

UN CONVENTION ON THE RIGHTS OF THE CHILD AND ALBANIAN LEGISLATION

By: Dr. Tefta ZAKA
Supreme Court Member

The Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989, is one of the most important acts of international law which foresees rights and obligations in all the aspects of the child's life, amassed in such a comprehensive, complete and detailed manner as in no other legal act in the field of human rights.

The present Convention shall intent to introduce into the International Law the specific rights of the child with concrete responsibilities for States Parties, which should take into account particular needs of the child as well as their situation concerning the rights and the fact. The reason is based on the fact that the children belong to a particular group of the society, whose needs and interests have never been considered sufficiently by the politics on the rights and in the bosom of society.

UN Convention on the rights of the child was ratified by Albania in February 1992 and came in force in March 1992. The legal framework after the ratification of the Convention and after the endorsement of Constitution has undergone changes. Many draft laws are at the final phase of discussion, among which is the Draft Code of the Family, which shall be endorsed by the Parliament within April 2001. Besides the importance to compile a comprehensive legislation, I think that this legislation shall remain inefficient if it is not implemented in practice. In this issue more is needed to be done, especially in the reference to the existing situation of children in Albania, a situation which has not been on the proper level, yet.

The new Constitution, which came in force on 28 November 1998, foresees the special protection of the child by the State. I think that in the present Constitution must include, to a greater extend, the rights of the child, which are assembled in one article only (Article 54),

Article 1

For the purposes of the Present Convention, a child means every human being below the age of eighteen years, unless, under the law applicable to the child, majority is attained..

Signification of the minor

With regard to the definition of a child provided by Article 1 of the Convention, it has been recognized and foreseen by the legislation of Countries, which have ratified the present Convention.

The differences in legislation of other states consist in the age limitations mainly in the expansion of this definition including children before birth.

Article 1 of the Convention provides enough space for states parties to decide on which moment the juridical protection of the child will initiate, or whether they shall recognize some rights to child before birth.

The Preamble does not have an obligatory character to the states parties. However, Paragraph 9 of the Preamble envisages the right of the child for legal protection before birth and after it.

The Civil Code of the Republic of Albania (Article 6,7,8) envisages full legal age which is 18 years old. At this moment, the individual is completely entitled to enjoy his rights and take over civic responsibilities he or she has acted for.

The woman is excluded from this case as she can enjoy these rights through her marriage, even if she is below 18 years of age. She shall not be deprived of this right even when the marriage is declared invalid, or if the divorce has occurred before she reaches the age of 18 years.

With regard to the protection of the rights of the child before birth, Civil Code (Article 2) envisages that legal rights shall start right after the individual is born and finish at his or her death. When the child was born alive, he or she is entitled of legal rights since the moment of perception. In addition, Civil Code (Article 320) envisages the protection of property rights of the child, inherited since the moment of the conception. Concretely, this provision acknowledges that entitled to inheritance is the individual who is alive when the process of inheritance starts, or the person has been connected before the death in bequeathed and was born alive.

Article 2

1. State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. State Parties shall take all appropriate measurements to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Protection of the rights of the child

According to Article 2 of the Convention, States Parties are obliged to protect the rights of each child within their jurisdictions, as it stands for human rights in general.

This category of children covers not only the residential children within jurisdiction of the relevant state, but also children who are as visitor of the state or happens to be there for any other reasons.

The new Constitution (Article 18) acknowledges that no one shall be discriminated because of gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economical or educational or social status, or parental origin.

It does not exist any special legal provision to envisage discrimination of children but the constitutional provision is valid for children, as well.

With regard to second paragraph of Article 2 of the Convention, Albanian legislation has not envisaged any provision related to non-discrimination of the child because of his or her position, activity, expressed opinions or parents' beliefs, etc..

During the communist regime the child was discriminated because of the expressed opinions and beliefs of his or her parents or other members of the family. There were various forms of discrimination starting with internment up to depriving the child of the right to education as the whole population.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. State Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. State Parties shall ensure that institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

The interest of the child, a primary consideration.

This Article is addressed to public and private social protection institutions, courts and administrative authorities, which should take into consideration the best interest of each child in their country.

The Convention refers to the best interest of the child. However, it is not clear what the best interest of the child consist of. Nevertheless, the Convention as a whole provides numerous indicators on the interpreting manner to this notion.

Considering the fact that countries which have ratified the Convention have different economic and social developments, the definition of best interest of the child should be different, in accordance with the circumstances of the concrete case.

Under such circumstances, most important is the presentation of this principle in the fundamental law, such as Constitution, and in the legal framework on minors.

The best interest of the child has not been reflected in the Constitution of the Republic of Albania.

This principle has been reflected in the Code of the Family (Article 48), which states that adoption shall be done at the best interest of the child to be adopted. Law No. 7650, dated 17.12.1992 "On adoption of minors from foreign citizens, and some amendments to the Code of the Family" Article 1) points out that adoption is permissible only at the best interest of the minor and shall guarantee the respect of his or her fundamental rights.

In addition, the Code of the Family (Article 64) covers the relations between parents and children pointing out that parental rights shall be exercised only at the best interest of the minor child and on the agreement of both parents.

After the '90ies, a new juridical procedure has been noticed, a procedure which does not satisfy the best interest of the minor. This holds true in most divorce cases when the upbringing and education of the child or children is accepted to be the responsibility of one or both parents. At such cases, the interests of the parents are taken into account more than the ones of the child. This is also noticed in cases of food benefit, when in most of the cases child does not receive the minimum of what is needed for his or her education and well-being.

The Code of Civil Procedures (Article 354 and Article 357) recognizes that the court takes the decision for the appointment of the tutorship of the child or his or her replacement taking into consideration the interests of the minor.

As we can see it, the best interest of the child as a primary consideration and as signified by the Convention, has been presented in the appropriate relations of Family Rights, but it has not been presented as a fundamental principle referring to the rights of the child.

Tendencies

The Draft Code of the Family, under general provisions, envisages the principle of the best interest of the child.

According to the draft, parents, competent organs and courts, through their decisions and activities, should show primary consideration to the best interest of the child.

At the same time, under the Chapter on Adoption, it has been stressed out that adoption shall be permissible only at the best interest of the minor and guarantees the respect of his or her fundamental rights.

For certain cases, the draft Code of the Family foresees the obligation of the court of law to take into consideration the interest of the minor for special relations.

Thus, the chapter on parental authority, in cases when the child shall leave the parents and shall be illegally held by other persons, parents may demand from the court, the consignment of the minor child. According to the Draft, the court may not decide on the consignment in case this is contrary to the interests of the child. The court of law takes into consideration the opinion of the child when he or she has reached 10 years of age.

Regarding the management of the minor's property, the Draft recognizes the alienation of his or her property only when the minors' interest requires.

For the first time, the Draft covers the case when parents shall not agree on what is required for the best interest of the child and they can address this case to the court of law, which shall decide, after trying to solve the issue through the reconciliation

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, State Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

State Measures for the protection of the rights of the children

States Parties are not only obliged to respect and guarantee the rights of the child envisaged by the Convention, but at the same time, they should take all legal, administrative and appropriate measures to apply these rights.

In second Paragraph of this Article the obligations of states parties should be concrete in the economic and social field. But the text of this paragraph requires that the different economic possibilities of states parties should be taken into consideration to implement these rights.

Article 4 of the Convention is related to all the other provisions of the convention, which recognize various rights of the child.

The provisions of the Convention are mainly addressed to authorities of each state including legal authorities as well as those who deal with the application of laws in favor of the child. These provisions comprise the directives for general programmes and measures to be taken, which allow some space to states to maneuver.

An important aspect of Article 4 of the Convention is the recognition and guarantee by the state to the child and his or her family, of the individual freedom, which the child needs for his or her development and for a life of dignity.

Such provisions are the ones related to the prevention of discrimination (Article 2), to the right for life (Article 6), to the right to his or her own identity, nationality and name (Article 7-8), to the freedom of expressed opinion, etc.

The protection by the state of the family relations of the child against threats, is the objective of special provisions like the right to know his or her parents (Article 7), protection against any arbitrary separation of the child from the parents and the right of the child to maintain personal relations and direct contacts with both his or her parents (Article 9-10).

On the other side, the Convention envisages some provisions which deal with the right and responsibilities of parents for the education of the child and the insurance of appropriate conditions for the growth of the child (Articles 18 and 27), in ensuring the rights of the child for his or her freedom of religion (Article 14) etc.

Considering the category of children, states parties shall protect the child from any threats towards their rights, such as they shall protect the child from violence, maltreatment, negligence and exploitation in the family, from economic and sexual exploitation, etc.

Children with problems

For a certain category of children, especially threatened ones, such as the children deprived of their families, handicapped children, refugee children and children in armed conflicts, the state is responsible to offer special assistance, and shall ensure the physical and psychological adoption and their social re-integration.

After the ratification of the Convention in 1992, Albania did not take appropriate measures for satisfying these requirements deriving from the present Convention.

Certainly, the majority of rights of the child envisaged in the present Convention have been reflected in the Albanian legislation. But with regard to their application, a lot more measures shall be taken and the state shall have to fulfil certain requirements.

To achieve this, it is necessary to formulate a concrete policy and strategy for the future, as well as to establish a working group to identify the deficiency of the legislation in relation to the Convention and to assess the current situation of children in Albania.

Application of International Law

The new Constitution approved in November 1998 (Article 122) expresses that every ratified international agreement is part of the internal juridical system, after it has been published in the Official Journal of the Republic of Albania. It shall be applied directly, except when it can not be self applied or when its application requires the proclamation of one law.

An international agreement ratified by law takes over the laws of the country which do not reconcile with it.

This constitutional provision bears special importance for the protection of the rights of the child, because even in cases when local legislation bears shortcomings, the UN Convention on the rights of the child shall be directly applied.

But not all the provisions of the Conventions which establish a certain right for the child, are directly applicable. The Convention comprises several provisions, whose formulation has not been defined to the extend that they could establish a certain right which can be required to the justice.

For instance, the economic, social and cultural rights of the child or the various responsibilities for their protection, support and development require some real actions taken by the legislator, otherwise one shall not have their application in a direct manner.

This is the reason, the Constitution envisages that in cases when the Convention is not self applied, relevant laws shall be laid down for its application (Article 121/1).

Tendencies

The Draft Code of the Family, in the part on general provisions, envisages the responsibilities of the family, of the state and the society to take care for the minor children.

Thus, the Draft envisages that every child has the right to have the appropriate conditions for his or her normal physical, mental and moral development and to have the protection and care of the family, state and the society.

Article 5

State Parties respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Responsibilities of the parents

The Preamble of the Convention stresses that the parents and the family are primary responsible for the protection and upbringing of the child.

According to Article 5 of the Convention, states parties shall respect the responsibilities, rights and duties of parents or the members of the family or legal guardians to provide, in a manner consistent with evolving capacities of the child, appropriate direction and guidance in the exercise of the rights.

Article 5 of the Convention is related to other articles of the present Convention (such as Article 8, 9, 10, 18, 27, etc) defining responsibilities of the parents and family in various aspects of the child upbringing and development as well as considering the relations of the child with his or her family. At this point, the Convention slightly considers how the case is or should be solved when there is a conflict between children who wants to exercise his or her individual rights as guaranteed by the Convention, and the parents who wish to exercise their right to direct or assist their child.

Even with regard to the manner to deal with the conflict between the two parents as far as their responsibility over their children is concerned, the Convention has not clearly envisaged such a position.

The Convention has clearly expressed the relation of the child with the parents and state. The Convention does not give the right to the child that he, himself, can avoid paternal authority and chose the shift to the state authority.

The Albanian legislation which regulates the relations between the child and the parents or the family or the other persons responsible for upbringing of the child, gives priority to the rights and responsibilities of parents, family and other legal guardians of the child. It is important to define the proper place and role of the child in the protection of his or her rights.

Tendencies

The Draft Code of the Family envisages the duty and responsibility of parents to keep, educate and upbringing the child born in or out of their marriage, who in case of need are assisted by the state.

In addition, the Draft envisages the understanding of parental responsibilities which comprise the rights and responsibilities which ensure the moral and material well-being of the child, while caring for the child, while maintaining personal relations with the child, while ensuring the upbringing, development, legal representation and management of properties of the child.

In cases of guardianship, the Draft envisages the responsibilities of the court of law to decide based on the qualities of the selected person to upbringing and educate the minor in accordance with the requirements envisaged by the Code of the Family.

Article 6

1. *States Parties recognize that every child has the inherent right to life.*
2. *State Parties shall ensure to the maximum extent possible the survival and development of the child.*

The right to life

The right to life is one of the human rights, which has a special importance and is part of the imperative and un-avoided norms of the international law.

With regard to Article 1 of the Convention, Article 6 guarantees the right to life, just right after birth. The right to life is also recognized in Article 2 of the European Convention on Human Rights and in Article 6 of the International Pact related to civil and political rights. All these acts have been ratified by the Republic of Albania.

In addition, states parties shall guarantee to the most possible extend, the life and development of the child.

The same viewpoint of the first paragraph for the protection of the life of the minor has been maintained by the Constitution of the Republic of Albania. Article 21 of this Constitution proclaims that the life of the individual is protected by law, considering the fact that minors are part of the category of individuals.

Abortion

Abortion is a problem to be discussed with regard to the undeniable right of the child to life.

Up to 1995, voluntary abortion was not legal in Albania. The People's Assembly endorsed on 7 December 1995, the Law No. 8045, "On interruption of pregnancy". Although Article 1 expresses that the Law shall guarantee the respect towards each human being right after birth, exceptions are provided, when this principle may be broken should it be necessary and in accordance with the conditions set forth by this Law.

Thus, in addition to interrupting pregnancies due to health reasons, the voluntary interruption of pregnancy is also permitted when required by the mother. The question arises whether this is a case of violation of the right of the child to life or this Law, to the part we quoted above, contradicts Article 6 of the Convention on the Rights of the Child?

The development of the child (To add the Law on breastfeeding)

With regard to second paragraph, the main stress lies on the protection of the child from mortality due to malnutrition or decease.

In Albania, there does exist a difference in the nutrition of children in urban and rural zones. But this difference is more noticeable between mountainous and lowland areas. The economic conditions of families in mountainous zones are very difficult also because of the difficult terrain. Thus children who live in these zones are poorly nurtured. This is the reason of the higher infant mortality rate in these zones.

In accordance with the Convention, the state shall take all possible measures to compile differentiated policies for various zones of the country with the aim of ensuring the existence and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

The right to a name

Law No. 5840, dated. 20.02.1979 “ On registration of Acts on Civil Status” envisages the registration procedures for the child after birth. Nowadays, when important changes have happened in Albania in all the fields of life, and when the internal and external migration has expanded, there is a great necessity to compile a new law or fundamentally change the existing law on the registration of Acts on Civil Status”.

According to the current Law, the registration of the child in the civil status books shall be done within 30 days from the birth date, at the civil status offices of the parents inhabitation or where the child was born. Should the child be born dead, registration shall take place within three days.

The declaration of the child’s birth shall be made by the parents of the child who give him or her a name. In their absence, the declaration of the birth shall be made by the relatives of the child, other adult members of the family or by the health institution where the child was born. In case the child is not alive at the moment of registration, with the approval of the parents, the child is given a name and the child is recorded in the books as dead.

When the child is born dead, it is registered without a name and appropriate notes are made to the column of remarks, in the registry book.

The child born out of marriage relations, is recorded by his or her name, by the name of his or her mother and with a non-existing name of the father. The child is always given the family name of the maiden mother. In case paternity is recognized at any time, the name and family name of the father is registered.

The abandoned (found) child is registered within three days by the state institution or the administration of the orphanage on the basis of a Process verbal kept at the time when the child was found.

In such a case, the civil status official gives a name to the child and registers him or her with an non-existing name of father, mother and family name.

The situation in Albania after the '90ies, when mothers disappear after the delivery or provide false names, requires a detailed regulation of the law. The causes of this phenomenon relate to the irregularities occurring in maternity and to the legal amendments which have provided possibilities for the placement of the child in local or foreign non-state institutions.

The protection of the right to a name is explained in the Civil Code also (Article 5). According to the Article, each physical individual (children included) has the right and responsibility to have a name and surname which is given to him or her after birth. The individual who is deprived of using these names or who is being threatened by the illegal use of others, may claim to the court of law for the use of his or her own name or surname, interruption of threat and the reward for the relevant damage.

In cases when the court accepts the indictment, the court of law orders the publication of the decision in the Official Journal. Upon request of the suitor, the court of law shall order the publication of its decision in other newspapers, too.

Nationality right

The Constitution of the Republic of Albania (Article 19) expresses that everyone born, with one of the parents of Albanian nationality, is automatically given the Albanian nationality. Albanian nationality is acquired for other reasons envisaged by law.

The Albanian citizen shall not loose the nationality unless when he or she decides to give up from it.

Law No. 8389, dated 5.08.1998 "On Albanian Nationality" provides cases of acquiring or withdrawing from the child's nationality. By Law (Article 5) acquiring and re-acquiring the Albanian nationality, and withdrawing from this nationality by the minors, shall be dealt with upon the approval of parents. Changes to the nationality of children when 14-18 years old shall be done with the approval of the child, too. According to the above mentioned law on nationality, Albanian nationality is acquired by birth, naturalization or adoption.

Acquiring nationality by birth

Acquiring the Albanian nationality by birth was amended by Law No. 8442, dated 21.01.1999. According to this Law, each individual born from one of the parents of Albanian nationality, automatically acquires Albanian nationality.

The Law on nationality, in accordance with paragraph 7 of the Convention envisages cases when the child risks to remain without nationality. According to the Law, a born or abandoned child within the territory of the Republic of Albania acquires Albanian nationality in case he or she is born by unknown parents thus risking the child to remain with no nationality (Article 8).

In case parents of the child become known before the child reaches the age of 14 (as the consent of the child shall be considered at this age) and the parents are of a foreign

nationality, Albanian nationality may be withdrawn upon request of legally recognized parents under the condition that the child shall not remain without nationality afterwards, as a result of this act.

In addition, the Law envisages cases when the child is born by foreign parents (of another nationality). On this case, the child shall acquire Albanian nationality upon the consent of both parents if the two conditions below are fulfilled:

First, the child must be born within the territory of the Republic of Albania, and

Secondly, parents are legal residential in the territory of the Republic of Albania.

Acquiring nationality by naturalization

The primary condition to acquire Albanian nationality by naturalization is upon request of individual who has reached the age of 18 years old. Thus, minors are not included in this category.

But the Law has defined some exceptions for the individuals with no nationality, thus favoring the minors under 18 years of age, who in such cases may acquire Albanian nationality although they do not fulfill the age condition and some other conditions set forth by Law (Article 9).

In addition, the child shall acquire Albanian nationality upon request of parents and with his or her own consent when 14 – 18 years of age, in cases when parents acquire Albanian nationality by naturalization.

Acquiring Albanian nationality by adoption shall be covered later, while dealing with adoption chapter.

The request to acquire Albanian nationality shall be addressed to the Ministry of Public Order and when the individual is living out of Albania, to the diplomatic embassy or consulate of the Republic of Albania abroad, accompanied by supporting documents required by this Law. After reviewing the relevant documentation, the above mentioned bodies shall evaluate the documentation as requested by Law, shall address the documentation to the President of the Republic, who proclaims the relevant decree.

The right to know the parents

With regard to the right of the child to know his or her parents, the problem of the Albanian law consists in two aspects, on adoption of the minor and when the children are set in orphanages.

The Code of the Family, amended by Law No. 7650, dated 17.12.1992 “On Adoption of minors from foreign citizens and on some amendments of the Code of the Family”, recognizes the complete adoption. Thus, if the child is adopted, the relations established between the child and the adopter are similar to those between parents and children.

The rights and responsibilities between the adopted child and the one born after him or her, on one side, and the child’s gender on the other side, shall not exist any longer (Article 57).

As it can be realized, the Code does not recognize the right of the child to know his or her parents.

The Law on registration of Acts of Civil Status, has not envisaged anything in relation to this problem, although the registers of civil status include the information recorded before adoption.

In order to maintain the real origin of the child, the civil status official shall not delete any prior generalities of the adopted child recorded after birth. As by the decision of the court of law for the adoption, the official records relevant notes under the special column of remarks by the registered act of the birth of the adopted child. The civil status official shall provide information on the origin of the child only when such information is requested by the court or by the Prosecutor's office in accordance with the law requirements in such cases. With regard to the right of the child to request such information related to his or her origin, it is intended that she or he can not exercise this right in a legal way.

Reality has proved that it is more difficult for children in orphanages and when they do not know their parents. It is assumed that the mother is known, unless the child is found somewhere. However, this information is very difficult to be collected from the orphanages.

I think that the practice which is often followed in maternity hospitals, related to the registration of the real identity of the mother, expresses the threat to the right of the child to know one of the parents, because irregularities in registration negate the possibility to know at least his or her mother.

The new Constitution (Article 23) recognizes the right to information in general, whereas as by Article 35, each individual is entitled to have the information related to him or her, unless the Law envisages such cases.

Broadly interpreting the two constitutional provisions mentioned above, I think that they comprise the right of the child to acquire information and data at the disposal of relevant legal institutions, regarding his or her parents.

The right to be cared for by the parents

The right of the child to be cared for his or her parents is defined in the introduction of the Code of the Family (Article 7) amended by Law No. 7540, dated 17.12.1991 "On some amendments to the Code of the Family of the Republic of Albania". According to the above mentioned provision, parents are responsible for the upbringing and education of their child. The Code of the Family also recognizes (Article 69 and 71) that parents shall not delegate the responsibility of the upbringing and education of their child to another person that can not be the guardian. The parents themselves represent the minor child, when he or she are below 14 years of age, in all juridical proceedings, unless the child can represent him or herself, as defined by Law.

In addition, the Code of the Family and other special laws recognize the right and responsibility of the parents to care for the nutrition, education etc. of the child, which will be dealt with below, in the respective parts.

Tendencies

New draft code on civil status, which is at the final phase of discussions, recognizes the civil status of Albanian citizens, residential inhabitants out of Albania, as well as of foreign inhabitants and individuals with no nationality.

Within the viewpoint of the draft code, the family is composed of members who voluntarily are recorded together in the documentation of the civil status services. According to the draft code, family relations consist of relations between the parent and his or her family, related to the birth of an individual, marriage and adoption. These relations shall change only when the major individual requests to be isolated and when such a request shall be approved by the competent organ or the court of law.

According to the draft code, the minor children follow their parents. When parents separate and do not come to an agreement for the minor, actions shall be taken according to the decision of the court of law, upon the request of each parent. For registration and family significance purposes, the draft envisages the possible manners to follow when the child lives with his or her parents. I think that it is of interest that the draft envisages cases when the child or children live with the guardian or not, the registration procedures under such circumstances, and what is the significance of family relations in such cases, as defined by law.

In addition, the draft code does not leave space to minor children to address themselves to the civil status services should they change their relations with parents or guardians, or other cases as per the interest of the child.

The Draft expresses the registration of the child under the name that parents give. In case parents disagree, they should address themselves to the court of law. The registration follows as per the decision of the court.

According to the draft code, the surname shall be the one of the parents, and when parents bear different surnames, both surnames are given. When the child does not have a father, he or she is given the surname of the mother. This definition opposes the Code of the Family in force. It opposes the new draft of the Code of the Family, too, as by the latest, the acquisition of two surnames is not permitted. I think that the definition provided by the Draft law is not correct, due to the discrimination of children born out of marriages, who are given only their mother's surname versus the ones born within marriage. At the same time, it opposes the Albanian tradition and is not in favor of integration of the abandoned child and the one born out of marriage, in the society.

The change of name and surname, as by Law, shall be done only under reasonable circumstances. This is a very general definition and provides space for abuse. Although this has to do with the dignity of the child, the draft does not envisage the child's right to keep his or her name or surname, regardless of the wish of the parents or guardian and of the procedures to be followed by the child.

Another disputable tendency nowadays is the introduction of artificial reproductive methods.

Draft law on reproductive health amongst other issues, recognizes the introduction for the first time in Albania, of new artificial reproductive methods.

The draft law recognizes surrogative adoption, artificial insemination and experimental birth "in vitro". Without mentioning the technical side of the draft, but considering the aspect of respect towards the rights of the child, I think that the draft leaves much to be desired. Parents' desires are taken into consideration in choosing the reproductive methods, without thinking of consequences of these methods to the children who are born as a result of their application.

Besides, I think the application of the surrogate adoption method is premature in Albania, due to the mentality of Albanian society.

The draft is not accompanied by amendments to the other legal acts to define the rights of the child born due to this artificial reproductive method; rights which have to do with the maternity and paternity of the child, his or her relations with the genetical parents, the property rights which derive from inheritance, etc.

The draft foresees that the details and procedures for the application of such services shall be defined by other acts to be laid down by the Ministry of Health. As we are dealing with application of new artificial reproductive methods, I think that the procedures and consequences of their application should be defined by law, thus ensuring a better protection of the minors, to add to the fact that in the majority of cases, the acts laid down by the Ministry are not published.

In cases of artificial fecundation, problems are numerous as compared to the natural fecundation, creating various situation not in favor of the interests of the child. For instance, the delivery of the child in the absence of the legal parent, who does exist physically at the moment the child is being delivered, but the law does not recognize the title, the rights and responsibilities as of the father; or the existence of two mothers when two women have contributed for one child to be born, one of them being the genetical mother, and the other the carrying mother. In such a case the draft recognizes the establishment of a notaries contract between the couple and the carrying mother, who after the child is born shall deliver him or her back to the couple. The draft does not envisage what might happen if the carrying mother does not respect the contract due to the affection she might feel between her and the child. I think that this regulation of the law opposes the interests of the child, who may suffer from the existence of two mothers at the moment he or she will be informed about this fact.

UN Convention on the rights of the child does not deal with the rights of the child in relation with the artificial reproductive techniques.

I think that in the formulation of the draft law on artificial reproductive techniques, one should take into consideration Articles 7 and 8 of the Convention, which make states parties responsible to respect the right of the child to preserve his or her identity, to know the parents and be cared for by the parents.

Article 8

1. *States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.*
2. *Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.*

Identity of the child

As we can realize it, the concept of identity has not been defined with all its elements in the Convention.

The above mentioned provision recognizes as elements of identity, the nationality, surname and family relations as recognized by law. The notion remains unclear beyond these elements, especially with reference to the genetical aspect.

The Constitution of the Republic of Albania and special laws recognize the right of the individuals, in general, (the minor included) to preserve the identity in special elements such as nationality, family relations, language, culture, etc.

Constitution

The Constitution (Article 3) presents the responsibility of the state to respect and protect national identity, which bears a wider meaning than the identity of the individual.

At the same time, when referring to the general principles of the human rights and fundamental freedoms, the Constitution recognizes the responsibility of the public order organs to respect the human rights and fundamental freedoms and shall contribute to their application.

Definitions of such rights can be established by law for the public interest or for the protection of the rights of the others.

The definition should be in proportion with the situation urging the establishment of the definition (Article 17).

At the same time, the Constitution respects the preservation of identity by the national minorities, who enjoy the right to express and preserve their ethnic, cultural, religious and language belonging.

Civil Code

The first chapter of the Civil Code defines the rights of the individual to preserve the name and surname as well as the living place (Article 5 and 12). In addition, the Civil Code recognizes the right of the physical individual to enjoy civil rights except the exceptions defined by law.

Nationality

With regard to preserving the nationality, the Constitution and Law No. 8389, dated 5.08.1998 guarantee the preservation of Albanian nationality acquired by law.

According to the Constitution, Albanian citizens can not lose the nationality unless the individual gives up from it.

For the minors below 14 years of age, the parents shall decide for the nationality of the child within the criteria defined by law. Whereas the children over 14 up to 18 years of age, the child's consent shall be taken into account, too.

The law does not express the legal power of the child's consent and what shall be decided when the child disagrees for acquiring or withdrawing the Albanian nationality, as case may be.

Name and surname

With regard to preserving the name and surname of the individual, the Law on Acts of Civil Status has been amended by Law No. 7682, dated 9.03.1993 "On some amendments to the Law".

According to this law, each citizen is entitled to require the change of his or her name or surname by providing reasons for this change, as well as the name and surname he or she has chosen.

The decision of changing the name or surname is taken by the Council of Commune or Municipality and is delivered to the relevant civil status office which registers the changes in the fundamental register of citizens.

The fact is that this amendment did not introduce anything new in the legislation because the right to change the name or surname has already been recognized.

In practice, after 1990-1991, Albanian nationals started to require the change of their names and surnames, depending from the country they were migrating to, where the highest percentage is held by the emigrants to Greece.

I think that at this point the law requires to be amended because this is a case of violation of the right to the child to preserve one of the elements which compose his or her identity, when parents decide whether to change or not the name or surname of their child.

By this provision, the Convention obliges the States Parties to respect the right of the child to preserve his or her identity.

How can we talk of the right of the child, when the parent or the guardian of the child shall decide for the part of identity elements.

With reference to preserving family relations in cases of adoption, according to the Code of the Family, all relations with the family of origin shall cease after the adoption process takes place.

This issue will be dealt thoroughly when dealing with adoption.

Tendencies

The draft law on civil status defines that the family certificate for each citizen, including children comprises: name, surname, identification number, sex, date of birth, place of birth, name of father, name of mother, nationality, status and family relations.

According to the draft law, the child acquires the nationality of the parents of the same nationality, which can not be changed even by the decision of the court, unless the parents' nationality is correct or when the maternal and paternal recognition shall be made in court.

When parents of different nationality disagree, the civil status service temporarily defines the nationality of the father and finalize the decision according to the will of the child at his full legal age.

In addition, the draft defines the nationality of the child born out of marriage, of the adopted child, of the parentless child, and of the child born as a result of artificial fecundation. As for the latest, the draft is limited to the children delivered by a married mother and does not define the case when the child is delivered through artificial fecundation by an unmarried mother.

I think that the draft should be limited only in the definition of nationality, because the concept of changing the nationality refers to the nationality of the minor child as part of his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interest of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with essential information concerning the whereabouts of the absent member (s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

The right to live with the parents

The content of Article 9 is related to considerable provisions of the Convention. Place has been provided to the detailed treatment of rights recognized by this Article.

According to paragraph 1 of Article 9, states parties are responsible to ensure that a child lives within the family environment taking all measures that the child shall not be separated from his or her parents, except when for the best interests of the child.

Taking into consideration the fact that the right of the child to live with his or her parents is nowadays a principal element recognized by other Acts (Article 8 of the European Convention on Human Rights) in the field of human rights, the separation of the child from his or her parents as being deprived of parental care, or of the parental authority can take place only

when this is for the best interest of the child and when this best interest is at risk and if this risk can not be avoided in another manner.

The Family Code of the Republic of Albania (Article 70) recognizes the case when parents can claim in the court for the consignment of their child when the child does not live with them and is illegally held by other persons.

In such a case the court decides the return of the child except if such an act is against the best interest of the child, and the court takes the opinion of the child when he or she is over 10 years of age.

In addition, the Penal Code (Article 127) expresses that the illegal kidnapping and taking him or her away from the persons exercising parental authorities, or is responsible for the upbringing and education of the child, and not consigning him or her to the other parent, according to the law this is a penal case and shall be fined or imprisoned up to six months.

Guardianship

The Code of the Family (Article 75) recognizes the right of the Guardianship Council to require the court of law to decide the withdrawal of the child from the parents in such a case when the parents shall not care for the upbringing and education of the minor child or when this is in the best interest of the child. The responsibility of upbringing and education of the child shall be recognized to a state institution or to another person, when he or she agrees.

After 1990-1991, when most of the field of human rights experienced serious changes, the family right issues are undergoing those changes with much more difficulties. Some organizations which functioned in favor of the protection of the child, such as Councils of Guardianship in Municipalities, currently have remained functionless. This brings out the fact that the competencies and functions held by the Council of Guardianship remain in paper, presenting a disadvantage for the interests of the child.

Paternal authority

In cases when parents abuse their paternal rights (or paternal authority) or neglect this authority, or when his or her activity influences negatively in the upbringing and education of the children, upon the request of the other parent or of the Council of Guardianship, or of the prosecutor, and by the decision of the competent court, the parent shall be deprived of the paternal right.

In most of their decisions, the courts of law have attempted to apply the criteria of the best interest of the child, while defining the paternal authority in the proceedings of dissolving a marriage, when a child or the children shall live with one of the parents. But there are other cases when courts of law are not expressed or are vaguely expressed in relation to the interest of the minor under such circumstances.

The juridical experience before 1990 was more consolidated in this direction. One of the reasons was the guidelines of the Supreme Court which according to the law, were obligatory for all the other courts of law.

The right to participate in the trial proceedings

Paragraph 2 of Article 9 of the Convention through its definition, provides the States Parties with the possibility to decide on the manner how to adjust the participation of interested parties in discussions and the expression of their opinion.

With regard to the rights of the child as an interested individual, this provision is closely related to Article 12 of the Convention, which recognizes the right of the child to be heard in any judicial proceedings affecting the child.

Based on the above, the question arises about the form through which the child shall express his or her thought. This holds true for other interested persons who can participate in the proceedings according to the qualities recognized by the legislation of the relevant country.

With reference to the expression of thoughts by the minor, when the child shall remain with one parent or with other individuals depending on the case, the Code of the Family accepts the age of 10 years (Article 66, 67). Thus, the court of law shall take the opinion of the child when he or she is over 10 years of age.

The problem arises whether the child shall be entitled to address him or herself to the court to demand for the exercise of his or her rights. **To add concrete cases**

The right to meet the parents

Paragraph 3 of Article 9 recognizes the right of the child, when he or she is separated from one or both parents, to maintain regular personal relations and direct contacts with both parents, except if it is contrary to the child's best interest.

According to this paragraph, the right of the child to have contacts with the parent is not an absolute right, but it is limited by the best interest of the child.

The Code of the Family recognizes the right of the unreliable parent to maintain personal relations with his or her child (Article 98), according to the manner defined by the court's decision. Although by the Code of the Family it has not been recognized as an institute, the separation of couples before dissolving the marriage, only regarding the maintenance of relations between the parent and the child who live with the other parent, there does exist a special provision (Article 66). This provision refers to cases when parents live separately although the marriage has not been dissolved. The Council of Guardianship is the decision making authority which decides who will be the parent the child is going to live with, and what relations the child is going to have with the other parent.

In cases when the Council of Guardianship almost does not exist, the issue of regulating the relationship between the child and the parent he or she is living, needs to be dealt with especially for the cases when parents are separated for other reasons than the ones set for dissolving the marriage. Such cases might be the transfer of one spouse to another place for business purposes and the couple disagrees with whom the child is going to live with and for the type of relations he or she will have with the other parent, etc.

The Code of Civil Procedure came in force on 1-st of June 1996, which without amending or abrogating the above mentioned provision of the Code of the Family, differently regulates the competence of the organ which is responsible to define the consignment of the child for upbringing and education at the pre-marriage dissolving stage.

The Code of Civil Procedure recognizes the Section on Review of Family Disagreements in the district court, as the competent organ to decide with whom the child will stay till the marriage is dissolved.

Based on the above, one can realize that the legislation on the family recognizes in a significant manner, the right of the parents to maintain personal relations with their children and not as the right of the child to maintain relations with his or her parents.

Tendencies

The draft Code of the Family recognizes cases when minor children, where impossible to remain with the parents, are placed under guardianship and enjoy special protection by the state. These cases include physical abuse of parents, nonexistence of their care, withdrawal of parental authority, etc.

In addition, the draft recognizes cases of the child's upbringing and education in case of divorce and of the relations the child maintains with the other parent.

The importance lies over the definition of the relations of the child with the parents during the divorce trial proceedings, where the draft recognizes the court of law as the organ which shall decide for this period, on the way the relations will be established, on the material needs of the child and on the residence of the child. The draft provides space to the child for participating in the proceedings of interest for him or her, for expressing his or her thoughts and feelings, and declares the participation of the psychologist as obligatory.

The draft abolishes the Council of Guardianship and more functions are delegated to the court in favor of the protection of the rights and interest of the child.

The Draft defines the relations that the child shall have with the guardian, which shall be the same to the relations between the child and his or her parent(s). The guardian cares for the minor, represents him or her in every judicial proceedings and manages the property of the child according to the provisions on the paternal authority.

According to the Draft, generally speaking, the minor under the guardianship shall live with the guardian, unless the court decides otherwise.

The draft recognizes the responsibility of the court that before choosing the guardianship, it shall listen and take into consideration the opinion of the minor who is over 10 years of age.

In cases of conflict of interests between the minor and the parent or the guardian, the court shall appoint a special guardian defining his or her relations with the child;

Article 10

1. In accordance with the obligation of State Parties under Article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

The right to family reunification

I think that paragraph 1 of Article 10 does not specifically recognize the responsibility of States Parties to realize the family reunification, providing space to them to regulate laws related to the content of this provision, as per their desires and possibilities.

Paragraph 2 is related only to the personal relations and direct contacts between the child and his or her parent(s), mainly through meeting them at fixed times for certain period at a certain place.

But paragraph 2 obliges the states parties to authorize the entrance and exit from their country only of their proper citizens (nationals) and not to guarantee foreign citizens' entrance for realizing the contacts defined in this proper paragraph.

For the conditions of Albania, it would have been very important to guarantee the entrance of Albanian citizens to other states realizing the contacts for many children, when one of the parents is employed or is in another state, for various reasons.

I think that Albanian legislation is in conformity with Article 10 of the Convention.

The Constitution of the Republic of Albania (Article 16) recognizes that the fundamental rights and freedoms as well as the responsibilities of the Albanian citizens defined by the Constitution, shall be applied similarly to a foreign citizen or other stateless individual in the territory of the Republic of Albania, except if the Constitution specially relates the application of defined rights with the Albanian nationality.

This is a general provision which shall apply in special laws for special fields of human rights and freedoms.

The right to move

In addition, the Constitution (Article 38-40) recognizes the right of every individual to freely move within the territory of the state and out of the state. While recognizing the rights of sheltering the foreigners in Albania, according to the Constitution, the procedures and criteria shall be regulated by special law.

At present, the entrance and exit of individuals in the Republic of Albania, sheltering them and providing them with relevant permission, is regulated by Law No. 7939, dated 25.05.1995 "On migration".

According to this law, every Albanian citizen who leaves the territory of the Republic of Albania, is entitled to return (Article 6).

Not only for the Albanian nationals but also for the foreign ones, this law establishes possibilities for stay in Albania in periods of 3 months or 1 year, with the right to renewal.

For receiving the permission to stay, the law facilitates individuals who are spouses to Albanian citizens, or their children who are under the age of 18, or individuals who are under their responsibility (Article 15).

The law recognizes and accepts the case of families of expatriates who have come to Albania for various reasons (studies, investments, employment, etc). Under such circumstances, the spouse and children below 18 years of age, or are under the responsibility of the above mentioned individuals, are provided permission to stay for the period of the permission the main bearer has, presenting proofs that they can be cared for without addressing themselves to the public funds.

Tendencies

Currently, GTZ has prepared a draft law on international private law. The draft is in the phase of discussions. It defines the legislation to be applied in cases of relations between parents, or parent(s) and children, when they live in the same country or in different ones.

According to the draft, the personal and property relations between the child and his or her parents and the paternal care shall apply the law of the state of the child's residence.

Article 11

1. *States Parties shall take measures to combat the illicit transfer and non-return of children abroad.*

2. *To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.*

Illicit transfer of the child abroad

Paragraph 1 of Article 11 of the Convention refers to the illicit transfer of the child abroad, by other persons or by one of the parents, as well as to the kidnapping of the child for certain reasons to another country abroad.

Actually this provision does not define the cases it refers to. Consequently, its interpretation will be made on case-to-case bases. Kidnapping, which I think is included in this provision, is clearly expressed in Article 35 of the Convention.

Most important in this Article is the international cooperation to fight against these phenomena through bilateral or multi-lateral agreements or through adhering in existing agreements.

In reality, I think that Albania has not paid much attention to the issues of the rights of the child.

Besides the ratification of the UN Convention on the rights of the child, no other initiative has been taken, be that the ratification of important convention on the issue.

Currently Albania is experiencing many problems which are related to the transfer of children with one of the parents abroad, thus negating the possibility of the child to maintain contacts with the parent who remains in Albania; or are related to the children trafficking phenomenon, etc. which should be given legal possible solutions. After the endorsement of the Constitution, penal legislation was amended in the aspect of kidnapping of minors, amendments which will be covered in Article 35 of the Convention.

For the application of this provision, Albania should firstly ratify the Hague Convention of 25 October 1980 on the civil aspects of international kidnapping of children, for the situation in Albania.

Article 12

1. *States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*

2. *For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.*

The right to be heard and to participate in any judicial or administrative proceedings

This provision defines one of the fundamental principles of the Convention and is one of the most important recognition of the Convention, related to the child's personality and the state's responsibility to preserve and develop this personality. It shows that the community and state institutions shall not any longer consider the child as a mouthless and passive being, but as an active progressive participant in accordance to his or her intellect, in the organization and running of his or her life and the environment around him or her.

But the participation of the child is related to the possibilities offered to him or her to express his or her views freely in the matters of interest for the child, or as defined in the Convention, in all matters affecting the child.

At first glance, it seems like Article 12 covers the right of the parents to lead and upbringing the child. This right has been protected by the Convention. But this Article does not cover this right of the parents, because the Convention relates the role of parents to the intellectual development of the child, eliminating the contradiction between family dependence of the child and his or her freedom of expression.

This requires that since the very beginning, it is necessary to verify whether the child is capable to have an opinion (view) in the particular aspect of the matter affecting him, and not in the matter, as a whole. For instance, in the case of divorce of the parents, the child may express his or her views for the future, for the residence and for the parent the child shall live with, after the divorce.

According to the Albanian legislation, the child shall be asked and the child's views shall be taken into consideration when the child is over 10 years of age.

In the understanding of Article 12 of the Convention, the capacity to have his or her own view shall not be considered as an intruder to a certain age at a certain manner. The capacities change as per the development of the child, the child's skills to understand matters affecting him or her, the nature and importance of the concrete matter.

The Code of the Family (Article 66 and 70), when for certain reasons parents are not living together but are not divorced, the Council of Guardianship decides for the parent the child shall live with. When the child is over 10 years of age, the child's opinion shall be taken into consideration.

In cases of divorce, the court solves the matter of who will be the responsible parent for the upbringing and education of the child. When the child is over 10 years of age, the court takes into consideration the opinion of the child (Article 97).

Law no. 7650, dated 17.12.1992, "On adoption of minors by expatriates and on some amendments to the Code of the Family" recognizes the right of the minor to express his or her opinion for the adoption, if the child is over 10 years of age. Thus, the opinion of the minor is taken into consideration since at the administrative proceedings phase (Article 7).

Besides, during the judicial proceedings, should the child be over 10 years of age, the child is asked to provide his or her consent (Article 54).

According to the Code of the Family, in cases when the Council of Guardianship appoints the guardian, the opinion of the child over 10 years of age shall be taken into consideration (Article 105).

Because the Code of the Family was not amended at the time the Civil Code and the Code of Civil Procedures were amended, contradictions amongst definitions of responsibilities of institutions are noticed.

Thus, the Code of Civil Procedures recognizes the placement under guardianship according to the decision of court of law. The Code of Civil Procedures confirms Article 12 of the Convention, and recognizes the right of the child over 16 years of age, to address him or herself to the court for the placement of guardianship for him or her.

In addition to the cases related to the family relations of the child, the opinion of the child shall be taken into consideration for acquiring and withdrawing the child's nationality.

Law No. 8389, dated 5.05.1998 "On Albanian Nationality" points out that every changes of the nationality of minors between 14-18 years of age shall take into consideration the consent of the child (Article 5). In addition, the law envisages the case when both parents acquire the Albanian nationality by naturalism. Under such circumstances the child below 18 years of age, when living with the parents, becomes Albanian national upon the request of the parents and with the consent of the child when between 14-18 years of age. I think that at this age, more space should be given to the child to choose the nationality and not simply considering his or her opinion.

Tendencies

The draft Code of the Family has undertaken an important step forward in defining the right of the child to be heard by the court and to be present or to be represented through an advocate or a legal representative.

Thus, in the first part on general provisions, two variants are presented regarding the right of the child to be heard by the court in cases when decisions are taken for matters affecting the child.

The first variant does not define the age, but it is stated that it depends on the capacities of the minor to understand and on the child's intellectual development, not violating the provisions of the Code which recognize the right of the child and the responsibility of the court to hear and consider the opinion of the child, as per the case to be judged.

The second variant defines the age of 12 years as a boarder for the child to actively participate in proceedings and to be protected in a manner consistent with the procedural rules recognized by this Code and by the Code of Civil Procedures.

I think that it would have been of interest to specially introduce the right of the child to receive appropriate information from the court on the consequences the child shall bear as a result of his or her requirements or of the guardianship requested by the child, him or herself.

This definition in the draft Code of the family gains importance especially when the procedures of interest to the child are family related proceedings, are particularly related to the parental rights like residence, relations with the parent, the right to the visits, establishment of guardianship, threats to the private life and correspondence, protection of property rights, etc.

Albania has ratified the European Convention on Human Rights and has accepted the jurisdiction of the European Court. Thus Albania is responsible to respect the jurisprudence of this Court.

Thus, in the case of Nielsen against Denmark, a child of 12 years addressed his case to the Human Rights Commission for violations of Article 5 of the Human Rights Convention (the right to liberty and security), placing the child in a psychiatric hospital upon request of the mother; or in the case of Hokkaen against Finland, when the Court came to the conclusion that a child of 12 years is capable enough to understand and to be heard by the court and shall not authorize visits against his or her will.

European Court of Human Rights has generally concluded that no decision shall be taken against the will of a 12 years child in cases of placing the child to a family, of changing the child's name, of the child's request for nationality, religious belief, etc.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order, or of public health or morals.

Freedom of expression

This provision obliges states parties to respect the right of the child to freedom of expression which has been reflected also in the Universal Declaration of Human Rights and in the European Convention on Human Rights.

The right of the child to expressed thoughts has been recognized in Article 12 of the Convention. But different from Article 12, Article 13 covers a general application of this right, except for the limitations recognized in Paragraph 2 of this Article. In this view point, Article 12 shall apply where the case is directly related to the interest of the child.

Article 13 permits the child to participate in the social life through expressing the opinions and through exchanging information and ideas.

The Constitution of the Republic of Albania does not comprise special provisions for children with regard to the right to freedom of expression. But the Constitution provides a provision for every individual where children are included. According to this provision, the freedom of expression shall be ensured (Article 22).

In addition, the Constitution recognizes the insurance of the right to information. While applying the constitutional provisions, legal acts shall be laid down to define the manners and ways of application of this right to children which is more specific compared to the right of individuals. Certainly children receive information and express their views in the educational process. But the Law on education does not recognize any special provision for this right.

The Law on Education expresses that the goal of education is the spiritual emancipation, material progress and social development of the individual (Article 2).

The most important aspect of this, is the fact that the Law comprises the participation of children in community, ensuring possibilities for the child to express views and seek information in this field (Article 12/2).

Under such circumstances, I think that it is of interest to establish an information center for children, which in accordance to Article 13, shall provide possibilities to children to receive information and express their views in magazines, electronic media, discussions, etc.

With regard to Paragraph 2 of Article 13, covering the restriction of this right, the Constitution recognizes restrictions to this right and freedom and these restrictions shall be decided by law for the public interest or for the protection of human rights. The restriction should be in direct proportion with the situations it has derived from (Article 17). Paragraph 2 of this Article in the Constitution is of special importance. According to this paragraph these restrictions shall not threaten the kernel of freedom and rights and in no cases they shall be decided beyond what is recognized by the European Convention on Human Rights. This is due to the fact that freedom of expression for every individual, including children, has also been recognized by the European Convention on Human Rights.

In addition to the above, as by Law No. 8525, dated 09.09.1999, Albania has ratified the European Convention on Interfrontier television. According to the Convention, the freedom of expression and right to information have been recognized. According to Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the freedom of

expression and the right to information compose the fundamental principles of a democratic society and one of the basic conditions for the development of every human being.

The Convention shall apply for children, too. However, it is expressed for children in particular, for frontiers of transmissions of programmes and advertisements, recognizing restricting provisions for the protection of the rights of the child. Thus according to the Convention (Article 7), every programme services which might negatively influence on the physical, mental or moral development of children and adolescents, shall not be transmitted at the times the transmission might be watched by this group.

In the understanding of Article 13 of the convention, the endorsement of Law no. 8503, dated 30.06.1999 "On the right to information on official documents" is important. The Law does not comprise special provisions for children, but it is not expressed for restrictions, either. I think that the Law is applicable for children because Article 2 of the Law defines that an individual, in the understanding of this Law, is every physical or judicial individual, an Albanian or foreigner.

In addition, the Law recognizes the right to complain in an administrative and judicial manner, in cases of violations of the right to information on official documents.

Article 14

1. *States Parties shall respect the right of the child to freedom of thought, conscience and religion.*

2. *States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.*

3. *Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.*

Freedom of thought, conscience and religion

Albanian legislation does not recognize anything special for the right of the children to be free in the selection of religious belief.

The Constitution recognizes that the state shall be neutral in issues related to belief, conscience and shall guarantee their freedom to expression in public (Article 10). In addition, the Constitution recognizes that freedom of conscience and religion shall be guaranteed.

Everyone is free to choose or change religion or beliefs, as well as individually or collectively express them in public or in private life, through the cult, education, practices or exercising rituals.

No one shall be obliged or stopped to participate in a religious union or in its practices, or in expressing the beliefs in public (Article 24).

Thus, the right recognized by Article 14 of the Convention on the Rights of the Child, is recognized as the right of everyone, not excluding the category of children.

Whereas, the Law on education does not permit religious propaganda of any beliefs in schools, because public education is laic. In Albania, there have been no problems regarding religious beliefs. This is also due to the fact that for 50 consecutive years religious beliefs were abolished.

As by the Council of Ministers' Decision No. 248, dated 28.05.1999, criteria and procedures are defined for permitting the nonpublic educational institutions and non-public additional educational institutions to develop religious subjects. The Decision recognizes that the private entity shall function as a non-public educational institution where religious subjects will be held. In addition to other documents, the institution shall present a declaration where it is stated that the Institution shall take the responsibility to respect the Universal Declaration of Human Rights and the Convention of the Rights of the Child. The Decision does not express whether the view of the child shall be taken into consideration when registered in school. Whereas the Decision expresses the facultative participation of children in activities out of the educational programme, where the consent of parents, guardians or the child is determining. The Decision does not recognize the age of the child for the determining opinion of parents. This should be of interest especially in schools of this character, where the consent of the child is indispensable.

The Decision of Council of Ministers No. 459, dated 23.09.1999, decided for the establishment of a State Committee of Cults, which presents to the Ministry of Education and Science, its views related to the educational plan, curriculum and non-laic text books in the requests for the establishment of these non-public educational institutions covering religious subjects.

With regard to Paragraph 2 of Article 14 of the Convention, the Code of the Family recognizes the rights and duties of parents or legal guardians to provide direction to the child. But there is nothing special to direct the child in the exercise of the right to freedom of religion.

The Penal Code recognizes the case when individuals want to participate in religious ceremonies and want to freely express their religious beliefs and they are not permitted to exercise this activity. The exercise of this act shall consist as a penal violation and shall be fined or punished with imprisonment for up to one year.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restriction may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Freedom of association and of peaceful assembly

The Constitution of the Republic of Albania recognizes the right of every individual to associate collectively for any legal purpose (Article 46).

In addition, the Constitution ensures the freedom of peaceful and unarmed manifestations according to the procedures defined by law (Article 47). The Civil Code recognizes the rights of the child, who is over 14 years of age, to participate to social associations (Article 7). In addition, the Civil code deals with procedures of establishing associations when age is not defined. This implies that children are entitled to be organized in associations, which are consistent to their interests.

Article 16

1. *No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation.*

2. *The child has the right to the protection of the law against such interference or attacks.*

The right to respect private life, family and correspondence

Article 16 recognizes the non-interference and violation of private life of the child, as a whole.

The Constitution has defined the secrecy of correspondence and inviolability of residence for every individual, without defining special categories such as that of children, but without excluding them. Thus, the constitutional definitions hold true for children, too.

According to the Constitution, the state shall guarantee the freedom and secrecy of correspondence (Article 36). In addition, the constitution guarantees the inviolability of residence. The controls of residences shall be exercised only when such a case shall be recognized by law.

Violation of residence, unlawful interference in private life or violation of correspondence secrecy shall compose a penal act and shall be punished in accordance with the provision of Penal Code. Concretely speaking, violation of residence shall be fined or punished with imprisonment up to 3 months; unlawful interference with the private life shall be considered as penal violation and shall be fined or punished with imprisonment up to 2 years; arbitration of violation of correspondence secrecy shall be considered as a penal violation and shall be fined or punished with imprisonment up to 2 years.

Article 17

State Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from e diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

(a) *Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of Article 29;*

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of Articles 13 and 18.

The right to information

This provision reflects the positive role of mass media in disseminating various information and opinions which assist and support the educational and intellectual evolution and well-being of children.

To achieve these objectives, States Parties are left with a wide free space to act in formulating programmes and finding ways for international co-operation. The content of Article 17 of the Convention, which aims at promoting the production and dissemination of informational materials and books of children, is addressed to cultural policies and policies for children of different age groups, to be followed by the States Parties.

Constitutional Law

The Constitution guarantees freedom of information, expression and press. In addition, the Constitution guarantees the freedom of radio and television and abolishment of pre-censure to means of communication (Article 22).

In the chapter which covers the social-cultural rights and freedoms, although there is no direct expression to the children, the Constitution recognizes the right of everyone to be informed on the environment the person is living and on the protection of the individual (Article 56); the right to education, freedom of artistic expression and scientific researches, etc (Article 57, 58).

Mass media

Law No. 8410, dated 30.09.1998 "On the public and private radio and television in the Republic of Albania" does not express the special needs of children in the field of mass media. But the Law expresses in general the respect towards the rights and interests of the minors. At the point when the Law refers to that part of radio-television activity which impartially respects the right to information, political and religious beliefs, personality, dignity, private life of the individual, as well as the human rights and fundamental freedoms, it covers the special respect of rights, interests and legal and moral requirements for the protection of minors (Article 4,36).

In addition, the Law on radio and television and Law No. 8096, dated 29.04.1996 "On cinematography" recognize the differential transmission of films in accordance with the age groups, and does not permit the display of films for children below 14 years of age and between 14-18 years of age at defined times of the day (Article 43,11).

According to the Law, public radio and television transmit programmes of informational, educational, cultural, artistic character and entertainment programmes. Amongst other issues, they shall respect the rights of children and adolescents, the Albanian language and culture, the rights of minorities, etc. (Article 35, 36).

Based on the above, the Law mainly recognizes the ban of certain shows for children, but does not recognize the type of programmes to be transmitted to insure information and other necessary material to the child, aiming at the promotion of the child's social, spiritual and moral well-being and physical and mental health.

In line with this idea, the Law recognizes a special provision for the protection of minors, according to which radios and televisions are not permitted to transmit advertisements which promote injurious behaviors to the child's health and normal psycho well-being. The advertisements for children or when children are playing them, shall be as such that they shall avoid damaging the interests and specialties of their age (Article 56).

The Law also bans the transmission of advertisements for spirits to children as well as displaying spirits handed by children (Article 57).

With regard to transmitting programmes for children who belong to a certain ethnic group, the Law recognizes the transmission of programmes in the language of national minorities located in Albania, the respect of their culture and language and providing special information for them (Article 36,37, 68).

Under the current situation Albania is undergoing, when the means of spiritual entertainment for children are limited, the encouragement by the state is of great importance in applying the Convention on the Rights of the Child, production and dissemination of children's books.

I think that it would have been of interest to promote the production and dissemination of children's books, recognition of facilitating provisions for the producers and distributors of children's books, and why not, recognition of favorable provisions for writers and translators of the literature for children.

In line with this Article, the ratification by Albania of the European Convention on Interfrontier Television" by Law No. 8525, dated 09.09.1999 and law No. 8503, dated 30.06.1999 "On the right to information on official document" is very important (see Article 13 of the Convention).

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child shall be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the Present Convention, States Parties shall render appropriate assistance to parents and

legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Parental Care

As Article 18 of the Convention does have common issues with Articles 5, 7 and 9, part of issues related to this have been dealt with in the above mentioned Articles.

But different from the other Articles, Article 18 stresses out the responsibility of both parents for the upbringing and development of the child, and they shall be based on the basic principle of the present Convention which is the best interest of the child.

I think that the exercise of parental responsibilities towards children should be viewed in three aspects:

Firstly, when they exercise this responsibility during the marriage life;

Secondly, when they exercise this responsibility after the divorce;

Thirdly, when they are not married as by the laws set forth.

The Constitution of the Republic of Albania does not recognize any special provisions for the parents responsibilities towards their child.

Responsibility during the marriage life

The Code of the Family which is currently in force, recognizes the fact that parents shall be responsible for the child-rearing and education (Article 7). The common responsibility of parents for the upbringing and development of the child shall take place through the exercise of parental right (or parental authority, the term used by the draft Code of the Family). This responsibility equally belongs to both parents.

This is the conclusion drawn from the content of the Code of the Family, according to which parents enjoy equal rights and responsibilities towards their minor children (Article 63).

In addition, family legislation does not accept any advantage to one of the parents in relation to the paternal right and its exercise shall be in the best interests of the child. It recognizes that the paternal right shall be exercised only to the benefit of the minors and upon the agreement of both parents (Article 64).

In cases when parents, due to several reasons, can not care for the child, they can ensure that another person shall care for the upbringing of the child. This person shall have the characteristics of the guardian, as defined by law.

Parents shall protect all the individual and property rights of their children, no need for special appointment. This is part of the rights and duties of parents towards their children (Article 71, 72).

Both parents are responsible for the education, physical and mental upbringing, health and nutrition of their child (Article 78).

Responsibility after the divorce

In case parents dissolve their marriage through the divorce, the parental right shall be exercised by the parent who shall be legally responsible for the upbringing of the child (Article 68). Although the Code of the Family does not state it, the other parent shall continue to enjoy the parental right, but the manner to exercise it shall be defined by the decision of the law on divorce.

With regard to the food benefit to the child, to the care for the normal upbringing and education of the child, etc. he or she shall continue to be responsibly parallel with the other parent.

In case the parents are not married, but have accepted the child as theirs, they bear the same responsibilities as the parents who have a child within legal marriage.

The common responsibility of both parents towards their child is expressed in other international acts ratified by Albania. In the Convention for the Elimination of all Forms of Discrimination against women, ratified by Albania by Law No. _____, it is stated that parents enjoy equal rights and duties towards their child. The child's best interest shall be the primary consideration in all the cases (Article 6/2-c).

Besides the responsibility of parents for the education and upbringing of their children, parents are responsible for the misbehaviors of their children.

Decree No. 2450, dated 27.05.1957 "On the parents' responsibility for the misbehaviors of their children and on measures to be taken for the children' education" amended by Decree No. 7441, dated 01.12.1990, recognize that in case of misbehavior of minor children who are below 14 years of age, parents will be punished for administrative violations and fined up to 500 Lek. Although this Decree is still in force, it has not been applied due to the change of conditions which require the application of new methods for the upbringing of children below 14 years of age.

Paragraph 2 and 3 of the Convention refer to the assistance the state shall provide for the establishment of institutions, facilities and services for the care of children, thus assisting the parents to exercise their paternal responsibilities.

In Albania, there do exist a number of state or private institutions and services which assist the parents in various ways. The working parents or the ones who are not able to care for the children during the day, can leave their children under the care of trained individuals, in kindergartens and in schools, for those children who have reached the appropriate age.

After the 1990, many new specialized services for the care of children have been introduced to Albania, be them local or international. Most of these institutions and services are offered by the state.

Under the difficult situation Albania is facing nowadays one cannot think that the state, with its budget, shall be able to maintain qualitative and comprehensive services.

Local and international NGOs have provided their assistance through the projects they have implemented for the improvement of existing services or establishment of new services.

The state is responsible to assist parents in fulfilling their responsibility towards the children, even in respect of the right to work or to social insurance.

The Code of Labor recognizes the benefit of the salary for not more than four days per year, for the employee in cases of caring for the child under responsibility.

Continuing with the idea of common responsibilities towards the children, the Code of Labor proclaims the right of the mother and the father to the above mentioned rest to care for the child.

The new draft Code of the Family, while dealing with parental responsibilities, takes into considerations international instruments, especially the Convention on the Rights of the Child and the resolutions of the Council of Europe (see Article 5, 6 and 9 of the Convention).

Article 19

1. States Parties shall take all legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who takes care for the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Protection from violence, maltreatment, neglect, etc

Maltreatment of children is nowadays one of the numerous problems of the Albanian society. The unpleasant reality of maltreatment is increasing in various forms, within and out of the family.

Article 19 of the Convention conveys the idea that it is referring to the protection of children from any form of physical or mental violence, maltreatment, exploitation, sexual abuse, etc within the family or by responsible persons who care for them.

The Code of the Family recognizes cases when, after the divorce, the parent who is not recognized by law as responsible for the upbringing of the child, realizes that the responsible parent is not properly exercising the paternal right, shall address to the Council of guardianship to require appropriate measures to be taken (Article 68).

The Code of the Family does not specify the types of actions taken to the child, but based on the judicial doctrine and practice, it results that it refers to acts which are related to the maltreatment of the child, to the physical violence, insult up to sexual abuse.

Judicial practice

The recent judicial practice has come across instances of decisions which do not deal with the causes of maltreatment of the child and neglect the family situation, thus going against the interest of the child. When the child is left under the care of the mother, after the divorce,

there was doubt that the child's uncle was sexually abusing with the child. On this basis, the father of the child claimed from the court to change its decision, placing the child under the responsibility of the father. The father had proofs for the case as the child was living with the mother and uncle in the same flat. Although the father required the medical expertee over the child, as there were marks over the body of the child, the court did not take this into consideration leaving the child under the previous conditions.

In another instance, although the court was provided with the medical expertee, which suspected that based on the marks over the body, the child was sexually abused, it did not change its decision justifying it with the argument that the expertee was based on suspicions.

Maltreatment and abandonment of the child

In accordance with the Code of the Family, when the court recognizes that the parent(s) missuses the paternal right or neglects this right, or his or her activities injure the upbringing of the child, the court shall deprive the parent(s) of the paternal right (Article 76).

Certain cases of maltreatment and abuse of children are recognized by the Penal Code, accompanied by the relevant measures for the sentence. As by the Penal Code, the non-provision of necessary means for the child's life by the responsible person, shall be considered as a penal violation and shall be fined or imprisoned for up to 1 year (Article 125).

In addition, the Penal Code considers as a penal act, the neglect of the child below 14 years of age, by the parent(s) or the responsible person(s) to care for the child. In such instances, the individual shall be fined or imprisoned for up to three years.

If severe health consequences shall be experienced due to the act, or if the child shall die, the person shall be imprisoned from three up to ten years (Article 124).

However, the Penal Code does not provide other sanctions or measures for instances of insult, negligent treatment, mental violence, etc. to the child. These instances go under the provisions of the Penal Code, as for every other case.

The latest amendments of the penal Code on February 2001, recognize as a penal act and shall be fined or imprisoned up to two years, when the individual seriously threatens for revenge or blood feud the other person who is the besieged, hindering his or her free movement, or when a child, preventing him or her to leave school.

These amendments to the Penal Code are important under the circumstances of Albania when besieged minors are deprived of free movement, of information, of the right to education, thus indirectly exercising mental violence with consequences to the minor.

Sexual abuse

The penal Code refers to sexual or homosexual relations with relatives or the ones under responsibility.

According to the relevant provision, the exercise of sexual and homosexual relations between the child and the parent, brother and sister, or with persons bearing responsibility or adoption relations, shall be punished with imprisonment up to 7 years. Before the amendment of the Penal Code in February 2001, homosexual relations and other sexual acts were not considered and the punishing measures were imprisonment for up to 5 years. After the

amendments, a more complete definition of the provision was provided and the measures to follow were prolonged to seven years.

Prevention of maltreatment and establishment of programmes

Although the legislation of this field is of primary importance, Article 19 of the Convention ensures special attention to establish social programmes for the necessary support for the child and for the prevention of the child's maltreatment. This provision bears a more programmatic character and stresses out the prevention of maltreatment, and especially their judicial involvement.

The main problem does not lie on the judicial protection of the child, but on the effective application of this protection, especially under the conditions when families are very closed and do not allow the exposure of the situation and taking the protective and preventive measures for the interest of the child. This situation in the majority of cases obliges the children not to dare speak openly for their family problems. Under such circumstances, in addition to the improvement of legislation, state institutions and NGOs shall raise the public awareness for the protection of the rights of the child.

So far, no reliable surveys have been made to try and define the types of maltreatment of children and the relevant statistics. Mainly the NGOs have recognized the maltreatment of children and the protection of their rights. One of the studies in this aspect draws the conclusion that electronic and written media plays an important role in the awareness of the society as a whole, and of the children, in particular. This media should support the parents and children in dealing with psychological violence, neglect, phenomena which in the majority of instances remain hidden.

School also plays an important role, not only to the education of children on their own rights, but also on possible ways to recover from the consequences of types of abuse.

Specialized centers, equipped with qualified staff on such matters, may support the child and the family after the child's maltreatment or abuse.

Establishment of special centers to support children under such situations shall provide emotional assistance and shall gradually lead to the overcoming of the consequences of maltreatment.

The decision of the Council of Ministers No. 415, dated 01.07.1998, "On the establishment and operation of the Committee of the Woman and Family", recognizes the establishment of this Committee as an independent structure, under the responsibility of the Council of Ministers. In the defined functions of this Committee, there is no special provision expressed for the children, including this group in the term "family".

I think that it would have been more efficient to establish an independent structure for children, which would establish appropriate policies and strategies for the protection of the rights of the child and would provide solutions to different situations arising in Albania, based on the detailed studies.

Article 20

1. *A child temporarily or permanently deprived of his or her family environment, in whose own best interests can not be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.*

2. *States Parties shall in accordance with their national laws ensure alternative care for such a child.*

3. *Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.*

The right to assistance and protection by the State

The Constitution of the Republic of Albania recognizes the care and assistance by the State to the orphans (Article 59/e). But there is no special provision for the state care to children who are deprived of their family environment. In addition, the Constitution recognizes the special protection of the children by the state, but expressed in general. Whereas the Code of the Family recognizes the responsibility of the state for the well-being and upbringing of children remaining with no parents and with nor assistance (Article 10).

In addition, the Code of the Family recognizes the right of the Council of Guardianship to address to the court and request the withdrawal of the child from the parent(s)' responsibility in case parent(s) shall not care for the upbringing and education of the children or when such an act is to the best interest of the child, and the Council claims the placement of the child in a state institution or under the care of another person, should the latter accept. Under such circumstances, the other rights and duties of parent(s) remain in force.

The Code of the Family recognizes the cases when children shall not be under the responsibility of parents, when parents are both dead or unknown, or proclaimed not-found, or they are deprived of the capability to act. These children are placed under the guardianship which shall ensure appropriate conditions to the child for his or her upbringing, education and overall development (Article 102 and 103).

According to the Code of the Family, the Council of Guardianship shall be entitled not only to appoint a guardian for the child, but also to place the child to special institutions for children, at boarding schools at health institutions or other institutions (Article 105).

But under the conditions when the Council of Guardianship is not functioning, the provisions of the Code of the Family can not be applied in practice, at a time when the number of children under such situations is increasing.

Contradictions in legislation

The legislation endorsed after the Code of the Family has not taken into consideration the requirements of the latter. Consequently, the laws which recognize the placement of children in institutions or under the responsibility of other persons, contradict one another regarding the

competencies of the authority which defines the manner of placing the child with no family or under difficult situations for reasons defined by law.

Thus Law No. 7710, dated 18.05.1993 "On the social assistance and care" and its relevant amendments, defines the manner of placing orphans to welfare institutions, orphans be the children with no parents, blind children, or children with physical and mental disabilities, etc.

According to the Law, these institutions might be central or local. The law also recognizes the non-governmental social services which might be managed by private individuals or NGOs which should have agreements with the Ministry of Labor and Social Affairs.

The request for the placement of the orphans or disabled children to institutions shall be made by the head of the family or by the social administrator or by the medical and expertee commission, in cases when the institution is under the responsibility of the local government. When the institution is under the responsibility of central Government, under the Ministry of Labor and Social Affairs, it is the Ministry which defines the way of placing the child to the institution.

Law No. 8153, dated 31.10.1996 "On the Status of the Orphan", defines as orphan the individual who :

- was born out of marriage;
- does not have any of the parents living;
- by the decision of the court, the parent or both parents are deprived of the paternal right and the other parent is not living;
- are abandoned by both parents and their identity is not known.

In addition, the law recognizes that the placement of orphans to private or public welfare institutions shall be handled according to the criteria defined by the Council of Ministers.

As it can be realized, the above mentioned laws define different ways of placing children to private or public welfare institutions leading to a legislative conclusion in this aspect.

While the Code of the Family defines the ways of placing the child, after the court takes the decision of depriving the parents from the paternal right, the Law on the Status of Orphans allows the Council of Ministers to define the way of placement of the orphans, without referring to the provisions in force which regulate this problem.

According to the Code of the Civil Procedures, which came in force on 1 June 1996, the request for placement under guardianship shall be presented to the court by the members of the child's family and by anybody else who shall be informed on the abandoned child, on the birth of the child with unknown parents, or on any other instances when the law requires the placement under guardianship (Article 351). The Code of the Civil Procedures recognizes other provisions, too. Actually these provisions belong to the material law and have been laid down regardless of the existence of the Code of the Family.

In addition, Law No. 7650, dated 17.12.1992 "On the adoption of minors" recognizes that the court of law declares the child abandoned, and defines by the same law the placement of the child, at a time when the Law on the Status of Orphans recognizes criteria as per Decisions of the Council of Ministers, thus ignoring the existence of the present Law.

The formulation of various and uncoordinated laws has created problems in applying them for concrete cases.

There have been cases when the court has decided on the manner of placement of the child while the Ministry of Labor and Social Affairs has not taken this decision into consideration, in the view that placement of children in institutions is under its responsibility.

Tendencies

Guardianship

The Draft Code of the Family unifies the placement under guardianship by finally recognizing the court as the responsible authority for cases envisaged in this Code.

Taking into consideration the protection of the minors' interests, the draft recognizes short terms and judgments by one single judge.

According to the Draft, minor children, who are not under the parent(s)' care because both parents are not known or are dead, or the parents have been announced not-found, or when the parents are deprived of the paternal right or of the ability to act, or for any other reasons accepted by the court, are placed under guardianship and are ensured special protection by the State.

The draft recognizes the appointment of the guard by the post-living parent, through the will or any other notaries declaration.

To protect the interests of the minor, especially the property interests, the Draft recognizes the possibility of appointing a special guardian, and the limits of exercising his or her guardianship over the child shall be defined by the court decision.

Foster families

Another alternative for placing the child under care is the foster family. A draft law on Foster care has been formulated. The draft law defines the cases and procedures of placing the child in foster families which shall satisfy some conditions set forth by this draft law.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary;*
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;*

- (c) *Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;*
- (d) *Take all appropriate measures that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;*
- (e) *Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavor, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.*

Institute of Adoption

According to the Albanian Law, the Institute of Adoption shall be regulated by the Code of the Family and Law No. 7650, dated 17.12.1992 "On adoption of minors by foreigners and on some amendments to the Code of the Family".

Although the law on Adoption was endorsed after the ratification of the UN Convention on the Rights of the Child, the Law was formulated in conformity with the present Convention and with the Hague Convention on Inter-country Adoption, on 29 May 1993, which was a draft by that time. In the Introduction of the Law on the Adoption of Minors, the principle recognized was that the adoption shall be permitted in cases of the best interests of the minor and shall ensure the respect of fundamental rights of the child (Article 1), taking into consideration paragraph 1 of Article 21 of the Convention.

The Law on the adoption of minors, mainly regulates the inter-country adoption, because the former legislation was not in conformity with the new conditions of Albania after the '90ies.

The Law mainly defines the administrative procedures of the adoption process. In accordance with the Convention, the Albanian Committee on Adoption was established as the competent body which prepares the necessary documentation for the adoption of the child within and out of the country, before the review by the court.

The Albanian Committee on Adoption is under the responsibility of the Council of Ministers and is composed of representatives from most important Ministries related to the interests of the child. To apply the adoption by foreigners, Albanian Committee on Adoption signs agreements with specialized organizations and agencies, for the adoption of children to relevant countries.

During its activities, the Committee should apply the responsibilities deriving from the international conventions and agreements in this field, which have been ratified by Albania (Article 5,6).

The Committee, in addition to preparing the folder with the documentation necessary for the adoption, requires the written consent to the adoption from the biological parents and the parents who are adopting the child, as well as the opinion of the minor to the adoption, if the child is over 10 years of age (Article 7).

In accordance with Article 21/b of the UN Convention on the Rights of the Child, the Law recognizes the adoption of the child in another country as an alternative, by making the Committee primary responsible for the attempts to find a family in Albania before giving the approval for a permanent family hearth out of the country. The Albanian Committee on

Adoption shall approve the inter-country adoption only when there shall not be possibilities within Albania for a period of six months from the day of registration in the books of the Committee (Article 8, 11).

The experience so far of the Albanian Committee on Adoption has proved that priority has been given to the adoptions within the country due to the numerous requests by the Albanian parents to adopt Albanian children.

The final decision shall be taken by the court (the Sector of reviewing family disputes), which reviews once more the documentation presented by the Albanian Committee on Adoption and which requires the consent of biological and adopting parents to the adoption, in front of the court. In addition, the courts hears the opinion of the child when he or she is over 10 years of age (Articles 54, 56 of the Code of the Family and Article 349 of the Code of Civil Procedures).

In conformity with Article 21/c of the Convention, the Law on Adoption of Minors recognizes that the adoption shall not be permitted when the minor to be adopted shall not be entitled to the same right as in Albania, to the country the child shall be adopted, or when the conclusion shall be that the adoption shall have serious consequences to the minor.

In accordance with Article 21/d, the Law on Adoption of Minors recognizes the sentence of loss of freedom. According to the Law, acceptance, request for gain or financial or other material gain by the parent, guardian or any other person for him or her self or a third party shall be punished with 5 years imprisonment.

This provision has been recognized due to the cases of abuse in adoption of children by foreigners in 1990-1991. This phenomenon was favored by the shortcomings of the legislation of that time on the inter-country adoption.

The regulations of the Albanian Committee on Adoption envisage in a detailed manner the administrative procedures of adoption and the necessary documentation which is based on a psycho-social, spiritual, medical, cultural, etc study. According to these regulations, the Albanian Committee on Adoption shall do some preparatory work with the adopting parents and the child when he or she is a grown-up. In such circumstances, the Albanian Committee on Adoption advises the child so that he or she can understand the concept of adoption and provides explanations to the adopting parents, getting information on their life through photos, videotapes, letters, etc. and ensures personal contacts with the adopting parents.

Tendencies

By Law No. 8624, dated 15.06.2000, the People's Assembly endorsed the adherence of Albania in the Hague Convention "On the protection of children and collaboration for inter-country adoption", dated 29 May 1993. This brought about the commitment of Albania to realize whether the legislation on adoption of minors contradicts the present Convention. The adherence of Albania in the Hague Convention happened at a very appropriate moment, when the legislation on the family issues was undergoing important changes.

The Draft Code of the Family includes the material part of the Law on Adoption of Minors by foreign nationals, and amendments have been done in conformity with the above mentioned Convention. The draft recognizes the trial period for the placement of the child with the adopting parents, before the court takes the final decision for adoption. In addition, the Draft

prioritizes the rights of biological parents in relation to the adopting parents, before the court takes the final decision for adoption. Thus, in case biological parents have provided the consent to the adoption and later withdraw their consent, even later than the period set by the Code, but prior to the final decision taken by the court, they are entitled to this withdrawal.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered refugee in accordance with applicable international or domestic laws and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other intergovernmental or non-governmental organizations cooperating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

The refugee status

The Law no. 8432, dated 14.12.1998 "On the Asylum in the Republic of Albania" recognizes the criteria to gain the refugee status and the assistance of the state in such circumstances in general, and for children in particular.

The Law defines the cases when individuals do not satisfy the criteria to gain this status.

Under such situations, the individual is provided temporary protection on humanitarian basis by not departing him or her from Albania, due to relevant reasons expressed in the present Convention on the Rights of the Child, in addition to other Conventions that Albania is a State Party. Thus, the Law explicitly offers protection for the children who do not obtain the status of refugee (Article 5).

In addition, the People's Assembly has endorsed the law No. 8492, dated 27.05.1999 "On the Expatriates", which regulates the entrance, residential movement and employment regime of expatriates in the Republic of Albania, as well as the exit regime from the territory of the Republic.

For minors below 16 years of age, the Law recognizes the right to apply for visa permission or entrance permission in the Republic of Albania under the permission of the legal guardian and accompanied by major individuals. Exceptions from this rule cover minors who enter for asylum purposes. Applying the law on expatriates, the Council of Ministers has endorsed decision no. 439, dated 04.08.2000 "On the entrance, residence and treatment of

expatriates in the Republic of Albania", which defines in a detailed manner, the criteria for the movement of expatriates in the Republic of Albania, including the minor children.

Family reunification

In accordance with Article 22/2 of the present Convention, Law No. 8432, "On the Asylum in the Republic of Albania" has defined the provision of the asylum on the basis of the family reunification principle. According to the law, the asylum right under the same status, shall be acquired by the spouse of the refugee and children of the refugee below 18 years of age, considering that the refugee has been provided with the asylum and under the condition that they shall live together.

The children entitled to asylum in accordance with the principle of family reunification, shall continue to enjoy this right even after they reach 18 years of age and even in case of divorce or death of the refugee, on the basis of who the child obtained the asylum in the Republic of Albania (Article 6). The refugee who obtains the asylum right, shall be entitled to social treatment such as social assistance to be provided by the office for refugees, to the same standards as the Albanian nationals.

If the person requesting asylum status who has entered Albania illegally, is an accompanied child, under the age of 16 years, measures shall be taken in accordance with the international norms on the rights of the child, ratified by Albania (Article 16).

The competent organ dealing with the applications for asylum is the Office for Refugees. The chief of the office for Refugees is the National Commissioner for refugees.

The National Commissioner for Refugees ensures to every applicant for asylum under the age of 18 years, or disabled, a guardian appointed in accordance with the Albanian legislation.

The decisions of the Office for Refugees shall be opposed and claimed against to the National Committee for Refugees.

Law No. 8492 "On Expatriates" defines the cases in which residential permission shall be issued, as a result of family reunification. According to the Law, an expatriate is allowed to apply for residential permission for family reunification purposes, if one of the family members is an Albanian national, refugee or foreign resident with residential permission for not less than one year.

International Instruments

By the Decree of the president of the Republic of Albania, No. 200, dated 03.06.1992, the Republic of Albania adhered to the Convention on the Status of Refugees, signed in Geneva on 28.07.1951, and in the Protocol for the Status of Refugees signed in New York on 31.01.1967.

In addition, the People's Assembly by Law no. 7833, dated 22.06.1994, ratified the agreement between the Government of Albania and the United Nations High Commissioner for Refugees.

On 28.01.1999, the People's Assembly endorsed law no. 8451, "On denouncing the Convention no. 21 of the International Labor Organization (ILO), "Inspection of Emigrants".

The status of Albanian children

The most important problem in Albania is the removal of children from Albania with or without families, and that in most of the cases these children do not experience in the other countries the treatment as set forth by the UN Convention on the Rights of the child, although these states are parties to the present Convention.

The removal of children from Albania started in 1990-1991 and is continuing, especially to the neighbor states. In accordance with Article 22/2 of the present Convention, the Assembly endorsed Law no. 8456, dated 11.02.1999 "On the functions of the legal attachés in the international human rights organizations". According to this Law, the legal attaché officially represents the Albanian Government in every case to be reviewed by the international organizations on the status of human rights in Albania. In addition, the legal attaché advises and requests explanations from relevant organs on the proceedings of the cases in the application of international acts on human rights, where Albania is a state party. Thus the mechanisms have been established to ensure the application in practice of the rights of Albanian children in countries they emigrate. But the way these mechanisms function leaves to much to be desired.

Article 23

1. *States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community*

2. *States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or other caring for the child.*

3. *Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whether possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.*

4. *States Parties shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.*

The right to special care

Mentally or physically disabled children in Albania before '90ies were under the responsibility of Ministry of Health. Consequently the main care provided by the relevant institutions was concentrated on the health of the children.

Under the new conditions in Albania after the '90ies, it became necessary that the treatment of this category of children should change. Attention was paid mainly to their integration in the Albanian society.

The Albanian Law takes into consideration the objectives of the Convention for this category of children. The Constitution of the Republic of Albania, when reviewing the social objectives, recognizes the responsibility and aim of the state which, within its constitutional competencies and means at its disposal, attempts to care for the health rehabilitation, special education and the integration of the disabled in the society, as well as to improve continuously their living conditions.

According to the Constitution, the achievement of all the social objectives shall not be claimed directly in the court of law. The conditions and measures to achieve these objectives shall be defined by special laws.

Mental Health

Law No. 8092, dated 21.03.1996 "On mental health" recognizes preventive policies for the mental protection and the institutions which will apply these policies. These institutions are divided into institutions for mentally disabled individuals which deal with the rehabilitation, education and care for this category of individuals, including children in psychiatric and rehabilitation institutions such as hospitals and rehabilitation centers (Article 4).

Children with delayed mental development and the ones with mental irregularities, are taken care free of charged, in the public care, rehabilitation and education institutions.

When children are treated in private institutions, the state covers part of the expenses equal to the treatment costs in a public institution (Article 6).

The Ministry of Health and the Ministry of Labor and Social Affairs shall define the basic principles of the rehabilitation and education policy for children at different level of mental disability.

According to the Law, Ministry of Labor and Social Affairs shall appoint social workers who shall supervise the patient treatment from the social and protection point of view.

Taking into account the important role of associations, foundations and of non-governmental organizations in general, the Law considers them in the introduction part, as partners and facilitators for the protection of mental health. But the endorsement of a comprehensive Law is worthless if it is not accompanied by measures for its application. Actually, I think that a lot needs to be done for the protection of mental health, considering the time which has passed from the moment this Law has been endorsed.

Law expresses special attention to the disabled of mental irregularities by involving them in various activities, facilitating their integration in the social life.

I think that the content of the above mentioned new law is comprehensive. But as far as children are concerned, it covers them in the framework of care towards every individual. It explicitly recognizes the category of children only by some special provisions.

In the provisions recognizing the relations of individuals with the family, appointment of the guardian by the court's decision upon request of the psycho-legal commission, and their treatment, there is no differentiation made for the children. But one provision recognizes that definitions of this Law also stand for the legal guardian of the minor.

For this category of individuals who need a guardian because of not being able to act, the Code of the Family recognizes another procedure, handing the responsibility of appointing the guardian to the Council of Guardianship (Article 10). The Draft Code of the Family has unified this, by delegating to the court of law the right to appoint the legal guardian even for this category of children, the same as the Code of Civil Procedure.

The Albanian legislation has recognized special criteria for certain categories of disabled children.

The status of the blind

Law no. 8098, dated 28.03.1996 "On the status of the blind" recognizes the responsibilities of the state and of the society for this category of individuals, including children.

According to the Law, the state and society shall protect the blind individuals and shall ensure all necessary conditions for their integration in the normal life, through employment and by defining professions which might be appropriate to their physical status; optimal living conditions, allocation of funds for their depistation and check-ups in clinics in Albania and abroad, etc (Article 2).

In addition, the Law recognizes the responsibility of the state to protect the blind individuals from every form of exploitation, discrimination, abuse and cheat.

To promote the employment of this category of individuals, the employer benefits decrease of profit taxes equal to the percentage of blind employee (Article 6).

The Law recognizes the possibility of free education to the blind individuals, in the state system, in addition to their integration to the normal comprehensive and university education, in which cases the state covers the expenses. The professional 8-grade education for the blind has been operational long before this Law was endorsed. But this Law ensures to this category of children, a wider protection in the moral as well as in the financial aspect.

The health insurance of the blind child shall be handled by the state in addition to expenses related to medical visits and appropriate medicine.

"The Association of the Albanian Blinds" is playing an important role for the protection of the rights of the blind. This association provides opinions for the formulation or amendments to the legislation related to this field, and on the way these problems should be solved.

The status of the invalid

Law No. 7889, dated 14.12.1994 "On the status of the invalid" covers the category of individuals who have different physical disabilities, and their rights especially the economic ones, such as the insurance of necessary economic level to live in dignity, appropriate jobs, some restrictions regarding tax payments, possibilities to be cured, educated or organize and participate in recreation activities. But the Law does not cover in particular the rights of the physically disabled children.

I think that a better solution shall be the treatment of mentally and physically disabled children as specially recognized by special or, at least, relevant laws, and the treatment of the children should be dealt with by special provisions.

In addition, if we refer to the reality, the legal provisions are, in the majority of cases, in favor of this group of individuals and to an appropriate level as per the conditions of Albania.

With regard to education of physically and mentally disabled children, Law No. 7952, dated 21.06.1995 "On the preuniversity education" comprises a chapter on the public special education, which is considered as part of public education system in the Republic of Albania. According to the Law, the public special education aims to ensure the possible complete development of children with physical, mental and emotional disabilities, in accordance with their needs and requirements for a life in dignity (Article 39).

Should it be for the interest of the child and upon consent of the parents, the education of these children shall be free of charge in the public educational institutions. The case be such, the state takes the measures for gradually ensuring the necessary conditions for achieving the integration.

When the requirements of some children can not be satisfied within the common school system, special classes and institutions shall be established where special care shall be provided free of charge (Article 40).

In Albania it is necessary to establish other special schools for disabled children and that these institutions should be distributed all over the country. The existing schools can not satisfy the demands, and taking into account the fact that not every disabled child has been registered, especially the ones living in the countryside.

The school curriculum for the disabled children has been compiled till the completion of the compulsory education level.

Although the Law recognizes the establishment of branches and groups for the qualification of special education staff, this field has been neglected, especially for the treatment of disabled children who attend the general educational system.

In addition to defining the status of the invalid, in general, by Law No. 8626, dated 22.06.2000, the People's Assembly endorsed the status of paraplegic and tetraplegic invalids. The beneficiaries of this Law are all the paraplegic and tetraplegic invalids, regardless of age, time, and place of accident and moment of insurance. Thus the Law recognizes the treatment of children, too, although it is not explicitly expressed in reference to this group.

In addition, the Law defines the responsibilities of the state to ensure appropriate conditions to the paraplegic and tetraplegic invalids, with the aim to involve them in the social life like the others, by ensuring the necessary economic level for them to live in dignity, normal living conditions, to have appropriate jobs and lives, and by providing to them normal possibilities to be cured, educated and to participate in recreative and sport activities. Public or private judicial individuals who employ paraplegic and tetraplegic employees, in addition to the criteria defined by Law No. 7955, dated 20.09.1995 "On promotion of employment", shall benefit decreases of their taxes over the profit, to an amount equal to the percentage of paraplegic and tetraplegic employees.

The Law recognizes the responsibility of the State in taking the appropriate measures for the establishment of schools and institutions for the education, rehabilitation and upbringing of

paraplegic and tetraplegic individuals. In addition, the state shall exclude this category of individuals from the tax scheme of health insurance and provides them with free medicine for disease consequent to their invalidity.

The Law recognizes other facilities for these invalids, but which have not been properly applied in practice.

Employment of invalids

Law No. 7995, dated 20.09.1995 "On the promotion of employment" recognizes the right to employment for the individuals of limited abilities. Children are included in this category, too, although this Law does not provide special criteria, either. However, general provisions are applied, as in cases of every individual of limited abilities.

The Law recognizes the State policies for employment. One of the objectives of these policies shall be the professional ability and establishment of other forms of support for the employment of individuals with limited abilities.

In addition, according to the Law, the state shall take the necessary, possible and practical measures to establish and promote within the framework of employment offices, the specialized services for professional training of individuals of limited abilities, who require assistance in choosing or changing their jobs (Article 14).

The Law on employment shall make the employer responsible for employing one employee with limited abilities, in case he or she has already employed 25 other workers. To encourage the employer, the employment offices shall be entitled to subsidize the employer in equipping the working place appropriately to the needs of the employee with limited abilities.

With regard to benefits for minor children, the Law does not provide special recognition.

Article 24

1. *States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.*

2. *States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:*

(a) *To diminish infant and child mortality;*

(b) *To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;*

(c) *To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;*

d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

The right to health care services

The content of Article 24 of the Convention mainly covers the obligations of the States Parties to establish efficient programmes and policies in the field of child' health protection, diminishing infant mortality, care for the nutrition, protection against disease, and assure appropriate pre-natal and post-natal care for mothers, etc.

In addition to application of certain programmes, the legal framework is also important and part of it is complete, whereas the other part needs to be improved, especially the Law on health care.

Constitutional law

The Constitution of the Republic of Albania recognizes the right of the Albanian citizens to equally enjoy state health care. According to the procedures defined by Law (Article 55) everyone shall be entitled to health insurance.

Health care service

Health care service in Albania is regulated by the basic Law No. 3766, dated 17.12.1963 "On health care" and by the amendments in the Law No. 7718, dated 03.06.1993 and Law No. 7738 dated 21.07.1993.

The Law recognizes the organization of health services in private or public different health institutions. According to the Law, the state health services shall be ensured through medical education, controls and the general or particular prophylactic measures, relevant institutions, check-ups, cure and rehabilitation of the diseased, etc.

Law No. 8167, dated 21.11.1996 "On stomatologic health services" and the relevant amendments, recognize the establishment of the stomatologic health service, be it prophylactic and curing at the same time, at the expenses of the state budget. The stomatologic health services have been established to school institutions with facilities ensured by the Ministry of Health.

Prevention of disease

Of special importance in the field of health care is the Law No. 7761, dated 19.10.1993 "On prevention and cure of infectious disease". According to the Law, if cases of infectious disease shall be noticed in preschool and school institutions, the doctor of the institution is responsible to inform the relevant organs and take measures that the disease shall not infect the other children, and care that the diseased child receives the appropriate health care.

For the prevention of these disease, the compulsory vaccination shall be organized which, according to the Law, covers children between 0 to 15 years of age.

For every child starting school for the first time, it is obligatory that the child should have a document from the health institutions which proves that the child has been vaccinated as per the calendar of vaccination.

Advantages of breast-feeding

Article 24 of the Convention, letters "c" and "e", covers issues related to the protection of the child from malnutrition, advantages of breast-feeding, and the measures the state should take to ensure access to appropriate information and education of parents and children, in this field.

Concerning the breast-feeding, the People's Assembly has endorsed Law No. 8528, dated 23.09.1999 "On promotion and protection of breast-feeding". The aim of this Law is to promote and protect breast-feeding as well as to regulate the commercial replacements of breast-feeding for the healthy nutrition of children. The Law recognizes the responsibility of producers to display in the labels of their products that "breast-feeding is the ideal nutrition for the healthy rearing and evolution of the child".

In addition, the Law recognizes the responsibility of national and local health centers to promote and protect breast-feeding and to make public the disadvantages of alternative nutrition.

Family planning

Article 24 of the Convention on the Rights of the Child recognizes services in the family planning field as well as the insurance of appropriate health care to pre-natal and post-natal mothers. As far as family planning services are concerned, they have been established in the maternity hospitals, especially in Tirana. But the role of these services is far from the necessary level, especially in rural areas where this service has not been introduced almost.

NGOs have started to operate recently in the family planning field, but they are still few in numbers.

Care for mothers

With reference to pre-natal and post-natal care for mothers, the Labor Code defines special provisions for the protection of these mothers. According to the Labor Code, pregnant women do not go to work 35 days before delivery and 60 days after delivery of the first child and 42 days after delivery of the second child (Article 104).

The income to be benefited from the birth, has been defined by the Law on Social Insurance, according to which the Labor Code recognizes the right to the leave as recognized by Law on Social Insurance even when the woman adopts a new born baby.

Tendencies

The draft law "On Reproductive Health", under the session "Reproductive Health Care" includes also:

- family planning services;
- pre-natal, natal and post-natal care for the woman;
- care for the children 0-6 years;
- information, education and communication on reproductive health.

At the same time, the draft law defines several rights for mothers and children, including the right to information and education on reproductive law, the right to medical care and necessary medical services, etc.

But the draft law is very declarative and does not define how shall the family planning services function, how the provision of the care for woman and child shall be ensured, etc. According to the draft law, all these problems will be regulated through regulations endorsed by the Minister of Health. I think that the regulation of the above mentioned problems by law, should ensure the protection and guarantee for the mother and child, taking into account the fact that protection of health is a constitutional law.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic overview of the treatment provided to the child and all other circumstances relevant to his or her placement.

The continuous treatment of the minor

Article 25 of the Convention bears a general character and is related to other Articles of the Convention, articles which deal with the education of the child, health care in general, and the continuous care for mentally and physically disabled children.

With reference to children with slight mental disabilities, who follow the special school established for these children, the periodic review of the treatment also exist, to trace the children's development.

This school is under the responsibility of the Ministry of Education and the treatment of the children, apart other things, covers their education and upbringing to create possibilities for their integration in the society to the extend possible at their level.

For children with serious mental disabilities, a special treatment has been established by the Ministry of Labor and Social Affairs, which is responsible for the Institution where the children shall be treated.

I think that it would have been better should this Institute be under a double responsibility, intending also under the Ministry of Education, so that this Ministry can establish special programmes for this group. Certainly, the application of these programmes would require specialized professional staff in treating this group of children.

With reference to children suffering from serious psychic disease, the Law on mental health recognizes the periodic review of the treatment provided to the child, as well as the circumstances relevant to the child's placement.

With reference to the other field of treatment to the child, I assume I have already covered part of them, as for other issues, such as the treatment of children during the pre-imprisonment, or while exercising their punishment, I will deal with them in the relevant provisions.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

The right to social assistance and social insurance, a constitutional law

The Constitution of the Republic of Albania recognizes the right of everyone to benefit from social insurance when at an elderly age, or when disabled to work, in accordance with the system established by law.

The Constitution also recognizes the right to benefit from the assistance under conditions defined by law, for everyone who remains unemployed for reason out of the individual's will, and when the individual shall not have other means of living. Thus, the Constitution has specifically dealt with children in the field of social security and social insurance.

With reference to the laws on social assistance and social insurance, and to the Constitution, the rights of the child have been dealt with within the framework of the family and of other persons who benefit from them.

The social assistance and care system has been recognized by Law No. 7710, dated 18.05.1993 "On Social assistance and care", amended by Law 7886, dated 8.12.1994 and Law no. 8008, dated 5.10.1995 and by some legal acts issued as guidelines for the application of Law, endorsed by the Council of Ministers and the Ministry of Labor and Social Affairs.

Cash benefit

The Law recognizes the provision of cash benefit to families of Albanian citizens who lack other means of living, or those means are insufficient.

In cases when it is possible and necessary, instead of cash benefits, or of part of it, public services of social assistance shall be offered.

Cash benefit shall be provided to families of Albanian citizens who have insufficient income or have no other material living means through exercising legal activities, as defined by Law. Cash benefit shall be possibly provided also to families who care for one or more members, including children, who is:

- blind;
- mentally disabled;
- with serious development disabilities;
- disabled individual who can not take care of him or her self and consequently needs another person to take care for him or her, under the condition that these disabled individuals should not have other sources of income or those are insufficient and when they are not placed in public welfare institutions

Partial cash benefit may be provided to agricultural families to complement their insufficient income, but taking into account, in the review process for the entitlements for the cash benefit provision, the other sources of income, such as:

- land (except for the land under exploitation);
- livestock, cattle and poultry;
- vineyards, garden products and maintenance of bees.

The cash benefit, complete or partial, shall be provided periodically as an installment. The competent authority to define the amount of cash benefit for a family is the Council of the Municipality of the Commune.

The amount of the cash benefit per month to be allocated to families shall not be greater than 100% of the maximum level of the cash benefit defined by the Council of Ministers. The cash benefit amount shall be provided to the families based on the decision of the Council of the Municipality of Commune, after reviewing the needs of the family. The cash benefit shall be:

- complete, in cases when the other sources are not existing;
- partial, when it complements the insufficient sources in accordance with the decision of the Council of Municipality or Commune

The Decision of the Council of Ministers No. 620, dated 06.11.1995 "On provision of cash benefit", recognizes that for the establishment of the maximum level of monthly cash benefit, it is necessary that the basic level or unemployment benefit shall be taken into consideration. The maximal level of the complete cash benefit for one family shall not be greater than 250% of the basic level of the unemployment benefit. The complete cash benefit amount provided to a family comprises two parts:

- the basic amount which shall be provided to the head of the family and which can not be greater than 95% of the basic level of monthly unemployment benefit;
- a percentage over the basic amount, for every other member of the family as below:
 - not more than 100% of the head of the family, should the member be over the age of employment, or physically and mentally disabled;
 - not more than 20% of the head of the family, if the person is at the employment age;
 - not more than 25% of the head of the family, if the person is under the employment age.

The maximal level of complete monthly cash benefit changes in accordance with the changes of the basic level of monthly unemployment benefit.

The partial cash benefit provided to the family consists of the difference between the maximal level of complete monthly benefit and the current income of the above mentioned families.

The family claiming for cash benefit shall be excluded from the benefiting system in case at least one member of the family shall satisfy one of the conditions below:

- shall be the owner of any type of capital, excluding the residence and the agricultural land under exploitation;
- shall be self employed or employed by others;
- shall be out of the country for any reason, except for studies or medical treatment for a period of 6 months;
- shall not be registered as unemployed in the employment office, except for the members of agricultural family;
- refuses to be employed when the offer shall be made to an able person of the family and at the employment age;
- shall not pay the obligations towards the state for the period when employed;
- refuses the qualification and re-qualification;
- changes the place of residence by abandoning the former place of residence and property and sources of life. Exception to this rule are the individuals who change the place of residence when obliged to do so or when required by the state, or when under special circumstances, as by the decision of the Council of Commune of the former place of residence;
- shall not collect the allocated cash benefit for the period it has been allocated;
- shall undertake actions purposely for receiving cash benefit, such as attempts to avoid employment or qualification, speculative donation of the capital, false declaration of living conditions, etc.

Offices of employment, tax and duties organs, Inspectorate of Cash Benefit, inform the Council of Municipality or Commune on every family that shall be excluded from the cash benefit scheme.

The Council of Municipality or Commune defines the period of cash benefit provision in accordance with the type of this benefit. Regularly, the benefiting period shall not be longer than one month. The family and individuals which receive cash benefit shall declare that their conditions have not changed, so that they shall continue to benefit for the period to follow. The declaration shall be accompanied by the certification of the relevant employment office, proving that there are no employment possibilities.

The Decision No. 311, dated 11.07.1994, amended by the Decision no. 457, dated 21.08.1995 and the Guidelines No. 12, dated 16.06.1998 recognize the instances for disability benefit. The beneficiaries shall be:

- all the disabled born individuals or the ones who have become disabled before reaching the age of 21, or up to the age of 24 years when following University studies, upon the certification of KMCAP. The disability benefit shall be delivered once every month starting from the following month of the day the relevant Commission shall define the disability. The amount of disability benefit reaches 70% of the value of the minimal salary and changes every time this level changes. The individuals deprived of this right shall be placed in public

residential rehabilitation centers for the time they shall remain in these institutions, and the other group of individuals who get employed.

- The disabled individuals who continue education in secondary schools shall be entitled to receive double disability benefit as defined above, and when attending University, three times disability benefit.
- Disabled individuals who in certain cases, in the areas they live, there do not exist daily centers or special education and the KMCAP recognizes that these individuals need continuous assistance. Under such circumstances a member of the family shall be entitled of guardianship benefit if this same person does not have personal income. This benefit amounts to 60% of the minimum salary level. This benefit shall not be delivered if the disabled person shall be treated in daily centers or special schools.

The Law on social assistance and care and the Decision no. 307 dated 24.05.1994, recognize the social care services. Social care services include institutions for elderly, mentally and physically disabled, orphans and other similar institutions, which are under the responsibility of the central or local Government. These services include:

- **services out of the institution**, such as daily centers (for mentally and physically disabled children, street children), home services, emergency assistance;
- **services in institutions** for orphans or abandon children, physically and mentally disabled children, disabled who are not able to care for themselves, etc.

Orphans and disabled with no income shall be accepted, free of charge, to public welfare institutions. The state shall cover expenses for their stay in these institutions as well as a quota for personal expenses.

Parents, who, for any reason, request the placement of the child to orphanages, shall contribute to the necessary expenses in proportion to their income.

Individuals placed in public welfare institutions shall be offered improved conditions upon contribution to supplementary services.

The request for placement to institutions for orphans, physically or mentally disabled, shall be addressed to the council of the district, municipality or commune, depending on the circumstances, and the request shall be made by the head of the family, by the social administrator or by the medical expert commission.

Social welfare institutions can be managed by private individuals and NGOs in the basis of a contract that shall be signed with the Ministry of Labor and Social Affairs.

Decision no. 52, dated 8.01.1996 of the Council of Ministers "On the establishment and functioning of the General Council of Social Assistance and Services and of the General Administration of Social Services", which was as an application of Law "On Social Care and Assistant", defines the establishment and functioning of the General Council of Social Services and Assistance and of the General Administration of social services, which plays an important role in this field.

The Council establishes the Administration, which shall be responsible for the general management of social policies in the field of social assistance and services.

The General Administration of Social Services shall lead the cash benefit and social service systems, shall collect resources for this purpose, shall finance projects and programmes

proposed by the local administration and organs, by NGOs, by international donors, with the aim to profit social assistance and services

The Administration operates through regional and local offices which operate in the whole Albania, to soothe the poverty and to ensure other services through grants allocated as per the social services programmes in Municipalities and communes.

Social Insurance

With reference to the entitlement of social insurance, children benefit in various ways as per their relevant status.

In accordance with Law No. 7703, dated 11.05.1993 "On Social Insurance in the Republic of Albania", children are entitled to compulsory insurance when they are employed, in cases of temporary disability at work due to illnesses, invalidity, loss of family head, accidents at work or professional disease, unemployment.

The child benefits family benefit/pension from the person who dies and used to receive or lived under circumstances entitling him for supplementary orphan pension by the state, and this individual was responsible for the above mentioned person at 25% of the referring payment according to the Law.

The insured individual, who receives the invalid pension, when responsible for children below 15 years of age, shall receive a supplementary family income per every child at 5% of the basic pension, but not more than 20%. The orphan shall receive family pension when it has been proved that he or she is responsible for the person who is dead, and is below the age of 18 years old, or up to 25 years if he or she is studying, or disabled to work, before reaching the above mentioned age.

The orphan is entitled to a family pension even when the living parent is employed and is benefiting a pension as per his or her entitlement. Under such circumstances, the amount to be provided to the orphan shall not go beyond 50% of the pension that the person used to receive or should receive in case of death. With reference to unemployment benefit, it shall be a basic amount, which shall ensure the minimum living standard, indexed every year by the Council of Ministers.

The beneficiary responsible for the child below the age of 15 years shall receive a family supplementary of 5% of the monthly unemployment benefit, per every child. But this supplementary shall not go beyond 20% for all the children under responsibility.

When one of the parents is employed or receives a complete pension, the family supplementary is reduced 50%, that is 25% for every child under responsibility below the age of 15 years, but not less than 10% for all the children under responsibility.

When parents are divorced, the family supplementary shall be provided to the responsible parent. Should the other parent pay for the food quota, the family supplementary shall be given at 2.5%.

Benefits provided by the social insurance and in cases of social assistance, are minimum and, in reality, insufficient to live a normal life, comparing it with the prices and living standard in Albania.

Article 27.

1. *States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.*
2. *The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.*
3. *States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.*
4. *States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, lives in a state different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as making of other appropriate arrangements.*

The right to a standard of living adequate

Article 27 of the present Convention, its general and formulative compilation, provides the States Parties with a great free space for ensuring an adequate living standard to the child. With regard to the assistance that the Albanian government provides to certain categories of children, so that they can ensure the minimum living conditions, by sheltering some of them to social welfare centers, and by providing benefits to families which satisfy the conditions set forth by the Law, have been covered in detail under Article 26 of the present Convention, which deals with the benefits of social assistance and social insurance.

The concern is based on whether the benefits provided by the state are sufficient or not, to ensure adequate living conditions for the development of the child, and whether there are financial possibilities to increase this assistance.

The Convention does not cover this concern and does not envisage the need for an international cooperation in cases the lack of resources, like the case of developing countries, including Albania, hinders the exercise of this right.

Parents' Responsibility

As recognized by the Convention, parents are primary responsible for ensuring the appropriate living conditions for the development of the child.

The Code of the Family, as mentioned above, envisages the responsibility of parents for the upbringing, wellbeing and education of the child (Article 7).

Responsibility for nutrition

Parentless children and the ones with no support, are educate and cared for by the state (Article 10). According to the Code of the Family, the parents are responsible for the nutrition

of their minor children when they do not have sufficient means of living. The responsibility for nutrition continues even for the time that children attend middle school or go to University, up to 25 years of age.

Parents continue to be responsible for the nutrition of their children even if the parents are deprived of the parental right (Article 79,80).

The Code of the Civil procedure envisages that the suit for the divorce shall require the obligation of the other spouse for covering the nutrition expenses and the expenses for the development of the child. This is not the case when the consideration of these issues would render the case very difficult (Article 364).

Whereas, the code of the Family has defined that upon the decision of the court for the divorce, the court at the same time, solves the issue of defining the parent who shall be responsible for upbringing and education of the child, and what would be the necessary contribution for the upbringing and education of the child (Article 97,99).

Thus, the Code of the family clearly defines that the court is responsible to decide, within the same case of divorce, on the necessary contribution for the upbringing and development of the child. Whereas, the Code of the Civil Procedures provides some free space to this issue by quoting that "unless, this would render the review of case very difficult".

Judicial practices

There are two shortcomings noticed in the experience of recent judicial practices:

- a) nutrition benefit, that the court allocates in general, is not sufficient to ensure the upbringing and education of the child. In the majority of cases, the court decisions do not provide the arguments necessary to justify the definition of nutrition benefit amount. In other cases, it is difficult to certify the income of parent who is not responsible for the child, but who should liquidate the obligatory amount for nutrition. This is due to the fact that a considerable number of individuals have not registered their activities in accordance with the law requirements or have not signed agreements for the jobs they are doing. Certainly, this opposes the interests of the child to ensure an appropriate living standard for his or her physical, mental, spiritual, moral and social development.
- b) During these last two years, the court, in the majority of decisions, has not been expressed on the nutrition obligation, at a time when the Code of the Family, which is still in force, has already established this responsibility.

According to the Penal Code, non-provision of necessary means for the child's life by the individual who shall be responsible for this action by the court of law, shall be considered a penal violation and shall be fined or imprisoned for up to one year (Article 125).

When Albania opened after 1990-1991, a lot of parents emigrated abroad to find a better future. In most of the case, this emigration was accompanied by the separation of families, marriage relations, and many children remained with no appropriate assistance to follow their schooling and their normal life. However, most of the Albanian court's decisions, which define the nutrition obligation of the parent who has left, have not been applied. This is due to the international legislation, which require the satisfaction of some conditions for the acceptance of Albanian court's decisions in their countries. One solution might be the establishment of bilateral agreements between the Republic of Albania and states, which do have many Albanian

emigrants. This alternative has been envisaged in the Code of the Civil Procedure for the application of decisions taken by foreign court of law (Article 393).

Albania has ratified the agreement with the Former Yugoslav Republic of Macedonia and Greece, for the inter-exercising of the judicial decisions. Discussions are being held to reach an agreement with Italy, where a considerable number of Albanian emigrants work.

Tendencies

The Draft law of the Code of the Family envisages the responsibility for nutrition that parents have towards their minor children, in addition to the responsibilities of other persons when parentless.

Parents are responsible to provide nutrition to their minor children, when they do not have the sufficient means of living. The obligatory amount for nutrition shall be defined in proportion to the needs of the applicant and to the economical possibilities of the responsible.

The draft Code of the Family does not bare serious changes compared to the existing code, in relation to the nutrition obligation towards minors.

Article 28

1. *States Parties recognize the right of the child to education, and with a view of achieving this right progressively and on the basis of equal opportunity, they shall, in particular:*
 - (a) *Make primary education compulsory and available free to all;*
 - (b) *Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance of need;*
 - (c) *Make higher education accessible to all on the basis of capacity by every appropriate means;*
 - (d) *Make educational and vocational information and guidance available and accessible to all children;*
 - (e) *Take measures to encourage regular attendance at schools and the reduction of drop-out rates.*
2. *States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.*
3. *States parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.*

The right to education

The Constitution of the Republic of Albania has ratified the principle that every individual is entitled to education (Article 57).

Whereas the Law No. 7952, dated 21.06.1995 "On pre University Education", although endorsed before the Constitution, considers education in the Republic of Albania as a national priority.

The Law on educational system with its relevant amendments, is in conformity with the UN Convention on the Rights of the Child.

The law recognizes the equality of every citizen of the Republic of Albania to be educated in every level of education, regardless of his or her social status, nationality, language, sex, religion, race, political beliefs, health status and economic level. In addition, the Law envisages the obligation of children from 6 to 16 years of age to attend the compulsory education, which shall last not less than 8 years.

Parents are responsible to send the child who is covered by the compulsory education, to public or private institution of compulsory education.

Educational obligation

Law No. 8387, dated 30.07.1998, which amended the Law on preuniversity education in the part of ratification, envisages that parents who do not send their child to school (the child between 6-16 years), or when children do not attend school with no special reason, or who abandon school, shall be punished for administrative violations and be fined from 1000 to 10000 Leks.

When the child, with no special reason, does not attend school for 30-50% of the time in two consecutive months, the fine shall be from 1000 to 3000 Leks. In cases of repetition of this case within the same year, the fine will be 5000 Leks.

When the child shall be absent with no special reason, for over 50% of the time in two consecutive months, the fine shall be from 5000 to 7000 Leks. In cases of repetition or abandoning schools, the fine shall be 10000 Leks.

The decision for the fine shall be taken by the mayor of the Head of the Commune, upon the proposal of the headmaster of the school.

There is an opportunity to appeal against the fine, within 10 days after the announcement of the decision. The appeal shall be in the district court where the violation has taken place. The exception cases include parents, whose children have been registered to schools abroad. Should we refer to the reality, these penalties have almost not been applied. The number of children who do not attend compulsory education has increased due to the migration of families from rural areas to areas, which had not been populated. Consequently, there are no schools in these areas, to send the children. Another reason is the employment of children, especially in rural areas.

In this aspect, the state should protect the right of the child to education, by establishing special social policies in support of families and children who are part of these families.

The state assistance

Through the public educational institutions, the state guarantees the educational premises, facilities and teaching staff, free of charge.

Should we refer to the reality, the premises and facilities in schools require big investments from the government. This is also due to the fact that schools were the first ones to be destroyed in 1990-1992, when some of them had severe damages.

Events of 1997 added to the former damages of schools and to the urgent need to renovating the existing schools and constructing new ones, especially in the urban areas, where there is a great number of families coming from rural areas.

Principally, the Law is comprehensive. But this is not sufficient, especially when we speak of a country like Albania, with an education-loving nation and with a good educational level.

With reference to the public secondary education, it is organized according to various levels of education, to the various contents covering, and to professional profiles. Whereas for the education in special areas, such as artistic, social, cultural, etc. there are special secondary public schools (Article 27,32).

In accordance with Article 28/3 of the present Convention, the Law envisages the right of the Ministry of education and Science to experiment for the quality improvements in education, conform the international standards, in co-operation to local and international institutions.

Article 29

1. *States Parties agree that the education of the child shall be directed to:*
- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;*
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;*
 - (c) The development of the respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;*
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship amongst all peoples, ethnic, national and religious groups and persons of indigenous origin;*
 - (e) The development of respect for the natural environment.*

2. *No part of the present article of article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.*

Directions of education

Article 29/1 envisages the goals for the education of children, where most important are the ones related to the development of personality, physical and mental abilities and skills, respect of human rights, respect for his or her parents, his or her cultural identity and the cultural identity of others, natural environment, etc.

Certainly, the way Article 29/1 of the present Convention has been formulated, presents difficulties in concretely presenting these objectives in the local law.

The Constitution of the Republic of Albania envisages that the state aims to education and qualification of children and youngsters, as per their capacities (Article 59).

In addition, the Law on preuniversity educational system, envisages that the mission of the education is the spiritual emancipation, material progress and social development of the individual and that education shall respect the rights of the child defined by Law.

Improvement of the educational level of children and their optimum integration to the country's life, emancipation and development shall be realized through the public school community composed of pupils, teachers, parents and other social partners.

According to the Law, the compulsory public education aims to develop intellectual, creative, practical and physical capacities of the pupils, to develop their personality and to equip them the fundamental elements of common culture and civilized behavior (Article 21). Whereas the public secondary education aims to develop a completely and harmoniously as possible, the pupils' personality and potentiality, to train them to actively contribute to the economic, political, social and cultural development of the country.

With regard to Article 29/2 of the present Convention, the Constitution of the Republic of Albania defines the possibility provided to the pupils, to be educated to other non-public schools, when they have been established and function in accordance with the law.

Besides, law no. 7952, dated 21.06.1995 on preuniversity education, amended by Law no. 8387, dated 30.07.1998, permits the establishment of private educational institutions in all preuniversity levels. Whereas, in the range of public preuniversity institutions, only vocational educational institution may be privatized. To ensure a more complete education of children, the Law envisages the establishment of other structures, which support and enrich the educational system, such as cultural centers, school documentation centers, lectoriums, special courses, vocational centers, etc.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the rights, in community with other members of his or her group, to enjoy his or her culture, to profess and practice his or her own religion, or to use his or her own language.

The rights of minorities

The Constitution of the Republic of Albania envisages the right of minorities to freely express, without being stopped or obliged, their ethnical, cultural, religious and linguistic origin.

They are entitled to maintain the above, to learn and be taught in their mother tongue, as well as to be assembled in organizations and associations for the protection of their identity.

This provision does not specify the rights of the children who belong to these ethnic minorities, but includes them within the term used in the Constitution "individuals belonging to national minorities".

The International Pact on Political and Civil Rights (Article 27) expresses the protection of children belonging to the national minorities. Albania has already ratified this Pact.

The other articles of the present Convention cover the freedom of religion, the right to protect the private life, the right to be organized in associations, etc. But Article 30 provides the relations with the community aspect, including maintenance of the cultural, religious and linguistic identity, consequently related to the freedom to assemble and be organized in associations.

In principle, the above mentioned rights in Albania have been guaranteed for children of every ethnic, religious or language group. These groups may freely enjoy the individual freedom of belief and conscience, of education and organization.

There have been long discussions, before and after the endorsement to the Constitution of the Republic of Albania (Article 18/3), regarding the positive discrimination notion. This provision does not permit the unfair discrimination due to ethnicity, language, religion, education, etc. But on the other side, it does not forbid the positive discrimination, providing arguments based on the space that should be permitted for the special treatment and support to these special categories of individuals. I think that this provision provides possibilities to the state to interpret it as per its interests, as case be.

However, national minorities in Albania have been almost entitled to equal rights as the Albanian nationals. I think that their manner of treatment has never been a problem. In addition, the Decision of the Council of Ministers No. 396, dated 22.08.1994 "On 8-grade education in mother tongue, for the national minorities" envisages the right of individuals belonging to national minorities, to learn their mother tongue in an educational unit and defined educational state institutions.

Within the framework of the school curriculum, pupils of national minorities shall be ensured possibilities to study their history, traditions and culture in these institutions or units.

The Decision of the Council of Ministers also envisages the cases when individuals belonging to national minorities live in community, but does not reach the number to establish a special school for them. These individuals are ensured possibilities to learn their mother tongue in a facultative manner, within the state system of compulsory education.

Albania ratified the "Frame Convention of Europe for the Protection of Minorities" by Law no 8496, dated 03.06.1999, thus expressing the commitment for the application of this Convention.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

The right to leisure

This provision bears a programmatic character. In general, it takes into account the needs of the child without proposing defined concrete measures. It is related to several daily activities, which might have been included in the school programmes or might be part of the cultural policy, such as it might be the case of promoting cultural activities for children.

I think that the Albanian Government policies in this aspect should be changed. Specifically, Article 31 of the present Convention might serve and assist the Government in establishing policies for the future.

The Constitution of the Republic of Albania, under chapter on social objectives, envisages the aim of the state to develop sports and other recreational activities (Article 59).

In reality, the participation in the cultural and artistic life, in entertainment and games, is becoming a dream for the Albanian children.

With reference to playground, were children might entertain, they almost do not exist. The ones, which have functioned recently, are disappearing, being replaced by new construction sites. The latter mercilessly destroy the playgrounds of children who are so powerless to prevent such a phenomenon.

The various cultural or sport activities are organized, in the majority of cases, by the schools. Parents care for the entertainment of their children, too.

Article 32

1. *States parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health of physical, mental, spiritual and moral or social development.*
2. *States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:*
 - (a) *Provide for a minimum age or minimum ages for admission to employment;*
 - (b) *Provide for appropriate regulation of the hours and conditions of employment;*
 - (c) *provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.*

Protection at work

The employment of children is an international very urgent problem and is closely related to the economic difficulties of the developing countries, which are seeking for solutions through an international cooperation.

The Constitution of the Republic of Albania envisages that every child is entitled to be protected from violence, maltreatment, and exploitation and from performing any work. This is especially when children are below the minimum age of children who can work. This may have negative consequences for their health and moral and may put their normal life and development at risk.

In addition, the Labor Code envisages a special protection for minors.

The minimum age for acceptance to work is 16 years. The Labor Code envisages other ages for admission to employment (age 14 years). But the employment cases at this age should be done for easy jobs, which do not risk their health. These types of jobs have been defined by decision of Council of Ministers and only during school vacations. (Article 99).

For employees below 18 years, night shifts are not permitted. The admission to employment shall be done after a complete medical examination, which shall recognize the individual as able to work. The expenses of such an examination shall be bared by the employee (article 103).

For employees below the age of 18 years, the working hours per day shall be no longer than 6 hours per day, in comparison to 8 hours per day, which are the normal working hours per day (article 78).

Should the employer admit an employee below the minimum working age, the Labor Code envisages penalties. Concretely speaking, the violation of this provision shall be fined at up to 50% of the minimum monthly salary.

The decision of the Council of Ministers No. 384, dated 20.05.1996 "On the protection of minors at work" has been laid down as an application of the Labor Code. This Decision defines the working conditions and the easy and difficult jobs, leaves, etc.

According to the Decision, the working conditions for employees below the age of 18 years should not be hazardous for the employee's health, and his or her physical, psychological, moral and social development, and should not interfere with the child's education.

The minors from 14 to 16 years of age might work only during school vacations, under the condition that they should be employed in easy jobs. In addition, the employment Inspectorate should issue an authorization for the employer.

At least once every year, the children from 14-16 years of age, should have some leave for 4 weeks, free from every school or employment activity. The employment Inspectorate shall be informed on children from 16 to 18 years of age, who are employed for hard and hazardous jobs. This Inspectorate shall review the employment criteria whether they are hazardous for the health of the child, or not. The employment hours for these children should not exceed 8 hours per day and 40 hours per week. The annual leave period shall be for at least, 4 weeks. In cases of employment of children below the age of 18 years, with the aim of participation in cultural, artistic, sports and publishing activities, an authorization shall be issued by the employment Inspectorate.

With reference to week-leave days, for a period of 7 days, the minors below the age of 18 years are entitled to have a minimum lead period of two consecutive days, including Sunday.

In case the working hours per day are longer than 4 hours and a half, the minors below the age of 18 years are entitled of at least, 30 successive minutes break.

International Instruments

By Law No. 8086, dated 13.03.1996, republic of Albania has adhered to the Covenants of the International Labor Organization, No. 105 "On abolishment of compulsory employment", No. 111 "On discrimination at work and by profession", No. 138 "On the minimum employment age".

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production of trafficking of such substances.

Protection of minors from drugs

The Convention envisages the responsibility of the States Parties to undertake appropriate measures against drugs, but does not define the measures to be undertaken. Under such circumstances, it is up to the states to define which are the most important measures to be undertaken to protect children from drugs.

The drug use had not been a disturbing phenomenon for Albania. This was due to the complete isolation of Albania. After 1992-1993 the use and trafficking of drugs increased and the ages 14 to 25 years are mainly involved.

To correctly define the drug distribution it is necessary to develop a special study, which should be followed by the establishment of relevant centers for treating this category of individuals, especially children, who are the major users of drugs.

Thus, Law No. 8494, dated 27.05.1999 endorsed the Agreement between the Government of Albania and the "Emanuel Community" Association and Caritas, for the establishment and functioning of the Plivalent Social Center in Vaqarr, Tirana.

This center shall treat children and women in need, youngsters who are using alcoholic or narcotic drugs, especially the ones of urban areas. These individuals need the assistance from the Government and of the society. The established center has treated children under drugs and is serving as a good experience for the establishment of other centers in Albania.

Production and trafficking of narcotic drugs

Law No. 7975, dated 26.07.1995 "On narcotic drugs and psychotropic substances" defines the regulations for the production, processing, importing, exporting, trafficking, use, controlling and possession of narcotic drugs and psychotropic substances.

The Law also envisages the prevention, within the territory of the Republic of Albania, of producing, processing, trafficking, and wholesale or retail trading, transportation, supplying, provision free or charge or under payment, purchase, use, importing, exporting, transit transportation of herbs and substances of high risk which are not used as medicine. In the part where Law envisages the production and trafficking of narcotic drugs and psychotropic substances, I think that it would have served to the protection of children if the Law would envisage the prevention of employment of children in such a production process.

The law has been compiled according to the Unique Covenant of Narcotic drugs, and the Convention on Psychotropic Substances. However, the protection of the rights of minors should have been taken into account.

The decision of the Council of Ministers No. 412, dated 20.05.1996 "On the establishment of the National Committee on Drugs" has established this committee as an inter-institutional organ headed by the Deputy Prime Minister. For the achievement of the objectives set forth by this Committee, the Decision envisages the establishment of the National Center of Information Collection for Drugs, in the Institute of Public Health.

Penal responsibility

The Penal Code of 1995 was deeply amended by Law No. 8279, dated 15.01.1998 and was recently amended in February 2001, with reference to penal actions related to drugs.

The Penal Code envisages the penal action of producing and selling any kind of narcotic drugs and psychotropic substances, opposing the Law (Article 283); the penal action of trafficking of narcotic drugs (Article 283/a); the establishment of facilities for taking and using drugs (Article 283/b); the cultivation of narcotic herbs; the production and processing of narcotic and psychotropic substances (Article 284/c); the penal action of organizing and managing criminal organizations which aimed to cultivate, produce, process narcotic drugs illicitly (Article 284/a); and the penal action of keeping, producing and trafficking chemical substances (article 285).

The Penal Code does not envisage any special provision for the involvement of children in selling and trafficking drugs. However, there is a general provision, which may be applied in such cases. According to this provision, the promotion or involvement of minors below the age of 14 years, in committing crimes, shall be punished with imprisonment up to five years.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;*
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;*
- (c) the exploitative use of children in pornographic performances and material.*

The sexual exploitation of children, especially girls, has become a seriously expanded problem in Albania, especially in the recent years. Although it has become a social problem, the real situation has not been defined yet. The number of exploited children, is not known, at a time when there are certain data which point out that this phenomenon has also been expanded in Albania.

The majorities of girls, who are involved in this activity, do not have the necessary information and become victims of deceit and of this new, unknown phenomenon to them.

The Penal Code has amended the sexual crimes by Law no. 8279, of 1998 and the latest amendments were made in February 2001. In the recent amendments of the Penal Code, the term "minors" replaced the term "minor" and "homosexual relations" were added, including every other sexual act.

Currently, the penal Code envisages sexual and homosexual relations and every other sexual relations with minors below the age of 14 years, as penal actions. The same holds true for relations with minor children who have not reached sexual maturity. When these actions are committed with violence or result in death or self-suicide of the minor child, the sentence shall be heavier than in the first case (article 100).

The Penal Code envisages penal actions of violent sexual relations with children between 14 to 18 years of age, or with individuals not physically or mentally able to be protected, including children between 14 to 18 years (Article 101,103).

In addition, the Penal Code envisages as a penal action, even the commitment of disreputable actions with minors who have reached the age of 14 years of age (article 108).

In 1993-1994, the crime of violent sexual relation with female minors from 14 to 18 years of age, increased considerably. The judicial practice shows that the punished announced in the beginning were too smooth. Only when this phenomenon expanded to a disturbing extend to the society, the court of law set forth heavier sentences, which were later endorsed by the new Penal Code in 1995.

With reference to exploitation of children for prostitution purposes, the Penal Code envisages as a penal action, which shall be severely punished the inducement, interference, or rewards for exercising prostitution towards minors.

Deceit, threat and violence were the means to apply prostitution in Albania, in addition to close relative, in-laws, guardianship relations. For this reason, by Law no. 8279, dated 15.01.1998, the provision of Penal Code on the exploitation of prostitution was amended.

Exploitative use in prostitution under hazardous circumstances, comprised the above mentioned elements. In addition, the exploitative use in prostitution by an individual who has been induced or threatened to action prostitution out of the Republic of Albania has been envisaged as a penal action. The reason for envisaging this penal action was the exploitative use of exploitation in other countries more than in Albania.

The recent amendments in the Penal Code led to the endorsement of a new provision on women trafficking for prostitution (Article 114/b). According to this provision, the trafficking of women for prostitution, and for material or any other profiting, shall be punished with seven to fifteen years' imprisonment. Should the same action be committed in collaboration or more than once, or is committed with physical or psycho violence and inducement to the victim, to

commit actions which may bring out serious consequences, the individual shall be imprisoned for not less than fifteen years or life imprisonment.

With reference to pornography, the Penal Code envisages the penal actions, those, which involve production, distribution, advertisement, publication and distribution of pornographic materials in environments for minors.

The fight against this category of crimes which are hazardous to the health and future of children, requires an international plan of cooperation, especially with Governments like that of Italy, Greece, where exploitative use of prostitution of Albanian girls for trafficking is greater than in other countries.

Article 35

State Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

The fight against the traffic of individuals, due to its specifications, should be developed at an international level.

The International Convention in 1910 on the prevention of the traffic of white meat and the Convention of 1921 for the abolishment of the trafficking of women and children, have been as a result of international efforts.

The Penal Code amended in 1998 and in 2001, envisaged that the abduction or kidnapping of the child below the age of 14 years shall be considered as a penal action. This penal action shall be punished with imprisonment not less than fifteen years. The same penal action when resulting in death or extinction cases of the minor child, shall be punished for not less than twenty years imprisonment or life imprisonment. In addition, the Penal Code envisages the concealment or replacement of the child with another one, committed by a physician, as a penal act. This act shall be punished with three up to eight years imprisonment.

After the recent amendments of the Penal Code in February 2001, it envisages that the traffic of children shall be considered as a penal act (Article 128/a). According to this Article, the trafficking of children for reward or any other benefits, shall be punished with ten up to twenty years imprisonment.

When such an act has been committed in collaboration or has been repeated, or when accompanied by maltreatment or physical or psychological inducement to commit certain acts, or bears serious consequences, shall be punished with not less than fifteen years imprisonment to life imprisonment.

Another form of trafficking, is the adoption, especially international adoption.

Practice has shown that a grater international cooperation is required to recognize cases of abuse in the field of adoption and to improve the situation.

Law No. 7650, dated 17.12.1992 "On adoption from expatriates" has provided a penal provision. According to this provision, the request for or acquiring the benefits or income by the parent(s), the legal guardians or any other individual for him or herself, or for any third party, in the adoption process of a minor, shall be punished with up to five years deprived of freedom.

But this provision does not specify the cases referring to, and covers the issue generally. Law no. 8193, dated 06.02.1997 "On the transplant of organs" comprises a provision according to which the trading of transplants shall be prevented, in addition to any other activities promoting illicit advertisements, trading and trafficking of transplants. The second paragraph of this provision envisages that these activities shall be punished in accordance with the provisions of Penal Code.

Actually, the Penal Code does not bear an explained provision in relation to the illicit trafficking of transplants or their advertisements.

Recently in Albania, a lot has been said about the trafficking of children and transplants, especially by the written media. But concretely speaking, the trafficking network has not been identified, yet. On the contrary, the children abduction became as a profiting tool to the organizers of trafficking, as the parents of the minors have paid enormous amounts.

Judicial practices have recognized several cases like this. But there are cases where there has been no discovery by the competent organs. This is also due to the lack of capacities of individuals who work in such institutions, in addition to the phenomena newly introduced in Albania and the lack of facilities necessary for their capture.

Article 36

States parties shall protect the child against all other forms of exploitation prejudicial to any aspect of the child's welfare.

The present Convention, through its special provisions, has envisaged the protection of the children from economic and sexual exploitation. The protection of children from any form of exploitation means that other forms of exploitation do exist in addition to economic and sexual exploitation.

The application field of this provision has not been limited, providing the States Parties with the vast possibilities to take actions for any problem they may encounter in this direction.

The idea of the establishment of an Institution or Committee for the protection of the children's rights would serve to the necessary application of this provision of the Convention at any time and in any case.

Article 37

States Parties shall ensure that:

(a) No child shall be subject to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults, unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before the court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Protection of children from tortures, inhuman and degrading treatment

Part of the rights envisaged by the present Convention, have been reflected in the Albanian legislation in the general framework of human rights, thus not considering as necessary the reflection, in particular, of the rights of the child, in part of them.

In conformity with Article 37/a, the Albanian Constitution envisages that none can should be subject to tortures, punishment or inhuman or degrading treatment (article 25). The Code of penal procedures, under the general provisions, envisages that none should be subject to tortures, punishment ad degrading treatment.

The Republic of Albania adhered, by Law no. 7727, dated 30.06.1993, the Convention against all forms of tortures or other forms of inhuman and degrading treatment.

With reference to the capital punishment and life imprisonment, the Albanian penal legislation prevents the punishment of these types to children below 18 years of age. Furthermore, the Penal Code envisages that the life imprisonment to minors who are below eighteen years of age shall not be for longer than half of the period of punishment a defined by the Law for the penal act committed (Article 51). In cases where the penal act is of a significant interest and the previous behavior of the minor has good records, the court may decide to exclude the child from punishment and may decide to send the child to an educational institution.

With reference to taking security actions, the Code of the Penal Procedures envisages the criteria and circumstances to be taken into account by the court, especially when referring to penal acts committed by minors.

When the defendant is a minor, the court shall take into account the claim for not interrupting the correct educative processes. In case the minor has committed penal violations, he or she shall not be arrested.

Special Treatment

Article 37/c of the Convention requires that the child deprived of liberty, should receive special treatment, taking into account the needs of persons of his or her age.

The Code of the Penal procedures has envisaged the insurance of the human treatment and the moral rehabilitation of the imprisoned (Article 5/3).

With reference to children deprived of liberty, the Albanian legislation has envisaged a special treatment by the adults. This shall require the appropriate time to prepare the appropriate staff who will deal with this category of children.

The legislation, which envisages the treatment of individuals deprived of liberty, pays special attention to the maintenance, improving and reestablishing relations between the minors and their families, through compiling a favorable programme.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts, which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of eighteen years, States parties shall endeavor to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Protection from armed conflicts

Law No. 7527 dated 11.12.1991 " On the Military Service in the Republic of Albania" and its amendments, have defined that the age for recruitment to the armed forces for the military service in the Republic of Albania is that of 19 years. Practically speaking, Albania has never had problems with the protection of and care for the children affected by armed conflicts, as there have been no such conflict in Albania so far.

For certain, the norms of international humanitarian law for the protection of civil population in cases of armed conflict shall be applied. Albanian legislation includes defined regulations for sheltering and treatment of the population in cases of armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading

treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Protection of the child, victim of an armed conflict

Albanian legislation has not envisaged special legal provisions for the treatment of children, victims of exploitation, maltreatment, torture, etc. But these measures can be encountered distributed in other social laws, as per the concrete case, because Article 39 of the present Convention is very general. The treatment of refugees coming to Albania and the measures taken for their reintegration, have been envisaged by the law on refugees. This has been envisaged as another provision of the present Convention.

Whereas, the Code of Penal Procedures envisages the manners of compensating for the non-material damages as a result of penal act.

Recently, we have encountered the inhuman treatment of Kosovo children by Serbian. Many of these children stayed in Albania for some time. Not only to apply the nutrition treatment, but also the physical and psychological rehabilitation of the terrified children, a lot was done by the specialized structures and individuals.

Article 40

1. *States parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting of promoting the child's reintegration and the child's assuming a constructive role in the society.*

2. *To this end, and having regard to the relevant provisions of international instruments, States parties shall, in particular, ensure that:*

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the

presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or juridical body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

The treatment of the child with dignity

Article 40 is one of the most important articles of the Convention on the rights of the child. This article has also been reflected in the International Covenant on Civil and Political Rights and the European Convention on Human Rights.

Paragraph 1 of Article 40 of the present Convention deals with the special treatment of the child, when alleged as, accused of or recognized as having infringed the penal law. This treatment covers mainly the measures that should be taken to assist the reintegration of the child in the society in the manner that he or she can assume a constructive role in society.

Constitutional Law

The Albanian Constitution envisages that every individual, who has been deprived of liberty, is entitled to human treatment and respect of dignity.

Based on the Albanian legislation, the defendant child shall be ensured legal and psychological assistance at any status or level of proceedings, through the presence of his or her parents or other individuals requested by the minor and accepted by the proceeding authority. During the judging phase, as per the age of the minor, the court takes into account the demand for the continuation of concrete educational proceedings.

The rights of the punished children

Of significant importance in this direction is the endorsement of Law no. 8331, dated 21.04.1998 "On the execution of penal decisions" and Law no. 8328, dated 16.04.1998 "On the rights and treatment of the punished in prison".

The above mentioned Laws envisage that the execution of penal decisions to children shall be done in special favorable manners as defined by law. The educative measures shall be executed by the special educative institutions of minors, where the parent, or the legal guardian, has voluntarily sent his or her child, as by the execution of the prosecutor's decision. In the places where minors suffer the punishment in prison, education and cultural and professional training of the child, shall be realized through school, which is compulsory for children, and through vocational courses, as the case may be. Certainly, the application in practice and the training of appropriate staff require the relevant time to be realized. Currently, in the town of Kruja, the construction of the premises where minors will suffer their punishment has been finalized. This building is a modern one and well planned to serve the upbringing and education of this category of children who have a great need for reintegration in society.

The rights of the minor in penal proceedings

The second paragraph of Article 40 of the present Convention envisages certain rights to children in penal proceedings. In conformity with the second paragraph, letter "a", the Albanian Constitution recognizes that none shall be accused of, or recognized guilty for having infringed the penal law by reason of acts or omissions that were not prohibited by national law at the time they were committed, unless the acts at the time of commitment were recognized as crimes of war or against humanity, in accordance with the international law (Article 29).

In addition, the penal Code recognizes that none shall be punished for infringing the penal law by acts, which were not prohibited by law at the time they were committed.

Paragraph 2, letter "b" envisages the guarantees to children in penal proceedings, such as presuming him or her innocent until proven guilty according to law. In accordance to this, the Constitution sanctioned that the individual shall be called innocent until the contrary shall be proved by the court's final decision. (Article 30).

The Code of the penal Procedures recognizes that the defendant shall be presumed innocent until the contrary shall be recognized by the court's final decision.

Article 40/2 of the present Convention recognizes the right of the child to be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her

parents or legal guardians shall have legal or other appropriate assistance in the preparation and presentation of his or her defense.

The Albanian Constitution envisages that every one is entitled to be promptly and directly informed on the charges placed against him or her, for his or her rights and creates the possibility to inform families and relatives. Everyone is entitled to have the necessary time and facilities to prepare for the defense (Article 31).

Whereas the Code of the Penal Procedure defines that when the defendant is below 18 years of age, the assistance by an advocate is compulsory.

The right to legal assistance

Article 40/2(b) of the Convention sanctions the right of the child to be have the matter determined without delay, by a competent, independent and impartial authority of judicial body, in presence of legal or other appropriate assistance. This is a very important right which deals with the issue discussed these last years in Albania, the issue of establishing the court of minors, which would play an important role in the judicial professional and fair decisions on the case. The Code of penal procedure has envisaged the existence of a court for minors in the penal issues (Article 81). This provision recognizes that when some proceedings, related to one another, are under the responsibility of the common court of law, and some others are to the court which considers the cases of minors, the latter, that is the court for minors, is the competent authority. In addition, Article 13 of the Code of the Penal Procedures defines that the judgment of cases for minors shall be handled by judge qualified in such judgements, and specially appointed for this task.

Although the Code of the Penal Procedure entered into force in June 1996, the share of responsibilities for the minors has not been applied yet.

I think that there might be a temporary solution to establish special sections for judging minors who have infringed the penal law. These sections will be within the common courts of law but the judge will be qualified. With reference to the legal assistance to be ensured to the minor, the Code of the Penal Procedure recognizes that the minor defendants should be ensured to legal and psychological assistance at all stages of the proceedings, in the presence of his or her parent(s) or the legal guardian or other person accepted by the minor and by the proceeding authority.

Different opinions have been discussed in jurisprudence with regard to ensuring the dependence of the minor who is not present. Under such circumstances, the court declares by its decision, the absence of the minor and appoints mainly an advocate. The discussible issue is whether the appointed advocate will mainly continue to defend the minor even to the other stages of the proceedings, or should have a proxy from the minor's guardian to exercise this right and appeal in the other judicial instances.

Another opinion expressed in jurisprudence, and which comes near to the interpretation of the Code of the penal Procedures, is that the defense appointed by the court shall be entitled to defend the minor to the end of the proceedings in the first stage. Whereas the other opinion has been expressed in the Decision no. 30, dated 28.01.1999 of the United Colleges of the Supreme Court, referring to Article 40/b(iii) of the present Convention. This opinion recognizes the defense established by the minor at all stages of the proceedings, regardless the child is

absent or not. The same opinion has been held by the Constitutional Court in considering the case where an adult was the subject. The reference to the present Convention was made based on Article 122 of the Albanian Constitution. According to this article, every international ratified agreement becomes part of the local juridical system after being published in the Official Journal.

An international agreement ratified by Law gains priority over the local legislation, which opposes it.

Article 40/2(b) of the Convention recognizes the right of the child not to be compelled to give testimony or to confess guilt as well as to examine or have examined adverse witnesses and to obtain participation and examination of witnesses on his or her behalf under conditions of equality.

The Albanian Constitution envisages that none shall be compelled to testify against oneself or one's family and to confess guilt (article 32).

In addition, the Constitution recognizes the right of every individual to impose questions to the present witnesses and to require the residence of the witnesses, experts and other persons who can clarify the case.

Article 40/2(b) of the present Convention defines the right to have the prior decision of the court imposed in consequence reviewed by a higher competent, independent and impartial authority or judicial body, according to law.

The Albanian Constitution also recognizes that everyone is entitled to complain against a court's decision to a higher competent authority (Article 43).

The Code of the Penal Procedure envisages the complain and recursion to higher legal instances, according to the concrete proceedings (Article 249, 407).

In conformity with Article 40/2(b) of the present Convention, the Albanian Constitution envisages free assistance of an interpreter, when the child does not understand or speak the Albanian language (Article 31).

The Code of Penal procedure further clarifies the assistance of an interpreter, thus assisting the minor defendant in understanding the accusation and follows the legal proceedings.

To fully respect the privacy of the child at all stages of the proceedings, in addition to what has been endorsed by the Constitution, the Code of the Penal Procedures prevents the publication of generalities and photos of the minor defendant accused of infringing penal law.

In addition, the Code of the Penal Procedure defines the guidance for the instances when the control of the residence shall take place, or when the phone calls or other communications may be traced (article 202, 221, 222).

The age for penal responsibility

In conformity with Article 40/3(a) for the establishment of a minimum age for declaring the responsibility of the child, the Penal Code recognizes the fact that the person shall be responsible when committing crime at the moment of compiling 14 years of age. In cases of infringement of penal law the person is responsible after compiling 16 years of age (Article 12).

With reference to the third paragraph, letter "b" of Article 40 of the present Convention, Law no. 8465, dated 11.03.1999 "On safeguards for resorting the conflicts" envisages the appropriate measures for dealing with such children without resorting to judicial proceedings. The Law does not specifically recognize the minors, but includes them in the category of

individuals who have infringed the penal law regardless of their age. One of the measures envisaged in this paragraph is dealing with such children without resorting to judicial proceedings.

Of considerable importance is the recognition of the rights envisaged by the present Convention by the children and adults, where the formers should know them to demand for their rights, whereas the latter should know them to establish appropriate conditions to apply these rights of children in reality. Education of children with their rights has been currently introduced to the school curriculum. But NGOs operating in the field of human rights, including right of the children, are playing a significant role.

Tendencies

The draft Code of the penal procedure, which is being discussed, has recognized the judgement of the minors for all penal actions, including severe crimes, by the relevant sections established in the district judicial courts. The importance lies with the judge. The draft recognizes that the judgement of the minors shall be handled by a judge team of two judges and a psychologist, with the status of the judge.