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**REPORT**  
**BY DUNJA MIJATOVIĆ**  
**COMMISSIONER FOR HUMAN RIGHTS**  
**OF THE COUNCIL OF EUROPE**  
**FOLLOWING HER VISIT TO ALBANIA**  
**FROM 21 TO 25 MAY 2018**

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## SUMMARY

Commissioner Dunja Mijatović and her delegation visited Albania from 21 to 25 May 2018. In the course of the visit the Commissioner held discussions with state authorities, non-governmental and international organisations. The present report focuses on the following human rights issues:

### **Children's rights**

The Commissioner welcomes the strengthening of the legal and institutional framework for the protection of the human rights of children, in particular the adoption in 2017 of the Law on the Rights and protection of the Child. However, she stresses the need for more effective implementation of the existing legislation and better co-operation between the different levels of responsible authorities in this field. The Commissioner also emphasises the importance for evidence-based policy making of the collection of reliable data on socio-economic status and desegregated data relating to vulnerable groups, including children, and supports the initiatives aimed at strengthening the capacities of the authorities in this context.

While welcoming the prohibition by Albania of corporal punishment in all settings, the Commissioner is concerned by the reported high levels of physical and psychological violence against children, including in educational settings and at home. The Albanian authorities are called upon to step up their activities aimed at eradicating violence against children, including by strengthening the capacities of child protection services and education professionals to identify violence and to adequately respond to it, while putting an emphasis on the prevention of violence and mediation. The authorities are encouraged to step up awareness-raising on zero-tolerance of violence against children. Noting with concern the negative impact of domestic violence on children in Albania and certain reported shortcomings in domestic judicial proceedings related to the prosecution of such violence, the Commissioner urges the authorities to implement the recommendations of the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence in this regard. The Commissioner notes as a positive development the improvements made in the national legislation in order to bring it in line with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

The Commissioner is concerned by the fact that some 700 children live in residential care institutions, some of them for very long periods of time without clear prospects for leaving the institution before they become adults. The Commissioner calls on the authorities to invest in and step up the deinstitutionalisation process and devise strategies to prevent the placement of children in state care, by providing more support to families raising children and developing an effective system of family-type services.

The Commissioner welcomes the enactment of the Code on Criminal Justice for Children, as a positive step forward towards establishing child-friendly justice in Albania. She encourages the authorities to pursue their efforts to provide professionals working with children with adequate and systematic training on children's rights and on the application of the principle of the best interest of the child.

While noting with satisfaction that the principle of inclusive education and the prohibition of discrimination in education are enshrined in Albanian legislation, the Commissioner is concerned about the lack of inclusion of some Albanian children, in particular Roma children and children with disabilities, in mainstream education. The Commissioner calls on the authorities to sustain their efforts aimed at the inclusion of Roma children in mainstream education, by working closely with Roma parents and increasing their efforts to tackle the lack of inclusion of Roma in pre-school education. The authorities are called upon to pursue vigorously their efforts to ensure that all children with disabilities are included in and benefit from the necessary individual support and reasonable accommodation in mainstream education settings.

The Commissioner is concerned that there remain about 4 900 stateless persons or persons at risk of statelessness in Albania, many of them Roma who lack personal identity documents, as well as Roma children or children born abroad, who lack birth registration. Noting that Albania does not have a dedicated statelessness determination procedure, the Commissioner recommends the establishment of such a determination procedure, so that those persons who are entitled to the protection regime of the 1954 Convention relating to the Status of Stateless Persons can be identified, and be granted legal status as a stateless person. Albania is urged to accede to the 2006 Council of Europe Convention for the Avoidance of Statelessness in relating to State succession.

### **The rights of persons with disabilities**

The Commissioner is pleased to note the improvement of the legislative framework for the protection and inclusion of persons with disabilities, in particular the adoption in 2014 of the Law on Inclusion of and Accessibility for Persons with Disabilities and the 2016 National Action Plan on Persons with Disabilities. Notwithstanding these positive developments, the Commissioner is concerned that persons with disabilities are confronted with significant difficulties, owing in particular to shortcomings in the implementation of the existing legislation, structural problems in the social care system, and poor access to quality education and to employment. The Commissioner calls on the authorities to step up their work in this field with a view to ensuring accessibility for persons with disabilities in line with Article 9 of the UN Convention on the Rights of Persons with Disabilities.

The Commissioner is concerned that despite the commitment of the authorities to moving towards deinstitutionalisation, there remain persons with intellectual and psycho-social disabilities, including children, in institutions for social care in Albania. The authorities are called on to draw up and implement, with the active involvement of persons with disabilities, a comprehensive plan for deinstitutionalisation and the replacement of institutions with community-based services, while ensuring that no deinstitutionalised person with a disability is left without the necessary protection and support. Abstaining from any new placement of persons with disabilities in institutional settings and ensuring that such persons are provided with community-based services would be an important step in the right direction.

It is of concern to the Commissioner that persons with disabilities in Albania may be fully deprived of legal capacity and consequently of their civil and political rights. She calls on the authorities to fully and effectively align domestic law and practice with the standards of the UN Convention on the Rights of Persons with Disabilities and the relevant case-law of the European Court of Human Rights

in order to ensure that all these persons enjoy legal capacity on an equal basis with others in all aspects of life.

### **Access to free legal aid**

The Commissioner would like to emphasise that effective access to justice, particularly by persons who are in an economically weak situation, cannot be achieved without an effective system of legal aid and legal advice. She is concerned that obstacles to access to justice and lack of access to legal aid for vulnerable groups, including Roma, persons with disabilities and persons with economic difficulties continue to be reported. In this context, the Commissioner welcomes the enactment in 2017 of the new Law on Free Legal Aid which broadens the category of persons benefiting from legal aid and introduces primary and secondary legal aid concepts. The Commissioner is also pleased that the authorities have earmarked the budget for the implementation of this law. The authorities are encouraged to step up their work on the implementation of the legal aid legislation with a view to removing the obstacles to access to justice for vulnerable persons.

The report contains the Commissioner's conclusions and recommendations addressed to the Albanian authorities and is published on the Commissioner's website along with the authorities' comments.

## INTRODUCTION

1. The present report follows a visit to Tirana and Shkodra, Albania, by the Council of Europe Commissioner for Human Rights (“the Commissioner”), Dunja Mijatović from 21 to 25 May 2018.<sup>1</sup> The visit focused on children’s rights, the human rights of persons with disabilities and access to free legal aid.
2. During her visit the Commissioner held discussions with the Albanian authorities, including the Prime Minister, Edi Rama; the Minister for Europe and Foreign Affairs, Ditmir Bushati; the Minister of Justice, Etilda Gjonaj; the Minister of Education, Sports and Youth, Lindita Nikolla; the Deputy Minister of the Interior, Romina Kuko; and the Deputy Ministers of Health and Social Protection, Bardhylka Kospiri and Mira Rakacolli. In addition, the Commissioner met with the Ombudsman, Erinda Ballanca and the Commissioner for the Protection against Discrimination, Robert Gajda.
3. While in Tirana, the Commissioner had an exchange on children’s rights and issues related to asylum and migration with Roberto di Bernardi and Pablo Zapata, representatives of UNICEF and UNHCR respectively. The Commissioner also met with a large number of representatives of civil society organisations active in the field of human rights. Additionally, the Commissioner carried out a field visit to Shkodra where she visited the kindergarten “Guerille”, the special school for children with disabilities “3 qershori” and the public residential care institution for children “Shtëpia e Fëmijës”.
4. The Commissioner wishes to thank sincerely the Albanian authorities in Strasbourg and in Tirana for their assistance in organising her visit and facilitating its independent and smooth execution. She also extends her thanks to all her interlocutors for their willingness to share with her their knowledge and views.
5. The Commissioner notes in general that the legislative and institutional framework for the protection of the human rights of children and of persons with disabilities and the fight against discrimination in this field has been significantly strengthened in recent years. While welcoming this development, the Commissioner stresses the need for the authorities to step up the implementation of the relevant legislation and ensure better co-operation and coordination between the different levels of responsible authorities.
6. The Commissioner visited Albania in the period marked by the implementation of a number of important reforms in different areas relevant to the issues addressed by the Commissioner, including the reforms focusing on economic aid, the evaluation of disability and the provision of social services. The Commissioner encourages the authorities to use this opportunity to effectively address the outstanding shortcomings in these fields and to strengthen their capacity to pursue systematic work on the protection of human rights of vulnerable groups, including children and persons with disabilities.

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<sup>1</sup> During her visit the Commissioner was accompanied by the Deputy to the Director of her Office, Özgür Derman, and her Adviser, Erliha Biçakčić.

7. The Commissioner appreciates the authorities' constructive approach to meeting their human rights obligations and wishes to continue her fruitful dialogue with them on these issues. She trusts that this dialogue will be facilitated by the present report, which consists of the following sections: children's rights (section I); the rights of persons with disabilities (section II) and access to free legal aid (III). Each section of the report ends with the Commissioner's conclusions and recommendations addressed to the Albanian authorities.

## 1 CHILDREN'S RIGHTS

### 1.1 LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE PROTECTION OF THE HUMAN RIGHTS OF THE CHILD

8. Albania is a party to the UN Convention on the Rights of the Child and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse ("the Lanzarote Convention").
9. In 2013 the Albanian parliament adopted a resolution "on the protection of children's rights in Albania", in which it stressed its commitment to improving the legislation relating to the protection of the human rights of the child and effectively monitoring its implementation.
10. The Commissioner notes that in recent years the authorities have made significant efforts to harmonise domestic legislation with the UN Convention on the Rights of the Child. In 2017 the Parliament enacted the Law on the Rights and Protection of the Child, which replaced the 2014 law governing this field. This piece of legislation recognises the child as a rights-holder and provides for a positive obligation of parents, the authorities and society to care for and protect every child. The law applies to all children on Albanian territory, regardless of their citizenship, as well as to the children of Albanian citizens living outside Albania. According to this law, every child has the right to live with his or her parents, to be brought up in a family environment and have regular communication with his or her parents, regardless of whether or not they live together, unless it is contrary to the child's best interests, or if the law provides otherwise. The law also stipulates that lack of financial means does not constitute sufficient grounds for the authorities to separate a child from the family or relatives living with the child, or to remove parental responsibility.
11. The Ministry of Health and Social Welfare and the State Agency for the Protection of Children's Rights within this ministry, have the main responsibilities in developing and implementing policies relating to the protection of children's rights. At local level, Child Protection Units (CPU) have been established to work on the protection of children. The Commissioner noted the concerns expressed by several interlocutors on the need for better coordination and co-operation between the central and local authorities on the implementation of the legislation concerning the protection of children and of social policies in general.
12. In the same vein, the Commissioner noted the concerns expressed in the 2016 Council of Europe-commissioned report on an integrated and effective child protection system in

Albania<sup>2</sup> that “even though the relevant structures for the protection of children had been established, the coordination and co-operation between the different sectors and levels of action is ineffective, there is a lack of clear leadership and the implementation of the policies is poor.” It was also noted in the report “that the existing services and structures do not constitute a child protection system, but a ‘patchwork’ of services and dispersed action”. The Commissioner supports the conclusion contained in the above report about the need for the authorities to move from the fragmented, issue-based approach to the systemic approach and to ensure a holistic approach to prevention and protecting children from harm, and she brought this to the attention of the authorities.

13. In this context, the Commissioner would also like to emphasise the importance of collecting quality and reliable data on socio-economic status and desegregated data pertaining to vulnerable groups, including children and persons with disabilities. She notes with interest that in the context of the United Nations’ Programme of Cooperation for Sustainable Development (PoCSD) with the Government of Albania 2017-2021, the capacities of relevant ministries and the national statistics agency (INSTAT) to produce disaggregated data and to ensure the dissemination and use of such data, at national and local level, for evidence-based policy development and planning will be strengthened.<sup>3</sup>
14. During her field visit in Shkodra the Commissioner visited one of ten community centres “For the family” established by the local authorities where activities are organised for families and children, including after-school and income-generation activities. The Commissioner was informed that, inter alia, these centres play an important role in assisting in the reintegration of Albanian children who returned to Albania after having spent some time abroad. The staff in the centre that the Commissioner visited comprises one psychologist, a community facilitator and a person dealing with income generation activities. The centre is financed by local authorities and donors. Noting with appreciation the enthusiasm of the staff and the work that they carry out, the Commissioner encouraged the national authorities to consider providing financial support to this and similar local initiatives.

## 1.2 VIOLENCE AGAINST CHILDREN

15. While there is a growing public awareness in Albania of the negative impact of violence on child development and wellbeing, violence against children remains an issue of serious concern. A 2016 survey, referred to by several of the Commissioner’s interlocutors, noted that 70% of surveyed children aged 8 to 11 reported having been subject to physical violence in the preceding year; 58% of the surveyed children aged 10-14 reported being a victim of or witnessing domestic violence; and one in five children reported that they were subject to bullying in school. The Albanian National Child Helpline ALO 116, a child protection referral and counselling service, which was established in 2009, receives on average about 200 calls per day. The Helpline has so far treated more than 15 000 calls relating to physical, sexual and emotional abuse, domestic violence, peer violence and bullying.

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<sup>2</sup> Council of Europe, [Future of an Integrated Child Protection System in Albania](#), June 2016.

<sup>3</sup> United Nations’ Programme of Cooperation for Sustainable Development (PoCSD) with the Government of Albania 2017-2021



16. The 2017 Law on the Rights and Protection of Children includes safeguards for the protection of children from violence. It establishes the responsible national mechanism and structures for the prevention of and response to violations of children's rights as well as protection mechanisms, including the removal of a child from the family in cases of violence against the child. It also imposes an obligation on all professionals working with children to report child abuse.
17. While she was pleased to note the consensus of all the stakeholders she met that violence against children is unacceptable, the Commissioner notes with concern the reported lack of capacity of social protection authorities to ensure the effective implementation of the above legislation. According to UNICEF, only 28% of the required child protection workers have so far been appointed and only 38% of the appointed ones are active and managing cases related to children at risk. In addition, the Commissioner noted the concerns expressed by civil society representatives that most children do not know where to seek help in case they are subject to violence, and in particular how to safely report abuse committed by parents or other close relatives.
18. In its 2012 concluding observations on Albania the Committee on the Rights of the Child welcomed that corporal punishment was explicitly prohibited in all settings, but was concerned that various forms of corporal punishment were widely practiced at home, in schools and in institutions. Noting that the Law on Pre-University Education prohibited corporal punishment, the Committee regretted that it did not specify the necessary legal mechanisms for the prevention of violence and the protection of children in school premises, nor did it provide for sanctions against teachers who use violence, or for procedures to identify and report violence.
19. The Commissioner is worried about the reported levels of violence in Albanian schools, including physical and psychological violence used by teachers, peer violence and bullying. Some of the Commissioner's interlocutors highlighted that there is a need for more awareness-raising in order to change the societal attitude that violence against children as a way of disciplining them is acceptable. Additionally, the need to strengthen the capacity of teachers and education professionals to identify violence, including sexual violence, and to adequately respond to it has been noted by experts.<sup>4</sup> In this context, the Commissioner is pleased to note the ongoing implementation in Albania of the CoE-EU joint programme "[Fighting bullying and extremism in the education system in Albania](#)", which aims to combat discrimination in schools and to raise awareness of bullying at school, discrimination, the right to equal treatment, and diversity. Special attention in this programme is given to strengthening the capacity of teachers in this regard.
20. The Commissioner noted with satisfaction the authorities' awareness of the seriousness of the issue of school violence. In her discussion with the Commissioner, the Deputy Minister of Interior, Romina Kuko, evoked that one of the preventive measures taken by the authorities was the deployment in a high school in Tirana of plain-clothes police officers to work as school security officers. According to the Deputy Minister, this measure has contributed to a

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<sup>4</sup> GREVIO, ([Baseline](#)) [Evaluation Report Albania](#), November 2017, page 29.

reduction of violence in this school and will therefore be replicated in other high schools in Albania. Additionally, training for police officers on how to deal with school violence is planned to be included in the curriculum of the Police Academy.

21. Against this background, the Commissioner would like to stress that even though the use of school security officers may seem an adequate response to demands to ensure a safe learning environment in schools, it should only be used as a temporary measure. The authorities should give priority to prevention, conflict resolution and mediation, while ensuring the full inclusion of students in the development of any measures that concern them.
22. The Commissioner is also concerned about the negative impact of domestic violence on children in Albania and certain reported shortcomings in relevant domestic proceedings related to the prosecution of such violence. Albania is a party to the Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) which it ratified in 2013. The Commissioner has noted the concerns expressed by the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)<sup>5</sup> that in court decisions for protection orders relating to domestic violence the situation of children is not systematically examined. The Commissioner supports the GREVIO conclusion that the authorities should, in close co-operation with an expert association of psychologists, take the necessary measures to ensure that in all cases where a protection order is issued for victims of domestic violence, the situation of child witnesses is systematically examined to determine whether they too should benefit from a protection order.
23. In this context, the Commissioner noted the interest expressed by the Albanian authorities in receiving Council of Europe technical assistance with a view to strengthening the national capacities to ensure an effective implementation of the GREVIO recommendations.
24. On a positive note, the Commissioner has noted that some improvements have been made to criminal legislation in order to bring it in line with the relevant European and international standards concerning the protection of children against violence, including the Lanzarote Convention, such as amendments to the Criminal Code which provide for safeguards for the protection of children from sexual crimes and economic exploitation and the strengthening of criminal provisions pertaining to sexual violence and assault against children and the protection of children in this context. Also, the maximum sentence for crimes of child sexual abuse has gone up from 15 to 25 years imprisonment and a new offence criminalising violence of a sexual nature has been added in the Criminal Code.

### 1.3 CHILDREN LIVING IN RESIDENTIAL CARE INSTITUTIONS

25. The Commissioner stresses that institutional care is not good for children, as it cannot provide the one-to-one care, love and attention a child needs to develop. Empirical evidence shows that children in institutions are at a higher risk of being subject to violence and

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<sup>5</sup> GREVIO, ([Baseline](#)) [Evaluation Report Albania](#), November 2017, p. 29

discrimination. Young adults leaving institutional care are more likely to fall victim to trafficking, exploitation, unemployment, homelessness and depression.<sup>6</sup>

26. According to the authorities, in 2017 there were 703 children in institutional care in Albania: 525 of them in public and non-public residential care institutions, including 62 children with disabilities; 41 children in the centre for victims of trafficking; and 75 in the centres for victims of domestic violence.
27. While the number of institutionalised children in Albania does not appear to be high, the Commissioner noted some serious human rights concerns related to institutionalisation. In 2016 the Albanian Ombudsman published a special report “on the situation of respect for the rights of children living in residential institutions, and children and baby homes”, following an inspection by the Ombudsman’s office of nine institutions for residential and daily care of children in Tirana, Durrës, Vlora, Shkodra and Korça. The Ombudsman expressed a number of concerns with regard to the living conditions and treatment of children in those institutions, the most worrying of which were related to serious allegations of physical and psychological violence against children, including a case of sexual abuse of a child. The Ombudsman recommended, *inter alia*, that the authorities establish an effective monitoring of complaints related to violence, negligence, forced labour and exploitation of children in state care institutions.
28. One of the major reasons for continued institutionalisation, identified by many interlocutors, is the lack of adequate support provided to poor families with children, in particular Roma, which contributes to the abandonment of children by their parents. The Commissioner visited the residential care institution “Shtëpia e Fëmijës” in Shkodra, which, at the time of her visit, hosted 33 children, 70% of whom are Roma. This institution was opened in 1944 and has 24 staff members. In his discussion with the Commissioner, the director of the institution expressed his concern that some children spend years in the institution, due in particular to the difficulties encountered in integrating them in their families or finding a foster family. All the children living in this institution attend mainstream schools.
29. The Commissioner would like to stress that, while the de-institutionalisation process needs to be stepped up, the authorities need to urgently improve the monitoring of the existing residential institutions and strengthen the work of social protection services in this regard. The National Preventive Mechanism under OPCAT, within the Ombudsman’s office, should continue to play an important role in this context. The Commissioner was also pleased to note that after years of delay a Commissioner for Children’s Rights was appointed last March in the Ombudsman’s Office.
30. One of the arguments put forward by the Commissioner’s interlocutors in discussions about the deinstitutionalisation of children from state care related to the estimation that the authorities currently spend €700 per institutionalised child per month, while foster families receive social benefits in the amount of about €80.

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<sup>6</sup> See Open doors <http://www.openingdoors.eu/institutional-care-in-europe/damaging-to-children-damaging-to-society/>.

31. Concerning family-type alternatives to institutionalisation, the Commissioner has noted concerns that non-kinship foster care has not been gaining ground in Albania, despite the measures taken by the authorities in this regard. In 2008 a Foster Care Strategy was adopted, and in 2010 the Foster Care Implementation Standards Framework came into force. A foster care project was piloted and evaluated in 2013, with the involvement of UNICEF and its implementing partners. Training, procedures and support systems for 80 families were provided. However, the reported lack of sustainable follow-up and of adequate financial support provided to foster families appear to be among the reasons for the lack of interest among persons, other than close family members, to become foster carers.
32. The Commissioner stresses that in parallel with the development of community-based services and family-like settings for deinstitutionalised children, the authorities need to provide adequate support to biological families who are willing to take care of their children and integrate them in the family. The Ombudsman has therefore called for improving the economic aid scheme to target poor families and children in need, through better social assessment of the living conditions of families.

#### 1.4 JUVENILE JUSTICE, WITH A FOCUS ON STREET CHILDREN

33. The Commissioner has noted reports indicating that until recently, Albania was among the countries with the highest rate of children in detention among the CEE/CIS<sup>7</sup> (178 in 2014 and 114 in 2016), most of them held in pre-trial detention. According to juvenile justice experts, this was an indication of the punitive approach that Albania had been pursuing with regard to children in conflict with the law, which failed to address the recidivism of juveniles which doubled from 2012 to 2015, with the first decrease noted only in 2016.
34. Against this background, the Commissioner was pleased to note the improvement of the legislative and policy framework concerning criminal justice for children, indicating a shift in the authorities' approach from the punitive one towards a preventive and restorative approach. This relates in particular to the enactment in 2017 of the Code on Criminal Justice for Children which, for the first time, does not treat children in contact with the law as adults and includes safeguards in line with relevant international standards on juvenile justice and child victims and witnesses of crime. Additionally, the new Law on Legal Aid (*see also Access to Free Legal Aid below*), which entered into force last June, provides for free legal aid to child victims and witnesses of crime, children in conflict with law, and in administrative and civil proceedings.
35. According to the authorities, there are currently 44 children in detention, 20 of them in pre-trial detention. Most of them are detained in the Kavaja centre for minors. In her discussion with the Commissioner, the Deputy Minister of Interior, Romina Kuko, stressed that the first measure taken by this ministry as a follow-up to the juvenile justice reform is the development of a road-map of the ministry's obligations in this field. A strategy on crime prevention is planned to be developed in this process. Close co-operation with the social service sector and schools will also be ensured.

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<sup>7</sup> This stands for Central Eastern Europe/Commonwealth of Independent States.

36. The Commissioner noted concerns expressed by her interlocutors that more focus should be put by the authorities on the protection of street children who appear to be at a higher risk of coming into contact with the law. The authorities have taken measures to address these concerns in particular in Tirana where there is a higher number of children on the streets than in other parts of Albania. In close co-operation with the Tirana municipality, the authorities have intensified their work to identify the protection needs of these children and will involve the social care services accordingly.
37. Another concern in this context relates to the risk of human trafficking. In its 2016 second evaluation report on Albania<sup>8</sup> the Council of Europe Group of Experts against Trafficking in Human Beings (GRETA) noted “that street children are at highest risk of trafficking, and some have become trafficking victims, while there have been few prosecutions of child trafficking cases”. It was also noted in the evaluation that the number of child victims, particularly of internal trafficking, has been on the increase. As noted by GRETA, the Albanian authorities should strengthen their efforts in the area of preventing child trafficking, in particular by sensitising and training child protection professionals across the country, raising awareness among children through education, and paying special attention to children placed in institutions and children from the Roma and Egyptian communities.
38. The authorities were also urged by GRETA to step up their efforts to prevent and detect cases of trafficking in human beings during border controls, paying particular attention to unaccompanied children. In this regard, the Commissioner noted the measures taken by the authorities to address the cases in which some Albanian parents left their minor children unaccompanied in the country where they travelled as a family. According to the authorities, such cases have been reported in the Netherlands, France and Germany. As a measure to counter this trend, the authorities have introduced, at the borders, a system which automatically detects parents who return to Albania without their minor children. Moreover, in 42 such cases the parents have been prosecuted. The Commissioner would appreciate receiving more detailed information on the outcome of the proceedings in these cases.

#### 1.5 THE RIGHT TO INCLUSIVE EDUCATION, WITH A FOCUS ON ROMA CHILDREN AND CHILDREN WITH DISABILITIES

39. The 2012 Law on Pre-University Education provides for free and mandatory education without discrimination on any ground, including ethnicity or disability. The Commissioner has noted that Albania has significantly increased access to all levels of education, reaching the level in which primary and lower secondary enrolment is nearly universal. Nonetheless, some children remain excluded from mainstream education due to a number of factors, in particular disability, extreme poverty and migration. The children who are most at risk of being out of school in Albania are children with disabilities, Roma and Egyptian children from families engaged in seasonal migration, returnees, children contributing to the family income and early married girls.

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<sup>8</sup> GRETA, [Report](#) concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Albania – Second Evaluation Round, published in June 2016.

40. A 2017 UNICEF study on Albania's investment in education noted that about 15 000 children are out of school, many of them engaged in child labour, and that Roma children lag behind in scholastic achievement. The study also found that one half of schools lack basic facilities, one in four teachers is not qualified, the PISA score of secondary school children is among the lowest in Europe and public spending for education is 2.9% of GDP, against a 4.5% average in EU countries.<sup>9</sup>
41. In her discussion with the Commissioner, the Minister of Education, Sports and Youth, Lindita Nikolla, noted a number of important initiatives carried out in the education sector in order to improve its quality as well as access to education for vulnerable groups. One of the authorities' priorities is increasing the professional capacity of teachers and transforming schools into centres for civic education, along with the development of a competence-oriented curriculum. As concerns the inclusion of Roma and Egyptian children in mainstream education, the Minister emphasised the results achieved thus far, namely the increase in these children's enrolment from 23% in 2013 to 66% in 2018. The number of Roma teachers has also increased. Additionally, the authorities plan to continue providing Roma parents with incentives to send their children to school, which has proven to be useful and has helped to include some 80 street children, who live with their families, in education.
42. Notwithstanding the aforementioned positive measures taken by the authorities, the lack of inclusion of Roma children in mainstream education remains an issue of concern. The Commissioner is particularly concerned about the reported low level of enrolment of Roma children in pre-school education, due to poverty, lack of registration, discrimination, or lack of awareness of Roma parents of the benefits of pre-school education. However, there are positive examples of inclusion that need to be highlighted, such as the kindergarten "Guerrile" in Shkodra visited by the Commissioner. Sixty Roma children and children from wider communities are enrolled in this pre-school facility. The Commissioner was informed by the staff that the inclusion process lasted eight years and there have been a number of challenges, such as the withdrawal of non-Roma children from the kindergarten. However, thanks to the dedicated work of the staff, following the initial period of setbacks, parents have supported the inclusion process and taken an active part in it which lasts to date. This has resulted in the creation of an inclusive and inspiring learning environment for the benefit of all of the children educated there.
43. Concerning access to education for children with disabilities, the 2012 Law on Pre-University Education stipulates that "the education of children with disabilities in special schools is temporary and that their integration in mainstream education shall be a priority". The law also provides that every child with disabilities shall be provided with an assistant teacher and rehabilitative services according to their needs. Additionally, one of the strategic objectives of the 2016 National Action Plan on the Rights of Persons with Disabilities is ensuring access to quality and inclusive education for children with disabilities.
44. There is no updated reliable data on the number of children with disabilities living in Albania. In 2014 the State Social Services registered 17 786 children with disabilities in Albania who

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<sup>9</sup> UNICEF, [Albania The cost of Underinvestment in Education: And ways to reduce it](#), 2017.

received disability allowances; however there are estimations that there are more than 90 000 such children.<sup>10</sup> According to the authorities, 3451 children with disabilities are currently included in mainstream education. The Commissioner was informed that the main reasons for the exclusion of children with disabilities from mainstream education were lack of assistant teachers and other materials in mainstream schools to meet their education needs, lack of physical access to schools and school facilities, as well as discrimination and prejudice against them.

45. Although the law provides for the right of children with disabilities to receive assistance in schools, including by assistant teachers, in most cases the funding for such assistance is lacking. The scarcity of funding and of available specialised staff is in fact conducive to the concentration of children with disabilities in special schools, in segregated settings. There are currently ten special schools in Albania attended by 700 children with disabilities, including the special school “3 qershori” in Shkodra, which was visited by the Commissioner. In this school children with different types and levels of disabilities and of different ages are educated together. The Commissioner noted with interest that during the school year 2017-2018 four children from this school have been integrated in mainstream schools.
46. Against this background, the Commissioner welcomed the authorities’ commitment to increasing the number of assistant teachers, which currently stands at 620, to ensure that every child with disabilities who needs such assistance is provided with it in mainstream schools.

## 1.6 STATELESSNESS

47. Albania is a party to the 1954 Convention on the Status of Stateless Persons, the 1961 Convention on the Prevention and Reduction of Statelessness, and the European Convention on Nationality. However it has not yet acceded to the Council of Europe Convention on the Avoidance of Statelessness in relation to State succession.
48. There is no updated data on stateless persons or persons at risk of statelessness in Albania, due in particular to the fact that Albanian law does not provide for a statelessness determination procedure. While the 2011 general census registered 7443 persons who declared themselves as stateless, UNHCR estimated that in 2016 there were 4921 stateless persons or persons at risk of statelessness in the country.
49. In a 2018 expert report<sup>11</sup> on statelessness in Albania it was noted that the law provides for the acquisition of Albanian citizenship based on birth on Albanian territory (*jus soli*) and on a blood relationship with an Albanian national (*jus sanguinis*). However, due to the fact that the acquisition of citizenship is granted pursuant to birth registration, many Roma and Egyptians are at a higher risk of being stateless because of their lack of birth registration due to poverty, marginalisation and economic migration. It was also noted in the above report that application of the *jus soli* is limited to children whose parents are lawful residents in

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<sup>10</sup> Save the Children, [Albania Country Spotlight](#), 2014.

<sup>11</sup> Institute of Statelessness and Inclusion, European network on Statelessness and European Roma Rights Centre, [Report: Statelessness, Discrimination and Marginalisation of Roma in Albania](#), June 2018.



Albania, which leaves the children of parents who do not have residence permits, or who are themselves undocumented, at a higher risk of statelessness.

50. Another group of persons at risk of statelessness are reportedly certain Albanian emigrants who have moved abroad and were left stateless because they voluntarily renounced their nationality and/or failed to acquire citizenship of the destination country. Moreover, children born to Albanians who have lived abroad have been facing bureaucratic challenges in accessing nationality procedures upon their return to the country. With regard to this issue GRETA has noted that the number of unregistered children increased in 2014, partly as a result of numerous Albanians previously living in Italy or Greece returning to the country with their children. It has also been noted by GRETA that, while most women gave birth in hospitals, where all new-born children are registered, the number of women giving birth elsewhere was put at several hundred. As noted by GRETA, the authorities should continue their efforts to register children, particularly those born outside maternity units or abroad and/or returning to Albania without valid documentation.

## 1.7 CONCLUSIONS AND RECOMMENDATIONS

51. The Commissioner welcomes the strengthening of the legal framework for the protection of children, especially the adoption in 2017 of the Law on the Rights and Protection of the Child. However, the implementation of the legislation needs to be stepped up and additional resources should be earmarked to this end. The Commissioner is particularly concerned about the reported shortcomings of the social protection system which have a negative impact on the protection of children's rights. The Commissioner calls on the authorities to address these shortcomings in the context of the ongoing reforms of the social protection system, while ensuring that the best interest of the child is always their primary consideration. The authorities are also called upon to ensure better coordination between authorities at different levels in charge of the protection of children's rights, as well as sufficient staff and expertise to provide child-focused social services at the local level. Useful guidance in this regard could be found in the Committee of Minister's [Recommendation CM/Rec\(2011\)12](#) on children's rights and social services friendly to children and families.
52. The Commissioner notes with satisfaction that Albania has banned all forms of violence against children, including corporal punishment, in all settings. In order to prevent and address violence against children in a systematic and effective manner, the Commissioner calls on the authorities to adopt a coordinated strategy at national level, with the involvement of all actors including at local level, and to subsequently ensure effective and independent monitoring of the implementation of such a strategy. Mandatory reporting by all relevant professionals of incidents of alleged violence against children is a pre-requisite for creating a safer environment for children. The Commissioner wishes to draw attention to [the Council of Europe Policy Guidelines on Integrated National Strategies for the Protection of Children from Violence](#), which are a useful instrument for developing a holistic national framework for safeguarding the rights of the child, eliminating violence against them and promoting a culture of respect for the rights of the child. The promotion of positive and non-violent forms of child-rearing should form a basis for the planning and implementation of policies related to children and the family. The authorities are encouraged to step up



awareness-raising on zero-tolerance of violence against children. The authorities are also invited to consult the Council of Europe [Recommendation Rec\(2006\)19](#) on policy to support positive parenting which could serve as a source of inspiration for such policies.

53. The Commissioner would like to highlight the Council of Europe recommendation on the rights of children living in residential institutions, which stresses that the placement of a child in such institutions should remain the exception, and have as the primary objective the best interests of the child and his or her successful social integration or re-integration. She stresses that children in institutions are more vulnerable than others to various forms of violence and abuse. Authorities both at the national and at local levels are urged to speed up the deinstitutionalisation process and devise strategies to prevent the placement of children in state care, by providing more support to families raising children and developing an effective system of family-type and community-based services while ensuring that no child is left behind. The Commissioner wishes to refer to the [UN Guidelines for the Alternative Care of Children](#) which provide useful guidance in this respect.
54. The Commissioner stresses that pending the progressive shift away from placement in institutions towards care within the community, the authorities need to ensure that children are treated with dignity and respect at all times and must benefit from effective protection from abuse, neglect, and all forms of exploitation, whether on the part of care providers, peers or third parties, in whatever care setting they may find themselves, as stated in the UN Guidelines for the Alternative Care of Children. In this context, the Commissioner urges the authorities to put in place an effective system for the monitoring and external control of the state care institutions in the light of the above standards. Any breach of children's rights should be sanctioned in accordance with appropriate, effective procedures.
55. The Commissioner welcomes the enactment of the 2017 Code on Criminal Justice for Children, as a positive step towards establishing child friendly justice in Albania. Noting that other important legislative and policy changes will have to take place in order to implement the above legislation, the Commissioner draws the Albanian authorities' attention to the Council of Europe Committee of Ministers Guidelines of 2010 on child friendly justice and encourages them to draw inspiration from them and to give them effect. As stressed by these guidelines, child-friendly justice means "justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity". The authorities should continue their efforts to provide adequate and systematic training and/or awareness-raising about children's rights to professionals who work with and for children, most notably judges, lawyers, law enforcement officials, and other civil servants.
56. While noting with satisfaction that Albanian law enshrines the principle of inclusive education without discrimination on any ground, the Commissioner is concerned that there remain children, in particular Roma children and children with disabilities, who are excluded from mainstream education. The Commissioner calls on the authorities to sustain their efforts aimed at the inclusion of Roma children in mainstream education, in particular by

working closely with Roma parents and increasing the efforts to tackle the issue of lack of inclusion of Roma in pre-school education.

57. The Commissioner wishes to underline that the exclusion of children with disabilities from mainstream education further reinforces and legitimises their marginalisation in the later stages of their lives. However, the placement of students with disabilities in mainstream classes can only be successful if accompanied by structural changes. The authorities need to take measures to ensure that children with special education needs effectively benefit from individual support and reasonable accommodation in mainstream settings, in accordance with Article 24 UN CRPD. Such measures should be accompanied by a clear and ambitious timetable and an adequate budget. The transfer of children from special to mainstream education should be based on accurate statistical data concerning children with disabilities enrolled in special education or home schooling.
58. Lastly, the Commissioner calls on the authorities to ensure that European and international instruments concerning nationality, prevention and reduction of statelessness, which are binding on Albania, are complied with. Special attention should be paid in this context to the situation of Roma children and children born abroad lacking birth registration. Albania should introduce a procedure in law to identify and protect stateless persons in line with the 1954 Convention and UNHCR's Handbook on Protection of Stateless Persons. Albania is also urged to accede to the 2006 Council of Europe [Convention for the Avoidance of Statelessness in relation to State Succession](#).

## 2 HUMAN RIGHTS OF PERSONS WITH DISABILITIES, WITH SPECIAL REFERENCE TO ACCESSIBILITY, LEGAL CAPACITY AND DEINSTITUTIONALISATION

59. The 2011 general census registered 6.2 % of the Albanian population over 15 years of age with one form of disability in at least one of the following: sight, hearing, mobility, sensory impairment, self-care, and communication. According to the information quoted in the 2016 National Action Plan on Persons with Disabilities, 162 350 persons in 2014 and 157 434 in 2015 respectively, received disability-related social benefits, and 74,373 of them were persons with labour-related disabilities. It has been reported that 79% of the households who have members with a disability are dependent on some form of social care benefits.<sup>12</sup>
60. Albania ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2012 and submitted its first report to the CRPD Committee in December 2015. The Constitution of Albania prohibits discrimination against persons with disabilities with regard to, *inter alia*, access to justice, employment, education and health care. Anti-discrimination safeguards pertaining to persons with disabilities are also embedded in the 2010 Anti-Discrimination Law, the 2012 Law on Pre-University Education System in Albania, and the 2014 Law on Inclusion of and Accessibility for Persons with Disabilities which incorporates the CRPD's main principles and provisions. Moreover, a number of by-laws have been adopted with a

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<sup>12</sup> National [Action Plan](#) on Persons with Disabilities 2016-2020.

view to improving accessibility for persons with disabilities, formalising the sign language for persons with hearing impairments, and improving the collection of aggregated data relating to persons with disabilities.

61. In 2016 the government adopted a policy document on social inclusion 2016-2020, which provides for a framework for monitoring and measuring social inclusion in a number of areas relating to civil, political, social and economic rights. A National Action Plan on Persons with Disabilities 2016 – 2020, which was adopted in 2016, sets objectives and activities to be implemented in priority areas outlined in this document in line with the Council of Europe Disability Strategy 2017-2023, namely accessibility, participation, equality, education, health, social protection, and international co-operation.
62. The Commissioner was pleased to note the establishment in 2015 by the prime minister of the National Disability Council, an advisory body to the government composed of 17 members, the majority of them persons with disabilities and their associations.
63. Since the ratification by Albania of the CRPD the authorities have organised a series of trainings for public officials and awareness raising campaigns concerning the rights of persons with disabilities with the support of donors and civil society organisations.
64. Notwithstanding these positive developments, the Commissioner is concerned that persons with disabilities in Albania are confronted with significant difficulties owing, in particular, to shortcomings in the implementation of the existing legislation, structural problems in the social care system, and poor access to quality education and to employment. The Commissioner was also informed about the existence of strong societal prejudices which tend to relegate persons with disabilities to a life of marginalisation.
65. The Commissioner noted the information provided by the authorities about the slow pace of implementation of the 2016 National Action Plan on Persons with Disabilities, and on their plan to carry out by the end of 2018 an assessment of its implementation. One of the areas in which the authorities aim to make more progress relates to the access of persons with disabilities to the labour market. The Commissioner was informed that the employment quota introduced by the authorities, which mandates the employment of one person with disability per 25 employed persons, has not yielded the expected results. The authorities have been considering other measures, including the possibility of imposing fines on non-compliant employers. The Commissioner would appreciate receiving more information about any new affirmative measures adopted by the authorities in this context.
66. The Commissioner warmly welcomes the dedicated work of many national NGOs involved in the protection and promotion of the human rights of persons with disabilities, and encourages the authorities to use their valuable expertise to bring their practice fully into line with international and European standards. One of these organisations, which the Commissioner met during the visit, drew the Commissioner's attention to the many obstacles facing families of children with Down syndrome and stressed the need for the authorities to provide these families with adequate support and assistance from the very moment a child is diagnosed with Down syndrome. One of the concerns raised by this NGO was that in order for the families with a child with Down syndrome to be entitled to social care benefits they

need to present the authorities with the results of a special screening for Down syndrome, which can only be done abroad and involves expenses that most of these families cannot afford.

## 2.1 ACCESSIBILITY

67. The Commissioner recalls Article 9 of the CRPD which enshrines a positive obligation of member states to take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas in order to enable persons with disabilities to live independently and participate fully in all aspects of life. Although the CRPD is not directly legally binding on private actors, it obliges states to require that private entities that are open to the general public comply with Article 9.
68. The Commissioner notes with concern that in Albania the movement of persons with disabilities in public spaces and their physical access to institutions (such as healthcare institutions, schools, administrative and other institutions) is considerably limited. It is quoted in the 2005-2015 National Action Plan on Persons with Disabilities that access to streets and pavements is virtually impossible for people with physical disabilities, in particular those using wheelchairs, and that public transport also remains inaccessible. There are no sound signaling devices at street or road crossings, or on public transport services and bus stops are not marked, making orientation difficult. The authorities have not fulfilled the commitment from the 2005-2015 National Action Plan on Persons with Disabilities to render 100 schools, 90 kindergartens and eight vocational and education centres accessible for persons with disabilities.<sup>13</sup>
69. Specific by-laws on spatial planning provide that all public buildings should be made accessible to persons with disabilities and that new buildings must be constructed to ensure accessibility. However, reportedly the implementation of the by-laws has been slow.
70. The Ministry for Social Care and Health and the Ministry of Urban Planning have worked together to improve accessibility and some government buildings have been rendered physically accessible for persons with disabilities and others are being renovated to this end. However, in some public buildings, including schools, where renovation or adjustments have been made to render them accessible for persons with disabilities, some facilities in those buildings, such as restrooms, remained inaccessible.
71. The authorities have developed several housing programmes in order to make public housing more accessible for persons with disabilities, including social housing and serviced land plots. Notwithstanding these programmes, as noted in the 2005-2015 National Action Plan on Persons with Disabilities, the present social housing framework and policies do not meet the needs of vulnerable groups, including persons with disabilities.

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<sup>13</sup> National [Action Plan](#) on Persons with Disabilities 2016-2020.

72. As concerns the accessibility of information, the Commissioner notes that the 2014 Law on Inclusion of and Accessibility for Persons with Disabilities provides for the right to independent living for persons with disabilities by introduction of communication and information policies and accessible formats, such as prints in Braille or large font, use of simplified language and reader-accessible electronic formats. However, textbooks for mainstream schools, for instance, do not exist in Braille or audio format. Moreover, government websites and portals are not easily accessible for persons who need large font or higher contrast, or are hearing-impaired. It is noted in the 2016 National Action Plan for Persons with Disabilities that the standards for government websites developed by the National Agency for Information Society (NAIS) must take into account accessibility aspects.
73. Against this background, the Commissioner appreciates the importance attached by the authorities to improving accessibility for persons with disabilities. In her discussion with the Commissioner, the Deputy Minister for Social Welfare and Health, Bardhylka Kospiri, stressed that the measures taken so far by the authorities have yielded some results, but that more progress is needed. She also stressed that an assessment of accessibility for persons with disabilities was underway and the results thereof were planned to be discussed at the meeting of the National Disability Council following the Commissioner's visit. The Commissioner looks forward to receiving more information about the results of the aforementioned assessment and the authorities' further steps in this context.

## 2.2 THE RIGHT TO LEGAL CAPACITY

74. Article 12 of the CRPD guarantees the right to equal recognition before the law for persons with disabilities and, in particular, the right to enjoy legal capacity on an equal basis with others in all aspects of life. The CRPD Committee has reaffirmed "that a person's status as a person with a disability or the existence of an impairment (including a physical or sensory impairment) must never be grounds for denying legal capacity or any of the rights provided for in article 12."<sup>14</sup> It has called on states parties to "review the laws allowing for guardianship and trusteeship, and take action to develop laws and policies to replace regimes of substitute decision-making by supported decision-making, which respects the person's autonomy, will and preferences."<sup>15</sup> Article 12 of the CRPD necessitates that guardianship systems should be replaced by systems of alternatives, including, in particular, methods of supported decision-making. This concept entails that everyone has the right to make their own decisions and to receive adequate support to do so. When setting up safeguards for systems of supported decision-making, the authorities should consider Articles 12, 13 and 16 of the CRPD.
75. The Commissioner also wishes to recall the case-law of the European Court of Human Rights establishing that the non-recognition of a person's legal capacity severely limits their human rights and that full deprivation of legal capacity is a very serious interference with the right to

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<sup>14</sup> Committee on the Rights of Persons with Disabilities, General Comment on Article 12 on Equal recognition before the law, paragraph 9.

<sup>15</sup> Ibid. paragraph 22.

private life protected by Article 8 of the Convention. The existence of a mental disorder, even a serious one, cannot by itself justify incapacitation.

76. Albanian law provides for the possibility to fully deprive persons with psycho-social and intellectual disabilities of their legal capacity and to place them under guardianship. The extent to which a person with a disability can be deprived of his/her legal capacity and the appointment of a guardian is determined by a court decision in civil proceedings. Concerning the incapacitation procedure, the Commissioner has noted that deprivation of legal capacity is subject to certain safeguards including the obligation of the court to hear the concerned person. It also provides for a mandatory medical expertise and for the participation of a prosecutor in such proceedings.<sup>16</sup>
77. The Commissioner has noted the information contained in the National Action Plan on Persons with Disabilities 2016 – 2020 that due to the lack of a functioning system of supported decision-making the use of guardianship is prevalent.<sup>17</sup> Also, in a 2016 expert NGO report<sup>18</sup>, which was based on an analysis of a certain number of court incapacitation cases in Albania, it was noted that domestic court judges had a tendency to resort to full deprivation of legal capacity even in cases in which a decision on partial deprivation of legal capacity should be rendered. The report also noted that in the majority of those cases the incapacitation proceedings were initiated by a family member (33% by one of the siblings, 18% by one or both parents, 12 % by a spouse and 14% by children, while for 22% of cases there was no data available). It was also noted in the report that despite the aforementioned safeguards domestic court decisions in incapacitation proceedings are often based solely on medical expertise and the participation of the person concerned in the proceedings tends to be limited.
78. In her discussion with the Commissioner, the Minister of Justice, Etilda Gjonaj, stressed that the authorities plan to establish a working group for the assessment of the domestic legislation concerning legal capacity and guardianship, with a view to bringing the legislation in line with Article 12 CRPD. The government aims to finalise the reform of the Civil Code and Civil Procedure Code by the end of its mandate, while ensuring that all relevant stakeholders are involved in this process. The Commissioner underlines that this legislative process should be coupled by activities aimed at raising public awareness of the importance of these reforms for the inclusion persons with disabilities in society and for their enjoyment of the right to legal capacity on an equal basis with others in all aspects of life

### 2.3 THE RIGHT TO LIVE INDEPENDENTLY AND BE INCLUDED IN SOCIETY

79. The Commissioner recalls that living independently and being included in the community is closely linked with other human rights such as equality and non-discrimination, physical and mental integrity, liberty, freedom from inhuman and degrading treatment or punishment, autonomy, legal capacity, privacy, family rights and freedom of movement.

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<sup>16</sup> Albanian Disability Rights Foundation, Country Report: [Deprivation of the Capacity to Act in Albania](#), 2016.

<sup>17</sup> National Action Plan on Persons with Disabilities 2016 – 2020.

<sup>18</sup> Albanian Disability Rights Foundation, Country Report: [Deprivation of the Capacity to Act in Albania](#), 2016.

80. In Albania there are 28 social service facilities for persons with disabilities, including 12 residential institutions, 14 day care centres and two non-public community centres. According to the authorities there are currently 182 persons with disabilities in residential facilities, 38 of whom are children. Concerning admittance to institutions, the Commissioner notes that persons with disabilities are placed in institutions when independent living is not possible, where family members are unwilling or unable care for the persons and in cases of abandonment or inadequate living conditions. A request for placement of a disabled person in a residential centre can be made by a parent or court-appointed carer, the Medical Commission for Assessment of Working Capacity, the police, and social care administrators at the local level. The admission decision rests with the Managing Council of the State Social Service, chaired by the General Director of the State Social Service.
81. One of the aims of the 2014 Law on Inclusion of and Accessibility for Persons with Disabilities is to ensure independent living for persons with disabilities and improve their autonomy and supported decision-making. This law provides for measures to ensure support and assistance for persons with disabilities who would like to live independently, such as “personal assistance, supportive technical equipment and devices, accessibility services, reasonable accommodation, and, where necessary, supported decision-making”.
82. In its 2015 report to the CRPD Committee, the Albanian authorities noted that “despite the existing legal framework there were not yet services in place for persons with disabilities who would like to lead an independent life in their communities.” According to the authorities, most of the community-based services were provided by civil society organisations and volunteers in shelters or day-care centres, while the authorities ensured the monitoring of the provision of those services.<sup>19</sup> Following her visit the authorities informed the Commissioner that an action plan on deinstitutionalisation is under preparation and is planned to be submitted to the Council of Ministers for adoption.
83. The Commissioner noted the concerns expressed by civil society representatives that recently under the pretext of deinstitutionalisation, some persons with disabilities who have been released from institutions ended up on the street without any support or assistance. In this context, the Commissioner would like to emphasise that the process of deinstitutionalisation needs to be carefully planned and implemented, and no hasty measures should be taken which may result in persons with disabilities being left behind without the necessary support and protection.

## 2.4 CONCLUSIONS AND RECOMMENDATIONS

84. Recalling Article 9 of the CRPD, the Commissioner emphasises that accessibility is a precondition for the full realisation of the rights and inclusion of persons with disabilities in society. While welcoming the progress made so far in this field, the Commissioner calls on the authorities to step up their action to ensure that persons with disabilities have access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems,

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<sup>19</sup> UN CRPD, Initial [report](#) submitted by Albania under Article 34 of the Convention, due in 2014, December 2015.

and to other facilities and services open or provided to the public, both in urban and in rural areas.

85. The Commissioner calls on the authorities to develop laws and policies to replace the regime of substituted decision-making with supported decision-making. While the guardianship system remains in place, the Albanian authorities should ensure that this does not amount to a full deprivation of legal capacity, and that persons placed under guardianship have effective access to judicial review proceedings to challenge the guardianship or the way in which it is administered. They should always be recognised as persons with equal standing in courts and tribunals and empowered to effectively challenge any interference with their right to legal capacity.<sup>20</sup>
86. Isolating persons with disabilities in institutions perpetuates their stigmatisation and social marginalisation, in violation of their right to live independently in the community, guaranteed by Article 19 CRPD. The Commissioner calls on Albania to adopt a plan for replacing institutions with community-based services. Abstaining from any new placement of persons with disabilities in the institutional settings would be an important step in this direction. The authorities should prove their commitment to reforming the social care system for persons with disabilities by closing down residential institutions and allocating adequate resources for the development of community-based alternatives. Given that Albania is at the very beginning of this process it is very important that there is unambiguous understanding of what the right to live in the community means. It needs to be ensured that big residential institutions are not replaced with small ones which resemble the previous model and that an individual's ability to choose or interact with others or be included in the community is not compromised.

### 3 ACCESS TO FREE LEGAL AID

87. In her discussions in Albania, the Commissioner raised the issue of access to free legal aid for vulnerable groups, such as Roma, persons with disabilities, victims of trafficking and children, following up on the dialogue initiated by her predecessors in two country reports, published in 2008<sup>21</sup> and 2014<sup>22</sup>, and two letters addressed to the authorities in 2012<sup>23</sup> and 2016<sup>24</sup>. The authorities' attention was consistently drawn by the Commissioner's predecessors to the shortcomings in the 2008 Law on Free Legal Aid and its implementation and the negative impact thereof on the enjoyment by vulnerable groups of their human rights.
88. The most recent intervention concerning this issue by the Commissioner was the aforementioned 2016 letter in which it was noted that the lack of effective implementation

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<sup>20</sup> See the Commissioner's Issue Paper, "[Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities](#)", 2012.

<sup>21</sup> Commissioner's 2008 [report](#) on Albania, paragraph 23.

<sup>22</sup> Commissioner's 2014 [report](#) on Albania, pp.15 and 16.

<sup>23</sup> Commissioner's 2012 [letter](#) to the Minister of Justice of Albania, Eduard Halimi.

<sup>24</sup> Commissioner's 2016 [letter](#) to the Minister of Justice of Albania, Ylli Manjani.



of the 2008 Law on Free Legal Aid continued to hinder access to justice by certain vulnerable social groups, such as Roma and women victims of trafficking and of domestic violence. It was also noted that despite the existence of the State Legal Aid Commissioner most legal aid continued to be provided by NGOs. The authorities were called upon to step up their efforts aimed at establishing an efficient national system of legal aid.

89. The Commissioner has noted reports indicating that obstacles to access to justice for vulnerable groups persist. The results of a 2017 UNDP survey on access to justice demonstrated a high level of legal illiteracy, in particular among Roma, dubious attitudes on justice, and a lack of trust in the justice system among Albanians. According to this survey, Roma, low earners, persons with little formal education, members of the LGBTI community, persons with disabilities, victims of domestic violence and children from residential institutions face various obstacles that make accessing justice even harder than for the average Albanian citizen. Many of them, such as Roma, are victims of discrimination and economically deprived, which leaves them unable to access better quality services. As a result some do not even attempt to reach out to institutions, leaving their legal issues unaddressed.<sup>25</sup>
90. Against this background, the Commissioner was pleased to note that in December 2017 a new Law on Legal Aid was enacted and entered into force last June. This law broadens the category of persons benefiting from legal aid and introduces primary and secondary legal aid concepts. In her discussion with the Commissioner, the Minister of Justice, Etilda Gjonaj, stressed that this law is a result of the authorities' commitment to building a sustainable system of free legal aid and a budget has been earmarked for its implementation. The preparation of necessary by-laws is underway and is being carried out in close co-operation with relevant international partners, including EURALIUS and UNDP. The law provides for the establishment of a directorate within the Ministry of Justice as a responsible body for free legal aid, as well as legal aid offices in each of the country's four districts.

### 3.1 CONCLUSIONS AND RECOMMENDATIONS

91. The Commissioner welcomes the adoption in 2017 of the new Law on Legal Aid and the authorities' commitment to creating a sustainable and just free legal aid system.
92. Recalling the Council of Europe Committee of Ministers Resolution (78)8 on legal aid and advice and its Recommendation (93)1 on effective access to the law and to justice for the very poor, the Commissioner calls on the authorities to ensure an effective implementation of the 2017 Law on Legal Aid, with a view to facilitating effective access to justice for vulnerable persons and persons with economic difficulties, and to raise awareness among the broader public about the availability of free legal aid. The Commissioner encourages the authorities to continue engaging closely with civil society organisations which provide legal aid and draw on their extensive experience in this field.

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<sup>25</sup> UNDP, [Survey on Access to Justice in Albania](#), 2018.