

MARRIAGE IN COURT? CHILDREN'S RIGHTS, UNDERAGE MARRIAGE AND THE ROLE OF THE COURT

REPORT 2

*Report on the legal and social aspects and the judicial practice of
underage marriages in Shkodra, Kukës, Tropoja, Lezha, Puka, Fier,
and Kavaja for the period 2011-2017*



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TIRANA, JUNE 2018



This report is prepared in the framework of the project implementation, *“Implementing the legal mechanisms as a tool for preventing underage marriages”*.

This project was implemented by the **Observatory for Children and Youth Rights (Observatory)** through the monitoring of court decisions of the District Courts (DC) of *Shkodra, Kukës, Tropoja, Lezha, Puka, Fier, and Kavaja* for the period 2011 to 2017. The Canada Fund for Local Initiatives (CFLI) and the Australian Government through its Department of Foreign Affairs and Trade have financially supported this project.

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“The content of this report is the responsibility of the Observatory for Children and Youth Rights and does not necessarily represent the opinion of the Canadian Fund for Local Initiatives and the Australian Government.”

Table of Contents

i. Abbreviations	6
ii. List of Graphs	7
iii. List of Tables	8
iv. Acknowledgments	9
v. About the Observatory for Children and Youth Rights	11
vi. Executive Summary	13
vii. Introduction	17
I - Legal analysis of court decisions related to requests with subject permission to conduct underage marriage.....	21
1. Key findings of the monitoring of court decisions of the DCs of Shkodra, Kukës, Lezha, Puka, Kavaja, Fier, and Tropoja with subject 'permission to conduct underage marriage' for the period 2011-2017	21
1.1 General data on cases with subject 'permission to conduct underage marriage'	21
1.2 Form of request to court: request versus lawsuit	24
1.3 Sex of the person for whom underage marriage is requested .	25
1.4 The requestor of the permission for underage marriage. Relation of the requestor to the minor when the request is not made by the minor: active legitimation	25

1.5 Age of the person for whom the underage marriage is requested	29
1.6 Education of the person for whom the request is filed and a decision is made regarding the underage marriage	30
1.7 Residency of the minor or non-minor applicant in cases of permission of underage marriage	31
1.8 Number of hearings and duration of the judicial process	32
2. Participants in the process	33
2.1 The civil status office and the adult person with whom the marriage is bound	33
2.2 Role/participation of the psychologist	34
2.3 Role of parents and escort of the minors in Court by other adults	34
2.4 The presence of legal counsel/lawyer	34
3. Content of judicial decisions	35
3.1 Important cause according to the request versus important cause according to the court decision	35
3.2 Assessment of the higher interest of the child in court decisions	36
3.3 Evaluation of physical and psychological maturity of the minor and clear understanding of marriage	37
3.4 Evaluation by the minor to clearly understand marriage and readiness of the minor to take responsibility	38
II - Social analysis of cases of underage marriage.....	39
1. Analysis of findings in social terms regarding marriages under the permitted age in Shkodra, Kukës, Lezha, Tropoja, Puka, Fier and Kavaja	39

1.1 The demographic characteristics according to the research in Shkodra, Kukës, Lezha, Tropoja, Puka, Fier and Kavaja	39
1.2 Characteristics of the educational history of the underage married women	44
1.3 Family life and social status of women married under age	46
1.4 The reasons of the underage marriages and the legal marriage	48
1.5 Cause of importance of the Court's decision.....	50
III. Main Concerns related to underage marriages.....	51
IV. Summary of the key recommendations. Guideline for the court in reviewing the requests with subject 'permission to enter into underage marriage'	53
V. Bibliography	57
Annex A: Court Decisions.....	58



i. Abbreviations

CEDAW	The Convention on the Elimination of All Forms of Discrimination Against Women
CFLI	Canada Fund for Local Initiatives
CRC	Convention on the Rights of Children
DC	District Court
HIC	Highest Interest of the Child
FC	The Family Code adopted by the Law no. 9062/8.5.2003
Observatory	Observatory for Children and Youth Rights

ii. List of Graphs

Graph 1:	Cases presented in DC Shkodra, Kukës, Tropoja, Lezha, Puka, Fier, Kavaja during the period 2011 - 2017	22
Graph 2:	Percentage of applicant's category in decisions...	27
Graph 3:	Percentage of duration of cases through court hearings	33
Graph 4:	Cause of Importance as requested in Court	36
Graph 5:	Current age of respondents according to the survey	41
Graph 6:	Age when the first child was born according to the survey	42
Graph 7:	Respondents' level of education.....	46
Graph 8:	Schooling after the child's birth	46
Graph 9:	Causes of underage marriage	50
Graph 10:	Reasons for allowing the marriage by the Court	51

iii. List of Tables

Table 1:	Total of requests to allow underage marriage by districts and years.....	21
Table 2:	Applicants of the requests with subject permission to enter into underage marriage by district.....	26
Table 3:	Age group of the minor girl in the requests with subject permission to enter into underage marriage	29
Table 4:	Percentage of cases according to the age difference between the minor girl and the future husband in requests with subject permission to enter into underage marriage	30
Table 6:	Age when the respondents were married according to survey	40
Table 7:	Marriage status according to survey.....	42
Table 8:	Age of the parents of the girls married underage according to survey	43
Table 9:	Type and status of households where the respondents grew up	43
Table 10:	Employment status of the minor girls' parents	44
Table 11:	Parents' education	45
Table 12:	Years of co-living with the husband's family	46
Table 13:	Number of children born after the first child	47
Table 14:	Health condition of the children according to mother's assessment.....	47
Table 15:	Gender issues	48
Table 16:	Emotional state during	49

iv. Acknowledgments

This report is prepared in the framework of the project implementation, *"Implementing legal mechanisms as a tool for preventing underage marriages"* implemented by the **Observatory for Children and Youth Rights (Observatory)**.

The **Observatory** in cooperation with the **School of Magistrates** have monitored the judicial decisions of 7 District Courts (DC) *Shkodra, Kukës, Tropoja, Lezha, Puka, Fier* and *Kavaja* during a period from 2011 to 2017. The **Canada Fund for Local Initiatives (CFLI)** and the **Australian Government** through its Department of Foreign Affairs and Trade have financially supported this project.

We would like to thank the CFLI and the Australian Government for funding the monitoring of the court decisions and the preparation of this report. All this initiative aims at identifying the issues of the judicial practice and taking appropriate measures by the justice system regarding the phenomenon of marriages under the age of 18.

The Observatory expresses its gratitude to the Director of the School of Magistrates, Mr. Sokol Sadushi, as well as the administrative staff of this institution for their professional cooperation.

The Observatory also thanks and expresses its gratitude to the Chairman of the DC Shkodra, Mr. Arben Zefi, Chairman of the DC Kukës, Mr. Isuf Shehu, Chairman of the DC Tropoja, Mr. Dritan Seci, Chairwoman of the DC Lezha, Mrs. Ornella Naqellari, Chairman of the DC Puka, Mr. Izet Kadana, Chairman of the DC Fier, Mr. Roland Jaupaj, Chairwoman of the DC Kavaja, Entela Shedula (Sorra), as well as the administrative staff of these courts for their readiness to provide any information regarding the judicial practice with subject

to permit underage marriage and for all the facilities created in this process.

The Observatory wishes to express a special gratitude and heartfelt thanks to the PhD Prof. Arta Mandro who compiled the tables, fostered contacts with the court and prepared the legal analysis of the judicial decisions in this report. The Observatory also thanks the experts, who contributed to the social analysis of underage marriages.

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The Observatory hopes that the findings, conclusions and recommendations of this report will be useful and will find room in their implementation in the court practice and civic awareness related to the cases of underage marriages and will also encourage a wider engagement of other actors.


v. About the Observatory for Children and Youth Rights

The Observatory for Children and Youth Rights (Observatory) is a non-profit Albanian organization established in 2013 with the mission of ensuring the dignity and wellbeing of children and youth throughout the country through observations, research and analysis, communications and advocacy; by cooperating with key stakeholders and institutions; engaging in awareness-raising and education campaigns. With it 12 offices (one for each region of the country) from the local to the national level, the Observatory collects data, exchanges information, raises debates, uses innovative methods and programs, in order to contribute to building a country where every child and young person lives with dignity and is served well by the national institutions. For more information on the Observatory's activity, please visit our webpage: www.observator.org.al

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.

The Observatory has contributed over the years on the issue of underage marriages by attracting the attention and interest of international and national institutions. Underage marriage is a phenomenon of many societies under development, largely due to traditions and culture. Consequently, the Observer has extended the analysis from the specific communities, specific areas to the cases of legitimacy of underage marriages by the Albanian Courts.

The studies conducted by the Observatory on underage marriages are:

- 
- 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: Shkožë, Liqen and the Emergency Centre. The electronic version of this 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 "*The Disillusion of Happiness of Early Marriages: 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 third study "*Marriage in Court? Children's rights, underage marriage and the role of the Court. Report on the legal and social aspects and the judicial practice of underage marriages in Korça and Pogradec for the period 2011-2016*" was conducted through the monitoring of court decisions in the Courts of Korça and Pogradec. The electronic version of this study can be found on the Observatory's official website: http://observator.org.al/wp-content/uploads/2017/03/Raporti-martesat-nen-moshe_al.pdf

vi. Executive Summary

This report analyzes the legal and social aspects of underage marriages in Albania. The report focuses on the identification and analysis of the *judicial decisions* of Judicial District Courts (DC) of Shkodra, Kukës, Tropoja, Lezha, Puka, Fier and Kavaja for the period 2011-2017. The report was conducted in the framework of the project *“Implementing legal mechanisms as a tool for preventing underage marriages”* with the support of the Canada Fund for Local Initiatives (CFLI) and the Australian Government. The monitoring of court decisions with subject permission to enter into underage marriage was carried out by the Observatory for Children and Youth Rights (Observatory) in cooperation with the School of Magistrates.

This report identifies the problem of the judicial practice and the adoption of appropriate measures by the justice system regarding the phenomenon of marriages under the age of 18. The report analyzes the judicial practice with subject permission to allow underage marriage and how “underage marriage” has affected the social and family life of the juveniles.

The monitoring of court decisions with subject permission to allow underage marriages in 7 DC during the period 2011 – 2017 shows that:

- 68 applications were submitted for “permission to enter into underage marriage”, of which 82% of the claims were accepted (56 requests), 16.5% of the applications were dismissed (11 requests) and 1.5% of the applications were overturned (1 request).

- The Courts with a higher number of legitimate decisions to allow underage marriages are the DC Fier (14 out of 18 cases submitted) and the DC Shkodër (12 out of 14 cases submitted).
- Most of the requests for “permission to enter into underage marriage” have been filed in 2011, specifically 25% of cases. This phenomenon has started to reduce in 2017 with 12% of cases.
- In all judicial decisions (100% of them), **the request to allow underage marriage was made for the future wife and there is no case of such request being made for the future husband.**

But, what is the profile of a minor girl for whom permission for marriage under 18 is being requested?

- Regarding the age of the juvenile girls, it results that the largest number is in the age group 17 and 18 years old with a small difference with the age group under 17. There are 5 decisions where the age of the girl is under 16. In 3 decisions the age is not specified.
- In relation to the residence of the minor girl for which underage marriage is requested, it turns out that in 70.5% of cases, the girls live in rural areas (48 cases). While, in 3% of the cases they live abroad, specifically in the US and Croatia.
- In most cases (75%), the education of the minors is not mentioned in the decisions. While in other cases, the minors have finished the primary education (9 years) (18% of the cases) and in 7% of the cases the minors have attended the secondary education.

Who are the young girls married to?

- The analysis of all court decisions shows that the age of the future husband varies from 19 to 35 years old. In the majority of the decisions (32% of decisions) the difference

between the minor and the future husband is 7-10 years. 4% of the cases are disturbing, where the age difference is too high, 16-19 years.


- In 73.5% of the cases, the future prospective husbands live in Albania, where the majority of them live in the village (in 40 cases). While in 12% of the cases, the future prospective husband lives abroad, either in America, Italy, Macedonia, Kosovo or Croatia.

What is the content of the court decisions?

- *In six court decisions the psychological assessment* of the minor was carried out, while in 26 other cases, it is clear that there was no psychologist involved in the process. In 36 decisions no psychological evaluation of the juvenile was made.
- *In 28 court decisions there is no legal representation with lawyer* of the juvenile, while in 13 cases there is representation with lawyer. The rest of the decisions do not have a clear indication as to whether the minor was legally represented with lawyer or not.
- In relation to the cause of importance for the legitimating the request for underage marriage, in the majority of cases (59%), the cause is pregnancy. The other causes are: co-living, customary marriage, building a life abroad/ family reunion, childbirth. There have also been decisions in which there is no cause or simply marriage permit is requested.

Based on the work carried out so far and the findings of the monitoring, we propose that:

- The main consideration of the Court should be to keep in mind the highest interest of the juvenile.
- The court is encouraged to take the opinion of the juvenile **under conditions where there is no influence on him or her.**

- 
- The Court needs to verify and reflect in the decision the physical and psychological maturity of the person under 18 who applies for underage marriage.
 - The Court needs to verify the relevance of the alleged motive / cause that accompanies the request to allow underage marriage.
 - The court needs to verify the merits/grounds of the motive.
 - The reduction towards elimination of marriages under the age of 16 should be at the attention of the Court and must become its practice
 - The court needs to keep in mind that the minor girls in difficult economic situation are more exposed to the risk of fictitious marriages or promises for marriage that end up in exploitation for prostitution, trafficking or any other form of abuse.

vii. Introduction


This monitoring of court decisions with subject permission to conduct underage marriage conducted by the Observatory for Children's Rights in cooperation with the School of Magistrates is a valuable contribution to the cause of "the highest interest of the child" for the protection of the marriage and family institutions.

There are many risks posed to the child if a process that keeps this interest in mind isn't carried out. These analyzes are inseparable from those related to the special protection that marriage and family as institution and fundamental pillars of every society enjoy. But, it appears that the institutions in question are in a vertical and horizontal dependency relation line in relation to the child's highest interest. But setting the 'highest' or priority determinant also makes the difference in the beginning and end of the analysis and the conclusions when a child-related matter is presented to the justice system.

The justice system can, deliberately or inadvertently, contribute through its own authority to the violation of the fundamental freedoms and rights of humans and children as human beings with special needs due to their development. This shouldn't be allowed in any case and for any reason.

The report of GREVIO Committee on Albania¹ highlights in paragraph 43 that, "Another area where data from civil courts would help in the prevention of violence against women, in particular

¹ GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) Albania. GREVIO/Inf(2017)13 Published on 24 November 2017.



forced marriage is that related to judicial authorisations for minors to marry. Initiatives aimed at collecting this type of data have been carried out by NGOs and have proven useful in highlighting the issues at stake².” Also, paragraph 44 of the same report on Albania states, “GREVIO encourages the Albanian authorities to ensure the collection and publication of data from the civil justice sector on the number of protection orders, the sex, age and relationship of all parties involved, as well as on the authorisations granted by courts for underage marriages³.”

In paragraph 145 of the Report for Albania, GREVIO Committee also gives these important recommendations for the local authorities, including the judiciary: “Having regard to the risk that child marriages poses in terms of possibly constituting forced marriage and other forms of violence, such as trafficking, GREVIO encourages the authorities to: c. review the applicable legislation with a view to introducing appropriate additional safeguards, such as a minimum age requirement for minors to be able to request the authorisation to marry; d. develop guidelines framing the judicial review of any request by a minor seeking the authorisation to conclude marriage, and train judicial officials accordingly; e. ensure that any such review is carried out on the basis of a close co-operation between courts

² According to the English version: “Another area where data from civil courts would help in the prevention of violence against women, in particular forced marriage is that related to judicial authorisations for minors to marry. Initiatives aimed at collecting this type of data have been carried out by NGOs and have proven useful in highlighting the issues at stake.”

³ This report referred to the results of the monitoring of the court decisions of the District Courts of Korça and Pogradec for the period January 2011 – December 2016 in the study by Arta Mandro-Balili, Bernard Zeneli (2017), *Marriage in Court? -The rights of children, underage marriage and the role of the Court*, Observatory for Children's Rights, Tirana., GREVIO encourages the Albanian authorities to ensure the collection and publication of data from the civil justice sector on the number of protection orders, the sex, age and relationship of all Parties involved, as well as on the authorisations granted by courts for underage marriages”.


and the existing mechanisms for the protection of children's rights, such as the child protection units established at the municipal level"⁴.

The CEDAW Committee is also concerned about Albania. Especially about such harmful practices as child marriage, choice of husband by the family, and the payment of a price or dowry for the bride, a phenomenon predominant in rural and remote areas and among small communities. This Committee recommends banning all harmful practices including child marriage and the practice of families that choose their daughter's husband. The Committee is seriously concerned about the practice of child marriage, particularly noted among Roma and Egyptian communities and often authorized by court decision as an exception to the minimum age of 18 allowed for marriage. CEDAW demands the strict banning of child marriage, allowing only limited and clearly defined exceptions of cases when courts may authorize the unions under the age of 18 with the consent of both partners, to punish violations of this ban, and to increase awareness among children, parents, the community and the general public on the negative impact of child marriage on their health and development, especially for girls⁵.

⁴ Having regard to the risk that child marriages poses in terms of possibly constituting forced marriage and other forms of violence, such as trafficking, GREVIO encourages the authorities to: c. review the applicable legislation with a view to introducing appropriate additional safeguards, such as a minimum age requirement for minors to be able to request the authorization to marry; d. develop guidelines framing the judicial review of any request by a minor seeking the authorization to conclude marriage, and train judicial officials accordingly; e. ensure that any such review is carried out on the basis of a close co-operation between courts and the existing mechanisms for the protection of children's rights, such as the child protection units established at the municipal level".

⁵ Cedaw/CALB/CO/4, 25 July 2016. For more see: The Committee evaluated the 4th periodic report of Albania (CEDAW/C/ALB/4) in its 1413th and 1414 the session, on 12 July 2016 (see CEDAW/C/SR.1413 and 1414). The Committee's list with the topics and questions raised are included in CEDAW/C/ALB/Q/4 and the answers of Albania are included in CEDAW/C/ALB/Q/4/Add.1.

Quoting these paragraphs taken from the latest GREVIO report and the CEDAW, I have a special regard for the work of the Observatory, which is very progressive and precedes the realization of interventions based on the actual study of life, legal and judicial situations related to the underage marriage phenomenon. A valuable contribution for all children and the entire system.



This report follows the one prepared on the monitoring of the decisions of the District Courts of Korça and Pogradec published by the Observatory in 2017⁶. The same methodology has been applied here, too and almost the same problems have been identified. This shows that the interventions at several legal and awareness levels are important.

⁶ See report at: <http://observator.org.al/wp-content/uploads/2017/03/Early-marriage-report-english.pdf>

I - Legal analysis of court decisions related to requests with subject permission to conduct underage marriage

1. Key findings of the monitoring of court decisions of the DCs of Shkodra, Kukës, Lezha, Puka, Kavaja, Fier, and Tropoja with subject 'permission to conduct underage marriage' for the period 2011-2017

1.1 General data on cases with subject 'permission to conduct underage marriage'

The applications with subject 'permission to conduct underage marriage' submitted to the monitored courts for the period 2011-2017 were different from one court to the other. The total number of requests submitted is 68. The largest number is found in the DC Fier with 18 cases, Kukës with 13 cases, Shkodra with 12 cases, and Tropoja with 11 cases. The following table represents the distribution of these requests by courts and monitored years, taking them in total and not divided into approved or rejected cases.

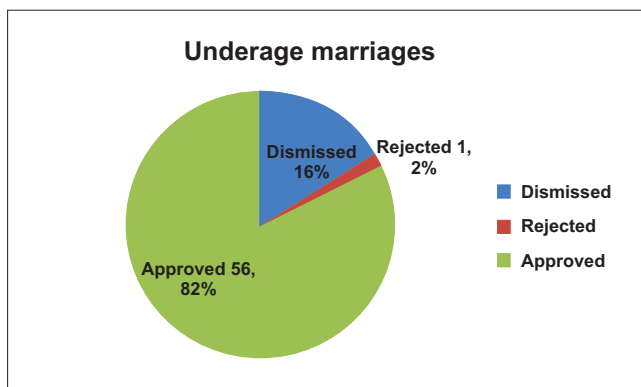
Year/ district	2011	2012	2013	2014	2015	2016	2017	Total
Shkodër	2	4	6	1	1	0	0	14
Kukës	1	1	1	3	3	1	3	13
Lezhë	3	0	0	2	0	0	0	5
Pukë	0	0	0	0	0	0	0	0
Kavajë	3	1	1	1	0	1	0	7
Fier	5	2	3	1	3	0	4	18
Tropojë	3	2	1	0	1	3	1	11
Total	17	10	12	8	8	5	8	68

Table 1: Total of requests to allow underage marriage by districts and years

This summary table shows in qualitative terms the cases presented to the monitored courts. It should be read by focusing on the number of cases in a court from one year to the other, within a year in all courts, and in relation to different courts throughout the analyzed period. So,

for example, it seems that the highest number of requests according to years was in 2011 with a total of 17 followed by 2013 with a total of 12 decisions. It is noted that the DC Fier is the one with the largest number of requests for underage marriage permission. It is followed by Shkodra, Kukës, and Tropoja. While the first two courts fall in the category of 'large' courts, both in terms of number of judges and cases, it is noticed that Tropoja and Kukës are 'small' court but with a not-so-small number of requests. This should be considered in several aspects. First, in terms of the interest to conduct a marriage under the law even when the age criterion is not met. Second, the trust in marriage and the role of the court to allow it. Third, that underage co-living in the form of 'marriage through wedding' is unknown and however a phenomenon still impossible to evaluated at least by this report.

Of the 68 requests submitted in all these DC in the period 2011-17, 56 were approved and 11 were dismissed. There is only 1 case when the request was rejected by the DC of Shkodra⁷. In terms of percentage, it means that 82% of requests were approved. The courts have argued in these cases that the claimed causes in any request filed were important and thus the underage marriage was allowed.



Graph 1: Cases presented in DC Shkodra, Kukës, Tropoja, Lezha, Puka, Fier, Kavaja during the period 2011 - 2017

⁷ See Decision no. 795/23.3.2012 of DC Shkodër.

In the **DC Shkodra**, of 14 total applications filed for permission to conduct underage marriage, 12 were approved, 1 was dismissed and 1 was rejected. The minor in the dismissed case was a 16 years, 5 months old girl. As we said, only this court has a rejected request. The cause of rejection is because the request was filed by the father of the girl who is under 18. The Court deemed that the father is not a legitimate party in this claim. The decision contains these statements: "Upon reviewing the request and hearing the final claims of the applicant who requested that **his daughter be bound into marriage**, as well as after discussing the case as a whole...." This decision has no data on the exact age of the child.

There is no dismissed or overthrown requests in the **DC Kavaja** during the monitored period. All requests were approved. In **DC Kukës**, of the 13 requests in total, 3 were dismissed due to the absence in court of the applicant that is a girl of 14 years, 2 months. There are no data on the age of the minor for the other 2 cases. In the **DC Lezha**, there is 1 request out of 5 in total that was dismissed due to failure of the applicant to appear in court, a 16 years, 9 months old girl. For the **DC Tropoja**, 2 out of 11 requests were dismissed and the minor girls in these cases were 17 years, 5 months, and 17 years, 8 months. In the **DC Fier**, 4 out of 18 requests were dismissed and the juvenile girls in these decisions were 17 years; 15 years, 7 months; 17 years, 4 months, and; in 1 decision the birthdate was incorrect⁸.

The control of all decisions shows that there are **only 2 instances** of dismissed cases for which the request was refiled. In 1 case of the Court of Tropoja dismissed by decision no. **234/3.10.2016**, the request was refiled and the Court issued decision no. **235/4.10.2016** – so, a day after issuing the dismissal decision - to allow the bonding of marriage. In 1 case of the Court of Kukës dismissed by decision no. **65/21.12.2016**, the request was refiled and this Court issued decision no. **20/4.4.2017** - so, about 4 months after issuing the dismissal decision - , and allowed the bonding of marriage. It would

⁸ See Decision no. 992/14.7.2015 of the DC of Fier: the birthday in the decision is written incorrectly (is mentioned birthdate 28.06.2015).

be appropriate to note that in such cases that the court dismisses but the applicant refiles the request, the court should make a more careful investigation of the child's free will and consent **by ensuring questioning sessions without the presence of relatives who may influence decision-making, as well as to obtain a psychological report on the child's emotional state and the possibility of her being imposed or forced into marriage.**

1.2 Form of request to court: request versus lawsuit

The permission to conduct underage marriage is a process that takes place without an opposing party. In the majority of the cases monitored, 67 out of 68 in total, the courts were set in motion by requests and there is only 1 decision, specifically that of the DC Fier⁹ that contains the form of lawsuit. The object in this decision is "conducting marriage", which by the wording seems incorrect because the court is not the place where marriage is bound. The Court issues a permission or authorization upon the mandatory verifications to allow or reject the binding of marriage in front of the civil registrar. The plaintiff in this decision is the future husband while the defendant is a minor that, as the decision shows, is a girl of about 17. This positioning of the litigants and the court's lack of attention to this procedural inaccuracy is a little odd. However, it results that the plaintiff requested in the preparatory hearing the withdrawal of the 'lawsuit' and all documents submitted by him, which the Court approved.

In a decision of the DC Tropoja¹⁰ the word 'plaintiff' used in the decision was corrected with the word 'applicant' in the content of the decision.

Thus, we can conclude that the filing of a request as the procedural tool to set the court in motion is understood correctly in terms of procedure.

⁹ See Decision no. 964/103/23.7.2015 (is corrected by is still unclear in the scanned copy) of the DC of Fier.

¹⁰ See Decision no. 234/3.10.2016 of the DC Tropoja.

1.3 Sex of the person for whom underage marriage is requested

In all the court decisions, i.e. 100% of the DCs of Shkodra, Kukës, Lezha, Puka, Kavaja, Fier, and Tropoja for the period 2011-2017, the permission for underage marriage is requested for the future wife and in no case for the future husband.

So, once again, we repeat that the request leads mostly to the reappearance by court decision of abolished legal regulations where marriage was allowed only for the 16-year-old woman [FC 1982]. What remains concerning is that there are cases when marriage is requested and allowed even for minors under 16. As we are going to analyze below, there are marriages involving girls that have just turned 15.

So, of the 68 cases in total for all monitored courts, in 6 cases the minor was under 16 and in 4 cases the decision doesn't contain data on the age of the minor¹¹. In some decisions, the minor had just turned 16.

1.4 The requestor of the permission for underage marriage. Relation of the requestor to the minor when the request is not made by the minor: active legitimization

The most diverse situation in relation to this data appears *in the DC Shkodra*. Of the 14 requests in total, 9 of them were made by the minor, 1 by the minor's mother and father who address the court jointly and request the marriage of their daughter, 1 request was made only by the minor's father, which was rejected by the court, in 1 decision the applicant is the minor and the parents, and in 1 decision the applicant is the Prosecution of the District Court of Shkodra¹². The last case with instigator the prosecution is a case of

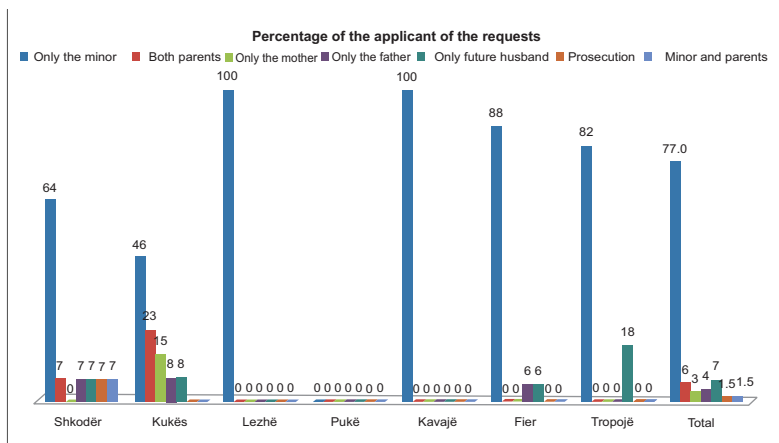
¹¹ See Decision no. 20/4.4.2017 of the DC Kukës, where the minor is 15 years, 10 months; Decision no. 118/7.6.2012 of the DC Tropoja, where the minor is 15 years, 7 months; Decision no. 12-2011-739/1.7.2011 of the DC Kavaja, where the minor is 15 years, 10 months; Decision no. 84/7.4.2014 of the DC Kavaja, where the minor is 15 years, 3 months; Decision no. 1002/15.7.2015 of the DC Fier, where the minor is 15 years, 7 months.

¹² See Decision no. 292/6.2.2013 of the DC Shkodër that approves the

request that we have not encountered in the practice of any of the courts monitored to date, including the DC of Korça and Pogradec. In two different decisions, the Court of Shkodra was invested by the request to allow underage marriage. In the first case, the request was made to allow underage marriage, and the second the Court was request to allow marriage without announcement. There is also one decision of the Court of Shkodra where the applicant is an adult, who in the present case is the minor's future husband, and the minor herself¹³.

District	Only the minor	Both parents	Only the mother	Only the father	Only future husband	Prosecution	Minor and parents	Total
Shkodër	9	1	0	1	1	1	1	14
Kukës	6	3	2	1	1	0	0	13
Lezhë	5	0	0	0	0	0	0	5
Pukë	0	0	0	0	0	0	0	0
Kavajë	7	0	0	0	0	0	0	7
Fier	16	0	0	1	1	0	0	18
Tropojë	9	0	0	0	2	0	0	11
Total	52	4	2	3	5	1	1	68

Table 2: Applicants of the requests with subject permission to enter into underage marriage by district



Graph 2: Percentage of applicant's category in decisions

request for underage marriage.

¹³ See Decision no. 1068/29.4.2013 of the DC Shkodër.

Of the 13 total cases of requests to allow underage marriage **in the DC Kukës**, 6 had as applicant the minor. In 1 decision, the request was filed by the future husband ¹⁴ in 3 cases, the request was filed by both parents of the minor ¹⁵ and in 2 case, the request was filed only by the minor's mother who had divorced the girl's father and exercised the parental responsibility while the father had sent a proxy accepting and allowing this marriage¹⁶.

In the DC Lezha and Kavaja, the requests to allow underage marriage was filed only by the minor girl.

In the DC Tropoja, of 11 requests in total, 9 were filed by the minor while in 2 cases, the request was filed by the prospective future husband.

In the DC Fier, in 16 requests out of 18 in total, the applicant is the minor, while in 2 cases they were filed by the prospective future husband in one case, and by the minor's father in the other.

Submission of the request by the person under 18: The issues of active legitimization of the minor seeking to enter into underage marriage are an exception to the general rule of the Civil Procedure Code. Thus, as has occurred in most cases, the court is set in motion by the minor seeking to enter into underage marriage. This attitude of the law and judicial practice is fully justified since marriage is a personal act and representation in court would not be right. Just as there is no marriage with representation before the Civil Registrar, the same applies to filing a request in court. In order to allow the underage marriage, the court should evaluate the minor personally, the free consent and the reason that is specifically important for that minor. In general, the Court does not make assessments of what constitutes 'important reason' for marriage, but sees them in relation to the minor, his/her physical and psychological maturity, free consent, the readiness to undertake the marriage responsibilities, etc. Thus, the underage marriage invests the court

¹⁴ See Decision no.7/14.1.2015 of the DC Kukës.

¹⁵ See Decision no.20/4.4.2017 of the DC Kukës.

¹⁶ See Decision no.54/17.10.2017 of the DC Kukës.

as an authority that assesses the reasons case by case, as well as the other conditions and hindrances set forth in the CF regarding the marriage bond for the juvenile that has filed the request.

Parent/parents as applicants: according to the CF, the parent has the right to oppose to the marriage. Among other things, this is one more reason not to actively legitimize the parent who seeks permission for the child's marriage in quality of practitioner of the parental responsibility.

The future, adult husband: the future husband, even if he is an adult, cannot address the court alone to request the marriage bond with the minor. Age is not an obstacle for him but for the minor. The judicial practice knows cases of forced or coerced marriages and, in order to eliminate any danger and the violation of juvenile rights, it is required that the minor whose marriage permission is being assessed by the court be personally present in court in quality of applicant. In 5 decisions or 7% of the total of 68 requests, the request was made by the future husband. It is not clear in these decisions whether the minor was present and whether she was questioned while attention was paid to question and obtain the consent of the family members of the boy and girl¹⁷. The parent's consent or that of anyone else can not in any case substitute the assessment of the juvenile by the court. So, the judicial decisions need to clearly state the consideration for the minor, if she understands the request she has made and the changes it brings to her life, if she understands the process, etc. It is always the father who gives the consent, the future husband, but in some decisions she does not seem a protagonist in her marriage.

The minor as third person: It is not correct to summon the child in quality of third party, when in fact the process is entirely for and about her. The provisions of the Civil Procedure Code regarding the participation of third persons in the civil process also help us to understand that the minor cannot absolutely have that procedural position.

¹⁷ See Decision no.7/14/01.2015 of the DC Kukës.

1.5 Age of the person for whom the underage marriage is requested

Age is an objective legal criterion. Determining an age limit is related to coming out of juvenility, which is the age dedicated to the physical, psychic, emotional, social development, etc., during which particular care is required. In this age group, the level of responsibilities against rights is disproportionate in favor of the rights.

As can be seen by the following data, the largest number belongs to the age of 17 with a small margin with the ages under 17. There are 5 decisions, where the age of the child is under 16. In 3 decisions, the age is not specified.

Court decisions of the period 2011-17 for DC				
Age 14 to 15 years	Age 15 to 16 years	Age 16 to 17 years	Age over 17 years	No data
1 case	5 cases	26 cases	31 cases	5 cases

Table 3: Age group of the minor girl in the requests with subject permission to enter into underage marriage

So, as noted, there are also requests submitted to court for permission of marriage of minors under 16. There is a worrying case, as is for example the case of a decision in DC Kukës, where the minor is 14 years, 2 months [decision no. 65/21.12.2016] who addressed the Court but the request was dismissed because the applicant did not appear in Court. In a decision of the DC Kavaja, the minor is 15 years, 3 months [decision no. 84/7.4.2014], and in another case of the same court, the minor is 15 years, 10 months [decision no. 12-2011-739/1.7.2011]. There are only two instances of the dismissal of the case: the decision of the DC Fier no. 1002/15.7.2015, where the minor is 15 years, 7 months, and the decision of DC Kukës no. 65/21.12.2016, where the minor is 14 years, 2 months.

It is true that the provisions of the CF do not foresee a minimum age under which marriage cannot be permitted neither by a court decision, but the court has all the discretion and should exercise its utmost care in cases of such requests and we would recommend

that such requests have a special treatment including also the local authorities dealing with children's rights protection as provided for by Law 18/2017 "On the Rights and Protection of Children" with a view to raising awareness and preventing early marriages. Under Article 51 of the Law no. 18/2017, it is the duty of these authorities, so the children's rights protection workers to actively identify the cases of children at risk and in need of protection through periodic visits in field and in the family of the child at risk, the communication with education, health, and police professionals, who are in contact with the children. They are also charged with the duty of evaluating the level of risk of any case referred and identified of the child in need of protection, etc.

The analysis of all the court decisions show that the age of the future husband varied between 19 to 35 years. The following table presents the age difference between the minor girl and the future husband:

Court decisions of the period 2011-17 for DC				
Age difference 2 to 6 years	Age difference 7 to 10 years	Age difference 11 to 15 years	Age difference 16 to 19 years	No data on age
12%	32 %	15%	4%	37%

Table 4: Percentage of cases according to the age difference between the minor girl and the future husband in requests with subject permission to enter into underage marriage

1.6 Education of the person for whom the request is filed and a decision is made regarding the underage marriage

This data drawn from the monitored decisions gives this result: out of 68 decisions in total:

- ☐ 51 decisions – this data is not shown;
- ☐ 12 decisions – the minor girl has finished primary education
- ☐ 5 decisions – the minor girl has finished secondary education

Obtaining this data is related to the highest interest of the child and the right to education. This would enable conclusions about the right to education and the impact of marriage. It would also be of interest to learn if there are cases of requests for underage marriage for minors without any education. Underage marriages negatively affect the realization of other rights of this age group and the right to education and training is one of them. It would be of interest for the local authorities to monitor the progress in education and edification issues of these children and the effect of underage marriage in this regard.

In paragraph 30 of the CEDAW Committee Closing Remarks of 2010 and repeatedly, in paragraphs 20 and 21 of the CEDAW Committee Closing Remarks of 2016 for Albania, this institution expresses its concern about the large number of school dropouts, particularly in high school level also due to early marriages, child marriages, choice of husband by the family, and the payment of a prize or dowry for the bride, a phenomenon that is predominant in rural and remote areas and among small communities. This should draw the attention of the Albanian judiciary to cases of requests for permission of underage marriage that has a negative impact on the girls' education. Therefore, the education of the minor requesting the underage marriage should not only be reflected in such court decisions, but it should also be the focus of the court in relation to the exercise of this right when underage marriage is allowed.

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 that our country bans all harmful practices, including child marriage, the practice of families choosing the spouse for their daughter, etc.

1.7 Residency of the minor or non-minor applicant in cases of permission of underage marriage

According to the decisions analyzed in relation **to the residency of the minor girl** for whom permission for underage marriage is requested, the situation is as follows:

- ☐ Resident in city - 16
- ☐ Resident in village - 48
- ☐ Resident abroad – 2 [USA and Croatia]
- ☐ Residence not shown in the decision - 2

So, it is clear that the minor girls living in the village are those that mostly seek to enter into underage marriage.

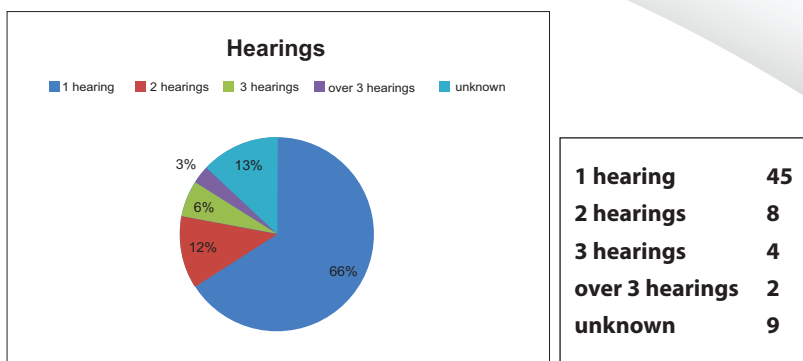
Regarding **the residency of the future husband**, the situation is as follows:

- ☐ Resident in city - 10
- ☐ Resident in village - 40
- ☐ Resident abroad – 8 [USA, Italy, Macedonia, Kosovo, and Croatia]
- ☐ Residence not shown in the decision - 10

We considered it of interest the impact that the residence of the future husband has in encouraging the bonding of these marriages. Because, when moving abroad is intended through marriage, the consideration of the court for the minor should be even greater. The Council of Europe Convention, known as the Istanbul Convention “On Preventing and Combating Violence against Women and Domestic Violence”, specifically Article 32 on the civil consequences of forced marriages, and Article 37 on forced marriages, requires the national Parties to take care and take all the measures against the coercion to marry and the invalidity of these marriages.

1.8 Number of hearings and duration of the judicial process

66% of claim reviews last only one session. So, these fall under quick cases with few numbers of judicial sessions.



Graph 3: Percentage of duration of cases through court hearings

Judgments of applications for permission of underage marriages generally take place in a few sessions. For example, the Court of Tropoja and Lezha have reviewed all cases in one hearing, while the Court of Shkodra has reviewed only one case in two hearings while the rest of the 12 requests in total were reviewed in only one hearing. The Court of Kavaja did not give this data for the seven decisions taken.

Translated into duration, generally, it is noted a decision-making ranging from minimum to 2 days, as is the case of decision no. 1880/31.7.2013 of the DC of Shkodra, up to a maximum of 121 days or 4 months, as in the case of the decision no. 12-2013-418/3.4.2013 of the DC of Kavaja.

The consistency between the number of hearings and the length of the processes is not present in all cases. The dismissed cases have a longer duration than the approved cases.

2. Participants in the process

2.1 The civil status office and the adult person with whom the marriage is bound

According to the monitored decisions of the period 2011-17, it turns out that out of 56 decisions approved for permission to marry, *the Civil Status Office has been summoned as third party in only 19 of them.*

2.2 Role/participation of the psychologist

Of the 68 decisions of the period 2011-17, it results that *a psychological assessment of the juvenile was made in 6 cases and in 26 cases, it is clear that there was no psychologist involved in the process.* In 36 decisions, the psychological assessment of the minor was not carried out.

For example, the Court Fier has no data. In Kavaja, the psychologist was involved in only one case out of 7 decisions, while this is not clear in other decisions. Tropoja and Lezha didn't involve the psychologist in any of the cases, Shkodra in only 3 cases out of 14 in total, while Kukës only in 2 out of 13 cases in total.

2.3 Role of parents and escort of the minors in Court by other adults

Who accompanies the minor in the processes of requests for permission to enter into underage marriage?

- ☐ Future husband - 3
- ☐ Only the mother - 9
- ☐ Only the father - 16
- ☐ Both parents - 20
- ☐ None or is not shown in the decision – 20

According to the monitored data, there have been cases where the minor was escorted by the parents of her future husband, for example, the decision no. 7/14/1/2015 of the DC Kukës.

2.4 The presence of legal counsel/lawyer

It turns out that *there was no representation through lawyer in 28 decisions out of 68 in total while this representation was done in 13 cases.* The rest of the decisions, altogether 27, do not have a clear

data on representation through lawyer.

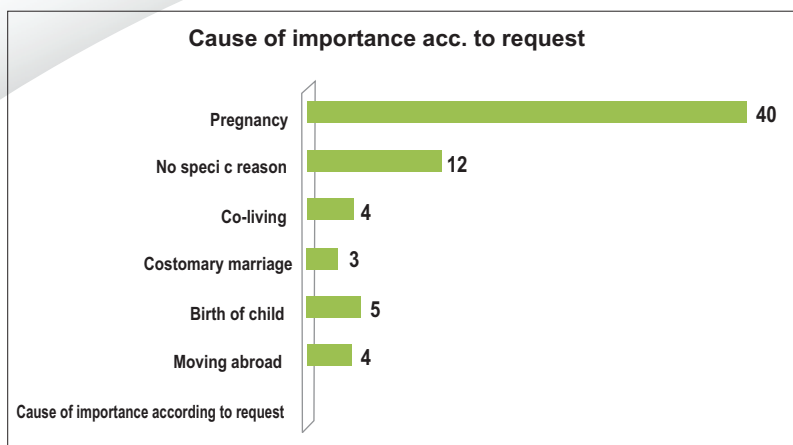
It cannot be verified how much are the minors aware of access to court access through free legal assistance.

3.Content of judicial decisions

3.1 Important cause according to the request versus important cause according to the court decision

In the process with subject permission to enter underage marriage, the important causes claimed by the applicants are:

- ☐ Pregnancy - 40 out 68 **or 59%**. In 10 cases, the minor had co-lived with the boy before.
- ☐ Co-living - 4 out of 68 **or 6%** where co-living is the sole reason not accompanied with pregnancy.
- ☐ There is no cause or is just requested permission to marry - 12 out of 68 **or 17%**.
- ☐ Customary marriage - 3 out of 68 **or 4%**.
- ☐ Building a live abroad/family reunion - 4 out of 68 **or 7%**.
- ☐ Birth of child - 5 out of 68 **or 7%**.



Graph 4: Cause of Importance as requested in Court

Pregnancy remains the main cause. It is worrying that there are some decisions with no specific cause but simply permission to marry. It is also worrying the number of decisions, though small, which are about marriage according to the customary law.

In all the approved cases, the reasoning shows that the court has evaluated the same cause as cause of importance in allowing the underage marriage.

3.2 Assessment of the higher interest of the child in court decisions

The Court must argue that ruling or not ruling this decision is in the best interest of the applicant that aims to bind underage marriage.

The reasoning of the decision must pass through the line of the entire analysis of the causes, reasons, psychologist's opinion, etc. that are part of the judicial review.

The courts were expressed on the principle of the highest interest of the child (HIC) in only 17 decisions. There is no such analysis in the rest of the decisions.

Districts	The HIC only mentioned without being analyzed (cases)	There is no analysis of the HIC (Cases)	Total
Shkodër	10	4	14
Kukës	0	13	13
Lezhë	0	5	5
Pukë	0	0	0
Kavajë	0	7	0
Fier	5	13	18
Tropojë	2	9	11
Total (number)	17	51	68
Total (%)	25%	75%	100%

Table 5: Highest interest of the child in court decisions

Shkodra – of 14 in total, 10 analyze the principle mostly by simply quoting it without a complete analysis.

Kukës – this analysis is not found in any of the 13 decisions.

Lezha - this analysis is not found in any of the 5 decisions

Tropoja - of 11 in total, 2 make this analysis but not sufficiently in-depth.

Kavaja - this analysis is not found in any of the 7 decisions.

Fieri - of 18 in total, 5 make this analysis but not sufficiently in-depth.

3.3 Evaluation of physical and psychological maturity of the minor and clear understanding of marriage

The psychological maturity includes the clarity of the applicant on the importance of marriage in the entirety of his/her rights and obligations. For the court, the psychological maturity must be ascertained from the actions of the subjects and not merely from their statements. The court must protect two institutes in this decision-making: the pupilage and marriage. Given that rights, obligations and responsibilities arise from marriage, the Court must assess how much is the person in harmony with his/her maturity with respect to these rights and obligations that the marriage imposes. The court is able to achieve this through various methods, including open and closed questions rather than

suggestive ones. Of course, the list of questions addressed to the person may be long. The dedication to this process is a contribution to the protection of the minor and marriage.

How does the situation appear in the monitored court decisions?

- Shkodra - of 14 in total, 8 of them analyze the physical –psychic maturity of the child
- Kukësi - of 13 in total, 2 of them contain this analysis
- Lezha – of 5 in total, 2 of them contain this analysis
- Tropoja - of 11 in total, 5 of them contain this analysis
- Kavaja - of 7 in total, none have this analysis
- Fieri - of 18 in total, 2 of them contain this analysis

Regarding the monitoring of the decisions, it turns out that the physical and psychological maturity of the child is carried out superficially, without properly analyzing the physical and mental developmental context in accordance to the age and growth.

3.4 Evaluation by the minor to clearly understand marriage and readiness of the minor to take responsibility

The analysis of this aspect of the court decisions shows that:

Shkodra – of 14 in total, 10 of them analyze this aspect

Kukësi - of 13 in total, none contain this analysis

Lezha - of 5 in total, none contain this analysis

Tropoja - of 11 in total, 2 of them contain this analysis

Kavaja - of 7 in total, none contain this analysis

Fieri - of 18 in total, 5 of them contain this analysis

The Court must assess if the minor applicant is clear on the concept of marriage as a personal act by which he/she aims to establish a material and spiritual union for the rest of their lives.

II - Social analysis of cases of underage marriage

1. *Analysis of findings in social terms regarding marriages under the permitted age in Shkodra, Kukës, Lezha, Tropoja, Puka, Fier and Kavaja*

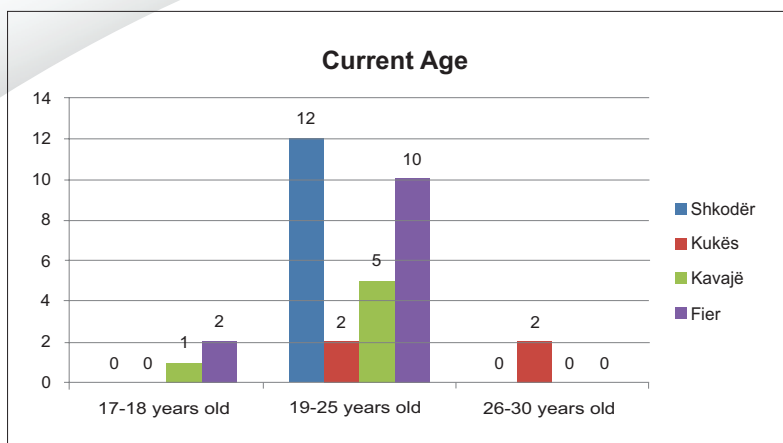
1.1 **The demographic characteristics according to the research in Shkodra, Kukës, Lezha, Tropoja, Puka, Fier and Kavaja**

Of the 68 cases addressed to the Court with subject “permission to enter into underage marriage”, 34 of them were identified and interviewed. In Shkodra, 12 out of 14 cases were interviewed, while the other 2 cases couldn’t be found. In Kukës, the interview was conducted with 4 women that had married underage, while in 9 cases communication was not established. 6 women were interviewed in Kavaja, while 1 woman was not interviewed because she lived abroad. In Fier, the number of respondents was 12, while 4 people couldn’t be found and 2 were abroad. In Tropoja, none of the 11 cases could be found. In Puka, there is no case of legal marriage under the age of 18. In Lezha, of 5 cases in total, 3 persons were not found, while the other 2 refused to be interviewed.

All the women interviewed stated that they were married before the age of 18, although 4 cases in Fier were dismissed as the court did not legitimize the underage marriage.

1.1.1 *Current age of the respondents*

The dominating *current* age-group of women married underage is between *19 and 25 years old* representing over 85% of the sample in all the cities.



Graph 5: Current age of respondents according to the survey

1.1.2 Age of respondents when they married

Almost all the respondents were married during the age of 16 to 17. There is only one case in Kavaja where the marriage took place at the age of 14.

It is worth emphasizing 4 cases in Fier that were dismissed. In one (1) case, the girl turned 18 during the trial and there was no need for the permission of the Court to marry. In two (2) cases, the parties did not attend the Court, however, these girls report a marriage age under 18 (one was 15 years old and the other 12 years old). In one (1) instance, the case was dismissed because the Court did not find any cause of importance to allow the marriage, however, the girl reports a marriage age of 15.

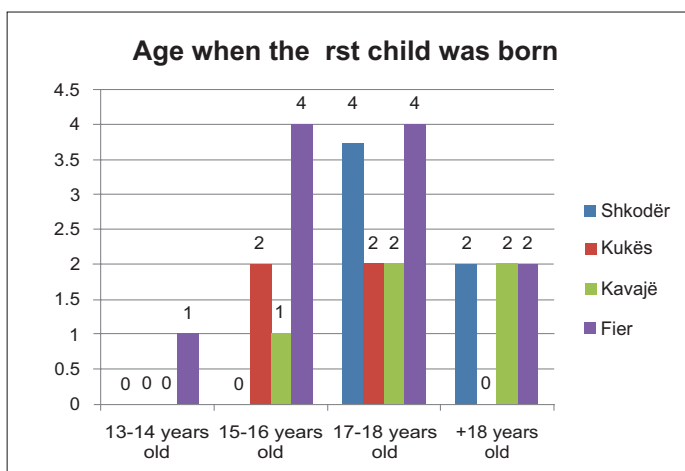
Age when you were married:	Shkodra	Kukës	Kavaja	Fier
14 years old	0	0	1	0
15 years old	0	0	0	0
16 years old	4	2	2	2
17 years old	8	2	3	6

Table 6: Age when the respondents were married according to survey

1.1.3 Mother's age when the first child was born

Most of the women married underage are now mothers, specifically 74% of them. In the sample of Shkodra, in 67% of the cases, the first child was born when the mother was in the age group of 17-18 years old, while the rest of them had their first child after the age of 18. In Kukës, in 50% of the cases, the first child was born when the mother was in the age group of 15-16 years old, while the rest, when the mother was in the age group of 17-18 years old. In Kavaja, in 20% of the cases, the birth of a child occurred when the mother was in the age group of 15-16 years old, 40% when the mother was in the age group of 17-18 year olds, and the remaining 40% when the mother was over 18. As pertaining to Fier, the dominating cases are those where the child was born when the mother was in the age group of 15-16 years old and 17-18 years old, respectively 36% of the cases for each age group. There is one (1) concerning case in Fier where the mother acknowledges that she delivered the first child when she was 13 years old.

In all the cases in Shkodra and Kavaja, it is reported that the marriage occurred before the child was born, while in Kukës the situation appears to be the opposite, where the marriage in all cases took place after the child was born. Meanwhile in *Fier*, in 64% of cases, the marriage took place after the child was born.



Graph 6: Age when the first child was born according to the survey

1.1.4 Current status of the underage married women

The situation regarding the marriage status appears solid in all the cases in Shkodra, Kukës and Fier. In Kavaja, there is only one case of an ongoing divorce process.

Current legal status:	Shkodra	Kukës	Kavaja	Fier
Married	100%	100%	83%	100%
Divorced	0%	0%	0%	0%
Widow	0%	0%	0%	0%
Single/unmarried	0%	0%	0%	0%
In process of divorcing	0%	0%	13%	0%

Table 7: Marriage status according to survey

1.1.5 Age difference between spouses

The age difference between the spouses in Shkodra varies from 2 to 16 years and dominates the age difference of 6 to 10 years and 11 to 15 years with 36% of the cases in each category. In Kukës, Kavaja and Fier, the age difference of the couple is lower and varies from 2 to 10 years. In Kukës, 50% of the respondents represent an age difference with their husband of 1 to 5 years. In Kavaja and Fier, the dominating age difference is 5 to 10 years, respectively 75% and 80% of the cases.

1.1.6 Age of the respondents' parents

The parents of the interviewed women are reported to be between the ages of 35 to 70 years old. The majority of female parents are in the age group of 41-50 years old (55% of the cases), while the majority of male parents are in the age group of 51-60 years old (58% of the cases).

Parents' age (in years)	Shkodra	Kukës	Kavaja	Fier
Mother's age:				
35-40 years old	0	0	0	3
41-50 years old	8	2	4	4
51-60 years old	3	2	2	5
61-70 years old	0	0	0	0
Father's age:				
35-40 years old	0	0	0	0
41-50 years old	3	2	0	5
51-60 years old	6	2	6	5
61-70 years old	2	0	0	2

Table 8: Age of the parents of the girls married underage according to survey

1.1.7 Type of household

The majority of the respondents are girls raised in households with both parents, namely 75% of the respondents in *Shkodra*, 83% in *Kavaja*, and 100% of the respondents in *Kukës* and *Fier*.

	Shkodra	Kukës	Kavaja	Fier
Type of household:				
With both parents	9	4	5	12
With one parent	2	0	1	0
With divorced parents	1	0	0	0
With remarried parents	0	0	0	0
Legal status of the parents				
Single/unmarried	0		0	0
Married	8		5	12
Divorced	1		1	0
Widowed	3		0	0

Table 9: Type and status of households where the respondents grew up

1.2.1 Parents’ employment status

Most of the respondents’ parents are unemployed. This situation appears like this: 100% of the cases in Kukës, 33% of the cases in Kavaja, and 67% of the cases in Fier. The unemployment is a disturbing factor that is reflected in the employment status of the underage married women.

Are your parents employed?	Shkodra	Kukës	Kavaja	Fier
Yes		0	4	4
No		4	2	8

Table 10: Employment status of the minor girls’ parents

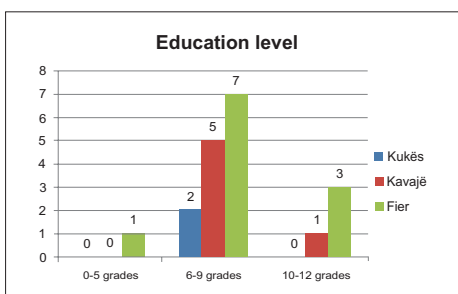
1.1.8 Migration of parents

Migration of parents does not seem to be correlated as an important factor to the underage marriages, as in 100% of the cases in Kukës, 50% of the cases in Kavaja, and 25% of the cases in Fier, the parents have never been in immigration.

1.2 Characteristics of the educational history of the underage married women

1.2.1 Level of Education

The women with low level education dominate the group of respondents in all areas, namely 100% of the cases in Kukës, 83% of the cases in Kavaja, and 67% of the cases in Fier. International data show a correlation between the low level of education and underage marriages. The comparison of the level of education of the parents and the respondents shows a very small increase of the number of years of the respondents passed in education compared to the parents. The fact that the level of education of the respondents corresponds to that of their parents can be significant and explanatory for the cause of marriage before the permitted age.



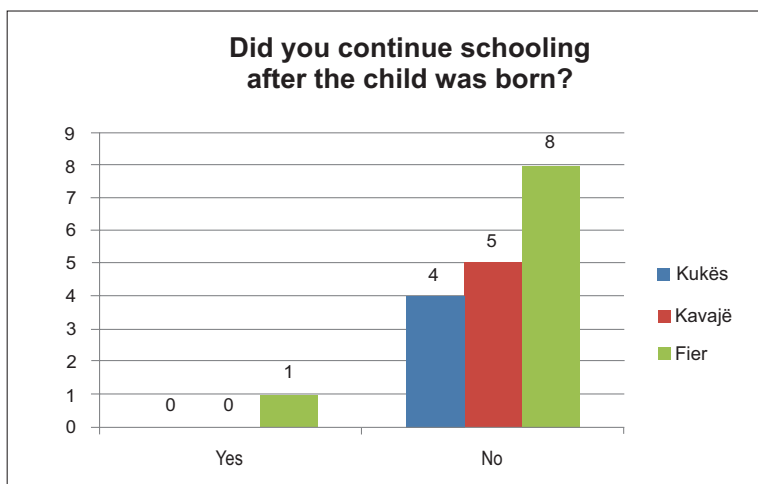
Graph 7: Respondents' level of education

Parents' level of education:	Kavaja	Fier
No education	0	1
Elementary	0	0
8 years	4	7
High school	2	4
University	0	0

Table 11: Parents' education

1.2.2 Achievements and results at school

Most of the respondents speak of very good or average school results. *In Kukës*, 100% of the respondents appear to have had *average* school results. *In Kavaja*, the number of those with *good* and *average* school achievements is up to 40%, while *in Fier* 80% of the respondents appear to have had *very good* results at school. Also, most of the respondents did not return to school after the first child was born, as shown by the following chart.



Graph 8: Schooling after the child's birth

1.2.3 Professional trends

According to the research, most of the women in this type of situation do not work out of the house. This applies to 75% of the women in Fier. In other cities, the respondents did not answer this question. 100% of women in Kukës, 75% in Kavaja and Fier say that they do not have any intension of a professional career.

1.3 Family life and social status of women married under age

1.3.1 Cohabitation with the husband's parents

Meanwhile, in 67% of the cases interviewed, the families who originate from underage marriages live together with the husband's parents. It also appears that the families created by underage marriage live together with the husband's family for a period of at least two years after the birth of the first child. The analysis of this study cases shows that after the fifth year of marriage, the families created by underage marriage live economically separate. These data require in-depth studies from the institutions to better understand the dynamics of the "large" Albanian family over the last decade.

No. of years that you lived with the husband's family before the child was born:	Shkodra	Kukës	Kavaja	Fier
0-1 years	7	1	1	4
2-5 years	0	0	4	5
+5 years	0	0	1	2

Table 12: Years of co-living with the husband's family

1.3.2 Number of children

The families with one (1) or two (2) children dominate in all areas. This trend shows that even these types of families are going towards the concept of nuclear/conjugal family.

How many children did you have after the first child?	Shkodra	Kukës	Kavaja	Fier
0	3		4	3
1	1		2	6
2	2		0	2

Table 13: Number of children born after the first child

1.3.3 Children's health condition

According to the respondents' statements, the health status of their children is *very good or good* in almost all the cases. We can only mention one (1) case of a child in Fier, whose health condition appears to be poor.

What is the health condition of the child/children?	Shkodra	Kukës	Kavaja	Fier
Very good	6	4	4	2
Good	0	0	1	8
Poor	0	0	0	1
Very poor	0	0	0	0

Table 14: Health condition of the children according to mother's assessment

1.3.4 Respondents' family status after the birth of the first child

We have tried through this report to shed light also on the attitude towards the birth of female children and the correlation between the number of abortions and the child's gender. The situation appears problematic only in Kukës, where one of the respondents said that she had problems because she delivered a girl, while the other 3 respondents did not answer to this question. Also, the situation in this area seems alarming even regarding the number of abortions, where the 4 respondents said that they were forced to interrupt the pregnancy/abort.

If you delivered a girl, did you face any problems?	Shkodra	Kukës	Kavaja	Fier
Yes	0	1	0	0
No	6	0	1	11
Were you forced to interrupt (abort) the pregnancy?				
Yes	0	4	0	0
No	6	0	5	11

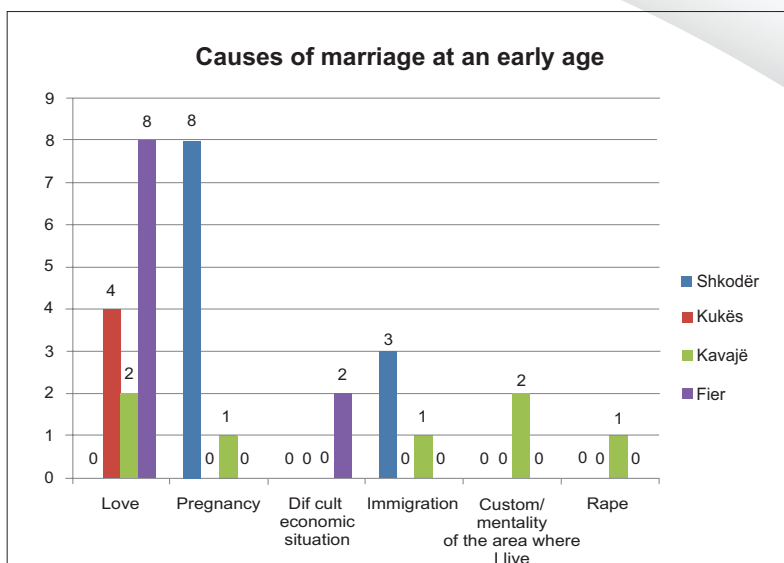
Table 15: Gender issues

1.3.5 Raising the child

In all cases, it is the relatives and family members that help the underage married mothers to raise their children. There is no reported case of children from these families attending the day care because most of the women married underage do not work outside the house.

1.4 The reasons of the underage marriages and the legal marriage

Most of the respondents answered that the main reason behind the underage marriage is related to *falling in love, namely 44% of cases or 14 cases*. Four (4) respondents mention immigration (in order to be able to immigrate at the country where the fiancé resides) as the cause of underage marriage. We also note that some of them mention *poverty and the difficult economic situation* as secondary causes. *Mentality/mindset and cultural customs* also seem to play a role in the decision to marry too early. *It is worth mentioning a case in Kavajë, where the respondent mentions rape as the cause of marriage.*



Graph 9: Causes of underage marriage

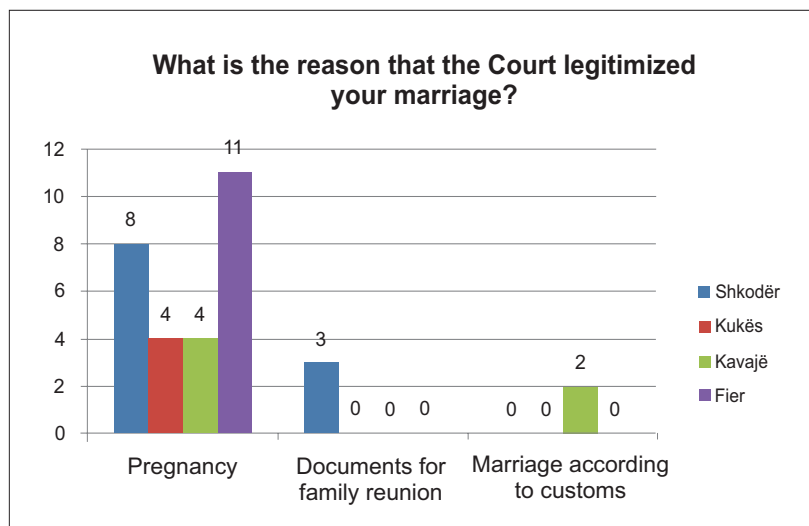
The women married underage were often confused about the questions related to their legal status and their rights after the legal emancipation due to marriage. Although no violence or coercion was exercised during the marriage process in Court, some women showed high emotional intensity during the interview process and use of violence was mentioned in one case.

Did the respondent show signs of emotional distress?	Kukës	Kavaja	Fier
Yes	0	2	0
No	4	3	12
Was the respondent harmed or attacked physically?			
Yes	0	1	0
No	4	4	12

Table 16: Emotional state during interviewing

1.5 Cause of importance of the Court's decision

The data of underage marriage in this report show that this phenomenon is an undercurrent with opposite direction that is getting stronger and, as such, deserves the attention of the society and policymakers. Pregnancy is seen as an excuse to allow underage marriage. It is worth mentioning *three (3) cases* in *Shkodra* where the respondents stated that the Court has legitimated the marriage in order to complete the documents for family reunion while the husband lived abroad and *two (2) cases* in *Kavaja* where the marriage was allowed to take place because the marriage bond in terms of tradition had already taken place.




Graph 10: Reasons for allowing the marriage by the Court

III. Main Concerns related to underage marriages

Even in this study, a good part of the previously identified concerns continue to be present:

1. Underage marriages in Albania continue to be considered a traditional practice and as such continue to be present in the country. The decisions in most of the cases speak of “marriage” outside the Court and that has preceded the decision even for the non-legal institute of “engagement”.
2. The young women are influenced to believe that economic security and the promise of a “comfortable life” being offered to them are the key factors that will ensure a happy life. This happens especially when the bridegroom is an immigrant. They are not forced to marry strange men, but it remains unclear whether marriage has taken place with the full and complete consent and conviction of the persons involved in the future marriage, to marry due to family pressure, or because of the socio-economic situation in family of origin.
3. Transition towards a more open society is not accompanied by the dissemination of information to the right extent, particularly with regard to family planning and sexual education. Marriage is considered a golden solution even before the pressure on girls to give their consent to marriage or cohabitation as soon as the pregnancy/ relation becomes public. In such a case, there is a tendency to consider underage marriage automatically as the only and best solution for both the minor girl and the baby that is expected to be born.
4. Underage married women do not return to school and most of them have not thought of having a professional life especially after the birth, committing themselves only to the family and house.
5. The community itself accepts this phenomenon, and the schools and other social institutions do not seem prepared

to address the issue of underage marriages: both their prevention and the reintegration process of women married under age.

- 
6. Raising awareness and training on the phenomenon of underage marriage has not been properly implemented and achieved by civil society and women's organizations. This raising awareness should be achieved through cooperation with the local government.
 7. There is a lack of media sensitivity and critical awareness in addressing issues related to child sexuality and underage marriages. The need for their training and awareness raising in reporting these issues is indispensable
 8. Underage marriages for immigration purposes are considered an important step in initiating a happy and comfortable life for the underage girl, but often they become dramatic and turn to abuse and sexual exploitation.

IV. Summary of the key recommendations. Guideline for the court in reviewing the requests with subject 'permission to enter into underage marriage'¹⁸

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 to the marriage. Under these conditions, he/she cannot be the one to act on behalf of the minor and he/she 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 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 compared to 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

¹⁸ 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 them". Publication of the SoM and UNDP. Tirana, April 2014. pp 46-78.

a subject that must be necessarily summoned in the process in quality of third party.

- ❑ A very important principle that should be kept under control by the Court is the autonomy of the will of the minor requesting permission 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 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 causes of importance claimed; education abroad can be ensured even 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 deem it necessary, the minor can be questioned separately. The Court is encouraged to get the minor's opinion under circumstances where influence is not being exercised on her/him. So, the minor needs to be questioned without the presence of the parents, guardian or future husband, or other adults; an already prepared list of questions may help the Court during the communication with the minor to understand the free will of the minor and other aspects.
- ❑ The Court needs to verify the physical and psychological maturity of the person under 18 requesting to enter into underage marriage. For this purpose, it may compile a list of questions, even simple ones, to gauge the minor's reaction. The psychological maturity includes the clear understanding by the applicant of the importance of marriage in general and the rights and obligations. The

psychological maturity must be concluded by the actions of the persons and not simply by their statements. The Court should protect the minors and the marriage in this decision-making. Being that rights, obligations and responsibilities stem from marriage, the Court should assess the degree of harmony of the person with his/her maturity against these rights and obligations imposed by the marriage and to inform the minor.

- ❑ The Court needs to verify the importance of the claimed motive/cause that accompanies the request of permission for underage marriage. The reason should be treated in relation to what pushes the persons to request the permission of the Court to enter into early marriage and not according to the marriage rules. There should be good reasons to enter into marriage. Is marriage being bound due to shame? Pressure? Economic needs? Obligation? Etc.
- ❑ The Court needs to verify the grounds of the reason. Is this a real or fictitious reason? This is achieved through questions. If it is real, how grounded is it to make the request in violation of the general rule of age? The reasons should be given clearly. 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 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 local child’s rights protection units and social workers may play a special role in helping the Court in such decision-making.

- ❑ The reduction towards 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 under 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 in exploitation, 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 marriage cannot be allowed for any reason. Also, many of the suggestions include in this document may be also accompanied by legal improvements. Approaching and harmonizing the legislation 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 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!

V. Bibliography

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Cedaw/CALB/CO/4, 25 July 2016. For more see: The Committee evaluated the 4th periodic report of Albania (CEDAW/C/ALB/4) at the 1413th and 1414th session, on 12 July 2016 (see CEDAW/C/SR.1413 and 1414). The Committee’s list with the topics and questions raised are included in CEDAW/C/ALB/Q/4 and the answers of Albania are included in CEDAW/C/ALB/Q/4/Add.1.

ANNEX A: Court Decisions



Decision no. **171**/02.02.2015 of DC Shkodër
Decision no. **1313**/16.10.2014 of DC Shkodër
Decision no. **1882**/31.7.2013 of DC Shkodër
Decision no. **1880**/31.7.2013 of DC Shkodër
Decision no. **2144**/10.10.2013 of DC Shkodër
Decision no. **292**/6.2.2013 of DC Shkodër
Decision no. **168**/24.1.2013 of DC Shkodër
Decision no. **1068**/29.4.2013 of DC Shkodër
Decision no. **1727**/27.6.2012 of DC Shkodër
Decision no. **2878**/22.11.2012 of DC Shkodër
Decision no. **795**/23.3.2012 of DC Shkodër
Decision no. **1169**/3.5.2012 of DC Shkodër
Decision no. **51-2011-797**/10.3.2011 of DC Shkodër
Decision no. **51-2011-2056**/23.5.2011 of DC Shkodër
Decision no. **7**/14.1.2015 of DC Kukës
Decision no. **27**/19.5.2015 of DC Kukës
Decision no. **43**/10.7.2015 of DC Kukës
Decision no. **20**/4.4.2017 of DC Kukës
Decision no. **54**/17.10.2017 of DC Kukës
Decision no. **63**/11/12/2017 of DC Kukës
Decision no. **35**/19.2.2014 of DC Kukës
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Decision no. **81**/31.01.2011 of DC Lezhë
Decision no. **235**/11.3.2011 of DC Lezhë
Decision no. **15**/12.2011 of DC Lezhë (the number of the decision hasn't been noted but the registration no. is 1140)
Decision no. **26**/13.01.2014 of DC Lezhë
Decision no. **494**/26.09.2014 of DC Lezhë
Decision no. **90**/29.4.2011 of DC Tropojë
Decision no. **135**/14.6.2011 of DC Tropojë
Decision no. **206**/30.9.2011 of DC Tropojë

Decision no. **39**/10.2.2012 of DC Tropojë
Decision no. **118**/7.6.2012 of DC Tropojë
Decision no. **64**/25.4.2013 of DC Tropojë
Decision no. **54**/2.2.2015 of DC Tropojë
Decision no. **234**/3.10.2016 of DC Tropojë
Decision no. **235**/4.10.2016 of DC Tropojë
Decision no. **321**/21.12.2016 of DC Tropojë
Decision no. **75**/24.4.2017 of DC Tropojë
Decision no. **12-2011-1136**/17.10.2011 of DC Kavajë
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