The Practical Enforcement of the Right to Family Life in Albania: Legal Standards, Institutional Gaps, and Challenges for Vulnerable Groups

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Abstract

The right to family life represents a fundamental pillar of human dignity and personal development, safeguarded by both international and domestic legal systems. This study aims to critically assess the gap between legal guarantees and their practical enforcement in Albania, with a particular focus on vulnerable groups such as Roma and Egyptian communities, economically disadvantaged families, migrants, and persons with disabilities. The research is grounded in a normative and institutional analysis, combining doctrinal interpretation of constitutional, civil, and family law provisions with a review of judicial practice and institutional functioning. The findings highlight significant discrepancies between formal legal standards and their implementation, which are characterised by fragmented jurisprudence, limited institutional capacity, and difficulties in access to rights for marginalised populations. In conclusion, the study proposes targeted legal reforms, inter-institutional coordination mechanisms, and a more coherent judicial approach, with the aim of strengthening the effective protection of the right to family life in Albania.

Keywords: *Right to family life; vulnerable groups; Roma and Egyptian communities; migration; persons with disabilities; civil law; human rights*

1. Introduction

Family life represents a fundamental pillar of both social structure and individual development, enjoying a special legal status in both international and domestic legal systems. The present research context is shaped by the challenges contemporary societies, including Albania, face in effectively guaranteeing this fundamental right in an environment characterised by economic

insecurity, migration, discrimination, and limited institutional capacity (Aliu & Gashi, 2007). The right to family life is recognised in Article 8 of the European Convention on Human Rights, which imposes a dual obligation on member states: to refrain from arbitrary interference and to undertake positive measures for its protection and promotion (Council of Europe, 1950; Caggia, 2006).

The case law of the European Court of Human Rights has developed a consistent body of standards aimed at ensuring the practical enforcement of this right (Kurić and Others v. Slovenia, 2012; ECtHR, 2020; Draghici, 2017). In Albania, these standards are reflected in the legal framework through Article 53 of the Constitution and specific acts such as Law No. 18/2017 "On the Rights and Protection of the Child," the Family Code, and the Civil Code (Constitution of the Republic of Albania, 1998; Family Code, 2003; Civil Code, 1994). In theory, these instruments reflect the state's efforts to harmonise national law with European standards (Dobjani, 2011; Anastasi, 2009; Mandro et al., 2006). However, in practice, implementation remains fragmented and inconsistent, particularly for vulnerable groups such as Roma and Egyptian communities, families living in extreme poverty, migrants, and persons with disabilities (UNICEF, 2021; UNDP Albania, 2022; People's Advocate, 2020).

These categories face structural and institutional obstacles that limit their access to rights formally guaranteed by law. Empirical literature and international reports have emphasised that although the legal framework exists, it often remains declarative and fails to translate into effective protection for the most at-risk citizens (Open Society Foundations, 2020; European Commission, 2022; Commissioner for Protection from Discrimination, 2020). The problem this study seeks to address is the gap between the legal norm and the practical reality of family life protection in Albania.

The research particularly focuses on identifying the reasons why this right remains difficult to realise in practice, by analysing institutional capacities, judicial performance, inter-institutional coordination, and the social and cultural barriers experienced by marginalised groups (Craig & De Búrca, 2011; Cholewinsky et al., 2007). The central research question is: How is the right to family life implemented in practice in Albania, and what are the main obstacles limiting its effective enforcement for vulnerable groups?

In this regard, the study's main hypothesis is that despite the existence of a formal legal framework aligned with European standards, weaknesses in institutional capacity, the absence of consistent jurisprudence, and the social exclusion of certain groups hinder the practical realisation of this right. The study aims to offer a critical analysis of these gaps through an interdisciplinary legal and institutional approach, proposing solutions directed towards normative reform, institutional capacity-building, and the enhancement of judicial coherence.

The relevance of this research lies not only in its theoretical contribution to the fields of family law and human rights in Albania but also in its potential to inform policies and reforms that directly impact the lives of individuals affected by social exclusion and the lack of effective legal protection.

2. Literature Review

The right to family life has been extensively addressed in international legal literature as a fundamental component of human dignity and fundamental rights. Article 8 of the European Convention on Human Rights (ECHR) constitutes one of the most dynamic and progressively interpreted provisions by the European Court of Human Rights, establishing a balance between individual autonomy and public interest (Van Dijk et al., 2018; Mowbray, 2020; Cholewinsky et al., 2007). Jurisprudence has affirmed that states bear a dual obligation: to refrain from arbitrary interference and to undertake positive measures to ensure the effective realisation of this right, as demonstrated in landmark cases such as Marckx v. Belgium (1979) and Kurić and Others v. Slovenia (2012). These principles have evolved into binding standards for national systems, including countries undergoing democratic transition.

In Albanian legal scholarship, the focus has primarily been on the analysis of the normative framework concerning the protection of family life and children's rights, through the provisions of the Constitution of the Republic of Albania (Article 53), Law No. 18/2017 "On the Rights and Protection of the Child," the Family Code (2003), and the Civil Code (1994), which collectively form the foundation of Albanian family law (Aliu & Gashi, 2007; Mandro, 2009; Omari, 2008). Contributions by scholars such as Bejko (2015), Shytaj (2019), Dobjani (2011), Papa (2019), and Ikonomi (2011) have illuminated efforts to harmonise these instruments with international standards on human rights and child protection, reflecting the influence of ECtHR jurisprudence on national legal doctrine (Anastasi, 2009; Omari & Anastasi, 2008).

However, there is a noticeable gap in the critical analysis of the practical implementation of these guarantees, particularly in relation to vulnerable groups such as Roma and Egyptian communities, persons with disabilities, migrants, and families in extreme poverty (UNICEF, 2021; UNDP Albania, 2022; People's Advocate, 2020; FRA, 2020). Reports from national and international institutions, such as the Venice Commission and the European Commission, have emphasised that fragmented judicial practice and the lack of harmonised interpretive standards hinder the consolidation

of a stable body of case law in accordance with Article 8 of the ECHR (Carlier & Guild, 2006; Council of Europe, 2021).

Despite legislative efforts and partial institutional improvements, the prevailing analyses have not systematically addressed the interplay between family law, civil law, and the state's international obligations in the field of human rights. It is precisely this gap that the current study seeks to fill, combining doctrinal analysis with empirical examination of institutional shortcomings and judicial incoherence. The paper contributes to existing literature by offering an integrated international and domestic perspective, addressing in a systematic manner the implementation challenges of Article 8 of the ECHR in the Albanian context and proposing concrete solutions at the legal, institutional, and judicial levels (Danaj, 2021; ELI, 2019).

3. Methodology

This study adopts an integrated qualitative methodological framework, combining doctrinal legal analysis with critical institutional and socio-legal review, in order to assess how the right to family life is implemented in practice in Albania. This approach is grounded in contemporary human rights and comparative law literature, which emphasises the need to move beyond purely formal interpretation in favour of analyses that explore the interaction between legal regulation and social context (Van Hoecke, 2011; Tushnet, 2006; Carlier & Guild, 2006). In transitional contexts such as Albania, where a notable gap exists between legal norms and their effective implementation, such an approach is particularly appropriate to identify the structural and institutional factors that hinder the fulfilment of fundamental rights.

The data selection process was built upon an in-depth review of primary and secondary legal sources, with a focus on documents published primarily over the last ten years in order to reflect recent normative and jurisprudential developments. At the national level, the Constitution of the Republic of Albania (1998/2022), the Family Code (2003), the Civil Code (1994), and Law No. 18/2017 "On the Rights and Protection of the Child" were examined. At the international level, emphasis was placed on Article 8 of the European Convention on Human Rights and the relevant case law of the European Court of Human Rights (Mowbray, 2020; Van Dijk et al., 2018). Furthermore, monitoring documents and reports from national bodies such as the People's Advocate and the Commissioner for Protection from Discrimination (People's Advocate, 2020; Commissioner, 2021), as well as from international organisations monitoring the implementation of social and family rights in Albania, such as UNICEF and UNDP Albania (UNICEF, 2021; UNDP Albania, 2022), were also included.

The analysis was conducted through a combined textual, content-based, and systematic approach, critically interpreting legal texts, institutional practices, and empirical data in light of international human rights standards. Special attention was given to the analysis of relevant jurisprudence from both Albanian courts and the ECtHR, selected through purposive sampling, in order to identify interpretative trends, systemic gaps, and recurring challenges affecting the most marginalised groups. This combination of sources and analytical techniques was designed to provide a detailed and reliable overview of the performance of Albania's legal and institutional system in relation to its obligations under Article 8 of the ECHR.

The choice of this methodology is justified by the multifaceted nature of the right to family life, which requires not only an assessment of legal provisions, but also of the context in which these norms operate in reality. Through this integrated perspective, the study aims to identify not only deficiencies at the level of formal regulation but also the administrative, socio-economic, and cultural barriers that render legal protection insufficient for those in need. Only through such a comprehensive approach can credible conclusions be drawn and concrete recommendations offered for legal and institutional improvements, in view of ensuring the genuine guarantee of the right to family life in Albania.

4. The Legal Framework in Albania: Formal Guarantees for Family Life

In Albania, the right to family life is enshrined both in the Constitution and in sectoral legislation, reflecting efforts to harmonise the domestic legal order with international human rights protection standards. Article 53 of the Constitution of the Republic of Albania provides that "the family enjoys special protection by the state," granting family a privileged status within the constitutional framework (Constitution of the Republic of Albania, 1998/2022). This provision serves as the foundation for an integrated system of guarantees, where civil and family law provisions converge not only to ensure the formal functioning of the family institution but also to safeguard the rights of its members in practice.

The Family Code (Law No. 9062/2003) provides a comprehensive framework regulating relationships between family members, including guardianship, adoption, parental responsibilities, and the division of duties. It conceptualises the state as a guarantor of equality and protection within the family, especially for vulnerable groups such as children and persons with disabilities. This protective principle is further reinforced by Law No. 18/2017 "On the Rights and Protection

of the Child," which establishes the positive obligations of public authorities to ensure the physical, moral, and familial integrity of children, recognising them as rights-holders with distinct legal capacity (Shytaj, 2019; UNICEF, 2021).

Beyond this domain, the protection of family life is also strengthened through civil law provisions. The Albanian Civil Code, particularly the articles relating to legal capacity, representation, and civil liability (Articles 6, 56, 608 and onwards), provides tools for the legal protection of family members in cases of violations of their fundamental rights. For instance, the provisions on civil liability offer a legal basis for addressing cases of child abandonment or domestic violence, thereby giving legal force to the protective principles found in family law (Papa, 2019). Furthermore, rules on representation and guardianship play a key role in safeguarding the rights of those lacking full legal capacity, such as minors and persons with disabilities (Bejko, 2015).

The intersection of family law's regulatory function with the protective instruments offered by civil law forms a multi-layered structure for ensuring the right to family life. Additional relevant legislation includes Law No. 9669/2006 "On Measures against Violence in Family Relations" and Law No. 121/2016 "On Social Care Services," which establish clear obligations for immediate intervention and the provision of social assistance for families at risk of social exclusion or violence (People's Advocate, 2020; Commissioner for Protection from Discrimination, 2021).

In addition to domestic law, Albania is party to several international instruments, including the Convention on the Rights of the Child (CRC, 1989) and the Convention on the Rights of Persons with Disabilities (CRPD, 2006), which further strengthen the state's obligations to protect family life in line with Article 8 of the European Convention on Human Rights (Council of Europe, 1950; ECtHR, 2020). The ECtHR has particularly emphasised the importance of positive obligations and effective state interventions in situations where family relationships are at risk, as highlighted in cases such as Kurić and Others v. Slovenia (2012) and Mubilanzila Mayeka and Kaniki Mitunga v. Belgium (2006).

Albania's EU integration process has further driven the alignment of national legislation with the acquis communautaire and with the standards established by the ECtHR and the European Commission (European Commission, 2022). Although this legal framework has been harmonised and includes a variety of protective instruments, its practical implementation remains dependent on the effective functioning of institutions, administrative capacity, and judicial coherence (UNDP Albania, 2022; FRA, 2020). The challenge lies less in normative improvement and more in operationalising existing guarantees and building a functional inter-institutional cooperation mechanism to ensure equal access to protection for all citizens.

Only through an integrated approach between civil and family law, anchored in international standards and supported by effective institutional mechanisms, can the right to family life move beyond a formal guarantee and become a tangible and enforceable protection for individuals and families in Albania.

5. The Practical Implementation of the Right to Family Life: Challenges for Vulnerable Groups

In Albania, the effective protection of the right to family life remains highly uneven, particularly for vulnerable groups facing socio-economic hardship or institutional neglect. Among these, families affected by migration and those caring for persons with disabilities experience distinct yet interconnected challenges that hinder the realisation of this right as enshrined in Article 8 of the European Convention on Human Rights (Council of Europe, 1950; ECtHR, 2020).

The phenomenon of economic migration has reshaped traditional family configurations, often resulting in prolonged parent–child separation. Children left in the country of origin are frequently entrusted to relatives through informal arrangements that lack legal status, leaving them without adequate legal protection or state oversight. Although the Family Code (Law No. 9062/2003) provides for guardianship and alternative care, it does not specifically address the temporary guardianship needs arising from parental migration. This legal vacuum contravenes the standards laid out in Article 20 of the Convention on the Rights of the Child, which requires that all forms of alternative care be legally regulated and subject to competent supervision (CRC, 1989; UNICEF, 2021).

Cross-border family reunification further complicates the situation, as current procedures are characterised by disproportionate administrative requirements, the absence of child-sensitive legal representation, and a general lack of procedural clarity. These deficiencies undermine children's access to essential rights and conflict with the jurisprudence of the European Court of Human Rights, which has emphasised the state's obligation to facilitate family unity where feasible (Gül v. Switzerland, 1996; Ombudsman, 2020).

Families caring for persons with disabilities face a similarly fragmented legal and institutional landscape. Despite the existence of Law No. 121/2016 "On Social Care Services" and Law No. 93/2014 "On Inclusion and Accessibility of Persons with Disabilities", implementation remains inconsistent across municipalities, largely due to limited resources and administrative capacity (Commissioner for the Rights of Persons with Disabilities, 2021). As a result, the burden of care is

transferred almost exclusively onto family members, often in the absence of any formal support network.

Although Albania has adopted the principle of deinstitutionalisation, in line with Article 19 of the Convention on the Rights of Persons with Disabilities (CRPD, 2006), the lack of viable community-based alternatives leaves families with limited options, either to institutionalise their loved ones or to provide unsupported care, typically under strenuous conditions (UNICEF, 2021). The situation is exacerbated by persistent barriers such as inaccessible education systems, insufficient physical infrastructure, and entrenched social stigma, which collectively contribute to the dual exclusion of both persons with disabilities and their caregivers (European Disability Forum, 2020; Constitution of the Republic of Albania, 1998/2022, art. 54).

Taken together, these structural shortcomings highlight a significant implementation gap between formal legal guarantees and the lived experiences of families in vulnerable situations. Bridging this gap requires not only legal harmonisation with international standards but also investment in institutional capacity, procedural safeguards, and inclusive service delivery models.

6. Discussion

Although Albania has made notable progress in aligning its legal framework with international human rights standards, particularly in the domain of family life protection (UNICEF, 2021; People's Advocate, 2020), the effective implementation of these guarantees continues to face persistent systemic barriers. The existence of a comprehensive normative framework has not automatically translated into equal and tangible protection for all individuals. Marginalised families are disproportionately affected due to intersecting ethnic, socio-economic, and administrative factors (Commissioner for Protection from Discrimination, 2020; UNDP Albania, 2022).

A central dimension of these challenges lies in the lack of effective mechanisms for inter-institutional coordination. While legislation formally outlines the responsibilities of public institutions at both central and local levels, in practice the management of complex family cases remains weak and fragmented. The absence of sustained cooperation among institutional actors often leads to procedural delays, overlapping mandates, and unfulfilled responsibilities, thereby impeding the provision of unified and coherent support for families at risk of social exclusion (UNICEF, 2021).

Moreover, significant financial and administrative disparities affect the capacity of local government units to develop and sustain comprehensive social service networks. Preventive and early intervention services, such as psycho-social counselling, parenting support programmes, and community-based care for persons with disabilities, remain geographically limited, organisationally fragmented, and financially unstable. As a result, service provision tends to be reactive and crisis-driven, rather than focused on prevention and long-term empowerment (UNDP Albania, 2022).

In both legal and administrative terms, the ongoing issue of documentation gaps for Roma and Egyptian individuals constitutes a major obstacle to accessing education, healthcare, and social protection services (People's Advocate, 2020; UNICEF, 2019). Similarly, the lack of legal formalisation for kinship care arrangements in cases where children are left in the care of relatives due to parental migration results in serious protection gaps. These gaps expose children to the risk of abandonment or unnecessary institutionalisation, despite international standards prioritising family-based care solutions (CRC, art. 20).

In this context, effective cooperation between state institutions and civil society organisations plays a compensatory and essential role in addressing systemic deficiencies and ensuring service provision for vulnerable groups. Non-governmental organisations (NGOs) frequently intervene by offering direct services, community-based programmes, and legal assistance where public services are either absent or insufficient. In parallel, oversight mechanisms such as the People's Advocate and the Commissioner for Protection from Discrimination perform essential monitoring functions, though their impact is constrained by the lack of binding enforcement powers (People's Advocate, 2021; Commissioner for Protection from Discrimination, 2020).

Beyond structural barriers, more subtle forms of discrimination continue to restrict equal access to public services for marginalised families, female-headed households, and carers of persons with disabilities. Administrative practices shaped by social stereotypes often result in implicit exclusion, thereby undermining the practical enforcement of the right to family life (European Disability Forum, 2020).

Finally, the absence of disaggregated and detailed data by social group impairs evidence-based policymaking and the monitoring of rights implementation. The administrative inability to identify marginalised families systematically excludes them from planning processes and resource allocation, thereby perpetuating the cycle of institutional exclusion (UNDP Albania, 2022).

7. Conclusions

The right to family life in Albania emerges as a complex legal concept that, despite being clearly institutionalised at both constitutional and legislative levels, remains far from fully realised in the everyday lives of citizens, particularly among the most vulnerable groups. This study has demonstrated a significant gap between legal norms and their practical enforcement, shaped by institutional, social, and economic factors.

The protection of family life cannot be reduced to the mere existence of legal provisions; it requires the establishment of a functional culture of inter-institutional cooperation, procedural clarity, and structured support for local actors who are on the frontlines of engagement with families in need. An effective system must be capable of identifying and responding to the specific needs of children, Roma and Egyptian communities, families separated by migration, and persons with disabilities.

Fragmented, ad hoc interventions driven by individual initiative are insufficient to ensure the genuine protection of the right to family life. These must be replaced by a long-term, integrated policy approach that combines the principle of non-discrimination with institutional capacity-building and inclusive social strategies.

In this regard, the role of external monitoring mechanisms and civil society should not only be strengthened but institutionalised as an integral part of Albania's national human rights protection system. Only through such an approach can Albania move beyond the formal fulfilment of international obligations and ensure the substantive realisation of the right to family life for all its citizens.

8. Recommendations

The recommendations of this study aim to go beyond a theoretical critique of the current situation by proposing an integrated legal, institutional, and social approach to improving the effective implementation of the right to family life in Albania. At the legal level, it is essential to address existing gaps related to child care in the context of economic migration by formalising temporary guardianship arrangements and adapting both the Family Code and Civil Code to contemporary social realities. Legislative amendments should also guarantee the civil registration of every child and ensure equal access to public services in compliance with Albania's international obligations under the Convention on the Rights of the Child and the European Convention on Human Rights.

Institutionally, the establishment of sustainable cooperation mechanisms among public actors is strongly recommended. This includes the development of joint intervention protocols and case management systems for complex family situations. Furthermore, the oversight roles of independent institutions such as the People's Advocate and the Commissioner for Protection from Discrimination must be reinforced by equipping them with stronger competencies to influence public policy and ensure the enforcement of fundamental rights. The capacities of local government units should be enhanced through balanced funding and continuous training for personnel delivering social and legal services.

From a social perspective, priority should be given to developing an inclusive and accessible network of preventive social services, including psychological counselling, parental support programmes, short-term shelter for at-risk families, and community-based care for persons with disabilities. These services should be equitably distributed across the country and supported by public policies aimed at inclusive social protection. Moreover, the collection and analysis of detailed and disaggregated data on vulnerable groups is essential for evidence-based policymaking and for improving transparency in the allocation of resources.

Finally, the active involvement of civil society organisations in the implementation of protective policies for families in need must be prioritised. Institutional cooperation with NGOs, who often address the gaps left by the public sector, should be formalised through long-term agreements and shared impact assessment mechanisms. Only a comprehensive and well-coordinated approach can transform the constitutional guarantee of the right to family life into a tangible reality for all families in Albania.

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