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ALBANIA

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Contribution prepared by:

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<p><u>in collaboration with:</u></p> <p>ECPAT International</p>	

The Albanian Coalition against Child Trafficking and Sexual Exploitation of Children (ACTSEC) is supported by the Children’s Human Rights Centre of Albania (CRCA), a major child and youth rights organization in the country and the Affiliate Group of the ECPAT network in Albania. ACTSEC is also supported by the Information and Research Centre for Children’s Rights in Albania (IRCCRA) and ALO 116: Albanian National Child Helpline. ACTSEC works towards and promotes close cooperation with other ECPAT groups and affiliates in Europe. ACTSEC has made significant efforts in conducting awareness-raising activities for students and teachers on the sexual exploitation and trafficking of children.

Members of ACTSEC:

- Children’s Human Rights Centre of Albania (CRCA) www.crca.al
- Information and Research Centre on Children’s Rights in Albania (IRCCRA)
- Albanian National Child Helpline (ALO 116) www.alo116.al

ECPAT International (End Child Prostitution, Child Pornography and Trafficking of Children for sexual purposes) is the leading global network working to end the commercial sexual exploitation of children (child prostitution, child pornography, child trafficking and child sex tourism). It represents 82 member organizations from 75 countries. ECPAT International holds consultative status with ECOSOC.

Website: www.ecpat.net

Executive Summary

This UPR submission aims to provide a review of the status of implementation of international obligations and commitments regarding the commercial sexual exploitation of children (CSEC) in Albania during the four year period 2009-2013.

Internationally, the country has ratified essential legal standards regarding CSEC, including the recently adopted Optional Protocol to the Convention on the Rights of the Child on a communications procedure. Albania has also ratified all relevant Council of Europe Conventions aimed at protecting children from trafficking and sexual exploitation.

Despite some efforts to bring the domestic legal framework in line with ratified international treaties, including the development of a strong legal framework against trafficking and a recent revision of the Criminal Code to strengthen laws against child pornography, Albania remains a country where children continue to be victims of prostitution, pornography and sexual exploitation online and international and transnational trafficking.

There remain gaps in legislation related to child prostitution, as well as a lack of effective enforcement of existing laws which results in a low level of prosecution of perpetrators. There is a lack of systematic access to justice for child victims, and limited access to rehabilitation services or compensation, which adds to the general culture of impunity on child sexual exploitation issues.

I. Current normative and institutional framework for the promotion and protection of human rights

1.1 Legal Framework

1.1.1 International Legal Standards

Albania ratified the *Convention on the Rights of the Child* (CRC 1989) in 1992, the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* (OPSC, 2000) in 2008, the *ILO Convention on the Worst Forms of Child Labour* (No. 182, 1999) in 2001. Albania also ratified the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (2000) in 2002 as well as the *Optional Protocol to the CRC on a communications procedure* (2013).

1.1.2 Regional Legal Standards

Albania ratified the *Council of Europe Convention on the protection of Children against Sexual Exploitation and Sexual Abuse* (2007) in 2009, the *Council of Europe Convention on Action against Trafficking in Human Beings* (2005) in 2007 as well as the *Council of Europe Convention on Cybercrime* (2001) in 2002.

1.1.3 Domestic Legal Framework

Albania recently made very significant progress with regard to the development of laws specifically defining and criminalising child pornography. Albania also has a robust legal framework to address child trafficking.

However, children involved in prostitution are not exempted from criminal responsibility. Therefore in principle they can be prosecuted for being victims of child prostitution.

Recommendations

- **The preparation of a Children’s Code is a priority for Albania. In order to achieve such a major objective the Ministry of Justice, Ministry of Interior and the Ministry of Social Welfare and Youth should lead an open and participatory process with the final aim to protect children from any forms of exploitation and abuse.**
- **Training and enhancement of capacities of justice and law enforcement agencies on laws addressing all manifestations of commercial sexual exploitation of children should be a priority.**

1.1.3.1 Laws regarding Child Prostitution

As pointed out in the Committee on the Rights of the Child’s concluding observations in October 2012, conduct relating to child prostitution such as *offering, obtaining, procuring or providing a child for child prostitution* are still not criminalised by the Albanian Penal Code.

As mentioned in the Committee on the Rights of the Child’s concluding observations in October 2012¹, the Penal Code does not expressly exempt children involved in prostitution from criminal responsibility. Therefore, even though in practice children involved in prostitution are not prosecuted, it is still legally possible.

Children involved in prostitution are victims and should receive care, support and legal assistance instead of being prosecuted.

Recommendations

- **The Penal Code should expressly criminalise the following offenses: *offering, obtaining, procuring or providing a child for child prostitution*.**
- **The penal Code should be amended to contain a specific provision which would expressly state that children victims of prostitution should not be prosecuted.**

1.1.3.2 Laws regarding Child Pornography

According to the Minister of Technology and Information, nearly 60 percent of the Albanian population uses the internet. The average age of users of social networking sites is under 24 years old, while nearly six percent of users are aged between 13 and 15.² Furthermore, according to a recent study Albanian young people spend on average three to four hours navigating online.³ In addition to this increase in Internet usage throughout the country, the government has made internet available in every school throughout Albania.⁴ However, there

¹ Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Available at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-OPSC-ALB-CO-1_en.pdf

² [The speech of Minister of Innovation and ICT Mr. Genc Pollo “The Seminar for the Freedom of Media and Voice in the framework of the European integration of Albania”](http://www.mitik.gov.al/english/index.php/fjalimet-e-ministrit/299-the-speech-of-minister-of-innovation-and-ict-mr-genc-pollo-the-seminar-for-the-freedom-of-media-and-voice-in-the-framework-of-the-european-integration-of-albania), <http://www.mitik.gov.al/english/index.php/fjalimet-e-ministrit/299-the-speech-of-minister-of-innovation-and-ict-mr-genc-pollo-the-seminar-for-the-freedom-of-media-and-voice-in-the-framework-of-the-european-integration-of-albania>, 16 Jan 2013.

³ Cela A., Fshazi T., Mazniku A., Kamberi G., Smaja J., *Youth in albania 2011, study*, Friedrich-Ebert-Stiftung, 22 May 2012, <http://www.fes-tirana.org/pages/en/publications/publications-2012.php?lang=EN>

⁴ <http://www.balkanweb.com/gazetav5/artikull.php?id=128036>
<http://www.kohajone.com/zarticle.php?id=61274>

are no laws that make it obligatory for Internet Service Providers to provide safe internet to children. This increases the risks of child sex abuse materials being used by offenders without any legal consequence.

The BECAN study 'Violence against children in Albania' revealed some alarming statistics related to the prevalence and incidence of pornography in young children's lives. According to the study 2.2 percent of the interviewed children had recorded or shot pornographic images in the presence of others during their life and 1.77 percent expressed that it had happened in the last year.⁵

In May 2013, the Criminal Code was amended⁶ in order to provide children with stronger legal protection against pornography in Albania. The legal domestic legal framework is now in full compliance with the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography. However, it is not yet fully compliant with the *Council of Europe Convention on the protection of Children against Sexual Exploitation and Sexual Abuse* (Lanzarote Convention) as it does not criminalise "knowingly obtaining access, through information and communication technologies, to child pornography" (Art. 20-1(f) of the Lanzarote Convention). In addition it does not criminalise the solicitation of children for sexual purposes (grooming), as requested by Article 23 of the Lanzarote Convention. Article 117 of the Criminal Code was amended to include the 'possession (...) of pornographic material' as a criminal offense, in addition to the 'use of a child for production of pornographic materials and its distribution or publication on the Internet or in any other form'.

Although Albania ratified the Council of Europe Convention on Cybercrime (2002), unfortunately it has not yet adopted any laws or normative acts by which ISPs are obliged by law to contribute to the prevention of publishing of child pornography materials or to blocking them automatically. This represents a big challenge which requires attention and immediate action.

Recommendation

- **Legislation must be improved in the field of the protection of children from pornographic content online. The National Regulatory Commission for Electronic Communications and ISP's should find ways to filter child sex abuse materials, and to control accessibility of adult content by minors in order to enhance digital safety and promote child safety online.**

1.1.3.3 Extraterritorial legislation

Albanian travelling child sex offenders who escape prosecution in the country where they have sexually exploited children can be prosecuted in Albania for such crimes (Art. 6 of the Criminal Code). However, prosecution based on the extraterritorial jurisdiction of Albanian courts over commercial sexual exploitation related crimes can only take place if such crimes are also criminalised in the country where they were allegedly committed (double criminality principle). This legal requirement constitutes an obstacle to the prosecution of Albanian

⁵ 'Has filmed or shot pictures with you or with other people making sexual things?' Question 45A. Children's Questionnaire, (Prevalence; 2.2, Incidence 1.77), Cenko E., Hazizaj A., Haxhiymeri E., Çoku B., *Violence against Children in Albania. Balkan Epidemiologic Research on Child Abuse and Neglect (B.E.C.A.N)*, CRCA Albania, Tirana 2013.

⁶ Law No. 144/2013 'On some amendments to the Law No. 7895, date 27.01.1995 'Criminal Code of the republic of Albania' amended. (144. Ligji nr. 144/2013 "Për disa shtesa në ligjin nr. 7895, datë 27.01.1995 "Kodi Penal i Republikës së Shqipërisë", të ndryshuar; http://www.parlament.al/web/Sesioni_i_tete_15184_1.php

travelling child sex offenders as such offenders might target countries where laws do not effectively criminalise sexual exploitation of children related offenses.

The Committee on the Rights of the Child in its Concluding observations (October 2012) encouraged Albania to ensure that extraterritorial laws could be implemented in child sexual exploitation cases without the requirement of double criminality.

Recommendation

- **In prosecuting alleged Albanian travelling child sex offenders for sexual exploitation of children related crimes committed in a foreign country, Albanian courts should exercise their extraterritorial jurisdiction over sexual crimes against children without requiring that such crimes are also criminalised in the foreign country where the alleged facts took place.**

1.2 Policy framework addressing commercial sexual exploitation of children

With regard to child protection policies, the Albanian government has made significant efforts in the area of human trafficking and child trafficking by adopting in 2011 a 2011-2013 National Action Plan on the fight against Trafficking in Persons, and its supplementing document the Plan of Action on the Fight against Child Trafficking and the Protection of Child Victims of Trafficking.

According to the Council of Europe Group of Experts on Action against Trafficking in Human Beings⁷, this National Action Plan could be regarded as comprehensive even though it should have a greater focus on national trafficking, which is a growing phenomenon, including national trafficking of children for sexual purposes.

Albania has also developed an Action Plan for Children 2012-2015. However, this National Action Plan does not address the different manifestations of commercial sexual exploitation of children, including child prostitution, child pornography and sexual exploitation of children in travel and tourism.

Recommendations

- **The government of Albania should ensure that sufficient resources are allocated to the implementation of the *Plan of Action on the Fight against Child Trafficking and the Protection of Child Victims of Trafficking***
- **The government should also ensure that specific strategies and actions against national trafficking of children for sexual purposes are established and implemented.**
- **Albania should include specific sections on preventing and combating CSEC in its Action Plan for Children 2012-2015.**
- **The government should establish a child protection system at national and local level.**

II. Promotion and protection of Human Rights on the ground: implementation of international human rights standards

⁷ Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Albania, December 2011.

2.1 Key areas of concern with regard to the implementation of the children's right to protection against commercial sexual exploitation on the ground

2.1.1 Lack of effective implementation of the legal framework addressing trafficking

Even though chief police inspectors and judges and prosecutors from the First Instance Court for Serious Crimes and the Public Prosecutor's office receive regular training on trafficking in persons, the level of arrests, prosecution and conviction of traffickers appears to remain quite low. For example, in 2010, the First Instance Court for Serious Crimes tried 19 cases related to THB and reached a decision on seven out of them resulting in the conviction of 11 persons⁸.

This could be due to a lack of awareness of law enforcement officials on domestic trafficking cases that should be prosecuted in the same way as transnational trafficking cases.

Recommendations

- **Law enforcement officials should be provided with specific trainings on how they should address the issue of domestic trafficking in persons.**
- **The government of Albania should ensure and monitor that all cases of child trafficking are duly prosecuted, especially cases of domestic child trafficking.**

2.1.2 Inadequate care and support to child victims of sexual exploitation (prostitution, child pornography and sexual exploitation online)

Victims of trafficking, including children, are entitled to receive assistance regardless of their willingness to cooperate with law enforcement. Child victims at risk of trafficking are referred to specialised organisations such as the National Reception Centre for Victims of Trafficking, funded by the government and three shelters run by NGOs. These organizations provide medical assistance, counseling, social reintegration, education and vocational training and help with finding jobs⁹. In 2010, 14 child victims of trafficking received care and protection services.

However, even though referral mechanisms exist to support child victims of sexual exploitation (e.g. Albania National Child Helpline - ALO 116), there are no specific institutions and social services available to accommodate and provide adequate care, protection and assistance to child victims of prostitution, pornography or sexual exploitation online.

Recommendation

The government of Albania should fund national services aimed to accommodate and provide specific assistance (medical assistance and counseling to child victims of sexual exploitation (child prostitution, child pornography and sexual exploitation online) to promote their recovery and rehabilitation, including the support for the Albanian National Child Helpline (ALO 116).

⁸ Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Albania, December 2011.

⁹ Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Albania, December 2011.

2.1.3 Lack of systematic access to justice and compensation for child victims

According to Law No. 10/039 on Legal Assistance, victims of trafficking are entitled to receive free legal assistance during criminal proceedings provided by lawyers. However, in practice it appears that such legal assistance is not systematically available due to financial constraints from the government. NGOs reported that they cover financial costs for legal assistance for trafficking victims¹⁰.

Law No. 10/192 of 3 December 2009 on the Prevention of and Fight against Organised Crime and Trafficking through Preventive Measures against Assets provides with compensation for non-material damages from offenders (e.g. damages to the physical and moral integrity of a child) can be claimed by child victims in Albanian civil courts. This requires that child victims engage in a civil court case in addition to the criminal case filed against the offenders.

However, even though this case constitutes a very positive step with regard to the provision of compensation to child victims from the perpetrators, it appears that the case is isolated as no other court decision provided compensation to child victims of trafficking or sexual exploitation from the offenders.

Recommendations

- **The government of Albania should harmonise their national laws to comply with Article 8 of the OPSC.**
- **The government of Albania should prioritise the implementation of the ECOSOC Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.ⁱ**
- **The government of Albania should implement the Draft basic principles on the right to an effective remedy for trafficked personsⁱⁱ.**

Specifically:

- **The government of Albania should ensure that child victims of trafficking and sexual exploitation (child prostitution, child pornography and sexual exploitation through the use of the Internet) should systematically receive free legal assistance from the State during criminal proceedings.**
- **The government of Albania should ensure that all child victims of trafficking and/or sexual exploitation should be given access to their right to compensation from the offenders and receive adequate legal support to do so.**
- **During the criminal case, the child should be able to testify against the perpetrator through a video recording system in order to avoid any confrontation with the perpetrator which could be a source of revictimization for the child.**

¹⁰ Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Albania, December 2011.

ⁱ Resolution 2005/20 of the Economic and Social Council of the United Nations, “Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime”. Available at <http://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf> [Accessed September 2, 2013]

ⁱⁱ Draft basic principles on the right to an effective remedy for trafficked persons, UN General Assembly 66th Session, Trafficking in persons, especially women and children, note by the Secretary-General (A/66/283), Available at: <http://www.ohchr.org/Documents/Issues/Trafficking/A-66-283.pdf> (Accessed September 3, 2013)