

AN INVESTIGATION OF ALBANIAN ORPHANS' ACCOMMODATION AND EDUCATION ISSUES FROM A LEGAL PERSPECTIVE

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Abstract

Among the most vulnerable groups in Albania, orphans are the ones who have been encountering a lot of problems due to the neglect of the government on providing the support they need. This work focuses on the Albanian orphans' accommodation and education issues while at and after leaving the residential care. There will be an elaboration of two articles (27 and 28) from the convention of the children's rights, which address their rights on such issues. After a detailed analysis of the situation further recommendations will be suggested based on the national law and the Convention on the Rights of the Child.

Keywords: orphans, education, children's' rights, convention, accommodation.

1. INTRODUCTION

Albania has been going through a long period of transition where despite economic growth, many people's lives continue to be marked by poverty, unemployment and homelessness. Under such conditions, the family, although also under strain, is still the most secure place in most people's lives.

Orphans and other young people raised in institutional care are amongst the most disadvantaged and vulnerable groups: they lack the support, love and care derived from a family environment, the network of family relationships through which children and young people find their place in the wider community and which may assist them when they grow up in finding employment and establishing their own families. They do not only suffer because of their vulnerability and disadvantages but also because of the state's failure in fulfilling its duties and obligations under international and national law and its violation of their rights to family life; to "special protection and assistance" provided by the state for children deprived of parental care; to health care and, to education. These rights are recognized to all children under the UN Convention on the Rights of the Child (CRC), ratified by Albania in 1992.

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2. CHILDREN'S PLACEMENT IN RESIDENTIAL CARE

According to Albanian traditions children are not easily given to the State orphanages (Children's Homes) regardless of the circumstances of the parents. The most widespread form of alternative care is the informal care, where the grandparents or other relatives take care of the child. This is one of the main reasons why the number of the children in residential institutions is low compared to regional standards. A small number of orphan children around the country are treated in nine governmental residential centers and in sixteen non-governmental centers. State Social Service Network operates in 12 regional offices around the country; offices that have not operated properly during the years of transition. This because of the fact that service network has been mostly corrupted and informal (Ombudsman Office, 2013).

The law Nr. 8153, Article 5, dated 31 October 1996 on the Status of orphans states that:

- 1) Orphans in state or private social care institutions are kept there until they reach the age of 14. In cases when a child has not completed primary education by that age, he or she is kept in the orphanage until the age of 17. After that age, article 6 where it is stated that: "Scholarships and clothing for the years of secondary and higher education are determined by a decision of the Council of Ministers" (OSCE, 1991), shall be applied to those who are granted the status of orphans.
- 2) Upon the completion of primary school, the directorate of the social care institution, in cooperation with the Ministry of Education and the local government units arranges for admission to further education on the basis of the child's talents and skills. These persons are given a full scholarship by the state according to the criteria established by secondary legislation.

Most of the state Children's Homes are dependent on the local government but are inspected by central government. According to a report of State Social Services, there were 241 children in total placed in these institutions. The other children (In 2008, there were 362 children) are hosted by other private institutions run by NGOs or religious foundations whose activities are approved by the state. These institutions create a family-style environment where small groups of children of different ages live together with a caretaker, the siblings are not separated and the establishment of long-term family-type relationships with each-other is stimulated.

One of the main factors that contribute to the children's placement in Children's Homes is poverty. In case the parents get divorced and because of the difficulties of single parenting and being unable to provide the child with appropriate care, children are placed in these institutions. This has a negative effect on the children as they are indirectly forced to stay away from their parents only because of financial strains. After a sharp increase in the number of orphans placed in institutions, the government enacted a policy since 2005 in order to reduce this number and to

promote the staying of children with their parents by financially helping families to care for their children at home. What is more, a year later the Albanian government contrary to this ruling, in the categories of children who may be admitted to residential care institutions, included “*children whose parents do not have sufficient financial resources to maintain the child*”. Thus, here we have a situation where the government does one step forward and then follows it with two steps backward. The government tries to solve the problem by allocating certain funds for families to promote the staying of children with their families, and after the government does not materialize this, it facilitates once again the placement of the children at orphanages.

3. REGULATIONS AND PRACTICES ON ORPHANS’ ACCOMMODATION

Children stay under the care of the State orphanages (Children’s Homes) until they reach the age of 14. Prior to their departure, Albanian law requires that they should be consulted about their future, and should receive counseling about the risks of exploitation, sexual health, alcohol and drug abuse, as well as practical instruction in managing a budget, cleaning, and cooking. There is also a requirement that the child should continue to be supported and monitored after leaving care, although no specification as to who is responsible for this or the period for which such support and monitoring should last (Amnesty International, 2008).

Orphan is called any child (a person under 18 years), whose both parents or one of the parents has died, especially if the dead parent is the father. In fact the most accurate term for orphan is “children deprived temporarily or permanently of parental care”. The category of orphan children includes those individuals who, under applicable law, shall enjoy the orphan status. This status is granted to all persons aged between 0-25 years, fulfilling all requirements as provided by the law. The acceptance of these individuals by social care institutions, whether governmental or private, is not an excluding requirement (Albanian Ombudsman Office, 2013). Children’s Homes are mostly occupied by children whose one or both living parents, for different reasons are temporarily or permanently unable or unwilling to care for them. Children whose both parents have died (sometimes referred to as “biological orphans”) are usually nationally or internationally adopted. Children who have a living parent or parents are not given the orphan status and rights unless their parent/s has relinquished the rights by a court decision or the child has been abandoned. According to the Albanian legislation, homeless registered orphans till 30 years old, have the right of being treated with priority in case of social housing. However the law has been implemented very rarely and many of these orphans continued to live in school dormitories in very bad conditions and others paid the rent for a very poor accommodation.

Until now we see that there are two major problems in Albania with regard to the orphans’ situation: (i) when there is no law or we have an incomplete formulation of the law, (ii) even when there is a positive regulation, that regulation is not applied by the state or the state appears to lack the necessary sources. An example of the first kind of the problem is the law that

requires a consultation of the orphans prior to leaving the residential care while not specifying the parties that would conduct this consultation. In order to facilitate the application of the law the government should definitely specify the parties or the individuals responsible for applying the law, in this case for consulting the orphans on the risks of exploitation, sexual health, alcohol and drug abuse, as well as practical instruction in managing a budget, cleaning, and cooking. Similarly the same law states that the orphans leaving the care should be supported but there is no specification of how long this support will continue. An example of the second type of problem is the one where the government does not allocate the necessary supporting funds for the single parent families or families in dire financial situation.

4. ORPHANS' RIGHTS VIOLATED WITH REGARD TO ACCOMMODATION

4.1. Lack of Special Protection and Assistance

The Law "On protection of children's rights", aims to establish appropriate conditions for the development and implementation of policies that affect children's rights, adapting them to international standards. On the other hand, this law enables the establishment of an effective system of monitoring and reporting on children's rights at the local and central level. But while this normative base exists and the monitoring and enforcement mechanisms have already been created, there are still many problems, which should be addressed (Albanian Ombudsman, 2013). There are many reports on Albanian orphans' situation that are not any longer under state custody, who have been facing many difficulties in finding a shelter or adequate public services once they leave care.

Under Article 20 of the CRC (U.N. General Assembly, 1989), "A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State" (Child Protection International). Although their existential needs are met, the state does not provide them with this "special protection and assistance" which, as minors deprived of parental care, is also their right under Albanian law (Articles 54 and 59.1e of the Albanian Constitution). One aspect of this lack of "special protection and assistance" is reflected in the fact that they no longer have a guardian, and that no specific state authority or adult is assigned a special duty of care to them individually (Amnesty International, 2010).

4.2. The Right to Live in a Family Environment

Another right violated by the state is their right to live in a family environment. Besides family reasons, Albanian authorities recognize the right to be placed in State orphanages to all children who live under extreme poverty. Insufficient efforts are done by the government to avoid their unnecessary placement in such institutions. Although they have at least a living parent or other relatives who would care for them, the latter cannot financially support them. There are a lot of children in residential care *'today whose best interests would be served by*

remaining in their families, and who have a parent or other close relatives who would care for them if adequate economic assistance and other support were available'. These children are being denied their right to family life (Amnesty International, 2009). Such prevention has negative consequences on the child's development. The importance of family environment on child's development is stated also in the preamble of the CRC: "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding". Only through strong families children can develop physically, socially, emotionally and spiritually as unique individuals worthy of respect (Melton, 2010).

Article 27 (See appendix 1) of the CRC concerns the State's responsibility to either assist parents to provide protection and care for their children or it is the State's responsibility to provide all this for the children who lack parental care and for different reasons are placed in the State orphanages. Thus, it emphasizes that every child including orphan children, have the right to live at a standard that promotes the child's physical, intellectual, spiritual, moral and social development. In case of the orphans, the state provides a secure and financially sufficient environment and services by the means of the caretakers at the institution. Once the child is placed at the institution permanently or temporarily, the state should either provide the child with appropriate nutrition, education, clothing and housing, or it should assist and support the family through financial support and different programs to be able to raise the child in a family environment. This article makes clear that the parents have the primary responsibility to provide security and care for the child and in case of their inability to do so, members of the extended family are expected to take over such a role.

Regarding Article 27, Albania has not fulfilled any of the responsibilities in a sufficient way for the Albanian orphans placed in State institutions. The need for its implementation is very urgent for this category of children. Even in Article 25 of Universal Declaration of Human Rights, it is stated that: "*Everyone* has the right to a standard of living adequate for the health and well-being of himself." The principle of universality in the Declaration is grounded in moral philosophy. However, the power of international law seems to rest on the good will of national government (Melton, 2010). Thus, for the sake of the best interest of the children, Albania should rely on and use at maximum domestic resources and ask for support if needed from the international community.

Besides what the state provides for these children, there are several NGOs and religious organizations which provide accommodation, care, and supervision to a limited number of orphan children in Albania such as Hope for the World, SOS Villages, Casa Famiglia, Terre des Homes, and so on. Children who have the opportunity to transfer to private institutions usually complete the compulsory education and receive personal and educational supervision aiming to prepare them for individual life. In the memorandum of Amnesty International sent to the government in November 2009, among other issues there was a concern that children continued

to be placed in residential institutions because of family poverty. Thus, poverty dominates as one of the main reasons for the placement of children in institutional care in Albania, and the State does little to help them escape poverty. Amnesty International also called for a change to the rules governing admission to residential institutions, to ensure that children are never admitted solely because of family poverty, but only when institutionalization is in the best interests of the child.

5. ORPHANS' EDUCATION CHALLENGES

A similar situation appears to continue also regarding orphan's education. Article 28 (see Appendix 1) of the Convention sets out that States parties shall ensure that primary education is compulsory and available to all children on the basis of equal opportunity. States parties are encouraged to make secondary and vocational education available and accessible to every child. 'States should ensure that access to education is maintained during all phases of the displacement cycle. Every unaccompanied and separated child, irrespective of status, shall have full access to education in the country that they have entered in line with articles 28, 29 (1) (c), 30 and 32 of the Convention and the general principles developed by the Committee (CSIE, 2010). High dropout rates especially from the secondary school are partially attributed to the teachers' and administrators' attitudes and lower academic expectations toward these children. Having no parental support and no one to care and guide these children to the right path in terms of education, may result in their involvement with crimes and violence.

Participation of children in school life, the creation of school communities and student councils, peer education and peer counseling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realization of rights..." (The Committee on the Rights of the Child, 2013).

The government's role remains insufficient in preparing the policies and procedures to help these children succeed at school. Research shows that parental involvement (PI) with the school is considered as an important predictor of the child's academic achievement and social development (Dearing et al., 2006; Englund et al., 2004; McWayne et al., 2008). By default, orphans lack this important predictor (PI) and this makes them a risk group. This neglect is reflected also in their poor academic performance resulting in their drop out of the school and risk of drifting into crimes. These children need an initial emotional and psychological support from someone that would presumably "replace" the parental figure while at the orphanage, in order to facilitate the improvement in academic performance. The orphanages should have a group of psychologists who in consultation with each-other should get involved with the orphans education and work on all the matters related with the school. They should visit the school, talk with the teachers and advise the orphans in case they are performing poor at school. This support would also help with the orphans' socialization and integration into the community. Once integrated into the community, then the community will directly or indirectly support the role of

the psychologists at the orphanage and thus, creating a constructive structure that would be in the interest of the child. The child is regarded as part of a community; therefore, the community is responsible to assist with these children's developmental and moral upbringing (Deters, 2008). Just as strong communities are important for healthy families (Melton, 2010), for the orphans, who are a very vulnerable group of the society, the support by the community has a preventive role on many negative outcomes. Volunteers from the community can offer their time to help the orphans and engage with their matters related to the school like visit their schools and talk with the teachers and offer other supplementary support. Such a support (by means of community-based programs) from the community would be very important especially for the children out of care.

6. STANDARDS OF CARE AND CURRENT PRACTICES

Public and private residential centers for orphan children have made progress in implementing standard services, but still there are difficulties and vagueness in several directions. Institutions continuously focus on the implementation of standards related to the physical environment, and have difficulties in the enforcement of standards related to psychosocial aspects of children, reintegration, inclusion of parents and relatives in the process of drafting individual plans, relations with community, etc. Staff members who take care of the orphans lack their professional capacities and qualifications for their age based treatment on psychosocial and emotional development and according to their different needs. Albanian authorities should encourage family-home service to be implemented in all social care institutions.

A report on the Albanian young children leaving the care shows that there is a lack of accurate information about the number of children who leave the care every year because of the fragmentation of services provided by public institutions, boarding schools, NGOs, and families.

Thus, there is a fatal gap for 14–16-year-olds in state care as they may neither work nor stay in state care facilities (SOS – Childrens' villages). Some of the orphans have an opportunity to return to their families or members of extended family and a few move to NGOs' care after the age of 14. After a child's completion of primary school, the directorate of social care, in cooperation with the Ministry of Education and relevant local government units, based on their abilities and talents, arrange the child to be admitted to further education. Young people who attend secondary school or pursue higher education are offered accommodation in boarding schools and dormitories (GoA, 1996, art. 7). Until they finish the secondary school and make efforts to find employment, their expenses for food, education and accommodation are covered by the offices of social assistance in municipalities and its units.

Amnesty International considers that young people leaving state social care do not receive the support they need to make the transition to independent life. Many leave school without acquiring the skills and qualifications that would enable them to find secure employment

and an income enabling them to live independently. Most of the young people now leaving state care, risk following earlier generations into poverty and marginalization.

The right to adequate housing is a right guaranteed in international law, which requires states to give priority to disadvantaged groups. Albanian law guarantees orphans the right to priority with housing. However, the law has been implemented very rarely and many of these orphans continued to live in school dormitories in very bad conditions and others paid the rent for a very poor accommodation. Official statistics indicate that, between 1996 and 2008 only 29 out of 845 registered orphans obtained housing under the law's provisions (none of them after 2005) (Amnesty International, 2010).

Thus, there is a lack of comprehensive legislation dealing with care leavers referred to the orphans, and inadequate social services to support them in accessing housing. Government policy foresees the introduction of special programs to prepare orphans for independent life when they leave institutions, but as yet no action has been taken to achieve this aim. Having no family to turn to, and often only insecure and unemployed, they may have no choice but to live in very bad conditions of semi-abandoned school buildings – the state's only “solution” to their housing needs. Some of them have shared rooms in such buildings for many years, and are now living with families and children of their own.

The UN General Assembly has adopted some Guidelines for the Alternative Care of Children. They aim at “*Assisting and encouraging the governments to better implement their responsibilities*” and “*Guide policies, decisions and activities of all concerned with social protection and child welfare in both the public and private sectors, including civil society*” (Amnesty International, 2009). Young children who leave the care and make the transition to independent living can be supported through community-based services providing legal, social and other services. Partnerships between local community and social welfare institutions should focus their efforts on supporting the young orphans with activities and resources that can improve their education and adequate living.

Thus, there is an urgent need for the design, implementation and evaluation of community-based intervention programs for orphans leaving care. Further, child advocates should insist and criticize the approach of placing children in institutions which is an inefficient and unsustainable way of raising them resulting in adverse psychological and social effects among children. Albanian authorities and policymakers should design a more comprehensive leaving care legislation which can have a supportive role on the young orphans' transition to independence and during aftercare. Such legislation should include different programs focused on education and training well before they leave institutional care and for some time afterwards as well as support in having employment and effective access to adequate housing. Only in this way problems such as social exclusion and destitution can be diminished and vulnerable young people can start living a more stable and independent life (Amnesty International, 2008).

7. CHALLENGES AND OPPORTUNITIES DURING THE TRANSITION PERIOD

The government must also take effective measures to redress its prolonged neglect of its obligations with regard to the rights of earlier generations raised in social care to adequate housing and employment. These people have experienced the most turbulent and difficult years of Albania's transition from communist rule. They are now mature adults, some of whom are struggling to bring up their own children in severely inadequate housing and living conditions. Most of the regulations in Albanian orphanages are inherited from the communist regime. Similarly, the children used to stay in orphanages until the age of 14 and then, they were placed in high school dormitories. There have been reports of abuse by these children staying in dorms after leaving the residential care (Hope for Albania).

Leading politicians of all the main parties have on numerous occasions expressed the intention to make better provisions for orphans.

We hope that the current and the new government which started its duty on September 2013, will do a better job for the situation of orphans. There are some opportunities for the late governments though which may be categorized in two groups: (i) *opportunities that are present as a result of better communication with the outside world, and* (ii) *opportunities that are present as a result of many contributing partners.* Current policymakers can learn faster about new regulations on the rights of orphans and the state officials are continuously being trained around Europe on the issues dealing with the orphans. Also, nowadays it is easier to learn about the other countries' experience. In the second group of opportunities we may mention the other actors who actively offer services to the orphans and several international monitoring agencies (Amnesty International, UNICEF) that monitor the situation in Albania. UNICEF continuously supports the government, civil society and others in reviewing and revising the laws relating to child protection to ensure that they are consistent with the UN Convention on the Rights of the Child. Having many organizations may be good on the one hand. On the other hand, there are more difficulties for the state to monitor them until they attain the "reliable" status. Unfortunately, there has been a case where the children were abused in an orphanage run by an NGO (The Guardian, 2008).

8. PRACTICAL RECOMMENDATIONS TO IMPROVE THE ORPHANS' QUALITY OF LIFE

Poverty alone should not be a reason for a child to be placed in social care. The Convention on the Rights of the Child asserts as a guiding principle that the family is "*the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children*". Under this convention, states are required to "*render appropriate assistance to parents and legal guardians in the performance of their child-rearing*

responsibilities ...". In March 2005, the Committee on the Rights of the Child, the committee of independent experts which monitors compliance with the Convention on the Rights of the Child, stated that it "*remain[ed] concerned that children may be ... placed in institutions by parents in difficult economic situations*", and recommended that Albania take measures to provide appropriate support to enable families to care for their children at home.

The adoption of the Sectoral Strategy of Social Protection 2008, which aims to establish: 1) family-oriented alternative care services for children without parental care, 2) the de-institutionalization of children, 3) the recognition of foster families as beneficiaries of the 2010 Economic Aid Law and 4) the strengthening of foster families has been recommended to be implemented in Albania (UN Committee on the Rights of the Child, 2012).

The government has to ensure the presence of elements of a family environment, even when the child does not live with his or her family of origin (Melton, 1996). There is a concern that most of the children in institutions have been placed there because of poverty reasons and the lack of appropriate support provided to their families. As the priority is given to children, the government has to ensure sufficient social and financial support for those families to promote strong family ties between families and children and child wellbeing. Not only the government, but also the local community should make some efforts on supporting these children through donations and mentorship programs once they leave the institutions at the age of 15 years. The number of staff members who care for children in the institutions should be increased and be provided with trainings on how to promote better growth for these children.

The State party should take all necessary measures to ensure that children from the most marginalized families can be raised with their biological parents and to this end, increase financial allocations to families in need and combine them with social services appropriate for them. The State Party should try to Amend Decree No. 209 of 12 April 2006 with a view to prohibiting the placement of children into institutions on economic grounds (UN Committee on the Rights of the Child, 2012). The State Party should also prioritize family-type care settings over institutional placements, by raising public awareness about the negative impact of institutionalization on a child's development. It should also take all the necessary measures to reduce children's length of stay in institutions by the regular review of placement as required under article 25 of the Convention. The State Party should abide by its commitment made during the Universal Periodic Review process to extend the age of leaving care from 15 to 18 years and ensure that children leaving institutions are provided with appropriate support and ensure that alternative care institutions are provided with the necessary human, technical and financial resources for the proper care of children placed in those institutions.

It is worth mentioning that the Article 43 of the CRC requires for the national committees to consist of "*experts of high moral standing*". In line with this initial requirement of moral standing, the state should carefully control the situation of the committee involved. Upon the

initial employment the background of each applicant should be checked. In one case when a foreign national was found guilty of abusing with the children in an orphanage, it was revealed that he had twice been convicted of indecently assaulting teenage boys in the UK (The Guardian, 2008). In any case that the behavior of any committee member raises any dubious flag, then the state parties should take measures or should monitor the situation. As children are very vulnerable to abuse, a general rule stating that in any contact with the children there should always be at least two state officials present with the children.

Finally, the State parties should arrange a better coordination and information sharing between local and national stakeholders. There should be an individual plan or monitoring of young children who have left the care especially those aged 15-18. The state should monitor care leavers based on several indicators such as education, employment and accommodation. These factors are considered as main indicators for an independent life. The state should also promote community based services because a warm community environment is second only to a family environment.

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Appendix I

The Articles of the CRC

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility

for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.