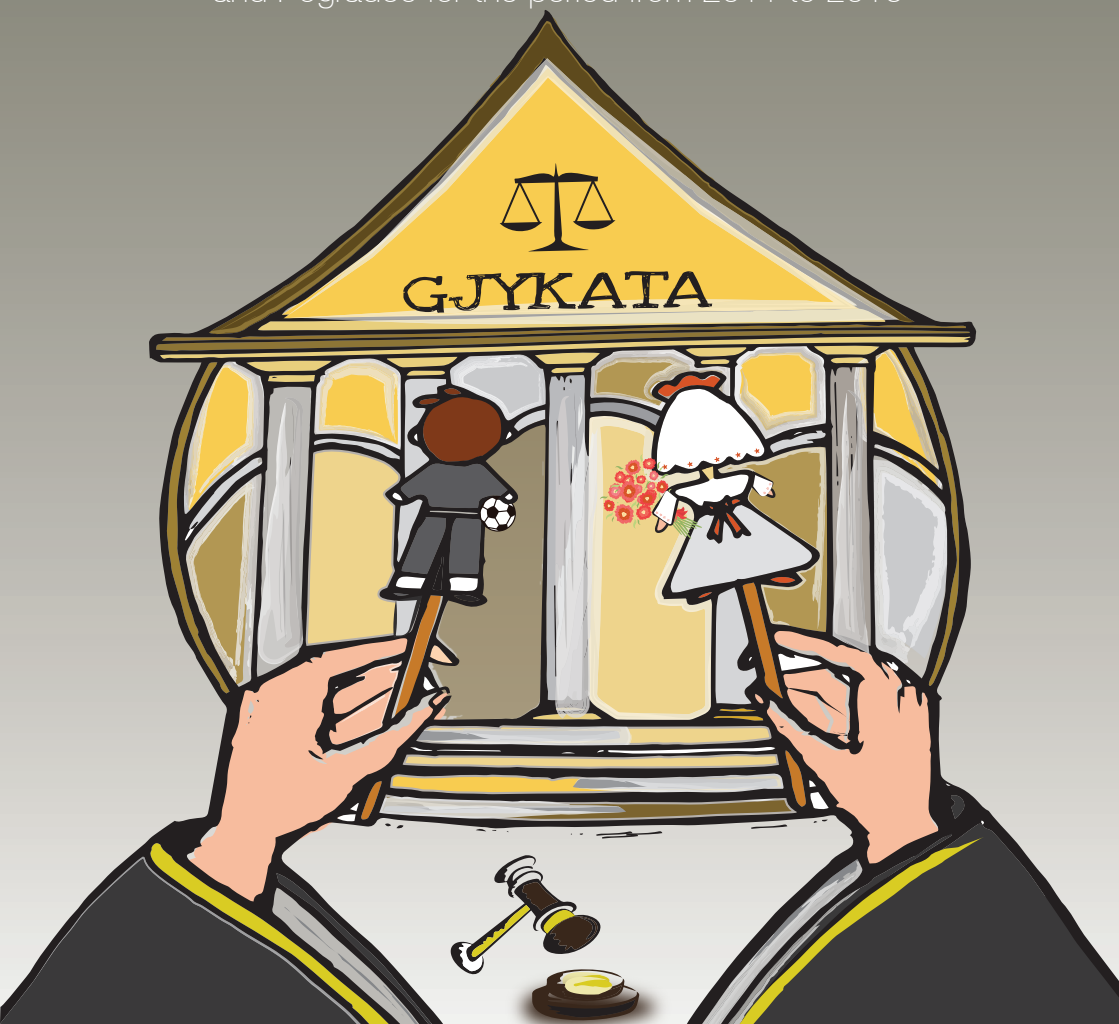


Marriage in Court?

The rights of children, underage marriage and the role of the Court

Report of the legal and social aspects and the judicial practice of underage marriages in Korça and Pogradec for the period from 2011 to 2016



This report is compiled within the framework of the implementation of the project *Prevention of early marriages by applying legal mechanisms and social perception as a tool for empowering women and girls (PREVENTION)*.

This project was implemented by the Observatory for Children's Rights (Observatory) through the monitoring of court decisions for the period from 2011 to 2016, specifically in the District Courts (DC) of Korça and Pogradec. This project was funded by the Canada Fund for Local Initiatives (CFLI).

Author:

Prof. PhD. Arta Mandro – Balili, - Legal Analysis of Court decisions

Bernard Zeneli, - Social Analysis of underage marriages

Supervised:


Elma Tërshana, MA

Managed:

Eridjona Kica, MA

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Observatory for Children's Rights

 Blv. Bajram Curri
Pallatet Agimi, Shk.5, Ap. 81, Tiranë

 Tel: 00355 42 258 987

 Email: info@observator.org.al

 Webmail: www.observator.org.al

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i. LIST OF ABBREVIATIONS

CEDAW	The Convention on the Elimination of All Forms of Discrimination Against Women
CFLI	Canada Fund for Local Initiatives
ECHR	The European Court of Human Rights and Fundamental Freedoms [Strasbourg]
DC	District Court
CRC	Convention on the Rights of the Child [1989]
ECHRFF	European Convention on Human Rights and Fundamental Freedoms
FC	The Family Code approved by the Law No. 9062/8.5.2003
CC	The Criminal Code of RoA approved by Law No. 7895, dated 27.1.1995, as amended
CPC	Code of Civil Procedure of RoA approved by Law No. 8116/29.3.1996, as amended
CPC	Criminal Procedure Code of RoA approved by Law No. 7905, dated 21.3.1995, as amended
Observatory	Observatory for Children's Rights
RoA	Republic of Albania

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iv. ACKNOWLEDGMENTS

This report was compiled within the framework of the implementation of the project Prevention of early marriages by applying legal mechanisms and social perception as a tool for empowering women and girls (**PREVENTION**). The project was implemented by the Observatory 'through the monitoring of court decisions of the District Courts in Korça and Pogradec for the period from 2011 to 2016.' This project was funded by the CFLI.

We would like to thank the CFLI for funding the monitoring of the court decisions, the preparation of this report and the consultative table after the compilation of the report. This entire initiative aims at highlighting the problems of the judicial practice and the undertaking of appropriate measures by the justice system related to the phenomenon of marriages of people under the age of 18 years.

The Observatory would like to express its gratitude and appreciation to Mr. Admir Belishta, Chairman of DC Korça and Ms. Emona Muçi, Chairwoman of DC Pogradec, as well as to the administrative staffs of these Courts for their readiness in providing any information related to the judicial practice with subject 'requests for permit to enter into underage marriage' and for all the facilities that they provided during this process.

The Observatory would like to express its special acknowledgment and heartfelt gratitude to Prof. PhD. Arta Mandro who compiled the tables, facilitated the contacts with the Courts, and prepared the legal analysis of the judicial decisions in this report. We would also like to address a special thank to Mr. Bernard Zeneli, who prepared the social analysis of underage marriages.

The Observatory would also like to sincerely thank the team of this initiative and the monitoring teams composed of Ms. Elma Tërshana, Ms. Eridjona Kica, Ms. Mariana Jorgji, Ms. Ina Zallemi.

The Observatory hopes that the findings, conclusions and recommendation of this report will be useful and will find a place to be implemented in the judicial practice, as well as to raise awareness among the people about the cases of underage marriages and will encourage higher engagement of other actors and stakeholders.

v. EXECUTIVE SUMMARY

This report analyzes the legal and social aspects of underage marriage in Albania. The report focuses on identifying and analyzing the court decisions of the District Courts in Korça and Pogradec for the period from 2011 to 2016. The report was carried out within the framework of the project Prevention of early marriages by applying legal mechanisms and social perception as a tool for empowering women and girls (PREVENTION), which was implemented by the Observatory for Children's Rights and was funded by CFLI.

The following pages present an analysis for the identification of the problems of the judicial practice and the undertaking of appropriate measures by the justice system regarding the phenomenon of marriages under the age of 18. This report analyzes the judicial practice with subject 'the requests to enter into underage marriage' and how "underage marriage" has affected the social and family life of the juveniles.

During the period from 2011 to 2016, there were 34 requests for 'permit to enter into underage marriage' that were filed in the District Court of Korça and Pogradec, of these 85.3% of the applications were accepted (29 requests) and 14.7% of the requests were dismissed (5 requests).

The majority of the requests for 'permit to enter into underage marriage' were submitted in 2011 with 38% of the cases, followed by 2013 with 27% of the cases. This phenomenon decreased during the following years with 2016 marking 14% of the cases.

In 22 cases or 76% of the accepted cases in DC Korça and Pogradec the pretender for future spouses live in Albania. Meanwhile, in 7 cases or 24% of the cases accepted by the Court, the pretendors for future spouse live outside the territory of Albania (abroad).

It results that a psychological evaluation of the minor was not performed in 72% of the case out of the 29 decisions accepted in DC Korça and Pogradec for the period from 2011 to 2016.

In DC Korça dhe Pogradec, 12 cases or 41% of the cases had representation from the lawyer, meanwhile in 15 cases or 52% of the cases there wasn't any representation from the lawyer. Information about the legal defense could not be obtain about two decision or 7% of the cases ruled in DC Korça.

The analysis of the social aspects of the cases of underage marriage identifies the concern that 65% of the women interviewed in Pogradec are already divorced and in 11 cases the divorce has occurred after 5 to 7 years of marriage. A more solid situation of the state of marriage appears in Korça where the divorce has occurred in 5% of the cases.

Most of the minor girls who were married under age come from families whose parents are unemployed: over 50% of the cases in Pogradec and over 75% of the cases in Korça. Unemployment is a concerning factor that is also reflected in the employment status of the women who are married early.

The immigration of parents correlates as a significant factor related to underage marriages in Korça, where more than half of the parents seem to have been in immigration (in Greece). This does not seem to be a very important factor in Pogradec

The women in 91% of the cases of the juvenile girls in Pogradec have a low level of education, while in Korça this appears in 80% of the cases. This finding coincides with the international data, which have identified the correlation between low levels of education and underage marriages..

It seems that after giving birth to a child neither education nor employments are a priority in the life of women who are married under age. According to the conducted research, most women in this kind of situation do not work outside of the house. There is only one case in Korça where someone works outside the house; while in Pogradec 75% of the women are not employed outside the house.

The highest number of abortions and problems due to the newborn being a girl appears in Pogradec. In this municipality, in 7 cases out of 22 cases of birth, the new mothers have had problems due to the sex of the newborn. Also, the number of abortions reported in 23 of the cases interviewed on this matter is 8

We recommend to the Court institutions that, among other things, it should pay attention to the best interests of the juvenile.

The reduction leading towards the elimination of marriages under the age of 16 should be in the focus of all institutions and local or central stakeholders, including the judiciary and the media. We should all help and be actors in order not to allow the binding of underage marriages in any case, despite the justifications and excuses.

vi. WHO IS THE OBSERVATORY?

The Observatory is an Albanian non-profit entity established in 2013 as part of the network of the civil society monitoring the situation of children in the country. Through the representatives at the regional level and in cooperation with local units and social welfare institutions the Observatory gathers information on data from the administrative records of health, education, social protection and other local authorities. The consolidated database rich in statistical information can be accessed online through the use of DevInfo system at the website: <http://www.observator.org.al/odf-map/>

Using these data, which are completed with evidence drawn from questionnaires, the Observatory has compiled reports on the situation of children and has contributed to the action plans for children at the regional and central level. In 2013, the Observatory conducted the first comprehensive report with various dimensions of the poverty and the deprivation of children in Albania.

Another evidence of the strong presence of the Observatory on the field has been its ability to advocate with government authorities in order to increase the measures aimed at addressing the needs of the most vulnerable children and families.

The Observatory contributes at producing and using scientific evidence for the formulation of policies based on results and centered on the rights of the child. The Observatory monitors the implementation of national policies for the welfare of children and youth, referring to the national and international standards and policies.

With the support of CFLI, the Observatory has conducted two studies on the matter of underage marriages:

- The first study 'Early marriages in Albania, a specific overview of the Roma community' was conducted during the period from January to March 2015 and was piloted in three areas of Tirana: Shkozë, Liqen and the Emergency Centre. The electronic version of the study can be found at the official website of the Observatory:

http://observator.org.al/wp-content/uploads/2015/03/2015-Martesat_e_hershme_ne_Shqiperi.pdf

- The second study "Taking the false step of family bliss: Case Studies for the Early Marriages in Korça and Vlora" was conducted in the areas of Korça and Vlora, extending the focus of this matter in the rural areas. The electronic version of this study can be found at the official website of the Observatory: http://observator.org.al/wp-content/uploads/2016/02/ZEB_Studimi_al_12Shk2016.pdf

The purpose of this report is to monitor the court decisions of the DC Korça and Pogradec during the period from 2011 to 2016, as well as the social effects that these decisions have produced in the lives of these individuals. The Observatory aims to further engage the local government institutions and the key stakeholders in a coordinated process to address the phenomenon of underage marriage in a national scale

vii. METHODOLOGY

A monitoring of the court decisions of DC Korça and Pogradec during the period from 2011 to 2016 was conducted within the framework of the implementation of the project "Prevention of early marriages by applying legal mechanisms and social perception as a tool for empowering women and girls (PREVENTION). This project was implemented by the Observatory with the support of CFLI. The subject of the monitored decisions is the 'requests to enter into underage marriage.' During the abovementioned period, DC Korça ruled 20 decisions in favor of underage marriage and 1 case was dismissed, while in DC Pogradec there were 9 decision in favor of underage marriage and 4 case were dismissed.

In methodological terms, the realization of this monitoring included several key step, such as:

- Identification of the courts and establishing contacts with them: as mentioned before, the monitoring was focused in DC Korça and DC Pogradec;
- Identification of the 'macro' situation related to the binding of underage marriages through piloting the total requests submitted for the period from 2011 to 2016;
- Preparation of the tables with data relevant to the monitoring according to the subject of the monitored court cases ;
- Instruction of the monitors and the work with the decisions on the field;
- Obtaining electronic copies of the decisions;
- Elaboration of the data;
- Compilation of the report with the relevant analysis and recommendations.

viii. SHORT NOTE ON THE LEGAL FRAMEWORK AND THE INTERNATIONAL STANDARDS RELATED TO ‘UNDERAGE MARRIAGE’

The right to marry and the right to have a family are part of the fundamental human rights. The fulfillment of this right has however its own legal limitations. One of them is reaching adulthood [see Article 7 of the FC]. Other limitations include lack of free consent [Article 8 of FC]; existing marriage if a new marriage is requested; serious mental illness or mental underdevelopment, such that makes the person incapable of understanding the purpose of marriage, etc. [see Articles 7 to 14 of FC]. All the cases, including underage marriage or marriage without free consent make the bound marriage void. The FC [2003] provides the same conditions and obstacles to marriage for both future spouses. Also, it does not contain any discriminating provision regarding the age for marriage.

But, while free consent for example does not know any legal compromise and remains in any case to the will of the spouses to be verified, age is an objective criterion and as such it is completely ‘measurable’ or verifiable by both the civil registrar and the Court if a request to enter into marriage before the age of 18 is submitted. Under Article 7 of the Family Code: “Marriage can be concluded between a man and a woman who are 18 years or older. The court in the location where the marriage is to be concluded may, for sufficient reasons, allow marriage prior to this age.”

The phenomenon of child marriage is among the most frequently discussed issues in the Concluding Observations of the CRC Committee and the CEDAW Committee in their dialogue with the countries party of these instruments. Through their jurisprudence related to child marriage, both committees emphasize the complementary and mutually reinforcing features of both Conventions regarding the age for marriage. While the CRC does not specifically prohibit child marriage, but it clearly stipulates the adult age of 18 years, CEDAW categorically considers the marriage of children *ab initio* invalid. Underage marriages negatively affect the fulfillment of a series of rights of this age group, such as the right to education and training, development, entertainments, etc.

When a minor seeks to enter into underage marriage, this situation is not a competence of the civil registrar. In these exceptional cases, the Court has a special role. While it is aware of the minor age of the applicant, the Court needs to stop and consider how important is the cause presented or claimed to allow the binding of underage marriage compared to the violation of the legal obligation of the age for marriage. Case by case, the Court must verify whether or not the important causes stand and according to the case, it may or may not allow the marriage. In this case, the Court undertakes an important role.

² See also the Convention on the Rights of the Child, Article 19

³ CEDAW Convention, Article 16:1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: [...] (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; [...] The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

In cases of permission of underage marriages, the ‘burden falls’ on the Court to understand:

- How real are the important causes claimed for the binding of underage marriage versus the risk of violating the equality and non-discrimination standards, as well as the violation of the principle on age for marriage;
- What are the chances of continuing to legalize through the Court the custom or tradition of marriages without free consent or ‘arranged or match made’ marriages or forced marriages;
- Does the free consent of the minor exist;
- Does the juvenile understand what marriage is? What effects it has on his or her rights, etc.

The arranged marriage or those with mediation (matchmaking) are still evident in Albania and this is the reason why in such cases, the Court should take into account the risks that this kind of marriage poses to the principle of ‘free consent.’ In some areas of the country, the customs and traditions of the past still have a greater impact.

What can be noticed from the monitoring of the judicial practice and the analysis of the decisions related to the permission to enter into underage marriage is that there isn’t a case when the request to enter into underage marriage ‘was applied for a man.’ We also found that there is no case of rejection of the request to enter into underage marriage. In this way, it looks like the important causes are related only to a specific sex and they lead to the old rule of age differences in marriage. However, what we must admit, for the two districts that we analyzed at least, is that the trend shows a reduction of the number of such requests.

The right to choose a spouse and to freely enter into marriage is important for the life, dignity and equality between the man and the woman.

The younger the age is the more limited is the freedom to decide and the more possible is the imposition or constraint to marry. In its role, the Court controls and protects the marriage as an institution, but it also protects the rights of the child requesting to enter into underage marriage. According to the Constitution of RoA and the provisions of the FC, both marriage and children are entitled to special protection by the state. The Court that allows underage marriage is ‘interfering’ in the realization of the act of marriage, but it cannot be that superficial as to not see beyond this act. The guarantee of marriage as an institution is an important duty which in this case the law has delegated to the Court that gives the permission based on a thorough analysis of the important causes compared to the best interest of the minor and the meaning of marriage.

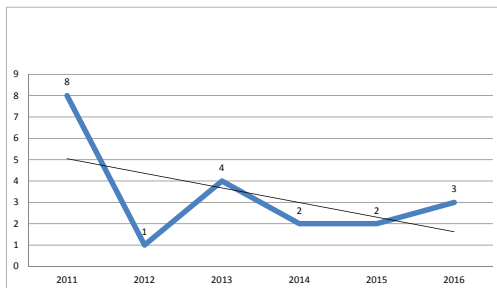
The Convention of the Council of Europe known as the Istanbul Convention “On preventing and combating violence against women and domestic violence” contains three important articles that need to be kept in mind especially in cases of underage marriages .

⁴ Article 32 – Civil consequences of forced marriages: Parties shall take the necessary legislative or other measures to ensure that marriages concluded under force may be voidable, annulled or dissolved without undue financial or administrative burden placed on the victim; Article 59 – Residence status: 4. Parties shall take the necessary legislative or other measures to ensure that victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, may regain this status; Article 37 – Forced marriage: 1. Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalized. 2. Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of luring an adult or a child to the territory of a Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage is criminalized.

I - LEGAL ANALYSIS OF THE COURT DECISIONS

1. THE MAIN FINDINGS OF THE MONITORING OF COURT DECISIONS OF DC KORÇA AND POGRADEEC WITH SUBJECT 'UNDERAGE MARRIAGES' FOR THE PERIOD FROM 2011 TO 2016

1.1 General information related to the cases with subject "permit to enter underage marriage"

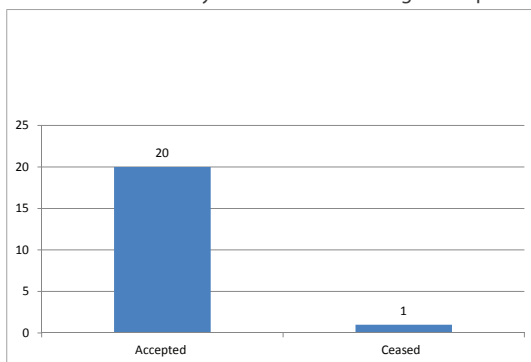


Graph 1: Cases received for the period from 2011 to 2016 in the DC of Korça

During the period from 2011 to 2016, 22 requests were filed at DC Korça for 'permission to enter into underage marriage'. Of these, 20 requests were accepted, only 1 [one] case was dismissed, and 1 [one] was returned because of shortcomings. This Court hasn't rejected any case. This means that the Court has found important reasons in each of the presented requests and has therefore permitted the underage marriage.

The second table/chart shows the number of requests for permission to enter into underage marriage according to the years monitored by the Observatory, so from 2011 to 2016. As it can be seen, the highest number of requests in DC Korça is in 2011 with 8 requests. The graphical representation shows the trend of the requests in this Court during the monitored period [respectively, the dotted line]. According to the Court records, this is a downward trend. There is a decision among the decisions administered by DC Korça in which this Court has decided to dismiss the case and the inspection of the decisions of this Court shows that the applicant did not file another request for permission to enter into underage marriage until December 2016.

The decision bears the date 23 September 2015 and the applicant's date of birth is 27 June 2002, which means that she celebrated her 13th birthday 3 months before filing the request.

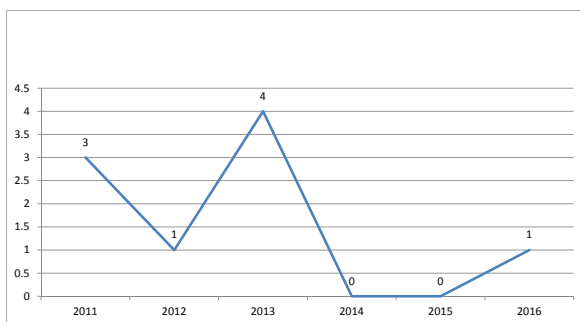


Graph 2: Cases accepted versus those dismissed from 2011 to 2016 in the DC Korça

⁵ The applicant has not set its address so the court can make the notification for hearings.

⁶ Decision no. 1630/23.09.2015 of the DC Korça

There is a total of 13 requests filed in the DC Pogradec for permission to enter into underage marriage of which 9 were accepted and 4 cases were dismissed. This Court too hasn't rejected any request. We notice from the decision administered during the monitoring that of the 4 dismissed cases 2 of them refiled the request for permission to enter into underage marriage. It seems that the parties did not withdraw from their goal. It would be of interest to research and understand the real causes that led to the dismissal of the first decision and what encouraged the repetition of the request. But, the content of the decision was not helpful for this. Even this finding was reached through noticing the names of the applicants. As the decisions show, there is a period of 2 to 4 months between the decision to dismiss and the decision to accept the case. Meanwhile, we noticed that both cases that were dismissed and were then reopened through the repetition of the requests were presided by the same judge, which makes the role of the Court in assessing the free consent through a more comprehensive investigation even more important. In one of the decision, the juvenile girl seeks to enter into marriage, because upon finishing high school she wants to continue the studies abroad where her 'fiancée' lives.



Graph 3: Cases received for the period from 2011 to 2016 in the DC of Pogradec

In such cases with subject 'permission to enter into underage marriages', when the case is dismissed and the request is refiled, it would be appropriate for the Court to conduct a more careful investigation of the will of the juvenile girl and the free consent by ensuring hearings to question the juvenile without the presence of relatives that may influence the decision-making.

1.2 Form of request in court: request versus lawsuit

It can be noticed that in all the cases presented to the Court either in DC Korça or DC Pogradec, the Courts were set in motion through the request. The permission to enter into underage marriage is a process carried out without an opposing party. So, it can be noticed that the submission of a request to set the court in motion has been well understood in procedural terms.

1.3 Sex of the person who is the subject of the request to enter underage marriage

In all the Court decisions for the period from 2011 to 2016 in DC Korça or DC Pogradec, the request for permission to enter into underage marriage was made for the future wife and in no case for the future husband. This gives the impression that the exception to the rule on allowing underage marriage is an artifice to lower the age of marriage for women and a return through court decisions to the previous rule regarding the marriage, where women can enter into marriage at the age of 16 and man at the age of 18 [FC 1982]. What continues to be a disturbing problem is that there are cases when marriage is requested and is allowed for juvenile girls under the age of 16.

⁷ See the Decision no. 715/27.6.2011 which dismisses the case and the Decision no. 1013/12.10.2011 which rules to allow the binding of underage marriage for the same juvenile. See also the Decision no. 1026/25.10.2013 which ruled to dismiss the case and Decision no. 1213/26.12.2013 which rules to allow the binding of underage marriage for the same juvenile and the important cause is the continuation of studies upon completion of high school.

1.4 The applicant of the permission to enter into underage marriage. The relationship between the applicant of the request and the minor in cases when the request is not submitted by the minor: active legitimization

In DC Korça, the request in 18 cases out of the 20 cases accepted by this Court was filed by the juvenile girl and in 2 of them the applicant was an adult who claimed to be the future husband of the juvenile girl. The applicant in the dismissed cases was also a juvenile girl and the case was returned due to flaws.

In DC Pogradec, the applicant in all the requests for permission to enter into underage marriage - a total of 13 requests including the decisions to dismiss the request - was the juvenile girl.

The cases of active legitimization of the juvenile requesting to enter into underage marriage are an exception to the general rule of the Code of Civil Procedure. So, as in the 18 cases in DC Korça and the 13 cases in DC Pogradec, the Court is set in motion by the concerned party itself, which seeks to enter into underage marriage. This position of the law and judicial practice is fully justified if the permission to enter into marriage is in question. Given that marriage is a personal act, representation in court would not be correct. Since there are no binding of marriage with representation in front of the civil registrar, the same is true for the submission of the request in Court. In order to permit the bidding of underage marriage, the Court must personally evaluate the minor, the free consent and the cause that is important to that juvenile. The Court does not in general make the evaluation of those things that constitute 'cause of importance' for the bidding of marriage, but sees them in relation to the minor, his or her physical and psychological maturity, free consent, willingness to undertake the responsibilities of marriage, etc.

So, the binding of underage marriage invests the Court as an authority that evaluates case by case the cause as well as other conditions and restrictions provided in the FC related to the binding of marriage of that minor that has filed the request.

According to the FC, the parent has the right to object to the marriage. Then, this is one more reason for the parent to not be actively legitimated to request permission for the marriage of the child in capacity of the person exercising the parental responsibility.

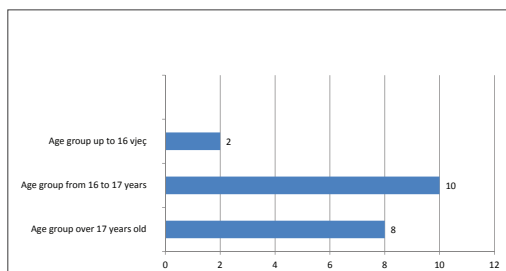
Likewise, the future husband cannot address the court only by himself to seek the binding of marriage with the minor, even if he is an adult. In Decision no. 1288/30.05.2013, the applicant is precisely the pretender for future husband, while the juvenile girl for whom the request for marriage is filed is summoned as a third party. Also, this decision shows that the father of the minor girl was present at the hearing. The judicial practice has known cases of coercion or obligation to marry and in order to avoid any risk as well as to eliminate the violation of the rights of the minor, it is necessary for the minor for who the permission to enter into marriage is being assessed by the Court to personally appear in capacity of applicant.

In one of the decisions of DC Korça where the request for permission to enter into underage marriage was done by the future husband, it is not clear whether the juvenile girl has appeared and has been questioned by the Court. This is the Decision No. 2443/26.10.2011 which quotes that the juvenile girl was interviewed in the presence of the psychologist called by the Court with the aim of questioning the juvenile on this request. Meanwhile, the court has mentioned the existence of free consent of the future husband on this case, which undoubtedly has its own importance, but it can in no case substitute the evaluation of the juvenile girl by the court. So, the Court decisions should clearly express the care for the juvenile girl. Does the juvenile understand the request that she has submitted and the change that is brings to her life? Does she understand the process?

⁴See Decision no. 2443/26.10.2011 and Decision no. 1288/30.5.2013 of the DC Korça.3 i GjRrGj Korçë.

It doesn't actually seem right to call the juvenile girl in capacity of third person when in fact the entire process from the beginning to the end is about her. The provisions of the Code of Civil Procedure regarding the participation of third persons in civil proceedings come to aid on this matter in order to understand that the juvenile girl can never have that procedural position. In one of these cases, the child is only 15 years and less than 2 months and in another case 16 years and 5 months. So, her autonomy, called as third party is almost non-existent. It is always the father who gives the consent and her future husband, but she herself doesn't seem to be a protagonist in her marriage.

1.5 Age of the person for whom the request is filed and a decision is issued to enter into underage marriage



Graph 4: Age group of the juvenile girl according to the decisions of the DC Korça, 2011-2016

The matter in any case is about juvenile girls under the age of 18. In addition to the position of the Court, the age of the juvenile girl helps us to understand the attitude of the society in general. So, is there a social concept beyond which a request for permission to enter into underage marriage cannot be made? Given that we are dealing with the sensitive limits of age, the following table helps us to better understand the age group of the juvenile for who the permission for underage marriage is requested.

As it can be seen, the highest number in DC Korça is for the age group from 16 to 17 years old with 10 cases, followed by the age group over 17 years with 8 cases. There are only 2 decisions that allow underage marriage for a 16-year-old mother. The juvenile girl in one of the cases is a member of the Roma community and the decision represents the tradition of this community to enter into under marriage below the limits permitted by the law.

DC Korça		
Age group up to 16 years old - 2 case	Age group from 16 to 17 years old - 10 cases	Age group over 17 years old - 8 cases
[1] 15 years and 10 months; [2] 15 years 1 month and 20 days;	[1] 16 years 5 months and 19 days; [2] 16 years 10 months 16 days; [3] 16 years 5 months and 13 days; [4] 16 years 7 months and 8 days; [5] 16 years and 2 months; [6] 16 years 5 months and 17 days; [7] 16 years 5 months and 7 days; [8] 16 years 10 months and 22 days; [9] 16 years and 26 days; [10] 16 years 1 month and 22 days;	[1] 17 years; [2] 17 years and 1 month; [3] 17 years and 7 months; [4] 17 years 5 months and 24 days; [5] 17 years 2 months and 5 days; [6] 17 years 5 months and 20 days; [7] 17 years 5 months and 21 days; [8] 17 years 2 months and 25 days;

Table 1: Cases by age groups of minor girls according to the decisions of the DC Korça, 2011-2016

⁹ See Decision no. 2443/26.10.2011 of the DC Korça.

In DC Pogradec, the largest number of requests is that for the age group over 17 years old with 4 cases, followed by the age group over 16 years with 3 cases. There are only 2 decisions that allow underage marriage to a 16-year-old mother.

DC Pogradec		
Age group up to 16 years old - 2 case	Age group from 16 to 17 years old - 3 cases	Age group over 17 years old - 4 cases
[1] 15 years and 4 months; [2] 15 years and 6 months;	[1] 16 years and 5 months; [2] 16 years and 6 months; [3] 16 years and 11 months.	[1] 17 years and 3 months; [2] 17 years and 3 months; [3] 17 years 6 months; [4] 17 years and 2 months;

Table 2: Cases by age groups of minor girls according to the decisions of the DC Pogradec 2011-2016

As it can be seen, the Court also receives requests to permit underage marriage for juvenile girls under 16. It is true that the provisions of the FC do not provide a minimum age below which marriage cannot be allowed even by court decision, but the Court has all the discretion and it should exercise the utmost care in cases of such requests and we would recommended the special treatment of such requests by involving also the local authorities dealing with the protection of the rights of the child in order to raise awareness and to prevent marriages at an early age.

1.6 Education of the person for whom the request is filed and a decision is issued to enter into underage marriage

This data cannot be clearly understood in all the decisions monitored for DC Korça. So, of the 20 decisions accepted only 3 of them have data about the education of the person for whom the permission for underage marriage is being requested. The decisions are about juvenile girls that have finished primary education in 2 case and 10 years of school in one case.

It would be of interest if this information was provided in all the judicial decisions. This would allow the formulation of conclusions regarding the right to education and the impact of the marriage. Also, it would be of interest to know if there are cases of requests to permit underage marriage for minors without any education. Underage marriages negatively affect the realization of the other rights in this age group and the right to education and training is one of them

Regarding the DC Pogradec, information regarding the education of the person for whom the permission for underage marriage is being requested is provided in only 1 case out of 9 decisions. In this case, the child was attending the secondary education.

In Paragraph 30 of the Concluding Observations of the CEDAW Committee in 2010 and again in paragraph 20 and 21 of the Concluding Observations of the CEDAW Committee in 2016 for Albania, the Committee expresses its concern about the high number of school drop-outs, especially in secondary level, due to early marriages, too, child marriages, the choice of husband by the family and payment of a price or dowry for the bride, a phenomenon that is prevalent in rural and remote areas and among small communities. This should attract the attention of the Albanian judiciary for the cases when permission for underage marriage is requested, which has a negative impact on the girls' education. In this way, the education of the juvenile seeking to enter into underage marriage should not only be reflected in the court decisions, but it should also be in the focus of the Court regarding the realization of this right when the permission to enter into underage marriage is given.

Referring to the General Recommendation no. 31 of the CEDAW Committee and the General Comment no. 18 of the Committee on the Rights of the Child on harmful practices (2014), the CEDAW Committee also recommends to our country to stop all harmful practices, including child marriage, the practice of families who choose husband for their daughter, etc.

1.7 Residence of the minor or of the adult applicant in cases of permission to enter into underage marriage

The decisions monitored in DC Korça show that there is a balanced percentage regarding the residence of the person for who the permission to enter into underage marriage is being requested. Thus, in 10 cases the residence of the juvenile girl is in rural areas and in 10 cases in urban areas. Regarding the adult applicants, there are 2 decision out of a total of 20 total, which show that the applicant is the pretender for husband and resides in Korça. Also, the data of the decision show his status to be bachelor.

In the DC Korça, there are 5 case or 25% of the cases accepted in this Court in which the contenders for future spouse live abroad. So:

- In one case, the residence of the person is in Italy ;
- In 2 cases the residence is in Greece ;
- In 2 cases the residence is in Macedonia

According to the decisions monitored in the DC Pogradec, as highlighted above, the applicant in all the cases was the juvenile girl herself. Regarding the residence of the juvenile applicant, the Court decisions show a ratio of 6 to 3 in favor of residence in 'village.' therefore, most of the requests to permit underage marriages are made for juvenile girls residing in rural areas. Regarding the residence of the person with whom the juvenile wants to enter into marriage, in at least 2 cases, he lives abroad, respectively in Italy and Germany .

In Pogradec DC, of the 6 cases of minor girls residing in the countryside, in 4 cases the contender for spouse lives in the village. In one case the residence of the contender for spouse is not shown and in 1 case of the juvenile residing in the village, the contender for spouse lives in Germany.

In DC Pogradec, of the three cases of minors residing in the city, the future husband lives in the city in 2 cases and in one case he has residence papers in Italy. In 1 case of the juvenile residing in the city, the future husband lives in the village.

We considered the influence of the residence of the future husband important in encouraging the binding of these marriages. Because, when marriage requires the relocation abroad, the carefulness of the Court for the juvenile girl should be greater. The Convention of the Council of Europe known as the Istanbul Convention "On preventing and combating violence against women and domestic violence," specifically Article 32 on the civil consequences of forced marriage and article 37 on forced marriage requires the state parties to be careful and to take all measures to avoid forced marriage and the nullity of these marriages.

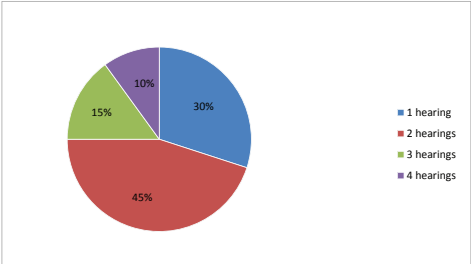
¹⁰ See Decision no. 31/07.01.2011 of the DC Korça

¹¹ See Decision no. 1461/07.09.2016 and Decision no. 2673/14.11.2011 of the DC Korça

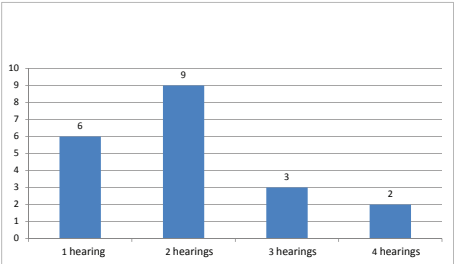
¹² See Decision no. 2163/03.10.2011 and Decision no. 2208/21.12.2015 of the DC Korça

¹³ See Decision no. 59/23.03.2016 for the residence in Italy and Decision no. 652/26.12.2013 for the residence in Germany of the DC Pogradec

1.8 The number of hearings and duration of the court proceeding



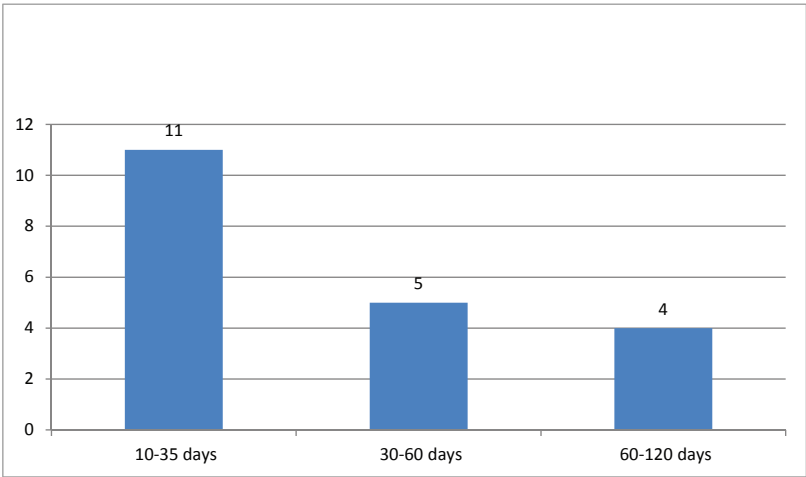
Graph 5: Percentage of court hearings for the 20 cases monitored in the DC Korça



Graph 6: Number of court hearings for the 20 cases monitored in the DC Korça

The time of submission of the request to permit underage marriage is another data drawn from the monitoring of the judicial decisions.

Generally, the trials for requests to permit the binding of underage marriage are conducted in a few hearings. Thus, in the 20 cases monitored in DC Korça, for 9 requests or 45% of them only 2 hearings were held; for 6 requests or 30% of the cases only one hearing was enough. So, in other words, 75% of the requests were evaluated within 1 to 2 hearings. The decision for the rest of the requests, i.e. 25% or 5 cases, was taken within 3 or 4 hearings. For more details see the attached tables.



Graph 7: Development of trials for the permission to enter into marriage calculated in days. The case of the DC Korça

The Observatory monitored not only the number of hearings, but the duration in day of the trials with this subject. We noticed that in about 12 cases the trial lasted from a minimum of 10 days to a maximum of 35 days.

In 4 cases, the duration of the trial varies from 36 to 60 days and 4 cases of the trial lasted up to 120 days.

The number of hearings and the duration of the proceedings do not coincide in all the cases. The two adjacent tables help us understand this aspect, where the connection between the hearings and days of trials is apparent according to the cases [20 in Korça and 9 in Pogradec]. For example, the cases with 1 hearing in DC Korça have a duration starting from 15 days to 1 month and 20 days, as the cases carried out in 2 hearings have a duration of even 10 days.

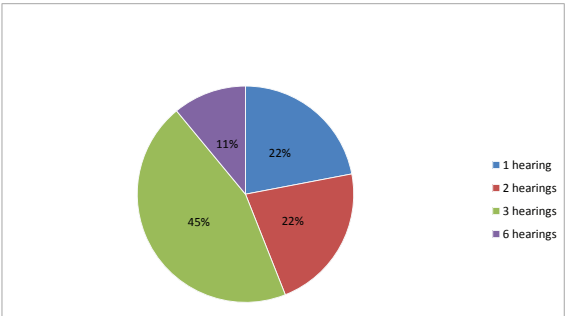
As pertaining to the DC Pogradec, of the 9 decisions about 45% of them or 4 case were carried out in 3 hearings; only 1 case was reviewed in 6 hearings; 2 cases were carried out in 2 hearings, and 2 other cases were concluded with 1 hearing.

DC Korça	
Hearings	Duration
3	1 month and 20 days
1	27 days
1	15 days
1	15 days
2	26 days
3	1 month and 5 days
1	1 month and 12 days
1	17 days
2	1 month
2	1 month and 4 days
3	1 month and 13 days
2	10 days
2	2 months and 7 days
2	22 days
2	19 days
4	2 months and 22 days
4	3 months and 4 days
2	4 months and 3 days
2	1 month and 4 days
1	1 month and 20 days

Table 3: Duration of trials in the decisions of the DC Korça, 2011-2016

DC Pogradec	
Hearings	Duration
3	23 days
1	19 days
2	2 months and 19 days
1	18 days
2	20 days
3	1 month and 7 days
3	1 month and 21 days
3	1 muaj 8 ditë
6	3 months

Table 4: Duration of trials in the decisions of the DC Pogradec 2011-2016



Graph 8: The number of court hearings for the 9 cases monitored in the DC Pogradec

2. THE PARTICIPANTS IN THE PROCESS

2.1 The civil registration office and the adult with whom the marriage is being bound

The decisions of the DC Korça monitored for the period 2011 to 2016 show that the Civil Registration Office was called as a third party in only 6 cases out of the 20 decision accepted to allow the marriage. In all these cases, it turns out that the Civil Registration Offices have received a regular notice to appear in Court through summonses. However, it turns out that in 6 cases, the Civil Registration Offices (Pirg, Vreshtas, Bulgarec and Korça) were not present. Meanwhile, in 12 cases out of the 20 decisions accepted to allow marriage, the contender for future spouse has been a third party.

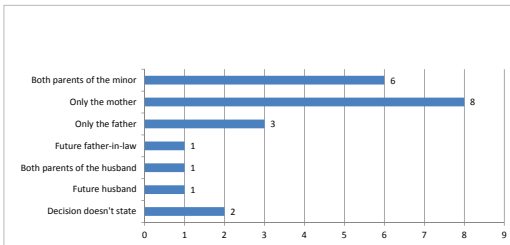
According to the decisions monitored in the DC Pogradec for the period from 2011 to 16, the Civil Registration Office was not called as a third party in any of the 9 cases accepted to allow marriage. Meanwhile, in 5 cases out of the 9 decisions accepted to allow the marriage, the contender for future spouse has been third party

2.2 Role/participation of the psychologist

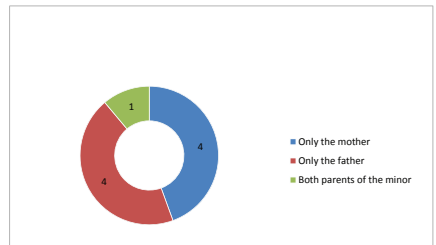
The 20 decisions of DC Korça for the period from 2011 to 2016 show that in 12 cases the psychological evaluation of the minor was not carried out. In 2 decisions, it is not clear whether or not a psychological evaluation was carried out. For the rest of the decisions of this Court, so, in 6 decisions, the role of the psychologist and the psychological evaluation of the minor carried out by him or her is clearly reflected

The 9 decisions in the DC Pogradec for the period from 2011 to 2016 show that the psychological evaluation of the minor was done in 100% of the cases.

2.3 Role of the parents and the accompaniment of the minor in Court by other adults



Graph 9: Accompaniment of the minor in Court according to the decisions of the DC Korce, 2011-2016



Graph 10: Accompaniment of the juvenile girl in Court in the decisions of the DC Pogradec, 2011-2016

According to the data monitored for the decisions of the DC Korça, it turns out that in 50% of the cases the juvenile girls were accompanied by their mothers. These constitute also the majority of cases in this Court. In 30% of the cases the juvenile girl was accompanied by both parents, while in 10% of the cases only by the father. However, there is a decision where the minor girl was accompanied by other adults, such as the parents of the future husband, as well as one case in which the decision does not state whether the minor girl was accompanied by the parents or the pretender for future husband .

In the 9 decisions of the DC Pogradec ruled during the period 2011-16 to allow the underage marriage, we notice that in 44.5% of the cases the minor girl was accompanied only by the mother and the same is the number of accompaniments by the father. In 11% of the cases both parents were present.

2.4 Presence of legal counsel/Attorney

Of the 20 decision of the DC Korça, it turns out that 8 of them have representation by lawyer while in 10 cases there is no representation by lawyer. Information about the legal counselor could not be obtained in two decisions ruled.

Of the 9 decisions of the DC Pogradec, 4 of them have representation with lawyer, while the rest, so 5 cases, were carried out without representation of the lawyer

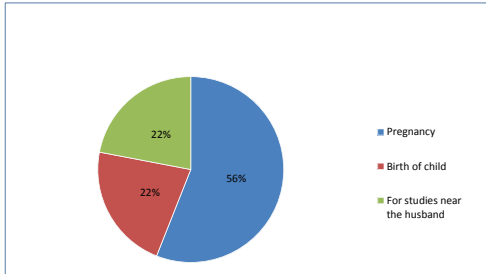
It cannot be verified whether the minors are aware of the practice of accessing the Court through free legal counsel.

¹⁴See Decision no. 1428/07.06.2011 of the DC Korça

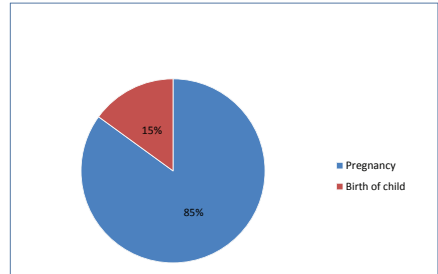
3. SUMMARY OF THE JUDICIAL DECISIONS

3.1 The cause with importance according to the request versus the cause with importance according to the court decision

According to the decision of the Court, pregnancy and the birth of a child have been considered as the causes with importance. In this way, the DC Korça has decided to allow the binding of marriage under the legal age where the main cause is either the pregnancy [in 17 cases] or the birth of a child [in 3 cases].



Graph 11: The cause with importance in the decisions of the DC Pogradec, 2011-2016



Graph 12: The cause with importance in the decisions of the DC Korça, 2011-2016

As pertaining to the cause with importance reflected in the request submitted to the Court, we notice that for DC Korça the same causes are found also in the request submitted by the parties.

For the DC Pogradec, in addition to the birth of a child [2 decisions] and pregnancy [5 decisions] we see another cause that we haven't come across earlier [in 2 other decisions]: 'to continue tertiary education abroad, respectively in Italy and in Germany, since the 'fiancée' is there.

3.2 Evaluation of the higher interest of the child in the decision of the court

In the DC Korça, the Court has made a statement about the principle of the best interest of the child in only 14 decisions or 70% of the total decisions of this Court. Such analysis cannot be found in the other 6 decisions of this Court. The DC Pogradec has made an evaluation regarding the principle of the best interest of the child in all its decisions.

3.3 Evaluation of physical and psychological maturity of the minor

In 11 decisions, the DC Korça has made a statement about the physical and psychological maturity of the juvenile girl for who the Court is ruling to allow the underage marriage. In 9 other cases such analysis cannot be found. In 3 decisions of the DC Pogradec, the Court has made a statement about the physical and psychological maturity of the juvenile girl

3.4 Evaluation of clear understanding of marriage and readiness of the minor to take responsibility

In 19 decisions of the DC Korça, the Court has made a statement about the evaluation of the juvenile girl regarding the clear understanding of marriage and the readiness of the juvenile to undertake the responsibility. This analysis cannot be found in 1 case.

In the decisions of the DC Pogradec, the Court has made an evaluation on the clear understanding of the marriage by the juvenile girls and how willing is the juvenile to undertake the responsibilities stemming from marriage.

II - SOCIAL ANALYSIS OF THE UNDERAGE MARRIAGES

1. ANALYSIS OF THE FINDINGS WITH SOCIAL ASPECT IN RELATION TO THE UNDER AGE MARRIAGES ALLOWED IN KORÇA AND POGRADEDEC

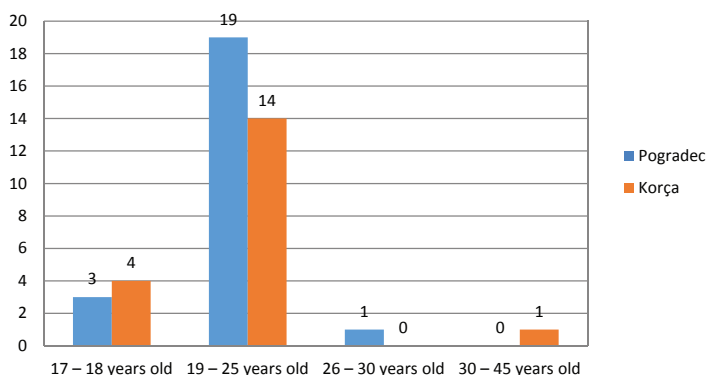
1.1 The demographic characteristics according to the research in Korça dhe Pogradec

49 women

Were interviewed in relation to the initiative undertaken for underage marriage. In Korça, there were 23 women in underage marriage that were interviewed, while in Pogradec the number of respondents was 26. All the interviewed women were married before reaching the age of 18.

1.1.1 Current age of the respondents

The dominant age group of the women married underage is between 19 and 25 years old, representing over 70% of the sample. In Pogradec, this age group constitutes the dominant majority of the respondents, while the age group in Korça seems even younger.



Graph 13: Current age of respondents in December 2016

1.1.2 The age when the respondents were married

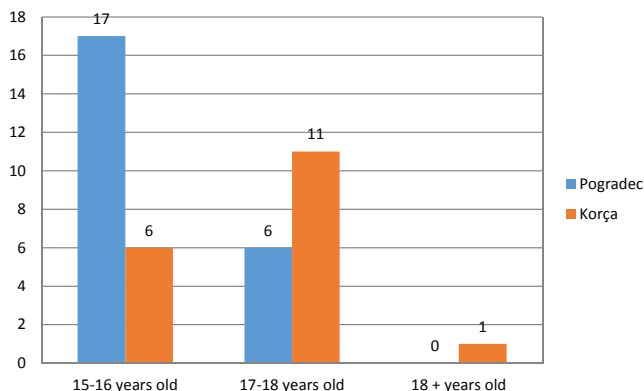
Most of the respondents were married during the age of 16 to 17 years old. This is the dominant age group, with respectively 70% of the cases in Pogradec and 90% of the cases in Korça, or, taken together, 34 cases. The situation is disturbing in 9 cases that belong to the age of 15 years old or under.

Age when you got married	Pogradec	Korça
14 years	1	0
15 years	6	2
16 years	10	10
17 years	6	8

Table 5: Age of marriage of the respondents according to the survey of December 2016

1.1.3 The age when they gave birth to the first child

Most of the women married underage are now mothers. In the sample of Pogradec, in 74% of the cases, the first child was born when the mother was in the age group to 15 to 16 years old. This percentage in Korça is only 33% or six cases. A reversed situation is identified in these two areas about the causality link between marriage and pregnancy. In 78% of the cases in Pogradec, marriage had the birth of the first child, while in Korça this situation is the opposite – in 90% of the cases the marriage occurred before the birth of the first child.



Graph 14: Age when the first child was born according to the survey of December 2016

1.1.4 Current status of the women married underage

In our research we mention with concern the fact that 65% of the women interviewed in Pogradec are already divorced and in 11 cases the divorce happened 5 to 7 years after the marriage. A more solid situation of the state of marriage appears in Korça.

Current legal status:	Pogradec	Korça
Married	30%	95%
Divorced	65%	5%
Widow	4%	0%
Single	0%	5%

Table 6: Status of marriage according to the survey of December 2016

1.1.5 Age difference with the husbands

The age difference of spouses in Korça varies from 3 up to 18 years and the dominant age difference is from 6 to 1 years with 50% of the cases. The age difference of the couple in Pogradec is lower and over 90% of the respondents have an age difference of 1 to 5 years with the husband.

1.1.6 Age of the parents of the respondents

It appears that the parents of the interviewed women are between the ages of 35 to 59. In Pogradec, 60% of the male parents belong to the age of 51 to 60 years old, while in Korça this percentage corresponds to the group of female parents with age 41 to 50 years old.

1. Age of parents (years)	Pogradec	Korça
1.a Mother's age		
40 years old	4	4
50 years old	10	12
60 years old		
70 years old	1	1
1.b Father's age		
40 years old		
50 years old	4	9
60 years old	13	8
70 years old	3	0

Table 7: Age of the parents of the girls in underage marriage according to the survey of December 2016

1.1.7 Type of family

The situation of the respondents shows that the girls in Korça were raised in families with two parents. Only 2 of the respondents in Korça come from families with one parent, while in Pogradec over 50% of the respondents are members of families with one parent or with divorced parents.

Type of family:	Pogradec	Korça	Legal status of the parents	Pogradec	Korça
With both parents	8	17	Single	1	0
With one parent	5	2	Married	11	15
With divorced parents	10	0	Divorced	11	0
With remarried parents	0	0	Widow	0	1

Table 8: Type and status of the families where the respondents were raised - December 2016

1.1.8 Employment status of the parents

Most of the parents of the respondents are unemployed, with over 50% of the cases in Pogradec and over 75% of the cases in Korça. Unemployment is a concerning factor that is also reflected in the employment status of the women married underage.

Are your parents employed:	Pogradec	Korça
Yes	11	5
No	12	15

Table 9: Employment status of the parents of the juveniles in December 2016

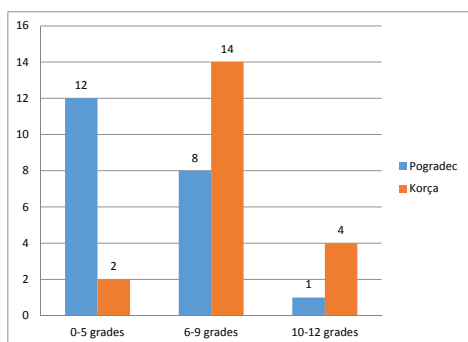
1.1.9 Immigration of parents

The immigration of parents is correlated as an important factor in relation to the underage marriages in Korça where more than half of the parents seems to have been immigrants (in Greece). The migration of parents does not seem to be a very important factor in Pogradec. The country where most of the parents immigrated is Greece with 16 cases in both districts.

1.2 Characteristics of the educational background of underage married women

1.2.1 Level of Education

The women with low level of education dominate the group of respondents in both districts, respectively 91% of the cases in Pogradec and 80% of the cases in Korça. The international data highlight a correlation between the low level of education and underage marriages. The comparison of the level of education between the parents and the respondents shows a very small increase of the number of years spent in education by the respondents compared to their parents. The consistency of the level of education of the respondents to that of their parents may be significant and explanatory for the causality of the marriage before the allowed age.



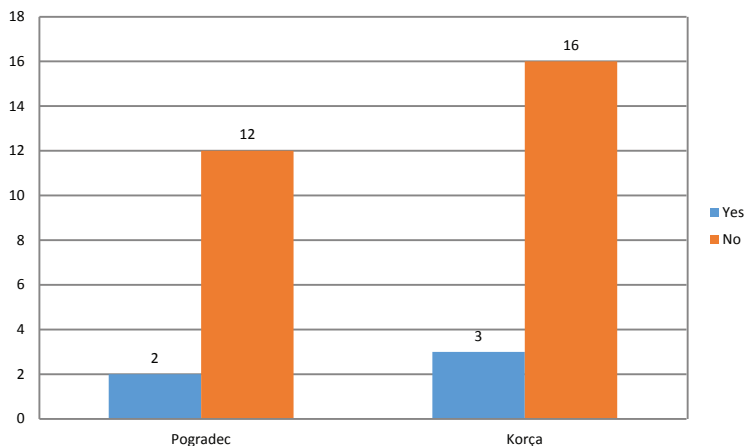
Graph 15: Level of education of respondents in December 2016

Parents' level of education:	Pogradec	Korça
Without education	2	2
Elementary	18	6
Primary	1	7
Secondary	2	2
Tertiary	0	1

Table 10: Parent's education in December 2016

1.2.2 School achievements and scores

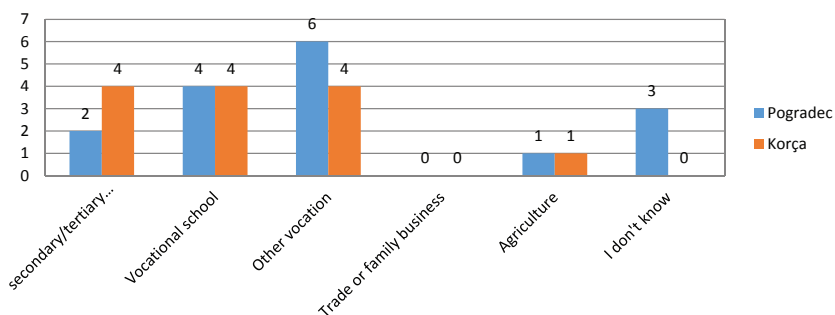
Most of the respondents say that they have average or poor scores in school. In Korça, both the respondents with average scores and those with poor scores make up 37% of the surveyed group, respectively. In Pogradec, the number of those with poor results in school reaches 41%, but it is worth mentioning once again the very low degree of school attendance. Also, as the following chart shows, the majority of the respondents did not return to school after they gave birth to the first child.



Graph 16: Education after childbirth– December 2016

1.2.3 Professional inclination

According to the conducted research, most of the women in this situation do not work outside the house. In Korça, there is only one case where someone works outside the house; while in Pogradec 75% of the women are not employed outside the house. As the following chart shows, the distribution of interest after motherhood is not clear at all. Silently, these numbers are alarming, but they should be considered in national scale in order to develop adequate and appropriate strategies to correct this situation.



Graph 17: Lack of professional inclinations according to the questionnaires in December 2016

1.3 Family life and social status of women married under age

1.3.1 Living together with the husband's parents

Meanwhile, in half of the interviewed cases, the families originating from underage marriages live together with the husband's parents. Also, it appears that the families created due to the underage marriage live together with the parents of the husband's family for a period of at least two years after the birth of the first child. Our results show that the families created by the underage marriage live economically separate after the fifth year of marriage. These data require more in-depth studies by the institutions in order to better understand the dynamic of the Albanian 'large' family during the last decade.

Number of years that you have lived with the family of the husband before giving birth to the child	Pogradec	Korça
0 - 1 year	7	6
2 - 5 years	6	5
5+ years	1	0

Table 11: Years of living with the family of the husband according to the questionnaire of December 2016

1.3.2 Number of children

The families that dominate in Pogradec are those with one or two children, while in Korça the dominant families are those with one child. This trend shows that even this type of families are moving towards the concept of the nuclear family.

How many children did you gave birth to after the first child?	Pogradec	Korça
	5	10
1	9	6
2	7	0
3	0	0
4	1	0

Table 12: Number of children born after the first one according to the questionnaire of December 2016

1.3.3 Health condition of the children

The information that we received from the respondents when asked to evaluated the health condition of their children was positive in all the cases in Korça and the dominant majority of cases in Pogradec. This can also be seen in the following table. We can note 5 cases of children in Pogradec the health condition of whom appears bad.

What is the health condition of the child/children?	Pogradec	Korça
Very good	0	14
Good	17	3
Poor	5	0
Very bad	0	0

Table 13: Health condition of the children according to the evaluation of the mothers in the questionnaire of December 2016

1.3.4 1.3.4 Family status of the respondents after the birth of the first child

We have also tried through this report to shed light on the attitude towards the birth of female children and the connection between the number of abortions and the sex of the child. The highest number of abortions and problems because the child that was born was a female appear in Pogradec. In this district, the new mothers have faced problems due to the sex of the newborn in 7 cases of birth or 31% of them. Meanwhile, the number of reported abortions is 8 cases or 35% of the cases. In a very brave manner, the women that we interviewed answered to the questions related to the coercion to carry out the abortion. In order to keep the confidentiality, we did not make any further questions about the abortion, but the situation in Pogradec represents another concern, where the consciousness must be raised more about this cases and about raising awareness on general equality.

If you have given birth to a girl, did you have any problems?	Pogradec	Korça
Yes	7	0
No	15	11
Were you forced to abort the first child	Pogradec	Korça
Yes	8	1
No	15	16

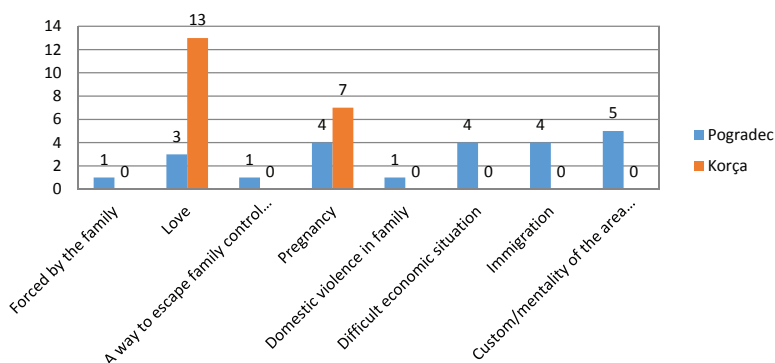
Table 14: Problems arising from the gender according to the questionnaire of December 2016

1.3.5 Raising the child

Relatives and family members help the underage mothers in the process of raising the child. There are very few cases where they are supported by health and education institutions (nurseries), only 3 cases in Korça, because most of them are not employed outside the house.

1.4 Reasons of underage marriages and the legal binding

Most of the respondents answer that the main reason for the underage marriage is related to falling in love, 37% of the cases or 16 cases. Also, we notice that some of them mention the poverty and the difficult economic situation as secondary causes. The mentality and cultural customs must also pay a role in the decision to marry too early, a situation that is the opposite of the national date which report an increase of the age of marriage for both sexes.



Graph 18: Causes of underage marriage according to the questionnaire of December 2016

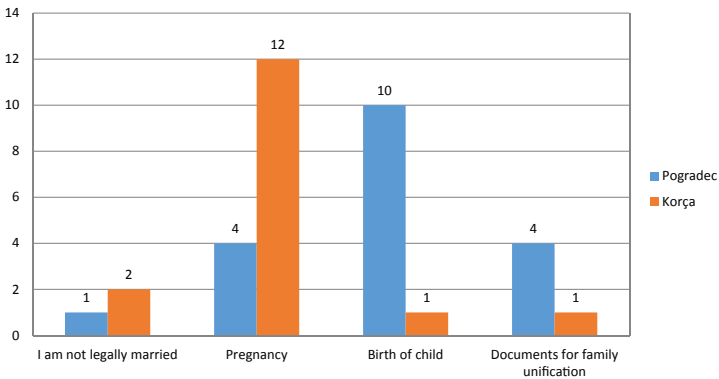
The women married under age were often at a loss about the questions related to the legal status and their rights after the legal emancipation due to the marriage. Even though violence or coercion was not exercised during the marriage process in Court, the majority of the women displayed intense emotions during the interviewing process and violence was also mentioned in at least six cases.

Did the respondent display signs of emotional distress?	Pogradec	Korça
Yes	17	0
No	6	20
Was she physically harmed or attacked?	Pogradec	Korça
Yes	5	1
No	18	19

Table 15: State during the interview in December 2016

1.5 The cause with importance of the decision of the Court

The data of the underage marriages in this report show that this is phenomenon is an undercurrent with opposite direction, which is becoming stronger and as such it deserves the attention of the society and the policymakers. Pregnancy as well as the birth of a child are seen as a justification to allow the underage marriage. 5 cases must also be highlighter (4 in Pogradec and 1 in Korça) where the Court legitimized the marriage on the grounds of completion of the papers for family unification, while the husband lived abroad.



Graph 19: The cause for allowing the marriage according to December

2. MAIN CONCERNS ABOUT UNDERAGE MARRIAGES

This study has identified a good part of the concerns which were also outlined in the study "The disillusion of happiness of early marriage: Case studies for the early marriage in Korça and Vlora" which was conducted in January 2016 and which are:

1. Underage marriages in Albania continue to be considered a traditional practice and as such they continue to be present in the country.
2. Young women are made to believe that the economic security and the 'comfortable life' that is being offered to them are the main factors that will ensure a happy life for them, especially when the bridegroom is an immigrant. They are not forced to marry men who are strangers to them, but it is clear that the consent of the parties involved in the marriage or co-living was given due to the family pressure or sometimes even by law enforcement, especially in the cases where underage marriage comes as a result of unplanned pregnancy.
3. The transition towards a more open society is not accompanied by safety measures, especially in terms of family planning and sexual education. As soon as the pregnancy or the relation becomes public, the marriage is regarded as a golden solution even in the face of the pressure to the girls to consent to marriage or co-living. In such a case, there is a tendency to not consider the marriage as a corrupt and illegal practice.
4. The women married under age do not return to school and most of them haven't thought of having a professional life, especially after the birth, committing themselves only to the family and the home environment.
5. The community itself acknowledges this phenomenon and schools and other social institutions do not seem prepared to address the issue of underage marriage, such as their prevention and the process of reintegration of women married under age.
6. The matter of underage marriages doesn't seem to have received the proper attention from the government stakeholders, because it doesn't seem to be part of any strategy.
7. The awareness and education on the phenomenon of underage marriage is not achieved at the right measure by the civil society and women's organizations. This awareness must be achieved through cooperation with local authorities.
8. The media lacks sensitivity and critical awareness in addressing the matters related to the sexuality of children and underage marriages. The need to train them and to raise awareness among them about the reporting of these issues is essential.
9. Underage marriages for immigration purposes are considered an important step in starting a happy and comfortable life for the juvenile girl, but it often happens that they become dramatic and turn into sexual abuse and exploitation.

III. SUMMARY OF THE KEY RECOMMENDATIONS

Following we are listing some of the recommendations that we consider that the Court should keep in mind in cases of permission to enter into underage marriage.

- For the Court, keeping the interest of the minor in mind should be the main consideration and this special care needs to be reflected in the content of the decision as clearly as possible through the specific analysis according to the case.
- Only the minor seeking to enter into underage marriage is the one that is actively legitimated to make the request.
- According to the FC, the parent has the right to object the marriage. Under these conditions, he cannot be the one to act on behalf of the minor and he cannot request permission for the marriage of the child in capacity of the person exercising the parental responsibility.
- The Albanian legislation does not recognize the acceptance or consent of the parents as an obligation for biding underage marriage. Being that the parent has the right to object to the marriage, the evaluation of their opinion by the Court should be done in comparison with the interest of the child and to understand the degree of influence that the parents have on the violation of free will
- The future husband cannot be actively legitimated in the permission to enter into underage marriage. This is a subject that must be necessarily summoned in the process in quality of third party.
- A very important principle that should be kept in control by the Court is the autonomy of the will of the minor requesting permit to enter into underage marriage. In order to evaluate this will, the minor should be personally present throughout the entire process. The Court should guarantee the right of the minor to be heard and informed. The Court should keep in mind that the younger the age of the person the easier it is to manipulate the minor to enter into marriage without free consent.
- The Court that is invested in allowing underage marriage rules its decision after a thorough analysis of the claimed causes; the education abroad can be ensured without necessarily marrying the person that lives abroad; such cases should be carefully monitored, because they may be a source of exploitation, traffic, forced labor, etc
- If the Courts deems it necessary, the minor can be questioned separately. The Court is encouraged to get the opinion of the minor under circumstances where influence is not being exercised on her or him. Therefore, the minor needs to be questioned without the presence of the parents, guardian or future husband, and other adults; an already prepared list of questions may help the Court during the communication with the minor to understand the will of the minor and other aspects.
- The Court needs to verify the physical and psychological maturity of the person under the age of 18 requesting to enter into underage marriage and to reflect this analysis in the decision. For this, the Court may compile a list of questions, even simple ones, in order to see the reaction of the minor. The psychological maturity includes the clear understanding by the applicant of the importance of marriage in general and the rights and obligation deriving from it. The psychological maturity must be concluded by the actions of the persons and not simply by their statements. The Court should protect the minor and marriage in this decision-making. Being that rights, obligations and responsibilities derive from the marriage, the Court should assess the degree of harmony of the person with his or her maturity against these rights and obligations imposed by the marriage and to inform the minor on this.
- The Court needs to verify the importance of the claimed reason/cause that accompanies the request to allow the binding of underage marriage. The reason should be treated compared to what pushes the persons to request the permission of the Court to enter into marriage before time and not according to the rules of marriage. There should be good reasons to enter into marriage. Is marriage taking place because of shame? Pressure? Economic needs? Obligation? Etc

¹⁵ A part of the recommendations were taken from the publication of the author Arta Mandro Balili "Gender discrimination in family and marriage matters. The role of the Albanian judiciary in eliminating it." Publication of SoM and UNDP. Tirana, April 2014. Pg. 46-78

- The Court needs to verify the merits of the reason. Is this a real or fictitious reason? This can be achieved through questions. If it is real, how grounded is it to justify make the request in violation of the general rule of age? The reasons should be clear. They should be specific and real. There may be other causes behind those that are justified as important, which may pose a risk to the minor.
- Taking the opinion of the psychologist on the psychological evaluation, free consent and social situation is a legal obligation and a great help for the Court, so that it can rule a fair decision and to judge on the importance of the causes and their merits, as well as the physical and psychological maturity of the person through the verification of the psychologist. Even in such trials, the Court should uphold the principle of Article 6 of the Family Code and the CRC, which stipulates that: "The presence of the psychologist is obligatory in any procedure involving children in order to evaluate the statements of the minor in accordance to the mental development and social situation." The Units of protection of child's rights and social workers may play a special helping role for the Court in such decision-making.
- The reduction towards the elimination of marriages under the age of 16 should be in the focus of the Court and should become its practice. So, the Court should not allow the biding of marriage below this age under any circumstance, despite the justifications.
- The Court should keep in mind that the juvenile girls in difficult economic situation are more exposed to the risk of fictitious marriages or the promises of marriage that end up to exploitation for prostitution, trafficking or any other kind of exploitation.
- As pertaining to the legislation, there is still room for improvements regarding the active legitimization of the minor girl and the determination of a minimum age below which underage marriage cannot be allowed for any reason. Furthermore, many of the suggestions include in this document may be also accompanied by legal improvements. The approach and harmonization with the international standards quoted in this report is still important.

The problems and issues that accompany underage marriages require an in-depth analysis of this situation throughout the entire country.

An adequate and productive intervention in this direction is related to the unification of the interventions and the efforts to improve the situation of women married under age by bringing together the policymakers, the state bodies involved in the enforcement of the law related to marriage, civil society organizations, donors, schools and the communities where these women live.

Let us give a voice to these girls and let them have a healthy and dignified childhood!

IV. BIBLIOGRAPHY

The CEDAW Convention "On the elimination of all forms of discrimination against women"

The Convention on the Rights of the Child

The Convention of the Council of Europe known as the Istanbul Convention "On preventing and combating violence against women and domestic violence"

PhD. Prof. Arta Mandro Balili (April 2017) "Gender discrimination in family and marriage matters. The role of the Albanian judicial in its elimination", Publication of the School of Magistrates and UNDP, pg. 46-78

V. ANNEX

Annex A: *The form of the questionnaire of the data of interest for the monitoring according to the subject of the monitored court cases*

I. GENERAL DATA

Number of decisions according to years					
Type of decision	2011	2012	2013	2014	2015
Accepted					
Ceased					
Dismissed					
Incompetence					
Rejected					

II. The data related to every decision accepted [according to years]

Cases accepted The data related to every decision accepted							
	Date of request	Date and no. of decision	No. of hearings	Time of trial	Form of request	Cause in request	Cause in decision
1							
2							
3							
4							

1. Date, month, year of final decision**2. Number of hearings**

a. Note the no. of hearings

3. Duration of trial

a. In days

b. In months

4. Form of submission of the request to Court

a. Request

b. Lawsuit

5. The cause with importance established by the applicant /the cause that legitimates the request**6. The cause with importance of the court decision****III. DATA RELATED TO THE MINOR**

Data related to the minor									
Sex		Age	Residence			Education			
M	F		City	Village	?	No education	Compulsory	Secondary	Doesn't show

7. Sex of the minor

a. M

b. F

8. Exact age

a. Write the age in years and months

9. Residence

a. City

b. Village

c. The decision doesn't show

10. Education

a. No education

b. Compulsory

c. Secondary

d. The decision doesn't show

IV. DATA RELATED TO THE NON-MINOR APPLICANT

Data on the applicant					
No.	Applicant	Sex	Civil status	Residence	Education

11. Completion of the column 1: Who submits the request? The general relation between the minor and the applicant

- a. The minor himself or herself
- b. Mother
- c. Father
- d. Guardian
- e. Grandfather/grandmother
- f. Other relatives [specify]
- g. The decision doesn't show

12. Completion of the column 2: Sex of the non-minor applicant

- a. M
- b. F

13. Completion of the column 3: Civil status of the non-minor applicant

- a. Married
- b. Divorced
- c. Widow
- d. The decision doesn't show

14. Completion of the column 4: Residence of the non-minor applicant

- a. City
- b. Village
- c. The decision doesn't show

15. Education of the non-minor applicant

- a. Without education
- b. Compulsory
- c. Secondary
- d. Tertiary
- e. The decision doesn't show

V. DATA ABOUT THE PROCESS, DEFENSE ETC.

Data about the process, defense						
No.	Representation with lawyer		Psychologist		Accompaniment	
	Yes	No	Yes	No	Yes who?	No
1						
2						
3						
4						

16. Representation with lawyer

- a. Po
- b. Jo
- c. The decision doesn't show

17. Presence of the psychologist

- a. Po
- b. Jo
- c. The decision doesn't show

18. Accompaniment of the minor in the process by another adult

- a. Po [who]
- b. Jo

VI. EVALUATION OF THE INTEREST OF THE CHILD BY THE COURT

19. The principle of the best interest of the child mentioned

20. Physical and psychological maturity analyzed

21. Analysis to clearly understand marriage and the readiness of the minor to undertake the responsibility

ANNEX B: QUESTIONNAIRE ON UNDERAGE MARRIAGES



QUESTIONNAIRE ON UNDERAGE MARRIAGES

This questionnaire was conducted by the Observatory for Children's Rights (Observatory) within the framework of the project "Prevention of early marriages by applying legal mechanisms and social perception as tool for empowering women and girls (PREVENTION)," during the period October 2016 to February 2016, and was funded by the Canadian Fund for Local Initiative. Its content is the responsibility of the author and the opinion stated in it does not necessarily represent the opinion of the Canadian Fund for Local Initiative. The purpose of the questionnaire is to analyze the social life and the cases of marriage under the age of 18, which were allowed by court decisions of the District Courts of Korça and Pogradec. The respondents of the questionnaire will be the individuals who are legally married under age in the selected areas, based on the court decisions of the District Courts of Korça and Pogradec. The questionnaire will be completed during the period December 2016. The personal data in this questionnaire are confidential and will be used only for the purposes of the quantitative analysis of the study. The findings and analysis of the study will become public with the purpose of influencing the local policymaking processes. The findings and analysis will be published in the webpage of the Observatory as the implementing organization: www.observator.org.al

DATA:

Interviewer

Respondent (Signature)

Date -----

Approval Form

I agree to participate in the questionnaire that the Observatory for Children's Rights (Observatory) is conducting on early marriages in the district of Korça and Pogradec.

I was explained and I understand that the questionnaire is being conducted with the sole purpose of improving the early interventions and the generation of future ideas of the program in relation to the improvements of the mechanisms of child protection, while my personal data will not be disclosed.

I agree that the data completed in this questionnaire will be used by the office of the Observatory for internal use and research purposes.

SECTION I: GENERAL INFORMATION ON THE RESPONDENTS

Date: _____

City: _____

1. Name and Surname: _____

2. Address: _____

3. Current Age: _____

4. Current Status:

- a) Married
- b) Divorced
- c) Widow
- d) Single

5. Type of Family:

- a) With both parents
- b) With one parent
- c) With divorced parents
- d) With remarried parents

6. Number of sisters and brothers (siblings) in family _____

7. Order of birth in the family:

- a) First child
- b) Second child
- c) Third child
- d) _____ child
- e) Last child

8. Age when you were married: _____

9. Number of children: _____

10. Age when the first child was born: _____

11. The marriage took place

- a) Before the child was born
- b) After the child was born

If the answer is (a) skip to question 12. If the answer is (b) skip to question 13

12. Was the childbirth the reason to get married?

- a) Yes
- b) No

13. You live:

- a) Alone as a couple
- b) Together with your husband's parents or yours

14. Number of years that you lived with the husband's family before giving birth to the child: _____

15. Age difference with the husband: _____

SECTION ii: INFORMATION ON THE SOCIAL EFFECTS OF UNDERAGE MARRIAGES

SUBCATEGORY A OF SECTION II- GENERAL INFORMATION ON EDUCATION

If education is lower than 4 grades move to Subcategory B of Section II

1. How many grades did you finish? _____

2. Your scores in school were:

- a) Excellent
- b) Very good
- c) Good
- d) Average
- e) Poor
- f) Very poor

3. What subjects did you like?

- a) Mathematics
- b) Reading

4. Did you read books besides those given by the school?

- a) Yes
- b) No

5. Did you continue to attend school after childbirth?

- a) Yes
- b) No

6. Do you work after childbirth?

- a) Yes
- b) No

7. Do you have any intention about professional carrier?

- a) Yes
- b) No

If the answer is (a) skip to question 8. If the answer is (b) skip to question 9

8. In what area do you see yourself working? _____

9. Where do you see yourself after childbirth, besides being a mother:

- a) High school / university
- b) Vocational school
- c) Other vocation
- d) Trade or family business
- e) Agriculture
- f) Other (specify) _____

SUBCATEGORY B OF SECTION II- GENERAL INFORMATION ON THE PARENTS

1. Age of parents: _____
2. Legal status of the parents: _____
3. Education level of parents: _____
4. Are the parents employed:
 - a) Yes
 - b) No
5. Were your parents immigrants?
 - a) Yes
 - b) No
6. If yes, in which country did they immigrate to? _____

SUBCATEGORY C OF SECTION II- GENERAL INFORMATION ON THE CHILD OR CHILDREN

1. Who helps you to raise your child/children?
 - a) Family
 - b) Relatives
 - c) Child health services
 - d) Doctors
 - e) Others (specify) _____
2. Is your child registered?
 - a) Yes
 - b) No

If the answer is (a) skip to question 3. If the answer is (b) skip to question 4

3. IS your child registered with you as parent?
 - a) Yes
 - b) No
4. What is the health condition of the child/children?
 - a) Very good
 - b) Good
 - c) Poor
 - d) Very poor
5. How many children did you give birth to after the first child? _____
6. If you gave birth to a girl, did you have any problems?
 - a) Yes
 - b) No
7. Were you forced to have an abortion?
 - a) Yes
 - b) No
8. If your child was a boy, did your status in the family change?
 - a) Yes
 - b) No

SUBCATEGORY D OF SECTION II- GENERAL INFORMATION ON UNDERAGE MARRIAGE

1. What is the reason that you were married at an early age?

- a) Forced by the family
- b) Love
- c) A way to escape the family control within your household
- d) Pregnancy
- e) Domestic violence in the family
- f) Difficult economic situation
- g) Immigration
- h) Customs/mindset of the area where I live

2. What is the reason that the Court legitimated your marriage? _____

SECTION III: NOTES ON THE INTERVIEWER

1. Did the respondent show signs of emotional distress?

2. Was he or she physically harmed or attacked?

3. Was he or she accompanied by family members or members of the community when notified the Court about the marriage?

4. With whom did he or she speak when he or she received the notice for marriage?

5. If he or she is a member of the Roma community was he or she threatened in his or her own language?

6. If he or she was married with a foreigner, how did they communicate?

7. Did she have any information about the future husband, including date of birth, profession and address?

8. Were there any accusations from third parties about forced marriage?