**SUBMISSION FROM OMBUDSMAN (PEOPLE’S ADVOCATE) INSTITUTION OF ALBANIA**

Reference: WHRGS/GA/RES/75167

1. **A comprehensive report to the General Assembly on progress made towards ending CEFM, including in the context of the COVID-19 pandemic**
2. **A report to the Human Rights Council on progress, gaps, and challenges in addressing CEFM and measures to ensure accountability**
3. **The legal framework in Albania regarding the topic**

Early marriage constitutes a violation of children’s rights, including the right to equality based on sex and age, education and development, the right to marry and create a family, the right to life, and the right to have a possible standard of well-being. A country needs to include the legislation's concrete definition of the minimum age for marriages. The harmonization of national legislation with international standards and requirements is one of the commitments undertaken by the government through the ratification of several international conventions on human rights and, in particular, conventions that specifically address the rights of women and girls.

The Constitution of the Republic of Albania provides that “... everyone has the right to marry and to create a family...”, as well as marriage and the family enjoy the special protection of the state[[1]](#footnote-1). Children, young people, pregnant women, and young mothers are entitled to special protection by the state[[2]](#footnote-2). This definition of the fundamental law of the state, as well as the definition that “... the marriage and dissolution of marriage are regulated by law[[3]](#footnote-3) ...”, the Family Code of the Republic of Albania[[4]](#footnote-4) has forwarded with the provision that “Parents, competent bodies and courts, in their decisions and activities, they must have as a primary consideration the best interests of the child.” Essential importance is given to giving consent for marriage[[5]](#footnote-5).

According to the Family Code, the minimum legal age for marriage in Albania is 18.[[6]](#footnote-6) However, the same article of the Family Code also stipulates that the court may approve the marriage at an earlier age “for matters of importance.”

The Civil Code of the Republic of Albania has provided that a person shall acquire the full capacity to enjoy rights and undertake civil duties consequently to his actions upon reaching the age of eighteen years. However, the code specifies that if a girl marries before the age of 18, she automatically gains (achieves) the ability to act. Besides the age limit for marriage, Albanian legislation does not prescribe any measures to prevent child marriages.

Child marriage in Albania is a complex issue. Young people affected by child marriage are often involved in a cycle of poverty, exploitation, and marginalization. As a phenomenon, it has been addressed in contexts such as ethnic exclusion based on ethnicity, discrimination, poverty, child labor, and exploitation. It is worth noting that marriages involving children are not registered, so there is no accurate statistical data on this phenomenon. There is a considerable cost to inaction in child marriage, as this phenomenon denies them childhood education, endangers their health, and limits their opportunities for normal development. Married girls need particular, targeted strategies that ensure access to education, life skills, health, and opportunities to participate fully in society.

Albanian legislation provides for marriage under the age of 18 for exceptional cases, with a court decision, thus leaving it to the judiciary to assess and interpret, in this case, the “special case.” Even in this legal ambiguity, judges have the opportunity to prohibit early marriages, taking into account their definition in international conventions. Therefore, it is essential to note that judges should analyze in all plans the principle of the child’s best interests in the decision-making process for allowing early marriages. In determining the “best interests of the minor,” all the child’s legal rights must be taken into account, as well as any individual circumstances. The determination of the highest interest should include the participation of children in the process without any discrimination, the appropriate weight that should be given to the views of the child, and most importantly, the implementation of the impact assessment that public policies and policymakers, with decision-making their rights in children (CRIA).

1. **International recommendations for Albania**

The United Nations Committee on the Rights of the Child[[7]](#footnote-7) has recommended to Albania to develop procedures and criteria for determining the best interests of the child in any field, as well as to inform social care institutions (public and private), courts, administrative authorities, and parliament. Legal reasoning should be based on this principle in all judicial and administrative processes and decisions. For this, in cases of early marriages, it is necessary to monitor local institutions for fundamental problems such as the employment and education of married girls under the age of 18 years[[8]](#footnote-8).

GREVIO urges the authorities to review the legislation in force, to impose additional appropriate safeguards, such as the minimum age requirement for a minor to be authorized to marry, to draw up guidelines defining the judicial review of any request for authorization to enter into a marriage, as well as for court clerks to be adequately trained and to ensure that any such assessment is carried out in close co-operation between the courts and existing mechanisms for the protection of the rights of children (such as locally established child protection units). These measures should be taken simultaneously to raise awareness of this form of violence and engage certain professionals in preventive measures[[9]](#footnote-9).

The CEDAW Committee has recommended to Albania[[10]](#footnote-10) to continue its efforts to ban all harmful practices, including child marriage[[11]](#footnote-11), the practice of male-dominated families, other crimes committed in the name of so-called “honor,” and the prosecution and the proper punishment of the perpetrators of such practices. Also, strictly prohibit child marriage, allowing only very limited and clearly defined exceptions, when courts can authorize marriages under the age of 18 with the consent of both partners, and raise awareness among children, parents, the community, religious leaders, and the general public of the negative impact of child marriage on the health and development of children, especially girls[[12]](#footnote-12).

1. **Recommendation of the Albanian Ombudsman**

The Albanian Ombudsman Institution has submitted a legislative recommendation for the necessary legal changes in the Family Code to protect children from early marriages and prevent them[[13]](#footnote-13).

The Institution of the People’s Advocate has been informed by the online media regarding the phenomenon of marriages of underage girls in our country. Based on article 13 of Law no. 8454, dated 4.2.1999, “On the People's Advocate,” as amended, the People’s Advocate initiated the procedure of reviewing the case “ex-officio.” Marriage of girls under the age of 18 remains a worrying phenomenon, and referring to data from INSTAT (Institute of Statistics), during the year 2019, Albanian courts have allowed the marriage of 20 minor girls (under the age of 18), while in 2018 this number was 24. According to the INSTAT data, in the publication “Men and Women in Albania,” ten married girls under 18 for every 1000 marriages. The age group “under 19” accounts for 17.4% of total marriages. The situation is the opposite for boys of the same age group.

Law no. 9062, dated 8.5.2003 “Family Code in the Republic of Albania” as amended, in pg.1, of the article 7, prohibits underage marriage. Meanwhile, pg.2 of this article is the legal reference in most cases, on which the courts have allowed marriages under 18 years of age[[14]](#footnote-14).

The People’s Advocate initiated this case with initiative (ex-officio), outlining all efforts, even in the international and long-term plan, to prevent marriages at an early age. Efforts to end child marriage should coordinate education, health, defense, and other sectors.

In Albania, child marriage rates are low, but they are practiced among Roma and in some isolated rural areas. Child marriage is a gendered phenomenon that affects girls and boys differently. In general, the number of boys in early marriages worldwide is significantly lower than that of girls. While married children-girls are also affected by domestic violence and sexual abuse within unequal relationships, if they are pregnant, they often go through complications during pregnancy and childbirth, as their bodies are not ready to have children[[15]](#footnote-15).

One of the most prominent civil society organizations[[16]](#footnote-16) that the Ombudsman of Albania has cooperated, mainly in the context of protecting children’s rights, has made efforts to highlight this phenomenon in Albanian society. Through the study “Early marriages in Albania - focus on the Roma community,” it has been identified that qualitative data related to early marriages are limited in our country[[17]](#footnote-17). Early marriage has spread and can lead to a life of disadvantage and deprivation.

The Ombudsman Institution, during his activity, has encountered this phenomenon intertwined with the problem of non-registration in the civil status of children, the difficult situation without economic support, mainly by members of the Roma community or living in remote rural areas. Moreover, during the year 2020, we (Ombudsman Institution) have addressed with the initiative the problematic situation and complex situation of two minors, respectively 13 and 16 years old, made parents of a baby, based on the protection of the highest interest of the child.[[18]](#footnote-18) Despite the treatment and support of local structures for the two minors who become parents, the case highlights the importance of raising awareness that the empowerment and economic support of families in need most help prevent this phenomenon.

The Ombudsman Institution of Albania, in the exercising of its constitutional mandate, for the prevention of violations, protection, and promotion of human rights, in the critical situation of natural disaster caused by the Covid-19 pandemic, has followed with special attention, the case of the Roma and Egyptian communities and the measures taken to provide and meet their basic living needs, in the unprecedented situation. The daily reality has made us reflect deeply and understand that the Roma (without excluding the Egyptians) are a vulnerable and at-risk group and other social categories. And when we talk about this system, we have in mind housing, civil registration, receiving economic assistance, or even education, as the most critical problems, without excluding employment, vocational training, health care, and any benefits that our social system provides citizens. Precisely for this fact, today is the time to speak the weakest language to find a solution that naturally integrates these minorities in this challenging situation. This is the vision of the People’s Advocate (Ombudsman) institution towards these worrying issues. Their current situation as homeless, unemployed, and without life services increases and worsens these communities’ situation. These consequences affect these communities and negatively affect children, including early marriage.

Today, increased attention and institutional commitment are needed to respond to the basic living needs of these communities, concretized with measures that directly affect and ensure an acceptable standard of living in the conditions of this global pandemic. Providing additional financial assistance, primary means of subsistence, guaranteeing the provision of essential social services, and access to these services for these communities are some of the suggestions of the ombudsman institution for these communities. The problems of Roma and Egyptians today in Albania are not just their problems, but a strong bell for Albanian society, so their adequate solution is in the best interest of our society. No one should be left behind in this unusual situation, which requires interaction, support, and social solidarity.

But while the Family Code sets an age limit for marriage (18 years old) and recognizes the court’s discretion, for important reasons, to allow marriage before this age, it does not specify how far this age tolerance will extend. Paragraph 2, of Article 6 of Law no. 18/2017, “On the rights and protection of the child,” provides that the realization and protection of children’s rights are based on one of the main principles, that the UN Convention and this law provide for the respect of the dignity, honor, and personality of the child, thus guaranteeing sustainable physical, mental, moral, spiritual and social development. The

implementation of this principle in practice by the responsible state authorities means protecting children from any form of violence.

The People’s Advocate (Ombudsman Institution) is one of the actors engaged in protecting and respecting human rights, which are the basis for the conception of the Sustainable Development Objectives. By some recommendations, we reiterate the continuous monitoring of the work of the responsible state structures, according to the legislation in force and taking concrete measures by the State Agency for the Protection of Children’s Rights, for imposing and executing administrative sanctions, in case of non-fulfillment of legal obligations by these structures.

In order to fulfill the constitutional and legal obligations, to effectively guarantee the exercise, respect, and protection of the rights of the child in their highest interest, in compliance with international legislation and instruments, based on the Merida Declaration “On the role of human rights institutions in the Sustainable Development Goals,” as well as the specific role in the process of implementation and monitoring of the United Nations Agenda 2030, which also aims to eliminate early or forced child marriages, up to in 2030, the Ombudsman of Albania assesses the necessity of changes in the Family Code. So the Ombudsman under Article 24, of Law no. 8454, dated 4.2.1999 “On the People’s Advocate,” as amended, has recommended:

* Taking measures to assess changes in law no. 9062, dated 8.5.2003 “Family Code,” amended to prevent child marriages, based on protecting their highest interest.
* The provision in the Family Code that gives the right to courts to approve marriages under the age of 18 should be repealed. The reconceptualization of a provision that sets the minimum age, below which no exceptions to the legal age for marriage are allowed, is an obligation that derives from the CRC.
* Taking measures for inclusion in the Future National Action Plan for the Rights of the Child, raising awareness regarding the consequences of the phenomenon of child marriage so that the practice can be addressed more strategically. Awareness of the effects of early marriages should also be raised among parents, children, and young people living within communities where child marriage is widely practiced. Efforts to end child marriage should aim at coordinated and budgeted actions at the multilevel in education, health, defense, and other sectors.

The response of the Ministry of Health and Social Protection and the State Agency for Rights and Child Protection (SARCP)[[19]](#footnote-19) to the Ombudsman’s recommendation states that the Ombudsman’s recommendations will be taken into account for discussion during legislative change initiatives, as well as during drafting of political and strategic documents for the following years. Monitoring the child protection structures and taking concrete measures by the SAPCR to impose and execute administrative sanctions in case of non-fulfillment of legal obligations by these structures is a functional and legal task of the SAPCR, which is performed continuously.

By the decision of the Council of Ministers, no. 659, dated 3.11.2021, the National Agenda for the Rights of the Child 2021-2026[[20]](#footnote-20) was approved.

According to INSTAT’s 2019 Survey of Income and Living Conditions[[21]](#footnote-21), which was conducted in accordance with European statistical standards, 29.7% of children aged 0 to 17 are at risk of poverty. The link between poverty and a lack of opportunities for children to realize their rights is now well recognized. The best way to solve this complex phenomenon in Albania is to take an integrated approach that helps the entire family, including education for positive parents.

Even though the Family Code (2003) sets an 18-year-old minimum marriage age, 11% of women aged 20 to 49 years old and 2% of men married at 18, and the rate of women 15 to 19 years old in reproductive age grew by 3.5% in 2017 - 2018 from 2.8% in 2008-200923. Current data suggest that child marriage remains a significant issue that must be addressed promptly, even though it is not widely reported due to gender inequality, poverty, and social exclusion. A national electronic child protection data system, and as a result, a unified database that collects data on children who are beneficiaries of social protection programs, has yet to be implemented, making it more difficult to plan effective and sustainable child protection interventions. Positive parenting programs have yet to be developed and implemented throughout all service areas.

Budgeting for children is a problematic area of action. In this regard, it is required to invest in the necessary resources to conduct budget analysis focused on children periodically, capacity building/instruments to implement child-centered budgeting at the central and local level, and, above all, to increase financial allocations for the benefit of children. Sectoral information management systems and indicators for children are not yet fully operational to realize children's rights, given the dynamics of the sector. The collection and reporting of administrative data (for children), aggregated by gender, age group, disability status, belonging to a national minority, citizenship, etc., remain problematic[[22]](#footnote-22).

The National Agenda on the Rights of the Child 2021-2026 provide “The following are some of the critical areas requiring Family Code review: Marriageable age – minimum eligible age to marry, to prevent harmful practices, such as child marriages (in addition to defining the minimum age and prohibition of marriage until 18 years old, this measure should also set forth sanctions against those allowing marriages under period specified in the law)[[23]](#footnote-23).

1. Article 53 of the Constitution of the Republic of Albania [↑](#footnote-ref-1)
2. Article 54 of the Constitution [↑](#footnote-ref-2)
3. Article 53/3 [↑](#footnote-ref-3)
4. Law nr.9062, dated 8.5.2002, amended. [↑](#footnote-ref-4)
5. Article 8 of the Family Code provides that “Marriage is entered into before the civil registrar, with the free consent of both future spouses.” [↑](#footnote-ref-5)
6. Article 6 [↑](#footnote-ref-6)
7. CRC/C/ALB/CO/2-4, Final observations for Albania after the periodic report on CRC, 17 September-5 October 2012. [↑](#footnote-ref-7)
8. The United Nations Committee on the Rights of the Child has recommended to Albania to take measures to fully implement the age limit for marriages and to take the necessary measures to curb the harmful practices of early and forced marriages, including the development of awareness-raising programs and campaigns involving community leaders, society at large and children themselves, on the negative impact of early and forced marriages”. Item 48 of the Recommendations of the UN Committee on the Rights of the Child, the year 2012 [↑](#footnote-ref-8)
9. Paragraph 42/a of Concluding observations on the fourth periodic report of Albania, CEDAW 2016. [↑](#footnote-ref-9)
10. https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/ALB/CO/4&Lang=En Concluding observations on the fourth periodic report of Albania. [↑](#footnote-ref-10)
11. Paragraph 21 [↑](#footnote-ref-11)
12. Paragraph 42/b [↑](#footnote-ref-12)
13. [www.avokatipopullit.gov.al](http://www.avokatipopullit.gov.al), rek.nr.dok.202002594 [↑](#footnote-ref-13)
14. Pg.2 of article 7 of the Family Code provides that: “The court of the country where the marriage is entered into, for important reasons, may allow the marriage even before this age.” [↑](#footnote-ref-14)
15. https://albania.unfpa.org/sq/publications/martesat-e-f%C3%ABmij%C3%ABve-n%C3%AB-shqip%C3%ABri [↑](#footnote-ref-15)
16. Observatori për të Drejtat e Fëmijëve [↑](#footnote-ref-16)
17. The Albanian child protection system needs to reflect the phenomenon of early marriages. There is still a lack of a referral system for identifying cases of married children, so institutions have yet to work to build a referral system for early marriages. [↑](#footnote-ref-17)
18. Referring to letter no. 110/1 plot., dated 1.7.2020, the Mayor of Fier city, informed that they handled the case of the 13-year-old minor. The CPU supported the minor mother, with psychological and legal assistance, assistance with food packages, and assisted in registering the child in the civil registry. This case is already being handled and monitored by the CPU in the Municipality of Fier. [↑](#footnote-ref-18)
19. On 11.1.2021 [↑](#footnote-ref-19)
20. https://www.unicef.org/albania/media/4396/file/NARC%202021-2026\_ENG.pdf [↑](#footnote-ref-20)
21. INSTAT 2021. Survey of Income and Living Conditions. [↑](#footnote-ref-21)
22. Page 32, National Agenda on the Rights of the Child, 2021-2026 [↑](#footnote-ref-22)
23. Page 38 [↑](#footnote-ref-23)