

**MAPPING - CRIMINAL JUSTICE SYSTEMS IN CENTRAL EASTERN EUROPE**

**CONDUCTED BY**

**ALBANIAN FOUNDATION FOR CONFLICT RESOLUTION AND  
RECONCILIATION OF DISPUTES**

**ALBANIA COUNTRY REPORT**

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## **Introduction**

The purpose of the mapping, composed of a desk review and qualitative interviews, was to gather data and insights on the criminal justice systems and its stakeholders in seven CEE countries, respectively in Albania, Bosnia and Herzegovina, Croatia, Czech Republic, Hungary, Slovakia, and Ukraine.

This report contains information about Albania and it structured in two parts. The first part contains 6 sections. Section 1 presents very generally the main criminal policies and reforms on crime and punishment. Section 2 maps the main legislative background as it related to restorative justice, alternative sanctions, rehabilitation and reintegration, and juvenile justice. Section 3 goes more in-depth and reflects on the implementation level of the laws and policies as they relate to the areas mentioned above. Section 4 is dedicated to victims and vulnerable groups and deals with the main reforms, laws, and implementation of programmes. Section 5 gives an account of public and stakeholders' attitudes, either as known from previous research or as resulted from the interviews. This section is more meant to give a general sense (pulse), rather than to be interpreted very precisely, because data on public opinion is generally missing, and what we have are mostly impressions of different stakeholders. Section 6 aims to provide a general reflection on the main challenges and opportunities that Albania presents in relation to the topics that have been researched. Part two aims at providing a short conclusion section and develop some concrete recommendations for change.

## 1.1. Albania Country Report

### 1.1.1. Criminal policies and reforms

In Albania, criminal policies and reforms happen at two different levels: **Parliamentary level** and **Governmental level**. At the Parliamentary level, **the Justice Reform**, one of the main reforms, which is at the same time part of the Albania's conditions to fulfil as part of the EU accession process, aims to create a justice system that is credible, fair, independent, professional and oriented toward services, open, accountable, efficient and one that will enjoy the confidence of the public. At the Governmental level, the Ministry of Justice developed the **Justice Inter-Sectorial Strategy for 2017-2020**, which aims at achieving consolidation of the independence and effectiveness of the judiciary; increasing the transparency and consolidation of the public trust in the justice system; guaranteeing the fundamental human rights and transformation of the punishment in the opportunities for re-education; and improvement of the prison infrastructure.

In terms of the main criminal justice policies and reforms that exists in relation to alternatives to imprisonment, restorative justice and treatment, rehabilitation, or reintegration of prisoners in Albania, worth mentioning is the **Objective 6** of the Criminal Law pillar of the Justice Reform: *Increasing the effectiveness of the criminal justice system*. The general objective of reform in the penitentiary system is to increase public security and prevention of criminality through the concepts of rehabilitation, humane and dignified treatment and the protection of convicts' rights. Another objective worth mentioning is **Objective 8**: *Reforming the justice system for juveniles in conflict with the law by strengthening the restorative justice system and effective protection of their procedural rights*.

Worth mentioning here is also the **Juvenile Justice Strategy and its Action Plan 2018-2021**, which aims to promote and effectively protect the rights and needs of: children in conflict with the law, children victims or witnesses of crime, children under age of criminal responsibility, whether in criminal judicial proceedings or alternatives thereof, as well as children participating in administrative or civil court proceedings, through the implementation of national and international standards of child rights. The strategy has an interdisciplinary approach, it ensures alignment with all other existing national documents and agendas (such as the National Agenda for the Children's Rights 2017-2020).

### 1.1.2. Legislation

In terms of the legal context and basis for juvenile justice, restorative justice, and alternatives to incarceration, we can mention briefly the following legislation, specifying their important elements:

#### **Criminal Procedure Code (CPC)**

The CPC has some articles which stipulates the efforts for reconciliation and provide mainly rights of the victim to ask compensation for certain offences (such as Article 338, Article 58/g, Article 59, Article 284).

## **Law no.10385 On Mediation in Dispute Resolution”**

The law no.10385 “On Mediation in Dispute Resolution”, dated 24.02.2011, amended twice, in 2013 and in 2018, stipulates that mediation can be applied in civil, family and criminal cases. Regarding criminal cases that can be resolved through mediation, the law makes reference to Articles 59 and 284 of the CPC.

## **Criminal Code of Republic of Albania (CC)**

Article 34 of the CC provides for the possibility of punishment through a fine. Chapter VII of the CC sets out the Alternatives to Imprisonment Sentences (such as semi-freedom, home confinement, community work, parole, and probation).

## **Code of Criminal Justice for Children (CCJC)**

The CCJC was drafted in implementation of Objective 8 of the Justice Reform mentioned above. It was recently approved through Law no.37/2017 “On the rights and protection of children”, which regulates the organization and functioning of institutions for treatment and protection of children’s rights and entered into force in January 2018.

Chapter VII of the CCJC provides for the procedure of diversion from criminal prosecution and punishment through alternative measures. Article 63 of the CCJC sets out the possible alternative measures of diversion from criminal prosecution, which may include: restorative justice and mediation programmes; advising the child and family; verbal warning; written warning; mandatory measures; placement in foster care. The CCJC provides that during the decision-making process, the court shall consider imprisonment of the child as the last resort to be considered only if the measures of diversion foreseen in Chapter VII of this CCJC are inappropriate. As far as imprisonment is concerned, a child may be imprisoned only if s/he has committed a criminal offence for which the minimum of the punishment is foreseen to be 7 years and when such punishment is deemed as necessary due the nature, high social risk of the criminal offence and level of guilt.

### **1.1.3. Implementation**

#### **Restorative justice**

The main restorative practice used in Albania is **victim-offender mediation (VOM)**. The service is provided by the local NGO, Albanian Foundation for Conflict Resolution and Reconciliation of Disputes (**AFCR**). Services are provided only in main cities through support by projects implemented by civil society organizations. The mediators are licenced by the National Commission for Mediators Accreditation, based on the criteria set out by the mediation law mentioned above. From the 470 licenced mediators, only 89 mediators are registered in the Register of Mediators, which is managed by the Ministry of Justice.

Cases can be referred for VOM by the prosecutor or the judge. In adult cases, the CPC is not harmonized with the mediation law, and the institutions (police, prosecution, court) are reluctant to refer criminal cases to mediation. According to the mediation law, mediation in criminal matters applies to disputes examined by the court at the request of the accusing victim, or upon complaint of the injured party. The types of cases that can be settled through mediation are limited. No cases involving adults in fact have ever been referred by the court and prosecution.

Referrals from the Probation Service are regulated by Regulation on Cooperation of the Probation Service with NGOs and the Mediation Service. In the cases referred by the Probation Service, restorative practices have been used to deal with the consequences of the offence, while the offender is serving his sentence. For example, in cases of sentences for violation of traffic rule (compensation to the victim), or in family disputes (improvement of family relations), and in thefts (restitution of the value or object). Very few cases of juvenile offenders have been referred to mediation by the prosecution pursuant to the new Juvenile Justice Code. AFCR manages about 100 cases/year involving juvenile victims and offenders.

### **Alternatives to incarceration**

The **Probation Service**, established in 2009, is a state-run agency dependent on the Ministry of Justice. As part of the Justice Reform, the Parliament adopted the normative- legal framework for the establishment and functioning of the Probation Service as a specialized state body which would supervise alternative sentences. The essence of the role of the Probation Service is that of providing assessment, prevention and remedial, aimed at reducing criminal activity and raising security for people living in these communities.

It has national coverage whereby 22 local probation offices are established in those districts where there are first instance courts. There are currently 148 probation officers, with an educational background in law, social sciences and psychology. Cases of alternative sentences for adults (probation, home confinement, parole, community work, and semi-freedom) have significantly increased in the last five years (from 2,085 cases in 2013 to 6.046 cases in 2017).

### **Juvenile justice**

The **Criminal Justice for Children Code** in March 2017 ensured Albania's *de jure* compliance with international standards on juvenile justice. The law provides for establishment of disciplinary/educational centres, rehabilitation centres, Crime Prevention Centre - however, they are not yet set up as by-laws need to be still adopted. Cooperation Agreements have been signed between the Ministry of Justice and five municipalities about implementation of diversion for juveniles in conflict with the law, as a pilot phase. Several trainings have been conducted the last year for juvenile justice professionals on the new legislation for minors.

During 2017, the Prosecution Office of Tirana diverted 77 cases of juveniles and ordered alternative measures (no cases to mediation). The first 6 cases have been referred to mediation by Prosecution Office of Elbasan. **Social centres** were established recently in Tirana (5 centres set up in cooperation of the Municipality with the Ministry of Justice) where juveniles in conflict with the law will be involved in special socializing programs.

The role and support of **international agencies** in promoting rehabilitation, reintegration and restorative programs in Albania, especially for juveniles, like the **EU Delegation, UNICEF, Save the Children**, has to be highlighted. It is mainly due to the work of the AFCR, through joint efforts with UNICEF and Save the Children, and some experts in this area, which contributed and led to the inclusion of restorative justice in the Code of Criminal Justice for Children.

### **Treatment, rehabilitation, and reintegration of offenders**

Treatment and rehabilitation programmes are usually integrated in the programs of the Probation Service in cooperation with municipalities and NGOs. Some civil society organizations provide rehabilitation programs, but they are dependent on funding from donors. Among the NGOs involved in rehabilitation, reintegration programs worth mentioning are: **Vatra Psycho-Social Centre, Centre of Integrated Legal Services and Practices, MERIDIA, Tirana Legal Aid Society, Today for the Future, and community centers.** Few rehabilitation programs exist also in the detention centres (particularly in the Institute for Minors in Kavaja). There are no policies focused on rehabilitation of convicts after they have served their sentence.

#### **1.1.4. Victims of crime and vulnerable groups**

##### **Victims of crime**

Objective 7 of the Criminal Law pillar of the Justice Reform aims at “**Strengthening and improving the status and juridical status of the victim in the criminal process**”. The Justice System analysis highlights that the procedural position of the person injured by the criminal offense and the role of the prosecutor in guaranteeing the protection of those injured by the criminal offense has marked weaknesses. There is a lack of legal regulation and detailing of rights and procedural guarantees in accordance with EU standards. Many of the rights prescribed for victims of crimes in the Directive 2012/29/EU are in fact not reflected in the current Criminal Procedure Code.

In terms of **practices, services, and support mechanisms** that exist in the justice system or civil society towards victims of crime, we can mention the following:

- Child Protection Units at municipality level which provide assistance to children and women victims of domestic violence;
- State-run National Shelter for Domestic Violence Victims in Tirana which houses around 40 survivors;
- National Reception Centre for Victims of Trafficking in Tirana.
- Vatra Psycho-Social Centre, which is a civil society organization, providing shelter to victims of trafficking/domestic violence and community service center.
- Civil society organizations providing free legal aid to vulnerable groups, such as Tirana Legal Aid Society, Centre of Integrated Legal Services and Practices, Albanian Helsinki Committee, Civic and Legal Initiatives Centre, Albanian Foundation for the Rights of Disabled People, Res Publica Center.
- Mediation Service, such as Albanian Foundation for Conflict Resolution and Reconciliation of Disputes.
- Other organizations focused on women and children rights provide support to these groups as well. However, the NGOs are dependent on grants in providing services.

##### **Vulnerable groups**

The Justice Reform Strategy has not made specific reference to vulnerable groups, apart from **juveniles** in the criminal justice system, who the Strategy recognises as representing a vulnerable category and therefore their protection is one of the most important strategic objectives of reform in the criminal justice system.

According to a Survey of UNDP in Albania that was conducted in 2017, the following groups are recognized as vulnerable ones, who have unequal access to the justice system, and cannot fully exercise their rights guaranteed by the Constitution and other laws: women living in rural

areas; women heads of households; victims of violence against women and domestic violence; Roma and Egyptians; persons with disabilities; LGBTI people; ethnic minorities; victims of human trafficking; elderly men and women; and recipients of social assistance. Other vulnerable groups are convicts committed for immoral acts and convicts suffering from mental health problems. Most of the population is not informed on the existing ways of accessing justice system and often it is the **lack of information on their rights** makes some groups remain outside of the justice system.

From the legislation point of view, there is **no intended discrimination** since it enables that all people are equally treated by the system. Moreover, if an offence is committed due to motives related to gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious, or philosophical convictions, health status, genetic predispositions or disability – it is considered as an aggravating circumstance.

Some of the main **policies and laws** that protect vulnerable groups worth mentioning are:

### **National strategies on vulnerable groups**

- National Strategy and Action Plan on Gender Equality 2016-2020;
- National Action Plan on Persons with Disabilities 2016-2020;
- National Action Plan on LGBTI people in the Republic of Albania (2016-2020);
- National Action Plan for Integration of Roma and Egyptians in the Republic of Albania (2016-2020).

### **Constitution**

The Constitution provides for equal rights of citizens. Relating to vulnerable groups we can mention Article 18, Article 20/1, Article 31.

### **CPC**

In the CPC, relating to rights of vulnerable groups we can mention:

- Article 9/a - The right of the victim of the criminal offence;
- Article 58/a - The rights of the minor victim;
- Article 230 /2, 3 and 4 - Special criteria for establishing the pre-trial detention;
- Article 476 - Postponing the execution of decision.

### **Law no. 111/2017**

One of the objectives of the law no. 111/2017 “On State Guaranteed Legal Aid” is to create a system for the organisation and delivery of free-of-charge legal aid in an effective and equal manner for all individuals in need in order to enable to them access to justice. Among Primary legal aid the law provides for “the delivery of advice on the procedures of mediation and the alternative means of dispute resolutions”.

### **Law no. 47/2018**

Law no. 47/2018 “On some additions and addenda to the law no.9669, dated 18.12.2006 “On measures towards domestic violence” foresees “the establishment of social centers for the rehabilitation of victims and provide services to them; coordination of the work with the

existing centers, prioritizing the centers specialized in the respective areas and emergency centers for the immediate treatment of the domestic violence victims. The law also foresees educational programs and vocational ones for offender minors and juveniles between 18-21 years, and victims, with the aim of their integration, rehabilitation and re-socialization.

Other **relevant laws** that can be mentioned are:

- Law no. 96/2017 “On the Protection of National Minorities in the Republic of Albania”.
- Law no. 10221 “On protection against discrimination”
- Law no.9970 “On gender equality in society”
- Law no. 93/2014 “On the inclusion of and accessibility for persons with disabilities”
- Law no. 9959 “On Foreigners”

In terms of **practices, services, and support** mechanisms that exist in the justice system or civil society towards groups that are vulnerable to the criminal justice system, besides the ones we mentioned in the previous section, we can mention here the following:

- Legal aid provided by the state;
- The Commissioner against Discrimination at the Ombudsman – provides support to cases of discrimination from the justice system;
- The Commissioner for the Rights of Children at the Ombudsman – support to implementation of rights of children in the justice system;
- Other civil society organizations, depending on their main area of activity provide supporting mechanisms for vulnerable groups.

#### **1.1.5. Public and stakeholders’ attitudes**

There is a general opinion among the informants of this research that the actors involved in the policy of criminal justice reform are mostly **supportive** to restorative approaches, with the goal of having as fewer people as possible in prisons. This positive approach is indicated in the inclusion of rehabilitation and reintegration in strategic documents. The developments in the last years, such as the National Strategy for Children, the approval of Code of Criminal Justice for Children, where much focus was placed on diversion, alternative measures and rehabilitation of both victims and offenders, the amendment of several laws, and also of the Mediation Law, as part of the Justice Reform, demonstrate the positive attitude of political and legal actors towards these measures. The development of the Inter-Sectorial Justice Strategy, where alternative sentences are included, is also an indicator of the positive attitude towards these practices. The recommendations by the Ministry of Justice in the last four years have included the use of alternative sentences particularly for women and for persons of low risk to society.

The establishment of the Probation Service in 2009, is also considered as a demonstration of the positive attitude in implementing alternative sentences. There are also informants who think that sometimes **two directions** are followed by the policy makers, cases being oriented towards more punitive sentences and sometimes being less punitive, depending on the circumstances. As an example, it was mentioned the case when the Parliament approved more punitive sanctions to the ones who committed theft of electric power in 2014, or illegal constructions, whereas the increase of alternative sentences by the court was mentioned as positive trend.

When it comes to **public attitudes** towards restorative justice measures, alternatives to imprisonment, and rehabilitation policies, we have not been able to identify any existing research, however, we can summarise the results of the opinions expressed about the public



opinion by our informants. Most of the informants shared the perspective that the public opinion is divided into two groups when it comes to their attitudes: Attitudes that are supportive to alternative measures, rehabilitation polices and alternative sentences, especially for juveniles, and attitudes that are very sceptical towards these approaches, sometimes even expressing “extremist” opinions for the use of capital punishment.

Among **factors having an impact** on the second attitude is the perception on increased level of criminality and therefore the need for more punitive policies. The opinion is influenced also by the types of offence committed, such as serious domestic crimes (e.g., father killing daughter or husband killing wife), child sexual abuse, or robbery into someone house and murder of the owner. The media, presenting the “black chronicle” has a large influence on public opinion. Another factor is the lack of knowledge about and lack of trust in the application of alternative sentences and the impact of such sentences. Finally, the corruption associated often with alternative sentences has also an important influence on public opinion.

Actors that have **an important role** in creating obstacles or supporting the development of juvenile justice, restorative justice, and alternatives to incarceration and other options with the intention of offering an alternative to punishment, we can mention the following:

- the parliament is the key actor who should convey the message of restorative policies and undertake restorative or punitive polices;
- the Ministry of Justice can be either supportive or create obstacles;
- the General Prosecution in advising prosecutors about wider use of alternative sentences;
- the Government by supporting rehabilitation and reintegration programs and the positive outcomes could lead to further extension;
- justice institutions (court, prosecution office, probation service, police) due to their understanding of restorative practices could lead either towards supportive approach or create obstacles;
- local government since if they are not aware of restorative approaches, they cannot be supportive in their implementation;
- civil society organizations focusing on human rights and justice area, who should lob for wider use of alternative measures for adults;
- the education institutions have a role in promoting restorative programs in schools;
- the mediation services and their success stories can be used to promote the approach and lob for restorative policies.

### **1.1.6. Challenges and opportunities**

In this section we firstly refer to some of the challenges that exist in the legislation and/or implementation of restorative justice and alternative measures, including reflections on victims of crime and vulnerable groups, and secondly, we highlight some opportunities.

#### **Main Challenges**

- There are some challenges related to legislation, such as: the approval of the Code of Criminal Justice for Children is not accompanied by approval of respective bylaws; the law on mediation is not harmonized with the CPC; diversion procedure and restorative justice measures for adults in the CPC are not regulated and approximated with the EU legislation; the referral procedure for adults is not regulated; the range of offences that can be referred to restorative programs and mediation is limited and should be expanded.

- Financial constraints for implementation remain a big challenge. For example, although the Code of Criminal Justice for Children provides that all services for minors are free of charge, no budgeting is planned to cover the mediation services which are in fact not subsidised.
- The roles of different stakeholders are not clear, and there is insufficient inter-institutional cooperation and lack of coordination among institutions.
- Lack of proper infrastructure and accessible services and there is no national coverage; lack of infrastructure to implement and monitor the implementation of restorative practices; lack of proper separate proper rooms to have the meetings with the minor probationer.
- Low capacities of mediators in the restorative practices. A main issue related to the sustainability of the trained personnel is the removal of trained persons and renewal of staff due to change-over of the political power and consequently the continuous need for capacity building for them.
- Reluctant attitude of some judges or prosecutors to decide on alternative measures and the low number of criminal cases referred to restorative programs.
- Lack of awareness of the larger public on the possibility of benefiting from restorative practices. The perception of increased criminality / killings or commission of some other criminal offences which are not tolerable to the public opinion, could have a negative impact on the public's attitude towards use of alternatives measures, and instead support harsher punishments.
- The case load per probation officer is high, and therefore sometimes it is difficult to make individualized rehabilitation programs for probationers.
- Lack of aftercare programs for convicts and lack of rehabilitation and reintegration programs in detention.
- The vetting process that judges and prosecutors are going through in Albania could be an impediment in implementing alternative sanctions.

## **Opportunities**

- The ongoing Justice Reform, and the obligations that Albania needs to fulfil as part of the EU accession process and the requirement to reform the justice system provide with opportunities in implementing reforms.
- The establishment of the Probation Service related to the implementation of alternative sentences.
- The cooperation of the Probation Service with AFCR in providing mediation service to probationers.
- The inclusion of restorative justice as diversion measure in the Code of Criminal Justice for Children.

- In the last years, there have been positive changes in the attitude of justice professional regarding the effectiveness of restorative practices, demonstrated by integrating such measures in the Code of Criminal Justice for Children.
- The implementation of restorative justice programs in pre-trial detention and prison for juvenile offenders – pilot programs supported by Save the Children in Kavaja Institute for Minors, which can be as promoted to foster the implementation for adults as well.
- The initiation of starting to use diversion and alternative measures for juvenile offenders by the prosecution office.
- The pilot programs implemented by AFRCR in using restorative justice for juveniles – approval of some protocols on the referral mechanism from the court, prison system and police.
- The pilot community conferencing and victim-offender mediation program for Roma juveniles (2014-2015).
- Intervention in the schools, and in the university programs that educate teachers, lawyers, sociologists, social workers, psychologists.