



## CENTER FOR LEGAL CIVIC INITIATIVES

### SHADOW REPORT

Submitted to the 64th session of CEDAW

This report is presented by the Center for Legal Civic Initiatives as a Shadow Report to the report submitted by the Albanian Government at CEDAW sixty-fourth Session<sup>1</sup>.

**Topics.** The report treats two main issues related directly to gender equality in the Albanian family and society, especially related to women's economic position in the Albanian society. For this reason the report is divided in two parts. The first part analyses the institutional responsibility in relation to the execution of the court decisions on the food compensation obligation to be paid for the children. While the second part, examines women's situation in relation to the property in the family.

**Methodology.** For the preparation of this report the Center for Legal Civic Initiatives is based on the summary of the results of the work conducted for the implementation of two projects. The projects are entitled as follows:

*"Support women's access to property through increased access to information, legal counselling and awareness"*<sup>2</sup>.

*"Strategic Issues for the Protection of Economic Rights of children and women in Cases of divorce"*<sup>3</sup>.

The experience gained during the process of providing free legal aid to protect the rights of the GB&DV women and of the women who do not have economic possibilities to hire a private lawyer has been a great help for the preparation of this report<sup>4</sup>. It is a daily activity conducted by the Center for Legal Civic Initiatives. Such an activity has created the conditions to know the problems and to identify the respective findings and conclusions. Previous surveys, analyses and

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<sup>1</sup> This report is prepared by Aurela Anastas, assisted by Aurela Bozo and Iris Aliaj.

<sup>2</sup> Center for Legal Civic Initiatives in collaboration with Central Immovable Property Registration Office, National Chamber of Notaries and National Bar Association, has implemented the project **"SUPPORT WOMEN'S ACCESS TO PROPERTY THROUGH INCREASED ACCESS TO INFORMATION, LEGAL COUNSELING AND AWARENESS"** supported by United Nations Entity for Gender Equality and the Empowerment of Women (UNWOMEN).

<sup>3</sup> CLCI has implemented the project **"STRATEGIC ISSUES FOR THE PROTECTION OF ECONOMIC RIGHTS OF CHILDREN AND WOMEN IN CASES OF DIVORCE"** during the period July 29, 2014 - January 31, 2015, supported by UNDP Albania with funds from the Government of Sweden in the framework of GoA-UN Programme of Cooperation 2012-2016. This is an ongoing project for year 2016-2017. In the framework of this project CLCI produced a report on **"Key findings from monitoring decisions of the Court of First Instance in Tirana, with regard to divorce and its consequences"**. January – December 2014.

<sup>4</sup> Free Legal Aid is exercised due to the support of CRD and Soros Foundation.

reports have been very helpful as well<sup>5</sup>. Usually, a special help is given by the statistics and data, but the statistics and data from the point of view of the right for ownership, at a national level, have been limited.

## **I. The execution of court decisions with regard to the payment of alimony in favour of children in cases of divorce.**

### **CEDAW Convention.**

“States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations ...” (Article 16 of the Convention)

“States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: 2. (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; 2. (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination...”; (article 2)

### **Concluding observations of the Committee on the Elimination of Discrimination against Women, Albania**

The Committee further recommends that temporary special measures be applied in order to ensure the equality of women and men in accessing property, capital and credits, health-care services, housing and, more generally, all the components of an adequate standard of living...

The Committee invites the State party to provide, in its next periodic report, detailed information about the enforcement of the Family Code in relation to property ownership in marriage and following its dissolution<sup>6</sup>.

#### **1. Brief introduction of the situation.**

Whenever analysing the difficult economic situation of divorced or unmarried mothers, one of the most common problems is their economic weakness. Thus, among others, there is need to examine the payment of alimony in favour of children from the debtor parent, as an important issue to ensure the children's welfare. Usually, the mother is appointed to raise and educate the child, while the father is obliged to pay a monthly alimony. By monitoring the judgments of the Court of First Instance in Tirana, during 2011-2014 it results that on average, in 87% of cases of divorce, mothers have direct responsibility for the upbringing and education of child, while the

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<sup>5</sup> See, “*Të drejtat Pronësore të Grave. Rasti i Shqipërisë. Analizë e standardeve ligjore dhe e zbatimit të tyre në praktikë*” (The property rights of women. Case of Albania. Analyse of the legal standards and their application into practice), prepared by Arta Mandro, technically and financially supported by United Nations Entity for Gender Equality and the Empowerment of Women (UNWOMEN), in collaboration with the Ministry of Social Welfare and Youth and the Ministry of Justice, Tirana, 2013.

<sup>6</sup> Committee on the Elimination of Discrimination against Women, Forty-sixth session, 12–30 July 2010

father pays the alimony<sup>7</sup>. During monitoring, we could not identify a unified practice of a living wage necessary to bring up children.

There are not identified cases in which women in divorce process have asked alimony from the other spouse<sup>8</sup>.

## **2. Legislation.**

In Albania, the execution of court decisions with regard to the payment of alimony in favour of children is regulated by the Family Code and the Civil Procedure Code, which provide several guarantees. Article 210 of the Family Code explicitly says that the support obligation begins from the date of the filing of the petition. However, this act does not consider the court decision as directly executable and this leads to several problems in practice. This means that the interested person has to start the execution, in this case the parent who is keeping the children. Furthermore, Article 211 of the Family Code explicitly states that when a verdict, containing a support obligation, is executed 6 months after the date the verdict became final, the outstanding support can be requested only for the last 6 months. Experience shows that the creditor parent usually starts executing the decision after 6 months or 1 year, which leads to partially executed obligations. This often happens because parents are not aware of their lawful rights and obligations or because they are waiting for a voluntary execution by their former spouse. This situation has led to an increasing number of cases, where the execution of the decision extends outside the legal deadlines.

In this circumstance, there is urgent need for *free legal assistance*, for which a competent institution exists but it has never functioned in this aspect (Legal Aid Commission<sup>9</sup>). In the meantime, the aid provided by NGOs is insufficient.

## **3. Collection and publication of statistical data.**

While undertaking an initiative to monitor the situation of the execution of court decisions on children alimony, we immediately encountered a lack of statistical data. In the Statistical Yearbook, which is published annually by the Ministry of Justice, there was no evidence and therefore we could not reach any conclusion on this matter. We did not manage to get any statistics, even by the executive offices of the judicial districts, while there were no indications from the Chamber of Private Bailiffs either. We asked for a list or a database of debtors, but there was no trace of it. In a situation, where private bailiffs act to execute some of these decisions, the collection of statistical data becomes more difficult. Although we do not have specific statistic published by state institutions<sup>10</sup>, some official and indirect data, as well as records of NGOs, make us believe that there is a considerable number of court decisions that are not executed, or partially executed.

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<sup>7</sup> Report of the Centre for Legal Civic Initiatives; "Report on key findings from monitoring decisions of the Court of First Instance in Tirana, with regard to divorce and its consequences". January – December 2014, in the framework of the project "Strategic Issues for the Protection of Economic Rights of children and women in Cases of divorce", with the support of the United Nations Development Program Albania and funded by the Government of Sweden..

<sup>8</sup> According to Article 199 - Obligation between spouses, "A spouse, who is incapable of working and without sufficient means to live, has the right to request alimony from the other spouse. A request for alimony should be made in the petition for the dissolution of the marriage. This request may also be submitted within 6 months from the date the decision for the dissolution of marriage becomes final, if the conditions for the incapacity to work or insufficiency of means to live existed during the marriage."

<sup>9</sup> Law No.10 039, date 22.12.2008, "On legal aid".

<sup>10</sup> The Ministry of Justice of the Republic of Albania publishes statistical yearbooks, which provide the dynamic of criminal and civil processes in Albania. But from these annuals it is impossible to reach specific conclusions on the execution rate of court decisions regarding the payment of alimony to children.

Based on official data for cases of the criminal process regarding “Denial of support” (Article 125 of the Criminal Code), it results that the Albanian courts have previously handled cases with this object and also convicted those who have violated this provision. The annual statistic provided by the Ministry of Justice shows that during 2010-2014, there have been 331 criminal cases with the same object and 229 persons were convicted, as shown in Table no.1 in the annex of this Report. Whereas, only during 2014 there were 108 cases and 44 of them were convicted, 28 of them being sentenced to prison and 16 receiving a fine.

However, the table cannot reveal a clear image of the situation because it does not take unexecuted decisions in consideration. This happens because these decisions are rarely denounced before the court. Moreover, these statistics have not divided cases of alimony in favour of the children from other cases of alimony. However, the number of prisoners in 2013 and 2014 does not change, even though the number of cases is higher. By analysing this data we are not able to draw clear conclusions about the effectiveness and performance of this tool. We have no official record of how prison sentence or fines have helped to fulfil this obligation. This requires a deeper statistical study. During our work as lawyers, in cases we have followed, we can conclude that this sentence has barely contributed to the enforcement of court decisions. Unfortunately, in most cases it serves as a penalty for never paying the alimony<sup>11</sup>. The position of CLCI about the penalty for non compliance with laws on alimony/family support is that this remedy, envisaged in the Albanian Criminal Code has resulted non effective, regarding the execution of the civil court decision.

Alternative data are also provided by the Centre for Legal Civic Initiatives. According to their data, during 2014 – 2015, the lawyers of this organisation have followed a total of 87 cases of alimony payment in favour of children (See Table No.2, in the Annex). At the end of the trials in Tirana’s District Court, it resulted that 82 mothers were deemed eligible to exercise their parental responsibility and to guarantee their children’s successful upbringing, the father was appointed in 5 cases and in one case the children was appointed to both parents. Out of these cases, 86 are subject to execution by the Public Bailiff Office, due to the other parent not paying alimony on a voluntary basis. Only in 1 case (2% of them) the decision is executed and the parent is paying alimony. In 4 cases, the court decision is partially executed and in 82 of cases (96%) the decision was never executed. The same situation was encountered with the accumulated obligations during 2008-2013.

#### **4. Reasons and factors that hinder the execution of court decisions with regard to the payment of alimony in favour of the children;**

After monitoring all the procedures of the 82 cases mentioned above, these factors can be summarised as follows:

##### **4.1. Economic Factors;** Given that in approximately 62 % of the cases the alimony was not paid because of the unemployed status of the debtor, one of the main factors impeding the execution of court decisions is a poor economic condition because of

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<sup>11</sup> Article 125 of the Albanian Criminal Code, “Denial of support” has envisaged that, “ Denial of necessary support for the living of children, parents or spouse, from the person who is obliged, through a court order, to provide the support, constitutes criminal misdemeanor and is punishable by a fine or up to one year of imprisonment”.

unemployment. The general idea is that these factors cannot be solved overnight, but with the general economic development of the country instead. The same idea is also present in the Albanian Constitution, which *considers the employment of all capable persons as a social objective* (Article 59, par. 1/a) and at the same time provides that *“The fulfilment of social objectives cannot be directly sought before the court”* (Article 59, par. 2). However, this situation cannot essentially be approached this way by the authorities, which must take positive measures to make it possible for this target group to comply with its obligations. Until today, the state seeks to resolve this by paying social assistance, but the sum provided in the legal acts is completely insufficient<sup>12</sup>. Meanwhile, it could be possible to draw employment strategies for these persons, in order to secure the payment of alimony or compensation strategies, where the state can guarantee this payment and the debtor can repay his obligation at a later time. The state must take certain measures even when the charged parent is serving a sentence in prison.

**4.2.** Another impeding factor for executing these court decisions is the **informal employment** of the debtor parent. The person will not pay any social insurance, will not receive the salary through the banking system, and will not declare any income, therefore making the competent authorities unable to execute the payment of alimony. However, this issue shall not be evaluated only as a problem related to the poor economic development, but also related to institutional malfunctioning and failure to effectively enforce the current legislation. Refusing to take the necessary measures to reduce the informal economy may cause an irregular legal process in the execution of alimony decisions.

**4.3. Immigration** – In two cases followed by CLCI during 2014 – 2015, the debtor lives abroad as an immigrant. There are several cases where debtor parents are immigrants and do not pay. This is evident in the case R.H., before the Constitutional Court, in which, despite the long processes that the mother of the children has followed, court decisions are not executed since 2006<sup>13</sup>. These appear to be the most hopeless cases. They are not executed for a very long time or even never. We can refer to the case of R.H., judged by the Constitutional Court, which has not been executed since 2006, despite the long processes that the mother followed when her little child was only 1 year old.

**4.4. Institutional Factors;** Another obvious factor that impedes the proper execution of court decisions is institutional ineffectiveness. This weakness becomes clearly visible when the former spouse is employed or owns property, but still the bailiff office will not execute the decision in time. The same thing happens when the former spouse is an immigrant living abroad. In this context, some problems regarding the execution of court decisions are due to the gaps on the Bailiff’s side. Since 2010, private bailiff services have also started to operate<sup>14</sup>, but still it is not possible to see whether this service has improved the situation. There is a need for the recognition of the statistical data of private bailiff services, for which we cannot reach a conclusion today due to lack of data, even though the law on their organization and functioning has been into force for 5 years.

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<sup>12</sup> Law no. 9355, date 10.3.2005, “On social assistance and services”.

<sup>13</sup> Decision of the Constitutional Court of the Republic of Albania, No. 24, date 21.4.2014, at [www.gjk.gov.al](http://www.gjk.gov.al)

<sup>14</sup> Law no. 10031, date 11.12.2008 “On Private Bailiff Services”.

## 5. Jurisdictional Guarantees;

The role of the courts is more evident particularly in the interpretation of due process of law for the execution of decisions regarding alimony. They have created a general practice for the appointment of alimony and the amount of obligation to be paid. By monitoring the aforementioned judicial decisions given by the Court of First Instance in Tirana, it is a positive fact that the courts take the interest of the child into consideration, which is considered the highest interest. However, practices have been different and there is no uniformity of factors, in which the court should be based on to give the extent of alimony<sup>15</sup>. This gap creates problems especially when a change of measure of alimony for children is requested. The Albanian Supreme Court has ruled that every change to the amount of alimony in favour of children shall be conducted by the court of the district in which the children live, in order to have a better picture of their life's conditions and circumstances<sup>16</sup>.

The Constitutional Court plays a major role, by setting a clear position towards the execution of decisions and considering it a part of the due process of law. Though it has to be admitted that its decisions regarding these cases were of a declarative nature and not very effective to help the process. The only decision to discuss on this issue is the no. 24/2014, regarding the infringement of the right to a fair trial, as a result of non-execution within a reasonable time of the three court decisions. These decisions issued by courts of Librazhdi and Elbasan respectively in 2001, 2008 and 2011, determine the alimony amount for the two kids. But the debtor, father of the children does not pay the debt since 2006 and most of the time is living abroad. Therefore, in this case we call the implementation of the Hague Convention on maintenance obligations.

The Constitutional Court stated that the applicant has not exhausted all legal possibilities for the fulfilment of the rights acquired by a court decision and, therefore, the non-execution of the decision within a reasonable time does not constitute a violation of the due process of law. This conclusion is opposed by the opinion of two judges. In this context it seems very strange that judges have separate opinions on a matter of fact, while as a rule it should be a matter of interpretation. Legal Remedies either are there or they are not, since they should be visible and effective. The fact that judges do not agree on this issue shows that the legislation is not clear about these remedies. It is the duty of the Constitutional justice to give a decision, while keeping in mind the institutional responsibilities regarding the right to be informed and consulted in order to ensure citizen's access to remedies. Even the Court is contradictory to what it says. On the one hand it states that the Ministry of Justice cannot be invested directly by the applicant to launch a procedure for the recognition, and on the other hand it makes the Ministry responsible for not

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<sup>15</sup> Report of the Centre for Legal Civic Initiatives; ***“Report on key findings from monitoring decisions of the Court of First Instance in Tirana, with regard to divorce and its consequences”***. January – December 2014, made by the Centre for Legal Civic Initiatives, with the support of UNDP Albania and funds of the Government of Sweden. Website: <http://www.qag-al.org/>

<sup>16</sup> Decision of the Albanian High Court, date 12.05.2011, (No.00-2011-942 of decision (245)): *“Based on the principles of the Convention of 19 October 1996, ‘On Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children’ and on the provisions of the Family and Civil Procedure Codes, it results that the protection of the child is of a primary interest. Thus, since the child is living in USA with her mother, every circumstance regarding her interest shall be examined by the court of the district, where the child is living”*.

orienting the applicant towards an appropriate legal basis<sup>17</sup>. In the same decision, the Court stated that "*the bailiff as a procedural subject for the execution performed all the appropriate procedures, while the applicant claims that this is not true*". In this regard, she stated that the behaviour of Elbasan's Bailiff Office has affected the execution of a judicial decision. But, if all procedural actions were conducted by the bailiff office and the Ministry of Justice has given an answer, it is not clear which link has struggled in the non-execution of this decision.

To conclude, we can say that this decision of the Constitutional Court does not help us at all or creating a new standard in the execution of court decisions on the payment of alimony for the child.

**6. Conclusions and Suggestions;** Looking back at this small piece of analysis, we can conclude that:

Firstly, we can draw a very important conclusion on the necessity to improve the performance of institutions that provide statistical information on this issue. The direct responsibility falls on the Ministry of Justice, which needs to improve the basics of collecting and publishing data. The Annual Statistical Report of this Ministry did not provide specific information on the number of requests at the national level for compulsory execution of judicial decisions. So, we did not get any information on the number of decisions executed by the public and private bailiffs. Moreover, if an official list of names and addresses of debtors existed, it could be used for compulsory execution with other alternative measures such as, priority in employment, control at the border when moving abroad etc. On the other hand, the institutions would be better coordinated to follow the execution of the alimony decisions and would not be limited only to imprisonment or fines.

Moreover, even legal vacuums or regulations constitute an obstacle. It is noted particularly in the lack of acts that would appoint the responsible authorities for the execution of court decisions on child alimony, according to the obligations stemming from international conventions. As mentioned above, Albania has ratified specific conventions in this field, but it is necessary to take appropriate measures for their implementation. Thus, institutional dysfunction occurs particularly when the parent who is obliged to pay child maintenance is an immigrant, or when for various reasons he lives abroad.

Below we are stating some suggestions regarding all the above,

*Firstly*, the competent institutions of the state should do a general summary, including the situation of the execution of court decisions regarding the payment of alimony in favour of children, and publish data on this matter (directed to the Ministry of Justice).

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<sup>17</sup> Decision of the Constitutional Court of the Republic of Albania, No. 24, date 21.4.2014, at <http://www.gjk.gov.al/> "*In this regard, the Court highlights the fact that although this body cannot be invested directly by the applicant in the process of starting a procedure for recognition and enforcement of the judicial decision in Greek territory, through the expertise and practice that the ministry follows the implementation of these conventions, it has had every opportunity to orient the applicant towards the appropriate legislation applicable to this case and to undertake steps for the recognition and enforcement of the Greek decision*".

*Secondly*, effective bailiff services are necessary for executing the decisions of this category. It is fruitful to recognize and monitor the execution experience of the private-public bailiff in this field.

*Thirdly*, many provisions of the Family Code should be revised and also there is need to improve legal guarantees for the execution of decisions continuously and within reasonable limits. Penalties should be removed for claims, which breach the 6 month deadline.

*Fourthly*, the Albanian legislation needs several improvements, in order to fulfil the obligations put forward by international conventions in this field (directed to the Council of Ministers).

*Fifthly*, competent institutions should take all necessary measures to inform the public about their services in order to increase its access in them. The Legal Aid Commission and other relevant institutions should be more effective for providing free legal aid to citizens.

*Sixthly*, the obligations and responsibilities of the institutions charged with the execution of decisions on alimony need to be reviewed, in order to have effective means available for realization of execution. Making a list of debtors and their addresses is a necessary measure that the state should take.

*Seventhly*, the state should set up all the proper mechanisms for executing court decisions regarding the payment of alimony when the debtor parent lives abroad. This is particularly directed to the Ministry of Justice. A list of debtors would help for enforcing the alimony payment, by executing court decisions even when crossing a border.

*Eighthly*, there is a need to enhance the role of the courts and especially the Constitutional Court for executing this kind of decisions. This is achieved not only through legislative improvements that increase the effectiveness of constitutional adjudication, but especially through recognizing the best case law in this field.

*Ninthly*, decreasing unemployment, increasing income opportunities for divorced women, strengthening the social welfare system is recommended.

## **II. Ownership situation of women in the Albanian family.**

### **CEDAW Convention.**

According to Article 13 of **CEDAW Convention**:

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits; (b) The right to bank loans, mortgages and other forms of financial credit;

According to Article 16 of **CEDAW Convention**:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women

....(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.



## **Concluding observations of the Committee on the Elimination of Discrimination against Women Albania**

The Committee further recommends temporary special measures to be applied in order to ensure the equality of women and men in accessing property, capital and credits, health-care services, housing and, more generally, all the components of an adequate standard of living, particularly in regard to women belonging to disadvantaged groups, including women and girls belonging to linguistic and ethnic minorities, older women, women with disabilities and women living in rural and remote areas, as authorized by the comprehensive article 8 of the Law on Gender Equality in Society of 2008<sup>18</sup>.

The Committee recommends to the State party that gender impact analysis of all social and economic policies and of measures aimed at reducing poverty be conducted regularly. It recommends that the State party take targeted corrective measures, including enhancing opportunities to access property, loan and credits and providing for sufficient day-care institutions for children, so that women, especially those who are members of ethnic minorities or who live in rural or remote areas, as well as women who head households, are able to fully and equally benefit from growth and poverty reduction. The Committee invites the State party to provide, in its next periodic report, detailed information about the enforcement of the Family Code in relation to property ownership in marriage and following its dissolution<sup>19</sup>.

### **1. A brief overview of the legal situation.**

Taking into consideration the legal situation from 2010 and on, it is noticed that there is an improvement of the **Law 33/2012 "On the Registration of Immovable Property"**. This law is amended in 2012. This amendment represents a good legal basis for the improvement of the rights of spouses, in order to get registered as co-owners<sup>20</sup>. The law has clearly defined the obligation of the clerks of the registration entities. By this law, based upon the family status certificate, they are obliged to automatically register in the property file, not only the individual title of the spouse who is carrying out the transaction, but also the name of the spouse who is presumed as a co-owner. The obligation of the notary is to attach the marriage certificate in the relevant documents. If the parties have chosen a separate property regime, then it is the obligation of the interested party to present the respective notary act to the Registrar. Nevertheless, it should be highlighted that this provision is being implemented slowly, due to the lack of practices and lack of unified legal acts from the part of the Immovable Property Registration Office and due to the contradictions that occur between the notaries and the registrars, in regard to the duties of each one. There are cases as well that this provision is not applied into practice due to the lack of information of the interested parties and due to lack of action of the authorities without the request of the parties.

Meanwhile, there is not any change in the Family Code, or in the law "On Gender Equality in Society", in regard to such an issue.

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<sup>18</sup> Committee on the Elimination of Discrimination against Women, Forty-sixth session, 12–30 July 2010; Concluding observations of the Committee on the Elimination of Discrimination against Women Albania

<sup>19</sup> Idem

<sup>20</sup> It foresees that: "If a property which is subject-matter of a property transfer contract made in favour of natural persons who, according to the civil status register, are married, has been acquired during marriage in accordance with Article 76 of the Family Code, the registration in the appropriate section of the file shall indicate that the property is co-owned by both spouses" (article 41/2 ).

## **2. Legal presumption of co-ownership between spouses and the need for a new mentality.**

In the Family Code is legally sanctioned that “*The wealth of the spouses is presumed as joint, unless one spouse proves its personal character*”,<sup>21</sup> by clearly expressing the sense of the legal community property regime<sup>22</sup>. So far, this sanction is understood as a rule serving only to solve the judicial conflicts between spouses, in the case of dividing the spousal property. This has happened because it is understood not as a general principle to regulate the property relations between spouses during their spousal life, but as a principle applied only in the court in solving the issue of dividing the spousal property. In Albania it often happens that the immovable property is contracted and is registered on behalf of the husband, while the wife is not entitled as holder of the property. This gender limitation has brought privation of access to spousal property, especially for women. It is not the aim of this report to treat issues deriving from the judicial treatment of this legal presumption in the division of the spousal property, but it aims to treat the issues that have derived from the incorrect understanding of this principle during the spousal life.

Due to the registration of all the immovable spousal properties on behalf of the husband, under the quality of the head of the household, the husbands have been entitled holders of the common properties thus, bringing difficulties in the behaviour of the wives as co-owners. “Only 8 per cent of women own property, even though title registration under only the husband’s name is unlawful”<sup>23</sup>.

This difficulty is reflected especially in providing the women with the property certificate, which they do not possess. In reality, they are not recognized as co-owners and they are not entitled as holders in this co-ownership. As a consequence, in many cases, during the administration of the property, especially regarding the contracts carried out under the framework of the legalization of dwellings, or the civil contracts carried out by their husbands, the women do not result to be owners of the property, together with their husbands. Currently, the wife is obliged to express her will and to sign in front of the notary in cases when her husband carries out legal actions with the property that is presumed as joint, but the wife doesn’t participate in the transaction in an equal way as her husband. The wife just declares in front of the notary that she gives her consent for the action carried out from her husband. There are some NGOs initiatives which aim to increase the registration of co-ownership, since the norm is already established in the law.

## **3. Consequences deriving from the lack of a proper understanding of the legal presumption.**

A range of consequences have been identified that transform the woman into a subject without her own property rights, or into a subject dependant from her husband’s will. Some of them are listed below.

*Firstly*, women face long procedures for the division of spousal property. Such long procedures result in loss of time. The expenditures become a burden for them, especially regarding the period after the divorce. So, during the process of monitoring the Court Decisions

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<sup>21</sup> See article 76 of the Family Code of Albania

<sup>22</sup> On the legal community property regime see: Arta Mandro, pg., 226-253 and Sonila Omari, “E drejta familjare” (Family Law), Tirana, 2010, pg. 93-129.

<sup>23</sup> Idem

of Tirana District Court, with the object “Division of the spousal property”<sup>24</sup> are identified some tendencies:

There is a relatively small number of requests for the division of the spousal property as compared to the number of the cases for dissolution of marriages. Such a fact can be explained due to some reasons. Among them it is prominent the economic and moral weakness of the woman to seek for these rights. For example, during the period, object of monitoring, 2014-2015, in 18 months, Tirana District Court issued more than 1000 (one thousand) decisions on dissolution of marriage, but during the same period only 54 decisions were issued on division of spousal property and most of such cases were dismissed by the court.

The highest number of the requests for the division of the spousal property comes from wives. This is explained with the fact that they are not owners of the spousal property. So, for example, out of the 54 court decisions issued for the division of the spousal property, results that 37 of the requests that have initiated the court proceedings, or 69% of all requests, are submitted by ex-wives, while the other part of the requests is submitted by ex-husbands.

More than 60% of the submitted requests finish with the dismissal of the case, due to the absence of the suitor. This tendency might have different reasons, but one of them is related to the long and expensive procedures of the court proceedings. The court has no role and there is no protocol for lawyers in explaining the law.

**Secondly**, women cannot alter the property in cases that they do not possess a property title and in case they have a different will from their husbands, they have to be recognized first as co-owners in order to be able to make a testament or a donation.

**Thirdly**, As a result of the lack of a proper understanding of the legal presumption of co-ownership for the properties earned during the marriage period, problems have come out in relation to the retirement pension for women.

**Case I.A.** The Center has represented in the court the case of Mrs. I.A.. Tirana Regional Directorate of Social Insurances had interrupted the retirement pension of Mrs. I.A. on the grounds that: “*based upon the property certificate Mrs. I.A. is not entitled as a co-owner of the land surface and does not result to be a member of the family composition who owns the land surface according to the law no. 7983, dated on 27.07.1995, “On buying and selling agriculture land, meadows and pastures.*” In these cases the leasing contracts and the document of ownership upon land are on behalf of the husband based upon the article 224 of the Civil Code, which defines that: “*The farm family is represented in the property relationships with a third party by the head, who is elected by the family members*”. In such cases the head of the farm family is the husband. Nevertheless, the suit was accepted by the district court and this case serves as a precedent case for other courts in judging such cases.

**Fourthly**, the most serious deprivation has happened related to **the hereditary rights**. Being not entitled as co-owners, it has been impossible for the women to make with their own will a testament. Meanwhile the husband who holds the title of all the property has the right to determine the disposition of the property. Legal presumption of co-ownership is not taken into consideration enough in such a case. From the point of view of legal inheritance the women have

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<sup>24</sup> Recognition and implementation of gender equality standards in the judicial process, Report, Center for Legal Civic Initiatives, December 2013. Published in [www.qag-al.org/WEB/publikime/raporti\\_shqip.pdf](http://www.qag-al.org/WEB/publikime/raporti_shqip.pdf), page 45-46

lost and are still losing properties in a considerable way, because the legal inheritance becomes available entirely on the basis of the hereditary title. As a consequence, the wife loses half of the property that she owned on the basis of the legal presumption and unjustly she is equated with the children in the property inherited from her husband. “In practice the transcription of the inheritance certificate in the Immovable Property Registration Office is done ...by transferring the property on behalf of all the heirs, in equal parts without taking into consideration the fact that the property was in co-ownership of spouses...”<sup>25</sup>.

Furthermore, a big disfavour for women is produced by gender stereotypes according to which the property of the family is inherited by the male heirs. For example, all over the country is practiced the tradition of not allowing the women to inherit properties from their parents, by favouring the male members of the family of origin.

**Fifthly**, denial of the rights of women happens in cases of obtaining bank loans, because they cannot be presented as borrowers, but only as complementary to their husbands’ will in bail contracts.

**Sixthly**, denial of services has happened as well. The husband, as the “head of the household”, has been entitled as the holder of the contract with the electric current supplier, with leasing contractors, etc. Moreover, there have been cases when it has been impossible for the woman to conclude such a contract on her own name, even in cases when the woman could demonstrate paying capacities. A case like that is examined by the Commissioner for Protection from Discrimination and is concluded as follows:

*The Electricity Distribution Operator has accepted the request of the ex-husband to terminate the contract for supplying with electricity the joint house where he and his ex-wife live, at a time that ex-spouses were still under court proceedings for the division of the spousal property. On the other hand the Contractor didn’t accept to re-establish the contract on behalf of the ex-wife, despite the fact that she could demonstrate paying capacities, on the grounds that the only owner of the house appears be the ex-husband.*

*The Commissioner for Protection from Discrimination considered the behaviour of the Contractor as discrimination on gender basis in offering services.*<sup>26</sup>

#### **4. Cohabitation property issues for women.**

Cohabitation, in our days, has turned to be a recognized form of the family. There is a considerable number of couples who aren’t legally married and they consume the spousal life in cohabitation. There is also an increase of the number of couples who want to live in cohabitation and to raise their children without being married legally. Cohabitation is legally recognized by the Family Code, in 2003. Article 163 defines cohabitation as: “...*a factual union between a man and a woman living as a couple, with a common life that is stable and continuous in nature*”. But, the Family Code does not ensure protection of the spousal property for the cohabitating individuals, as the Family Code does for the married spouses. The Family Code foresees that the cohabitating individuals can sign an agreement in the presence of a public notary, whereby they

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<sup>25</sup> Arta Mandro, “Të drejtat pronësore të grave, rasti i Shqipërisë” (The property rights of women. Case of Albania), Tirana, 2013, page 65

<sup>26</sup> See the decision no. 93, dated 30.09.2013, of the Commissioner for Protection from Discrimination.

determine the consequences resulting from cohabitation in relation to children and assets acquired during the cohabitation (article 164). But, such contracts are not applied into practice.

## 5. Conclusions and suggestions.

- **Access in information and services.** There is a need to improve the information and the legal education of the public, aiming at awareness raising of women and girls to ask for their property rights. In this framework, it is needed the strengthening of the work of the State Commission for Legal Aid and of all other independent institutions dealing with information of the public.
- **Awareness raising of the citizens.** Information and legal education of the public are of a great importance aiming at awareness raising of the citizens to ask for the rights of the spouses and not to violate their rights as it happens in the cases when husbands and children become the violators of such rights.
- **Need for legal improvement and for the improvement of the implementation of the existing laws.** It is suggested that the Family Code needs legal improvements aiming at improvement of the provisions that regulate the cohabitation in a couple and the access of both spouses to the property.

There are suggested changes in the Civil Code and in the law 33/2012 "On the Registration of Immovable Property", in order to foresee actions that prevent the inheritance from other heirs of the part of the property which, based on the legal presumption of the co-ownership between spouses, belongs to the spouse who is still alive.

Law no. 33/2012 "On the Registration of Immovable Property" needs to be amended with a transitory provision which should provide article 41/2 of the law with retroactive power to regulate the registration in co-ownership of the properties earned during the period of marriage even for the period before entering into power of this provision. There is a need to unify property registration practices in all Immovable Property Registration Offices. Such an issue is recommended to be solved out through an Internal Administrative Act.

- **Need for official statistics.** There is a fragmentation of statistics regarding these issues. The statistics are not complete. So, it is recommended a coordinated work among INSTAT, Ministry of Social Welfare and Youth, Ministry of Justice and Immovable Property Registration Offices in order to provide complete and useful official statistics that will help in recognition of the situation and for comprehensive studies on such issues.
- **Professional preparation.** It is needed professional training of all the employees who work in this field, especially the employees of Immovable Property Registration Offices, notaries, lawyers, judges, etc. These problems are recently treated in Albania, that's why it is needed to treat them in relation to the institutional activities for the law enforcement.

## Annex no.1

**Table no.1.** Annual Statistics, Ministry of Justice.

Year	No. of cases	Convicted persons
2010	44	45
2011	41	42
2012	49	43
2013	89	45
2014	108	44

[http://www.drejtesia.gov.al/files/userfiles/statistika/Vjetari\\_Statistikor\\_2010.pdf](http://www.drejtesia.gov.al/files/userfiles/statistika/Vjetari_Statistikor_2010.pdf),  
[http://www.drejtesia.gov.al/files/userfiles/statistika/Vjetari\\_Statistikor\\_2011.pdf](http://www.drejtesia.gov.al/files/userfiles/statistika/Vjetari_Statistikor_2011.pdf),  
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**Table No. 2**

Year	No. of successfully executed cases followed by CLCI	No. of cases appointing the exercise of parental responsibility to:			No. of cases subject to execution from the Bailiff	Execution status; Voluntarily executed cases.			
		Mother	Father	Both		Number	Executed	Partially	Voluntarily
2014	42	40	2	0	41	1	2	0	39
2015	45	41	3	1	45	0	2	0	43

## Annex no.2.

### Center for Legal Civic Initiatives

The Center was established in November 1997, as a project of the Lawyer Women's Association and has been operating regularly ever since. On 6 December 2001, by means of Decision No.8 of Tirana District Court, it was registered as an independent legal entity. On December 14, 2004, with the court decision No.8/1 Women's Advocacy Centre changed its name to Centre for Legal Civic Initiatives. The Centre provides free legal aid for victims of domestic violence and for poor women, having a very strong focus also in undertaking legal initiatives or being part of legal initiatives undertaken by other organizations. The aim of activity is to increase the access of poor and/or abused women and girls in the justice system. Legal education for women and girls especially for poor women and girls in rural areas, reports, analyses, trainings for professionals of justice system, are part of our activity too. Strategic litigation is another strong focus that CLCI use in its activity.

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