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The Child Labour
Phenomenon, a comparison
between two countries of
the same nation.
Albania vis-a-vis Kosovo.

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Summary

This thesis deals with one of the most concerning issues regarding children over the years, child labour. The child labour problem first reached the public attention in 1830s and notwithstanding all the endeavours of the international community to combat the phenomenon, this issue still nowadays remains a matter of concern in both developed and developing countries.

The thesis describes the child labour situation in two Balkan countries of the same nationality, Albania and Kosovo. Through a comparative study among these two states, it aims to examine the approach that governments of both countries have taken in order to heal this scourge of the society. The national framework (legislation, polices and monitoring mechanisms) and also the international obligations, from which only Albania is bound by, are examined.

The thesis aims to draw the attention of policy makers to comply with the international standards and to implement laws and policies adopted in the countries.

KEYWORDS: Child labour, street children, Albania, Kosovo.

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Abbreviations

ANCH	Albanian National Child Helpline
ANR	Albanian National Roadmap
ARSIS	Association for the Social Support of the Youth
CEACR	Committee of Experts on the Application of Convention and Recommendations
CPSN	Child Protection Safety Net
CPU	Child's Protection Unit
CRC	Convention on the Rights of the Child
CRCA	Children's Human Rights Centre of Albania
CRU	Child Rights Unit
C 138	ILO Convention No. 138 on the Minimum Age for Admission to Employment and Work
C 182	ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No. 182
DCM	Decision of the Council of Ministers
EALI	Executive Agency of Labour Inspectorate
ECHR	European Convention on Human Rights
ESC	European Social Charter
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organization
INSTAT	Institute of Statistics
IPEC	International Programme on the Elimination of Child labour
ITUC	International Trade Union Confederation
KEPECL	Kosovo Committee for the Prevention and Eradication of Child Labour
KLA	Kosovo Liberation Army
LAC	Local Action Committees
MoLSAEO	Ministry of Labour, Social Affairs and Equal Opportunities
MLSW	Ministry of Labour and Social Welfare
NATO	North Atlantic Treaty Organization
NCSS	National Center for Social Services
NGO	Non-Governmental Organization
PVPT	Center for Protection of Victims and Prevention of Trafficking in Human Beings
SAPCR	State Agency for the Protection of Children's Rights
SFRY	Socialist Federal Republic of Yugoslavia
SLI	State Labour Inspectorate
TdH	Terre des Hommes

UDHR	Universal Declaration of Human Rights
UN	United Nations
UNICEF	United Nations International Children's Emergency Fund
UNMIK	United Nations Interim Administration Mission in Kosovo
VoT	Victims of Trafficking
WB	World Bank
WFCL	Worst Forms of Child Labour
WV	World Vision

1 Introduction

1.1 Background

“It is the exploitation of childhood which constitutes the evil...most unbearable to the human heart. Serious work in social legislation begins always with the protection of children.”¹

Albert Thomas, first Director of the ILO

Still today in the 21st century, children’s rights issues and particularly child labour remain a concerning problem worldwide. According to the ILO, throughout the world, around 215 million children work, and many of them full-time. Such activity deprives them of their right to education, for they do not go to school. Furthermore, they have little or no time to play, while this is what children should do and what is even worse is that many do not even receive proper nutrition or care. These children are denied the right to live their childhood and the chance to be children. While the number of working children is really high, the majority of them are exposed to the worst forms of child labour, consisting of work in hazardous environments, slavery, or other forms of forced labour, illicit activities including drug trafficking and prostitution, as well as involvement in armed conflict.²

Albania and Kosovo, like other countries as well, are no exception to the child labour issue. This paper will focus on a comparative study between these two Balkan states, which apart from sharing the same nationality, share the same values and aim towards the same country development and aspire to become members of the European Union. The paper will demonstrate the reality of Albania and Kosovo in regard to children’s rights and violation of these rights. Moreover it will show the approach of the governments toward the phenomenon, how the child labour issue is regulated in both countries. In addition, it will explain what has been done so far, what the main problems are in improving the situation and what needs to be done in order to provide a healthy and happy environment to the most vulnerable category of the society, children. The paper will demonstrate the current discrepancy of what the law says with what it actually really does. Results of the study will be compared in order to see where Albania and Kosovo meet and where they separate from one another, what can they learn from each other’s experience in order to improve the occurring situation.

¹ ILO, The International Programme on the Elimination of Child Labour (IPEC), What it is and what it does. Available at: <http://www.ilo.org/ipecinfo/product/viewProduct.do?productId=13334>, last accessed April 15, 2012.

²The International Labour Organization, <http://www.ilo.org/global/topics/child-labour/lang--en/index.htm>, last accessed May 18, 2012.

1.2 Methodology

This thesis is based on traditional legal method and a comparative case study between two countries. For the elaboration of the paper, the internationally recognized standards set out in the most important human rights instruments adopted by the ILO, UN and Council of Europe, are used. Along with the two ILO Conventions, Convention No. 138 on the Minimum Age of Admission to Employment and Work and Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, the UN Convention on the Rights of the Child, the European Convention on Human Rights and the European Social Charter, the countries' national legislation and policies are examined. For a better understanding of the issue, reports from international organizations and national NGOs will be broadly taken into consideration. In addition, academic books and articles written on the child labour issue will be used. Additional to these sources, reference is also made to online sources used to gather needed information.

1.3 Outline

This thesis consists of five chapters.

Following the Introductory chapter, chapter 2 aims to give a clear image of the activities that constitute child labour according to the ILO and the ILO Conventions. It continues with setting out the main forms and types of child labour in world today and it ends with the reasons that cause it.

Chapter 3 focuses on the international legal framework against child labour. First, a short description of how the child labour issue reached the public attention is made. Moreover, the chapter describes the protection given to children in the most important human rights instruments adopted by the ILO, UN and the Council of Europe.

Chapter 4 consists of a comparative study between two states, Albania and Kosovo. After a description of the political, social and economic situation in each of the states, attention is directed towards the national legal framework and monitoring mechanisms established in these countries to combat the phenomenon. Furthermore, policies and services aiming to eliminate child labour and obligations under international law are analyzed. Next, this chapter addresses the characteristics, causes and consequences of child labour in both countries.

At last, chapter 5 emphasizes the concluding remarks, findings of the comparative study and possible solutions for achieving the eradication of child labour in Albania and Kosovo.

2 Literature Review on Child Labour

2.1 Definition

Child labour is a complex phenomenon widely acknowledged, but there is still no final international definition of what is considered child labour. Nevertheless, a series of conventions and international organizations have tried to provide an adequate definition of child labour.

The International Labour Organization (ILO) considers as “child labour” child work which does not fall within what is allowed by ILO standards, even if there is no explicit statement in a convention of a definition. It refers to it as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.³ In addition, while there are elements of choice at the national level, e.g. to determine the work that is considered hazardous, most elements of what would be child labour are spelled out by international standards. The two ILO conventions, Convention No. 138 and Convention No. 182, contain all the elements in a consolidated way to help creating a definition of child labour.

Still, there is the need to draw a distinction between “child work” and “child labour.” “*Child work*” identifies those economic activities carried out by children that are compatible with the provisions of the relevant treaties, those activities that are not detrimental to children’s health, personal development, education, growth, etc.. On the other hand, “child labour” identifies any kind of employment or work carried out by children without complying with the requirement of Conventions 138 and 182.⁴

Concept 1: “Light work” and “hazardous work”.

The ILO determines as “*light work*”, the work which is not likely to be harmful to the health and development of the child and does not prejudice attendance at school, participation in vocational orientation or training programmes.⁵

ILO stipulates as “*hazardous work*” any activity or occupation held by children, that by its nature or type, has or leads to adverse effects on the child’s safety, health and moral development. In general, hazardous work conditions include night work and long hours of work, exposure to physical,

³ ILO, information on: “<http://www.ilo.org/ipec/facts/lang--en/index.htm>”, last accessed March 31, 2012.

⁴ Marco Pertile, *Introduction: The Fight Against Child Labour in a Globalized World*, in M. Pertile, G.Nesi & L.Nogler (eds.) *Child Labour in a Globalized World, A Legal Analysis of ILO Action*, (Ashgate Publishing Ltd, Aldershot, 2008) p.10.

⁵ ILO Convention No. 138, 1973, article 7.

psychological or sexual abuse; work underground, underwater, at dangerous altitudes or in confined spaces; work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads; and work in an unhealthy environment which may damage the child's health.⁶

Concept 2: “Worst forms of child labour”

ILO in Convention No. 182 stipulates the activities considered as “*worst forms of child labour*”. They consist of the following:

- All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- Using, procuring or offering a child for prostitution or pornography;
- Using, procuring or offering a child for illicit activities, such as production and trafficking of drugs;
- Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.⁷

Moreover, the Convention on the Rights of the Child (CRC) refers to child labour as “economic exploitation and any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.”⁸

Countries and regions define “child labour” differently, and this leads to the creation of discrepancies in calculating the number of working children, due to these different definitions and also the use of different methods in counting working children.⁹

2.2 Forms and types of child labour

According to ILO and UNICEF, there are eight main types of exploitative child labour in world today:

- 1) *Hazardous working conditions;*
- 2) *Domestic service*
- 3) *Street children*
- 4) *Child labour in the informal economy*
- 5) *Child slavery*

⁶ ILO: Accelerating action against child labour, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. International Labour Conference, 99th Session 2010 Report (I) B, p. 6.

⁷ ILO Convention No. 182, 1999, article 3.

⁸ Convention on the Rights of the Child, Article 32(1), 1989.

⁹ Geraldine Van Bueren, *The Right of the Child to be Protected against Exploitation*, in *The International Law on the Rights of the Child*, (Kluwer Law International, Martinus Nijhoff Publishers, 1998) p.263.

- 6) *Trafficking and commercial sexual exploitation*
- 7) *Children in armed conflict*
- 8) *Illicit activities*.¹⁰

Hazardous working conditions

The effects of hazardous work working conditions on children can be destructive. Children are exposed to the same dangers as adults are when placed in the same situation, and survival and physical integrity are undoubtedly as important to them as to older people, but work hazards that affect adults affect children even more strongly, due to their anatomical, physiological and psychological characteristics.¹¹ The health consequences can be more devastating for them causing irreparable damage to their physical and psychological development, resulting in permanent disabilities, which also affects their adult lives.¹² Among the most dangerous of occupations are the following ones: work in small-scale mining, manufacturing, construction-related activities and agriculture.¹³

Domestic service

Children in domestic service are among the most vulnerable and exploited of all and at the same time the most difficult to protect due to the hidden nature of this type of work. Many of them work in almost total isolation for up to 15 hours a day and are frequently unpaid. What is even worse is that often they are subject to physical, emotional and sexual abuse.¹⁴

Street children

Children working in the streets are probably the most evident face of child labour. Their activities consist of: vending food and small consumer goods, shining shoes, washing windscreens, repairing tyres, scavenging and rag picking, begging and portering.¹⁵ The hazard of their work derives from work itself and also the environment, such as traffic, exhaust fumes, exposure to the elements, insecurity, harassment and violence.

UNICEF has provided three definitions regarding street children¹⁶:

- a) *Street living children*, are children who ran away from their families and live alone on the streets.
- b) *Street working children*, are children who spend most of their time on the street, fending for themselves, but returning home on a regular basis.

¹⁰ Franziska Humbert, *The problem of child labour. The Challenge of Child Labour in International Law, Cambridge Studies in International and Comparative Law*, (Cambridge University Press, 2009) p.19.

¹¹ ILO, *Child Labour: Targeting the intolerable*. 1996. Report VI (1), International Labour Conference, 86th session, 1998. Geneva, p. 9.

¹² *Ibid.*

¹³ ILO, *Targetting the Intolerable: A New International Convention to Eliminate the Worst Forms of Child Labour*, Leaflet. Geneva, 1999.

¹⁴ ILO, *Targetting the Intolerable, Domestic Service*.

¹⁵ ILO, *A Future Without Child Labour*. Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Geneva 2002, p 27.

¹⁶ Information retrieved from: <http://www.mexico-child-link.org/street-children-definition-statistics.htm>, last accessed April 9, 2012.

- c) *Children from street families*, are children who live on the streets with their families.

Child labour in the informal economy

The characteristics of children working in the informal economy is that they are not recognized or protected under the legal and regulatory frameworks.¹⁷ As a result, the biggest number of child labourers is found here and since child labour in this sector is beyond the reach of most formal institutions, it represents one of the principal challenges to the effective elimination of child labour.¹⁸

Child slavery

While labour is an activity, slavery is considered to be a status. Under this concept falls bonded labour in industries such as agriculture, carpet and textiles, quarrying and brick-making.¹⁹ One of the most common forms of bondage is family bondage, where children work to help repay a loan or other obligation incurred by their own family. Mostly the situation is manipulated by the creditor in such a way that is impossible for the family to pay back the loan.²⁰ Bondage agreements are illegal in almost every country counting also the countries where they are most widespread.²¹

Trafficking and commercial sexual exploitation

There are numerous reasons why children are still in the 21st century being bought and sold across borders. Children are trafficked for prostitution, for begging and soliciting, and for work such as in construction sites, in small shops, in factories and in domestic service.²² One of the worst forms that children are subject to is the commercial sexual exploitation, where they as victims experience extreme physical, psychological and emotional abuse that have lifelong and life-threatening consequences.²³

Children in armed conflict

The groups of children, which end up in many of the worst forms of child labour, are often the ones recruited or forced into various kinds of military activity and also in rebel and guerrilla actions.²⁴ The number of children under the age of 18 who have been forced or persuaded, either by the State or by non-state military groups, to turn into child soldiers or to serve as porters, messengers, cooks and sex slaves, in 2000 was thought to be in the range of 300.000, with 120.000 of whom only in Africa.²⁵

Children in illicit activities

¹⁷ ILO, A Future Without Child Labour, supra note 15, p. 22.

¹⁸ Ibid., p. 24.

¹⁹ Humbert, supra note 10, p. 21.

²⁰ ILO, Targetting the Intolerable, supra note 13, Child Slavery.

²¹ Ibid.

²² Ibid., The Sale and Trafficking of Children.

²³ ILO, Child Labour, supra note 11, p.17.

²⁴ ILO, Targetting the Intolerable, supra note 13, Child Soldiers and the Use of Children in Armed Conflict.

²⁵ ILO, A Future Without Child Labour, supra note 15, p. 34.

Illicit activities are illegal activities or crimes. Illicit activities that involve children are the producing and trafficking of drugs. Children involved in illicit activities are often exposed to violence which harms their mental and physical development. Furthermore, they encounter problems in developing good social skills and are more vulnerable to suffer from depression, alcohol and drug addictions and identity difficulties.²⁶

2.3 Socio-economic factors related to child labour

Child labour seems to persist beyond national and international capacity, not only to control it, but also to identify and understand it.²⁷ While what makes sense in one place or circumstances is shown to be senseless in another²⁸, the reasons and factors why child labour exists are practically the same in every country. These factors can be grouped in two categories, supply-side and demand-side factors.²⁹

In the supply-side group stand together poverty, social protection, education, slow demographic transition, migration, inadequate laws and discrimination against minorities.³⁰

Poverty is the most important reason why children work. Poor households need the money that are being earned by the children and since this money is basically spent on food, working children are crucial to the survival of the family.³¹ Poverty affects children in different ways than adults and it can have different consequences for them. But poverty does not always necessarily cause child labour. Kerala State in India is an example, where although the country is poor it has abolished child labour.³²

Poverty is strongly related to the role of **social protection**, consisting of “*all the public actions taken in response to levels of vulnerability, risk and deprivation which are deemed socially unacceptable within a given polity or society.*”³³ In various societies, mainly in the developing ones, large parts of the people are involved in the informal economy and not covered by the social security service. Given the situation, children are the ones providing

²⁶ International Initiative to End Child Labour, Illegal Activities. Available at: <http://endchildlabor.org/?cat=26>, last accessed April 9, 2012.

²⁷ Burns H. Weston, *Bringing Human Rights to Child Labour: Guiding Principles and Call to Action*, in B. H Weston (ed) *Child Labour and Human Rights, Making Children Matter*, (Lynne Rienner Publishers, Inc. 2005) p. 427.

²⁸ Ibid., p.428.

²⁹ Humbert, supra note 10, p.25.

³⁰ Ibid.

³¹ ILO, Child Labour, supra note 11, p.17.

³² Ibid.

³³ ILO, A Future Without Child Labour, supra note 15, p. 52.

social insurance through their work, especially when sickness and ageing affect the older generations in the family.³⁴

The general condition of the *Education* system is another factor contributing to the supply of child labour.³⁵ There are often inconsistencies between the minimum age for employment and the end of compulsory schooling in national legislation. If the minimum age for employment is lower than the end of compulsory education, this leads to lack of confidence in government policies to achieve education for all. In most developing countries, education is underfunded.³⁶

Slow demographic transition such as the size and structure of the family also affects decisions on child labour. Changes in family form and function influence children's participation in the labour market and in the poorest parts of the world results in a continuous supply of children available for the labour market.³⁷

Migration as a result of natural disaster, limited economic opportunities and also armed conflict, increases children's vulnerability and creates more chances that they will become victims of child labour. Furthermore, migration from the poorer rural areas to the more prosperous rural or urban areas draws children into the labour market.³⁸

The laws inadequacy is another hallmark contributing to child labour prevalence. In many countries, national laws are inconsistent and contradictory in regard with the ratified international instruments forbidding child labour. While almost all countries have endorsed laws stipulating the minimum age legislation, they frequently exclude sectors such as agriculture, domestic service and the informal sectors, regardless of the children engaged.³⁹ Also *lack of adequate enforcement* contributes to the continuation of the child labour issue. Laws which are not implemented are equal to non existence.

Discrimination, mostly against minorities, has also its say among the factors why child labour takes place. In South East Europe, children of the Roma families are most likely to start working instead of going to school. The same reality stands for indigenous children and for the children from Dalit families in South East Asia.⁴⁰

On the other hand, in the demand-side factors, are grouped together the nimble fingers and lower costs argument, and the vulnerability of children.⁴¹

³⁴ Humbert, supra note 10, p. 26.

³⁵ Ibid., p. 25.

³⁶ Ibid.

³⁷ ILO, A future without child labour, supra note 15, p. 50.

³⁸ Humbert, supra note 10, p.25-26.

³⁹ Ibid., p. 28.

⁴⁰ Ibid., p. 28-29.

⁴¹ Ibid., p. 29.

The *nimble fingers and the lower costs* arguments are the most common explanations of why employers hire children instead of adults to accomplish different kinds of tasks. However, concerning the nimble fingers argument, both ILO and UNICEF have carried out studies which have shown that this argument was completely deceptive regarding the hazardous industries, such as carpet-making, glass factories, mining of slate, lock making, diamond polishing, etc.⁴² Children don't have skills that adults cannot match, so every excuse behind child labour is intolerable.⁴³

Children without any doubts are the most *vulnerable* category of the society. Due to this characteristic, they are often taken advantage of. Acknowledging that they are less aware of their rights and easier to intimidate, it is much easier for employers and grown-ups to exploit them.⁴⁴

As seen, child labour factors are very diverse and this is why strategies for combating the phenomenon have to be multi-sectoral.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid., p. 30.

3 The International Legal Framework on Child Labour

3.1 Child labour under the ILO framework

The child labour issue first reached the public attention in the 1830s as a result of the Industrial Revolution in Europe and the involvement of children in different industries, who were required to work under abusive conditions⁴⁵, but until 1918 discussions regarding this problem were only focused in Europe⁴⁶.

The ILO was one of the few international organizations which directly, since its creation in 1919, among other subjects, focused on and committed to combat and eliminate child labour worldwide.⁴⁷ Such aim was initially addressed in the preamble of the ILO Constitution of 1919⁴⁸ requiring urgent improvement for the protection of children and young persons⁴⁹, and later on in the Declaration of Philadelphia of 10 May 1944.⁵⁰

From the very beginning, at its first session of the International Labour Conference in 1919, the delegates of the tripartite structure of ILO, aware of the need to protect children against economic exploitation, included child labour on the agenda and adopted the *Minimum Age (Industry) Convention, 1919 (No. 5)*, marking so, the beginning of ILO's standard-setting activities to combat child labour.⁵¹ The Convention prohibited the employment of children under the age of 14 in public or private industrial undertakings.

⁴⁵ Breen Creighton, *Combating Child Labour: The Role of International Standards*, (Comparative Labour Law & Policy Journal, 1997) p. 364.

⁴⁶ Hugh Cunningham and Shelton Stromquist, *Child Labor and the Rights of Children: Historical Patterns of Decline and Persistence*, in B. H Weston (ed) *Child Labour and Human Rights, Making Children Matter*, (Lynne Rienner Publishers, Inc. 2005) p. 70-71.

⁴⁷ ILO. Child Labour, supra note 11, p. 4.

⁴⁸ The ILO Constitution was adopted by the Peace Conference in April 1919 and became part XIII of the Treaty of Versailles, which ended World War I, on 28 June 1919. It is a separate instrument and has been amended six times. The text of the Constitution may be found at: <http://www.ilo.org/ilolex/english/constq.htm>, last accessed March 22nd, 2012.

⁴⁹ Anne Trebilcock and Guido Raimondi, *The ILO's Legal Activities Towards the Eradication of Child Labour: An Overview*, in M. Pertile, G.Nesi & L.Nogler (eds.) *Child Labour in a Globalized World, A Legal Analysis of ILO Action*, (Ashgate Publishing Ltd, Aldershot, 2008) p. 18.

⁵⁰ The Declaration of Philadelphia was adopted at the 26th General Conference of the ILO. It restated the fundamental aims and purposes of the ILO and it is annexed to the ILO Constitution since 1946. Available at: <http://www.ilo.org/ilolex/english/iloconst.htm>, last accessed March 22nd 2012.

⁵¹ ILO: Ricardo Hernandez-Pulido and Tania Caron, *Protection of Children and Young Persons*, Fundamental rights at work and international labour standards, Geneva, International Labour Office, 2003, p. 89.

Other Conventions⁵² as well addressed the age issue and set at 14 years the employment age. Another step of developing the standards set by the ILO, was taken with the adoption of *Forced Labour Convention 1930 (No. 29)*. Convention No. 29 although a Convention of general application, served to focus on the protection of children that experienced forced or compulsory labour, such as victims of trafficking, children in bondage, and those exploited by prostitution and pornography.⁵³

On 26 June, 1973 the ILO key instrument was adopted. *The Minimum Age for Admission to Employment Convention*, known as Convention No. 138 raised the age of employment or work to 15 years or the age of completion of compulsory schooling, whichever was higher. It also allowed developing countries to choose the age of 14 years. In the years that followed until 1990s the child labour issue remained in shadow. Then, in 1992 the ILO again took a step forward by launching the *International Program for the Elimination of Child Labour (IPEC)*, which consisted of field work toward the elimination of the phenomenon. In 1995, at the *World Summit for Social Development*⁵⁴ held in Copenhagen, abolition of child labour was regarded as one of the important factors in achieving sustainable social development. Furthermore, the *Copenhagen Declaration*⁵⁵ adopted by the World Summit committed the international community to “promoting respect for relevant ILO Conventions, including those on the prohibition of forced and child labour.”⁵⁶ What followed in 1998, was the adoption of the *Declaration on Fundamental Principles and Rights at Work and its Follow-up*⁵⁷ from the ILO, in which it was stated that all member states should respect the principles of the four fundamental rights, among which “the effective abolition of child labour”. This meant that these principles should be binding on member states regardless the fact if these conventions have been ratified or no.⁵⁸ Only a year later, in 1999, the ILO unanimously adopted the *Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, No. 182. Convention No. 182 requires states to prevent and eliminate immediately the most unacceptable and harmful forms of child labour occurring.

⁵² ILO Convention Concerning the Age for Admission of Children in Agriculture (C No.10) of 1921 and ILO Convention Concerning the Age for Admission of Children to Non-Industrial Employment (C No.33) of 1932.

⁵³ Information retrieved from:

<http://www.un.org/cyberschoolbus/briefing/labour/labour.pdf>, p. 4, last accessed April 1, 2012.

⁵⁴ World Summit for Social Development, 6-12 March 2012, Report available on <http://www.un.org/documents/ga/conf166/aconf166-9.htm>, last accessed April 2, 2012.

⁵⁵ Ibid.

⁵⁶ Creighton, supra note 45, p. 366.

⁵⁷ The Declaration on Fundamental Rights and Principles at Work was adopted by the General Conference of the ILO at its 86th Session, June 18th, 1998. Text available at: <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>, last accessed April 2, 2012.

⁵⁸ Trevor Buck, *Child Labour*, in *International Child Law*, 2nd Ed., (Routledge, Taylor & Francis Group, 2011) p. 198.

In setting out international labour standards the ILO draws on not only Conventions, but also *Recommendations*. Recommendations are as well legal instruments, but different from Conventions they are not legally binding and as such are not open to ratification by member states. They lay down general or technical guidelines to be applied at the national level and often provide detailed guidelines to supplement the principles a Convention sets out.⁵⁹ Two are the Recommendations relevant to the child labour issue, The Minimum Age Recommendation, No.146 of 1973 and Worst Forms of Child Labour Recommendation, No. 190 of 1999.

Regardless the entire legal endeavor of the ILO in the battle against child labour, there laid the need of field action in helping combat the phenomenon. In 1992 the ILO launched the International Program for the Elimination of Child Labour (IPEC). IPEC's aim is the progressive elimination of child labour worldwide, emphasizing the eradication of worst forms as a priority.⁶⁰ In doing so, it provides support to member states to fulfill the obligations deriving from the Conventions ratified⁶¹ and through traditional country programs, regional capacity-building programs and comprehensive support projects for national time-bound programs.⁶²

3.1.1 ILO Convention No. 138 on the Minimum Age of Admission to Employment and Work

ILO Convention No.138 on the Minimum Age to Admission and Employment at Work (C138) was adopted by the International Labour Conference on 26 June 1973 and entered into force on 19 June 1976. On the same date was adopted the Minimum Age Recommendation (R.146). The Convention revised 10 earlier conventions⁶³ on minimum age in particular sectors, adopted by the ILO from 1919 to1965. It is a general Convention that brought together in one place the rules from the previous sector-specific treaties applicable to limited economic sectors.⁶⁴ Depicted as flexible due to allowing States to have different levels of employment age, it has been considered by the developing countries that it reflects a rigid Western or

⁵⁹ ILO: Child Labour, A textbook for university students, 2004, p. 44.

⁶⁰ ILO: IPEC at a glance, April 2007, p.1.

⁶¹ ILO: Accelerating action against child labour, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. International Labour Conference, 99th Session 2010 Report (I) B, Preface, x.

⁶² ILO: IPEC at a glance, supra note 59, p. 1.

⁶³ The 10 Conventions are: C5 Minimum Age (Industry) of 1919, C7 Minimum Age (Sea) of 1920, C10 Minimum Age (Agriculture) of 1921, C15 Minimum Age (Trimmers and Stokers) of 1921, C33 Minimum Age (Non-Industrial Employment) of 1932, C58 Minimum Age (Sea-Revised) of 1936, C59 Minimum Age (Industry-Revised) of 1937, C60 Minimum Age (Non-Industrial Employment-Revised) of 1937, C112 Minimum Age (Fishermen) of 1959, and C123 Minimum Age (Underground Work) of 1965.

⁶⁴ Holly Cullen, *Child Labour Standards: From Treaties to Labels*, in B. H Weston (ed) *Child Labour and Human Rights, Making Children Matter*, (Lynne Rienner Publishers, Inc. 2005) p. 91.

Eurocentric approach because it does not take into account the actual practice of child employment in these countries.⁶⁵ On the other hand though, it has been increasingly ratified, with 161 ratifications as of April 2012.⁶⁶

It is stated in the Preamble that Convention 138 is meant to have general application throughout all spheres of economic activity: “*The time has come to establish a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labour.*”⁶⁷

Its scope is reflected also in article 1, “*Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical or mental development of young persons.*” Moreover, article 1 requires member states to make the abolition of child labour a national policy and establish the general minimum age for employment bearing in mind the highest interest of the child.⁶⁸

Article 2(1) stipulates the obligation of Member States to specify upon ratification a minimum age for admission to employment or work and on means of transport registered in its territory, and no one under that age shall be admitted to employment or work in any occupation. Article 2(3) establishes the general rule regarding the minimum age. It states that: “*the minimum age shall not be less than the age of completion of compulsory schooling, and, in any case shall not be less than 15 years.*” Exception to the general rule is made in article 2(4), under which a Member State can reduce the employment age to 14 years, only if its economy and educational facilities are insufficiently developed. There must be due consultation and they have to comply with the conditions to the exception established in article 2(5). The Member State has to include in its reports a statement which states clear the reason for doing so and the renouncement of the right to avail itself of the provisions in question as from a stated date.

Article 3(1) provides the general rule for the minimum age for admission to any type of employment or work which is considered to affect the health, safety or morals of young persons. The age is set at 18 years. While Recommendation No. 146 specifies that where the minimum age for admission to *hazardous work* is below 18 years, immediate steps should be taken to raise it to that level, C138 does not provide any specific definition of what hazardous work is and consists on.⁶⁹ Under article 3(2) these types of employment or work shall be determined by national laws or regulations or by the competent authority after consultation with the organizations of

⁶⁵ Matteo Borzaga, *Limiting the Minimum Age: Convention 138 and the Origin of the ILO's Action in the Field of Child Labour*, in M. Pertile, G.Nesi & L.Nogler (eds.) *Child Labour in a Globalized World, A Legal Analysis of ILO Action*, (Ashgate Publishing Ltd, Aldershot, 2008) p. 40.

⁶⁶ Information retrieved from: <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C138>, last accessed April 4, 2012.

⁶⁷ Creighton, *supra* note 45 p. 371.

⁶⁸ Cullen, *supra* note 64, p. 91.

⁶⁹ ILO: Hernandez-Pulido & Caron, *supra* note 51, p.95.

employers and workers concerned. Article 3(3) sets out the exception from Article 3(1) regarding “dangerous work” when a Member State can lower the age of employment or work to 16. This though, can happen only if the following conditions are met: Consultation with the organizations of employers and workers; health, safety and morals of the young persons concerned are fully protected; and the young persons have received adequate instruction and training.

Articles 4 and 5 are exceptions from the absolute rules pointed out in the provisions above. Article 4(1) allows some sectors such as employment in family undertakings, domestic service⁷⁰ in private household, homework and other work outside the supervision and control of employers⁷¹, to be excluded temporarily if special and substantial problems interfere with the application of the Convention. But, article 4 requires employers and workers organizations to be consulted and makes no exception for any work that might be hazardous to the health, safety and morals of children.⁷² Article 5 allows developing countries, whose economy and administrative facilities are insufficiently developed, to limit the scope of application of the Convention. When a Member State does so, it must append a declaration to its ratification specifying the branches of economic activity or types of undertakings, to which it will apply the provisions of the Convention. However, as a minimum protective requirement, the Convention will always be applicable to some activities⁷³, consisting of the following: mining and quarrying manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; plantations and other agricultural undertakings.

In articles 6, 7, and 8, are stipulated the circumstances when this Convention does not apply. Article 6 states that the Convention does not apply to work done by children and young persons in schools for general, vocational or technical education or other training institutions. Likewise, it does not apply to work done by persons at least 14 years or more as part of an apprenticeship or similar arrangement.⁷⁴ Article 7 specifies that light work may be allowed for children aged 13-15 years, and 12-14 years if the country has elected to have the minimum age at 14, if two conditions are met: first, work must be not likely to be harmful to their health or development, and second, not such as to prejudice their attendance at school, their participation in vocational orientation, or their capacity to benefit from the instruction received. The last case under which children are permitted to work even if below the minimum age of 15 years, is that

⁷⁰ New international standards regarding domestic workers were set by the ILO in June 2011 with the adoption of Convention No. 189 Concerning Decent Work for Domestic Workers and Recommendation No. 201. These standards recognize the economic and social value of domestic work and call for action to address the existing exclusions of domestic workers from labour and social protection.

⁷¹ Buck, *supra* note 58, p. 180.

⁷² Cullen, *supra* note 64, p. 91.

⁷³ Buck, *supra* note 58, p. 181.

⁷⁴ *Ibid.*

provided by article 8 and it concerns activities such as the participation in artistic performances.⁷⁵

3.1.2 ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

The debate that emerged among the international community in the 1990s, indicated the need to generate a particular standard on exploitative or unacceptable forms of child labour. Discussions brought up the question if the new standard was necessary for revising or complementing Convention No. 138.⁷⁶ Furthermore, among the debate on child labour held in 1995 and 1996 in the Employment and Social Policy Committee⁷⁷, on June 18, 1996 the ILO Governing Body adopted a Resolution, which, inter alia, encourages governments and employers and workers organizations to: “develop formal policies and set priorities so as to immediately proceed to put an end to the most intolerable aspects of child labour, namely the employment of children in slave-like and bonded conditions and in dangerous and hazardous work, exploitation of very young children, and the commercial sexual exploitation of children”, and “enact and give full effect to national legislation that prohibits the exploitation of children at work.”⁷⁸ What followed was the decision of the Governing Body to incorporate the child labour issue on the agenda of the International Labour Conference in 1998, aiming at the adoption of new standards.⁷⁹ The outcome of the discussions was the unanimous adoption of the *ILO Convention Concerning the Prohibition and immediate Action for the Elimination of the Worst Forms of Child Labour*, No. 182. The Convention known as the Worst Forms of Child Labour Convention, was adopted on 12 June 1999 and entered into force on 19 November 2000. From 2002, the date of adoption of this milestone ILO Convention, has been the UN’s World Day Against Child Labour.⁸⁰ At the same time with Convention 182 was also adopted *Worst Forms of Child Labour Recommendation*, No. 190, aimed to be applied in conjunction with C182 and providing guidelines to its implementation.

The Convention reflected the widespread recognition and global consensus that there should be an immediate action in ending the worst forms of child labour⁸¹ because certain forms of child labour cannot be tolerated and

⁷⁵ Borzaga, supra note 65, p.52.

⁷⁶ ILO: Accelerating action against child labour, supra note p. 13.

⁷⁷ ILO: Hernandez-Pulido & Caron, supra note 51, p. 106.

⁷⁸ Resolution Concerning the Elimination of Child Labour, adopted by the International Labour Conference at its 83rd Session on 18 June 1996.

⁷⁹ ILO: Hernandez-Pulido & Caron, supra note 51, p. 106

⁸⁰ Buck, Child Labour, supra note 58, p. 188.

⁸¹ Yoshie Noguchi, *ILO Convention No. 182 on the worst forms of child labour and the Convention on the Rights of the Child*, (The International Journal of Children’s Rights 10, 2002) p. 355-369.

therefore cannot be subject to progressive elimination.⁸² The Preamble of C182 proclaims that “*child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education.*” Convention 182 is the most rapidly and widely ratified Convention in the history of the ILO⁸³, recording as of April 2012, 174 ratifications.⁸⁴ It has also contributed to increase the number of ratifications of Convention 138⁸⁵, which now stands at 161.⁸⁶

Regardless of the same target of Convention 138 and Convention 182 to abolish child labour, there lies a difference between the two instruments, consisting on “the immediate goal” and “the approach of how to achieve” it. While C138 aims at “the pursuit of a national policy designed to ensure the effective abolition of child labour and the raise of the minimum age for admission to employment or work” *progressively*, without setting any time limits⁸⁷, C182 in article 1, calls for *immediate* and effective measures for the prohibition and elimination of child labour, due to the nature of these forms of child labour and the harm caused. According to the Convention, Member States’ level of development or national circumstances is not an excuse for tolerating such forms.⁸⁸ The term “*child*” in the Convention refers to all boys and girls under the age of 18, so including children, adolescents and young persons. The age of 18 corresponds to the higher age limit set out in C138 and also to the definition of the “child” in the Convention on the Rights of the Child⁸⁹. It means that persons under this age cannot in any case be engaged in the activities considered as “the worst forms of child labour”.

Under Article 3, “worst forms of child labour” consist of:

- a) *all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;*
- b) *the use, procuring or offering of a child for prostitution for the production of pornography or for pornographic performances;*

⁸² ILO: Hernandez-Pulido & Caron, supra note 51, p. 106.

⁸³ Cullen, supra note 64, p. 94.

⁸⁴ Information retrieved from: <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C182>, last accessed April 4, 2012.

⁸⁵ Deepa Rishkesh, *The Worst Forms of Child Labour: A Guide to ILO Convention 182 and Recommendation 190*, in M. Pertile, G.Nesi & L.Nogler (eds.) *Child Labour in a Globalized World, A Legal Analysis of ILO Action*, (Ashgate Publishing Ltd, Aldershot, 2008) p. 84.

⁸⁶ Information retrieved from: <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C138>, last accessed April 4, 2012.

⁸⁷ Rishkesh, supra note 85, p. 84.

⁸⁸ Ibid., p.85 and ILO, Report of the Committee of Child Labour, Report IV (2A), ILC, 87th Session, June 1999, Geneva, Office Commentary, 34. Available at: <http://www.ilo.org/public/english/standards/reln/ilc/ilc87/com-chil.htm>, last accessed April 4, 2012.

⁸⁹ ILO: Hernandez-Pulido & Caron, supra note 51, p. 106.

- c) *the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;*
- d) *work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.*

A distinction can be drawn between two categories of the worst forms of child labour. First, the ones termed the *unconditional worst forms of child labour*, paragraphs (a) to (c) of article 3, that fundamentally infringe children's basic human rights and that are absolutely prohibited for all persons under the age of 18⁹⁰. Second, *hazardous work*, as defined in the national legislation, but due to the nature of work and circumstances in which it performed, jeopardizes the physical, mental or moral well-being of a child.⁹¹ In addition, section 3 of R190 determines a list of types of work to which consideration should be given when these types of work are identified as *hazardous*. They comprise:

- a) *work which exposes children to physical, psychological or sexual abuse;*
- b) *work underground, under water, at dangerous heights or in confined spaces;*
- c) *work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;*
- d) *work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;*
- e) *work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.*

Furthermore, article 4 states that when determining the types of work, international standards must be taken into consideration. It also requires Member states to revise this list periodically to make sure that these standards are being applied.

Other means to ensure the implementation of Convention 182 are the enforcement measures stipulated by article 5, through the establishment of appropriate mechanisms in consultation with employers' and workers' organizations. Article 6 obligates Member States to create programmes of action to eliminate as a priority the worst forms of child labour and pays special attention not only to tripartite consultation, but also to consultation with the interest groups.

Article 7 provides that among all the necessary measures taken to ensure the implementation and the enforcement of the provisions giving effect to the Convention, are also penalties such as penal sanctions or others. This emphasizes the great importance of the Convention and the states' obligation in fulfilling their duties. Besides, it continues saying that these measures to be taken should be time-bound, which means that States need to

⁹⁰ Rishkesh, *supra* note 85, p. 85.

⁹¹ ILO, *A Future Without Child Labour*, *supra* note 15, p. 9.

set a date when it will finish. Likewise, these measures aim to prevent children's engagement in the worst forms of child labour; provide support for the removal of children from the worst forms of child labour and for their rehabilitation and social integration; ensure access to free basic education and vocational training; identify children at special risk; and take account of the special situation of girls.

Article 8 imposes on Member States the obligation to assist each other through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication and universal education. However, it is up to individual States to decide on the appropriate steps.⁹² Section 11 and 16 of R190 provide indications on the way in which member States could cooperate and/or assist in international efforts to prohibit and eliminate the worst forms of child labour.⁹³

Both Conventions, C138 and C182 have provided a strong foundation in the war against the abolition of child labour. Unfortunately, though, there are still countries that have not ratified them, and as such avoiding to put an end to the situation where one-third of the world's children are engaged in child labour.⁹⁴

3.2 Child labour under the Human Rights Instruments framework – UN system

First step taken towards children's rights were made in 1919 when the League of Nation set up a Committee for the Protection of Children. Through the persuasive work of Eglantyne Jebb⁹⁵, in 1924 the League of Nations adopted the Declaration on the Rights of the Child⁹⁶, which marked the first declaration of human rights adopted by a intergovernmental organization and preceded the adoption of the Universal Declaration of Human Rights (UDHR).⁹⁷ The five principles included in the Declaration addressed the creation of the conditions necessary for the protection of children (including exploitation) and for enabling them to develop into citizens contributing to their communities.⁹⁸ 24 years later, in 1948, UDHR was adopted. This human rights catalogue proclaims human rights applicable to all human beings, including children, but explicitly refers to

⁹² ILO: Record of Proceedings, ILC, 87 Session, Geneva, 1999, Report of the Committee on Child Labour, para 242, p.19/49

⁹³ ILO: Hernandez-Pulido & Caron, supra note 51, p. 112

⁹⁴ ILO: Accelerating action against child labour, supra note 6, p. 14.

⁹⁵ Eglantine Jebb (1876-1928) was the founder of the British Save the Children Fund and the Save the Children International Union in Geneva.

⁹⁶ The Declaration is also known as the Geneva Declaration, adopted on 26 September 1924. Available at <http://www.un-documents.net/gdrc1924.htm>, last accessed April 6, 2012.

⁹⁷ Trevor Buck, *Childhood and Children's Rights*, in *International Child Law*, 2nd Ed., (Routledge, Taylor & Francis Group, 2011) p. 23.

⁹⁸ Ibid.

them only in two articles, 25 and 26, highlighting the right of children to special care and assistance and focusing on their protection.⁹⁹ Next step taken towards the protection of children's rights was the adoption of the Declaration of the Rights of the Child in 1959¹⁰⁰, which revised the Declaration of 1924 and set out in a more expanded form ten principles listing the child's fundamental rights in international law.¹⁰¹ The child labour issue is addressed in principle 9 of this Declaration, which states that "*The child shall be protected against all forms of neglect, cruelty, and exploitation. He shall not be the subject of traffic, in any form.*" It further continues stipulating that "*the child shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.*"

The modern human rights movement in the post-Second World War era produced increasing concern about the rights of children. This has been reflected in the development of the more robust textual formulations found in different instruments, among which the most important ones are the International Covenants of 1966, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights and the later Convention of 1989, Convention on the Rights of the Child.¹⁰²

3.2.1 International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) was adopted by the United Nations (UN) General Assembly on 16 December 1966 and entered into force upon receiving the necessary number of ratifications, on 23 March 1976. It has been considered to be among the most important human rights treaty due to its universal coverage and the aim to protect civil and political rights, including right to life (art.6), freedom from liberty and security (art.9), and right to equality (art. 14).¹⁰³ The rights enshrined in it apply to all peoples, which mean children as well, but explicit mention regarding children's special protection is made in article 24 of the Covenant. It states: "*Every child shall have, without any discrimination...the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.*" The article itself does not address child labour directly, but the Human Rights

⁹⁹ Geraldine Van Bueren, *A History of the International Law on the Rights of the Child*, in *The International Law on the Rights of the Child*, (Kluwer Law International, Martinus Nijhoff Publishers, 1998) p. 17-18.

¹⁰⁰ Adopted by UN General Assembly Resolution 1386 (XIV) of 10 December 1959

¹⁰¹ Buck, *Childhood*. Supra note 97, p. 23.

¹⁰² Buck, *Childhood*. Supra note 97, p. 24.

¹⁰³ Sarah Joseph, Jenny Schultz and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Material and Commentary*, 2nd ed., (Oxford University Press Inc., New York, 2004) p. 4.

Committee, the structure responsible for monitoring the implementation of ICCPR, notes in this regard in General Comment 17¹⁰⁴ that the provision may be linked to the establishment of a minimum age for work and to a more general prohibition of exploitative child labour.¹⁰⁵ Indirect reference to child labour is also made in article 8 of ICCPR, under which individuals are provided with the right to enjoy freedom from slavery and forced labour, therefore by implication applying also to children.¹⁰⁶

3.2.2 International Covenant on Economic, Social and Cultural Rights

Adopted at the same time as ICCPR, the International Covenant on Economic, Social and Cultural Rights (ICESCR) entered into force on January 3rd 1976. The preamble recognizes that human beings can only enjoy freedom from fear and want provided that everyone is able to enjoy economic, social and cultural rights, thus recognizing the indivisibility of human rights, acknowledging that all human rights are interlinked and of equal importance.¹⁰⁷ The Covenant specifically refers to children through a strongly worded provision in article 10(3), giving protection to children against economic and social exploitation and in particular setting out standards to regulate child labour.¹⁰⁸ State Parties to the Covenant recognize that, inter alia: “*Special measures of protection and assistance should be taken on behalf of all children and young persons (...). Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.*” Other rights in the Covenant supplement this provision, such as article 12 regarding “the right to the highest attainable standard of health” and article 13 “the right of everyone to education.”

3.2.3 Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) was unanimously adopted by the UN General Assembly on 20 November 1989 and entered into force

¹⁰⁴ The Human Rights Committee, General Comment No.17: Rights of the Child (Art.24): 04/07/1989. Para. 4.

<http://www.unhchr.ch/tbs/doc.nsf/0/cc0f1f8c391478b7c12563ed004b35e3?Opendocument>

¹⁰⁵ Alessandro Fodella, *Freedom from Child Labour as a Human Right: The Role of the UN System in Implementing ILO Child Labour Standards*, in M. Pertile, G.Nesi & L.Nogler (eds.) *Child Labour in a Globalized World, A Legal Analysis of ILO Action*, (Ashgate Publishing Ltd, Aldershot, 2008) p.205-206.

¹⁰⁶ Sarah Joseph, Jenny Schultz and Melissa Castan, *Miscellaneous Rights – Articles 8,11 and 16*, in *The International Covenant on Civil and Political Rights: Cases, Material and Commentary*, 2nd ed., (Oxford University Press Inc., New York, 2004) p. 294-298.

¹⁰⁷ Van Bueren, *supra* note 99, p. 19.

¹⁰⁸ Buck, *Childhood*. *Supra* note 97, p. 24.

on 2 September 1990. As of April 2012, 193 states have ratified the Convention and it is signed by the United States of America and Somalia.¹⁰⁹ In a general analysis, we see that CRC is concerned with the four P's: a) the *participation* of children in decisions affecting their own destiny; b) the *protection* of children against discrimination and all forms of neglect and exploitation; c) the *prevention* of harm to children; and d) the *provision* of assistance for their basic needs. Moreover, it is considered to be a comprehensive treaty which covers the full range of civil, political, economic, social and cultural rights.¹¹⁰ There are several provisions of CRC that provide a framework of rights relevant to child labour, among which article 32 is the most important one, followed by articles 33 to 36 and 38.¹¹¹

The legal definition of the term "child" is provided by article 1 of CRC. According to that article, a child means *every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier*. In this regard, CRC follows the approach of article 10(3) of the ICESCR which incorporates a general prohibition on the employment of children under a certain age and the employment of children in work constituting a threat to their health or morals.¹¹² This approach is also followed with regard to ILO standards enshrined in several Conventions.

Article 32 provides for the *right of the child to be protected against economic exploitation, as well as from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development*. While the Convention provides protection to children from harmful and exploitative work, there is nothing in it that prohibits parents from expecting their children to help out at home in ways that are safe and appropriate to their age. If children help out in a family farm or business, the tasks they do, have to be safe and suited to their level of development and comply with national labour laws. Children's work should not jeopardize any of their other rights, including the right to education, or the right to relaxation and play.¹¹³

Moreover, the article stipulates the core obligation of States to take legislative, administrative, social and educational measures in order to ensure the implementation of the article. Likewise, having regard to the relevant provisions of other international instruments, State parties are

¹⁰⁹ United Nations Treaty Collection, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en, last accessed April 8, 2012.

¹¹⁰ Van Bueren, *supra* note 99, p. 15-16.

¹¹¹ Lee Swepston, *The Convention on the Rights of the Child and the ILO*. (Nordic Journal of International Law, Vol. 61, No.1, 1992) and Trevor Buck, *Childhood*. *Supra* note 97, p. 186.

¹¹² Franziska Humbert, *The prohibition of child labour in international law*, in *The Challenge of Child Labour in International Law*, Cambridge Studies in International and Comparative Law, (Cambridge University Press, 2009) p.68.

¹¹³ UNICEF, *The Convention on the Rights of the Child; Protection Rights: Keeping safe from harm*. Available at: http://www.unicef.org/crc/files/Protection_list.pdf, last accessed April 8, 2012.

obliged to provide for a minimum age or minimum ages for admission to employment, but does not mention any concrete minimum age, it limits itself to the criterion of providing a minimum age or minimum ages for admission to employment. More specifically, article 32(2)(a), does not prevent the child from performing work that does not meet the qualifications stated in this article; does not require that one age limit is set below which any kind of work performed by children is forbidden; does not require a specific minimum age or ages allowing States Parties to set different age limits depending e.g. on the nature or the conditions of work.¹¹⁴

The Convention though, obliges States to provide for appropriate regulation of the hours and conditions of employment and guaranteeing enforcement through penalties or other sanctions.

Like other human rights treaties, CRC is also complemented by optional protocols, which are not binding unless ratified even if the States have ratified the Convention. They provide more details and expand obligations beyond the ones stipulated in the original treaty.¹¹⁵ Two are the Optional Protocols added to the Convention on the Rights of the Child, the Optional Protocol on the sale of children, child prostitution and pornography and the Optional Protocol on the involvement of children in armed conflict.¹¹⁶ The latter two correspond to some of the worst forms of child labour elaborated in ILO C182.

3.3 Child labour under the European framework

Apart from the international regulation of the phenomenon of “child labour”, there is also the regional one. Two are the main instruments in Europe addressing the problem, the European Convention on Human Rights¹¹⁷ and the European Social Charter¹¹⁸.

3.3.1 European Convention on Human Rights

Based on UDHR, but intended to be a binding legal document from the beginning, the Convention for the Protection of Human Rights and

¹¹⁴ Jaap E. Doek, *The CRC and the elimination of economic exploitation of children*; International Conference “Stopping the economic exploitation of children: new approaches to fighting poverty as a means of implementing human rights?”, 22 to 24 February 2002, Hattingen (Germany) .

¹¹⁵ Information retrieved from: http://www.unicef.org/crc/index_protocols.html, last accessed April 8, 2012.

¹¹⁶ Adopted by the General Assembly 25 May 2000, GA 263, UN GAOR, 54 Sess., Supp 49; UN DOC. A/RES/54/263.

¹¹⁷ Available at: http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/CONVENTION_ENG_WEB.pdf, last accessed April 10, 2012.

¹¹⁸ Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm>, last accessed April 10, 2012.

Fundamental Freedoms, known as the European Convention on Human Rights (ECHR) was adopted on 4 November 1950 in Rome and entered into force on 3 September 1953.¹¹⁹ As stated in the Convention Preamble, one of its main aims was that member States should take the first steps toward the collective enforcement of certain rights previously set out in UDHR and guaranteeing to individuals the civil and political rights therein.¹²⁰

The Convention does not make any explicit reference to children and their exploitation, but since article 1 stipulates that States Parties shall secure to *everyone* the rights and freedoms, children are included. Article 4 of the Convention forbids slavery and forced labour. It states that “*No one shall be held in slavery or servitude*”. Neither term is defined, but the Court has considered that it refers to a situation where one person has legal ownership of another, and “servitude” refers to the obligation to provide one’s services that is imposed by the use of coercion. Furthermore, the article stipulates that “*no one shall be required to perform forced or compulsory labour*” and gives the definition of what comprises forced or compulsory labour.¹²¹

3.3.2 European Social Charter

The European Social Charter (ESC) is a Council of Europe treaty and was adopted on 18 October 1961 and entered into force on 26 February 1965. Revised in 1996, the Charter complements the European Convention on Human Rights in the field of economic and social rights. It sets out rights and fundamental freedoms and establishes a supervisory mechanism based on collective complaints and state reports. Among the wide range of rights guaranteed by the Charter, are rights relating to housing, health, education, employment, legal and social protection, free movement of persons and non-discrimination.¹²²

The Charter addresses child labour under article 7 “*The right of children and young persons to protection*” and is modelled upon earlier ILO standards relating to the issue.¹²³ The article sets upon Contracting Parties the obligation to provide the age of 15 years as the minimum age of admission to employment and as an exception to the rule, cases when

¹¹⁹ Iain Cameron, *The Origins and Structure of the Convention System*, in *An Introduction to the EUROPEAN CONVENTION on HUMAN RIGHTS*, 6th ed., (Iustus Forlag 2011) p. 41.

¹²⁰ Ed Bates, *The Evolution of the European Convention on Human Rights and Fundamental Freedoms. The Evolution of the European Convention on Human Rights, From its Inception to the Creation of a Permanent Court of Human Rights*, (Oxford University Press, 2010), p. 2.

¹²¹ Iain Cameron, *The Substantive Rights*, in *An Introduction to the EUROPEAN CONVENTION on HUMAN RIGHTS*, 6th ed., (Iustus Forlag, 2011) p. 86.

¹²² Council of Europe, Children’s Rights under the European Social Charter, Factsheet, Information Document prepared by the Secretariat of ESC. Available at: http://www.coe.int/t/dGHI/monitoring/Socialcharter/Theme%20factsheets/FactsheetChildren_en.pdf, last accessed April 10, 2012.

¹²³ Creighton, *supra* note 45, p. 369.

children are subject to “*light work*” which does not harm their health, morals or education. On the other hand it requires states to provide a higher minimum age of admission to employment if occupations are prescribed as dangerous or unhealthy. Furthermore it stipulates that persons who are subject to compulsory education shall not be employed in full work as would deprive them of the full benefit of their education. Regarding working hours of children under the age of 16, the article states that they shall be limited in accordance with the needs of their development. It also addresses issues such as wages, annual holiday, night work and medical check of children.

4 Albania and Kosovo comparative case study

4.1 Albania

4.1.1 The political, economic and social framework

Albania is located in the southwestern region of the Balkan Peninsula, bordering with Greece to the south/southeast, Macedonia to the east, Kosovo to the northeast, and Montenegro to the northwest.¹²⁴

The current year 2012, marks the 100th anniversary of Albania as a free independent country. Following the end of the First Balkan War, Albania declared its independence from the Ottoman Empire in November 1912. Then, during the Second World War, it was first conquered by Italy (1939-1943) and later by Germany (1943-1944).¹²⁵ After the war, the communist party and its leader Enver Hoxha took over the country for the following years, allying first with USSR until 1960 and then China in 1978.¹²⁶ Albania entered into a new era of its history in 1992, after being for 45 years one of the poorest, most isolated, most repressive and most inscrutable country in Europe.¹²⁷

Throughout 20 years of democracy, after the collapse of half century rule from the communist party, Albania has experienced large political, social and economic changes. The changes, for a country in transition, as Albania, have been both positive and negative in affecting different categories of the population.¹²⁸ *“Phenomena which were previously unheard of or unacknowledged from and in the society have become common, including poverty, unemployment, social problems within the family and massive migration”*.¹²⁹ These changes and the phenomena they brought into the Albanian society have also increased the vulnerability of children to exploitation, violence, abuse and neglect.¹³⁰

¹²⁴ United States Department of State, Bureau of European and Euroasian Affairs, Background Note: Albania. Available at: <http://www.state.gov/r/pa/ei/bgn/3235.htm#political>, last accessed April 30, 2012.

¹²⁵ Ibid.

¹²⁶ Central Intelligence Agency (CIA), The World Factbook, Europe: Albania. Available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/al.html#top>, last accessed April 30, 2012.

¹²⁷ European Forum for Democracy and Solidarity, <http://www.europeanforum.net/country/albania>, last accessed, April 30, 2012.

¹²⁸ National Albanian Center for Social Studies, Assessment of the Child Care Services and the Institutions for Children Without Parental Care, October 2005, p. 18.

¹²⁹ Ibid.

¹³⁰ Ministry of Labour, Social Affairs and Equal Opportunities and UNICEF, Report on the National Conference: Strengthening the Child, Youth, and Family Protection in Albania, September 2007, p. 9.

Like in other transition countries, the emphasis on macroeconomic reform has led to the worsening of social services and at the same time drastic demographic shift have weakened traditional community based protection systems.¹³¹ Moreover, new demands on vulnerable families, including growing socio-economic segregation, have limited their capacity to provide a protective developing environment for children. The consequence has been an increase in the number of children affected by, exploitation, abuse, neglect and violence, and a decrease in the capacity of the responsible actors such as individual families, communities and State structures to respond, prevent and take appropriate measures to put to an end the phenomena.¹³²

The disparities created due to economic and cultural conditions have led to the social exclusion of some population groups, depriving them of their basic rights. Children who work and street children are among the most deprived and least visible social groups.¹³³

4.1.2 National legislation and monitoring mechanisms on child labour

Legislation is a gateway to improve and update policies and to produce substantial changes in the implementation of human rights as required by international standards, including the rights of children and the protection of these rights. The most important legal instruments addressing the child labour issue in Albania and the monitoring mechanisms in this regard are the following ones:

The Constitution of the Republic of Albania.¹³⁴ The Constitution is the fundamental law of the Republic of Albania and that constitutes the foundation of the Albanian legislation. All the other laws that are adopted in the country have to be in accordance with the provisions of the Constitution. Right in its Preamble is proclaimed the importance of fundamental rights and freedoms setting the determination of the people of Albania “...to build a social and democratic state based on the rule of law, and to guarantee the fundamental human rights and freedoms.” The provisions of the Constitution are directly applicable, except when the Constitution provides otherwise.¹³⁵ Chapter IV that sanctions economic, social and cultural rights stipulates under article 54 protection for children. It states, “*Children, the young, pregnant women and young mothers have the right to special*

¹³¹ Ibid.

¹³² Ibid.

¹³³ National Albanian Center for Social Studies, Supra note 128, p. 12.

¹³⁴ The Constitution of the Republic of Albania was adopted on October 21, 1998 and entered into force on November 28, 1998. The Constitution is divided into 18 parts which sanction a parliamentary democracy, people’s sovereignty and fundamental rights of the citizens as well as other important points. The Constitution is said to have fulfilled all the requirements for a modern European Constitution. Available at:

<http://unpan1.un.org/intradoc/groups/public/documents/untc/unpan013810.pdf>, last accessed March 29th, 2012.

¹³⁵ Constitution of the Republic of Albania, 1998, Article 4 (3).

protection by the state.” Furthermore, it continues, “Every child has the right to be protected from violence, ill treatment, exploitation and their use for work, especially under the minimum age for work, which could damage their health and morals or endanger their life or normal development.”

The Labour Code of the Republic of Albania¹³⁶ establishes the minimum age for child labour as well as the main conditions under which child labour above the minimum age may be conducted. With regard to duration of work, Article 78 (2) determines that for the employees under the age of 18, the daily duration of work is not longer than 6 hours a day. Article 98 sets the minimum age of employment at 14, stipulating that although employment of the juveniles under the age of 16 is prohibited, this does not apply to juveniles from 14-16 years of age, when they are employed during the holidays from school, for as long as this employment does not harm their health and growing up. Moreover, article 99 brings to attention the “*easy jobs*” notion, under which juveniles between the age of 16 to 18 may be given easy jobs that do not harm their health and growing up process, but the Labour Code does not give any criteria or definition neither for what “*easy jobs*” nor “*difficult jobs*” represent.¹³⁷ Furthermore, the prohibition by the Labour Code is not translated in a criminalization of those who exploit the child labour. The Labour Code leaves it unclear which institution is responsible for ensuring the banning of child labour within the country.¹³⁸

At the same year that the Labour Code was adopted, was also established the **State Labour Inspectorate (SLI)**¹³⁹ as a central public institution, under the Minister of Labour, Social Affairs and Equal Opportunities, which is composed by the General Directorate on central level, regional directorates and local labour inspection offices.¹⁴⁰ With the adoption of the Law no. 9634, date 30.10.2006 “On Labour Inspection and State Labour Inspectorate”¹⁴¹, it was transformed in an independent body. Law no. 9634 regulates the organization and the functions of SLI. The main responsibility of SLI is the enforcement of legal provisions and control related to working conditions, such as: working time, safety, hygiene and welfare, *child labour*, migrant workers and other vulnerable groups. Moreover, the labour

¹³⁶ The Labour Code was adopted on July 17, 1995. Since then, it has been amended three times, in March 1996, July 2003 and December 2008, in order to be in full compliance with the ILO Conventions. Available at: <http://www.ilo.org/dyn/natlex/docs/SERIAL/41344/63433/F1167646799/ALB41344.PDF>, last accessed March 29th, 2012.

¹³⁷ International Trade Union Confederation (ITUC), International Recognized Core Labour Standards in Albania, Report for the WTO General Council Review of the Trade Policies in Albania (Geneva, 28 and 30 April 2010), p.5.

¹³⁸ Transnational Protection of Children, The Case of Albania and Greece, 2000-2006, p.16.

¹³⁹ Official website: www.sli.gov.al

¹⁴⁰ European Network Education and Training in Occupational Safety and Health, http://www.enetosh.net/webcom/show_article.php/c-192/nr-3/p-1/i.html, last accessed April 20, 2012.

¹⁴¹ Available in Albanian, at: http://www.sli.gov.al/images/files/ligj_nr_9634_dt_30_10_2006.pdf, last accessed April 20, 2012.

inspectorate is authorized to issue the working permissions for the 14-16 old children.¹⁴²

Regardless of a good legal foundation, labour inspection as a preventive culture has not really been applied in Albania and the system has resulted pretty weak.¹⁴³ To improve the situation the ILO in February 2012 launched a two year technical co-operation project within the “IPA National Programme for Albania/Human Resources Development”. The objective of this project lies on improving the capacity of labour market institutions, SLI and other institutions and also to adapt Albanian Legislation to European Union Standards on health and safety at work.¹⁴⁴

Law No. 10 347 “On the Protection of the Rights of the Child”¹⁴⁵ was adopted by the Albanian Parliament on 4 November 2010 and it entered into force in May 2011. It is the first national law related only to children and marking an important milestone in the protection of their rights.

Protection of children from economic exploitation is stipulated in Article 22. This article states: *“The child is protected from economic exploitation and from performing any work that is hazardous, affects education, harms health, harms his physical, mental, spiritual, moral or social development and is forced labour.”* Furthermore, it provides that *“hiring children under the age of 16 is prohibited. The child of age 14 to 18 may be employed in light work that does not harm his/her health and growing up process, in accordance with the conditions laid down in the legislation.”*

In addition, Law No. 10347 sets the foundation for the establishment of appropriate institutional central and local mechanisms that would guarantee and ensure respect for the rights of the child from individuals, family and the state.

At the central level, this mechanism is **The State Agency for the Protection of Child’s Rights (SAPCR)**. It is organized and functions according to this law and the Decision of the Council of Ministers (DCM) no. 30, date 21.3.2011, as a legal entity, depending on the minister who coordinates the work in protecting the rights of the child and which is headquartered in Tirana.¹⁴⁶

Article 37 sanctions the functions of SAPCR, under which the Agency accomplishes its mission. They consist of the following:

- a) Monitoring of the implementation of Law no. 10347, date 04.11.2010 “On the Protection of the Rights of the child” and the legislation in force and the coordination of state authorities

¹⁴² Information retrieved from: http://www.ilo.org/labadmin/info/WCMS_112487/lang--en/index.htm, last accessed April 20, 2012.

¹⁴³ Ibid.

¹⁴⁴ Information retrieved from: http://www.ilo.org/labadmin/what/events/WCMS_173134/lang--en/index.htm, last accessed April 21, 2012.

¹⁴⁵ Available in Albanian, at: <http://80.78.70.231/pls/kuv/f?p=201:Ligj:10347:04.11.2010>, last accessed April 20, 2012.

¹⁴⁶ Law no. 10 347 “On the Protection of the Rights of the Child”, 2010, article 36.

- responsible for monitoring the implementation of strategies and policies in children's rights field;
- b) Proposal to the ministry that coordinates the issues on the protection of the rights of the child to intervene in policies and legislation, based on problems that have arisen during the monitoring of the implementation of the law, strategies and politics in the field of children rights;
 - c) Proposal for methodological guidelines for the children rights unit and children protection units in local government bodies;
 - d) Technical support for the structures of central and local government bodies and non-profit organizations working in the children's rights field;
 - e) Coordination with all the relevant structures of central and local government in order to prepare reports, information and statistics about the state of implementation of children's rights in Albania;
 - f) Retribution against entities, which violate the provisions of Law no. 10247, date 04.11.2010 "On the Protection of the Rights of the Child.

At the local level, two are the monitoring mechanisms, the Child Rights Unit (CRU) and the Child Protection Unit (CPU). **CRU** is established at the administrative level of the Region and inter alia is tasked with monitoring and assessing the implementation of children's rights policies at the regional level; identify and coordinate the referral of cases of violation or abuse of children rights within the region's territory; collaborate and share information on the conduct of children rights with the responsible structures on health, education, police, local government (municipalities and communes) as well as with the civil society.¹⁴⁷

CPU is established at the administrative level, as part of the social services structure of municipalities. Its main duties are: to identify and assess the need of children in difficult situations and to coordinate actions for the protection of these children; to raise awareness of the community and to organize informative and educational meetings for the protection of the child in the territory of the municipality.¹⁴⁸

Law no. 10347 in article 42 imposes on the Council of Ministers the obligation to generate legal acts for the implementation of the law within six months after its entry into force. Unfortunately, timelines have not been respected and these legal acts have been adopted only in April 2012, but have not yet entered into force. The five Decisions of the Council of Ministers adopted, consist of:

- 1) DCM No. 266, date 12.04.2012 "On the coordination of the activity of central and local mechanisms on issues related to the protection of the rights of the child."¹⁴⁹

¹⁴⁷ Law No. 10347, "On the Protection of the Rights of the Child", 2010, Article 38.

¹⁴⁸ Law No. 10347, "On the Protection of the Rights of the Child", 2010, Article 39.

¹⁴⁹ Available at: <http://www.keshilliministrave.al/?fq=brenda&m=news&lid=16305>, last accessed April 19, 2012.

- 2) DCM No. 263, date 12.04.2012 “On the establishment of detailed rules for cooperation between the institutional mechanisms and non-profit organizations for the implementation of local policies to protect children’s rights.”¹⁵⁰
- 3) DCM No. 264, date 12.04.2012 “On the establishment and operation of the work coordination mechanism between state authorities, responsible for referral of the cases of children at risk, and the way of proceedings.”¹⁵¹
- 4) DCM No. 267, date 12.04.2012 “On types and manners of exchanging and processing information and statistical data required by SAPCR and the responsible state structures at both central and local level.”¹⁵²
- 5) DCM No. 265, date 12.04.2012, “On the procedures of performing inspection and emplacing sanctions by SAPCR.”¹⁵³

Two other important mechanisms dealing with the monitoring of children’s rights, *child labour* included, are: the Inter Ministerial Committee for Children’s Rights, established by the Order no. 118 of the Prime Minister, date 30.06.2004 and the Children’s Rights Section, set up at the Ombudsman office as part of the General Section of Complaints.¹⁵⁴

4.1.3 Ratified international instruments

Albania’s Constitution has selected the monist system, so the right of domestic and international law are part of the same constitutional legal system. It provides a clearer and more secure position of the international norm within the normative state system. In this way, the value of international norm is clear to the legal operator and normative bodies do not need to draft a special law to suit their international commitments. Albania gives the value of law to the international norm.

Article 116(1) states:

1. Normative acts that are effective in the entire territory of the Republic of Albania are:

- a. -- the Constitution;
- b. -- ratified international agreements;
- c. -- the laws;
- d. -- normative acts of the Council of Ministers.

¹⁵⁰ Available at: <http://www.keshilliministrave.al/?fq=brenda&m=news&lid=16310>, last accessed April 19, 2012.

¹⁵¹ Available at: <http://www.keshilliministrave.al/?fq=brenda&m=news&lid=16297>, last accessed April 19, 2012.

¹⁵² Available at: <http://www.keshilliministrave.al/?fq=brenda&m=news&lid=16295>, last accessed April 19, 2012.

¹⁵³ Available at: <http://www.keshilliministrave.al/?fq=brenda&m=news&lid=16308>, last accessed April 19, 2012.

¹⁵⁴ Albanian newspaper ”Telegraf”, <http://www.gazetatelegraf.com/speciale/7837-zhduken-486-femije-shqiptare-ne-greqi.html>, last accessed April 25, 2012.

Albania is one of the countries, which has ratified most of all the important Conventions of United Nations and Council of Europe. Furthermore, it has taken measures to incorporate these conventions into its own legislation, even if gaps remain.¹⁵⁵

The International Instruments ratified, concerning the child labour issue, consist of the following:

The ILO Convention No.138 on the Minimum Age to Admission and Employment at Work (C138) was ratified by the Assembly of the Republic of Albania on 16 February 1998.¹⁵⁶

The ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour was ratified on 2 August 2001.¹⁵⁷

The International Covenant on Civil and Political Rights was ratified by the Assembly of the Republic of Albania on 4 October 1991. The Covenant came into force on 4 January 1992.¹⁵⁸

On the same date was adopted the International Covenant on Economic, Social and Cultural rights. It also entered into force on 4 October 1992.¹⁵⁹

The Assembly of the Republic of Albania ratified the Convention on the Rights of the Child on 27 February 1992. The Convention entered into force on 28 March 1992. The two Optional Protocols complementing CRC have also been adopted by Albania. The Optional Protocol on the Involvement of Children in Armed Conflict was ratified on 9 December 2008 and entered into force on 9 January 2009. The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography was ratified on 5 February 2008 and entered into force on 5 March 2008.¹⁶⁰

The European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights – ECHR) was ratified by the Albanian Assembly on 2 October 1996. The treaty came into force on the same day.¹⁶¹

¹⁵⁵ Samuel Grumiau, "Child labour in Albania: Report on the current situation and guidelines for Action by Albanian Trade Unions", The International Confederation of Free Trade Unions (ICFTU), Brussels 2004, p. 6. Available at:

<http://www.icftu.org/www/PDF/AlbaniareportEN.pdf>, last accessed April 25, 2012.

¹⁵⁶ Information retrieved from: <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C138>, last accessed April 25, 2012.

¹⁵⁷ Information retrieved from: <http://www.ilo.org/ilolex/english/convdisp1.htm>, last accessed April 25, 2012.

¹⁵⁸ Information retrieved from Bayefski.com (The United Nations Human Rights Treaties, http://www.bayefsky.com/pdf/albania_t1_ratifications.pdf, last accessed April 25, 2012.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Information retrieved from:

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=&DF=&CL=EN&NG>, last accessed April 25, 2012.

The Assembly of the Republic of Albania signed the European Social Charter (revised) on 21 September 1998. The Charter was ratified four years later, on 14 November 2002.¹⁶²

As shown, the legal framework relating to the protection of the rights of the children who are engaged in different types of work in Albania is relatively comprehensive and contemporary. The most important challenges are to reinforce institutional capacities for implementation; strengthen local governmental powers to identify and refer cases; extend services as close to applicants as possible; as well as to oversee and report on implementation.¹⁶³

4.1.3.1 Albania's obligations under International Law

From the very first moment that a State ratifies a certain Convention, automatically it submits itself to the obligations stipulated in that instrument. As such, by ratifying, C 138, C 182, CRC, etc., Albania has undertaken to fulfill all the requirements these Conventions set.

With regard to C 138, article 2(1) the Committee of Experts on the Application of Conventions and Recommendations (CEACR) notes that this article has been partly applied, only to children hired under an employment contract. As a result CEACR *“requests the Government of Albania to take the necessary measures to ensure that the protection afforded by the Convention is granted to children carrying out economic activities without an employment agreement, including self-employed children and children working in the informal economy, as soon as possible. In this regard, the Committee encourages the Government to take measures to adapt and strengthen the State Labour Inspectorate to improve the capacity of labour inspectors to identify cases of child labour in the informal sector”*.¹⁶⁴ Moreover, CEACR draws attention to article 7(3), related to determination of types of light work, which are lacking in the Albania Labour Code. The Committee explicitly *“requests the Government to take the necessary measures to ensure the determination of the types of activities which constitute permissible school holiday work for persons between the ages of 14–16, in addition to number of hours during which and the conditions in which such employment may be undertaken. It requests the Government to provide information on the progress made in this regard, with its next report”*.¹⁶⁵

At last, focusing on a report of the International Trade Union Confederation (ITUC) on child labour and on the concerning number of children engaged in different forms of child labour, the Committee *“requests the Government*

¹⁶² Information retrieved from:

<http://www.derechoshumanos.net/normativa/normas/europa/CSE/CSE-firmas-ratificaciones.pdf>, last accessed April 25, 2012.

¹⁶³ National Albanian Center for Social Studies, *supra* note 128, p. 36.

¹⁶⁴ Observation (CEACR), Minimum Age Convention, 1973 (No. 138) – Albania. 100th ILC session, 2011.

¹⁶⁵ *Ibid.*

*to strengthen its efforts to address the problem of child labour in the country, in continued collaboration with ILO–IPEC. The Committee requests the Government to provide information on the concrete measures taken in this regard, and on the results achieved”.*¹⁶⁶

With attention to C 182, article 7(2) Effective time-bound measures, Clause (d), regarding the Identification and reach out to children as special risk, street children, the Committee notes that children from a very early age like 4 or 5 years are engaged in begging and most of them are from the Roma and Egyptian communities. These children are very poorly educated and live in very bad conditions and more exposed to trafficking and prostitution. As a result, CEACR *“requests the Government to strengthen its efforts, within the framework of the new National Action Plan for the Roma Inclusion Decade, to ensure the protection of Roma children against worst forms of child labour, particularly trafficking, forced begging and work on the streets. It requests the Government to provide information on the effective and time-bound measures taken in this regard, and on the results achieved.”*¹⁶⁷

Furthermore, regarding article 8 of C 182, on international cooperation with an emphasis on “trafficking”, the Committee *“requests the Government to pursue its international cooperation efforts to combat inter-state trafficking of persons under 18. It requests the Government to continue to provide information on the measures taken in this regard, and on the results achieved.”*¹⁶⁸

Regarding CRC, Albania is required to provide information on data and statistics on *the number of children who are Victims of economic exploitation, in particular the number of children subjected to the worst forms of child labour, the number of prosecutions for economic exploitation of children and the number of convictions.*¹⁶⁹

As shown, Albania is still missing compliance with the obligations to which it is bound to after the ratifications it has made to the international instruments. A more comprehensive and serious work is needed in order to reach the change and eliminate child labour all over the country. The child labour issue cannot in any moment be neglected, for it is exactly that the moment that exploiters wait for.

¹⁶⁶ Ibid.

¹⁶⁷ Observation (CEACR), Worst Forms of Child Labour Convention, 1999 (No. 182) – Albania. 100th ILC session, 2011.

¹⁶⁸ Ibid.

¹⁶⁹ CRC/C/ALB/Q/2-4, 15 March 2012. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/413/68/PDF/G1241368.pdf?OpenElement>, last accessed May 5, 2012.

4.1.4 National policies on child labour and street children

Children's rights protection constitutes one of the most important trends of social policies in the Republic of Albania. Cornerstone of these policies are the fundamental principles of the Constitution of Albania, UN Conventions and other international instruments ratified by the Albanian State, which emphasize that children, due to characteristics of age, lack of physical and intellectual maturity, need special protection from the family and state institutions.¹⁷⁰

The **Albanian National Roadmap (ANR)**, approved by the Ministry of Labour, Social Affairs and Equal Opportunities (MoLSAEO) during the reporting period, outlines concrete steps to achieve the elimination of the worst forms of child labour in Albania by 2016. Five Local Action Plans for the ANR's implementation have been adopted and are focused on law enforcement, education and vocational training, social protection and employment, capacity building, enhancing stakeholder collaboration and awareness raising.¹⁷¹

The National Strategy for Children 2005-2010.¹⁷² The National Strategy 2005-2010 was approved by DCM no. 368, on 31 May 2005. It stipulates, inter alia, the strategic objectives of the Albanian government's policies in abolishing all forms of exploitative child labour, including work performed by street children. It aims to ensure equal opportunities to all children, regardless of age, gender, ethnicity, disability or birth status. Furthermore, it aspires to reduce the number of working children and guarantee a protection system for them. Likewise to reduce the number of street children and setting up services that protect and develop these children. In order to achieve such objectives, the establishment of institutional systems and other necessary measures to protect children from all forms of exploitation and violence is needed.

The National Strategy for Children was accompanied with an **Action Plan** aiming the progressive elimination of the number of children engaged in child labour. The measures it defined in order to improve the situation consisted of: Data collection on child labour, publishing of this data every six months and reporting to local power units on the number of working children; including abolition of child labour in general and national policies and programs; research study on the child-beggars problem and recommendations for necessary legal, administrative and economic

¹⁷⁰ Ministry of Labour, Social Affairs and Equal Opportunities, The National Strategy for Children, 2005-2010.

¹⁷¹ Information retrieved from <http://www.unhcr.org/refworld/pdfid/4e8c39700.pdf>, last accessed May 4, 2012.

¹⁷² The National Strategy is the second one on children after the one covering the period 2001-2004. It is available only in Albanian on the website of the Ministry of Labour, Social Affairs and Equal Opportunities, <http://www.mpcs.gov.al/strategji-standarte>, last accessed May 2, 2012.

interventions. Moreover, emphasis is put on the implementation of the law on compulsory education and the return to school of children who have not completed it and also the provision of vocational training alternatives for young people in working age; establishment of vocational training, employment of family support alternatives for street children.

The National Strategy against Child Trafficking and Protection of Children, Victims of Trafficking 2005-2007.¹⁷³ The Strategy was approved by DCM no. 171, on 11 February 2005. Being one of the worst forms of child labour, the strategy aims to diminish and eliminate the phenomenon of child trafficking in Albania. Provisions regarding truancy, child labour, poverty reduction and options to solve these problems are included in the strategy.¹⁷⁴

This strategy was followed by **The National Strategy against Trafficking in Human Beings (2008-2010)** and the **Supplementing National Strategy against Trafficking in Children and Protection of Child Traffic Victims** adopted on 23 July 2008 with the President Decree No. 1083. Both of them aim to reach total eradication of trafficking and enhance opportunities for education, inclusion, abolition of child labor and the building of networks in the fight against all forms of child exploitation.¹⁷⁵

Due to its nature and due to the vulnerability of children, children's rights are also made part of strategies and policies dealing with social inclusion. The National Children's Strategy is an integral part of the **Inter-sectoral Strategy on Social Inclusion 2007-2013.**¹⁷⁶ Furthermore, the **Social Protection Strategy and Action Plan 2008-2013**¹⁷⁷ foresee a number of indicators in order to enable the evaluation of social protection policies. The Strategy sets the ground for the design of policies to protect vulnerable groups, and gives particular attention to children outside parental care and children with disabilities. Improvement of the social protection system has a direct impact on the social wellbeing of the child.¹⁷⁸

The most recent step in terms of policies towards the protection and promotion of children's rights was taken in 13 March 2012, with the adoption by the Council of Ministers of the **Action Plan for Children 2012-2015.**¹⁷⁹ The Action Plan aims to promote cooperation between different governmental actors (central and local), donors, the civil society and the community in order to make decisions which guarantee respect for

¹⁷³ Available at the Ministry of Labour, Social Affairs and Equal Opportunities website, <http://www.mpcs.gov.al/strategji-standarte>, last accessed May 2, 2012.

¹⁷⁴ Children's Human Rights Center of Albania (CRCA), Child labour and street children in Albania, A research into economical exploitation and forced labour in Albania. November 2005, Tirana, p. 17.

¹⁷⁵ Technical Secretariat for Children, Evaluation Report on the National Children's Strategy and Action Plan (2005-2009) p. 13.

¹⁷⁶ Available at the Ministry of Labour, Social Affairs and Equal Opportunities website, <http://www.mpcs.gov.al/strategji-standarte>, last accessed May 2nd, 2012. (supra note)

¹⁷⁷ Ibid.

¹⁷⁸ Technical Secretariat for Children, supra note 175, p. 13.

¹⁷⁹ Decision of the Council of Ministers No. 182, date 13.3.2012.

children's rights.¹⁸⁰ The Action Plan draws attention to two main directions: first, strengthening of institutional structures established to monitor and report on the implementation of children's rights at the national and regional level, and, second, encouraging the development of comprehensive, coordinated and harmonized policies of protection and social inclusion of children.¹⁸¹ The strategic goals and objectives of this Action Plan are grouped according to children's rights: right of the child to be protected from violence, abuse and *economic exploitation*, right to development and education, right to protection and social inclusion, right to legal protection, etc. The Action Plan aims not only to protect children, but to prevent and provide effective response to various forms of children's exploitation.¹⁸²

In accordance with this set of policies, there have been taken also several actions. Since 1999, the government continues collaboration with ILO/IPEC in order to strengthen public institutional capacities addressing child labour. There has been established the Child Labour Unit at the MoLSAEO, which during the year 2010 continued to implement the second phase of its child labor monitoring initiative in the regions of Elbasan and Shkoder. As a result of those efforts, 362 children were withdrawn from various forms of employment and returned to school. In addition the Ministry of Tourism has established a code of conduct for preventing child sex tourism that was signed by 24 tourist agencies and hotels.¹⁸³ Moreover, regarding trafficking, the Government has improved its efforts to identify and protect victims of trafficking in 2010. NGOs and the government's shelter assisted 97 trafficking victims via the National Referral Mechanism in 2010, compared with 94 victims in 2009. Fourteen of the victims were children.¹⁸⁴

Without denying the work that has been done, while the legal and policy framework is to a certain extent well built, more needs to be done in terms of implementation of these laws and policies, words are worthy when they are transformed into action which brings positive changes.

4.1.5 Services offered by governmental and non-governmental institutions

On March 15, 2012, MoLSAEO in collaboration with UNICEF, World Vision (WV) and the National Center for Social Services (NCSS) inaugurated the first internet website on social services, which consists of

¹⁸⁰ Information retrieved from <http://www.mpcs.gov.al/zedhenesi/6-njoftime-per-shtyp/722-km-miraton-planin-e-veprimit-per-femije-2012-2015>, last accessed May 2, 2012.

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ United States Department of State, 2010 Human Rights Report: Albania. Available at: <http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154409.htm>, last accessed May 20, 2012.

¹⁸⁴ United States Department of State, Trafficking in Persons Report 2011. Available at: <http://www.state.gov/j/tip/rls/tiprpt/2011/164231.htm>, last accessed May 20, 2012.

the electronic map of social services throughout all the country.¹⁸⁵ According to representatives of MoLSAEO, the map will identify all the social services that are being delivered in Albania and improve the referral system of different cases and also determine where action needs to be taken in order to meet unmet needs.

In the framework of the decentralization reform of social services, responsibility is set upon the local power and so municipalities are in charge to draft their own policies and implement their own services with regard to the characteristics of the area.

An example is the *Day Center for the Protection of Street Children and of Those Working in the Street* that operates in Tirana since September 2010. The center serves as a protection and intercession space for street children, trying to meet the basic needs of children, especially the ones dealing with health, nutrition, hygiene and education. The ongoing aim of the Center is to consolidate its profile as a Center capable to protect and support street children in reducing confrontation of children's presence with the street phenomena, by carrying out psycho-social-educational activities and the operation of the field mobile team.¹⁸⁶ The Center identifies and opposes any kind of exploitation of children for begging and other illegal activities. Moreover, through the field mobile team, the Center monitors and regularly updates the street children situation in Tirana with concrete field interventions and by providing social and education services at its residency.¹⁸⁷ The center is currently attended by 193 children which have benefited from all the basic services provided at the Center and by its activities, which have been created respecting the highest interest of the children.¹⁸⁸

The Children's Human Rights Centre of Albania (CRCA) is one of the few non-governmental organizations (NGO) in Albania which works for the elimination of child labour and other forms of labour among children. Since 2001, CRCA operates to take to an end child labour and child trafficking in Albania. It has established five "Children's clubs", two in Tirana and the others in Korça, Shkodra and Kuçova. These clubs serve as psycho-social centers that provide services for working children, children at risk and their families. During the whole year children are supported through non-formal education, and educational and cultural activities, in order to enable their return to school in the coming year. For this purpose CRCA works closely with the local authorities, the educational directorates, and the Social

¹⁸⁵ The social services are grouped according to the 12 regions of Albania, <http://infosherbime.com/Services.aspx>, last accessed May 5, 2012.

¹⁸⁶ Information retrieved from: http://www.tirana.gov.al/common/images/Menyra_e_funksionimit_dhe_aktivitetet_qe_zhvi_llohen_ne_qender.pdf, last accessed May 5, 2012.

¹⁸⁷ Information retrieved from: <http://www.tirana.gov.al/?cid=1,86,2985>, last accessed 5 May, 2012.

¹⁸⁸ Supra note, 184.

Services Administration so as to make possible the rehabilitation and reintegration of children in the formal schooling system.¹⁸⁹

Another service offered by CRCA in collaboration with UNICEF, since 1 June 2009, is “*ALO 116 – The Albanian National Child Helpline (ANCH)*”. ANCH is a national service that aims to help children through telephone counseling and cases referral to governmental and non-governmental institutions that provide services for children. The service is available to all children across the country, 24 hours 7 days a week and everyday of the year. It has been a very successful and helpful service from the beginning and its effectivity has been shown through the number of calls received, an average of 400 phone calls a day or approximately 16-17 calls within an hour.¹⁹⁰

Association for the Social Support of Youth (ARSIS) works in Tirana, Albania since 2005. It is specialized in social support of children/youth of age 0 to 25, who are in difficulty or at risk and in protecting their rights. The target group interventions from Arsis are street children, victims of economic exploitation and trafficking and their families. Most of them belong to the Roma and Egyptian minorities, who also experience racial and social discrimination in all aspects of their daily life. ARSIS intervention involves daily contact with the target group through three main methods:

- a) street work;
- b) family visits;
- c) welcoming children and their families at ARSIS center.¹⁹¹

Alo!Mik (Alo!Friend) is another non-governmental organization operating in Albania. It supports disadvantaged children and aims to make a positive impact on their future through humanitarian aid, educational and training projects, with the belief that children will contribute to meaningful changes in their communities.¹⁹²

The contribution that NGOs have given towards the fight against child labour both through the services offered and lobbying on the issue, has been and still is very significant. Very often they have encountered difficulties, but they have never given up. Greater collaboration is needed from governmental institutions and the society itself in order to bring change as soon as possible, for the harm which is done to children today, is irreversible.

¹⁸⁹ Information retrieved from: http://www.crca.org.al/o_s/shqip/ndal.htm, last accessed May 5, 2012.

¹⁹⁰ Information retrieved from: <http://www.alo116.al/sherbimet>, last accessed May 5, 2012.

¹⁹¹ Information retrieved from: http://www.arsis-al.org/arsis/?page_id=71, last accessed May 5, 2012.

¹⁹² More information on: <http://www.alomik.org/>.

4.1.6 Profile of street working children

The child labour phenomenon hit the country at the beginning of 90s, after the fall of communism. From a closed country deprived of many things, Albania opened itself not only to positive changes but unfortunately also to negative ones. There are a number of factors, such as social, economical, cultural, demographical and psychological which combined, make the problem both social and individual.¹⁹³

Although, there are no reliable statistics on the number of children working in Albania, still just by walking in the streets, everyone can see that children are involved in different types of work.¹⁹⁴ According to the Institute of Statistics (INSTAT)¹⁹⁵, 32 % of children of age 6 to 17 do work, 19 % of age 6 to 14¹⁹⁶ and almost all of them are enrolled in school. NGOs do not agree with these data and according to them, even when these children are enrolled in school the chances to drop out of education remains quite high.¹⁹⁷ The following will show the characteristics and causes of child labour in Albania.

4.1.6.1 Characteristics of child labour

Children who work in Albania, are both boys and girls, even though boys constitute a higher number than girls.¹⁹⁸ With regard to age, the majority of working children are between the ages of 10 to 17, and the highest number of them is of ages 10 to 12 and mostly younger than 14 years old. Working children are of Roma, Egyptian and Albanian ethnicity.¹⁹⁹ Based on socio-economic characteristics, categories of children who work consist of:

- a) Children whose families have a low economic, social and educational level;
- b) Usually children with a single parent, or orphans living with their relatives;
- c) Children from families that have moved from rural areas to urban ones, after the year 1992 and who are settled in the suburbs of these cities;
- d) Children who have dropped out of school.²⁰⁰

Child labour is practiced in different areas, varying on family tradition, locality, and geographical conditions of places where children work.²⁰¹ The most common forms of work performed by children are: farming, selling

¹⁹³ Institute for Contemporary Studies (ICS), Albania: Street Working Children in Tirana, Shkodra, Vlora. A rapid assessment survey. ILO/IPEC. Tirana, 2002, p. 35.

¹⁹⁴ Agenda Institute, Child labour in Albania, Providing a Solution. Policy brief, 2008, p. 5.

¹⁹⁵ <http://www.instat.gov.al/>

¹⁹⁶ Information retrieved from <http://www.unhcr.org/refworld/pdfid/4e8c39700.pdf>, last accessed May 4, 2012.

¹⁹⁷ Agenda Institute, supra note 192, p. 6.

¹⁹⁸ ICS, supra note 191, p. 11.

¹⁹⁹ Tonya R.Thurman, Lisa Johnston, Bridget Lavin, Elizabeth Bunde, Nancy Mock, *Characteristics of Street Children in Tirana, Albania, A Quantitative Assessment*, 2008, p. 6.

²⁰⁰ ICS, supra note 191, p. 11.

²⁰¹ CRCA, supra note 174, p. 10.

small goods on the streets or at markets, car wash worker, sorting rubbish in the streets, begging, car window cleaning at street crossroads, pizza delivery, construction, domestic labour, mining, making clothes and shoes, drug distribution, prostitution and other informal economy activities such as loading and unloading trucks, carrying luggage at the airport, shining shoes, and selling tickets at buses and trains.²⁰²

Based on the Labour Market characteristics, child labour has been categorized in two main categories: first, children working in the formal sector of the economy, and, second, children working in the informal sector of the economy.²⁰³ Children working in the formal economy are mostly of 14-18 years of age, but there are cases when children themselves give false data regarding their age in order to get the job, or employers hire them in violation with the provisions of the Labour Code. While inspection and monitoring for this category is done regularly in accordance with the provisions of the Labour Code and the Law on Inspection, the opposite happens with the informal sector, because SLI is charged only to monitor the formal sector of the economy. As a result, child labour in the gray sector of the economy is let out of monitoring and supervision and this leads way to great violations, exploitation and abuse.²⁰⁴

According to working hours, children work between 2 to 18 hours per day with an average of 7 hours of work a day. They work between 2 to 7 days a week with an average of 6 working days a week. It is the same for both boys and girls. The amount of hours worked is strongly related to the level of the administration and supervision of work.²⁰⁵ Children working long hours are forced to wake up early and come back from work late at night. The length of their working hours is affected by the conditions at work.²⁰⁶

Regarding working conditions, in most of the cases the working environment is not appropriate for children and work in general. They work for the most part in open air workplaces, polluted workplaces, noisy workplaces, dangerous workplaces, workplaces exposed to different weather conditions, or workplaces with no hydro-sanitary facilities. These workplaces are very unsafe with accidental risks and also dangerous for children's health.²⁰⁷

4.1.6.2 Causes of child labour

Various factors come together to explain the existence of child labour and street children phenomena in Albania, among which socio-economic are the most important ones.

²⁰² Ibid., and ICS, supra note 191, p.12, and Grumiau, supra note 155, p. 10-18.

²⁰³ CRCA, supra note 174, p. 11.

²⁰⁴ Ibid., p. 11.

²⁰⁵ ICS, supra note 191, p.12.

²⁰⁶ Ibid., p. 12.

²⁰⁷ Ibid., p. 43.

Poverty is the main reason that drives children into the workplace. The World Bank (WB) estimates that 12.4 % of the Albanian population lives below the national poverty line.²⁰⁸ This means that these people are not able to fulfil even the elementary needs of living, such as feeding themselves. In a survival situation, parents are forced to push their children to work.

Unemployment is a phenomenon of critical concern that has characterized Albania since the change of the political system in 1992, when many economic activities were closed. Official statistics talk about 13.29 % of unemployment²⁰⁹, but trade unions give figures of 35 % or even more.²¹⁰ Unemployment is closely related to poverty, as the lack of a job, leads to lack of food, shelter, warmth, clothes and other basic material and emotional needs for the family.²¹¹

Wages and the cost of living is another factor leading to child labour. Wages in Albania are among the lowest in Europe, while on the other hand the cost of living increases every year. As a result family needs do not meet the market's prices. Upgrading wages would with no doubt improve the children's situation in Albania.²¹²

Regarding social factors, child labour would not have been so widely spread if it were socially and culturally unacceptable. There are certain beliefs within the society that favour this phenomenon. The tradition that children are expected to follow their parent's path in a particular business and start practicing at a very early stage; or the thought that girls do not need as much education as boys do; or even the view that work is good for building a strong character and developing you for the future.²¹³

Education While on one hand the school enrolment rate is high, on the other hand the attendance rate is much lower.²¹⁴ Working children and in particular street children comprise the majority of children who have dropped out school. There lies a connection between the working and dropping out trends, in two ways: 1) the child starts work, which directly influences the decision to drop out of school; 2) the child, due to different reasons, drops out of school and starts working.²¹⁵ Lack of infrastructure also contributes to children giving up education. Schools in rural areas are in bad conditions and far from inhabited areas.²¹⁶

²⁰⁸ The World Bank:

<http://data.worldbank.org/indicator/SI.POV.NAHC/countries/AL?display=graph>, last accessed May 4, 2012.

²⁰⁹ INSTAT, www.instat.gov.al, last accessed May 4, 2012.

²¹⁰ Grumiau, supra note 155, p.19.

²¹¹ ICS, supra note 191, p.8.

²¹² Grumiau, supra note 155, p.19.

²¹³ ICS, supra note 191, p. 9.

²¹⁴ Agenda Institute, supra note 192, p.10.

²¹⁵ ICS, supra note 191, p. 10.

²¹⁶ CRCA, supra note 174, p. 14.

Poor application of legislation and lack of enforcement Although Albania has ratified the main international instruments addressing the child labour issue (C 138, C 182, CRC), there is the need to bring the national legislation in line with the requirements of the provisions of these instruments. Likewise, legislation is meaningless if it is not enforced and that is why a more serious and competent work needs to be carried out by monitoring mechanisms.²¹⁷

4.2 Kosovo

4.2.1 The political, economic and social framework

Kosovo, a country of 10.887 square kilometers lies in south east Europe, bordering Serbia to the north and to the east, Montenegro to the northwest, Albania to the west and Macedonia to the south.²¹⁸

It is the youngest independent country of Europe, recording only its fourth year as a free country after the Assembly of Kosovo declared the independence from Serbia on 17 February 2008. The road to independence though has been quite harsh and difficult along the years. Serbia reacquired²¹⁹ control over Kosovo during the First Balkan War in 1912. After World War II, Kosovo became an autonomous province of Serbia in the Social Federal Republic of Yugoslavia (SFRY) and in 1974 the Yugoslav Constitution gave Kosovo the status of a Socialist Autonomous Province within Serbia.²²⁰ Then in late 1980s Slobodan Milosevic came to power. In 1989, in breach of the Constitution of 1974, he revoked Kosovo's autonomy. In response to the loss of their status, Kosovo Albanian leaders organized in 1991 a referendum that declared Kosovo independent, and through secret elections held in 1992 Ibrahim Rugova was appointed president of the country.²²¹ Dissatisfaction of Albanians with his poor work for the recognition of independence from the international community, led in 1997 to the creation of the Kosovo Liberation Army (KLA) and the launch of an insurgency. But in 1998 the Serbian military forces led by Milosevic started an atrocious counterinsurgency operation that resulted in

²¹⁷ ICS, supra note 191, p. 11.

²¹⁸ Foreign & Commonwealth Office. Available at: <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/europe/kosovo?profile=geography>, last accessed May 9, 2012.

²¹⁹ During the medieval period, Kosovo was the center of the Serbian Empire, until the 14th century when Ottomans took over.

²²⁰ United States Department of State, Bureau of European and Euroasian Affairs, Background Note: Kosovo. Available at: <http://www.state.gov/r/pa/ei/bgn/100931.htm>, last accessed May 9, 2012.

²²¹ Information retrieved from: <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/europe/kosovo?profile=history>, last accessed May 9, 2012.

massacres and massive expulsions of ethnic Albanians.²²² With the failure of international attempts to mediate the conflict, in March 1999 NATO started a military operation against Serbia in order to end the violence occurring in Kosovo. After the NATO intervention the UN Security Council with Resolution 1244, placed Kosovo under the administration of the UN Interim Administration Mission in Kosovo (UNMIK), until 17 February 2008 when the Kosovo Assembly declared independence²²³, which still today on May 2012 is not recognized by Serbia²²⁴.

From 1990-1999 Kosovo under the Milosevic regime experienced a mixture of a deep economic, social and political crisis. The war and the post war era resulted in a devastated and completely paralyzed economy and extreme poverty. After the war there were no state institutions, the economy was totally frozen, public finances were nonexistent, the industry was over amortized and generally unusable, and agriculture was abandoned. Furthermore, there was massive unemployment, the educational and health institutions were destroyed and under continuous need, the road infrastructure was destroyed, and there was interruption of access to drinking water and electricity.

This reality that was spread all over the country, could not leave children unaffected, the vulnerability of whom to be exploited and abused increased rapidly. Several forms of child labour flourished, all of them harmful to children's welfare.

Things started to slightly improve after the proclamation on independence in 2008. Kosovo has been establishing and consolidating democratic state institutions in accordance with the international standards. A series of initiatives and reforms to fight poverty and improve the education, health and social security system are being implemented. The road is long and difficult, and of course there is a lot to do, but a good start gives hope for progress and development.

4.2.2 National legislation and monitoring mechanisms on child labour

The Constitution of the Republic of Kosovo.²²⁵ The Constitution is the highest legal act of the Republic of Kosovo. Laws and other legal acts that

²²² Central Intelligence Agency (CIA), The World Factbook, Europe: Kosovo. Available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/kv.html>, last accessed May 9, 2012.

²²³ Ibid.

²²⁴ In October 2008, Serbia sought an advisory opinion from the International Court of Justice (ICJ) on the legality under international law of Kosovo's Declaration of Independence. The ICJ released the advisory opinion in July 2010 affirming that Kosovo's Declaration of Independence did not violate general principles of international law, UN Security Council Resolution 1244, or the Constitutive Framework.

²²⁵ The Constitution of the Republic of Kosovo was adopted on 9 April 2008 and entered into force on 15 June 2008. Available at:

are adopted in the country shall be in accordance with the Constitution.²²⁶ The provision related to children's rights to protection and welfare, including the right to protection from exploitation is provided in chapter II, "Fundamental Rights and Freedoms", under article 50. It states inter alia: "*Children enjoy the right to protection and care necessary for their wellbeing; Every child enjoys the right to be protected from violence, maltreatment and exploitation.*" Furthermore its mandates action by the authorities stipulating, that "*All actions undertaken by public or private authorities concerning children shall be in the best interest of the children.*"

The Labour Law No. 03/L - 212²²⁷ defines the minimum age for child labour and the working conditions of children engaged in work activities and under article 44 it is stated that they enjoy special protection in compliance with this Law. Article 7, with regard to the terms and criteria for the establishment of employment relationship states that "An employment relationship may also be established with a person between 15 and 18 years of age, who may be employed for light work that does not represent a risk to their health or development..." From this article derives also the definition of what it is considered as "*light work*", the work which does not harm the child's health and development, but classification of easy and prohibited jobs, is regulated by the sub-legal act below, issued by the Ministry in charge. Moreover, article 17 stipulates that regarding commissioning employees in working posts, "an employee under the age of 18...cannot be reassigned to other habitation without his/her consent." Article 20 provides that maximum working hours for a person under 18 years of age, may not exceed 30 hours per week. Article 23 continues, stipulating that extended working hours for employees under 18 years of age, are prohibited. Furthermore, article 27 prohibits night shifts for persons under 18 years old. In terms of rest during working hours, article 28 determines that an employee under the age of 18 who works at least 4 hours and 30 minutes, is entitled to a daily break of 30 minutes. Regarding weekly rest, under article 31 they are entitled to a rest of at least 36 continuous hours. Article 45 stipulates that an employee under 18 years of age shall not work under conditions, which by their nature or the circumstances in which they are performed, may damage the health, safety or the moral of the employee. They shall not carry out dangerous work, such as: underground, under water, dangerous heights or closed premises; dangerous machinery, equipment and tools used in the labour process and in the transportation of heavy shipments; unhealthy environment, which exposes youth to dangerous substances, factors or processes, temperatures, noise or vibrations that may be harmful to health; and, under especially difficult conditions,

<http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>, last accessed May 11, 2012.

²²⁶ Constitution of the Republic of Kosovo, 2008, article 16.

²²⁷ The Labour Law was adopted by the Kosovo's Assembly on 2 November 2010 and was promulgated by the Decree of the President No. 077-2010, on 18 November 2010. Available at: <http://www.assembly-kosova.org/common/docs/ligjet/2010-212-eng.pdf>, last accessed May 11, 2012.

such as extended working hours or certain circumstances during the night, or a closed environment.

The Administrative Instruction No. 17/2008 on Prevention and Immediate Prohibition of Hazardous Child Labour²²⁸ aims to define, prevent and eliminate all form of hazardous child labour. It defines, regulates and protects children under the age of 18 from hazardous forms of work and any other activity performed by a child, which deprives him/her of childhood, potential and dignity, and damages his/her psychological, physical and moral development.

The monitoring system on child labour lies in all Kosovo and is coordinated by the Ministry of Labour and Social Welfare (MLSW). The monitoring mechanisms consist of:

The Executive Agency of Labour Inspectorate (EALI). Its main task is to monitor the implementation of the legal provisions of the Regulation No. 27/2001 on Labour Law in Kosovo, Regulation 2003/33 on Law No. 2003/19 on Occupational safety and health at work and other applicable provisions in the labour field, employment, occupational safety and health at work.²²⁹ The responsibilities and function of EALI are determined in Law No. 2002/9 on the Labour Inspectorate in Kosovo.²³⁰

Kosovo Committee for the Prevention and Eradication of Child Labour (KCPECL) was established with the decision of the Prime Minister No. 5/166 on 13 December 2005. KCPECL is a coordinating and monitoring body of programmes for the prevention and eradication of child labour being taken in Kosovo. It is chaired by the Minister of MLSW and is comprised of 15 members, directors of Directorates in appropriate Ministries. The Committee has established the Working Group on the Monitoring of Child Labour, the role and responsibilities of which consist of the initiation, support, coordination and supervision of the performance of local MCL structures.²³¹

The Inter-Ministerial Committee on Children's Rights was established in 2006 and is chaired by the Prime Minister. The main objective of this mechanism is the protection and the promotion of children's rights in Kosovo, in order to place children at the center of the government's efforts. Through this mechanism, the Government of the Republic of Kosovo, aims

²²⁸ The Administrative Instruction entered into force on 25 September 2008. Available at: <http://www.antitrafikimi.com/legjislacioni/U.A.%20nr.17-2008%20per%20parandalimin%20dhe%20eliminimin%20e%20puneve%20te%20rrezikshme%20per%20femijet%20ne%20Kosove.pdf>, last accessed May 11, 2012.

²²⁹ Information retrieved from: <http://mpms.rks-gov.net/en-us/departments/executivebodyofthelabourinspectorate.aspx>, last accessed May 12, 2012.

²³⁰ The Law is available at: http://www.unmikonline.org/regulations/unmikgazette/03albanian/A2003regs/RA2003_04.pdf, last accessed May 12, 2012.

²³¹ Office of the Prime Minister, Strategy and National Action Plan on Children's Rights in the Republic of Kosovo 2009-2013. June 2009, p. 19.

to achieve international human rights standards and to assist in improving the effectiveness of existing mechanisms and to guarantee that accepted norms of children's rights are being respected and implemented.²³²

The Local Action Committees (LAC) for monitoring child labour (MCL) are established in six municipalities, respectively in Pristina, Prizren, Mitrovica, Gilan, Obilic and Glogoc to coordinate MCL's activities, including: a) monitoring of schools/working places/families in order to identify working children, assess the situation and refer to appropriate services; b) documenting the lack of services and barriers to services for children at risk; c) review consolidated child labour data from the Centres for Social Work; d) prepare annual action plans for addressing child labour at municipality level and e) provide recommendations on further actions in strengthening the local response to child labour and improve social policies and programs.²³³

There is also established the **Child Rights Unit**²³⁴ in every Ministry, and within the structure there is an appointed official dealing with children's rights, and the **Child Rights Group** at the Ombudsperson Institution which is set up within the Discrimination Department.²³⁵

As shown, Kosovo has made considerable progress towards the establishment of monitoring mechanisms concerning children's rights. However, the system still needs to be empowered, aiming the institutional capacity building and making these mechanisms functional.²³⁶

4.2.3 Ratified international instruments

Kosovo is neither a member of UN²³⁷ or the ILO, nor of the Council of Europe. As a result it is not yet in position to ratify the important international human rights instruments that protect the rights of the children, including their right to be protected from exploitation. Not being a member country, Kosovo consequently is not subject either to the obligations set up by these international bodies for regular reporting and cooperation on human rights.²³⁸

²³² Information retrieved from: <http://www.kryeministri-ks.net/index.php?page=1.89>, last accessed May 12, 2012.

²³³ Ministry of Labour and Social Welfare, Strategy and Action Plan for Prevention and Elimination of Child Labour in Kosovo 2011-2016. June 2010, p. 21-22.

²³⁴ Information retrieved from: <http://www.unhcr.org/refworld/pdfid/4d4a680627.pdf>, last accessed May 12, 2012.

²³⁵ Information retrieved from: <http://www.ombudspersonkosovo.org/new/?id=1,144,144,144,a>, last accessed May 12, 2012.

²³⁶ MLSW, supra note 231, p. 19.

²³⁷ As of May 2012, 90 UN countries out of 193 have recognized Kosovo <http://www.mfa-ks.net/?page=2.33>, last accessed May 16, 2012.

²³⁸ European Commission: Kosovo* 2011 Progress Report. Available at http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf, last accessed May 16, 2012.

Nevertheless, the Constitution of the Republic of Kosovo contains strong provisions to secure international standards on human rights. Together with the catalogue of rights, in article 22 the Constitution makes the provisions of numerous international human rights instruments binding and directly applicable within the legal order of Kosovo.²³⁹ Article 22 states: *Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions:*

- 1) *Universal Declaration of Human Rights;*
- 2) *European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;*
- 3) *International Covenant on Civil and Political Rights and its Protocols;*
- 4) *Convention on the Rights of the child; etc..*

Although no mention is made of ILO Conventions, the ILO labour standards regarding children are incorporated in the national legal system, such as in the ***Labour Law No. 03/L – 212*** and the ***Administrative Instruction No. 17/2008 on Prevention and Immediate Prohibition of Hazardous Child Labour***. Furthermore, these standards are made part of national policies and actions plans which deal with children's issues, such as education, health, welfare, protection from hazardous work, etc.

Laws in general and other legal acts and policies which regulate children's rights issues are all based in the international instruments that guarantee children's rights.

4.2.4 National policies on child labour and street children

The National Strategy and Action Plan on Human Rights 2009-2013

Children's rights first of all are human rights, and as such are of a particular importance in all democratic countries in order for citizens to live in dignity and enjoy human rights and freedoms according to the international standards set. The same applies to Kosovo.

The National Strategy and Action Plan aim to promote and strengthen the protection of human rights; develop relevant policies and legislation and ensure that legislation meets the international standards. Likewise, they seek to actively promote the strengthening of democratic institutions and the rule of law, through dialogue and the establishment of institutions that

²³⁹ Ibid.

implement human rights. They also aspire to accelerate the process of ratification of all international human rights instruments.²⁴⁰

The National Strategy and Action Plan for Children 2009-2013 was approved by the Government of the Republic of Kosovo with decision No. 07/69 on 19 June 2009. The Strategy identifies priority issues which require immediate intervention and particular attention is given to the protection of the best interests of the child. Moreover, the strategy offers measures to resolve certain problems and to improve the general situation of children's rights in Kosovo. In doing so, it aims to achieve the international standards of children's rights and to guarantee that the established norms on children's rights are implemented and upheld.

The National Action Plan for Children 2009-2013 establishes objectives and formulates tasks, making possible their achievement aimed at improving the life of children in Kosovo, that ensure their development and provide equal opportunities. Furthermore it determines important actions which have to be implemented in order to harmonize the Kosovo legislation in order for it to accommodate international standards, and it establishes the path for developing social dialog based on constitutional guarantees of support and partnership of the public administration with its citizens on the implementation of programs beneficial for children.²⁴¹

The National Strategy and Action Plan for the Prevention and Elimination of Child Labour 2011-2016. The strategy aims to provide a framework for setting priorities, and defining the roles and responsibilities of the state institutions and other stakeholders interested in combating child labour, including employers' organizations and trade unions, the civil society, international development partners and other partners, children included. Regarding the **Action Plan**, it is divided into two phases. The purpose during the first phase 2011-2013 is to improve the relevant institutions' performance, improve the knowledge on child labour and to pilot direct interventions that draw and rehabilitate children engaged in the Worst Forms of Child Labour (WFCL). This will serve as the basis for the second phase of the Action Plan 2014-2016, which will include interventions for eliminating all forms of child labour.²⁴²

The National Strategy and Action Plan against Trafficking of Human Beings 2008-2011²⁴³ was approved by the Council of Ministers on 30 July 2008. The Strategy aims the prevention of the phenomenon of trafficking and re-trafficking, the protection of victims and witnesses, investigation and

²⁴⁰ Office of the Prime Minister, National Strategy and Action Plan on Human Rights in the Republic of Kosovo 2009-2013. December 2008. Available at: http://www.humanrights-ks.org/repository/docs/strategjia_2009_2011.pdf, last accessed May 12, 2012.

²⁴¹ MLSW, supra note 231, p. 14.

²⁴² Ministry of Labour and Social Welfare, Strategy and Action Plan for Prevention and Elimination of Child Labour in Kosovo 2011-2016. June 2010

²⁴³ Available at: http://www.mpb-ks.org/repository/docs/strategjia_nacionale_dhe_plani_i_veprimit.pdf, last accessed May 12, 2012.

prosecution. Particular attention throughout the whole document is given to the child protection issue, including child labour.

Although a comprehensive job has been done in drafting strategies, implementation is not yet at high levels and as a result child labour still remains a problem in Kosovo. Regulations prohibit exploitation of children in the workplace, however, with the exception of trafficking, the government rarely defies these practices. In this regard, measures taken by the government has been the elevation of the anti-trafficking police section to directorate status and tripling the number of anti-trafficking investigations. In 2010, Kosovo authorities conducted 194 investigations, compared to 63 investigations in 2009 and offered a comprehensive range of government-funded services to those victims.²⁴⁴ Furthermore, in the fall of 2010, the government conducted a diverse and innovative trafficking awareness raising campaign. Challenges in victim identification persisted this year, as the government identified an average of one victim for every 10 raids conducted, and few victims of trafficking were identified among a highly vulnerable population of child beggars. During the reporting period, the government drafted and adopted the *Minimum Standards of Care for Victims of Trafficking*, strengthening ties between the victim shelters, unifying standards for services, and establishing common reporting forms.²⁴⁵ Trafficking of children, mainly for labor exploitation, was a problem, but there is a lack of statistical data to rightly estimate its extent.²⁴⁶ Likewise, the number of children begging on the streets rose, albeit the overall number of child beggars remained unknown.²⁴⁷ Moreover, during 2010 EALI issued 3,329 site inspection records and 360 records for various labor standard violations during the first half of the year, many of the fines remained unpaid pending litigation.²⁴⁸

4.2.5 Services offered by governmental and non-governmental institutions

The decentralization of social services in Kosovo has happened since 2009²⁴⁹, with the signing of the Memorandum of Understanding between Kosovo's Municipalities²⁵⁰ and the Ministry of Labour and Social Welfare, Ministry of Finance and Ministry of Local Government Administration, which means that all the management responsibilities and the delivery of social services that has have been under the administration of the central

²⁴⁴ United States Department of State, Trafficking in Persons Report 2011. Available at: <http://www.state.gov/j/tip/rls/tiprpt/2011/164232.htm>, last accessed May 20, 2012.

²⁴⁵ Ibid.

²⁴⁶ United States Department of State, 2010 Human Rights Report: Kosovo. Available at: <http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154432.htm>, last accessed May 12, 2012.

²⁴⁷ Ibid.

²⁴⁸ Ibid.

²⁴⁹ Information retrieved from: <http://www.telegrafi.com/ekonomi/konference-per-sherbimet-sociale-46-9676.html>, last accessed May 14, 2012.

²⁵⁰ There are 37 Municipalities in Kosovo. More information on each of them is available at: <http://kk.rks-gov.net/>, last accessed May 14, 2012.

level (MLSW) have moved to the local power administration. As of October 2011, the Association of Kosovo Municipalities has considered this decision political, and done with no preparation, which has caught Municipalities not ready to develop this process. They ask for: professional capacity building, training for the staff in charge, identification of Social Work Centers' needs, drafting of strategies, etc..²⁵¹

Center for Protection of Victims and Prevention of Trafficking in Human Beings (PVPT) is a local Ngo operating in Kosovo since 2000. Its mission is addressing the causes and consequences of exploitation and violence through a multi-sectoral approach built upon three pillars:

- a) Direct assistance;
- b) Prevention/Awareness raising;
- c) Long term rehabilitation and reintegration.

In practical terms this consists of: social assistance to victims of trafficking (VoT), prevention and education, advocacy and information-sharing, awareness raising and empowerment, vocational training and other recreational activities, as well as the long-term rehabilitation and reintegration of victims and potential victims of trafficking and children involved in worst form of child labour.²⁵² During the period 2005-2009, 790 persons have benefited from the long-term reintegration of victims of WFCL, during 2009-2012 there were 52 beneficiaries from the long-term reintegration of VoTs and PVoTs and through 2008-2012, 128 beneficiaries from the rehabilitation of VoTs and PVoTs.²⁵³

PVPT has implemented several projects: the “Long-term reintegration of children, victims of trafficking and victims of Worst Forms of Child Labour”, supported by the International Labour Organization ILO – IPEC; “Raising capacities for addressing trafficking in children, from human rights perspective in South-East Asia, South-East Europe and Latin America”, supported by the European Commission; “Prevention/Withdrawal of Children at Risk and those Involved in Worst Forms of Child Labour in street and agriculture”, supported by the International Labour Organization ILO – IPEC; Preventing trafficking in human beings through youth’ awareness rising in Mitrovica community’, supported by US Embassy in Prishtina, etc..²⁵⁴

Terre des Hommes (TdH) has been working in Kosovo since 2000 and starting from 2010 has been committed in building an efficient Child Protection Safety Net (CPSN) which protects children against neglect,

²⁵¹ Information retrieved from: <http://komunat-ks.net/wp-content/uploads/2012/01/13.10.2011.Raport-nga-takimi-i-Kolegjiumi-p%C3%ABr-Sh%C3%ABndet%C3%ABsi-dhe-Mir%C3%ABqnie-Sociale-rev.pdf>, last accessed May 14, 2012.

²⁵² Center for Protection of Victims and Prevention of Trafficking in Human Beings <http://www.pvptcenter.net/>, last accessed May 14, 2012.

²⁵³ Ibid.

²⁵⁴ Ibid.

abuse, trafficking, exploitation and delinquency.²⁵⁵ The project is currently established in 6 cities: in Pristina, Mitrovica, Ferizaj, Fushe Kosovo, Gjakova and Peja. Through the implementation of the CPSN project *Terre des hommes* aims to provide the necessary means for operational prevention and protection of vulnerable children by national caregivers. It addresses the lack of child protection mechanisms and of cooperation between the different institutions by strengthening and empowering all the relevant actors involved in the child protection field in Kosovo.²⁵⁶ Up to now it has been TdH leading the project, but after 2012 it will no longer be on the front line. Instead it will monitor the continuation of the project's implementation and will give advice to stakeholders working on children's protection anytime needed.²⁵⁷

4.2.6 Profile of street working children

The end of war in 1999 brought many changes and difficulties to the society of Kosovo. The country found itself in a rapid political and socio-economic transition that challenged and continues to challenge every aspect of social welfare. Child labour was one of the phenomena spreading very quickly. Although it has been somehow previously faced (children helping out families and working in the meadows), it has never been so concerning as it revealed itself after the war, where in every street everybody could and can notice working children.²⁵⁸ Notwithstanding the fact that the phenomenon is prevalent there is no official statistical data on the overall number of children working, but international organization, such as UNICEF have provided estimates based on their own sources. Characteristics and causes of child labour elaborated below will give a better understanding of this issue in Kosovo.

4.2.6.1 Characteristics of child labour

Working children in Kosovo are both boys and girls, but male child labour is more visible than the female one, because girl's work is more housebound and as a result hidden. Regarding age, most of the children working are between the ages of 10 to 15, and the highest number of them is of ages 13 to 15, followed by children of age 10 to 12. Anyhow, younger children who have not yet reached the age of 5 as well work, but they constitute a low percentage of children engaged in child labour activities.²⁵⁹ Working children are of Albanian ethnicity as well as minority ones, such as Serbian, Roma, Ashkali, Egyptians.²⁶⁰

²⁵⁵ Information retrieved from: <http://tdh-childprotection.org/projects/kosovo/description>, last accessed May 14, 2012.

²⁵⁶ Ibid.

²⁵⁷ Ibid.

²⁵⁸ UNICEF: Child Labour in Kosovo, A study on working children. 2004, p. 3.

²⁵⁹ Ibid., p. 30.

²⁶⁰ MLSW, supra note 240, p. 15.

According to UNICEF report of 2004²⁶¹, main areas of child labour, besides trafficking, involvement in prohibited activities and sexual exploitation, are: the sale of items in streets, shops and markets, domestic work, agriculture, carrying of goods, gathering of cans, garbage, work in restaurants, bars, coffee shops, work in construction, etc. The table below shows the percentage of each of these forms of child labour in Kosovo.

Activity cluster	Percentage
Selling items in streets/shops/markets	37.0
Domestic work	26.6
Agriculture	18.3
Physical work/carrying goods	5.4
Collect cans and/or garbage	4.0
Restaurants/bars/coffee shops	1.7
Mechanic	1.7
Construction	1.7
Begging	0.8
Carpenter	0.3
Blacksmith	0.3

Furthermore, the report shows that there is a difference between children of rural and urban areas with regard to the kind of work they engage in. Children of rural areas are more involved in housework and agriculture, while those of urban areas in the street selling sectors.

According to working hours, children in Kosovo usually work longer hours during spring time and summer time due to better weather conditions and time off from school, but almost all of them work regularly along the whole year.²⁶² While during the school year they usually work 4 hours a day, in summer the number of working hours increases up to 6.5 hours, 6 days a week, which makes around 39 working hours a week during holidays and 23 working hours during the school year. It is estimated that boys work approximately double the time of working hours than girls.²⁶³ Children usually start working before 8 o'clock in the morning and there are enough cases when children work even longer than 8 or even 10 o'clock in the evening. This without doubts affects children's health and wellbeing.²⁶⁴

With regard to working conditions, children are exposed to hazardous and insecure work place environments. As a result they experience health problems starting from little pains to wounds and different kind of injuries. Street children have also often been victims of criminal acts and threats.²⁶⁵

²⁶¹ UNICEF, supra note 254, p. 26.

²⁶² Ibid., p. 32.

²⁶³ Ibid.

²⁶⁴ Ibid., p. 33.

²⁶⁵ Ibid., p. 36.

4.2.6.2 Causes of child labour

There are a number of reasons why the child labour phenomenon enrooted itself in the Kosovo society and continues to grow each day, amongst which socio-economic reasons remain the main ones.

Poverty is the most important factor why children are required to work. Poor families push their children to work in order to increase their insufficient incomes. WB estimates that in 2009, 34.5 % of the population in Kosovo lived below the national poverty line.²⁶⁶ Poverty is at the same time a cause and a consequence of child labour. In transition countries, the high level of child labour is self-reinforcing, i.e. in extreme poverty situations, child labour is part of a family strategy for survival. In such an urgent need, parents start to justify the replacement of school with work. In this case, the chances that the child as a grown up will also have a poor economic situation increase, as so they operate within a vicious circle in which family, but also the society drowns.²⁶⁷

Unemployment is another serious factor influencing the child labour trend. According to WB, unemployment in 2009 was at the level of 82.8%.²⁶⁸ Particularly after the war of 1999, it has been very difficult for Kosovo to overcome many economic situations and create stability.²⁶⁹

Education According to the ILO office in Kosovo and to PVPT, work always affects education and for a better understanding of the situation children have been divided in four categories. The highest number of working children belong to the first and last categories.

- 1) Children who combine work with school;
- 2) Children who went to school but drop out due to work;
- 3) Children who have never been to school because they have been working;
- 4) Children who go to school, but there is the risk they that they will drop out of school to work.

Lack of access to education is also another problem. Direct and indirect costs of education (school uniforms, books and school supplies as well as traveling back and forth from school) are very high for parents to afford in order to enable education for their children and/or schools are quite in a considerable distance from the spot they live in.²⁷⁰

²⁶⁶ The World Bank, <http://data.worldbank.org/indicator/SI.POV.NAHC/countries/KV?display=graph>, last accessed May 15, 2012.

²⁶⁷ ILO: The End of Child Labour : Within reach, Global Report under the Follow-up to the Declaration on Fundamental Principles and Rights at Work. International Labour Conference, 95th Session 2006, Report (I) B, p. 11.

²⁶⁸ The World Bank, <http://data.worldbank.org/indicator/SL.UEM.LTRM.MA.ZS>, last accessed May 15, 2012.

²⁶⁹ UNICEF, supra note 254.

²⁷⁰ MLSW, supra note 240, p. 17.

Supportive attitude towards child labour Parents, teachers and society in general see child labour as part of the children's education, especially when the existing education does not provide economic benefits for the youth. Parents also support children's work as a way to keep them safe, in areas where children are discriminated or subject to violence at school.²⁷¹

Failure of implementation of the **Rule of Law** has allowed the expansion of the informal (grey) economy and corruption has captured many aspects of people's lives. This affect directly the worst forms of child labour related to criminal activities such as illegal activities, trafficking, prostitution and the application of laws and policies related to the child labour issue.²⁷²

The high level of **migration** has contributed to the increase of income on a country scale, but on the other hand it has played a role in weakening the children social support because state services in the suburbs have not been able to cope with the influx of migrant from rural areas.²⁷³

4.3 Consequences of child labour in Albania and Kosovo

Children are the most vulnerable category of the society and as such, they need special protection and care from the family, the society and the state. The harm caused to children due to being subject to different forms of labour does more than only deprive them of their welfare, education, mental and physical development, it "steals" their childhood.

The consequences of child labour affect at first children themselves, then the family and also the society.

Children who work are deprived many important rights that they have since the moment they are born. They are denied the right to enjoy a normal childhood; the right to food, to rest and play; the right to education; the right to socialize; the right to be safe and protected. Instead, they are exposed to physical and mental harm, caused by the conditions of the environment in which they perform work, the prolonged working hours and malnutrition.²⁷⁴ Furthermore, children who work become mentally and emotionally mature too fast, because of the idea that they must take responsibilities and provide as much as they can for their families.²⁷⁵ Moreover, these children are condemned to a life of unskilled and badly paid work. Regardless of their desire to study and be educated, work today, determines their future tomorrow.²⁷⁶

²⁷¹ Ibid.

²⁷² Ibid., p. 17-18.

²⁷³ Ibid., p.17.

²⁷⁴ ICS, supra note 191, p. 13-14.

²⁷⁵ CRCA, supra note 174, p. 19.

²⁷⁶ ICS, supra note 191, p. 14.

Child labour consequences for the family are both social and economic. On the social aspect, with children who work, the level of education of the family does not increase. The family generates a wide number of social problems and can easily be involved in criminal activities. Moreover, it produces victims of economic exploitation. On the economic aspect, what seems as an improvement of the economic situation of the family due to child labour, in reality worsens it, and the family continues to be poor. What is even worse is that at this point, children have become part of the vicious circle of poverty.²⁷⁷

As previously mentioned, the child labour phenomenon affects not only the child and his or her family, but also the society at large. It does so, by contributing to the promotion of illegal labour market and devaluation of the labour regulatory mechanisms.²⁷⁸ Working children and street children are in need of continuous social assistance. They encounter problems in integrating in the society and the risk of being excluded makes them even more vulnerable. The economical exploitation that they undergo, affects the economic development of the country, for an inappropriate education lacks the requirements of the labour market and limits integration.²⁷⁹

Similarities and differences regarding the child labour issue exist between Albania and Kosovo. Points where they meet and separate from one another will be elaborated in the following chapter.

²⁷⁷ CRCA, supra note 174, p. 19.

²⁷⁸ ICS, supra note 191, p. 15.

²⁷⁹ CRCA, supra note 174, p. 20.

5 Concluding remarks

5.1 Conclusions and findings of the comparative study

The child labour issue is worldwide recognized and important efforts to take it to an end have been taken along the years. International bodies, such as the ILO, UN and the Council of Europe have aimed to achieve the eradication of the phenomenon through the setting of necessary legal frameworks and the launching of different programmes, but the problem is still persisting and the situation is concerning.

Albania and Kosovo are two of the states, which have been experiencing the burden of the phenomenon and difficulties to eliminate it are yet present in both countries. Although the same problem is present, events which led to the emergence of child labour in Albania and Kosovo were different. In the first case, the phenomenon appeared with the change of the political system. The fall of communism in 1992 after 45 year of ruling, brought many negative phenomena in Albania, among which, child labour. In the second case, it was the war of 1999 in Kosovo. But while Albania has had the opportunity to tackle the problem quite early and began to take the necessary steps against it (ratification of CRC since 1992 or the incorporation of the minimum age requirement in the Labour Code of 1995, and other instruments later on), to Kosovo it took almost a decade to set at least the national legal protection framework for combating child labour. It only became an independent country in 2008. Furthermore, Albania has ratified all the important instruments concerning the issue, the ILO Conventions No. 138 and No. 182, CRC, ECHR and ESC, which for Kosovo has not yet been possible because it is neither a member of UN, or the ILO, nor of the Council of Europe. Notwithstanding this, Kosovo has shown great commitment toward the elimination of child labour by drafting specific strategies and adopting legal acts on the problem, all in accordance with international standards. Albania still does not have a detailed strategy regarding child labour, it addresses the issue within children's right strategies and laws on the protection of these rights. In this regard, Kosovo is a step ahead, a path that Albania's government should follow. Moreover, Albania should comply with the obligations deriving from the Conventions ratified and take the necessary measures to do so.

Regarding the monitoring system, although both states have set up monitoring mechanisms, many problems are identified. The informal sector of the economy remains uncovered and the sanctions imposed on the formal economy are not applicable.

Relating to the services offered by governmental institutions, Albania and Kosovo have a decentralized services system, but while Albania has set up a working system, Kosovo still encounters difficulties in adapting to this reform. NGOs which operate in the countries have been doing a significant

work on the problem. Through their projects and the services offered to children engaged in different types of work, improvement is noticed.

Characteristics regarding child labour are quite similar in Albania and Kosovo. Children who work are both boys and girls and the majority of them start working at the age of 10. They are from Albanian ethnicity and also from minority ones. The most common forms of work performed by children are: agriculture, street work (begging, selling items in streets, sorting rubbish and collecting cans), construction, domestic work, carrying goods, prostitution, etc..

With regard to working hours children in Albania work with an average of 7 hours per day and those in Kosovo 6 hours. They are forced to work from early in the morning until late hours in the evening. Working conditions in most of the cases are inappropriate for children and as such harmful for their health and development.

The main causes that push children into work are poverty, unemployment, education and poor application of legislation and lack of enforcement. The consequences of child labour are always long-term and irreversible. They affect at first children themselves, then the family and also the society at large.

In order to bring to an end the child labour issue, raising awareness and collaboration between state instances, NGOs, families and children themselves is required in Albania and Kosovo.

5.2 Recommendations

As has been explained throughout the elaboration of the thesis, to achieve eradication of child labour, laws and policies need to go hand in hand with actions and concrete measures.

In this regard, my recommendations are related to the main problems that have been pointed out and consist of the following:

- **Education.** Children who have dropped out of school or who do so because they are engaged in different activities of child labour, constitute the highest number of working children. This is why education is considered as the main tool for awareness raising and prevention of child labour. Only by educating children the child labour chain network can be interrupted, which in case if it is not snapped it cannot be neither eliminated nor minimized. By educating a child we already provide him/her with a better future and simultaneously give him/her the advantage to be far from the street for a considerable time. This is done with the support of state and non-state structures, through various subsidies or reimbursements (providing the material base, transportation if needed, tax deduction for private entities which invest in children, etc.).
- **Social support for families in need** Because poverty is the main cause that drives children into the workplace, social support is more than needed. This kind of support should not necessarily be

translated into monetary aid. There should be ways to encourage parents to find other means of income, starting first with their employment in public state enterprises. Secondly, private enterprises which employ X number of them, shall have deducted taxes, their insurance should be reimbursed or deducted and the state should offer social services free of charge for this category.

- ***Enforcement of monitoring mechanisms.*** Monitoring mechanisms are already set in Albania and Kosovo, but the child labour issue still remains a big problem in both countries. Monitoring mechanisms have a leading role, the role of control. This control should be extended to all levels and instances, being started at the local level, with the registration of new born babies, so the Registrar role, and followed by the central level where all the mechanisms of decision-making and policies drafting are included, based on the first link, the registration one. Then control takes place. The enforcement of these mechanisms helps to minimize the effects of illegal child labour and at the same time side risks relate to trafficking, abuse, etc., are avoided.
- ***Data collection*** Both countries lack reliable official statistics on child labour. In order to fight the phenomenon accurate knowledge on these statistics is needed to estimate the situation. This will help to better determine policies, utilize resources and facilitate the implementation of policies and actions, and directing them where there is the real need to.
- ***Punishment for the exploiters (Sanctions)*** Even when violation have occurred and light sanctions consisting of fines have been taken, they have remained unpaid. Sanctions are related to the part described above. In case of violation/breach of the above mentioned rules sanctions are taken in order to oblige people to comply with these rules. Sanctions are imposed starting with family members and relatives who do not register children, up to those who exploit children for different purposes. Penalties should vary from the threat of removal of additional income and various goods, to heavy penalties consisting of imprisonment in flagrant cases or repetitive ones. On the other hand, the State should establish mechanisms that resolve complaints of the stratum in cases of convictions abuse. So the idea is, that they should not only be held liable, but in cases of abuse to create conditions for complaints.
- ***Awareness raising from NGOs*** It has been previously shown in the thesis that due to a family tradition, children are forced to work, instead of pursuing education. This is why an awareness raising campaign is necessary. If until now we have discussed for an education system that should educate and prepare children and young people for the future, NGOs' task is to sensitize adults. This task begins with activities that teach adults to take their children to schools and continues by showing them the benefits received if they are employed and the most delicate issue, to raise awareness on family planning. A good planning will lead to a significant reduction of the child's abuse risk and simultaneously will create more

opportunities to increase their incomes and improve living conditions.

- ***Effective field work*** There is no doubt that change cannot in any way come from sitting in an office and behind a computer. Real field action is needed. From point X we go to point Y, for all this activity should be conducted in the field and the greatest difficulty lies in the implementation on the ground and in receiving as many positive results as possible. This first requires skilled human resources who are ready to take such initiatives. Of course, fund management is an integral part of all the activity. Field work is inevitably linked with the evidence of the effectiveness of monitoring mechanisms, therefore is a proportional connection by checking one another.
- ***Use of the “Boomerang effect”*** All the links of this chain end in the relation with the state institutions and non-state institutions. Close collaboration with independent institutions (entities), such as the Ombudsman, Embassies, the Human Rights Commissioner, makes the debate on child labour to be in the focus of the daily life as a negative phenomenon. This debate should be inclusive in the media as well as in state institutions and cooperation on a periodical basis with and among these institutions is much needed. The policy drafting and decision-making processes are very important. There exist two kind of ways to influence the decision-making process: 1) through direct influence on it; 2) through the boomerang effect, in which the influence of the process comes from international institutions/organizations. These forms of cooperation will have a direct effect on the prohibition of child labour.

I strongly believe that through good will and responsibility the day to eliminate child labour in Albania and Kosovo won't be too far away. This of course, requires at first a strong political will, enlisting all parties.

All the planning and written papers are useless unless they go to vigorous and committed implementation. The child labour issue cannot be put aside due to personal benefits, and all the country leaders and MPs have to be reminded that they are parents themselves and if they want the best for their children, they should also ask for the best for all the children.

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