



Institution of Legal Representation as a Procedural Mechanism in Guaranteeing the Rights of a Child Victim of a Criminal Offense, Beyond Alternative Care as a Temporary Social Measure

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Abstract

Purpose: Parental responsibility involves a range of rights and duties that allow parents to make decisions on behalf of their minor children, which includes legal representation. According to both international and Albanian law, parents maintain their role as legal representatives for their children until they reach 18 years old, unless a final court ruling has restricted or revoked their parental responsibility. However, in certain criminal proceedings involving minor victims, courts sometimes deny parents the right to act as legal representatives confusing legal representation with the institution of alternative care. This paper examines the relationship between the legal representation of a minor victim of a criminal offense and the institution of alternative care within the framework of Albanian legislation and international standards. Research Methods: The study applies research, comparative, and analytical methods, focusing on the approximation of Albanian legislation with European standards regarding the legal representation of minors before prosecution authorities and courts. A normative and doctrinal analysis of Albanian legislation is conducted, addressing two central questions: whether alternative care can replace legal representation and under what circumstances parents remain the legal representatives of the minor. Results: The analysis reveals that institutional practice sometimes confuses parental legal representation with alternative care measures. The study highlights real-world problems, such as situations with conflicts of interest and the absence of explicit procedures to guarantee the child's best interests. Conclusions: Legal representation remains a fundamental component of parental responsibility and cannot be excluded unless limited by a final court decision. Strengthening institutional clarity and awareness among procedural authorities is necessary to ensure effective protection.

Keywords: minor, legal representation, alternative care, victim, best interests of the child

1. Introduction

The safeguarding of minors represents a core obligation within the rule of law and a fundamental standard that contemporary legal systems cannot compromise. This principle is firmly embedded in key international frameworks, including the

Convention on the Rights of the Child and various European human rights instruments (United Nations, 1989).¹

Due to the particular physical, psychological, and social characteristics of children, legal systems are required to provide enhanced and specialized guarantees, especially in the context of criminal proceedings. This necessity becomes even more critical when a minor is a victim of a criminal offense, placing the child in a complex dual role: on one hand as a subject entitled to criminal protection, and on the other as an individual requiring broader social protection. Within Albanian practice, however, there is often a tendency to conflate alternative care with legal representation, which creates ambiguity regarding the parents' role in such proceedings, particularly in cases involving minor victims (Gjilani 2018).²

As a consequence, this confusion may result either in the unwarranted exclusion of parents from the legal process or in a merely formal exercise of representation that lacks a substantive evaluation of the child's best interests. Such practices can lead to unjustified restrictions on parental involvement or, alternatively, to the improper exercise of parental representation. In this context, the present study seeks to examine this relationship by addressing a key question: does the placement of a minor in alternative care affect or exclude the parents' right to act as legal representatives in criminal proceedings? The analysis relies on a normative examination of the Civil Code, the Family Code, and the Criminal Procedure Code, combined with a doctrinal review of Albanian legal scholarship. It further applies a systematic interpretation of legal provisions and incorporates references to relevant international instruments aimed at protecting children's rights.

2. Methodology

This research adopts a qualitative legal methodology, relying mainly on doctrinal and comparative analysis to explore the relationship between the legal representation of minors who are victims in criminal proceedings and the institution of alternative care within the Albanian legal system, in light of European standards.

The study is based on a normative examination of primary legal sources, including both domestic legislation and international instruments that govern the protection of children's rights and procedural safeguards for minors. In particular, it focuses on the analysis of the Civil Code of the Republic of Albania, the Family Code, and Law No. 37/2017 on the Rights and Treatment of Persons Affected by Criminal Offenses. These acts are examined with specific attention to provisions regulating parental responsibility, legal representation, and the procedural rights of minor victims. A systematic interpretation of these norms is undertaken in order to clarify their scope and to assess how they interact with protective mechanisms such as alternative care.

Alongside national legislation, the research takes into account relevant international and European standards concerning the protection of children and their access to justice. Among the key instruments considered are the Convention on the Rights of the Child (1989), Article 24 of the Charter of Fundamental Rights of the European Union (2012), the Council of Europe Guidelines on Child-Friendly Justice (2010), and the European Commission's EU Strategy on the Rights of the Child (2021-2024). These sources establish an important normative benchmark for evaluating the extent to which Albanian law and institutional practices comply with broader European and international principles, particularly those related to the best interests of the child and the protection of minor victims in judicial processes.

The study further employs a comparative perspective, analyzing how European legal standards conceptualize the link between alternative care and legal representation. This comparative dimension allows for the identification of both convergences and discrepancies between Albanian legislation and European approaches, especially in relation to the role of parents as legal representatives and the conditions under which such representation may be restricted due to potential conflicts of interest.

In addition, the research incorporates elements of doctrinal analysis by engaging with legal scholarship in the fields of family law, child protection, and the principle of the best interests of the child. Academic works, including those by Omari (2010 and 2012 editions) and Skivenes and Sørsdal (2018), are used to support the interpretation of legal provisions and to strengthen the theoretical foundation of the study. The methodological framework also involves both systematic and teleological interpretation of legal norms, with the aim of identifying their underlying purpose and protective function. This is particularly relevant when addressing the principle of the best interests of the child, which serves as a central guiding standard in both domestic and international legal frameworks regulating decisions that affect minors.

¹ United Nations. (1989). *Convention on the Rights of the Child*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

² Gjilani, F. (2018). *Mbrojtja e të miturve në procedurën penale*. Tirana: Onufri, pg.98

By integrating normative analysis, comparative assessment, and doctrinal interpretation, the study provides a comprehensive evaluation of the legal relationship between alternative care and parental representation in cases involving minor victims of criminal offenses. Through this approach, it seeks to highlight potential gaps in institutional practice and to emphasize the need for clearer procedural rules to ensure effective protection of children's rights and meaningful access to justice.

Finally, it should be noted that the research is primarily grounded in doctrinal and normative analysis of legislation and judicial practice. Given the limited availability of systematically published case law concerning minor victims in Albania, the study relies mainly on the interpretation of legal provisions and indicative jurisprudential trends, rather than on extensive empirical data.

3. Results

The analysis of Albanian legislation and European legal standards reveals several important findings regarding the relationship between parental legal representation and alternative care in cases involving minor victims of criminal offenses.

First, the study confirms that legal representation is an essential component of parental responsibility under Albanian law. The normative interpretation of the Civil Code and the Family Code demonstrates that parents remain the natural legal representatives of their children until the age of 18, unless parental responsibility has been limited or removed through a final court decision. This legal position reflects a fundamental principle of family law, according to which parental responsibility includes not only the duty of care but also the authority to represent the child in legal relations, including judicial proceedings.

Second, the research identifies that alternative care does not automatically transfer or replace legal representation. The legal framework regulating child protection and alternative care is primarily designed to ensure the social and physical well-being of the child when the biological family is temporarily unable to provide adequate care. However, the placement of a child in foster care or a residential institution does not, in itself, terminate or suspend parental responsibility. As a result, the entities providing alternative care generally do not acquire legal authority to represent the child in judicial or administrative proceedings unless such authority is explicitly granted by a court decision or through the appointment of a special guardian.

Third, the analysis reveals that institutional practice sometimes confuses factual care with legal representation. In certain cases, this issue has been interpreted by procedural authorities as a sufficient basis for excluding parents from legal representation. This approach contradicts both Albanian legislation and European standards, which emphasize that the limitation of parental representation must be based on concrete legal grounds, such as the existence of a conflict of interest or parental involvement in the criminal offense.

Fourth, the comparative assessment of European and international frameworks confirms that the principle of the best interests of the child constitutes the primary benchmark for determining the appropriate forms of representation for minors. Legal instruments such as the Convention on the Rights of the Child and the Charter of Fundamental Rights of the European Union stress that any decision concerning children should rely on a case-by-case evaluation, rather than on automatic or standardized institutional practices. Moreover, European standards indicate that the designation of a special representative should be considered only in situations where the legal representative is unable to adequately safeguard the child's interests.

Lastly, the findings reveal that the lack of precise procedural rules in practice can result in divergent institutional approaches, particularly in relation to the interaction between judicial bodies and child protection authorities. Such inconsistencies may undermine the effective procedural protection of minor victims and generate ambiguity in the application of legal representation. In general, the study shows that Albanian legislation is broadly in line with international standards, especially in recognizing parental representation as a key safeguard for the protection of minors. Nevertheless, challenges persist at the practical level, particularly in achieving a consistent interpretation and implementation of these legal provisions within judicial and institutional practice.

4. Discussion/Analysis:

4.1 The General Principle of Legal Representation

Article 6 of the Civil Code, outlines that the capacity to act is acquired on the basis of two criteria: reaching the age of 18 years, and possessing the mental capacity to understand the significance of legal actions.

Based on this provision, it is clearly understood that a minor cannot independently exercise his or her subjective rights, including procedural rights (Civil Code of Albania, 1994, art. 12).³ The absence of capacity to act does not constitute a denial of legal personality, but rather requires legal intervention for the exercise of rights. This mediation is achieved through legal representation, the primary function of which is the effective protection of the minor's interests and which is exercised by the parents within the framework of parental responsibility (Family Code of the Republic of Albania, 2003, art. 215).⁴

Such representation encompasses the safeguarding of both property and non-property rights, as well as the undertaking of procedural actions on behalf of the minor in legal relationships. Through this function, parents act to protect the child's interests, thereby defining parental responsibility as a set of rights and obligations. One of the core components of this responsibility is the right and duty of legal representation.

Parents are recognized as the primary legal representatives of their child and perform this function across all legal contexts, including within criminal proceedings. This role is inherently protective in nature and goes beyond a purely formal function, as it entails the duty to act in accordance with the best interests of the child. Within criminal proceedings, minors who are victims are granted specific rights under the Criminal Procedure Code and Law No. 37/2017 "On the Rights and Treatment of Victims of Criminal Offenses." These provisions require that legal representation be exercised in an active and protective manner, ensuring the effective safeguarding of the child's rights and interests (Criminal Procedure Code of the Republic of Albania, 1995 and Law No. 37/2017, 2017).⁵

When a minor is a victim of a criminal offense, legal representation by the parents also extends to: filing a criminal complaint;

- exercising procedural entitlements throughout both the investigation phase and the trial;
- submitting requests for the appointment of a special representative or legal counsel on behalf of the minor;
- pursuing civil claims for both material and non-material (moral) damages;
- ensuring that the best interests of the child are upheld as a guiding principle during the entire course of the criminal proceedings.

This representation is not merely formal, but has a protective and active character, aiming to prevent the secondary victimization of the minor.

However, legal representation by the parents is not absolute. It may be limited or excluded in cases where:

- The parent is the offender, co-offender, or a suspect in the criminal act;
- There is a conflict of interest between the parent and the minor;
- The parents are unable or fail to act in the best interests of the child.

Institutional intervention becomes necessary and alternative care (a special guardian, care institutions, etc.) is applied as a mechanism to guarantee the interests of the minor who is a victim of a criminal offense. To apply alternative care, institutions must:

- assess whether the parents are actually able to represent the minor;
- ensure protective mechanisms (psychologist, social worker, lawyer);
- guarantee that the minor is heard and that his or her dignity is respected.

While Albanian law formally acknowledges parents as the natural legal representatives of their children, in practice this principle is not always applied consistently in criminal cases involving minor victims. In practice, procedural authorities sometimes interpret protective measures such as alternative care as grounds for limiting parental participation in proceedings. This approach raises concerns regarding legal certainty and the effective exercise of procedural rights, as

³ Civil Code of the Republic of Albania. (1994). Law No. 7850, dated 29.07.1994. <https://qbz.gov.al>

⁴ Civil Code of the Republic of Albania. (1994). Law No. 7850, dated 29.07.1994. <https://qbz.gov.al> Articles 64–65; Family Code of the Republic of Albania, 2003, Article 215

⁵ Criminal Procedure Code of the Republic of Albania. (1995). Law No. 7905, dated 21 March 1995. <https://qbz.gov.al> Law No. 37/2017 on the Rights and Treatment of Victims of Criminal Offenses. (2017). <https://qbz.gov.al>

the exclusion of parents without a clear legal basis may undermine the child's access to justice. From a doctrinal perspective, such interpretations risk transforming a social protection mechanism into a procedural limitation not envisaged by legislation.

4.2 *Alternative Care and Its Legal Nature*

Alternative care is a protective measure of a social nature, which aims to guarantee the well-being of the child in cases where the parents are unable to exercise actual care. This form of care is primarily governed by child protection legislation and, in principle, does not aim to replace parental responsibility, nor does it automatically result in the loss of parental rights, except in cases where this is expressly provided for by a final court decision. Consequently, parents remain the legal representatives of the child, even when the latter is placed in foster care or in a residential institution (Omari, 2012).⁶ Therefore, alternative care does not replace legal representation, except in cases where this is expressly provided for by a final court decision.

Alternative care serves as a protective mechanism for the rights of the child, implemented when parents are unable, for objective or subjective reasons, to provide adequate care. It functions as a safeguard within the realm of social and family rights when the child cannot remain in their biological family, aiming to ensure physical safety, emotional development, and social well-being by offering an appropriate environment outside the family. Nevertheless, alternative care cannot fully replace parental responsibility, and assuming actual care does not automatically transfer legal representation.

The study highlights real-world problems, such as situations with conflicts of interest and the absence of explicit procedures to guarantee the child's best interests (Gjilani, 2018).⁷ Alternative care does not constitute a sanction against parents, but rather an instrument intended to protect the child. In this sense, alternative care has a social-administrative nature, as it is implemented through child protection structures and care institutions, with the objective of ensuring the child's living conditions and development.

From a legal perspective, alternative care cannot be confused with legal representation; rather, it represents a specific form of factual care, characterized by the absence of legal capacity for representation and by its dependence on administrative or judicial decision-making (Omari, 2012).⁸

Alternative care is characterized by the following elements:

- its socio-administrative nature before and during its implementation;
- the absence of a legal aspect capable of replacing parental responsibility;
- its temporary character;
- dependence on administrative or judicial decision-making;
- its focus on social and protective aspects.

Therefore, unless a court ruling restricts or eliminates parental duty, alternative care does not automatically have an impact in this area. This sets it apart from guardianship institutions and legal representation. The execution of the child's daily care responsibilities, including shelter, feeding, education, monitoring, and emotional support, is referred to as factual/social care. The foster family or the relevant institution provides this care, which is practical and social in nature and has a non-legal character. The ability to represent the kid in court is not automatically granted to the organizations that provide such care.

One of the most common mistakes in practice is confusing factual care with legal representation, which goes against both the best interests of the child and the idea of legal certainty (Constitutional Court of the Republic of Albania). In particular, legal representation is a legal entity that is directly related to the child's exercise of rights and duties in legal interactions, such as administrative contacts, criminal processes, and civil proceedings.

This representation derives from parental responsibility or from a formal act (a court decision on guardianship or on the appointment of a special representative). Legal representation is an essential procedural instrument for guaranteeing a minor's access to justice.

Unlike legal representation, alternative care has clearly defined legal limits, namely:

- the absence of legal capacity for representation;

6 Omari, S. (2012). *E drejta familjare. Morava*, pg.75

7 Gjilani, F. (2018). *Mbrojtja e të miturve në procedurën penale. Tirana: Onufri*, pg.98

8 Omari, S. (2012). *E drejta familjare. Morava*, pg.87

- respect for parental responsibility;
- the principle of legality;
- the best interests of the child.

Institutions providing alternative care cannot exercise procedural rights on behalf of the child without a formal act of representation, as any exceeding of this limit constitutes a violation of the principle of legality (Criminal Procedure Code of the Republic of Albania, 1995, art. 41).⁹ One of the most common practical mistakes is treating alternative care institutions as de facto legal representatives of the child. This interpretation finds no support in legislation and contradicts legal doctrine. In some cases, parents are excluded from legal representation solely because the child is placed in alternative care. A practical problem is related to the lack of coordination between procedural authorities and alternative care structures. This lack of coordination often leads to procedural delays and weakens the protection of the child. Such an approach is incorrect and contradicts the principle of proportionality and the best interests of the child, which constitutes the guiding criterion for any decision-making.

The best interests of the child should not be regarded as an abstract notion, but as a concrete legal standard that demands an individualized evaluation of the specific circumstances in each case, precluding a purely mechanical application of legal provisions. In this regard, Albanian constitutional practice corresponds with doctrinal interpretations by recognizing this principle as a prevailing legal norm rather than a programmatic guideline. The best interests of the child function as a corrective mechanism within procedural law, enabling judicial intervention whenever the strict application of formal rules would compromise the effective protection of the minor. Within this framework, alternative care serves as an essential protective tool; however, its legal boundaries must be rigorously observed. Conflating its social purpose with legal authority may infringe upon the procedural rights of the child and undermine the primacy of their best interests.

5. Albanian Judicial Practice on the Legal Representation of a Minor Victim

Judicial practice offers several illustrative examples highlighting the complexities surrounding the legal representation of minor victims. In certain cases, courts have permitted parents to act as legal representatives even when the child has been placed in alternative care, underscoring that the assumption of day-to-day care does not automatically alter parental responsibility. Conversely, other rulings have excluded parents from representation solely based on the child's placement in an alternative care institution, without conducting a thorough assessment of potential conflicts of interest. These divergent approaches underscore the urgent need for more precise procedural guidance and a consistent interpretation regarding the interplay between alternative care arrangements and parental legal representation. Moreover, judicial practice plays a crucial role in operationalizing the legal norms governing the representation of minors, particularly in instances where these norms intersect with protective measures of a social and welfare-oriented nature, such as alternative care. By analyzing patterns in court decisions, it becomes evident that a harmonized approach is essential to safeguard both the procedural rights of the child and the effective application of the best interests principle (Constitution of the Republic of Albania, 1998, art. 54).¹⁰

In the absence of explicitly detailed legal provisions, Albanian courts have been required to interpret these frameworks through the lens of the best interests of the child. This judicial practice has contributed to: differentiating between actual care and legal representation, recognizing conflicts of interest as a basis for limiting parental representation, and reinforcing the proactive role of procedural authorities in safeguarding minor victims. The Constitutional Court of the Republic of Albania has consistently highlighted in its case law that the best interests of the child constitute a constitutionally protected principle with direct effect, serving as a guiding standard for the interpretation and application of all legislation concerning minors.

In several decisions, the Court has held that: "Any measure that directly or indirectly affects a minor must be based on a concrete assessment of the child's best interests and not on the formal application of legal provisions". This position is particularly important in matters of legal representation, since the exclusion or limitation of parents from this role cannot be based solely on the fact that the child is placed in alternative care, but requires an individualized analysis of the specific circumstances (Civil College of the Supreme Court of the Republic of Albania, 2025).¹¹

⁹ *Criminal Procedure Code of the Republic of Albania, Law No. 7905, Article 41, 1995*

¹⁰ *Constitution of the Republic of Albania, Art. 54 (1998, amended 2012)*. https://www.constituteproject.org/constitution/Albania_2012

¹¹ *Civil College of the Supreme Court of the Republic of Albania. (2025). Unifying decision on the evaluation of jurisdiction and best interests of minors in family law matters. Supreme Court of the Republic of Albania* <https://gjykataelarte.gov.al/en/lajme/publiku/njoftim-per-vendim-njesues-kolegji-civil-date-22.12.2025>

Judicial practice has emphasized that the exclusion of parents requires a concrete assessment of the existence of a conflict of interest and cannot be based on purely formal circumstances. Research on several decisions of courts of general jurisdiction shows that priority is given to the role of parents as legal representatives of minor victims, even in cases where they are placed in alternative care institutions, as long as the existence of a conflict of interest in accordance with criminal procedural norms has not been proven.

In several criminal cases concerning offenses against the person or against the sexual freedom and integrity of minors, the courts have accepted: the filing of a criminal complaint by the parents, the exercise of the right to a civil claim within the criminal proceedings, and the conduct of criminal proceedings, as long as the existence of a conflict of interest has not been established.

These decisions reflect a substantive interpretation of legal representation, considering it a protective instrument rather than a mere procedural formality (Law No. 37/2017).¹² The position of the jurisprudence recognizing parents as the legal representatives of a minor victim, even in situations of alternative care, constitutes a positive step by giving priority to legal representation as a component of parental responsibility, which cannot be limited without a clear legal basis or a court decision. Consequently, alternative care transfers only factual care and not legal representation. The legal representation of a minor by the parents constitutes a guarantee for effective access to justice and for avoiding procedural passivity. This position must definitely be taken into account in judicial practice in order to allow parents to exercise the procedural rights of the minor, especially when the minor is a victim of a criminal offense.

Judicial practice has generally restricted parental representation in situations where the parent:

- is the perpetrator or accomplice in the criminal offense;
- is subject to serious allegations of neglect or abuse;
- has a legal or personal relationship that creates a conflict with the minor's interests.

A conflict of interest in the scenarios described above constitutes an absolute barrier to parental representation, as it compromises both the integrity of the proceedings and the protection of the minor's interests. This principle is especially relevant when the legal representative is suspected of, or directly involved in, the criminal offense. In cases concerning minor victims, the concept of conflict of interest is interpreted broadly, extending beyond direct perpetration to include serious negligence, abuse, or parental incapacity. Under such circumstances, courts have frequently mandated the appointment of a special guardian to act as a procedural safeguard, in line with the provisions of the Family Code and the Criminal Procedure Code. Courts have reasoned that permitting parental representation in these situations would jeopardize the fairness of the process and the effective protection of the child's rights.

In such circumstances, the special guardian has the duty to properly decide in the best interests of the child. This institution constitutes a procedural safeguard in these cases, but it should be applied only when the exclusion of the parents is necessary, justified, and proportionate; otherwise, it risks seriously undermining the principle of family autonomy. The special guardian is not an ordinary substitute for parents, but an extraordinary protective mechanism, justified only when parental representation becomes impossible or harmful to the child.

This position prevents the unnecessary institutionalization of representation and strengthens the principle of family autonomy, treating the special representative as an exceptional instrument rather than a regular substitute for parents. Another problematic aspect identified in practice relates to the role of alternative care institutions. In some cases, these structures have been treated *de facto* as the legal representatives of the minor, without a clear legal basis or a corresponding court decision. Alternative care institutions are not subjects of the institution of legal representation, but rather administrative structures with a social function. Any expansion of their role into the procedural sphere requires a clear and explicit legal basis. This is also supported by contemporary doctrine on child-friendly justice, according to which legal representation should remain personalized rather than institutional, in order to ensure effective protection (Tempesta, 2022).¹³

In this context, some courts have intervened with an expanded interpretation of the norms, emphasizing that alternative care institutions have a supportive and informative role and cannot replace the legal representative without a formal act. Any intervention by them in the proceedings must take place in coordination with the legal representative or the special guardian. Successful jurisprudential cases have achieved effective protection for minor victims. However,

¹² *Juvenile Justice Code, Law No. 37/2017, Republic of Albania (2017). Criminal Justice for Children Code (English translation available via UNICEF Albania)*

¹³ Tempesta, C. (2022). *Legal representation as a necessary element of children's access to and participation in family justice*. In M. Paré, M. Bruning, T. Moreau, & C. Siffrein-Blanc (Eds.), *Children's access to justice: A critical assessment* (pp. 197–210). Cambridge University Press. <https://doi.org/10.1017/9781839702488.015>

there are also instances in judicial practice where a lack of uniformity in interpretation or a formalistic approach is still observed, as well as confusion between the social role and the legal role of alternative care, which has created difficulties in guaranteeing adequate legal protection for minors who are victims of criminal offenses.

Judicial practice in Albania has played a decisive role in clarifying the relationship between parental legal representation and protective measures concerning minors. In the absence of detailed procedural provisions regulating the interaction between criminal procedure and child protection mechanisms, courts have often been required to interpret these institutions in light of constitutional principles and international standards. In this context, judicial interpretation has contributed to reinforcing the understanding that the legal representation of a minor is primarily a legal institution linked to parental responsibility, while alternative care remains a social protection measure. This interpretative approach has been essential in preventing the automatic substitution of parents by institutional actors in criminal proceedings involving minor victims.

Despite these developments, judicial practice has not always been entirely consistent. Certain decisions of courts of general jurisdiction demonstrate a tendency to treat the placement of a child in alternative care as an implicit limitation of parental representation, without conducting a thorough assessment of the existence of a conflict of interest. Such an approach may lead to a restrictive interpretation of parental responsibility and may inadvertently weaken the procedural guarantees afforded to minor victims. From a legal perspective, this practice risks blurring the distinction between factual care and legal representation, thereby creating uncertainty regarding the scope of parental procedural rights.

Another key aspect highlighted in judicial practice relates to the implementation of the best interests of the child. Albanian courts increasingly stress that this principle requires a case-by-case evaluation of the specific circumstances, rather than a mere formal application of legal provisions. In matters involving minor victims, such an evaluation must consider the parents' ability to act in the child's best interests, the potential presence of a conflict of interest, and the need for appointing a special representative. Accordingly, the best interests of the child serve not only as a guiding standard but also as a corrective tool, enabling courts to balance parental rights with the effective protection of the minor.

Judicial practice has further underscored the significance of appointing a special guardian or representative as a procedural safeguard. Courts have consistently noted that this measure should be reserved for exceptional circumstances in which parental representation is demonstrably incompatible with the best interests of the child, such as cases involving allegations of abuse, neglect, or the parent's direct involvement in the criminal offense. The designation of a special representative in these instances ensures independent legal representation and reinforces the procedural protection afforded to the minor, while simultaneously upholding the general principle that parental representation remains the default.

A comprehensive review of judicial practice indicates that the effective protection of minor victims largely depends on courts' ability to clearly differentiate between social protection mechanisms and formal legal representation. Adopting a consistent jurisprudential approach, which treats parental representation as the primary rule and reserves institutional intervention for cases of verified conflict of interest, would enhance legal certainty and contribute to more robust and effective safeguarding of children's rights within criminal proceedings.

6. Alternative Care in Light of European Union Standards

The European Union treats alternative care as a social protective measure, aimed at ensuring the development of the child, but not as an institution that replaces the fundamental legal relationships between the child and the biological family (European Commission, 2021).¹⁴ In the fundamental documents of the EU, it is clearly emphasized that alternative care must be necessary, proportionate, and temporary, aiming, whenever possible, at the reunification of the child with the family (Council of Europe, 2010).¹⁵

The EU Strategy on the Rights of the Child (2021–2024) emphasizes that alternative care measures should not lead to the automatic legal severance of family ties, except in cases where this is absolutely necessary in the best interests of the child (European Commission, 2021).¹⁶ This position is consistent with Albanian legislation, which does not treat alternative care as an institution replacing parental responsibility.

Article 24 of the Charter of Fundamental Rights of the European Union stipulates that the best interests of the child

¹⁴ European Commission. (2021). *Supporting children in alternative care: Ensuring protection, participation, and development*. Publications Office of the European Union. <https://op.europa.eu/en/publication-detail/-/publication>

¹⁵ Council of Europe. (2010). *Guidelines on alternative care of children*. Council of Europe Publishing. <https://rm.coe.int/1680459f97>

¹⁶ European Commission. (2021). *EU strategy on the rights of the child (2021–2024)*. Publications Office of the European Union. https://ec.europa.eu/info/publications/eu-strategy-rights-child-2021-2024_en

must be a primary consideration in all actions concerning the child (Charter of Fundamental Rights of the European Union, 2012). This principle has both horizontal and vertical effect, meaning that it is comprehensive and applies both in administrative activities and in judicial proceedings.

The Court of Justice of the European Union (CJEU) has emphasized that the best interests of the child require an individual and concrete assessment and cannot be automatically generalized based on the child's status as a subject of alternative care. This standard prioritizes the position that should also be maintained by national law-enforcement authorities, namely that the exclusion of parents from legal representation cannot be generalized solely on the basis of the child's placement in alternative care.

The principle of the "*best interests of the child*" is a cornerstone of family justice and children's rights, requiring that every decision affecting a child's life take the child's well-being into account as a primary consideration (Convention on the Rights of the Child, 1989; Committee on the Rights of the Child, 2013).¹⁷ This principle does not have only a simple legal interpretation; its application requires analysis within the individual context of each child and the situation in which he or she is placed (Galeş & Florea, 2021).¹⁸

International doctrine and comparative studies show that the principle of the best interests of the child requires a flexible and individualized approach, including the child's emotional, social, and educational needs (Skivenes & Sørdsdal, 2018; Garayová, 2025). In the European and international context, the documents of the Council of Europe emphasize that every judicial or administrative decision must reflect this principle and ensure the maximum protection of the rights of the child (Council of Europe, 2016).¹⁹

Within EU law and the guiding documents issued by the European Commission, a clear distinction is established between alternative care as a social protection measure and legal representation as a procedural safeguard. The EU Guidelines on Child-Friendly Justice stress that providers of alternative care should not be regarded as the child's legal representatives, as doing so would compromise both the independence of representation and the child's substantive and procedural rights.

This distinction is particularly important in criminal proceedings involving minor victims, where legal representation must remain independent and focused on the child's best interests. Parents, as the child's legal representatives, retain full access to monitor the progress of proceedings concerning their child, thereby ensuring competent legal protection at every stage of criminal, civil, or administrative procedures. This framework ensures that parental legal representation complements, rather than competes with, alternative care, which serves solely as a temporary protective measure.

Directive (EU) 2012/29/EU²⁰ on the rights of victims provides that minor victims are entitled to support and special procedural representation, particularly when their interests do not coincide with those of their legal representatives. This directive does not link legal representation to alternative care but rather conditions it on the existence or absence of a conflict of interest. In this sense, European standards, according to which the limitation of parental representation is justified only in the presence of a conflict of interest, should be applied by Albanian courts, regardless of decisions concerning alternative care.

The main objective of these standards is to guarantee the principle of proportionality of state intervention in family life. The placement of a child in alternative care and the exclusion of parents from legal representation must be reasoned, proportionate measures supported by concrete evidence. Within this framework, the Court of Justice of the European Union (CJEU) has emphasized that measures affecting family relationships must be interpreted restrictively and reviewed

17 Committee on the Rights of the Child. (2013). *General comment No. 14: The right of the child to have his or her best interests taken as a primary consideration* (art. 3, para. 1). United Nations. <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-14-right-child-have-his-or-her-best>, Convention on the Rights of the Child, G.A. Res. 44/25, 1577 U.N.T.S. 3 (1989). <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

18 Galeş, R., & Florea, C. (2021). *Child protection and family justice: Best interests of the child in practice*. Routledge. <https://www.routledge.com/Child-Protection-and-Family-Justice-Best-Interests-of-the-Child-in-Practice/Gales-Florea/p/book/9780367475821>

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periodically. This position reinforces the idea that alternative care cannot be transformed into a permanent legal situation.

A comparison with European standards demonstrates that the effective protection of a minor's procedural rights requires a clear separation between social protection measures and mechanisms of legal representation. The European Guidelines on Child-Friendly Justice stress that a child's legal representative must act independently and solely in the child's best interests. This distinction carries important implications for Albanian practice: while alternative care institutions may provide social and psychological support, legal representation of the minor must remain formally defined and cannot be assumed by such institutions without a clear legal mandate. Strengthening this separation would enhance both legal certainty and the procedural protection afforded to minor victims.

International and European legal frameworks provide a more structured approach to safeguarding minor victims and clarifying the role of legal representation in judicial proceedings. Notably, the Charter of Fundamental Rights of the European Union emphasizes that the best interests of the child must be a primary consideration in all matters affecting children. While this principle is reflected in Albanian law through constitutional guarantees and sectoral legislation, European standards offer more explicit procedural guidance. In practice, although Albanian law recognizes parental legal representation as part of parental responsibility, European instruments increasingly underline the necessity of procedural safeguards to ensure independent representation of the child's interests whenever a potential conflict of interest arises.

A comparable approach is evident in the standards established by the Council of Europe, particularly in the Guidelines on Child-Friendly Justice. These guidelines stress that children participating in judicial proceedings must have effective access to representation and support tailored to their age, maturity, and vulnerability. In contrast, the Albanian legal system primarily regulates representation through parental responsibility and, in exceptional cases, the appointment of a guardian. While this framework formally aligns with European norms, the Council of Europe's guidelines place greater emphasis on the child's active involvement and on the establishment of specialized procedural mechanisms to ensure that the child's perspective is meaningfully considered throughout judicial proceedings.

The international framework established by the United Nations through the Convention on the Rights of the Child reinforces the principle that children are independent holders of rights within legal systems. Article 3 of the Convention designates the best interests of the child as a primary consideration, while other provisions underscore the child's right to be heard and represented in proceedings affecting them. While Albanian legislation formally recognizes these principles, it does not always provide detailed procedural mechanisms to ensure their consistent application in practice. Consequently, the realization of these rights often depends on judicial interpretation and the discretion of competent authorities.

Recent policy initiatives within the European Commission, particularly the EU Strategy on the Rights of the Child, further stress the importance of integrated child protection systems and enhanced coordination between judicial bodies and social services. These policy frameworks demonstrate that effective protection of minor victims requires not only robust legal guarantees but also institutional cooperation and specialized professional training. Although the Albanian legal system has made notable progress in aligning its legislative framework with international standards, practical challenges persist in ensuring effective coordination among courts, prosecutors, and child protection institutions.

Overall, the comparative analysis demonstrates that Albanian legislation broadly reflects the fundamental principles established in European and international instruments concerning the protection of children's rights. Nevertheless, the European and international frameworks place stronger emphasis on procedural safeguards, specialized representation mechanisms, and the active participation of children in judicial proceedings. Strengthening these elements within national practice would contribute to a more effective implementation of the principle of the best interests of the child and to greater consistency with contemporary European standards of child-friendly justice.

7. Conclusions

The findings of this study have several practical implications for judicial practice and legal policy. First, procedural authorities should avoid automatically linking alternative care with the limitation of parental legal representation. Any restriction of parental representation should be based on a concrete assessment of a conflict of interest and supported by a clear legal decision. Second, clearer procedural guidelines for prosecutors, judges, and child protection institutions would contribute to more consistent practice in cases involving minor victims. Finally, strengthening training programs on child-friendly justice and the best interests of the child would help ensure that legal representation functions as an effective mechanism for protecting the procedural rights of minors.

The principle of the best interests of the child, enshrined in the Convention on the Rights of the Child and reflected in Albanian legislation, requires that every measure serve the child's well-being. This principle should guide the respect for the institution of legal representation and the proper application of the institution of alternative care.

Within this framework, alternative care does not automatically exclude legal representation, since the exclusion of parents as the legal representatives of their children in any circumstance must be justified and based on an existing conflict of interest, whether direct or indirect, clarified in practice and institutionally through the process of judicial proof.

Therefore, parents remain the legal representatives of the minor who is a victim of a criminal offense, as long as there is no proven conflict of interest and no court decision has been issued limiting or removing parental responsibility. Alternative care may be applied as a temporary measure by the competent court, but without automatically undermining the institution of legal representation.

From the combined analysis of judicial practice and doctrine, it results that Albanian jurisprudence, although not always uniform, has made serious efforts to be in conformity with the fundamental principles of children's rights in general, but also with the principles of protective criminal procedure concerning minors who are victims of criminal offenses.

Nevertheless, the consolidation of this position into a stable and predictable practice for a protective approach remains a challenge.

This situation shows the need for specific guidelines for procedural authorities, specialized training for judges and prosecutors, as well as coordinated harmonization with international standards.

From the comparison of Albanian practice with EU standards, several problematic issues are identified in some courts, which equate alternative care with legal representation, apply the institutionalization of the child's representation, and present in their decisions a lack of individual assessment of the best interests of the child.

These practices contradict European standards, which place emphasis on the personalization of protection and the active role of the court in controlling protective measures. Therefore, the integration of EU standards in the interpretation of Albanian legislation on alternative care would strengthen legal certainty, the procedural protection of minor victims, as well as the harmonization of Albanian law with the *acquis communautaire*.

In this context, alternative care should be interpreted as a supportive social measure, without becoming an absolute cause for the exclusion of parents from legal representation, while legal representation remains a personalized and independent legal institution to guarantee the maximum protection of the best interests of children.

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