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# ENSURING ACCESS TO JUSTICE FOR PERSONS WITH DISABILITIES IN THE ALBANIAN LEGAL FRAMEWORK

**MONITORING REPORT**

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The content of this publication is the responsibility of the Albanian Disability Rights Foundation and does not necessarily represent the views of the European Union and Save the Children.

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## ABBREVIATIONS

ADRF	Albanian Disability Rights Foundation
PWD	People with Disabilities
NPO	Non-Profit Organization
CRPD	UN Convention on the Rights of Persons with Disabilities
Committee	Committee on the Rights of Persons with Disabilities established under the CRPD
Constitution	Constitution of the Republic of Albania
Ci.Code	The Civil Code of the Republic of Albania
Cr.Pr.Code	Criminal Procedure Code of the Republic of Albania
Ci.Pr.Code	Civil Procedure Code of the Republic of Albania
Ad.Pr.Code	Administrative Procedures Code
Cr.Code	Criminal Code of the Republic of Albania
Fa.Code	Family Code of the Republic of Albania
La.Code	Labor Code of the Republic of Albania
RA	Republic of Albania
OJBA	Office of Judicial Budget Administration

## EXECUTIVE SUMMARY

People with disabilities in Albania continue to face barriers to infrastructure, information and communication in the exercise of their legal rights. These barriers are particularly evident due to inaccessible facilities, information or paperwork not in accessible formats, or due to the lack of legal safeguards regarding “equal recognition before the law” or “procedural accommodations”.

Throughout the analysis in this monitoring report, it is noted that these barriers continue to exist in the Albanian context and legal framework, making it impossible to exercise the right to effective access to justice for people with disabilities, on an equal basis with all other individuals of society.

In Albania, justice system institutions do not fully provide infrastructural accessibility for all categories of disability, in order to facilitate access to *administrative services or the exercise of procedural rights* for them. There is a persistent issue with the accessibility of the Courthouse premises for wheelchair or other mobility devices users, particularly when they are in the role of the parties in the proceedings. Institution facilities do not allow physical access to any floor (there is a lack of elevators) and furthermore, do not meet the accessibility elements for persons with sensory disabilities or intellectual disabilities. The same situation is also reported in the prosecution offices or police commissariats.

On the other hand, people with disabilities in Albania, often face barriers to the implementation of the principle of “equality of arms” due to non-accessible documentation or procedures. It is precisely the lack of “procedural accommodations” that leads to violations of the “right to fair trial” principle and moreover to the exclusion from proceedings or subjection to unfair punishments.

The Albanian legal framework, referring to the procedural codes, does not explicitly provide for the guarantee of the right to “procedural accommodations due to disability or age and to guarantee the right to a fair remedy if this right is violated.

People with hearing and speech impairment, despite having been legally guaranteed in the criminal process pertaining the interpreter of the sign language provided free of charge by the state, the limited number of interpreters of the Albanian sign language (4 interpreters on a national scale) on the other hand, makes it impossible for them to cover the needs for this service throughout the Albanian territory.

For this category of people, problematic are also cases of trial during civil proceedings, where persons with hearing and speech loss/impairment are still required to individually cover court expenditures in terms of sign language interpreter service, through all the stages of the court process. Moreover, the Code of Civil Procedure of the Republic of Albania has not envisaged in line with the rights of deaf and mute persons the “procedural accommodations in terms of assistance with the interpreter and the use of sign language during all phases of trial process, which makes it even more difficult in judicial practice to ensure the implementation of this right.

Provisions of the of Civil Procedure Code and the Criminal Procedure Code for the category of blind people, do not explicitly provide for the application of the manner of notification or disclosure of acts and evidence in accessible forms or formats, in line with the needs of their disability (e.g. braille format) or forms and formats in “easy reading version” to be understood by person with intellectual disabilities or with psycho-social disabilities.

Also, for the category of persons with sensory disabilities (blind, deaf or mute) the legal framework limits their right to “independent living” with regard to limiting their right to sign acts in person, determining as a liability in each case, that they be accompanied by a third person, in the capacity of a witness.

“Equal recognition before the law” is a foundational right to ensure effective access to justice in many respects. In order for persons with disabilities to apply their rights on an equal basis with others, they should be recognized as persons with full legal capacity before the law.

The Albanian legal framework and judicial practice, limits or denies the right of persons with disabilities, and in particular of persons with intellectual or psycho-social disabilities, to exercise fully and equally their rights, through removing or limiting the “ability to act”. This category is in many cases excluded from exercising the right to be a party in the process, in the role of the applicant, the complainant, the plaintiff, the defendant or even that of a witness.

In line with the standards and principles that the CRPD affirms, in particular its Article 12, the Albania as one of the signatory states of the CRPD, must fully recognize and respect the “legal capacity to act” for persons with disabilities, thus enabling them to make decisions at any time, including those with profound or multiple disabilities.

On the other hand, the government should ensure that complete and appropriate information is provided to the PWD regarding “supported decision-making” in the exercise of “legal capacity to act” including *the legal capacity to testify in administrative, criminal or judicial proceedings*.

Following the standards that the CRPD has affirmed and recommendations addressed by the Committee in “General Comment no. 1 (2014)” it is worth noting that the Albanian legal framework needs to undergo a radical revision process with a view to its full compliance with the standards and principles of the CRPD with regard to “equal recognition before the law”. Certainly, we should not leave out without emphasizing that recent years, with the constitutional changes and the standards set out in some of the adopted laws, some of the approaches of the CRPD are reflected but the lack of effective mechanisms continues to make it very difficult to implement the application of equal recognition before the law regarding persons with disabilities.

It should be noted that the establishment and implementation of “*the supported decision-making regime*”, requires not simply putting deadlines in issuing sublegal acts and establishing formal bodies for the simple reason of meeting the deadlines set out in the legal acts. The sanctioning of the “supported decision-making” regime is more than the issuance of a sublegal act. It is first and foremost a change of the “legal” mentality, primarily of the law professionals as well as the establishment of groups with the composition of law professionals as well as other related fields including psychology, social workers, the medical specialist etc. It requires research and reference to the best international experiences to effectively put into practice the supported decision-making regime. Moreover, the establishment of a supported decision-making regime would in tandem require the abrogation and redrafting of the legal framework in line with CRPD standards pertaining the equal recognition before the law through the exercise of “full legal capacity to act” for all PWDs, including the Civil Code, as well as Codes of Procedures, and subsequent related legal and subordinate legal acts.

Regarding the exercise of the right to claim justice, to stand to trial and to testify, the Albanian legal framework contains provisions that are not in line with the CRPD and in particular with the guarantees of Article 13 “Access to Justice”.

Specifically, the removal of the “legal capacity to act” through a judicial decision, a provision which is still in force in the Civil Code and the Civil Procedure Code, and widely applicable to Albanian judicial practice, exempts from investigative, criminal or investigatory proceedings, and limits the exercise of the right of people with disabilities to the “right to a fair trial”. In particular, persons with intellectual disabilities or psychosocial disability are mostly limited to their right to initiate court proceedings, to be heard personally (themselves), to claim evidence or to appeal court decisions, etc. The legal provisions that apply in the territory of the Republic of Albania, favor these legal constraints that directly lead to the violation of the principles of “equality of arms” or “protection

against discrimination". These restrictions are still in force in the Code of Civil Procedure, the Criminal Procedure Code, the Family Code and even in the Constitution of Albania, as regards the restriction of the right to vote for persons who by a judicial decision the "legal capacity to act" is removed or restricted.

The Criminal Procedure Code continues to apply the principle of "unfitness to stand trial" or exempted a person from criminal responsibility on the basis of their psychosocial or intellectual impairment, and by a court decision the person is subjected to expertise to evaluate his legal ability to act, which may be contrary to his will. While it does not appear in the legal framework but also within the policy framework that effective measures have been taken to guarantee the necessary support through "supported decision-making" that this category of persons fully exercise their rights, rather than "removing or restricting the legal capacity to act".

*Regarding the administration of justice and legal education*, it was not ascertained that the Magistrates in the School of Magistrates have a specific topic for their continual training in terms of the new concepts that have been introduced with Article 12 "Equal Recognition Before the Law" and Article 13 "Access to Justice" of the CRPD. The same situation is noted in the curricula of the Faculty of Law, where these important topics are not included in the curriculum of students of this faculty.

Part of this monitoring report was also the analysis of quantitative data collected by justice system institutions and persons with disabilities. The data collected by the justice institutions were gleaned through the drafting of 3 specific questionnaires for the justice institutions, namely: civil courts, administrative courts and prosecution institutions. Out of 16 justice institutions in the 5 targeted regions: Tirana, Lezha, Mati, Durrës and Gjirokastra, only 11 of them replied with an official response. Meanwhile, the collection of quantitative data from people with disabilities in the 5 targeted regions was made through the development of a specific questionnaire and a simplified language to suit the different categories of disability, whereby 1/5 of the questionnaires were dedicated to be filled by their legal guardians or personal assistant. More in-depth analysis of the quantitative data collected for both target groups, can be found in Section IV "Quantitative Data Analysis".

As it may be noticed, in all the way of this monitoring report it is necessary to take measures and set up working groups for the compliance of Albanian legislation with the CRPD standards, focusing in particular on:

- Setting up a working group to include the body of professors and academics in the country, in close consultation with people with disabilities and their representative organizations, as well as technical staff of line ministries,



to launch a technical-legal debate on the CRPD standards, in order for a full compliance of the Albanian legal framework with the CRPD.

- Measures for defining and setting up the 'Institution in Charge' for defining the forms/elements of "procedural accommodations" and the parallel review of the Albanian legal framework, including the legal, civil, criminal and ongoing legal framework, with a view to explicitly incorporating the obligation to guarantee "procedural accommodations" in all stages and legal proceedings.
- Establishment of inter-ministerial working group in close consultation with persons with disabilities and their representative organizations, for the establishment and standardization of the 'supported decision-making' regime, through the drafting and adoption of legal and sub-legal acts, as well as guides for assisting the work of judges, prosecutors, lawyers and all parties involved in the justice administration system.
- Review and improve the legislation regarding the criminal justice principle of '*their criminal incapacity, due to mental state*' as well as the elimination of security measures involving compulsory medical or psychiatric treatment in the relevant institutions.
- Establishment of a working group by OJBA to inspect all premises in which the Courts operate in Albania, in order to identify all elements that do not meet the eligibility standards both in indoor and outdoor premises, as well as in communication and information.
- Action should be taken to plan, deliver and disseminate compulsory and regular training programs, for the administration employees and the justice system, including police officers, administration and professionals working as public defenders, providing legal assistance or exercise similar professions, and in particular the body of judges, prosecutors, mediators or lawyers.
- Inclusion of CRPD standards (Article 12-13) in curricula of the Faculty of Law and the School of Magistrates.
- Action should be taken pertaining translation and adaptation of the text of the CRPD in Albanian language, in compliance with the legal terms applicable in the Albanian legal framework, particularly as regards the legal terminology applied in Articles 12 and 13 of the CRPD.
- The Albanian legal framework, including the Constitution of the RA, has still in force provisions that need to be revised and improved especially

for inadequate terminology applied to persons with disabilities. The use of discriminatory and denigrating terminology, as well as the not unified use of terms, persists to pose a problem encountered occasionally in the Albanian legal framework, which underscores the need to establish a working group for compliance of the Albanian legal framework with international standards established from the CRPD, where part of the work of this group is the unification of the pertinent legal terminology.

## METHODOLOGY

The methodology of this monitoring report was constructed so that results could be obtained to build a clear picture of the current situation of guaranteeing access to justice for persons with disabilities, both in legal and practical terms, combining collecting and analyzing qualitative and quantitative data.

Qualitative methodology focused on analyzing and evaluating the regulatory, legal and political framework, as well as studies and international research work. International and domestic legislation, as well as the existing literature have been studied and analyzed with regards to the principle of equality before the law, legal capacity and the capacity to act; legal documents on human rights and the rights of persons with disabilities, legal and sub legal acts in force in the Albanian legal framework.

Internationally, there were reviewed the: CRPD, General Comments of the Committee on the Rights of Persons with Disabilities, Convention on Civil and Political Rights, Convention on the Elimination of Forms of Discrimination against Women, Convention on Economic, Social and Cultural Rights, the European Convention on Human Rights and the decisions of this court concerning equal recognition before the law of persons with disabilities. Whereas, as far as the legal framework at national level (the Albanian one) is concerned, the legality of the legal acts has been studied, analyzed and evaluated in comparison with the standards that the CRPD affirms, including procedural codes in civil, criminal, family, administrative and labor law as well as legal acts and the by-laws in force in the area of disability (the Law on Involvement and Accessibility, the Law on Notaries, Laws on the Functioning of the Judiciary, etc.).

The authors of this study consider it very important to highlight the principles of the law according to the standards affirmed by the CRPD through general recommendations or other reports that have come into effect under Article 12 and 13 of the CRPD. In this respect, a part of the analysis of the principles presented in this report is reference to these important documents that the CRPD makes available and that will be elaborated in more depth by the authors of the study on the compatibility and guarantees that the Albanian legal framework currently has in force.

For quantitative data collection from justice institutions, this monitoring report included first instance courts and prosecutors' offices (first instance courts and prosecutors' offices) focusing specifically on the five targeted areas, Tirana, Durrës, Gjirokastra, Lezha and Mati. The carrying out of a training day in each of the targeted regions, preceded the formal submission of a questionnaire with structured and semi-structured questions for the purpose of collecting primary data. Three standard questionnaires were tailored to the nature and function of the justice institution, namely: a questionnaire was drafted for the judicial district courts (civil courts); a questionnaire was drafted for first instance administrative courts and another questionnaire was drafted for prosecutors of judicial districts in the targeted regions.

For collecting quantitative data from the target group, people with disabilities, in order to evaluate the provision of access to justice, applied the same methodology: a questionnaire was developed, taking into consideration the type and the features presented by the different categories of disability. The questionnaire went through a preliminary validation process from people that do advocacy but that are PWD themselves, in order to see whether the drafted questions were easily understood by the PWD and their guardians. The questionnaire contained structured, semi-structured or unstructured questions with the purpose of collecting primary data. It was then printed in a total of 250 questionnaires, with a geographical distribution of all 50 people with disabilities in all 5 targeted areas. The 50 questionnaires for each target area, with a view to collecting the most comprehensive data, were subdivided into 5 other groups, as follows: 10 questionnaires to be filled out by wheelchair users or by those with mobility difficulties; 10 questionnaires to be filled out by people with disabilities in listening and speaking; 10 questionnaires to be filled by people with disabilities or blindness (blind); 10 questionnaires to be filled out by persons with intellectual disabilities or mental health and 10 questionnaires to be filled out by legal guardians or personal assistants of persons with disabilities.

## I. ACCESS TO JUSTICE

Access to justice<sup>1</sup> is one of the essential elements of the rule of law, a fundamental right and an essential prerequisite for the protection and promotion of human rights. Access to justice includes the “right to a fair trial”, “equal recognition before the law” and “seeking and having legal remedies for the protection of violated rights”. Ensuring access to justice is indispensable for the rule of law in any democratic society, as well as to combat social and economic marginalization in society.

People with disabilities face major obstacles regarding access to justice, including criminal proceedings or the recognition of their civil rights. These difficulties include denial of their legal rights due to lack of physical access and communication during the application and development of proceedings in public administration institutions as well as in justice institutions. However, on the other hand, it is the legislation of many countries, including Albania, that envisages denial or restriction of ‘access to justice’ for all categories of persons with disabilities on an equal basis with others, more information on which you will find in the sections below of this monitoring report.

The CRPD is the first international human rights instrument that explicitly guarantees the right to access to justice and emphasizes the elimination of obstacles to effective access to justice and on an equal footing for all categories of persons with disabilities. The Convention not only defines and clarifies

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<sup>1</sup> Throughout this study, in the Albanian version, we will use the term ‘aksesi në drejtësi’ in conformity to the English translation of the phrase ‘access to justice’. While in the CRPD’s translation into Albanian it is used the phrase ‘Mundësimi i drejtësisë’ for the English phrase ‘access to justice’, which is worth noting it is a good form of translation from English to Albanian. However, in the content of Article 13 of the CRPD in the Albanian version is again used in the phrase ‘aksesi në drejtësi (access to justice)’ thus undermining the consistency of a literal translating or giving full meaning to the terms used in English. This is also due to the fact that this terminology is new and up to now has not been used in the Albanian legal framework, and as such, it requires research and grammatical approximation, and as accurate equivalent as possible in regard to the Albanian legal terminology, so that we may have the best use and implementation of this principle in practice. In conclusion, this fact confirms once again the need to review the translation of the CRPD in its entirety and in particular of Article 12 and Article 13 thereof.

what ‘access to justice’ means for persons with disabilities, but also supports equitable and effective participation at all stages and in every role within the justice system for anyone, which constitutes an essential element of the right to access to justice. The novelty of the Convention in this respect is also related to the fact that the Convention further extends this right (access to justice) beyond the notion of “the right to a fair trial” and effective mechanisms, which have been the essential elements proclaimed by international instruments of human rights and their monitoring mechanisms. *The Convention underlines the fact that access to justice for persons with disabilities includes not only removing barriers to access to legal proceedings and having effective remedies on an equal basis with others, but also emphasizes the promotion of active involvement of persons with disabilities in the administration of justice*<sup>2</sup>.

The right of access to justice is envisaged in the Convention in two parts. Article 13 (paragraph 1)<sup>3</sup> requires from States Parties<sup>4</sup> to ensure effective access to justice for persons with disabilities on an equal basis with others, including the adaptation of procedures both in terms of disability and age, in order to facilitate their effective role as direct or indirect participants (including as a witness) starting with preliminary measures such as civil, administrative or criminal proceedings. *In accordance with the safeguards provided by this Article, access to justice is for the first time defined as a legal guarantee that is mostly related to a person rather than to parties in the process of legal proceedings.* Whereas article 13 (paragraph 2)<sup>5</sup> requires States Parties to provide specific training for justice system employees. *In this regard, the Convention considers the justice system as an integral part of the governing system that requires the society’s contribution and participation in order to function effectively.*

On the other hand, the Convention, through its articles ‘calls’ for the ensuring of ‘substantial equality’ which includes both equality of opportunities and of the outcomes. Article 13 (paragraph 1) of the Convention explicitly requires Member States to ‘ensure access to justice for persons with disabilities on an equal basis with others’. Equality before the law and the right to a fair legal process are key

<sup>2</sup> Report of the Office of the High Commissioner for Human Rights in UN. *Right to Access to Justice guaranteed by Article 13 of the Convention on the Rights of Persons with Disabilities, December 27, 2017*

<sup>3</sup> Article 13.1 ‘States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of appropriate procedural and age-related opportunities, in order to facilitate their effective role as direct and indirect participants, as well as witnesses, in all trials, including investigations and other preliminary stages.’

<sup>4</sup> States that have ratified the CRPD

<sup>5</sup> Article 13.2 “In order to provide assistance in ensuring effective access to justice for persons with disabilities, States Parties shall promote training for those persons working in the field of justice administration, including police and prison staff.”

elements for the protection of human rights and serve as a procedural means to guarantee the rule of law.

Committee on the Rights of Persons with Disabilities (the Committee)<sup>6</sup> stressed that persons with disabilities enjoy all procedural rights and protection throughout the pre-trial, administrative, investigative, criminal and judicial phases, as well as after the conclusion of the proceedings, including the right to a fair trial, the presumption of innocence, the right to have a lawyer and the right to be heard personally, as well as all other procedural rights.

Access to justice must be effectively guaranteed in all cases, in order to ensure that no individual is denied, in procedural terms, his/her right to seek justice. However, with regard to persons with disabilities, both in terms of administrative, criminal or civil proceedings, access to justice is mostly denied as a result of the lack of:

- Infrastructure accessibility;
- accessibility to communication and information;
- limitation or removal of 'legal capacity to act';
- procedural and age-appropriate accommodations;
- the right to file a claim or to initiate a judicial proceeding;
- respect to the principle of 'presumption of innocence';
- or of providing free legal aid<sup>7</sup>.

Also, the lack of "procedural accommodations" violates the principle of "right to a fair trial" and this may result in exemption from proceedings and/or the imposition of unfair penalties. Concerning the latter, limited support in the aspect of "procedural accommodations" for persons with intellectual disabilities and those of mental health category in criminal proceedings, it resulted in their non-representation, and even to death sentence<sup>8</sup> in a number of countries, other than our, in the world.

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<sup>6</sup> The Committee on the Rights of Persons with Disabilities has been established for the purposes of the CRPD

<sup>7</sup> Excerpt from 'Office of the UN High Commissioner for Human Rights Report. Right to Access to Justice guaranteed by Article 13 of the Convention on the Rights of Persons with Disabilities' December 27, 2017 (paragraph 17-19)

<sup>8</sup> Quote from the Committee for the Rights of Persons with Disabilities: *In the recent years, it has been reported that persons with intellectual disabilities and with mental health diagnosis have been executed or sentenced to death, regardless of Resolution No. 1989/64 of the Economic and Social Council, General Assembly 71/187 and the Resolution of the Human Rights Council 36/17, where it has been requested by the State Parties not to apply decisions of executions or death sentences for persons with intellectual disabilities or with mental health diagnosis. The Committee on the Rights of Persons with Disabilities has expressed concern that this category of persons (with intellectual disabilities or mental health) may be more vulnerable to the application of 'death sentences' due to the lack of "procedural accommodations" in criminal proceedings.*

The Convention has also targeted multiple or indirect discrimination that different categories of disability may come across beyond that on the basis of age or sex, addressing the specific challenges faced by people with visual impairment, persons with albinism, deaf people, deaf or blind people, as well as those with intellectual or psycho-social disabilities. Specifically, the Convention has also described these categories as they are faced with multiple discrimination not only in everyday life but also in access to justice.

It follows that all these component elements guaranteeing the “right to a fair trial” for the effective implementation of the principle of access to justice (Article 13), will be analyzed in the light of the legal compliance of the Albanian legal framework with the standards that the CRPD affirms and that are provided in *‘Report of the Office of the High Commissioner for Human Rights in the UN on December 27, 2017’*<sup>9</sup>.

## I.1 Infrastructure accessibility

Infrastructure accessibility is an important prerequisite for ensuring access to justice for all categories of people with disabilities. The restriction of this right begins with the physical barriers encountered on daily basis, starting with sidewalks, access roads and motor vehicles, which are constructed not in accordance with the settings for use by all categories of persons with disabilities. While the restriction of this right becomes even more evident when people with disabilities face barriers to the benefit of public services or to seek their rights to justice. Specifically, the lack of access ramps, lifts to enable access to the building on each floor, the accessibility of the courtrooms where the hearings take place, limit the right of this category to the exercise of their right to a fair legal process as one of the essential elements in guaranteeing effective access to justice.

Also in its first report on the implementation of the CRPD<sup>10</sup> the Albanian Government has confirmed that *people with disabilities face barriers to the exercise of the right to access to justice, due to inaccessible environments, non-accessible forms of paper, non-simplified procedures*. Although about 4 years have passed since government reporting, the situation remains the same today. These barriers continue to exist and make it impossible to exercise the right to access to justice for persons with disabilities on an equal basis with all other individuals in society.

<sup>9</sup> A/HRC/37/25

<sup>10</sup> DCM no. 460, dated 27.5.2015 ‘On the adoption of the First National Report for the Implementation of the UN Convention’ On the Rights of Persons with Disabilities, paragraph 83



In Albania, justice institutions do not fully guarantee physical access to all categories of disability<sup>11</sup>. In recent years, the construction of ramps has been made possible in the premises of some district courts<sup>12</sup> which make it possible to facilitate access to *administrative services by persons with disabilities*. The accessibility of the Courthouses by wheelchair users in the role of the parties in the process persists to pose a challenge. Buildings do not allow physical access (for PWD) to any floor (there are no elevators)<sup>13</sup>. Moreover, the buildings do not meet any of the accessibility criteria for persons with sensory disabilities (blind, as well as the deaf and mute), with intellectual disabilities or mental health, neither in the interior of the premises of the institution, even in the halls where the judicial proceedings takes place.

The same problematic situation arises also in prosecution offices and police commissariats, where the elements of physical fitness both in the external and internal spaces of the buildings of these institutions, do not guarantee the elements that are required to be met by the standards of the Convention but also from Albanian legislation.

### 1.1.1 Albanian Legal Framework

Within the framework of infrastructure accessibility, the Albanian legal framework has adopted a series of legal and sub legal acts, specifying the obligation to meet the elements of accessibility for the use of spaces by persons with disabilities including public facilities, private buildings, public buildings, premises, public spaces all over the Albanian territory, specifically:

- In implementing the Law 8402 dated 10.09.1998 '*For the control and discipline of construction works*' was issued the DCM No. 1503, dated 19.11.2008 '*On the adoption of the regulation on the use of spaces by persons with disabilities*', the purpose and scope of this regulation is to determine the technical requirements and criteria for the elimination of obstacles that are defined as 'architectural barriers', applicable in all public buildings constructed with state budget funds or private facilities located in the territory of the Republic of Albania.

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11 ADRF, 'Infrastructure accessibility and services of the Courts for people with disabilities', December 2010

12 The Judicial District Courts of Tirana, Mat, Lezha, based on the observation of ADRF in the framework of the project 'Effective Access to Justice for Persons with Disabilities'

13 For more information refer to Section IV. 1 'Analysis of Justice Institutions Data'.

- Law no. 93/2014 dated 24.7.2014 '*On the inclusion and accessibility of persons with disabilities*' in article 4 '*Principles*' inter alia, provided for in point ç) '*ensuring accessibility by removing obstacles of all kinds*'. While Article 11 of this law clearly provides that '*state institutions gradually take action to provide the necessary funds for the removal of environmental and infrastructure barriers in the provision of public services*'<sup>14</sup>.
- Within the framework of Law no. 93/2014 was approved the DCM 1074, dated 23.12.2015 on '*Determining actions to remove communication barriers and infrastructure in the provision of public services for people with disabilities*'<sup>15</sup> where in point 9 it is clearly defined that any entity that provides services to the public, must draw up a plan of actions within 6 (six) months from the entry into force of this decision for the identification of physical barriers and the progressive planning of the necessary budgetary funds, to ensure a barrier-free environment for the category of people with disabilities. In the category of entities that provide public services, are included also courts, prosecution and police bodies, regarding the administrative services they provide, and in this regard these institutions should also apply the obligations deriving from DCM no. 1074 regarding infrastructure and communication adaptation (see section below).

As it is also noted by the data analyzed in the section IV.1 '*Data analysis of justice institutions*' almost the vast majority of justice institutions<sup>16</sup> fail to meet the basic elements of infrastructure accessibility to be used by persons with disabilities. Given this situation, we find it that *the establishment of a working group by OAJB*<sup>17</sup> to inspect all institutions where the courts operate in the country

<sup>14</sup> Chapter IV '*Accessibility Financing*' Article 11 1. The needs for assistance and support, within the meaning of point 1 of Article 10 of this law, are supported by the State Budget. The planning of the funds needed for this purpose is the responsibility of the ministry in charge, in coordination with the line ministries on disability affairs and is based on guidance provided by the National Council on Disability. 2. State, central and local institutions gradually take action to provide the necessary funds for the removal of environmental and infrastructure barriers in the provision of public services. 3. Actions for the removal of environmental and infrastructure barriers in the provision of public services are determined by a decision of the Council of Ministers.

<sup>15</sup> Point 9. Any entity that provides services to the public, is obliged to adopt a plan of actions, in order to implement the requirements of this decision within 6 (six) months of its entry into force. 10. The plan of actions, includes the obligation of the entity to: a) Identify existing facilities and services in which accessibility is missing; b) Progressively plan the funds needed for adaptation; c) Determine the timeframe for achieving the adaptability.

<sup>16</sup> Here we refer only to those justice system institutions that were part of the monitoring report conducted by ADRF.

<sup>17</sup> Office of Judicial Budget Administration

Article 3 - The Office has the following core competencies: a) Study and determine the budget

*in order to identify all elements that do not meet the eligibility standards both in the indoor and outdoor environments of buildings, would be a convenient thing to do. As well as in any case, we recommend that the OAJB draft a specific regulation wherein to define all elements of infrastructure adaptation and information as guidance for the courts in this regard.*

In addition, special attention should be paid to the institutions of the prosecution and the police bodies, institutions that are related to the courts in the exercise of access to justice for persons with disabilities, where in this regard is suggested the establishment of a working group for evidencing all the buildings that do not meet the eligibility standards as an essential precondition for access to justice for people with disabilities.

On the other hand, drafting the regulations, taking into consideration also the guiding documents ‘road map’ drafted by ADRF<sup>18</sup>, identifying the elements that justice institutions must fulfill to enable effective access to justice for all categories of people with disabilities, would constitute a first sufficient basis to be used by the OAJB in order to the eligibility elements in the buildings where these institutions exercise their activity.

## **1.2 Communication and information accessibility**

*Barriers in communication and information*, including lack of sign language interpreter, lack of materials produced in the braille or audio version (for blind people) or in the simplified language (easy read format), limit the right of people with disabilities to understanding legal proceedings or communication with parties in the administrative, investigative or judicial process.

Ensuring adaptability in communication and information provides the PWDs with the opportunity to recognize and defend their rights. Use of accessible technologies and communication technologies, in particular through their implementation for the provision of government services<sup>19</sup>, can contribute to improving access to justice through the adaptation of communication and information.

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needs of all Court proceedings in cooperation with the financial sectors of the Courts of all instances. b) Process the financial indicators related to the requirements and the activity of the Courts. c) Control the use of funds provided to the Courts, by destination.

Article 5 - The funds available to the Office are used for these purposes: ... c) To construct or repair the Court premises, as well as for other investments. ç) To cover Court expenditures regarding the provision of compulsory legal aid in cases provided for in specific legal provisions.

<sup>18</sup> ADRF, March 2019, Guidance Document ‘Physical Adequacy and Information in Justice System Institutions for Persons with Disabilities’

<sup>19</sup> The Albania equivalent could be the ‘e-albania’

Today in the world there are good practices that illustrate the necessity of guaranteeing access to justice through both legal information and communication in this regard for all categories of people with disabilities. From a comprehensive report conducted by the Committee<sup>20</sup>, it was found that in this regard, the Constitutional Court of Colombia and the Supreme Court of Mexico have requested the drafting of decisions in ‘simplified formats’<sup>21</sup> to assist, both PWDs in general (including people with intellectual disabilities) but also the members of society as well as young practitioners of justice. Another positive model is that of Finland, the Department of Police of which designed the website of this institution to provide various accessible formats, such as plain language, content and video in sign language, some of which with subtitles and a complaint form with enlarged font.

An important place has also been devoted to the Communication and Information Adaptation Committee under Article 9/2 (h) of the Convention, *calling on States Parties to promote access to legal information for persons with disabilities and to all members of society in general using the full and varied range of forms and ways of communication. Also, the use of new forms of technology can contribute further to this purpose*<sup>22</sup>.

Within the project ‘Effective Access to Justice for Persons with Disabilities’<sup>23</sup> in terms of guaranteeing ‘Accessible elements related to the provision of accessible information in the form and adapted formats’ ADRF has drafted a road-map document for the justice institutions, in which it has evidenced the internationally guaranteed standards for the categories of persons with disabilities, in order to facilitate and make more convenient the communication and obtainment of official information by these categories of people.

This guideline may be a first reference basis for the justice institutions to draft internal regulations in order to guarantee full and effective access to communication and information while benefiting from administrative services, taking into account inter alia the provision of official information:

- In printed form;
- In printed form, including enlarged font size 18/‘source 18’;
- By means of printed material in braille;

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<sup>20</sup> Committee of the UN Convention on PWD

<sup>21</sup> ‘easy read format’

<sup>22</sup> Report of the Office of the High Commissioner for Human Rights in UN. *Right of Access to Justice guaranteed by Article 13 of the Convention on the Rights of Persons with Disabilities*, December 27, 2017.

<sup>23</sup> Funded under the program ‘Civic Engagement for a Functioning Judicial System and Access to Justice in Albania’ with the financial support of European Union and implemented by Save the Children in partnership with the Center of Services and Integrated Legal Practices

- The materials produced are provided through the audio program on official websites online or through the audio recording program;
- In printed format where the information is provided in simplified language and accompanied by figures, including photographs or figures that make information easily digestible (so-called 'easy reading format');
- Explain the personally the information to the person concerned (mainly for the blind) whenever it is needed and in those cases when the provision of information is allowed to be made verbally;
- Through the sign language interpreter or the use of a Telephone Typewriter (TTY) in the case of persons with hearing disability or hearing impairment;
- Electronic formats, including via email or via official websites<sup>24</sup>.

### 1.2.1 Albanian Legal Framework

In Albania, communication barriers and information on the exercise of the right to effective access to justice are evident and this is best evidenced by the data analyzed in section IV 'Quantitative data analysis' of this monitoring report. While as a legal concept the accessibility of communication and information has begun to take place in recent years in the Albanian legal framework and in concrete terms:

- Within the framework of Law no. 93/2014 dated 24.7.2014 '*For the inclusion and accessibility of persons with disabilities*' was issued DCM no. 1074, dated 23.12.2015 '*Determining measures to remove communication barriers and infrastructure in the provision of public services for people with disabilities*', where a special place has been devoted to removing obstacles in communication and information and where any public service entity should guarantee the interpretation of sign language, simplified forms and formats, audio and braille document versions<sup>25</sup>.
- Law no. 111/2017 '*On State Guaranteed Legal Assistance*' has envisaged the obligation of the Ministry of Justice to take the necessary action to

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<sup>24</sup> For more, refer to ADRF, March 2019 Guidance Document 'Physical Adaptation and Information in Justice System Institutions for Persons with Disabilities'

<sup>25</sup> Points 11-24

publish the forms in accessible forms<sup>26</sup> on PWD<sup>27</sup> for the benefit of legal aid. While this law has not yet been implemented, there is still no evidence of issues that are expected to bring to fore practices that meet the standard of adaptation in communication and information pertinent to benefiting legal aid from the state.

- Law no. 119/2014 '*On the Right to Information*' has provided in Article 3 point 3<sup>28</sup> the right of every person to get acquainted with public information, getting a copy of it on a *form or format that allows full access to the content of the document*. However, in this regard, most importantly, it relates to the development of the practice, which would create the necessity of issuing relevant acts and guidelines that would standardize the form and formats suitable for providing information in accordance with the needs of each category of disability.

We just evidenced the legal framework that currently guarantees the adequacy of communication and information regarding the provision of administrative services and the official information that should be guaranteed by the justice institutions, while in terms of guaranteeing these elements in the judicial and investigative process, this element is dealt with extensively in the following section. 1.3. "*Procedural and age-appropriate accommodations*". However, at the end of this section it is worth noting that *justice institutions should draft internal regulations in order to guarantee full and effective access for persons with disabilities, all categories, to communication and information such as the provision of official information, but also during the provision of administrative services.*

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<sup>26</sup> The inclusion of this stipulation was made thanks to ADRF's ongoing efforts and recommendations to the working group set up to draft this law and the defense it made to it in front of the Parliamentary Law Commission.

<sup>27</sup> Article 7 '*The Duties of the Minister of Justice*' '*...The Ministry of Justice takes the necessary action to publish the forms provided in this paragraph in formats accessible by persons with disabilities...*'.

<sup>28</sup> Article 3 '*The right to information*' '*... 3. Everyone has the right to get familiar with public information, through the original document or by obtaining a copy of it in the form or format that enables full access to the content of the document.*'

### 1.3 Procedural and age-appropriate accommodations

“Procedural and age-appropriate accommodations”<sup>29</sup> was ascertained to be an unapplied term from Albanian legislation and jurisprudence. On the other hand, it is noted that this term is newly incorporated in the legal terminology of other countries as an obligation arising from the ratification of the CRPD<sup>30</sup>. Specifically, the obligation of States Parties to guarantee “Procedural and age-appropriate accommodations” is directly related to civil and political rights. This obligation is related to the principle of non-discrimination and must be fully rather than progressively fulfilled. In order to fulfill the principle of “Procedural and age-appropriate accommodations” *States Parties should ensure ‘equality of arms’ as one of the key components of the “right to a fair trial”, ensure the same procedural rights that are afforded to all litigants, in order to provide access to the same information and for the same opportunities to file and challenge evidence*<sup>31</sup>.

The list of actions that States Parties must take to ensure effective and equitable access to justice, listed in Article 13 (1) of the Convention, is not exhaustive and States Parties are obliged to provide *a suitable and consistent procedural system that is age appropriate*, in order to facilitate the role of PWD as direct and indirect participants in all procedural phases, including investigative and preliminary ones.

The Committee has provided a number of examples of how the “procedural accommodations” to PWD may be applied in practice, suggesting inter alia that the following be provided:

- the interpreter of the sign language;
- legal and judicial information in accessible/adapted formats;

<sup>29</sup> Terminology used in English ‘Procedural and age appropriate accommodation’. In the Albanian translation of the CRPD we find this term translated as follows ‘....sigurimit të mundësive të përshtatshme procedurale dhe të moshës ..... (providing procedural and age appropriate opportunities)’. The authors of this study are of the opinion that to adapt this term to Albanian “Procedural and age-appropriate accommodations” as it best captures the standard that the CRPD seeks to stipulate, and moreover this term is not fully unified in the Albanian legal framework or in the Albanian jurisprudence, we have also underscored the need to review the text of the translation of the CRPD into Albanian language, in order to unify the terminology of the CRPD with that of Albanian legal terminology.

<sup>30</sup> Initially, this term was discussed in the Ad Hoc Committee established under the Convention on the Human Rights of People with Disabilities (Ad Hoc Committee - Daily Summaries. January 18, 2006) on the terminology that should be used with regard to the right of PWD to have available the appropriate procedural elements in order to ensure the right to a fair trial on an equal basis with others. Only at the 8th session of this Committee dated September 13, 2006 it was decided the use of the phrase ‘Procedural and Age Appropriateness’ (IDA - OHCHR).

<sup>31</sup> Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities. Report of the Office of the United Nations High Commissioner for Human Rights. A/ HRC/37/25

- diverse forms of communication;
- document formats that are simple to read/understand;
- Braille formats, including evidence given in braille format or in the form of ‘video evidence’.

Parts of the “procedural accommodations” components are also the elements that ensure the extension or procedural regulation of deadlines. All these elements are directly related to the principle of ‘non-discrimination’.

As noted above, it is worth pointing out that *the Committee itself has not yet determined what the practical process would be in ensuring “procedural accommodations”*. However, despite it, the Committee has consistently acknowledged that “procedural accommodations” should be made on the basis of the ‘free choice and preferences’ of the person with disabilities. In this line, the judge or the institution in charge should give priority to the person with disabilities to ‘adapt the procedures’ as the person himself knows better his or her needs. However, determining the need for “procedural accommodations” should not necessarily be based on medical information and cannot be subjected to any disability assessment, for example those related to granting a ‘disability attestation’. However, if the requirements of a person with disabilities change over time, “procedural accommodations” should be modified or replaced, as appropriate.

*The Committee on the Rights of Persons with Disabilities has consistently recommended Member States to review the legal framework, including the administrative, civil and criminal legal framework, in order to explicitly include the obligation to guarantee the ‘adaptation of procedures’ in all phases and legal proceedings.* The Committee also recommends that the national legal framework should on the other hand *pin point the institution in charge of determining the “procedural accommodations” that will need to include details on when and how the PWD may seek to access these rights. In any case, the “procedural accommodations” must be provided and must be free of charge*<sup>32</sup>.

The requirement for “procedural accommodations” should be documented by the institution in charge, in order to facilitate accountability and improve knowledge management. In this way, the systematization of good practices allows for the identification of those elements of adaptation that serve best the purpose of ensuring effective participation in all legal proceedings. On the other hand, this serves also to set up an ‘institutional memory’ for tailored procedures depending on the disability category, which would contribute to achieving the goal of making the legal system more suitable and inclusive<sup>33</sup>. In this line, the Committee instructs that the process for determining “procedural accommodations” should

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<sup>32</sup> Ibid

<sup>33</sup> Ibid



be carried out under the conditions of confidentiality in accordance with Article 22 of the CRPD and all these specifics/elements should be clearly defined in the national legal framework. In any case, PWD must not be obliged to provide information or personal data regarding their health or rehabilitation, in violation of their wishes and wills, and without giving full consent after being clearly informed of this fact and in accordance with the appropriate means of ensuring the adaptation of communication and information<sup>34</sup>.

### 1.3.1 Albanian Legal Framework

In Albania, PWD often face barriers to the implementation of the principle of ‘equality of arms’ due to not accessible documentation or procedures<sup>35</sup>. Lack of “procedural accommodations” may lead to a violation of the “right to a fair trial” principle and what’s more, the exemption from the procedures and/or submission to unfair penalties. Referring to the legal framework and specifically to the procedural codes, there does not appear to be explicitly defined the guarantee of the right of “procedural accommodations” to all categories of disability or the guarantee of the right to fair reparation if this right is violated.

The following is a detailed analysis of the Albanian legal framework, focusing in particular on the procedural codes, to see their compliance with the standards that have been affirmed by the CRPD, while since its ratification these standards have already been part of the Albanian legal framework.

- *Criminal Procedure Code of the Republic of Albania (Cr. Pr. Code)*

Elements of “procedural accommodations” in Cr. Pr. Code<sup>36</sup> relate mainly to the legal provisions that provide for the rules to be followed during all phases of

<sup>34</sup> A large number of countries have made significant progress in adopting the legal framework and developing protocols within the ‘adaptation of procedures’ for people with disabilities in access to justice. For example, Azerbaijan has passed the ‘Code of Civil Procedure’ that allows witnesses with disabilities to testify at their place of residence, if appropriate, depending on their circumstances. Good Practices for States and Local Government in America, or Protocols on Access to Justice for PWDs in Argentina or Australia are examples to be followed since they provide recommendations and guidelines on how to ensure ‘adapted procedures’.

<sup>35</sup> Unmatched in accessible formats for all categories of people with disabilities

<sup>36</sup> Cr. Pr. Code of RA (amended by laws: no. 7977, dated 26.7.1995, 8027, dated 15.11.1995, no. 8180, dated 23.12.1996, no. 8460, dated 11.2.1999, no. 8570, dated 20.1.2000, no. 8602, dated 10.4.2000, no. 8813, dated 13.6.2002, no. 9085, dated 19.6.2003, no. 9187, dated 12.2.2004, no. 9276, dated 16.9.2004, no. 9911, dated 5.5.2008, no. 10 054, dated 29.12.2008, no. 145/2013, dated 2.5.2013, no. 21/2014, dated 10.3.2014, no. 99/2014, dated 31.7.2014, no. 35/2017, dated 30.3.2017; Decisions of the Constitutional Court no. 55, dated 21.11.1997, no. 15, dated 17.4.2003 and no. 31, dated 17.5.2012)

the criminal proceedings concerning deadlines, notices, collecting or examining evidence, including preliminary investigations.

Cr.Pr.Code has not sanctioned in a particular provision the guarantee of “procedural and age-appropriate accommodations”, but in certain provisions it has guaranteed certain elements by specifically designating the guarantee of “procedural accommodations” according to the type of disability.

Specifically, the legal provisions where “procedural accommodation” due to disability is guaranteed, is envisaged in the criminal process and specifically designated *for persons with disabilities in listening and speaking*. However, despite the fact that the law provides for an interpreter free of charge provided by the state<sup>37</sup> for this category of people, the limited number of interpreters of the Albanian sign language (4 interpreters in the entire country)<sup>38</sup> makes it impossible to cover this service all over Albania.

The provisions of the Co. Cr. Procedure also refer to the assistance of the mute and deaf persons during the proceedings even by one of his relatives, albeit in those cases only when that relative is not himself/herself lacking the legal capacity to act<sup>39</sup>.

However, as recommended by the Committee, pin pointing the institution in charge that would determine the need for “procedural accommodations” for people with disabilities in order to guarantee their effective participation in all legal proceedings, is a necessity.

Cr. Pr. Code provides for some of the procedural safeguards for the category of deaf and mute persons, however, referring to other categories of disability, we conclude that in the Code of Criminal proceedings, *the procedural accommodations rights both for persons with visual disabilities (blind or the visually impaired), persons with intellectual or psycho-social disabilities, are not provided<sup>40</sup>, people with disabilities due to limb amputations, people with*

<sup>37</sup> Cr. Pr. Code - Article 8 - Use of Albanian language ... 2. .... *Deaf and Mute People, have the right to use the sign language. 3. The incurred costs of translation and interpretation are covered by the state.*

Article 34/a The Rights of the Defendant 1. The person under investigation or the defendant has the right to: a) be notified as soon as possible in the language he/she understands for the criminal offense for which he/she is investigated, as well as for the cause of the charges; b) to use a language that he/she speaks or understands or use sign language, and is assisted by a translator and/or interpreter if affected by disability in speech and hearing;

Article 58 ‘The rights of the victim of the offense’ ... c) *communicate in her language and be assisted by an interpreter, sign language interpreter or facilitator of communication for people with disabilities in speech and hearing;*

<sup>38</sup> Reference by ANAD association

<sup>39</sup> Article 124 ‘Unqualified and Non-Proficient Interpreter’

<sup>40</sup> The lack of procedural guarantees for this category of people, is dealt with in more depth in Section II. ‘Equal recognition before the law’

*disabilities who are assisted through assistive technology or other categories of disabled.* This situation is supposed to have been created also due to the fact that the criminal prosecution bodies mostly had cases where the parties to the proceedings were deaf or mute persons (where the need for interpretation was even more evident) and in a less number of cases, or in just a few of them, parties in the proceedings have been persons with other disabilities<sup>41</sup>.

In order to meet the legal standard of “procedural accommodations” it is necessary that the Criminal Procedure Code also provide for the obligation that criminal procedural acts (minutes<sup>42</sup><sup>43</sup>, minutes of the session<sup>44</sup>, ‘rights letter’<sup>45</sup> etc..) in order to familiarize themselves with their content and signing of them regularly by the parties in the process, be made available in the adapted form and format, including *braille format or in large font if the person is blind requires so, or in a simplified language format if the person has intellectual disability, as well as in any other suitable communication format adapted to the type of disability of this category of persons.*

*The signing of acts is another and very important element related to the principle of “procedural accommodations” referring mainly to the categories of disability which cause: lack of visibility (blindness); visually impaired; have disabilities due to limb amputation or inability to move, as well as every other disability that makes it impossible for the PWD to sign. For these cases Article 99 of the Criminal Procedure Code ‘Signature of Acts’ provides that ‘It is invalid the signature stamped with mechanical tools or with characters other than writing. When a person is unable to sign, the official before whom the written act is filed or that records the verbal act, makes certain for the identity of the person and reflects that fact at the bottom of the act in the presence of a third person’.* This Article may be applicable to that category of PWDs with amputation of limbs, however, it is in conflict with the standards affirmed by the CRPD regarding the principle of “procedural accommodations” and ‘independent living’ for other categories of disability.

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41 Highlighted also on the basis of the data analysis in Section IV.2 ‘Data Collected by PWD’

42 Article 98 ‘Language of Acts’

43 Article 117 ‘Signing the minutes’ ... 2. *When one of the participants does not want to or will not be able to sign, a note is made to indicate the reason why....”*

44 Article 115 ‘Minutes of the session’

45 Article 34/a ‘The rights of the defendant’

34/b point 2 of Cr. Pr. Code, Article 34/b ‘The rights of a person arrested or detained ... 2. The proceeding authority immediately notifies the person arrested or detained for the rights provided for in the letters “a”, “b”, “c”, “ç”, “d”, “dh” and “e”, of paragraph 1, article 34/a, of this Code, giving, upon signature, the letter of rights in written form. The person has the right to keep the Rights letter.

The same problematic is found in the newly adopted law of notary<sup>46</sup> which limits the right of persons with disabilities (the blind) to sign in person but in any case should be accompanied by a third person as a witness<sup>47</sup>. Consequently, a positive form solved by foreign practice can be through ‘digital signature certification’, for blind persons and its standardization in the form of a stamp, which could provide a solution in practice for signing acts by this category of persons.

On the other hand, we still find in the Code of Criminal Procedure the improper use of disability terminology (Article 34/a of the Code of Criminal Procedure) where it is ascertained that terms such as ‘disability incapability’ are used, while the right term to use in this case would be ‘speech or hearing disability’. Or in Article 107 *‘The participation of the deaf and the mute in Drafting the Procedural Acts’*<sup>48</sup> where the terminology used is even more denigrating. Certainly, the unified use of terms continues to be a problem encountered randomly in the Albanian legal framework, a situation which underscores the need to set up a working group on compliance with the Albanian legislation with the international standards established by the Convention, where part of the work of this group would also be the unification of legal terminology in this regard.

In what preceded this text, we noted only a few articles in the array of Articles of the Criminal Procedure Code that are not in accordance with the standards of the Convention, where it would certainly not be relevant to describe the elements of “procedural accommodations” for each Article under the categories of capacity but in this regard it is recommended that the lawmaker adopt a *legal provision where to provide for the obligation of the proceeding body to guarantee “procedural and age-appropriate accommodations” for persons with disabilities at any stage of the criminal process.* While for the purposes of practical implementation of “procedural accommodations” the enrichment of criminal court practice with the standardization of forms of “procedural

<sup>46</sup> Law no. 110/2018 dated 20.12.2018 ‘On Notary’

<sup>47</sup> Article 100 ‘Language of drafting notaries acts’ ... 3. *When a party or the participant in a notarial act does not hear or speak, the notary acts with the help of a person who knows how to communicate with them, such as witnesses. In the case of blind persons, in the notarial act, a third person is present as a witness. The notary identifies the notary act and the witness, who signs the notarial act on the party’s behalf.’*

<sup>48</sup> 1. When the deaf or the mute desires so or is required to provide explanations, the procedure is as follows: a) the deaf are asked questions and are presented with a written warning and he or she answers verbally; b) the mute is asked verbally the questions and so is given the perjury clause warning also and he answers in writing; c) Deaf people are asked questions and the perjury clause warning in writing and they answer in writing. 2. Should the deaf, mute be illiterate, the procedural authority assigns one or more chosen interpreters among those persons who are accustomed to communicate with them.

accommodations” by referring to international practices in this regard as well would be of great value.

Below are quoted some of the articles of the Criminal Procedure Code that need amendment/abolition or the identification of elements of “procedural accommodations” in accordance with the needs of PWD:

- Article 58 ‘The Rights of Victims of Criminal Offense’<sup>49</sup>;
- Article 107 ‘Participation of Deaf, Mute in Drafting the Procedural Acts’<sup>50</sup>;
- Article 108 ‘Witnesses in Procedural Acts’<sup>51</sup> 1. *The following can not be witnesses to validate the content of a procedural act: a) juveniles up to fourteen years of age and persons with apparent mental illness ...;*
- Article 140 ‘First Notification of Defendants prosecuted while not incarcerated’ ‘... 3. *A copy of the notice cannot be handed over to a minor under the age of 14 or to a person with apparent intellectual disability.*’
- Article 155 ‘The capacity to testify’<sup>52</sup> ‘1. Every person has the capacity to testify, except for those who are unable to testify due to mental or physical incapacities. 2. When for the assessing of statements is necessary the verification of the physical or mental capacity to testify, the court may also order the relevant verifications.’;
- Article 156 ‘Incompatibility with the duty of the witness’ ‘1. The following persons cannot be questioned as witnesses: a) Persons who, due to their physical or psychological disabilities, are unable to provide proper testimony ...’;
- Article 165/a ‘Concealed identity witness’ ‘... 3 ... *Only the presiding judge shall be acquainted with the true identity of the witness with concealed identity and it is the former that verifies the capacity or not of the witness, as provided for in this Code....*”.

- *Juvenile Justice Code*

“Procedural accommodations” also requires “due to age” accessibility. The Committee has recognized this right both for juveniles with disabilities but also

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<sup>49</sup> Article 58 provides for positive measures in favor of persons with sensory disabilities. The need for improvement of this article is mainly related to the standards that the CRPD establishes regarding “procedural accommodations” which would require a good formulation and establishment of an effective mechanism for meeting this standard from the Albanian criminal law.

<sup>50</sup> The content of Article 108 requires the rewording of the terminology used.

<sup>51</sup> This article is in conflict with Article 12 and 13 of the CRPD and necessarily requires its reformulation. Refer to Section II ‘Equal Recognition Before the Law’

<sup>52</sup> Ibid

for adults who, due to their age, have a limitation on the exercise of their life skills. In the following, we will focus on adapting procedures due to being a minor. This is an obligation stemming from the Committee on Child’s Rights which has consistently underscored that the adaptation elements should guarantee the right to access to justice for children, including children with disabilities. In this regard, an example is given of the appropriateness of ‘due to age’ procedures that may require, inter alia:

- modification of courtroom proceedings;
- adapting special places to sit for children;
- Assistance during the hearing session due to age, etc...

In this particular respect, Albania has made progress in terms of the legal safeguards affirmed in the ‘Criminal Justice Code for Minors’<sup>53</sup>. The Code clearly provides for the concept of non-discrimination of juveniles, including juveniles with disabilities<sup>54</sup>. Also, the principle of “procedural accommodations”, in order to ensure the right of the minor to effective access to justice, is best reflected in this Code in its articles, both in terms of the juvenile’s notification but also his participation in the juvenile the judicial process<sup>55</sup>.

This Code has sanctioned a new practice in Albanian legal terminology including for the first time the term “Procedural and age-appropriate accommodations” that the CRPD affirms through its articles. This standard is best guaranteed by Article 16, Participation of the Minor in the Proceedings, item 6. *The necessary adaptation and support is provided through the means provided for in the ratified international acts related to persons with disabilities as well as the applicable law on the inclusion and accessibility of persons with disabilities’.*

Also, the Code has guaranteed a disabled minor to benefit free of charge all

<sup>53</sup> Law no. 37/2017, dated 30.3.2017, entered force on January 1, 2018

<sup>54</sup> Article 11 The Principle of Protection from Discrimination 1. The rights deriving from this Code are guaranteed without any discrimination to any juvenile in conflict with the law, victim or witness, regardless of ... disability, belonging to one special group and/or any other circumstance of the juvenile, the parent or juvenile legal representative.

<sup>55</sup> Article 16 Juvenile Participation in the Process” ... 6. The necessary adaptation and support is ensured through the means provided for in the internationally ratified acts related to persons with disabilities as well as the applicable law on the inclusion and accessibility of persons with disabilities.

Article 33 General Principles 1. The competent authorities, in matters involving juvenile victims and/or witnesses, take special care in order to: a) Have the minor victim/witness of the offense be treated with care in a friendly and sensitive way, such as respecting his dignity throughout the process, taking into account his personal situation, immediate and special needs, age, gender, disability, if any, and degree of his/her prudence.

Article 38 ‘Notification of a Minor Victim or Witness’ ‘1. Should the minor be a victim or witness, the proceeding authority takes all actions for the minor’s notice to be made: a) *in such a way that the information is appropriate and understandable to include cases of minors with disability...;*’

the services needed to ‘adapt the procedures’ during all stages of the trial (Article 50)<sup>56</sup>.

The Juvenile Justice Code should be held by the lawmaker as a strong reference point for reviewing the legal provisions in other applicable Codes. However, it should be noted that the adoption of legal provisions requires taking measures for their implementation in practice, which means that any legal obligation should go hand in hand with the establishment of bodies responsible for effective access to justice for persons with disabilities.

- *Civil Procedure Code of the Republic of Albania (Ci. Pr. Code)*

*Civil Procedure Code*<sup>57</sup> (just as *Cr. Pr. Code*) does not envisage any proper legal provision whereby the procedural body is obliged to ensure the “procedural accommodations” to the PWD at any stage in the development of the civil process.

More specifically, for the category of persons with disabilities in hearing and speaking, one of the major issues related to not guaranteeing “procedural accommodations” *during the civil litigation process*, is the sign language interpreter. *Ci. Pr. Code* does not specifically guarantee this right and in any case this category of people is required to individually cover court costs in terms of the sign language interpreter service during all stages of the litigation<sup>58</sup>. In particular, this fact has been reported by the ANAD association<sup>59</sup> because a considerable number of members of this association face the same difficulty during the civil trial, due to their inability to pay the sign language interpretation fee. This is specifically related to issues that are being examined by the court such as: divorce processes, property division, administrative disputes with public administration

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<sup>56</sup> Article 50 ‘Juvenile’s right to communicate in a language that he/she understands’ ... 3. *A disabled person has the right to benefit free of charge from all services for which he needs to be informed and communicate on the case and to participate in the proceeding’*

<sup>57</sup> Law No. 8116, dated 29.3.1996 ‘The Civil Procedure Code of the Republic of Albania’ (amended by Laws no. 8431, dated 14.12.1998; no. 8491, dated 27.5.1999; no. 8535, dated 18.10.1999; no. 8812, dated 17.5.2001; no. 9062, dated 8.5.2003; no. 9953, dated 14.7.2008, no.10 052, dated 29.12.2008, no. 49/2012, dated 19.4.2012; 122/2013, dated 18.4.2013; 160/2013, dated 17.10.2013; no. 114/2016, dated 3.11.2016.

<sup>58</sup> Despite the fact that the Law ‘On Legal Aid’ no. 111/2017, dated 14.12.2017 has come into force since June 1, 2018, on the basis of which is guaranteed exemption from court expenses (part of court expenses are also expenses for experts or translators) of all categories of persons with disabilities, effective implementation of this right has not yet become effective due to lack of issuing sub-legal acts in this regard.

<sup>59</sup> The National Association of Deaf and Mute Persons.

bodies, etc. Lack of this procedural guarantee of ‘procedural adjustment’ in terms of assisting with the interpretation and use of the Albanian sign language during all stages of the civil trial<sup>60</sup>, makes it even more difficult in judicial practice to guarantee this right and hence violates the “right to a fair trial”.

While for the category of blind persons the provisions of the Ci. Pr. Code do not explicitly envisage the application of the manner of notification, submission or receipt of procedural or judicial evidence in appropriate forms or formats in accordance with the needs of PWD (such as Braille formats) or simple forms and formats to be understood by persons with intellectual disabilities or mental health disorders<sup>61</sup>.

It is worth noting the fact that Ci. Pr. Code (Article 118 - Procès-verbal)<sup>62</sup> envisages holding the minutes of the hearing session with employment of video/audio recording, which serves the purpose of ensuring “procedural accommodations”. However, on the other hand, the transcript of the minutes<sup>63</sup> held in this form should be offered in any case free of charge to blind persons in the “braille” writing, if so requested by them.

Ci. Pr. Code has envisioned a special Article (Article 141) on ‘*Rules of electronic notification of acts*’ by stipulating the performance of electronic notification of acts by means of electronic communications, while detailed rules on the manner of electronic notification are defined by the order of the Minister of Justice. In this regard, we would recommend that part of the rules of electronic notification of acts include deaf and mute persons who in this case can be notified by means of assistive technology, text writer devices, and persons who have visual disability or that are visually impairment, for whom also communication with electronic means would be an effective way of fulfilling the principle of “procedural accommodations”.

### *Witnesses statement*

Moreover, an additional element that violates the rights of persons with disabilities during the civil (and criminal) proceedings are the legal provisions

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<sup>60</sup> Ci. Pr. Code Article 27 ‘Use of Albanian Language in Adjudication’ ‘*The Albanian language is used in all stages of the trial. People who do not know Albanian, use their own language. They get acquainted with the evidence and all the development of the adjudication through the translator/interpreter.*’

<sup>61</sup> Cr. Pr. Code Article 130 ‘Rules of Written Notification of Acts’; Cr. Pr. Code Article 132; Cr. Pr. Code Article 143

<sup>62</sup> *The single judge or the presiding one of the hearing, should ensure that a record is held through audio or audiovisual recording for the court session as well as for any other judicial proceeding taking place outside of the hearing.*

<sup>63</sup> Article 118/1 ‘Transcript of records kept with video or audio recording media’



still in force in the Code of Civil Procedure prohibiting the question as witnesses of persons who according to the terminology in the Code of Civil Procedure ‘because of physical or psychological defects they are not able to properly understand the facts that matter to the case and to bear proper witness’. As will be dealt with extensively in the section on ‘Equal Recognition before the Law’, such legal provisions are in full contradiction with the standards of the Convention and should therefore be repealed.

In view of the compatibility of Albanian legislation with the Convention, it is recommended the revision of supplementation of the following provisions that are still in force in the Code of Civil Procedure. It should be noted, however, that the articles listed below may have in their content ‘seemingly positive or protective elements’ to the rights of people with disabilities, but this should not serve as an excuse for leaving them in force, but it is necessary to approve the abrogation in relation to all the other provisions that violate the ‘principle of due process’ in order for Ci. Pr. Code to be in full compliance with the standards that the CRPD affirms.

Specifically, the following Articles need to be amended/abrogated:

- Article 105 ‘1. Expenses for witnesses, bailiffs, experts, translators<sup>64</sup> and for inspecting items or on the spot inspection, are prepaid by the party that has requested these services in the amount that the Court has decided. The Court, by taking into account the circumstances of the case and the property status of the parties, via a decision, charges to one or both parties the costs, regardless of which of them has requested the questioning of the witnesses, performing of the expertise work, calling the interpreter or the different types of inspections...’;
- Article 116 ‘Language of drafting the act’ ‘...Procedural acts are drafted in Albanian language ... A translator who does not appear without due cause, is summoned by coercion. He/she is under criminal and civil liability just as the expert...’;
- Article 118/1 ‘Transcript of procès-verbal kept with audio or audio-visual recording’ ... Transcript of the procès-verbal is made when: a) Required by the members of the panel; b) is required in writing by the parties to the trial or other interested persons, and this request is approved by the chairman of the court session, as the fees<sup>65</sup> set for this purpose are paid...’;

<sup>64</sup> Generally, sign language interpreters are included under the category of ‘translators’

<sup>65</sup> It may be the case when the transcript of the procès-verbal in braille format is required by the litigant who has visual disability (blindness). In any case, to this category of people, the information should be provided at no additional cost.

- Article 141 'Rules of Electronic Notification of Acts'<sup>66</sup>;
  - Article 218 'Deaf or Mute Witness' .... *When questioning a person who does not speak or does not hear, if their answer can not be made in writing, the court calls in a person who understands the signs of the person who is questioned...*”;
  - Article 235 'Prohibiting the questioning in the quality of a witness' ‘... *The following persons can not be questioned as witnesses: persons who, due to physical or psychological defects, are not able to properly understand the facts that matter to the case and to testify as required...*’.
- *Administrative Procedure Code (Ad. Pr. Code)*

Code of Administrative Procedures<sup>67</sup> guarantees protection against discrimination on the basis of disability during the exercise of the activity of public bodies and guarantees the right to public information pertinent to the activity of the public body<sup>68</sup>.

However, it is apparent from the spirit but also the provisions of the Code of Administrative Procedure the lack of an explicit definition of the principle of “procedural accommodations” in favor of the categories of people with disabilities during the administrative relationship established with the public institutions.

In the interpretation of the articles of the Code of Administrative Procedure, it is certainly not forbidden to apply the standards of “procedural accommodations”<sup>69</sup> but due to the fact that there is no proper administrative practice in this regard, it is recommended the adoption of the legal provision (s) in this Code to guarantee all elements during the administrative procedures regarding the interpreter *sign language; providing information in accessible/adapted formats; diverse forms of communication; simple to read/understand document formats, Braille formats, including evidence provided in Braille format or in the form of ‘video evidence’, etc...*

Consequently, this would require the inclusion of a legal provision in the Code of Administrative Procedure that would stipulate the implementation of “procedural and age-appropriate accommodations” throughout the steps of administrative procedures to meet the specific needs of persons with disabilities.

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<sup>66</sup> The rules for the electronic notification of acts should be determined by order of the Minister of Justice, including the rules on the manner of notification of persons with disabilities through assistive technology.

<sup>67</sup> Law no. 44/2015

<sup>68</sup> Article 6 ‘The principle of information’

<sup>69</sup> Article 147 ‘Appropriate notice’; Article 156 ‘Notification via electronic means’

## II. EQUAL RECOGNITION BEFORE THE LAW<sup>70</sup>

The CRPD, through its Article 12<sup>71</sup> brought a new perspective on the principle of *'equal recognition before the law'* for all people with disabilities affirming that: *all persons with disabilities have 'full legal capacity to act'*.

The right to equal recognition before the law implies that *legal capacity and capacity to act is a universal natural right for all persons because of their existence and it must also be guaranteed for persons with disabilities on an equal basis with all other members of the society.*

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<sup>70</sup> The content of this section is taken from the text of 'General comment No. 1 (2014) Article 12: Equal recognition before the law', with a view to understanding and applying the right of this new regime aimed at ensuring the standards of the CRPD. Also, the authors of this study consider it very important to identify the principles of the law according to the standards affirmed by the CRPD through general recommendations or other reports that have come into effect under Article 12 and 13 of the CRPD. In this respect, a part of the analysis of the principles presented in this report has been taken as a reference from these important documents that the CRPD makes available that will be elaborated in the following text by the authors of this paper regarding the compatibility and guarantees that the Albanian legal framework has in force.

<sup>71</sup> Article 12

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.
5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

“Legal capacity to act” is indispensable for the exercise of civil, political, economic, social and cultural rights. This is of particular importance to PWDs when they have to make substantive decisions about their health, education, work or property.

Denial of ‘legal capacity to act’ for PWD, has in many cases led to their deprivation from many fundamental rights, including the right to vote, the right to marry or to find/choose a family, reproductive rights, parental rights, the right to consent to intimate relationships, medical treatment, or the right to be independent.

Historically, PWD, including those with physical, intellectual, or sensory disabilities, are placed under the regime of removal or restriction of “legal capacity” and placement under the ‘legal guardianship’ regime. However, the category that was found to be among the most discriminated against, is that of the persons with cognitive or psycho-social disabilities (with mental health diagnosis) who have been and are still at risk from being placed under the ‘legal guardianship’ regime<sup>72</sup>.

*Legal Capacity: ‘Legal Capacity’ is an inherent right enjoyed by all people, including PWDs. As mentioned above, this right consists of two components. The first component is the enjoyment of the rights and the right to be recognized as a person before the law. This may include, for instance, the right to have a birth certificate, apply for a passport, seek medical help, to register or to vote. The second component is the enjoyment of the right to act legally, that is, the person’s entry into legal relations through the exercise of rights and obligations, as well as the recognition of such actions by law. It is precisely this second component that is mostly removed or restricted to PWDs. For instance, the law may recognize the PWDs the right to enjoy their property, but may not recognize the actions taken by them, for example in terms of purchasing or selling property, elements that are directly related to the full enjoyment of “legal capacity to act”.*

## II. 1 “Legal capacity to act”

“Legal capacity”<sup>73</sup> means that all individuals, including the PWD, enjoy full “legal capacity and legal capacity to act” simply by virtue of being human<sup>74</sup>. Therefore, both components of legal capacity should guarantee the full fulfillment of ‘legal capacity to act’ and the two components should not be separated.

<sup>72</sup> In English, the Albanian term rendered ‘legal guardian’ (as envisaged in the Civil Code of the RA) may be equivalented to the term ‘substitute decision-making regimes’

<sup>73</sup> In the Convention and in the General Comment No. 1 (2014) - Article 12: Equal Recognition Before the Law is termed ‘legal capacity’ in English

<sup>74</sup> because of their being a human being

‘The legal capacity’ and ‘mental capacity’ are distinct concepts. The concept of “mental capacity” is very controversial in itself. Mental capacity is not as usually portrayed, a phenomenon that occurs for objective, scientific or natural reasons. *“Mental capacity” is conditioned by the social and political context, such as disciplines, professions and practices that play a dominant role in assessing mental capacity.* While “legal capacity” is the capacity to enjoy rights and to assume legal standing and the capacity to exercise those legal rights (legal agency).

The full enjoyment of “legal capacity” is the *key to being engaged in society.* ‘Mental Capacity’ refers to the person’s capacity for ‘decision-making’, which naturally varies from person to person, depending on various factors, including social and environmental ones.

Legal instruments such as the Universal Declaration of Human Rights (Article 6), the International Covenant on Civil and Political Rights (Article 16) and the Convention on the Elimination of All Forms of Discrimination against Women (Article 15) do not specify the distinction between mental and legal capacity. Article 12 of the Convention clearly states that “mental illness or mental delayed development”<sup>75</sup> or other discriminatory terms are not legal arguments for the removal or restriction of “legal capacity”.

**According to Article 12 of the CRPD, innate intellectual disability or that created during life, including mental health, should not be used as an excuse or argument for removal of the “legal capacity to act”.**

The Committee notes that in most member states reports elaborated so far, on the concepts of ‘mental capacity’ and ‘legal capacity to act’, it is recognized that when a person is considered to be disabled in making decisions, due to his/her mental state or mental health, his/her legal capacity to make a special decision is consequently removed. This is simply based on the diagnosis of an impairment (the status approach), or when a person takes a decision that is considered to have negative consequences (the outcome approach), or when a person’s decision-making ability is considered to be deficient (a functional approach). The functional approach tries to evaluate mental capacity/ability and thus denies “legal capacity”. This method is often based on whether a person can understand the nature and consequences of a decision and/or whether he or she can use or assess the relevant information. *This approach is flawed for two main reasons: (a) It is applied in a discriminatory manner to PWD and (b) It assumes that it is able to accurately assess internal operations of the human mind and when the person does not pass the assessment then he/she is denied*

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<sup>75</sup> In English ‘unsoundness of mind’

*the fundamental human right—the right to equal recognition before the law*<sup>76</sup>.

On the other hand, in order to make possible the full and equal recognition of “legal capacity to act” for all categories of people with disabilities, it is important to legally recognize the “legal capacity to act” of people with disabilities in public and political life (Article 29). **This implies that the ability of a person in decision-making cannot serve as an excuse to exclude any PWD from exercising their political rights, including the right to vote, the right to participate or to assist in elections or the right to participate as an observer or monitor.**

*States parties have an obligation to protect and promote the rights of people with disabilities in order to guarantee their right to access ‘the necessary support’ to express their choice during the voting process through the secret ballot and to participate in it all electoral processes or referendums without any discrimination. The Committee further recommends that States Parties guarantee the rights of people with disabilities to provide support during electoral processes, to effectively have the electoral office and to exercise all state functions at all levels of government in accordance with ‘reasonable accommodation’ and ‘support’. When this is required/desired in order to fully exercise their “legal capacity to act”.*

In all these approaches, the skills or disabilities in the decision-making of the person are taken as legitimate grounds for denying the legal capacity to act and diminishing his/her status as a person before the law. Article 12 does not allow such a discriminatory denial of ‘ability to act’ but rather requires ‘adequate support’ in exercising ‘ability to act’. Indeed, Article 12 of the Convention does not provide for new rights for PWD, but simply explains the specific elements that States Parties are obliged to guarantee, in order to ensure the right to equality before the law for every PWD on an equal basis with any other member of the society.

For a more effective reading and implementation of Article 12 of the Convention, the Committee has drawn up a guiding document ‘*General Comment Nr. 1 (2014) - Article 12: Equal Recognition Before the Law*’ in which a detailed interpretation of Article 12 is provided, which is based on the general principles of the Convention: *respect for inherent dignity, individual autonomy — including the freedom to make one’s own choices, and independence of persons; non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; accessibility; equality between men and women; and respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.*

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<sup>76</sup> General comment No. 1 (2014) Article 12: ‘Equal recognition before the law’

Through General Comment no. 1 (2014) The Committee recommends Member States to take comprehensive actions to ensure full and effective guarantee of the “legal capacity” of PWD on an equal basis with other members of the society, specifically:

- States Parties must holistically examine all areas of law to ensure that the right of persons with disabilities to ‘legal capacity’ is not restricted on an unequal basis with others.
- Legal Acts or Legal Practice must be abolished in order to ensure that full ‘legal capacity is restored’ to persons with disabilities on an equal basis with others.
- A person’s status as a person with a disability or the existence of an impairment (including a physical or sensory impairment) must never constitute grounds for denying legal capacity or any of the rights provided for in article 12 of CRPD.
- All practices that in purpose or effect violate article 12 must be abolished in order to ensure that ‘full legal capacity’ is restored to persons with disabilities on an equal basis with others.
- State Parties are under an obligation to respect, protect and fulfil the right of all persons with disabilities to ensure equal recognition before the law. In this regard, States Parties should refrain from any action that deprives persons with disabilities of the right to equal recognition before the law.
- States Parties should take action to prevent non-State actors and private persons from interfering in the capacity of persons with disabilities to exert and enjoy their human rights, including the right to exert ‘legal capacity’. One of the aims of support in the exercise of legal capacity, is to build the confidence and skills of persons with disabilities so that they can exercise their ‘legal capacity’ with less support in the future, if they so wish.
- The Committee recommends that States Parties have an obligation to provide training for persons receiving support so that they can decide when less support is needed or when they no longer require support in the exercise of their legal capacity.
- In order to fully recognize ‘universal legal capacity’, whereby all persons (regardless of disability or decision-making skills) inherently possess legal capacity, State parties must abolish those legal provisions that stipulate denials of legal capacity, constituting practices that are discriminatory on the basis of disability in purpose or effect<sup>77</sup>.
- States Parties concerned must ‘review the laws allowing for legal guardianship, and take action to developing laws and policies to replace

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<sup>77</sup> Refer to Article 12 of the CRPD in conjunction with Article 5.

the guardianship regime, with that of the supported decision-making, which respects the person's autonomy, will and preferences'.

- States Parties' obligation to replace substitute decision-making regimes by supported decision-making, requires both the removal of legal guardianship and the development of supported decision-making alternatives. However, in any case, the development of supported decision-making systems in tandem with the maintenance of substitute decision-making regimes is not sufficient to comply with article 12 of the CRPD.
- The Committee will continue to do work in this area and provide further in-depth description of the rights and obligations deriving from Article 12 with its future concluding observations, general comments, and other work.

For national implementation, the Committee recommends that States Parties should take further steps to ensure the full implementation of article 12 of the Convention on the Rights of Persons with Disabilities, by:

- Recognizing persons with disabilities as persons before the law, having legal capacity to act in all aspects of life, on an equal basis with others. This requires the removal of substitute decision-making regimes and mechanisms that deny legal capacity which discriminate deliberately or that directly affect adversely persons with disabilities. *It is recommended that States Parties create the legal terminology in order to protect the right to legal capacity on an equal basis for all.*
- Establish, recognize and provide persons with disabilities with the opportunity to access a broad range of supports in the exercise of their legal capacity. Safeguards for these supports must be premised on respect for the rights, will and preferences of persons with disabilities.
- Closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations, in the development and implementation of legislation, policies and other decision-making processes that effect the implementation of Article 12 of CRPD.
- The Committee encourages States Parties to undertake or commit resources to the research and development of best practices respecting the right to equal recognition of the legal capacity of persons with disabilities and support in the exercise of legal capacity.



- States Parties are encouraged to develop effective mechanisms to combat both formal and informal substitute decision-making. To this end, the Committee urges State parties to ensure that persons with disabilities have the opportunity to make meaningful choices in their lives and develop their personalities, to support the exercise of their legal capacity.

This includes, but is not limited to: opportunities to build social networks; opportunities to work and earn a living on an equal basis with others; multiple choices for place of residence in the community; and inclusion in education at all levels.

### *II.1.1 Albanian legal framework*

The right to equal recognition before the law for a long time has been recognized as a civil and political right, rooted in the ‘International Covenant on Civil and Political Rights.’ Civil and political rights are enshrined in the CRPD and States Parties are obliged to take steps to automatically fulfill these rights. Consequently, the rights provided for in Article 12 apply at the moment of ratification of the CRPD and are subject to immediate implementation. Moreover, the State’s obligations under Article 12, paragraph 3, to provide access to support for the exercise of “legal capacity” is already an obligation for the fulfillment of civil and political rights and consequently for the equal recognition before the law.

From the ratification of the CRPD, the States Parties should immediately begin to take steps to fulfill the rights provided for in Article 12 of the Convention. These steps should be well anticipated and include consultation with/and meaningful participation of PWDs and their representative organizations.

In the Albanian legal framework, the principle of direct implementation of the CRPD is also best affirmed by the constitutional principle and obligation of the legal hierarchy, where the international agreement ratified by law prevails over the laws of the country that contradict it 122<sup>78</sup> of the Constitution of the RA.

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Article 122

1. Any ratified international agreement constitutes a part of the domestic legal system after it is published in the Official Gazette of the Republic of Albania. It applies directly, except where it is not self-applicable and its implementation requires the issuance of a law. Amendments, supplements and abrogation of the laws adopted by the majority of members of the Parliament for the purpose of ratifying international agreements, are made by the same majority.

2. An international agreement ratified by law prevails over domestic laws that are in contradiction with it.

Following the standards that the CRPD upholds and recommendations addressed by the Committee in its General Comment no. 1 (2014), as shown at the beginning of this section, it is worth underscoring that the Albanian legal framework needs to undergo a radical review process with a view to its full compliance with the standards and spirit of the CRPD, with regards to ‘equal recognition before the law’.

Of course we should not forget to underscore that in the recent years, with the constitutional changes<sup>79</sup> and the standards set out with some of the adopted laws<sup>80</sup> some of the approaches of the CRPD have been enforced, however, the lack of effective mechanisms continues to make it very difficult to enforce in practice the principle of equal recognition before the law as regards PWDs.

The following is an analysis of the Albanian legal framework, focusing mainly on the provisions of the applicable codes, to analyze the compliance of legal provisions with the CRPD standards.

- *Civil Code of the Republic of Albania*

The CRPD in its Article 12, paragraph 1, reaffirms that PWDs have the right to recognition everywhere as persons before the law. This guarantees that every human being is respected as a person who enjoys ‘legal capacity’ or legal personality<sup>81</sup>, that is an essential element and a prerequisite for recognizing “legal capacity to act”<sup>82</sup>.

Civil Code of the Republic of Albania (Ci. Code)<sup>83</sup> which in its first article defines ‘Legal Entity’ by stipulating that ‘every natural person has full and equal capacity to enjoy civil rights and obligations within the legal framework. In the Albanian practice so far there is no case of restriction or removal of the “legal capacity”.

On the other hand, Article 4 of the Civil Code provides that ‘the natural person may not be limited to civil rights, except for the exceptions provided by law’. From a standpoint of standards affirmed by the CRPD, ‘Civil Rights’ are universal and therefore cannot be limited. Based on these standards that the CRPD affirms, we must therefore seek that this article be reviewed in the spirit

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<sup>79</sup> Elaborated following this section/Constitution of the Republic of Albania.

<sup>80</sup> Referring mostly to the ‘Juvenile Justice Code’

<sup>81</sup> ‘legal personality’

<sup>82</sup> General comment No. 1 (2014) Article 12: Equal recognition before the law, point 11

<sup>83</sup> Law No. 7850, dated 29.07.1994 ‘On the Civil Code of the Republic of Albania’ (amended by Law No. 8536, dated 18.10.1999, No. 8781, dated 3.5.2001, No. 17/2012, dated 16.2.2012 , no.121 / 2013, dated 18.4.2013, no. 113 / 2016, dated 3.11.2016) (updated)

of the CRPD, in order to guarantee the right of equal and full recognition before the law for all PWDs.

The CRPD in its Article 12 guarantees that PWDs enjoy “legal capacity to act” on equal basis with others in all areas of life. The “legal capacity to act” includes the capacity to be both ‘rights holder’ but also holder of ‘civil liability’ under the law.

‘The legal capacity to act’ to be a holder of rights, entitles a person to the full protection of his rights from the legal system. While ‘capacity-to-act’ as a ‘civil liability holder’ entitles every person to have and undertake civil obligations/the right to engage in commercial transactions and to create, amend or terminate legal relationships. The right to be recognized as holders of rights and obligations in respect to commercial transactions is provided for in Article 12, paragraph 5 of the Convention. This paragraph highlights the obligation of States Parties to *‘take all effective measures to guarantee equality before the law of persons with disabilities to enjoy and inherit property, to be in control of their financial income and to have equal access to bank loans, mortgages and other forms of financial loans; and ensure that persons with disabilities are not arbitrarily restricted on the right to enjoy their property’*.

Ci.Code, as cited above, is in full contradiction with the standard established by the CRPD, since in its Article 9 and Article 10 expresses its intention to remove or restrict the “legal capacity to act” of a minor between the ages of fourteen and eighteen, as well as for an adult eighteen years old and up, found by a court decision unable to care for their affairs due to mental illness or delayed mental development.

In addition to the fact that the terminology applied in the Albanian legal framework is still denigrating for the category of people with disabilities and that it still leans toward the medical approach, what is even more problematic is the remaining in force of the provisions that restrict or remove the “legal capacity to act”, the right of people with disabilities to be equal before the law to any other person in society. Limitation or removal of the “legal capacity to act” has been legally considered for decades now<sup>84</sup> and is widely included in many of the legal provisions and in most cases listed as one of the conditions that constitute the termination of a legal relationship or even not commencement of it. It is the removal or restriction of the “legal capacity to act” conditions the PWDs and mainly those with intellectual or psycho-social disabilities from the same rights as envisaged in a series of articles of the Ci. Code *as the right to carry out legal actions, to be entitled to a death will, freely possess personal income,*

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<sup>84</sup> The principle of abolishing or limiting the capacity to act is recognized as such by ‘Roman law’ and applied since the beginning of our century.

etc., provisions which necessarily require a full review and compliance with the standards affirmed by the CRPD, mentioning here also the conditionality of the psycho-social rights of the person concerning independent living.

Ci. Code in its Article 13, is in complete contradiction with the safeguards affirmed by Article 12 and Article 19 (Independent Living) of the CRPD. Due to the removal of the “legal capacity to act” PWD does not have the right to choose a place abode or residence, however, Ci. Code directly forces him/her to have his/her legal guardian’s residence or specifies Ci.Code, that of the legal representative and this calls for immediate intervention for improvement.

These limitations are made in some of the provisions of the Ci. Code, as follows:

- Article 4 *‘The natural person shall not be limited to his/her civil rights, save for the exceptions provided by law’;*
- Article 9 *‘A minor between the ages of fourteen and eighteen, who is unable to take care of his/her work due to mental illness or mental development, may be removed of the capacity to perform legal actions, via a Court decision. These actions can be carried out only through his/her legal representative’;*
- Article 10 *‘An adult who, due to mental illness or delayed mental development, is wholly or partly unable to take care of his or her affairs, may be subjected to removal or limitation of the capacity to perform legal actions, via a court decision.’;*
- Article 13 *‘...The person who has been deprived of his/her “legal capacity” and the children under guardianship, shall have for their residence address, that of their legal representative.’;*
- Article 34 *‘Meaning of Representation’ ‘... Cannot act as a representative of a person who has no full legal capacity...’;*
- Article 76 *‘Termination of the power of attorney’ The Power of Attorney ends when: ... c) when the representative or the represented person has died or when either of them has lost the legal capacity...’;*
- Article 94 *‘Legal actions declared void’;*
- Article 373 *‘Capacity to Possess Through a Testament’.*

Apart from the articles quoted above, and the process of reviewing the legal framework and specifically Ci. Code would also require the revision of the following Articles which are drafted in function of the spirit of this Code regarding the removal and restriction of “legal capacity to act”. It should be noted, however, that the articles listed below *may indicate in their content legal*

*protection elements to PWD, but this should not be an excuse for leaving them in force, but their abrogation must be necessarily approved in relation to all other provisions that violate “legal capacity to act” in order for Ci.Code to be in full compliance with the standards that the CRPD affirms and specifically as follows:*

- Article 104 *‘The time limit for filing a lawsuit begins: a) for legal actions taken by persons who have been removed or that have had limited legal capacity to act, since the day they have become adults or have been restored the legal capacity to act...’;*
- Article 108 *‘... When the legal transaction is found to be invalid because it has been committed ... by a minor who has reached the age of fourteen but without the consent of the parent or his guardian, ... In addition, the party that has the legal capacity to act is obliged to reimburse to the minor the damage he has suffered because the legal action is found or declared void....’;*
- Article 109 *‘When a legal action is declared invalid because it is committed by a person whose legal capacity to act has been completely removed, or because it is committed by a person who has been restricted the capacity to act without the consent of his guardian, ...’;*
- Article 129 *‘Suspension of statutory limitation’ ‘The prescription is suspended ... d) for the indictment of minors and other persons who do not have the capacity to act, ...’;*
- Article 416 *‘The district Court, upon the request of heirs or other relevant persons, may dismiss the executioner for grave misconduct or inability to administer the hereditary estate..’;*
- Article 468 *‘Bailiff and the creditor incapacitated to act...’;*
- Article 613 *‘Damage incurred from minors and persons incapacitated to act’;*
- Article 627 *The lawsuit of reparation ‘... Parents or guardians who have paid the reparation of the damage caused by juveniles or persons whose legal capacity to act has been completely removed ...’;*
- Article 927 *‘Termination of Obligation ‘The obligation ends with the death, the incapacity to act, or ...’;*
- Article 928 *‘Quitting the obligation and the Legal Effects’ ‘... The obligation assigned in the interest of the orderer or third parties ... but is not negated due to the death or the incapacitation to act of the orderer.’;*
- Article 1108 *‘Exclusion of a member may be due to ... as well as the detention, the incapacity<sup>85...</sup>’.*

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<sup>85</sup> Again, Ci. Code used the term ‘inability’ to refer to the removal or restriction of the ‘capacity to act’

- *Constitution of the Republic of Albania*<sup>86</sup>

The Constitution of the Republic of Albania<sup>87</sup> has undergone the same changes in recent years, and it is worth pointing out that a good part of the constitutional provisions regarding the judicial system have improved in view of enabling the PWD to be part of the justice system bodies.

The 1998 Constitution had provisions such as the Article 127 1. The mandate of a Constitutional Court judge ends when: ... d) *with a final Court decision the person is declared disable to act*. While with the changes that followed in the Albanian legal framework regarding the reform of the justice system in 2016, the stipulations of the provision in question and other constitutional provisions have been replaced with the voluminous phrase ‘incapability to exercise the duty’<sup>88</sup>, a legal provision that we would consider pivotal and in line with the standards affirmed by the CRPD.

We have the same guarantees as regards the constitutional provisions for the functioning of the High Court (Article 139), the High Judicial Council (Article 147/b), the High Inspector of Justice (Article 147/dh), the mandate of the Prosecutor General (Article 148/c), the High Council of Prosecutor’s Office (article 149/b).

While we conclude that the constitutional provisions still have in force legal provisions that restrict the right of people with disabilities to fully exercise the political rights and, in particular, the right to vote. Article 45<sup>89</sup> affirms that ‘2. *Are prohibited from the right to elect the nationals declared mentally disabled via a final Court decision*’. Despite the 2016 constitutional amendments, the provision on the exemption from the right of citizens’ election, continues to be in force, against who is given a final Court decision that limits or abolishes “legal capacity to act” and this fact has been used as a cause for denying and limiting participation in political life for these categories of PWDs.

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<sup>86</sup> In this part of the study we are analyzing the constitutional legal provisions regarding the removal or restriction of ‘legal capacity to act’. In the hierarchy of norms, the Constitution and then other legal and sub-legal acts should be analyzed initially. Nevertheless, for a better reading of this report, since we have dealt extensively with the concept of ‘legal capacity to act’ in the analysis of the Civil Code, we are of the opinion that it is already time to restore the limitations encountered in exercising this right since the first and fundamental act that operates in Albania - Constitution of the Republic of Albania.

<sup>87</sup> Law no. 8417, dated 21.10.1998 (amended by Law No. 9675, dated 13.1.2007, Law No. 9904, dated 21.4.2008, Law No.88 / 2012, Law No.137 / 2015 and with law no. 76/2016).

<sup>88</sup> Article 127 (Amended by Law No. 76/2016, dated 22.07.2016) “1. *The term of a judge of the Constitutional Court shall expire when: ... dh) the fact of impossibility to exercise the duty is attested...”/ dh) vërtetohet fakti i pamundësisë për të ushtruar detyrën...”.*

<sup>89</sup> Amended is the third paragraph to Law no. 137/2015, dated 17.12.2015

On the other hand, respect for the right to exercise the “legal capacity to act” of people with disabilities on an equal basis with others, includes respect for the right of people with disabilities to independence and security. While in the Constitution it is stipulated in its Article 27 ‘... 2. Freedom of a person cannot be limited except in the following cases: d) when the person is a spreader of a contagious illness, is mentally ill and dangerous for the society;...’.

We also note that Article 18 of the Constitution of the Republic of Albania requires reformulation and improvement of constitutional guarantees regarding “protection against discrimination”.

Consequently, we suggest the revision and improvement of Article 18 of the Constitution because the way how this article is formulated is not in accordance with the extended interpretation of the prohibition of discrimination referred to in Article 14 of the European Convention on Human Rights and Article 5 and 12 and the CRDP. Inclusion of the phrase “prohibition of discrimination due to disability” should be taken into account during the process of reviewing the constitutional provisions.

In the following, we note that in the Constitution of the Republic of Albania there are still provisions in force that need to be amended especially those pertaining the inappropriate terminology used for PWDs. This fact is widely highlighted throughout the analysis of this report, where the use of discriminatory and denigrating terminology is noted, with phrases such as ‘*i paaftë mendërisht* (mentally disabled)’, ‘*invalid* (invalid)’, ‘*të paaftëve* (incapable)’. In this regard, we continue to emphasize that the amendments needed to be made to the legal framework in order for it to comply with the CRPD standards, require revision of the legal provisions starting with the Constitution of Albania and to proceed further with all applicable legal and sub legal acts in force. However, of course here we cannot fail to mention the application of the constitutional principle of the norm hierarchy, whereby we cannot claim the obligation of direct implementation of the CRPD standards for the Constitution of the Republic of Albania. However, given that the Albanian state has now agreed to embrace the new legal and revolutionary concept of ‘equal recognition before the law’, this would certainly require standardization of these core principles in the RA Constitution, too, to clear the way for improving and fully complying with legal and sub-legal acts in this regard.

Regarding the Constitution of the Republic of Albania, it is specifically required to review in particular the following constitutional provisions, in particular Articles 52 and 59 should be revised in terms of applied terminology:

- Article 18 “..... No one can be unjustly discriminated against on grounds such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic, educational, social or parental status... ..”;
- Article 27 ‘ ... 2. Freedom of the person cannot be restricted except in the following cases: ... d) when the person is a spreader of a contagious disease, mentally incapable and dangerous for the society;...’;
- Article 45 ‘... 2. Excluded from the right to vote are citizens declared mentally disabled by a final court decision ...’;
- Article 52 ‘... 1. Everyone has the right to social security in old age or when he is unable to work, according to a system set by law...’;
- Article 59 ‘1. The state, within the constitutional competencies and the means it possesses, and in addition to the private initiative and responsibility, aims at: e) care and assistance for the elderly, the orphans and the invalids; f) health rehabilitation, specialized education and integration into the society of the disabled, as well as continuous improvement of their living conditions;...’.

- *The Civil Procedure Code of the Republic of Albania (Cr. Pr. Code)*

In line with the overall Albanian legal framework on legal provisions for the removal or restriction of “Legal capacity to act” the provisions of the Code of Civil Procedure,<sup>90</sup> we do not guarantee the right of PWDs who have been removed or restricted the legal capacity to act, to address the Court regarding the filing of the lawsuit<sup>91</sup>, being part of the civil process<sup>92</sup> or their questioning as a witness<sup>93,94</sup>.

Moreover, Ci.Pr.Code in Chapter VII (Articles 382 to 387) provides for the procedure to be followed for the removal and restriction of ‘ability to act’ with the purpose of placing a person under the ‘legal guardianship’ regime. The Code establishes as a legitimate party to initiate a petition, not only the spouse, family members of the same gender, but also the Prosecutor, as well as persons who have a legitimate interest in this fact, including the administration of institutions

<sup>90</sup> Law no. 8116, dated 29.3.1996 ‘The Code of Civil Procedure of the Republic of Albania’ (amended by the Law No. 8431, dated 14.12.1998; no. 8491, dated 27.5.1999; no. 8535, dated 18.10.1999; no. 8812, dated 17.5.2001; no. 9062, dated 8.5.2003; no. 9953, dated 14.7.2008, no.10 052, dated 29.12.2008, no. 49/2012, dated 19.4.2012; 122/2013, dated 18.4.2013; 160/2013, dated 17.10.2013; no. 114/2016, dated 3.11.2016; no. 38/2017, 30.3.2017)

<sup>91</sup> Article 33

<sup>92</sup> Article 91 ‘The capacity to act’

<sup>93</sup> Article 235 ‘Prohibiting the questioning in the quality of a witness’

<sup>94</sup> More generally, this topic is dealt with in Section III ‘Right to seek justice and to be tried’



where the PWD can be hospitalized or resident<sup>95</sup>. Moreover, Article 383 of the Code of Civil Procedure provides that the request for removal or restriction of “Legal capacity” in any case is notified to the Prosecutor.

In line with the CRPD standards, Chapter VII of the Ci. Pr. Code should necessarily be abolished and special arrangements should be provided in the Albanian legal framework with regard to ‘supported decision-making’ in order to establish the structures or mechanisms that will be in support of people with disabilities in expressing their will, desires, or preferences when making decisions.

In view of the compatibility of Albanian legislation with the CRPD, it is recommended the amendment of the following provisions that are still in force in the Ci. Pr. Code. However, it should be noted, that the articles listed below may have in their content ‘*seemingly positive or protective elements*’ to the rights of people with disabilities, however, this should not be used as an excuse for leaving them in force, but it is necessary to approve their abrogation in relation to all the other provisions that violate “Legal capacity”, so that Ci. Pr. Code is in full compliance with the standards that the CRPD affirms.

Specifically, the following articles need to be amended:

- Article 33 ‘... *There can be no lawsuit filed by a person who lacks legal capacity to act.*’;
- Article 35 ‘... *A panel of three judges adjudicates these issues: ... ç) Lawsuits for the removal or restriction of the person’s legal capacity to act.*’;
- Article 44 ‘*Indictments against ... persons who have been completely removed the capability to act, are brought to the Court of the district in which their legal representative resides....*’;
- Article 91 ‘*The legal capacity to act*’;
- Article 93 ‘... *Persons who have the legal capacity to act may perform all procedural actions themselves, except when the law provides otherwise...*’;
- Article 94 ‘... *When the person who is to be represented in the courtroom is absent ... a special guardian may be appointed until the case is followed by the substitute decision maker of him ...*’;
- Article 96 ‘*Power of attorney for the representative*’ ‘... *Can not be representatives of parties: ... b) persons who have been deprived of their legal capacity to act; ...*’;
- Article 131 ‘... *If the person subpoenaed is not in one of these places, the notice is delivered to a family member ... except when the recipient is ... incapable to act...*’;

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95 Article 382

- Article 158/a '*... 1. If, from the preliminary study of the acts, the judge finds the lack of jurisdiction or competence, or should the parties lack the legal capacity to act ...*';
  - Article 224/d 'Electronic Register of Experts' '*... b) have full legal capacity to act; ...*';
  - Article 235 Prohibiting the questioning as a witness '*The following are not to be questioned as witnesses: ... - persons who, due to physical or psychological defects, are not able to properly grasp the facts of the matter of the case and/or to give proper testimony; ....*';
  - Article 297 'Suspension of the trial' '*... ç) one of the parties has no or has over time lost the legal capacity to act ...*';
  - Article 298 '*... or legal representative of the party that has lost the legal capacity to act as a party ...*';
  - Chapter VII '*Removing or restricting the legal capacity to act*' Articles 382 - 387.
- *Criminal Code of the Republic of Albania (Cr. Code)*

In the Cr. Code<sup>96</sup> the principle of '*criminal irresponsibility due to mental state continues to apply*'<sup>97</sup> (unfitness to stand trial) through which the individual is declared to be 'psychologically unaware at the moment of committing the offense and is thereby exempt from criminal liability.

It is precisely the declaration of criminal irresponsibility due to mental state<sup>98</sup> thus denying also the 'legal capacity to act' of the individual, that further affects the violation of the very important principle of 'equal recognition before the law', and the exercise of this right on an equal basis with all other individuals.

On the other hand, the individual declared 'criminally irresponsible', is exempted from criminal prosecution and placed under security measures, including restriction of liberty and placement under medical treatment, contrary

<sup>96</sup> Amended by: Law no. 8175, dated 23.12.1996; no. 8204, dated 10.4.1997; no. 8279, dated 15.1.1998; no. 8733, dated 24.1.2001; no. 9017, dated 6.3.2003; no. 9030, dated 13.3.2003; no. 9086, dated 19.6.2003; no. 9188, dated 12.2.2004; no. 9275, dated 16.9.2004; no. 9686, dated 26.2.2007; no. 9859, dated 21.1.2008; no. 10 023, dated 27.11.2008; no. 23/2012, dated 1.3.2012; no. 144, dated 2.5.2013; no. 98, dated 31.7.2014; no. 176/2014, dated 18.12.2014; no. 135/ 2015, dated 5.12.2015; no. 82/2016, dated 25.7.2016; no. 36/2017, dated 30.3.2017; no. 89/2017, dated 22.5.2017, decisions of the Constitutional Court: no. 13, dated 29.5.1997; no. 46, dated 28.8.1997; no. 58, dated 5.12.1997; no. 65, dated 10.12.1999; no. 11, dated 2.4.2008; no. 19, dated 1.6.2011; no. 47, dated 26.7.2012 and no. 9, dated 26.2.2016.

<sup>97</sup> Article 17 'Incapacity due to mental state'

<sup>98</sup> non-liability ('inimputabilidad'; 'non-imputabilité') or the 'insanity defense'

to his/her will, often indefinitely, by conditioning it on the process that is guaranteed to other individuals, in violation of the ‘right to a fair legal process’. Generally, the criminal judgments given by the Albanian Courts to ‘irresponsible persons who have committed the criminal offense’ are decisions that necessitate the issuance of ‘medical measures’<sup>99</sup> through compulsory outpatient treatment or compulsory medication in a medical institution. This problematic situation was also highlighted by the CRPD Committee in which it was stated that: The Committee in this regard, strongly seeks to challenge the principle of ‘unfitness to stand trial’ and its discriminatory character by *recommending the revisioning of the criminal proceedings for the purpose of reviewing the concept of ‘irresponsible for the crime due to mental state’*. This position was also supported by the ‘Working Group on Arbitrary Detention’<sup>100</sup>, which has demanded that intellectual disabilities and mental health disorders be given the opportunity to be tried, granting the necessary support through ‘reasonable accommodation’<sup>101</sup> throughout the course of the criminal process. *In addition, the Committee has called for the elimination of security measures involving mandatory medical or psychiatric treatment at institutions and has expressed concern for those institutions that include the absence of guarantees regularly provided in the criminal justice system and indefinite deprivation of liberty, recommending that they be abolished.*

In this respect, in Albania, both in the legal framework and in the policy framework, no effective action have been taken for the category of people with intellectual disabilities and mental health disorders to give them the opportunity to guarantee the necessary support through ‘reasonable accommodation/ supported decision-making’, rather than declaring these persons ‘incapacitated to act and not responsible criminally’ and automatically placing them under the ‘mandatory medical measures’ regime.

In view of the compatibility of Albanian legislation with the CRPD, it is recommended the amendment or repeal of the following provisions that are still in force in the Cr. Code. It should be noted, however, that the articles listed below may have in their content ‘seemingly positive or protective elements’ to the rights of people with disabilities, but this should not be an excuse for leaving them in force, however, it is necessary to approve the abrogation just as all other provisions that violate the ‘ability to act’ and the ‘supported decision making’ regime, so that Cr. Code is in full compliance with the standards that the Convention affirms, specifically:

<sup>99</sup> Article 46 ‘Medical and educational measures’

<sup>100</sup> Working Group on Illegal Prohibitions

<sup>101</sup> Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities. Report of the Office of the United Nations High Commissioner for Human Rights. A/ HRC/37/25

- Article 17 'Irresponsibility Due to Mental State';
- Article 46 'Medical and Educational Measures';
- Article 58 'Half Freedom' 'For a sentence of up to one year of imprisonment, the Court, due to the obligations of the convicted person ... or for the need for medical treatment or rehabilitation<sup>102</sup>, may decide to execute the decision of imprisonment in half-freedom regime'.

Article requiring review only in terms of terminology, as follows:

- Article 103<sup>103</sup> Sexual or Homosexual Relationships with People who are Unable to Defend Themselves.
- *Criminal Procedure Code of the Republic of Albania (Criminal Procedure Code)*

Criminal Procedure Code<sup>104</sup> in the same line as the other codes operating in the RA, provide for the exercise of the rights of people with disabilities only through the guardian<sup>105</sup> or legal representative<sup>106</sup> as a 'victim of a criminal offense'<sup>107</sup> also that of 'victim who presses charges'<sup>108</sup>.

The Code of Criminal Procedure also limits the ability to testify during the criminal proceedings<sup>109</sup> or as 'in the quality of a witness to validate the

<sup>102</sup> It is recommended the revision of this article regarding 'medical treatment and rehabilitation' which is to be reviewed within the standards set by the CRPD.

<sup>103</sup> Here we recommend only reviewing the article in terms of terminology, not its content, which is a safeguard against the categories of people with disabilities.

<sup>104</sup> Law no. 7905, dated 21.3.1995 'Criminal Procedure Code of the Republic of Albania' (*changed with laws: no. 7977, dated 26.7.1995, 8027, dated 15.11.1995, no. 8180, dated 23.12.1996, no. 8460, dated 11.2.1999, no. 8570, dated 20.1.2000, no. 8602, dated 10.4.2000, no. 8813, dated 13.6.2002, no. 9085, dated 19.6.2003, no. 9187, dated 12.2.2004, no. 9276, dated 16.9.2004, no. 9911, dated 5.5.2008, no. 10 054, dated 29.12.2008, no. 145/2013, dated 2.5.2013, no. 21/2014, dated 10.3.2014, no. 99/2014, dated 31.7.2014, no. 35/2017, dated 30.3.2017; Decisions of the Constitutional Court no. 55, dated 21.11.1997, no. 15, dated 17.4.2003 and no. 31, dated 17.5.2012*).

<sup>105</sup> The Custodian of PWD may be referred to as the 'legal guardian' assigned to PWD after his/her 'capacity to act' has been removed via a court decision. However, the law also provides for a 'guardian' for the person who according to the law 9355 'For social assistance and services' refers to the paid guardian who assists during the PWD daily activities. In Law no. 93/2014 'On the Inclusion and Accessibility of Disabled Persons' the term guardian has been replaced by the term 'personal assistance' in line with the standards affirmed by the CRPD.

<sup>106</sup> Article 58 'The rights of the victim of the offense'

<sup>107</sup> Ibid

<sup>108</sup> Article 59 'Victim that Presses Charges'

<sup>109</sup> Article 155 'The Capacity to Testify'

content of the procedural act<sup>110</sup> linking the incapacity to testify not only with intellectual disability, but also to the physical abilities<sup>111</sup>, a provision which is in full contradiction with the CRPD standards.

As discussed in the section above where Cr. Code was elaborated, in it is still in force the principle of ‘criminal irresponsibility due to mental state’ leads directly to the court’s decision-making that the person is subjected to expertise in order to assess his/her legal capacity to act<sup>112</sup>, what may be contrary to their will and in many cases the duration of the criminal process can exceed the time of the sentence given by a court decision<sup>113</sup>.

In view of the compliance of Albanian legislation with the CRPD, it is recommended the revision or repeal of the following provisions that are still in force in the Criminal Procedure Code. It should be noted, however, that the articles listed below may have in their content ‘*seemingly positive or protective elements*’ to the rights of people with disabilities, but this should not be an excuse for leaving them in force, but it is necessary to approve the abrogation in relation to all other provisions that violate the ‘ability to act’ and the ‘supported decision-making’ regime so that the Code of Criminal Procedure is fully in line with the standards that the CRPD affirms. Concretely, the following articles should be amended:

- Article 43 ‘Verification of Accountability of the Defendant’;
- Article 44 ‘Suspension of the proceedings due to the defendant’s irresponsibility’;
- Article 45 ‘Revocation of the suspension decision’ ‘...1. *The decision of the suspension is revoked when it appears that the mental state of the defendant allows cognizant participation in the proceeding ...*’;
- Article 46 ‘Coercive Medical Measures’;
- Article 59 ‘The Victim that Presses Charges’ ‘... 4. *The victim that presses charges, who has no legal capacity to act exercises the rights recognized by law through the legal representative....*’;
- Article 155 ‘The capacity to testify’;
- Article 156 ‘Incompatibility with the duty of the witness’ ‘... 1. *The following can not be questioned in the quality of witness: a) Persons who, due to their physical or psychological disabilities, are unable to provide regular evidence;...*’;
- Article 165/a ‘Concealed identity witness’ ‘...3. *Only the presiding judge shall be acquainted with the true identity of the witness with hidden*

<sup>110</sup> Article 108 ‘Witnesses in Procedural Acts’

<sup>111</sup> Article 155 ‘The Capacity to Testify’; Article 156 ‘Incompatibility with the Duty of the Witness’

<sup>112</sup> Article 43 ‘Verification of Accountability of the Defendant’

<sup>113</sup> Article 44 ‘Suspension of the Proceedings Due to the Defendant’s Irresponsibility’

*identity and verifies the ability and incompatibility with the witness's duty, as provided for in this Code ...';*

- Article 180 'Incompatibility with the duty of the expert' '*1. Can not perform the duty of the expert: a) the minor, the one who has a legal prohibition or has been removed the legal capacity to act or suffers from a mental illness; ...'*;
- Article 232 'Types of coercive measures' '*1. The coercive measures are: ... e) temporary hospitalization in a psychiatric hospital ....'*;
- Article 239 'Temporary hospitalization in a psychiatric hospital'.

- *Family Code of the Republic of Albania (Fa. Code)*

Family Code<sup>114</sup> also provides for prohibitive provisions for the full exercise of the rights to family relationships for people with disabilities mainly related to intellectual or psycho-social disability.

In many of the Fa. Code articles, the prohibition of marriage, adoption or guardianship is not specifically related to the fact that a court decision removing or restricting "Legal capacity to act" is effective, but the prohibition actions provided in this Code seem to entitle the law enforcement to limit the rights of the person with the evidencing of 'a serious mental illness or deficient mental development' which makes one argue that in these cases, even a simple forensic report would be a sufficient basis to limit the rights under this Code.

Also, the Family Code has designated a special chapter, Chapter II '*Guardianship over persons who have been removed or restricted the legal capacity to act*' on the rules of guardianship of persons who have been restricted or removed the capacity to act'. The guardian appointed by a court decision has the right to give consent and to administrate the ownership of the person who has been removed the 'capacity to act'.

The provisions of the Family Code are in violation of Article 12, paragraph 5 of the CRPD, under which it requires States Parties to take action, including legislative, administrative, judicial and other practical ones, in order to ensure the rights of PWDs in accordance with financial and economic issues on an equal basis with other members of the society. The right to manage financial income and private property has traditionally been denied to people with disabilities based on the medical model of disability. Precisely this inadequate approach to denying the right of people with disabilities to exercise their "Legal

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<sup>114</sup> Law no. 9062, dated 8.5.2003 'Family Code' (Amended by Law No. 134/2015, dated 5.12.2015)

capacity to act” with regard to financial affairs/income management, etc., should be replaced with the support to exercise ‘the legal capacity to act’ in accordance with Article 12, paragraph 3. In the same way as ‘gender’ cannot be used as a basis for discrimination in the area of income management or private property<sup>115</sup>, in the same line it is necessary to act on disability as well.

In view of the compatibility of Albanian legislation with the CRPD, it is recommended the review of the following provisions that are still in force in Fa.Code. It should be noted, however, that the Articles listed below may contain ‘*seemingly positive or protective elements*’ to the rights of people with disabilities, but this should not constitute an excuse for leaving them in force, but should rather necessarily approve their abrogation or reformulate them just as all other provisions that violate ‘legal capacity to act’, so that the Fa. Code is in full compliance with the standards that the CRPD affirms. Specifically, the following Articles need to be reviewed/abrogated:

- Article 12 *‘A person who is suffering from a serious mental illness or that has a deficient mental development that makes him unable to understand the purpose of marriage, can not get married’;*
- Article 35 *‘Marriage entered in by a person suffering from a serious mental illness or having a defective mental development that makes him unable to understand the purpose of marriage, is invalid.’;*
- Article 47 *“When a spouse has been declared without legally capacity to act, a petition for the invalidity of the marriage can be made by their guardian.”;*
- Article 245 *‘The person can not adopt when: ... b) suffers from a mental illness or has a defective mental development, ....’;*
- Article 132 *‘Divorce at the request of one spouse’ ‘Each of the spouses may seek the termination of marriage when, due to ..., incurable mental illness...’<sup>116</sup>;*
- Article 141 *“The right of a guardian to petition for divorce”;*
- Article 270 *‘Inability and incompatibility to be a guardian’ ‘Guardian can not be assigned the person who: ... ë) because of his health condition can not easily exercise guardianship ...’;*
- Article 274 *‘Cases of special guardianship’;*
- Chapter II *‘Guardianship over persons who have been removed or restricted the legal capacity to act’ the articles 307-313.*

<sup>115</sup> For more details refer to the ‘Convention on the Elimination of All Forms of Discrimination Against Women’ Article 13 (b).

<sup>116</sup> In regard to this Article, we recommend the revision of the terminology, while we can by no means recommend the abolition of the spouse’s right to seek the divorce on these grounds.

- *Administrative Procedure Code of the Republic of Albania (Ad. Pr. Code)*

Ad. Pr. Code<sup>117</sup> has included in the legal provisions concerning the ‘principle of equality and non-discrimination’<sup>118</sup> also the category of disability, as a guiding principle of the public institution during the exercise of its activity. However, it is noted that despite the fact that the Code of Administrative Procedure has been revised recently (in 2015) there are provisions in this Code that are in contradiction with the CRPD regarding the principle of ‘equal recognition before the law’. The provisions of this code affirm, contrary to the CRPD standards, the restriction of the exercise of rights in an administrative process for those persons who have been removed or restricted ‘the legal capacity to act’ (Article 34; 36).

In view of the compliance of Albanian legislation with the CRPD, it is recommended the revision of the following provisions that are still in force in the Code of Administrative Procedure. It should be noted, however, that the articles listed below may have in their content ‘seemingly positive or protective elements’ to the rights of people with disabilities, but this should not serve as an excuse for leaving them in force, but it is necessary to approve the abrogation or reformulation of them in relation to all other provisions that violate ‘legal capacity to act’ so that the Code of Administrative Procedure is in full compliance with the standards that the CRPD affirms.

Specifically, the following articles need to be reviewed/abrogated:

- Article 34 ‘The legal capacity to act in the administrative proceedings’;
- Article 36 ‘Assigned representative’ 1. *‘The public body, which conducts the proceeding, suspends the procedure and requests the competent authority according to the law, the appointment of a legal representative or his/her replacement, when it finds that a party who is not fully capable to act or has limited legal capacity to act, is anyhow not assigned a legal representative or when he/she has a conflict of interest with the person represented ...’;*
- Article 40 ‘The capacity to be a representative or a assistant’ *“...Any person who enjoys full legal capacity to act, under the Civil Code, may act as a representative or assistant, unless the law provides otherwise”.*

- *The RA Labor Code (La. Code)*

La. Code<sup>119</sup>, as well as the codes of procedures elaborated in the sections

<sup>117</sup> Law no. 44/2015 ‘Code of Administrative Procedures of the Republic of Albania’

<sup>118</sup> Article 17 ‘Principle of Equality and Non Discrimination’

<sup>119</sup> Law no. 7961, dated 12.7.1995 ‘Labor Code of the Republic of Albania’ (amended by the Laws: no. 8085, dated 13.3.1996; no. 9125, dated 29.7.2003; no. 10 053, dated 29.12.2008; no. 136/2015, dated 5.12.2015)



above, have in force and implement provisions that are in conflict with the CRPD standards and with the principle of equal recognition before the law. Specifically, the La. Code (Article 20) denies the right to enter into a work relationship in the sense of the legal relationship of a labor contract, should the person have a restriction or lacks full legal capacity to act.

Legal Provisions in the Labor Code that need to be amended, reformulated or abolished:

- Article 20 'Ability to contract' '1. *Have the right to enter a work contract: a) persons who have full capacity to act according to the provisions of the Civil Code; b) persons with limited capacity, but expressly or tacitly authorized to perform work by their legal representative.*'

## II. 2 Supported decision making<sup>120</sup>

'Supported decision-making' is a newly introduced legal concept in international terminology and practice, since the adoption of the CRPD.

'Supported decision-making' in the context of the exercise of 'legal capacity to act' must respect the rights, will and preferences/choices of people with disabilities and should in no way rely on 'legal guardianship' or 'substitute decision-making' (the term used by CRPD).

Article 12, paragraph 3 of the CRPD *does not specify the form that 'support'/'supported decision-making' should have.* Nevertheless, the CRPD explains that 'support' is a broad term involving both formal and informal support, different types and dynamics. For instance, People with Disabilities can choose:

- one or more people who have more faith in helping them exercise the 'legal capacity to act' in order to make different decisions during their daily activities;
- or may require other forms of support, such as peer support, advocacy (including self advocacy support) or communication assistance;

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<sup>120</sup> The content of this section is taken from the text of 'General comment no. 1 (2014) Article 12: Equal recognition before the law. Given that the 'supported decision-making' regime is completely new and unapplied in Albanian practice, for a better understanding of it throughout this section we are presenting an adjusted excerpt from the Committee's General Recommendation, as the authors of this the study consider it very important for the purpose of highlighting the principles of the law according to the standards affirmed by the CRPD through general recommendations or other reports that have come into effect under Article 12 and 13 of the CRPD. In this respect, a part of the analysis of the principles presented in this report, has taken for reference parts of these important documents that the CRPD makes available to be analyzed later by the authors of this study, pertaining the compatibility and safeguards that the Albanian legal framework has in force.

- also, support for people with disabilities in exercising their ‘ability to act’ may include measures related to ‘*universal design and accessibility*’.

For instance, public or private operators, such as banks or financial institutions, may be required to provide information in an understandable format or to provide a professional interpreter of the sign language, in order to enable the PWD to carry out the required legal actions for the opening of a bank account, for entering into contracts or for conducting other social transactions;

- ‘support’ may also include the development and recognition of various non-conventional communication methods, especially those who use non-verbal communication forms to express their will and preferences.

For many PWDs, the ability to plan in advance is an important form of support through which they can express their will and preferences that need to be heeded at a time when they may not be able to communicate their desires to others.

All PWDs have the right to engage in planning in advance and be given the opportunity to do so on an equal basis with others.

The CRPD Committee recommends that *States Parties should provide different forms of pre-planning mechanisms to accommodate different preferences of persons with disabilities*, however, all opportunities offered should not be discriminatory. Support should be provided to a person, according to his/her desire, in order for him/her to accomplish a preliminary planning process.

The type of support and its intensity can be entirely different from one person to another in accordance with diversity and disability. However, in any case, including difficult situations, the autonomy of the individual and the will of the person with disability for making decisions, ought to be respected.

While some other people with disabilities may only seek recognition of their right to exercise ‘ability to act’ on an equal basis with others and may not seek to exercise their right to support, as is also provided for in Article 12, paragraph 3 of the Convention.

It is precisely through paragraph 3 of Article 12 that the obligation of States Parties arises to provide adequate support for people with disabilities in exercising their ‘legal capacity to act’ (legal capacity). *States parties should not deny people with disabilities the ‘legal capacity to act’ but need to provide them with the support they need to enable them to make decisions that have legal effect.*

The CRPD in Article 12, paragraph 4, underlines the safeguards that should be envisaged to exercise ‘legal capacity to act’ through the ‘support’ system. Paragraph 4 of Article 12 should be read in conjunction with the entire Article 12 of the CRPD,

where it requires that *States Parties should establish effective and necessary defense mechanisms for the exercise of 'legal capacity to act'*. The main purpose of these defense mechanisms should be to ensure respect for the rights of the individual, his/her will and preference. In order for this to be accomplished, safeguards should provide support to the abused and that on an equal basis with others.

However, in those cases where despite all possible efforts being made and in practice, it is impossible to determine the individual's desire and preference, *'the best interpretation of desire and preference'* should replace the definition of 'higher interest'. This determination respects the rights, wishes and preferences of the individual in accordance with Article 12, paragraph 4. In this line, the principle of 'higher interest' is not a safeguard in accordance with Article 12 as regards 'adult' individuals. The paradigms about 'desires and preferences' should replace the 'highest interest' paradigm to ensure that people with disabilities enjoy the right to exercise 'legal capacity to act' on an equal basis with others.

All persons may risk being under 'unnecessary influence'<sup>121</sup> and in particular, this may be even more evident to people relying on helping others to make decisions. The unlawfulness of 'unnecessary influence' becomes evident when in the interaction *between the support person and the person receiving the support are displayed signs of intimidation, aggression, intimidation, fraud or manipulation*. The protective measures for the exercise of 'legal capacity to act' should include protection against 'unnecessary influence' but in any case protective measures should respect the rights, will and preferences of the person, including the right to take risks and to make mistakes.

The 'supported decision-making' regime consists of various support options that give priority to the desires and preferences of the person, and respect human rights norms. This regime should guarantee the protection of all rights, including those related to autonomy (the right to full exercise of "ability to act", equal recognition before the law, the right to choose a place of residence, etc.) and the right to freedom from abuse and compulsory treatment (right to life, the right to human/physical integrity), etc...). Moreover, 'supported decision-making' systems should not over-regulate the lives of people with disabilities.

The Committee on General Recommendation no. 1 (2014) states that 'the supported decision-making' regimes may take many forms and incorporate some key provisions to ensure compliance with Article 12 of the Convention, including the following:

- Supported decision-making must be available to all. A person's level of support needs, especially where these are high, should not be a barrier to obtaining support in decision-making;

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<sup>121</sup> 'Undue influence' as quoted in General comment No. 1 (2014) Article 12: 'Equal recognition before the law'

- All forms of support in the exercise of legal capacity, including more intensive forms of support, must be based on the will and preference of the person, not on what is perceived as being in his or her objective best interests;
- A person's mode of communication must not be a barrier to obtaining support in decision-making, even where this communication is non-conventional, or understood by very few people;
- Legal recognition of the support person(s) formally chosen by a person, must be available and accessible, and States Parties are under an obligation to facilitate the creation of support, particularly for people who are isolated and may not have access to naturally occurring support in the community. *This must include a mechanism for third parties to verify the identity of a support person as well as a mechanism for third parties to challenge the action of a support person if they believe that the support person is not acting in accordance with the will and preferences of the person concerned;*
- In order to comply with the requirement, set out in article 12, paragraph 3, of the Convention, for States parties to take measures to "provide access" to the support required, States parties must ensure that support is available at nominal or no cost to persons with disabilities and that lack of financial resources is not a barrier to accessing support in the exercise of legal capacity;
- Support in decision-making must not be used as justification for limiting other fundamental rights of persons with disabilities, especially the right to vote, the right to marry, or establish a civil partnership, and found a family, reproductive rights, parental rights, the right to give consent for intimate relationships and medical treatment, and the right to liberty;
- The person must have the right to refuse support and terminate or change the support relationship at any time;
- Safeguards must be set up for all processes relating to legal capacity and support in exercising legal capacity. The goal of safeguards is to ensure that the person's will and preferences are respected.
- The provision of support to exercise legal capacity should not hinge on mental capacity assessments; new, non-discriminatory indicators of support needs are required in the provision of support to exercise legal capacity.

On the other hand, the Committee underscored the interaction between the principle of 'access to justice' and 'equal recognition before the law' and

recognition of the concept of ‘supported decision-making’ as set out in Article 12 (3) of the CRPD as a means of exercising the right of ‘access to justice’. It is precisely the ‘supported decision-making’ regime that can facilitate following the lawyer’s instructions, his/her defense in Court, or self-representation.

The concept of ‘supported decision-making’ requires other fundamental developments in the context of the principle of ‘access to justice’ *through the drafting and adoption of legal and sub-legal acts as well as guides to assist the work of judges, prosecutors, lawyers and all working parties in the justice administration system.*

Drafting procedures in this context would contribute to the establishment of appropriate practices, the systematization of practices and the development of means to ensure respect for the right to exercise legal capacity to act in all legal proceedings. *States should include the body of professors and academics from their own countries in developing legal remedies in close consultation with persons with disabilities and their representative organizations, in accordance with the stipulations of the Convention.*

## II. 2.1 Albanian Legal Framework

The ‘supportive decision-making’ regime envisaged by the CRPD in its Article 12, is not merely a term but also an unknown and unrecognized regime already covered by Albanian legislation. As it was thoroughly analyzed in the “Legal capacity” section, the Albanian legal framework is based on the removal or restriction of ‘capacity to act’ and the placement of a person under the ‘substitute decision-making regime’, which is already in complete contravention with the standards affirmed by the CRPD.

Thanks to the strong lobbying of international organizations and in particular of the ADRF<sup>122</sup> it was made possible the adoption of the 2014 Law no. 93/2014 ‘On the Inclusion and Accessibility of Persons with Disabilities, and *one of its goals is to ensure independent living for all persons with disabilities, maximizing their autonomy and independent decision-making with the aim of guaranteeing life in the community on equal terms with that of others*<sup>123</sup>.

For the first time, a separate Article (Article 7 ‘Supported Decision-making’) was included in this law, which provided not only a definition of this new legal regime in Albanian legislation, but also the introduction to the supporting

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<sup>122</sup> “Albanian Disability Rights Foundation (ADRF) – A non-profit organization with extensions across the Albanian territory.

<sup>123</sup> Article 1 ‘Object’

mechanisms to be established with the intention to provide support to people with disabilities who need help in decision-making.

Article 7 ‘Supported Decision-Making’<sup>124</sup>

1. ‘Supported decision-making’ is the exercise of will by a person with disabilities through a specific added competence that supports his/her best intention and interest, enabling action to gain rights and to take on responsibilities.

2. Any person with disability, who needs help in decision-making, gets the right support from an individual or group of trusted individuals. Support can be provided in a variety of ways, including support through simple interpretation and plain language, as well as assistance with third-party relationships that are not able to understand his/her means of communication. Support is provided gradually, giving ample time to those who ask for it to learn how to use the support for their best interest.

3. The rules, procedures and criteria for providing these services are determined by a decision of the Council of Ministers.

However, despite the adoption of this provision, there is an attempt by the lawmaker to incorporate the CRPD standards into the domestic legal regime, in the interpretation of the approved legal provision/Article 7, we again see that there is a need for improvement and compliance with the standards that the CRPD affirms. Referring to point 1 of article 7, where definition of supported decision-making is given, we find that the phrase ‘its best interest’ is used, a term that contradicts the spirit and standards that the CRPD seeks to affirm. This term should be replaced with the phrase ‘*the desires and preferences of the individual*’<sup>125</sup>, recognized by the CRPD as a ‘safeguard measure’ and which guarantees the PWD to enjoy the right to exercise ‘ability to act’ on an equal basis with others.

Referring to point 2 of Article 7, it is noted that the lawmaker has quoted in this article several ‘support’ approaches including support through simple *interpretation and language as well as assistance with third-party relationships that can not understand his ways of communication*. Of course, the ways of referencing support are very general and we can not attempt to argue if the legal prediction is in line with the CRPD standards, while the by-laws under implementation of this article are still not approved.

At this point, in order to implement the ‘supported decision-making’ regime as soon as possible, we recommend that the lawmaker pay attention to the

<sup>124</sup> Law no. 93/2014 On the Inclusion and Accessibility of Persons with Disabilities

<sup>125</sup> Paragraph 20 General comment No. 1 (2014) Article 12: Equal Recognition Before the Law

recommendations given by the CRPD Committee, and to initiate as soon as possible the following actions:

- Establish effective and necessary defense mechanisms for the exercise of “legal capacity” through the ‘supported decision-making’ regime;
- Setting up a mechanism for third parties to verify the identity of the support person;
- Establish a mechanism for third parties to be able to oppose the actions of the support person if it is believed that the support person is not acting in accordance with the desires and preferences of the person benefiting ‘supported decision-making’.
- Review and align the Albanian legal framework with CRPD standards and recommendations given by the Committee.

As noted, point 3 of Article 7 of the ‘Law on Inclusion and Accessibility’ requires the Council of Ministers to issue the rules, procedures and criteria for the provision of services. Pursuant to Article 21 of the same law, it is required that the by-laws pursuant to this Article be approved within 24 months from the entry into force of the law, that is, minimum within September 2016. While there are still no approved sub-legal acts referring to this article.

In this part of the monitoring report, it is worth pointing out that the establishment and implementation of the ‘supported decision-making regime’ requires not just putting time limits on issuing sub legal acts and establishing formal structures for the simple reason that the fulfillment of the deadlines set out in the legal acts. The sanctioning of the ‘supported decision-making’ regime is more than the issuance of a subsidiary act. First and foremost, it is a change of the ‘legal mentality’ of the law professionals in the first place, as well as the establishment of groups composed by professionals of human rights and other related fields including psychology, social workers, doctors by specialty, etc. It requires research and referral to best international experiences for effective implementation of the supported decision-making regime.

Moreover, the establishment of a supported decision-making regime would simultaneously require the abrogation and redrafting of the legal framework, in line with CRPD standards with regard to the equal recognition of the law through the exercise of ‘full legal capacity to act’ for all PWDs, Including Ci. Code, consequently, Codes of Procedures, and subsequent related legal and sublegal acts.

### III. RIGHT TO CLAIM JUSTICE AND STAND TRIAL<sup>126</sup>

The right to claim justice and stand trial is another domain of the rights that the CRPD through “*General Recommendation No. 1 (2014)*” pays particular attention to, focusing in particular on the principle of ‘criminal irresponsibility due to the mental state’, the right to possess ‘effective legal remedies’, the right to benefit from the ‘legal aid’ and the right for persons with disabilities to be part of the ‘administration of justice’.

In the following, we discuss these important principles as integral elements of “right to claim justice and stand trial” by balancing the standards that the CRPD affirms with the legal provisions in force of the Albanian legal framework.

#### III. 1 Legal aid

The right to claim justice is directly linked to the right to a fair trial, which include also the right to free legal aid. Lack of free legal aid is one of the most common barriers to the principle of ‘equality of arms’ and ‘equality of access to justice’ specifically for PWDs, who are generally amongst the poorest categories of the world and face challenges in obtaining legal aid and legal representation.

Moreover, many PWDs are restricted by the right to initiate an investigative or judicial process as a result of being isolated in institutions or isolated in their homes. However, on the other hand, the lack of information on their rights and how to claim these rights from justice institutions or other administrative institutions is another form of barriers that limits their right to effectively use of legal remedies.

*The Committee* has raised concerns regarding the lack of free legal aid to people with disabilities, including those living in institutions, as well as for

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<sup>126</sup> Parts of this section are taken from the General comment no. 1 (2014) Article 12: Equal Recognition Before the Law, as the authors of this study consider it very important to highlight the principles of the law according to the standards affirmed by the CRPD through its General Recommendations or other reports that have come into effect under the Articles 12 and 13 of the CRPD. In this respect, a part of the analysis of the principles presented in this report has been taken as a reference from parts of these important documents that the CRPD makes available to be analyzed later by the authors of this paper, pertaining the compatibility and safeguards that the Albanian legal framework has in force.



women and girls with disabilities who are victims of violence and abuse. In some countries where legal aid services have been put in place, they actually present shortcomings *with regard to the necessary resources; do not act on an independent basis; are inaccessible for PWDs; or lack the necessary expertise on the rights of people with disabilities. While the coercive measures that can be taken against people with disabilities may limit their access to essential services and benefits, exposing them to social exclusion and violations of their rights to seek legal support to claim these rights. Failure to provide legal aid has effects that further affect and expose the PWD to further marginalization.*

*The Committee recommends that member states enhance their skills to guarantee legal assistance to people with disabilities, adopt the legal framework in this regard and allocate resources to support the provision of free legal aid. Legal aid should be accessible, and States Parties to the Convention should ensure the availability of services and information by using multiple means, methods and forms of communication throughout their territory*<sup>127</sup>. For example, in Canada, the Legal Aid Office in Ontario offers all online information in alternative formats (adapted to be understood by people with disabilities) and constantly trains institution's staff to communicate with people with disabilities according to their abilities.

### *III.1.1 Albanian legal framework*

The “juridical aid” or “legal aid” is referred with these two terms in the Albanian legal framework and is guaranteed by both the Ci. Pr. Code <sup>128</sup> and by Cr. Pr. Code<sup>129</sup>.

Meanwhile Law no. 111/2017 ‘On Legal Aid Guaranteed by the State’ entered into force on June 1, 2018 and guaranteed the right for any PWD to receive primary and secondary legal aid, regardless of their income or wealth,<sup>130</sup> including particularly children placed in care institutions or individuals with mental health disorders who have been removed or limited their legal capacity to act without the need to obtain the approval of their legal guardian.

The current issue of this legal act is the lack of effective implementation and specifically, the Albanian Government is more than 1 year late in adopting sub-

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<sup>127</sup> UN High Commissioner for Human Rights Office Report, December 27, 2017.

<sup>128</sup> Cr. Pr. Code Article 158 ‘Preliminary Actions of the Single Judge’

<sup>129</sup> Cr. Pr. Criminal Article 6 ‘Provision of Defense’

Cr. Pr. Criminal/Article 58 ‘The Rights of the Victim of the Criminal Offense; d) to appoint a defense counsel and, where appropriate, to receive free legal aid under the legislation in force;...’

<sup>130</sup> Article 11 ‘Special Categories of Legal Aid Beneficiaries’

legal acts in this regard. As a result, people with disabilities in Albania are still unable to exercise the right to legal assistance in fulfilling the important principle of “the right to a fair trial” through legal aid guaranteed by the state.

While a possible space in this regard is related only to NGOs that have already consolidated their legal clinics and offer extensively free legal aid to different social categories. However, even for these organizations, the financial sustainability is becoming volatile as they rely on donations from organizations that are increasingly limiting their financial support. Consequently, this leads to the reduction of the number of beneficiaries and cases handled.

### III.2 Presumption of innocence

One of the principles of a “the right to a fair trial” closely related to the guarantee of “procedural accommodations”, is the principle of ‘*Presumption of Innocence*’. In some legal systems, including the Albanian legal framework, persons with intellectual disabilities or mental health disorders can be found ‘incapable of being adjudicated/irresponsible due to their mental state’ and are exempted from ‘criminal liability’, following the removal or restriction of their ‘legal capacity to act’.

Consequently, the individual is declared to have ‘been mentally mismanaged at the moment of committing the offense’, thereby exempting him from criminal liability and his/her placement under the regime of restriction of liberty generally applicable to the forcible dispatch or treatment in mental health institutions for an indefinite period of time.

In certain cases, people with disabilities may also undergo tests to assess their capacity to be tried, which may be contrary to their will and in many cases the duration of this process may exceed the time of the sentence given by a court decision, by conditioning it from the process that is guaranteed to other individuals for the “right to a fair trial”.

In this regard, the Committee has *recommended the review of criminal proceedings strongly seeking to challenge the concept of ‘being incapable of being tried’*<sup>131</sup> and its discriminatory character and has requested the removal of this provision from the criminal justice system. This stance was also supported by the ‘*Working Group on Illegal Prohibitions*’<sup>132</sup>, which has required that persons with intellectual disabilities and mental health disorders (psycho-social) be given the opportunity to be tried, guaranteeing the necessary support ‘reasonable

<sup>131</sup> Unfitness to stand trial

<sup>132</sup> Working Group on Arbitrary Detention

accommodation through adaptation of procedures’ or as we have dealt with broadly in section II.2, guaranteeing ‘supportive decision-making’ instead of declaring these people ‘*irresponsible persons due to their mental state*’.

The Committee has also *recommended the elimination of security measures involving compulsory medical or psychiatric treatment in institutions in the legal framework of member states*<sup>133</sup>.

### *III. 2.1 Albanian legal framework*

In the Cr. Code, still applies the principle of ‘lack of criminal liability due to mental state’<sup>134</sup> (unfitness to stand trial) and by a court decision the person is subjected to expertise in order for the assessment of his/her legal capacity to act, even contrary to his/her own will<sup>135</sup>.

On the other hand, although the new Approval of the Law ‘On Mental Health’ (Law No. 44/2012 dated 19.4.2012) guarantees some fundamental rights for people who present mental health disorders, we would again emphasize that although this law was adopted following the ratification of the CRPD by the Albanian state,<sup>136</sup> yet, in its legal provisions is envisaged the reference to ‘removal or restriction of the legal capacity to act’<sup>137</sup>, procedures that are followed for ‘involuntary treatment’ or ‘involuntary treatment by a court decision’<sup>138</sup>.

Following the standards established by the CRPD and the Committee’s ongoing recommendations, it is recommended the amendment/abolishment of the following legal provisions:

- *Criminal Code*
  - Article 17 ‘Irresponsibility Due to Mental State’;
  - Article 46 ‘Medical and Educational Measures’.
  
- *Criminal Procedure Code*
  - Article 43 ‘Accountability Checks of the Defendant’;
  - Article 44 ‘Suspension of proceedings due to the defendant’s irresponsibility’

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<sup>133</sup> General Comment No. 1 (2014) Article 12: Equal Recognition Before the Law.

<sup>134</sup> Cr. Code Article 17

<sup>135</sup> Cr. Pr. Code Article 43

<sup>136</sup> Law no. 108/2012 dated 15.11.2012 *On the ratification of the UN Convention ‘On the Rights of Persons with Disabilities’*

<sup>137</sup> Article 9 ‘Removing or Restricting the Capacity to Act’

<sup>138</sup> Article 20 ‘Involuntary Treatment’; Article 24 ‘Involuntary Treatment Via a Court’s Decision’

- Article 45 ‘Revocation of the decision of suspension’;
  - Article 46 ‘Mandatory Medical Measures’;
  - Article 464 ‘Execution of Imprisonment Sentence’ ‘... 4. *The same applies to cases of execution of forced hospitalization in medical institutions or education.*”.
- *The Law ‘On mental health’*
    - Article 9 ‘Removing or restricting the legal capacity to act’;
    - Article 20 ‘Involuntary Treatment’;
    - Article 24 ‘Involuntary Treatment Via a Court Decision’;
    - Chapter VI ‘Mental Health in Prisons and Special Medical Institutions’ (Articles 28-29).

### III.3 Administration of justice

According to the CRPD, in order for people with disabilities to have access to justice on an equal basis with others, they should be able to participate effectively, directly or indirectly in all legal proceedings, including investigative and preliminary stages. Direct participation refers to those cases when the PWD is in the position of a plaintiff, defendant or as one of the parties in the proceedings. Indirect participation refers to other cases that contribute to the administration of justice, such as a witness, a qualified expert, a jurist, a judge or an attorney.

The CRPD considers the administration of justice a part of the democratic system that contributes to good governance and therefore goes beyond the respect of the rights to a fair legal process for PWDs.

Respect for democracy, rule of law, accountability and effective administration of justice requires the involvement of persons representing all aspects of society in all capacities, including PWDs.

Article 13 seeks to promote the rights of people with disabilities to contribute and participate in all aspects of the administration of justice and in all other legal proceedings as a component of active citizenship that is in the composition of the society in which we live in. Consequently, participation in securing access to justice, relates to participation in public and political life, as described in Articles 4 (3), 29, 33 and 34 of the Convention.

PWD continue to face restrictions on their participation as parties to various legal proceedings, such as judges, prosecutors, witnesses or lawyers. These limitations are mostly influenced by stereotypes that reduce the credibility and capacity of people with disabilities, especially women, to contribute effectively

to legal proceedings. An example of a positive development in this context is a decision of the Supreme Court of Canada, in which *The Court found that persons with intellectual disabilities could testify in criminal matters on the basis of an oath to the truth, whereas before they had to prove their competence to testify by explaining the meanings of the concepts of promise, truth, and falsehood.*

The Committee has specifically stated that the denial or failure to take appropriate action to participate on an equal basis with others, such as the non-provision of the sign language interpreter, has resulted in a violation of the right to access to justice, non-discrimination, 'reasonable accommodation', freedom of expression and participation in political and public life.

The role of guaranteeing the 'adaptation of the procedures' through 'reasonable accommodation' is key to ensuring that the rules of procedure can be interpreted with sufficient flexibility to involve and participate in PWD on an equal basis with others in the justice administration institutions.

To overcome barriers to participation in the administration of justice, there are many countries that are engaged in the upgrading of their systems in the world today. For example, Chile has abolished the law prohibiting persons with sensory disabilities (visibly impaired/blind and who do not hear or speak) to practice the magistrate's profession. Similarly, in Ethiopia, the Federal Chamber ruled against a common-law practice in the justice sector, which prohibited blind persons from exercising their duty as judges and ordered the courts to provide 'reasonable accommodation' for the exercise of their duties.

In Peru 'reasonable accommodation' is provided for blind candidates who conduct the entrance examination procedure to become a judge or prosecutor. In Germany, about 70 blind people are judges, and some have climbed up to the highest judicial functions in the country, including also positions in the Federal Supreme Court.

### *III.3.1 Albanian legal framework*

Referring to the Albanian legal framework, we note that provisions are still in force which restrict the right of people with disabilities to be elected or to exercise the function of Magistrates, Attorneys or Expert (during the judicial process).

Specifically, Law no. 96/2016 '*On the Status of Judges and Prosecutors in the Republic of Albania*' in its Article 23 provides as one of the criteria for admission to initial training the enjoyment of full legal capacity to act or Article 67 of this law provides for removal from office or temporary suspension of the

magistrates if the special commission attests not only the mental but also the physical ability of the magistrate.

Also, Law no. 55/2018 *'For the profession of lawyer in the Republic of Albania'* provides for the revocation of the title or the suspension of the exercise of the profession if *the lawyer suffers from mental or physical illness, which renders him/her impossible for the normal exercise of the profession.*

Law no. 10 385, dated 24.2.2011 *'For Mediating in Settling Disputes'* (amended)<sup>139</sup> provides in its Article 6, one of the reasons for the removal of the mediator's license *'removal or restriction of the legal capacity to act'.*

Regarding the exercise of the Expert's function both in the civil and the criminal process, it is here ascertained that a preliminary condition is his/her the enjoyment of 'full legal capacity to act' or 'suffering from mental illness', legal provisions which are still in force as in Ci. Pr. Code<sup>140</sup> as well as in Cr. Pr. Code<sup>141</sup>.

The following are some of the legal acts that require amendment or abolition of legal provisions in order to comply with the CRPD standards regarding the important principle of the administration of justice:

- Law no. 96/2016 *'On the Status of Judges and Prosecutors in the Republic of Albania'*:
  - Article 28 *'Admission Criteria in Initial Training'* *'Everyone has the right to apply for admission at the School of Magistrates to be admitted to the initial training for magistrates, provided that he/she meets the following criteria: a) Has full legal capacity to act;...'*
  - Article 67 *'The physical and mental inability of a magistrate'*;
  - Article 156 *'Suspension Duration Limits'* *'.....b) the physical or mental rehabilitation of the magistrate...'*
- Law no. 55/2018 *'On the Profession of Lawyer in the Republic of Albania'*
  - Article 13 *'Acquiring the title of lawyer'* *'... 2. The right to obtain the title 'Lawyer' in the Republic of Albania shall be granted to any Albanian citizen who meets the following conditions: a) to have full legal capacity to act ...'*
  - Article 46 *'Removal of the title and suspension of the profession's practice'* *'.....2. Disciplinary Committee of the Bar Association of Albania..., has the authority to suspend the practice of profession for a period of from*

<sup>139</sup> Amended by law no. 81/2013, dated 14.2.2013, no. 26/2018, dated 17.5.2018

<sup>140</sup> Article 224/d *'Electronic Register of Experts'* point 3/b

<sup>141</sup> Article 180 *'Incompatibility With the Duty of the Expert'* Point 1/a

two months to two years, when one of the following cases is verified:  
... ç) the lawyer suffers from mental or physical illness, which renders it impossible for him/her to normally exercise the profession; ...

- Law No. 10 385, dated 24.2.2011 ‘On Mediation in Dispute Settlement’ (amended)<sup>142</sup>
  - Article 6 ‘Revoking the Mediator’s License’ ‘1. The mediator’s license is revoked and he/she is deregistered in cases when: ... b) loss or limitation of legal capacity to act ...’.
- Civil Procedure Code of the Republic of Albania
  - Article 224/ d ‘Electronic Register of Experts’ ‘... 3. Ministry of Justice accepts the registration of the expert in the electronic register if he/she meets the following criteria: .... b) have full legal capacity to act;....’.
- Criminal Procedure Code of the Republic of Albania
  - Article 180 ‘Incompatibility with the duty of the expert’ ‘1. Can not perform the duty of the expert: a) the minor, the one who is prohibited by law or has been removed from the legal capacity to act or suffers from a mental illness;...’.

### III.4 Training in the fields of administration of justice and legal education

Attitudinal barriers affect access to justice for people with disabilities, as they may adversely affect the way in which laws, policies, procedures and legal practices apply. Often, these barriers to attitudes stem from lack of awareness of the rights and appropriate practices of people with disabilities in the justice system by police officers, the administration and professionals working as public defenders, providing legal assistance or practicing other similar professions.

The provisions of Article 13 (2) promote appropriate training for these categories in order to overcome barriers. *States Parties should develop and disseminate compulsory regular training programs, which should be appropriately funded, including persons with disabilities at all stages of legal proceedings, also in rural areas.*

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<sup>142</sup> Amended by law no. 81/2013, dated 14.2.2013, no. 26/2018, dated 17.5.2018

The Committee has recommended that training programs address areas such as:

- (a) the barriers faced by people with disabilities in access to justice;
- (b) the rights guaranteed in the CRPD, including participation on an equal basis with others;
- (c) providing ‘reasonable accommodation’ in the judicial process;
- (d) overcoming stereotypes based on gender and disability;
- (e) rights related to marriage, family, parenting, fertility and relationships;
- (f) ways to combat prejudice against persons with disabilities, especially those with psycho-social and/or intellectual disabilities.

Some training programs show the ways in which Article 13 (2) can be applied. For example, in Spain, police and civil society have developed a training manual for distribution at police stations. In South Africa, the Police Service has prioritized the training of its staff pertaining the rights of people with disabilities. The European Union, Estonia and France have trained judges and other justice agents in this regard.

### III.4.1 Albanian legal framework

Referring to the ‘National Action Plan for People with Disabilities’ 2016-2020<sup>143</sup> is envisioned in Objective 2, activity ‘2.4 Training of Officials in all Judicial Institutions in relation to the CRPD’ by providing for ‘training of 100 officials by the end of the year 2020’.

*It is ascertained that up to now, there have been some trainings in the Magistrates’ School for judges and prosecutors. Training focused on the provisions of the CRPD, but more work needs to be done in this area to enable the effective implementation of the right to equality before the law. Only one basic training was conducted and the number of judges and prosecutors that attended was limited<sup>144</sup>.*

In this framework, also ADRF<sup>145</sup> has provided its contribution, thanks to the implementation of the project ‘Civic Engagement for a Functioning Judicial System and Access to Justice in Albania’ with the financial support of ‘European

<sup>143</sup> DCM no. 483, dated 29.06.2016 ‘National Action Plan for Persons with Disabilities 2016-2020’

<sup>144</sup> 1.2 Equality/DCM no. 483, dated 29.06.2016 ‘National Action Plan for Persons with Disabilities 2016-2020’

<sup>145</sup> Albanian Disability Rights Foundation



## ▶ RIGHT TO CLAIM JUSTICE AND STAND TRIAL

Union’ and implemented by ‘Save the Children’ in partnership with the ‘Center of Integrated Services and Law Practices’. Throughout March-June 2018, ADRF managed to conduct a one-day-training on ‘National and International Standards for Ensuring Access to Justice for Persons with Disabilities’ for the staff of Courts and Prosecution Offices in 5 Regions: Tirana, Durrës, Gjirokastra, Lezha and Mat. The training focused specifically on Articles 12 and 13 of the CRPD, with a special focus on cases from the European Court of Strasbourg.

Meanwhile, it is not found that the magistrates students of the School of Magistrates have a specific subject in their curricula for their continued training regarding the new concepts that Article 12 of the CRPD has introduced, such as ‘Equal Recognition Before the Law’ and 13 ‘Access to Justice’. The same situation is noted pertaining the students of the Faculty of Law.

## IV. QUANTITY DATA ANALYSIS

Part of this monitoring report was also the administration of quantitative and qualitative data collected from the justice institutions and from the PWDs, mainly concentrated in the 5 targeted regions: Tirana, Lezha, Mat, Durrës and Gjirokastra.

In what follows, we will analyze the data collected by target groups, presenting the collected results both in narrative and graphical form.

### IV. 1 Data collected by justice institutions

Justice Institutions that were targeted to be part of the data that will be analyzed within this report, are located across 5 regions: Tirana, Lezha, Mat, Durrës and Gjirokastra. In order to collect the data, a questionnaire with open and half open questions was drafted which was also adapted to the function of the justice institution. Specifically, the questions were adapted to the Civil Courts, Administrative Courts or the Prosecutor's Office.

In total, 16 official letters were sent to the targeted institution, 16 official letters were sent to targeted regional institutions,<sup>146</sup> with only 11 institutions sent back the completed questionnaire in official and electronic way.

From the data collected and analyzed it was found that:

*Infrastructure accessibility of institution's buildings:* Out of 11 (responding) institutions, only 6 of them report having a platform (ramp) at the entrance of the institution. The qualitative data collected raise concerns about institution's staff regarding infrastructure accessibility, these in some cases is due to the fact that the buildings are too old and require specific reconstruction, while in some other cases the budget allocated to these services, is lacking.

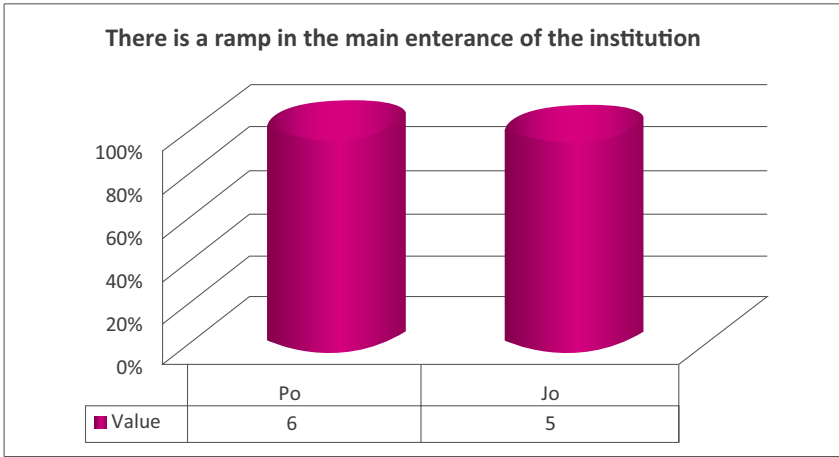
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<sup>146</sup> The Supreme Court of the Republic of Albania, the Tirana Court of Appeals, the Tirana Administrative Court of Appeals, the Tirana Judicial District Court, the Tirana Administrative Court, the Tirana Judicial District Prosecutor; Durres Judicial District Court, Durres Administrative Court, Durres Judicial District Prosecutor's Office; Lezha Judicial District Court, Lezha Judicial District Prosecution; Mat Judicial District Court, the Prosecutor's Office of the Mat Judicial District; Judge of the Gjirokastra Judicial District, Gjirokastra Administrative Court, Gjirokastra Judicial District Prosecutor's Office.

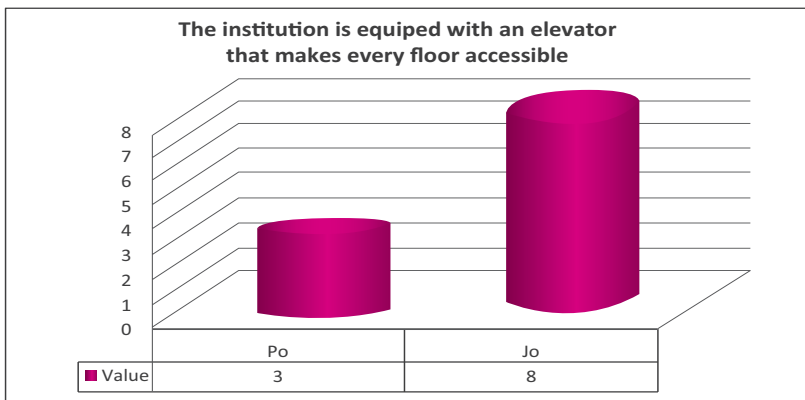
▶ QUANTITY DATA ANALYSIS

Following are some of the quotations from the questionnaires that were sent:

*“.... The institution’s premises are old constructions, built many years ago. For this reason, there is no possibility of setting up a ramp; the construction of a new building that is expected to be made soon may be able to meet all the required parameters ....”*



Regarding the accessibility of the institution and the availability of physical access to each floor, it was found based on the data collected that only in 3 institutions<sup>147</sup> there is an operational elevator, while 8 other institutions do not report having one.



<sup>147</sup> The High Court of the Republic of Albania, the Tirana Judicial District Court and the Prosecution Office at the Court of the Judicial District Tirana

*Administrative services:* Part of the data collected were also the questions related mainly to the evaluation of the administrative services offered to the institution regarding the adaptation of information in the function for the PWD, specifically:

The question whether *'The institution provides information in the braille format'*, all institutions have responded to with a 'No' (n=11).

As for the question *'Whether the information is provided in enhanced font and in audio format'* only 2 (two) institutions from the total number of 11 institutions (who have turned in the questionnaire) report that they provide information in enhanced font.

Regarding the question of whether the *'Institution provides interpretation of sign language for people with disabilities in listening and speaking'* the 11 institutions report that they do not provide interpreter service along with their administrative services.

Meanwhile, 4 institutions<sup>148</sup> out of 11 institutions, part of the data analysis, have a person responsible for helping and guiding PWDs to provision of the administrative services at their institution.

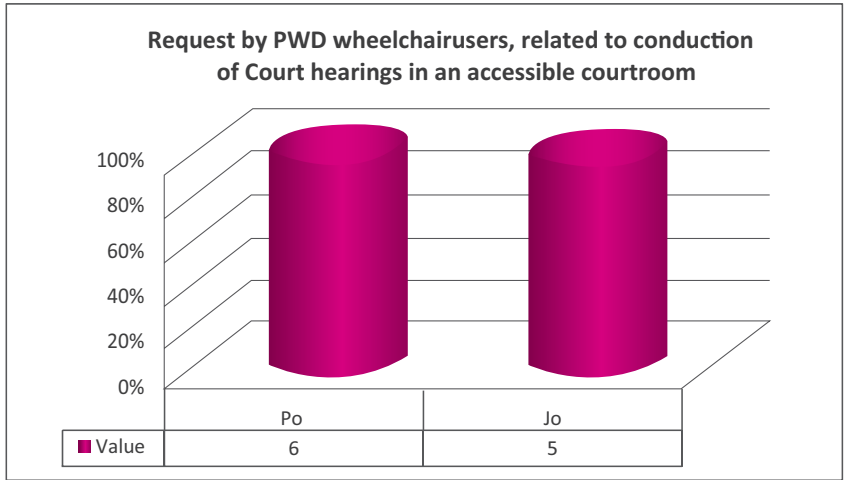
*"Procedural accommodations"*: Questions in the questioner were also focused on fulfillment of the "procedural accommodations" requirements' in investigating or adjudicating Court cases wherein at least one of the parties was a person with disabilities. From the data analyzed it was found that:

In a similar report, in 6 of the institutions (n=6), there were requests from people with disability, wheelchair users, to conduct a Court hearing *in a court room where they could easily access, in order to be personally attending Court hearings*, and the request was taken into account. While in 5 other institutions (n=5) are not reported to have been filed requests of this nature.

One of the interviewees stated that *"... the request of a person with disabilities to change the courtroom was accepted and the person was he was led to the first-floor hall where he could attend the Court hearing..."*.

Meanwhile another interviewee states that: *"... a wheelchair person has applied for an adapted environment but has not been taken into consideration since the facilities at our institution are not suitable altogether. For other elements of adaptation there are no requests..."*.

<sup>148</sup> The High Court of the Republic of Albania, the Tirana Judicial District Court, the Prosecutor's Office of the Tirana Judicial District Court and the Administrative Court of the First Instance Durres



About the question *‘Whether there were requests from PWD to conduct a Court hearing at an appropriate time, in relation to his or her health status’*, reportedly only in 3 institutions (n=3)<sup>149</sup> was requested (and consequently fulfilled) such a request, while 7 other institutions (n=7) report that they did not receive any such request and only 1 (n=1) institution did not respond.

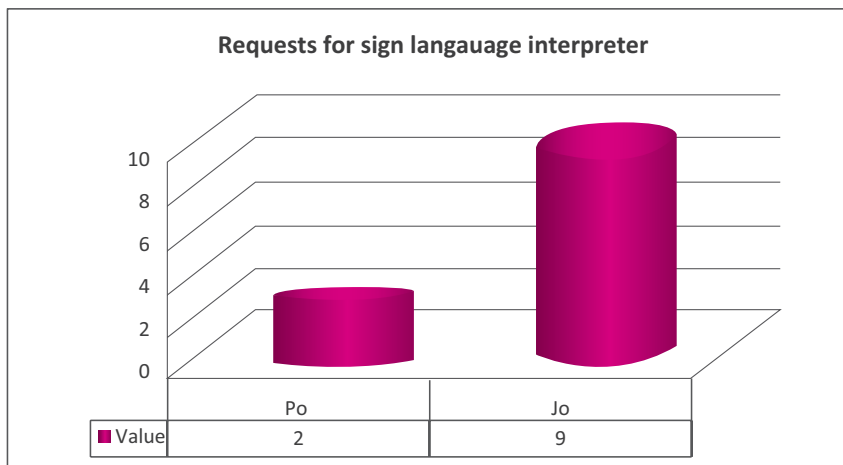
Interesting data also refer to the availability of trial evidence in audio format, where 4 institutions (n=4) report that they have administered such requests, while the requirement for *audio recording of Court hearings* is administered *only to 2 institutions (n=2)*<sup>150</sup>. Regarding the requirements for making available *‘Court trial evidence in braille format/court decision in braille format/making available court ruling in audio version’* none of the 11 institutions is reported to have been administered such a request.

Regarding the question *‘Whether you have had requests from persons with disabilities in particular in hearing and speaking, to make available the interpreter of the sign language during the court proceedings’* it is reported that this request was administered in only 2 institutions (n=2)<sup>151</sup> and the peculiarity of it is that this request is made only in the institutions that exercise jurisdiction in the District of Tirana, while 9 other (n=9) institutions report that they did not administer requests of this nature.

<sup>149</sup> The Court of the Gjirokastra Judicial District Court, the Court of the Mat Judicial District and the Tirana Judicial District Court

<sup>150</sup> The High Court of the Republic of Albania, the Tirana Judicial District Court

<sup>151</sup> The Tirana Judicial District Court and the Prosecutor’s Office of the Tirana Judicial District Court



The questionnaire focused on a set of questions to assess the targeted institutions regarding the categories of people with disabilities that they consider face more difficulties *in obtaining administrative services or during the course of the judicial/investigative proceedings*.

From the data collected it was found that the category of people with disabilities who encounter more difficulties during the *judicial/investigative process*, were as follows:

- in only 2 institutions (n=2) it is reported that more difficulties are encountered by persons with mobility related disabilities and that are wheelchairs users;
- 4 institutions (n=4) report that more difficulties are encountered by blind and visibly impaired persons;
- 3 institutions (n=3) report that more difficulties are encountered by people with 'mental health' diagnosis;
- whereas 1 institution (n=1) reports that most difficulties are encountered by deaf or mute people
- only 1 institution (n=1) reports that none of the categories of people with disabilities faces difficulties with their institution during the hearings.
- while 5 institutions (n=5) report more than one category of disability, more specifically, in their institution, encounter more difficulties the wheelchair users, with mobility difficulties, blind people, deaf and mute people, with mental health diagnosis and with intellectual disabilities.

Respondents have underscored that

*“...During the process of litigation, more difficulties are faced by plain or motorized wheelchair users, with mental health diagnosis or the blind. Due to the difficulties in mobility and in accessing the courtroom, as well as the braille format and sign language interpreter*

*....*

*Also, due to the lack of sign language application during the court process, difficulties are also encountered in finding experts of this area.”*

Regarding the data on the category of people with disabilities who face more difficulties in *obtaining administrative services*, it is concluded that 6 institutions (n=6) have not provided any answer; 3 institutions (n=3) report more than one category of disability that has difficulty accessing administrative services, namely ‘the category of people with visual disabilities (visually impaired or blind), those who are deaf or mute, with mental health diagnosis and with intellectual disability’; 1 institution (n=1) reports that more difficulties are encountered in the category of ‘blind and visually impaired persons’ and only 1 institution (n = 1) reports that none of the categories of persons with disabilities faced difficulties with their institution in obtaining administrative services.

Also, from the qualitative data collected, the respondents state that *“... we do not have a specialist to provide assistance for adaptation of procedures for disability specifics, but there were also no requests from people with disabilities in this regard...’.*

*... The category of people that faces more difficulties in our institution for receiving administrative services is reported to be the category of plain or motorized wheelchair users, people with mobility difficulties, due to the architecture of the building and the lack of elevators in the building.”*

The last part of the questionnaire focused on the evaluation of ‘Accessibility services provided in the Court’s and prosecution institution websites, such as: information providing in audio version; magnified font; information in a simplified language to be understood by the public in general; sign language or other forms of information’.

From the data analyzed, it was ascertained that: 1 institution (n=1) has no website, while 10 other institutions (n=10) report that generally speaking, the institution's official website provides information in simplified language; 3 institutions (n=3) provide information in 'magnified letters' and only 1 institution (n = 1) provides information in the 'audio' version via the website.

## IV. 2 Data Collected From PWD

The collection of quantitative and qualitative data for the assessment of access to justice by PWD was also concentrated on the 5 targeted regions: Tirana, Lezha, Mat, Durrës and Gjirokastra.

In order to collect the data, a questionnaire was created with open and half open questions which tried to fit in a simplified language to be understood by PWD, personal assistants or their guardians.

The process of drafting the questionnaire, passed also the review and testing faze by the PWD themselves that have been part of the review and drafting of this monitoring report.

In total, 250 questionnaires were completed, divided into a fair distribution for the five regions, respectively: 50 questionnaires for Tirana, 50 questionnaires for Lezha, 50 questionnaires for Mati, 50 questionnaires for Durrës and 50 questionnaires for Gjirokastra.

In order to obtain the most comprehensive data from all categories of people with disabilities and their guardians, the experts of this Study recommended the completion of the total number of 50 questionnaires in each region according to the following division: 10 questionnaires to be filled out by persons with mobility disabilities; 10 questionnaires to be filled by people with hearing and speech disabilities; 10 questionnaires to be filled by people with visual disabilities; 10 questionnaires to be filled by persons with disabilities with intellectual disabilities or by their guardians; 10 questionnaires to be filled out by persons with psycho-social disabilities or their guardians.

Questionnaire's questions aimed at assessing the situation on the ground, not only in the Albanian capital but also in other major cities besides Tirana, such as Durres and Gjirokastra, but also in other smaller towns such as that of Lezha, as well as the Mati region, as the most peripheral regions, part of this monitoring report.

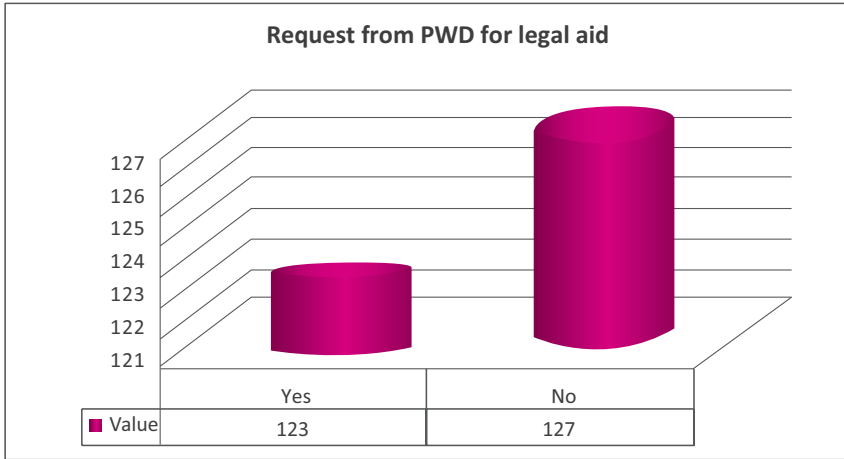
The first section of the questions focused mainly on measuring the level of enabling justice for the categories of people with disabilities in terms of providing 'legal assistance', 'required legal information' and the institution where they resorted to in order to obtain information.



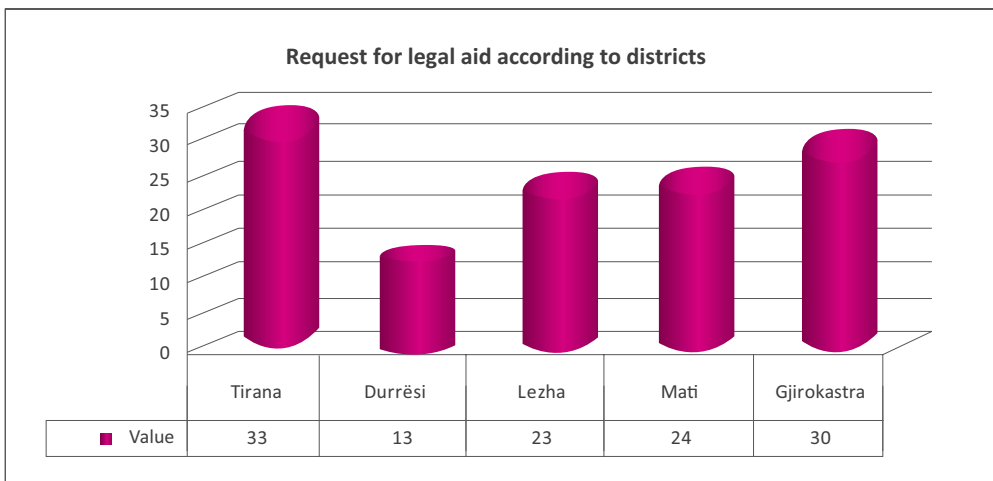
▶ QUANTITY DATA ANALYSIS

From the data analyzed it was noted that:

Regarding the question 'Have you ever asked for legal aid in relation to the laws or your rights?' It is noted that the number of people with disabilities who have sought legal aid is smaller (n=123) than the number of people with disabilities who have not requested legal aid (n=127). Nevertheless, the difference between the two values is not significant, only the number of 4 PWD (n=4) makes the difference between the two measured values.



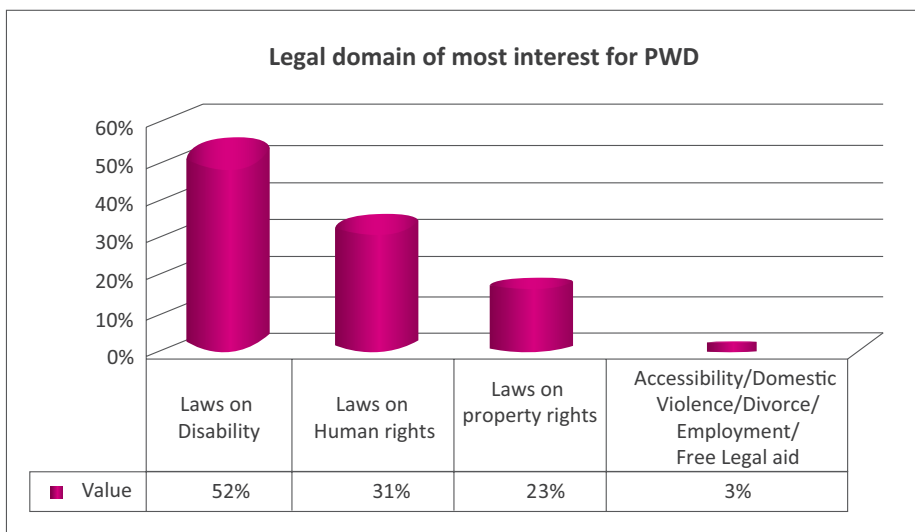
For a better reading of the requests for legal aid divided according to the 5 targeted counties, the following chart shows that the largest number of legal aid applications are headed by the Tirana district (n=33), following Gjirokastra (n=30), while Mat (n=24) and Lezha (n=23) are in the same value range. The ranking closes with the Durres region (n=13) with the lowest number of legal aid applications.



Interesting information was gathered from the question addressed to the PWD pertaining *the legislation of most interest regarding obtaining information*, giving the interviewee the opportunity to answer 4 alternatives<sup>152</sup>, where the last option gave them the opportunity to specify other areas not quoted in the question posed.

From the data analyzed, also shown in the chart below, the percentage of PWDs showed the highest interest is on laws on disability (52%), followed by human rights laws (31%); Property Rights Laws (14%) and the last option given to respondents to quote other areas of interest, it is very interesting to see that there are the areas identified by them (about 3%) the need for obtaining legal information in the domain of accessibility, employment, free legal service.

While it is interesting to see also what they quote about the legal domain related to ‘domestic violence’ or legal information about divorce.



Following, the above-mentioned question, respondents were asked another closed question, with the intention to assess their level of interest within the legal framework, governing the disability domain.

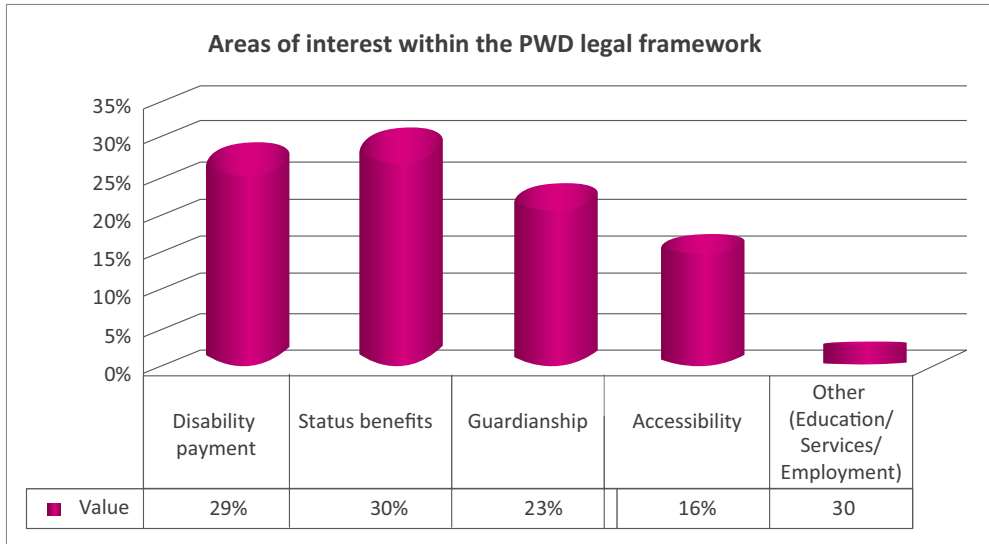
From the data collected, it turned out that mostly the category of people with disabilities are interested in the legal domain that regulates ‘status benefits’ (30%), ‘benefits from disability payments’ (29%) the benefits they receive due to their disability and mainly governed by Law 9355 ‘On social services and economic assistance’. Of interest is also the area of ‘substitute decision-making

<sup>152</sup> Laws in the domain of disability; human rights laws; property rights laws; other, explain more .

▶ QUANTITY DATA ANALYSIS

of PWD' benefits (23%), meanwhile the legal section on accessibility is ranked last by 16%.

Regarding the open alternative to this question, respondents have also added the domain of education, health and employment, but nevertheless the provision of these alternatives is reported to be at a low value of about 2%.

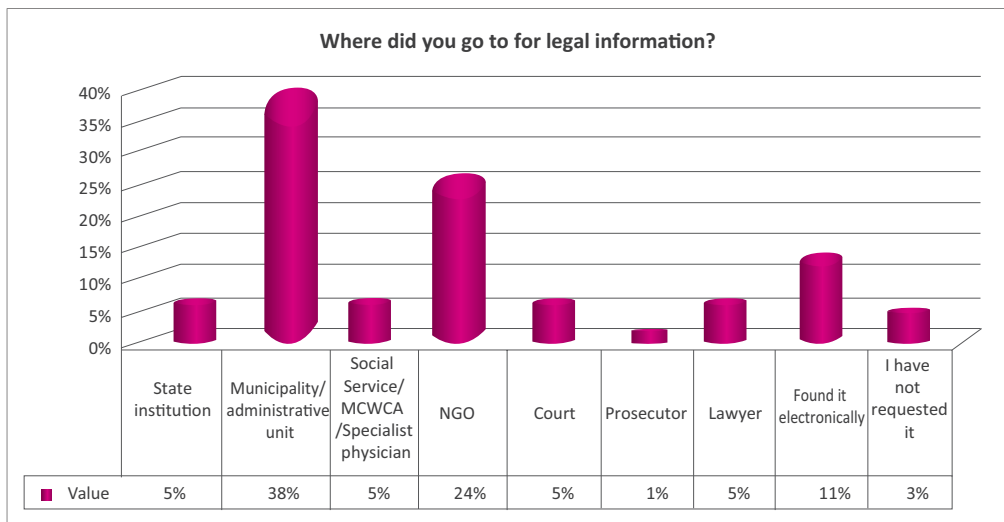


Given that one of the standards of access to justice is also the provision of legal aid to vulnerable groups of the community, some of whom are also PWDs, one of the questions addressed in the questionnaire was about the public or private institution in which they turned to obtain legal information.

From the data collected it is ascertained that PWDs are mostly directed to obtaining legal information at the institution of the Municipality/Administrative Units (38%). Interestingly, however, about 25% of respondents resort to different NGOs operating in the territory of their place of residence. While other institutions such as the Court (5%) or the prosecution office (1%) have a low percentage, at the same level are also lawyers (5%). However something to highlight in this domain is the fact that a significant part of respondents are quoted to have said that ‘they have found electronically the legal information.’ (11%).

Respondents claim that:

*“... the institutions where I resort more often to in order to get information, are the Municipality and NGOs.....”*



To assess the level of accessibility to information regarding legal rights and the legal framework, another closed ended question with some alternatives on the difficulties encountered was posed to the interviewees where the data analyzed showed that the bulk of the respondents do not understand the content of the law (32%) or have encountered difficulties reading the current law due to its (frequent) amendment (30%) and the difficulty of finding them. On the other hand, it is noticed that there are people with disabilities seeking legal information in the simplified format (11%), audio format (6%), or braille (5%) format. Meanwhile, it is noticed that 17% of respondents do not know where to turn in order to get more simplified information about the content of the law or their rights.

Some of the interviewees have identified some quotes in the questionnaire below, which reflect the reality that each disability category faces in the area of access to justice:

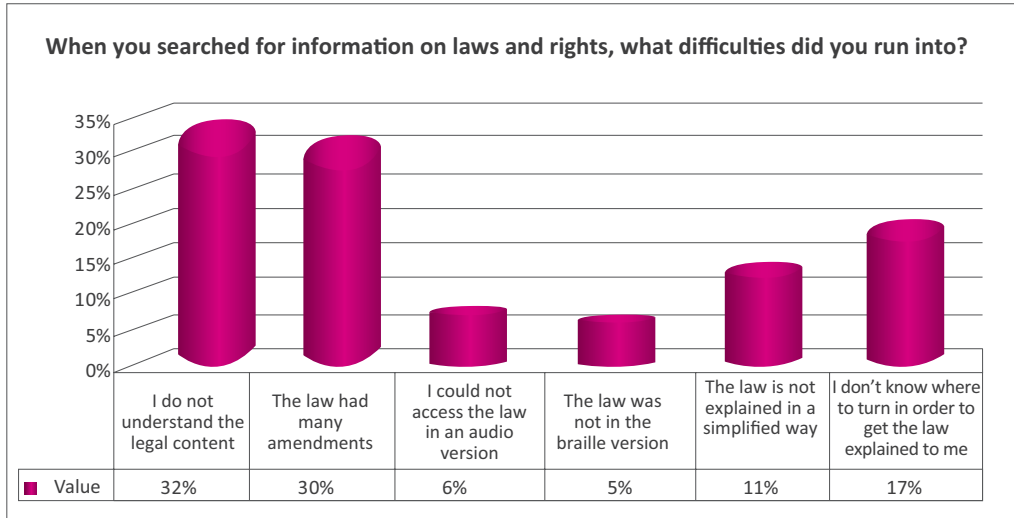
Quotations from people who do not listen and do not speak”

*‘... I do not understand the laws ... should be in the Albanian signs language ...’*

*‘there is no law adapted in the Albanian sign language for deaf and mute people ...’*

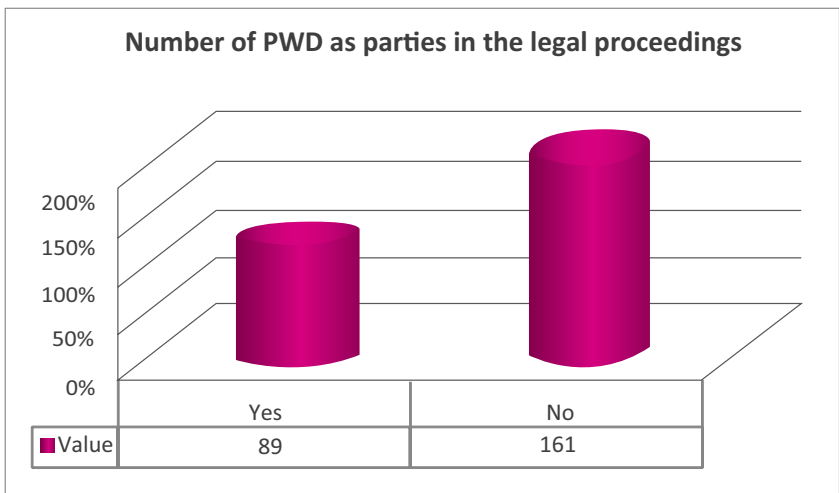
*‘... a deaf person does not know his/her rights because there is no accessible information in the Albanian sign language ...’*

*'...I'm blind and encounter a lot of difficulties because there are missing braille or audio documents for the blind'.  
 '... I had difficulty understanding the terminology of the law ...'*

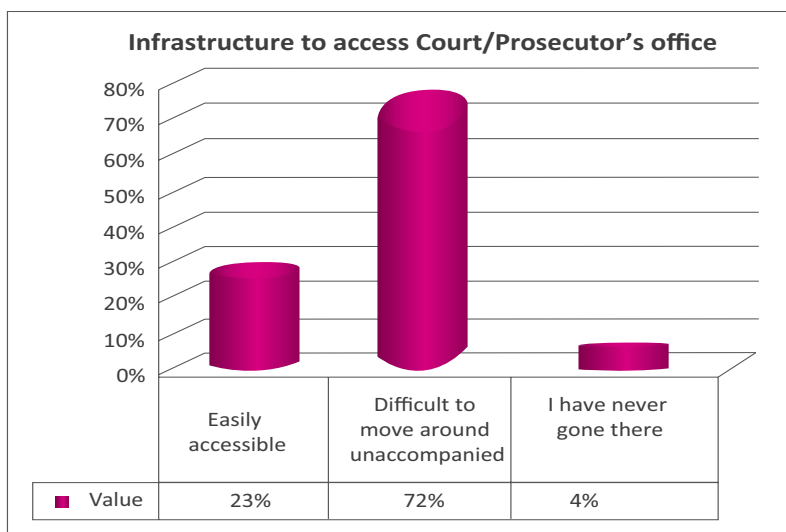


In order to assess the elements of physical fitness and information on the justice institutions, respondents addressed a series of questions which are reflected in the following graphic data.

Of the 250 respondents, only 89 of them were parties to judicial proceedings, while 161 of them reported that they were not.



*Accessibility of external infrastructure:* Respondents were asked in order to assess from their vantage point the elements of physical fitness of the outside infrastructure that leads to the the premises of the prosecution or court buildings, and it was found that: the majority of respondents (72%) claim that there is no possibility to move unaccompanied in the outside premises and to access the justice system, Court, or prosecution authorities. While 23% of respondents claim they have not encountered any difficulties and 4% of them claiming that they have never gone to these institutions.



Regarding the road signs to show the direction to the police, prosecutor’s office or court data collected shows that 31% of respondents claim that the signs are distinguishable; 23% of respondents report that the signs are not visible or are partially visible; a considerable number, about 34% of respondents report that there are no signs and 12% have never been into those institutions.

Some of the respondents state that:

*“it is impossible to move around freely because the city does not offer me the possibility of crossing roads or engraved signs....”*

*“when I did not have a guardian with me, I found it difficult orienting myself ...”*

*...Signs are not discernable for people with autism. Because of their difficulties in perception, they do not understand the signs. This category of PWD should be taken in consideration in this regard...*

*... I am tetraplegic ... I can not find a parking space for my car when I go to the institutions as others occupy those parking spaces ...'*

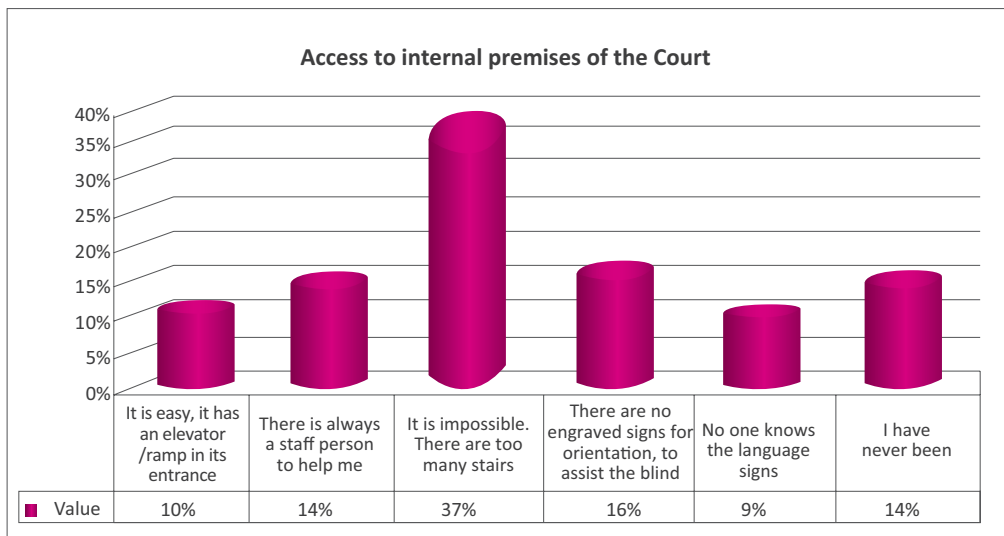
*'... every institution has many stair steps and I can not climb them....'*

*'infrastructure for the blind is dismal...'*

*'in the recent years, some positive changes have occurred, but people need to be aware and not park in the places dedicated to PWD.....'*

*Accessibility of the internal infrastructure of the building:* Respondents were also asked about the possibility of accessing internal premises of prosecution or court buildings, using as a measuring value some of the eligibility elements that must be minimally fulfilled by each justice institution. About 37% of respondents point out that *'it is impossible to contact the offices of the institution, there are too many stairs'* whereas only 10% state that *'it is easy to access the facility, there is an elevator/there is a ramp at the entrance/no stairs'* and 14% claim that *'there is always an employee to help me'*.

Regarding physical fitness for the blind, it is reported that 16% of them *'find it impossible to move around the offices of the institution independently, because there are no engraved signs'* and so are always accompanying by their guardian if they are a party in proceedings. While 9% of people who do not hear or speak claim that they *'are unable to communicate with public institutions' staff as no one knows the sign language there.'* The remaining 14% of respondents report that they have never gone to any justice institution (court or prosecutor's office).



Some of the respondents' remarks in this domain, touch upon a series of issues identified in this monitoring report, which particularly draws attention to the problems faced by people with hearing and speech disabilities.

*'there is no information available in sign language when we go to the police in case of any problem we may have ...'*

*'I had a lot of difficulties in the police ... no one understood the sign language ... some policemen thought I was simulating ... as if I was pretending I was deaf and mute and I felt verbally humiliated ... the rights of people who do not listen are not respected in these institutions...'*

*'courts... the police stations do not have any information in sign language pertinent to the needs of deaf people in...'*

*"... in any office there is no information in sign language..."*

*"Procedural accommodations"*: Part of the questionnaire questions also focused on the elements of the accommodation of the procedures. The interviewer explained in a simplified language the content of the question, since such questions are of a legal nature and require specific knowledge. However, that part of the respondents who had experience as a party to the judicial process,



▶ QUANTITY DATA ANALYSIS

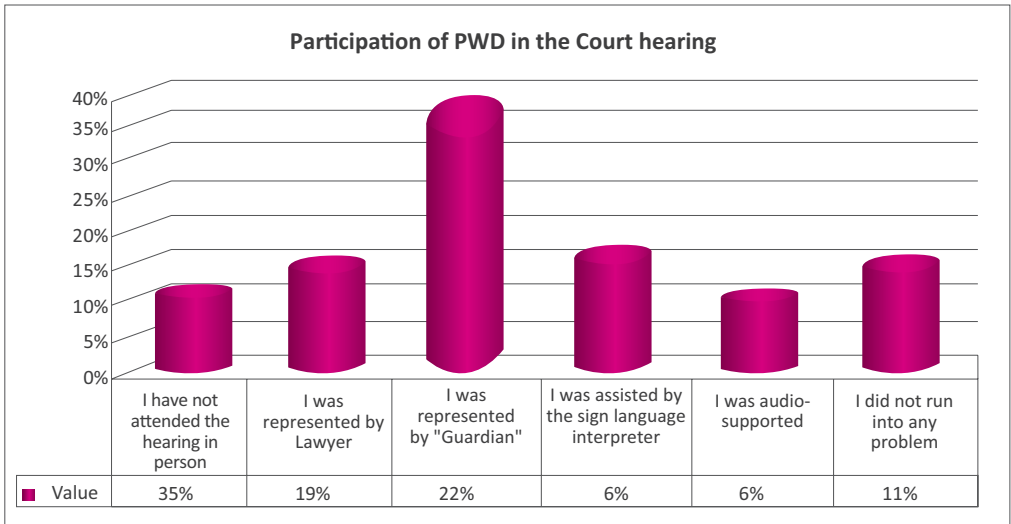
provided valuable data that serve well the findings of this monitoring report. It is noted that almost 35% of the respondents did not attend the Court session personally, 19% of them were represented by the lawyer and 22% by their guardians. Similarly, 6% of respondents were assisted in the Court hearing by the sign language interpreter and 6% were assisted by audio equipment, 11% report that they did not have any problem.

Some interviewees stated:

*'in the civil process, the interpreter of sign language is not paid by the state ... this is a big problem for us since we cannot afford paying ourselves one...'*

*'...there are no interpreter services in the court and the prosecutor's office ...'*

*'I'm blind ... I'm totally unable to move unattended and take part in meetings in state institution's offices...'*



Regarding procedural requirements in terms of ensuring physical accessibility in the premises where a court hearing will take place or in terms of the information release/making available the evidence of trial, the respondents state that: about 23% have requested *relocation of the venue in which the investigative/court hearings take place, to a place that would be easily accessible. Their request*

was accepted. While 12% of them who have asked to *relocate the venue of an investigative/court hearing* on a convenient time due to their health condition, report that this request was not taken into account. For 2% of them there was no sign language interpreter, despite the fact that a procedural request was lodged in Court. Another 2%, it also reported to the non-provision of a psychologist for people with intellectual disabilities, although it is available as a procedural requirement during the court session. About 9% of respondents have applied for the registration of the hearing in the audio version and the request has been accepted. Meanwhile, 56% of respondents reported that their procedural requirements were not taken into account, yet without qualifying a particular procedural element on which refusal was grounded.

Some of the respondents state that:

*“I made a request to shift the session to a more customized schedule ... my request was partially granted due to very tight timetables in Court ... there was very little space....”*

*‘...I was not able to be present at the hearing, there were no adaptations...’*

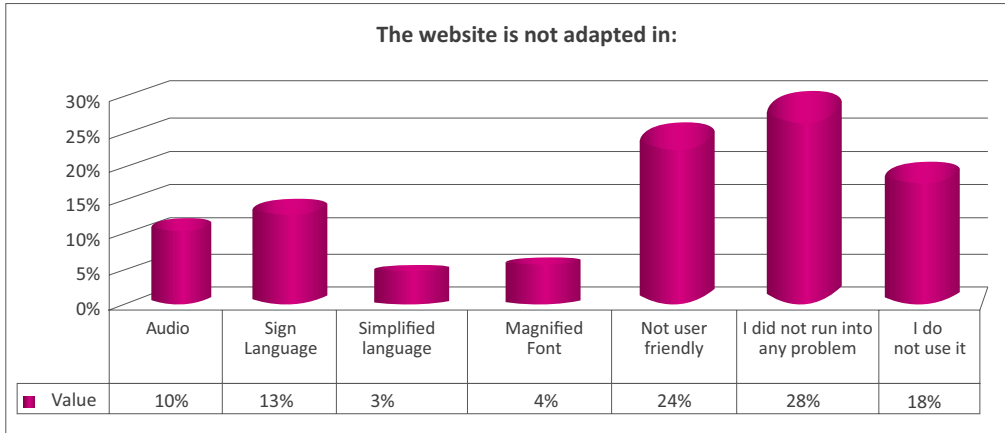
*‘...Yes, I wanted the hearing to take place on a convenient time and it was granted to me...’*

*‘I’ve always enjoyed the help of my family ... I cannot make it on my own’*

*‘in the Court there is nothing accessible for PWDs...’*

*‘...justice institutions do not have specialized staff for people with disabilities...’*

*Accessibility of information and communication:* The last part of the questionnaire questions relates to measuring the level of ‘accessibility of information’ and any service provided through the justice institution’s website. Respondents were asked to answer one or several of the alternatives on which to assess the level of inadequacy of information in the electronic version.



The data collected indicates that 10% of respondents claim to find the websites inaccessible in the audio version, 13% claim that they require that the information on the website be in sign language, 3% in simplified language and 4% in enhanced font. The largest number of respondents claims that there were no problem (28%) followed by 24% of respondents claiming that it is not easy to use the websites and 18% report having no access to the Internet.

It is worth pointing out in this part of the analysis that this data is generally reported for the websites of Albanian institutions and not specifically for the justice institutions due to the fact that most of the justice institutions do not have a website or a comprehensive website managed by the official web site of OJBA.

### IV. 3 Conclusions

At the conclusion of the analyzed data for the *justice institutions* in the 5 target regions: Tirana, Lezha, Mat, Durrës and Gjirokastra, we noted that there is an improvement of the infrastructural adaptation in the targeted institutions, in terms of investments made on construction of ramps. Out of 11 respondent institutions, 6 report that they have a ramp at their main entrance.

However, the most problematic situation is presented with the appropriateness of the interior of the institution buildings as far as access to multi-story buildings is concerned. Out of 11 institutions, only 3 of them have installed an elevator in the institution premise.

Regarding access to administrative services as well, the data is not positive either and that is also related to the lack of information but also the non-provision of accessible services for people with disabilities in Albanian institutions.

Specifically, none of the 11 institutions has made plans on the provision of information in Braille version, *none of the 11 institutions provides interpreting service to deaf or mute people of their administrative services* and only 2 (two) institutions from a total of 11, reported that they provide information in enhanced font. Also, only 4 institutions (n=4) have a designated person to assist and guide the PWDs for receiving administrative services at their institution.

Regarding the fulfillment of the elements of “procedural accommodations”, it is positive that the PWD administer requests for conducting a Court session *in a hall which they can easily access, in order to participate personally in a court session*, where 6 of the institutions (n=6) report that they had received requests of this nature, while 3 institutions (n=3) report of the administration of the requests for *conducting the court session at an appropriate time, in relation to the health status of the individual involved*. Meanwhile, interesting data are reported with respect to the *availability of trial evidence in audio format* where 4 institutions (n=4) report that they have administered such requests, whereas *audio recording requests for Court hearings* were administered in only 2 institutions (n=2). Regarding requests for making available *‘trial evidence in braille format/Court decision in braille format/making the Court decision available in audio version’* none of the 11 institutions reports such an application being administered. Meantime, the requirement for sign language interpretation is administered in only 2 institutions (n=2) exercising jurisdiction in Tirana Region and this service is granted.

In the institutions asked to identify the categories of people with disabilities who face more difficulties *during the Court proceedings*, it is ascertained that about 5 institutions (n=5) report more than one disability category that faces more difficulties: wheelchair users, people with mobility difficulties, blind people, deaf and mute people, with mental health diagnosis and with intellectual disabilities. As far as the data on the category of persons with disabilities that encounter more difficulties in *obtaining administrative services* is concerned, it is ascertained that most of the institutions (n=6) have not provided any response, while 3 institutions report on more than one category of disability that has difficulties in gaining administrative services, namely *‘the category of people with disabilities who are blind, visually impaired, who are deaf or mute, with mental health diagnosis and with intellectual disabilities’*.

The last part of the questionnaire focused on evaluating accessible services provided by the Court and prosecutor’s website, where it is ascertained that the key elements related to the accessibility of the services for PWD are also lacking. Generally, most of the institutions of the 10 other institutions (n=10) report that the official website provides information in simplified language and only

## ▶ QUANTITY DATA ANALYSIS

3 institutions (n=3) provide information in 'enlarged font' while information in sign language, audio version (for people with visual impairment) or in simplified formats (for the category of people with intellectual disability), is missing.

*In assessing quantitative and qualitative data collected by persons with disabilities in the 5 targeted regions, where 250 questionnaires were distributed and completed, it was noted that the need for disability for legal aid is considerable. The region with the highest number of people seeking legal aid is Tirana and is followed by the regions of Gjirokastra, Mati and Lezha, while the region of Durres is at the lowest level of individuals seeking legal aid.*

The most important areas of the legal framework for the category of people with disabilities, are the laws pertinent to PWD, where special attention is paid to the benefits of the disability statuses', 'benefits from disability payments', the benefits of 'disability substitute decision-making' or accessibility, followed by human rights laws, property rights laws, and the legal framework related to accessibility, employment, free legal service, 'domestic violence' or legal information on 'divorce.'

The institution where most people with disabilities are directed to obtain legal information is the Municipality/Administrative Units (38%), this is also related to the fact that several services are concentrated to be offered by this institution. About 25% of respondents address different NGOs operating in the territory of their place of residence. While other institutions such as the court (5%) or the prosecution (1%) marked a low percentage, with advocacy at the same level (5%).

It is ascertained that people with disabilities face a series of difficulties as regards the understanding of the legal framework, where the majority of them state that they do not understand the content of the law (32%) or have encountered difficulties reading the law due to the many amendments (30%), or encounter difficulties in finding out about the legal amendments. On the other hand, it is noticed that PWD are aware of seeking legal information in the simplified format (11%), in audio format (6%) or braille (5%) format. Meanwhile, it is ascertained that 17% of respondents do not know where to turn to get more simplified information about the content of the law or their rights.

Of the 250 respondents, only 89 of them were parties to a judicial process, and 161 of them reported that they were not part of it. This part of the respondents was asked to assess from their point of view the elements of physical fitness of the external environment surrounding the location of the police, prosecution or court buildings, where it was found that: the majority of respondents (72% ) claim that it is difficult and that there is no way to move around unassisted in the outside

premises and to access independently the justice system, Court or prosecution bodies. Whereas, 23% of respondents claim they have not encountered any difficulties and 4% of them have never been to these institutions.

Regarding the road signs indicating the direction to the police, the prosecutor or the Court, the data collected show that 31% of respondents claim that the signs are easy to see; 23% of respondents report that the signs are not visible or are partially visible; a considerable number, about 34% of respondents report that there are no signs, whereas 12% have never gone to the aforementioned institutions.

Regarding the adequacy of the internal infrastructure of court/prosecution buildings, respondents point out that the institution presents the same barriers for all categories of people with disabilities. Even if the institution has a ramp at its entrance, the lack of elevator makes it difficult to access the building on each floor. About 37% of respondents point out that *'it is impossible to contact the institution's offices, there are many steps, while only 10% claim that it is easy to enter the institution, there is an elevator/there is a ramp at the front entrance/there are no stairs' and 14% claim that 'there is always a staff member to help me'*.

Regarding physical adaptation for the blind, it is reported that 16% of them *'find it impossible to move around the offices of the state institution on their own, due to the lack of engraved signs'* but in any case, they are accompanied by their guardian if they are a party in proceedings. While 9% of deaf and mute people say they *'are unable to communicate in institutions as no one there knows the sign language.'*

As far as the adaptation of the procedures is concerned, it is noted that were granted the requests from the PWD to be personally involved in the hearing, requesting the conduct of a Court session in an appropriate hall. About 23% of them have requested *relocation of the venue of the investigative/judicial hearing session to premises they can easily access*, and the request is accepted. There are also 12% of them who have *asked to reschedule an investigative/judicial hearing at a convenient time due to their health condition*, report that this request was not taken into account. For 2% of them, there was no sign language interpreter provided, despite the fact that a procedural request was made in the Court. The same level of 2%, it also reported to the non-provision of a psychologist for PWD intellectuals, although it is available as a procedural requirement during the court session. For 9% of respondents a request was made for obtaining a recording of the hearing in audio version and the request was granted. While 56% of respondents reported that their procedural requirements were not taken into account, but without specifying a particular procedural element for which refusal came about.

## ▶ QUANTITY DATA ANALYSIS

Regarding the appropriateness of information from official websites of justice institutions, the survey found that 10% of respondents claim to have found the web pages inaccessible in the audio version, 13% require that information on the website be in sign language, 3% in simplified language and 4% in enhanced font. The largest number of respondents claim that there was no problem (28%) followed by 24% of respondents claiming that it is not easy to navigate the websites and 18% report not having internet access at all.

## V. RECOMMENDATIONS

In the last section of this monitoring report, in reference to the analysis laid out in all the above sections, we will highlight in the form of recommendations areas where it is necessary to take institutional and legal action in order for compliance with the Albanian legislation and the standards of CRPD.

### **General Recommendations**

- It is recommended the establishment of a working group composed of university lecturers and academics in the country, in close consultation with persons with disabilities and their representative organizations, as well as technical staff of line ministries, to initiate the startup of a technical-legal debate on the CRPD standards in order to fully comply with the Albanian legal framework and that of the CRPD.
- Actions ought to be taken for defining and setting up the 'Institution in Charge' for defining the forms/elements of "procedural accommodations" and the parallel review of the Albanian legal framework, including the administrative, civil and criminal justice legal framework, with a view to explicitly incorporate the obligation to ensuring "procedural accommodations" in all stages and legal proceedings.
- Establishment of an inter-ministerial working group in close consultation with persons with disabilities and their representative organizations, for the establishment and standardization of the 'supported decision-making' regime through the drafting and adoption of legal and sub-legal acts, as well as guides for assisting the work of judges, prosecutors, lawyers and all parties working in the justice administration system. Drafting procedures in this context would contribute to the establishment of appropriate practices, systematization of practices and development of means to ensure respect for the right and the exercise of 'legal capacity to act' in all legal proceedings.
- Review and improve the legislation regarding the criminal principle of '*no criminal liability due to mental state*' as well as the elimination of



security measures involving compulsory medical or psychiatric treatment in relevant institutions.

- Establishment of a working group by OAJB to inspect all institutions where the Courts operate in the country, in order to identify all elements that do not meet the adaptation standards both in indoor and outdoor premises as well as in communication and information.
- Measures should be taken to translate and correct the text of the CRPD in Albanian language, in compliance with the legal terms applicable in the Albanian legal framework, particularly as regards the legal terminology applied in Articles 12 and 13 of the CRPD.
- Action should be taken to plan, deliver and disseminate compulsory and regular training programs, for the administration employees and those of the justice system, including police officers, administration and professionals working as public defenders, providing legal assistance or exercise similar professions, and in particular the body of judges, prosecutors, mediators or lawyers.
- Inclusion of CRPD standards (Article 12-13) in curricula of the Faculty of Law and the School of Magistrates.
- The Albanian legal framework, including the Constitution of the RA, still has in force provisions that need to be revised and improved especially for inadequate terminology applied to persons with disabilities. It is precisely the use of discriminatory, denigrating terminology and the ununified use of terms that persistently pose a problem encountered occasionally in the Albanian legal framework, which ones more calls for the establishment of a working group, to work for compliance of the Albanian legal framework with international standards established from the CRPD, where part of the work of this group is the unification of legal terminology in this regard.

### ***Recommendations for ensuring ‘access to justice’***

- Fulfillment of the *“procedural and age-appropriate accommodations”* principle in order to guarantee ‘equality of arms’, as one of the main components of the *“right to a fair trial”* by guaranteeing the same procedural rights to be provided to all parties, to provide access to the same

information and the same opportunities, to file and challenge evidence. In any case, “procedural accommodations” should be provided on the basis of ‘free choice and preferences’ of the person with disabilities, since the person himself knows better what his/her needs are.

- An all-encompassing review of the legal framework, including the administrative, civil and criminal justice, in order for it to explicitly include the obligation to ensure the “procedural accommodations” in all phases and legal proceedings for all categories of disability, as well as ensuring the right to a fair reparation, should this right be violated.
- The obligation to provide in the Albanian legal framework for the establishment of the *institution in charge* of determining the “procedural accommodations” that will need to include details on when and how persons with disabilities may seek to access these rights. In any case, the “procedural accommodations” must be provided and must be free of charge.
- Enrichment of judicial practice with the standardization in practice of forms of “procedural accommodations”, referring to international practices in this regard.
- Establishment of a working group by the OAJB to inspect all Court premises in the country in order to identify all the elements that do not meet the accessibility standards both in the indoor and outdoor environments and in terms of accessibility elements in communication and information. In any case, we recommend that the OAJG develops a specific regulation to determine all elements of infrastructure adaptation and information as guidance for the courts in this regard.
- Measures to be drafted by the justice and home affairs institutions in order to guarantee full and effective access for people with disabilities, all categories, in communication and information, both for the provision of official information but also during the delivery of administrative services.

### ***Recommendations for the implementation of ‘Equal recognition before the law’***

Take comprehensive actions with a view to ensuring full and effective ‘legal capacity to act’ of PWD on an equal basis with other members of the society, including:

## RECOMMENDATIONS

- The Albanian legal framework should enter into a radical review process with a view to its full compliance with the CRPD standards, with regard to 'equal recognition before the law' for all categories of persons with disabilities.
- Compatibility of the Albanian legal framework with CRPD standards in order to ensure the full and equal recognition of 'legal capacity to act' for all categories of persons with disabilities.
- Establish an inter-ministerial working group in close consultation with persons with disabilities and their representative organizations for drafting and adopting legal acts and policies to implement new forms of 'supported decision-making' that focus on respect for autonomy of the individual, his/her desires and preferences.
- Undertake further steps to ensure full implementation of Article 12 of the CRPD on the rights of persons with disabilities through:
  - o Abolition of legal/sub legal acts, legal provisions or legal practices that restrict or remove 'legal capacity to act' and provide for placement under the 'legal guardianship' regime that deliberately discriminates or directly affects adversely the persons with disabilities;
  - o Drafting legal terminology to protect the right of 'legal capacity to act' on equal basis for all;
  - o Close consultation and active involvement of persons with disabilities, including children with disabilities, through their representative organizations, in the development and implementation of legislation, policies and other decision-making processes affecting the implementation of Article 12 of the CRPD.
- Undertaking measures and actions that prohibit any private or non-state entity to interfere with the ability of a person with disabilities to enjoy and pursue human rights, including the right to exercise the 'legal capacity to act'.
- Establish, recognize and enable people with disabilities to have access to a wide variety of support in the exercise of their 'legal capacity to act'. This form of support should be provided in respect of the rights, desires/will and preferences of persons with disabilities.
- Improvement and revision of the legal framework related to criminal proceedings of '*non-criminal responsibility due to mental state*' and

the elimination of security measures involving compulsory medical or psychiatric treatment in relevant institutions, to enable the possibility of persons with disabilities (especially intellectual and psycho-social disabilities) to be adjudicated, guaranteeing the necessary support through “reasonable accommodation”, “procedural accommodations” and the “supported decision-making”.

### ***Recommendations for ensuring civil and political rights***

- The Albanian legal framework should guarantee full and equal recognition of the right of people with disabilities to exercise their political rights, including the right to vote, the right to participate or to assist in electoral processes, and the right to participate as an observer or monitor of election processes.
- The Albanian legal framework should guarantee the rights of persons with disabilities to enjoy the “reasonable accommodation”, in order to express their choice during the voting process, through the secret ballot and to participate in all electoral processes or referendums without any discrimination.
- Drafting and adopting legal provisions or other practical measures in order to ensure equality before the law of persons with disabilities for them to enjoy and to be able to inherit property, to control their financial income and to have equal access to bank loans, mortgages or in other forms of financial loans and to ensure that persons with disabilities are not arbitrarily restricted to enjoy these rights.
- Ensuring the rights of persons with disabilities to create opportunities for social networking, opportunities to work and earning income on an equal basis with others, being provided with multiple of options to choose from regarding the place of residence in the community and their involvement in the education system at all levels.
- The legal framework should ensure the effective involvement and participation of persons with disabilities in order to enable their professional contribution to the administration of the justice system through the role of a qualified expert, judge, mediator or lawyer.