

NATIONAL STUDY

IMPLEMENTATION OF PROCEDURAL RIGHTS FOR CHILDREN IN CONFLICT WITH THE LAW





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Tirana, October 2025

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Disclaimer

This study was carried out within the framework of the project “Youth Voice for Justice and Rights”, implemented by Terre des hommes Albania (Tdh) and funded by the Austrian Development Agency (ADA). The content of this publication, including the analyses, findings, and recommendations, reflects exclusively the views of the authors and does not necessarily represent the official position of Terre des hommes or the donor. The study is analytical and informative in nature and aims to contribute to the improvement of institutional practices and policymaking in the field of justice for minors in conflict with the law, without prejudice to the decision-making of judicial authorities or individual and institutional responsibilities.

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List of Acronyms

Acronym | Definition

CCJC | Code of Criminal Justice for Children

CCP | Code of Criminal Procedure

CC | Criminal Code

CRC | Convention on the Rights of the Child

JP / JPO | Judicial Police / Judicial Police Officer

ECtHR | European Court of Human Rights

EU | European Union

IAR | Individual Assessment Report

ADA | Austrian Development Agency

Tdh | Terre des hommes

MCL | Minor in conflict with the law

UN | United Nations Organization

ECOSOC | UN Economic and Social Council

CoE | Council of Europe

AIRE Center | Advice on Individual Rights in Europe Center

CRD | Civil Rights Defenders

ECHR | European Convention on Human Rights

UDHR | Universal Declaration of Human Rights

CAT | Convention against Torture

BR | Beijing Rules

HR | Havana Rules

CM/Rec | Recommendations of the Committee of Ministers of the Council of Europe

OJ | Official Journal

RSC | Revue de Science Criminelle

UN Doc. | United Nations document

GC | Grand Chamber of the ECtHR

1. INTRODUCTION

This research study was conducted within the framework of the project “**Youth Voice for Justice and Rights**”, implemented by Terre des hommes Albania (Tdh) and funded by the Austrian Development Agency (ADA). The project aims to strengthen justice for minors in conflict with the law, based on the principles of child-friendly justice and the use of alternative measures as diversion from criminal prosecution. For more than three decades, Terre des hommes has been one of the key actors in the protection of children’s rights in Albania and in promoting the standards of a child-friendly justice system.

The purpose of this study is **to assess the level of implementation of procedures and procedural safeguards for children in conflict with the law by prosecution offices and courts in Albania**, by identifying good practices, legal and institutional gaps, as well as challenges that hinder the effective and child-sensitive administration of justice. The analysis focuses on the degree to which child-friendly justice principles are integrated into investigative and adjudicative practice, the relationship between children and justice actors, the use of diversionary measures from criminal prosecution, and the effectiveness of protective mechanisms during proceedings.

The study is based on an analysis of preliminary investigation case files of the prosecution offices attached to the courts of first instance of general jurisdiction in Tirana, Durrës, Elbasan, Fier, Vlorë, and Shkodër. The analysis indicates a generally satisfactory application of legal norms by the Judicial Police and the Prosecution, as well as the achievement of an acceptable standard in terms of respect for the procedural rights of minors in conflict with the law during preliminary investigations. However, the study also identified cases of non-application or incorrect application of criminal procedural law.

The findings of the study highlight recurring problems, such as delays in the registration of criminal proceedings, shortcomings in informing of and documenting rights, the absence of a defence lawyer, parent, or psychologist during procedural actions, and violations of the norms of the Code of Criminal Procedure during the questioning and investigation of minors. These shortcomings directly affect the psychological, social, and developmental well-being of children. They generate feelings of fear, insecurity, and distrust toward institutions, increase stress and the risk of long-term trauma, undermine children’s ability to understand and exercise their rights, and hinder their reintegration into school, family, and the community. Consequently, the study underscores the immediate need to strengthen procedural standards, enhance the professional specialization of justice actors, and implement a coordinated, protective, and rehabilitative approach based on clear guidelines, mandatory professional training, individual assessment, and effective protective mechanisms to ensure full respect for children’s rights and their best interests.

The study’s recommendations aim to support the improvement of institutional practices and to guide policymaking toward a more protective, inclusive, and child-friendly justice system. The proposals focus on strengthening the role of defence lawyers and psychologists, improving procedural documentation, increasing the accountability of the Judicial Police and the Prosecution, expanding the use of alternative measures, and establishing mechanisms for the assessment and monitoring of the implementation of children’s procedural rights.

2. EXECUTIVE SUMMARY

This study aims to assess the effectiveness of procedural safeguards for minors within Albania's criminal justice system, comparing national legislation with international standards and actual practices of procedural authorities. The study seeks to identify systemic gaps, repeated violations, and inconsistencies in the protection of procedural rights, including access to legal assistance, child-friendly treatment, and the involvement of supporting professionals.

Key Findings

- There is a significant gap between legislation and actual practice.
- Most frequent violations include unlawful deprivation of liberty, lack of effective legal representation, questioning of minors in violation of the law, and insufficient documentation of procedural actions.
- The mandatory involvement of parents, legal guardians, and psychologists is often missing or inadequate.
- Procedural delays undermine the protective and rehabilitative nature of the justice system for minors.

Conclusions

Albania has a legal framework largely harmonized with international standards, but its implementation remains partial and often formalistic. Major deficiencies relate to inter-institutional coordination, documentation, psychosocial assessment, and direct application of legal provisions. The main challenge is the gap between law and practice, requiring concrete measures to strengthen institutional capacities and ensure a justice system that is genuinely child friendly.

Key Recommendations

For the Judicial Police

1. Questioning of arrested or detained minors should be conducted **exclusively by the prosecutor**.
2. **Immediate cessation of self-incriminating statements** obtained unlawfully.
3. Ensure and document the **mandatory presence of legal counsel and a psychologist**.
4. Provide **clear information on procedural rights** and ensure the minor fully understands them.
5. Include **parents or trusted persons** according to the minor's will and document their participation.

For the Prosecutor's Office

1. **Immediate and accurate registration** of criminal offenses and suspected perpetrators.
2. Ensure **judicial review** of the lawfulness of the arrest or detention of minors.
3. Strictly respect the prosecutor's **exclusive competence** to question detained minors.
4. Declare **inadmissible any self-incriminating statements** obtained unlawfully.
5. Organize investigations efficiently to **complete proceedings within legal timeframes**.
6. Prepare **mandatory individual assessment reports** for each minor to ensure personalized justice in line with the child's best interests.

These measures aim to enhance **legality, transparency, and the real protection** of minors' rights in procedural practice, addressing systemic and procedural gaps identified in the study.

3. METHODOLOGY

The methodology of this study is built on an integrated research approach, combining dogmatic and normative analysis of the legal framework with an empirical examination of procedural practice applied to minors within the criminal justice system. In the initial phase, an extensive documentary review was conducted, analyzing the relevant constitutional, legal, and by-legal provisions, including the Code of Criminal Procedure, the Criminal Code, the Code of Criminal Justice for Children, Law No. 18/2017 “On the Rights and Protection of the Child,” as well as guidelines issued by justice institutions. This review was complemented by an examination of the case law of the European Court of Human Rights and decisions of domestic courts, as well as an analysis of academic literature and monitoring reports related to juvenile justice. This normative and doctrinal corpus established the standard framework for assessing the conformity of practice with the procedural obligations and guarantees provided for under national and international legislation.

The key empirical component of the study consisted of a qualitative analysis of 49 preliminary investigation case files administered by the prosecution offices attached to the courts of general jurisdiction in Tirana, Durrës, Elbasan, Fier, Vlorë, and Shkodër. The analysis was guided by a standardized assessment protocol, which enabled the examination of key elements of criminal procedure, such as respect for the right to immediate notification of charges and procedural rights, the guarantee of effective legal assistance, the presence and role of the lawyer and psychologist during investigative procedures, the manner in which minors are questioned, compliance with statutory deadlines, documentation of individual assessment, and the application of alternative measures to arrest and pre-trial detention. This analysis sought to identify, in a structured manner, the degree of compliance between procedural law requirements and the investigative practices followed by the competent authorities.

As part of minors’ perspective into the analytical process, a focus group was conducted with convicted minors at the Kavaja Institution for the Execution of Criminal Sentences. The focus group aimed to collect first-hand accounts regarding the exercise of procedural rights during initial contact with the judicial police and prosecuting authorities, minors’ perceptions of the guarantees of their legal protection, their experiences during questioning, and their subjective assessment of institutional treatment. The activity was carried out in full compliance with ethical standards for research involving minors, with due respect for the principles of confidentiality, informed consent, and the protection of participants’ integrity.

Data processing was carried out through qualitative methods of thematic analysis and source triangulation, with the aim of identifying the structural features of criminal proceedings involving minors, regardless of inter-institutional differences. This analysis enabled an assessment of the degree of harmonization between legal standards and current practice, highlighting procedural gaps, recurrent non-compliance, and practices deviating from the principles of child-friendly justice. The comparative approach between legal norms and practice created a solid basis for the critical interpretation of the findings.

Despite the high value of the evidence collected, the study acknowledges its methodological limitations. The limited inclusion of minors through a single focus group restricts the possibility of generalizing experiences at the national level. Furthermore, the analysis depends on the quality of documentation in the investigation files, which in many cases show omissions or inaccuracies, directly affecting the assessment of the procedures applied. The absence of direct consultation with justice system professionals — such as judges, prosecutors, lawyers, and psychologists — constitutes another limitation. Nevertheless, given that the data were collected from several of the prosecution offices with the highest case loads in the country, the study’s findings provide an indicative and reliable overview of the systemic issues characterizing the implementation of procedural safeguards for minors in Albania.

4. PRINCIPLES OF CRIMINAL JUSTICE FOR MINORS IN CONFLICT WITH THE LAW

An understanding of the procedural rights of minors in conflict with the law would not be complete without first addressing the principles of juvenile criminal justice. These principles, set out in Articles 8–18 of the Code of Criminal Justice for Children (CCJC), place the minors at the centre, giving due attention to their level of maturity and adapting procedures on the basis of their needs and rights¹. The principles of child-friendly justice constitute essential premises for enabling minors to enjoy their procedural rights.

The principles of criminal justice must be taken into account by all institutions involved in criminal cases concerning minors. This conclusion follows from the content of Article 8 § 1 of the CCJC, which provides that these principles **“shall have an effect on its entire content and they shall be applied by every person and competent body in every action and decision related to the child in conflict with the law, child victim, and/or witness of the criminal offence.”**

For the purposes of this study, we will only address the main principles related to the protection of the procedural rights of minors in conflict with the law and, specifically: (i) the principle of the presumption of innocence, (ii) the principle of the best interests of the child, (iii) the principle of the priority of alternative diversionary measures, (iv) the principle of the minor’s participation in the proceedings, (v) the principle that cases are examined without delay and as a matter of priority, and (vi) the principle of the mandatory participation of a psychologist.

a. The principle of the presumption of innocence

The principle of the presumption of innocence means that a person who has been attributed the commission of a criminal offense by the prosecution body is considered as if they have not committed it until a competent court forms a conviction and decides, through a final judicial decision, that they are criminally guilty of the offense. **The presumption of innocence expresses the belief that, until proven otherwise, people are honest and law-abiding**². The principle of the presumption of innocence implies that, during the judicial process, the burden of proof to establish the defendant’s authorship of the alleged offense lies exclusively with the prosecution. The defendant chooses their own defence strategy: by presenting evidence they consider necessary to prove their alibi; by merely challenging the truthfulness and probative value of the evidence presented by the prosecution; by remaining entirely passive throughout the trial; or even by not attending the court session at all.

In our country, the principle of the presumption of innocence has **constitutional** value, as it is provided for in **Article 30** of the Constitution, which states: *“Everyone is considered innocent as long as their guilt is not proven by a final judicial decision.”* It also has legal value, as it is enshrined in **Article 4 of the Code of Criminal Procedure (CCP)**, which provides: *“The defendant shall be deemed innocent until his guilt has been established by a final judicial decision. Any doubts regarding the charge shall be evaluated in favour of the defendant.”*

This principle is recognized at the global level in **Article 11 § 1 of the Universal Declaration of Human Rights**, adopted by the United Nations General Assembly through its Resolution 217 A (III) on December 10, 1948, which provides: *“Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”*

1 Mandro, Arta and Semini, Marjana, *Manual “Code of Criminal Justice for Children and Restorative Justice Programs”*, Tirana (2020), p. 22.

2 Béliveau, Pierre and Pradel, Jean, *La justice pénale dans les droits canadien et français (Criminal justice in Canadian and French law)*, Cujas (1986), Paris-France, p. 55 and 56.

Similarly, the **European Convention on Human Rights (ECHR)**, adopted in Rome on September 4, 1950, in the **second paragraph of Article 6**, titled "Right to a fair trial," defines the principle of the presumption of innocence as follows: "*Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*"

This fundamental right of the individual to be considered innocent has not only been recognized but also enforced at the European level by the European Court of Human Rights (hereinafter "*ECtHR*"), which **has transformed the presumption of innocence into a decisive element of the right to a fair trial**, creating extensive jurisprudence. The ECtHR has stated that the presumption of innocence requires, among other things, **that the actions of court members must not begin with the predetermined idea that the accused has committed the offense for which they are charged**³; that the burden of proof lies with the prosecutor, and that any doubt must be resolved in favour of the accused.

Our **Constitutional Court** emphasizes that the presumption of innocence is one of the essential components of a fair trial. The Court has interpreted the presumption of innocence to mean that **ordinary courts must not begin proceedings with the belief that the accused has committed the crime they are charged with, that the burden of proof lies with the prosecution, that any doubt must be resolved in favour of the accused**, and that the court's decision must be based on direct and indirect evidence that must be proven by the prosecution⁴.

Regarding minors, this fundamental principle – the right to be presumed innocent – is enshrined in **Article 40, paragraph 2, letter (b), subparagraph (i) of the Convention on the Rights of the Child (CRC)**, in **Rule 14.2 of the Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)**, adopted by the UN General Assembly through Resolution No. 40/33 on November 29, 1985, as well as in Article 9 of the Code of Criminal Justice for Children (CCJC), which provides that: "**1. Every child in conflict with the law shall be presumed innocent until guilt is established by a final court decision. 2. Any doubt on the charges against the child shall be deemed in his/her favor.**"

These provisions establish that every minor who is suspected, accused, or found guilty of a criminal offense has the right to be considered innocent until their guilt is proven according to the law. In other words, **a minor cannot be treated as guilty, punished, or stigmatized until a competent court, through a fair and regular judicial process, establishes their guilt**. In the case of minors, this principle takes on a stronger protective dimension, as the aim is not only to maintain equality before the law but also **to prevent any prejudice that could affect their emotional and social development**. Judicial authorities must act carefully when dealing with minors, refraining from treating them as guilty before conclusive evidence is established, and must avoid any form of pressure or treatment that could create a sense of guilt.

b. The principle of the best interests of the child

This is the guiding principle of the entire juvenile justice system. It requires that every decision or action concerning a child in conflict with the law be guided by **the child's best interests, which take precedence over any other consideration**. Justice authorities must ensure that the procedures, measures, and sanctions aim at the physical, psychological, and social development of the minor, rather than their punishment. **This principle requires an individualized assessment in each case to guarantee the child's well-being and prospects for rehabilitation and reintegration.**

³ *Barberà, Messegué and Jabardo v. Spain*, Application No. 10590/83, ECtHR, 6 December 1988, § 77.

⁴ Decision No. 23, dated 23/07/2009, of the Constitutional Court, § 37, accessible on the website: https://www.gjk.gokunderal/include_php/previewdoc.php?id_kerkesa_Decisionë706&nr_vendimë1

Article 6 § 2 of Law No. 18/2017 “*On the Rights and Protection of the Child*”⁵ (hereinafter: “LRPC”) defines the best interests of the child as “*the child’s right to enjoy healthy physical, mental, moral, spiritual, and social development, as well as to enjoy a family and social life appropriate to the child.*” To more precisely determine this principle, the provision requires that the following be taken into account:

- a) *the needs of the child for physical and psychological development, education and health, security, and sustainability, as well as the upbringing/ belonging to a family;*
- b) *views of the child, depending on their age and maturity;*
- c) *background of the child considering special situations of abuse, neglect, exploitation or other forms of violence against the child and the potential risk of occurrence of similar situations in the future;*
- ç) *ability of the parent or persons caring for the child to respond to the needs of the child;*
- d) *continuity of personal relations between the child and persons with whom they have kinship, social and/or spiritual relations.*

How, then, should the priority of the interests of minors be understood? Albanian legal doctrine tells us that it means **the child’s interest overrides any other assessment or any combination of other factors placed in favour of another party**⁶. The prosecution or the court, in resolving the case, must apply the solution that is least harmful to the minor and the alternative closest to the ideal, taking into account all factors while considering the child’s long-term interests and well-being.⁷

According to the Code of Criminal Justice for Children (CCJC), **this principle ensures that every measure taken aims at the education and rehabilitation of the minor, avoids public stigmatization, and is proportionate to their level of personal development.** Essentially, this principle treats the minor not as the “perpetrator of a crime” but as a developing person who requires protection, care, and the opportunity for change.

The principle of the best interests of the child stems from **Article 3** of the CRC, which provides that: “*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.*” In Albanian law, **this principle is constitutionally supported by Article 54 of the Constitution**, which provides **special protection for children** against violence, exploitation, and abuse, as well as protection for their healthy physical and moral development.

In the criminal context, the best interests of the child are defined as the need to ensure the child’s full personality development, the preservation of their dignity, and their reintegration into society through measures that are educational, rehabilitative, and non-punitive. This principle guides not only the decision-making of courts but also the actions of any institution involved in the criminal process concerning a minor – judicial police, prosecution body, probation services, and educational and/or social institutions. In practice, it requires that every decision be based on an individualized assessment of the minor’s situation: age, level of maturity, family circumstances, education, emotional state, and social environment. Criminal intervention should aim at the child’s reforming and the prevention of repeated delinquent behaviour, instead of merely the punitive sanctioning of the act.

This principle is also enshrined in **Article 6 of the LRPC**, which provides the following: “*The best interest of the child shall imply the right of the child to have a sound physical, mental, moral, spiritual, and social development and to enjoy an appropriate family and social life suitable for the child.*”

5 Law No. 18/2017 “*On the Rights and Protection of the Child*”, accessible on the website: <https://www.qbz.gokundëral/eli/ligj/2017/02/23/18-2017/a7b5c582-78fa-4109-beca-a0c7b48a2c8c> last consulted on 05/10/2025.

6 Mandro, Arta, *Family Law*, family, children, marriage, spouses, Tirana (2009), p. 55.

7 Ibid., p. 56.

According to Article 10⁸ of the CCJC, the competent authority must, during the criminal process, assess the following:

- a) the needs of the child for physical and psychological development, education and health, security and sustainability and also the child's upbringing/belonging to a family;
- b) views of the child, in accordance with their age and maturity;
- c) the history of the child, considering the special situations of abuse, neglect, exploitation or other forms of child violence, and the potential risk that similar situations may occur in the future;
- c) the capacity of the parents or persons in charge of the child's upbringing to respond to the needs of the child;
- d) the continuity of personal relations between the child and persons with whom the child has kinship, social and/or spiritual relations.

Meanwhile, paragraph 3 of Article 10 establishes an important obligation for authorities handling cases involving minors in conflict with the law, requiring that: **"Decisions and acts of the competent bodies must contain a special reasoning related to how the best interest of the child is analyzed and how it will be ensured."**

It is precisely the fundamental interests of the minor – the assessment of their needs for physical, mental, spiritual, moral, and social well-being, as well as the prompt and prioritized handling of any action or decision involving the minors – that serve as the key criteria for guaranteeing a fair trial for a minor, not only in procedural terms but also in ensuring the effective outcome of the criminal proceedings involving the minor.⁹

In international law, this principle has been thoroughly developed by the UN Committee on the Rights of the Child in **General Comment No. 14 (2013)**, which states that:

- The child has a legal right for their best interests to be taken into account in every decision;
- The principle serves as a guide for the interpretation of all laws affecting children;
- State authorities have the obligation to document and justify how they assessed the best interests of the child in the specific decision.

The principle of the best interests of the child constitutes one of the fundamental pillars of international child protection law and has been fully reflected in the **case law of the European Court of Human Rights (ECtHR)**. The ROL Platform document *"Children and the European Court of Human Rights – A Review of the Jurisprudence"*¹⁰ emphasizes that this principle, initially enshrined in Article 3 of the CRC, has become a binding interpretative standard for all Member States of the Council of Europe. **It requires that in every decision or action affecting a child** – whether in criminal, civil, or administrative proceedings – **the child's best interests must be the primary consideration**. According to the document, this principle has a threefold nature, as defined by the UN Committee on the Rights of the Child in General Comment No. 14 (2013). First, it is *a fundamental right of every child* to be treated in a way that ensures their full development. Second, it is *an interpretative principle* guiding public authorities to always choose the legal solution that is most favourable to the child's well-being. Third, it constitutes *a procedural rule*, imposing on authorities the obligation to clearly justify how the child's best interests were assessed and respected in the decision taken.

In ECtHR jurisprudence, this principle has been materialized in several important cases. Thus, in the criminal cases (***T. v. United Kingdom***¹¹, and ***V. v. United Kingdom***¹²; ***Blokhin v. Russia***¹³), it has been required that proceedings involving minors be conducted promptly, with respect for their dignity, and with a rehabilitative purpose, avoiding any form of stigmatization.

8 Law no. 37/2017 "Code of Criminal Justice for Children", f. 4 & 5, accessible on the website: <https://www.qbz.gokundwral/preview/f83e2041-7f9d-4b5e-aa53-c967bf87810c>, last consulted on 21/10/2025.

9 See: Merkaj, Tereza, *Commentary on the Code of Criminal Justice for Children interpreted with case law*, cited above, "Morava" Publishing House, Tirana, December 2020, f. 58.

10 ROL Platform (2020), *Children and the European Court of Human Rights - An Overview of the Jurisprudence*, project supported by AIRE Center and Civil Rights Defenders, Tirana 2019, pp. 12–25, accessible online at: <https://www.rolplatform.org/wp-content/uploads/2020/11/rol-children-alb.pdf> last consulted on 18/10/2025.

11 *T. v. the United Kingdom*, Application No. 24724/94, ECtHR [GC], 16 December 1999.

12 *V. v. the United Kingdom*, Application No. 24888/94, ECtHR [GC], 16 December 1999.

13 *Blokhin v. Russia* [GC], Application No. 47152/06, ECtHR, 23 March 2016.

c. The principle of priority of alternative diversionary measures

In juvenile criminal justice, the legislator's aim is not punishment, but the education and reintegration of minors into society. In this regard, one of the fundamental principles of the CCJC is the principle of the priority of alternative diversionary measures. According to this principle, justice authorities **are guided to avoid, whenever possible, criminal prosecution and punishment, replacing them with rehabilitative and reintegrative measures.**

The CCJC establishes a clear hierarchy of interventions for minors, where **alternative measures** to criminal prosecution and imprisonment **take precedence over any punitive measure.** The goal is to prevent the minor from entering the traditional criminal justice system, except in cases where it is absolutely necessary. Investigative and judicial authorities can apply diversion, mediation with the victim, warnings, obligations for school attendance or rehabilitation programs, as well as community service. **These measures constitute an educational and preventive form of justice, giving the child the opportunity to correct their behaviour without being stigmatized by criminal sanctions.**

This principle expresses **humanism and educational justice.** Avoidance of criminal prosecution helps **protect the child's personality** and prevent the stigmatization that criminal proceedings may cause. These measures are effective only when accompanied by institutional support, with the involvement of psychologists, social workers, family, and school, all of whom play a crucial role in the rehabilitation of the minor in conflict with the law. **Diversion is the most effective way to prevent recidivism and promote minors' individual responsibility.**

The General Comment No. 10 (2007) of the UN Committee on the Rights of the Child¹⁴ emphasizes that the aim of juvenile justice is **"rehabilitation and reintegration, not punishment."** Alternative measures make this objective possible by preserving the child's dignity and providing a real opportunity for change.

In this context, **individual assessment can help determine the appropriateness of diversion from criminal prosecution.** Programs that allow children to maintain family connections and continue schooling appear to achieve better results than prisons, where family life, education, and work are of a different standard. Pre-trial detention leads to lower levels of education and increases the risk of future repetition of the criminal behaviour. Implementing alternative diversionary measures reduces the harmful impact on the minor, unlike detained or incarcerated minors, many of whom suffer mental and emotional consequences due to the loss of their family and social ties.

The principle of the priority of alternative diversionary measures **gives juvenile criminal justice a humane character,** placing the minor at the centre of the process and considering criminal intervention only as a last resort (*ultima ratio*), thereby giving priority to their education and reintegration into society.

d. The principle of the participation of the minor in the process

Article 16 of the CCJC represents the normative materialization of the principle of the minor's participation in the criminal process. **It transforms the child into an active subject, guaranteeing the right to be heard, to be informed, and to participate in accordance with their age and level of development.** This provision aligns with Article 12 of the Convention on the Rights of the Child (CRC) and the Council of Europe Guidelines on Child-Friendly Justice, which recognize the child's participation as a fundamental right.¹⁵

14 Committee on the Rights of the Child, *General Comment No. 10 (2007): Children's rights in juvenile justice*, CRC/C/GC/10, paragraphs 24–27 and 81–84.

15 Council of Europe, *Guidelines on Child-Friendly Justice* (Strasbourg: Council of Europe, 2010), §§ 24–27.

i. The right of the minor to be heard and to express their opinion

Paragraph 1 of Article 16 of the Code of Criminal Justice for Children (CCJC) guarantees that the minor has the right to be heard and to express their views, which must be taken into account, in accordance with their age and maturity, providing that: “1. **The right of participation in the process includes the right of the child to be heard and express own views, which are given due weight in accordance with the age and maturity of the child. Where a child seeks to be heard, the request shall be accepted, except for important reasons which are reasoned in the respective decision. If the child is unable to exercise this right, he/she may do so through the parent as a legal representative.**”

The right to be heard is explicitly enshrined in **Article 12** of the Convention on the Rights of the Child (CRC), which requires States to ensure that **every child capable of forming their own views can express them freely** and that these views **are taken into consideration according to the child's age and maturity**. Specifically, the child must have the opportunity to be heard directly or through a representative in any judicial or administrative proceedings affecting them. This provision marks a qualitative shift from “protection” to **active participation** – the child is treated as a **rights-holder**, not merely as an object of protection. This provision aligns with the international standard set out in **General Comment No. 12 of the UN Committee on the Rights of the Child**, which emphasizes that the hearing must be real and not merely formal.¹⁶

Similarly, the Law on the Rights and Protection of the Child (LRPC), in Article 13 § 2, provides:

“1. The child shall be ensured the right to be heard in any judicial and administrative proceedings concerning the child, either directly or through the parent, legal guardian or representative, in a manner consistent with the procedural rules for this purpose. If authorities refuse to obtain the opinion of the child, in any case, a reasoned decision on the grounds of refusal must be given.”

According to our **Constitutional Court, the right to be heard, together with other rights, aims to guarantee a judicial process in which the individual is given the opportunity, prior to the judicial decision, to be genuinely heard on the merits of the case**. Through participation and the creation of conditions to be heard, individuals are afforded equal opportunities to present their statements, facts, evidence, and legal arguments (*see Decisions No. 7, dated 12/03/2010, paragraph 4; No. 12, dated 06/06/2005, paragraph 7, of the Constitutional Court*).¹⁷

From the perspective of the ECtHR, it is difficult to imagine how a defendant could exercise the rights explicitly guaranteed under Article 6 § 3 (c), (d), and (e) – specifically the rights to “defend themselves,” “examine or request the examination of witnesses”, and “receive free assistance from an interpreter if they do not understand or speak the language used in court” – **if they are not present at their own trial**. The obligation to ensure the accused the right to be present in the courtroom is a fundamental element of Article 6.¹⁸

The Council of Europe Guidelines on Child-Friendly Justice (2010) place the child's participation at the centre: **children “have the right to be heard in decisions affecting them, and adults must take their views seriously.”** The Guidelines require **age-appropriate procedures, simple language, and a non-intimidating environment**, as well as trained professionals, who **facilitate the expression of the child's views** (not merely tolerate it).¹⁹ This also includes special standards for questioning/hearing, the use of visual aids, and frequent breaks during questioning or court proceedings, the presence of a psychologist, and the possibility for the child **to express themselves directly in court or through other means**, when needed.²⁰

¹⁶ Committee on the Rights of the Child, *General Comment No. 12 (2009): The right of the child to be heard*, CRC/C/GC/12, par. 32–35.

¹⁷ *Guide to the jurisprudence of the Constitutional Court 1998-2023 regarding individual constitutional complaints*, accessible at: [udherrefyes_gjk_2803.pdf](#), p. 167, last accessed on 20/10/2025.

¹⁸ *Hermi versus Italy*, Application No. 18114/02, ECtHR [GC], 18 October 2006, §§ 58-59, and *Sejdovic versus Italy*, Application No. 56581/00, ECtHR [GC], 1 March 2006, §§ 81 and 84.

¹⁹ Council of Europe, *Guidelines on Child-Friendly Justice (2010)*, sections on children's participation/listening, available at: Council of Europe, last accessed on 18/10/2025.

²⁰ FRA-EU, *Child-friendly justice – Perspectives and experiences (2015)*, synthesizing the practical implementation of the EC Guidelines in: (FRA) last accessed on 15/10/2025.

In criminal matters, **Directive (EU) 2016/800** (procedural safeguards for children suspected or accused) regarding the right to be heard requires that the minor **be informed in advance and in a comprehensible manner about their rights**, be individually assessed, and be provided legal assistance, including the support of a parent or trusted adult. The right to information about the nature of the proceedings, in which the minor will participate, and the other rights they enjoy under the law, serve as **prerequisites** for exercising the right to be heard. Such assistance is essential to ensure that the minor **can follow and participate meaningfully** in every phase of the investigation and trial (judicial police, prosecution, court).

Children should also be consulted about the manner in which they wish to be heard. A child must not be excluded from being heard solely on the basis of age. Whenever a child takes the initiative to be heard in a matter affecting them, **the judge must not refuse the hearing** (unless it is in the child's best interests) **and must consider the child's views and opinions on the issues concerning them in the case.** Lawyers must provide the child with all necessary information and explanations regarding the possible consequences of the child's views and/or opinions.

The UN Committee on the Rights of the Child emphasizes that the child has the right to be heard directly, not only through representation, if this is in their best interests. At this point, the importance of a multidisciplinary approach to assessing the child's best interests must be reiterated. With the help of other professionals (social workers, psychologists, teachers, etc.), the child's maturity can be assessed, and their views should be given due weight. At this stage, any communication difficulties that could impede the minor's full participation must be identified.

The European Court of Human Rights (ECtHR) has linked the child's right to be heard with Article 6 (*The Right to a Fair Trial*). In **S.C. v. United Kingdom**²¹, the Court emphasized that mere physical presence of a minor is not sufficient: the child must have a "**broad understanding of the nature of the proceedings and what is at stake**" in order to participate effectively, arguing that: "*In the case of a child, it is essential that they are treated in a way that fully takes into account their age, level of maturity, and intellectual and emotional capacities, and that steps are taken to promote their ability to understand and participate in the proceedings, including holding the hearing in a manner that minimizes, as far as possible, feelings of intimidation and inhibition.*"

In **T. v. United Kingdom** and **V. v. United Kingdom**, the Strasbourg Court required additional measures (simple language, occasional breaks during questioning or court sessions, a suitable environment for the proceedings) to ensure that the child can understand and express themselves; otherwise, Article 6 of the ECHR is violated. Similarly, in **Panovits v. Cyprus**,²² the lack of effective assistance and comprehensible information for a minor in police custody was deemed a failure to guarantee **real participation** and the exercise of defence rights. In **Blokhin v. Russia**, the ECtHR consolidated the idea that **the vulnerability of a minor requires strong safeguards to make their participation in proceedings real**, not merely formal.

The ECtHR has clarified that "**effective participation**" for children is a high qualitative standard, but mere formal presence is not enough, because **understanding the proceedings, active communication, and the real opportunity to express views are essential.** Otherwise, the equality of arms and the integrity of the process are compromised. In **Sahin v. Germany**,²³ the Court found a fundamental violation in **failing to hear the child's own views** and stated that the national court should have taken significant steps to ensure direct contact with the child, and that only through this mechanism can the child's best interests be guaranteed.

The right to be heard reinforces the idea that children should not have more limited rights than adults. Minors must have the opportunity **to express their views** so that **the procedure can be better adapted to their needs.** Being heard is not an obligation but a right, which implies a counterbalance: the right to remain silent. To guarantee a minor's right to be heard, the authority must listen attentively, as being heard requires the interlocutor to make an

21 *S.C. v. the United Kingdom*, Application No. 60958/00, ECtHR, 15 June 2004, § 26.

22 *Panovits v. Cyprus*, Application No. 4268/04, ECtHR, 11 December 2008.

23 *Sahin v. Germany*, Application No. 30943/96, ECtHR [GC], 8 July 2003.

effort to welcome and understand the child's words. **Effective participation of the minor in the proceedings is ensured through measures such as creating a calm and safe environment and a procedural pace adapted to the child's cognitive abilities.**

It is also essential that the participants in the proceedings are properly trained and use tools that enable a multidisciplinary approach. Through the minor's voice, their "boundaries" are revealed, allowing an assessment of their capacity to participate in the judicial process. The judge may determine that it is not in the minor's best interests to attend the trial; however, it is essential that the judge is obliged to justify this decision. The right to be heard, granted to the minor, does not exempt the responsibility of adults who are the child's **legal representatives** to participate in the judicial process. They have the duty to represent the child's voice and to accompany them throughout the entire procedure.

ii. The right of representation and voluntary participation of the minor

Paragraphs 2 and 3 of Article 16 of the Code of Criminal Justice for Children (CCJC) establish three rules: (i) **the minor's right to participate in any decision-making process affecting them, directly or through a legal representative**; (ii) **the minor's non-obligation to attend the trial personally**; and (iii) **the prohibition of using non-participation to prejudice the minor's position**. This model reflects universal and European standards, treating the child as a **rights-holder** while also recognizing them as **vulnerable persons** who can exercise their rights **even through representation** when personal participation would compromise their well-being, dignity, or the effectiveness of their defence.

Article 12 of the Convention on the Rights of the Child (CRC) recognizes every child's right, if capable of forming views, to express those views freely and obliges authorities to consider them according to the child's age and maturity. This provision specifically requires that the minor "be heard in any judicial or administrative proceedings affecting them, either directly or through a representative." **General Comment No. 12 (2009) of the UN Committee on the Rights of the Child** interprets this norm to mean that **a child's participation must be informed, voluntary, safe, and respected**, with communication support to avoid negative impacts (fatigue, fear, trauma). This justifies the legislative provision that **does not compel personal participation** (e.g., in-court hearings) when the right is effectively exercised **through a representative**.

The Constitutional Court has considered essential to a fair trial the right of the accused individual to be present at the hearing of charges. This includes not only the physical presence but **also the ability to hear and follow the proceedings**, understand the evidence and arguments, guide legal representatives, and present facts. The State is obliged to inform the accused effectively and appropriately about the hearing and to take measures to ensure their presence. Moreover, a fair trial criterion includes the right of any person accused of a criminal offense to be effectively defended by a lawyer, a right that is not lost even if the accused is not physically present at the trial (see *Decisions No. 14, dated 21/06/2022, par. 24; No. 84, dated 26/12/2017, par. 13; No. 45, dated 10/10/2011, par. 15, of the Constitutional Court*).²⁴

The parties' right to be present and to defend themselves in judicial proceedings imposes duties on authorities to notify the parties and their defenders in a timely manner about the date and place of the proceedings, to request their presence, and not to exclude them unjustly from the trial. A detailed description of procedural guarantees for the parties would be meaningless if their actual participation in the trial, which makes the exercise of these rights possible, were not ensured (see *Decisions No. 6, dated 26/02/2013, par. 38; No. 42, dated 29/09/2011, par. 9; No. 11, dated 18/05/2005, par. 5, of the Constitutional Court*).²⁵

24 *Guide to the jurisprudence of the Constitutional Court 1998-2023 regarding individual constitutional complaint, p. 174.*

25 *Guide to the jurisprudence of the Constitutional Court 1998-2023 regarding individual constitutional complaint, p. 173.*

The Council of Europe Guidelines on Child-Friendly Justice place the minor's participation in the trial at the centre of justice that is "*accessible, age-appropriate, and child-focused.*" They require that the child **be heard using child-friendly means** (simple language, appropriate tone, breaks, presence of a psychologist) and that **the manner of participation** (direct or through a representative) be chosen according to the child's **best interests** and **capacity to understand**, rather than as a procedural formality. The guidelines also provide that when personal participation would harm the child, authorities may opt for representation without any negative impact on the minor's procedural position.

Directive (EU) 2016/800 obliges Member States to ensure that suspected or accused children are able **to understand and follow the proceedings**, providing them with comprehensible information, legal assistance, the presence of a parent or trusted adult, and **an individual assessment** (maturity, psycho-social needs), which will be addressed further in this study. These measures make **the minor's participation in criminal proceedings real**, not illusory. At the same time, the Directive recognizes the child's right to "*be present and participate in the trial,*" but does not transform personal participation into an obligation that can be used against the child when representation provides the same standard of defence and fair trial.

The European Court of Human Rights (ECtHR), in interpreting Article 6 of the ECHR, has held that **physical presence alone does not equate to participation in the trial**. Therefore, in matters involving minors, authorities must ensure that the child **understands the process and can contribute** to their defence. This standard aligns with the logic of the CCJC, which establishes that **non-personal participation cannot be used to the minor's disadvantage** if the guarantees of defence are respected.

In conclusion, the minor **has the right to be heard and to participate** in the proceedings conducted against them, but they **should not be forced to personally expose themselves** when this conflicts with their best interests, and, in particular, **they should not suffer any negative consequences** from choosing to be represented.

iii. Conflict of interest between a minor in conflict with the law and their representative

Paragraph seven of Article 16 of the CCJC regulates a sensitive situation, where the opinion of the minor conflicts with that of the legal representative or parent. The law requires authorities to assess which claim better serves the best interests of the child.²⁶ This standard reflects the jurisprudence of the European Court of Human Rights (ECtHR), which, in the case of *Neulinger and Shuruk v. Switzerland*²⁷, emphasized that the child's best interests cannot always be equated with those of the parents.

In criminal proceedings involving minors **the presence of a legal representative** constitutes an essential safeguard for respecting **the child's best interests** and the right to **a fair trial**. However, in practice, this protective principle may clash with the minor's own interests, especially when the legal representative has personal, emotional, or legal interests contrary to those of the child. This situation constitutes a conflict of interest, testing the justice system's ability to guarantee effective and independent protection.

When the legal representative holds a position different from that of the child – for example, when the representative seeks punishment while the child seeks rehabilitation, or when the representative is a party in the proceedings (e.g., a victim, complainant, or collaborator) – an objective conflict of interest arises, compromising the child's right to fair protection.

The ECtHR has emphasized that **no person representing a minor may have interests opposed to the child's**, as this would undermine the **essence of Article 6 of the ECHR**, which guarantees a fair trial and effective protection.²⁸

26 *Neulinger and Shuruk v. Switzerland*, Application No. 41615/07, ECtHR, 6 July 2010, §§ 138–140.

27 *Neulinger and Shuruk v. Switzerland*, §§ 131–140.

28 *S.C. v. United Kingdom*, Application No. 60958/00, ECtHR, 15 June 2004, §§ 28–36.

Conflicts of interest in the representative–minor relationship may arise in several circumstances, which can be summarized as follows:

- (i) when the legal representative is involved in the criminal act (e.g., in cases of domestic violence);
- (ii) when they do not accept the child's defence strategy;
- (iii) when the representative seeks to avoid their parental responsibility by shifting the blame onto the child;
- (iv) when the parent's moral, social, or economic interests (e.g., preserving reputation, avoiding stigmatization, or reducing legal costs) conflict with the minor's legal interests.

In such cases, legal representation loses its protective function and becomes a source of psychological pressure on the minor. The European Court of Human Rights (ECtHR) has repeatedly emphasized that the minor's right to an independent lawyer is an essential safeguard against conflicts of interest.²⁹ **States have a positive obligation to intervene when a conflict of interest exists or is suspected, ensuring the appointment of an ad hoc representative** if the legal guardian is compromised, and to inform the minor of their procedural rights.

A conflict of interest between the minor and their legal guardian represents **a sensitive challenge for juvenile justice**, as it directly affects **the right to effective legal protection**. This principle, reinforced by **ECtHR jurisprudence**, requires **the child's defence not remain merely formal**, but instead guarantees that **the child's voice is heard and protected** beyond any potential conflict of interests.

e. The principle of examining the case without delay and with priority

Article 42, paragraph 2 of the Constitution provides that: "2. *Everyone, for the protection of his constitutional and legal rights, freedoms, and interests, or in the case of an accusation raised against him, has **the right to a fair and public trial, within a reasonable time**, by an independent and impartial court specified by law.*" From the content of this constitutional provision, it is concluded that a trial within a reasonable time is an essential component of the right to a fair trial. The requirement for a "trial within a reasonable time" imposes an obligation on the judicial system to organize itself so that prosecution bodies and courts meet the standards demanded by the right to a fair trial. In this regard, courts are obliged to ensure that all participants in the process act in a manner that avoids any unnecessary delays (See *Decisions no. 33, dated 01/11/2021, paragraph 27; no. 22, dated 20/03/2017, paragraph 11; no. 12, dated 05/03/2012, paragraph 12, of the Constitutional Court*).³⁰

Similarly, Article 6 §1 of the European Convention on Human Rights (ECHR) guarantees the right of every person to have their case heard within a reasonable time. **In criminal matters, this provision aims to ensure that the accused are not left for an excessive period under accusation and that the merits of the case are determined promptly.**³¹ The reasonableness of the duration of a procedure is assessed based on the circumstances of the case, which requires a holistic evaluation.³² Even if certain stages of the procedure proceed at an acceptable pace, the overall length of criminal proceedings may still exceed a "reasonable time."³³ Article 6 emphasizes the promptness of judicial procedures but also enshrines the broader principle of proper administration of justice. It is prudent to maintain a fair balance between the various aspects of this fundamental requirement.³⁴

In this context, **Article 17 of the CCJC establishes a clear obligation for the priority and prompt handling of any case involving minors in criminal proceedings.** This provision is inspired by Article 40 §2 (b) (iii) of the CRC, which stipulates that every child accused of violating criminal law has the right for "*his or her case to be heard without delay by a competent, independent, and impartial authority.*" Essentially, this article aims to ensure that **the duration of the process does not itself become a form of punishment**, as procedural delays can have serious psychological,

29 *Panovits v. Cyprus*, §§ 68–74; *Blokhin v. Russia*, § 195.

30 *Guide to the jurisprudence of the Constitutional Court 1998-2023 regarding individual constitutional complaints*, op. cit. p. 248.

31 *Wemhoff v. Germany*, Application No. 2122/64, ECtHR, 27 June 1968, § 18; *Kart v. Turkey*, Application No. 8917/05, ECtHR [GC], 3 December 2009, § 68.

32 *Boddaert v. Belgium*, Application No. 12919/87, ECtHR, 12 October 1992, §§ 36, 39.

33 *Dobbertin v. France*, Application No. 13089/87, ECtHR, 25 February 1992, §§ 36, 39.

34 *Boddaert v. Belgium*, § 39.

educational, and social consequences for the child. Therefore, justice for children must not only be fair but also swift, since any delay undermines the educational and rehabilitative purpose of the system.

The European Court of Human Rights has repeatedly emphasized that, **in cases involving minors**, authorities must exercise special care, striving for **the swiftest possible conclusion of the proceedings** due to the impact delays can have on the child's development and stability. In the cases of *T. and V. v. the United Kingdom*, the Court assessed that proceedings against minors must be "not only fair, but also focused and brief in time," in order to avoid prolonged stress and educational consequences. Similarly, in *Blokhin v. Russia* [GC] (2016), the Court stressed that delays in criminal proceedings involving a minor may constitute a violation of Article 6 and Article 3 of the Convention if they create situations of prolonged anxiety, uncertainty, and isolation for the child. The Court also linked this standard to **the best interests of the child**, requiring that any delay be not only legally justified but also **proportionate to the developmental needs of the child**.

Article 17 of the CCJC first establishes the general principle of speed and priority at every stage – from investigation to the execution of the judicial decision – explicitly connecting it to **the best interests of the child**. Secondly, it emphasizes that cases involving minors in conflict with the law, as well as those involving minor victims or witnesses, must be treated with priority, ensuring that the process **"does not exacerbate the trauma experienced."**

This article can be regarded as a guarantee of effective justice, aiming to reduce the negative effects of the criminal system on the developing personality of the minor. During the period of personality development, prolonged waiting for a judicial decision is experienced as punishment and affects **the child's sense of security, self-esteem, and social integration**. Therefore, Article 17 is closely linked to the principles of rehabilitation and social reintegration, which constitute the primary objective of juvenile justice, according to General Comment No. 10 of the UN Committee on the Rights of the Child (2007).

f. The principle of mandatory participation of the psychologist

Article 18 of the CCJC clearly establishes that, **at every stage of criminal proceedings** involving a minor in conflict with the law, as well as in cases where the minor is **a victim or witness, the presence of a psychologist is mandatory**. This provision expresses one of the fundamental guarantees of child-friendly justice: ensuring that the child **is not emotionally harmed and can communicate freely and without fear** with the authorities.

The minor's right to receive free psychological support in any judicial or administrative procedure is also provided in Article 29 §1 of the LRPC, which states: "1. **The child shall be guaranteed free legal aid and psychological assistance in any administrative and judicial proceedings in accordance with the interests, development and maturity of the child.**" This constitutes a positive obligation for the Albanian state, with paragraph 2 of Article 29 requiring "Legal aid and psychological assistance shall be provided to the child directly and without any barriers, in full respect of the principle of non-discrimination and the best interest of the child." Psychological support includes "all actions and counselling provided by the psychologist appointed by the competent authority in accordance with applicable legislation."

In the case law of the European Court of Human Rights (ECtHR), the need for psychological protection of children during judicial proceedings is linked to Article 3 (Prohibition of Inhuman or Degrading Treatment) and Article 8 (Right to Respect for Private Life) of the ECHR. In *Z. and Others v. the United Kingdom*, **the Court emphasized that the state has positive obligations to protect children from psychological harm during judicial procedures, including the manner of questioning and communication with investigative authorities.**³⁵ In *S.N. v. Sweden*, the Court stressed that children victims of sexual abuse must be interviewed "under conditions that prevent intimidation, under the supervision of a professional psychologist or social worker."³⁶

35 *Z. and Others v. the United Kingdom*, Application No. 29392/95, ECtHR, [GC], 10 May 2001.

36 *S.N. v. Sweden*, Application No. 34209/96, ECtHR, 2 July 2002, §§ 47–52.

In *Blokhin v. Russia*, the ECtHR explicitly linked **the lack of psychological support during the pre-trial detention of a minor** to a violation of Article 3 of the Convention, highlighting that “*children are particularly sensitive to the effects of isolation, psychological pressure, and careless communication by authorities.*”³⁷ These cases demonstrate that the inclusion of a psychologist at every stage of the process is not merely a procedural matter but a conventional obligation arising from the ECHR, as part of protecting the child’s dignity and emotional integrity.

According to **§2 of Article 18**, the assisting psychologist has two functions: **providing psychological support** to ensure that the minor feels understood and protected during the proceedings, and **assessing the minor’s statements** in accordance with their mental and emotional development. These functions are essential to guarantee **the validity of the testimony**, as a statement given under pressure or in a fragile emotional state may be inaccurate or legally inadmissible. In this sense, the psychologist is not only a supporter but also **a procedural guarantor of justice**. **The absence of a psychologist** during the questioning of a minor constitutes a serious violation of the right to a fair trial and **renders the evidence inadmissible**.

Paragraph 4 of Article 18 introduces a very important innovation: whenever possible, **the same assisting psychologist should follow the child throughout the criminal process**. This principle of “professional continuity” aligns with the **Council of Europe Guidelines on Child-Friendly Justice (Article 53)**, which call for avoiding “*rotation of professionals working with the child,*” in order to maintain trust and a sense of psychological security. This aspect is particularly important for child victims, as **frequent changes in professionals can lead to “secondary victimization,”** i.e., the re-traumatisation of the child through re-experiencing the event.

Finally, Article 18 establishes a procedural rule: **the psychologist providing emotional support** during criminal proceedings **may not act as an evaluative expert for the same child** (i.e., preparing the psychological assessment report). This prohibition prevents conflicts of interest and ensures the objectivity of the psychological evaluation. In international doctrine, this standard is recognized as the **role separation principle**.³⁸

³⁷ *Blokhin v. Russia*, §§ 195–202.

³⁸ United Nations Economic and Social Council, *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, ECOSOC Resolution 2005/20, 22 July 2005, § 22.

5. PROCEDURAL RIGHTS AND GUARANTEES OF THE MINOR IN CONFLICT WITH THE LAW DURING CRIMINAL PROCEEDINGS

Article 19 of the CCJC summarizes and systematizes the fundamental rights guaranteed to a minor during criminal proceedings. It provides that a minor in conflict with the law enjoys not only the rights established in the Code of Criminal Procedure (CCP) but also a set of special rights arising from their developmental, social, and psychological needs. The purpose of this provision is to ensure a special procedural and protective treatment that corresponds to the non-punitive, educational, and rehabilitative nature of juvenile justice. Below, we will discuss some of the most significant procedural rights of minors facing criminal justice, starting with the international standards that establish these rights.

a. International standards on procedural rights of children in conflict with the law

The rights envisaged in Article 19 of the CCJC are the result of a comprehensive harmonization process with **international standards for the protection of children** deriving from the **United Nations system, the Council of Europe, and the European Union**. Three key documents form the foundation of this standard: **the Convention on the Rights of the Child (Article 40)**, **the Council of Europe Guidelines on Child-Friendly Justice**, and **Directive (EU) 2016/800** of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings.

Article 40 of the CRC constitutes the fundamental international basis for juvenile criminal justice. It requires that every child suspected or accused of a criminal offense be treated **“in a manner that promotes the child’s sense of dignity and worth, and that reinforces respect for human rights and the fundamental freedoms of others.”** The article guarantees a range of core rights, including legal assistance and preparation of the defence (Article 40 § 2 (b) (ii)), immediate and comprehensible information on the criminal proceedings initiated (Article 40 § 2 (b) (i)), protection against self-incrimination (Article 40 § 2 (b) (iv)), and effective participation in proceedings. Moreover, it requires States to establish specialized judicial procedures for children, favour **alternative diversionary measures over punitive sanctions**, and ensure **the rehabilitation of the child in society**.

The Council of Europe Guidelines on Child-Friendly Justice, adopted by the Committee of Ministers on 17 November 2010, provides **the most comprehensive European framework for policies regarding child justice**. The document defines *“child-friendly justice” as justice that is accessible, age-appropriate, child-centred, and respectful of the child’s dignity and developmental needs*. The guidelines require **all professionals involved in the justice system** – judges, prosecutors, police, and psychologists – **to receive specialized training to work with children; that procedures be conducted without undue delay and in non-threatening environments**; and that priority be given **to alternative measures to imprisonment**, ensuring clear information, active participation, and psychological support. Paragraph 57 explicitly provides that children should always be accompanied by parents or trusted persons, and that communication with them should be “age-and development-appropriate.”

Directive (EU) 2016/800 on procedural safeguards for children suspected or accused in criminal proceedings, adopted on 11 May 2016 by the European Parliament and the Council, represents **the most advanced binding standard in EU law for the procedural protection of children**. It requires Member States to ensure that every child suspected or accused in criminal proceedings is treated in accordance with **Article 24 of the Charter of Fundamental Rights of the European Union**, which recognizes children as individuals with specific rights and needs. **The Directive sets out seven essential guarantees:** (1) the right to understandable information; (2) the right to legal assistance; (3)

the right to an individual assessment of the child's situation; (4) the right to parental or trusted person involvement; (5) detention only as a last resort; (6) the right to confidentiality; and (7) audio-visual recording of questioning.

In conclusion, paragraphs 1 and 2 of Article 19 of the CCJC affirm **enhanced legal protection for minors in conflict with the law**. In addition to applying the guarantees of the Code of Criminal Procedure, compliance with special safeguards due to the child's age is also required. **This additional protection aligns with the European model of child justice**, where criminal procedures must be essentially the same but adapted in form.

b. Informing the minors of their procedural rights through a letter of rights

One of the innovations introduced by the amendments to the Code of Criminal Procedure (CCP) under the 2017 reform³⁹ is the obligation imposed on the prosecuting authority to provide the person under investigation/accused with a letter of rights. These rights must be reflected in a written document and must be necessarily signed by the investigated person. The Code establishes several situations in which the Judicial Police (JP) or the prosecutor have a procedural duty to inform the person under investigation of the letter of rights, aimed at ensuring the most effective protection of the right to defence.

While the CCP is silent regarding the consequences of failing to provide the letter of rights when the person under investigation is questioned, gives statements, or participates in procedural acts where their presence is legally required, Article 256, which regulates the mandatory questioning by the prosecutor of a suspect arrested *in flagrante* or detained, paragraph 3⁴⁰ provides for the procedural sanction of inadmissibility in court of statements given without providing the letter of rights.

Cases in which the CCP obliges the prosecuting authority to inform the suspect/accused of their letter of rights in advance are the following:

- (i) when the person under investigation is questioned for the first time or before the conduct of procedures where their presence is mandatory – Article 34/a § 2;
- (ii) when the person is arrested *in flagrante* under the conditions of Articles 251 & 252, or detained as a suspect for a crime according to Article 253 of the CCP – Articles 34/b § 2 and 255 § 3;
- (iii) when the JP executes a precautionary measure in the absence of the suspect, pursuant to Article 244 of the CCP, as ordered by the investigating judge – Article 246 § 1;
- (iv) when the arrested or detained person is questioned by the prosecutor – Article 256 §§ 2 & 3;
- (v) when the person attributed with committing the criminal offense is questioned by the JP – Article 296 § 1;
- (vi) when the prosecutor sends a summons for the appearance of the person under investigation for the purpose of questioning – Article 308 § 2 (d).

The rights communicated to a person under investigation, including minors in conflict with the law, according to paragraph 1 of Article 34/a of the Code of Criminal Procedure (CCP) are as follows:

- a) *to be informed as soon as possible, in a language they understand, about the criminal offense under investigation, as well as the reasons for the charges;*
- b) *to use the language they speak or understand, or sign language, and to be assisted by a translator or interpreter if they have speech or hearing impairments;*
- c) *to remain silent, freely present their defence, and not answer certain questions;*

³⁹ With Law No. 35/2017, dated 30/03/2017, 284 provisions of the CCP underwent profound changes. For more information, see the content of this law on the official website of the OPC: https://qbz.gokundwral/share/vSIGWAwyQkqmp4oM_LWMTw.

⁴⁰ Point 3 of Article 256 of the CCP specifies: "3. **Statements made by the arrested or detained person before receiving the letter of rights or before meeting with their defence attorney cannot be used.**"

- d) to defend themselves or be assisted by a lawyer of their choice;
- e) to have a lawyer provided by the state if legal representation is mandatory or if they cannot afford a lawyer, according to the provisions of this Code and the legislation on legal aid;
- f) to meet privately and communicate with the lawyer representing them;
- g) to have sufficient time and facilities to prepare their defence.

Meanwhile, **arrested or detained persons**, in addition to the above rights – of which they are expressly informed and which they acknowledge by signing the document in which they are set out – **also enjoy certain specific rights**,⁴¹ due to the restriction of their freedom and in particular the right:

- a) to meet privately with their lawyer before being questioned for the first time;
- b) to be informed of the documents, evidence, and reasons for their arrest or detention;
- c) to request that a family member or another close person be notified immediately of their arrest. If the arrested or detained person is a foreign national, they have the right to request that their consular or diplomatic representation be notified; if stateless or a refugee, they may request that an international organization be informed;
- d) to receive immediately the necessary medical care.

Regarding minors in conflict with the law, Article 35 of the CCP (discussed earlier in this study) does not contain any explicit special provisions for minors. Nevertheless, it provides that the minors are afforded legal and psychological assistance at every stage of the proceedings, in the presence of a parent, legal guardian, or other persons requested by the minor and accepted by the proceeding authority.

Meanwhile, the CCJC mentions the letter of rights that is handed over to the minor only in the case of their arrest/detention by the JP or the prosecutor, regulated by Article 73 § 3 thereof, sanctioning that: “3. **The proceeding body, immediately upon bringing the minor to the premises of the relevant institution, shall notify the legal representative of the minor or the adult person indicated and accepted by them regarding the arrest of the minor and the location of the detention and explain the reasons for the arrest and make available a copy of the letter of rights.**”

However, this provision does not prevent the application of the relevant provisions of the Code of Criminal Procedure, as long as Article 5 of the CCJC itself, which regulates the relationship of the latter with other laws, allows the provisions of the Code of Criminal Procedure to be applied as long as the *lex specialis* for children (CCJC) does not regulate them.

Returning to the analysis of **Article 35 § 1 of the CCP** regarding the provision of legal and psychological assistance to minors, it is considered that this guarantee **constitutes a positive obligation for the proceeding bodies to make the letter of rights available to the minor in any case in the presence of their legal representative, the defence attorney and the psychologist**. This presence must be proven by the signing of the letter of rights not only by the minor, but also by the “guarantors” of their right to protection – the parent, the defence attorney and the psychologist. The signing of this document by these persons constitutes a guarantee that the procedural rights of protection have been adequately explained and understood by the minor in conflict with the law prior to the initiation of the procedural actions for which the law requires the minor’s mandatory participation. Consequently, throughout the study, both the fact and timing of the delivery of the letters of rights will be examined, as well as the persons who signed them.

c. The right to be promptly informed about criminal proceedings

Prompt information enables minors to understand the nature of the procedure and their rights. According to the CCJC, the information should be adapted to the **minor’s individual level of development**, not only to their chronological age. This is a standard in line with **Article 28 § 2, first sentence**,⁴² of the **Constitution** of the Republic

41 CCP, Article 34/b (1).

42 Article 28 § 2, first sentence of the Constitution states: “1. “Anyone who is deprived of their liberty has the right to be informed promptly, in a language they understand, of the reasons for this measure and of the charge against them.”

of Albania, **Article 40 § 2 (b) (iii) of the CRC**,⁴³ **Articles 5 § 2⁴⁴ and 6 § 3(a)⁴⁵ of the ECHR**, **Article 4 of Directive (EU) 2016/800, the Council of Europe Guidelines on Child-Friendly Justice**, and **General Comment No. 10 (2007) of the UN Committee on the Rights of the Child**.

In reference to Article 4 of Directive (EU) 2016/800, the child must be provided with an explanation of their rights in plain and intelligible language. An explanation of the process will help the minor to understand what is expected of them during the proceedings and when they will be able to express themselves before the court. It is equally important to ensure that children are properly informed during court proceedings, so that they are able to follow them and participate where appropriate. Judges and lawyers may need time to explain to children what is happening, so that they do not feel lost. In addition to the procedure, lawyers must ensure throughout the proceedings (but especially before and during the trial) that their child clients understand the charges against them and the possible outcomes.⁴⁶

Meanwhile, the ECtHR recognised in *S.C. v. the United Kingdom* that **the accused must have a broad understanding of the nature of the trial process and what is at stake, including the severity of any penalty that may be imposed, in order for the individual to participate effectively in the proceedings**. However, it should be noted that the Directive does not require children to understand every aspect of the trial.

At this point it should be noted that **a child's ability to understand their position and to understand the information given to them by the prosecuting authority or their lawyer is generally more limited than that of an adult**. It should be borne in mind that a child who has been arrested by the police may be facing the criminal justice system for the first time and they may find this experience more difficult than most adults. The lawyer, psychologist and parent should take special care to ensure that a child suspect understands the information provided, either by explaining it themselves or by encouraging the police to use simple, child-friendly language, as well as by clarifying the consequences that may follow.

In this regard, the **Albanian Constitutional Court** has reasoned that the purpose of the right to be informed of the charge, sanctioned by Article 6(3) of the ECHR, is that the requested information is provided to the accused at the time of the indictment or at the time of the commencement of the trial and that it is essential that the criminal offence for which a person is convicted is the one for which he/she is accused (*Decisions no. 24, dated 30/04/2012, paragraphs 12 – 13 and no. 4, dated 10/02/2012, paragraph 12, of the CC*).⁴⁷

While in the case of *T. and V. v. the United Kingdom*, the ECtHR found that the use of complex legal language during the trial against minors violated Article 6, since children could not really understand the nature of the charge. The information should not be formal, but **effective and adapted to the development of the minor**, with the assistance of a psychologist when necessary.

"Prompt information" cited in the abovementioned normative acts, in the context of criminal proceedings against minors, implies an obligation that any information, notification, or procedural interaction with the minor should take place **as soon as practically possible**, once there are **reasonable suspicions, based on concrete evidence**, of

43 Article 40 § 2 (b) (iii) of the CRC provides: "2. To this end and taking into account the relevant provisions of international instruments, States Parties shall ensure in particular that: ... iii) His or her case shall be heard promptly by a competent, independent and impartial authority or judicial body, in accordance with due process of law, in the presence of legal or other appropriate assistance, and, unless it is considered not to be in the best interests of the child, in particular by reason of his or her age or situation, of his or her parents or legal guardians."

44 Article 5 § 2 of the ECHR provides: "2. Everyone who is arrested shall be informed promptly and in a language which he/she understands of the reasons for his arrest and of any charge against him."

45 Article 6 § 3 (a) --- "3. Everyone charged with a criminal offence has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him".

46 EU Directive on Procedural Safeguards for Children who are Suspects or Accused in Criminal Proceedings - Implementation Handbook, published by "Fair Trials International", p. 37, § 121, accessible at: <https://kli-ks.org/wp-content/uploads/2021/04/06.-ALB-Children-Directive-Toolkit-1.pdf> , last consulted on 06/10/2025.

47 *Guide to the jurisprudence of the Constitutional Court 1998-2023 regarding individual constitutional complaints*, op. cit., p. 176.

their involvement in a criminal offense. At this point, the proceeding bodies are obliged to guarantee that the minor **is informed immediately**, in a manner **adapted to their age, level of education, psychological development, and ability to understand** both the nature of the charges and the evidentiary basis on which they are founded.

The right to be informed immediately is inseparable from **the guarantee of due process**, as one of the most substantial guarantees of the rule of law. In the case of children, the time aspect takes on particular weight, as prolonged processes **directly affect their development and psychological well-being**.

In the Albanian context, this consideration takes on particular importance due to the nature of the age of criminal responsibility (14–18 years), which coincides with **the most dynamic phase of physical, emotional, and educational development**. A prolonged criminal process – whether investigation, trial, or appeal – can adversely affect the **education, socialization, and moral development** of minors, leaving lasting consequences on their lives. The speed of the procedure affects **in preventing stigmatization and preserving the adolescent’s developmental skills**.

In conclusion, providing minors with thorough, accurate, and intelligible information – in the presence of the defence attorney and psychologist – about the nature of the criminal offense attributed to them, the evidence collected and its sources, and the procedural rights they enjoy, should be regarded as a fundamental condition for the credibility of the process and the proper preparation of an effective defence. This is one of the fundamental guarantees for the realization of the right to a fair legal process, as sanctioned in Article 42 of the Constitution and Article 6 of the ECHR.

d. Right to legal assistance

The right to legal assistance is fundamental and constitutes an essential component of the overarching constitutional principle of a fair trial. Its effective enjoyment is necessary to safeguard the exercise of other procedural rights. This right is particularly important for children, whose age and experience may create additional obstacles that call into question their ability to participate effectively in criminal proceedings.

Articles 37 § 5 and 40 § 2 of the CRC impose on States the obligation to ensure that “**children deprived of their liberty shall have the right to have prompt access to legal assistance or other appropriate assistance**” and that children suspected of, accused of, or convicted of having infringed the criminal law may “**have the benefit of legal assistance or other appropriate assistance in the preparation and presentation of their defence**”.⁴⁸

Meanwhile, **Article 15 of the Beijing Rules** provides for this right as follows: “*Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country*”.

Whereas, **point 18, letter “a” of the United Nations Rules for the Protection of Juveniles Deprived of Liberty**⁴⁹ establishes as a positive obligation for States that: “*Juveniles shall have the right to the services of a lawyer and the opportunity to seek legal assistance where this is provided for, as well as to communicate regularly with their lawyer. The private and confidential nature of such communications shall be guaranteed ...*”

Article 6 of Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016⁵⁰ stipulates that: “1. Children who are suspects or persons prosecuted in criminal proceedings shall have the right of access to a lawyer,

48 Convention on the Rights of the Child, Article 37, accessible at: <https://qbz.gokundwral/preview/0bf6d47f-11a5-47e8-b163-f937cc8a1cc3>, last consulted on 21/10/2025.

49 United Nations Rules for the Protection of Juveniles Deprived of Liberty, adopted by the General Assembly by Resolution 45/113 of 14 December 1990, paragraph 18(a).

50 Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the *Strengthening of Certain Aspects of the Principle of the Presumption of Innocence and of the Right to be Present at Trial in Criminal Proceedings*, Article 6.

in accordance with Directive 2013/48/EU. Nothing in this Directive, and in particular this Article, shall prejudice this right (...)."

Point 120.2 of Recommendation CM/Rec (2008) 11 of the Committee of Ministers of the Council of Europe require that: "*The competent authorities should reasonably assist the minor to have effective and confidential access to legal advice and assistance, including unrestricted and unsupervised meetings with their lawyer.*"

The right of a minor to legal assistance, in order to ensure their emotional and developmental support during the process, is sanctioned in Article 31(ç)⁵¹ of the Constitution as a general principle, without explicitly referring to minors. In addition, Article 29, paragraphs 1 and 2 of the LRPC, cited above, provides that minors, in any administrative and judicial process, are guaranteed free legal aid, in accordance with their best interests and without any obstacle. Specifically, regarding the range of legal aid provided, the third paragraph of Article 29 specifies that "*it includes all administrative and judicial actions, as well as consultations carried out by the representative, the lawyer chosen by him or appointed by the responsible authorities according to the legislation in force, during the entire administrative or judicial process.*"

The provision of legal and psychological assistance to a minor in conflict with the law is also provided for in Article 35 of the CCP, which stipulates that **he or she shall be provided with legal and psychological assistance at every stage of the proceedings**, guaranteeing the presence of the parent or legal guardian, as well as other persons requested by the minor and accepted by the proceeding authority (§1). According to the content of the second paragraph of Article 35, the proceeding body may carry out procedural actions without the minor and their legal representative being present, but always in the presence of the defence lawyer and only after having argued in the record of the action that their absence is either in the interest of the minor or that any delay could seriously damage the proceedings.

However, the legal provisions that expressly provide for **mandatory protection for minors in conflict with the law** are Article 49(1)-a⁵² of the CCP and Article 19(3)-a⁵³ of the CCJC. The mandatory protection of minors in conflict with the law is provided for in both international instruments and the national legislation of democratic states, due to the particular vulnerability and lack of legal and psychological maturity of children, who are not able to fully understand the nature, consequences, and their own rights during criminal proceedings. These legal provisions aim to guarantee effective protection of the rights of the minor, to prevent abuse, pressure or self-incrimination, and to ensure treatment that takes the best interests of the child into account.

Due to the development of the judicial debate on questions of law, the participation of the defendant in the trial of the case in the higher courts has not been deemed necessary, except in cases where the personal qualities of the defendant have been of decisive importance for the delivery of justice. On this basis, it has been considered sufficient that the lawyer be notified of the appeal lodged at the higher levels of the trial. If neither the lawyer nor the defendant appeared at the court hearing, its further continuation has been considered inadmissible.⁵⁴

According to the ECtHR, paragraph 3, letter c) of Article 6 of the ECHR presents some specific aspects of the right

51 Article 31 (ç) of the Constitution provides: "*During criminal proceedings, everyone has the right: ... ç) to be defended by himself or with the assistance of a defence lawyer chosen by him; to communicate freely and privately with him, as well as to be assured of free defence when he does not have sufficient means.*"

52 Article 49 of the CCP provides: "1. **The proceeding authority shall provide immediately a lawyer paid by the State to the defendant, who has not appointed or no longer has a retained lawyer, if he: a) is under eighteen years of age**", accessible at: <https://www.qbz.gokundwral/preview/b4819f4d-c246-49b3-87a9-2e6c8512c975>, last consulted on 23/10/2025.

53 Article 19 § 3 (a) of the CCJC provides: "3. **At every stage of criminal proceedings, a juvenile shall enjoy the following rights: a) the right to legal and psychological assistance or any other appropriate assistance in the preparation and presentation of his or her defence.**"

54 See Decisions No. 5, dated 04/03/2008; No. 23, dated 13/10/2005, paragraph 7; No. 25, dated 30/07/2003, paragraphs 9-11, of the CC.

to a fair trial guaranteed in the first paragraph.⁵⁵ It guarantees that the proceedings against an accused shall not be conducted without the latter being adequately represented for the purposes of his defence.⁵⁶ It sets out three different rights: that of defending oneself, that of having the assistance of a defender of one's own choosing, and that of being assisted free of charge by a lawyer.

The right of every accused person to be effectively defended by a lawyer is one of the fundamental elements of due process.⁵⁷ In principle, every suspect should have access to a lawyer as soon as he/she is taken into custody or detention.⁵⁸ The right of the accused person to participate effectively in their criminal proceedings includes, in general, not only the right to be present, but also the right to be assisted by a lawyer if necessary.⁵⁹ However, the mere presence of the accused person's lawyer cannot compensate for the latter's absence.⁶⁰

Guaranteeing legal protection for minors is also provided for in **Article 6 of Directive (EU) 2016/800**, which requires that children have access to a lawyer and not be questioned unrepresented. This provision requires Member States to ensure that a suspected or accused child is assisted by a lawyer. **The aforementioned article makes it clear that a child suspect or accused has the right to access legal assistance from the earliest possible moment of criminal proceedings**, i.e. as soon as they are informed of being suspects or accused and at any time before they are questioned by the prosecuting authority.

The ECtHR has, in several decisions, recognized that *"although not absolute, the right of every accused person to be effectively defended by a lawyer, if necessary provided by the State, constitutes one of the fundamental elements of due process"*⁶¹. The presence of a lawyer allows for *"appropriate compensation"* for the vulnerability of the accused person during police detention, ensuring that *"the right of every accused person not to incriminate himself/herself"*⁶² is respected. Following its case-law, the ECtHR has argued that any systematic restriction on the assistance of a lawyer during police detention, provided for by the law in force, *"is sufficient to establish a violation of the requirements of Article 6 of the Convention, despite the fact that the applicant remained silent during police detention"*.⁶³

In the case of ***Salduz v. Turkey***, which concerned a minor aged 17 at the time of his arrest, the **ECtHR** emphasised that **access to a lawyer must be granted from the very first moment of police questioning**, unless it can be demonstrated that there are "compelling reasons" for restricting this right. It explained that when self-incriminating statements made during police questioning without the assistance of a lawyer are used to support a conviction, then "the rights of the defence are irreparably jeopardised." This decision was analysed in the light of the **particular circumstances of the case**, since before concluding that there had been a violation of the rights of the defence, the Court noted that *"one of the characteristic elements of the case was the applicant's age"* and stressed **"the fundamental importance for every minor in police detention to have access to a lawyer"**.

Minors **do not have the capacity to assess the importance of the presence of a lawyer**. It is for the **States** to ensure that this right is effectively guaranteed, so that the minor, *"taking into account his vulnerability"*, has *"full awareness of his rights"*⁶⁴. This includes, in particular, **the right to meet with a lawyer before making statements** to the investigating body. States have a positive obligation to act *"actively"*⁶⁵ **so that the minor actually understands**

55 *Correia de Matos v. Portugal (decision on admissibility)*, Application No. 48188/99, ECtHR, 15 November 2001; *Foucher v. France*, Application No. 22209/93, ECtHR, 18 March 1997, § 30.

56 *Pakelli v. Germany*, Application No. 8398/78, Report of the European Commission of Human Rights, 12 July 1982, §§ 31 and 84.

57 *Salduz v. Turkey*, Application No. 36391/02, ECtHR [GC], 27 November 2008, § 51.

58 *Dayanan v. Turkey*, Application No. 7377/03, ECtHR, 13 October 2009, § 31.

59 *Lagerblom v. Sweden*, Application No. 26891/95, ECtHR, 14 January 2003, § 49 and *Galstyan v. Armenia*, Application No. 26986/03, ECtHR, 15 November 2007, § 89.

60 *Zana v. Turkey [GC]*, Application No. 18954/91, ECtHR, 25 November 1997, § 72.

61 ECtHR, *Poitrinol v. France*, 23 November 1993, No. 14032/88, § 34.

62 *Ibid.*, §54.

63 *Dayanan v. Turkey*, § 33.

64 *Panovits v. Cyprus*, § 68.

65 *Ibid.*, § 72.

the possibility of seeking the assistance of a lawyer, and is able “to assess as best as possible the consequences of his actions”⁶⁶. **A simple notice**, in the form of **reading the text of the domestic law** “cannot be considered sufficient enough to make clear to the minor the nature of his rights”.⁶⁷

Taking into account the inherent vulnerability stemming from the very status of a minor, the ECtHR underlines the added role of the lawyer as a countervailing force, enabling the minor to **avoid any possible pressure from the authorities to plead guilty**.⁶⁸ The minor must be able to have “a broad understanding of the nature of the investigation, of what is at stake for him, including the importance of the sentence that may be imposed, as well as of his rights of defence and, in particular, of the right to remain silent”.⁶⁹

However, while the lawyer has an obligation to ensure the protection of his client, **the State has an obligation to intervene** when **the lawyer assigned ex-officio** shows **obvious deficiencies** in representation. In a judgment of 20 January 2009, in the case of *Güveç v. Turkey*⁷⁰, concerning a **15-year-old minor in conflict with the law**, the European judges stressed that: “the actions or decisions of a defendant’s lawyer cannot render the State liable, since the manner in which the defence is conducted is essentially a matter for the defendant and his lawyer, whether appointed under legal aid or paid for by the client; however, **where the inadequacy of the lawyer appointed ex officio is manifest, Article 6 § 3 (c) of the Convention obliges the national authorities to intervene**.”⁷¹ Before deciding on a violation of the guarantee of **effective representation at trial**, the ECtHR took into account, inter alia, “**the young age of the person concerned [...] and the manifest inadequacy of his lawyer**,” which should have prompted the first-instance court to react to the “*urgent need for competent defence counsel*.”⁷²

Meanwhile, **the Council of Europe Guidelines on Child-Friendly Justice**, in point 2, letter “C” – “*Friendly justice during the judicial process*” – requires that lawyers representing children be trained and knowledgeable about children’s rights and issues related to them, receive in-depth and ongoing training, and be able to communicate with children in accordance with their level of understanding.

5.4 The right of a minor in conflict with the law to have an individual assessment

The psychological and individual assessment of a minor in conflict with the law constitutes one of the most important elements of criminal justice for minors, as it ensures that any state response is **personalized, proportionate, and rehabilitative** rather than punitive. According to **Article 22 of the CCJC**, the court and the prosecution body are obliged, before making any decision, to take into account the **individual circumstances** of the minor in conflict with the law, such as age, level of development, living conditions, education, family, and health situation, and to seek the assistance of **experts in various fields**, in order to understand their **personality, responsibility, and the degree of criminal liability**. This principle represents the materialization in Albanian legislation of international standards of child-friendly justice.

The **CRC**, in Article 40, requires that every suspected or accused child be treated in a manner that **strengthens their dignity and sense of personal worth**, as well as **facilitates their reintegration** into society. This article is closely linked to Article 3 (Best Interests of the Child) and Article 12 (Right to be Heard), which require that any procedural intervention be based on a **careful assessment of the child’s personal, developmental, and emotional characteristics**.

66 Ibid., §§ 68, 71.

67 Ibid., §§ 74.

68 *Adamkiewicz v. Poland*, Application No. 54729/00, ECtHR, 2 March 2010, §§ 86–92; *Blokhin v. Russia*, § 195.

69 *Martin v. Estonia*, Application No. 35985/09, ECtHR, 30 May 2013, § 92.

70 *Güveç v. Turkey*, Application No. 70337/01, ECtHR, 20 January 2009.

71 Ibid. § 130.

72 Ibid. §§ 131–131.

General Comment No. 10 (2007) of the Committee on the Rights of the Child clearly states that “any decision affecting a child in the criminal justice system should be based on a full assessment of their personality and situation”, including family history, health status, education, and community influences.⁷³ This assessment, according to the Committee, is a **prerequisite** for choosing between **alternative measures to criminal punishment** and **other forms of rehabilitation** that best serve the child’s interests. Similarly, **General Comment No. 24 (2019)** reinforces this standard, requiring that the assessment be **interdisciplinary and early**, to guide the process towards avoiding criminal prosecution or to taking more lenient measures.⁷⁴

The **Council of Europe Guidelines on Child-Friendly Justice** give a central role to individual and psychological assessment, emphasizing that “every child who comes into contact with the justice system should be assessed individually by trained professionals to identify his or her needs, capacities, and vulnerabilities.”⁷⁵ According to these guidelines, the assessment should aim **not only to analyse the past**, but also **to foresee the most appropriate way to support the child in the future**, so that they do not relapse into reprehensible behaviour.

Similarly, the **European Rules on Sanctions and Measures for Juveniles (CM/Rec (2008) 11)** require that any penal intervention be preceded by an individual report, which reflects the psychological and social state of the minor and helps the authorities to choose the **least restrictive possible measures**.⁷⁶

Directive (EU) 2016/800 on procedural safeguards for children suspected or accused in criminal proceedings establishes the obligation for an **individual assessment of each child**, in order to determine the measures best suited to their circumstances and maturity. According to Article 7 of this Directive, “the individual assessment aims to identify the specific needs of the child with regard to protection, education and reintegration.”⁷⁷ This means that the process should not only focus on the criminal act committed, but also on the **circumstances of the minor’s life and their potential for positive development**. This standard is directly included in **Article 22 of the CCJC**, which requires cooperation between **psychological experts, the probation service and child protection units (CPUs)**, in accordance with Law No. 18/2017 “On the Rights and Protection of the Child”.

Psychological assessment, as defined in **Article 22 of the CCJC** and international standards, has two essential purposes: (a) to ensure that judicial decision-making is **in accordance with the maturity and developmental capacity of the child**, and (b) to orient the justice system towards **rehabilitative and educational measures**, rather than criminal punishment. In this sense, psychological assessment allows the court to understand that each child is a unique individual, with specific needs and potentials.

5.5 The right to have a parent or a trusted person present during the conduct of procedural actions

The **minor**, if he has been arrested or detained, or if a criminal proceeding has been initiated against him and it is necessary to carry out investigative actions in relation to him, **has the right to request assistance from his legal representative** (parent or guardian) or from any other trusted person (hereinafter referred to as the “legal representative”), chosen by him. **The legal representative, if summoned by the minor, must participate during the conduct of procedural actions, in accordance with the provisions of Article 49 § 1 of the CCJC**, which stipulates that: “**Every procedural action carried out in relation to the minor shall be conducted in the presence**

73 UN Committee on the Rights of the Child, *General Comment Nr. 10 (2007): Children’s rights in juvenile justice*, CRC/C/GC/10, §§ 27–29

74 UN Committee on the Rights of the Child, *General Comment Nr. 24 (2019): Children’s rights in the child justice system*, CRC/C/GC/24, §§ 46–47.

75 Council of Europe, *Guidelines of the Committee of Ministers on Child-Friendly Justice*, 17 November 2010, §§ 37–39.

76 Council of Europe, *European Rules for Juvenile Offenders subject to Sanctions or Measures*, Recommendation CM/Rec(2008)11, Rules 15–19.

77 Directive (EU) 2016/800 of the European Parliament and of the Council, 11 May 2016, Art. 7.

of the defence lawyer, the legal representative, and a psychologist." Consequently, before carrying out these procedural actions with the minor, the criminal prosecution body or the court must ensure the presence of the legal representative, notifying them to appear for this purpose, except in the exceptional cases provided for in the second paragraph of Article 49⁷⁸, related to the conflict of interest that may have arisen between them.

Upon **being requested by the minor** to accompany them in any investigative action in which the minor is required to appear, the **legal representative becomes a procedural representative**; therefore, they must be notified by the proceeding body and have the obligation to appear, providing the minor with emotional and psychological assistance and support. To this end, Article 53 of the CCJC, which provides for the manner of notifying the minor, sanctions in its third paragraph⁷⁹ that the latter receives notice through his/her legal representative (when the minor is not detained).

In addition, the legislator has provided that the legal representative may also be personally notified of the investigative act in which the minor in conflict with the law is required to participate, at the discretion of the proceeding body, which may notify either the legal representative or the minor's defence counsel, in accordance with the provisions of the last paragraph of Article 53, which reads as follows: "**A copy of the notification of the summons of the minor defendant shall be delivered or sent to the minor's defence lawyer or the minor's legal representative.**" The minor's legal representative has the right, independently of the minor, to appoint a defence lawyer for the minor, with the obligation to guarantee their best interests, as provided for in the first paragraph of Article 48⁸⁰ of the CCJC.

Meanwhile, Article 73 of the CCJC, in its first paragraph⁸¹, establishes the right of the arrested minor to request notification of a parent or, in their absence (due to non-identification, inability to locate, unavailability, or incompatibility), another adult person trusted by the minor. The presence of the parent or trusted person at this stage of the criminal proceedings is considered necessary, since in the first moments after the arrest the minor needs moral and emotional support, as well as guidance on ensuring the right to defence through the appointment of a lawyer. **The presence of the parent at this point strengthens the minor's self-esteem and serves as a guarantee for the respect of the rights enjoyed by the minor at this stage of the proceedings.**

The CCJC is silent about the relationship that the trusted person appointed by the minor must have with the minor. **Logic requires that the minor's trusted persons be close relatives** by blood (grandparents, older brothers or sisters), as well as other relatives (uncles or aunts, etc.), but not every person the minor determines. In this case, exceptions may be made for persons who are proven to have stable, known, and close ties with the minor in conflict with the law. Of course, the trusted person, like the parent, must not be in conflict of interest with the minor, that is, they must not be related to the criminal act attributed to the minor, they must not be in a situation of hostility with the minor, and their presence must not affect the progress of the criminal investigation against the minor.

However, the minor's choice of a trusted person is not mandatory for the proceeding body, if it assesses that this choice is not in accordance with the best interest of the minor. In this case, the proceeding body does not accept the choice of the trusted person and decides to appoint a trusted person, who, as a rule, is selected from the list of persons made available by the Child Protection Unit at the relevant municipality.

78 The second paragraph of Article 49 of the CCJC provides that: "*The judge, during the trial and the prosecutor during the investigation phase, may prohibit the legal representative of the minor in conflict with the law from participating in the procedural action only if such a thing is in the best interest of the minor.*"

79 Article 53(3) of the CCJC stipulates that: "*Notification of a minor in conflict with the law shall be made, as the case may be, through his/her legal/procedural representative or the head of the institution where the minor is placed.*"

80 Article 48(1) of the CCJC provides that: "*1. The legal representative of a minor has the right to independently select and appoint a defence lawyer, taking into account the best interests of the minor.*"

81 Article 48(1) of the CCJC provides that: "*1. The proceeding body, at the moment of the arrest of the minor, informs them of their right to notify a parent and, in their absence, another adult indicated and accepted by the minor.*"

However, the presence of the minor’s legal representative is not mandatory in the questioning of a minor in conflict with the law. Thus, Article 76(5) of the CCJC provides that: *“The questioning of the minor shall be conducted in the presence of the defence counsel and the psychologist. **If the minor consents, the legal/procedural representative may also participate in his questioning.**”* In view of this provision, as well as the overall content of Article 76, it can be concluded that **while the presence of the defence counsel and the psychologist is mandatory in any procedural action** – specifically during the questioning of a minor suspected of committing a criminal offense – **the presence of the legal representative or trusted person remains at the discretion of the minor.**

The accompaniment of the child by their legal representative during procedural actions constitutes an important measure to ensure the fairness of the procedure. Naturally, the effectiveness of such accompaniment depends on its implementation in practice. **The Committee of Ministers of the Council of Europe in Recommendation No. R (2003)20 on new methods of dealing with juvenile delinquency and the role of juvenile justice recommends that parents “where circumstances permit, be offered assistance, support, and advice”.**⁸²

While the **2008 Recommendation on European rules for minor offenders subject to sanctions or measures** is clearer, as it states that:

“In order to meet the specific needs of minors, national law should establish:

- a) the obligation of the competent authority to explain to minor offenders and, if necessary, to their parents or legal guardians, the content and purpose of the legal provisions governing sanctions or measures applied in the community;*
- b) the obligation for each competent authority to seek the best possible cooperation with minor offenders and their parents or legal guardians.”*⁸³

Currently, **this accompaniment is often reduced to a formal presence, without any clear assistance or support – which raises doubts about its real effectiveness.** It should be remembered that parents remain the first educators and the main bearers of responsibility for their children. Given this quality, parents should rely on their strengths, and not be judged solely by their weaknesses, while States have the obligation to provide “appropriate assistance to parents and legal representatives of the child in the exercise of their parental responsibility”.⁸⁴

It should be emphasized here that **the simple physical presence of parents during the procedure cannot be considered a guarantee of respect for the principle of equality of arms.** In order for this principle to be fully respected, **parents must be able to understand the nature and purpose of the procedure,** so that they are truly able to accompany their child. However, **the participation of parents should not become a hidden cause for the violation of the interests and rights of the minor.** Consequently, a collaborative approach with parents is the only way to face their difficulties and to make the parent become the guarantor of their child’s rights.

An obstacle to the effective participation of parents in criminal proceedings against their children is the feeling of stigmatization that they experience for the criminal offense committed by their child, which in many cases prevents them from offering real support. It should be borne in mind that most parents experience their child’s involvement in criminality as a personal failure. A study conducted in Canada collected the emotional experiences of parents who were absent from the courtroom. Parents participating in this study stated that **“they feel watched, judged, and humiliated when they are publicly summoned to court and when they are mentioned during the examination of the case [...]. Uninformed about the course of the procedure, they feel powerless in an environment that they perceive as hostile.”**⁸⁵

82 Recommendation No. R (2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, Committee of Ministers, Council of Europe, 24 September 2003.

83 Recommendation CM/Rec(2008)11 of the Committee of Ministers to Member States on the European Rules for juvenile offenders subject to sanctions or measures, 5 November 2008.

84 CRC, Articles 5 and 18.

85 J. Trépanier, Les transformations du régime canadien relatif aux mineurs délinquants: Un regard sur le droit et les pratiques (Transformations in the Canadian Juvenile Delinquent System: A Look at the Law and Practices), RSC, vol. 4, no. 4, 2012, f. 850, available at: <https://droit.cairn.info/revue-de-science-criminelle-et-de-droit-penal-compare-2012-4-page-819?lang=fr>.

However, while the state of vulnerability of the minor perpetrator of a criminal offense justifies the presence of legal representatives – particularly the parents – there are situations in which their presence is impossible or compromised. In cases of a conflict of interests between parents and children, the proceeding body must appoint a procedural representative from the Child Protection Unit of the local administrative unit in whose jurisdiction the proceeding body operates (Article 74 of the CCJC).

5.6 The right not to testify or plead guilty

The presumption of innocence includes the right of the accused person not to contribute to self-incrimination, which in turn includes the right not to speak before the prosecuting authority (the right to remain silent) and the right not to be compelled by the prosecution to produce evidence that could adversely affect their position. In other words, it is a matter of applying the ancient Roman principle “*Nemo tenetur prodere seipsum*” (no one may be compelled to incriminate themselves). The accused persons may refuse to answer questions, thereby not making their “contribution” to the creation of evidence, a task that remains for the prosecution body.

The ECtHR⁸⁶ has emphasized that, although not expressly mentioned in the Convention, the right not to incriminate themselves is a generally recognised international norm and an integral part of the concept of a “fair trial”. This principle protects the defendant against undue coercion by state authorities, thereby reducing miscarriages of justice and allowing the principle of equality of arms to be applied.

The right of a minor not to incriminate themselves implies their “**right to remain silent**”, not to answer certain or all questions.⁸⁷ Any form, mechanism, or manner of physical or psychological coercion to obtain statements from a minor in conflict with the law is unacceptable, because, *first*, any such action is considered to fall within the scope of Article 3 of the ECHR as inhuman or degrading treatment to obtain a confession or an admission of guilt, thus constituting a serious violation of children’s rights and, *secondly*, such a confession or admission cannot be admissible as evidence.⁸⁸ The age of the minor, their development, the length of the interview, the lack of understanding of their situation, the emotional state created by the process, the fear of unknown consequences or imprisonment are all factors that can push them to make a statement that is not true.⁸⁹

As stated above, **the prosecution body must seek to base its arguments without resorting to evidence obtained through coercion or pressure**. In this sense, the first paragraph of Article 92 of the CCJC prevents the criminal proceedings authorities from “*forcing the minor to make statements that indicate criminal self-responsibility*”. As the **ECtHR has also stated, public security and order cannot serve as justifications for violating these rights**. These rights are closely interconnected, so any coercion aiming at obtaining evidence from the defendant that implicates them in the commission of a criminal offense constitutes a violation of the right to remain silent. For example, the State violates the defendant’s right to remain silent if it attempts to coerce them into providing statements regarding their bank details to customs investigators.⁹⁰

Forcing a defendant to cooperate with the prosecution authority during the preliminary investigation phase may violate their right not to give statements or present self-incriminating evidence, as well as compromise the impartiality of the entire judicial process that will take place subsequently, i.e. the right to a fair trial.

86 *Heaney and McGuinness v. Ireland*, Application No. 34720/97, ECtHR, dated 21/12/2000.

87 See Article 37 of the Code of Criminal Procedure. We note that statements given not in the capacity of the person under investigation/defendant that indicate self-responsibility cannot be used as evidence.

88 Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in its Resolution 39/46 of 10 December 1984, provides that: “*Each State Party shall ensure that any statement which is proven to have been obtained as a result of torture shall not be used as evidence in any proceedings, except when that fact is used against the person accused of torture to prove that the statement was made.*”

89 Merkaš, Tereza, *Commentary on the Code of Criminal Justice for Children interpreted with case law*, op. cit. p. 451.

90 *Funke v. France*, Application No. 10828/84, ECtHR, 25/02/1993, in summary A 256-A.

The prohibition provided for in Article 38 § 2 of the CCP that methods or techniques which may influence the freedom of determination shall not be used can only be read in the broadest possible sense, *prohibiting any conduct on the part of law enforcement agencies that may give rise to suspicions that the will of the interrogated person has been violated.*

Article 25 of our Constitution prohibits any form of torture or inhuman treatment, while Article 32 provides for two prohibitions: *first*, that no one may be compelled to testify against themselves or to confess guilt, and, *second*, that no one may be found guilty on the basis of unlawfully obtained information. Every defendant has the absolute right not to make any contribution during the judicial investigation or during the trial, and this is an undeniable right.⁹¹

5.6.1 The right of a minor in conflict with the law to remain silent

The right of a minor not to give explanations during questioning extends from the preliminary investigation phase of criminal proceedings by the judicial police to the development of the trial of the case. **The minor should have the right not to give explanations, so that they do not reveal their defence strategy in trial before the trial begins.**

In order for this right to be effectively guaranteed, the suspect must be informed (made aware) by the person questioning them of their right, as provided for in the Code of Criminal Procedure (Article 255 § 3). In this regard, the Albanian legislator, reflecting the legal experience of most European countries, has been quite careful *to provide for such a right explicitly in the law*, along with the warning that if they do not wish to benefit from such a right, anything they say may be used against them in trial.⁹²

Meanwhile, the second paragraph of Article 92 of the CCJC⁹³ provides for a very important prohibition – **no conclusions of guilt can be drawn from the silence of a minor in conflict with the law**. In the context of children and minors in conflict with the law, the right to remain silent takes on an even deeper protective dimension, since the psychological pressure on the child during criminal proceedings can make “silence” a defensive reaction rather than a voluntary act.

We note that, from the silence of an adult defendant, in exceptional cases and when the necessary conditions exist, conclusions of guilt can be drawn. *Only when the evidence presented by the prosecution “requires” an explanation from the defendant, in the event of his refusal to provide explanations, can reasonable conclusions be drawn that there is no possible explanation to the contrary and, consequently, the defendant is guilty.* On the other hand, if the arguments presented by the prosecution are of such weak probative value that they cannot withstand the objections of the other party, the benefit of the right to remain silent by the defendant cannot lead to the conclusion that this person is guilty. *The ECtHR has clarified that reasonable inferences drawn from the defendant’s conduct should not have the effect of shifting the burden of proof from the prosecution to the defence, thereby violating the principle of the presumption of innocence.*

The fundamental decision on this issue is **John Murray v. the United Kingdom**⁹⁴, where the Court accepted that drawing **reasonable inferences from the defendant’s silence** is not in itself a violation of Article 6 of the ECHR, provided that the evidence presented by the prosecution is **sufficient to require an explanation** and that the silence is not the **sole source of the conviction**. The ECtHR emphasised that such conclusions are permissible only when all the circumstances of the case justify them, and that in any case the burden of proof lies exclusively with the

91 Decision No. 14, dated 03/05/2011, of the Constitutional Court of the Republic of Albania.

92 Article 255 § 1 of the CCP provides, as one of the most important duties of the judicial police officers or agents when carrying out an arrest or detention, that of immediately informing the person whose freedom is restricted that they “*have no obligation to make a statement*”.

93 According to this provision: “*The silence of a minor during the investigation and trial procedure cannot be considered an admission of guilt.*”

94 *John Murray v. the United Kingdom*, Application No. 18731/91, ECtHR, 8 February 1996.

prosecution. This standard was further developed in the case of *Condron v. the United Kingdom*⁹⁵, where the Court clarified that the use of silence against the defendant requires an **individual analysis of its motives**. If silence stems from the advice of a lawyer or from personal circumstances that prevent the defendant from speaking (e.g. stress, health condition, distrust of the system), it cannot be interpreted as evidence of guilt.

In *Averill v. the United Kingdom*⁹⁶, the Court further reinforced this principle by stating that where the evidence of the prosecution is weak or unclear, any inference drawn from silence **risks shifting the burden of proof from the prosecution to the defence**, thereby violating the principle of the presumption of innocence. Along the same lines, in *Heaney and McGuinness v. Ireland*⁹⁷, the Court emphasised that the right to remain silent and not to incriminate oneself is "one of the most internationally recognised standards of a fair trial" and that any penalty for silence – whether direct or through inferences drawn from it – **constitutes a violation of Article 6 § 2 of the Convention**. Similarly, in *Funke v. France*, the Court held that the obligation to produce documents that could be used to prove one's own guilt conflicts with the right not to incriminate oneself, considering this to be "a fundamental right of a fair trial and of the rule of law".

This line of jurisprudence makes it clear that the **defendant's silence is not evidence in itself**, but an element that can be taken into account **only if certain strict conditions are met**:

- (i) the evidence of the accusation must be sufficient to require a logical explanation from the defendant;
- (ii) the court must verify whether the silence is not the result of any external pressure or circumstances; and
- (iii) any conclusion drawn from the silence **cannot be the sole basis for the conviction**. On the contrary, using silence as evidence of guilt or to compensate for the lack of real evidence **would constitute an unfair shift of the burden of proof**, violating the principle of the presumption of innocence and the very essence of a fair trial.

For the right to remain silent to be effective, it must not be interpreted to the detriment of the minor. **Its inclusion as a prohibition in the CCJC serves as a safeguard against any form of pressure exerted to forcefully extract a guilty plea**. Moreover, failure to inform the minor of the right to remain silent, even when the question is posed in the presence of the defence lawyer, cannot, under any circumstances, render the procedural act documenting this action valid.

5.6.2 Admission of guilt by the minor

Regarding the admission of guilt by a minor in conflict with the law, the third paragraph of Article 92 of the CCJC provides that: "**3. In the event that the minor admits guilt, the court, in any case, must ensure that this does not occur for reasons related to the age, development, and capacity of the minor to perceive and understand the fear of a possible punishment or the fear of excessive interrogation time.**"

In other words, a guilty plea is valid only if it is the result of the **free and informed will of the minor**, while any element that may affect this autonomy must lead to the invalidity of the procedural act and the inadmissibility of the evidence obtained. It should not be forgotten that, **for children, the criminal process is often a traumatic experience, where the admission of guilt is not an expression of free will and an untroubled conscience, but a reaction to fear and the desire to end the confrontation with criminal justice as soon as possible**. The pressure resulting from a prolonged stay in detention or from the psychological impact of the investigation may lead the minor to an admission of guilt that does not reflect the objective reality, thereby violating the fairness of the process.

The right of the minor to freely and conscientiously admit or not to admit guilt constitutes one of the most important guarantees of a fair process and a concretization of the principle of **non-incrimination** sanctioned in Article 32 §1

95 *Condron v. United Kingdom*, Application No. 35718/97, ECtHR, 2 May 2000.

96 *Averill v. United Kingdom*, Application No. 36408/97, ECtHR, 6 June 2000.

97 *Heaney and McGuinness v. Ireland*, Application No. 34720/97, ECtHR, 21 December 2000

of the Constitution⁹⁸, Article 6 of the ECHR, and Article 40 of the CRC.

The constitutional standard regarding due process during criminal investigation and trial requires that the prosecuting authority prove beyond reasonable doubt that the defendant committed the criminal offense attributed to them. Every defendant has the absolute right not to make any contribution during the judicial investigation or during the trial and this is an undeniable right (Decision No. 14, dated 03/05/2011, paragraph III. 12, of the CC).⁹⁹

The manner of obtaining evidence is of fundamental importance for the fair conduct of the criminal trial. **The unlawful provision of evidence and its admission by the bench cannot but imply that the trial was irregular.** No court may, without prejudice to the provision of the “due measure of justice”, rely on evidence that was obtained not only through dishonest methods but, above all, unlawfully. Under the European Convention on Human Rights, the courts are required to assess in their entirety whether the procedures relating to the manner in which evidence was obtained were fair. (*Decisions no. 67, dated 10/11/2017, paragraph 13; No. 7, dated 27/04/2005, paragraph 5; No. 95, dated 27/07/2001, paragraph 4, of the Constitutional Court*).¹⁰⁰

Article 92 § 3 of the CCJC stipulates that, in cases **where a minor pleads guilty, the court must ensure that this is done freely and knowingly, excluding any influence related to age, development, or fear of punishment or the length of the proceedings.** This provision represents a positive obligation for the judicial authorities to verify the **real will of the minor** before accepting their statement as evidence. This right is related to the principle of “**equality of arms**”, as any tacit pressure by the authorities on minors to cooperate, through promises or suggestions of a lighter sentence, constitutes a violation of Article 42§ 2¹⁰¹ of the Constitution and Article 6 of the ECHR.

In international law, this standard is directly based on Article 40 § 2 (b) (iv) of the CRC, which prohibits a child from “**being compelled to testify or to confess guilt.**” The Committee on the Rights of the Child, in its **General Comment No. 10 (2007)**, emphasizes that any confession of guilt by a child should be made only after the child has received **adequate legal and psychological assistance**, and after the child has fully understood the legal and moral consequences of the confession.¹⁰² This requirement is linked to the rehabilitative function of juvenile criminal justice, protecting the child from self-stigmatization and the long-term consequences of an unconscious confession on their social life.

The Council of Europe Guidelines on Child-Friendly Justice require that, when interrogating children, questions and procedures should be adapted to their level of development and be child-friendly. **To ensure the validity and reliability of the testimony, Member States should develop and implement standard interview protocols, which take into account the age and maturity of the child.** The court may allow the child not to testify if doing so is in accordance with their best interests and overall well-being.¹⁰³

In the case-law of the **ECtHR**, the validity of confessions has been consistently treated as part of the **right to a fair trial**. In the case of **Saunders v. the United Kingdom**, the Court explained that the right not to incriminate oneself “*includes the freedom not to make statements which spring from the defendant's conscience and which could be used to his or her detriment.*”¹⁰⁴ Any admission of guilt resulting from psychological pressure, fear of punishment, or threat of more serious consequences is contrary to Article 6 of the ECHR.

98 Article 32 § 1 of the Constitution of the Republic of Albania sanctions: “1. *No one may be obliged to testify against himself or his family or to confess his guilt.*”

99 *Guide to the jurisprudence of the Constitutional Court 1998-2023 regarding individual constitutional complaints*, op. cit., p. 269.

100 *Guide to the jurisprudence of the Constitutional Court 1998-2023 regarding individual constitutional complaints*, op. cit., p. 270.

101 Article 42 § 2 of the Constitution provides: “2. *Everyone, for the protection of his constitutional and legal rights, freedoms, and interests, or in the case of an accusation raised against him, has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law.*”

102 Committee on the Rights of the Child, *General Comment No. 10 (2007): Children's rights in juvenile justice*, UN Doc. CRC/C/GC/10, §§ 56–58.

103 Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice*, CM/Del/Dec(2010)1098/10.2, adopted on 17 November 2010, §§ 65–68, available at: <https://rm.coe.int/16804b2cf3>

104 *Saunders v. United Kingdom*, §§ 68–74.

In particular, in the case of *S.C. v. the United Kingdom*, cited above, the Court considered that for minors, any admission of guilt must be analysed, taking into account **their capacity to understand the nature of the process and the consequences of their statements**.¹⁰⁵ If the statement is the result of fear, pressure or a desire to put an end to the proceedings, **it cannot be considered a valid admission** within the meaning of Article 6 of the Convention. The Court underlined the State's obligation to provide effective legal assistance and communication conditions appropriate to the age of the minor, so that the admission of guilt is a conscious act and not the product of manipulation or procedural stress.

105 *S.C. v. United Kingdom*, §§ 68–74.

6. FINDINGS OF THE STUDY AND ANALYSIS

As stated in the introduction, this study involved criminal proceedings handles by six Prosecution Offices at the First Instance Courts of General Jurisdiction – namely Tirana, Durrës, Elbasan, Fier, Vlorë and Shkodra – and interviews with numerous detained minors who were undergoing investigation or trial. From the examination of case files and the analysis of interviews with the minors, a number of findings were identified that, in our opinion, should be addressed, as will be recommended at the conclusion of the study.

Following are **some of the main findings observed**:

1. Delay in registering proceedings following the referral of a criminal act, and failure to record the name of the minor in conflict with the law in the Criminal Offenses Notification Register concurrently with the suspected criminal offense.
2. Restriction of the freedom of a minor in conflict with the law by the Judicial Police through the act of *flagrante delicto*, and the absence of its subsequent validation by the Prosecutor and/or the court.
3. Failure to provide a letter of rights or failure to sign the letter of rights by the legal representative, lawyer, and psychologist, as well as failure to fill in the letter of rights' date and/or time.
4. Failure of the Judicial Police to document actions, as provided for by Article 48 § 3 of the CCJC, to ensure the presence of a defence lawyer.
5. Interrogation of minors in conflict with the law by Judicial Police officers without the presence of a defence lawyer or based on the “argument” that the minor does not require a defence lawyer at that stage, as well as failure to document the presence of a defence lawyer in the relevant procedural act in which they participate.
6. Interrogation of a minor in conflict with the law, arrested *in flagrante delicto* or detained, by a Judicial Police officer in violation of the norms of the Code of Criminal Procedure that assign such an action exclusively to the prosecutor.
7. Allowing statements by minors that indicate self-responsibility, while failing to carry out the mandatory procedures under the provisions of the CCP for declaring them unfit for trial.
8. Failure to ensure the participation of, or to document in the relevant minutes the presence of, a parent or psychologist during procedural actions with a minor in conflict with the law.
9. Failure to complete preliminary investigations within a reasonable time, without any objective reasons to justify the delay.
10. Lack of drafting of an Individual Assessment Report for a minor in conflict with the law.

For the purposes of this paper, we have focused only on the most significant findings, identified in at least 25% of the criminal proceedings reviewed, or in the main allegations raised by minors. Findings that do not meet these criteria have been included due to the fundamental importance of the violation they appear to reflect, with the intention that highlighting them may help prevent their occurrence in the future. Below, we analyze the observed findings, citing the proceedings in which they were identified or the detained minors who raised them.

6.1 Delay in registering the proceedings following the referral of a criminal act and failure to record the name of the minor in conflict with the law in the Criminal Offenses Notification Register concurrently with the suspected criminal offence

The prosecution office with the subject matter and territorial jurisdiction, upon receiving notification of the commission of a criminal offense and the suspected perpetrator, or when the offense and perpetrator come to its attention during the course of investigations, is obliged to register these facts in the relevant register. This obligation clearly results from the content of Article 287 § 1 of the CCP, according to which: ***“The prosecutor shall enter into the register every notice of criminal offences brought to him or received by him upon his own initiative and, simultaneously or since the moment it is found out, the name of the person to whom is attributed the criminal offence.”***

Naturally, **not every notification received by the prosecution office from various sources regarding alleged criminal facts and suspected perpetrators “deserves” to be investigated.** It may happen that the fact referred to clearly (*prima facie*) does not exist or is not provided for by law as a criminal offense (Articles 2 and 3 § 1 of the Criminal Code). In addition, it may happen that the person to whom the criminal offence is attributed has died (Article 47 § 1 of the Criminal Code), has not reached the age of criminal responsibility (Article 12 of the Criminal Code) or has been irresponsible before the criminal law at the time of the commission of the criminal act (Article 17 of the CCP). It may also happen that the criminal offence has been extinguished due to the statute of limitations of the criminal offence (Article 66 of the Criminal Code) or that an amnesty has been granted for this criminal offence by the Albanian Parliament (Article 82 § 2 (ë) of the Constitution). Finally, in criminal offences that are prosecuted upon the complaint of the victim, the victim may not file a complaint (Article 284 of the CCP) or may withdraw it (Article 285 of the CCP).

In all cases referred to in Article 290 as circumstances precluding the initiation of criminal proceedings, the competent Prosecution Office does not immediately register the alleged criminal offence in the Criminal Offenses Notification Register, in accordance with the requirements of Article 287 of the CCP. **Instead, it first conducts a preliminary verification of the existence of such circumstances, which in any case shall not exceed 15 days**, before ordering the registration of the criminal offence or refraining from initiating proceedings, pursuant to Article 291 § 1 of the CCP.

However, the 15-day deadline applies solely to the verification of the circumstances set out in Article 290 and is not relevant, nor does it apply, in cases of manifest criminal offenses (observable *ictu oculi*), committed shortly after the referral to the prosecution body, where there is no doubt about regarding the alleged perpetrators having reached the age of criminal responsibility or having committed the criminal offence under conditions of complete loss of mental capacity. In such cases, **the registration of both the criminal offence and suspected perpetrator in the Criminal Offenses Notification Register must be carried out without delay** by the prosecutor in charge of investigations.

6.1.1 The first issue relates to delays in registering the criminal offence after its referral by the Judicial Police

In the criminal proceedings under review, the provisions of point 1 of Article 287 of the CCP are, for the most part, applied correctly. In such cases, the **prosecutor** in charge of the preliminary investigation **orders the registration in the Criminal Offenses Notification Register** not only of the **criminal offence suspected to have been committed** but also of the **name of the person** allegedly responsible. **For serious criminal offences** referred by the Judicial Police, this registration **is carried out immediately upon receipt of the notification or on the following working day.** Other less serious criminal offences are registered within a time frame of 3-4 working days, which is not considered a deficiency as long as the magistrates, due also to their workload, have difficulty performing their duties within reasonable deadlines. *For the purposes of the study, the failure to record reports that do*

not exceed 10 days in the register was not considered a defect, considering that this deadline, at the unusual time that the prosecution body is going through, should be considered a reasonable deadline.

It should be noted that, **in all criminal proceedings in which the reasonable deadline for registering the criminal offense was not observed, the referral was made by the Judicial Police. In each of these cases, the Judicial Police also notified the prosecution of the name of the person to whom the criminal offense was attributed.** These referrals were, as a rule, submitted to the prosecution within the 72-hour period required by Article 293 § 1 of the CCP. However, even when this deadline was not met by the Judicial Police, the time was not taken into account for the purpose of verifying the duration for registering the criminal offense and the name of the person to whom it is attributed.

A review of the criminal case files of the six ordinary jurisdiction prosecution offices has also revealed **instances of unreasonable delays in registering the criminal offense and the suspected perpetrator, as well as failures to record the name of the person attributed to its commission, even when the identity and suspected responsibility were clear.** This includes cases involving criminal offenses where the perpetrator was arrested *in flagrante delicto* (Article 252 of the CCP), during the commission of the offense. Below, we highlight some notable cases of failure to properly implement Article 287 § 1 of the CCP.

In criminal proceeding no. 10/2023¹⁰⁶ of the Shkodra Prosecution Office, where the Judicial Police seized a firearm from the minor J.B. during a *flagrante delicto* search on 21/12/2022, it is noted that on 10/01/2023, the **prosecutor ordered the registration in the Criminal Offenses Notification Register only of the relevant offense**, even though the suspected perpetrator had already been identified in the referral submitted by the Judicial Police. A review of the entire file shows that **no order was issued to record the name of the minor in conflict with the law**, in violation of point 1 of Article 287 of the CCP, even though this is the first act that precedes any other procedural action involving the suspected perpetrator.

However, we believe that in the abovementioned case there was an omission in including in the prosecutor's file the relevant act in which the name of the suspect was also to be recorded in the register, as on 10/03/2023¹⁰⁷ the prosecutor ordered an extension of the investigation deadline pursuant to Article 324 § 1¹⁰⁸ of the CCP. According to point 2, Article 323 of the CCP: "The time limit for termination of investigations is three months, from the date that the name of the person whom the criminal offence is attributed to has been written in the register of notification of criminal offences, and six months for criminal offences provided for in letters "a" and "b" of Article 75/a of this Code." From the interpretation of the preliminary investigation period in the above provision, we conclude that its starting point is the entry in the Criminal Offenses Notification Register of the name of the person to whom the criminal offense is attributed. Therefore, the investigation period cannot be extended without first initiating this period and completing the initial 3-month term.

Fortunately, the is an isolated case, which we have highlighted due to the importance of recording the name of the person suspected of having committed a criminal offense for the proper conduct of the preliminary investigation. However, in the proceeding under review, this is not the only irregularity. Another flaw is that the criminal proceeding was registered on 10/01/2023, 19 days after the referral of the criminal act by the Judicial Police to the Prosecution Office, which t recorded under no. 1830 on 22/12/2022.

The analyzed proceeding files indicate that **the longest delay in registering the criminal offense is recorded in a file of the Tirana Prosecution Office**, which registered criminal proceedings **no. 2578/2024**, concerning the

106 Criminal proceedings **no. 10/2023, of the Shkodra Prosecution Office**, indicting the minor in conflict with the law, **J.B.**, for the criminal offense of "*Unauthorized possession and production of weapons, explosive weapons and ammunition*", as provided for by Article 278 § 4 of the Criminal Code.", p. 11.

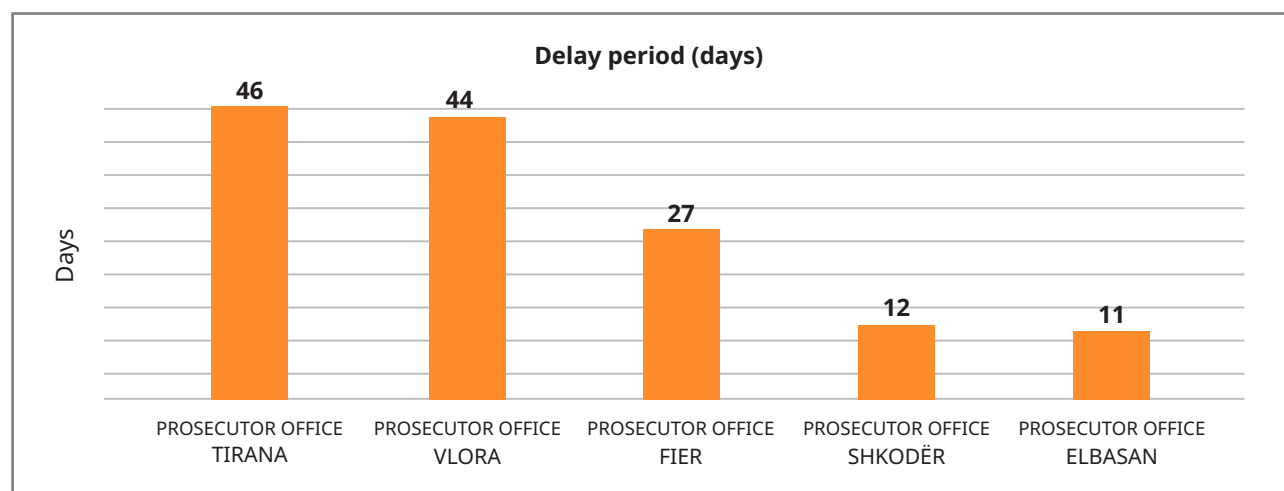
107 See pp. 16-18 of criminal proceedings **no. 10/2023 of the Shkodra Prosecution Office**.

108 According to Article 324 § 1 of the CCP: "A prosecutor may prolong the period of investigations up to three months. For the Special Prosecution Office, this time limit is up to six months."

minors A.G., T.Ç. and Xh.M., referred by the Judicial Police on 26/02/2024, only on 12/04/2024, i.e., **1 month and 16 days later**. This is followed by the **Vlora Prosecution Office**, which registered criminal proceedings **no. 796/2023**, concerning the minor F.K., on 21/07/2023, while the Judicial Police had referred it on 07/06/2023, i.e., **1 month and 14 days later**. Next, **with a delay of 27 days**, is criminal proceedings **no. 328/2024**, of the **Fier Prosecution Office**, where the registration of the criminal offense and perpetrators E.P. and R.R. in the Criminal Offenses Notification Registry was ordered on 26/02/2024, although the referral by the Judicial Police was made on 29/01/2024.

Shorter delays are observed in two criminal proceedings of the Shkodra and Elbasan Prosecution Offices. Criminal proceedings **no. 37/2023 of the Shkodra Prosecution Office**, concerning the minor in conflict with the law A.G., was registered on 17/01/2023, **12 days** after the Judicial Police referral on 04/01/2023. Criminal proceedings **no. 809/2024 of the Elbasan Prosecution Office** was registered on 02/07/2024, **11 days** after the Judicial Police referral regarding the criminal act and the minor P.C.'s alleged authorship, which was received on 20/06/2024.

The table below shows the time elapsed from the referral of the criminal offense by the Judicial Police to the Prosecution Office until the registration of the offense in the Criminal Offenses Notification Register, based on the criminal proceedings analyzed:



6.1.2 The second issue relates to the failure to concurrently record in the Criminal Offenses Notification Register the name of the person to whom the criminal offense is attributed, when the authorship is clearly evidenced in Judicial Police referrals

The most problematic criminal proceeding is that of the **Vlora Prosecution Office, no. 796/2023**, concerning the minor in conflict with the law, F.K., whose name was registered in the Criminal Offenses Notification Register on 14/10/2024, **1 year and 2 months** after the registration of the criminal offense (21/07/2023). In our assessment, such a deadline defies every international and Albanian standard, which require criminal proceedings against minors in conflict with the law to be conducted as quickly as possible and, even with priority over other cases, a principle that has been clearly ignored in this case.

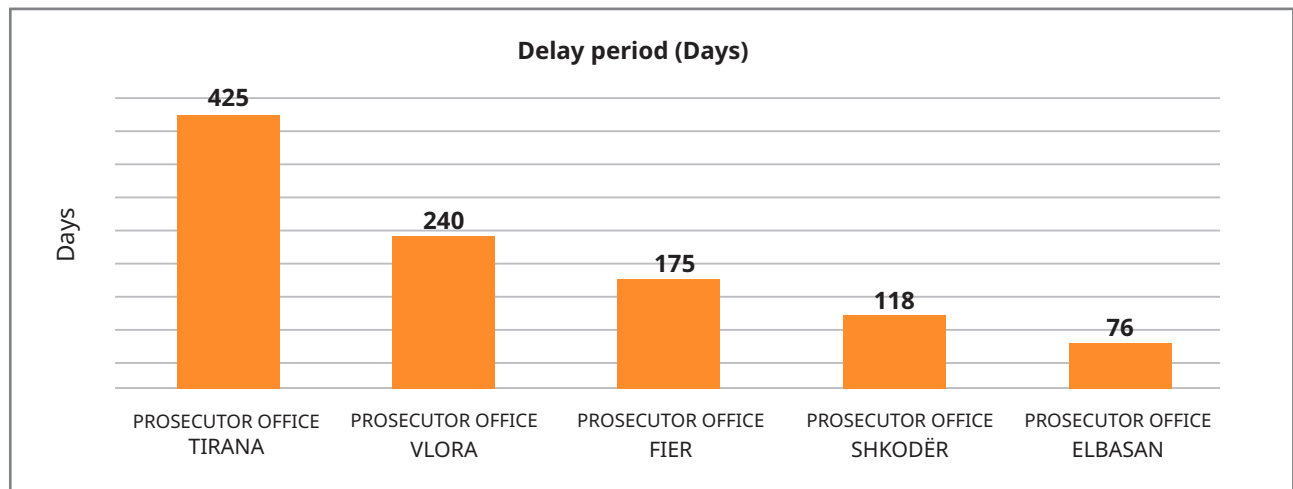
The next most significant case, although involving a shorter duration, is criminal proceedings **no. 446/2023** of the **Shkodra Prosecution Office**, where **the name of the minor, A.G.**, in relation to two criminal offenses registered respectively on 08/05/2023 (Article 284 of the Criminal Code) and on 30/05/2023 (Article 291 of the Criminal Code) was registered on 08/01/2024, i.e., **8 months** after the registration of the first criminal offense and **more than 7 months** after the registration of the second offense.

Next comes criminal proceedings **no. 2578/2024, of the Tirana Prosecution Office**, where the time elapsed from the registration of the criminal offense (12/04/2024) to the registration of the names of the alleged perpetrators, **A.G., T.Ç. and Xh.M.**, was **5 months and 25 days**.

The fourth case is that of criminal proceedings **no. 44/2023 of the Shkodra Prosecution Office**, where the name of the person under investigation, **G.N.**, was registered on 15/05/2024, i.e., **3 months and 28 days** after the registration of the criminal offense on 17/01/2024.

The last case is that of criminal proceedings **no. 37/2023**, of the **Shkodra Prosecution Office**, where the name of the minor in conflict with the law, **A.G.**, was registered on 03/04/2023, i.e., **2 months and 16 days** after the registration of the criminal offense on 17/01/2024.

Findings concerning the delay between the registration of the criminal offense and the registration of the minor’s name in the Criminal Offenses Notification Register:



6.2 Restriction of the freedom of a minor in conflict with the law by the Judicial Police through the act of *flagrante delicto*, and the absence of its subsequent validation by the Prosecutor and/or the court

In five of the investigation files reviewed, it was observed that minors in conflict with the law were apprehended *in flagrante delicto* by the Judicial Police. The state of flagrancy is defined in Article 252 of the CCP with this definition: “A person shall be considered in a state of *flagrante delicto* when caught in the act of committing a criminal offense or who immediately after committing the offense is chased by the judicial police, the injured person or other persons or who is caught with items and evidence from which it appears that he has committed the criminal offense.”

In the cases reviewed, it is noted that in four of them, minors in conflict with the law were caught in the act of committing the criminal offense: (i) **K.B.**, carrying a cold weapon (iron handle) – criminal proceedings **no. 627/2023 of the Shkodra Prosecution Office**; (ii) **J.B.**, carrying a firearm in his apartment – criminal proceedings **no. 10/2023 of the Shkodra Prosecution Office**; (iii) **K.Ç.**, driving a vehicle without a license - criminal proceedings **no. 1123/2023 of the Fier Prosecution Office**, and (iv) **J.D.**, driving a vehicle without a license - criminal proceedings **no. 146/2025 of the Fier Prosecution Office**. Meanwhile, the minor R.V.’s freedom was restricted by the Judicial Police immediately after committing the criminal offense of “*Murder against two or more persons*”, remaining in the attempt, following an uninterrupted pursuit - criminal proceedings no. 6711/2024 of the Tirana Prosecution Office.

In all the cases mentioned above, the status of *flagrante delicto* of minors in conflict with the law is not in question, but rather the obligation or discretion of the Judicial Police Officers (JPO) to carry out the arrest in flagrante, within the meaning of Article 251 of the CCP, which provides that:

1. *Judicial police officers and agents shall arrest on a mandatory basis whoever is caught in flagrante delicto committing or attempting to commit a crime with intent, punishable by law by not less than five years imprisonment in the maximum term.*

2. *Judicial police officers and agents shall be **entitled to arrest whoever is caught in flagrante delicto committing or attempting to commit a crime with intent, punishable by law not less than two years imprisonment as a maximum term or committing a criminal offence by negligence punishable by law not less than ten years imprisonment as a maximum term.***
3. ***In case of necessity, due to the importance of the fact or danger posed by the offender, substantiated by a separate document, judicial police officers and agents shall be entitled to arrest anyone in flagrante delicto, even if the requirements under paragraph 2 are not met.***
4. *In the cases provided for in paragraph 1, any person is authorized to carry out the arrest in flagrante delicto for crimes subject to prosecution ex officio. The person who has carried out the arrest shall immediately deliver the arrested person to the judicial police, who shall keep the delivery minutes and provide a copy thereof."*

Before analyzing the circumstances surrounding the arrests of minors, it should be clarified that the CCP does not provide for being caught in flagrante delicto as a procedural action that, in itself, authorizes the Judicial Police to temporarily restrict a person's freedom. The only act by which the Judicial Police may impose such a restriction of freedom is the "arrest in flagrante", as regulated by Article 251 of the CCP. Accordingly, *a person may be arrested after being caught in flagrante delicto, since flagrante constitutes a factual state, whereas arrest is the procedural action through which the Judicial Police terminates the state of illegality* and which is documented in a specific official report. Consequently, regardless of the terminology used by the Judicial Police to describe the act restricting the freedom of a person found in flagrante conditions while committing a criminal offense, that act, in substance, constitutes an arrest in flagrante.

Let us continue with an analysis of the circumstances of the arrests of each of the aforementioned minors:

- (i) The minor **K.B.** was suspected of having committed the criminal offense of carrying a cold weapon in his vehicle, as provided for by Article 279 § 2¹⁰⁹ of the Criminal Code, a crime which is punishable by 1 to 5 years. The content of the provision indicates that this is a crime committed only intentionally (possession of a cold weapon) and it is punishable by a maximum of 5 years. Therefore, **in application of the provisions of Article 251 § 1 of the CCP the judicial police officers and agents were obliged to arrest the minor K.B. in flagrante delicto.**
- (ii) The minor **J.B.**, was suspected of carrying a combat weapon in his apartment, a criminal offense provided for by Article 278 § 4¹¹⁰ of the Criminal Code, punishable by 1 to 3 years of imprisonment. Again, this crime is punishable by a maximum of 3 years of imprisonment. Under these conditions, **the judicial police officers and agents exercised the discretionary power granted them by point 2 of Article 251 of the CCP to arrest the minor J.B. in flagrante delicto.** This also allows them to arrest persons who intentionally commit crimes punishable by imprisonment for a maximum of not less than two years.
- (iii) Meanwhile, minors **K.Ç.** and **J.D.**, drove their vehicles without a permit, a fact that is foreseen as a crime committed intentionally and punished by Article 291¹¹¹ of the Criminal Code with a maximum of 3 years of imprisonment. In this case too, **the judicial police officers and agents exercised the discretion that stems from Article 251 § 2 of the CCP to arrest them in flagrante delicto.**
- (iv) Finally, in the case concerning the minor **R.V.**, he attempted to kill three other minors¹¹²; the criminal act therefore constitutes a serious intentional offence, punishable by up to life imprisonment. Accordingly, in this case as well, **the judicial police officers and agents were obliged to carry out the arrest in flagrante delicto of the minor K.B., pursuant to point 1 of Article 251 of the CCP.**

An examination of the case files shows that, with regard to minors K.B., J.B., K.Ç and J.D., the respective prosecutors considered that they should not be subjected to any personal security measures of a coercive nature (Article 232

109 Article 279 § 2 of the Criminal Code provides: "**Possession, purchase or sale in vehicles or any other motorized means, in public places or places open to the public, of cold weapons** such as swords, bayonets, knives and other means prepared and intended specifically for assaulting people or for self-defence, without the permit of the competent bodies, shall be sentenced from one to five years of imprisonment."

110 Article 274 § 4 of the Criminal Code has the following content: "**Keeping weapons in the home, without the permission of the competent state bodies, is punishable by imprisonment from one to three years.**"

111 Article 291 § 1 of the Criminal Code provides: "**Driving vehicles or other motorized vehicles while intoxicated, under the influence of narcotics or without the relevant proof of ability is punishable by imprisonment from ten days to three years.**"

112 Article 79(dh) of the Criminal Code provides: "**Intentional murder committed: ... dh) against two or more persons; ... is punishable by imprisonment of not less than twenty years or by life imprisonment.**"

of the CCP and Article 82 of the CCJC). While they deemed it appropriate for the minors to be investigated while at liberty, in accordance with the legal requirement “*not to interrupt the educational, upbringing, and normal development processes of a minor*” (point 2 of Article 81 of the CCJC), they failed to implement the requirement set out in point 2 of Article 85 of the CCJC, which provides that: “**2. When not ordering immediate release, the prosecutor, without delay, but in any case within 48 hours of the arrest or detention, requests their validation in the competent court.**”

It should be noted that, in the context of security measures, the prosecutor exercises only a “negative” power, i.e., the prosecutor may declare an arrest or detention carried out by the Judicial Police to be unlawful, in accordance with Article 257¹¹³ of the Code of Criminal Procedure, only if the hypotheses provided for in its content are met, specifically related to:

- a) a mistake regarding the identity of the person who should have been arrested/detained;
- b) the lack of legal conditions to carry out an arrest/detention; and
- c) exceeding the 48-hour deadline to request the court to validate as lawful the arrest *in flagrante delicto* or detention.

In the abovementioned cases, no prosecutorial act was issued ordering the immediate release of minors for any of the reasons mentioned in the preceding paragraph. By failing to act according to the provisions of Article 257 of the CCP, in conjunction with Article 85, paragraph 2¹¹⁴ of the CCJC, **the court did not verify the lawfulness of the temporary restriction of the minors’ liberty – a necessary action and constitutional obligation sanctioned in Article 27, paragraph 2, subparagraph “c”, and Article 28, paragraph 2 of the Constitution.** In absence of this required act, it remains unclear how long the minors were subjected to this security measure, and the legality of the arrest *in flagrante delicto* carried out by the Judicial Police was not examined – an assessment essential to ensure respect for the constitutional right to liberty and security.

Whereas, in the case of the minor **R.V.**, although he was arrested once *in flagrante* on 23/09/2021 at 15:00, he was arrested again *in flagrante* at 17:30 of the same day¹¹⁵. As this constitutes an act that restricts freedom, the “date and time of arrest *in flagrante*” also mark the moment when the individual’s freedom was effectively restricted. Accordingly, from this moment, the 48-hour deadline within which a request must be submitted to the court for the legal validation of the arrest *in flagrante* should be calculated.

The right to liberty and security of any person, and even more so of a minor in conflict with the law, is one of the most important fundamental human rights, and **any measure by the Judicial Police and the prosecutor restricting, even temporarily, this freedom must be verified by the court, in accordance with the Conventional (Article 5 of the ECHR) and constitutional obligations.** Negligent attitudes in this regard may contribute to create a climate of lawlessness that is incompatible with the principles and constitutional norms of the rule of law.

6.3 Failure to provide a letter of rights or failure to sign the letter of rights by the legal representative, lawyer, and psychologist, as well as failure to fill in the letter of rights’ date and/or time

The examination of criminal proceedings case files analyzed for the purpose of this study, indicates that, **generally speaking, the proceeding bodies respect the obligation established by Articles 140(1), 256, 296(1) and 308(2)-d of the CCP to provide the minor in conflict with the law with the letter of rights** before they are questioned

113 Article 257 of the CCP provides: “1. *When it clearly appears that the arrest or detention was performed because of a mistake concerning a person’s identity or in infringement of the law requirements or when the arrest or detention order have already lost their effect due to expiry of the time limit for the request of court validation, the prosecutor shall order, by reasoned decision, that the arrested or detained person be immediately released. In such cases, the release shall also be ordered by the judicial police officer, who immediately notifies the prosecutor of the place where the arrest or detention took place.*”

114 Article 85, point 2 of the CCJC provides: “2. **When not ordering immediate release, the prosecutor, without delay, but in any case within 48 hours of the arrest or detention, requests their validation in the competent court.**”

115 See p. 74 & 76 of criminal proceedings no. 157/2021, of the Tirana Prosecution Office.

or immediately after they have been arrested/detained, or before the execution of the security measure “*Arrest in prison*”, in absentia, pursuant to Article 73(3) of the CCP in conjunction with Articles 246(1) and 255(3) of the CCP.

In most cases, the written act documenting such rights is signed, in addition to the minor under investigation, by his defence counsel, the legal representative and a psychologist. In most cases, the letter is also signed by the Judicial Police Officer or the prosecutor who questioned the minor (according to Articles 308 and 315 § (c) of the CCP). We consider that the signing of the letter of rights of the minor in conflict with the law by the representative of the proceeding body is necessary, though not strictly mandatory. By signing, the specific person (part of the proceeding body) responsible for implementing this legal obligation is identified, and only through such identification can that official potentially be held accountable for any failure to implement the law.

This provides an opportunity to highlight that the **JPOs who carry out arrests *in flagrante* or detentions of minors in conflict with the law on their own initiative almost never document in the minutes their actions** – whether arrest or taking statements – **the delivery of the letter of rights, the minor’s prior acknowledgment of these rights, or the clarification, through questioning, that the minor has understood them.** Effectively informing the minor in conflict with the law of their procedural rights is a crucial responsibility of the Judicial Police, as argued earlier in this study, yet it is not treated with the necessary seriousness. Unlike the JPOs, prosecutors, when questioning minors in conflict with the law, always ensure beforehand that the minors have been familiarized with the letter of rights and have understood them, a model that the JPOs should likely follow through clear instructions and orders.

Returning to the importance of the letter of rights, it should be noted that the research of criminal case files from six Prosecution Offices at the Courts of First Instance of General Jurisdiction has identified, *in primis*, good examples¹¹⁶ regarding the implementation of the procedure for granting the letter of rights, particularly in the **Prosecution Office of Elbasan**. The investigative files consulted for this study indicate that the procedure of informing minors in conflict with the law of their letter of rights was strictly observed prior to taking statements by the Judicial Police or questioning, following communication of the accusation by the prosecutor. **The letter of rights was duly signed by all the requested parties** (the minor, the legal representative, the defence attorney, the psychologist, and the JPO). **The date of delivery to the minor was recorded, and the minors confirmed, in the respective minutes, that they had received the letter of rights and acknowledged the rights described therein.**

Although it must be acknowledged that the Judicial Police and the prosecution make distinct efforts to provide the letter of rights to minors in conflict with the law, it remains evident that, **in most cases, the document does not contain the date and/or time of its delivery to the minor, or it is not signed by all persons required by law to acknowledge it.** It should be clarified that the lack of signatures does not concern the minor in conflict with the law, who, in every case verified in the investigative files has signed it, but rather the defence attorney, the legal representative, and the psychologist. Below are some instances of failure to meet the legal requirements for delivering the letter of rights to a minor in conflict with the law.

From the review of all files for the purposes of this study, it was found that **the date on which the letter of rights** was made available to the minor in conflict with the law **was recorded in only seven** out of the twenty-five proceedings analyzed. In addition to the **three cases from the Elbasan Prosecution Office**, we note **two cases from the Shkodra Prosecution Office** (*criminal proceedings no. 44/2023*¹¹⁷ and *criminal proceedings no. 627/2023*¹¹⁸),

116 Criminal proceedings of the **Elbasan Prosecution Office: No. 166/1-/2023**, concerning a minor in conflict with the law, M.C. (16 years old) accused of the criminal offense of “Domestic violence”, as provided for by Article 130(a)-4 of the Criminal Code; **No. 809/2023**, concerning a minor in conflict with the law, P.C. (16 years old), accused of the criminal offense of “Theft”, as provided for by Article 134(1) of the Criminal Code, and **No. 1227/2023**, concerning a minor in conflict with the law, F.Z. (15 years old), accused of committing the criminal offense of “Domestic violence”, committed twice, as provided for by Articles 130/a(1) and 130/a(3) of the Criminal Code.

117 **Criminal proceedings no. 44/2023 of the Shkodra Prosecution Office**, against a minor in conflict with the law, **G.N.** (16 years old), accused of the criminal offense of “*Providing false information to public order bodies*”, as provided for by Article 272 of the Criminal Code.

118 **Criminal proceedings no. 627/2023 of the Shkodra Prosecution Office**, against a minor in conflict with the law, **K.B.**

one case from the Fier Prosecution Office (criminal proceedings no. 328/2024¹¹⁹) and one case from the Vlora Prosecution Office (criminal proceedings no. 14/2024)¹²⁰.

Below is a list of criminal proceedings where the letter of rights was not signed by, as the case may be, the parent (legal representative), the defence attorney (lawyer), and the psychologist.

a) In the following criminal proceedings, it was observed that the letter of rights concerning the minor in conflict with the law was not made known to either the parent, the lawyer or the psychologist:

- (i) criminal proceedings no. 331/2024¹²¹ of the Tirana Prosecution Office;
- (ii) criminal proceedings no. 44/2023 of the Shkodra Prosecution Office;
- (iii) criminal proceedings no. 146/2025¹²² of the Fier Prosecution Office;
- (iv) criminal proceedings no. 836/2024¹²³ of the Vlora Prosecution Office; and
- (v) criminal proceedings no. 204/2019¹²⁴ of the Durrës Prosecution Office (letter of rights provided to the minor L.L.).

The above constitutes the most important case of violation of the rights of minors in conflict with the law to have legal and psychological assistance throughout the criminal proceedings, as an essential part of their right to defence, as required by Article 35 of the CCP and Article 19 § 3 (a) of the CCJC. A minor, without the specialized legal assistance of a counsel to understand the nature and importance of the rights set out in the relevant document, the emotional and moral support of a parent or trusted person to maintain self-esteem and the necessary emotional balance, and the psychological support to prevent stigmatization and to cope psychologically with the tension created by confronting the criminal proceeding authorities, finds it almost impossible to successfully cope with their questioning or any other procedural action where their presence is required.

b) In the following cases, the simultaneous absence of both the parent of a minor in conflict with the law and the psychologist was observed:

- (i) criminal proceedings no. 331/2024 of the Tirana Prosecution Office;
- (ii) criminal proceedings no. 627/2023 of the Shkodra Prosecution Office;
- (iii) criminal proceedings no. 338/2023¹²⁵ of the Shkodra Prosecution Office; and
- (iv) criminal proceedings no. 204/2019 of the Durrës Prosecution Office (regarding the minor in conflict with the law, L.M.)

(16 years old), accused of the criminal offense of "Unauthorized possession of cold weapons", as provided for by Article 279(2) of the Criminal Code.

119 **Criminal proceedings no. 328/2024 of the Fier Prosecution Office**, concerning minors in conflict with the law, **E.P.** and **R.R.** (both 15 years old), accused of the criminal offense of "Theft", in collaboration, as provided for by Article 134(2) of the Criminal Code.

120 **Criminal proceedings no. 14/2024 of the Vlora Prosecution Office**, concerning the minors in conflict with the law, **A.H. (15 years old)**, **P.K. (16 years old)**, and **K.K. (16 years old)**, accused of the criminal offense of "Theft", in collaboration, as provided for by Article 134(2) of the Criminal Code.

121 **Criminal proceedings no. 331/2024 of the Tirana Prosecution Office**, concerning the minor **S.K.** (16 years old), accused of having committed, in collaboration with the adult **G.K.**, the crime of "Trafficking in narcotics", as provided for by Article 283/a(2) of the Criminal Code, in the form of importing from the USA.

122 **Criminal proceedings no. 146/2025 of the Fier Prosecution Office**, against a minor in conflict with the law, **J.D.** (16 years old), investigated for the criminal offense of "Driving vehicles inappropriately", as provided for by Article 291 of the Criminal Code.

123 **Criminal proceedings no. 836/2024 of the Vlora Prosecution Office**, against a minor in conflict with the law, **I.H.** (16 years old), investigated for the criminal offense of "Intentional serious wounding under the conditions of strong psychic distress", as provided for by article 88/a of the Criminal Code.

124 **Criminal proceedings no. 204/2019 of the Durrës Prosecution Office**, in charge of minors in conflict with the law: **L.L., L.M., F.M., E.M., K.M., K.K., E.H. and E.K.**, accused of committing the criminal offense of "Sexual or homosexual relations with a minor" who has not reached the age of fourteen, committed in collaboration and more than once, as provided for by Article 100(2) of the Criminal Code.

125 **Criminal proceedings no. 338/2023 of the Shkodra Prosecution Office**, against a minor in conflict with the law, **A.H.** (16 years old), accused of the criminal offense of "Serious intentional injury", as provided for by Article 88(1) of the Criminal Code.

In these criminal proceedings as well, **a violation of the rights of minors in conflict with the law is evident in terms of psychological and emotional support**, which is essential for minors, particularly during questioning in preliminary investigation, but also during other actions in which they are required to participate.

- c) In criminal proceedings no. 1123/2023¹²⁶ of the Fier Prosecution Office, the minor in conflict with the law **was not provided with a lawyer and psychologist during the introduction to the letter of rights**.

In addition, the minor was denied to qualified professional legal assistance and the necessary psychological support from specialists in the field.

- d) In criminal proceedings no. 796/2023¹²⁷ of the Vlora Prosecution Office, the letter of rights was given to the minor in conflict with the law **in the absence of both a parent and a lawyer**.

In this case, the minor was not informed of his procedural rights or the criminal proceedings in general, due to the absence of the legal counsel. Furthermore, the minor was deprived of emotional and moral support due to the absence of a legal representative (parent/guardian/trustee).

- e) **In two proceedings, the letter of rights was not made known to the psychologist** (*criminal proceedings no. 3374/2019*¹²⁸ of the Tirana Prosecution Office and *criminal proceedings no. 446/2023*¹²⁹ of the Shkodra Prosecution Office),

In the absence of a psychologist, the minor in conflict with the law was left to confront the proceeding authorities without the necessary psychological support.

- f) *In criminal proceedings no. 6711/2021*¹³⁰ and *no. 2578/2024*¹³¹ of the Tirana Prosecution Office, both **the parent and lawyer were not called to be present** during the delivery of the letter of rights to the minors in conflict with the law.

This violation also infringed upon the minor's right to protection, since, in order for to achieve the level of safeguarding required by the CCJC, legal and emotional assistance must be provided simultaneously.

The results of the above research are presented in the table below, showing data analyzed from the criminal case files of several prosecution offices regarding the **non-participation of the parent/trustee, the defence attorney, and psychologist at the time the letter of rights was delivered to minors in conflict with the law**. The following symbols indicate participation (☑) or non-participation (✗).

126 **Criminal proceedings no. 1123/2023 of the Fier Prosecution Office**, against a minor in conflict with the law, **K.Ç.** (15 years old), investigated for committing the criminal offense of "*Driving a vehicle inappropriately*", as provided for by Article 291 of the Criminal Code.

127 **Criminal proceedings no. 796//2023 of the Vlora Prosecution Office**, against a minor in conflict with the law, **F.K.** (17 years old), accused of the criminal offense of "*Unauthorized production, possession, purchase or sale of cold weapons*", as provided for by Article 279(2) of the Criminal Code.

128 **Criminal proceedings no. 3374/2019 of the Tirana Prosecution Office**, against a minor in conflict with the law, **E.M.** (15 years old), accused of the criminal offense of "*Robbery*", as provided for by Article 139 of the Criminal Code.

129 **Criminal proceedings no. 446/2023 of the Shkodra Prosecution Office**, against a minor in conflict with the law, **A.K.** (16 years old), accused of the criminal offenses of "*Cultivation of narcotic plants*" and "*Driving vehicles inappropriately*", as provided for by Articles 284 and 291 of the Criminal Code.

130 **Criminal proceedings no. 6711/2021 of the Tirana Prosecution Office**, against a minor in conflict with the law, **R.V.** (16 years old), accused of the criminal offense of "*Murder committed under other qualifying circumstances*", against two or more persons, remaining in attempt, as provided for by Articles 79(dh) and 22 of the Criminal Code.

131 **Criminal proceedings no. 2578/2024 of the Tirana Prosecution Office**, against minors in conflict with the law, **A.G., T.Ç. and Xh.M.**, accused of committing the criminal offense of "*Forcing through blackmail or violence to give out the property*", committed in collaboration, as provided for by Article 109/b-1 of the Criminal Code.

No.	Prosecution office	Proceeding no.	Minor (age)	Criminal offence and article of the CC	Parent/ Legal representative	Defence lawyer	Psychologist
1	Tirana	331/2024	S.K.	Trafficking in narcotics (No. 283/a § 2)	✗	✗	✗
2	Shkodër	44/2023	G.N.	False notification to public order bodies (No. 272)	✗	✗	✗
3	Fier	146/2025	J.D.	Driving the vehicle inappropriately (No. 291)	✗	✗	✗
4	Vlora	836/2024	I.H.	Intentional serious injury (No. 88/a)	✗	✗	✗
5	Durrës	204/2019	L . L . , L . M . , F . M . , E . M . , K . M . , K . K . , E . H . , E.K.	Sexual relations with minors <14 (No. 100 § 2)	✗	✗	✗
6	Shkodër	627/2023	K.B.	Unauthorized possession of cold weapons (No. 279 § 2)	✗	<input checked="" type="checkbox"/>	✗
7	Shkodër	338/2023	A.H.	Intentional serious injury (No. 88 § 1)	✗	<input checked="" type="checkbox"/>	✗
8	Durrës	204/2019	L.M.	Sexual relations with minors (No. 100 § 2)	✗	<input checked="" type="checkbox"/>	✗
9	Fier	1123/2023	K.Ç.	Driving the vehicle inappropriately (No. 291)	<input checked="" type="checkbox"/>	✗	✗
10	Vlorë	796/2023	F.K.	Production/ possession of cold weapons (No. 279 § 2)	✗	✗	<input checked="" type="checkbox"/>
11	Tiranë	3374/2019	E.M.	Robbery (No. 139)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	✗
12	Shkodër	446/2023	A.K.	Cultivation of narcotic plants and driving the vehicle inappropriately (No. 284 & 291)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	✗
13	Tiranë	6711/2021	R.V.	Murder under qualifying circumstances, remained in attempt (No. 79(dh) & 22)	✗	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
14	Tiranë	2578/2024	A . G . , T . Ç . , Xh.M.	Forcing through blackmail or violence to give out the property (No. 109/b § 1)	<input checked="" type="checkbox"/>	✗	<input checked="" type="checkbox"/>

Analysis of the results:

- In 5 cases, all three figures were absent at the same time: the legal representative, the defence lawyer, and the psychologist;
- In most cases, two of the three actors were absent;
- The psychologist was absent most frequently, in 11 out of the 14 cases analyzed, followed by the parent (legal representative) in 10 cases, and the lawyer in 8 cases.

In light of observations made above, and considering what has been discussed earlier in this paper regarding the importance of informing the minor in conflict with the law of their **procedural rights** – which under Article 34/a of the CCP the legislator requires to be documented in writing and handed over to the persons under investigation – **we must once again emphasize the necessity of explaining these rights through legal professionals, after establishing the most appropriate emotional and psychological environment.** A minor’s full understanding of their rights cannot be complete if the letter of rights is not examined in its entirety by all the “supporters” of the minor who is facing criminal justice, meaning that the participation of each actor: the parent, the defence attorney, and the psychologist is essential. The contribution of these actors is irreplaceable, as their separate roles, although distinct, are complementary to one another.

We may have dwelled at long on the importance of the letter of rights, but the data obtained **from the interview conducted for this study at the Kavajë Juvenile Institute on 08/04/2025** were both unexpected and surprising. **None of the ten detained minors** – who were under investigation or trial for serious criminal offenses in various first-instance courts or in the Court of Appeal of General Jurisdiction – **reported that their procedural rights had been explained to them immediately after being detained or arrested in flagrante delicto. Only one minor, S.S.** (investigated by the Tirana Prosecution Office for the criminal offense of “*Robbery*” committed in collaboration), **stated that the letter of rights had been made known to him prior to taking his statement.** When asked about their signature on the letter of rights, the minors did not deny having signed it; however, they indicated that it had been provided to them only after they were questioned – that is, when the advisory and guiding function of these rights had been exhausted.

Even if this information is not entirely accurate, it serves as a wake-up call for the prosecuting authorities to abandon the improper practices of failing to implement the new procedures recognized by the Code of Criminal Procedure since the comprehensive reform of 2017 and the adoption of the CCJC, concerning the strengthening of the right to defence of persons under investigation in general, and of minors in conflict with criminal justice in particular. **In giving proper importance to the process of informing minors in conflict with the law of their rights, defence counsels (whether elected or ex-officio) and psychologists must also play a role, as any tolerance on their part leads to disrespect for the right to protection of the minor.** At this point, **the role of the parents is comparatively smaller**, as they are generally not legally knowledgeable and must themselves be informed, **while also coping with the trauma** caused by the suspected criminal actions of their children, which makes them feel **ashamed and stigmatized** in the eyes of the officials of the proceeding bodies when confronting them in accompanying the minor.

6.4 Failure of the Judicial Police to document the actions as provided for by Article 48 § 3 of the CCJC to ensure the presence of a defence lawyer

Earlier in this study, we argued for the fundamental importance of the right to a lawyer for minors in conflict with the law, as well as the positive obligation imposed on the state to guarantee this right, arising from international commitments (the UN International Covenant on Civil and Political Rights (1966), the ECHR (1950), etc.) and domestic legislation (the Constitution, the Code of Criminal Procedure, and the CCJC). However, **before the right to a lawyer can be ensured in substance, it must be preceded by a proper procedure that guarantees the presence of a lawyer at every procedural action in which the minor is requested to participate.** The law is quite clear about the necessity of the presence of a lawyer in every procedural action where the minor participates – point 4 of Article

48¹³² of the CCJC – while the sanction provided for in case of failure to fulfil this condition is the invalidity of the act, as stipulated in point 5 of Article 48¹³³ of the CCJC.

The importance of the right to protection for a minor in conflict with the law, as well as the need to guarantee the minor’s best interests in all cases, requires that the minor’s legal representative, as a general rule, also consult with the minor when choosing a defence lawyer. Although this requirement is not explicitly stated in Article 48 § 1¹³⁴ of the CCJC, the right granted to the minor’s representative to choose the defence lawyer “**independently**” leads to the conclusion that this situation should be regarded as an exception to the general rule. According to that rule, **the process of selecting the defence lawyer for a minor by the legal representative should be carried out in cooperation with the minor.**

In any case in which a minor in conflict with the law is without a defence lawyer or has not chosen one, the proceeding body is under the obligation to appoint a defence lawyer ex officio (point 2 of Article 48 of the CCJC). The defence lawyer must be trained in providing legal services and legal aid to minors in conflict with the law.

Given the constitutional importance of the entire activity carried out by the proceeding body in providing legal aid to minors in conflict with the law, **point 3 of Article 48¹³⁵ of the CCJC requires this procedure to be documented, keeping minutes on the following:**

- (i) *the request of the minor to be assigned a defence lawyer by the proceeding body;*
- (ii) *the minor’s notification of the assigned defence lawyer;*
- (iii) *the minor’s consent to the assigned defence lawyer; and*
- (iv) *in the absence of such consent by the minor, the consent of the minor’s legal representative.*

The examination of all criminal case files included in the research did not reveal the existence of any procedural act (minutes) documenting the appointment of a defence lawyer by the proceeding body in coordination with the minor and/or the minor’s legal representative or trusted person. It is necessary to emphasize that this requirement constitutes a binding legal obligation; accordingly, appropriate measures must be adopted to ensure its effective implementation in the practice of the procedural authorities when appointing a defence lawyer ex-officio.

6.5 Interrogation of minors in conflict with the law by Judicial Police officers without the presence of a defence lawyer or based on the “argument” that the minor does not require a defence lawyer at this stage, as well as failure to document the presence of the defence lawyer in the relevant procedural act in which they participate

This study extensively argues for the necessity of the presence of a defence lawyer throughout the entire criminal proceedings against a minor in conflict with the law, that is, in every procedural action where the minor participates. Although it must be acknowledged that, during preliminary investigations the procedural authorities generally take care to **ensure the presence of a defence lawyer, there are still instances in which investigative actions are carried out in their absence.** Such instances constitute a serious procedural violation, as **procedural acts drafted in the absence of defence lawyers are deemed invalid.**

132 According to Article 248 § 4 of the CCJC: “**4. In any case, the participation of the defence counsel is mandatory.**”

133 According to Point 5 of Article 248 of the CCJC: “*Statements of the suspected minor, made without the presence of the defence lawyer, cannot be used as evidence.*”

134 According to this provision: “**1. The legal representative of the minor has the right to independently select and appoint a defence lawyer, taking into account the best interests of the minor.**”

135 Article 48 § 3 of the CCJC provides: “**3. The request for the appointment of a defence lawyer, informing the minor and taking the minor’s consent and, in the absence of such consent, that of the minor’s legal or procedural representative, shall be recorded in a separate record. As appropriate, the record shall be signed by the minor or the minor’s legal/procedural representative and the defence lawyer.**”

Below, are referred three cases of violation of the right to defence of minors in conflict with the law. Two cases¹³⁶ concern **JPOs taking statements from minors in conflict with the law in the absence of a defence lawyer**, even though they were suspected of committing criminal offenses. While the third case¹³⁷ concerns the **absence of a defence lawyer in the process of recognition of a minor**, in violation of the provisions of points 3 and 4 of Article 171 of the CCP, which respectively provide for the mandatory presence of a defence lawyer and the subsequent sanction in the event of such violation – the invalidity of the recognition.

Another significant finding – fortunately not widespread, as it was identified only in two criminal proceedings¹³⁸ conducted by the Shkodra Prosecution Office – is nevertheless worth highlighting due to the serious implications it carries for the violation of the right to defence of a minor in conflict with the law. It concerns the **acceptance of taking statements from the JPOs, according to Article 296 § 1 of the CCP and Article 76 of the CCJC, in the absence of a defence lawyer, justified on the ground that the minor did not request a defence lawyer.**

Although faced with a clear normative situation, the JPOs consented to commit a flagrant violation of the law by taking statements from a minor in the absence of the defence lawyer, based on the “will” of the minor. The minor, as argued earlier, lacks the necessary maturity and required skills to understand the nature and importance of the presence of a defence lawyer, particularly during interrogation by the Judicial Police; therefore the minor is unable to decide independently whether or not to be assisted by a lawyer.

In addition, **the presence of a defence lawyer during interrogation and other procedural actions, in which the minor is required to participate, is an absolute legal obligation** (Article 48 § 4 of the CCJC) and no subject involved in the procedure can waive its strict enforcement. Otherwise, a biased procedural act will be produced rendering it useless, as provided for in point 5 of Article 48 of the CCJC.

Minors detained at the Kavajë Juvenile Institution also alleged that they were questioned without the presence of a defence lawyer. The minor **F.M.**, accused by the **Tirana Prosecution Office** of committing the criminal offense of “Robbery”, remaining in the attempt, claimed that he was not assisted by a defence lawyer during the interrogation by the Judicial Police. Minors **O.Z.** (accused by the **Tirana Prosecution Office** of committing the criminal offense of “Robbery”, in collaboration) and **P.K.** (accused by the **Vlora Prosecution Office** of committing the criminal offense of “Intentional murder”, remaining in the attempt) also claimed to have given their statements to the Judicial Police without the presence of a defence lawyer.

Consequently, such a practice should be avoided, and it is therefore the initial duty of prosecutors to declare such statements inadmissible when submitted by the Judicial Police. In addition, it is also a duty of judges (preliminary investigation judges, preliminary hearing judges, and trial judges) to declare at any time their inadmissibility and exclude them from evidentiary material (trial files) submitted by the prosecutor. In the meantime, JPOs must undergo ongoing training on recognizing the procedural rights of persons under investigation, with particular emphasizes on the rights of minors in conflict with the law.

136 See the criminal proceedings of the Shkodra Prosecution Office: **no. 37/2023**, concerning the minor A.G. – the latter’s statements, dated 28/12/2022, p. 51-52 and **no. 44/2023**, concerning the minor G.N. – the latter’s statements, dated 27/12/2022, p. 41-42.

137 Criminal proceedings **no. 157/2024** of the Tirana Prosecution Office, concerning the minors E.D., E.Sh. and B.D., minutes of recognition of E.D., dated 30/01/2024, p. 164-165.

138 See criminal proceedings of the Shkodra Prosecution Office: no. 192/2023, concerning the minor P.M., statements before the JPO of P.M., dated 23/02/2023 (p. 25) and no. 140/2023, concerning the minor E.B., statements of E.B. before the JPO on 29/01/2023 (p. 30).

6.6 Interrogation of a minor in conflict with the law, arrested *in flagrante delicto* or detained by a Judicial Police officer in violation of the norms of the Code of Criminal Procedure that assign such an action exclusively to the prosecutor

We believe that one of the most significant shortcomings identified in the study conducted is the **violation of Article 256¹³⁹ of the CCP, which assigns the prosecutor the duty of interrogating a person suspected of committing a criminal offense when they are arrested *in flagrante delicto* or detained.** According to the first paragraph of the article, the prosecutor is the sole authority to interrogate the arrested or detained person, after ensuring that the arrested/detained person has the chosen defence lawyer present or appointing one if no choice has been made or the chosen attorney has not appeared. Before starting the questioning, the prosecutor informs the arrested/detained person of the fact for which the proceedings are being conducted and explains the reasons for the interrogation. The prosecutor then presents the arrested/detained person with the evidence collected about them up to that stage of the proceedings and, where the prosecutor deems it not compromising, discloses the source of the evidence.

Then the prosecutor, in view of the provisions of the second paragraph of Article 256 of the CCP, asks the arrested or detained person whether they have received the letter of rights and if not, gives them the letter of rights before the first interrogation, while also explaining their rights. The third paragraph provides for a sanction in case the procedure set out in this article is not observed – statements made by the arrested or detained persons before receiving the letter of rights or before meeting their defence lawyer are inadmissible.

As it stands, the content of **Article 256 of the CCP** is quite clear and does not require interpretation. **It prohibits any authority other than the prosecutor of the case from questioning a person detained or arrested *in flagrante delicto*.** Consequently, **any interrogation by the JPOs renders the evidence illegal and, consequently, inadmissible.**

But what really happens in practice? A review of criminal proceedings within the framework of this study reveals that this obligation, clearly sanctioned in the procedural law, is almost never implemented. **In only one of the proceedings examined, the minor in conflict with the law arrested *in flagrante delicto* for the criminal offense of intentional murder was questioned by the prosecutor¹⁴⁰.** In all other cases, minors were questioned by the JPOs who, due to misunderstanding and misapplying the procedural law, and without having the authority to do so, questioned the arrested/detained persons, mistakenly thinking they were acting under the first paragraph of Article 296 § 1 of the CCP, which provides: *“1. Judicial police officers shall collect information from the person under investigation in the mandatory presence of his lawyer, except in the cases of a person arrested in flagrante delicto or placed under temporary detention, who shall be questioned following the rules provided for by Article 256. ...”*

According to the first sentence of Article 296 § 1 of the CCP **the right of the JPOs to question persons against whom investigations are conducted arises only when the provisions of Article 256 of the CCP do not apply,** that is, only when the person to be questioned has not already been arrested or detained. **This is the only case in which questioning is exclusively granted to the prosecutor, a right that cannot be delegated to the Judicial Police.**

139 Article 256 specifies: *“1. The prosecutor shall question the arrested or detained person in the presence of his/her retained or ex officio appointed defense lawyer. He shall inform the arrested or detained person on the facts he is being prosecuted for and the reasons for his questioning, indicating any information against him/her and, when this does not compromise the investigations, also the sources [of such information]. 2. The prosecutor shall firstly ask the arrested or detained person whether he/she has been provided with the letter of rights and shall ensure that they have understood their rights. When the arrested or detained person has not been provided with the letter of rights, the prosecutor shall provide them with it prior to their first questioning and shall explain their rights. 3. Statements made by the arrested or detained person prior to receiving their letter of rights or prior to meeting with their defense lawyer, cannot be used.”*

140 Criminal proceedings **no. 903/2020 of the Vlora Prosecution Office**, concerning the minors in conflict with the law, G.T., Q.P., Xh.Z., R.T. and A.G. The minor **G.T.** was questioned by the prosecutor on the day of his arrest *in flagrante delicto*, on 19/06/2020 (pp. 43-45).

Below are several instances of criminal proceedings in which this legal obligation was disregarded by the JPOs and which, in no case, were declared inadmissible by either the prosecutor or the court (for the latter, we refer only to cases where it was possible to access the judicial decision of the court of first instance).

- (i) criminal proceedings **no. 3374/2019 of the Tirana Prosecution Office**, concerning the minor in conflict with the law, **E.M.**, accused of committing the crime of "Robbery", in which the minor was questioned by the JPO on the day of his arrest *in flagrante delicto*, on 26/04/2019 (pp. 15-16);
- (ii) criminal proceedings **no. 903/2020 of the Vlora Prosecution Office**, concerning the minors in conflict with the law, **G.T., Q.P., Xh.Z., R.T. and A.G.** Minors **G.T. and A.G.** were accused of "Intentional murder" committed in collaboration, while the others were accused of "Failure to report a crime". The minor G.T. was questioned by the JPO on the day of his arrest *in flagrante delicto*, on 19/06/2020 (p. 43-44);
- (iii) **criminal proceedings no. 6711/2021 of the Tirana Prosecution Office**, concerning the minor in conflict with the law, **R.V.**, accused of committing the criminal offense of "Intentional murder against two or more persons", remaining in the attempt. The minor was questioned on the day of his arrest *in flagrante delicto* by the JPO, on 23/09/2021, (p. 62);
- (iv) criminal proceedings **no. 501/2022 of the Durrës Prosecution Office**, concerning the minor in conflict with the law, **M.M.**, accused of having committed the crime of "Intentional serious injury". The minor was questioned by the JPO on the day of his arrest *in flagrante delicto*, on 18/03/2022, (p. 36-37);
- (v) criminal proceedings **no. 338/2023 of the Shkodra Prosecution Office**, concerning the minor in conflict with the law, **A.H.**, accused of having committed the criminal offense of "Intentional serious injury". The minor was questioned by the JPO on 07/04/2023, the same date he was arrested *in flagrante delicto* (p. 151-152);
- (vi) criminal proceedings **no. 321/2024 of the Tirana Prosecution Office**, concerning the minor in conflict with the law, **S.K.**, accused of having committed the crime of "Trafficking in narcotics" in collaboration. The minor was questioned by the JPO on the day of his arrest *in flagrante delicto*, on 13/01/2024, (p. 109);
- (vii) criminal proceedings **no. 157/2024 of the Tirana Prosecution Office**, concerning the minors in conflict with the law, **E.D., E.Sh. and B.D.** accused of committing the criminal offense of "Robbery". The minors were questioned on the day of their arrest *in flagrante delicto* by the JPO, on 05/01/2024 (p. 20-12, p. 27-28 and p. 35-36);
- (viii) criminal proceedings **no. 14/2024 of the Vlora Prosecution Office**, concerning the minors in conflict with the law, **A.H., P.K. and K.K.**, accused of committing the criminal offense of "Robbery", in collaboration. The minors were questioned by the JPO on the day of their arrest *in flagrante delicto*, on 07/01/2024 (pp. 47-48, 49-50 and 51-52); and
- (ix) criminal proceedings **no. 836/2024 of the Vlora Prosecution Office**, concerning the minor in conflict with the law, **I.H.**, accused of having committed the criminal offense of "Serious injury in conditions of psychological shock". The minor arrested *in flagrante delicto* on 27/07/2024 was questioned by the JPO on 28/07/2024 (p. 154-155);

6.7 Allowing statements of minors that indicate self-responsibility, while failing to carry out the mandatory procedures under the provisions of the CCP for declaring them inadmissible

Our Code of Criminal Procedure, in guaranteeing an individual's right to remain silent and not to contribute to the production of evidence that may incriminate them (as discussed above), provides in Article 37¹⁴¹ for the defence of any person called as a witness in a trial or as someone providing information useful for a preliminary investigation. This ensures that any statement they make **before the proceeding body, which could serve the prosecution as evidence of their guilt combined with other elements, cannot be used against them.**

141 Article 37 provides: "***If a person who is not taken as a defendant makes statements before the proceeding authority, that raise suspicion of guilt against him, the proceeding authority shall interrupt the questioning and warn him that, following such statements, an investigation may be carried out on him, and advise him to appoint a lawyer. Statements previously made by the person cannot be used against him.***"

For this purpose, Article 37 provides that, if a witness or declarant, during their deposition, indicates elements that may incriminate them, the proceeding body: *first: interrupts their questioning immediately rather than waiting for them to confess everything that may implicate them in a criminal activity; secondly: informs them that investigations may be conducted against them in the future, as well as informs them of their right to choose a defence lawyer.* As a general rule, the questioning then continues in the presence of a defence lawyer, although with a changed status – that of a person under investigation. The choice of a defence lawyer allows the individual to build a line of defence and assess whether to make statements about questions asked by the proceeding authority or choose to remain silent and, *thirdly: guarantees the right of the individual being questioned not to provide incriminating evidence against themselves.* The last part of Article 37 of the CCP provides for a sanction against previous self-incriminating statements – the prohibition of their use (inadmissibility) against the individual who made them.

From the study of criminal proceedings files, it has been observed that, in most cases, the Judicial Police – particularly in criminal offenses involving a crime scene, such as murder, injury, sexual violence, domestic violence, or in cases of persons arrested *in flagrante delicto*, such as for unauthorized possession of firearms, cold weapons, etc., – in order to document and collect data to reconstruct the criminal fact and identify the suspected perpetrators, questions in the capacity of persons who may indicate useful circumstances for the investigation, even individuals for whom, in the meantime, sufficient data and information is collected suggesting that they may be the suspected perpetrators.

Under these conditions, instead of being questioned in the capacity of a person under investigation (Article 296 § 1 of the CCP), with the guarantees this status affords (the right to have a lawyer, the right to remain silent, the right not to answer some of the questions of the proceeding body, etc.), they are questioned as declarants (point 1 of Article 297¹⁴² of the CCP) **without the assistance of a defence lawyer and under the threat of punishment** pursuant to Articles 305/a, 305/b, and 306 of the Criminal Code (which provides for the punishment of a person who makes false statements to the prosecutor, the JPO, and the court), according to the warning given for providing false information under Article 165¹⁴³ of the CCP.

This erroneous practice, followed in the initial steps of the preliminary investigation when the Judicial Police acts on its own initiative and has not yet been placed under the direction and supervision of the prosecution body, **has, in several cases examined, resulted in individuals questioned as declarants – rather than as suspected perpetrators – providing statements that effectively implicate them as perpetrators of criminal offenses.**

Even when someone provided self-incriminating data, **the JPOs rarely intervened to implement the requirements of Article 37 of the CCP, and when decided to do so, it was done at the end of the statement¹⁴⁴,** after the declarant had exhaustively “confessed” about the facts implicating them, as well as about any potential collaborators. The manner in which this provision is implemented is unacceptable, if not illegal. We reach this conclusion through a teleological interpretation of this norm, whereby the expression ***“the prosecuting authority interrupts the questioning”***, should be understood as requiring **the prosecutor’s intervention as soon as the person testifying begins to provide information that implicate them in the commission of a criminal offense** – whether the same offence under investigation or trial, or a different one.

142 Article 297 § 1 of the CCP stipulates: “Judicial police shall gather information from persons who may indicate useful circumstances for the purposes of investigation.”

143 Article 165, points 1 & 2 of the CCP specifies: “1. If during the questioning a witness makes contradictory or incomplete statements or statements which are in contrast with the evidence taken, the court shall note this fact, warning him of the criminal liability for false testimony. 2. The same warning is made by the court also to the witness refusing to testify. If the witness insists on his/her refusal to testify, the court shall request the prosecutor to proceed pursuant to the law.”

144 See **criminal proceedings no. 14/2024 of the Vlora Prosecution Office**, concerning minors in conflict with the law, **A.H., P.K. and K.K.** According to the three reports on obtaining data from persons who have knowledge of the criminal offense, dated 07/01/2024, involving the minors **P.K.** (p. 47-48), **K.K.** (p. 49-50), and **A.H.** (p. 51-52), their questioning was interrupted while they had already told everything about the criminal offense for which they were suspected.

Failure to intervene in a timely manner – or, even worse, intervention at the end of the statements – contravenes the meaning and purpose of Article 37 of the CCP, which aims to prevent granting undue advantages to the criminal prosecution body to the detriment of the principles of due process, as protected by Article 42 of the Constitution and Article 6 of the ECHR, particularly **the right not to produce evidence that may incriminate the person**. This right takes on greater weight when the person issuing the statements is a minor, who due to lack of capacity and maturity may also declare implicating circumstances that are not entirely true. Consequently, **the proceeding bodies, the prosecutor¹⁴⁵ and the court** must rigorously implement point 3 of Article 151 of the CCP, which states: **“3. Evidence gathered in violation of the prohibitions set out by law shall not be used. The exclusion of evidence may be declared also ex officio at any stage and instance of the proceedings”, declaring, in any case, the statements obtained in violation of the provisions of Article 37 of the CCP as inadmissible.**

Failure of the proceeding bodies to do so may expose the self-incriminating declarant to a criminal trial that is vulnerable to a fundamental violation of the criminal procedural law (Article 37 read together with Article 151 § 3). By not being declared as inadmissible, such self-incriminating statements will not only remain in the prosecutor’s file, but will also become part of the trial file (Article 331/ë of the CCP), due to the acceptance of the request for abbreviated trial (Article 403 of the CCP), which is massively applied in Albanian judicial practice. **With such statements remaining part of the evidentiary material available to the natural judge, the individual risks being declared guilty on the basis of evidence collected illegally**, which would also constitute a violation of the important principle sanctioned in the second paragraph of Article 32¹⁴⁶ of our Constitution.

Before identifying the criminal proceedings where Article 37 of the CCP was not applied, it is important to note that, unfortunately, in no judicial case investigated – where the inapplicability of statements given before the JPO was established – did the judge of the preliminary hearing recognize the inapplicability, thereby failing to fulfil their obligation set out in point 3 of Article 151 of the CCP.

Below, are several instances of violations observed in **criminal proceedings** in which **minutes of statements** from persons providing information relevant to the investigation were obtained **in contravention to the requirements of Article 37 of the CCP and were not declared inadmissible by the respective prosecution offices**, despite such violation being obvious:

(i) Criminal proceedings no. 903/2020 of the Vlora Prosecution Office concerning minors in conflict with the law, G.T., Q.P., Xh.Z., R.T. and A.G.

In the *Records of statements from persons aware of the circumstances of the investigation*, dated 19/06/2020, given by the minor **R.T.** (p. 64-66), he provided self-incriminating evidence, admitting to have seen his friend, the minor **G.T.**, carrying a knife as they went to “explain themselves” to the other minor **K.P.**, and that he was present when the victim **A.P.** was killed by **G.T.** and **A.G.** in collaboration. He did not report these as required by Article 300 § 1 of the Criminal Code. The proceeding body did not act pursuant to Article 37 of the CCP to terminate these statements and continue investigating **R.T.** for the abovementioned criminal offense. In addition, these statements were not declared inadmissible, pursuant to the last sentence of the Article.

In the same line of unlawful behaviour, the Judicial Police took a statement from the minor **A.G.**, as documented

¹⁴⁵ In the investigative files reviewed for the purposes of this study, there was only one case identified of application of Article 151 § 3, in connection with Article 37 of the CCP, pertaining to the **Elbasan Prosecution Office**, namely criminal proceedings **no. 1227/2023**, concerning the minor in conflict with the law, **F.Z.** In this case, the prosecutor, by its decision dated 18/10/2023 (p. 122) decided to declare the minutes of the statements given by the minor on 11/10/2023 (p. 121) as inadmissible, due to the violation of Article 37 of the CCP (Disclosure of data indicating self-responsibility), and the conflict of interest between the minor and his father, **L.Z.**, both suspected perpetrators of the criminal offense of “Domestic violence”, committed mutually against each other (Article 74 § 1 (c) of the CCP).

¹⁴⁶ Article 32 § 2 of the Constitution reads: *“No one may be declared guilty on the basis of data collected in an unlawful manner.”*

in the *Records of statements from persons aware of the circumstances of the investigation*, dated 19/06/2020, (p. 69-70). The minor in question provided information that implicated him as an accomplice of G.T. in the commission of the criminal offense of "Intentional murder" against the victim A.P. In this case too, the JPO failed to observe the requirements of Article 37 of the CCP.

(ii) Criminal proceedings no. 446/2023 of the Shkodra Prosecution Office, concerning the minor in conflict with the law, A.K..

The minor A.K. was questioned about a quantity of 80 packages of narcotic plants found near his house in the "Gjuraj" neighbourhood, Koplik i Sipërm village, municipality of Malësi e Madhe. In the *Records of statements from persons who have knowledge of the criminal offense*, dated 29/04/2023 (p. 167), the minor admitted to having purchased them with the intention of cultivating the plants. The minor had also purchased the necessary tool for this purpose. Even in this case, the Judicial Police failed to act according to the provisions of Article 37 of the CCP.

(iii) Criminal proceedings no. 796/2023 of the Vlora Prosecution Office, concerning the minor in conflict with the law, F.K.

According to the *Records of statements from persons who have knowledge of the criminal offense*, dated 31/05/2023 (p. 73-74), the minor **F.K.**, was questioned as a person who had knowledge of a criminal fact occurred rather than as a suspected perpetrator, although the Judicial Police were aware of the criminal facts attributed to him. In the meantime, they had seized from him *in flagrante delicto* (following a physical search) a suspected cold weapon (metal handle), which he had allegedly used to hit his math teacher, Ar.O., and his son Al.O. During the direct questioning, where explanations were requested regarding the quarrel and the weapon used, the minor F.K. explained in detail his involvement in the violent incident, the motives behind his actions, and the weapon used.

(iv) Criminal proceedings no. 2578/2024 of the Tirana Prosecution Office, concerning minors in conflict with the law A.G., T.Ç., and Xh.M..

According to the *Records of statements from persons who have knowledge of the criminal offense*, dated 17/02/2025 (p. 31-32), the minor **A.G.**, was questioned by the Judicial Police about the violent robbery of the victim G.P., by three young men, the day before. The JPO did not explain why he thought that A.G. could provide useful circumstances for the investigation initiated on the victim's report. The JPO asked the minor: "*What can you tell us about this situation?*" Following this general question, which was not intended to obtain information about the minor's behaviour, the latter explained the entire criminal act occurred (the robbery of the victim), his role (as an assistant), and the actions of the other accomplices (Xh.M.'s Instagram communications and T.Ç.'s knife threats against the victim). Although faced with self-incriminating statements, the JPO failed to interrupt the questioning according to Article 37 of the CCP. He continued with questions to provide further knowledge about the criminal act, asking the minor A.G. about the person who had taken the forcefully stolen money, and the person behind the Instagram page, which they had used to trap the victim into going to a location where the robbery took place.

The Judicial Police followed in the same line when taking statements from the minor **Xh.M.** on 17/02/2024 (p. 35-36). The minor was informed of the incident occurred on 16/02/2024 and asked if he had anything to say about it. The minor Xh.M. admitted his involvement and provided information about his actions, his role, and the role of his accomplices, who used a knife and a chain to force the victim to give up his money (4,000 ALL). Again, the JPO failed to interrupt the questioning although the minor's self-incriminating statements were evident. The JPO continued with questions about the persons behind the Instagram page, through which they had trapped the victim and convinced him to appear at a location designated by them (the victim was supposed to have sexual relations against payment with a girl he had communicated on social networks).

(v) Criminal proceedings no. 2578/2024 of the Fier Prosecution Office, concerning the minors in conflict with the law E.P. and R.R.

According to the *Records of statements from persons who have knowledge of the criminal offense*, dated 24/01/2024, at 15:16, the minor in conflict with the law, **E.P.** (p. 39-40), was questioned as a declarant rather than as a person to whom the criminal offense was attributed, a fact obtained from the statements of the victim M.M. and his mother E.M.. According to their statements, he took his peer M.M.' cell phone, and with the assistance of another minor, R.R., sold it to an unidentified person for 750 Euros, benefiting a taxable amount of 350 Euros. Again, the JPO failed to interrupt E.P.'s questioning, and continued asking about the circumstances of the criminal act, the motives behind it, the others involved, and the profits from the sale of the stolen item, as well as the identity of the buyer.

The same violations were observed while taking statements from the minor **R.R.**, on 24/01/2024, at 14:50 (p. 31-32). Asked as a declarant, the minor provided self-incriminating information, admitting to have stolen the mobile phone from the victim M.M., and given it to his associate R.P., who had then sold it to an unidentified individual. Then they divided the money between themselves.

6.8 Failure to ensure the participation of, or to document in the relevant minutes the presence of a parent or psychologist during procedural actions with the minor in conflict with the law

An essential component of the child-friendly justice for minors in conflict with the law is the obligation of the proceeding body to ensure the presence of a parent or another trusted person whenever the minor so requests. As already addressed in the section concerning the analysis of the minor's procedural rights, the presence of a parent or another trusted person during the questioning is not mandatory if the minor does not request so. In other words, **the proceeding body informs the minor of the right to have a parent or another trustee person present; however, if the minor, after being expressly asked, refuses to be assisted during the questioning by the legal representative or the trusted person, that person does not participate in the proceedings.** At this point, it is important not to confuse the right of the minor to have the parent or another trusted person present during the interactions with the proceeding body with the obligation of that body, in all cases, to notify such persons to appear prior to the performance of procedural actions in which the minor participates.

From the examination of criminal proceedings conducted for the purposes of this study, it emerged that the **right of minors in conflict with the law, as enshrined in the last sentence of point 5 of Article 76 of the CCJC, has unfortunately not been respected. This conclusion is based on the review of all records of their statements.** However, since there were no cases in which minors expressly refused the presence of a parent or trusted person, it must be presumed that they wished for such presence.

It should be recalled that **the presence of a parent or another trusted person aims to ensure that the minor does not face the proceeding authorities alone, to provide emotional and moral support throughout the proceedings, and to prevent feelings of uncertainty and fear.** Their presence guarantees that the minor: (i) is not subjected to pressure or coercion to plead guilty, (ii) is questioned in an understandable language and in a calm tone, (iii) understands the nature of the questions asked, including the right not to incriminate themselves, and (iv) has a clear understanding of the consequences of procedural actions.

It should also be reiterated that **the presence of a psychologist throughout the procedure involving a minor in conflict with the law is essential**, as minors lack the necessary capacities to understand the process and its consequences, due to their age, mental, and emotional maturity. According to point 4 of Article 76 of the CCJC, the presence of a psychologist in questioning a minor helps the proceeding body to consult "*the psychologist in advance about the content of the questions to be addressed to the minor*", aiming to guarantee that the minor is "*questioned in the appropriate manner, facilitating their testimony, and eliminating any feeling of intimidation or shyness due to the process*".

Therefore, in light of the above, **the psychologist assists the proceeding bodies in:** (i) using a language that is as friendly as possible with the minor, (ii) avoiding harshness, rudeness, or an elevated tone while questioning, (iii) refraining from asking questions that are difficult to understand, and (iv) generally ensuring that the procedural actions in which the minor participates are conducted in an environment that safeguards their emotional and psychological well-being.

At this point, it should once again be emphasized that **the failure to ensure psychological and legal assistance** during criminal proceedings – together with the participation of the legal representative (parent or guardian) or a trusted person, where such participation is requested by the minor – **renders any evidence obtained in the absence of the psychologist, lawyer, or legal representative unlawful**, thereby resulting in its **inadmissibility**, as per the meaning of Article 49 of the CCJC “**Mandatory presence in procedural actions with minors**”, the first sentence of the first paragraph of which stipulates that: “1. **Every procedural action carried out in relation to the minor shall be carried out in the presence of a defence counsel, legal representative, or psychologist.**”

From the examination of criminal case files, as well as from the interview of minors at the Kavaja Juvenile Institute, it emerges that, in general, the role and importance of the presence of a parent and a psychologist during the questioning of minors in conflict with the law, as well during other investigative actions in which they participate, are understood. However, there have been **cases of procedural actions conducted by the proceeding bodies without the presence of a parent or psychologist, as well as cases where such presence was doubtful**, due to the failure to record it in the minutes documenting the activity, even though those persons had signed the minutes.

- **In the following proceedings, the absence of the parent and/or psychologist was identified:**

- a) criminal proceedings **no. 3374/2019 of the Tirana Prosecution Office**, concerning the minor in conflict with the law, **E.M.**. *His statement dated 16/07/2019 was taken in the absence of a psychologist, while there are doubts about the presence of the parent and lawyer who are not mentioned in the minutes, although they signed it* (p. 64);
- b) criminal proceedings **no. 903/2020 of the Vlora Prosecution Office**, concerning the minors in conflict with the law, **G.T., Q.P., Xh.Z., R.T. and A.G.** *In the decision to notify the charge to G.T., dated 15/04/2021, the parent was not present* (p. 29); *in the decision to amend the charge against A.G. the parent and the psychologist were not present* (p. 42); *in the minutes of the questioning of A.G., dated 19/06/2020, his parent was absent* (p. 69); *in the minutes of questioning the minors A.G., Xh.Z. and R.T., as defendants, dated 19/03/2021, their parents were again absent.*
- c) criminal proceedings **no. 6711/2021 of the Tirana Prosecution Office**, concerning the minor in conflict with the law, **R.V.**. *The statement of the minor R.V. issued to the Judicial Police on 23/99/2021, was made without the presence of a parent*, and he was not even asked if he wanted a parent to be present. (p. 62);
- d) criminal proceedings **no. 446/2023 of the Shkodra Prosecution Office**, concerning the minor in conflict with the law, **A.K.** *In the minutes of his questioning by the JPO, on 22/05/2023, the psychologist was not present* (p. 179);
- e) criminal proceedings **no. 10/2023 of the Shkodra Prosecution Office**, concerning the minor in conflict with the law, **J.B.** *The psychologist was not present in issuing the notification of the charge against the minor, dated 03/05/2023, (p. 94-98); and*
- f) criminal proceedings **no. 903/2020 of the Vlora Prosecution Office**, concerning the minors in conflict with the law, **G.T., Q.P., Xh.Z., R.T. and A.G.** *The minutes of questioning A.G., as a person who had information about the criminal offense, dated 25/06/2020, indicate the absence of the parent* (p. 37-38).

Minors in conflict with the law **F.M.** (Tirana Prosecution Office), and **O.Z.** (Tirana Prosecution Office) also claimed that their statements were issued to the JPO without the presence of a parent or psychologist. Minors **S.M., E.K., O.Ç. and Xh.Çe.** (Elbasan Prosecution Office) claimed that they were not allowed to meet their parents, who were not present when they issued their statements to the prosecutor of the case. Similarly, the minor in conflict with

the law **P.K.** (Vlora Prosecution Office), claimed that his statement to the Judicial Police was issued in the absence of his parent. The minor in conflict with the law **O.Z.** (Tirana Prosecution Office) claimed that his mother was not present during his questioning, as she arrived only in the end, despite signing the minutes. A serious allegation was made by the minor S.M. (Elbasan Prosecution Office), who claimed that the psychologist had pressured him to speak, suggesting that the proceeding body would blame only him for committing the criminal offense of “Murder in qualifying circumstances”.

- **The criminal proceedings below raise doubts about the presence of a parent and/or psychologist in procedural acts concerning minors in conflict with the law, as their presence was not documented in the respective minutes:**

- (i) criminal proceedings **no. 204/2019 of the Durrës Prosecution Office**, concerning the minors in conflict with the law **L.L., L.M., F.M., E.M., K.M., K.K., E.H. and E.K.** *Minutes of L.L.’s statement, dated 30/01/2019, indicate that **the presence of the father is disputable*** (p. 195-196);
- (ii) criminal proceedings **no. 501/2022 of the Durrës Prosecution Office**, concerning the minor in conflict with the law, **M.M.** *Minutes of his statements, dated 18/03/2022, indicate that **the presence of both the mother and psychologist is disputable*** (p. 36-37);
- (iii) criminal proceedings **no. 446/2023 of the Shkodra Prosecution Office**, concerning the minor in conflict with the law, **A.K.** *Minutes of his questioning on 12/06/2023, indicate that **the participation of both the parent and psychologist is disputable**, as they were not mentioned, although they did sign (p. 179). *Minutes of the questioning of the minor A.K. on 18/01/2024, indicate that **the presence of the father is not mentioned, although he signed*** (p. 220);*
- (iv) criminal proceedings **no. 192/2023 of the Shkodra Prosecution Office**, concerning the minor in conflict with the law, **P.M.** *Minutes of his statements on 23/02/2023, indicate that **the presence of both the father and psychologist is disputable*** (p. 25);
- (v) criminal proceedings **no. 44/2023 of the Shkodra Prosecution Office**, concerning the minor in conflict with the law, **G.N.** *Minutes of his statements on 27/12/2022, indicate that **the presence of both the father and psychologist is disputable*** (p. 41-42);
- (vi) criminal proceedings **no. 10/2023 of the Shkodra Prosecution Office**, concerning the minor in conflict with the law, **J.B.** *Minutes of his statements on 22/03/2023, indicate that **the presence of both the father and psychologist is disputable*** (p. 90). Their absence was also noted *in the minutes of his questioning, dated 12/05/2023* (p. 98/1);
- (vii) criminal proceedings **no. 627/2023 of the Shkodra Prosecution Office**, concerning the minor in conflict with the law, **K.B.** *Minutes of his questioning as a defendant on 27/07/2023, indicate that **the presence of both his father and psychologist is disputable*** (p. 42); and
- (viii) criminal proceedings **no. 1123/2023 of the Fier Prosecution Office**, concerning the minor in conflict with the law, **K.Ç.** *Minutes of his statements on 25/08/2023, indicate that **the presence of both his father and psychologist is disputable*** (p. 25-26).

6.9 Failure to complete preliminary investigations within a reasonable time frame without objective reasons to justify the delay

Earlier in this study, we discussed the importance of investigating and adjudicating criminal cases involving minors in conflict with the law promptly and within a reasonable time frame, in line with the principle of trial with priority and without delay (Article 17 of the CCJC). In essence, **the process must not be prolonged beyond the limits sanctioned by law, so as to avoid constituting a form of punishment in itself.** Prolonging the proceedings can cause serious educational, social, and psychological consequences for the minor. Consequently, it is required that justice for children be not only fair, but also speedy, **as delays undermine the educational and rehabilitative purpose of the child.**

Delays in the criminal process against minors can create situations of anxiety, uncertainty, and prolonged isolation for the child. As already emphasized, during the personality development stage of minors aged 14-18, **a prolonged wait for a court decision is experienced as a form of punishment and negatively affects the child's sense of insecurity, self-esteem, and ability to integrate socially.**

In accordance with the principle enshrined in Article 17 of the CCJC, certain provisions stipulate that:

- (i) **preliminary investigations against minors must be completed within three months of registration of their name in the Register of Notifications of Criminal Offenses** (Article 88 § 2), except when the minor commits another criminal offense or the criminal offense investigated is within the jurisdiction of the Special Court against Corruption and Organized Crime, in which case the duration of investigations is equal as for adult defendants;
- (ii) **the trial at the first instance must be completed within 6 months** (Article 88 § 3), while **in appellate court within 2 months** (Article 88 § 4);
- (iii) **the detention of a minor in conflict with the law must not exceed ½ of the duration provided for adults under the CCP** (Article 87 § 4), and
- (iv) the coercive personal security measure “Arrest in prison” must be reviewed monthly (Article 87 § 1).

For the purposes of this study, **only the adherence to the deadline for preliminary investigations by the prosecution offices in the reviewed criminal proceedings** will be examined. *So, to what extent is this deadline being respected?* It must be noted that, **in the majority of criminal proceedings, these deadlines are respected**, with efforts made to ensure that the investigation does not exceed the three-month period from the date the name of the minor in conflict with the law is entered in the register. This reflects the dedication and diligence of the prosecutors in performing their duties, helping to prevent formal violations of the law and contributing to the stronger protection of the rights of minors in conflict with the law.

However, **there are instances in which the deadline for completing investigations was not met**, resulting in extensions beyond the maximum three-month period established by the legislator. Below, we present some cases in which this deadline was not respected.

In the case of the **Elbasan Prosecution Office (criminal proceedings no. 809/2024)** concerning the **minor P.C.**, the order to register both the criminal offense and the name of the minor was received on 02/07/2024, while the criminal proceedings were closed (preliminary investigations completed) on 24/10/2024, with a decision to dismiss the case against the minor P.C., accused of the criminal offense of “Theft” (Article 134 § 1 of the Criminal Code) due to the application of an alternative diversionary measure. **The investigations lasted more three months** (they were completed on 02/10/2024), in violation of point 2 of Article 88 of the CCJC. Although, **in our assessment the CCJC does not recognize the extension of the deadline for preliminary investigations** for this criminal offense, the prosecution did not extend the deadlines, as common in other criminal proceedings that could not be completed within the three-month period. **In this specific case, there was no reason not to end the investigations within the legal deadline**, considering that all the necessary evidence, including the Individual Assessment Report (IAR) for the minor P.C. was collected as early as 05/08/2024. This was not the case of a criminal offense that required complex investigations, therefore, although the prosecution was facing a high workload and a shortage of prosecutors, the case could have been closed by 02/10/2024.

In criminal proceedings **no. 166/1/2024 of the Elbasan Prosecution Office**, concerning the minor in conflict with the law, **M.C.**, accused of the criminal offense of “Domestic violence”, as provided for by Article 130/a (1) of the Criminal Code, his name was recorded on 15/02/2024, and the investigation was supposed to be closed by 15/05/2024. In the meantime, the prosecutor decided to extend the deadline of the investigation, which required 22 days to be completed, to 23/04/2024 (!). Although an extension of the deadline is not permitted for this criminal offense, the decision to prolong the investigation – besides the abovementioned procedural irregularity – lacks a valid justification for postponing the deadline for the notification of the charge and the closure of the investigation

by an additional three months, as claimed in the decision dated 23/04/2024. The actions of the prosecutor to request the prolongation of the investigation could have been concluded within 15/05/2024, thus respecting the legal deadline. **The criminal case was finally closed on 08/07/2024, almost 5 months from the registration of the name**, with dismissal granted due to the application of an alternative diversionary measure for the minor M.C.

Another case **of the Fier Prosecution Office (criminal proceedings no. 11239/2023)** concerns the minor **K.Ç.**, investigated for committing the criminal offense of "Driving a vehicle inappropriately", as provided for by Article 291 of the Criminal Code. The order for the registration of both the criminal offense and the name of the minor was received on 07/09/2023, while the preliminary investigations were completed on 12/12/2023, with a dismissal decision due to the application of an alternative diversionary measure. **The investigations lasted more three months** (they were completed on 09/12/2024), in violation of Article 88 § 2 of the Code of Criminal Procedure. Meanwhile, even though the CCJC does not recognize the extension of the deadlines for preliminary investigations for this criminal offense, the prosecution did not extend the investigation deadline. **In this case, there was no reason not to conclude the investigations within the legal deadline**, since all the necessary evidence, including the Individual Assessment Report (IAR) for the minor K.Ç. was gathered as early as 14/11/2023. The mere fact that the prosecutor managed to complete all the actions and procedural acts within one day (12/12/2023) is a meaningful indicator of the possibility to observe the deadline. This was not the case of a criminal offense that required complex investigations, therefore, even though the prosecution body was facing a high workload and a shortage of prosecutors, the case could have been closed by 07/12/2023.

In **criminal proceedings no. 338/2023 of the Shkodra Prosecution Office**, concerning the minor in conflict with the law, **A.H.**, accused of the criminal offense of "Intentional serious injury", as provided for by Article 88 § 1 of the Criminal Code, his name was registered on 08/4/2023, while the investigations should have been closed by 08/07/2023. Meanwhile, on 07/07/2023, the prosecutor decided to extend the investigation deadline for one more month, with the justification that the required acts of expertise had not yet been administered, and the witnesses and suspects had not been questioned. Even in this case, the extension of the investigation deadline is not permitted. The prosecutor should have taken the necessary measures to carry out the required procedural actions within the legal deadline. **The criminal case was sent to court on 31/07/2023, 24 days after the 3-month deadline**.

The last case refers to criminal proceedings **no. 903/2020 of the Vlora Prosecution Office**, concerning the minors in conflict with the law, **G.T., Q.P., Xh.Z., R.T. and A.G.** Minors G.T. and A.G. were accused of "Intentional murder" committed in collaboration, while the others were accused of "Failure to report a crime". G.T.'s name was registered on 19/06/2020 and the investigation was supposed terminate by 19/09/2020. Meanwhile, **although the CCJC does not provide for an extension of the investigation period for this criminal offense, on 18/09/2020 the prosecutor decided to extend the investigation periods for a three-month period**, until 19/12/2020, with the justification that the forensic medical examination report concerning the victim A.P. had not yet been administered. The file contains Expertise Report no. 19/A, dated 19/06/2020, prepared by the forensic doctor A.Z, who practices at Vlora Regional Hospital. It is surprising that the expertise report was administered by the Prosecution Office only on 17/12/2020, considering it was drafted 6 months earlier, and that the proceeding body had not requested its delivery in a timely manner. Meanwhile, **on 18/12/2020 the prosecutor decided to extend the investigation period by another three months**, until 19/03/2021, in order for the persons under investigation to get to know the charges against them, to be informed of the completion of the investigations, and questioned as defendants. Taking three months for these procedural actions is utterly contrary to the spirit of the CCJC, which requires prompt closure and priority in cases involving minors in conflict with the law. Finally, **the criminal proceedings were sent to court on 03/2/2021 - 7 months and 14 days later**. This indicates a significant lack of diligence on the part of the prosecutor, resulting in the completion of the investigations being delayed for many months beyond the legal deadline, for reasons that could have been avoided with minimal effort and commitment.

6.10 Lack of drafting of an individual assessment report

The final significant finding from the analysis of the criminal case files of the prosecution offices selected for this study concerns the failure to draft the Individual Assessment Report (IAR) in some proceedings. As discussed earlier, the IAR is crucial for minors in conflict with the law, as it ensures that any measure taken against them is personalized, proportional, and rehabilitative rather than punitive. Article 22 of the CCJC provides that, before any decision-making, the court and the prosecutor are obliged to consider the individual circumstances of the minor, such as: age, level of development, living conditions, education, family, and health situation, as well as to seek the assistance of experts in various fields to understand the minor's personality, responsibility, and degree of criminal liability. From the content of this provision, it follows that the **IAR is an essential instrument, since only by reviewing its findings in advance can the proceeding body make decisions in accordance with the best interests of the minor, ensuring the protection of their physical and psychological well-being and avoiding any potential trauma.**

Article 47 of the CCJC regulates in detail the content of an IAR and under what circumstances is an IAR required. The first paragraph of Article 47 specifies the factors on which the prosecutor or the court should rely when assessing the minor, by establishing: *"the level of development, lifestyle, upbringing, and conditions of development, education, health status, family environment, and other conditions of the minor, which allow them to assess the characteristics of the minor's personality, behaviour, and needs, including special needs."*

The Individual Assessment Report of a minor in conflict with the law describes their special needs, the risk of committing other criminal offenses in the future, as well as other aspects depending on the case, while also recommending appropriate measures to promote their development and integration into society. The fourth paragraph of Article 47 specifies **the circumstances in which an IAR is mandatory**, defining, for the purposes of this study, the cases in which the prosecutor or the court deems it necessary to apply **diversionary alternative measures** or when the court is determining the **type of punishment** to be imposed. Indeed, legal doctrine holds that a complete criminal process involving a minor in conflict with the law – or a minor victim – cannot be conducted without first preparing an IAR.¹⁴⁷

From the study of criminal case files, it emerges that, **in most instances, IARs are drafted during the preliminary investigation**, primarily by the territorial Probation Service, which provides recommendations regarding the type of measures to be applied, whether diversion or supervision. However, the review of the files revealed that **in some cases, the preparation of the IARs was not ordered**, resulting in the prosecution and the court making decisions concerning minors in conflict with the law without a comprehensive psycho-social understanding of the minor, in contravention of the provisions Articles 22 and 47 of the CCJC.

The following **criminal proceedings involve cases in which the IAR was not prepared by the prosecuting body, in violation of the provisions of the CCJC** that require it in a mandatory manner when determining the type of punishment (suspension of the prison sentence and placement of the convicted minor on probation, under the terms of Article 104 of the CCJC, in conjunction with Article 59 of the Criminal Code):

- (i) **criminal proceedings no. 331/2024 of the Tirana Prosecution Office**, concerning the minor **S.K.**, accused of having committed the criminal offence of "Trafficking in narcotics" in the form of import from USA, in collaboration with the adult G.K. as provided for by Article 283/a(2) of the Criminal Code. The minor S.K. was sentenced to probation by the Court of First Instance of General Jurisdiction of Tirana;¹⁴⁸

¹⁴⁷ See: Merkaj, Tereza, *Commentary on the Code of Criminal Justice for Children interpreted with case law*, cited above, p. 112.
¹⁴⁸ Decision No. 2657/486 Act, dated 24/07/2025, of the Court of First Instance of General Jurisdiction, Tirana.

- (ii) **criminal proceedings no. 2578/2024 of the Tirana Prosecution Office**, concerning the minors in conflict with the law, **A.G., T.Ç.** and **Xh.M.**, accused of committing the criminal offense of “Coercion by threat or violence for the release of property”, committed in collaboration, as provided for by Article 109/b-1 of the Criminal Code;
- (iii) **criminal proceeding no. 3374/2019 of the Tirana Prosecution Office**, concerning the minor in conflict with the law, **E.M.**, accused of the criminal offense of “Robbery”, as provided for by Article 139 of the Criminal Code;
- (iv) **criminal proceeding no. 14/2024 of the Vlora Prosecution Office**, concerning the minors in conflict with the law, **A.H., P.K.** and **K.K.**, accused of committing the criminal offense of “Robbery”, in collaboration, as provided for by Articles 139 and 50(gj) of the Criminal Code; and
- (v) **criminal proceeding no. 903/2020 of the Vlora Prosecution Office**, concerning the minors in conflict with the law, **G.T., Q.P., Xh.Z., R.T.** and **A.G.** Minors G.T. and A.G. were accused of committing the criminal offence of “Intentional murder” in collaboration, while the other minors **Q.P., Xh.Z.** and **R.T.** were accused of “Failure to report a crime” and were sentenced to probation by the Vlora Court.¹⁴⁹

General conclusions

In conclusion, this study finds that, although Albania has a legal framework generally aligned with international standards on juvenile criminal justice, its implementation in practice continues to show significant legal and institutional gaps. The analysis of preliminary investigation files and procedural practice shows that the Judicial Police and the Prosecution Service, in most cases, have reached an acceptable standard in formally respecting the procedural rights of minors, demonstrating knowledge of the legal framework and a certain level of professionalism, particularly in guaranteeing legal protection and following basic procedures.

However, this positive assessment coexists with recurring problems, indicating that respect for procedural guarantees is not yet consistent, substantive, or sustainable, but often remains formal and dependent on the individual practices of the actors involved. The study also highlights significant shortcomings in inter-institutional coordination between the Judicial Police, the Prosecution, psychologists and child protection structures, reflected in the lack of systematic involvement of support professionals, incomplete documentation of procedural actions, and the absence of individual psychosocial assessments, which are essential for decision-making in accordance with the best interests of the child.

An important challenge remains the prolongation of procedures and the failure to complete investigations within reasonable deadlines, which undermines the educational and rehabilitative character of juvenile justice and turns the criminal process into a prolonged experience of pressure.

In this context, the study highlights the need to enhance the professional specialization of justice actors, strengthening monitoring mechanisms and institutional accountability, and improve inter-institutional coordination. It emphasizes that the primary challenges do not arise from a lack of legal norms, but from the gap between legislation and practice, as well as from the lack of necessary infrastructure, which impede the full functioning of an effective, comprehensive, and genuinely child-friendly justice system for minors in conflict with the law.

149 Decision no. 130, dated 06/03/2024, of the Court of First Instance of General Jurisdiction, Vlora.

7. RECOMMENDATIONS

As stated several times in this study, the analysis of criminal case files has revealed a generally satisfactory implementation of legal norms by the Judicial Police and the Prosecution. This has contributed to achieving an acceptable standard in terms of respecting the procedural rights of minors in conflict with the law during the preliminary investigation stage. However, the study also identified instances of non-implementation or incorrect implementation of criminal procedural law (specifically the norms of the CCJC and the Code of Criminal Procedure), based on which ten main findings were listed.

As can be easily observed, most of the findings identified in this study refer to the Judicial Police, especially the Judicial Police Officers (JPOs) who are part of the State Police services, without excluding those JPOs operating within the relevant sections of the first-instance prosecution offices. Consequently, the most important recommendations aimed at improving the implementation of criminal procedural law and the CCJC are addressed to the Judicial Police.

A. Recommendations for the Judicial Police

The **first recommendation** addressed to the Judicial Police concerns the rigorous application of Article 296 § 1 of the CCP, in conjunction with Article 256 § 1 of the same Code, in cases where a minor in conflict with the law is arrested *in flagrante delicto* or detained by the JP. As discussed in the findings section, in such cases the questioning of the arrested or detained minor must be carried out exclusively by the prosecutor of the case, in accordance with the provisions of Article 256 § 1 of the CCP. Consequently, the respective JPO should not only notify the prosecutor of the commission of the criminal offense and the suspected perpetrator, but must also place the arrested or detained minor at the prosecutor's disposal for questioning, should the prosecutor deem it necessary to undertake this investigative action. Under no circumstances should the JPO personally interrogate the arrested or detained minor, as doing so would constitute a violation of point 1 of Article 256 of the CCP, rendering the evidence unlawfully obtained and, therefore, inadmissible.

The **second**, and perhaps most important recommendation for the Judicial Police concerns the **proper implementation of Article 37 of the CCP, which prohibits the use of self-incriminating statements as evidence**. According to the findings, the JPOs, only in rare cases, prohibit the statements of persons questioned not as suspects but as individuals who provide information considered useful for the purposes of punishment and who cite self-incriminating data. **The correct application, according to the purposeful (teleological) interpretation of the norm of Article 37 requires that such self-incriminating statements be terminated immediately, rather than at their conclusion**, when the person has already declared everything he knows about the criminal act and his actions or omissions relating to its commission. In such cases, the **JPOs** should not only stop further questioning, inform the declarant that investigations may be conducted against them, and direct them to seek a defence lawyer, but should also **request the prosecutor to declare the previous statements inadmissible, in accordance with the imperative provisions of point 3 of Article 151 of the CCP**.

The third recommendation for the Judicial Police concerns the **implementation of the provisions of the CCJC regarding the mandatory presence of the defence lawyer and psychologist in every procedural action involving the minor**. The findings of this paper showed that, in some procedural actions against minors in conflict with the law, one or more of these subjects did not participate, or their presence remained uncertain. In this regard, it must be reiterated that the presence of a defence lawyer and a psychologist cannot be waived under any circumstance, as it constitutes a legal imperative. Such actions constitute a serious violation of procedural law – in view of Articles 18 and 19 §§ 1 & 3 (a) of the CCJC, read together with Articles 35 and 49 § 1 (a) of the Code of Criminal Procedure – leading to the absolute or relative invalidity of procedural acts (Articles 128 § 3 & 129 of the Code of Criminal Procedure) or the inadmissibility of evidence (Article 151 § 3 of the Code of Criminal Procedure).

To prevent such illegality, the **Judicial Police must clearly document in the relevant minutes the presence of both the defence lawyer and the psychologist, rather than relying solely on their signatures.** It is also advisable for the Judicial Police to record the appointment of the psychologist in a separate act, as is done by the prosecutor. While, **regarding the actions taken by the Judicial Police to appoint the defence counsel,** inform the minor of the appointment, and obtain consent from the minor or their legal representative, **it is mandatory to maintain a separate record in accordance with Article 48 § 3 of the CCJC.**

The fourth recommendation for the Judicial Police concerns the **documentation of the actions taken to notify the parent or trustee to be present in any procedural action involving the minor,** in compliance with the requirements of Article 19 § 3 (ç) of the CCJC. It must be reiterated that, while the presence of the defence lawyer and psychologist is mandatory, the presence of the parent or trustee depends on the will of the minor in conflict with the law. However, if the minor requests the presence of the parent or trustee, such presence becomes mandatory. **The will of the minor must also be documented in a special act or in the minutes reflecting the conduct of the procedural actions.**

The fifth recommendation for the JP concerns **respecting the timing for proving the letter of rights to the minor in conflict with the law and ensuring that the minor has the opportunity to understand it through explanations provided by the JPO, defence lawyer, psychologist, and parent or trustee.** As observed during the analysis of the findings, in most cases the letter of rights did not contain the date of issuance, and it was rarely documented in the minutes that the minor had been familiarized with its contents and had understood them. Moreover, there were numerous instances in which the letter of rights was provided to the minor without any assistance in understanding it, as confirmed by references from the parent or trustee, defence lawyer, or psychologist.

Without wishing to reiterate the importance of ensuring the minor's rights are understood before they are presented to the proceeding body for questioning or other procedural actions, **the burden rests on the Judicial Police to demonstrate that the minor has been made aware of his rights. This requires not only obtaining the minor's signature, but also providing explanations of these rights** with the support of the minor's lawyer, psychologist, and, if applicable, the parent or trustee. The Judicial Police must not proceed with any procedural actions until it is satisfied that the minors fully understand their rights, the nature of the investigation, and the facts attributed to them. Only once the procedural rights provided for in Articles 34/a and 34/b of the CCP are understood by the minor can effective protection be ensured.

B. Recommendations for the prosecution

As noted in this study, in most procedural actions conducted by the prosecutor, compliance with criminal procedural law is observed, reflecting the satisfactory professional level of the prosecutor magistrates. However, certain issues have also been identified in actions led by the prosecution, which were cited and analyzed in the findings. Based on the analysis of the applicable legislation and these findings, it is necessary to make recommendations for the prosecution body, aimed at strengthening the implementation of the law and ensuring the most effective protection of the procedural rights of minors in conflict with the law.

The first recommendation for the prosecution concerns the **correct implementation of Article 287 of the CCP, which requires the prompt registration in the Registry of Notifications of Criminal Offenses of both the notification regarding the suspected commission of a criminal offense and its perpetrator.** While a time limit of several days may be justifiable due to workload, registration of a criminal offense beyond the 15-day deadline is unreasonable and contradicts the principle of procedural expediency guaranteed by the CCP. Similarly, failing to register the name of the perpetrator, when their identification is evident or when they were arrested *in flagrante delicto*, constitutes an unjustified violation of the law.

The **second recommendation** for the prosecution concerns **taking measures to request that the preliminary investigation judge validate the legality of the arrest *in flagrante delicto* or detention of a minor in conflict with the law by the Judicial Police** (Article 258 of the CCP). This action is essential and relates to the fundamental importance of the right to liberty and security for the individual, as protected by Article 5 of the ECHR and the Albanian Constitution (Articles 27 and 28). Accordingly, any restriction of liberty through the arrest *in flagrante delicto* or detention of a minor, if deemed compliant with the norms of the CCP by the prosecutor, must be validated as lawful by the court, as the only authority constitutionally empowered to assess the legality of the security measure imposed by the JP or the prosecutor.

The **third recommendation** concerns the **strict implementation of Article 256 of the CCP**, which assigns exclusively to the prosecutor the right and responsibility to question a person arrested *in flagrante delicto* or detained. To this end, the prosecutor must instruct the Judicial Police to make the minor in conflict with the law available for questioning, if the prosecutor deems it necessary to carry out this action at the initial stage of the preliminary investigation. In any case, **the prosecutor is obliged to declare inadmissible any statements made by the arrested or detained minor in conflict with the law if they were obtained before the JPO.**

The **fourth recommendation** for the prosecution concerns the **proper application of Article 37 of the CCP**, assessing in each case whether statements made before the JPO by persons questioned in the capacity of those who may assist the investigation, contain self-incriminating information. This verification may be carried out *ex officio* or upon the request of the parties, **declaring them inadmissible, if violations of the conditions established by this provision are found.**

The **fifth recommendation** for the prosecution concerns the **organization of investigative work to ensure that the investigation of a case is completed within 3 months** from the date of registration of the name of the minor in conflict with the law in the Criminal Offenses Notification Register. At this point, it should be noted that the CCJC does not allow any extension of the preliminary investigation deadlines; therefore, in accordance with the principle of expediency and priority, these cases must be investigated within this legal timeframe.

The **sixth recommendation** for the prosecution concerns **the preparation of Individual Assessment Reports for minors in conflict with the law whenever required by the CCJC.** This is a **mandatory legal requirement**, leaving no discretion to the prosecutor. The personal assessment of the minor must be conducted in every case when the prosecution is required to apply diversionary measures, as well as when requesting a decision regarding the type of punishment to be imposed for an offense for which the minor has been found guilty.

Finally, considering that the Judicial Police and the Prosecution have generally achieved an acceptable standard in implementing legal norms and respecting the procedural rights of minors in conflict with the law during preliminary investigations, it is recommended to strengthen and consolidate these positive practices through their standardization and adoption of a uniform approach in all cases. In particular, it is necessary to enhance the quality of the practical implementation of procedural guarantees by developing clear institutional guidelines, providing continuous professional training, and establishing effective monitoring and evaluation mechanisms. This will contribute to ensuring sustainable respect, not only formal but also substantial, of the procedural rights of children, further reinforcing the educational, protective, and rehabilitative character of criminal justice for minors.

These recommendations are intended to guide prosecuting authorities when carrying out procedural actions during preliminary investigations. We believe that their proper implementation will contribute to a fairer criminal justice for minors, placing the respect for the procedural rights at the centre of the process. Only in this way can the basic principles of child-friendly justice and the best interests of the child be fully realized.

Tirana, October 2025

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5. J. Trépanier, *Les transformations du régime canadien relatif aux mineurs délinquants: un regard sur le droit et les pratiques* (Transformations in the Canadian juvenile justice system: a look at the law and practices), RSC, vol. 4, no. 4, 2012.
6. Udhërrëfyes për jurisprudencën e Gjykatës Kushtetuese 1998-2023 lidhur me ankimin kushtetues individual (Guide to the jurisprudence of the Constitutional Court 1998-2023 regarding individual constitutional complaints).

B. National and international laws

1. Constitution of the Republic of Albania.
2. European Convention on Human Rights.
3. Universal Declaration of Human Rights adopted by the General Assembly of the United Nations by its Resolution 217 A (III), on 10 December 1948.
4. Convention on the Rights of the Child adopted by the UN General Assembly, 20 November 1989.
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly by Resolution 39/46, 10 December 1984.
6. Directive (EU) 2016/343 of the European Parliament and of the Council, 9 March 2016, on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, OJ L 65/1, 11 March 2016.
7. Directive (EU) 2016/800 of the European Parliament and of the Council, 11 May 2016, on procedural safeguards for children who are suspects or accused persons in criminal proceedings, OJ L 132/1, 21 May 2016.
8. Criminal Code of the Republic of Albania, as amended.
9. Code of Criminal Procedure of the Republic of Albania, as amended.
10. Code of Criminal Justice for Children of the Republic of Albania.
11. Kosovo's Code of Justice for Minors No. 06/L-006, 14/09/2018.
12. Law No. 18/2017 "On the rights and protection of the child".

C. Guidelines, recommendations and comments of international organizations

1. Handbook on European law relating to the rights of the child.
2. ROL Platform (2020), *Children and the European Court of Human Rights - an Overview of the Jurisprudence*, project supported by AIRE Centre and Civil Rights Defenders, Tirana (2019).
3. Beijing Standard Minimum Rules for the Administration of Juvenile Criminal Justice, adopted by the United Nations General Assembly through Resolution No. 40/33, dated 29 November 1985.
7. European Rules on Sanctions and Measures for Juveniles (CM/Rec (2008) 11).
8. Council of Europe Guidelines on Child-Friendly Justice (2010).

9. General Comment no. 10 (2007): Children's rights in juvenile justice, UN Doc. CRC/C/GC/10 (26 April 2007).
10. General Comment no. 12 (2009): The right of the child to be heard, UN Doc. CRC/C/GC/12 (20 July 2009).
11. General Comment no. 24 (2019): Children's rights in the child justice system, UN Doc. CRC/C/GC/24 (18 September 2019)
12. United Nations Economic and Social Council (ECOSOC), Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, ECOSOC Resolution 2005/20, 22 July 2005, par. 22.
13. United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("Havana Rules") adopted by the General Assembly by Resolution 45/113, 14 December 1990.
14. Recommendation No. R (2003)20 on new ways of dealing with juvenile delinquency and the role of juvenile justice, adopted on 24 September 2003.
15. Recommendation CM/Rec(2008)11 of the Committee of Ministers to Member States on the European Rules for Juvenile Offenders subject to Sanctions or Measures, adopted on 5 November 2008.
16. Directive of the EU on procedural safeguards for children who are suspects or accused in criminal proceedings – Implementation Manual, published by Fair Trials International (under the auspices of the European Commission).

D. Decisions of the European Court of Human Rights

1. *Wemhoff v. Germany*, Application No. 2122/64, 27 June 1968.
2. *Pakelli v. Germany*, Application No. 8398/78, 12 July 1982 (Report of the European Commission of Human Rights).
3. *Barberà, Messegue and Jabardo v. Spain*, Application No. 10590/83, 6 December 1988.
4. *Boddaert v. Belgium*, Application No. 12919/87, 12 October 1992.
5. *Funke v. France*, Application No. 10828/84, 25 February 1993.
6. *Dobbertin v. France*, Application No. 13089/87, 25 February 1993.
7. *Poitrimol v. France*, Application No. 14032/88, 23 November 1993.
8. *John Murray v. United Kingdom*, Application No. 18731/91, 8 February 1996.
9. *Foucher v. France*, Application No. 22209/93, 18 March 1997.
10. *Zana v. Turkey* [GC], Application No. 18954/91, 25 November 1997.
11. *T. v. United Kingdom* [GC], Application No. 24724/94, 16 December 1999.
12. *V. v. United Kingdom* [GC], Application No. 24888/94, 16 December 1999.
13. *Condron v. United Kingdom*, Application No. 35718/97, 2 May 2000.
14. *Averill v. United Kingdom*, Application No. 36408/97, 6 June 2000.
15. *Heaney and McGuinness v. Ireland*, Application No. 34720/97, 21 December 2000.
16. *Z. and others v. United Kingdom* [GC], Application No. 29392/95, 10 May 2001.
17. *Correia de Matos v. Portugal* (decision on admissibility), Application No. 48188/99, 15 November 2001.
18. *S.N. v. Sweden*, Application No. 34209/96, 2 July 2002.
19. *Lagerblom v. Sweden*, Application No. 26891/95, 14 January 2003.
20. *Sahin v. Germany* [GC], Application No. 30943/96, 8 July 2003.
21. *S.C. v. United Kingdom*, Application No. 60958/00, 15 June 2004.
22. *Sejdovic v. Italy* [GC], Application No. 56581/00, 1 March 2006.
23. *Jalloh v. Germany* [GC], Application No. 54810/00, 11 July 2006.
24. *Hermi v. Italy* [GC], Application No. 18114/02, 18 October 2006.
25. *Galstyan v. Armenia*, Application No. 26986/03, 15 November 2007.
26. *Salduz v. Turkey* [GC], Application No. 36391/02, 27 November 2008.
27. *Panovits v. Cyprus*, Application No. 4268/04, 11 December 2008.
28. *Güveç v. Turkey*, Application No. 70337/01, 20 January 2009.
29. *Dayanan v. Turkey*, Application No. 7377/03, 13 October 2009.
30. *Kart v. Turkey* [GC], Application No. 8917/05, 3 December 2009.
31. *Adamkiewicz v. Poland*, Application No. 54729/00, 2 March 2010.

32. *Neulinger and Shuruk v. Switzerland*, Application No. 41615/07, 6 July 2010.
33. *Martin v. Estonia*, Application No. 35985/09, 30 May 2013.
34. *Blokhin v. Russia* [GC], Application No. 47152/06, 23 March 2016.

E. Decisions of the Constitutional Court of the Republic of Albania

1. Decision No. 95, dated 27/07/2001
2. Decision No. 25, dated 30/07/2003
3. Decision No. 7, dated 27/04/2005
4. Decision No. 11, dated 18/05/2005
5. Decision No. 12, dated 06/06/2005
6. Decision No. 23, dated 13/10/2005
7. Decision No. 5, dated 04/03/2008
8. Decision No. 23, dated 23/07/2009
9. Decision No. 7, dated 12/03/2010
10. Decision No. 14, dated 03/05/2011
11. Decision No. 42, dated 29/09/2011
12. Decision No. 45, dated 10/10/2011
13. Decision No. 4, dated 10/02/2012
14. Decision No. 12, dated 05/03/2012
15. Decision No. 24, dated 30/04/2012
16. Decision No. 6, dated 26/02/2013
17. Decision No. 22, dated 20/03/2017
18. Decision No. 67, dated 10/11/2017
19. Decision No. 84, dated 26/12/2017
20. Decision No. 33, dated 01/11/2021
21. Decision No. 14, dated 21/06/2022

F. Decisions of the Criminal Chamber of the Supreme Court

1. Decision No. 00-2023-422, dated 10/03/2023, *Korça Prosecution Office against the minor in conflict with the law K.S.*
2. Decision No. 00-2023-995, dated 15/06/2023, *Kruja Prosecution Office against the minor in conflict with the law A.C.*
3. Decision No. 00-2023-922, dated 01/06/2023, *Pogradec Prosecution Office against the minor in conflict with the law M.K.*
4. Decision No. 00-2024-947, dated 23/05/2024, *Shkodra Prosecution Office against the minor in conflict with the law E.M.*
5. Decision No. 00-2022-1595, dated 06/12/2022, *Fier Prosecution Office against the minor in conflict with the law F.G.*
6. Decision No. 00-2023-928 (169), dated 01/06.2023, *Kurbin Prosecution Office against the minor in conflict with the law A.Xh.*
7. Decision No. 00-2025-858, dated 22/05/2025, *Kukës Prosecution Office against the minor in conflict with the law I.Ç.*
8. Decision No. 00-2024-1583, dated 01/10/2024, *Tirana Prosecution Office against the minor in conflict with the law A.Th.*
9. Unifying Decision No. 00-2024-2161 (167), dated 04/07/2024, *Shkodra Prosecution Office against the minor in conflict with the law R.M.*
10. Decision No. 00-2025-374 (59), dated 27/02/2025, *Prosecution Office against Serious Crimes v. (inter alia) the minors in conflict with the law A.A. and E.K.*

1.1 LIST OF CRIMINAL PROCEEDINGS ANALYZED FOR THE STUDY

A. Prosecution Office at the Court of First Instance of General Jurisdiction, Tirana

1. Criminal proceedings No. 321/2024, *Prosecution against the minor in conflict with the law S.K.*
2. Criminal proceedings No. 157/2024, *Prosecution against the minors in conflict with the law E.D., E.Sh., and B.D.*
3. Criminal proceedings No. 2578/2024, *Prosecution against minors in conflict with the law A.G., T.Ç and Xh.M.*
4. Criminal proceedings No. 6711/2021, *Prosecution against the minor in conflict with the law R.V.*
5. Criminal proceedings No. 3374/2019, *Prosecution against the minor in conflict with the law E.M.*

B. Prosecution Office at the Court of First Instance of General Jurisdiction Shkodër

1. Criminal proceedings No. 446/2023, *Prosecution against the minor in conflict with the law A.K.*
2. Criminal proceedings No. 192/2023, *Prosecution against the minor in conflict with the law P.M.*
3. Criminal proceedings No. 140/2023, *Prosecution against the minor in conflict with the law E.B.*
4. Criminal proceedings No. 44/2023, *Prosecution against the minor in conflict with the law G.N.*
5. Criminal proceedings No. 1/2023, *Prosecution against the minor in conflict with the law J.B.*
6. Criminal proceedings No. 627/2023, *Prosecution against the minor in conflict with the law K.B.*
7. Criminal proceedings No. 37/2023, *Prosecution against the minor in conflict with the law A.G.*
8. Criminal proceedings No. 338/2023, *Prosecution against the minor in conflict with the law A.H.*

C. Prosecution Office at the Court of First Instance of General Jurisdiction Vlora

1. Criminal proceedings No. 796/2023, *Prosecution against the minor in conflict with the law F.K.*
2. Criminal proceedings No. 14/2024, *Prosecution against the minors in conflict with the law A.H., P.K. and K.K.*
3. Criminal proceedings No. 836/2024, *Prosecution against the minor in conflict with the law I.H.*
4. Criminal proceedings No. 321/2024, *Prosecution against the minors in conflict with the law, G.T., Q.P., Xh.Z., R.T. and A.G. and the young people in conflict with the law A.H. and A.O.*

D. Prosecution Office at the Court of First Instance of General Jurisdiction Fier

1. Criminal proceedings No. 146/2025, *Prosecution against the minor in conflict with the law J.D.*
2. Criminal proceedings No. 1123/2023, *Prosecution against the minor in conflict with the law K.Ç.*
3. Criminal proceedings No. 328/2024, *Prosecution against the minors in conflict with the law E.P. and R.R.*

E. Prosecution Office at the Court of First Instance of General Jurisdiction Elbasan

1. Criminal proceedings No. 1227/2023, *Prosecution against the minor in conflict with the law F.Z.*
2. Criminal proceedings No. 809/2024, *Prosecution against the minor in conflict with the law P.C.*
3. Criminal proceedings No. 166/1-2024, *Prosecution against the minor in conflict with the law M.C.*

F. Prosecution Office at the Court of First Instance of General Jurisdiction Durrës

1. Criminal proceedings No. 501/2022, *Prosecution against the minor in conflict with the law M.M.*
2. Criminal proceedings No. 204/2019, *Prosecution against the minors in conflict with the law, L.L., L.M., F.M., E.M., K.M., K.K., E.H. and E.A.*

I. JUDICIAL DECISIONS ANALYZED FOR THE PURPOSE OF THIS STUDY

A. Court of First Instance of General Jurisdiction Tirana

1. Decision on the merits No. 460, dated 20/02/2020, *Prosecution against the minor in conflict with the law G.B.*
2. Decision on the merits No. 6081 Act, dated 19/04/2021, *Prosecution against the minor in conflict with the law M.K.*
3. Decision on the merits No. 2549, dated 01/11/2023, *Prosecution against the minor in conflict with the law R.B. and young people in conflict with the law H.D. and M.U.* (all three were minors at the time of the commission of the criminal offense).

B. Court of First Instance of General Jurisdiction Shkodër

1. Decision on the merits No. 10 (1147), dated 05/03/2024, *Prosecution against the minor in conflict with the law A.K.*
2. Decision on the merits No. 50 (3170), dated 05/07/2023, *Prosecution against the minor in conflict with the law J.B.*
3. Decision on the merits No. 60 (4088), dated 02/10/2023, *Prosecution against the minor in conflict with the law K.B.*
4. Decision on the merits No. 51-2023-4353, dated 16/10/2023, *Prosecution against the minor in conflict with the law A.H.*
5. Decision No. 182 (1678), dated 10/04/2023 on the validation of detention and imposition of the security measure, *Prosecution against the minor in conflict with the law A.H.*

C. Court of First Instance of General Jurisdiction Vlora

1. Decision on the merits No. 61-2025-67 (6), dated 15/01/2025, *Prosecution against the minor in conflict with the law F.K.*
2. Decision on the merits No. 61-2024-4058 (550), dated 05/12/2024, *Prosecution against the minors in conflict with the law A.H., P.K. and K.K.*
3. Decision on the merits No. 130, dated 06/03/2024, *Prosecution against the minors in conflict with the law, G.T., Q.P., Xh.Z., R.T. and A.G., and the young people in conflict with the law A.H. and A.O.*
4. Decision No. 61-2024-2978 (366), dated 13/09/2024 on reviewing the request to change the security measure, *Prosecution against the minor in conflict with the law A.H.*
5. Decision No. 7, dated 10/01/2024 on the validation of the arrest *in flagrante delicto* and the imposition of a security measure, *Prosecution against the minors in conflict with the law, A.H., P.K., and K.K.*
6. Decision No. 283, dated 30/07/2024 on the validation of the arrest *in flagrante delicto* and the imposition of a security measure, *Prosecution against the minor in conflict with the law I.H.*
7. Decision No. 130, dated 21/06/2020 on the validation of detention and imposition of a security measure, *Prosecution against the minors in conflict with the law, G.T., Q.P., Xh.Z., R.T., and A.G., and the young people in conflict with the law A.H. and A.O.*

D. Court of First Instance of General Jurisdiction Fier

1. Decision on the merits No. 62-2024-6267 (886), dated 02/12/2024, *Prosecution against the minors in conflict with the law E.P. and R.R.*

E. Court of First Instance of General Jurisdiction Durrës

1. Decision on the merits No. 11-2022-5019 (630), dated 19/10/2022, *Prosecution against the minor in conflict with the law M.M.*
2. Decision on the merits No. 11-2020-530 (39), dated 29/01/2020, *Prosecution against the minors in conflict with the law, L.M., F.M., E.M., K.M., K.K., E.H., and E.A.*

3. Decision on the merits No. 11-2020-934 (95), dated 13/02/2020, *Prosecution against the minor in conflict with the law L.L.*
4. Decision no. 11-2022-1391 (195), dated 21/03/2022 on the validation of the arrest *in flagrante delicto* and the imposition of a security measure, *Prosecution against the minor in conflict with the law M.M.*
5. Decision no. 11-2022-1391 (195/1) dated 19/04/2022 on the imposition of the security measure, *Prosecution against the minor in conflict with the law M.M.*
6. Decision no. 26/1, dated 01/02/2019 on the imposition of the security measure, *Prosecution against the minors in conflict with the law, L.L., L.M., F.M., E.M., K.M., K.K., E.H., and E.A.*

1.2 LIST OF QUESTIONS DURING THE INVESTIGATION AND TRIAL OF MINORS IN PRE-DETENTION

1. At the moment of your arrest *in flagrante delicto*, detention, or the execution of the security measure "Arrest in prison" imposed in absentia (restriction of personal freedom) by the Judicial Police (JP), were you asked about your age, in addition to providing other general information (name, surname, father's name, mother's name, date of birth, place of birth, residence, etc.)?
2. If your age was not previously known to the JP, were your parents or legal representative (guardian) immediately notified after obtaining this information, either on JP's initiative or at your request?
3. How long after your liberty was restricted were your parents able to arrive?
4. Were you allowed to meet your parent immediately and if not, how long it took?
5. Were you able to speak with your parents alone, in a suitable environment?
6. At the time you were escorted to the JP premises, were you informed of your procedural rights as per the meaning of Article 34/a of the Code of Criminal Procedure?
7. If you were informed of your procedural rights, was your parent present during the information session?
8. Did you understand your procedural rights and if not, did you inform the JPO and/or your parent of this fact?
9. Did you sign any document proving that you were aware of your procedural rights?
10. How long after the restriction of your liberty were you able to meet the defence lawyer chosen by your family?
11. If your family could not afford to choose a defence lawyer, how long after your liberty was restricted were you able to meet the defence lawyer appointed *ex officio* by the proceeding body?
12. After your liberty was restricted, were you able to consult with a psychologist or social worker and, if so, approximately how long after?
13. Were you questioned by the JP immediately after being escorted, even without keeping a record of the circumstances of the attributed criminal act, possible accomplices, motives, and reasons for committing this act, as well as other information?
14. If you were questioned by the JP, was your parent, psychologist, defence lawyer, or any of them present?
15. Were you questioned by the prosecutor of the case about the criminal act attributed to you? If so, do you remember when this questioning took place (before appearing in court for the determination of the security measure or afterwards)? Were there any other persons present during the questioning besides you?
16. Do you remember whether other persons, besides the judge, the prosecutor, and your defence lawyer, were present in the session for the determination of the security measure?
17. Were you asked by the preliminary investigation judge to speak at the court session for the determination of your security measure?
18. Which persons were present during the procedural acts carried out in the preliminary investigation of the case in which you were also present?
19. Were you able to familiarize with the procedural acts collected at the end of the investigation? If so, did you have any difficulty understanding the procedural acts you consulted?

20. During the preliminary hearing and the trial of your case on the merits, were you assisted by anyone rather than your defence lawyer?
21. Were you asked for your opinion on the procedural actions taken by the court?
22. What language and tone did the court and the prosecutor use when addressing you during the trial?
23. During the trial, did you have the opportunity to express your opinion on the facts you were accused of?
24. If your trial was conducted under the summary trial procedure, did the judge explain the rights you had and the rights you could choose to waive?
25. Did you read the final decision in your case, and if so, did you have difficulty understanding it? Did you find the language used in the decision difficult to understand?