



Advancing Gender Equality Commitments in Albania

A Review of Selected Legislation

Background

The United Nations Gender Thematic and Results Group in Albania, led by UN Women Albania, reviewed selected legislation from a gender perspective, to assess compliance with international law. The review included the Criminal Code, Family Code, and Civil Code with particular emphasis on sections related to:

1. Sexual violence
2. Early marriage
3. Sexual harassment in the workplace
4. Co-ownership in the agricultural family

The review is a contribution to the Secretary General Call to Action on Human Rights. It was carried out in accordance with the UN Checklist on Elimination of Discriminatory Laws against Women and Girls (2021), with considerable support from the UN Resident Coordinator's Office. The legal expertise for the endeavor was provided by the Centre for Legal and Civic Initiatives (CLCI).


Key findings and Recommendations


1. Criminal Code provisions concerning sexual violence

International standards used for the review: the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), EU legislation, European Court of Human Rights and CEDAW Committee jurisprudence and EU and Council of Europe member states practice.

Key issues identified

The definition of “sexual assault by use of force” (rape) as it exists in the Albanian legislation needs amending to be aligned with international standards of consent-based definition of rape.

 **Albanian legislation:** according to the Albanian Criminal Code, a sexual act with adults is considered rape only if the condition of use of threat or physical violence by one party is met. The absence of consent is a prerequisite only for rape between spouses or cohabitants. The use of coercion is also the main element of sexual violence against minors 14 to 18 years old (Article 101) and in same-sex relations (Article 102/1). In all these cases, the burden of proof rests upon the victim, who must be able to prove the use of violence against them as well as their resistance.

 **International standards:** the Istanbul Convention affirms in Article 36 that the absence of consent by the victim should be the standard to determine whether an act is to be considered as sexual violence. “Consent must be given voluntarily as the result of the person’s free will assessed in the context of the surrounding circumstances.” This definition and other standards explicitly exclude the rapist’s use of force or the threat of use of force, and do not require the victim to prove resistance to rape.

Recommendations for legal revisions of the Albanian Code

- Amend the definition of rape of adults between 14 and 18 years old to ensure that it is based on the absence of freely given consent and does not require demonstration of use of force or resistance by the victim.
- Review and increase the minimum age of consent of sexual relations (currently 14 years old) and consider the age gap between the perpetrator and the victim while assessing the child’s full and free consent.
- Thoroughly complete the definition of rape to include the nature of sexual violence, the methods with which it can be committed, and the actions that constitute rape.
- Criminalize other sexual acts committed without the consent of the person, as described in Article 36, paragraph 1, letter b of the Istanbul Convention: ‘involvement with a person without his/her consent in other acts of a sexual nature (not including intercourse)’.
- Introduce, as a criminal offence, the act of forcing a person to engage in non-consensual sexual acts with a third party.
- Criminalize forced sterilization.
- Criminalize female genital mutilation.
- Revise relevant provisions relating to sexual crime to repeal any discriminatory language or reference pertaining to sexual orientation.
- Revise sanctions on sexual violence crimes based on the principle of proportionality. For instance, sexual violence against adult women is sanctioned with sentences ranging from 3-10 years, while rape in same-sex relations ranges between 3-7 years.

2. Family Code (FC) and Civil Code provisions concerning early marriage

International standards used for the review: CEDAW, the UN Convention for the Protection of the Rights of the Child, the Istanbul Convention and EU legislation.

Key issues identified

The absence of a minimum age for marriage, as well as other aspects of judicial practice in the Albanian legal system, have been specifically highlighted as problematic by GREVIO in its baseline evaluation report in 2017.

- **Albanian legislation:** According to the Family Code, the legal marriage age is 18 years old for both women and men. However, the FC allows for exceptions that can be authorized by the Court. In practice, the Court needs to assess the importance of the alleged ground for a child marriage as a specific exception to the obligation to keep with the minimum legal age on a case-by-case basis. Albanian legislation lacks provisions articulating the circumstances under which derogations to the legal age cannot be permitted, even by a decision of the Court.

Recommendations for legal revisions:

- Clarify the legal provisions regarding authorization of child marriage by the Court.
- The Family Code should establish a minimum age under which a marriage may not be permitted, even by a Court decision.
- Ensure that the Court is guided by the principle of the best interest of the child in determining the circumstances under which the minimum age can be derogated.
- The Family Code should clarify that the child (above 16 years old) should be the only person with the right to request permission of the Court to marry before the minimum age. Currently, since the Family Code does not clearly stipulate that the child him/herself should be the one requesting permission, Courts have accepted requests also from parents or future spouses.
- Clarify procedures and requirements regulating the request for Court authorization of a child marriage.
- Strengthen the emphasis on due legal process of authorization of child marriage and the right of the parties to be heard and informed.
- Mandate the participation of the psychologist and the representatives of the Child Protection Unit at the local level during the judicial process.
- FC should ensure access to specialized experts capable of providing free legal and psychological aid to the child.
- Modify the existing criteria regarding time limits for seeking the annulment of a forced marriage and extend such limit from six months to one year.
- Ensure that cohabitation, as a factual union between two people living as a couple, is regulated, and restricted for persons under 16 years old.
- Ensure a special provision for cases of sexual abuse within early marriage so it does not fall under the umbrella of sanctions for sexual abuse within marital relationships.

3. Criminal Code provisions concerning sexual harassment in the workplace

International standards used for the review: The International Labor Organization (ILO) Convention No.190 on Violence and Harassment in the World of Work, Istanbul Convention, EU legislation and other countries practices.

Key issues identified

Violence and harassment in the workplace are not addressed by Albanian Criminal Code.

- **Albanian legislation:** The Albanian Criminal Code does not explicitly address violence and harassment in the workplace. However, it includes provisions on protection of human dignity, human rights, and freedoms for every person, potentially covering the protection from violence and harassment in labor relationships. Some of these provisions (see Article 108/a, Sexual harassment, and Article 121/a, Stalking), should be amended to specifically include violence and harassment in the workplace.
- **International standards:** As required by the ILO Convention 190 ratified by Albania, the Criminal Code should include provisions against violence and harassment in the workplace. These obligations derive also from the Istanbul Convention.

Recommendations for legal revisions:

- Consider amending criminal provisions related to sexual harassment (Article 108/a) and stalking (Article 121/a); Elaborate of these two definitions to the context of the workplace to ensure legal protection from sexual harassment in the workplace.
- Consider the impact of such acts on the mental and physical health of victims as well as the impact on their productivity.
- Expand aggravating circumstances to include victim's vulnerability due to age, disability, previous victim of gender-based violence and other factors.
- Develop measures for victims of sexual harassment in the workplace that enable departure from workplace where they were harassed.

4. Civil Code provisions concerning co-ownership in the agricultural family

Key issues identified

The principle of equal recognition between women and men of the right to property, as required by the CEDAW Convention and other international standards, needs to be systematically applied, including in the context of the agricultural family.

In Albania, the agricultural land before 1990 was all state-owned. With Law 7501, agricultural land was allotted firstly to the farmers who possessed the land, and secondly to the former owners. The provisions on co-ownership in the agricultural family, defined in the Civil Code of 1994 as a special type of co-ownership, have in practice impacted gender equality. The special type of co-ownership provisions favors the men of the family and have been the basis of various legislation regarding management and registration of properties, which led to different interpretations by the courts regarding the identification of the co-owners in the agricultural family. Three different practices are noticed with regards to property transactions:

The practice that considers as co-owners only those members of the agricultural family who were part of the family certificate of the head of household in 1991 (01 August 1991 or 01 October 1992).

The practice, which considers co-owners only the agricultural family members on the family certificate of the head of household at the time of sale/alienation of the immovable property.

The practice that considers as co-owners the members of the agricultural family appearing in the family certificate of the head of household in 1991 and the members of the agricultural family who are currently on the family certificate of the head of household at the time of sale/alienation of the immovable property.

These concerns were highlighted in the CEDAW Committee Concluding Observations addressed to Albania in 2016, which stated that "...Concerning marriage and family relations, only a small percentage of women in Albania (8%) own land... The practice ALUIZNI has been following by registering the informal constructions in the name of the so-called 'head of the family' is considered discriminatory against women...."

Recommendations for legal revision

- Address and regulate cases when new members enter the agricultural family.
- Address and regulate cases when members leave the agricultural family.
- Address and regulate the extent to which the head of household can represent the agricultural family.
- Address and regulate the inheritance in the agricultural family.
- Continue to address and regulate gender discrimination and stereotypes within agricultural families that are a barrier to women's access to land and agriculture property.