



# PERS<sub>Q</sub>N

Kosovo Country Report  
on Legal Capacity  
June 2016

## **Country report on legal capacity in Kosovo**

### **PERSON Project in Kosovo**



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**ISDY** - Institute for Sustainability and Development of Youth

Office in Kosovo

Sahat Kulla No 24

20000 Prizren

Kosove

Email: [isdypishtina@gmail.com](mailto:isdypishtina@gmail.com)

**PERSON** – Partnership to Ensure Reform of Support in Other Nations

Address: Centre for Disability Law and Policy, National University of Ireland,  
Galway, University Road, Galway, Ireland.

Tel: +353 (0)91 494272. Fax: +353 (0) 91 495569.

Email: [joanna.forde@nuigalway.ie](mailto:joanna.forde@nuigalway.ie)

Skype: Centre for Disability Law and Policy, NUI Galway

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**Written by:**

Isuf Halimi, Executive Director for Southeast Europe/ISDY

Linda Simitciu Country Director for Kosovo/ISDY

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## Introduction

Fifty years after the armed conflict and eight years after the establishment of Kosovo as a state, people with disabilities continue to face many difficulties in various aspects of their lives. The challenges vary from basic support for living, scarce services, lack of social and medical insurance, challenges in entering education and receiving professional/vocational training, low employment, low and ineffective participation in policy-making and drafting of the laws, which would guarantee people with disabilities full enjoyment of human rights on an equal basis with the others. There is no reliable data about the number of people with disabilities in Kosovo. However, based on the latest WHO World Disability Report,<sup>1</sup> which suggests that 15% of the world population is with disabilities, we can assume there are anywhere between 170,000 to 260,000 people with disabilities in Kosovo. Given that Kosovo is in a state of post-conflict development, it is likely that this figure is at the higher end of the WHO estimate.

Although civil society organizations (CSOs) established by people with disabilities and their family members exist in Kosovo, their approach towards the disability rights issues remains fragmented and is highly influenced by the narrow interests of certain disability communities, which these organizations represent. Furthermore, due to the lack of services for people with disabilities, most of the existing CSOs have been overwhelmed with the need to provide services for the community, thus leaving them very few opportunities to act as advocates for their rights. The lack of a unified voice that comes from the community of people with disabilities and their families makes this community vulnerable when it comes to advancing their interests in the policies, laws and services, for which the final beneficiaries are people with disabilities.

The Government of Kosovo has already shown willingness to improve the situation of people with disabilities. In April 2009 it approved the National Action Plan for Persons

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<sup>1</sup> World Report On Disability (2011), published by World Health Organization and World Bank available at [http://www.who.int/disabilities/world\\_report/2011/en/](http://www.who.int/disabilities/world_report/2011/en/)

with Disabilities 2009-2011,<sup>2</sup> and now the approval of National Strategy for the Rights of People with Disabilities in Kosovo and National Action Plan 2013-2022 is pending.<sup>3</sup> CSOs of people with disabilities should serve as a resource for advice and consultation to the government in the implementation, and should take the leading role in monitoring the implementation of the pending Strategy, to ensure transparency and outreach.

Currently ISDY are partners in implementing the regional project PERSON (Partnership to Ensure Reforms of Supports in other Nations) whose objective is to increase the competencies of CSOs in Balkan states on both regional and national levels, to strategically advocate for and monitor reforms affecting persons with intellectual, cognitive and psycho-social disabilities. Both PERSON and the proposed action by government have common objectives, though different in scale. There is an obvious synergy between the two, and ISDY will seek to draw on and connect the experiences and results of both initiatives. ISDY Kosovo staff decided that there is a need for sustainable local activity in this particular field of human rights and thus registered as an independent organization in July 2010. This decision was strongly embraced by international non-government organizations (NGOs), who provide ongoing support for the work of ISDY, and with whom ISDY continues to work in close relationship in promoting of human rights and community-based services for people with mental disabilities in Kosovo.

Finally, despite the fact that there exists a considerable number of CSOs working in Kosovo, the number of organizations that work on the issue of human rights of people with intellectual and psychosocial disabilities is very small. Moreover, those few organizations that have decided that there is a need for treating the issues of intellectual and psychosocial disability in particular or in the context of the human rights of people

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<sup>2</sup> National Disability Action Plan for The Republic Of Kosovo 2009-2011(2009) available at [www.cooperazioneallosviluppo.esteri.it/pdgcs/download/Kosovo\\_Plan.pdf](http://www.cooperazioneallosviluppo.esteri.it/pdgcs/download/Kosovo_Plan.pdf)

<sup>3</sup>The Action Plan for the Implementation of the National Strategy on the Rights of Persons with Disabilities is available at [https://zqm.rks-gov.net/Portals/0/Docs/New%20folder/strategjia\\_nacionale\\_finale\\_per\\_shtyp\\_3\\_gjuhet\\_bardh\\_e\\_zi\\_88013.pdf](https://zqm.rks-gov.net/Portals/0/Docs/New%20folder/strategjia_nacionale_finale_per_shtyp_3_gjuhet_bardh_e_zi_88013.pdf) and National Strategy On The Rights Of Persons With Disabilities in The Republic Of Kosovo 2013-2023 available at [https://zqm.rks-gov.net/Portals/0/Docs/New%20folder/strategjia\\_nacionale\\_finale\\_per\\_shtyp\\_3\\_gjuhet\\_bardh\\_e\\_zi\\_88013.pdf](https://zqm.rks-gov.net/Portals/0/Docs/New%20folder/strategjia_nacionale_finale_per_shtyp_3_gjuhet_bardh_e_zi_88013.pdf)

with disabilities in general, lack the knowledge of successful experiences in the region on implementing these rights.

This report has been prepared by ISDY in order to set out the current law related to the deprivation of legal capacity of persons with intellectual and psychosocial disabilities in Kosovo. The report will provide an overview of the current laws, and will describe some of the initiatives of ISDY to bring about human rights-based reform in disability law and policy in Kosovo.

## **Current law on legal capacity**

The main laws relevant to legal capacity and its deprivation in Kosovo which affect persons with intellectual and psychosocial disabilities are the Law on Non-Contentious Procedures and the Mental Health Law. However, before considering these laws in detail it is important to set out the position of the Kosovo Constitution on the right to equal recognition before the law (including the right to legal capacity).

### **a) Kosovo Constitution**

The Constitution of the Republic of Kosovo, which entered into force on 15 June 2008, refers in its preamble to freedom, democracy and peace with particular emphasis on respect for human rights and for freedom for all citizens within the state (Articles 1 and 2).

Human rights and fundamental freedoms are considered indivisible, inalienable and inviolable and are defined as "basic legal order of the Republic" (Article 21), protected by the state and must be respected from all. Article 21 of the Constitution expressly stipulates the obligation of all authorities to respect the rights and freedoms of others; therefore this principle should be respected by all, including the institutions responsible for providing care and support to people with intellectual and psychosocial disabilities.

Discrimination is prohibited by the Constitution of the Republic of Kosovo, and guarantees equality while respecting the principles of human rights. Discrimination is prohibited in Article 24 of the Constitution, which stipulates equality before the law. This article states that everyone has the right to equal legal protection without

discrimination, that no one can be discriminated against on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, association with any community property, economic and social status, sexual orientation, birth, disability or any other personal status. However, Article 24(3) states that “principles of equal legal protection do not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures will apply until the purposes for which they are imposed no longer exist.” This provision is used to justify the existence of ‘protection’ measures, such as adult guardianship, based on a deprivation of legal capacity to persons with intellectual and psychosocial disabilities.

Article 22 of the Constitution provides for the direct application of international agreements and instruments in domestic law, including the Universal Declaration of Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (ECHR). This could also be interpreted to apply to the UN Convention on the Rights of Persons with Disabilities (CRPD), although Kosovo has not yet been recognized as a State Party which is empowered to ratify the CRPD.

#### **b) Kosovo Adult Guardianship Law**

The main law regarding the legal capacity of persons with disabilities is Law No. 03/L-007 on Non-Contentious Procedures. In general, the law provides for both full guardianship (total deprivation of legal capacity in all matters) and partial guardianship (where a person may retain legal capacity to make some kinds of decisions). The decision to place a person under guardianship is taken by a judge based on the evidence of three medical experts. Guardians are usually family members of the person concerned, but professional guardians from the Centres for Social Work can also be appointed if no suitable family member is willing to take on the role of guardian. The person to be placed under guardianship has a right to be heard by the judge and to be present at the hearing, as well as a right to appeal. The court can also decide in the course of a guardianship hearing to place the person in an institution. Further detail on the procedure to deprive a person of legal capacity is provided in the translation of the relevant articles below. The following section will list the relevant sections of the Law

on Non-Contentious Procedures, particularly related to the 2<sup>nd</sup> Part, on the ‘Regulation of Personal and Family Position’ and the ‘abolition and remittal of ability to act.’ Each relevant article will be cited in turn. Please note, this translation was prepared by the Kosovo Government. ISDY is concerned that the translation may not be fully accurate, but it is used here to indicate the relevant parts of law for legal researchers and other English language speakers concerned with legal capacity-related law.

### **Article 31**

*31.1 In the procedure of ability remitting to act court ascertains that it is the person of adult age, because of full inability or partly inability to judge, in condition to take care of his interest and rights and in accordance with this or partly takes the ability to judge.*

*31.2 In the procedure of remitting the ability to act the court fully or partly gives back to the adult person ability to act if it ascertains that are felt reasons that have influenced fully or partly.*

*31.3 Procedure from paragraph 1 of this article has to and as soon as possible and not later than 90 days, whereas procedure from paragraph 2 of this article must end inside the deadline of 30 days from the day in which has arrived in court proposal for remitting the ability for acting*

### **Article 32**

*Procedure for abolition and remitting the ability for acting begins according to proposal of:*

*a) custody body, b) husband or wife, children and parents of the person at which are created legal conditions, for abolition respectively remitting the ability to act, c) grandparents, brothers, sisters, nephew and other persons of this persons live in the same family community with the persons for which is proposed abolition, respectively remitter of the ability to act, d) another person foreseen by the law, e) court, f) health organization for curing mental sicknesses at which is person which has to abolished or remitted ability to act, g) procedure for abolition and remitting the ability for acting begins also with the proposal of the person whose abolished the ability to act.*

### **Article 33**

*For procedure developing according to authorized subject proposal is competent municipality court in which territory has a dwelling or temporarily dwelling of a person whose will be abolished or remitted ability to act.*

#### **Article 34**

*34.1 Proposal with which is initiated procedure should include facts in which can be rely, and probative means with which this facts are proved or will become believable.*

*34.2 When the procedure is not initiated according to official obligation or in base of curator ship body proposal or health institution proposal, proposal has to content also data from which results authorization for initiating the procedure.*

#### **Article 35**

*If the person who will be taken or remitted ability to act is the owner of real assets, court without delay, with the aim of noting the initiated procedure, will inform competent body for evidencing real assets.*

#### **Article 36**

*For initiated procedure court informs municipality competent service for births registers maintains works in which is registered person which is it taken or remitted ability to act, with the aim of evidencing initiated procedure.*

#### **Article 37**

*37.1 In this procedure the court decides after assessment of proofs in court hearing.*

*37.2. In all sessions for proposal investigation is summoned proposer, curator of the person, to whom is taken or remitted ability, respectively temporary representative custody.*

*37.3 Judicial session will be summoned in for the person to whom is taken the ability for acting, except when he according to court estimation is not in condition to understand importance and juridical consequences of his participations or nonparticipation in session.*

#### **Article 38**

*38.1 For acting ability abolition or remitter court decides according verified facts in court hearing.*

*38.2 If the person whom is taken, respectively remitted ability to act is settled in the institution in which pursues health activity, court can maintain court hearing in such institution and to listen such person*

*38.3 Court will estimate that if will question person to whom is developed procedure in presence of doctor which supervise his health condition while he is in health institution.*

*38.4 Court can quitclaim from listening of person to whom is developing the procedure only if such a thing is not possible at all taking in consideration health condition of this person, while before is assured doctors opinion which does his health supervise .*

### **Article 39**

*Court has for obligation to listen curator, respectively temporary representative, proposer and other persons that can give notification for person's life and behavior to whom is being developed the procedure.*

### **Article 40**

*40.1 Person to whom is being developed the procedure must be controlled by three medical experts of appropriate specialization who will give written ascertainment and opinion for psychic condition and ability of this person to judge.*

*40.2 Surveying is done in a presence of a judge, except when it is done in the health institution. In second case surveying must be commit within the deadline which court determine and which cannot be longer than 7 days.*

### **Article 41**

*41.1 If for ascertaining the health condition and ability of person to judge to whom is developed the procedure , according to expert opinion of medical profession , is necessary to be settled in health institution court can give judgment with which can determine that he temporarily but not more than 3 months to be settled in such institution.*

*41.2 If the health institution from paragraph 1 if this article is out matters court territory, than this court will commit necessary acting through competent court in territory of this is such institution.*

*41.3 Against judgment from paragraph 1 of this law is permitted complaint, The complaint does not impede distraintment of stroke judgment. Complaint can present person to who is developed the procedure, curator and temporary representative of such person.*

*41.4 Complaint is presented within the deadline of 3 days from the day of judgment surrender. Complaint together with matter file, court will send immediately to second step court, which has to decide within the deadline of 3 days from the day that has obtained complaint.*

#### **Article 42**

*42.1 When it confirms that there are reasons for abolition of ability to act, the court will abolish ability to act fully or partly to the person to whom is developed the procedure.*

*42.2 In judgment with which to person will be abolished ability to act, court according to medical expertise result can determine concrete juridical acts that this person can commit in independent manner.*

*42.3 Against judgment for ability abolition to act the person to whom is developed the procedure can present complaint.*

#### **Article 43**

*43.1 Court can delay a judgment for abolition from paragraph 1 of this article if the person to who is developed the procedure will restrain from misuse of alcohol or other toxic means if it can be accepted with the reason that the person to whom is developed procedure will restrain from misusing alcohol and other toxic means.*

*43.2 Court will delay judgment from paragraph 1 of this article if the person to who is developed the procedure with his initiative or by court proposal will inpatient to the health institution cure. Judgment announcement from paragraph 1 and 2 of this article is delayed for time of six to twelve months.*

*43.3 Judgment for delaying will be revoked if the person to who is developed the procedure continues to misuse alcohol or other toxic means within the time for which is delayed merit judgment.*

#### **Article 44**

*When the reasons rest existing for which to one person has been abolished ability to act, court according to official obligation or according to authorized persons proposal from article 32 of this law, will develop procedure and dependent on its result will give a judgment with which to such person fully or partly will be remitted ability to act.*

#### **Article 45**

*In the procedure for remitting the ability to act are implemented appropriately provisions of this chapter according to which is done act ability remitting.*

## Article 46

*Against judgment with which is abolished or remitted ability to act the right of complaint have persons that have participated in procedure within the deadline of three days from the day in which has been surrendered the judgment.*

## Article 47

*Final judgment for abolition or remitting of ability to act court will send to municipality competent service for maintaining the birth register also to competent body for maintaining register of real assets.*

### c) Mental Health Law

Kosovo introduced its Mental Health Law (Law No. 05/L-025) in November 2015.<sup>4</sup> It sets out procedures for involuntary detention and forced treatment in both mental health institutions and social care institutions as well as providing for forced treatment in the community. Despite the efforts of ISDY and the comments provided by the PERSON partners on an initial draft of the law in 2013, the law has not adopted the approach required by the UN CRPD, and allows for decisions about medical treatment for people deprived of legal capacity to be made by their guardians, without their personal consent.

The law does provide for voluntary treatment as well as involuntary detention and treatment, and includes a list of rights of all persons with ‘mental disorders’ including the right to participate in the development of an individual treatment plan, the right to claim compensation for damage caused by error in treatment or possible ill treatments and the right to request reconsideration of forced hospitalization or treatment. However, it does not respect the absolute prohibition on deprivation of liberty based on disability and the ban on forced treatment which has been repeatedly called for by the UN Committee on the Rights of Persons with Disabilities.<sup>5</sup>

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<sup>4</sup> <http://www.kuvendikosoves.org/common/docs/ligjet/05-L-025%20a.pdf> (Mental Health Law – final version – in English)

<sup>5</sup> Committee on the Rights of Persons with Disabilities, General Comment No.1 – Article 12: Equal Recognition Before the Law (April 2014) UN Doc. No. CRPD/C/GC/1, adopted at the 11<sup>th</sup> Session. and Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities:

According to Article 20, involuntary treatment can be authorized by a judge, regardless of whether or not the person has first been deprived of legal capacity by a court. The following criteria must be met before involuntary treatment can be imposed: there is a severe mental disorder that limits the person's ability to understand or control his / her behaviour; without involuntary treatment the person endangers the life, health or safety of himself or the others; existing possibilities for health treatment in community are exhausted and necessary medication can only be provided through in-patient treatment, in accordance with the least restrictive principles of treatment; the opinion of the affected person is considered and there are no available less restrictive measures to provide the necessary care.<sup>6</sup> Evidence of these criteria must be provided by a psychiatric-legal commission of specialised experts who report to the court, and the judge makes the final decision.

Kosovo Institutions, especially the Ministry of Health, sponsored the drafting of Law on Mental Health Law in Kosovo, which was initiated after an advocacy campaign of ISDY Kosovo. The Ministry of Health created the working group on drafting the law of Mental Health Law. After the designing of first draft, it was shared with DPOs and other stakeholders for participating with their comments on drafting the mental health law. It is worth noting the assistance and commitment of PERSON Project partners who provided assistance with our input into drafting the mental health law and pointed out the many ways in which the draft law did not comply with the UN Convention on the Rights of Persons with Disabilities. The Ministry of Health organized a public debate on the mental health law before sending the draft to the government for approval.

Since the beginning of the implementation of the project PERSON (2013), ISDY has consistently recommended changes to the drafting of the Mental Health Law. The Mental Health Law was originally drafted in 2013, but due to a change of legislation was passed in 2015. It was approved by the Assembly of the Republic of Kosovo in October 2015, and has now entered into force. With the entry into force of the Mental Health Law, institutions are obliged to regulate the detention and forced treatment of

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The Right to Liberty and Security of Persons with Disabilities, Adopted during the Committee's 14<sup>th</sup> session, held in September 2015.

<sup>6</sup> Article 20(2) ....

persons with psychosocial disabilities, or, in the terminology of the law ‘mental disorders’ in hospitals, residential institutions and in the community.

In preparing the drafting of the mental health law, ISDY was part of the Working Group on the law offering its expertise in this field. For some important parts, especially in the treatment of people with mental disorders, ISDY has provided concrete recommendations through the partners of the PERSON project, although these recommendations were not taken into consideration by the Commission that drafted the law.

ISDY since the beginning of monitoring institutions in mental health and social care, has found that physical restraint of persons with intellectual and psychosocial disability is widespread as a response to perceived challenging behaviour.<sup>7</sup> This restraint was undertaken without any legal basis and was not subject to legal oversight or regulation. People with mental disabilities placed in institutions of mental health and social care are mainly treated involuntarily. For many years people were held without any legal basis in these institutions and treated against their will. Since the enactment of the Mental Health Law, institutions are taking steps to improve this situation and have begun regulating the legal status of these persons who have been detained and forcibly treated.

Verification of their legal status is still a work in progress, but the percentage of those detained without any legal basis in these institutions, especially in the two largest institutions – both located within the Special Institution of Shtime (a mental health hospital under the jurisdiction of the Ministry of Health and a social care institution under the jurisdiction of the Ministry of Social Affairs) is reducing. In these institutions over 50% of residents were without a court decision or legal decision, and now almost all have had a ruling on their legal status. However, these rulings in general simply justify the continued detention and forced treatment of persons with psychosocial

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<sup>7</sup>See Kosovo Country Report (2014) available at <http://www.eu-person.com/publications/?wpa-paged=2> and Not On the Agenda: Human Rights of People with Mental Disabilities in Kosovo (2002) Report by Mental Disability Rights International available at [www.driadvocacy.org/wp-content/uploads/KosovoReport.pdf](http://www.driadvocacy.org/wp-content/uploads/KosovoReport.pdf)

disabilities in violation of the UN Convention on the Rights of Persons with Disabilities.

Similar problems exist in the so-called Integrated Community Houses for Persons with Disabilities, where people with intellectual and psychosocial disabilities are also placed at the request of their families but often without their own consent, and may experience forced treatment. However, ISDY is continuing to raise awareness about these human rights violations and to campaign for reform.

#### **d) The National Strategy on the Rights of Persons with Disabilities 2013-2023<sup>8</sup>**

The government of Republic of Kosovo has prepared a National Strategy on the Rights of Persons with Disabilities. The drafting of this document has been a joint effort of institutions, civil society and persons with disabilities, the strategy aims to make operational, through this strategic plan which has begun to apply across several ministries, aims at improving the living conditions and persons with disabilities. National Strategy runs from 2013-2023 and an Action Plan for 2013-2015 has also been developed.<sup>9</sup>

This National Action Plan is developed in parallel with the overarching Strategy and its objectives conform with the 2013-2023 strategy. The Nation Action Plan is focused on five strategic objectives;

- ❖ Improving health services
- ❖ Creation of a functional service system
- ❖ Creating the conditions for inclusion in education
- ❖ Creation of legal infrastructure
- ❖ The creation of equal conditions for access, information and data

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<sup>8</sup> Strategy available at [https://zqm.rks-gov.net/Portals/0/Docs/New%20folder/strategjia\\_nacionale\\_finale\\_per\\_shtyp\\_3\\_gjuhet\\_bardh\\_e\\_zi\\_88013.pdf](https://zqm.rks-gov.net/Portals/0/Docs/New%20folder/strategjia_nacionale_finale_per_shtyp_3_gjuhet_bardh_e_zi_88013.pdf)

<sup>9</sup> National Action Plan available at <https://zqm.rks-gov.net/Portals/0/Docs/eng/aft/ACTION%20PLAN%20ON%20THE%20IMPLEMENTATION%20OF%20THE%20NATIONAL%20STRATEGY%20ON%20THE%20RIGHTS%20OF%20PEOPLE%20WITH%20DISABILITIES%20IN%20THE%20REPUBLIC%20OF%20KOSOVO%202013-2015.pdf>

The National Strategy on the Rights of Persons with Disabilities 2013-2023 (the Strategy) sets out the long-term aims of the Republic of Kosovo in protecting and promoting the rights of persons with disabilities. The Strategy is drafted, according to the government, ‘in compliance with the principles declared in the United Nations Charter, Universal Declaration of Human Rights and International Treatises on Human Rights. The Strategy sets out the collaborative approach of the government and its willingness to work with civil society in its implementation. According to the Strategy:

“(S)pecial emphasis is placed in cooperating with the organizations of persons with disabilities as part of the partnership between the Institutions of the Republic of Kosovo and civil society that have contributed so much in drafting this document and continue to be one of the most important promoters in all aspects of persons with disabilities themselves in the entire country.”<sup>10</sup>

The principles of the Strategy are as follows:

- *Respect for inherent dignity, individual autonomy including the freedom to make personal choices and personal independence;*
- *Non-discrimination;*
- *Full and effective participation and inclusion in society;*
- *Respect for the differences and acceptance of persons with disabilities as part of human diversity and humanity;*
- *Equal opportunities;*
- *Access;*
- *Gender equality;*
- *Respect for developing capacities of children with disabilities and respect for the rights of children with disabilities to preserve their identity.*<sup>11</sup>

Importantly, the Strategy indicates that ‘public policies will comply with these

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<sup>10</sup> Page 7, Strategy available at [https://zqm.rks-gov.net/Portals/0/Docs/New%20folder/strategjia\\_nacionale\\_finale\\_per\\_shtyp\\_3\\_gjuhet\\_bardh\\_e\\_zi\\_88\\_013.pdf](https://zqm.rks-gov.net/Portals/0/Docs/New%20folder/strategjia_nacionale_finale_per_shtyp_3_gjuhet_bardh_e_zi_88_013.pdf)

<sup>11</sup> Strategy available at [https://zqm.rks-gov.net/Portals/0/Docs/New%20folder/strategjia\\_nacionale\\_finale\\_per\\_shtyp\\_3\\_gjuhet\\_bardh\\_e\\_zi\\_88\\_013.pdf](https://zqm.rks-gov.net/Portals/0/Docs/New%20folder/strategjia_nacionale_finale_per_shtyp_3_gjuhet_bardh_e_zi_88_013.pdf) page 9.

principles, including the all inclusive and non-discrimination policies.<sup>12</sup> All of these issues are tied to equality before the law and legal capacity. ISDY has built an alliance with the Office of the Prime Minister/Office for Good Governance who was responsible for developing the strategy. The next phase of the project could see this relationship strengthened could both assist the government to implement the strategy and put pressure on them to do so in ways that respect Article 12 on the right to legal capacity.

The Republic of Kosovo, according to the Strategy, is ‘maximally engaged and dedicated to draft and create the necessary legal infrastructure, policies, sustainable programs and institutional mechanisms for the protection and promotion of these rights both in the central and local level of governance.’<sup>13</sup> ISDY can build on this aim. The Strategy lists a number of laws that are relevant to people with disabilities but it does not include the Law No. 03/L-007 on Non Contentious Procedures. This is the primary law in which legal capacity of persons with disabilities is denied or restricted. Of all laws, this is the most important law which needs to change if people with disabilities in Kosovo are to have equal recognition before the law, including the right to legal capacity on an equal basis with others. But this law is not mentioned in the Strategy on the list of laws requiring attention and CSOs, including ISDY are should advocate to add reform of this law as a priority in the Strategy. There are five strategic objectives of the Strategy: Health, Social Welfare and Employment, Education, Legal Protection, Access (information, communication, participation) Statistics. Strategic Objective 4, (Equal access to legal protection as well as provision of services in the local level for the fulfillment of the right of persons with disabilities) is most relevant to legal capacity.

However, all of the strategic objectives are affected by laws that restrict or deny legal capacity. In other words, if a person is found to lack the capacity to act, as defined in Article 31 and 32 of the Law No. 03/L-007 on Non Contentious Procedures, legal ability to make decisions about healthcare, employment, education, and access to services on an equal basis with others, are all compromised. Finally, there is no reliable

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<sup>12</sup> Strategy available at [https://zqm.rks-gov.net/Portals/0/Docs/New%20folder/strategjia\\_nacionale\\_finale\\_per\\_shtyp\\_3\\_gjuhet\\_bardh\\_e\\_zi\\_88\\_013.pdf](https://zqm.rks-gov.net/Portals/0/Docs/New%20folder/strategjia_nacionale_finale_per_shtyp_3_gjuhet_bardh_e_zi_88_013.pdf) page 9.

<sup>13</sup> Strategy available at [https://zqm.rks-gov.net/Portals/0/Docs/New%20folder/strategjia\\_nacionale\\_finale\\_per\\_shtyp\\_3\\_gjuhet\\_bardh\\_e\\_zi\\_88\\_013.pdf](https://zqm.rks-gov.net/Portals/0/Docs/New%20folder/strategjia_nacionale_finale_per_shtyp_3_gjuhet_bardh_e_zi_88_013.pdf) page 13.

data about the number of people with disabilities in Kosovo, and statistics related to legal capacity restrictions or denials are non-existent.

Strategic Objective 4, on creating the legal infrastructure to respect and fulfill the rights of persons with disabilities, is defined as follows:

“Republic of Kosovo has continuously been focused in completing the national legislation for protecting and guaranteeing the rights of persons with disabilities on equal grounds with all citizens, but a lot still remains to be done. Following actions should be undertaken in fulfilling this strategic objective: promotion, self-awareness and acknowledging the rights of PWD, reviewing the legislation from the human rights perspective, ensuring that the legislation is in compliance with international obligations on human rights, etc. Furthermore, it is also demanded equal access to justice bodies for PWD, appropriate legal procedures aiming to facilitate their effective role as direct and indirect participants or even witnesses in all legal procedures.....”<sup>14</sup>

The strategy also identifies monitoring, reporting and implementing mechanisms to ensure the rights of persons with disabilities in Kosovo are respected. According to the Strategy, ‘all the institutions of both the central and local level that have participated in drafting the Strategy in cooperation with civil society’ have responsibilities for monitoring and implementation.<sup>15</sup> The Strategy also establishes a National Disability Council as well as a specific Committee on Monitoring, Reporting and Evaluating the National Strategy on the Rights of People with Disabilities. During the reporting phase all responsible institutions (ministries, municipalities, agencies and other relevant institutions in the country) are obliged to report to the Office for Good Governance/Office of the Prime Minister every six months on the achievements and encountered barriers

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<sup>14</sup> Strategy available at [https://zqm.rks-gov.net/Portals/0/Docs/New%20folder/strategjia\\_nacionale\\_finale\\_per\\_shtyp\\_3\\_gjuhet\\_bardh\\_e\\_zi\\_88\\_013.pdf](https://zqm.rks-gov.net/Portals/0/Docs/New%20folder/strategjia_nacionale_finale_per_shtyp_3_gjuhet_bardh_e_zi_88_013.pdf) page 16.

<sup>15</sup> Strategy available at [https://zqm.rks-gov.net/Portals/0/Docs/New%20folder/strategjia\\_nacionale\\_finale\\_per\\_shtyp\\_3\\_gjuhet\\_bardh\\_e\\_zi\\_88\\_013.pdf](https://zqm.rks-gov.net/Portals/0/Docs/New%20folder/strategjia_nacionale_finale_per_shtyp_3_gjuhet_bardh_e_zi_88_013.pdf) page 18.

during the implementation of the Action Plan for the implementation of the Strategy.

Throughout the 10 year plan, three year Action Plans are developed to ‘reflect and define the specific and concrete measures for each institution together with the implementation indicators, financial resources and time limits.’<sup>16</sup> The National Action Plan from 2013-2015 lists certain laws which are prioritized for reform in order to comply with the aims of the overarching Strategy. However, the Law on Non-Contentious Proceedings is not one of the laws currently prioritized for reform. ISDY along with other CSOs representing persons with disabilities and their families will continue to advocate for the inclusion of the Law of Non-Contentious Proceedings, the Mental Health Law, and other laws regulating the deprivation of legal capacity in the next National Action Plan.

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<sup>16</sup> Strategy available at [https://zqm.rks.gov.net/Portals/0/Docs/New%20folder/strategjia\\_nacionale\\_finale\\_per\\_shtyp\\_3\\_gjuhet\\_bardh\\_e\\_zi\\_88\\_013.pdf](https://zqm.rks.gov.net/Portals/0/Docs/New%20folder/strategjia_nacionale_finale_per_shtyp_3_gjuhet_bardh_e_zi_88_013.pdf) page 9.

## Information on other areas of law and compliance with Article 12

### a) Voting

In general, persons deprived of legal capacity are also deprived of the right to vote in Kosovo. However, where persons have only been partially deprived of legal capacity, the judge placing them under partial guardianship has the power to determine whether they can retain the right to vote. Since many persons with intellectual and psychosocial disabilities were until recently, not formally deprived of legal capacity, they retained the right to vote even where they were resident in institutions. However, since the enactment of the Law on Non-Contentious Proceedings and the Mental Health Law, there has been an increase in the numbers of persons formally deprived of legal capacity, and this usually entails a deprivation of the right to vote.

Elections and voting processes are monitored by CSOs focused on disability – to encourage individuals with disabilities to participate fully in the civil registration process, conducting public outreach and information campaigns, and implementing field-based procedures to accommodate the needs of people with disabilities in political participation. For example, during the Kosovo local elections in November 2013, 26 of 37 persons with psychosocial disabilities who are resident in the Mental Health Institution in Kosovo (Stimje Institute) have exercised their rights to vote. The rest of the residents abstained from their right to vote.<sup>17</sup>

Persons with disabilities are entitled to vote if they are not deprived of legal capacity. However, during the process of voting there are many obstacles that they face in the electoral process. Included in these obstacles are polls that are not prepared for making accommodations for people with intellectual disabilities, including easy to read materials and independent assistance. There are also reports regarding the misuse of votes of persons with intellectual and psychosocial disabilities in Kosovo. In some

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<sup>17</sup>[http://krct.org/web/images/Menu\\_Reports/monitoring\\_reports/T\\_DREJTAT\\_E%20NJERIUT\\_N%20INSTITUCIONET\\_E%20SHNDETIT\\_MENDOR\\_2013\\_QKRM\\_T\\_.pdf](http://krct.org/web/images/Menu_Reports/monitoring_reports/T_DREJTAT_E%20NJERIUT_N%20INSTITUCIONET_E%20SHNDETIT_MENDOR_2013_QKRM_T_.pdf)

cases, it has been reported that their vote is misused by their own parents.<sup>18</sup> In terms of representing the issues facing people with disabilities, political parties have yet to campaign or provide policy information on mental disability people; including their citizenship rights, improving the education system, and regulation of the welfare.

#### **b) Family law including marriage, adoption etc.**

Full deprivation of legal capacity in Kosovo automatically entails a deprivation of the right to marriage and parental rights. However, where a person is only partially deprived of legal capacity, the judge may decide to allow the person to retain the right to marry or parental rights.

#### **c) Consent to medical treatment**

The Kosovo Health Law No. 04/L-125 specifies the consent to medical treatment for people with intellectual and psychosocial disabilities. Article 3 of the Health Law defines ‘disabled person’ as:

a person temporarily or permanently disabled and completely limited who is between eighteen (18) and sixty-five (65) years-old, who has a medical diagnosis of such conditions: physical, sensory, and mental illness or disability that makes them unable to undertake work, and for whom, after professional evaluation, relevant Ministry has taken a decision that meets the criteria set by law.

In general, people with disabilities retain the right to give free and informed consent to treatment as long as they are not deprived of legal capacity, in which the guardian is authorized to consent or refuse medical treatment on the person’s behalf. The Health Law also provides for emergency treatment without consent even where the person retains legal capacity where there is an “immediate change occurring in the health status,

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<sup>18</sup>[http://www.krcet.org/web/images/Menu\\_Reports/monitoring\\_reports/HUMAN%20RIGHTS%20SITUATION%20IN%20MENTAL%20HEALTH%20INSTITUTIONS-2013.pdf](http://www.krcet.org/web/images/Menu_Reports/monitoring_reports/HUMAN%20RIGHTS%20SITUATION%20IN%20MENTAL%20HEALTH%20INSTITUTIONS-2013.pdf) page 62

which in a situation of lack of an urgent healthcare, poses a risk of death or of serious damage to the health of the citizen and resident.”<sup>19</sup>

#### **d) Consent to sex**

According to our research, no law exists in Kosovo which is related to legal capacity and consent to sex. Sex education in Kosovo remains a low priority in policy (and law). However, there remain serious issues around the reproductive rights of people with disabilities. Kosovo is noted in various international reports, where the reproductive rights of the people with disability are not respected. Violation of these rights occur in mental health institutions such as the Mental Health Institute, Stimje, from which a number of cases are recorded where women were forcibly sterilised in order to prevent pregnancy within the institution. A report entitled, ‘Behind closed doors in Shtime - Human Rights on Mental Disability Rights in Kosovo’ (2013) included the following account:

"SABRIA has made up her mind to get married. Her dream husband is called Naser. Sabria may also have other dreams within her world of several square meters in Special Institute in Stimje. Even to have her own child, but, she may be among the women and girls here who have been forcibly sterilized.”<sup>20</sup>

#### **e) Financial decision making**

People with intellectual and psychosocial disabilities may be deprived of their property and financial decision-making rights following a determination that they lack the ‘legal capacity’ to act under Article 31 of the Law of Non-Contentious Proceedings. Once such a determination is made, the person’s finances are determined by the appointed guardian. The extent to which a person has a say over this fund is entirely dependent

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<sup>19</sup> Article 3, Kosovo Health Law No. 04/L-125

<sup>20</sup> ISDY, ‘Behind closed doors in Shtime - Human Rights on Mental Disability Rights in Kosovo’ (2013). Please contact ISDY if you would like a copy of the ‘Behind Closed Doors’ report.

on the discretion of the family member, or public official. There is no duty to enquire as to the will and preference of the relevant person.

The Ministries of Justice, Health and Social Welfare are the only responsible ministries for supporting the Mental Health Institutions in Kosovo. The Ministry of Health is funding mental health services in Kosovo, and in practice, they argue that health and social services is the place for which the funds of persons with psychosocial disabilities should be directed. The Ministry of Health also funds closed institutions for persons with psychosocial disabilities. If a person who is found to lack the 'ability to act' due to psychosocial disability, and is appointed a legal guardian by the state, then his or her finances are directed by the legal guardian. Where this legal guardian is a staff member of a health institution in which the person resides, the person's finances will typically be directed to this institution, in violation of the rights contained in Article 12 CRPD.

## Legal Capacity Law Reform Campaign in Kosovo

ISDY, in a coalition with a number of CSOs, have initiated campaigns on legal capacity reform. This coalition successfully stalled the approval of a National Strategy on Mental Health in 2007 because the needs and priorities of people with psychosocial disabilities were not taken into consideration. ISDY organized several workshops with DPOs from which emerged key recommendations which were sent to authorities for revising the National Strategy which was eventually published in 2008 and runs from 2008-2013.

Further, on December 10<sup>th</sup> 2013, ISDY published the monitoring report of Mental Institutions in Kosovo on the rights of disabled people. The findings and recommendations were sent to related ministries of the Kosovo Government, international authorities, civil society organizations and media outlets.

On 10 December 2013, 3 TV Talk (a national television station) broadcast information about ISDY's campaign on legal capacity and approximately 8 newspapers articles on legal capacity were published which discussed the PERSON Project in Kosovo. ISDY is the only organization in Kosovo which works with disability organisations on legal capacity reform.

ISDY organized the first International Conference on “Legal Capacity – Human Rights Lawyers” in April 2014 in Prishtina in the Prime Ministry Building. The participants in this conference were a large number of different types of people from relatives of people with disabilities to government representatives, KDF and NGO members, Prime Ministry office, Ministry of European Integration, families of people with disability, Prosecutors, chamber of lawyers, deputies. The major issues arising from the conference were as follows:

- Education (challenges in education)
- Social isolation
- Lack of legal services
- Lack of implementation of the law

- Ensuring Strategy is Implemented
- Initiation of the Kosovo Disability Forum
- Technical assistance from other countries

ISDY embraced the Right to Act campaign in April 2015 and for the three months of the campaign, throughout Kosovo ISDY have promoted the campaign and taken part in several activities in order to raise awareness. They promoted the Right to Act campaign amongst members of the Kosovo Disability Forum and the general public through their participation in a [mini-marathon](#) in Pristina, Kosovo.

The first Regional Conference was held in South East Kosovo in Prizren on 19 April 2016. The focus was the Legal Capacity and Human Rights. Participants in this conference were a large number of different types of people from relatives of people with disabilities to government representatives, KDF and DPO members, Directors of Social Welfare Centres, Institution of Ombudsmen Office, and human rights organisations. Issues arising from the conference included social isolation, lack of legal services, the municipality strategy and action plans for persons with disability and every day challenges.<sup>21</sup>

### **Ombudsperson Analyzed the Situation in Kosovo**

The Ombudsman published a report on the situation of persons with intellectual disabilities detained in institutions in 2015.<sup>22</sup> This report noted that the removal of the ability to act for residents in institutions had been undertaken by the Ministry of Labor and Social Welfare (MPMS). The report found that a total 124 residents were located in 7 institutions, the Shtime Special Institute (ShSI), Children House with mental disabilities (ChH) in Shtime, and in the community-based Houses (CBH), in Ferizaj, Vushtrri, Deçan, Kamenica, Gracanica. Of these 124 residents, 41 of them had a court verdict on their detention, 12 of them did not possess any identification document, and 9 of them still possessed identification cards issued by the United Nations Mission in

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<sup>21</sup> The agenda and photos from the event are available at <http://www.eu-person.com/news-events/>

<sup>22</sup> <http://www.ombudspersonkosovo.org/sq/lajme/AVOKATI-I-POPULLIT-PUBLIKOI-RAPORTIN-EX-OFFICIO-NUMER-7572015-1391>

Kosovo (which ceased operation in 2008), and had no up to date identification issued by the relevant municipalities, or local or national authorities.

Based this evidence, the Ombudsman reported many people with intellectual disabilities were detained in residential institutions without personal documents and judicial decisions, authorisation the deprivation of legal capacity or forced treatment, in violation of the Administrative Guide (AG) no.11 / 2014, and applicable laws. There is also a concern that this detention restricts the freedom of movement of persons under international human rights law.<sup>23</sup>

Based on the information, evidence, facts and legal analysis made, ISDY notes that many state institutions where people with intellectual and psychosocial disabilities are detained, have incomplete files concerning legal decisions on detention, forced treatment or removal of the ability to act.

#### **a) Relevant CSOs**

The ISDY's conferences on legal capacity law reform included a number of relevant CSOs. This included disabled peoples organizations (particularly the Kosovo Disability Forum), family organizations (particularly the Down Syndrome parents association) and general human rights organizations. Other organisations such as the Kosovar Rehabilitation Center for Torture Victims (KRCT)<sup>24</sup> and the Mental Disability Advocacy Centre (MDRC)<sup>25</sup> may also be well positioned to advocate for the rights of persons with disabilities. KRCT has conducted some monitoring in the mental health context. In 2010 KRCT helped to train monitors of psychiatric and social care institutions so as to promote the right to be free from ill-treatment and the right to live in the community<sup>26</sup>.

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<sup>23</sup> ICCPR

<sup>24</sup> <http://www.krct.org/site/>

<sup>25</sup> <http://mdac.info/en/where-we-work/kosovo>

<sup>26</sup> available at <http://mdac.info/freedom-from-ill-treatment>

## **b) State-Level Allies for Legal Capacity Law Reform**

ISDY considers the Ministry of Health, Ministry Labor and Social Welfare, Ombudsman and European Disability Forum as crucial partners for legal capacity law reform in Kosovo.

ISDY has conducted several meetings with the organizations of people with disabilities representing different communities; the organizations signed the declaration of agreement to work jointly in establishing the Kosovo Disability Forum, as an independent organization of people with disabilities and their families.

The Forum will represent the interests of all people with disabilities of Kosovo without exception, and will help to ensure inclusion and participation of people with disabilities in decision-making processes concerning disability law and policy.

This action aims to reach PERSON's overall objective 2: To bring together like-minded civil society organizations in Balkan states to support people with disabilities to exercise their rights on an equal basis with others, through bringing together like-minded CSOs in national level first. It is also a positive action towards achieving PERSON Specific objective, to increase the competencies of CSO's on both regional and national levels to strategically advocate and monitor reforms affecting persons with psycho-social and intellectual disabilities.

## **c) Organisations Relevant to Establishing Supported Decision-Making Pilots**

The Kosovo Disability Forum (KDF) is an umbrella organization of various disability people's organisations and other non-government organisations focusing on disability. It was to be established in 2000 but was unable to form until 2014, with the assistance of ISDY as part of the PERSON project. Even with the initiative of many international organizations and the international community, this forum was not formed by the start of the PERSON project. As such, ISDY has mobilized a disability self-advocate group since the PERSON project began and has moderated project in the establishment of the KDF. KDF is organized similar to the European Disability Forum. After KDF was

established, they were greeted by the Government of Kosovo. The Prime Minister's Office of Good Governance had a joint meeting with the KDF. The EU Office was informed about the meeting and also attended in order to monitor the meeting.

KDF is composed of an Assembly made up of a network of organisations representing persons with disabilities and family members. A Board of Directors is directly voted by the assembly of the KDF. The vice-president of KDF, *Bujar Kadriu*, is a person with intellectual disability. ISDY / PERSON have monitored the assembly and is providing ongoing technical assistance for their activities.

#### **d) Media Reporting on Legal Capacity**

On the day of publishing the monitoring report on the rights of peoples with disabilities in Mental Health Institutions (10 December 2013), ISDY organized a media conference. This resulted in national daily newspapers reporting on the monitoring efforts. Finally ISDY took part in media programs which discussed the monitoring report and legal capacity.<sup>27</sup> As noted, on 10<sup>th</sup> December 2013, approximately 8

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<sup>27</sup> <http://infoglobi.com/jete-e-rende-ne-institucionet-e-shendetit-mental/> “15 May 2014”

[http://www.ombudspersonkosovo.org/repository/docs/1718-2015,\\_Rekomandim\\_\(shqip\)\\_247682.pdf](http://www.ombudspersonkosovo.org/repository/docs/1718-2015,_Rekomandim_(shqip)_247682.pdf)

<http://www.kosovapress.com/sq/nacionale/rekomandohet-mbyllja-e-ishm-te-shtimes-7243/>“15 May 2014”

<http://www.telegrafi.com/lajme/rekomandohet-mbyllja-e-ishm-se-ne-shtime-2-38940.html>“15 May 2014”

<https://www.facebook.com/profile.php?id=100010876716937&fref=ts>

<http://www.kosovalive360.com/isdy-kerkon-mbylljen-e-institutit-te-shendetit-mendor-ne-shtime.html>“15 May 2014”

newspaper articles on legal capacity in Kosovo were published which the project PERSON was discussed. ISDY is the organization in Kosovo which works directly on legal capacity law reform and disability.

## **Future Plans for Legal Capacity Campaigning**

An important aspect of the ongoing campaign for legal capacity law reform and ISDY's plan for the future is the creation of an inter-ministerial group for deinstitutionalization and the establishment of independent mechanisms for investigation, oversight and enforcement of the protection of rights of persons with disabilities. ISDY plans to use the opportunity to work together with the Kosovo Disability Forum to identify possible partners for future pilot projects on supported decision-making. Further, ISDY can use the opportunities presented in the development of the next National Action Plan to support the National Strategy on the Rights of Persons with Disabilities to ensure that the Law on Non-Contentious Proceedings and the Mental Health Law are prioritised for further reform.

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<http://illyriapress.com/dyshime-per-heqje-te-mitrave-e-abuzime-seksuale-paciente-ne-shtime/>“15 May 2014”

Social Media YouTube: <https://www.youtube.com/watch?v=N4sqkID7XF8>“15 May 2014”

<https://www.facebook.com/profile.php?id=100010876716937&fref=ts0>

## Conclusion

In short, legal capacity reform in Kosovo has a long way to go in order to become compliant with Article 12 CRPD. To date the various reforms which have been introduced have only sought to regulate existing de facto deprivation of legal capacity, liberty and the removal of the right to informed consent to medical treatment (particularly in the context of mental health) for people with intellectual and psychosocial disabilities, rather than to abolish or critique these forms of human rights violations. ISDY will continue to work with other CSOs to raise awareness of the need for legal capacity reform.

# PERSON

PARTNERSHIP TO ENSURE  
REFORM OF SUPPORTS IN  
OTHER NATIONS

PERSON, Centre for Disability Law & Policy, National University of Ireland, Galway, Ireland  
P: +353 (0)91 494272 / E: [eu.person@nuigalway.ie](mailto:eu.person@nuigalway.ie) / W: [www.eu-person.com](http://www.eu-person.com)

## Partner Organisations



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