

**Research and Analysis of  
National Legislation Relevant  
to the Safeguarding of  
Children and Vulnerable  
Adults in CEE**

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## Executive Summary

There is a great variety of vulnerable groups of children and adults in the 16 Central and Eastern European countries. There is also a great variety of how these groups are approached in the different countries and to what extent they are seen as vulnerable.

In legislation in most countries there is an acknowledgement of the existence of the need for protection and support of these groups. This partly originates from the actual pressure by these needs, partly from international treaties and memberships - there are 7 EU members among the countries - and, to some extent, from the activities of international and national civil organizations in each country.

Safeguarding policies in the legislation of each country appear as declarations of the state's role in providing protection and support to certain vulnerable groups. Many experts writing the country reports found that in their countries safeguarding policies more or less stopped at this declarative level. Secondary legislation on how to implement the relevant laws and also the funding of the goals set in primary legislation often lags far behind in practice.

In most countries the main bodies implementing legislation concerning vulnerable groups of people are state authorities, institutions and networks, especially regarding vulnerable children. In all countries NGOs wishing to participate in providing protection and care for children, need accreditation. In some countries, however, due to poverty, ngo activity is vital for the provision of basic necessities for children, and even more so if the children are also vulnerable for other reasons - e.g. disabled - as well.

Concerning vulnerable adults, in most countries in the research there is less state activity and NGOs are dominant in helping.

Establishment and use of safeguarding policies, minimum standards and special measures when working with vulnerable groups is not obligatory in most countries, in most cases. When these exist, they usually set the way the actual service should be run, and concentrate less on the wellbeing and protection of the vulnerable children and adults.

In most countries in the research it is the NGOs that are more likely to have set an example on how to implement safeguarding policies. In their daily operation they often set standards and measures that are obligatory for those working with them. There are some very good practices in the region that will hopefully spread. In most countries NGOs have, in addition to providing actual help, activities of advocating for not only rights of the vulnerable groups but also for the uncompromising

implementation of safeguarding policies in their respective countries.

## **Introduction**

The region, in which the research on safeguarding policies to be applied when working with vulnerable groups of people was conducted, is extremely **diverse**. Compared to the relative stability of the Western part of Europe, in Central and Eastern Europe there were not only huge **political changes** in the past almost 30 years, but also borders shifted, countries split and new countries formed.

When investigating national legislation, especially on a sensitive issue such as that of vulnerable groups, the former political status (belonging to the communist bloc), or the change in ethnic composition of the country may have just as significant influence on the rights observed or ignored as the new alliances and/or memberships of a given country. There are countries in the region whose legislation, just like the country itself, is “brand new” and in some respect more **modern**, up to date and more in line with European political correctness than legislation in countries where laws have been accepted, patched up, modified in some hundred years.

No wonder that the brand new legislation is often well ahead of not only of what can **solidly be implemented** within a relatively short period of time, but also ahead of the state of mind and attitude of the population and politicians.

This is exceedingly true for example for legislation rendering any sort of discrimination illegal, yet in practice there is no protection for **ethnic** minorities or against **gender-based** crimes. In almost all countries there is flawless legislation guaranteeing the rights of **asylum seekers** and especially unaccompanied minors, yet there is more than one country in the region where the rights of refugees are largely ignored.

Even legislation concerning children’s rights and protection often remains **declarative** rather than something that is largely implemented in everyday practice. All countries have a comprehensive Child Protection Act, yet when it comes to allocating resources for the implementation, or how to interpret and how to put the existing act in practice, policies, measures, actions and often even the will to create these, are missing. In countries (most in the region) where the notion of child is defined according to UN CRC, prostituted children are often treated as criminals and

not as victims. While juvenile offenders should get special protection throughout procedures against them by the law of most countries, they are often put in the same cell in prison with adults.

Not surprisingly, it is revealed in the analysis in many countries that the concept of **“safeguarding policies” is only detectable on the legislation level**. In the field of social work, the motivation for seeking safeguarding measures is often cooperation with, or membership in, international organizations. It is also true for the notion of “vulnerability”. In many countries of the region the notion of **vulnerability does not exist in the national language**, and even when it does, there may be something **different** meant by it than, for example, the definition generally used in the UK.

*Vulnerability is a relatively new, and not unanimously defined concept in the better off part of Europe, too. It is mostly used in practice by professionals who are directly working with children and adults who, permanently or at a certain stage of their lives, are not able to take care of themselves and/or represent their own interest by themselves. Professionals and legislators may use different definitions for different needs. The main idea is to accept the risk that is involved in not providing support and the need for help by those who are thus classified “vulnerable”. The question who can be classified as vulnerable is not only a social but also a political decision.*

In general, in most countries in this report, **vulnerability can be detected in legislation through the provision of protection and support**. This approach makes it difficult to apply the concept to those who are, often by the legislators as well, either rendered invisible (like child victims of poverty), or are believed to be responsible for their state in which they need protection (e.g. homeless people). With the increasing **populism** in some countries in the region, under-educated, socially immobile people and their children are often thought of as such, and there is little intention to provide protection and help for them.

When searching for clues to “vulnerability” in respective national legislation it is also difficult for those who need protection and support to detect which part of the legislation applies to them, if any at all.

*“Gathering and searching for information for this Report was complicated, long-lasting and confusing. Vulnerable persons seeking for support and help with limited means and opportunities must have hard time searching the respective*



*solutions and aid.”<sup>1</sup>*

As to safeguarding policies, they are mentioned in the text of the laws, as a declaration and acknowledgement of the **need of protection**. However, the steps necessarily following from the declaration are regularly missing. Safeguarding policies when put into practice are meant to provide the “**how to ensure**” part of relevant legislation: How to ensure that the spirit of the law is observed? How to ensure that the rights of the vulnerable person are respected? How to ensure that even though a person is not able to represent his/her interest, this fact is not abused, and his/her dignity remains important?

Implementation of the politically often perfectly correct laws is much slower than the process of legislation. The need for safeguarding policies is only just forming in most countries. For members of the EU, the establishment of safeguarding policies comes as a **European requirement**. In other cases the need for safeguarding policies comes from participating in **international projects**. It is one of the long term benefits that international organizations can bring to the region.

## **General information on the research**

### **The purpose of the research**

The research focused on 16 countries of the **CEE region**.

Ensuring the safety and protection of vulnerable adults is an essential aspect if we work with them. Unless individuals are **safe and treated well**, with dignity and respect, it is impossible for them to realise their potential or to benefit fully from any development activities.

The **safety of vulnerable** adults is most often threatened by those closest to them in their families and communities. In recent years there has been increasing recognition of the way in which children and vulnerable adults can be at risk of harm from organisations and institutions that are supposed to help them, either as a result of abuse and exploitation by individuals in positions of trust, or via programme activities in general.

As a consequence, social institutions and international NGOs (like UNICEF, Terre

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<sup>1</sup> Zuzana Plevova, Slovakia

des hommes, SOS children's villages, etc.) have increased their efforts to ensure that no harm comes to beneficiaries and developed a safeguarding policy, which requires all its grantees to develop and implement their own safeguarding policy in line with minimum standards. In order to enable professionals to **support the grantees in their safeguarding efforts**, it is necessary to create a solid knowledge base on the relevant national laws and regulations.

For the above mentioned reasons, the **goals** of the research were:

- Finding and analyzing the relevant **definitions** according to national legislations of the targeted countries (who falls under "vulnerable adults," how is "child", "harm", "abuse", etc. defined in the relevant laws);
- Mapping and analysing of relevant governmental and non-governmental **stakeholders** in the countries investigated (who is involved in safeguarding and the protection of children and vulnerable adults in the respective country and what is the mandate or scope of work of the individual organisations);
- Researching and analysing of the **laws and regulations** relevant to the safeguarding and protection of children and vulnerable adults applicable in the respective countries (rights and obligations stipulated by the law);
- Giving assessment and **recommendations** (identification of gaps and challenges related to safeguarding and protection of children and vulnerable adults).

## **Countries involved in the research**

16 countries of the CEE region were listed in the research.

The majority of the countries targeted in the research are EU members or candidates / potential candidates. Only three countries of the research have neither member nor candidate status (see table below). However these three also have multifaceted and deep relations with the EU.<sup>2</sup>

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<sup>2</sup> Moldova and Ukraine have Association Agreement with the EU. While Russia does not have formal ties to the EU, the mutual trade and sometimes political interest may make it possible for the EU (and other parts of the world) to "trade" human interests and rights. (Source: [https://eeas.europa.eu/delegations/russia\\_en](https://eeas.europa.eu/delegations/russia_en))

Countries included in the research (16)	EU member states among the countries In the research (7)	EU candidate states among the countries in the research (4)	Potential EU candidates among the countries in the research (2)	Other countries (3)
Albania, Bosnia and Herzegovina, Bulgaria, Czech Republic, Croatia, Hungary, Kosovo, The former Yugoslav Republic of Macedonia, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Ukraine	Bulgaria, Croatia, Czech Republic, Hungary, Poland, Romania, Slovakia	Albania, The former Yugoslav Republic of Macedonia, Montenegro, Serbia	Bosnia and Herzegovina, Kosovo <sup>3</sup>	Moldova, Ukraine, Russia

The role and relevance of the **EU is significant** in the region not just because the legal framework that EU directives and other laws shape, but also because of its efforts to develop and maintain democracy, rule of law and good governance.

## Research methodology

Regarding the goals of the research (and the strict timeframe), **two phased external desk research** was used as research method.

The first phase was a **preparatory desk research** conducted by trained junior researchers in all targeted countries to find and gather all relevant information (laws, regulations, norms, soft legal instruments) in relation to the research questions. The second phase was a **legal desk research and analysis** conducted by senior researchers, well-known local experts of the investigated countries to evaluate the outcomes of the previous desk research and to write a country report.

### The research questions were:

1. What is the legal and relevant definition of 'child', 'vulnerable adult', 'harm', 'abuse', 'violence' in your country's national legislation?

<sup>3</sup> Kosovo is without prejudice to positions on status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence.

2. What is the legal and relevant definition of ‘safeguarding policy’, ‘stakeholder’, ‘protection of children’, ‘protection of vulnerable adult’ in your country’s national legislation and its practice? What rights and obligations are stipulated by the law?
3. Who are the relevant governmental and non-governmental stakeholders (who is involved in safeguarding and the protection of children and vulnerable adults); and what is the mandate or scope of their work?

National experts were also asked to provide situation-analysis with critical review, assessment and recommendation regarding each topic.

The research team was divided into two groups: the **core team** (of 2 leading researchers and a research assistant) and **the participating researchers** (of 31 local junior and senior researchers). The core team was responsible for all methodological issues, the coordination of the research project and the final report. The participating researchers were responsible for the desk research / country report (as described in their contract).

For reasons of quality assurance, **two persons** were chosen to run the different phases of the research in each country and both desk research and the research for the country report were conducted in **local** languages (from original online and offline sources).

#### **Limitations of the research:**

**Challenge of time:** Due to the chosen methodology, the research provides information based on the **actual situation** (all norms were in force in February 2017). All national law changes regularly, and in several countries there are bills relevant to our topic already prepared, that need to be passed. Thus a review is needed at the exact time when each report is being used.

The research was conducted within 2 months. This meant that the researchers got on average 2-3 weeks to run the actual desk research. This limits how deep they could research and how much detail they could include.

**Concerning the project:** The biggest challenge was to find and screen potential researchers. The number of the well-known experts in our research field is very limited in the CEE region. In addition, the majority of these professionals are

participating in several projects (they workload is extreme sometimes). It was not easy to find highly respected professionals and convince them to take part in the research at a short notice. At first, we contacted professionals we worked with in previous projects and then we used the **snowball method** if the targeted person was not able to join our research team.

**Content of this research:** Despite the fact that all countries included in the research have 'continental legal system', the national regulations are **diverse**. The legislation in each country is different, therefore to provide comparative information was difficult. The large **number of participants** also had an effect on comparativity. Also, while everyone received the same request, different researchers (with different background) have approached those differently and this also influenced the final content of each country report.

Some of the country reports are '**children heavy**' meaning that the content generally refers to the situation of children and child protection. We accepted this as reasonable since the legislation related to vulnerable adults is fragmented, less coherent and sometimes missing.

## **Who is considered vulnerable**

Vulnerability is a relatively new concept, although vulnerable groups of children and adults always existed. Vulnerability or some sort of synonym, like need of protection, is present in the legislation of the individual countries of the region, especially when referring to non-discrimination. While different groups and persons are identified in legislation as **potentially needing support or assistance**, the idea of a group of people being vulnerable by definition, rarely exist in national legislation.

The experts working on the desk research and writing the country reports were provided with the definition of vulnerability based on the use of the word in the United Kingdom: *"Any person who is in need of protection and care for any reason, and who is unable, for whatever reason, to represent his/her own interest."* They were asked to search for synonyms to the word "vulnerable" in their own languages in order to cover the phenomenon in this research. In most countries when the notion "vulnerable" or "vulnerability" was used in the national legislation or documents, it was in relation to international or European treaties and directives or was used in the context of international cooperation.

The synonyms that are detectable in the national legislation of each country usually refer to **the need and/or obligation of the state agencies to provide protection and assistance under certain circumstances**. In Russia it may be “difficult life situation” which is defined as “circumstances... that the citizens cannot overcome on their own”, or “the lack of ability of a person to take care of his/her everyday needs”. In Hungary it may mean “disadvantageous – or even multiple disadvantageous – situation” of a family or a child.

In most cases the law establishes the conditions under which certain protection and assistance (mostly financial) is available. In some legislation the stakeholders are also named, in others they are not – both can be found in different acts of the same country.

In some countries, e.g. Kosovo, legislation concerning vulnerable people (especially children) is on the level of that in some highly developed EU member countries, yet the implementation of these laws lags far behind.

*“Kosova is a country with a significant contradiction between the quality of the laws concerning child protection and their application in the field. Since the war ending in 2000, all of Kosova's laws governing health, education and welfare have been renovated, using lawyers from UNMIK and, later, EULEX. These laws tend to be on the cutting edge of European legal thought, and some may even be more advanced than the original EU countries. On the other hand, implementation of these laws has been rife with significant issues.”<sup>4</sup>*

In other, especially EU member, countries of the region legislation and national action plans may be quite comprehensive, probably due to EU requirements. In these EU member countries there may also be visible progress in the way legislation and plans concerning vulnerable adults and children in general are carried out.

It is striking though, how throughout the whole region, whether there is legislation and action plans, related to vulnerable groups of people that are EU conform, **the general attitude of politicians and the public toward vulnerable children and adults has remained relatively unfeeling**, or even become much harsher –

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<sup>4</sup> Moshe Landsman, Kosovo

ignorant or even hostile - in the past few years. In Hungary the prime minister publicly talks about “charming human rights nonsense” and this seems to set the mood on how to approach vulnerability.<sup>5</sup>

## **a. Age-related:**

### **i. Children**

The easiest group to identify as one seeking protection and help – i.e. being vulnerable - is children. While all countries except Kosovo have signed the **UN CRC**, neither the definition of “child” nor legislation concerning children are necessarily in line with the CRC. In most countries there is a difference in civil and criminal codes in who is considered a “child” and for this reason eligible to protection and special procedures.

In **none of the countries are children considered vulnerable by definition**. In each case when vulnerability (or rather its synonyms, like “in need of protection”, in disadvantageous situation”, etc.) is mentioned in relation to children another specific condition is needed, such as disability, incapacity, disadvantageous circumstances, lack of parental care, etc.

In all countries included in the research criminal codes define the child as “minor” (normally under 14, but in some countries under 13), and “juvenile” (normally between the ages of 13 or 14 and 18, but in Poland only above 17). However, in Russia where the criminal code refers to “minors” (or rather, “underage”) those between the ages of 14 and 18 are meant.

### **ii. Elderly**

Another group that may become **vulnerable due to age** is elderly people. Again, elderly people are not mentioned in legislation or in any programs as vulnerable, or in need of protection, by definition. Different mental states, recognized diminished abilities, lack of family care, long lasting illness or disability, poverty, etc. are the usual words that trigger mentioning in legislation or in documents of social work. The majority of researchers completing the reports failed to detect any part of national legislation that definitely points at the need of special attention and safeguarding

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<sup>5</sup> “emberi jogi szépelgő handabanda” [https://www.nytimes.com/2017/03/13/opinion/hungary-plays-the-eu.html?\\_r=1](https://www.nytimes.com/2017/03/13/opinion/hungary-plays-the-eu.html?_r=1)

policies when working with the elderly.

*“Outside of social security and medical insurance which are inherent to every modern country there is not much special protection in national legislation.”<sup>6</sup>*

Legislation that is age-related concerns eligibility to benefits and social care based on certain circumstances. In Slovakia the criminal code mentions that higher protection is due to elderly people, which in practice means a more severe sentence for those committing a crime against them, but not necessarily real protection for the elderly to avoid falling victim to crime. Also in Slovakia, there is a Government Council for Rights of Elderly Persons which proposes and controls measures affecting those rights.

While in some countries there are general **action plans** on how to deal with the ageing of the population, when it comes to working out and applying safeguarding policies, it is more likely to happen in individual institutions or by NGOs, than at government level.

## **b. Health-related:**

None of the report writers found that health problems per se would make a person “vulnerable” or entitled to special protection and/or support. Health related inability to represent one’s own interest is normally mentioned in legislation concerning **mental illnesses**. As to physical disabilities, legislation relates to the existence of permanent disability or malfunctioning which would entitle the sufferer of those to benefits and support. While in some countries representation of patients’ rights is mentioned as an example of safeguarding practices, the existing services are more likely to concentrate on **individual** breaches of patients’ rights than working out policies or minimum standards on how dignity of patients in general should be respected. In some countries only adults appear in legislation concerning vulnerability (i.e. eligibility to services) when they are disabled or mentally incapacitated.

### **i. Disabled**

The disability of a person in all countries is acknowledged by state institutions that

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<sup>6</sup> Dilyana Giteva, Bulgaria



focus on whether or not a person's limited or diminished bodily or mental abilities are on a level justifying the provision of special benefits and services. In some countries the expression used for disabled people are often derogatory or demeaning.

*“with regard to the **persons with disabilities**, although on November 11, 2010, Romania ratified the UN Convention on the Rights of Persons with Disabilities, there is even now terminological confusion in various norms and official documents over terms such as ‘disability’, ‘handicap’, ‘deficiency’, ‘impairment’, which are not correlated with the terminology found in the Convention or in the International Classification of Functioning. Even the title of core law for the protection of persons of persons with disabilities refers to the term ‘handicap’...”<sup>7</sup>*

The writers of the country reports indicate that people with disabilities are seen, sometimes even by the organizations dedicated to help them, as “needy”. There is very few good example of **integration** of disabled people in the society and there is a general reluctance in the region to employ them, or even to accept that their disabilities do not necessarily mean inability to work and be part of the society.

*“Employers however are very reluctant to hire people with disabilities and the examples of good practice are very few, making finding work incredibly difficult on grounds of disability.”<sup>8</sup>*

Very likely due to this general attitude, there is little mention in the respective country reports about safeguarding policies for disabled adults, and when there is, usually the policy of **assessing the need for support and providing benefits** is meant by it. While legislation concerning **equal opportunities** and **anti-discrimination** specifically mentions those with disabilities, the not uncommon approach that expects people with disabilities to be grateful for whatever help they get, hardly allows for considerations like equal opportunities and rights for them in practice.

## **ii. Mentally incapacitated**

There is no shortage of legislation on the mentally less abled or ill people. Perhaps

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<sup>7</sup> Roxana Paraschiv, Romania

<sup>8</sup> Dilyana Giteva, Bulgaria

this is one of the areas where **the heritage of the communist system is most visible in legislation**, in the actual places (old buildings, usually unsuitable for the purpose and for modern operation, severe lack of trained staff), and the attitude towards persons who are mentally disabled. As it is pointed out in one report “many of the provisions regulating it (mental disabilities) are **outdated** and in many ways detrimental to rehabilitation or social inclusion”<sup>9</sup>. In a number of countries included in the research mentally ill people or those who demonstrate lower abilities mentally and intellectually, are often de facto deprived of all legal capacity, even though their illness or state may not justify this. In Russia, for example, limited legal capacity can be established by a court decision in case of

*“ Game addiction, alcohol or drug abuse that lead to financial hardships for a person’s family. Such people can perform small everyday trades independently of their custodians; they are fully responsible for them.”*<sup>10</sup>

While in some national legislation there are provisions intended to prevent the abuse, in reality there is **very little guaranteeing the safety and protection of the mentally ill or disabled**. There are numerous examples in the region on how the position of the mentally ill is either not properly considered when caring for them, or the fact that nobody would believe them if they complained, is used to actually abuse their helpless situation by those who are rendered to care for them.

The same is true for elderly people in the region, who live with dementia or other age related diminished mental functioning. While the mentally ill or disabled are, in all countries, listed as a group of people who need support, they are rarely seen as people who have the right to support that guarantees as much independence as their state of health allows.

Perhaps as one of the “remains” of the communist system, in some countries mentally ill or disabled people are not only seen as people needing special care, but also as a threat to the society or to themselves, almost independent of whether their medical conditions justifies this or not. Mental illness or disability in the region is still a **label**, rather than indication that the person in question needs special services, care and protection of rights.

### **iii. Temporary health issues (pregnant, patient in hospital, etc.)**

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<sup>9</sup> Dilyana Giteva, Bulgaria

<sup>10</sup> Tatiana Archakova, Russia

Being ill or having serious health issues makes one vulnerable independent of how good a health care system is. Health care systems in the Central and Eastern European region, with few exceptions, are systems of authority and hierarchy, where the patient is rarely asked about his/her preferences or choice. The operation of the health care system in such a manner finds even more helpless those, who otherwise are, in all countries, classified in legislation as “vulnerable” or alternatively, “in need of special protection and support”, like children or pregnant women.

### **c. Social status related:**

In legislation of all countries concerned there is some reference to those who may need protection or support due to their social status. In most countries there is elaborate legislation and procedures in order to establish “**who is entitled to what**”: what sort of benefits are due to the person under certain circumstances. In some countries, like for example Kosovo, unemployment and poverty is **so predominant that there are whole regions living off emergency help**.

*“The official unemployment rate is about 45%, but unofficially it is higher, and in some places, such as the Mitrovica region, it reaches 70%.”<sup>11</sup>*

Poverty can be highly concentrated in the region according to areas of the respective countries (lack of employment possibilities), and sadly, along ethnic belonging as well. NGOs working in these regions witness how **economic poverty leads to deprivation** and hopeless life situation from a very early age of the children of those affected.

#### **i. Uneducated**

Lack of education as a factor triggering the need for protection and special assistance is not reported in any national legislation. At the same time the correlation between education and the propensity to fall victim to crime or to commit a crime is well known. Children who are early school leavers have hardly any hope in the society and are therefore vulnerable. But not in legislation, not on its own. While street children are one of the most prominent child related problems in Russia and may pose a serious threat to the peace of the better-to-do population in some other

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<sup>11</sup> Moshe Landsman, Kosovo

countries as well, if there is anything to help them, it is usually organized by ngo-s. Legislation and state institutions seem to have completely given up on a very high number of children, who fall victim to poverty, lack of family, lack of proper care from a very early age.

*“One of the biggest and incalculable vulnerable groups are street children from broken families. These children formally live in the families, but their parents are not involved in their upbringing. These children are left to themselves and their rights to normal life conditions, to education, care and protection are violated. Such situation could also be described as ‘**social orphanhood**’.”<sup>12</sup>*

## **ii. Unemployed**

In most countries involved in the research there is some sort of acknowledgement in law of material hardship due to unemployment. However, legislation on who can be registered as unemployed, and who, on what grounds, to what extent and for how long is eligible to special retraining or other support programs and benefits may depend not only on the actual capacity of any given country. It is also heavily influenced by the attitude of the actual government: whether or not the situation of unemployed people is seen as more or less self inflicted and the support they receive seem more like punishment. (In Hungary the only hope for a large proportion of long-term unemployed people is compulsory public labour, independent of the level of education, for wages below minimum wages.) There is very little trace of “vulnerability”-centred attitude towards the unemployed in **long term programs**. These may concentrate more on the cheap labour supply for investments important to the decision makers for political or personal reasons, rather than on the gradual employability of those unemployed.

## **iii. Poor**

Some of the poorest countries of Europe are among the countries included in the

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<sup>12</sup> Tetyana Rodnyenkova, Russia

research. Poverty always hits the helpless first and to the largest extent. Even in the EU member countries of our sample, child **poverty is high**, and not just by one measure, e.g. compared to EU average living standards. In countries of relatively high per capita income a large number of children regularly go to bed hungry, go to school without breakfast and may not have electricity and running water in their homes. These children are the ones who are classified as “in a multiple disadvantaged situation”, for in school they turn out to be slower than average, and may be placed in “special schools”, may drop out early. They have nothing to go for them, yet beside acknowledging the fact that they are “in a difficult life situation” there is not very much happening to stop this process and help these children (and their families) from a very early point. In some countries there are programs for early development but the availability and financing of these is arbitrary.

Poverty of the **elderly**, and those with **disabilities** is very common throughout the region, while the propensity and perhaps ability of the society to improve this situation and react to it with the sensitivity vulnerable groups of adults may deserve is less and less likely.

#### **iv. Homeless**

Poverty and unemployment on a very high level combined with a relatively leaky net of social security and, in some countries, devastating wars, increased the number of homeless people to a level never seen before. Not only adults live in the street, but there is a large number of **children**, either together with their families or alone, living in the streets as well. Compassion and solidarity definitely not on the rise in the region, legislative attempts to deal with the problem seem to concentrate on how to make the phenomenon invisible, rather than on how to help those - vulnerable - children and adults who are victims to homelessness. **Lack of permanent residence often means losing opportunities to claim care, benefits, services, in some countries even schooling and medical treatment.** In some countries there are shelters run by local municipalities, in others it is mainly NGOs that offer services to the homeless.

#### **d. Nationality, ethnicity related**

Minorities, by definition could be considered as a group of people in a special -

usually less than equal - situation, and therefore classified by law as vulnerable. The general idea is covered in all countries by legislation on **anti-discrimination**.

#### **i. Local minorities**

Borders and the mix of the population have undergone serious changes almost in all countries of the region in the past 50-70 years, in the case of some countries as a consequence of more than one big historic event. In almost all countries the population has a sizeable proportion of different ethnic groups. In most countries at times of relative peace and welfare these people of different nationalities and ethnicities may live together undisturbed and without hostility towards each other. In more difficult times, however, politicians and the main **nationality population** often use them as scapegoats. This is increasingly true in the region for the **Roma**, but also for Albanians, Turks, Russians or, in fact, any minority at hand. While there is legislation on the rule of antidiscrimination in all countries, the fact is that discrimination is rarely easy to prove. In addition to being discriminated against, some of the minorities or ethnic groups are also the poorest, least educated people in the respective countries. Consequences of the war among the former member countries of Yugoslavia, or the loss of territory of Ukraine even more recently, left many of these countries in a turmoil concerning how they feel about the minorities in the country.

#### **ii. Refugees**

The appearance of any significant number of refugees in the region is a relatively new phenomenon. All countries in the region have relevant legislation on how to help refugees, what their rights are and what sort of support they may be eligible for. The **unexpected influx of refugees from 2015 on have tested this legislation**, which largely **failed** in most countries. While the poorest countries in the region are hardly the final target countries for the refugees, they often are the country where they first reach Europe. They need some sort of supply, care, treatment, help, which, in this magnitude is not always available in the country. The need of refugees for help in the first instance mobilized the population in many countries and many NGOs became involved in supporting them. However, the unexpected magnitude of the influx turned, in most countries, the popular mood against refugees and in some countries, e.g. Hungary, not only the (relatively limited) practice of providing help

when needed changed into refusing help, but also changes in the legislation are initiated.

In most countries though, refugees still may enjoy the status and support by legislation, but rarely in practice.

#### **e. Other**

Perhaps the saddest phenomenon is the large number of **street children** in some of the countries involved in the research. Sometimes they are children who have families, but their families are not functional and for whatever reason the social network does not reach them. Or they may be without family, due, for example, to their parents working abroad and not leaving them with anyone, or whoever they were left with, do not attend to them. Sadly, **the social system often only meets them when they are caught committing crimes**. These children are, in principle, the beneficiaries of many legal acts: they are children, they are deprived, they are in special life conditions, they are in a multiple disadvantageous situation, without care and protection, yet the social system somehow cannot reach them. While there are some NGOs active trying to help street children in some of the countries, this is typically a situation that requires state level intervention.

Another, very large scale problem for the solution of which so far there are no sufficient resources available, is of those who are **internally displaced** due to war, most recently in the Ukraine.

*„...the military conflict affected numerous vulnerable categories of population. UN reports show that approximately 1,7 million children suffered from the conflict. According to the recent estimates of the International Organization for Migration (IOM) and the Ministry of Social Policy, “[t]he total number of internally displaced persons (IDPs) from Crimea and Eastern Ukraine is 1,641,895 as of 30 January 2017.” Under these circumstances, the Government is often not capable of implementing safeguarding policies under the national legislation. In particular, the state budget contains little funds to combat trafficking in human beings and support victims of human trafficking.”<sup>13</sup>*

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<sup>13</sup> Anatoliy Galushko, Ukraine

## Legislation on vulnerable groups of people

In the countries included in the research, the concept of ‘vulnerability’ and ‘safeguarding’ was usually adapted from international norms, although some parts of the concept (like marginalization and discrimination) have already appeared in the national legislation of many CEE countries in an organic way.

The influence of the UN, CoE and EU is eminent in this field. However most of the countries kept their original (mainly historically based) concept of safeguarding and protection.

### International (UN, CoE) and EU legislation, regulations, directives, recommendations relevant to the issue

All the research countries<sup>14</sup> are CoE members and they also ratified the UN CRC, UNDP, CEDAW (the Optional Protocols (OP) and the International Conventions of Economic and Social Rights as well as the IC of Political Rights that ensure the common pattern of the region in the field of child protection and safeguarding vulnerable adults. (see tables below)

	EU membership	CoE membership	CRC	CRC OP1	CRC OP2
ALBANIA	EU candidate	x	1990/1992	2008	2008
OSNIA&HERZEGOVINA	potential EU c.	x	1993	2000/2003	2000/2002
BULGARIA	x	x	1990/1991	2001/2002	2001/2002
CROATIA	x	x	1992	2002/2002	2002/2002
CZECH REPUBLIC	x	x	1993	2000/2001	2005/2013
HUNGARY	x	x	1990/1991	2002/2010	2002/2010
KOSOVO	potential EU c.*		2009		
MACEDONIA	EU candidate	x	1993	2001/2004	2001/2003
MOLDOVA	Non-EU	x	1993	2002/2004	2002/2007
MONTENEGRO	EU candidate	x	2006	2007	2006
POLAND	x	x	1990/1991	2002/2005	2002/2005

<sup>14</sup> Except Kosovo



ROMANIA	x	x	1990/1990	2000/2001	2000/2001
RUSSIA	Non-EU	x	1990	2002	2002
SERBIA	EU candidate	x	2001	2001/2003	2001/2002
SLOVAKIA	x	x	1993	2001/2006	2001/2004
UKRAINE	Non-EU	x	1990/1991	2000/2005	2000/2003

	UNDP	CEDAW	IC ESCR	IC CPR
ALBANIA	x	x	(no OP)	x
BOSNIA&HERZEGOVINA	x	x	(no OP)	x
BULGARIA	(no OP)	x	(no OP)	x
CROATIA	x	x	(no OP)	x
CZECH REPUBLIC	(no OP)	x	(no OP)	x
HUNGARY	x	x	(no OP)	x
KOSOVO				
MACEDONIA	x	x	x	x
MOLDOVA	x	x	(no OP)	x
MONTENEGRO	x	x	(no OP)	x
POLAND	(no OP)	x	(no OP)	x
ROMANIA	(no OP)	x	(no OP)	x
RUSSIA	(no OP)	x	(no OP)	(no 2nd OP)
SERBIA	x	x	(no OP)	x
SLOVAKIA	x	x	x	x
UKRAINE	x	x	x	x

The direct influence of international organizations and documents became stronger after the collapse of the Soviet block (in the late 80's, early 90's). Regrettably, it

means sometimes only the formal adaptation of international standards and remains 'paper law' - without real execution.

The EU also catalyzes legal development in the region through directives, secondary legislation, case law, and financial support /investments which is paramount for the member states but also principal for the candidates (potential candidates).

Regarding the research, the **following EU norms are relevant:**

Directive 2013/33/EU laying down standards for the reception of applicants for international protection,<sup>15</sup>

Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime<sup>16</sup>,

Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims,<sup>17</sup>

Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography<sup>18</sup>,

European Social Charter,<sup>19</sup>

Charter of Fundamental Rights of the EU.<sup>20</sup>

The latest EU directive laying down standards for the reception of applicants for international protection, names the following **groups as vulnerable**: children, minors, unaccompanied minors, disabled persons, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of mental, physical or sexual violence, such as **victims of genital mutilation**. From this list, only the last category (victims of genital mutilation) does not appear as *per se* vulnerable in the national legislation of the investigated countries.

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<sup>15</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013L0033&from=HU>

<sup>16</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012L0029&from=HU>

<sup>17</sup> [https://ec.europa.eu/anti-trafficking/legislation-and-case-law-eu-legislation-criminal-law/directive-201136eu\\_en](https://ec.europa.eu/anti-trafficking/legislation-and-case-law-eu-legislation-criminal-law/directive-201136eu_en)

<sup>18</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0092>

<sup>19</sup> <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163>

<sup>20</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

In referring to ‘children’, the EU has several legal sources that raise awareness on the vulnerability of children and their needs for protective measure. Regarding ‘vulnerable adults’, the EU developed strategies that pursue actions (in the priority areas) in several fields: for instance, disability, social inclusion, and consumer protection. It is important to highlight here that we can detect ‘children heavy’ legislation of ‘vulnerability’ and ‘safeguarding’ related issues in the EU legal environment also (not just in the investigated countries).

The EU 2020 Strategy has several components in relation to vulnerability thus it may be an important milestone to develop better state policies in this field.<sup>21</sup> But strategies and action plans (even directives) are only written norms without dedicated adaptation and effective execution.

**a. National legislation**

**Vulnerability** (as a term) is **NOT used** in the following research countries: Albania, Bulgaria, Croatia, Czech R., Poland, and Slovakia. In the other countries, at least one particular law uses this term.

In the investigated countries, synonyms of vulnerability are **endangered, sensitive, at-risk, marginalized, disadvantaged, excluded**. Other important terminology in the field is **‘discrimination’**. In the majority of the countries, the vulnerability factors are recognized as ‘risks of discrimination’.

Comparing the national legislations, it is obvious that **children’s basic need for protection** and safeguarding are widely recognized in the CEE region. The investigated countries acknowledge children’s special situation at three levels: in the constitution, in the most important codes (criminal code, civil code, procedural codes), and in independent child protection or child rights law. (see table below)

	Children’s vulnerability or child safeguarding in domestic legislation
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<sup>21</sup> “...design and implement programmes to promote social innovation for the most vulnerable, in particular by providing innovative education, training, and employment opportunities for deprived communities, to fight discrimination (e.g. disabled), and to develop a new agenda for migrants’ integration to enable them to take full advantage of their potential.” Source: <http://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BARROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf>

	In constitution / international norms	Special consideration in a general (criminal, civil, administrative) code	In independent law
ALBANIA	x	x	x
BOSNIA&HERZEGOVINA		x	x
BULGARIA	x	x	x
CROATIA		x	x
CZECH REPUBLIC	x	x	x
HUNGARY	x	x	x
KOSOVO	x	x	x
MACEDONIA		x	x
MOLDOVA		x	x
MONTENEGRO	x	x	
POLAND	x	x	x
ROMANIA		x	x
RUSSIA	x	x	x
SERBIA		x	Draft law
SLOVAKIA		x	x
UKRAINE		x	x

Regarding **vulnerable adults**, the recognition of the different vulnerability factors varies among the research countries as well as the terminology used by the law. (see table below)

	<b>Recognized vulnerability factors in domestic legislation (in relation to adults)</b>
<b>ALBANIA</b>	<p>Pregnant women, motherhood</p> <p>Violence, maltreatment, abuse, exploitation, neglect</p> <p>People from marginalized communities</p> <p>Disability, health issues</p> <p>People at-risk of discrimination</p> <p>Elderly people</p>
<b>BOSNIA-HERZEGOVINA</b>	<p>Social status (material deprivation, unemployment, etc.)</p> <p>Elderly people</p> <p>People without family care</p> <p>People in conflict with the law</p> <p>Violence, maltreatment, abuse, exploitation, substance abuse</p> <p>Roma</p> <p>Refugee</p> <p>Disabled persons</p>
<b>BULGARIA</b>	<p>Disability, health issues</p> <p>Persons in disadvantaged position / disadvantaged in the labour market</p> <p>Inequality</p> <p>Violence</p>
<b>CROATIA</b>	<p>Disability, health/mental health issues, HIV</p> <p>Elderly people</p> <p>Socially marginalized people</p> <p>Victims and witnesses of crime, violence</p> <p>Substance abuse</p> <p>Imprisoned people</p> <p>Sexual and gender minorities</p>
<b>CZECH REPUBLIC</b>	<p>Disability, health issues, impairment</p> <p>Victims of crime</p> <p>Violence, trafficking</p> <p>Victims of crime against dignity / terrorism / crime based on nationality, race, religion</p> <p>Socially deprived people</p>
<b>HUNGARY</b>	<p>Disability, impairment, health issues, maternity</p> <p>Victims of violent crimes, trafficking, violence,</p>

	<p>abuse, exploitation</p> <p>Socially excluded people</p> <p>Roma</p> <p>People at risk of discrimination</p>
<b>KOSOVO</b>	<p>Disability, health issues</p> <p>Violence, trafficking</p> <p>Family in need</p>
<b>MACEDONIA</b>	<p>People need social assistance</p> <p>Disability, maternity, health / mental health issues</p> <p>Victims of serious crimes</p> <p>Trafficking, exploitation</p>
<b>MOLDOVA</b>	<p>Victims of crimes, trafficking, exploitation, domestic violence</p> <p>Asylum seekers</p> <p>Social risk</p> <p>Disability, health issues</p>
<b>MONTENEGRO</b>	<p>Abuse, Substance abuse</p> <p>Disability, health issues, maternity</p> <p>Victims of violence, exploitation, trafficking</p> <p>Homeless people</p> <p>Social risk</p> <p>Single parents</p>
<b>POLAND</b>	<p>Disability</p> <p>Harm, abuse, exploitation</p> <p>People need social assistance</p>
<b>ROMANIA</b>	<p>People need social assistance</p> <p>Disability, maternity, health / mental health issues</p> <p>Single parents</p> <p>Victims of serious crimes</p> <p>Trafficking, exploitation</p>
<b>RUSSIA</b>	<p>Social status</p> <p>Disability</p> <p>Violence, harm, abuse</p> <p>Difficult life situation</p>
<b>SERBIA</b>	<p>Social status, deprivation, disadvantaged in the labour market</p> <p>Disability, health issues</p>

	Victims of crimes, violence, violence against women People at risk of discrimination (violence against dignity) Roma, other minorities
<b>SLOVAKIA</b>	Negative social situation Asylum seeker People at risk of discrimination Minorities, Roma Disability, health issues, pregnancy Single parent with minor children Victim of crime Elderly person
<b>UKRAINE</b>	Disability, health issues, HIV/AIDS People need social support and care Former military personnel, veterans of war Victims of domestic violence Refugee Victims of Chernobyl

**Safeguarding** (as a term) is **NOT used** in Albania, Bosnia and Herzegovina, Croatia, Hungary, Moldova, Slovakia, Romania.

Similar terms to safeguarding like **'measures of protection'**, **'care measures'**, **'support measures'**, **'safeguarding requirements'**, **'obligatory procedures of safeguarding'** are used in all research countries.

It is hard to evaluate the safeguarding measures only based on the law. The **quality of the practice** is key as prof. Landsman indicated in the Kosovo Report "*Kosovo is a country with a significant contradiction between the quality of the laws concerning child protection and their application in the field.*" The **gap between regulations and execution** is a revolving narrative in the country reports.

In addition to the quality of application, the **lack of soft law and secondary legislation** (safeguarding protocols and standards) seems to be a common pattern in the region.

## Stakeholders

### a. Appointed by legislation

The protection of vulnerable groups from harm needs an **intersectoral approach**. According to the research data, most of the investigated countries<sup>22</sup> have a multisectoral **reporting system** to secure an appropriate and timely response or intervention in case of **children**. Regarding other vulnerable groups there is no such integrated and mandatory reporting system, yet some elements as a multisectoral approach are detectable in the practice of social work in the research countries. In countries with a mandatory reporting system, the law lists the relevant stakeholders (according to their operation: health sector, educational sector, social sector, justice).

The most important governmental stakeholders appointed by the legislation are the followings:

- Ministry dealing with social and family affairs (it is under different names in the countries)
- Ministry or Governmental organization dealing with child protection
- Ministry dealing with health issues
- Ministry dealing with education
- Ministry of Justice
- the Ombudsperson
- The Children's Ombudsman (Bosnia-H, Republika Srpska, Croatia, Poland, Russia, Ukraine)
- Commission or Authority for the Protection of Equality / against Discrimination

The system of protection is decentralized in all research countries and the **municipal authorities** play an important role in establishing and maintaining the system at local level.

The role of the **NGO sector** as well as the religious organizations is eminent in each country. They can provide (following authorization) social services and perform certain tasks in relation to each vulnerable group. All NGOs that provide social services in place of the state, are required to follow an **accreditation process** in

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<sup>22</sup> Albania, Bulgaria, Czech R., Croatia, Hungary, Kosovo, Moldova, Poland, Romania, Slovakia, Serbia, Ukraine.



order to receive contracts/fund/financial support from public authorities. Having a safeguarding policy is not part of the accreditation in any research country.

If the NGO does not provide 'services for the public instead of the state', accreditation is not needed. However, **registration is a must** in case of every NGO. We have limited information in the research whether the NGOs have **reporting requirements** after registration. It seems that annual financial reporting is obligatory in each country except Czech Republic and Slovakia<sup>23</sup>.

The most important stakeholders among international actors of the NGO sector in the research countries are the following :

- UNICEF
- Habitat for Humanity
- World Vision
- Helsinki Committee
- Amnesty International
- Terre des hommes
- Save the children
- SOS Children's Villages

## **b. Civil organizations**

NGOs are especially active in countries where the support role or ability of the state is weak or insufficient. In some of the countries NGOs are not only welcome but also play a vital role in providing protection and support for children and vulnerable adults. The Albanian expert wrote:

*„According to the most current study on mapping and assessment of civil society organization all over the country there are 190 organizations working on child rights, out of which 57 are based in Tirana and the other 133 are placed in other cities and remote areas.”<sup>24</sup>*

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<sup>23</sup> We used additional sources to get more information about this issue. Source: <http://belngo.info/2016.the-guide-on-ngo-registration-and-functioning-in-european-countries-was-published.html>

<sup>24</sup> Orinda Gjoni, Albania

The situation is similar in Kosovo:

*„Since the war, Kosova has been flooded with well-meaning people from all over the world with resources and an agenda. It has been estimated that, in the year 2000, there were over 750 international NGOs operating throughout Kosova. Over the years, a natural selection process has filtered out the more negative elements and those currently working in Kosova have made, and are making, a significant contribution.”<sup>25</sup>*

In other countries, e.g. Romania, NGOs take on not only the task of actual helping those in need, but also participate - as much as they are allowed - in the forming of **legislation** and also the **public attitude** towards the vulnerable groups.

*“Other national level NGOs are both providing specialised services to vulnerable groups (including counselling in accessing the rights and benefits) and, at the same time, advocate for the improvement of the relevant legal framework or for a better implementation of the existing safeguarding provisions.”<sup>26</sup>*

In Russia NGOs are called **NPOs** (non-profit organizations) in legislation:

*“This wording is more popular than “non-governmental organization” in Russian legislation and on the media. Since NGOs/NPOs may be established for the aims of social entrepreneurship there is a clarification term “socially-oriented non-profit organization” (SO NPO) that refers to NPOs dealing with social issues and social provision for vulnerable groups.”<sup>27</sup>*

Also in Russia, the role of NGOs is vital not only in providing actual help but also in keeping an eye on relevant legislation:

*“Representatives of NPOs become members of public, expert and coordination councils at federal and regional ministries / departments; they participate in discussion of draft bills and execution of enforced laws. For*

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<sup>25</sup> Moshe Landsman, Kosovo

<sup>26</sup> Roxana Paraschiv, Romania

<sup>27</sup> Tatyana O. Archakova, Russia

*instance, in 2013-2014 NPOs suggested approximately 40 amendments to the legislation in the field of family placement of children in state care; part of these amendments was promptly changes as soon as actual problems with their implementations were revealed by the NPOs.*<sup>28</sup>

Many reports mention the role of NGOs in their respective countries as **establishing examples of minimum standards, safeguarding requirements and procedures** otherwise uncommon in this field.

In the past few years the **refugee crisis** affected the countries in the report very seriously. In the majority of these countries NGOs are the most prominent - sometimes only - organizations providing reliable support, both for physical needs and in services, including legal assistance and medical / psychological help. This is not always welcome by the state, especially when the influx of refugees is used for negative political propaganda, like, for example, in Hungary.

NGOs can be, and sometimes are, seen as a threat to the overall authority of the state to decide on issues concerning vulnerable people and especially their rights. One way to **turn public opinion against NGOs** is the example of Russia:

*“A risk for development of NPOs is posed with the Federal law № 121 On Amendments to the Russian Federation Legislative Acts on Regulation of Activities of Non-Commercial Organizations Functioning as Foreign Agents”, i.e. NPOs that obtain financial support or properties from foreign sources and participate in political activity. The law requires such organizations to voluntary register as “foreign agents”, otherwise there are subject to fines. The law claims that “social welfare and protection, protection of motherhood and childhood” as well as “charitable activities” are not related to political activities but the cases of its actual implementation is sometimes controversial. For instance, a leading NPOs in the field of family abuse prevention and victims rehabilitation – Regional public organization for support of women and children in crisis situations “Anna” – was included into the registry of “foreign agents” at the end of 2016.*<sup>29</sup>

Another example for the not always welcoming attitude to NGOs is Hungary, where

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<sup>28</sup> Tatyana O. Archakova, Russia

<sup>29</sup> Tatyana O. Archakova, Russia

organizers and beneficiaries of the **Norwegian Funds** were harassed and hindered in their charity work by legal actions, all of which were eventually ruled to be without foundation by the court.

## **Approach to safeguarding**

If we look at what is called safeguarding policies in the country reports, we find that the expression is often used for the policy documents of governments, either in legislation or in different programs, action plans or declarations. In these the commitment to the **protection and the need for assistance** to each respective vulnerable group is declared, sometimes with references to international obligations. Many report writers point out that while on the declarative, legislative level the principles of how to protect and assist vulnerable groups of people is correct, in many cases secondary legislation that would regulate “who and how” is missing. **Often resources are not allocated** to the correct goals. For example, in most countries there is good legislation concerning child protection, but there is no budget allocated to carry out the stated policies, and the “who and how” is regularly not answered.

The way the author put it in the country report for Serbia may summarize the situation in the whole region:

*“In the Republic of Serbia, a number of strategic documents, adopted on the Government level, confirm the readiness of the state to make a commitment to solving certain problems that are particularly significant for children and vulnerable adults. By trying to improve the status of vulnerable groups in certain segments of social life, these documents support the systemic approach and, in correlation with relevant regulations, represent a potential for more efficient resolution of relevant protection issues. However, implementation of adopted strategies and plans has still not been fully realized in practice, including the continuous monitoring of fulfillment of established objectives and activities, which is, at the same time, the major deficiency of the state policy in this field. Regarding the national regulations, greater number of laws and bylaws exist which directly or indirectly regularize the children’s rights in general, as well as special rights of adults from vulnerable groups. But, in the field of protection from abuse and neglect, our*

*legal system is far from complete. Safeguarding policies do not exist on the institutional level, while the existing regulations, even when supporting certain safeguarding mechanisms, are often implemented selectively, wrongly, or are not enforced at all.*<sup>30</sup>

In many countries in the region it is the example of (often international) NGOs that trigger a more widespread practice of working out and employing different procedures of safeguarding policies. Perhaps the best example of this is the Polish NGO, Empowering Children Foundation's initiative.

*“Safeguarding is a new issue for Polish non-governmental organizations. There are no legal regulations that obligate NGOs to develop and implement safeguarding policies. Some of the NGOs, inspired by international standards, try to create and implement their own safeguarding policies. In 2014, Fundacja Dajemy Dzieciom Siłę launched an initiative “Chronimy Dzieci” (English: “We Protect The Children”), ... a program aimed at preventing violence against children, authored and coordinated by Fundacja Dajemy Dzieciom Siłę. This program is addressed at nurseries, kindergartens, primary schools, middle schools, educational care facilities, non-governmental organizations and other institutions acting in support of children. It is the first program in Poland that promotes safe organizations and that responds to the needs of professionals and parents connected with implementation of standards of institutions that are safe for children. The concept of this program is to award the “Chronimy Dzieci” certificate to those facilities that meet elevated standards of children protection and that run high quality programs of protecting children against abuse. Organizations join this program on a voluntary basis and they themselves decide if they want to implement these standards. Persons who put children safety in danger cannot be employed in facilities that meet those standards. All employees of such facilities must know how to recognize signs of child abuse and how to intervene if they suspect that a child is a victim of violence in the facility or at home. All children learn how to avoid dangers in contacts with adults and peers. Also, all children have permanent access to information on where to seek help in difficult life situations. Parents on the other hand receive advice on how to raise children without violence and how to talk to them about safety*

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<sup>30</sup> Jelena Arsic and Milena Banic, Serbia

*rules.*

*.....*

*Until today 3754 facilities joined the “Chronimy Dzieci” initiative. A majority of facilities has only started working on meeting all the standards 353 facilities have completed the process of implementation of standards and were awarded a certificate.”<sup>31</sup>*

Establishment of safeguarding policies, relevant training of staff, elaboration of procedures, accountability and also monitoring and evaluation may remain heavily dependnt on the presence and work of NGOs in the region for the foreseeable future.

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<sup>31</sup> Paulina Maslowska, Poland

## ALBANIA

## **Desk research**

### **Question n.1: What is the definition of “child”?**

There is a definition of "child" in the domestic legislation. Albania has ratified the Convention of the rights of the child with the law Nr. 7531, datë 11.12.1991. We have also in force the law nr. Nr. 10 347, datë 4.11.2010 "For the protection of the rights of the child". In this specific law we have a definition for "child"/ article 3 that says: "A child is a person born alive, until 18 years old. If the person's age can't be determined exactly, but there are reasons to presume that the person is a child, he is considered to be a child and benefits by this law".

### **Question n.2.: Is the notion “vulnerability” or “vulnerable” (for child and adult) used in legislation in your country? What other words, notions are used in your national legislation to describe this phenomenon?**

Albania does not have a definition for "vulnerability" in general. For vulnerable child we can say that in the same law mentioned above, Nr. 10 347, datë 4.11.2010 "For the protection of the rights of the child" –does provide a definition in article 3 for "children in risk"- who are considered: "Child in risk is considered the child whose rights and protection provided by this law and the legislation in force, are denied".

Based on our legislation there is not a clear definition stipulating exactly that a child is considered vulnerable, but in our constitution we have an article stipulating that "children enjoy a special protection from the state". This article exactly provides:

"Children, the young, pregnant women and new mothers have the right to special protection by the state. 2. Children born out of wedlock have rights equal to those born within marriage. 3. Every child has the right to be protected from violence, ill treatment, exploitation and from performing any work, especially under the minimum age for child labor, which could damage his health and morals or endanger his life or normal development" (article 54 of the Constitution).



This principles are reflected in the Constitution of Albania, Family Code and law nr. 10 347, dated 4.11.2010 "For Protection of Children's Rights".

Article 5 law nr. 10 347, dated 4.11.2010 "For Protection of Children's Rights",  
General principles: The protection of the rights is carried out by guaranteeing:  
5/2 - Equality and non-discrimination, regardless of race, color, gender, language, religion, creed or any other opinion, national, ethnic, or social origin, wealth, disability, family origin or any situation of the child or his parents/legal representatives.

Article 5/3: "Elimination of all forms of discrimination or punishment of the child, because of the position, activities, opinions expressed or creed of his parents/legal representatives or his family members.

Article 5/1 of the aforementioned law: The protection of the rights is carried out by guaranteeing...the best interest of the child, as the primary consideration, in all the decision-making concerning the child, decisions regarding the child made by the public or private providers of social care services, courts, administrative or legislative bodies. Article 2 of the Constitution: Parents, competent authorities and the courts, in their decisions and activity, should have as a primary consideration, the best interest of the child.

Constitution of the Republic of Albania - Article 21: A person's life is protected by law; Law Nr. 10347 - Article 6: The right to life, survival and development:  
1. The child has the undeniable right to life and wellbeing, and basic healthcare. A child is guaranteed the enjoyment of the highest possible standards of health, treatment and rehabilitation. A child has the right to access these health care services. 2. Parents/legal guardians have the primary responsibility of ensuring the means of life, in order to guarantee the proper upbringing, development, wellbeing and education of the children born within or out of the wedlock.

Article 11 law nr. 10 347: Right to expression - The child has the right to express freely, individually and collectively his views and thoughts, on any matters affecting him, which should be evaluated according to his age and maturity. 3. The child has the right to be heard in any court or administrative proceedings affecting him, personally or through his legal representative, the presence of the psychologist being compulsory.

**Question n.3.: Is the expression of “safeguarding policy” or any synonym (safeguarding requirement, safeguarding measures, obligatory procedures of protection /measures of care, etc.) mentioned in these acts and/or regulations in relation to vulnerability? and Question n.4.: Does your national legislation on vulnerable children and adults specify the stakeholders who are expected by law to provide care and protection?**

According to Article 35 of the Law Nr. 10347, the Minister of Welfare and Youth (MSWY) coordinates the work between central government departments regarding issues of protection of children's rights.

According to Article 35/dh of of the Law Nr. 10347, MSWY is also responsible for coordinating the work between central and local government, through enacting methodological instructions on the activity of the Children’s Rights Units (CRU) and Child Protection Units (CPU), which are the local government structures responsible for coordinating and implementing the child protection services and cases management.

According to Article 34 of of the Law Nr. 10347, the National Council for the Protection of Children’s Rights (NCPCR) coordinates the state policies on guaranteeing the protection of children's rights in all the fields, especially those related to justice, social, educational, health and culture.

According to Article 34/ç) of of the Law Nr. 10347, the National Council for the Protection of Children’s Rights (NCPCR) analyzes the implementation of the state policies and national and regional programs on the protection of children.

According to Articles 36 and 37 of the Law Nr. 10347, the State Agency for the Protection of Children's Rights (SAPCR) is the legal entity under the hierarchy of the MSWY, whose aim is to supervise the legal framework on protection of children's rights, to coordinate the actions for the protection of children, and to consolidate the multidisciplinary interventions in order to provide all-round protection to children.

It is also possible to invoke these principles before the courts, as there are clear stipulations in the law.

**Question n.5.: What other stakeholders are you aware of concerning vulnerable children and adult in your country? (NGOs, international bodies, etc.)**

There is a lack of services in the country as regards children in need or vulnerable children. This role of providing services is provided by years by local and International organisations, operating in the country. There are a lot of organisations providing advocacy as well.

**Question n.6.: Anything else that you find relevant, interesting to mention from what you have found during your desk research on this topic**

There was not an actual complete and comprehensive review of all legislation with regard to compatibility with the convention in Albania. It is considered that law nr. 10 347, dated 4.11.2010 "For Protection of Children's Rights" is in full compliance with the convention, but there is not an evaluation of all specific laws and subsidiary legislation. One of the duties of State Agency for the Protection of Children's Rights (SAPCR) is also to monitor the implementation of the law in respect to the State obligation to comply with international standards. Such evaluation is done but partially, with regard to specific rights and not to all the legislation (National Reports of SAPCR on the Situation of

Children's Rights in Albania from 2011 to 2014). It is to be stated also the Two Evaluation reports made for the Convention by Albanian State (which comes as an obligation as a party state). The last evaluation was made in 2009.

## Country report

According to the 2016 Report on Albania<sup>32</sup>, the legal framework for the protection of human rights, including safeguarding of children and vulnerable adults, is broadly in line with European standards. Albania has ratified most international human rights conventions. However, enforcement of human rights protection mechanisms and the institutional mechanisms to protect the rights of the child needs to be enhanced. Moreover, the reform of social services in Albania, launched early in 2013, together with the development and approval of the **National Strategy for Social Protection 2015-2020** (Strategjia Kombëtare për Mbrojtjen Sociale) 2015-2020 and the **Policy Document for Social Inclusion**<sup>33</sup> (Dokumenti Politik I Përfshirjes Sociale) , as well the **Law 121/2016 on Social Services**<sup>34</sup>( Ligji 121/ 2016 për Shërbimet e kujdesit shoqëror) and the **Law on the Rights and the Protection of the Child**<sup>35</sup> (Ligji për të drejtat dhe mbrojtjen e fëmijës) creates a policy and legal foundation for the development of social services and social protection of children, vulnerable adults and marginalized communities.

Despite the progress made in regard to policy and legal framework in Albania, there is no clear definition of the term “vulnerability”. According to Child Protection Index 2016 *“Measuring government efforts to protect girls and boys”*, “child vulnerability” is measured upon three distinct elements: (i) the situation of children living outside of their biological families (ii) public sector personnel available to advocate on behalf of vulnerable children; (iii) and the amount of state welfare expenditures as a percentage of Gross Domestic Product. Albania is performing low in the category of child

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<sup>32</sup>[https://eeas.europa.eu/headquarters/headquarters-homepage\\_en/14432/Key%20findings%20of%20the%202016%20Report%20on%20Albania](https://eeas.europa.eu/headquarters/headquarters-homepage_en/14432/Key%20findings%20of%20the%202016%20Report%20on%20Albania)

<sup>33</sup> Approved by Decision of Council of Ministers No. 87, on 3 February 2016

<sup>34</sup> Entered into force on 24<sup>th</sup> November 2016.

<sup>35</sup> Law no. 18/2017, approved by the Albanian Parliament on 23<sup>rd</sup> of February 2017.

vulnerability reaching 0,367 out a possible score of 1,0. Moreover, Child Protection Index shows that Albania receives a high score for its law and policy actions to protect children and vulnerable adults from marginalized communities but still challenges are identified in terms of effective implementation.<sup>36</sup>

***The Albanian Constitution (Kushtetuta e Republikës së Shqipërisë)*** on Art. 54 stipulates that children, pregnant women and new mothers are entitled “*to special protection*” by the State. The same Article provides that every child has the right to be protected from violence, abuse, exploitation and use for work, especially under the minimum age for child labor, which can harm the child’s health or endanger life and normal development. According to the new Law on the Rights and the Protection of the Child, Art.3/point 3 ***“a child”*** “*Fëmijë*” is every physical person below 18 years old. In case the person’s age is impossible to determine accurately, but there are reasons to believe that the person is a child, s/he is considered a child in terms of this law until their age is determined in accordance with the law. Art. 3/point 4 foresees that ***“Child in need of protection”*** “*Fëmijë në nevojë për mbrojtje*” is the individual below 18 years of age who may be a victim of abuse, neglect, exploitation, discrimination, violence or any other criminal activity, as well as the individual under the age of criminal responsibility, who is suspected or has committed a criminal offence as well as children in conflict with the law, and Art. 3/point 5 ***“Child protection”*** is the prevention of and response to violence, maltreatment, exploitation and neglect of children, including kidnapping, sexual exploitation, trafficking, child labor and child marriage and ***“Integrated child protection system”*** “*Sistemi i integruar i mbrojtjes*” is the set of laws, policies, and services needed across all social sectors – especially social welfare, education, health, security and justice – **to support prevention and response to risks appearing during their implementation.** Responsible bodies shall take measures with a view to ensure collaboration, division of responsibilities and coordination between all government agencies,

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<sup>36</sup> Child Protection Index for Albania, 2016. ChildPact, United for Child Care and Protection (BKTF), World Vision International.

local government units, public and non-public service providers, community groups, including case referral systems, as components to the child protection systems.

Moreover, according to Art. 3/point 2 **"Violence against children"** *"Dhunë ndaj fëmijës"* is defined as the deliberate act or omission leading to all forms of physical or mental **violence (dhunë)**, injury or **abuse (abuzim)**, neglect or negligent treatment, maltreatment or exploitation, including sexual **abuse**; Art. 3/point 11 **"Child neglect"** *"Neglizhimi i fëmijës"* is the voluntary or involuntary failure by the person responsible for the upbringing, care or education of the child, to take the necessary measures, an omission that puts in danger the life, the physical and mental integrity of the child, and Art. 3/point 15 **"Harmful acts, visuals and images to the child"** *"Përmbajtje e dëmshme për fëmijën"* is any picture, photographic or graphic image or other visual depictions that call for an erotic interest, nudity or sexual relations with the child; they openly transmit inappropriate acts for the child; promote sexual relations or other sexual behaviors with the child, or display the genitals of the child.

The new law on the Rights and the Protection of the Child, provides for the first time the establishment of a comprehensive and integrated system of protection of children, redefining clearly the duties of institutional mechanisms and structures/agencies of child protection at central and local level, to coordinate with the new law on social services and the reality of the new legal administrative territorial division of the country. Despite the protection measures, which can be set for each child in a situation that requires protection, the law provides the modalities of intervention and steps taken to protect three categories of children, specifically those abused, violated, neglected, children in street situations and children who are accused of committing criminal offenses but are under the age of criminal responsibility, which aims to create a better basis and detailed in law for actions to be taken for these categories. Moreover, the law imposes the obligation of the background check for the child protection workers and/or those working with

children and provides termination of employment or suspension, in cases of commit intentional offences or have been *accused of committing offenses against the child*.

In addition, The law on **Social Care Services**( *Shërbime të kujdesit shoqëror*) foresees the creation of services delivered at community level for children and vulnerable adults/persons. In particular, the new law provides:

**"Social care services"** (*Shërbime të kujdesit shoqëror*) representing an integrated and organized system of benefits and facilities that are delivered/provided by professionals of relevant public or non-public entities, with the goal of ***improving the conditions of disadvantaged persons***.

**"Para-social care services"**(*Shërbime parashoqërore*)services that include provision of information, support ***to families*** so that they ***identify their needs for care, initial assessment***, and support to the individual to make the choice for the service that they need.

**Complimentary "Specialized care services"**(*Shërbime të specializuara*) which support at local level services delivered at the regional ***level for children with special needs such as autism, child victims of sexual abuse and women and girls who are victims of abuse and violence or trafficking***.

**"Online of telephone counselling services"** (*Shërbimi i këshillimit me telefon ose on-line*) services offered through the help phone line 24 hours 7 days a week, ***that support and counsel families or children in cases of crisis, domestic violence or for protection of children***.

Users of social services (Art. 5) include also, children, who are not yet 18 years old, and are not able or are in distress due to the fact that they parentless, or with no custodian/caregiver, outside their homes or are far from parental care or custodians', victims or potential victims of abuse, trafficking or domestic violence. The Law also foresees the treatment of children in emergency situations (Art. 18) and the treatment of children victims of trafficking (Art. 19).

According to the Strategy of Social Protection 2015-2020, the establishment of **an integrated system of social care services** at local level by local government units is a priority. The basic package of services will be the main tool for newly established local government units in planning and delivering of services in their communities **based on the needs of at-risk groups**, including children, vulnerable adults and persons from marginalized communities. The package will be tailored **to individual needs** and will take place based on the establishment of sectoral needs assessment and referral (SVNR), as well as a number of services to social care, organized and offered by public and private entities in central, regional and local levels. On the other hand, the **Social Inclusion Policy Document 2016-2020** (Dokumenti Politik I Përfshirjes Sociale) establishes that **social inclusion policies** will be developed, adopted and mainstreamed into sector strategies and national policy frameworks/strategies by 2020, while identifying causes and intensify efforts of social inclusion, aiming at poverty reduction and marginalization diminishing.

The government institutional mechanisms at the local and central level are considered to be the main stakeholders involved in the lifeguarding and the protection of children and adults. The role and mandate of the institutions towards protecting children is regulated through the Law “On the Protection of Children’s rights” and the secondary acts.

At the central level, the law foresees the functioning of: (i) **the National Council for the Rights and the Protection of Children** (Këshilli Kombëtar për të Drejtat dhe Mbrojtjen e Fëmijës në nivel qendror) as an advisory body established ad-hoc nearby the **Ministry Of Social Welfare and Youth (MSWY)**(Ministria e Mirëqënies Sociale dhe Rinisë) , (ii) **the Minister of SWY**( Ministri I MSR) and (iii) **the State Agency for the protection of children's rights and protection** (Agjencia Shtetërore për të Drejtat dhe Mbrojtjen e Fëmijës) Clear responsibilities and mandate of the above mentioned institutions are defined with regard to both, the protection of



children's rights and in the field of child protection.

At the local level the law foresees the functioning of local mechanisms such as: (i) **Child Protection Units (CPUs)**(Njësia Për Mbrojtjen e Fëmijës) or the **Child Protection Worker (CPW)** (Punonjësi i Mbrojtjes së Fëmijës) These structures are part of the structures of social services at local level. More specifically, the CPUs will be included within the Department of Social Services, whereas the CPW will be included within the Need Assessment and Referral Unit, part of the administrative unit of at the municipality level.

According to the law, the institutional mechanisms for the rights and protection of the child are divided in: (i) Institutional advisory and coordination mechanisms and structures for the rights and protection of the child; (ii) the structures for the rights and protection of the child at the central level and (iii) the structures for the rights and protection of the child at the local level. More specifically:

- Institutional advisory and coordination mechanisms are:

a) **The National Council for the Rights and Protection of the Child** (*Këshilli Kombëtar për të Drejtat dhe Mbrojtjen e Fëmijës në nivel qendror*) : serves the primary duty to coordinate government policies for the realization of the rights and protection of the child in all areas, particularly those of justice, social services, education, health, and culture. (Art. 35)

b) **The technical inter-sectoral group at the municipality and at the administrative unit** (*Grupi teknik ndërsektorial në nivel bashkie apo njësie administrative në nivel vendor*): composed of representatives of police structures, social services structures, and representatives of educational, health, justice structures, non-for-profit organisations, as well as any other specialist who is aware of or may contribute in taking or implementing the measures for child protection. They have the obligation to attend the meetings of the technical inter-sectoral group. (Art. 52)

c) **The Ombudsman** (*Avokati i Popullit*): monitors the implementation of this law in accordance with the Convention on the Rights of the Child and with the

obligations stipulated in Law no. 8454, dated 04.02.1999, "On People's Advocate". (Art. 34)

The structures for the rights and protection of the child at the central level are:

a) **The Minister responsible for coordinating action related to the rights and protection of the child** (*Ministri që bashkërendon punën për çështjet e të drejtave dhe mbrojtjes së fëmijës*): coordinates and monitors the development and implementation of the relevant policies and measures for the implementation of this law, of the national strategy and action plan for children, as well as of the international commitments of the Republic of Albania in relation to the rights and protection of the child and prepares the relevant reports; supervises the activity of the State Agency for the Rights and Protection of the Child and approves its annual progress report on the implementation of actions for the realisation of the rights and protection of the child; (Art. 38)

b) **The State Agency for the Rights and Protection of the Child** (*Agjencia Shtetërore për të Drejtat dhe Mbrojtjen e Fëmijës*) is responsible for the coordination and the organization of the child protection system, in implementation of the national policies for child protection, including the implementation of interventions and measures for the prevention and protection of children from abuse, neglect, maltreatment and violence. (Art. 41)

c) **Any Minister responsible, within their area of competence, related to the rights and protection of the child.**<sup>37</sup> (Art. 39) (*çdo ministër përgjegjës, sipas fushës që mbulon, në lidhje me të drejtat e fëmijës dhe mbrojtjen e tyre*)

The structures for the rights and protection of the child at the local level:

a) **The municipality** (*Bashkia*) : responsible for the establishment of the respective child protection structures at the municipality and at the administrative unit level under their subordination, in implementation of the standards, and, through these, of an integrated system of children protection.

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<sup>37</sup> Ministry of Health, Ministry of Education Education and Sport

(Art. 46)

b) **The responsible structure for Social Services at the municipality** (*Struktura përgjegjëse për shërbimet shoqërore në bashki*): also responsible for the child protection issues in general. It takes all the necessary measures for the realization and guaranteeing of the child protection in the territory of the municipality, through its subordinate structures and in collaboration with other municipal departments, with the local protection mechanisms / other local institutions. (Art. 47)

c) **The Child Protection Unit within Social Services Department at the municipality** (*Njësia për mbrojtjen e fëmijës pranë drejtorisë së shërbimeve shoqërore në bashki*): municipality is established and functions as a specific unit within the responsible Structure for Social Services at any municipality and is specifically responsible for the prevention, identification, assessment, protection and follow up of the cases of children at risk and/or in need for protection (Art. 49)

ç) **The Needs Assessment and Referral Unit at municipality or administrative units** (*Njësia e vlerësimit të nevojave dhe referimit pranë bashkisë apo njësive administrative*): The technical inter-sectoral group supports the Child Protection Worker and the Needs Assessment and Referral Unit in assessing the case, in drafting the Individual Protection Plan, it facilitates the referral of the case and the implementation of the interventions or specified actions in the Individual Protection Plan. (Art. 34)

d) **The Child Protection Worker** (*Punonjësi i mbrojtjes së fëmijës*): performs the function of the case manager for children in need of protection from the moment of identification or referral, during the determination and implementation of the Protection Measure and of the Individual Protection Plan until their conclusion. (Art. 50 & 51)

The above mentioned governmental mechanisms/agencies cooperate with non-profit organizations to implement national and local policies in relation to the protection of child's rights, and for the provision of necessary child protection services.

There has been a rapid growth of national civil society organizations,

increasingly active in many areas related to children's rights. International non-governmental organizations have played a key role in Albania, advocating children's rights, developing child protection practices and providing services. Given the lack of state resources, the contribution of the civil society has been seen as crucial and there is too great reliance upon NGOs to provide services.<sup>38</sup>

In Albania, there are many international, national and local organizations which work in the safeguarding and protection of children and vulnerable adults. According to the most current study on mapping and assessment of civil society organization<sup>39</sup> all over the country there are 190 organizations working on child rights, out of which 57 are based in Tirana and the other 133 are placed in other cities and remote areas.

There is a national coalition called "**United for Child Care and Protection (BKTF)**" (Bashkë Për Kujdesin Tërësor të Fëmijëve)

composed of 28 national and international organizations in Albania that coordinate mainly on implementing initiatives for child rights and child protection<sup>40</sup>.

According to the Report Learning Needs Assessment on Civil Society Organizations in 2016, conducted by Terre des hommes Mission in Albania there is a need of strengthening the capacity of local non-government agencies in providing services to children and their families is a critical component. Advocacy, lobbying and networking are areas where the organization need more experience and expertise. Program development and management, specifically project planning and project writing, as well as

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<sup>38</sup> Future of integrated Child Protection system in Albania, State Agency for the Protection of Child Rights (SAPCR) 2015.

<sup>39</sup> Report on Learning Needs Assessment on Civil Society Organisations for the Protection of Child Rights in Albania, April 2016, Terre des hommes, Save the Children.

<sup>40</sup> The member organisations of (BKTF) include the below mentioned organisations: Action Plus, Amarodrom Union, Arsis, Association of Women with Social Problems, Baxt Rromani, Bethany Social Services, CAAP, Caritas, Centre for Legal Civic Initiatives, Centre for Integrated Legal Services and Practices, Centro Informazione e Educazione allo Sviluppo, Children of the World – Albania, Children Today, Help for Children, International Social Services – Albania branch, National Association Education for Life, National Centre for Community Services, Partners for Children, Save the Children in Albania, SOS Villages, Terre des hommes - Mission in Albania, Tirana Legal Aid, Tjeter Vision, VIS-Internazionale per lo Sviluppo Volontariato.

organizational management including systems, procedures and reporting are identified from organizational assessment as in need of further enhancement<sup>41</sup>.

Recently, the organizations in Albania are implementing new approaches of working with children. There is a shifting in focus which promotes integrated approach of strengthening child protection systems at national and community levels to prevent and protect children, especially most the vulnerable, from violence abuse and exploitation.<sup>42</sup>

Despite the progress made with regard to the coordination and joint implementation between governmental institutions and civil society organizations, there is still a duplication and a lack of effective and planned coordination in the area of child protection by the government. This is translated in fragmented activities and initiatives from different donors, not systematic and not directly aligned with national policies. This leads to donors developing the policy and not the Ministry, and as a result a lot of a policy development in Albania in practice has been handed over to the donors.<sup>43</sup> There is limited state funding available for NGOs, and international donors have provided very substantial financial support. Procedures for donor coordination should be established at central government level, with regular meetings with main donor organizations active in child protection in Albania.

Based on the above mentioned analysis of the relevant legal framework on the protection and safeguarding of children's in Albania, the relevant governmental and non-governmental stakeholders and the identified gaps and challenges, some of the recommendations are as follows:

Efforts should be made by the state and civil society to draft and include in the relevant legislation the definition of "vulnerability" and "safeguarding";

Albania needs to strengthen the institutions capacities in implementing and monitoring the legal framework, mainly the law on rights and the protection of children;

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<sup>41</sup> Report on Learning Needs Assessment on Civil Society Organisations for the Protection of Child Rights in Albania, April 2016, Terre des hommes, Save the Children.

<sup>42</sup> World Vision International Child Protection Strategy, 2011

<sup>43</sup> Future of integrated Child Protection system in Albania, State Agency for the Protection of Child Rights (SAPCR)2015.

Strengthening the capacities of the child protection workers at the municipality level in providing quality child protection services;

Progress should be made to strengthen collaboration between child protection workers and other stakeholders, including civil society organization using a multi-disciplinary approach in case management;

Strengthening the collaboration and effective coordination between civil society organization and state agencies on the protection of children and developing of joint initiatives in this regard;

Strengthening the capacities of civil society's organization in developing advocacy efforts and lobbying to improve the situation of vulnerability and safeguarding both at policy level and implementation.

## **BOSNIA AND HERZEGOVINA**

## Desk research

### Question n.1: What is the definition of “child”?

In addition to the national law, in Bosnia and Herzegovina (hereinafter BiH) each of the two entities – namely, Republika Srpska (RS) and Federacija (Federation, FBiH) has its own set of laws. Therefore, it is important to note that, while there are many overlaps, some minor differences between the two can be detected. The Constitution does not define ‘child’, however, other legislations that deal with the rights of the child include brief definitions:

- **Social Protection Law of Republika Srpska** (Zakon o socijalnoj zaštiti Republike Srpske) Art 19; 12 defines ‘child’ as a person over 18 years old, except persons who have benefitted from the extension of parental rights before that.
- **Law on birth registry books of Republika Srpska** (Zakon o matičnim knjigama u Republici Srpskoj) Art 50 (2) states that a child who is 15 years of age and is capable of making judgments can inquire to look into their own birth registry in order to determine his origin.
- **Law on protection and treatment of children in conflict with the law of the Federation of Bosnia and Herzegovina** (Zakon o zaštiti i postupanju sa djecom i maloljetnicima u sukobu sa zakonom u Federaciji) in Art 2(1) states that a child is everyone under 18. However, there are special categories of minors, and thus, children under 14 cannot be sanctioned criminally nor can other criminal measures be applied, whereas children between 16 and 18 years of age are entitled to different treatment.
- **Law on Fundamental Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children of the Federation** (Zakon o osnovama socijalne zaštite, zaštite civilnih žrtava rata i zaštite porodice sa djecom FBiH) defines under Art 6 “children” as everyone under 18 years of age. However, in the context of obtaining the right to financial aid and scholarships for pupils and



students, children are those between 18 and 27 years of age.

**Question n.2.: Is the notion “vulnerability” or “vulnerable” (for child and adult) used in legislation in your country? What other words, notions are used in your national legislation to describe this phenomenon?**

“Vulnerability” or “vulnerable groups” can be translated into Bosnian in multiple ways and are sometimes found in legislation as “ugroženi” (endangered), “osjetljivi” (sensitive), or “ranjivi” (vulnerable). Nonetheless, these words are more often than not omitted from the legislature. For that reason, what groups the legislators refer to as being vulnerable must be read in context. In most cases listed below, these groups come in when discussed about ‘special protection’ (posebna zaštita) or additional actions (posebne, dodatne mjere) that should be taken for certain strata of the population. The legislations in which vulnerability was addressed in one way or the other are following:

Article 40 of the **Constitution of Republika Srpska** (Ustav Republike Srpske) ensures the rights of the employed people, and gives special protection (posebnu zaštitu) to youth, women and disabled.

Article 2 of the **Constitution of the Federation of BiH** (Ustav Federacije Bosne i Hercegovine) mentions potentially endangered groups (potencijalno ugrožene grupe) under para 1 (s) in terms of them being entitled to protection by the Federation, but it does not define them.

The national Constitution of Bosnia and Herzegovina makes no such mentions.

**Social Protection Law of Republika Srpska** (Zakon o socijalnoj zaštiti Republike Srpske), Art 17 states that people in the state of social need are entitled to social protection. This includes children who:

- are without parental care
- suffer from development impediments
- whose development is infringed by familial circumstances
- are victims of trafficking

- have socially unacceptable behavior
- are exposed to socially risky behavior
- need social protection due to special circumstances

As well as adults who:

- do not have material security and are incapable of working
- are disabled
- are older and without care from their family
- have socially negative behavior
- have been victims of the abuse of psychoactive substances
- have been victims of domestic violence
- have been victims of trafficking
- need social protection due to special circumstances

Art 11(2) of the same law talks about extended rights and services (proširena prava i usluge) which include assisting people with disabilities, adults once they leave foster families or care centers, children from socially endangered families, children with development impediments, and poor families, in the context of housing.

**Law on birth registry books of Republika Srpska** (Zakon o matičnim knjigama u Republici Srpskoj 2009) under Article 52 refers to offering free professional help regarding birth registration and registration of death to those who have a status of socially endangered (socijalno ugroženi) or national minority (which includes Roma people).

**Law on protection and treatment of children in conflict with the law of the Federation of Bosnia and Herzegovina** (Zakon o zaštiti i postupanju sa djecom i maloljetnicima u sukobu sa zakonom u Federaciji) defines vulnerable groups of children “osjetljiva grupa djece, rizična grupa djece” as those who:

- are in conflict with the law
- are homeless
- are without parental care
- have special needs
- belong to a minority or

- are immigrants

Furthermore, under Art 183, special care should be given to minors who have no parental care or family as well as other vulnerable (osjetljive/rizične) groups of children.

In addition, Art 188 states that children suffering from serious psychological disorders or were traumatized psychologically and physically are considered to be especially vulnerable (posebno osjetljivi).

**Anti-discrimination Law** (Zakon o zabrani diskriminacije) talks about vulnerable groups (ugrožene grupe) in the context of adopting temporary special measures (privremene posebne mjere) aiming to prevent or remedy harm suffered. For the purposes of this article, the following groups are listed as vulnerable:

- people with disabilities
- national minorities
- women
- pregnant women
- children
- youth
- elderly and other socially excluded persons
- victims of the war
- victims in criminal proceedings
- displaced, refugees and asylum seekers

**Law on Fundamental Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children of the Federation** (Zakon o osnovama socijalne zaštite, zaštite civilnih žrtava rata i zaštite porodice sa djecom FBiH) Art 12 states that beneficiaries of the social protection scheme are those who find themselves in a state of social need (u stanju socijalne potrebe) and these include:

- children without parental care
- neglected children

- children with inappropriate care
- children whose development has been impaired by familial circumstances
- people with disabilities and impediments in their physical or psychological development
- materially insecure and incapable of working
- elderly without familial care
- people with socially negative behavior

**Revised Action Plan of Bosnia and Herzegovina on Roma Educational Needs** (Revidirani akcioni plan za obrazovne potrebe Roma) 2010 by the Ministry of Human Rights and Refugees aims to ensure education rights to all children from national minorities, however, claims that Roma children and youth need special attention (posebno za Romsku djecu).

**Family Law of Republika Srpska** (Porodični Zakon Republike Srpske) gives special protection (posebnu zaštitu) to family, mother and child.

**BiH Action Plan for Children 2015-2018** (Akcioni Plan za Djecu Bosne i Hercegovine) defines vulnerable groups that need special attention (ranjive grupe s posebnom pažnjom) as:

- children refugees
- children migrants
- children from the street
- children in conflict with the law
- Roma children ('ugrožena kategorija')

**The Strategy and Action Plan for Improvement of the Social Position of Persons with Disabilities 2010–2015** (Strategija za Izjednačavanje mogućnosti za osobe sa invaliditetom u Federaciji Bosne i Hercegovine) states that people with disabilities are more vulnerable (osjetljiviji, ugroženiji) and more exposed to poverty and social exclusion. In the BiH context, special attention is given to rural women and children with disabilities. Through other

projects, disabled war veterans, civilian victims of war and other persons with disability not caused by war but are in social need were singled out (e.g. in housing).

**The National Action Plan for the Fight against Illicit Drugs** in BiH 2009–2013 (Državni Akcioni Plan za Borbu Protiv Zloupotrebe Opojnih Droga BiH) developed by the Ministry of Security mentions socially vulnerable and marginalized groups (socijalno ugrožene I marginalizovane grupe) in the context of undertaking special programs for them, but does not define them.

**The Action plan for Child Protection and Prevention of Violence against Children through Information-Communications Technologies** in BiH (Akcioni Plan za zaštitu djece i sprječavanje nasilja nad djecom putem informaciono-komunikacijskih tehnologija u Bosni i Hercegovini 2014-2015) listed children as a “curious category” (znatiželjna kategorija) and are therefore often victims of different abuses in the cyber space, in need of special measures of protection.

**The Strategy to Counter Trafficking in Human Beings in BiH and Action Plan 2013–2015** (Strategija Suprostavljanja Trgovini Ljudima u Bosnia i Hercegovini i Akcioni Plan 2013-2015) elaborated on vulnerable groups (osjetljive i ranjive grupe) in relation to trafficking and included minorities (especially Roma), women, and children who are not in birth registry books.

**Strategy and Action Plan in the field of Migration and Asylum 2016-2020** (Strategija i akcioni plan u oblasti migracija i azila 2016-2020) mentions vulnerable groups (ranjive grupe) repeatedly, but does not define them.

**Question n.3.: Is the expression of “safeguarding policy” or any synonym (safeguarding requirement, safeguarding measures, obligatory procedures of protection /measures of care, etc.) mentioned in these acts and/or regulations in relation to vulnerability?**

Safeguarding policy is exclusively referred to through its synonyms such as measures of protection (mjere zaštite). Most legislations observed make some mention of these measures of protection, however, they are not always elaborated on in detail.

- **Health Protection Law of the Federation of Bosnia and Herzegovina** (Zakon o zdravstvenoj zaštiti Federacije Bosne i Hercegovine 2010), aiming to regulate the health protection of national minorities, under Art 11 talks about preventive health protection of vulnerable groups (rizičnih grupa) but does not define them.
- **Anti-discrimination Law** (Zakon o zabrani diskriminacije), Art 22 mentions measures of protection (Zaštitne mjere) regarding vulnerable groups, but does not delineate them in much detail.
- **National strategy for combating violence against children** (Nacionalna strategija za borbu protiv nasilja nad djecom 2012-2015) mentions measures (mjere) to be taken in relation to children victims of violence
- In **the Revised Action Plan of Bosnia and Herzegovina on Roma Educational Needs** (Revidirani akcioni plan za obrazovne potrebe Roma iz 2010) there is a set of measures of protection corresponding to each goal (mjere).
- **BiH Action Plan for Children** (Akcioni Plan za Djecu Bosne i Hercegovine) talks about mechanisms of protection that need to be implemented for vulnerable groups (mehanizmi zaštite)
- **Strategy and Action Plan for Improvement of the Social Position of Persons with Disabilities 2010–2015** (Strategija za izjednačavanje mogućnosti za osobe sa invaliditetom u Federaciji Bosne i Hercegovine) includes measures of protection (zaštitne mjere) for the vulnerable.
- **Action plan for Child Protection and Prevention of Violence against Children through Information-Communications**

**Technologies in BiH** (Akcioni Plan za zaštitu djece i sprječavanje nasilja nad djecom putem informaciono-komunikacijskih tehnologija u Bosni i Hercegovini 2014-2015) included special measures of protection (posebne mjere zaštite) for children.

- **Strategy to Counter Trafficking in Human Beings in BiH and Action Plan 2013–2015** (Strategija Suprostavljanja Trgovini Ljudima u Bosnia i Hercegovini i Akcioni Plan 2013-2015) has measures of protection corresponding to each goal.
- **Strategy and Action Plan in the field of Migration and Asylum 2016-2020** (Strategija i akcioni plan u oblasti migracija i azila 2016-2020) enlists measures of protection (mjere zaštite) for vulnerable groups (ranjive grupe).

**Question n.4.: Does your national legislation on vulnerable children and adults specify the stakeholders who are expected by law to provide care and protection?**

Some of the legislations listed above (mostly strategies and action plans) include a wide range of relevant stakeholders, yet, others omit them completely or provide very vague narratives regarding who is responsible for providing care and protection.

- **“Organ starateljstva” (custodial authority)** is often listed as a relevant stakeholders in the legislations mentioned above. This term is defined in the Law on protection and treatment of children in conflict with the law of the Federation of Bosnia and Herzegovina (Zakon o zaštiti i postupanju sa djecom i maloljetnicima u sukobu sa zakonom u Federaciji) as a center for social work or other adequate agency of social protection with the same rights and duties.
- **Ombudsmen za ljudska prava Bosne i Hercegovine (Ombudsman for human rights in Bosnia and Herzegovina)** has a special section for monitoring the rights of the child (Odjel za praćenje prava djece), and its mandate lists protection of the rights and freedoms of children,

especially vulnerable categories (posebno ugrožene kategorije) of displaced people and refugees, as well as socially vulnerable categories (socijalno ugrožene kategorije). In the Anti-Discrimination Law, both the Ombudsman and human rights NGOs are listed as those dealing with the protection of the rights of groups vulnerable to discrimination (lica i grupe lica izloženih visokom riziku od diskriminacije). Ombudsman also appears in the BiH Action Plan for Children.

- **Ministry of human rights and refugees** (Ministarstvo za ljudska prava i izbjeglice) is listed as a stakeholder in a number of legislations, including National Strategy for combating violence against children, and BiH Action Plan for Children.
- **Public health department** (Zavod za javno zdravstvo FBiH), **Institute for public health of Republika Srpska** (Institut za javno zdravstvo RS) and **Federal Public Health Department** are all listed as stakeholders in the Health Protection Law of the Federation of Bosnia and Herzegovina.
- **Social work centers** are the most commonly mentioned stakeholders and appear in the Social Protection Law of RS (Art 81), The Law on protection and treatment of children in conflict with the law of the Federation of Bosnia and Herzegovina, National strategy for combating violence against children, Personal Names Act (Art 6), and National Action Plan for the Fight against Illicit Drugs in BiH.
- **Municipal and city authorities** appear in Art 52 of the Law on birth registry books of Republika Srpska as appropriate actors.
- Law on protection and treatment of children in conflict with the law of the Federation of Bosnia and Herzegovina in Art 183 furthermore **lists all ministries, NGOs and other state agencies, businesses and individuals** as responsible to all together enable protection of children who have been in conflict with the law, i.e. have been criminally convicted.
- National Strategy for combating violence against children further includes **Ministry of Security, Ministry of Labor and Social Politics,**



**Ministry of Health and social protection, Ministries of Internal Affairs of both entities, police agencies, and the Center for education of judges** as responding authorities.

- **NGO Network “Snažniji glas za djecu”** (Stronger voice for Children) appears in BiH Action Plan for Children as a stakeholder.
- Other stakeholders listed in the BiH Action Plan for Children are: **the media, local communities, Gender centers, Agency for pre-school, elementary and high school education of BiH (Agencija za predškolsko, osnovno i srednje obrazovanje BiH), and Ministry of Defense.**
- Stakeholders listed in the Strategy and Action Plan for Improvement of the Social Position of Persons with Disabilities (2010–2015) include: **the government of BiH, Parliament, Organization of the Persons with Disabilities (OOSI), Federal ministries, Ministry of Education and Science, public institutions of social protection, NGOs, sport organizations, Gender Center of the Federation, and the Election Commission of the Federation (Izborna Komisija).**
- In the Strategy to Counter Trafficking in Human Beings in BiH and Action Plan (2013–2015) in addition to the police and NGOs, new stakeholders such as **monitoring teams, NGO Vaša Prava (Your Rights), UNHRC, and Working Groups for Protection (radne grupe za zaštitu)** appear.
- Strategy and Action Plan in the field of Migration and Asylum 2016-2020 addresses the **Ministry of Security – Immigration Department, Ministry of Foreign Affairs, civil sector, private sector, diaspora, border police, Agency for labor and employment, Ministry of Education and other institutions.**

**Question n.5.: What other stakeholders are you aware of concerning vulnerable children and adult in your country? (NGOs, international bodies, etc.)**

Most of the stakeholders listed below are not included in the legislations in questions, but rather found their place on the list through other children’s and

vulnerable groups' rights-related projects they have initiated in the past.

- **Odbor za Rome (Council for Roma people)** is in charge of discussing all important issues regarding Roma rights in BiH.
- **Council for Children of BiH (Savjet za decu)** was established in 2013 with responsibilities to monitor the Convention on the Rights of the Children and create a new Action Plan for children.
- **UNICEF and OSCE** as they appear as sponsors of many children's rights related initiatives.
- **The Wings of Hope Foundation (Fondacija Krila Nade)**, providing education and psychological help to vulnerable groups of children, such as those from poor families, high school dropouts, children without parental care etc.
- **Naša djeca (Our Children) Sarajevo**, and **Zdravo da ste (Banjaluka)**, NGOs working on UNICEF-related projects, such as those tackling poverty and discrimination of marginalized groups of children and youth.

**Question n.6.: Anything else that you find relevant, interesting to mention from what you have found during your desk research on this topic**

The Constitution of Bosnia and Herzegovina does not explicitly mention children's rights, except the right to a family life, which includes but is not specific to children. However, if one looks at the Annex I of the Constitution, the UN Convention on the Rights of the Child is listed there as an additional source of law to be implemented in Bosnia. The two entities, the Federation and Republika Srpska both have their own constitutions. While the Federation's Constitution resembles much to the national Constitution, the Republika Srpska's Constitution elaborates more on the rights of the child through Art 36 where it states that mother and child are entitled to special protection (*posebna zaštita*), that children have a duty to help their parents if in need, and that those born out of wedlock have the same rights and duties as other children born within a marital union.

It has been noted throughout this research that many of the above-mentioned actions plans and strategies have not been renewed since 2014 or 2015.

### **Question n.7.: Registration of NGOs**

Bosnia has a bit more detailed regulations, and although it doesn't mention safeguarding measures or policies, it does require an NGO to delineate explicitly the rules of management/leadership, (majority) voting procedure and conditions that need to be fulfilled upon any kind of transformation or shutting down of the NGO. Its Law on organizations and foundations (Official Gazette No. 32/01 and 42/03) is rather comprehensive, and demands things such as goals that are in accordance with the Constitution and the law, but also criteria for membership which can be anything and is only subject to the Anti-discrimination law. The board of the NGO serves to monitor the work of the organization and take action against any irregularities (Art 47), which is the only implicit mention of safeguards that I could find.

## **Country report**

### **Introduction**

In Bosnia and Herzegovina, there is a good legal framework that ensures basic rights and protection of children under the law. In practice, there are certain differences in terms of the level of exercised rights and the level of assistance provided to children. Different financial capacity of relevant bodies and institutions working in the field of child protection and rights establishes different practices that lead to a partial application of the laws. However, The complex legal system of Bosnia and Herzegovina, its entities and the Brcko District is additionally complicated by processes of harmonization, adjustments, frequent amendments and changes to the laws, which is not in full agreement within the European standards.

There is no unique methodological system and jointly co-ordinated process for

a comprehensive analysis of the legislation. What is still dominant, are the *ad hoc* actions to achieve particular goals or rectify the situation in certain areas.

## **Legal framework for Safeguarding children and vulnerable adults**

### *Defining the term “child”*

Term “child” is not defined in the Constitution of Bosnia and Herzegovina, but other legislations dealing with the rights of the child do provide brief definitions for the term itself; **Social Protection Law of Republika Srpska** (Zakon o socijalnoj zaštiti Republike Srpske)<sup>44</sup> Art 19; 12 defines ‘child’ as a person over 18 years old, except persons who have benefitted from the extension of parental rights before that<sup>45</sup>. **Law on birth registry books of Republika Srpska** (Zakon o matičnim knjigama u Republici Srpskoj)<sup>46</sup> Art 50 (2) states that a child who is 15 years of age and is capable of making judgments can inquire to look into their own birth registry in order to determine his origin. **Law on protection and treatment of children in conflict with the law of the Federation of Bosnia and Herzegovina** (Zakon o zaštiti i postupanju sa djecom i maloljetnicima u sukobu sa zakonom u Federaciji)<sup>47</sup> in Art 2(1) states that a child is everyone under 18. However, there are special categories of minors, and thus, children under 14 cannot be sanctioned criminally nor can other criminal measures be applied, whereas children between 16 and 18 years of age are entitled to different treatment. **Law on Fundamental Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children of the Federation** (Zakon o osnovama socijalne zaštite, zaštite civilnih žrtava rata i zaštite porodice sa djecom FBiH)<sup>48</sup> defines under Art 6 “children” as everyone under 18 years of age.

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<sup>44</sup>Zakon o socijalnoj zaštiti Republike Srpske, Sl. glasnik RS, br. 5/93, 15/96, 110/03 i 33/08

<sup>45</sup> This regulated by the Family Law (Porodični Zakon) of both Republika Srpska and Federacija which give additional rights to children aged 16 and above.

<sup>46</sup> Zakon o matičnim knjigama u Republici Srpskoj, Službeni glasnik *Republike Srpske* broj 43/ 13

<sup>47</sup> Zakon o zaštiti i postupanju sa djecom i maloljetnicima u sukobu sa zakonom u Federaciji «Službene novine Federacije BiH», broj 7/14 /29.1.2014

<sup>48</sup> Zakon o osnovama socijalne zaštite, zaštite civilnih žrtava rata i zaštite porodice sa djecom

However, in the context of **obtaining the right to financial aid and scholarships** for pupils and students, the principal is not the same as in above mentioned definitions of a child; those between *18 and 27 years of age* are considered children.

#### *Defining the term “vulnerability”*

In the context of “vulnerability”, The National Constitution of Bosnia and Herzegovina makes no such mentions. The term is mentioned in the following legislations; Article 40 of the **Constitution of Republika Srpska** (Ustav Republike Srpske)<sup>49</sup> ensures the rights of the employed people, and gives special protection (posebnu zaštitu) to youth, women and disabled. Article 2 of the **Constitution of the Federation of BiH** (Ustav Federacije Bosne i Hercegovine)<sup>50</sup> mentions potentially endangered groups (potencijalno ugrožene grupe) under para 1 (s) in terms of them being entitled to protection by the Federation, but it does not define them. **Social Protection Law of Republika Srpska** (Zakon o socijalnoj zaštiti Republike Srpske)<sup>51</sup>, Art 17 states that people in the state of social need are entitled to social protection. This includes children who are without parental care, suffer from development impediments, whose development is infringed by familial circumstances, are victims of trafficking, have socially unacceptable behavior, are exposed to socially risky behavior, need social protection due to special circumstances. It also includes the “vulnerable” category of adults who do not have material security and are incapable of working, are disabled, are older and without care from their family, have socially negative behavior, have been victims of the abuse of psychoactive substances, have been victims of domestic violence, have been victims of trafficking, need social protection due to special circumstances.

Art 11(2) of the same law talks about **Extended rights and services** (proširena prava i usluge) which include assisting people with disabilities,

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FBiH „Službene novine FBiH“, broj: 36/99, 54/04, 39/06 i 14/09

<sup>49</sup> Ustav Republike Srpske sa amandmanima („Službeni glasnik Republike Srpske“, br. 21/92, 28/94, 8/96, 13/96, 15/96, 16/96, 21/96, 21/02, 31/02, 31/03, 98/03 i 115/05

<sup>50</sup> Ustav Federacije Bosne i Hercegovine Službene novine Federacije BiH”, broj: 1/94 sa amandmanima

<sup>51</sup> Zakon o socijalnoj zaštiti Republike Srpske supra at ft. 1

adults once they leave foster families or care centers, children from socially endangered families, children with development impediments, and poor families, in the context of housing. **Law on birth registry books of Republika Srpska** (Zakon o matičnim knjigama u Republici Srpskoj 2009)<sup>52</sup> under Article 52 refers to offering free professional help regarding birth registration and registration of death to those who have a status of socially endangered (socijalno ugroženi) or national minority (which includes Roma people). **Law on protection and treatment of children in conflict with the law of the Federation of Bosnia and Herzegovina** (Zakon o zaštiti i postupanju sa djecom i maloljetnicima u sukobu sa zakonom u Federaciji)<sup>53</sup> defines vulnerable groups of children “osjetljiva grupa djece, rizična grupa djece” as those who are in conflict with the law, are homeless, are without parental care, have special needs, belong to a minority or are immigrants. Furthermore, under Art 183, special care should be given to minors who have no parental care or family as well as other vulnerable (osjetljive/rizične) groups of children.

In addition, Art 188 states that children suffering from serious psychological disorders or were traumatized psychologically and physically are considered to be especially vulnerable (posebno osjetljivi).

**Anti-discrimination Law** (Zakon o zabrani diskriminacije)<sup>54</sup> talks about vulnerable groups (ugrožene grupe) in the context of adopting temporary special measures (privremene posebne mjere) aiming to prevent or remedy harm suffered. For the purposes of this article, the following groups are listed as vulnerable: people with disabilities, national minorities, women, pregnant women, children, youth, elderly and other socially excluded persons, victims of the war, victims in criminal proceedings, displaced, refugees and asylum seekers.

**Law on Fundamental Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children of the Federation** (Zakon o osnovama socijalne zaštite, zaštite civilnih žrtava rata i

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<sup>52</sup> Zakon o matičnim knjigama u Republici Srpskoj supra at ft. 2

<sup>53</sup> Zakon o zaštiti i postupanju sa djecom i maloljetnicima u sukobu sa zakonom u Federaciji supra at ft. 4

<sup>54</sup> Zakon o zabrani diskriminacije ("Službeni glasnik BiH", broj 59/09)

zaštite porodice sa djecom FBiH)<sup>55</sup> Art 12 states that beneficiaries of the social protection scheme are those who find themselves in a state of social need (u stanju socijalne potrebe) and these include: children without parental care, neglected children, children with inappropriate care, children whose development has been impaired by familial circumstances, people with disabilities and impediments in their physical or psychological development, materially insecure and incapable of working, elderly without familial care and people with socially negative behavior.

**Revised Action Plan of Bosnia and Herzegovina on Roma Educational Needs** (Revidirani akcioni plan za obrazovne potrebe Roma)<sup>56</sup> 2010 by the Ministry of Human Rights and Refugees aims to ensure education rights to all children from national minorities, however, claims that Roma children and youth need special attention (posebno za Romsku djecu). **Family Law of Republika Srpska** (Porodični Zakon Republike Srpske)<sup>57</sup> gives special protection (posebnu zaštitu) to family, mother and child. **BiH Action The Strategy and Action Plan for Improvement of the Social Position of Persons with Disabilities 2010–2015** (Strategija za Izjednačavanje mogućnosti za osobe sa invaliditetom u Federaciji Bosne I Hercegovine)<sup>58</sup> states that people with disabilities are more vulnerable (osjetljiviji, ugroženiji) and more exposed to poverty and social exclusion. In the BiH context, special attention is given to rural women and children with disabilities. Through other projects, disabled war veterans, civilian victims of war and other persons with disability not caused by war but are in social need were singled out (e.g. in housing). **The National Action Plan for the Fight against Illicit Drugs in BiH 2009–2013** (Državni Akcioni Plan za Borbu Protiv Zloupotrebe Opojnih Droga BiH)<sup>59</sup> developed by the Ministry of Security mentions socially vulnerable and marginalized groups (socijalno ugrožene I marginalizovane grupe) in the context of undertaking special programs for them, but does not

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<sup>55</sup> Zakon o osnovama socijalne zaštite, zaštite civilnih žrtava rata i zaštite porodice sa djecom FBiH „Službene novine FBiH“, broj: 36/99, 54/04, 39/06 i 14/09

<sup>56</sup> Ministarstvo za ljudska prava i izbjeglice, Revidirani akcioni plan za obrazovne potrebe Roma (2010)

<sup>57</sup> Porodični zakon Republike Srpske, „Službeni glasnik Republike Srpske“, br. 54/02 i 41/08

<sup>58</sup> Strategija za izjednačavanje mogućnosti za osobe sa invaliditetom u Federaciji Bosne I Hercegovine 2010-2015 (2010)

<sup>59</sup> Državni Akcioni Plan za Borbu Protiv Zloupotrebe Opojnih Droga BiH 2009-2013 (2009)

define them. **The Action plan for Child Protection and Prevention of Violence against Children through Information-Communications Technologies** in BiH (Akcioni Plan za zaštitu djece i sprječavanje nasilja nad djecom putem informaciono-komunikacijskih tehnologija u Bosni i Hercegovini 2014-2015)<sup>60</sup> listed children as a “curious category” (znatiželjna kategorija) and are therefore often victims of different abuses in the cyber space, in need of special measures of protection. **The Strategy to Counter Trafficking in Human Beings in BiH and Action Plan 2013–2015** (Strategija Suprostavljanja Trgovini Ljudima u Bosnia i Hercegovini i Akcioni Plan 2013-2015)<sup>61</sup> elaborated on vulnerable groups (osjetljive i ranjive grupe) in relation to trafficking and included minorities (especially Roma), women, and children who are not in birth registry books. **Strategy and Action Plan in the field of Migration and Asylum 2016-2020** (Strategija i akcioni plan u oblasti migracija i azila 2016-2020)<sup>62</sup> mentions vulnerable groups (ranjive grupe) repeatedly, but does not define them.

**Plan for Children 2015-2018** (Akcioni Plan za Djecu Bosne i Hercegovine)<sup>63</sup> defines vulnerable groups that need special attention (ranjive grupe s posebnom pažnjom) as: children refugees, children migrants, children from the street, children in conflict with the law and Roma children (‘ugrožena kategorija’), and it is most recent, applicable document in relation to the Safeguarding of Children and Vulnerable adults. Based on the presented assessment of the situation and the recommendations of the Committee for the Rights of the Child and recommendations of other international bodies, the Action Plan 2015–2018 proposed one Goal: **The realization of objectives and measures in the period from 2015 to 2018 in order to implement the Convention on the Rights of the Child, abiding by the recommendations of the Committee for the Rights of the Child and other international, UN, Council of Europe and other instruments for the protection of children**

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<sup>60</sup> Akcioni Plan za zaštitu djece i sprječavanje nasilja nad djecom putem informaciono-komunikacijskih tehnologija u Bosni i Hercegovini 2014-2015 (2014)

<sup>61</sup> Strategija Suprostavljanja Trgovini Ljudima u Bosnia i Hercegovini i Akcioni Plan 2013-2015 (2013)

<sup>62</sup> Strategija i akcioni plan u oblasti migracija i azila 2016-2020 (2016)

<sup>63</sup> Akcioni Plan za Djecu Bosne i Hercegovine 2015-2018 (2015)



**rights, and the realization of the measures from the previous Action Plan that have not been implemented**, and eight (8) objectives: **1.** Enhance the laws in BIH, policies, strategies, coordination and reporting with a view of strengthening the implementation of general measures entailing from the Convention of the Rights of the Child; **2.** Improve the atmosphere for the implementation of the Convention of the Rights of the Child general principles related to non-discrimination, the best interest of child and respect of child's opinion; **3.** Provide for the conditions for a full exercise of civil rights and freedom of children and set up specific mechanisms of rights and freedom protection; **4.** Improve mechanisms of child protection and raise awareness in order to prevent and stop violence against children; **5.** Strengthen capacities of family and society for social and health protection, education for the purpose of exercising the rights of children who are deprived of a family environment; **6.** Provide for the mechanisms to improve the protection of rights of children with impairments and the overall protection of children and living standard; **7.** Education and upbringing system will be made fair and available for the development of child/student potentials through high-quality, child-friendly and comprehensive service; **8.** Provide for mechanisms of protection for vulnerable groups, especially children refugees, children migrants, children in street situations, children in conflict with the law and other children.

### **Safeguarding Policies in Bosnia and Herzegovina**

The expression of "*safeguarding policy*" itself, is not used in this form in Bosnian legislation, but it is exclusively referred to through its synonyms such as *measures of protection* (mjere zaštite). Most legislations observed make some mention of these measures of protection, although not always elaborated in detail. Aiming to regulate the health protection of national minorities, under Art 11, **Health Protection Law of the Federation of Bosnia and Herzegovina** (Zakon o zdravstvenoj zaštiti Federacije Bosne i

Hercegovine 2010)<sup>64</sup>, talks about *preventive health protection* measures (preventivne mjere zdravstvene zaštite) of vulnerable groups (rizičnih grupa), but does not define them. **Anti-discrimination Law** (Zakon o zabrani diskriminacije)<sup>65</sup>, Art 22 mentions *measures of protection* (zaštitne mjere) regarding vulnerable groups, but does not delineate them in much detail. **National strategy for combating violence against children** (Nacionalna strategija za borbu protiv nasilja nad djecom 2012-2015)<sup>66</sup> mentions *measures* (mjere) to be taken in relation to children victims of violence. In **The Revised Action Plan of Bosnia and Herzegovina on Roma Educational Needs** (Revidirani akcioni plan za obrazovne potrebe Roma iz 2010) there is a *set of measures of protection* corresponding to each goal (mjere zaštite). **BiH Action Plan for Children** (Akcioni Plan za Djecu Bosne i Hercegovine) talks about *mechanisms of protection* that need to be implemented for vulnerable groups (mehanizmi zaštite). **Strategy and Action Plan for Improvement of the Social Position of Persons with Disabilities 2010–2015** (Strategija za izjednačavanje mogućnosti za osobe sa invaliditetom u Federaciji Bosne i Hercegovine) includes *measures of protection* (zaštitne mjere) for the vulnerable categories. **Action plan for Child Protection and Prevention of Violence against Children through Information-Communications Technologies in BiH** (Akcioni Plan za zaštitu djece i sprječavanje nasilja nad djecom putem informacijskih i komunikacijskih tehnologija u Bosni i Hercegovini 2014-2015) included *special measures of protection* (posebne mjere zaštite) for children. **Strategy to Counter Trafficking in Human Beings in BiH and Action Plan 2013–2015** (Strategija Suprostavljanja Trgovini Ljudima u Bosnia i Hercegovini i Akcioni Plan 2013-2015) has measures of protection corresponding to each goal. **Strategy and Action Plan in the field of Migration and Asylum 2016-2020** (Strategija i akcioni plan u oblasti migracija i azila 2016-2020) enlists *measures of protection* (mjere zaštite) for vulnerable groups (ranjive grupe).

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<sup>64</sup> Zakon o zdravstvenoj zaštiti Federacije Bosne i Hercegovine 2010 «Službene novine Federacije BiH», broj 41/10 /4.8.2010./

<sup>65</sup> Zakon o zabrani diskriminacije supra at ft. 11

<sup>66</sup> Nacionalna strategija za borbu protiv nasilja nad djecom 2012-2015 (2012)

**Governmental and non-governmental Stakeholders specified by National legislation on vulnerable children and adults, in charge of providing care and protection to mentioned categories**

“**Organ starateljstva**” (custodial authority) is often listed as a relevant stakeholder in the legislations mentioned above. This term is defined in the Law on protection and treatment of children in conflict with the law of the Federation of Bosnia and Herzegovina (Zakon o zaštiti i postupanju sa djecom i maloljetnicima u sukobu sa zakonom u Federaciji)<sup>67</sup> as a center for social work or other adequate agency of social protection with the same rights and duties. **Ombudsmen za ljudska prava Bosne i Hercegovine (Ombudsman for human rights in Bosnia and Herzegovina)** has a special section for monitoring the rights of the child (Odjel za praćenje prava djece), and its mandate lists protection of the rights and freedoms of children, especially vulnerable categories (posebno ugrožene kategorije) of displaced people and refugees, as well as socially vulnerable categories (socijalno ugrožene kategorije). In the Anti-Discrimination Law, both the Ombudsman and human rights NGOs are listed as those dealing with the protection of the rights of groups vulnerable to discrimination (lica i grupe lica izloženih visokom riziku od diskriminacije). Ombudsman also appears in the BiH Action Plan for Children. **Ministry of human rights and refugees** (Ministarstvo za ljudska prava i izbjeglice) is listed as a stakeholder in a number of legislations, including National Strategy for combating violence against children, and BiH Action Plan for Children. **Public health department** (Zavod za javno zdravstvo FBiH), **Institute for public health of Republika Srpska** (Institut za javno zdravstvo RS) and **Federal Public Health Department** are all listed as stakeholders in the Health Protection Law of the Federation of Bosnia and Herzegovina. **Social work centers** are the most commonly mentioned stakeholders and appear in the Social Protection Law of RS (Art 81), The Law on protection and treatment of children in conflict with the law of the Federation of Bosnia and Herzegovina, National strategy for combating violence against children, Personal Names Act (Art 6), and National Action

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<sup>67</sup> Art 12, Zakon o zaštiti i postupanju sa djecom i maloljetnicima u sukobu sa zakonom u Federaciji supra at ft. 4

Plan for the Fight against Illicit Drugs in BiH.

**Municipal and city authorities** appear in Art 52 of the Law on birth registry books of Republika Srpska as appropriate actors. Law on protection and treatment of children in conflict with the law of the Federation of Bosnia and Herzegovina in Art 183, furthermore **lists all ministries, NGOs and other state agencies, businesses and individuals** as responsible to all together enable protection of children who have been in conflict with the law, i.e. have been criminally convicted. National Strategy for combating violence against children further includes **Ministry of Security, Ministry of Labor and Social Politics, Ministry of Health and social protection, Ministries of Internal Affairs of both entities, police agencies, and the Center for education of judges** as responding authorities. Other stakeholders listed in the BiH Action Plan for Children are: **the media, local communities, Gender centers, Agency for pre-school, elementary and high school education of BiH (Agencija za predškolsko, osnovno i srednje obrazovanje BiH), and Ministry of Defense**. Stakeholders listed in the Strategy and Action Plan for Improvement of the Social Position of Persons with Disabilities (2010–2015) include: **the government of BiH, Parliament, Organization of the Persons with Disabilities (OOSI), Federal ministries, Ministry of Education and Science, public institutions of social protection, NGOs, sport organizations, Gender Center of the Federation, and the Election Commission of the Federation (Izborna Komisija)**. Strategy and Action Plan in the field of Migration and Asylum 2016-2020 addresses the **Ministry of Security – Immigration Department, Ministry of Foreign Affairs, civil sector, private sector, diaspora, border police, Agency for labor and employment, Ministry of Education and other institutions**.

As far as the NGO scene goes, the child protection policy and raising public awareness on the issues with national legislations, is much more represented and highlighted. **NGO Network “Snažniji glas za djecu”** (Stronger voice for Children) appears in BiH Action Plan for Children as a stakeholder. In the Strategy to Counter Trafficking in Human Beings in BiH and Action Plan (2013–2015) in addition to the police and NGOs, new stakeholders such as

monitoring teams, NGO Vaša Prava (Your Rights), UNHRC, and Working Groups for Protection (radne grupe za zaštitu) appear. Odbor za Rome (Council for Roma people) is in charge of discussing all important issues regarding Roma rights in BiH. Council for Children of BiH (Savjet za decu) was established in 2013 with responsibilities to monitor the Convention on the Rights of the Children and create a new Action Plan for children. UNICEF and OSCE as they appear as sponsors of many children's rights related initiatives. The Wings of Hope Foundation (Fondacija Krila Nade), providing education and psychological help to vulnerable groups of children, such as those from poor families, high school dropouts, children without parental care etc. Naša djeca (Our Children) Sarajevo, and Zdravo da ste (Banjaluka), NGOs working on UNICEF-related projects, such as those tackling poverty and discrimination of marginalized groups of children and youth.

**International Forum of Solidarity- EMMAUS (Međunarodni forum solidarnosti- EMMAUS)** is an NGO that works not only in the field of providing help to vulnerable categories (through PC Duje- Shelter, through development and dissemination of many handbooks, guidelines, scripts..., through capacity building, etc.), but is also engaged in prevention of **abuse, violence and exploitation of children through information and communication technologies (via Internet)**. Through a website/hotline **Sigurno dijete** (lit. translation Safe Child)<sup>25</sup> [www.sigurnodijete.ba](http://www.sigurnodijete.ba), IFS-EMMAUS has been raising public awareness about the general problem of Online VAC (Violence against children). The website is available in both English and Bosnian language, and written specifically for three categories – Parents, Teenagers and Children, with same topic on Internet safety on every sub-site, written in language that is adapted to the category that is intended for (eg. Terminology is explained much simpler for Children than it is for Parents, but the doctrine stayed the same). The website is also a hotline for an anonymous reporting of inappropriate content online, such as CSAM (Child Sexual Abuse Material), VAC Online (Violence Against Children Online), Exploitation of children for purpose of making pornographic material, etc.

#### **Other relevant information**

It is important to mention that in social protection, the main stakeholders are Centers for Social Work (Centri za socijalni rad), and they are the ones who will estimate the need for social assistance, potential risks, initiate needed proceedings (if there is need for eg. court procedure), etc.

As far as the health system, one of the main problems in Bosnia and Herzegovina is that, even though it is required that a medical worker reports possible abuse/violence of children if they notice anything out of order during regular check-ups in, for example, Family Health Centers (Ambulanta porodične medicine), in most cases known to sources, they do not do it, due to lack of protection for themselves if they do so. For example, there were cases where a doctor would report the suspicion on neglect/abuse/violence on children, and would very often get threats from family members of the child, and similar situations, where medical worker obliged to report suspicion, doesn't do it because they do not feel safe.

As an addition to measures of social protection services provided by CSW's, there are other stakeholders that are working in the field of safeguarding of children and vulnerable adults, such as educational institutions (Pedagogical Institutes, schools, universities, etc.) that in cooperation with other institutions work on awareness raising, informing children and parents on the current situation.

Police has one of the main roles in protection system, due to the fact that in most cases, they are the first ones on the field in cases of direct violence, taking the necessary steps to detect need for protection of the plausible victim, and possible further need for judicial proceedings.

Stakeholders acting in the civil and criminal proceedings are courts and judicial institutions with relevant persons within (judges, prosecutors, experts, etc.)

## **Recommendations**

In Bosnia and Herzegovina, the main problem is the problem of mismatching entity laws, and the lack of one State mechanism that will be applicable in

Federation of Bosnia and Herzegovina, Republic Srpska and Brčko District. Regarding the implementation of developed and adopted strategies considering Safeguarding of Children and Vulnerable Adults, there is need for full de facto realization and implementation of activities in practice, as well as synchronized terminology for all terms relevant for this topic.

With the aim of improving the current situation in Bosnia and Herzegovina in relation to this issue, the following recommendations are:

- Define and synchronize terminology for all entities (State level);
- Develop more recent and up to date safeguarding policies;
- Focus on capacity building through ToT's (training of trainers) or educations for relevant governmental and non-governmental stakeholders;
- Promote safeguarding policies to the public;
- Improve inter-sectoral cooperation;
- Improve entity cooperation;
- Monitor and implement current existing legal safeguarding policies and programs;
- Initiate awareness raising programs about the Safeguarding policies in BiH and plausible lack of the same ;
- Stimulate responsible behavior of relevant institutions to respond timely;
- Promote their rights to the vulnerable groups;
- Promote free legal aid services for vulnerable groups;
- Establish effective governmental body or bodies to monitor and coordinate policies in the field of protection of vulnerable groups from any form of violence.

## **BULGARIA**



## Country report

### Question n.1: What is the definition of “child”?

Child Protection Act, Article 2:

Definition of “child”

Article 2. In the meaning of the present Act a child shall be any natural person, who has not reached the age of 18.

Persons and Family Act (1949)

Article 3. *Persons, who are under age of 14 are minors.*

*Their parents and their guardians perform legal actions instead of them and on their behalf.*

Article 4. *From the age of 14 to the age of 18 the persons are adolescents (juvenile).*

*They perform legal actions with permission of their parents and guardians ...*

### Question n.2.: Is the notion “vulnerability” or “vulnerable” (for child and adult) used in legislation in your country? What other words, notions are used in your national legislation to describe this phenomenon?

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA:

*(38) Persons who are particularly vulnerable or who find themselves in situations that expose them to a particularly high risk of harm, such as persons subjected to repeat violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crime in a Member State of which they are not nationals or residents, should be provided with specialist support and legal protection.*

*(58) Victims who have been identified as vulnerable to secondary and repeat victimisation, to intimidation and to retaliation should be offered appropriate measures to protect them during criminal proceedings.*

*Article 22, para. 3:*

*3. In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.*

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

*Recital (8): Children are more vulnerable than adults and therefore at greater risk of becoming victims of trafficking in human beings. In the application of this Directive, the child's best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the 1989 United Nations Convention on the Rights of the Child.*

*Recital (12): ... When the offence is committed in certain circumstances, for example against a particularly vulnerable victim, the penalty should be more severe. In the context of this Directive, particularly vulnerable persons should include at least all children. Other factors that could be taken into account when assessing the vulnerability of a victim include, for example, gender, pregnancy, state of health and disability. When the offence is particularly grave, for example when the life of the victim has been endangered or the offence has involved serious violence such as torture, forced drug/medication usage, rape or other serious forms of psychological, physical or sexual*

*violence, or has otherwise caused particularly serious harm to the victim, this should also be reflected in a more severe penalty.*

*Recital (22): ... Given that child victims of trafficking are particularly vulnerable, additional protective measures should be available to protect them during interviews forming part of criminal investigations and proceedings.*

*Article 4, para. 2, letter “a”:*

*2. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment where that offence:*

*(a) was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims;*

Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA

*Article 3, para. 5:*

*5. Engaging in sexual activities with a child, where:*

*(ii) abuse is made of a particularly vulnerable situation of the child, in particular because of a mental or physical disability or a situation of dependence, shall be punishable by a maximum term of imprisonment of at least 8 years if the child has not reached the age of sexual consent, and of at least 3 years of imprisonment if the child is over that age; ...*

*Article 9, letter “a”:*

*In so far as the following circumstances do not already form part of the constituent elements of the offences referred to in Articles 3 to 7, Member States shall take the necessary measures to ensure that the following circumstances may, in accordance with the relevant provisions of national*

*law, be regarded as aggravating circumstances, in relation to the relevant offences referred to in Articles 3 to 7:*

*a. the offence was committed against a child in a particularly vulnerable situation, such as a child with a mental or physical disability, in a situation of dependence or in a state of physical or mental incapacity;*

Article 19, para. 4:

*4. Child victims of any of the offences referred to in Articles 3 to 7 shall be considered as particularly vulnerable victims pursuant to Article 2(2), Article 8(4) and Article 14(1) of Framework Decision 2001/220/JHA*

Child at risk (дети в риск): A legal definition of the term can be found in Child Protection Act, Additional Provisions, para. 1, point 6:

*6. "A child at risk" is a child:*

*a) whose parents have died or are unknown or deprived of parental rights, or whose parental rights are limited, or the child has been left without their care;*

*b) who has become victim of abuse, violence, exploitation or any other inhuman or degrading treatment or punishment either in or out of his or her family;*

*c) for whom there is a danger of causing damage to his or her physical, mental, moral, intellectual and social development;*

*d) who is afflicted with mental or physical disabilities and difficult to treat illnesses, established by specialists;*

*e) who is at risk of dropping out of school, or has already dropped out.*

B. Person in disadvantaged position (лице в неравностойно положение):

There is no legal definition of "person in disadvantaged position" in our national legislation. The term is used in the Protection against Discrimination Act, article 7, para. 1, point 14 and 15:

*Article 7*

*(1) It shall not constitute discrimination:*

*14. the special measures benefiting individuals or groups of persons in disadvantaged position on the basis of the grounds referred to in Article 4 (1) aimed at equalizing their opportunities, in so far as and while these measures are necessary;*

*15. the special protection of children without parents, juveniles, single parents and persons with disabilities established by law;*

The grounds referred to in article 4 (1) are the following: gender, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, convictions, political affiliation, personal or social status, disability, age, sexual orientation, marital status, property status, or on any other grounds established by law or by an international treaty to which the Republic of Bulgaria is a party

C. Children with special educational needs (деца със специални образователни нужди) – Pre-school and School Education Act, additional provisions, point 27:

27. “Special educational needs” of a child or a student are educational needs which may occur as a result sensory disabilities, physical disabilities, multiple disabilities, intellectual difficulties, language and speech impairments, specific impairments of the ability to learn, disorders from the autistic spectre, emotional and behavioural disorders.

- list the words describing “vulnerability”, the search of which finds relevant national legislation, in your own language and in English
  1. Лица с увреждания (people with disabilities)
  2. Лица от етническите малцинствата (ethnic minority people)
  3. Деца, лишени от родителски грижи (children deprived of parental care)
  4. Деца със специално образователни нужди (children with special educational needs)
  5. Лица в неравностойно положение (persons in

disadvantaged position)

6. Деца на улицата (street children)

7. групи в неравностойно положение на пазара на труда  
(groups in disadvantaged position in the labour market)

8. неравнопоставеност (inequality)

- list the places in your national legislation where these situations are described in relation to vulnerability (list the acts and/or regulations)
  - Protection against Discrimination Act
  - Child Protection Act
  - Pre-school and School Education Act
  - Protection against Domestic Violence Act
  - Act on Fight against Trafficking in Human Beings
  - Persons and Family Act
  - Law on Integration of People with disabilities
  - Employment promotion Act
  - Law on Equality between Man and Women

**Question n.3.: Is the expression of “safeguarding policy” or any synonym (safeguarding requirement, safeguarding measures, obligatory procedures of protection /measures of care, etc.) mentioned in these acts and/or regulations in relation to vulnerability?**

- Constitution of the Republic of Bulgaria:

*Article 14. The family, motherhood, and childhood shall enjoy the protection of the State and society;*

*Article 47. (4) Children left without the care of the immediate family thereof shall enjoy the special protection of the State and society;*

*Article 51. (3) Elderly people without immediate family who are unable to support themselves on the property thereof, as well as persons with physical and mental impairments, shall enjoy the special protection of the State and society.*

- Protection against Discrimination Act – the act protect all individuals on the territory of the Republic of Bulgaria against discrimination (Article 3).
- Child Protection Act:

Article 1 (1) *This Act shall govern the rights of the child; the principles and the measures for child protection; the state and municipal bodies and their interaction in the process of performing child protection activities, as well as the participation of legal entities and natural persons in the said activities.*

(2) *The state shall protect and guarantee the basic children's rights in all spheres of public life for all groups of children in view of the age, social status, physical, health and mental development, as providing appropriate economic, social and cultural environment, education, freedom of expression and security.*

(3) *The state policy for child protection shall be implemented on the basis of a National Strategy for the Child adopted by the National Assembly on a proposal by the Council of Ministers, and founded on the principles of this Act. In implementation of the national strategy the Council of Ministers shall adopt a National Programme for Child Protection proposed by the minister of Labour and Social Policy and the Chairperson of the State Agency for Child Protection.*

(4) *State bodies within the framework of their competence shall carry out the state policy for child protection and shall promote appropriate environment for the development of the child.*

Article 3. *Child protection shall rest on the following principles:*

1. *recognition and respect for the child's personality;*
2. *the child shall be brought up in a family environment;*
3. *(amended, SG No. 14/2009) the best interest of the child shall be secured;*
4. *(amended, SG No. 14/2009) special protection shall be provided to children at risk;*
5. *voluntary participation in child protection activities shall be encouraged;*

6. *persons directly involved in child protection activities shall be selected in accordance with their personal qualities and social communication abilities, and with care as to their professional training*
7. *restrictive measures shall be of temporary nature;*
8. *(new, SG No. 36/2003) child protection actions shall be immediate;*
9. *(new, SG No. 36/2003, amended, SG No. 38/2006, SG No. 14/2009) care in accordance with the needs of the child;*
10. *(new, SG No. 14/2009) the development of children of prominent talent shall be ensured;*
11. *(new, SG No. 14/2009) responsible parenthood shall be encouraged;*
12. *(new, SG No. 14/2009) support for the family;*
13. *(new, SG No. 38/2006, renumbered from Item 10, SG No. 14/2009) preventive measures for child safety and protection;*
14. *(renumbered from Item 8, SG No. 36/2003, renumbered from Item 10, SG No. 38/2006, renumbered from Item 11, SG No. 14/2009) the effectiveness of measures undertaken shall be controlled.*

#### Article 4. Protection Measures

*(1) Child protection under this Act shall be carried out through:*

1. *assistance, support and services rendered in the child's family environment;*
2. *placement of the child with relatives or close families;*
3. *adoption;*
4. *placement of the child with a foster family;*
5. *provision of social services - resident type;*
6. *placement of the child in a specialised institution;*
7. *police protection;*
8. *specialised protection at public places;*
9. *provision of information with regard to the rights and obligations of children and parents;*
10. *provision of preventative measures for security and protection of the child;*
11. *provision of legal assistance by the state;*



*12. special care for children with disabilities;*

*13. taking of measures of a provisional character for the protection of a child in the cases and under the terms established by Article 12 of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for Protection of Children, done at The Hague on the 19th day of October 1996 (ratified by law, promulgated in the State Gazette No. 9 of 2006) (Convention promulgated in the State Gazette No. 15 of 2007), hereinafter referred to as "the Convention of 1996".*

Article 5. (Special Protection)

*(1) Special protection shall be provided to children at risk.*

*(2) The conditions and procedure for implementing measures to prevent the abandonment of children and their placement in specialised institutions as well as their reintegration shall be determined in a Regulation of the Council of Ministers at the proposal of the Minister of Labour and Social Policy and the State Agency for Child Protection.*

Article 10. (Right to Protection)

*(1) Every child has a right to protection with a view to his/her normal physical, intellectual, moral and social development and to protection of his/her rights and interests.*

*(2) A person - victim of violence or exploitation - whose age is not determined and who could be assumed, with good reason, to be a child, has a right to protection according to the procedure of this Act.*

*(3) There shall be no limitation of rights, nor any privilege, on the grounds of race, nationality, ethnic background, sex, origin, property status, religion, education and convictions or disability.*

Article 11. (Protection against Violence)

*(1) Every child has a right to protection against involvement in activities that are harmful to his or her physical, mental, moral and educational development.*

*(2) Every child has a right to protection against all methods of upbringing, that undermine his or her dignity; against physical,*

*psychical or other types of violence; against all forms of influence, which go against his or her interests.*

*(3) Every child has a right to protection against the use of children for purposes of begging, prostitution, dissemination of pornographic material, receipt of unlawful pecuniary income, as well as protection against sexual abuse.*

*(4) Every child has a right to protection against forcible involvement in political, religious and trade union activities.*

Article 11a (Protection of the Child's Personality)

*(1) No information or data about a child may be disclosed without the consent of his/her parents or legal representatives save in the cases pursuant to Article 7 (1).*

*(2) In cases when a measure for the protection of a child has been taken, no information or data about a child may be disclosed without the written opinion of the child protection body taking the measure.*

*(3) When the child has reached the age of 14, his/her consent for the disclosure of information or data shall also be required.*

- Protection against Domestic Violence Act
- Act on Fight against Trafficking in Human Beings
- Law on the Integration of People with disabilities:

Article 4: *The integration of people with disabilities shall be implemented through:*

*4. socio-economic protection; (...)*

**Question n.4.: Does your national legislation on vulnerable children and adults specify the stakeholders who are expected by law to provide care and protection?**

Some stakeholders can be identified as follows:

-Child Protection Act – Parents, Council of Ministers, State Agency for Child Protection (national body with specific responsibilities regarding child

protection), Ministry of Interior, Ministry of Justice, Ministry of Labour and Social Policy - Social Assistance Agency (Child Protection Department), Ministry of Health, Ministry of Education and Science and their subsidiary state and executive agencies, Judges and Procreators.

-Ministry of Interior Act and Ordinance No I-51 of 12.03.2001 on the conditions and procedures for providing of police protection for the child – police

-Pre-school and School Education Act – school authorities

- Social Assistance Act – Social Assistance Agency and its respective departments

- Law on the Integration of People with Disabilities – Council of Ministers, Ministry of Labour and Social Policies, Local authorities, Nationally represented organisation of people with disabilities, employers' organisations.

**Question n.5.: What other stakeholders are you aware of concerning vulnerable children and adult in your country? (NGOs, international bodies, etc.)**

International bodies:

- UNICEF

Child protection NGOs:

- Right to Childhood Foundation
- SOS Children
- For Our Children Foundation
- Parents Foundation
- Pulse Foundation
- “Karin dom” Foundation Varna
- “Access to Legal Aid” FAR Foundation
- and many others

## Country report

### I. INTRODUCTION

There is no one separate legal act in Bulgaria, regulating the safeguards of different vulnerable groups. The Child Protection Act to some extent codifies the protection, to which the children are entitled, but still there are different safeguarding provisions, concerning children, which could be found in numerous different acts. As to the vulnerable adults, there are safeguarding provisions, concerning different grounds of vulnerability, spread among dozens of laws, under law regulations, strategies, programs, etc.

The Bulgarian national legislation does not use the word “vulnerable”. For the purposes of the present analyses we tried to identify the legislation, concerning the following groups: children, ethnic minorities, women, people with disabilities, migrants and asylum seekers, elderly people, as well as other disadvantaged people, which are in higher risk of social exclusion, compared to the general population. We also tried to identify legal acts and policy documents, providing safeguards to some particularly vulnerable categories of children, such as children in risk, minority children, children with disabilities, unaccompanied minors, children deprived of parental care, children in institutions, children in conflict with the law, children, victims of violence and abuse and others.

### Domestic legislation

#### a) Constitution of the Republic of Bulgaria<sup>68</sup>

The Constitution of the Republic of Bulgaria provides universal safeguards to all people on the territory of the country. In particular, Article 14 states that “*The family, motherhood, and childhood shall enjoy the protection of the State and society*” (Constitution of Rep. of Bulgaria 1991 – Art. 14). Further, Article 47 Paragraph 4 of the Constitution affords the “*protection of the State and*

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<sup>68</sup> Конституция на Република България от 13.07.1991 г., Обн. ДВ. Бр.56 от 13 юли 1991; Available at: <http://www.parliament.bg/en/const>, last accessed on 24.02.2017

*society*” (Constitution of Rep. of Bulgaria 1991 – Art. 47, Para. 4) to children left without the care of the immediate family. The same protection is also afforded to “*elderly people without immediate family who are unable to support themselves*” and “*persons with physical and mental impairments*” (Constitution of Rep. of Bulgaria 1991 – Art. 51, Para. 5).

#### **b) Criminal Code<sup>69</sup>**

The Bulgarian Criminal Code contains all legal provisions which lead to criminal sanction. Thus, the majority of safeguards to physical integrity are collected here. There are a number of various measures for protection of specific vulnerable groups which shall be examined in detail in the relevant section. The main provisions which deal with vulnerability from inability to defend oneself are contained in Article 137 and 138 of the Criminal Code and provide that people who expose or do not render help to a vulnerable “*due to minority, advanced old age, sickness or in general because of his helplessness*” (Criminal Code 1968 – Articles 137-138) person shall be punished.

#### **c) Protection against Discrimination Act<sup>70</sup>**

The Protection against Discrimination Act prohibits “*any direct or indirect discrimination on the grounds of sex, race, nationality, ethnic background, citizenship, origin, religion or belief, education, opinions, political belonging, personal or public status, disability, age, sexual orientation, marital status, property status or on any other grounds, established by the law, or by international treaties to which the Republic of Bulgaria is a party*” (Protection against Discrimination Act 2004 – Art. 4, Para. 1). Further, the law stipulates that measures taken to equalize opportunities for persons in disadvantaged positions do not constitute discrimination. (Protection against Discrimination Act 2004 – Art 7, Para. 1)

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<sup>69</sup> Наказателен кодекс от 01.05.1968 г., Обн. ДВ. Бр. 26 от 2 април 1968; Available at: <http://lex.bg/laws/ldoc/1589654529>, last accessed on 24.02.2017

<sup>70</sup> Закон за защита от дискриминация от 01.01.2004 г., Обн. ДВ. Бр. 86 от 30 Септември 2003; Available at: <http://lex.bg/laws/ldoc/2135472223>, last accessed on 24.02.2017

#### **d) Persons and Family Act<sup>71</sup>**

The Persons and Family Act regulates legal capacity of persons. It stipulates that persons under the age of 14 are minors and those from 14 to 18 are juveniles. They perform legal actions through their parents or with their permission respectively (Persons and Family Act 1949 – Articles 3-4). Similarly, “*minors and adults who because of feeble-mindedness or mental illness cannot care for their works*” are placed either under full or restricted interdiction, depending on the severity of their affliction (Persons and Family Act 1949 – Article 5).

#### **e) Integration of People with Disabilities Act<sup>72</sup>**

The main purpose of this law is creating conditions and guaranteeing equality for people with disabilities, social integration, support for their families and integration in the work environment. (Integration of People with Disabilities Act 2005 – Article 2)

#### **f) Child Protection Act<sup>73</sup>**

The Child Protection Act defines a child as “*any individual under 18 years.*” (Article 2). As its main purpose is to safeguard the rights of the child, in Article 5 Paragraph 1 the Act provides special protection to children at risk. Further, the Additional provisions of the Act in Paragraph 1, Point 6 define a child at risk under as:

- a child, whose parents have died, are unknown, or do not care for their child;
- victims of abuse, violence, degrading treatment or punishment or exploitation;
- children in danger to their normal physical and mental development;
- with physical or mental disabilities;

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<sup>71</sup> Закон за лицата и семейството от 10.09.1949 г, Обн. ДВ. Бр. 182 от 9 Август 1949; Available at: <http://lex.bg/laws/ldoc/2121624577>, last accessed on 24.02.2017

<sup>72</sup> Закон за интеграцията на хората с увреждания от 01.01.2005 г., Обн. ДВ. Бр. 81 от 17 Септември 2004, Available at: <http://lex.bg/laws/ldoc/2135491478>, last accessed on 24.02.2017

<sup>73</sup> Закон за закрила на детето, Обн. ДВ. Бр. 48 от 13 Юни 2000, Available at: <http://www.lex.bg/laws/ldoc/2134925825>, last accessed on 24.02.2017

— or at an educational risk.

#### **g) Protection against Domestic Violence Act<sup>74</sup>**

The law governs access to protection measures by victims of domestic violence. Domestic violence is defined as “*any act of physical, mental or sexual violence, and any attempted such violence, as well as the forcible restriction of individual freedom and of privacy*” (Protection against Domestic Violence Act – Article. 2) by members of the same household.

#### **h) Combatting Human Trafficking Act<sup>75</sup>**

This act provides protection and assistance to victims of human trafficking and their families. Children are given special protection as either victims or children of victims of human trafficking (Combatting Human Trafficking Act – Articles 22-23).

#### **i) Social Assistance Act<sup>76</sup>**

This is the main piece of legislation regulating assistance to vulnerable people, mostly in cases of poverty or disability. Article 1 Paragraph 2 of the Act defines its purpose as to assist persons who are unable to meet the basic necessities of life, to assist in social inclusion and to provide opportunities for employment.

#### **j) Family Allowances Act<sup>77</sup>**

This is the next major piece of legislation aimed at combatting poverty and strengthening the family and raising children. It provides persons with possibilities for family allowances for pregnancies (Article 1, Paragraph 1). The law explicitly states that family allowances may be “*monetary resources and/or other support in the raising of children*” (Family Allowances Act –

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<sup>74</sup> Закон за защита от домашното насилие, Обн. ДВ. Бр. 27 от 29 Март 2005, Available at: <http://www.lex.bg/laws/ldoc/2135501151>, last accessed on 24.02.2017

<sup>75</sup> Закон за борба с трафика на хора, Обн. ДВ. Бр. 46 от 20 Май 2003, Available at: <http://www.lex.bg/bg/laws/ldoc/2135467374>, last accessed on 24.02.2017

<sup>76</sup> Закон за социалното подпомагане, Обн. ДВ. Бр. 56 от 19 Май 1998, Available at: <http://lex.bg/laws/ldoc/2134405633>, last accessed on 24.02.2017

<sup>77</sup> Закон за семейните помощи от 01.04.2002г., Обн. ДВ. Бр. 32 от 29 март 2002, Available at: <http://lex.bg/laws/ldoc/2135441920>, last accessed on 24.02.2017

Article 1, Paragraph 2)

### **i) Law for the Asylum and the Refugees<sup>78</sup>**

This law defines the status of refugees as one of the vulnerable groups in Bulgaria. Two main groups are defined in this piece of legislation: 1. Refugees – *“a foreigner who has valid reasons to fear from victimisation due to his race, religion, nationality, belonging to a definite social group or political opinion and/or conviction”* (Law for the Asylum and the Refugees 2002 - Article 8), and 2. Humanitarian protection, *“provided to a foreigner compelled to leave or remain outside the country of origin or residence for reason of threat for his life, security or freedom due to violence”* (Law for the Asylum and the Refugees 2002 – Article 8).

## **II. CATEGORIES OF VULNERABLE PEOPLE**

### **1. Vulnerability due to age**

#### **1.1 Children**

Children are perhaps the most vulnerable group in relation to their age due to their mental and physical development. In Bulgaria, along with the Convention on the Rights of the Child there is a special law named the Child Protection Act. According to Art. 10 of the Act, *“every child has the right to protection for his normal physical, mental, moral and social development and a right to protection of his rights and interests”* (Child Protection Act 2000 – Art. 10). Further, the law is also applied to every person, victim of violence or exploitation, whose age cannot be determined, but for whom a reasonable guess for their age can be made, with a ‘child’ being any person under 18 years of age within the meaning of the law (Child Protection Act 2000 – Art. 10, Para. 2 ).

The protection afforded by this Act is wide and complex as it covers several aspects of child vulnerability. Art. 11 of the Act for example, titled “Protection

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<sup>78</sup> Закон за убежището и бежанците от 01.12.2002г., Обн. ДВ. Бр.54 от 31 Май 2002, Available at: <http://lex.bg/laws/ldoc/2135453184>, last accessed on 24.02.2017



against violence” has several provisions, protecting the child’s moral and physical integrity and his dignity in regard to his physical, mental, moral and educational development from actions such as prostitution, begging and even political and religious involvement. Protection is also provided for children involved in administrative and judicial proceedings as their fragile age and mental development might bar them from participating effectively. Accordingly, Art. 15 of the Act stipulates that children under the age of 10 should be interviewed in proceedings depending on their development and those above that age – always, unless that would harm their interests.

Finally, the Child Protection Act has provisions regarding the measures which can be adopted in regard to a child, separated in two categories – those within family care and those outside family care, with the latter being adopted only when the former are inapplicable and should be taken as a last resort. Some of the measures are described in detail in the Social Assistance Act.

In regard to their legal status, the Persons and Family Act stipulates that children under the age of 14 are minors and can only perform legal actions through their parents (Persons and Family Act – Art.3), whereas those between the ages of 14 and 18 are juveniles and can perform legal actions independently, however with the permission of their parents (Persons and Family Act – Art.4). Special rules are also established in the Criminal Code in regard to criminal liability of children, establishing that with regard to minors no criminal liability can be sought (Criminal Code – Art.32), but instead they shall be subjected to correctional measures under the Law on Combating Anti-Social Acts of Minors and Juveniles. This also applies to juveniles, unless they understand the properties and the impact of their actions and were able to control them in which case they shall bear responsibility as an adult (Criminal Code – Art. 31).

## **1.2 Adults**

Vulnerability due to age of adults mainly concerns the elderly. Outside of

social security<sup>79</sup> and medical<sup>80</sup> insurance which are inherent to every modern country there is not much special protection in national legislation. Some risks which concern the elderly such as physical and mental health, risk of physical harm and others will be examined in detail below in the relevant sections.

## **2. Vulnerability due to disability**

The main law which regulates vulnerability due to disability is the Integration of People with Disabilities Act. It covers a wide array of measures for protection in all fields of the lives of people with disabilities focusing mainly on rehabilitation, social inclusion, accessibility, education and assistance both at home and in the work environment.

The first area of social assistance is rehabilitation. Outside of medical rehabilitation, Art. 15 Paragraph 4 of the Act states that *“Social rehabilitation is the creation of skills for leading and independent life through rehabilitation of sight, hearing, speech, movement, psychological assistance, social services and others.”*

The second area is education, with most measures aimed at students and the others at university education. The law however is very declarative in this field and does not contain many concrete measures and safeguards, leaving their adoption to the responsible ministers with regard to the available budget resources.

The third field of protection is the work environment, which in contrast to education contains strict rules and regulations regarding employers and their obligations. In return to their responsibilities in that field, the law provides them with preferential costs for social security expenses. Employers however are very reluctant to hire people with disabilities and the examples of good practice are very few, making finding work incredibly difficult on grounds of disability. The Protection against Discrimination Act (Art. 4, Para. 1) and the Integration of People with Disabilities Act (Art. 3) however strictly prohibit

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<sup>79</sup> Кодекс за социалното осигуряване от 01.01.2000 г., Обн. ДВ, Бр. 110 от 17 декември 1999, Available at: <http://lex.bg/laws/ldoc/1597824512>, last accessed on 24.02.2017

<sup>80</sup> Закон за здравното осигуряване, Обн. ДВ. Бр. 70 от 19 Юни 1998, Available at: <http://lex.bg/laws/ldoc/2134412800>, last accessed on 24.02.2017

discrimination on grounds of disability.

Fourth, the law contains strict provisions on urban architecture and creating an accessible work environment with responsibilities for the owners of buildings and plots of land. The aim of those provisions is to provide people with disabilities the opportunity to travel freely and access all public buildings without assistance. However in reality there are still many examples of inaccessible urban environment and various obstacles and challenges in that regard which disabled people have to face on a daily basis.

Finally, people with permanent disabilities are entitled to various forms of financial assistance and support from the government.

### **2.1 Physical impairments**

The majority of measures provided in order to assist those vulnerable due to physical impairments are included in the Integration of People with Disabilities Act and the Social Assistance Act, Chapter Four of the latter, titled Social Services and the rules and regulations regarding the applicability of those Acts. The measures provided include, amongst others, a personal assistant, rehabilitation and medical services, specialized care in institutions and others.

### **2.2 Mental and intellectual impairments**

Mental disability in Bulgaria is a very complex matter and many of the provisions regulating it are outdated and in many ways detrimental to rehabilitation and social inclusion. Art. 5 of the Persons and Family Act stipulates that *“minors and adults who because of feeble-mindedness (слабоумие-slaboumie) or mental illness cannot care for their works shall be placed under full interdiction and become legally incapable. Adults with such afflictions whose condition is not so severe to be placed under full interdiction shall be placed under restricted interdiction”*.

The Persons and Family Act was adopted in 1949. The philosophy of the act is that people with some intellectual disabilities or mental disorders are not capable of forming full-fledged will. That is why they have to be treated as minors, all their preferences or wishes does not have any legal value, by definition are harmful for the person, cannot be taken into consideration and

have to be substituted by the decision of their legal guardian. Neither the Persons and Family Act, nor any other Bulgarian legislation presently contains provisions about supporting and guiding persons under full interdiction to form and express their preferences or any guarantees that their views will be taken into account. The overall legislation, when it comes to the people with intellectual disabilities or mental disorders, imposes bans and restrictions towards such people, even depriving them of rights, for example the right to vote.

In 2014 was presented the new draft Law on the Natural Persons and Support Measures, which would replace the Persons and Family Act. The aim of the new law is to be established a mechanism, empowering people with mental health problems or intellectual disabilities to exercise their basic human rights in accordance with their own preferences. The proposed law has not been adopted yet and in the last years it is not included in the legislative agenda.

### **3. Vulnerability due to risk of physical harm, trafficking**

This type of vulnerability is subject mostly to the Criminal Code, the Combatting Human Trafficking Act, the Protection against Domestic Violence Act and the Child Protection Act. The Criminal Code defines the majority of prohibited types of breaches to a person's physical integrity, including many internationally accepted crimes such as murder, physical assault, robbery, rape, human trafficking, procurement and hate crimes. The majority of those crimes give rise to greater responsibility and punishment when executed against vulnerable people, who are not able to defend themselves, including children, women or people with disabilities.

As regards human trafficking being an international problem, the Combatting Human Trafficking Act provides victims of such crimes with a wide array of measures for protection including shelter, psychological support, anonymity and international diplomatic assistance. Children of victims of human trafficking are also provided with supportive care and protection under this law along with the protection provided in the Child Protection Act.

Finally, the Protection against Domestic Violence Act stipulates that *"In the event of domestic violence the victim has the right to refer to the court to seek*

*protection.*” (Art. 4, Para. 1) and *“In cases where data exists showing a direct and imminent threat to the life or health of the victim, the latter may file an application with the police authorities for the imposition of emergency measures pursuant to section 76 of the Ministry of Interior Act.”* (Art. 4, Para. 2). The measures which may be applied may be an obligation to refrain from applying domestic violence, removal from the dwelling for a certain period, a restraining order for certain vicinities, relocation of the victim and the children, obligations for attendance to corrective and recovery programs. It should be noted that the Act protects family members from domestic violence originating from any other relatives, family members or guardians.

#### **4. Vulnerability due to social status, education, ethnic background or beliefs**

*“Any direct or indirect discrimination on the grounds of sex, race, nationality, ethnic background, citizenship, origin, religion or belief, education, opinions, political belonging, personal or public status, disability, age, sexual orientation, marital status, property status or on any other grounds, established by the law, or by international treaties to which the Republic of Bulgaria is a party, is forbidden.”* (Protection against Discrimination Act - Art. 4, Para. 1)

##### **a) Ethnic and religious minorities**

One of the most vulnerable minority group in Bulgaria are Roma. They are often subject to threats and attacks from nationalist and far-right supporters and are vulnerable to hate crimes, police violence and discrimination. The Bulgarian legislation provides ethnic and religious minorities with protection against discrimination stipulated in the Protection against Discrimination Act. The measures which can be applied in that regard include compulsory administrative measures and fines.

Second, hate crimes are included in Articles 162-166 of the Criminal Code under which violence, mobbing and hate speech in relation the characteristics mentioned in Article 4, Para.1 of the Protection against Discrimination Act are sanctioned with fines and deprivation of liberty. Usually those provisions of the

Criminal Code are not applied into practice.

There are also provisions of the Criminal Code, providing more severe punishment in cases of death or bodily injuries caused with racist or xenophobic motives (art. 116 and art. 131 of the Criminal Code).

#### **b) LGBT**

LGBT as a vulnerable group do not have any particular standing in Bulgarian legislation. They enjoy the protection of the Protection against Discrimination Act. One of the biggest challenges they face in Bulgaria is the lack of legislative regulation of same sex marriages as currently they are not recognized under any form. Examples of good practice in other countries can be found in the form of civil unions, allowing same sex couples to participate in legal matters effectively as a family, which however do not exist in Bulgaria.

#### **c) Refugees**

In recent years the vulnerability of refugees has become a very sensitive subject. The Law on Asylum and Refugees is the main piece of legislation governing the procedure for admitting and the protection of refugees. During the refugee procedure, persons have the right to stay within the territory of the Republic of Bulgaria, shelter and food, social assistance, health insurance, mental help, receive a registration certificate and a translator or interpreter. Currently, those awaiting results from their refugee application are placed in admission centres which provide poor living conditions. The Law also provides protection of refugee families and unaccompanied minors.

### **5. Vulnerability due to financial status**

The two main pieces of legislation governing financial resources are the Family Allowances Act and the Social Assistance Act. Family allowances are resources in cash and/or in kind supporting the raising of children (Family Allowances Act – Art.1, Para.2) They can be one-off or monthly depending on the needs of the family (Family Allowances Act – Art. 2, Para. 1). Allowances are provided for raising a child in the family, for families with low income, for single parents and for adoptive parents. The Social Assistance Act provides

protection. *“Social assistance benefits shall be resources provided in cash and/or in kind which supplement or substitute own incomes up to an amount sufficient to meet the basic necessities of life or to meet incidental needs of the beneficiary persons and families.”* (Social Assistance Act – Article 11 Para. 1) Social assistance is provided on the basis of a particular need or low income by an application submitted by the person in need. As regards the poor and unemployed, they are obliged to enter an employment program otherwise their social assistance might be suspended for a year.

### **III. INVOLVEMENT OF NGOS AND STAKEHOLDERS**

#### **1. Protection against discrimination**

The head regulatory body in this field under Article 40 of the Protection Against Discrimination Act is the Commission for protection against discrimination. Under Article 47 of the same Act, the Commission has powers to declare violations in regard to equal treatment, provide state prevention and order compulsory measures and fines in order to establish equal treatment. It also conducts researches and makes statements on compliance of legislation with the principles of non-discrimination. All other State bodies are also bound by the provisions of this legislation and must provide assistance to the Commission in the course of their duties.

#### **2. Disabilities**

Chapter Two of the Integration of People with Disabilities Act stipulates the main managing bodies in the field. First, the Council of Ministers defines the state policy in that regard. Second, the Council of Ministers, the Minister of Labour and Social Policy, heads of the regional governance, bodies of the local self-governance in cooperation with national-represented organizations of and for people with disabilities, national represented organizations of employers and national represented organizations of workers and servants implement measures in accordance with the state policy (Integration of People with Disabilities Act - Art. 5) The law also defines two more government bodies a consultative one - National council for integration of people with disabilities and an executive one – Agency for people with

disabilities, both responsible for defining and implementing the state policy.

*“National represented organisations of people with disabilities” and “National represented organisations for people with disabilities” shall mean these organisations representing the people with disabilities, and which are recognised under the terms and conditions established by the Council of Ministers.”* (Integration of People with Disabilities Act – Paragraph 1, Point 10 of the Supplementary provisions) These organizations are government approved NGOs which legally are the only ones approved to represent people with disabilities. They receive funding and benefits from government resources. However the approach, used by the large portion of these organizations towards the people with disabilities is presenting and threatening them just as needy people, rather than independent, active and empowered rights holders.

### **3. Social Assistance**

Under the Social Assistance Act and the Family Allowances Act, the main government bodies responsible for the definition and implementation of the state policy are the Council of Ministers, the Minister of Labour and Social Policy, the regional administrations, the bodies of local self-government and the not-for-profit legal entities pursuing public benefit activities, which create conditions and facilitate the implementation of programmes and projects in this sphere. Further, there is an executive body under the Ministry of Labour and Social Policy named the Social Assistance Agency which is responsible for implementing the state policy, providing social assistance benefits and social services, authorization of social service providers and coordination and control in the field of social assistance.

Under the Child Protection Act, in a similar manner two government institutions exist, one executive – State Agency for Child Protection and a National Council for Child Protection, comprised of representatives of the Ministry of Labor and Social Policy, the Ministry of Justice, the Ministry of Education and Science, the Ministry of Health, the Ministry of the Interior, the Ministry of Finance, the Ministry of Culture, Ministry of youth and sport, National Insurance Institute, Central Commission for tackling antisocial



behaviour of children under the Council of Ministers and the national association of the municipalities in the Republic of Bulgaria as well as non-for-profit legal entities, whose purpose of activity is child protection. On a regional level there is also a Social Assistance Directorate, a specialized body in charge of conducting child protection policies within the municipality.

It is worth mentioning that unlike in the field of people with disabilities, in the field of child protection and social assistance, non-profit organizations play a vital role and contribute actively in the implementation and execution of those policies.

#### **4. Education**

State education policy is stipulated in the National Education Act, with implementation powers given to the Council of Ministers and the Minister of National Education. Schools and kindergartens are created and closed with a decision of the Minister of National Education, except in cases of schools with foreign participation, in which case the decision is made by the Council of Ministers. Non-profit organizations are not provided with involvement under the existing legislation, however in practice there are many NGOs dedicated to promoting and supporting education in children and adults.

#### **5. Ministry of Interior and the State Agency for Refugees**

The Ministry of Interior ensures protection of national security, maintenance of public order and counteraction of criminal activity. It also has powers in guarding the state borders and the protection and enjoyment of the rights and freedoms of citizens. Under the Law for the Asylum and the Refugees, the Council of Ministers creates a specialized administrative body with implementation powers of the law named the State Agency for the refugees. Under Articles 53 – 56 of the Law the Agency relies on major cooperation with charity organizations and non-profit organizations.

### **IV. LIST OF POLICY DOCUMENTS CONCERNING VULNERABLE GROUPS**

- The National Strategy on the Child (2008 – 2018), issued by the National Assembly (Promulg. SG, is. 14 of 12 February 2008);
- National Roma Integration Strategy of the Republic of Bulgaria (2012-2020);
- Action Plan for the Implementation of the Roma Strategy;
- Coordination Mechanism for Cooperation in cases of children victims or in risk of violence;
- National Strategy for People with Disabilities (2016-2020), adopted with Decision 549 of the Council of Ministers, dated 07.07.2016;
- National Programme for Prevention and Protection against Domestic Violence (26.10.2016);
- National Programme for Countering of Trafficking in Human Beings and Protection of the Victims for 2016.

## **V. RECOMMENDATIONS**

Along with the recommendation for legislative changes, in order to provide the vulnerable people with better protection of their rights and to empower them as rights holders to lead dignified lives, the following recommendations to grantees of international organizations, implementing safeguarding measures in Bulgaria, could be made:

- To treat their clients with respect to their dignity and human rights;
- To listen, to hear and to understand the preferences and views of their clients;
- To work for removal of the obstacles and to create conditions vulnerable people to participate in the proses of taking decisions, which concern them, to lead independent and decent life and to participate in the public life;
- To be trained how to recognise the vulnerable person and how to identify her/his best interest;
- To be familiar with the existing protection mechanism (legislation, international human rights standards, institutions and available services). To invest in developing of better knowledge in the field of

protection vulnerable groups and to learn and implement the best practises;

- To elaborate and follow thorough Ethical Codes and Codes of Conduct;
- To organise their services around the needs and preferences of the vulnerable client.

## CROATIA

## Desk research

### **Question n.1: What is the definition of “child”?**

There is no unified definition of the “child” in Croatian legislation. Different legal acts define “child” for the purpose of their application, scope and coverage.

The Penal Code of Croatia defines the child as a person who still hasn't reached the age of 18. Children younger than 14 can not be held responsible under the Penal Code but those between the age of 14 and 20 are considered as juveniles and as such are subjects of the Penal Code.

The Act on Misdemeanours defines juveniles as persons between age of 14 and 18 and distinguishes between younger juveniles (14 to 16) and older juveniles (16 to 18).

Act on Protection of Persons with Mental Disorders define child as the person who has not turned 18 yet and has not acquired legal capacity.

Family Act prescribes that a person becomes of age and acquires legal capacity at the age of 18. Alternatively, a person can acquire the legal capacity at the age of 16 if he/she gets married.

See more in the Croatian State report on implementation of Convention on the Rights of the Child.

### **Question n.2.: Is the notion “vulnerability” or “vulnerable” (for child and adult) used in legislation in your country? What other words, notions are used in your national legislation to describe this phenomenon?**

The notion of vulnerability is not consistently used in Croatia legislation. When used, in original language the term is “**osljeljive skupine**”. The most comprehensive listing of vulnerable groups can be found in strategic document “National Program for Protection and Promotion of Human Rights 2013 - 2016 in the section titled “Care of especially vulnerable group of citizens”. In this section the following groups are listed along with the measures envisaged to advance their position in society:

Persons with disabilities, persons with mental disorders, elderly people, homeless people, drug addicts, people living with HIV, imprisoned persons, victims and witnesses, asylum seekers, sexual and gender minorities.

Worth noting is that the National Program include additional groups in priority areas which are not expressly included under section “especially vulnerable groups”. Those groups are: women, children, youth, national minorities, civil war victims and war veterans. From that it stems that the children rights are recognized as the priority area for intervention but children are given lesser priority and not included as “especially vulnerable group”.

Law on Social Protection mentions the importance of availability of programs of support to vulnerable groups (Article 129) but doesn't list those groups.

National Strategy for Protection from Domestic Violence recognizes victims of domestic violence as vulnerable group and puts the emphasis “especially vulnerable” on those facing multiple discrimination (e.g. women with disabilities) who are at heightened risk of domestic violence.

Strategy for Development of System of Social Protection (2011 – 2016) emphasizes the provision of support and services to socially vulnerable groups but does not define them.

National Strategy for Rights of the Child 2014 – 2020 makes explicit mention of children belonging to vulnerable groups. When outlining the measures it lists particular vulnerable groups as the examples but not as the exhaustive list (Roma children, children with disabilities, children from poor families).

**Question n.3.: Is the expression of “safeguarding policy” or any synonym (safeguarding requirement, safeguarding measures, obligatory procedures of protection /measures of care, etc.) mentioned in these acts and/or regulations in relation to vulnerability?**

The expression “safeguarding policy” is not used in Croatian legislation in relation to vulnerability. The closest synonyms used are “support measures” or “protection measures” or “care measures”.

The safeguarding policies containing such measures and obligatory actions

are listed below in Table 2. in relation to key vulnerable groups.

**Question n.4.: Does your national legislation on vulnerable children and adults specify the stakeholders who are expected by law to provide care and protection?**

**Note:** National program for protection and promotion of human rights 2013 – 2016 targets the area of intervention to advance the human rights situation in Croatia and it outlines target groups including “especially vulnerable groups”. It sets out the measures of intervention and stakeholders and responsible public bodies for implementation.

Table 1. Public Stakeholders

<b>Type of the activity or target group</b>	<b>Public Stakeholders</b>
Child rights	Child’s Ombudsman, Family centers (at county level), Government’s Office for Human and Minority Rights (applicable to other groups), Government’s Council for Children
Rights of women	Ombudswoman for Gender Equality, Government’s Office for Gender Equality,
Rights of elderly	Ministry of Social Policy and Youth, Ministry of work and pension system, Ombudsman’s council for the rights of elderly people
People living with HIV	Ministry of Health, Croatian Institute for Public Health, Clinic for Infectious Diseases “Dr. Fran Mihaljevic”
Persons with disabilities (including cross-disability organizations and impairment based organizations: physical disability, intellectual,	Disability Ombudswoman, Ministry of Social Policy and Youth, Fund for professional rehabilitation and employment of persons with

psychosocial and sensory (visual or hearing))	disabilities,
LGBT rights	Ombudswoman, Government's Office for Gender Equality, Government's Office for Human and Minority Rights
National minorities	Ministry of governance, Ministry of culture, National Councils for Minorities
Human Rights in general	Ombudswoman, Government's Office for Human and Minority Rights
Youth	Ministry of Social Policy and Youth
Social Protection	Ministry of Social Policy and Youth, Centers for Social Protection (municipal level), Croatian Association of Social Protection Workers, Residential care institutions of social protection,
Employment	Ministry of economy, work and entrepreneurship, National Employment Institute, Association of Employers, Croatian Chamber of Economy
Education	Ministry of Education, Agency for Education, Agency for vocational education and adult education
Social Inclusion	Ministry of Social Policy and Youth

Table 2. List of legal acts and policy documents defining stakeholders

<b>Type of the activity or target group</b>	<b>List of legal acts or other policy documents defining stakeholders</b>
Child rights	Law against discrimination, Family Law, Law on nannies, Law on Child's



	<p>Allowance, Law on Child's Ombudsman, Law on Support to Parents, Law on foster care, Law on Protection from Domestic Violence, Law on Social Protection</p> <p>Key policies: National Plan for Fight Against Discrimination 2016 - 2021, National Strategy for Rights of the Child, Strategy for Development of Social Protection System 2011-2016</p>
Rights of women	<p>Law on Free Legal Aid (applicable to other groups), Law on support to parents, Law on protection from domestic violence.</p> <p>Key policies: National Strategy for Protection of domestic violence 2011 - 2016, National Policy for Gender Equality 2011 – 2015 (new one is in the process of drafting)</p>
Rights of elderly	<p>Law on pension security</p> <p>Key policies: Strategy for social protection of elderly people 2014 - 2016</p>
People living with HIV	<p>Key policies: Croatian National Program for HIV/AIDS Prevention</p>
Persons with disabilities (including cross-disability organizations and impairment based organizations: physical disability, intellectual, psychosocial and sensory (visual or hearing))	<p>Law on Protection of People with Mental Disorders, Law on professional rehabilitation and employment of people with disabilities, Law on Croatian Sign Language</p> <p>Key policies: Strategy for fight against poverty and social exclusion 2014 – 2020 (<b>applicable to all other groups</b>),</p>

	National Strategy for Equalization of Opportunities for Persons with Disabilities
LGBT rights	Law on Civil Partnership between same sex persons
Minority Rights	Constitutional Law on Rights of National Minorities, Law on Clerks and appointees in local self-governemnts, Law on education on language of national minorities, Law on usage of language of national minorities Key policies: National Roma Inclusion Strategy 2013 - 2020
Youth	Law on youth councils Key policies: National Program for Youth 2014 - 2017
Migrants	Key policies: Migration Policy of Republic of Croatia 2013 - 2015
Human Rights in General	Key policy: National program of protection and promotion of human rights 2013 – 2016 (process of drafting the new one is about to begin)

**Question n.5.: What other stakeholders are you aware of concerning vulnerable children and adult in your country? (NGOs, international bodies, etc.)**

Table 3 List of NGO Stakeholders and international organizations and agencies

<b>Type of the activity</b>	<b>List of NGOs</b>
Child rights	For the list of child's rights NGOs see the list of the associations which participated in submission of Alternative report to CRC Committee
Rights of women	Autonomous Women's House Zagreb; Centre for Women War Victims-ROSA, Zagreb; Centre for Civic Initiatives, Poreč; Dominoes, Split; Lesbian group Kontra, Zagreb; PETRA Network of NGOs for the prevention and elimination of trafficking in women; Center for Reproductive Rights; Women's Room; Ba.Be. (Be active. Be emancipated); Women's Network of Croatia
Rights of elderly	Trade Union of Pensioners of Croatia
People living with HIV	Croatian Association for fight against HIV
Persons with disabilities (including cross-disability organizations and impairment based organizations: physical disability, intellectual, psychosocial and sensory (visual or hearing))	Association for Promotion of Equal Opportunities (UPIM), Association for Promotion of Inclusion (API), Association Heart, Croatian Union of Associations of Persons with Disabilities (SOIH)

LGBT rights	Queer Zagreb, Association Rainbow Family, Lesbian Organization Rijeka "Lori, Center for LGBT Equality, IQ – Initiative Queer, LGBTIQ coordination of Croatia
Minority rights	Youth Initiative for Human Rights Croatia, OBRIS
Human Rights in general	Helsinki Committee for Human Rights Croatia, Association GONG, Civil Rights Project Sisak, Center for peace, non-violence and human rights Osijek, Civic Committee for Human Rights, House of Human Rights Zagreb
Youth	Croatian Youth Network (umbrella association including 66 youth NGOs), Youth Initiative for Human Rights Croatia
International organizations and agencies	UNICEF Croatia, UNDP Croatia, European Commission in Croatia

### **Question n.6.: Registration of NGOs**

In Croatia the foundation and registration criteria and requirements for NGOs are set out in the Law on associations

Article 4 sets out the goals for which the NGO might be founded in a positive manner listing possible goals as following: protection of human rights and freedoms, protection of environment and sustainable development, humanitarian, social, cultural and educational goals, science, sport, health, technology, information or other goals which are not contrary to Constitutional provisions.

Section II, Articles 6-10 might be considered as safeguarding requirements. They set out the principles on which the NGO is functioning as following: principle of independency, principle of transparency, principle of democratic order, non-profit principle, principle of free participation in public life.

Article 13 sets out the requirements for NGO's Statute as foundational act and its elements including the area of work, the type of business (if any) and the goals of NGO and decision-making processes and managing organs of NGO.

Articles 16-19 sets out the basic requirements for organs of NGO and their roles and management.

Article 23 prescribes the official requirements for NGO registration including Statute but no any other safeguarding policies.

## **Country report**

### **1. INTRODUCTION**

The process of becoming the European Union member state was characterised by a dynamic process of harmonizing Croatian legislation and strategic documents with the legal frameworks of the EU. During that process and during the first years of accession, Croatia ratified a number of the EU directives related to prevention and protection of vulnerable groups. The country has also ratified the following international documents:

- The European Convention of Human Rights and related protocols, including recognition of the jurisdiction of the European Court for Human Rights.
- The UN Convention against Transnational Organized Crime
- The UN Convention on the Rights of Persons with Disability and The Optional Protocol to the Convention on the Rights of Persons with Disabilities

- The UN Convention on the Rights of a Child and the Optional Protocol on the sale of children, child prostitution and child pornography
- The European Convention on the Rights of a Child
- The European Social Charter
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),
- The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption
- Council of Europe Convention on Action against Trafficking in Human Beings

The provisions of these documents are incorporated in the legal framework of Republic of Croatia (RoC).

## **2. LEGAL AND NATIONAL POLICY FRAMEWORK RELATED TO CHILDREN AND VULNERABLE ADULTS**

### **1. THE DEFINITION OF A CHILD AND A VULNERABLE ADULT**

The definition of children, youth and vulnerable individuals or groups is not systematically used across the legislative and strategic framework of Croatia nor in data collection, although the need for consolidation of both definitions and data collection methodologies has been identified.

For instance, **The Family Act** (2015) defines that a person becomes of age and acquires legal capacity at the age of 18. Alternatively, a person can acquire the legal capacity at the age of 16 if he/she gets married

At the same time, a child over 14 have the right to undertake legal proceeding to enforce its rights autonomously, whilst a child over 16 can decide on medical procedures autonomously.

**The Penal Code of Croatia** defines a child as a person who still hasn't reached the age of 18. Children younger than 14 cannot be held responsible

under the Penal Code but those between the age of 14 and 20 are considered as juveniles and as such are subjects to the Penal Code.

**The Act on Misdemeanours** defines juveniles as persons between age of 14 and 18 and distinguishes between younger juveniles (14 to 16) and older juveniles (16 to 18).

**The Act on Protection of Persons with Mental Disorders** defines a child as the person who has not turned 18 yet and has not acquired legal capacity.

**National program for protection and promotion of human rights 2013 – 2016** targets the area of intervention to advance the human rights situation in Croatia and it outlines children, women, elderly, unemployed, Roma, LGBT persons and persons with HIV as “especially vulnerable groups”.

The **Social Welfare Act** defines the following categories:

- a child as a person under the age of 18,
- a person with disability as an individual who has a long term mental, physical, intellectual or sensory impairment, which in combination with other difficulties can prevent full and efficient participation in a society equal to individuals without disability,
- elderly as a person over 65,
- homeless as a person who has no place to live, who sleeps and spends time in a public or some other place not designed as residential and has no access to resources that can cover an accommodation.

In addition, the Social Welfare Act specifies the beneficiaries of the social welfare as the following categories:

- individuals and households without sufficient income to cover basic living expenses;
- children: without adequate parental care; victims of family, sexual or peer violence; victims of trafficking; children with developmental difficulties and unaccompanied children;

- pregnant women or parent of a child up to 12 months old with family support;
- persons with disabilities;
- adult victims of family or other type of violence or trafficking;
- elderly or other individuals who cannot care about basic needs due to infirmity
- homeless;
- individuals addicted to drugs, gambling or other type of addiction,
- asylum seeker and individuals under international protection

The data collection is disseminated among different state bodies, where each has its own databases which collect data organised in the age groups pertinent to its needs. The individual databases are not mutually coordinated nor interconnected. The National Office of Statistics, which is charged with national data collection, collects data for children and youth until the age of 19. This lack of unification and coordination results in gaps in data collection, protection mechanisms and coverage.

## 2. LEGAL AND STRATEGIC FRAMEWORK

The legal framework covering the rights of children includes the following laws and the respective implementation protocols:

**The Family Act (2015) (*Obiteljski zakon*)**, among other new mechanisms that improve protection of children, introduces the institutions of **Special guardian for children**, independent specialized lawyers who represent children in courts.

**The Social Welfare Act (2013) (*Zakon o socijalnoj skrbi*)**, apart from defining specific groups of vulnerable adults and children, for the first time sets foster care as a clear priority for children without adequate parental and limits the placement of children under 7 in the institutional care to a maximum of six months. However, there are no monitoring mechanisms in place that would



ensure the implementation of this provision.

**The Act on Combating Discrimination** (*Zakon o suzbijanju diskriminacije*)

ensures the protection and promotion of equality as the highest value of the Constitution of Croatia. It defines discrimination as placing any person in an unfavourable position due to race or ethnicity, colour of skin, gender, language, religion, political or other orientation, national or social background, income, family or social status, age, health, disability, gender or sexual identity.

**The Law on Protection against Family Violence** (2009)

(*Zakon o zaštiti od nasilja u obitelji*) outlines the prevention and sanctioning of any type of violence in the family, focusing on appropriate measures towards the perpetrator but also providing protection and assistance to the victims.

**The Law on Legal Aid** (*Zakon o besplatnoj pravnoj pomoći*) defines the purpose and types of the free legal aid, as well as the beneficiaries of the services.

**The Foster Care Act** (2011) (*Zakon o udomiteljstvu*) creates an improved legal framework for foster care as the alternative care for children without adequate parental care and persons with disabilities. It introduces foster care remuneration, recognise different categorises of foster care and introduce minimal standards.

**The Penal Code** (2011) (*Kazeni zakon*,) specifically defines child friendly procedures towards children victims and witnesses of criminal procedures.

**The Law on Juvenile Courts** (2012) (*Zakon o sudovima za mladež*), among other areas, defines the mediation procedure through out-of-court settlement, which allows children who have conducted misdemeanours, to atone for their acts.

The strategic documents outlining policy frameworks related to vulnerable groups include:

**The National Program for protection and promotion of Human Rights (2013-2016)** targets the area of intervention to advance the human rights situation in Croatia and it outlines children, women, elderly, unemployed, Roma, LGBT persons and persons with HIV as “especially vulnerable groups”.

**The Nacional Roma Inclusion Strategy 2013-2020** defines the Roma population as particularly vulnerable group due to its social exclusion and poverty deprivation. “Social exclusion should be understood as the relatively permanent, multiply conditioned and multidimensional state of deprivation of an individual. It is a process whereby certain individuals are pushed to the edge of society and prevented from participating fully in the society and societal processes solely by virtue of their poverty or lack of basic competencies and lifelong learning opportunities, or as a result of discrimination. Consequently, excluded persons and groups are being distanced from employment, income and educational opportunities as well as social and community networks and activities. It defines clear progress indicators and the formation of the Monitoring Commission, comprised of representatives of various government bodies and Roma minority and chaired by the representative of Roma minority in the Croatian Parliament. However, there is a space for improvement of the necessary systematic data collection to track progress and the training of the Monitoring Commission Roma representatives in using the data to track progress in the Strategy implementation.

**The Nacional Strategy for Protection and Promotion of the Rights of a Child 2014-2020** sets the focus on children with developmental difficulties as one of the strategic goals. The Strategy aims to develop early interventions services, standardise the disability evaluation criteria, ensure the right of children to individualised approach and life with the family (not institution). However, the implementation of the

strategy is limited, since the implementation protocols are not adopted nor is the necessary intervention applied systematically.

**The Plan for De/institutionalisation and transformation of social welfare institution** (2011-2016/2018) defines a strategic goal to change the ratio of institutional and family based care for children (20-80) and persons with disabilities (by 30%) by 2016 (2018). By the end of 2016, this goal has not been reached as there is insufficient capacity of home based (foster) care or community based living to accommodate a growing need for placement.

Other relevant strategic documents include: The Nacional Programme for Youth 2014-2017, The Nacional Strategy for Development of Social Welfare 2011 – 2016, The Nacional Plan for Suppression of Trafficking in Human Beings 2012-2015, The Strategy to Combating Poverty and Social Exclusion (2014-2020), The Strategy for Education, Science and Technology (2014-2020), The Nacional strategy for equalisation of possibilities of Persons with Disabilities, (2007-2015) and The Nacional Strategy for Development of Heath System 2012-2020,

### **3. SAFEGUARDING POLICIES IN CROATIAN CONTEXT**

The expression “safeguarding policy” is not used in Croatian legislation in relation to vulnerability. The closest synonyms used are “support measures” or “protection measures” or “care measures”.

The need to address issues of safeguarding policies arise from the two reports: The UN Committee for the Right of a Child Concluding Observations and The Parallel Report on the implementation of the UN Convention on the Rights of Persons w/ Disabilities in the RoC on the occasion of the review of the initial report of the Government of the RoC before the UN Committee on the rights of persons with disabilities.

Although both reports are dating to 2014, the bellow listed comments still apply.

The Un Committee for the Right of a Child has accepted the Croatian State report on implementation of Convention on the Rights of the Child at

its session on September 15, 2014. In its Concluding observation, it expresses satisfaction with the new positive legal framework, ratification of the conventions and national strategies. At the same time, the Committee expressed the following concerns :

- Legal insecurities and lack of consistency in application of the law, as well as the protraction of adoption of subsidiary legislation necessary for its implementation
- Insufficient coordination of policies for children among stakeholder at national, regional and local levels
- Lack of effective monitoring, evaluation and accountability mechanisms;
- Inadequately allocated funds, necessary for its implementation;
- Appreciating the efforts towards an inclusive education, it is noted that children from vulnerable groups, particularly Roma children, children in a risk of poverty, children living in isolated areas and children of foreign nationals do not have the equal access to education;
- With regards to children with developmental difficulties, the Committee has noted incidents of inadequate treatment of children in health institutions, unequal support that would allow inclusive education, especially in rural areas. Abandoned children with developmental difficulties are placed in health institutions instead of the institutions for children and are not included in any official data of children that could be adopted.

The recommendations include:

- Conducting a comprehensive assessment of budget needs of children and allocating adequate budgetary resources in accordance with article 4 of the Convention for the implementation of children's rights and in particular to increase the budget allocated to social sectors, and address disparities on the basis of indicators related to children's

rights;

- Establishing mechanisms to monitor and evaluate the efficacy, adequacy and equitability of the distribution of resources allocated to the implementation of the

Convention;

- Defining strategic budgetary lines for children in disadvantaged or vulnerable situations who may require affirmative social measures ;
- Establishing systems and/or procedures for social workers and courts to comply with the right of all children to be heard; The Parallel Report on the implementation of the UN Convention on the Rights of Persons With Disabilities by the Ombudsman for PwD describes the following concerns:
  - Inclusion of children with disabilities into mainstream education is significantly hampered by the government's failure to define the required support in legislation. The secondary school education is the weakest link in education of persons with disabilities in Croatia.
  - A professional rehabilitation system is almost non-existent so persons with disabilities with a lower work capacity are mostly placed in early disability retirement. Although early intervention
  - Children with disabilities do not have access to early intervention services, with children with autistic spectrum disorders being most disadvantaged.
  - Amendments to legislation regulating guardianship failed to introduce supported decision-making models. A serious impediment to addressing violations of the rights of persons with disabilities to education, employment, independent living and others is the lack of statistical data required for policy planning, resources allocation and systematic monitoring of undertaken actions<sup>12</sup>.

On the positive side, there are visible attempts to establish safeguarding policies in forms of defining operational inter-sectorial procedures and responsibilities such as **the Protocol related to the treatment of children separated from parents – foreign nationals ( 2013)**.

#### **4. RELEVANT GOVERNMENTAL AND NON-GOVERNMENTAL STAKEHOLDERS**

The national approach to protection and promotion of human rights and protection from violence is based on clear jurisdiction of different sectors, defined by legislation and strategic documents. This includes the governmental bodies with jurisdiction over human rights, social protection, security, health, justice and education.

**The Public Ombudsman** (*Pučki pravobranitelj*) is a commissioner of the Croatian Parliament responsible for the promotion and protection of human rights and freedoms and the performance of the mandates of the National Equality Body as well as the National Preventive Mechanism for the protection of the persons deprived of their liberty. She is independent and autonomous in her work.

Apart from the Public Ombudsman, there are three special Ombudsman offices:

**The Ombudsman for Children** (*Pravobraniteljica za djecu*), is a commissioner of the Croatian parliament charged with monitoring the consistency of national legislation and procedures with the Constitution of Croatia, The Convention on the rights of a child and other intentional documents. She monitors and advocates for the rights and interest of a child. She is independent and autonomous in performing the law proscribed duties and responsibilities and is obligated to submit the annual report about the protection of child rights to the Parliament.

**The Ombudsman for Persons with Disabilities** (*Pravobraniteljica za osobe s invaliditetom*) is a commissioner of the Croatian Parliament, charged to protect, monitor and

promotes rights and interest of persons with disabilities, based on the Constitution of Croatia, international conventions and the law.

**The Ombudsman for Gender Equality** (*Pravobraniteljica za jednakost spolova*), is a commissioner of the Croatian Parliament for prevention and **suzbijanje** discrimination related to gender equality in the areas of work, education, political participation, health, judiciary, access to services and family violence. He\*she is appointed by the Parliament and obligated to submit annual reports to the Parliament on the state of gender related issues in Croatia.

At the **executive level**, there is a diverse system of governmental bodies whose role is to promote and protect human rights, including the rights of vulnerable groups and individuals.

**Council for Children** (*Vijeće za djecu*), founded in 2012, is an advisory body to the GoC, responsible for the monitoring of child rights and implementation of the national policies. However, with the new election in 2015 and 2016 and formation of new governments, the Council has effectively stopped working and has not been reactivated yet.

**The GoC Office for Human Rights and Rights of Minorities** (*Ured za ljudska prava i prava nacionalnih manjina*) is an executive office of GoC. Its mission is to implement efficient and coordinated systematic implementation of national programmes, plans and strategies, the Constitutional Law on National Minorities, international documents as well as sensitivity of public and prevention of hate speech.

**The GoC Office for Gender Equality** (*Ured za ravnopravnost spolova*) is an executive office of the GoC, responsible for coordination of all activities related to ensuring gender equality in a society and monitoring the implementation and efficiency of the Gender Equality Act and National Policy for Gender Equality (2011-2015).

**Ministry for Demography, Family, Youth and Social Policies** (*Ministarstvo za demografiju, obitelj, mlade i socijalnu politiku*) is a

relevant ministry responsible for development of legislation and strategic documents related to demographic revitalisation and social welfare of families, children ( particularly children without adequate parental care, children with behavioural difficulties, unaccompanied children), youth and other vulnerable groups ( homeless, individuals and families at risk of poverty, Roma, asylum seekers, elderly, individuals with addiction, victims of trafficking and violence and persons with disabilities). The implementation bodies are government run **centres for social welfare** and other state and local **social welfare institutions** (homes for children without adequate parental care, homes for children with behavioural difficulties, institutions for placement and care for persons with disabilities) and **civil society organisations**.

**Ministry for Science and Education** (*Ministarstvo znanosti i obrazovanja*) is responsible for legislative and strategic framework related to pre/school education, primary, secondary and tertiary education and science. It develops national curriculums, norms and standards and monitors its implementation.

There is a very diverse **civil society sector** in Croatia. More than 52 000 civil society organisations (*udruge građana*) are involved in various types of activities, including those providing humanitarian assistances, programs and services to children, persons with disabilities, homeless, women, victims of violence and trafficking in the areas of social protection and support, education, legal protection, advocacy and human rights. Most concentrated area of activities is Zagreb, while the rest of Croatia experiences significant discrepancies in coverage of both the presence of the CSOs and the services they provide. CSOs are mostly funded through funding mechanism of various ministries using state and local councils' budget and Lottery funds, as well as the European Social Fund.

The recent migration trends have re/activated a presence of international NGOs and international organisations, such as Save the Children and IOM. UNHCR and UNICEF have maintained their presence since the 90ies, while UNDP has closed its office in Croatia.



More information about key CSO stakeholders can be found in the Table 1 below:

TABLE 1: CSO STAKEHOLDERS, INTERNATIONAL ORGANIZATIONS AND AGENCIES

Type of the activity	List of NGOs
Child rights	For the list of child's rights NGOs see the list of the associations which participated in submission of Alternative report to CRC Committee
Rights of women	Autonomous Women's House Zagreb; Centre for Women War Victims-ROSA, Zagreb; Centre for Civic Initiatives, Poreč; Dominoes, Split; Lesbian group Kontra, Zagreb; PETRA Network of CSOs for the prevention and elimination of trafficking in women; Centre for Reproductive Rights; Women's Room; Ba.Be. (Be active. Be emancipated); Women's Network of Croatia
Rights of elderly	Trade Union of Pensioners of Croatia
People living with HIV	Croatian Association for combating HIV
Persons with disabilities (including cross-disability organizations and impairment based organizations: physical	Association for Promotion of Equal Opportunities (UPIM), Association for Promotion of Inclusion (API),

disability, intellectual, psychosocial and sensory (visual or hearing))	Association Heart, Croatian Union of Associations of Persons with Disabilities (SOIH)
LGBT rights	Queer Zagreb, Association Rainbow Family, Lesbian Organization Rijeka "Lori", Centre for LGBT Equality, IQ – Initiative Queer, LGBTIQ coordination of Croatia
Minority rights	Youth Initiative for Human Rights Croatia, OBRIS

Human Rights in general	<p>Helsinki Committee for Human Rights Croatia,  Association GONG,  Civil Rights Project Sisak,  Centre for Peace, Non-violence and Human rights  Osijek,  Civic Committee for Human Rights,  The House of Human Rights  Zagreb, Documenta,  Roma National Council</p>
Youth	<p>Croatian Youth Network (umbrella association  including 66 youth CSOs), Youth Initiative for  Human Rights Croatia</p>
International organizations and agencies	<p>UNICEF, UNHCR, IOM, Save the Children,  The European Commission in Croatia</p>

## 5. CONCLUSION

There is an area for improvement in the consistency of definition of vulnerable groups in Croatia as well as setting up indicators and data collection to track progress in national policies aimed at improvement of their status.

Although there is a strong emphasis on protection, safeguarding is still a new concept among Croatian policy and legislation makers as well as a lack of accountability measures for the respective bodies entrusted to protect or safeguard certain vulnerable groups. Practitioners involved with protection and support express a need for operational mechanisms and tools focused on prevention and risk assessment across the scale of vulnerabilities, followed by clear guidelines for cross sector, integrated interventions.

## **CZECH REPUBLIC**

## **Desk research**

### **Question n.1: What is the definition of “child”?**

The Act on Social and Legal Protection of Children (“Zákon o sociálně-právní ochraně dětí,” Act No. 359/1999 Coll.) defines in § 2 (1) as child a person under so-called legal age.

According to § 30 (1) Civil Code (“Občanský zákoník,” Act. No. 89/2012,), majority (zletilost) is acquired by achieving the age of eighteen years.

Prior to that, majority in the sense of legal capacity (“svěprávnost”), can be acquired by a decision of a court with the consent of the child’s guardian in cases where the court finds the individual to be sufficiently capable to manage its own affairs or where acquiring majority is necessary for weighty reasons in the interest of the child (“z vážných důvodů v zájmu nezletilého”) (§37 in conjunction with § 30 (2) Civil Code). Alternatively, majority can be acquired by entering into a marriage, (also § 30 (2) Civil Code). In both cases it is not possible to acquire majority at an earlier age than of 16.

Moreover, the under the Act on Juvenile Responsible (“Zákon o odpovědnosti mládeže za protiprávní činy a o soudnictví ve věcech mládeže a o změně některých zákonů”, Act No. 218/2003 Coll.) a person can be held responsible for certain offenses from the age of 15.

### **Question n.2.: Is the notion “vulnerability” or “vulnerable” (for child and adult) used in legislation in your country? What other words, notions are used in your national legislation to describe this phenomenon?**

On the basis of the desk research, the notion of vulnerability („zranitelnost“), vulnerable or at risk („zranitelná/ý“, „ohrožená/ý“) does not appear to be a self-standing, precisely-defined concept in Czech law. Vulnerability of certain groups is, however, to some extent reflected in a variety of laws.

Act on victims of crimes (“Zákon o obětech trestných činů,” No. 45/2013 Coll.)

The only law which identifies certain individuals as particularly vulnerable is the Act on victims of crimes in the context of “particularly vulnerable victims.” According to § 2 (4) of Act particularly vulnerable victims are the following groups:

- a. a child
- b. person with physical, mental or psychical disability or other impairment osoba, which together with other barriers prevent his/her full realisation compared to other members of the society („osoba, která je postižena fyzickým, mentálním nebo psychickým hendikepem nebo smyslovým poškozením, které ve spojení s různými překážkami může bránit plnému a účelnému uplatnění této osoby ve společnosti ve srovnání s jejími ostatními členy“)
- c. victim of trafficking in human beings
- d. victim of a crime against dignity in the area of sexual life or of a crime involving violence or threat of violence. If in the concrete case there is a risk of particular harm with regard to the persons’s age, gender, race, nationality, sexual orientation, religious belief, medical condition, majority, ability to express herself/himself, life situation or with regard to his/her relationship or dependency on the suspect („oběť trestného činu proti lidské důstojnosti v sexuální oblasti nebo trestného činu, který zahrnoval násilí či pohrůžku násilím, jestliže je v konkrétním případě zvýšené nebezpečí způsobení druhotné újmy zejména s ohledem na její věk, pohlaví, rasu, národnost, sexuální orientaci, náboženské vyznání, zdravotní stav, rozumovou vyspělost, schopnost vyjadřovat se, životní situaci, v níž se nachází, nebo s ohledem na vztah k osobě podezřelé ze spáchání trestného činu nebo závislost na ní“)

According to its most recent amendment, the following groups will be included explicitly in the future as vulnerable, as well: victims of terrorism, victims of crimes based on nationality, race, ethnic group or religion of the victim, or victims of crimes conducting in support of organized crimes („oběti trestného

činu teroristického útoku, činů spáchaných pro příslušnost k některému národu, rase, etnické skupině nebo náboženství a činu spáchaného ve prospěch organizované zločinecké skupiny“).

Act on Social and Legal Protection of Children, (“Zákon o sociálně-právní ochraně dětí” Act No. 359/1999 Coll.)

The Act on social and Legal Protection of Children identifies groups of children who may be subjected to so-called measures of “social and legal protection” („sociálně právní ochrana“), by way of examples in § 6.

Typical circumstances giving rise to measures of social and legal protection are the following:

- a. parents of the children died; they fail to meet their obligations arising out of parental responsibility; they fail to exercise or abuse rights arising out of parental responsibility,
- b. the children have been placed in the custody of another natural person (than a parent) and this person fails to meet obligations arising out of the decision on granting the custody of the child,
- c. the children lead a truant or immoral life, particularly they neglect school attendance, do not work even though they have insufficient resources for living, they drink alcohol or use other addictive substances, make their living as prostitutes, they commit a crime or in case of children under 15 years of age an act that would otherwise be a crime, repeatedly commit offences or otherwise threaten public order,
- d. the child repeatedly runs away from the parents or other natural or legal persons responsible for its upbringing,
- e. a crime was committed against the children that threatened their life, health, freedom, human dignity, moral development or property, or there is a suspicion of such a crime having been committed,
- f. children, who upon a request of the parents or other persons responsible for the upbringing of the child were repeatedly placed into institutions providing constant childcare or placement of whom in such a facility lasts for more than 6 months,
- g. children threatened by violence perpetrated between the parents or



other persons responsible for the upbringing of the child, or by violence among other physical persons,

- h. children, who are applicants for asylum and are separated from their parents or other persons responsible for their upbringing

These groups are understood as “children requiring special care” (“děti vyžadující zvýšenou pozornost”) for the purposes of § 31 -34 of the Social and Legal Protection Act.

Education Act (“Zákon o předškolním, základním, středním, vyšším odborném a jiném vzdělávání,” Act No. 561/2004 Coll.)

§ 16 (1) of the Act defines children, pupils and students „with special educational needs“ („se speciálními vzdělávacími potřebami“). These include children with disability, a medical disadvantage or socially impaired children („osoby se zdravotním postižením, zdravotním znevýhodněním nebo sociálním znevýhodněním.“

Social Services Act (“Zákon o sociálních službách”, Act. No. 108/2006)

The Social Services Act (“Zákon o sociálních službách”, Act. No. 108/2006) regulates according to § 1 measures of support and aid to “persons in unfavorable social situation” (“fyzické osoby v nepříznivé sociální situaci“). § 3 lists contexts which may give rise to such situation, including age, health condition, life style or social disadvantageous environment and other. The Social Services Act also identifies „persons dependent on the aid of other physical persons“ („osoby závislé na pomoci jiné fyzické osoby“). This category relates specifically to health condition and is further defined in § 8 and 9 of the Act.

Regulation on the Application of Certain Provisions of the Social Services Act („Vyhláška kterou se provádějí některá ustanovení zákona o sociálních službách,” Regulation No. 505/2006 Coll.)

The Regulation prescribes the procedures and individual factors to be taken into consideration when assessing the level of dependence of the person on the

aid of others for the purposes of the Social Services Act.

#### Civil Code („Občanský zákoník,” Act. No. 89/2012)

The Civil Code identifies supportive measures in cases of „reduced legal capacity of adult persons“ („narušení schopnosti zletilého právně jednat“). Such situation is linked to cases of physical or mental illness or physical or mental disabilities (compare § 38-65).

#### Anti-Discrimination Act (“Antidiskriminační zákon”, Act No. 198/2009 Coll.)

The Anti-Discrimination Act defines in §2 direct and indirect discrimination and prohibits it on the basis of the following grounds: race, ethnic origin, nationality, gender, sexual orientation, age, disability, religion belief or opinion. Sexual harassment is also considered discrimination (§ 2 (2)).

#### Ombudsman Act (“Zákon o Veřejném ochránci práv”, Act No. 349/1999 Coll.)

According to § 1 (3) of the Ombudsman shall visit “institutions where are or may individuals deprived of liberty by public authorities, in order to strengthen the protection of these persons against torture, inhumane or degrading treatment or punishment or other ill-treatment (“osoby omezené na svobodě veřejnou mocí nebo v důsledku závislosti na poskytované péči, s cílem posílit ochranu těchto osob před mučením, krutým, nelidským, ponižujícím zacházením nebo trestáním a jiným špatným zacházením“). According to § 1 (6) the Ombudsman also monitors the detention of foreigners and their expulsion.

#### Other

The Act on Living an Existential Minimum (“Zákon o životním a existenčním minimu”, Act No. 110/2006) and Act on Social Support (“Zákon o státní sociální podpoře”, Act No. 117/1995), although thematically related to the Social Services Act, do not refer to vulnerability or any other similar notion. Their applicability is defined in relation to the income of the person or persons asking for social aid.

At present the government is discussing the proposal of an Act on Social

Housing (“Zákon o sociálním bydlení”) which should relate specifically to the persons “in need of housing” (“osoby v bytové nouzi”).

**Question n.3.: Is the expression of “safeguarding policy” or any synonym (safeguarding requirement, safeguarding measures, obligatory procedures of protection /measures of care, etc.) mentioned in these acts and/or regulations in relation to vulnerability?**

Act on Social and Legal Protection of Children, (“Zákon o sociálně-právní ochraně dětí” Act No. 359/1999 Coll.)

With regard to children, the Czech legislature and executive operates with the term “social and legal protection of children” (sociálně-právní ochrana dětí) which is specified in § 1 of the Social and Legal Protection Act as:

- a. protection of the child’s right to a favourable development and proper upbringing,
- b. protection of the rightful interests of the child including protection of the child’s assets and
- c. activities aimed at recovery of disrupted family functions,

Specific measures and responsibilities of the individual stakeholders are described in Chapter III of the given Act. Special measures are required in relation to children “children requiring special care” (“děti vyžadující zvýšenou pozornost”), as defined in § 6. Furthermore, the term „social and legal protection“ is referred to in Chapter 2 of the Family Act (“Zákon o rodině”, Act. No. 94/1963 Coll.) as well as in the Social Services Act.

Education Act (“Zákon o předškolním, základním, středním, vyšším odborném a jiném vzdělávání,” Act No. 561/2004 Coll.)

The Education Act provides for specific measures for children with special educational needs, as well as for children with foreigners.

Social Services Act (“Zákon o sociálních službách”, Act. No. 108/2006)

In relation to adults, the Social Services Act specifies social services to be

provided in Chapter I of the Act. The responsibilities of the different stakeholders for providing for social services are further specified in § 92 - 96a of the Act.

Ombudsman Act (“Zákon o Veřejném ochránci práv”, Act No. 349/1999 Coll.  
Specific tasks in relation to legal protection of vulnerable groups are accorded to the Ombudsman in the Ombudsman Act, these include primarily visits to institutions where individuals are deprived of liberty.

**Question n.4.: Does your national legislation on vulnerable children and adults specify the stakeholders who are expected by law to provide care and protection?**

Act on Social and Legal Protection of Children, (“Zákon o sociálně-právní ochraně dětí” Act No. 359/1999 Coll.)

The Act on social and legal protection lists in § 4 (1) „organs of social and legal protection“ („orgány sociálně-právní ochrany, also as „orgány SPOD“) responsible for providing social and legal protection of children. These are:

1. municipal authorities of municipalities with extended competences (city authorities, in chartered towns metropolitan and town district authorities, in Prague authorities of charged metropolitan districts) („obecní úřady obcí s rozšířenou působností“),
2. municipal authorities (“obecní úřady a újezdní úřady”),
3. regional authorities (in Prague the City Hall of the Capital of Prague),
4. Ministry of Labour and Social Affairs and (“Ministerstvo práce a sociálních věcí”)
5. Office for International Legal Protection of Children (“Úřad pro mezinárodněprávní ochranu dětí”)

In addition to that, according to § 4 (2), social and legal protection of children can be provided by municipalities and regions with separate powers, commissions for the social and legal protection of children and other legal and natural persons, provided they are authorized to do so („pověřené osoby“).

Social Services Act (“Zákon o sociálních službách”, Act. No. 108/2006)

The Social Services Act lists the stake holders responsible for providing social services in § 5 and § 6. The responsibilities of the different stakeholders for providing for social services are further specified in § 92 - 96a of the Act.

Ombudsman Act (“Zákon o Veřejném ochránci práv”, Act No. 349/1999 Coll.

As described above, specific tasks in relation to legal protection of vulnerable groups are accorded to the Ombudsman in the Ombudsman Act.

**Question n.5.: What other stakeholders are you aware of concerning vulnerable children and adult in your country? (NGOs, international bodies, etc.)**

**National institutions:**

Ombudsman (Veřejný ochránce práv): <http://www.ochrance.cz/>, special section on children: <http://deti.ochrance.cz/>

Minister for Human Rights, Equal Opportunities and Legislature (Ministr pro lidská práva, rovné příležitosti a legislativu)

Agency for social inclusion: (Agentura pro sociální začleňování): <http://www.socialni-zaclenovani.cz/>

Government Council for Human Rights (Rada vlády pro lidská práva): <https://www.vlada.cz/cz/ppov/rlp/rlp-uvod-17537/>

Inter-ministerial Commission for Roma Community Affairs (Rada vlády pro záležitosti romské menšiny): <https://www.vlada.cz/en/ppov/zalezitosti-romske-komunity/the-council-for-roma-community-affairs--50634/>

Office for International Legal Protection of Children (Úřad pro mezinárodněprávní ochranu dětí): <http://www.umpod.cz/en/>

Czech Children’s Council (Česká rada dětí a mládeže): <http://crdm.cz/>

Národní rada osob se zdravotním postižením (National Council of Persons with Disabilities): <http://www.nrzp.cz/>

Committee for the Protection of Parental Rights (Výbor na ochranu rodičovských práv): <http://www.vorp.cz/cs>

**International bodies:**

UNICEF: <https://www.unicef.cz/>

**NGOs and associations:**

*Other (general focus on human rights):*

Czech Helsinki Committee (Český helsinský výbor): <http://www.helcom.cz/cs/>

Human Rights League (Liga lidských práv): <http://llp.cz/temata/prava-deti/>

*Children at risk/domestic violence:*

Linka bezpečí: <https://www.linkabezpeci.cz/>

Dětské krizové centrum: <http://www.dkc.cz/>

Fond ohrožených dětí (Klokánek): <http://www.fod.cz/>

Centrum Locika: <http://centrumlocika.cz/>

SOS dětské vesničky <http://www.sos-vesnicky.cz/>

Středisko náhradní rodinné péče: <http://www.nahradnirodina.cz/>

Azylový dům: <http://www.azylovydum.cz/spod>

Spondea: <http://www.spondea.cz/>

*Education:*

Czech society for inclusive education (Česká odborná společnost pro inkluzivní vzdělávání): <http://cosiv.cz/cs/>

Educational institute for children's protection (Vzdělávací institut ochrany dětí) : <http://www.viod.cz/cz/viod/domaci.html>

*Persons with mental disabilities:*

Inventura <http://inventura.org/>

*Social housing /homelessness:*

Platform for social housing (Platforma pro sociální bydlení): <http://www.socialnibydeni.org/cs>

Jako doma (Cooks without home): <http://jakodoma.org/>

*Social inclusion :*

Institute for social inclusion (Institut pro sociální inkluzi):

<http://socialniinkluzce.cz/>

*Foundations relating to children, severely ill or disabled:*

Nadace naše dítě : <http://www.nasedite.cz/>

Dobrý anděl : <https://www.dobryandel.cz/>

Konto Bariéry: <http://www.kontobariery.cz/home.aspx>

Nadace Terezy Maxové: <http://www.nadaceterezymaxove.cz/>

**Question n.6.: Anything else that you find relevant, interesting to mention from what you have found during your desk research on this topic**

English overview on social and legal protection of children at the website of the Ministry of Labor and Social Affairs: <http://www.mpsv.cz/cs/7241>

Campaign on children's rights by the Ministry of Labor and Social Affairs  
<http://www.pravonadetstvi.cz/>

**Question n.7.: Registration of NGO's**

(Zákon o obecně prospěšných společnostech, No. 248/1995 Coll.) and in § 226 of the Civil Code (Občanský zákoník, No. 89/2012 Coll.), which to some extent absorbed the Act on Charitable Organisations. The Civil Code identifies the charitable characteristics of an association ("veřejná prospěšnost") in § 146-150. According to these provision, charitable organisations shall contribute to the "general wellbeing" (obecné blaho). The term general wellbeing is not specified any further. These provisions are rather formalistic and, to my understanding, none of them requires the entities to have a proper safeguarding policy.

## Country report

Most competencies in social and legal protection of children is a matter for the courts and the municipal authorities with extended powers have the most competencies from the authorities for social and legal protection. However, very important competences for children protection are entrusted to the municipal authority, to that one where the child has a permanent residence and to the other where the child is at the time of emergency. The police, healthcare establishment and school have special competences in protecting the rights of the child. The performance of care of vulnerable children is ensured by a combination of activities of state and local governments, which both act individually and also under delegated powers.

All public authorities should act in all their activities including children in accordance with its best interests (see Art. 3 of the Convention on the Rights of the Child). According to Section 7(2) of Act No. 359/1999 Coll., on social and legal children protection, everyone is entitled to notify the authority of social and legal protection of breach of duty or abuse of rights resulting from parental responsibility, the fact that parents cannot fulfil the obligations arising from the parental responsibility or other matters specified in the act. According to Section 10(4) of Act No. 359/1999 Coll., the state authorities, authorised persons, schools, educational institutions and healthcare providers or other institutions designed for children are obliged to notify the municipal authority with extended powers of any facts that indicate that these are the children who require social and legal protection without undue delay as soon as they find out such a fact. Furthermore, anyone who believes that a criminal offence has been committed is entitled to submit the filing that contains specific facts that indicate the offence (criminal complaint).

The current state of social and legal protection of vulnerable persons is based on the principle of gradual deinstitutionalisation, i.e. transition from the care provided by institutions (stay in an institution) to care provided through institutions (outpatient care, outreach services, where applicable). This principle is supported legislatively by legal actions, which take prevention,



assistance, care and protection of individual vulnerable groups into account more.

The aim of the reform of the system of care for vulnerable children is not a purposeless destruction of any type of establishments or services but the creation of a system ensuring that children in the Czech Republic can grow safely in a natural, i.e. family (or foster family), environment. Promoting parental care and development of foster care inevitably leads to a reduction in the number of children in institutional care, as it happened in other countries undergoing a similar process. That does not mean that the organisation that has provided institutional care must completely cease to exist. Therefore, we speak about the “transformation” which also includes the use of professional potential of existing staff and facilities for other activities, especially for outpatient and outreach services for families and children.

The reform of the system of care for vulnerable children in the Czech Republic comes mainly from the Central European tradition. If some foreign inspiration is sought for reforming the system, mainly the neighbouring countries are considered. Just compare, for example, the Slovak act on social and legal protection of children with the amended Czech legislation. All the changes implemented in the context of the transformation process are prepared with the knowledge that a foreign system cannot be artificially implemented into practice in the Czech Republic. You can certainly use the examples of good practice, different techniques and working methods that have been proved successful abroad. It is also possible to avoid steps that did not lead to the reform objectives, i.e. the consistent protection of the rights of all children.

The aim of the transformation process is:

- in the case of vulnerable children under 3 years, the maximum effort is to avoid placing them in the institutional care but offer an alternative in the form of foster care (temporary foster care, permanent foster care or adoption) with the concurrent support by the resources of the original family.
- in the case of vulnerable children from 3 to 18 years, the effort is to ensure a stable family environment (original family, foster care or adoptive

family) so that children can build long-term relationships, which will support their emotional safety and personal development. The system should be able to provide an adequate and maximally individualised care also to the children with multiple handicaps, which is currently able to provide only institutional care.

- During the transition period, **individualised** institutional care and foster care should exist in parallel. The long-term aim is to ensure a functioning system for all children and adolescents, maximum support of care and upbringing in primary family and the effort to return children to their original families or offering the most stable environment for the NRP.
- The main feature of the approach of the Czech Republic at the public administration and the NGO is the support of prevention, accompaniment and the offer of support services for primary and foster families.
- The MOLSA as legislative and methodical body sets up a system of social and legal protection of children through regional offices OSLPC, in which a family-type providers of social services so-called authorised persons (AP) are involved. AP should primarily provide the prevention, accompaniment, counselling and education.

### **State authorities in charge of coordinating and effective legislation:**

#### **Ministry of Labour and Social Affairs**

The Ministry of Labour and Social Affairs (MOLSA) has the largest share of the activities related to the issue of care for vulnerable children, it is a central government authority for the care of family and children. Within the social and legal protection of children, the MOLSA conducts, in particular, legislative, methodological and inspection activities, including the review of legitimate decisions of the regional authorities in appellate and review proceedings. In the field of care of family and children, the MOLSA works at the international level, carries out monitoring of children's rights and coordinating the implementation of the Convention on the Rights of the Child.

**The Office for International Legal Protection of Children** is subordinated

to the MOLSA. The MOLSA is also a coordinator of the social system, i.e. the administrative body responsible for the payment and inspection of social benefits (mostly through the branches of the Labour Office). The MOLSA sets the quality standards for the provision of social services. The MOLSA also regulates the State Labour Inspection Office and regional labour inspectorates, which inspects the performance of illegal work and also working conditions for young workers.

### **Ministry of Education, Youth and Sports**

The Ministry of Education, Youth and Sports (MEYS) is in charge of the legislation in the field of education. The competence of the MEYS is also the administration of children's homes, children's homes with school, diagnostic institutions and educational institutions. The MEYS prepares legal standards and methodological materials to institutional care, works on solving the problems of children running away from school facilities of institutional and protective education. It performs the methodology and training on the issue of institutional and protective care. The MEYS provides preventive care before ordering institutional education in educational care centres, pursues cooperation with families of children placed in facilities and with facilities, monitors regularly the respect of the rights of children placed in institutions, helps children in institutions before their release, prepares children in institutions to join the life, arranges accommodation and employment for children leaving the facility in cooperation with facilities, cooperates with institutions when searching for children suitable for foster care, performs interdepartmental coordination in the field of primary prevention and provides the system of care and education of children with special educational needs.

### **Czech School Inspectorate**

The Czech School Inspectorate is an administrative authority with a nationwide scope. The Czech School Inspectorate prepares conceptual plans of inspection activities and systems for evaluating the educational system. In

connection with the performance of inspection activities, the Czech School Inspectorate with the prior consent of the MEYS can participate in performing tasks associated with the implementation of international conventions, the development of the international relations and cooperation, as well as the challenges that arise for the Czech Republic from its membership in international organisations. The Czech School Inspectorate in schools and school facilities registered at the Register of Schools and other places, according to Act No. 561/2004 Coll., as part of inspection activities

- a) obtains and analyses the information about the education of children, pupils and students, about the activities of schools and school facilities registered in the Register of Schools, monitors and evaluates the effectiveness of the educational system,
- b) identifies and assesses the conditions, process and outcomes of the education according to respective school educational programmes and accredited educational programmes as well as the conditions and the course of providing guidance in schools and school guidance facilities,
- c) monitors and evaluates the school educational programme and its compliance with legislation and the framework educational programme,
- d) carries out inspection of regulatory compliance related to providing the education and school services,
- e) executes public administrative inspection of the use of state funds.

### **Ministry of Health**

The Ministry of Health (MoH) includes the establishments of preventive medical care – infant and children’s homes for children under three years of age. Furthermore, it is especially practical medicine for children and adolescents and social paediatrics. The competences of the MoH also includes prevention of violence against children, prevention of risky youth behaviour, addictive substance abuse among children and youth and support for families with disabled children.

### **Ministry of the Interior**

The Ministry of the Interior within its competence focuses on the problems of detecting, investigating and solving crimes of children and against children, conceptual and methodological activities in the area of crime prevention for children and against children, the creation of an information system, early interventions, systems in the field of prevention crime and the issue of foreign children unaccompanied.

### **Ministry of Justice**

The competence of the Ministry of Justice includes the administration of family legislation (it is in charge of the Civil Code where the issue of family law was moved from the former Family Act), administration relating to the procedural rules and the administration of the legal regulation of criminal law protection of children and youth, probation and mediation services, prisons for juveniles.

The Ministry of Justice is a central state administration body for courts and public prosecutors.

### **Government Council for Human Rights**

The Government Council for Human Rights of the Czech Republic (hereinafter the "Council") is an advisory body to the Czech Government for the issues of protection of human rights and fundamental freedoms established by Government Resolution No. 809 dated 9 December 1998. Currently it is headed by the Minister for Human Rights, Equal Opportunities and Legislation.

The Council monitors observance and implementation of the Constitution of the Czech Republic and of the Charter of Fundamental Rights and Freedoms as essential documents providing the protection of human rights and fundamental freedoms. The Council also monitors the implementation of international commitments of the Czech Republic in the field of human rights and fundamental freedoms, in particular the obligations arising from:

- International Covenant on Civil and Political Rights,
- International Covenant on Economic, Social and Cultural Rights,
- Conventions on the protection of human rights and fundamental freedoms,
- International conventions on the elimination of all forms of racial discrimination,
- Conventions on the rights of the child,
- Conventions against the torture and other cruel, inhuman or degrading treatment or punishment,
- European conventions for the prevention of torture and inhuman or degrading treatment or punishment.

The Council for Human Rights monitors the rate of implementation of human rights and fundamental freedoms in the Czech Republic which results from the documents mentioned above, develops proposals for the Czech government on policy concepts in particular areas of human rights protection, evaluates legislative and other proposals and measures of the government as well as ministries in terms of protection of human rights, identifies potential problems and drawbacks and recommends steps for their removal. The Council cooperates in those activities with non-governmental non-profit organisations that specialise in human rights and with bodies of local and regional governments.

In this respect, the Council is supported by its specialised committees.

Bodies of social and legal protection of children

Bodies of social and legal protection of children and their competences are defined in the act on social and legal protection of children. Bodies of social and legal protection of children are:

- a. municipal offices with extended powers (municipal authorities, City Hall in the statutory cities, municipal authorities of urban districts, authorised offices of Prague districts),
- b. municipal authorities, military zone authorities (provisions of the municipal authorities also apply to the military zone authorities),
- c. regional authorities (Prague City Hall in Prague),

- d. Ministry of Labour and Social Affairs
- e. Office for International Legal Protection of Children
- f. Labour Office of the Czech Republic – regional branches and the branch for Prague

Social and legal protection of children is also provided by the municipalities and regions in the autonomous powers, the Commission for social and legal protection of children and other legal entities and natural persons, if they are in charge of the execution of social and legal protection (Section 4(2) of Act No. 359/1999 Coll.), but they are not the authorities of social and legal protection of children. In the social field, the performance of care for vulnerable children is ensured by a combination of activities of state and local governments, which act both individually and also under delegated powers.

For foster care, the municipal authority with extended powers and the regional authority have the most important competencies, both entities perform these activities under delegated powers.

Due to the fact that especially the municipal authorities of the municipalities with extended powers and municipal authorities have the opportunity to monitor directly the protection of the rights of the child and make timely necessary arrangements with the knowledge of the problem and local conditions, the law gives them the most responsibilities related to the protection of children and assistance to parents and others who are responsible for the upbringing of children.

Pursuant to Section 38 of Act No. 359/1999 Coll., and Section 106 of Act No. 128/2000 Coll., on Municipalities (local government), the mayor of the municipality with extended powers establishes the Commission for Social and Legal Protection of Children (hereinafter only "the Commission") . It is intended solely for the performance of delegated powers in the field of social and legal protection of the child. The Commission's task according to Act No. 359/1999 Coll. is, for example, coordinating the exercise of social and legal protection in the administrative district of municipalities with extended powers, proposing and assessing the social preventive programmes to protect children

and considering the individual cases of implementation of social and legal protection of children and issuing opinions about them, organising case conferences.

In addition to inspection and methodological activities, the scope of regional offices includes almost the entire process of arranging foster care, deciding on granting the authorisation of the exercise of social and legal protection of children to natural and legal persons and decisions of state contribution for founders of the facilities for children requiring immediate assistance. In relation to the municipal offices and municipal offices with extended powers, the regional offices act as the superior inspection authority and the appellate body competent to review decisions issued by the municipal authorities and municipal offices with extended powers in administrative proceedings.

The MOLSA and OILPC are also considered as bodies of social and legal protection of children, certain activities may be also performed by the authorised non-state entities.

The OILPC is in charge of the administration of social and legal protection of children in relation to foreign countries. The role of the OILPC as the central authority consist of the representation of the Czech Republic abroad within certain international conventions. OILPC specific activities include the recovery of maintenance to foreign countries and from them, securing the activities associated with inter-country adoption, civil aspects of international child abduction and ensuring contact with the child. The administration of the Office is closely related to the activities of the Ministry of Labour and Social Affairs and other bodies of social and legal protection of children: in inter-country adoption, the regional offices of the Office make available the data from the register of children suitable for international adoption and information about applicants suitable for international arrangement of adoption, within the international child abduction, the child's guardian is in some cases the municipal office with extended powers established as the authority for social and legal protection of children.



## **Exercise of care for vulnerable children within the non-state sector**

Act No. 359/1999 Coll. gives the opportunity to the non-governmental entities (foundations, associations, organisations with public interests, churches and other legal and natural persons) to perform certain tasks in social and legal protection of children on the basis of the authorisation issued by the regional office or the Prague Municipal Authority, while these activities are stipulated directly by Act No. 359/1999 Coll. The authorised persons are not bodies of social and legal protection.

Natural and legal persons (mostly in practice, non-profit organizations) can provide social and legal protection on the basis of a decision on the authorisation and in the scope that Act No. 359/1999 Coll. permits and that is in relation to a particular authorised person clarified by the decision on granting the authorisation.

The authorised persons cannot be entrusted with the performance of activities other than those defined in Act No. 359/1999 Coll. The authorisations to perform social and legal protection are granted by the regional authority, whose local jurisdiction is governed by the permanent residence or place of residence of the applicant for the issuance of the authorisation.

The activities of persons involved in social and legal protection of children:

For example, the following permissions can be contained in the authorisation to perform social and legal protection of children:

- seeking children that social and legal protection is targeted on,
- assisting parents with solving educational or other problems related to child care,
- providing or arranging counselling to parents in the upbringing and education of a child and taking care of a child with disabilities and within the consultancy organising lectures and courses focused on solving educational, social and other problems related to child care and education;
- performing the activities aimed at protection of children against harmful influences and its prevention;
- establishment of facilities for social and legal protection; etc.

**Resources:**

Act No. 359/1999 Coll., The Act on Social and Legal Protection of Children

Act. No. 89/2012 Coll., The Civil Code

Act No. 218/2003 Coll., The Act on Juvenile Responsibility

Act No. 564/2001 Coll., The Act on pre-school, primary, secondary, higher professional and Further Education (Education Act)

Act No. 128/2000 Coll., The Act on Municipalities (local government)

Act No. 50/1973 Coll., The Act on Foster Care (abolished)

Act No 94/1963 Coll., the Family Act (abolished)

Myths and fact. Teams of Authors. Purpose publication of MOLSA, 2015.

## HUNGARY

## Desk research

### Question n.1: What is the definition of “child”?

- The definition of a child is given in The Hungarian Child Protection Act, which based on the 2:10 Section of Civil Code
  - minor (kiskorú) in Civil Code, but child (gyermek) in the Protection Act is: a person under the age of eighteen
  - minor of no legal capacity (cselekvőképtelen kiskorú) is: a person under the age of fourteen
  - minor of limited legal capacity (korlátozottan cselekvőképés kiskorú): a person who reached the age of fourteen and is not incapacitated

In Hungary, the minimum age of consent of both women and men to marriage is eighteen. However, an underage person may consent to marriage and reach full legal capacity from the age of sixteen if a court agrees that this is the best interest of the underage person.

- In criminal law:
  - child is under the age of fourteen years at the time the criminal offense was committed shall be exempt from criminal responsibility with the exception of homicide, voluntary manslaughter, battery, robbery, plundering and act of terrorism if over the age of twelve years at the time the criminal offense was committed, and if having the capacity to understand the nature and consequences of his acts.
- Legislative act:
  - The Hungarian Child Protection Act (in Hungarian: *1997. évi XXXI. Gyermekvédelmi Törvény, 5.§(a)* )
  - 2:10 Section of Civil Code (in Hungarian: *2013. évi V. Polgári Törvénykönyv, 2:10.§*)

- o 16 Section of Criminal Code (in Hungarian: 2012.évi C. Büntető Törvénykönyv, 16.§)
- Hungarian version available at:
  - o [https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99700031.TV](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99700031.TV)
  - o [https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1300005.TV](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1300005.TV)
  - o [https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1200100.TV](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1200100.TV)
- The United Nations Convention on the Rights of the Child was ratified in 1991 by Hungary. **Child** means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

**Question n.2.: Is the notion “vulnerability” or “vulnerable” (for child and adult) used in legislation in your country? What other words, notions are used in your national legislation to describe this phenomenon?**

- The notion of “vulnerability” or “vulnerable” is not used in legislation of Hungary. It can be found in various legislative acts and state social programs to the following synonyms: at risk ( *veszélyeztetett* ), vulnerable ( *sérülékeny* )
- Only in the Act XCIII of 1993 found the exact word of vulnerable person, as a vulnerable group: they are potentially at risk because of their physical or intellectual status: young people, pregnant woman, breastfeeding woman, the elderly, people with reduced capacity to work
  - o Legislative act: Act XCIII of 1993 87§. (in Hungarian: 1993.évi XCIII. törvény a munkavédelemről, 87.§)
  - o In Hungarian available: [https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99300093.TV](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99300093.TV)
- The Fundamental Law of Hungary stipulates in its equal opportunity provisions that elderly people represent a group which deserves special protection, similarly to children and women.

- o Legislative act: Fundamental Law of Hungary Article XV 5.§ ( *in Hungarian: Magyarország Alaptörvénye, XV. cikk 5.§.* )
- o In Hungarian available:  
[https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1100425.ATV](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100425.ATV)

**-is a child considered vulnerable by definition?**

Based on our legislation there is not a clear definition stipulating exactly that a child is considered vulnerable, but Child Protection Act grants special protection to all children: rights to life, health care, education, social services, universal development and upbringing in a family.

Though there is no such legal definition for vulnerability, some specific legal definitions give special preference to children exposed to risk:

- Child is **at risk** if his or her physical, intellectual, emotional and moral development is obstructed or hindered. In this case there is counselling for the family or the child is placed "under protection" if voluntarily the family cannot make the necessary changes.
- Legislative act: The Hungarian Child Protection Act (in Hungarian: *1997. évi XXXI. Gyermekvédelmi Törvény, 1.§, 5.§(n)*)
- In hungarian available at:  
[https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99700031.TV](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99700031.TV)

**- list the words describing “vulnerability”, the search of which finds relevant national legislation, in your own language and in English**

- “veszélyeztetett gyerek” - child at risk
  - o Legislative act: The Hungarian Child Protection Act (in Hungarian: *1997. évi XXXI. Gyermekvédelmi Törvény, 1.§, 5.§(n)*)
  - o In hungarian available at:  
[https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99700031.TV](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99700031.TV)
- not national legislation, but in Directive 2012/29 of EU establishing minimum standards on the rights, support and protection of victims of crime

- o the purposes of this Directive, child victims shall be presumed to have specific protection needs **due to their vulnerability** to secondary and repeat victimisation, to intimidation and to retaliation.
- o Legislative act: Directive 2012/29/EU of the European Parliament and of the Council Article 21 (in Hungarian: az Európai Parlament és Tanács 2012/29 Irányelvének 21.§)
- o In hungarian available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:HU:PDF>

**Question n.3.: Is the expression of “safeguarding policy” or any synonym (safeguarding requirement, safeguarding measures, obligatory procedures of protection /measures of care, etc.) mentioned in these acts and/or regulations in relation to vulnerability?**

The expression “safeguarding policy” is not used in Hungarian legislation in relation to vulnerability. Most relevant legislation make some mention of protection but the the notion is not always elaborated in detail.

- The Hungarian Child Protection Act:
  - o The Child Protection Act guarantees children's rights to :
    - "physical, intellectual, emotional and moral development" (Article 6 (1)),
    - "to be protected from circumstances that hinder their development" (Article 6 (2))
    - "to be protected from abuse, including physical, sexual and emotional abuse" and it states that "children cannot be exposed to torture, physical punishment and other forms of inhumane and humiliating punishment or treatment" (Article 6 (5))
- Organizational and operational rules:

institutes have to adopt rules of procedures as to ensure their own operation

and that of their departments

**Question n.4.: Does your national legislation on vulnerable children and adults specify the stakeholders who are expected by law to provide care and protection?**

- Office of the Commissioner for Fundamental Rights (Alapvető Jogok Biztosának Hivatala)
  - Vulnerable groups have always been at the core of ombudsman's work in Hungary since the beginning in 1995.
  - The Commissioner for Fundamental Rights pays special attention to the protection of the rights of children, the rights of different ethnicities living in Hungary, the values determined as 'the interests of future generations' and the rights of the most vulnerable social groups in general. As of 1 January 2012, citizens may directly request legal remedy from the Constitutional Court only in case their individual rights have been encroached by the implementation of an anti-constitutional legal regulation or ruling of the court.
  - There is no independent parliamentary institution for the protection of the rights of children, the Commissioner for Civil Rights operates during the whole mandate as an ombudsperson for children's rights.
  - "Human dignity projects": have focused on specific types of exclusion and risk of limited rights e.g. within the implementation process of human rights of special groups. The homeless, the disabled and the elderly were the subject to scrutiny in the Hungarian Ombudsman's Office between 2008 and 2010.
  - 'Dignity in old age' in 2010 with the aim to promote the enforcement of rights of elderly with the support of the ministry (Emberi Erőforrások Minisztériuma) responsible for elderly affairs. In order to promote a deliberate attitude towards legislation applicable on the elderly and people working



with the elderly, the Commissioner examined complaints and initiated focal studies to identify the key problems and also to raise awareness of those amongst policy makers.

- Members of mandatory reporting system (*jelzőrendszeri tagok*)
  - Members are obliged to report to the responsible authority all cases when there is any suspicion or at risk situation and the child is considered to be at risk.
  - Legislative act: The Hungarian Child Protection Act 17.§ (in Hungarian: 1997. évi XXXI. Gyermekvédelmi Törvény, 17.§)
  - In Hungarian available at:  
[https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99700031.TV](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99700031.TV)
- Child Rights Representative (*gyermekjogi képviselő*)
  - Legal representation of the child includes representation of the child and the child's property.
  - Unfortunately in Hungary there are only 19 representative for 20.000 children
  - Legislative act: The Hungarian Child Protection Act 11/A.§ (in Hungarian: 1997. évi XXXI. Gyermekvédelmi Törvény, 11/A.§)
  - In Hungarian available at:  
[https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99700031.TV](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99700031.TV)
- Patient advocate (*betegjogi képviselő*)
  - The patient advocate shall represent the rights of patients and shall help them become acquainted with, and enforce their rights. Patient advocacy services shall include especially assistance to patients with verbalizing their complaints.
  - The patient advocate shall pay special attention to representing patients' rights of those at a disadvantage due to their age, physical or mental disability, health status or social situation.
  - Legislative act: Act CLIV of 1997 30§ (in Hungarian: 1997.évi CLIV. törvény az egészségügyről 30.§)
  - In Hungarian available at:  
[https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99700154.TV](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99700154.TV)
- National Office for Rehabilitation and Social Affair

- o Defines and regularly reviews criteria applied to assess and evaluate needs in respect of rehabilitation, social care and services, as well as rules and rules of procedure applied in respect of examinations
  - o Puts forth recommendations for developing expert activities required for determining eligibility for rehabilitation and social services
  - o Undertakes official duties relating to checking the accreditation of employers employing persons with disabilities and accredited employers
  - o Tasks relating to licensing, operation and checking official activities in the case of social services providers and institutions, as well as tasks relating to authorising operation in the case of child welfare and child protection services and institutions
  - o Tasks relating to the registration of individuals officially undertaking guardianship, as well as the sectoral identification of the national registration of social, child welfare and child protection services and institutions
- Supporting services (*Támogató szolgáltatás*): Use of the supporting service appropriate to the needs stemming from the disability, and aid must be provided for persons living with disability. A separate regulation shall determine the range of aid obtainable at a subsidized price, the manner and extent of support.
  - o Legislative act: Act XXVI.of 1998 (in Hungarian: 1998. évi III.tv. a fogyatékos személyek jogairól és esélyegyenlőségük biztosításáról)
  - o In Hungarian available at: [https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99800026.TV](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99800026.TV)
- National Disability Program 2015-2025
  - o Based upon Section 26 of Act XXVI of 1998 on the rights and equal opportunities of people with disabilities, the National

Assembly adopts the below Decision in order to improve the living conditions of people with disabilities and to create their equal opportunities

- disabled woman: programs need to be launched to map the current social circumstances of disabled women to identify why exclusion may occur; and based on the findings develop a disadvantage management strategy and complex services.
  - disabled children: there is an increasing number of children with disabilities among those taken into state care. Their chances to be placed with foster parents greatly depend on knowledge about disabilities and on any fear or prejudice due to the lack of such information. Therefore, efforts should be made to provide mental and psychological support to foster parents who care for disabled children, in order to assure comprehensive management of any problem arising when caring for and bringing up children with disabilities.
  - people with multiple disabilities: information is scarce on the condition and special needs of people with multiple disabilities (e.g. severely and multiple handicapped people; people with disability and conduct problems that complicate integration) and their families. So it would be vital to develop and implement political strategies that can assist these people's complex rehabilitation.
- Legislative act: Decision 15/2015 Ogy of the National Assembly
  - In Hungarian available at: <https://mkogy.jogtar.hu/?page=show&docid=a15h0015.OGY>
  - In english available at: [http://www.kormany.hu/download/c/e4/60000/NDP\\_2015-2025.pdf](http://www.kormany.hu/download/c/e4/60000/NDP_2015-2025.pdf)
- National Strategy concerning Senior Citizens
    - Adopted by the Parliament in 2009 (Decision No 81/2009 (X.2))

of the Parliament). The strategy defines long-term goals up to 2034, such as aligning life expectancy in Hungary to the EU average; ensuring financial security in elderly age; promoting social integration; harmonising different services (healthcare, social, educational, cultural, etc.) considering the interests and needs of the elderly people; supporting lifelong learning by making digital studies accessible for the elderly; changing social attitude regarding ageing in economic and social sense.

- o One of the main principles of the Strategy is the 'neither-more-nor-less-than-exactly-what-you-need' notion, that is, elderly people should have access to a variety of services best adapted to their individual needs.
- National Action Plan for Children
  - o Parliament adopted a national strategy 'Let It Be Better For Children 2007-2032' (*'Legyen jobb a gyermekeknek!' Nemzeti Stratégia 2007-2032*).
  - o this resolution defines the tasks to reduce child poverty and social exclusion. It includes the rights of the child and declares that laws adopted for the protection of children must consider the interest of children as paramount.
  - o The strategy sets the goals of developing services for children – including developing and improving the organisation of childcare – as the main means of significantly reducing poverty within a generation. It also sets horizontal goals to improve the situation of children with disabilities and their families and reduce ethnic and regional disadvantages.

**Question n.5.: What other stakeholders are you aware of concerning vulnerable children and adult in your country? (NGOs, international bodies, etc.)**

**General Focus on Human Rights:**

Hungarian Helsinki Committee - Magyar Helsinki Bizottság

[www.helsinki.hu](http://www.helsinki.hu)

Office of the Commissioner for Fundamental Rights

<http://www.ajbh.hu/en/web/ajbh-en/>

Háttér Society - LMBTQI

<http://en.hatter.hu>

BAGÁZS

<http://bagazs.org/en/our-mission/>

**Child rights:**

Hintalovon Child Right Foundation

[www.hintalovon.hu](http://www.hintalovon.hu)

UNICEF Hungarian Committee

[www.unicef.hu](http://www.unicef.hu)

Family Child Youth Association

<http://www.csagyi.hu/en/>

**Children at risk, domestic violence:**

Kék Vonal Child Crisis Foundation

[www.kek-vonal.hu](http://www.kek-vonal.hu)

SOS Children's Village

<http://www.sos-childrensvillages.org/where-we-help/europe/hungary>

NANE

[www.nane.hu](http://www.nane.hu)

PATENT

[www.patent.org.hu](http://www.patent.org.hu)

**People with disabilities:**

ÉFOÉSZ -Hungarian Association for Persons with Intellectual Disability

<http://efoesz.hu>

Hand in Hand Foundation

[www.kezenfogva.hu/english](http://www.kezenfogva.hu/english)

**Question n.6.: Anything else that you find relevant, interesting to mention from what you have found during your desk research on this topic**

- Juvenile Justice: In Hungary there is no independent law on juvenile offenders, neither is there a separate statutory definition for young adults.
- Migrant crisis: The Hungarian Government voted a new amendment in February 2017 that allows the automatic detention of all asylum seekers, including families with children and unaccompanied minors from the age of 14, in shipping containers surrounded by high razor wire fence at the border for extended periods of time.

## Country report

### Introduction

While the notions “vulnerability” and “safeguarding” exist in Hungarian, they are mainly used in documents that are either translations of international documents or were written by non-governmental organizations or other independent bodies who usually, but not always, adopt the anglo-saxon use of these terms.

The synonyms of vulnerability and safeguarding used in legislation and other government / authorities produced documents usually relate to the specific groups of people to whom some sort of specific protection and services are rendered by law. The approach of legislation to these terms is that if there is a duty by the authorities to protect and care then there is a need to regulate to whom this protection and care is due. This regulation is then often based on the criteria of making the available funds sufficient.

In this sense legislation of socialist Hungary up to 1989 “spoiled” those who needed protection and care. While in practice it is difficult to detect any genuine “spoiling” by the state prior to 1989, people were, in general, used to the idea that protection and care should come from the social institutions run by the state.

The consecutive governments since 1989 all have declared with an increasing volume that: “No child should be left behind”, “This government cares for Hungarian families” or “We hold that we have a general duty to help the vulnerable and the poor”. In legislation, however, more and more earlier entitlements to care and protection have been gradually, or not so gradually, cut or abolished.

Since 1989 Hungarians experience, to an increasing extent, that they can easily fall out of the net of social protection and care, that the rules of entitlement to these do not include them and that there is not very much they can do about this.

The increased need for care and protection by vulnerable groups of people has been addressed and, to some extent, answered, by an increasing number and activity of civil organizations and by different religious organizations.

At the same time, it is not always easy to identify which non-governmental organization is “civil” and which one is called NGO in its name, but is entirely government funded and, sometimes, directed. Independent of their different categories of legal status or, indeed, social usefulness of their activities, some NGOs are more supported from central funds than others. Lately, the government and

other central authorities directly establish NGO-s that receive ample central funds hardly related to the social value of their activities. This, unfortunately, is also true for the part of EU funding the distribution of which is organized by the central authorities.

## **Legal framework for safeguarding children and vulnerable adults**

### **Definitions**

#### **Child**

“*We believe that our children and grandchildren will make Hungary great again...*”- declares the Hungarian Fundamental Law in its National Avowal (*Nemzeti Hitvallás*) without any addition description or definition about who is a ‘child’.

Everyone under the age of 18 is a **child** (*gyermek*) according to the Child Protection Act<sup>81</sup> of 1997 and the CRC ratified by the Hungarian Parliament in 1991. It seems a clear category but, as a contradiction, not every child is a **minor**. According to the Criminal Code, minor is a child under the age of 14 at the time the criminal offense with the exception of homicide, voluntary manslaughter, battery, robbery, plundering and act of terrorism if over the age of 12 years at the time the criminal offense was committed, and if having the capacity to understand the nature and consequences of his acts.

Children between the age of 14 and 18 are juveniles according to the criminal law.

There are two categories of minors according to the Hungarian Civil Code<sup>82</sup>. Minor of no legal capacity (*cselekvőképtelen kiskorú*) is a person under the age of fourteen, while a Hungarian child between the age of 14 and 18 is a minor of limited legal capacity (*korlátozottan cselekvőképes kiskorú*).

According to the civil law, children can join in marriage at the age of 16 (having the legal consent of the parents and the Guardianship Authority). The consequence of the marriage will be full legal capacity and “attained maturity / adulthood” (*teljes cselekvőképesség, nagykorúság*).

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<sup>81</sup> No. 31/1997. Child Protection Act, Art. 5.§(a) )

<sup>82</sup> 2:10 Section of Civil Code



**Summary:** Everyone under the age of 18 is a child and has special rights but particular legal norms in the field of criminal law, civil law, etc. may provide different sub-categories (minors, juveniles, incapables, etc.)

In general, it is hard to talk about children and childhood in the language of law or legal norms. Being a child can be understood better as a social, historical, cultural status than a legal one. Therefore, the legal definition is distressingly narrower and less complex.

### **Vulnerability**

The Hungarian Constitution (Fundamental Law of Hungary) declares the following groups as subjects of **special protection**: families, children, women, elderly people, disabled persons.<sup>83</sup> The National Avowal of the Fundamental Law uses the term 'vulnerable' and takes special responsibility towards "the vulnerable and the poor"<sup>84</sup> meaning that Hungary (as a nation) is sensible and judicious and follows the ancient Christian principle of compassion.

In addition to the constitutional law, **vulnerable** (*sérülékeny*) is used *expressis verbis* only in the Hungarian labour law, otherwise, 'at risk' (*veszélyeztetett*), 'marginalized', 'disadvantaged' (*hátrányos helyzetű*), 'excluded' (*kirekesztett*), 'discriminated' (*hátrányosan megkülönböztetett*) are used as a term in the Hungarian regulations.

The Labour Law Act No. 93 /1993 defines vulnerable persons as persons who are potentially at risk due to their physical or intellectual status: **young people, pregnant woman, breastfeeding woman, the elderly, people with reduced capacity to work.**

In the National Disability Program 2015-2025<sup>85</sup> vulnerability is used in relation to **disability** and 'multiple vulnerable groups', like **disabled women, disabled children**, people with **multiple disabilities**.

'At risk' groups are **children**. Based on the Hungarian legislation there is no clear definition stipulating exactly that a child is considered vulnerable, but the Child

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<sup>83</sup> Hungarian Constitution, Art. 15.: „Magyarország külön intézkedésekkel védi a családokat, a gyermekeket, a nőket, az időseket és a fogyatékkal élőket.”

<sup>84</sup> „We hold that we have a general duty to help the vulnerable and the poor” (*Valljuk az elesettek és a szegények megsegítésének kötelességét*)

<sup>85</sup> [http://www.kormany.hu/download/c/e4/60000/NDP\\_2015-2025.pdf](http://www.kormany.hu/download/c/e4/60000/NDP_2015-2025.pdf) (Last opened: 15 April, 2017)

Protection Act<sup>86</sup> grants special protection to all children and provides safeguarding to children at risk.<sup>87</sup>

‘Excluded’ people are – according to the Social Inclusion Action Plan of Hungary<sup>88</sup>: people of **Roma** origin, and the **poor**, socially **excluded** and **deprived** people.

“According to the census of 2011, the number of the population belonging to national minorities in Hungary is more than half million; however, the real numbers are estimated to be at least twice this number. Consequently, regulation of national minority rights may directly affect approximately 10 per cent of the Hungarian population. Apart from the Roma population Hungarian national minorities cannot be considered a deprived group on the basis of social, labour market or health care conditions.”<sup>89</sup> The vulnerability of Roma (gypsy) is obvious. Despite the methodological challenges, several research deals with the different aspects of Roma vulnerability:

- Over-representation of Roma among poor, financially deprived people,
- Over-representation and discrimination of Roma in the criminal justice system,<sup>90</sup>
- Segregation of Roma children in public education,<sup>91</sup>
- Over-representation of Roma children in residential homes /foster care<sup>92</sup>

Regarding the situation of **Roma children** (as “**multiple vulnerable**”), it is very hard to run a research or provide credible data, because it is against the law to register

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<sup>86</sup> Source in Hungarian: [https://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99700031.TV](https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99700031.TV) (Last opened: 15 April, 2017)

<sup>87</sup> „veszélyeztetettség: olyan - a gyermek vagy más személy által tanúsított - magatartás, mulasztás vagy körülmény következtében kialakult állapot, amely a gyermek testi, értelmi, érzelmi vagy erkölcsi fejlődését gátolja vagy akadályozza” (Child Protection Act, 1997) – At risk: A situation arising from the behaviour of, or lack of action or circumstance by the child or another person which hinders, or is an obstacle to the physical, mental, emotional or moral development of the child.

<sup>88</sup> <http://emmiugyfelszolgalat.gov.hu/tarsadalmi-felzarkozas/felzarkozas-ppt-en> (Last opened: 15 March, 2017)

<sup>89</sup> Magicz, A.: Re-regulation of National Minority Rights. in: Their shield is the Law source: <https://www.ajbh.hu/documents/14315/131278/Their+Shield+is+the+Law> (last opened: 15 April, 2017)

<sup>90</sup> [http://helsinki.hu/wp-content/uploads/HHC\\_Last\\_Among\\_Equals\\_2014.pdf](http://helsinki.hu/wp-content/uploads/HHC_Last_Among_Equals_2014.pdf) (Last opened: 30 March 2017)

<sup>91</sup> <http://www.errc.org/blog/segregation-in-hungary-the-long-road-to-infringement/106> (Last opened: 30 March, 2017)

<sup>92</sup> <http://www.errc.org/cms/upload/media/02/8F/m0000028F.pdf> (Last opened: 30 March, 2017)

the ethnical origin. As a consequence, only a few researches provide data about the systematic discrimination of Roma children:

*“It is widely held to be true that the situation of Roma children compared to non-Roma children is especially vulnerable vis-à-vis the child protection system of the country in which they live. In its most recent Concluding Observations on Hungary, the United Nations Committee on the Rights of the Child (hereafter “Committee”), which oversees the implementation of the Convention on the Rights of the Child (hereafter “CRC”), stated that it was “particularly worried about the considerable over-representation of Roma children among children in institutions.” Absence of relevant data disaggregated by ethnicity, it is difficult to provide details as to the actual extent of this over-representation. Regardless of this fact, the main problems noted with regard to Roma children in the Hungarian child protection system relate to the following three areas:*

- 1. The massive over-representation of Roma children in professional children’s homes;*
- 2. The way in which identity issues influence the adoption of Roma children; and*
- 3. The disproportionate categorization of Roma children in professional care as mentally disabled.”<sup>93</sup>*

Other forms of vulnerability were recognized in the past decade by the Ombudsman’s Office: **homelessness**, and **deprivation of healthy environment**. In his annual report the Ombudsman active in 2013 declared homelessness, disability and the situation of elderly people the most important vulnerability factors.

*“Urbanization and modernization produced forms of social exclusion and the dissolution of communal housing, which has led to the modern form of “homelessness”. Disability, or disabilities were looked upon in many different ways, but the survival of the majority of the disabled was rather uncertain. Modern age has excluded and institutionalized them in the healthcare and social system, separating them from “normal” citizens: Old people were at the top of the traditional social hierarchy, but modernization devalued former experience, wisdom and authority. The nuclear family model resulted in the “elderly” being dumped into institutions of social care. In Hungary there is a special situation because the remnants of the former communist welfare system and the new beginnings of a society based on market*

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<sup>93</sup><http://www.errc.org/cms/upload/media/02/8F/m0000028F.pdf> (Last opened: 15 April, 2017)

*economy and private property coexist, thus determining the field of social and health care where the homeless, the disabled and the elderly have to suffer severe cuts caused by the economic and social problems of transition and of the recent economic and financial crisis.*"<sup>94</sup>

The special vulnerability of refugee, asylum seeking and migrant children ("**children on the move**") is on the top of the agenda of Hungarian organizations advocating human rights. The Hungarian Parliament adopted several new amendments to the existing legislation in 2015-2017 that introduced stricter border surveillance and changed the immigration procedures. This violates fundamental human rights (including the rights of children). According to the latest amendment (February, 2017), unaccompanied minors between the age of 14 and 18 will fall out of the scope of the Child Protection Act. They will not be placed into the child protection system, they will not have an appointed guardian and they will have to stay in the 'transit zone' together with adults until the end of their asylum procedure.<sup>95</sup>

### **The concept of vulnerability in Hungary**

With the exception of the Fundamental Law of Hungary, legislation on vulnerable groups of people is not concerned, in general, with the idea of vulnerability of the person based on belonging to certain groups. Rather, the synonyms that are mentioned in different articles of legislation all relate to specific conditions under which those concerned are entitled to certain benefits and / or protection. From the point of legislation this seems justified. However, almost no legislation concerning any kind of vulnerability goes much further than listing the conditions of entitlement to government benefits or services. When a rare legislation considers the interest of anyone vulnerable – like, e.g. the Child Protection Act specifically forbidding taking a child into care for financial reasons – the actual practice does not necessarily follow legislation.

Legislation rarely mentions the central responsibility of the decision makers to avoid creating new vulnerable groups.

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<sup>94</sup> Szabó, M. (ed.) Their Shield is the Law. Source: <https://www.ajbh.hu/documents/14315/131278/Their+Shield+is+the+Law> (Last opened: 20 April, 2017)

<sup>95</sup> [http://www.upi.com/Top\\_News/World-News/2017/03/07/UN-Hungary-plan-for-refugee-camps-illegal-harmful-to-children/4631488910166/](http://www.upi.com/Top_News/World-News/2017/03/07/UN-Hungary-plan-for-refugee-camps-illegal-harmful-to-children/4631488910166/) (Last opened: 15 April, 2017)

A very sad example of this is the fact that there is no consequence for professionals responsible for taking a child into care without sufficient reasons – i.e. taking the child out of his / her family – even if the professional's decision is proven to be faulty. The system – and legislation – does not care about the harm done to the child, about the fact that as a child in care he / she will definitely belong to a very vulnerable group.

Similarly, when a central decision was made about the closure of a number of institutions for the mentally disabled in the early 2000s, there was – and still is - no action to provide and care for them after leaving their hitherto care place. Many of them became homeless, others quickly fell victim to slavery, or other to maltreatment. There is no acknowledgement in legislation or in social policy of their situation or any responsibility for them as a vulnerable group.

Likewise: after a 1989 a large number of people lost their jobs, in some areas of Hungary almost all jobs were gone with deindustrialization. While there were many programs designed to retrain, mobilize or early retirement of these people, there is a relatively high proportion of them who never found their feet again. They may have reached the age of pension or are approaching that by now, but due to their employment being abruptly, their pensions are rendering them poor – at the time when they are most likely to need finances to maintain their health.

The number and proportion of early school leavers have increased since 2010. These children and young people fall out of education – and consequently, from child protection – due to their socio-economic status. This process has been accelerated by lowering the age of compulsory education from 18 to 16 in 2012. An increased number of children under 18 found themselves in limbo: if they had difficulties at school earlier, some schools were happy to get rid of them. At the same time, without proper education and mostly in the poorest regions of Hungary, they don't have much opportunity to work either. Not attached to school or work place, they quickly loose any contact with the “active” world. There is no mention of these groups of young people in legislation and there is no specific care for them. Some NGOs try to intervene, but there is a diminishing amount of government support for their activities as well.

A lack of sensitivity of the current legislation is also detectable in the new way “socially disadvantaged position” is registered among children and families. Due to a simple change in how poverty and need for support is measured statistically, about 300000 multiple-disadvantaged children disappeared in 2015 from the nearly half

million of 2014.<sup>96</sup> This also meant there they were no longer entitled to free school lunches, which for some of them, often meant the only meal of the day. At the same time not only the criteria for eligibility to child protection benefit were increased in number but also the nominal benefit has remained stagnant since 2008. There is a very loud propaganda about the current government being family friendly, and this is supported by the way national poverty figures are creatively calculated. Unfortunately, statistics do not feed the same children, who are still hungry.<sup>97</sup>

Another socially helpless group of people are those who are forced to work in “public employment” (*közfoglalkoztatás*). Unemployment benefits are only due for a certain period and after that any person is obliged to accept any type of work for below minimum wage pay. Formally this form of employment could be a way back to proper employment but those benefiting from the work of the publicly employed practically prevent them from being able to find proper jobs. What is more, in some professions people with proper employment contracts were laid off only to be re-employed as public laborers for a fraction of their earlier salaries.

The lack of safeguarding policies is well illustrated by the way these people are treated. Sometimes unemployed graduate people are forced to take part in elementary level “education”, other times people are not allowed time off to attend job interviews that might give them a chance to work in a proper job.<sup>98</sup> For less than the minimum wage these people are regularly treated as slaves. In some areas of the country there are no other jobs than the “public employment”, hence this remains the only source of income for many families.

The location where people live may, on its own, make them vulnerable. In some villages and subregions of Hungary unemployment rate is as high as 80 percent. These Hungarian regions are also listed among the poorest regions of the EU. There are several NGOs that provide basic services and help for survival in these regions, especially to children. While a high number of these NGO programs are successful, sustainability is always delicate: central support of these programs is highly dependent on whether or not the respective NGOs abstain from even slightly criticizing the government’s social policy.

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<sup>96</sup> <http://hungarianfreepress.com/2015/06/25/poverty-in-hungary-skyrockets-government-to-stop-publishing-statistics/> (Last opened: 19 April, 2017)

<sup>97</sup> Source in Hungarian: [http://nol.hu/belfold/lazar\\_\\_aki\\_nem\\_vitte\\_semmire\\_az\\_eletben\\_\\_az\\_annyit\\_is\\_er\\_-1015391](http://nol.hu/belfold/lazar__aki_nem_vitte_semmire_az_eletben__az_annyit_is_er_-1015391) (Last opened: 19 April, 2017)

<sup>98</sup> Source in Hungarian: [http://hvg.hu/itthon/201550\\_abszurd\\_kozfoglalkoztatás\\_fuggoseget\\_oko\\_z](http://hvg.hu/itthon/201550_abszurd_kozfoglalkoztatás_fuggoseget_oko_z) (Last opened: 19 April, 2017)

All in all it would be hard to claim that vulnerability is something that the current – or in fact, the previous – governments are sensitive to. Not only legislation and soft measures punish those who are in need of protection and care but also the general attitude of the current government is opportunistic<sup>99</sup> in that it does not support vulnerable groups of people because of their vulnerability, but only for its own – election, image – reasons.

### **Stakeholders**

Social services, including those to vulnerable groups of people were all state delivered prior to 1989. In the past 28 years services by the government did not increase or improve much, but a great number of business and non-governmental organizations entered with their services a number of areas of protection and care. While the services of the NGOs were welcome and, off and on, supported by the respective governments after 1989, the current government since 2010 is very selective in admitting the useful and gap-filling quality of the services NGOs provide.<sup>100</sup>

The activities of NGOs when helping vulnerable groups of people are hindered by the difficulties in communication and cooperation with the authorities or other government institutions. The power structure and governing in Hungary is such that lower and medium level decision makers hardly make decisions at all and this can seriously delay or even prevent the work of NGOs who are dependent on central decisions. Also, political standing became the main criteria for the selection of government officials even in positions where serious professional experience would be necessary. This does not help professional decisions or ability to cooperate with the stakeholders of the given field either.

The eligibility of EU funds and the fact that these are distributed through central authorities gave rise to the establishment of so-called NGOs by different governmental or semi-governmental, central institutions. Some of these new NGOs were established in areas where “civil” NGOs had been efficient before. To the new, centrally founded, “socially beneficial” NGOs ample public funds are channeled and there does not seem to be any control over their activities or the public funding they receive. Government supported NGOs claim to be active and draw public funding for

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<sup>99</sup> Source in Hungarian: <http://24.hu/belfold/2016/05/05/ferge-zsuzsa-orban-nehany-even-belul-minden-segelyt-meg-akar-szuntetni/> (Last opened: 19 April, 2017)

<sup>100</sup> Source in Hungarian: [http://hvg.hu/itthon/20161013\\_emmi\\_tanodak\\_palyazat](http://hvg.hu/itthon/20161013_emmi_tanodak_palyazat) (Last opened: 19 April, 2017)

anti-poverty, child poverty, child-saving programs with not much account on what they actually achieve.<sup>101</sup>

At the same time the government tries to limit the activities of any NGO that is even slightly critical of the government. Public funding – often aimed at supporting children, disabled or poor people – have been seriously cut even in cases of highly respected and efficient NGOs whose services obviously fill gaps that the central social services leave. This is especially visible in education of children in multiple disadvantageous situation. Even EU financed projects are selected by the responsible national authorities on basis of who supports the current government and who criticizes it, and well proven programs are discontinued due to lack of funding. One such example is Igazgyöngy Alapítvány, the programs or which are considered best practices internationally.

As closing this report (April 2017), the National Assembly is getting ready to vote on the newest legislation on NGOs. It is very much fashioned after that in Russia, and aims at seriously limiting the resources for independent NGOs. If this law<sup>102</sup> passes in the Parliament, one of the new rules will be that NGOs who receive any sort of funding – EU or private – from abroad have to register at court as “organizations supported from abroad”, and put that label on any communication they publish.

NGOs that will be seriously affected by this legislation are not only those whose main activity is safeguarding the checks and balances of democracy. As NGOs tend to be independent and work for the purpose they had been established for, they may be critical of the ways the government handles helping – or leaving behind - vulnerable people. If they are critical, they can forget applying for central funds. Some of these activities are eligible to EU or other funding – especially when concerning vulnerable children and adults and, as there are scarce domestic funds, NGOs tend to apply for these. If the new legislation is passed in the Parliament, these NGOs will be labelled as “representing foreign interests”.

Curiously, sport and religious NGOs will not have to declare such funding even with the new legislation, they will be exempted.

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<sup>101</sup>SourceinHungarian:[http://hvg.hu/itthon/20151112\\_Hegedus\\_Zsuzsa\\_Nem\\_letezik\\_az\\_ehez\\_o\\_gyere](http://hvg.hu/itthon/20151112_Hegedus_Zsuzsa_Nem_letezik_az_ehez_o_gyere) (Last opened: 19 April, 2017)

<sup>102</sup><http://www.parlament.hu/irom40/14967/14967.pdf> (Last opened 19 April, 2017)



## **Ombudsman**

The Ombudsman's task has always been to remind government and public administration to fulfill their obligations taken on by agreeing to the European policies on vulnerable groups.

*“Vulnerable groups have always been at the core of ombudsmen's work in Hungary since the beginning in 1995, and the new institutional organization of the Ombudsman's Office did not change this priority. The new constitution (Hungarian Fundamental Law) and the new Ombudsman Act, both adopted in 2011 by the Parliament and effective as of 2012, established the new institutional arrangement of the ombudsman institution in Hungary. In accordance with the Basic Law of Hungary, Act CXI of 2011 on the Commissioner for Fundamental Rights created a unified ombudsman system. The offices of the special ombudsmen (Parliamentary Commissioners for the Rights of National and Ethnic Minorities and for the Interests of Future Generations) were integrated into the office of the general ombudsman,*

## **Safeguarding policies**

In view of the attitude of the government and legislation in general, it is difficult to detect intentions of establishing safeguarding policies and measures to protect the interest of vulnerable people.

As mentioned, legislation more often than not stops at establishing the duty of the government to provide assistance and care for those who meet the criteria listed for eligibility. The exact amount of a benefit or support may be established in the law but the guarantees to respecting legislation, or the dignity and actual needs of vulnerable people is missing almost entirely.

Civil organization, especially those with foreign experience and/or connections and support usually establish some sort of ethical rules, codes of conduct, that may or may not include specific requirements and protocols on how to handle certain situations, how to respect the vulnerable client, how not to harm.

In some professions – e.g. health, education – the rules of operation and safety may include safeguarding measures for the clients. However, usually there is no specific requirement for the physical or mental condition of those working with vulnerable people. The available complaint mechanism normally stops at “please refer to the

director of the institution” and the check on the moral standing of future employees at the clean criminal record, or not even that.

Legislation that would make the establishment of comprehensive safeguarding policies for all organizations and institutions working with vulnerable people would be not only necessary but also vital for the safety of some vulnerable groups, for example those with mental disabilities or children in institutional care.

## **Recommendations**

At the time the new civil law is submitted to be accepted in the Parliament, our recommendations may seem more wishful thinking than action plans, although civil organizations are unlikely to give up without fight.

1. The attitude to legislating care and support for vulnerable groups of people should change from “what we want to spend on this” to “what are the real needs”.
2. NGOs are established to fill gaps that exist in protection and care. The respective governments should provide support to NGOs that cover the undone tasks of the government, and this support should be based on quality criteria. Those receiving public funding should be accountable to spending, professionalism and quality.
3. Prevention of people becoming vulnerable is significantly cheaper than providing support to those already vulnerable. All government decisions should be based on preliminary impact analysis and, if possible, prevent consequences that make large groups of people vulnerable.
4. NGOs are here to help and safeguard, and to provide care and protection where the government cannot or does not. Don't make NGOs look like enemies.

**KOSOVO**

## Desk research

### Question n.1: What is the definition of “child”?

According to the Kosovo Constitution, Human rights and fundamental freedoms guaranteed by the international agreements and instruments are guaranteed by Constitution and directly applicable in Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions. The Convention on Children Rights is listed no. 7 on this list of international documents that is directly applicable no matter who national legislation regulates the Convention prevails. Every piece of legislation that is applicable in Kosovo on children and protection of their rights should fully be in accordance with the Convention.

Furthermore, in Article 50 of the Kosovo Constitution are included main principles of The Convention on Children Rights, such as the “The best interest of a child”, which is considered as general principle in all decisions that have to do with children; as well as protection of children from the abuse and negligence, including physical and psychical recuperation and social reintegration. The protection of children rights is foreseen also in legal provisions, which present the procedures to identify endangered children from all forms of violence.

1. Children enjoy the right to protection and care necessary for their wellbeing.
2. Children born out of wedlock have equal rights to those born in marriage.
3. Every child enjoys the right to be protected from violence, maltreatment and exploitation.
4. All actions undertaken by public or private authorities concerning children shall be in the best interest of the children.
5. Every child enjoys the right to regular personal relations and direct contact with parents, unless a competent institution determines that this is in contradiction with the best interest of the child.

With the Kosovo Juvenile Justice Code, Article 2, paragraph 1, sub-paragraph 1.1 says that “Child” is a person who is under the age of eighteen (18) years

and further to:

- 1.1. Child - a person who is under the age of eighteen (18) years.
- 1.2. Minor - a person who is between the ages of fourteen (14) and eighteen (18) years.
- 1.3. Young juvenile- a person who is between the ages of fourteen (14) years and sixteen (16) years.
- 1.4. Adult juvenile- a person who is between the ages of sixteen (16) years and eighteen (18) years.
- 1.5. Young adult- a person who is between the ages of eighteen (18) years and twenty-one (21) years.
- 1.6. Juvenile- a child or a young adult.
- 1.7. Adult - a person who has reached the age of eighteen (18) years.

Currently, Kosovo Assembly is preparing a Draft-Law on Child Protection, which soon will be passed in second reading and be approved. By this Law it is foreseen and aims to:

- protect children from all types of violence, abuse, misuse, exploitation, neglecting, or any other form of endangering child life, safety, health, education, and child development;
- guarantee and ensure responsibilities of parents, family, society and state care, protection and child development based on his/her best interest;
- provide to the best interest of the child, cooperation, coordination, monitoring and accountability, between the institutions at the central and local level, as well as with organizations that work in the field of protection and care of the child;
- integrate child protection system, providing a complete legal and institutional framework, in implementation of the Constitution, international instruments for child rights, inter-sectoral laws and policies to respond to all forms for child protection.

**Question n.2.: Is the notion “vulnerability” or “vulnerable” (for child and adult) used in legislation in your country? What other words, notions are used in your national legislation to describe this phenomenon?**

Yes, it is used at Law on Social and Family Service, it is mention the term “vulnerable adult”: *Article 13 Protection of vulnerable Adults.*

Other terms under which the laws protect children in regards of age, health, mental health, harm or abuse, disability, social status, minority status, poverty or education are:

**Disabled (Limited capability), and Children/ Adults with special needs**  
**Albanian: Aftësi të kufizuara; Fëmijë/ Të rritur me nevoja të veçanta.**

According to “The Constitution of Kosovo” in the below articles are described the situations related to vulnerability or similar as to disabled children/adults or with special needs:

- Article 24 – Equality before the law, points 1,2,3
- Article 31 – Right to Fair and Impartial Trial, point 7
- Article 47 – Right to Education, point 1 and 2
- Article 50 – Rights of Children, all points
- Article 59 – Rights of Communities and their Members, all points 1 to 14

<p>CONSTITUTION OF THE REPUBLIC OF KOSOVO  <i>Article 50 – pt.1,2,3,4,5.</i></p>
<p><b>Social Welfare</b></p>
<p>LAW Nr.2004/32 FAMILY LAW OF KOSOVO  <i>Article 5</i>  <i>Article 84, pt2</i>  <i>Article 179, pt2</i>  <i>Article 206</i></p>

<p><i>Article 343</i></p>
<p>LAW No. 04/L-081 ON AMENDING AND SUPPLEMENTING THE LAW NO. 02/L-17 ON SOCIAL AND FAMILY SERVICES</p> <p><i>Article 11.3</i></p> <p><i>Article 11.24b</i></p> <p><i>Article 12.3 a,b,c,d</i></p> <p><i>Article 13.9</i></p>
<p>LAW No. 2003/15 ON SOCIAL ASSISTANCE SCHEME IN KOSOVO</p> <p><i>Article 2.2.ii</i></p> <p><i>Article 2.3</i></p> <p><i>Article 2.7.i</i></p> <p><i>Article 2.7 .iii</i></p> <p><i>Article 2.9</i></p> <p><i>Article 6.2</i></p> <p><i>Article 12.1 and 12.2</i></p>
<p>LAW No.04/L-096 ON AMENDING AND SUPPLEMENTING THE LAW No. 2003/15 ON SOCIAL ASSISTANCE SCHEME IN KOSOVO</p> <p><i>Article 2.2.i and 2.2.iii</i></p> <p><i>Article 2.8</i></p> <p><i>Article 5.5 and 5.7a</i></p> <p><i>Article 6.2</i></p> <p><i>Article 12.2 and 12.4</i></p>
<p>LAW No. 03/L-022 ON MATERIAL SUPPORT FOR FAMILIES OF CHILDREN WITH PERMANENT DISABLITY</p> <p><i>Articles 2, 3, 4, 5, 6, 7, 8, 12, 13.c, 16, 18, 19, 20, 21, 24</i></p>
<p>LAW No.03/L –212 ON LABOUR</p> <p><i>Article 5.2</i></p> <p><i>Article 17</i></p> <p><i>Article 26.2</i></p> <p><i>Article 27</i></p> <p><i>Article 44</i></p> <p><i>Article 47</i></p> <p><i>Article 52</i></p> <p><i>Article 53</i></p>

LAW No. 04/L-092 FOR BLIND PERSONS <i>Article 16</i>
<b>Civil Status</b>
LAW No.2004/46 ON CIVIL REGISTERS <i>Article 12</i>
LAW No.04/L –003 ON CIVIL STATUS <i>Article 33.6</i>
LAW No. 02/L-126 ON AMENDING AND SUPPLEMENTING THE LAW ON REGISTERS OF CIVIL STATE No. 2004/46
LAW No.04/L-073 ON ASYLUM <i>Article 18.1 and 18.2</i>
<b>Healthcare</b>
LAW No. 04/L-125 ON HEALTH <i>Article 3.1.8</i> <i>Article 12.1.9</i> <i>Article 17.6.3</i> <i>Article 61</i>
LAW No. 02/L-78 ON PUBLIC HEALTH <i>Article 34.2</i>
LAW No. 05/L -023 ON THE PROTECTION OF BREASTFEEDING
LAW No. 02/L-36 TOBACCO LAW <i>Article 1, 10 and 11</i>
LAW No. 02/L-128 ON NARCOTIC MEDICAMENTS, PSYCHO-TROPES AND PRECURSORS
<b>Education</b>
LAW No.04/L –032 ON PRE-UNIVERSITY EDUCATION IN THE REPUBLIC OF KOSOVO <i>Article 3.4</i> <i>Article 4</i> <i>Article 5.1.4</i> <i>Article 5.7.4</i>



<p><i>Article 5.11</i></p> <p><i>Article 14.3</i></p> <p><i>Article 15.5.1</i></p> <p><i>Article 25.4.3</i></p> <p><i>Article 35.1</i></p> <p><i>Article 39, 40, 42, and 43</i></p>
<p>LAW No. 03/L-068 ON EDUCATION IN THE MUNICIPALITIES OF THE REPUBLIC OF KOSOVO</p> <p><i>Article 3.j</i></p>
<p>LAW No. 02/L-52 ON PRESCHOOL EDUCATION</p> <p><i>Article 1</i></p> <p><i>Article 6</i></p> <p><i>Article 25.b</i></p> <p><i>Article 27.b</i></p> <p><i>Article 28.2 and 28.3</i></p> <p><i>Article 34</i></p> <p><i>Article 42</i></p>
<p>LAW No. 02/L-42 ON VOCATIONAL EDUCATION AND TRAINING</p> <p><i>Article 2.3</i></p> <p><i>Article 27.5</i></p> <p><i>Article 11.5</i></p> <p><i>Article 20.2</i></p>
<p><u>LAW No. 2004/37 ON INSPECTION OF EDUCATION IN KOSOVA</u></p>
<p><b>Juvenile Justice</b></p>
<p>LAW Nr. 03/L-035 ON POLICE</p> <p><i>Article 61.2</i></p> <p><i>Article 61.3</i></p>
<p>CODE No. 03/L-193 JUVENILE JUSTICE CODE</p> <p><i>Article 2.1.8</i></p> <p><i>Article 2.1.10</i></p> <p><i>Article 2.1.5</i></p>
<p>CODE No. 04/L-082 CRIMINAL CODE OF THE REPUBLIC OF KOSOVO</p> <p><i>Article 74.2.6</i></p>

<p><i>Article 120.37</i></p> <p><i>Article 71.6.1</i></p> <p><i>Article 187.3</i></p> <p><i>Article 188.3</i></p> <p><i>Article 189.3</i></p> <p><i>Article 194.2.4</i></p> <p><i>Article 195.2.4</i></p> <p><i>Article 196.2.1</i></p> <p><i>Article 221</i></p> <p><i>Article 233.3</i></p> <p><i>Article 234</i></p> <p><i>Article 281.1.4</i></p>
<p>CRIMINAL No. 04/L-123 PROCEDURE CODE</p> <p><i>Article 53.6</i></p> <p><i>Article 57.1.1 and 57.1.4</i></p> <p><i>Article 132.5</i></p> <p><i>Article 157.1</i></p> <p><i>Article 168.3 and 168.4</i></p> <p><i>Article 310.1</i></p> <p><i>Article 506.1</i></p>
<p>LAW No. 04/L-149 ON EXECUTION OF PENAL SANCTIONS</p> <p><i>Article 5.2</i></p> <p><i>Article 224.3</i></p>

**Question n.3.: Is the expression of “safeguarding policy” or any synonym (safeguarding requirement, safeguarding measures, obligatory procedures of protection /measures of care, etc.) mentioned in these acts and/or regulations in relation to vulnerability?**

<b>SAFEGUARD POLICIES OR RELEVANT:</b>
LAW NO.04/L –032 ON PRE-UNIVERSITY EDUCATION IN THE REPUBLIC OF

<p>KOSOVO</p> <p><i>Article 3.4</i></p> <p><i>Article 4.1, 4.2 and 4.3</i></p> <p><i>Article 5.1.</i></p>
<p>LAW NO. 02/L-17 ON SOCIAL AND FAMILY SERVICES</p> <p><i>Article 1.j</i></p> <p><i>Article 10</i></p> <p><i>Article 11</i></p> <p><i>Article 13</i></p>
<p>LAW NO.03/L –238 ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION</p> <p><i>Article 4.2.2</i></p> <p><i>Article 23</i></p>
<p>LAW NO.03/L –182 ON PROTECTION AGAINST DOMESTIC VIOLENCE</p> <p><i>Article 1.1</i></p> <p><i>Article 2.1.8</i></p> <p><i>Article 2.1.9</i></p> <p><i>Article 6.2</i></p>
<p>LAW NO. 03/L-022 ON MATERIAL SUPPORT FOR FAMILIES OF CHILDREN WITH PERMANENT DISABILITY</p> <p><i>Article 3.3.1</i></p> <p><i>Article 8.8.1</i></p>
<p>LAW NO. 02/L-52 ON PRESCHOOL EDUCATION</p> <p><i>Article 34.34.3</i></p> <p><i>Article 38.38.9</i></p>
<p>LAW NO.2004/32 FAMILY LAW OF KOSOVO</p> <p><i>Article 1</i></p> <p><i>Article 3.2</i></p> <p><i>Article 6.4</i></p> <p><i>Article 7.1</i></p> <p><i>Article 82</i></p> <p><i>Article 93.1</i></p> <p><i>Article 125</i></p> <p><i>Article 128.3</i></p> <p><i>Article 140.3</i></p>

*Article 147*

*Article 157*

*Article 158*

*Article 159*

*Article 211*

*Article 212.1 and 212.3*

*Article 215.1*

*Article 219.1*

*Article 234.2*

*Article 316.3*

*Article 325.1*

*Article 327.2*

*Article 332.5*

*Article 342.3*

*Article 343*

*Article 344*

*Article 345*

*Article 348.1*

*Article 351.1*

*Article 352.3*

LAW NO. 04/L-081 ON AMENDING AND SUPPLEMENTING THE LAW NO. 02/L-17  
ON SOCIAL AND FAMILY SERVICES

Article 9.10.1

Article 10.11.2, 10.11.6 and 10.11.16

Article 11.A.1 and 11.A.3

Article 11.B.2 and 11.B.4

Article 13.9

LAW NO. 05/L-023 ON THE PROTECTION OF BREASTFEEDING

Article 15

**Question n.4.: Does your national legislation on vulnerable children and adults specify the stakeholders who are expected by law to provide care and protection?**

The list below defines the authorities/ stakeholders responsible to provide care and protect the rights of children and adults in regards of vulnerability:

- The Custodian Organ according to LAW NO.2004/32 FAMILY LAW OF KOSOVO
- Ombudsperson of Kosovo according to The Law nor.05/L-019 on the Ombudsperson
- Central Authority – Ministry of Justice in the Republic of Kosovo and LAW NO.03/L –238 ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION, article 23
- Ministry of Education, Arts, Sports and Culture Office
- Police of Kosovo as in LAW Nr. 03/L-035 ON POLICE
- Social Work Centre as defined according to LAW NO. 03/L-022 ON MATERIAL SUPPORT FOR FAMILIES OF CHILDREN WITH PERMANENT DISABILITY
- Social and Family Services according to LAW ON SOCIAL AND FAMILY SERVICES
- Guardianship Authority according to LAW Nr.2004/32 FAMILY LAW OF KOSOVO and LAW ON SOCIAL AND FAMILY SERVICES – ARTICLE 1, POINT (j).

**Question n.5.: What other stakeholders are you aware of concerning vulnerable children and adult in your country? (NGOs, international bodies, etc.)**

- SOS Children’s Villages International – Kosovo
  - Family-strengthening programme
  - Care in families
  - Care for abandoned babies
  - Education
- Unicef in Kosovo
  - Child survival
  - Child development
  - Child protection
  - Adolescence

- Soros - The Kosovo Foundation for Open Society
  - Education, Prosperity and Protection of rights of Minorities and Roma
- AITogether NGO
  - Minority Education
- Terre des Hommes – Stops Child exploitation
- Save the Children Kosovo
  - Child protection
  - Child Rights Governance
  - Education
  - Humanitarian Response
  - Health and Nutrition
- Parents and Teachers Association
- WHO in Kosovo
- KOMF
  - Enhancing the approval of laws and policies for children.
  - Monitoring the implementation of laws and national policies for children.
  - Sensitizing and mobilizing the relevant state authorities at both local and central level, sensitizing the service providers and other actors on child protection issues.
  - Raising awareness of the wide opinion on all issues related to child protection.
  - Increasing the participation of children and all other groups who are exposed to the violation of children rights.
  - Creating spaces to develop best practices in the field of children rights, documenting and sharing with all the members of the Coalition.
  - Empowering the capacities of the Coalition, especially the capacities of local organizations and community based organizations.

**Question n.6.: Anything else that you find relevant, interesting to mention from what you have found during your desk research on this topic**

The Prime Minister's office has approved the following strategies and action plans under the Ministry of Labour and Social Welfare as follows:

1. NATIONAL STRATEGY AND ACTION PLAN FOR PREVENTION AND ELIMINATION OF CHILD LABOUR IN KOSOVO 2011-2016
2. Action Plan 2015-2016 - The elimination of all worst forms of child labour in the Republic of Kosovo until 2016

**Question n.7.: Registration of NGOs**

According to the **LAW NO.04/L –057 ON FREEDOM OF ASSOCIATION IN NON-GOVERNMENTAL ORGANISATIONS** which explains in detail the process of registering and the functioning of an NGO, in Kosovo, there are not any safeguarding requirements.

For more information please refer to the link below where under Article 9 it is explained the process of registering the NGO:

<http://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2764>

In addition, this link might contain useful information in regards of this process:

<http://www.kcsfoundation.org/?page=2,127#.WMqIzfnYuM9>

## **Country report**

Kosovo is a country with a significant contradiction between the quality of the laws concerning child protection and their application in the field. Since the war ending in 2000, all of Kosovo's laws governing health, education and welfare have been renovated, using lawyers from UNMIK and, later, EULEX. These laws tend to be on the cutting edge of European legal thought, and some may even be more advanced than the original EU countries. On the

other hand, implementation of these laws has been rife with significant issues. The reasons for this are:

1. Untrained or undertrained child protection personnel:

Among the social workers in Kosova, almost none has an academic degree in social work. This will only begin to change now, as the department of social work has begun to function only recently and the first generation is due to graduate soon. For the moment, social workers in the public sector have academic degrees in Sociology, Law, or even mathematics. Some only finished high school. The low level of professional training leaves social work open to corruption and politicization.

2. Politicization:

According to the principle of decentralization, where the power to make day-to-day decisions is at the local level, large changes occur after local elections. The local political situation is much more unstable than the national situation is, and there have been times that the entire municipal center for social work changed after elections. The meaning of this phenomenon is that it is almost impossible to develop a tradition of professional development among social workers, as well as demoralization and lessened professional responsibility.

3. Corruption:

High unemployment and low professional levels invite immense pressure from those in power to get jobs for their friends and relatives. One could always say that it makes no difference anyway because the candidate accepted is not at a higher level than the one rejected. Besides moral and ethical concerns, there is the issue mentioned earlier, that a change in the powers that be bring about a change in key holders of jobs, rendering development of professional capacities impossible.

Besides the professional factor leading to a low functioning level of child protection in Kosovo, there are strong economic factors. The most blatant and problematic of these is unemployment. The official unemployment rate is



about 45%, but unofficially it is higher, and in some places, such as the Mitrovica region, it reaches 70%. This is a figure of fantastic proportions. Unemployment figures of 15-20 % are considered economic emergencies. Such high unemployment brings severe economic dependence and prevents the government from making its own decisions.

One of the strongest players in this issue is the World Bank. One would think that the Bank would invest in the development of risk-taking behavior that would encourage fast and strong national development. In fact, the opposite is true: strong sanctions are laid upon government offices that dare go into debt. Without the possibility of debit spending, development is curtailed and fewer risks are taken. In addition, there have been instances of agencies spending less than the precious little afforded them for fear of turning in a debit result at the end of the fiscal year.

Of course, a country can, as a general framework, only spend the money it makes. If income is small, taxes are few, and there is little for the government to spend; thus, it comes back to unemployment and a need for national development of industry.

Another issue is the localization of social services. Under EU pressure, the implementation of most laws, including social services and education, is in the hands of the municipalities. Because of political instability and lack of infrastructure, the quality of services varies greatly from municipality to municipality. In discussing severe issues concerning social services, this policy has left open a space where the municipality and the ministry can blame each other for the poor quality of the services.

### Legal Framework

The following laws have been identified as dealing with protection and support of children and vulnerable families. The more relevant laws are in bold:

**LAW Nr.2004/32 FAMILY LAW OF KOSOVO**

**LAW No. 04/L-081 ON AMENDING AND SUPPLEMENTING THE LAW NO. 02/L-17 ON SOCIAL AND FAMILY SERVICES**

**LAW No. 2003/15 ON SOCIAL ASSISTANCE SCHEME IN KOSOVO**

**LAW No.04/L-096 ON AMENDING AND SUPPLEMENTING THE LAW No. 2003/15 ON SOCIAL ASSISTANCE SCHEME IN KOSOVO**

**LAW No. 03/L-022 ON MATERIAL SUPPORT FOR FAMILIES OF CHILDREN WITH PERMANENT DISABILITY**

LAW No.03/L –212 ON LABOUR

LAW No. 04/L-092 FOR BLIND PERSONS

LAW No.2004/46 ON CIVIL REGISTERS

LAW No.04/L –003 ON CIVIL STATUS

LAW No. 02/L-126 ON AMENDING AND SUPPLEMENTING THE LAW ON REGISTERS OF CIVIL STATE No. 2004/46

LAW No.04/L-073 ON ASYLUM

LAW No. 04/L-125 ON HEALTH

**LAW No. 02/L-78 ON PUBLIC HEALTH**

LAW No. 05/L -023 ON THE PROTECTION OF BREASTFEEDING

LAW No. 02/L-36 TOBACCO LAW

LAW No. 02/L-128 ON NARCOTIC MEDICAMENTS, PSYCHO-TROPES AND PRECURSORS

**LAW No.04/L –032 ON PRE-UNIVERSITY EDUCATION IN THE REPUBLIC OF KOSOVO**

**LAW No. 03/L-068 ON EDUCATION IN THE MUNICIPALITIES OF THE REPUBLIC OF KOSOVO**

LAW No. 02/L-42 ON VOCATIONAL EDUCATION AND TRAINING

LAW No.2004/37 ON INSPECTION OF EDUCATION IN KOSOVA

LAW Nr. 03/L-035 ON POLICE

**CODE No. 03/L-193 JUVENILE JUSTICE CODE**

CODE No. 04/L-082 CRIMINAL CODE OF THE REPUBLIC OF KOSOVO

CRIMINAL No. 04/L-123 PROCEDURE CODE

LAW No. 04/L-149 ON EXECUTION OF PENAL SANCTIONS

The National Action Plan for Children 2009-2013 has the character of a strategic

document and covers actions for children, which have been specified in some priority fields: governance, education, healthcare, social welfare, delinquency budgeting and cross-sectional issues

Specifically, The NAP has adopted seven objectives for the social welfare part of the report:

**Objective 1:** Protection of children from the conduct of hard labour;

**Objective 2:** Offering services to children without parental care;

**Objective 3:** Integration, protection and provision of adequate services for the children with disabilities;

**Objective 4:** Improvement of the life of children living in poverty;

**Objective 5:** Prevention of child trafficking and protection of trafficked;

**Objective 6:** Protection of the children abused within and outside of their family;

**Objective 7:** Implementation and reviewing of the legislation regulating aspects of social welfare of children.

This plan is a good example of good intentions meeting with poor resources. Some of the objectives have been implemented, but none enough to make a significant difference.

As an illustration of the problems in the social services area, we will examine in some detail one of the more important laws, The Social and Family Services Law (No. 02/L-17). This law establishes legal grounds for the regulation and advancement of social and family services to persons in need and to families. Numbers refer to the original law.

In the definition of a person in need are 14 categories, 13 of which apply to children. The 14<sup>th</sup> category is a catchall: “other cause that renders them in need”, which allows the social services officer discretion in deciding if the child is “in need”. An important issue is financing; placing a child “in need” does not mean that he or she will receive services, although appearance in the

database will may raise the probability of receiving services before the child reaches old age. The definition of “in need” seems to cover instances that fit European standards.

The definition of “Families in need” is completely influenced by child protection. All of the details given relate to difficulties in bring up children properly. Violence in the family is not mentioned except in the context of parents or caregivers. The right of the woman to security within the family is not considered, although a victimized woman may be considered a person in need separately from her family.

The Municipality is the backbone of social services in Kosovo. Directorates deliver Social and Family Services within their territory through the activities of Centres for Social Work or by providing financial or other assistance to non-government organizations to enable them to do so (6.3). It takes steps to identify the nature and extent of the need for Social and Family Services within its territory. It is expected to produce annual plans for the development and maintenance of Social and Family Services. They maintain records and statistics and provide reports on Social and Family Services activities on an annual basis. In order to promote community involvement, transparency and accountability, it publishes its annual plan and report.

Section 6.7 gives a list of services that the Municipal Department is allowed to give if it has the funds. This section strikes us as being poor humor; the funding of both the Ministry and Municipality is so poor that one can only dream. Recently, we held a workshop where workers of a CSW were asked what they would do if funded by another million Euro. Not one of them remembered that they are allowed to give extra services if they had the funds.

Section 6.8. states that directorates make adequate provision for responding to urgent Social and Family Services cases arising out of normal working hours. This is one of the most active articles of the law. Emergencies usually consist of families without food or shelter.

Article 7 states that the CSW is responsible for carrying almost all of the municipal social services. Among many other tasks, The CSW is obliged to conduct a professional assessment in respect of any individual or family residing in, or found in, its area who refer themselves for assistance or who by other means come to its attention as needing or appearing to be in need of Social or Family Services (7.6). If the professional assessment of need indicates that an individual or a family require Social or Family Services the CSW may offer such services as it considers appropriate(7.7). Of course, allowing the CSW to provide such services is not the same as funding them. Although in dire emergencies funds have been found. The result is often that both the CSW and the families it serves are living hand to mouth.

In all matters concerning the provision of services to children and to families the best interests of the child shall be the first and paramount consideration.  
(9.1)

Although this section was probably meant to relate to court cases concerning parenting, it seems to us that being poor and hungry is not in the best interests of any child. Although that statement may sound cynical, it presents the problems in Kosovo in all their urgency. In all seriousness, the law should reflect some tension between the reality and the desired result.

Article 10 gives wide authority to the social services officer when a child's lifestyle may endanger him or her. The officer is required to report the child to the Department of social work and to request the court any authority necessary in order to ensure that the child is not at risk. Again, this section is in accordance with European standards and the question concerns implementation.

Article 11 sets up regulations, guidelines and procedures for children needing care outside the home.

11.1. The Centre for Social Work, on behalf of the Department of Social

Welfare has a duty of care and is at all times obliged to act as a good parent would towards a child:

- a. who has been orphaned of both parents
- b. who has been placed with it by his parent or parents for adoption
- c. who has been abandoned
- d. whose parents are not known
- e. who has been placed by his parent or parents in the temporary care of the Centre for Social Work
- f. who has been placed in the care of the Centre for Social Work, acting on behalf of the Department, by the court

Article 14 mandates the CSW to give expert opinions to the courts, particularly on issues concerning child protection and Juvenile justice.

Summary: Analysis of the above law is brought to illustrate the character of the laws passed in Kosova after the war. A detailed analysis of all relevant laws is beyond the scope of this report. However, from this example we can see the tension between an enlightened law and the impossibility of its implementation.

#### Stakeholders:

Kosova is gifted with a large number of stakeholders in child protection, both in government and non-governmental agencies.

Government agencies: **The Prime Minister's office** has been active in child protection issues and has put forward several programs for alleviating the situation, among them, two strategic documents relevant to our survey: 1) Strategy and national action plan on children's rights in the Republic of Kosovo, and 2) National Disability Action Plan for the Republic of Kosovo.

**The Ministry of Labor and Social Welfare** is the major government stakeholder, expressed as well through the municipal Department of Social Welfare and Centre for Social Work. The Ministry has designated 200 social workers to specifically deal with child protection issues. These social workers are undertrained and overloaded. The Ministry also has an Institute for Social Policy. **The Ministry of Justice** is a stakeholder through the correctional and probation service. The **Ministry of Health** gives various health services to vulnerable families. **The Ministry of Education, Science and Technology** is a stakeholder, giving highly inadequate services to children with special needs, and is a source where child protection issues are discovered and reported. Older children with special needs often go through the vocational education system. It may be worthwhile to remark upon significant issues concerning the education of the Roma-Askali-Egyptian community and failure to keep these children in the educational system.

Non-Governmental agencies. Since the war, Kosova has been flooded with well-meaning people from all over the world with resources and an agenda. It has been estimated that, in the year 2000, there were over 750 international NGOs operating throughout Kosova . Over the years, a natural selection process has filtered out the more negative elements and those currently working in Kosovo have made, and are making, a significant contribution.

Somewhere between the governmental and non-governmental is **UNICEF**, the largest and most influential stakeholder in the welfare of children. Much of the important work has either been performed by UNICEF, or has been funded.

The information on the following NGOs is taken from the *komfkosova* web site (<http://www.komfkosova.org/stafi/?lang=en>).

**Action for Mothers and Children – AMC** is a non-for-profit foundation with the foremost goal to save the lives of children and improve the health care for mothers in the Republic of Kosovo through developing better systems for the care of pregnant women, and their children. It has been

established since 2009 as Foundation for Healthy Mothers and Babies and grown into Action for Mothers and Children since 2013. <http://amchealth.org/>

**Organisation for Children without Parental Care – OFAP**, is a national humanitarian association, aiming at protection of children without parental care in Kosovo. The NGO's mission is for every abandoned child and every child without parental care, to provide a family to live in, grow up in, feel part of that family and have the needed love in a family environment rather than an institutional one. Contribute to developing foster care in Kosovo, promoting the culture of family hospitality, where family is the adequate place for the development of children and their psycho-physical capacities [.http://www.aibi.it/](http://www.aibi.it/)

**Balkan Sunflowers Kosova** is a local NGOs which main goal is to building activist lives in order to trigger social change. Balkan Sunflowers Kosova is totally inspired and engaged in community based actions in order to protect and respect human rights and dignity, working in fields such as education, health, culture, citizenship, employment, as well as increasing respect for diversity. <http://www.balkansunflowers.org/>

**Initiative 6** is a local organization based in Prizren, which is focused in the prevention, education and reintegration programs of children, especially from Roma, Ashkali, Egyptians communities. Iniciativa 6 develops projects related to integration of children in the preschool education system and organizes training for teachers regarding reintegration of children, through psycho-social activities for children in schools.

**One to One Children's Fund** is British Non Governmental organization which aims to contribute to the empowerment of the civil society capacities, in Kosovo, in order to increase awareness related to the government efforts to reform the civil sector, including the reduction of gaps in service provision and help toward a sustainable decentralization of the social service sector. <https://www.onetoonechildrensfund.org/>



**OPFAKKOS “Prindi & Fëmiu”** – aim and activities are lobbying, advocacy and protection of the rights of children and persons with disabilities in Kosovo, through public awareness regarding the reintegration of children and persons with disabilities. OPFAKKOS develops activities in almost all parts of Kosovo, and has branches in 25 municipalities and about 2000 members.

**Kosovo Education Center – KEC** aims to develop the capacity for the advancement of the education system, through provision of services and high quality resources and through active cooperation with all interested parties in and out of the country. The main goal is to build an efficient and inclusive education system by enabling citizens to longlife learning process and to actively participate in the democratic life. <http://www.kec-ks.org/>

**Center for Protection of Victims and Prevention of Trafficking in Human Beings** – addresses the causes and consequences of violence through a multi-sectoral approach and facilitates the empowerment of the targeted population, by offering: social assistance to victims and potential victims of trafficking, prevention and education, advocacy and information, raising awareness, empowering, rehabilitation and long-term reintegration of victims and potential victims. <http://www.pvptcenter.net/sq/>

**Save the Children** – The success of the SCiK’s program in Kosovo is based on direct interventions, establishing good practices and capacity building of civil society to respond to the needs of children. SCiK is committed to legislation and policies that include comprehensive practices to be followed with financial assets in order to achieve positive and sustainable changes. <https://kosovo.savethechildren.net/>

**SOS Village’s of Children in Kosovo** – is an organization dealing with social care dedicated to support children without parental care and children in need, regardless of their nationality, ethnicity and religion. SOS Villages provides accommodation, care and education through five projects: SOS Family, Family Empowering Program, Kindergarten “SOS Kinderdorf, the

House of Youth and project on short and midterm sheltering for children in need. <http://www.sos-childrensvillages.org/where-we-help/europe/kosovo>

**Shpresa dhe Shtëpi për Fëmijët (SDSF)** – is a non-governmental local organization that provides housing for children in need of protection (children without parental care, abused and mistreated and children victims of trafficking (low risk). SDSF provides medical / psychological services and education, rehabilitation and reintegration of children placed, until the family reunion or other alternatives will take place.

**Terre des hommes** is a Swiss foundation, which is contributing through the child protection program in order to build the child protection system in Kosovo. This is aiming at strengthening the capacity of state institutions working to protect children at the local level and through increased coordination between them in order to create an efficient system of case management for children in need of protection. <http://www.terredeshommes.org/>

**Voice of Roma, Ashkali and Egyptians – VoRAE** aims to improve the lives of these communities and support their integration into Kosovo society by advocating for their rights, living conditions and general situation before the competent domestic and international authorities and/or organizations. <http://www.vorae.org/>

**World Vision** is a global Christian humanitarian organization dedicated in working with children, families and the wider community to achieve their full potential by fighting the causes of poverty and injustice. Since 1999, World Vision has helped hundreds of families throughout Kosovo by helping them to restore their life. World Vision serves to all people in need, regardless to their religion, ethnicity or gender. <http://www.wvi.org/kosovo>

## **Kosovo in national language**

### **Grupe Vunerabel:**

Në Kosovë, zakonisht grupet vunerabel njihen edhe si grupet e rrezikuara që kanë nevojë për shërbime dhe mbështetje sociale, Në punën sociale dhe legjislacionin e Kosovës, përcaktohen si grupe vunerabel të gjitha grupet të cilat janë të rrezikuara dhe shteti ka për detyrë të i mbroj duke u ofruar shërbimet adekuate. Pjesë e një grupi të rrezikuar në këtë rast mund të konsiderohen edhe fëmijët që kanë një aftësi të veçantë, artistike apo intelektuale por që infrastruktura nuk mundëson zhvillimin pozitiv të këtij potenciali.

Për këto targete janë përgjegjëse Qendrat për Punë Sociale që të punojnë (nga ana e Shtetit) por gjithashtu ka dhe OJQ të posaçme që punojnë.

Si term grup i rrezikuar tek fëmijët, përdoret më shumë për:

Fëmijët pa përkujdes prindëror;

Të miturit në konflikt me ligjin;

Fëmijët me aftësi të kufizuara;

Nxënësit në nevojë për shërbime;

Fëmijët viktime të trafikimit;

Fëmijët në punët e rënda;

Fëmijët e riadhesuar;

Fëmijët në nevoja shëndetësore;

Fëmijët me sjellje asociale nën moshën 14 vjeçe;

Fëmijët e paregjistruar në regjistrin civil të shtetit;

Fëmijët në varfëri ekstreme;

Fëmijët e martuar në moshë të mitur.

### **Termi fëmijë:**

Sipas legjislacionit në Kosovë, përkufizimet më të përdorura në nivel kombëtar nën përkufizimin e termit fëmijë qëndron:

Sipas Ligjit për Shërbime Sociale dhe Familjare

1.1. Fëmijë - personi i cili nuk e ka mbushur moshën tetëmbëdhjetë (18) vjet.

1.2. I mitur - personi ndërmjet moshës katërbëdhjetë (14) dhe tetëmbëdhjetë (18) vjet.

1.3. I mitur i ri - personi ndërmjet moshës katërbëdhjetë (14) dhe gjashtëmbëdhjetë (16) vjet.

1.4. I mitur i rritur - personin ndërmjet moshës gjashtëmbëdhjetë (16) dhe tetëmbëdhjetë (18) vjet. 1.5. Madhor i ri - personi ndërmjet moshës tetëmbëdhjetë (18) dhe njëzetënjë (21) vjet.

1.6. I ri - fëmijë apo madhor i ri.

### **Dëmi**

Sipas ligjit për shërbime sociale dhe familjare, nënkupton faktin e drejtpërdrejt apo në mënyrë të tërthortë që rezulton nga një veprim kriminal, duke përfshirë humbjen e pronës, humbjen e fitimit, heqjen e lirisë, dëmtimin fizik, dëmtimin psikik apo humbjen e jetës së bashkëshortit ose anëtarit të familjes së afërme. Pastaj, të gjitha këto veprime rregullohen me ligj sipas kodit penal apo civil.

### **Abuzim:**

Në Kosovë nuk ka ndonjë ligj që e përshkruan në mënyrë specifike kuptimin e fjalës abuzim, në legjislacionin i referohen më shumë llojeve të abuzimit, siç është, shfrytëzimi, si ai në punë (në ligjin e Punës) si dhuna fizike, psikologjike, abuzimi seksual (tek ligji i familjes) apo tek viktimat e trafikimit (ligji për Shërbimet Sociale) dhe Kodi Penal.

Për momentin në Kosovë, akoma nuk është miratuar ligji për fëmijët. Ky ligj është në Kuvend për miratim dhe e përkufizon termin abuzim sipas rekomandimeve të dhëna, ama nuk mund të bazohemi pa amandamentimin e tij.

Një fakt interesant është se në protokollin kundër dhunës, të gjitha format e dhunës trajtohen me termin dhunë, psh: dhunë fizike, dhunë psikologjike, dhunë digjitale, dhunë emocionale, etj. Vetëm për dhunën seksuale, termi i përdorur është abuzim seksual! (RREGULLORE QRK- NR. 21/2013 PËR PROTOKOLLIN PËR PARANDALIMIN DHE REFERIMIN E DHUNËS NË

## INSTITUCIONET E ARSIMIT PARA-UNIVERSITAR)

### **Mbrojtja**

Mbrojtja, nënkupton detyrimin ligjor që kanë institucionet vendore në Kosovë apo/dhe personat për të ofruar shërbimet adekuate për njerëzit të cilët kanë nevojë sociale. Kjo mbrojtje garantohet me ligj dhe fillon që nga mbrojtja esenciale, që është mbrojtja e jetës, mbrojtja nga abuzimet, shfrytëzimet, neglizhenca, dhe deri tek dhënia e shërbimeve sociale nga institucionet përkatëse. Mbrojtja (flasim vetëm për rastet sociale) në Republikën e Kosovës është e rregulluar përmes Ligjit për Shërbime Sociale dhe Familjare, Ligjit për Skemën e Ndhmës Sociale në Kosovë, Ligji për Përkrahje Materiale Familjeve të Fëmijëve me Aftësi të Kufizuara, Ligji për Siguri në Punë, Mbrojtje të Shëndetit të Punësuarve dhe Ambientit të Punës si dhe Ligjit të Punës, Ligji për Inspektoratin e Punës, Ligji për Mbrojtje nga Dhuna në Familje. Ligji për Statusin dhe të Drejtat e Familjeve të Dëshmorëve, Invalidëve, Veteranëve dhe Pjesëtarëve të UÇK-së dhe Familjeve të Viktimave Civile të Luftës. Ligjet që garantojnë mbrojtjen dhe mirëritjen e fëmijës në Republikën e Kosovës kryesisht kanë për qëllim sigurimin e mirëqenies së individit atëherë kur nuk ka përkrahje familjare dhe kur përkrahja nuk është e mjaftueshme. Të drejtën e fëmijëve me aftësi të kufizuara të përhershme (fizike, mendore dhe shqisore) duke përkrahur familjet e tyre materialisht. Po ashtu, dispozitat ligjore rëndësi të veçantë i japin përkrahjes së prindërve në zhvillimin e përgjegjësive prindërore duke synuar parandalimin e ndarjes së familjes kurdo që është e mundur dhe të mënjanohet çdo rrezik që do ta lëndonte fëmijën apo adultin.

- Analysis of the laws and regulations relevant to the safeguarding and protection of children and vulnerable adults applicable in the respective country (rights and obligations stipulated by the law);

Is the expression of “**safeguarding policy**” or any synonym (safeguarding requirement, safeguarding measures, obligatory procedures of protection /measures of care, etc.) mentioned in these acts and/or regulations in relation

to vulnerability?

- if yes, please list the acts and regulations, where it is mentioned
- if not, please search for what **obligatory actions** are rendered by law in relation to vulnerable children and adults (or based on synonyms of vulnerable )

Fillimisht, duhet të kemi parasysh që Kosova nuk e ka të ratifikuar Konventën e të drejtave të Fëmijëve për shkak të statusit që ka si shtet. Megjithatë, legjislacioni është përshtatur dhe ka inkorporuar të gjitha hallkat që të jenë në harmoni me instrumentet ndërkombëtare për të drejtat e njeriut. Për këtë shpesh bëhen analiza, raporte dhe rekomandime për çështjet në fjalë.

- LIGJI Nr. 2004/32 PËR FAMILJEN I KOSOVËS
- LIGJI Nr. 02/L-17 PËR SHËRBIME SOCIALE DHE FAMILJARE
- LIGJI Nr. 04/L-081 PËR NDRYSHIMIN DHE PLOTËSIMIN E LIGJIT NR. 02/L-17 PËR SHËRBIME SOCIALE DHE FAMILJARE
- LIGJI NR. 2003/15 PËR SKEMËN E NDIHMËS SOCIALE NË KOSOVË
- LIGJI Nr. 04/L-096 PËR NDRYSHIMIN DHE PLOTËSIMIN E LIGJIT NR. 2003/15 PËR SKEMËN E NDIHMËS SOCIALE NË KOSOVË
- LIGJI Nr. 03/L-022 PËR PËRKRAHJE MATERIALE FAMILJEVE TË FËMIJËVE ME AFTËSI TË KUFIZUAR TË PËRHERSHME
- LIGJI Nr. 03/L-212 I PUNËS
- LIGJI Nr. 04/L – 092 PËR PERSONAT E VERBËR
- LIGJI Nr. 03/L-182 PËR MBROJTJE NGA DHUNA NË FAMILJE
- KODI Nr. 03/L-193 I DREJTËSISË PËR TË MITUR
- Kodi nr. 03/l-193 i Drejtësisë për të Mitur (neni 41) LSHSF (neni Neni 11.A dhe U.A 08/2013 për Trajtimin e Fëmijëve Kryerës të Veprave Penale Pa Përgjegjësi Penale dhe me sjellje asociale
- LIGJI Nr. 04/L-218 PËR PARANDALIMIN DHE LUFTIMIN E TRAFIKIMIT ME NJERËZ DHE MBROJTJEN E VIKTIMAVE TË TRAFIKIMIT
- LIGJI Nr. 05/L -036 PËR KOMPENSIMIN E VIKTIMAVE TË KRIMIT
- STRATEGJIA NACIONALE PËR TË DREJTAT E PERSONAVE ME AFTËSI TË KUFIZUAR NË REPUBLIKËN E KOSOVËS 2013-2023

- STRATEGJIA E RISHIKUAR PËR RI-INTEGRIMIN E PERSONAVE TË RIATDHESUAR
- STRATEGJIA PËR INTEGRIMIN E KOMUNITETEVE ROM, ASHKALI DHE EGJIPTIAN NË KOSOVË
- STRATEGJIA DHE PLANI I VEPRIMIT PËR PARANDALIMIN DHE ELIMINIMIN E PUNËS SË FËMIJËVE NË KOSOVË 2011 – 2016

#### UDHEZIMET ADMINISTRATIVE

- Udhëzimi Administrativ 1/2006 për Themelimin e Këshillit të Përgjithshëm për Shërbime Sociale dhe Familjare
- Udhëzimi Administrativ 4/2005 për Themelimin e Komisionit për Shqyrtimin dhe Vendosjen e Ankesave në Shërbimet Sociale dhe Familjare Shkalla e Dytë
- Udhëzimi Administrativ 5/2006 për Themelimin e Panelit për Vendosjen e Fëmijëve në Strehim Familjar dhe Birësim (Adoptim)
- Udhëzim Administrativ 16/2004 për Rregullimin e Strehimit Familjar në Kosovë
- Udhëzimi Administrativ 12/2004 dhe 11/2004 për Vendosjen e klientve në Strehimin Rezidencial Shtime, Prishtinë
- Udhëzimin Administrativ 02/2003 për prezentimin e të miturve dhe personave me aftësi të kufizuara mentale në mjetet e informimit.
- Udhëzimi Administrativ 04/2007 për Rregullat e Procedurat për Perkrahe Financiare të Rezidentëve të Strehuar në Shtëpitë e Personave në Perkuqdesje.
- U.A. për Perkrahe Materiale për Familje që kanë Fëmijë me Aftësi të përhershme të Kufizuara Marrëveshje bashkëpunimi me 6 OJQ vendore për ofrimin e shërbimeve sociale për viktimat e dhunës në familje.
- U.A. nr. 05/2013 për parandalimin dhe ndalimin e formave të rrezikshme të punës së fëmijëve në Kosovë
- Rregullore (MPMS) nr. 01/2015 e punës e grupit punues për rishikimin e Listës së Formave të rrezikshme të Punës së Fëmijëve
- U.A nr. 12/2012 për përcaktimin e vendit dhe mënyrës së trajtimit

psiko-social të kryesit të dhunës në familje, Procedurat Standarde të Veprimit

- U.A ( nr. 17/2013 për përbërjen formale, kompetencat, përgjegjësitë dhe mënyrën e funksionimit të autoritetit kombëtar kundër trafikimit me njerëz
- Udhezimi administrativ MPMS Nr.07/2013 Trajtimi i femijeve kryes te veprave penale pergjegjesi penale dhe atyre me sjellje asociale
- Rregullorja QRK Nr.21/2013 Protokoli per parandalimin dhe referimin e dhunes ne institucionet e arsimit Para/universitar.

#### MAREVESHJE ME OJQ

- Marrëveshje e bashkëpunimit me OJQ Save the Children për mbrojtjen e fëmijëve projekte,marrvesh)
- Marrveshje bashkpunimi me OJQ H.H.for Children( Shpresa e Shtep e Fe,)
- Marrveshje bashkpunimi me OJQ.SOS Kinderdorf
- M. B. me OJQ “PVPT”(Parandalo Trafikimin , mbro Viktimen)
- M.B. me OJQ Shtepia e Bleteve
- M.B. me OJQ One to One
- M.B me OJQ Amiqi dei Bambini

#### **Skemat e pagesave Sociale**

- Me qëllim të përmirësimit të kushteve të jetesës, zbutjes së varfërisë, zgjidhjes së problemeve sociale dhe ekonomike të qytetarëve në nevojë sociale janë ngritur dhe janë funksionale këto skema:
  - Skema e Ndhmës Sociale,
  - Skema Emergjente ,
  - Skema e Pensionit Bazë- i pleqërisë
  - Skema e Pensioneve Kontributive ,
  - Skema e Pensionistëve të Trepçës ,
  - Skema e Pensioneve te TMK-së
  - Skema e Pensionistëve të Personave me Aftësi të Kufizuar,
  - Skema e Përkrahjes së Familjeve me Fëmijë me Aftësi të Kufizuar



- Skema e Familjeve të Dëshmorëve, Invalidëve të Luftës dhe Viktimave Civile

Ndër analizat e legjislacionit më të mira që vazhdon të mbetet në Kosovë janë:

- Ajo e bërë në vitin 2012 nga Terre Des Homes Kosova “PËRMBLEDHJE E LIGJEVE QË MBROJNË TË DREJTAT E FËMIJËVE NË REPUBLIKËN E KOSOVËS”; (nese duhet nje kopje se saj mund te ua siguroj)
- Indeksi i Mbrojtjes së Fëmijës është një mekanizëm i pavarur për matjen e reformave të vendit në fushën e mbrojtjes së fëmijëve, në përputhje me Konventën e Kombeve të Bashkuara për të Drejtat e Fëmijës, bërë në bashkëpunim me Koalicionin e OJQve për Mbrojtjen e Fëmijëve; (<http://www.komfkosova.org/indeksi-i-mbrojtjes-se-femijes/> )
- Analiza për mbrojtjen e fëmijëve në rrezik për të rënë në konflikt me ligjin dhe fëmijëve në konflikt me ligjin pa përgjegjësi penale (nën 14 vjeç); (<http://www.komfkosova.org/english-mos-me-mbyll-deren-jam-vetem-nje-femije-analize-per-mbrojtjen-e-femijeve-ne-rrezik-per-te-rene-ne-konflikt-me-ligjin-dhe-femijeve-ne-konflikt-me-ligjin-pa-pergjegjesi-penale-nen-14-vjec/> )
- Raporti i Progresit për mbrojtjen e Fëmijëve e vitit 2013; ([http://www.kryeministriks.net/repository/docs/Progresi\\_i\\_Raportit\\_ALB\\_01\\_web.pdf](http://www.kryeministriks.net/repository/docs/Progresi_i_Raportit_ALB_01_web.pdf)
- Analiza “Më co në shtëpi, për fëmijët e braktisur në Kosovë”. <http://www.komfkosova.org/me-co-ne-shtepi-analiza-per-avancimin-e-mbrojtjes-se-femijeve-te-braktisur-ne-kosove-te-moshes-0-3-vjec-3/>

- Analysis of relevant governmental and non-governmental stakeholders (who is involved in safeguarding and the protection of children and vulnerable adults in the respective country and what is the mandate or scope of work of the individual organisations);

What other stakeholders are you aware of concerning vulnerable children and adult in your country? (NGOs, international bodies, etc.), please list them, with the type of activity they are involved in (e.g. child protection, care of the elderly, care of mental patients, etc.)

Në mbrojtjen dhe kujdesin ndaj fëmijëve në Kosovë është përgjegjës shteti, me legjislacionin dhe shërbimet e tij direkte dhe indirekte që jep, është shoqëria civile, me avokimin, lobimin, ekspertizën, shërbimet dhe mbështetjen e saj, janë dhe individët apo grupet e licencuara (psh: familjet strehuese për fëmijët pa përkujdes prindëror).

Mekanizmat institucional për të mbrojtjen e fëmijëve në Kosovë:

Ekzistojnë një gamë e gjerë e institucioneve qeveritare dhe trupave qeveritare që kanë për mandat të ndërmarrin veprimet e duhura drejt hartimit dhe zbatimit të politikave shtetërore, si dhe ofrimin e shërbimeve sa më cilësore drejt realizimit të të mbrojtjes dhe të drejtave të Fëmijëve në Republikën e Kosovës.

Ndër Institucionet më të mandatuara që punojnë në këtë drejtim janë:

1. Zyra e Kryeministrit

- a. Zyra për Qeverisje të Mirë
- b. Njësitë për të Drejtat e Njëriut në Nivel Qëndrorë dhe Lokal

2. Ministria e Punës dhe Mirëqenies Sociale

- a. Departamenti i Mirëqenies Sociale
- b. Qendrat për Punë Sociale
- c. Instituti për Politika Sociale
- d. Departamentit i Familjeve të Dëshmorëve, Invalidëve të Luftës dhe Familjeve të Viktimave Civile (DFDIL)
- e. Trupa Ekzekutive e Inspektoratit te Punës

3. Ministria e Drejtësisë

- a. Shërbimi Korrektues i Kosovës
- b. Shërbimi Sprovues i Kosovës

#### 4. Ministria e Shëndetësisë

- a. Instituti Kombëtar i Shëndetësisë Publike
- b. Departamenti i Shërbimeve Shëndetësore
- c. Zyra për Shëndetin
- e. Nënës dhe Fëmijës më Shëndetin Riprodhues

#### 5. Ministria e Arsimit, Shkencës dhe Teknologjisë

- a. Departamenti i Administratës së Arsimit Parauniversitar
- b. Divizioni i arsimit të përgjithshëm
- c. Divizioni i arsimit profesional
- d. Divizioni për komunitete
- e. Njësia e bashkërendimit prindër-arsimtarë

#### 6. Ministria e Punëve të Brendshme

- a. Departamenti për Siguri Publike
- b. Departamenti për Shtetësi, Azil dhe Migracion
- c. Agjencia për Regjistrim Civil

#### 7. Ministria e Kulturës, Rinisë dhe Sportit

- a. Departamenti i Rinisë
- b. Departamenti i Kulturës
- c. Departamenti i Sportit
- d. Departamenti i Trashëgimisë

#### 8. Ministria e Administrimit të Pushtetit Lokal

##### TRUPAT QEVERTARE QË PUNOJNË NË REALIZIMIN E TË DREJTAVE TË FËMIJËVE

- a. Komiteti Ndërmënyor për të Drejtat e Fëmijëve
- b. Komiteti për Parandalimin dhe Eleminimin e Punëve të Rënda dhe të Rrezikshme të Fëmijëve
- c. Këshillin Nacional për Persona me Aftësi të Kufizuara
- d. Këshilli për Mbrojtje dhe Drejtësi për Fëmijë

- e. Komiteti Kosovar për Shëndetin e Nënës dhe Fëmijës
- f. Koordinatori Nacional Kundër Trafikimit me Qenie Njerëzore- Grupi Punues
- g. Komitetet Lokale të Veprimit për Monitorimin e Punës së Fëmijëve
- h. Grupet Punuese Qeveritare

**Zyra për Qeverisje të Mirë pranë Kryeministrit**, Kompetencat e Zyrës për Qeverisje të mirë janë: Mbikëqyrja dhe këshillimi i ministrave/e në sferat e qeverisjes së mirë, në të drejtat e njeriut, në mundësitë e barabarta dhe në çështjet gjinore; të krijon politikën e veprimit dhe nxjerr urdhëresa në sferën e qeverisjes së mirë, në sferën e të drejtave të njeriut, në mundësitë e barabarta dhe në çështjet gjinore; Shqyrton projekt-rregulloret e përgatitura nga dega e ekzekutivit në pajtim me standardet e të drejtave të njeriut në fuqi dhe të praktikave të qeverisjes së mirë në bashkëpunim me Zyrën e shërbimeve për ndihmë juridike dhe këshillon e i jep rekomandime Kryeministrit dhe ministrive përkatëse në përputhje me rrethanat; Shqyrton politikën e veprimit të Degës së ekzekutivit, procedurat dhe praktikën e veprimit në pajtim me standardet e të drejtave të njeriut në fuqi, me praktikën e qeverisjes së mirë dhe mundësitë e barabarta dhe këshillon e i jep rekomandime Kryeministrit dhe ministrive përkatëse në përputhje me rrethanat; Ndhmon në zhvillimin dhe zbatimin e fushatave të informimit publik dhe të projekteve të tjera promovuese për të nxitur vetëdijesimin e popullatës mbi standardet ndërkombëtare të të drejtave të njeriut, transparencën e qeverisjes, barazinë gjinore, mundësitë e barabarta dhe parimet tjera bazë të qeverisjes demokratike; Konsultohet me përfaqësuesit e bashkësisë dhe sipas nevojës krijon organe këshillëdhënëse për shqyrtimin e qeverisjes së mirë, për të drejtat e njeriut, për mundësitë e barabarta dhe për çështjet gjinore. Ndhmon zhvillimin e politikave të barazisë gjinore dhe punon për avancimin e statusit të gruas në bashkëpunim me shoqërinë civile; Përcjell aktivitetet kundër mashtrimit dhe korrupsionit në Degën e ekzekutivit dhe nxit vetëdijesimin kundër mashtrimit; Përkrah vendimmarrjen demokratike dhe konsultimin e gjerë brenda Qeverisë; Inkurajon pjesëmarrjen e qytetarëve në qeverisje; I lëshon deklaratat e rekomandime Kryeministrit dhe ministrive të

tjera përkatëse dhe Shqyrton, sipas nevojës, dosjet dhe dokumentet e Qeverisë që janë në sferën e funksioneve dhe përgjegjësisë të Zyrës, pas dhënies së autorizimit nga Kryeministri. Zyra për Qeverisje të Mirë në ZKM, është organi institucional që ka për mandat inicimin, udhëheqjen dhe koordinimin e hartimit të Strategjive dhe Planeve Nacionale të Veprimit në sferën e të drejtave të njeriut. Gjithashtu ZQM udhëheqë dhe koordinon procesin e zbatimit, monitorimit dhe vlerësimit të dokumenteve strategjike për të drejtat e njeriut, në nivel qendror dhe lokal, të aprovuara nga Qeveria e Republikës së Kosovës. ZQM/ZKM mandatin e saj rrinë ta përmbushë nëpërmjet zyrtareve, si: Zyrtari i Lartë për të Drejtat e Fëmijëve, Zyrtari i Lartë për të Drejtat e Njeriut, Zyrtari i Lartë për Mundësi të Barabarta dhe Minoritete, Zyrtari i Lartë për Mundësi të Barabarta dhe Aftësi të Kufizuara dhe Zyrtari i Lartë për Qeverisje të Mirë. Ndërsa në ministritë e linjës dhe komuna të Republikës së Kosovës, ZQM e realizon mandatin e saj nëpërmjet Njësive për të Drejtat e Njeriut në nivel qendror dhe Njësive për të Drejtat e Njeriut në Nivel Komunal.

Monitoron përputhshmërinë e respektimit të standardeve për të drejtat e njeriut në këto fusha: mundësitë e barabarta, kundër-diskriminim, barazisë gjinore, të drejtat e fëmijëve, personat me aftësi të kufizuara, të drejtat e komuniteteve, përdorimin e gjuhëve dhe anti-trafikimin me qenie njerëzore; Këshillon në hartimin dhe monitorimin e zbatimit të politikave, rregulloreve dhe udhëzimeve të nxjerra nga Qeveria, Kuvendi i Republikës së Kosovës dhe Kuvendi Komunal, konform standardeve ndërkombëtare për të drejta të njeriut dhe legjislacionit vendor;

Monitoron aktivitetet dhe njëkohësisht ofron rekomandime dhe këshilla për në institucionin që përfaqëson lidhur me çështjet e të drejtave të njeriut; Harton dhe zhvillon planet e veprimit, identifikon nevojat për ngritjen e kapaciteteve dhe planifikon buxhetin për zbatimin e aktiviteteve të NJDNJ-së; Zbaton ligjet, planet dhe strategjitë e miratuara nga Qeveria dhe Kuvendi i Kosovës; bashkëpunon dhe koordinon aktivitetet me shoqërinë civile, në fushën e mbrojtjes dhe promovimit të të drejtave të njeriut; bashkëpunon me Institucionin e Ombudspersonit në Kosovë dhe të mbikëqyrë zbatimin e rekomandimeve të Ombudspersonit në institucionin që përfaqëson;

kontribuojnë në raportet e organe referuese të traktateve lidhur me dispozitat ndërkombëtare për të drejtat e njeriut që janë të zbatueshme në Kosovë.

2. Ministria e Punës dhe Mirëqenies Sociale, në kuadër të Qeverisë së Republikës së Kosovës ka për mandat, që ndërlidhet me respektimin dhe mbrojtjen e të drejtave të fëmijëve, të krijon politikat e punës dhe të mirëqenies sociale si dhe harton dhe zbaton legjislacionin duke marr parasysh standardet e zbatueshme ndërkombëtare të punës; Përcjell ecuritë e punësimit dhe të mirëqenies sociale si dhe prezanton masat pasive adekuate për të përmbushur nevojat në ndihmë sociale për qytetarët nevojtarë; Përkrah politikën e veprimit dhe praktikën e punës e të mirëqenies sociale për mbrojtjen e fëmijëve dhe të miturve; Vendos standarde për siguri dhe mbrojtje në punë të të punësuarve dhe mbikëqyr zbatimin e tyre; Udhëheq dhe mbikëqyrë institucionet administrative publike të punësimit dhe institucionet e përkujdesjes sociale, të personave në nevojë dhe bashkëpunon me komunat dhe institucionet e përfshira në zbatimin politikave të punësimit dhe mirëqenies sociale; Organizon takimet e Këshillit Ekonomiko Social (KES), si organ më i lartë këshillëdhënës i partnerëve socialë për politikën e punësimit, të mirëqenies sociale dhe politikën tjera ekonomike, duke synuar parandalimin dhe zgjidhjen e konflikteve sociale si dhe përfaqëson Qeverinë e Kosovës në këtë organ; Siguron ndihma financiare nga mjetet e akorduara për familjet dhe individët nevojtarë; Menaxhon shfrytëzimin dhe zhvillimin e infrastrukturës, që ndërlidhet me punën dhe mirëqenien sociale në përgjegjësinë e kësaj ministrie; Siguron përkrahje financiare dhe sociale, emergjente dhe të përhershme, përmes institucioneve apo shërbimeve të ngritura për këtë qëllim për qytetarët me nevojë; Për të realizuar me përpikëri mandatin dhe kompetencat e saj, që ngërthejnë në vete realizimin e plotë të të drejtave të fëmijëve, në kuadër të Ministrisë së Punës dhe Mirëqenies Sociale veprojnë këto mekanizma: Organizon i përgjithshëm i ofrimit të shërbimeve sociale dhe familjare në Kosovë, kryen koordinimin i aktiviteteve të institucioneve qeveritare dhe OJQ vendore dhe ndërkombëtare, përcakton i standardet minimale, inspekton ofruesit e shërbimeve, kryen themelimin/dhe ose aprovimin e themelimit të ambienteve rezidenciale, kryen financimin e

pagesës të përfitimeve të skemave për shërbime sociale dhe ndihma sociale, bën licencimin e OJQ-ve.

a. Departamenti i Mirëqenies Sociale, është i përbërë nga këto divizione:

Divizioni i Analizave Buxhetore dhe Vlerësimit të Varfërisë;

Divizioni i Shërbimeve Sociale;

Divizioni i Ndihmave Sociale;

Divizioni i Përkujdesjes Institucionale.

## POLITIKAT SOCIALE NË KOSOVË

Shërbimet e kujdesit rezidencial deri në këtë vit 2015, janë administruar nga MPMS, në formë të centralizuar;

Në 2014 është bërë bartja e përgjegjësive për dy shtëpive në komunitet: Skenderaj dhe Graçanicë (Komuna kosovare);

Ministri i MPMS dhe kryetarët e komunave, në këtë vit kanë nënshkruar Marrëveshjet e Bashkëpunimit për decentralizim edhe të 8 shtëpive tjera : Shtime, Ferizaj, Lipjan, Vushtrri, Deçan, Dardanë, Gurrakoc-Istog dhe Graçanicë;

Shërbime të kujdesit ditor ofrohen nga sektori jo qeveritar me bashkëfinancim me projekte të donatorëve;

Financimi i OJQ-ve për blerjen e shërbimeve sociale ende ka mbet përgjegjësi e nivelit qendror;

Pagesat e përfitimeve në kesh për shërbime dhe ndihma sociale administrohen në formë të deleguar .

## POLITIKAT SOCIALE NË KOSOVË

Zhvillimin e programeve të ndihmojnë familjet dhe individët e rrezikuar nga varfëria dhe përjashtimi social;

Programet kryesore të fokusuara në realizimin e përfitimeve nga skemat e ndryshme si dhe në shërbime profesionale dhe këshilluese ;

Shërbimet sociale dhe familjare si e drejtë vetanake e komunave janë decentralizuar në vitin 2009;

Në proces të zhvillimit/avancimit të sistemit të monitorimit dhe inspektimit të shërbimeve soc. dhe fam. në nivel qendror, dhe zhvillimin e një sistemi të

monitorimit në nivelin komunal

Standardet minimale (10 aprovuar, 6 finalizuar/në proces të aprovimit, 6 në proces të pilotimit).

### **Qendrat për Punë Sociale- QPS**

Kosova ka 35 QPS dhe 10 nënzyra nëpër Komuna;

Ka shtëpinë e Personave të Moshuar dhe pa përkujdesje Familjare;

Institutin Special në Shtime.

Një ndër synimet e Departamentit të Mirëqenies Sociale është zhvillimi i legjislacionit të ri dhe në përputhje me kriteret ndërkombëtare; vendosjen e standardeve të duhura për shërbimet dhe mbrojtjen sociale; mbështetja e gjerë dhe e qëndrueshme financiare të grupeve nevojtare. Misioni i DMS-së, përveç tjerash është, realizimi dhe zhvillimi i politikave sociale dhe mbrojtja e kategorive të ndryshme të qytetarëve në nevojë.

Qendrat për Punë Sociale - QPS-ët janë të obliguar të bëjë vlerësime profesionale për secilin individ ose familje që jeton ose gjendet në territorin e saj e që kërkon ndihmë prej saj ose në ndonjë mënyrë tjetër mësohet apo shihet se ka nevojë për shërbime sociale dhe familjare. Gjithashtu, QPS-të janë të mandatuara të ofrojnë shërbime sociale dhe familjare në emër të MPMS-së.

Instituti për Politika Sociale Instituti është përgjegjës për promovimin dhe zhvillimin e njohurive, shkathtësive dhe standardeve profesionale në fushën e shërbimeve sociale dhe familjare. Mbi këtë bazë bën hulumtime në fushën e shërbimeve sociale dhe familjare dhe nxitë ngritjen profesionale të kuadrit nëpërmjet trajnimit, ofrimit të këshillimit prej ekspertëve për profesionistët dhe publikimit të doracakëve përkatës, raporteve për rezultatet e kërkimeve dhe materialeve promovuese. Në kuadër të IPS funksionon Njësia për Parandalimin dhe Eliminimin e Punës së Fëmijëve, e që njëherit është pikë kontakti për të gjitha aktivitetet që adresojnë punën e fëmijëve brenda MPMS, në nivel qëndrorë dhe lokal.



Departamentit i Familjeve të Dëshmorëve, Invalidëve të Luftës dhe Familjeve të Viktimave Civile (DFDIL) Fushëveprimi i përgjithshëm i DFDIL-it, përveç tjerash është krijimi dhe zhvillimi i politikave aktive për një mirëqenie më të mirë ndaj familjeve të dëshmorëve, përfshirë fëmijët, dhe personave të tjerë që kanë kontribuar në luftën e fundit. Në mënyrë që të përfitojnë të gjitha familjet e dëshmorëve dhe personat e tjerë që kanë kontribuar dhe u viktimizuan në luftën e fundit, nga shërbimet shtetërore për ngritjen e mirëqenies DFDIL-it, koordinon veprimet edhe në nivel lokal.

Trupa Ekzekutive e Inspektoratit të Punës Inspektorët e punës kontrollojnë në mënyrë unike të gjitha vendet e punës që kanë të bëjnë me marrëdhënien e punës, kushtet e punës, mbrojtjen në punë dhe ruajtjen e shëndetit të punëtorëve në përgjithësi, të përcaktuara në bazë dispozitave ligjore që janë në fuqi në Republikën e Kosovës, e që aplikohen në fushën e punës, punësimit, sigurisë në punë, mbrojtjes së shëndetit të punësuarve dhe ambientit të punës.

Ne pika të shkurtra, mandati i Qendrave për Punë Sociale është:

- institucion publik profesional i nivelit komunal kompetent për mbrojtjen e qytetarëve në nevojë sociale: fëmijë dhe të rritur
- bën mbajtjen në nivel standardet e praktikës profesionale dhe ushtrimin e kompetencave dhe përgjegjësit të përcaktuara me ligj
- duhet të bëjë vlerësime profesionale për secilin individ ose familje në nevojë për ndihmë, që jeton ose gjendet në territorin komunës
- ofron shërbime të përshtatshme, përfshirë përkrahjen nga familja (nëse ka) dhe resurse të përshtatshme në dispozicion
- Kompetenca e organit të kujdestarisë/OK - t'ia besoj të miturin shtëpisë së fëmijëve ose ndonjë organizate tjetër për ruajtje dhe edukim ose që ta vendos për një kohë të gjatë për mjekim në institucion shëndetësor
- Obligim i institucionit ose organizatës që ta informojë kujdestarin dhe OK për të gjitha çështjet e rëndësishme për jetën, shëndetin, edukimin dhe arsimimin e të kujdesurit
- Mënyra e vendosjes dhe ofrimit të përkujdesjes e rregulluar me

Doracakun për Format alternative të mbrojtjes.

**Ministria e Drejtësisë** **Ministria e Drejtësisë**, përveç tjerash ka për mandat i cili korrespondon me mbrojtjen e të drejtave të fëmijëve të: zhvillon politikën brenda fushës së saj të përgjegjësisë, mundëson përgatitjen dhe zbatimin e legjislacionit në fushën e drejtësisë; ushtron mbikëqyrje ekzekutive mbi tërë shërbimin korrektues dhe shërbimin sprovues, në lidhje me zbatimin e drejtësisë për të mitur; ushtron përgjegjësitë për çështjet që kanë të bëjnë me mjekësinë ligjore; ofron ndihmë për viktimat e krimit, veçanërisht për viktimat e dhunës familjare dhe trafikimit të qenieve njerëzore. Një ndër synimet e Ministrisë së Drejtësisë është sigurimi i një sistemi gjyqësor e prokurorial efikas, të pavarur, të paanshëm, para së cilit të gjithë qytetarët do të ndihen të sigurt dhe të barabartë, si dhe trajtimi sa më profesional dhe në përputhje me standardet ndërkombëtare të të paraburgosurve, të dënuarve, viktimave të dhunës, viktimave të trafikimit dhe dëshmitarëve të mbrojtur. Për të lehtësuar dhe mundësuar përmbushjen e mandatit që korrespondon me të drejtat e fëmijëve, MD veprojnë këto departamente:

a. Shërbimi Korrektues i Kosovës - SHKK-ja është përgjegjës për administrimin e të miturëve të burgosur, paraburgosur, dënuarve, në përputhje me legjislacionin vendor dhe konventat Europiane. Të kontribuojë në reduktimin e nivelit të recidivizmit duke ofruar programe për rehabilitim dhe riintegrim të suksesshëm të burgosurëve. Krijimi i kushteve për arsim të obligueshëm fillor dhe profesional, si dhe ofrimi i programeve adekuate për aftësim profesional. Nën përgjegjësinë e SHKK-ës është menaxhimi i institucioneve të niveleve të ndryshme të sigurisë, përfshirë Qendrën Korrektuese të Lipjanit dhe Qendrat e Paraburgimit.

b. Shërbimi Sprovues i Kosovës, përkatësisht Shërbimi për Ekzekutimin e Dënimeve Alternative dhe Re integrimin Shoqëror të personave të dënuar, është përgjegjës për Ekzekutimin e dënimeve dhe masave alternative, mbikëqyrjen, risocializimin, re integrimin dhe rehabilitimin e të gjithë personave që kanë kryer vepra penale të ndëshkueshme sipas ligjeve të aplikueshme në Republikën e Kosovës. Në kuadër të SHSK veprojnë dy divizione:

Divizioni për Lirim me Kusht

Divizioni për Ekzekutimin e Masave dhe Dënimeve Alternative.

Përveç përmbushjes së obligimeve ligjore dhe fushëveprimit të MD, Shërbimi Sprovues në relacion me ofrimin e drejtësisë për fëmijë dhe mbrojtjen e tyre, kryesisht ka këtë mandat:

Përgatitjen e anketës sociale dhe raportet parandëshkuese për kryerësit e veprave penale; Ekzekutimin e masave dhe dënimeve alternative për persona të mitur;

Përpilimin e planeve dhe programeve individuale të mbikëqyrjes për ri socializmin dhe ri integrimin në shoqëri të personave të mitur;

Mbikëqyrjen dhe ndihmën e personave të mitur të dënuar me masa të diversitetit, masa edukative dhe dënime alternative, të dënuarve gjatë mbajtjes së dënimeve alternative; dhe kryerësve të varur nga droga ose alkooli të cilët i nënshtrohen trajtimit të detyrueshëm rehabilitues i cili mbahet në liri. Në

**Ministria e Shëndetësisë** në kuadër të Qeverisë së Republikës së Kosovës, përveç zbatimit të legjisllacionit vendor në sferën e shëndetësisë në kontekst me zbatimin e të drejtave të fëmijëve, ka për mandate hartimin dhe zbatimin e politikave jodiskriminuese dhe të përgjegjshme të kujdesit shëndetësorë. Po ashtu, ky institucion duke i respektuar standardet e rëndësishme ndërkombëtare, vendos mbi normat dhe kriteret në sektorin e shëndetësisë, duke përfshirë edhe inspektimin dhe shërbime të tjera sipas nevojës; ndjek situatën e shëndetësisë dhe zbaton masat adekuate për të parandaluar dhe kontrolluar problemet në lëmin e shëndetësisë; përkrah pjesëmarrjen, iniciativat dhe zhvillimin e aktiviteteve të komunitetit, që ndërlidhen me shëndetin; merr pjesë në zhvillimin dhe zbatimin e fushatës për informim publik dhe të projekteve të tjera promovuese për të rritur vetëdijesimin publik dhe pajtueshmërinë me standardet shëndetësore; inkurajon zhvillimin e arsimit shëndetësor për ngritjen e njohurive dhe kompetencave në lëmin e shëndetësisë. Llojet e institucioneve publike shëndetësore organizohen në institucione të nivelit parësor, dytësor dhe tretësor të kujdesit shëndetësor

Ministria e Arsimit, Shkencës dhe Teknologjisë MASHT punon dhe përkrahë zhvillimin e një sistem arsimor jodiskriminues, ku respektohet e drejta e çdo personi për shkollim dhe ku mundësitë për mësim cilësor janë në dispozicion të të gjithëve, përfshirë fëmijët. Përveç hartimit dhe zbatimit të legjislacionit dhe politikave arsimore dhe me qëllim të krijimit të ambientit për zbatimin e plotë të të drejtave të fëmijëve, ka edhe këto kompetenca: përpilimin, zbatimin dhe mbikëqyrjen e formave të drejta dhe efektive të menaxhimit të shkollave; përmirëson cilësinë, lidhjen dhe efikasitetin e arsimit në të gjitha nivelet; ndihmon zhvillimin dhe përmirësimin cilësor të sistemit arsimor dhe shpërndarjen e shërbimeve arsimore; përkrah hulumtimin lidhur me zhvillimin social, ekonomik, shkencor, teknologjik dhe kulturor të Kosovës; ofron arsim joformal; ndërton një sistem gjithëpërfshirës bibliotekar, i cili do të përfshijë bibliotekat e posaçme dhe ato shkollore; përkrah një politikë gjithëpërfshirëse për integrimin e fëmijëve me aftësi të kufizuar në sistemit e arsimit; përkrah pjesëmarrjen e prindërve dhe të komunave në aktivitetet arsimore dhe në format përkatëse të bashkëpjesëmarrjes shkollë - komunitet në nivelin lokal.

a. Departamenti i Administratës së Arsimit Parauniversitar Departamenti i Administratës së Arsimit Parauniversitar, kryesisht ka për mandat udhëheqjen e politikave të arsimit parauniversitar, duke: Përcjell realizimin e reformave arsimore duke propozuar qasje të reja për implementimin saj; Harton Rrjetin shkollor për të gjitha nivelet e arsimit parauniversitar; Përgatitë themelimin e Institucioneve arsimore në harmoni me ligjet në fuqi dhe Rrjetin shkollor; Identifikon nevojat e infrastrukturës ligjore për institucionet arsimore; Përcakton dokumentacionin shkollor bazuar në ligj dhe kurikulin arsimor; Shqyrton dhe përcakton barasvlerën dhe nostrifikimin e dokumentacionit të marrë jashtë Kosovë; Përcakton kalendarin për vitin mësimor; Përcjell realizimin e të drejtave të barabarta, për shkollim, për të gjitha komunitetet për mësim cilësor në gjithën amtare; Krijon kushte për shkollimin e nxënësve të arsimit të përgjithshëm, arsimit profesional dhe të arsimit të nxënësve me nevoja të veçanta; Bën promovimin e shëndetit në shkolla. Mandatin e saj DAAP arrinë ta realizoj nëpërmjet divizioneve të saj, e që janë: të arsimit të përgjithshëm, arsimit profesional dhe të komuniteteve.

b. Divizioni i arsimit të përgjithshëm Merret me aspektet pedagogjike të arsimit

të përgjithshëm që nga edukimi parashkollor e deri te shkolla e mesme e lartë (në veçanti me gjimnazet), pastaj me arsimin special për fëmijët me nevoja të veçanta, me shkollat promovuese të shëndetit, me çështjet e administratës së përgjithshme, etj. Sektori për edukimin parashkollor; Sektori për arsimin fillor; Sektori për arsimin e mesëm të ulët; Sektori për arsimin e mesëm të lartë; Sektori për arsimin me nevoja të veçanta. Sektori i edukimit parashkollor ka për mandat kompletimin e nivelit parashkollor me dokumentacion relevant Sektori i arsimit fillor (1-5), ka për mandat ngritjen e cilësisë së arsimimit në nivelin e parë të shkollimit (klasa 1-5), si dhe zbatimin i praktikave të reja, më të mira, për mësimdhënie dhe për punë në shkolla. Sektori i arsimit të mesëm të ulët (6-9), kanë për mandat që të sigurojnë që shkollat të ofrojnë mësimdhënie cilësore, të jenë më të sigurta dhe më funksionale. Sektori i arsimit të mesëm të lartë, ka për qëllim ta përmirësojë nivelin e cilësisë në shkollat e mesme të larta, të cilat do të përcillen edhe me tekste dhe literaturë profesionale, si dhe mjete të tjera didaktike sipas standardeve. Të sigurisë të gjitha shkollat të kenë qasje në rrjetin elektronik si dhe lidhje të ngushtë me zhvillimin ekonomik të vendit. Sektori i arsimit special është të ndikoj në përmirësimin e edukimit dhe arsimimit të fëmijëve me nevoja të veçanta në Republikën e Kosovës.

c. Divizioni i arsimit profesional Arsimi profesional është pjesë e sistemit të arsimit dhe aftësimin profesional që u mundëson nxënësve që kanë mbaruar shkollimin e obliguar, inkuadrimit në një shoqëri demokratike si qytetarë aktivë e kompetentë, si dhe për t'u angazhuar me sukses në tregun e punës gjithnjë në ndryshim. Puna kryesore e sektorit është të udhëheqë të gjitha punët administrative, si: planifikim dhe përgatitje të propozim rregulloreve për funksionimin e shkollave profesionale në përputhje me Ligjin e arsimit të mesëm, Ligjin e arsimit dhe aftësimin profesional, identifikimin e nevojave, mbledhjen e të dhënave për shkollat dhe propozimin e masave të ndryshme për avansimin e arsimit profesional.

d. Divizioni për komunitete Ky divizion merret me çështjet e arsimimit të gjitha komuniteteve, të cilët jetojnë në Kosovë, përfshirë: romët, ashkalinjtë, egjiptianët, goranët, boshnjakët, turqit, serbët. Qëllimi i sektorit është të sigurohet arsimimi cilësor në të gjitha nivelet në gjuhët amëtare të

komuniteteve. Arsimimi i komuniteteve ka për qëllim gjithë përfshirjen dhe integrimin e nxënësve në të gjitha nivelet e arsimit. Njësia e bashkërendimit prindër-arsimtarë Kjo njësi synon ndërtimin e një partneriteti shkollë-familje, duke përfshirë prindërit në çështjet e shkollës. Njësia e Bashkërendimit Prindër -Arsimtarë është pjesë përbërëse e sektorit Koordinimi me Komunitat, synon themelimin e Këshillit të Prindërve të Shkollës, në çdo shkollë me qëllim të ofrimit të mundësisë që në mënyrë sa më demokratike të përfaqësohen interesat e nxënësve, prindërve dhe arsimtarëve, të punojnë së bashku për të përmirësuar cilësinë në arsim. Këshilli i Prindërve ka për mandat krijimin e shkollave më miqësore për fëmijë dhe më atraktive për mësime nxënëse. Funkcioni i KPAK është të përfaqësojë interesat e prindërve, t'i përcjellë në MASHT mendimet e prindërve për çdo aspekt të arsimit fillor dhe të mesëm të Kosovës si dhe të jetë kanali kryesor i komunikimit midis MASHT dhe prindërve.

**Ministria e Punëve të Brendshme MPB** është institucion që ka për mandat koordinon aktivitetet brenda Qeverisë së Republikës së Kosovës duke synuar ofrimin e sigurisë publike për të gjithë qytetarët. Përveç përgjegjësisë të tjera, dhe me qëllim të realizimit të të drejtave të fëmijëve, MPB ka këto kompetenca: kontrollon dhe mbikëqyrë kufijtë shtetëror, në përputhje me legjislacionin në fuqi; harton dhe mbikëqyr zbatimin e politikës dhe legjislacionit në fushën e armëve dhe eksplozivëve për përdorim civil, si dhe shërbimeve të sigurisë private; administron dhe mirëmban regjistrin qendror civil dhe të bazës së të dhënave, lëshimin e të gjitha dokumenteve personale të gjendjes civile, regjistrimit civil; realizimin e të drejtave të azilantëve; punonë për të parandaluar, reaguat, menaxhuar dhe sanuar pasojat e rasteve emergjente; përmes Inspektoratit Policor të Kosovës, mbikëqyr punën e punonjësve të policisë. Ministria e Punëve të Brendshme, e cila nëpërmjet Sektorit Kundër Trafikimit me Qeniet Njerëzore, punon në parandalimin e krimit dhe veprave të trafikimit, mbrojtjen viktimave të trafikimit dhe ndjekjen e kryerësve të krimit dhe prezantimin e fakteve në prokurori.

a. Departamenti për Siguri Publike Departamenti për Siguri Publike kryesisht ka për mandatë të realizojë të gjitha veprimet e nevojshme për të siguruar

rendin publik dhe sigurinë e brendshme. Mandatin e saj e realizon duke monitoruar situatën në aspektin strategjikë, ofrimin e rekomandimeve tek institucionet përgjegjëse, realizimin e hulumtimeve të rregullta mbi kërcënimet ndaj sigurisë publike dhe vlerëson opinionin publik mbi besueshmërinë ndaj kërcënimeve të sigurisë. Departamenti për Siguri Publike mandatin e saj e realizon me anë të këtyre divizioneve: Armë dhe Eksploziv; Sigurinë e Aviacionit Civil; Kompanitë Private të Sigurisë dhe për Siguri në Bashkësi.

b. Departamenti për Shtetësi, Azil dhe Migracion Në relacion me ofrimin e mbrojtjes së të drejtave për fëmijë DSHAM kryesisht ka këto përgjegjësi: grumbullimin e të gjitha të dhënave, çoftë statistikore, informata apo rrjedhën e informatave për Shtetësinë, Azilin dhe Migracionin. Gjithashtu Shqyrton dhe vendos për aplikimet për shtetësi, aplikimet për azil; mbikëqyr dhe menaxhon strehimin e azilkërkuesve; si dhe Harton politikat, strategjitë, planet e veprimit dhe siguron koordinim të ngushtë me institucionet dhe organizatat tjera përkatëse.

c. Agjencia për Regjistrim Civil Agjencia për Regjistrim Civil, përveç që vepron në përputhje me legjislacionin në fuqi dhe politikat në kuadër të MPB, synon ofrimin e shërbimeve sa më cilësore dhe profesionale për qytetar në fushën e gjendjes civile. Agjencia për Regjistrim Civil (ARC) do të veprojë në përputhje me misionin e MPB-së, dokumentet strategjike të saj dhe vizionin e qartë për ndërtimin, ruajtjen, ngritjen e sigurisë së përgjithshme dhe ofrimin e shërbimeve sa më cilësore, profesionale dhe të avancuara, të bazuara në standardet dhe vlerat demokratike për paanshmëri dhe profesionalizëm. Në relacion me të drejtat e fëmijëve ka për mandate ofrimin e të gjitha shërbimeve për qytetarët dhe banorët të cilët aplikojnë për karta identiteti, pasaporta, nënshtetësi, dokumente të gjendjes civile. Në kuadër të ARC vepron edhe departamenti për regjistrim dhe gjendjen civile dhe departamenti për prodhimin e dokumenteve.

7. Ministria e Kulturës, Rinisë dhe Sportit Ministria e Kulturës, Rinisë dhe Sportit nën kompetencat e saj ka mbrojtjen, ruajtjen dhe promovimin e trashëgimisë kulturore. Gjithashtu, përkrahë sektorin e rinisë, politikën rinore, organizatat, klubet, qendrat dhe organizatat e përfaqësimit, duke përfshirë

zhvillimin e programeve për shqyrtimin e nevojave të të rinjve dhe përkrahjen e tyre dhe në veçanti identifikimin dhe përkrahjen e grupeve specifike të rrezikuara; krijon programe për ngritjen e cilësisë së produkteve dhe shërbimeve kulturore, rinore dhe sportive dhe ndihmon në vendosjen e kontakteve, shkëmbimin e informatave dhe përvojave më të mira; Harton politika me qëllim të ngritjes së nivelit të komunikimit kulturor dhe bashkëjetesës mes kulturave të të gjitha komuniteteve etnike, fetare apo gjuhësore në vend, duke përfshirë edhe promovimin kulturor dhe bashkëpunimin në fushën e kulturës, rinisë dhe sportit jashtë vendit.

a. Departamenti i Rinisë Departamenti i Rinisë ka për qëllim që t'ju ndihmoj të rinjve në promovimin e talentit dhe vlerave të tyre në nivel kombëtar dhe ndërkombëtar si dhe fuqizimin e Organizatave Jo Qeveritare Rinore në Kosovë. Departamenti i Rinisë synonë fuqizimin e të rinjve dhe krijimin e mjedisit përkrahës për zhvillimin shoqëror dhe personal të tyre, krijimin e mundësive për promovim, zhvillim dhe pjesëmarrje të të rinjve në jetën aktive shoqërore si dhe ofrimin e shërbimeve të barabarta për të rinjtë, që mundësojnë zhvillimin e shkathtësive jetësore dhe vlerave shoqërore, duke respektuar veçoritë individuale tek të rinjtë. Përveç tjerash Departamenti i Rinisë ka për mandat identifikimin e grupe të caktuara, përfshirë rininë jashtëshkollore, rininë analfabete, rininë e papunësuar, rininë refugjate të kthyer, rininë e droguar, rininë e familjeve me një prind, rininë prindër të vetëm, rininë me qasje të pakët ndaj objekteve sanitare dhe shëndetësore ose në rrezik nga marrja e ndonjë sëmundjeje dhe rininë e pakicave, si dhe zhvillon programe për t'u marrë me nevojat e tyre. Gjithashtu, bashkërendon dhe bashkëpunon punën e saj me të gjithë aktorët relevant, për të përparuar zhvillimin dhe zbatimin koherent dhe efikas të politikave dhe resurseve të rinisë në çështjet që kanë të bëjnë me: trajnimin për vende të punës dhe për shërbime zanatore, sportin dhe veprimtaritë rekretative, programet e këmbimit rajonal dhe ndërkombëtar, shëndetësinë dhe arsimin, drejtësinë për të miturit, si dhe përparimin e të drejtave të rinisë dhe të njeriut. Po ashtu, nxit formimin e klubeve, grupeve dhe shoqatave rinore në tërë Kosovën dhe në rajon si dhe mbikëqyr zhvillimin e tyre duke inkurajuar vendimmarrjen demokratike dhe pjesëmarrjen dhe konsultimin e gjerë në të gjitha nivelet siç janë klubet,



grupet dhe shoqatat.

b. Departamenti i Kulturës Në kuadër të mandatit të saj, Departamenti i Kulturës harton dhe zbaton politika zhvillimore në fushën e trashëgimisë kulturore, artit skenik-muzikor, arteve pamore, botimeve dhe bibliotekarinë në përputhje me kriteret Europiane, duke synuar riafirmimin e identitetit kulturorë të Republikës së Kosovës në vende ndërkombëtare. Përveç tjerash nxitë dhe motivon krijimtarinë artistike të brezit të ri, me qëllim të përfshirjes së tyre në jetën artistike kulturore të Kosovës dhe më gjerë. Në kuadër të Departamentit të Kulturës veprojnë këto divizione: Arteve skenike-muzikore, pamore dhe promovimit.

c. Departamenti i Sportit Ky departament, kryesisht ka për mandat hartimin e politikave sportive dhe zbatimin e tyre, të cilat konsistojnë në përgatitjen, vlerësimin dhe aprovimin e politikave programore të sportit, të cilat kanë të bëjnë me masivizimin e sportit dhe zhvillimin kualitativ të tij. Përkrahë funksionimin e aktiviteteve dhe infrastrukturës në sport, duke përfshirë programet për mbështetje të sportistëve, specialistëve të sportit, klubeve dhe federatave në ngritje të përfshirjes, cilësisë dhe pjesëmarrjes në aktivitete dhe gara sportive në vend dhe ato ndërkombëtare.

d. Departamenti i Trashëgimisë Krijon politikën kulturore dhe planet e veprimit dhe zbaton legjislacionin për të përkrahur sektorin e kulturës, duke përfshirë programet për mbrojtjen, ruajtjen dhe promovimin e trashëgimisë kulturore, avancimin e lidhjeve kulturore dhe shkëmbimeve ndërkulturore të artistëve, shoqatave kulturore dhe institucioneve të kulturës.

**Ministria e Administrimit të Pushtetit Lokal.** Në linjë me realizimin e të drejtave të fëmijëve, MAPL përveç tjerash është përgjegjëse të kontribuojë në respektimin dhe promovimin e të drejtave të njeriut dhe të koordinoj punën në këtë drejtim me të gjitha Komunat në Republikën e Kosovës.

TRUPAT QEVERTARE QË PUNOJNË NË REALIZIMIN E TË DREJTAVE TË FËMIJËVE

Me “Trup Qeveritarë” nënkuptohen mekanizmi i themeluar nga Qeveria për

shqyrtimin ose vendosjen e çështjeve të cilat Qeveria i vendos në kompetencë të trupës qeveritare. Gjithashtu, Qeveria përcakton përbërjen dhe mandatin e një trupe qeveritare në vendim për themelimin e atij trupi. Në aspektin e krijimit të Trupave Qeveritare, e që kryesisht kanë për mandat të punojnë në realizimin e plotë të të drejtave të fëmijëve, janë bërë përparime mjaft domethënëse duke bërë të mundur në këtë mënyrë themelimin e disa mekanizmave të tillë, si:

- a. Komiteti Ndërmintor për të Drejtat e Fëmijëve
- b. Komiteti për Parandalimin dhe Eliminimin e Punëve të Rënda dhe të Rrezikshme të Fëmijëve
- c. Këshillin Nacional për Persona me Aftësi të Kufizuara
- d. Këshilli për Mbrojtje dhe Drejtësi për Fëmijë
- e. Komiteti Kosovar për Shëndetin e Nënës dhe Fëmijës
- f. Koordinatorin Nacional Kundër Trafikimit me Qenie Njerëzore-Grupi Punues
- g. Komitetet Lokale të Veprimit për Monitorimin e Punës së Fëmijëve
- h. Grupet Punuese Qeveritare

Komiteti Ndërmintor për të Drejtat e Fëmijëve. Ky komitet, njëherit është trupi më i lartë qeveritarë përbrenda Qeverisë së Republikës së Kosovës lidhur me realizimin e të drejtave të fëmijëve në Kosovë. Komiteti ndërmintorë për të Drejtat e Fëmijëve, kryesohet nga Kryeministri i Republikës së Kosovës dhe në përbërjen e tij përfaqësohet në nivel Ministrash, nga ministrat më relevante. Gjithashtu, Shefi i Zyrës së UNICEF-it në Kosovë dhe përfaqësues të shoqërisë civile janë pjesë përbërëse e Komitetit. Zyra e Kryeministrit / Zyra për Qeverisje të Mirë, shërben si Sekretariat i Komitetit. Ndërsa, Komiteti parashihet të takohet dy herë në vit. Përgjegjësit e Komiteti Ndërmintor për të Drejtat e Fëmijëve janë: të analizojnë dhe mban të informuar anëtarët për aktivitetet ekzistuese, rregulloret, ligjet, programet e ministrive dhe të organizmave tjerë në lidhje me çështjen e të drejtave të fëmijëve në Kosovë; të ndan të dhënat, raportet dhe dokumente

të tjera relevante me fushën e të drejtave të fëmijëve në Kosovë; mban lidhje dhe bashkëpunon ngushtë me organizatat që përfaqësojnë fëmijët dhe me faktorë të tjerë relevantë me fushën e të drejtave të fëmijëve në Kosovë; analizon rregullisht dhe çështjet që kanë të bëjnë me zhvillimin e fëmijëve dhe të të drejtave të tyre; përpilon raportin vjetor mbi situatën e të drejtave të fëmijëve në Kosovë; definon prioritetet dhe masat e nevojshme që duhen ndërmarrë për përmirësimin e situatës së tanishme në lidhje me të drejtat e fëmijëve në secilën Ministri; lehtëson dhe monitoron implementimin e politikave, programeve dhe masave të tjera të aprovuara që kanë të bëjnë me të drejtat e fëmijëve; krijon grupe punuese të nevojshme për çështje të drejtave të fëmijëve; ndihmon në zhvillimin dhe zbatimin e fushatave të informimit publik dhe të projekteve tjera promovuese për të rritur ndërgjegjësimin mbi standardet e të drejtave të fëmijëve. Po ashtu janë përgjegjës për komunikimin dhe ndarjen e informatave brenda ministrive dhe të sigurohen se këshillat, rekomandimet dhe masat e tjera të dalura nga Komiteti Ndërmintros, kanë arritur në ministrinë apo zyrën përkatëse.

Komiteti për Parandalimin dhe Eliminimin e Punëve të Rënda dhe të Rrezikshme të Fëmijëve Për të vendosur politikat dhe prioritetet programore për mbrojtjen e fëmijëve nga format e rrezikshme të punës, për të monitoruar situatën e punës së fëmijëve në vend, si dhe për të koordinuar të gjitha veprimet e nevojshme. Ky trup qeveritar udhëhiqet nga Ministri i MPMS dhe në përbërjen e tij ka përfaqësues të institucioneve me relevante qeveritare dhe jo qeveritare, e të cilat përfaqësohen në nivel të drejtorëve ose udhëheqësve të divizioneve. Ndërsa, Njësia e Punës në kuadër të ISP-së në MPMS, e luan rolin e Sekretariatit të Komitetit. Ky organ vendimmarrës parashihet të takohet së paku katër herë në vit. Funkcionet kryesore të Komitetit janë: të jap udhëzime mbi politikat dhe programet që synojnë eliminimin e punës së fëmijëve dhe të përcaktojë fushat prioritare për programe të drejtpërdrejta që synojnë tërheqjen e menjëhershme të fëmijëve të përfshirë në format më të rrezikshme të punës dhe parandalimin e përfshirjes së fëmijëve të rrezikuar; të monitorojë situatën e punës së fëmijëve në vend dhe të koordinojë veprimet kundër saj; të bëjë propozime për të

modifikuar dhe kompletuar legjislacionin mbi eliminimin e formave të rrezikshme të punës së fëmijëve; të kërkojë përkrahjen e nevojshme nga institucionet ndërkombëtare në Kosovë, e në veçanti nga Programi Ndërkombëtar i ONP-së mbi Eliminimin e Punës së Fëmijëve dhe të sigurojë integrimin e intervenimeve të suksesshme në angazhimet qeveritare për luftimin e punës së fëmijëve; të përkrahë Qeverinë e Kosovës dhe institucionet tjera përgjegjëse në përmbushjen e objektivave dhe caqeve të përcaktuara me standardet dhe konventat e BE-së dhe ONP-së në fushën e punës së fëmijëve.

Këshillin Nacional për Persona me Aftësi të Kufizuara Më qëllim të përfaqësimit të interesave të personave me aftësi të kufizuara dhe ofrimit të hapësirës së tyre për të qenë pjesë aktive në procesin e hartimit të politikave që ndikojnë në përmirësimin dhe ngritjen e cilësisë jetësor të të personave me aftësi të kufizuara, Qeveria e Republikës së Kosovës në mbledhjen e mbajtur më 07.09.20011 mori. Një rol të rëndësishëm në përbërjen e Këshillit e zënë edhe tetë përfaqësues të shoqërisë civile, që në mënyrë aktive punojnë për realizimin e plotë të të drejtave të personave me aftësi të kufizuara. Ndërsa, ZQM/ZQM shërben si Sekretariat i Këshillit. Kjo trup qeveritare ka për mandat të punoj në krijimin e mundësive të barabarta, pjesëmarrjen e plotë dhe integrimin social të personave me aftësi të kufizuar. Të siguroj që nevojat dhe interesat e personave me aftësi të kufizuar të merren gjithmonë parasysh kur Qeveria sjell vendime për diç që ndikon në gjendjen e personave me aftësi të kufizuar. Rekomandimet e Këshillit Nacional mbi Aftësinë e Kufizuar, do të jenë në pajtueshmëri me Rregullat Standarde të Kombeve të Bashkuara mbi Barazimin e Mundësive për Personat me Aftësi të Kufizuar dhe instrumentet tjera ndërkombëtare mbi të drejtat e njeriut.

Këshilli për Mbrojtje dhe Drejtësi për Fëmijë Qeveria e Republikës së Kosovës, me qëllim të definimit të prioriteteve dhe masave të nevojshme që duhen ndërmarrë për përmirësimin e situatës së tanishme në lidhje me Mbrojtjen dhe Drejtësinë e Fëmijëve. Këshilli në pajtim me Vendimin mbi themelimin përbëhet nga: Kryesuesi, dy Zëvendës Kryesues, tetëmbëdhjetë (18) anëtarë; Në cilësinë e anëtarëve Këshilltar të jashtëm janë dy anëtarë që

vijnë nga Zyra e UNICEF-it në Kosovë , ndërsa në cilësinë e anëtarëve Vëzhgues janë katër anëtarë që përfaqësojnë institucionet e pavarura të Republikës së Kosovës siç është Avokati i Popullit dhe OJQ-të si Koalicioni i OJQ-ve për mbrojtjen e Fëmijëve dhe Terres des Homes. ZQM/ZQM shërbenë si sekretariat i Këshillit, për të koordinuar, monitoruar, zhvilluar dhe mirëmbajtur aktivitetet e nevojshme për punën e Këshillit. Mandati dhe përgjegjësitë e Këshillit, janë si në vijim: Definimi i prioriteteve dhe masave të nevojshme që duhet ndërmarrë për përmirësimin e situatës së tanishme në lidhje me mbrojtjen dhe drejtësinë për fëmijë; Lehtësimi dhe monitorimi i zbatimit të politikave, programeve dhe masave të tjera të aprovuara që kanë të bëjnë me mbrojtjen dhe drejtësinë për fëmijë në nivelin qendror dhe lokal; Analizimi dhe Vlerësimi i zbatimit të politikave zhvillimore dhe legjisllacionit që kanë të bëjnë me përmirësimin e gjendjes së mbrojtjes dhe drejtësisë për fëmijë.

Komiteti Kosovar për Shëndetin e Nënës dhe Fëmijës Bazuar në indikatorët e lartë të mortalitetit për nëna dhe fëmijë, si dhe nisur nga pakënaqësitë e shumta në lëmin e shëndetit të nënave dhe fëmijëve në Kosovë. Ky trup qeveritar, multidisiplinar, është i përbërë nga ekspertë të fushave relevante në lëmine e shëndetësisë. Gjithashtu në përbërjen e tij ka përfaqësues të OBSH-së, UNICEF-it dhe UNFPA-së. Bashkërenditjen e përpjekjeve dhe resurseve relevante profesionale dhe shkencore me qëllim të përmirësimit të zvogëlimit të mortalitetit tek kjo kategori e popullatës, si dhe rritjes së cilësisë së shërbimeve shëndetësore karshi fëmijëve dhe nënave.

Koordinatori Nacional Kundër Trafikimit me Qenie Njerëzore. Mandati i Koordinatorit është të koordinojë, bashkërendojë, monitorojë dhe të raportojë mbi implementimin e politikave kundër trafikimit me qenie njerëzore, si dhe të kryesoje takimet me grupet punuese ndërministrorë. Ndërsa, Grupi Punues përbëhet nga përfaqësues të institucioneve më relevante dhe kryesisht kanë për mandat të koordinojë zbatimin e politikave, të monitorojë dhe raportojë mbi të arriturat, në institucionet që përfaqësojnë.

Komitetet Lokale të Veprimit për Monitorimin e Punës së Fëmijëve Në të

gjitha Komuna e Republikës së Kosovës janë të themeluar Komiteti Lokal i Veprimit. Komitetet përbëhen nga zyrtarë të lartë të autoriteteve lokale, përfaqësues të bashkimit të sindikatave të pavarura të Kosovës si dhe përfaqësues të OJQ-ve vendore që punojnë për mbrojtjen e fëmijëve. Kjo trup institucionale udhëhiqet nga Drejtori i Drejtoratit për Shëndetësi dhe Mirëqenie Sociale në komunat përkatëse. Mandati i Komiteteve është që të zbatojnë drejtpërdrejt politikat dhe prioritetet programore për mbrojtjen e fëmijëve nga format e rrezikshme të punës, të monitorojnë situatën e punës së fëmijëve, si dhe të ofrojnë rekomandime për përmirësimin e politikave që kanë të bëjnë me Eliminimin e Punës së Fëmijëve.

Grupet Punuese Qeveritare Në Institucionet e Republikës së Kosovës janë të krijuara “Grupe Punuese” të ndryshme që merren me lehtësimin e realizimit të të drejtave të fëmijëve, si: Grupi Punues për Monitorimin e Zbatimit të Strategjisë dhe Planit Nacional të Veprimit për të Drejtat e Fëmijëve; Grupi Punues për hartimin e Raportit Shtetëror mbi Zbatimin e Konventës për të Drejtat e fëmijës në Republikën e Kosovës dhe përmbushja e obligimeve që adresohen nga Komiteti për të Drejtat e Fëmijëve pranë OKB-së; Grupi Punues për trajtimin e Braktisjes së Shkollës nga Nxënësit; Grupi Punues për Monitorimin dhe raportimin mbi zbatimin e Strategjisë dhe Planit të Veprimit; Grupi Punues mbi rishikimin e listës për Format e Rrezikshme të Punës së Fëmijëve; Grupit këshillues për edukimin parashkollor.

Gjithashtu është e involvuar edhe shoqëria civile e cila ofron shërbime direkte ose indirekte në bazë të statusit të njohur nga Ministria e administratë Publike.

- Situation of the NGO scene: e.g. Is safeguarding a new topic? Is the topic of safeguarding already an issue? Are there any campaigns/lobbying ongoing relevant to safeguarding?;

Në Kosovë sic e përmendëm dhe në pyetjet më sipër përdoret më shumë termi mbrojtje, që nënkupton, strehim, rehabilitim, kujdes tërësorë ruajtje të dinjitetit, dhe personalitetit të individit. Kjo nuk është një tematikë e re për Kosovën, madje është aplikuar që para ndërtimit të shtetit të ri. Shërbimet

sociale kanë dhënë gjithmonë mbrojtjen dhe kujdesin për klientët në nevojë.

Kosova aspirojnë rrugën drejt integritit evropian dhe ajo po punon çdo ditë që të plotësojë kriteret për marrëveshjen e stabilizimit asociativ, kështu që mbrojtja sociale është një ndër pikat ku po punohet realisht. Në këtë pikë motorin kryesor edhe sipas raporteve të ndërkombëtarëve por edhe sipas raportit të progresit po e bën shoqëria civile. Në fushën e mbrojtjes së fëmijëve është formuar një strukturë e qëndrueshme nga Koalicioni i OJQ-ve për Mbrojtjen e Fëmijëve, i cili nuk merret vetëm me avokim por po bën edhe monitorimin e disa shërbimeve kryesore siç është ai në Ministrinë e Drejtësisë për shërbimin sprovues në burgun e Lipjanit. Lidhja e marrëveshjes për bashkëpunim me Zyrën për Qeverisje të mira pranë Kryeministrit, etj.

Për safeguarding nuk ka ndonjë fushatë, por në fushën e mbrojtjes sigurisht që është një punë e qëndrueshme e shoqërisë civile në bashkëpunim me Qendrat për Punë Sociale e cila shkon në koordinim, siç është ai i strehimit familjar, fëmijëve në situatë rruge, fëmijëve me aftësi të kufizuara apo regjistrimit civil të fëmijëve.

Strehimore	Hope and Homes
	SOS Fshatrat e Fëmijëve
	Qendra për mbrojtjen e Viktimave dhe Parandalimin e Trafikimit të Qenieve Njerëzore-Prishtinë
	Qendra për Strehimin e Grave dhe Fëmijëve –Strehimorja në Prizren
	LIRIA- Qendra për Mbrojtjen dhe Rehabilitimin e Grave dhe Fëmijëve –Gjilan
	Shtëpia e Sigurtë –Gjakovë
	Qendra për Mirëqenien e Gruas – Pejë
	Qendra për Mbrojtjen e Grave dhe Fëmijëve –Prishtinë

	Strehimorja e perkoheshme e sigurt (ne kuader te MPMS) strehon dhe trajton VT me rrezik te mesem dhe te larte te rrezikut
	Qendra për Mbrojtjen e Grave dhe Fëmijëve –Mitrovicë

Perndryshe, organizatat kryesore qe punojne jane:  
<http://www.komfkosova.org/stafi/>

Sipas ligjit ne Kosovë:

Neni 8 i ligjit për Shërbime Sociale dhe Familjare

Subjektet juridike, OJQ vendore dhe ndërkombëtare, janë të inkurajuar të ofrojnë shërbime, qoftë me nismën e tyre ose me kontratë në emër të komunës në nivel lokal, ose në emër të Ministrisë në nivel të Kosovës

Duhet regjistrohen (në MAP) dhe të licencohen nga MPMS

T'u përmbahet rregulloreve, udhëzimeve dhe procedurave lidhur me aktivitetet e tyre siç përcaktohen nga MPMS

Mund të hyjnë në kontrata me komuna për ofrimin e shërbimeve të veçanta

Mund ofrojnë shërbime të veçanta në nivel të Repulika e Kosovës, kurse

Ministria mund të japë fonde dhe të ofrojë çfarëdo ndihme tjetër materiale

- Assessment and recommendations (identification of gaps and challenges related to safeguarding and protection of children and vulnerable adults, recommendations on how to ensure local organizations implement safeguarding measures in line with safeguarding requirements).

Ajo që ka nevojë Kosova për momentin është përcaktimi i një vije buxhetore në buxhetin e shtetit dhe më pas në buxhetin e Komunave (ndryshime ne ligjin e Pushtetit Lokal) që u dedikohet vetëm fëmijëve. Pa buxhet të planifikuar nuk mund të flasim për shërbime cilësore në fushën e mbrojtjes së fëmijëve.

Rekomandime për skemat sociale për mbrojtjen e fëmijëve në nevojë kanë qenë të vazhdueshme dhe vazhdojnë të ngelen:



- Rekomandohet që pragu i minimumit të financimit për shërbimet rezidenciale të rritet nga 25,000 EUR në 50,000 EUR në vit. Në përgjigje ndaj numrit të fëmijëve të cilët kanë nevojë për përkujdesje rezidenciale, shumë qendra rezidenciale që janë pjesë e sektorit jo-qeveritar ballafaqohen me sigurimin ekzistencial apo qëndrueshmërinë financiare duke rrezikuar ofrimin e këtyre shërbimeve. Andaj kërkohet që pragu i minimumit të financimit nga MPMS të dyfishohet.
- Rekomandohet të krijohet një vijë buxhetore në kuadër të buxhetit të Kosovës për strehimin rezidencial. Krahas financimit nga MPMS, krijimi i kësaj vijë buxhetore ku do të derdreshin mjete nga të gjitha ministritë e përfshira, do të kishte për qëllim sigurimin e qëndrueshmërisë për ofrimin e shërbimeve kualitative për viktimat e dhunës në familje dhe viktimat e trafikimit në strehim rezidencial dhe njëkohësisht të bëhet subvencionimi i shpenzimeve komunale për strehimoret nga komunat si ujë, rrymë, nxehje dhe mbeturina.
- Investimi financiar në përkrahjen e strehimit të fëmijëve tek të afërmit. Mirëqenia e fëmijës në strehim tek të afërmit mbetet ndër alternativat më të mira dhe njëkohësisht me koston më të ulët për mbrojtjen e fëmijës. Duke pasur parasysh numrin e fëmijëve të strehuar tek të afërmit, përkrahja në vlerë monetare do të ishte investimi në realizimin e interesit më të mirë të tyre.
- Familjet strehuese të cilat janë në pritje për strehimin e fëmijëve pa përkujdes prindëror të financohen me 50% të vlerës bazë. Strehimi familjar përveç se ka kosto më të ulët si formë e mbrojtjes ka dhe vlerën më të madhe për mirëqenien dhe zhvillimin tërësor të fëmijëve në nevojë strehimi. Kjo do të ndikonte dukshëm në rritjen e numrit të familjeve të reja strehuese për fëmijët pa përkujdes prindëror. Njëkohësisht të bëhet përshkallëzimi i shumës së pagesës së strehimit familjar, bazuar në moshën, kategoritë dhe nevojat e fëmijëve.

## MACEDONIA

## Desk research

In Macedonia, the biggest provider of social protection is the Republic, then the municipalities, the City of Skopje and municipalities in Skopje within their jurisdictions.

The Republic of Macedonia establishes the system of social protection and enables its functioning, by providing conditions and measures for social - protective activities.

The system of social protection in Macedonia is based on the principles of:

1. Social justice and solidarity
2. Providing special protection to the weak and unfit for work
3. Special care and protection for the family and children without parents and parental care.

These principles are enshrined in the Constitution of the Republic of Macedonia, but despite them, the amendments to the Law on Social Protection of 2004 proclaim the following principles:

1. Decentralization
2. Deinstitutionalization
3. Pluralism in the field of social protection

Protection of people at risk in R. Macedonia is based on the principles derived from international legal frameworks i.e. international and internal documents, laws, conventions, declarations, regulations, standards and guidelines.

From numerous international documents can be singled out:

- Universal Declaration of Human Rights
- European Social Charter
- Convention on the Rights of the Child
- UN Convention on the Rights of Persons with Disabilities
- UN Convention for the Prevention of Torture and Inhuman or Degrading Treatment

Also, the national legal framework includes:

- The Constitution of the Republic of Macedonia
- Law on Family (Закон за семејство)
- Law on Social Protection (Закон за социјална заштита)
- Law on the Protection of Children (Закон за детска заштита)
- Law on Juvenile Justice (Закон за малолетничка правда)
- Law on Local Self-Government (Закон за локална самоуправа)
- Law on Primary Education (Закон за основно образование)
- Law on Secondary Education (Закон за средно образование)
- Law on Higher Education (Закон за високо образование)
- Rules for the selection criteria for the foster family, the type and number of users that can be accommodated in a foster family, the type and scope of social services provided to the accommodated person, the amount of housing and compensation for care
- Rules of norms and standards for the establishment and commencement of work on social protection institutions, day center for people with intellectual and physical disabilities.

Protection of people at social risk is implemented with the help and support of individuals and families, in order to overcome the risk situation. If the risk exceeds the capacity of the family, the state takes measures and activities necessary for the care and protection provided by a developed system of institutional care and non-institutional forms of care. The system and the organization of social protection consist of institutions, measures, activities and forms that are achieved by the implementation of the rights of the citizens in the area of social protection.

The protection of children in Macedonia is precisely regulated by:

- Law on the protection of children
- Law on Family and

- Law on Social Protection

### **Law on Child Protection (Закон за детска заштита)**

The Law on Child Protection regulates the system and organization of protection of children. As a child in terms of this Act, mean any person to 18 years of age, and persons with physical and mental development by the age of 26 years.

In applying the provisions of this law sets out the principles for protection of the right to life and development of the child, protect the best interests of the child, providing a minimum standard for every child under equal conditions, excluding any form of discrimination, respect the child's right to liberty and security of person, their own opinion and freedom of expression, association and education for healthy living conditions and achieving other social rights and freedoms of the child.

In ensuring the protection of children and their rights under the law include: parents, family, guardians of the child and the foster family and institutions for children, educational, social, health and cultural institutions and individuals, state institutions and institutions Units local government, organizations and other individuals and legal entities whose activities are related to providing support and assistance to children.

### **Family Law (Закон за семејство)**

Family Law stipulates the protection of children from neglect, abuse and violence by establishing measures and supervising the custody. Abuse or severe neglect of parental duties is considered when the parents execute:

- Physical or emotional violence against children
- Sexually abuse a child;
- Force the child to work that does not fit his age
- Allow use of alcohol, drugs or other psychotropic substances
- Leave the child and does not care for the child for three months and
- Any other way that severely violate the rights of the child

If the Center for Social Work finds neglect of parental duties, it has the power to take the children away from their parents and place them in another environment. The Center for Social Work shall take all necessary measures to protect the person, the rights and interests of the child.

According to Article 87 of the Family Law, the Center for Social Work can take away the child from one and give it to the other parent, any other person or appropriate institution, when parents or parent with whom the child lives neglect child in terms of preservation and education, or when there is a serious danger for the correct development and cultivation.

The custody over minors ends when the child turns 18, marries, with adoption or stops due to any reason that a child under the Law placed under guardianship.

Child abuse is a community problem and every citizen should contribute to its prevention. Every citizen, authority and legal entity is obliged to inform the Centre for Social Work immediately, as soon they learn that the parent does not exercise their parental rights or any other reason that requires protection of the personality, rights, and interests of the child.

### **Law on Social Protection (Закон за социјална заштита)**

Law on Social Protection provides:

- Institutional and
- Extra-institutional care

A cross-cutting issue during the assessment of the child protection reforms in Macedonia was the category of children. The classification encompasses 6 categories: children without parents and parental care, children with disabilities, children victims of trafficking, children in conflict with the law and children living in poverty. Further in the report, reform processes for specific categories of children are emphasized where relevant. Herein, we point out

the categories of children as defined in relevant legislation and reform documents in Macedonia:

**Children without parents and parental care (деца без родители или родителска грижа)** are children whose parents had died, are missing, unknown or from any other reason temporarily or permanently do not perform their parental obligations.

**Children with disabilities (деца со пречки) are** children with physical and mental disabilities of the following type:

- impaired sight (blind and partially sighted)
- impaired hearing (deaf and hard of hearing)
- mentally disabled children
- children with physical disabilities
- children with impaired speech
- autistic children
- children with combined developmental disabilities.

**Children exposed to violence and/or neglect (деца изложени на насилство или занемарување)** are children exposed to violent behaviour within the family, characterised by the use of force, threat and intimidation, infliction of bodily injuries, emotional and sexual abuse, material, sexual and work exploitation, as well as neglected children.

**Children victims of trafficking (деца жртви на трговија)** are children under 18 years of age who are subjected to recruitment, transport, displacement, possession and captivation with a purpose of their exploitation in or outside the country. The consent of the child victim of trafficking is irrelevant, even in the cases when none of the following means are applied: force, compulsion, kidnapping, deception or any other activities undertaken while the child had been in a vulnerable situation or under control by another person.

**Children in conflict with the law (деца во конфликт со законот)** - In Macedonia, the juvenile justice system is integrated within the criminal legislation for adults, though regulated by separate provisions in the Criminal Code. According to these provisions there are different approaches and measures for criminal acts and offences depending on the juvenile's age. Accountability for criminal acts begins at 14 years of age. Every person who has not reached the age of 14 is regarded as a child from the point of view of the criminal law. After the age of 14, juveniles are divided into several age groups: 14-15 years are considered as younger juveniles, those aged 16-17 are considered as older juveniles, while persons between 18 and 21 years of age have a status of young adults. Herein, we should note that in the Law on Social Protection - purified text, (2006) "children in conflict with the law" are defined as "children and youth with educational and social problems and children with behavioural problems". There are differences in the terminology within the regulatory documents used to refer to the same category of children (in the relevant Criminal Code these children are referred to as "juvenile offenders").

**Children living in poverty (деца кои живеат во сиромаштија)** are children living in households where parents are capable to work, but are unemployed (the so-called materially insecure, living on income below 25% of the average wage in the Country), families with ill and incapable to work parents, or children whose resources (material, cultural and social) are so limited as to exclude them from the minimum acceptable way of life in the Country. Specific emphasis within the child protection system is placed on **Roma children** and **children coming out of age** (predominantly children without parents and parental care and children with disabilities), as they are particularly affected by the risk of living in poverty.

### **Notion of vulnerability in Macedonian legislation**

The notion of vulnerability is not consistently used in Macedonian legislation nor there exist comprehensively defined groups of vulnerable people. Rather,



different legal acts offer listings of vulnerable groups for the purpose of coverage of particular legal act. When it comes to national laws, in the internal regulatory framework for this area of a particular relevance is the Law on Social Protection, which in the framework of its provisions stipulates significant principles of social protection, such as the principle of respect of the integrity and dignity of beneficiaries and the principle of non-discrimination and regulates the access of users to material support (financial assistance) and social services.

In the category of socially vulnerable groups are included:

- Refuges (мигранит, малолетни непридружувани деца)
- At-risk children (including orphans and street children) (деца под ризик)
- Child and adult victims of human trafficking (деца и возрасни жртви на трговија со луѓе)
- People with disabilities (лица со попреченост)
- Poverty (сирмаштија)
- Unemployment (невработеност)
- Elderly (возрасни лица)

### **Refuges**

Macedonia is a source of refugees and in last three years a huge number of people are coming to the country as refugees. With the visa liberalization lot of Macedonians as economic refugees were trying to obtain economic asylum in EU countries and emigrate there, but all of them were unsuccessful. Strategy for refugees and foreigners 2008 and 2015, anticipate: housing, education and training, employment, health care, social care and protection, involvement in the community and development.

### **At-risk children (including orphans and street children)**

In Macedonia the number of street children is increasing - most of them are children between 7-14 years old, and Roma, 58,5% of the street children are manifesting socially unexpected behavior, and only 11,5% are exhibiting tolerant behavior. Social care for orphans in Macedonia is implemented through two public dormitories and one private institution.

### **Child and adult victims of human trafficking**

Number of cases of human trafficking decreased in 2009 to seven cases compared with 2008 when there were 10 cases of human trafficking. But there are concerns that all cases in 2009 involved children between 14 and 17 years of age. The deception is made by false promises, marriages of minors and in some communities the idea of "bride by order". "Program for resocialization and reintegration of children victims of human traffic" in order to support agencies working on anti-trafficking measures, and to increase their efficiency and professional competencies.

### **People with disabilities**

According to the Employment Service Agency of the Republic of Macedonia in 2010 there are 2085 unemployed people with disabilities, more than 706 of whom are women. 68,2% of these people are without education or have incomplete primary education, 10,5% have finished secondary education and only 0,8% have finished university. Law for employment of this group, where the conditions and rights for employment and working of this group are regulated for: part time and full time employment, training, adaptation of the working place, tax benefits, benefits for the social contributions and other financial support.

### **Poverty**

According to the State Statistical Office in Macedonia 31,1% of the population were living below the poverty line and the poverty gap index was 10,1%. 25,8% of the poor are living in households with four members and 53,7% of the poor are living in households with five or more members 40,5% of all poor people are unemployed. 32,5% of the households with one employed member are living below the poverty line, and 21% of the

households with two or more employed members are also poor. 54,2% of the households where the head of the family is without an education are living in poverty. The poverty index in Skopje was 24,5%, % in the other urban places was 26,8 and 39,1% in the rural places

## **Unemployment**

During the crisis period in Macedonia employment rate was increased and the unemployment rate decreased. Around 20% of them declare that they are registered only for the usage of the right for free health care and they are not looking for a job. Around half of the unemployed are people with low qualifications and have low education or are without primary education. To improve this situation it is necessary to simplify the procedures for registering the unemployed people and removing from that list anyone who is employed.

## **Elderly**

According to the projections from the State Statistical Office in 2008 the elderly comprised 16,6% of the population. The Government of Macedonia in July 2010 adopted the Strategy for Older People 2010-2020. The amount from the Central Budget for different programs for elderly in 2009 was almost doubled compared with 2008, from 1,4 million Euros in 2008 to 2,6 million Euros in 2009. Subsidies for employment of older people (from 55 to 64 years) were five times higher in 2009 (1,4 million Euros) compared with 2008. In 2010 the amount for the same program sharply decreased to 625.000 Euros.

In Macedonia, the **terminology used to refer to the same categories of children varies in different regulatory documents** (Law on Social Protection, Family Law, Criminal Code). And although this is under reform, the very same terminology is still considered to be out-dated

**Traditional categories** of children recognised within the Law on Social Protection prior to the reform were the children living in poverty, children

without parents and parental care, children with educational and behavioural problems and disabled children.

However, there are **new groups of at risk children** recognised in relevant legislation following the reform processes: street children, substance abusers, homeless and children victims of violence. As for the children victims of trafficking, they are recognised within the strategies but not yet in the regulatory documents (except for the Criminal Code). Nonetheless, MoLSP informs on the possible inclusion of children victims of trafficking as at risk group within the legislation (envisaging the entitlement to guardianship

Children **underserved within the child protection system** in Macedonia, according to the members of the Steering Group, are: internally displaced children, children without parents and parental care, neglected and street children, children living in rural areas, children - substance abusers, and children victims of trafficking who are not yet recognised within the relevant legislation

**Child's opinion/participation** is envisaged only in adoption cases when obligatory presence at the act of adoption and consent of the child is required

### **Safeguarding policies**

The expression “safeguarding policy” is not used in Macedonian legislation in relation to vulnerability. The closest synonyms used are “provision of support” or “support measures”. In Macedonia it is used детска заштита.

The Ministry of Labour and Social Policy (MoLSP), establishes the system of social protection, facilitates its functioning, and provides conditions for implementation of the social protection activities. Each year, the MoLSP prepares annual programmes for implementation of the social protection activities and budget planning.

Within the MoLSP there are 10 Departments and 2 Commissions and 1 specialised office. Three of the 10 Departments are involved in different capacities in policy making and planning of the child protection: the

Department for Social Protection, the Department for Child Protection and the Department for Equal Opportunities

Under the Department for Social Protection, there are 6 units overall:

1. the Unit for Social and Legal Protection;
2. the Unit for Protection and Placement of Disabled People, Employment of Disabled People and Protection of Persons with Social Problems and Elderly;
3. the Unit for Protection and Placement of People with Development Disabilities, Placement of Refugees and Asylum Seekers;
4. the Unit for Provision of Rights to Social Protection; and
5. the Unit for Public and Private Institutions for Social Protection;
6. the Unit for Protection and Placement of Socially Excluded.

There is no regional level of governance, but devolved national governance bodies on local level. The Centres for Social Work (CSWs) are the basic public social protection institutions. In Macedonia there are 27 inter-municipal CSWs, each covering the social protection needs of the population from the territories of several municipalities.

The Institute for Social Activities is a research and development institution of the MoLSP. The ISA is responsible for studying social phenomena and problems and advancement of social activities in the country.

The MoLSP collaboration with several relevant Ministries is focused on policy making, coordination and implementation of policies but there are no official inter-ministerial protocols in place to regulate cross-sectoral cooperation.

### **Stakeholders specified by legislation to provide care and protection**

**Note:** The list of vulnerable groups in the tables below was compiled on the basis of existing legal acts and policies tackling the issues faced by those groups. The list is not exhaustive.

Table 1. Public Stakeholders

<b>Type of the activity or target group</b>	<b>Public Stakeholders</b>
Refuges	Ministry of Labour and Social Policy, Ministry of Interior, social services (including residential care and foster care)
At-risk children (including orphans and street children)	Ministry of Labour and Social Policy, Ministry of education, Centers for Social Work (at municipal level) and state-run social service providers as defined in the Law on Social Protection.
Child and adult victims of human trafficking	Ministry of Labour and Social Policy, Ministry of Interior, The Government of the Republic of Macedonia, National commission against human trafficking and illegal migration.
People with disabilities	Ministry of Labour and Social Policy, Sector for protection of persons with disabilities is part of the Ministry Agency for Employment, Community of protection societies
Poverty	Ministry of Labour and Social Policy, Agency for Employment
Unemployment	Ministry of Labour and Social Policy, Employment Services Agency
Elderly	Ministry of Labour and Social Policy, Ministry of health

Table 2. List of legal acts and policy documents defining stakeholders

<b>Type of the activity or target group</b>	<b>List of legal acts or other policy documents defining stakeholders</b>
Refuges	Law on asylum and temporary protection, “Standard Operating Procedure for Dealing with Unaccompanied and Separated Children” (2015)., Indicators, Identification of Victims of Trafficking in Cases of Mixed

	Migration movement
At-risk children (including orphans and street children)	<p>Criminal Code</p> <p>Law on Juvenile Justice (2009)</p> <p>Law on Protection of Children (2000) amended 2005</p> <p>Law on Family (2004)</p> <p>Law on Labour Relations (2007)</p> <p>Law on Prevention and Protection from Discrimination (2010)</p> <p>Law on Social Protection (2005)</p> <p>Law on Healthcare (1991) amended 1997</p> <p>Law on Primary Education (2002) amended 2004</p> <p>Law on Secondary Education (2002) amended 2004</p> <p>National youth strategy of the Republic of Macedonia</p> <p>National Strategy for Prevention and Protection of Children from Violence</p> <p>Protocol for combating school violence, Action plan for prevention from sexual violence</p>
Child and adult victims of human trafficking	<p>“Standard Operating Procedure for Dealing with Unaccompanied and Separated Children” (2015)., Indicators, Identification of Victims of Trafficking in Cases of Mixed Migration movement, Multidisciplinary protocol for acting with street children, Standard operative procedures for victims of human trafficking</p>
People with disabilities	<p>National Strategy On Achieving Equal Rights for the Persons with Disabilities in the Republic of Macedonia</p>
Poverty	<p>National strategy on Alleviation of poverty and Social exclusion in the Republic of Macedonia, 2010-2020</p>

	National strategy for poverty reduction in the Republic of Macedonia
Unemployment	Labor relations law, Entrepreneurial learning strategy of the Republic of Macedonia 2014-2020, National strategy on employment in Macedonia, 2016-2020
Elderly	National strategy on elderly, 2010-2020

### Other stakeholders (NGOs, international bodies)

Table 3 List of NGO Stakeholders and international organizations and agencies

Type of the activity	List of NGOs
Refuges	La Strada, Save the children, Macedonia, Legis, RIC Tetovo, NGO Lil, NGO Umbrella, SOS Detsko selo
At-risk children (including orphans and street children)	Megjasi – first child embassy In the world, SOS Detsko Selo, HOPS, HERA, One Can, KRIK
Child and adult victims of human trafficking	NGO For Happy Childhood, La strada
People with disabilities	Poraka, Otvorete gi prozorcite, KRIK, Detski svet – nov pocetok
Poverty	NVO 8mi Septemvri, Macedonian platform against poverty, NVO Makedonska alijansa
Unemployment	One Can, KHAM Delcevo, Umbrella, Vrabotuvanje
Elderly	Humanost, Hega plus – HERA
International organizations and	UNICEF FYRMacedonia, OSCE Mission to FYRMacedonia, UNDP FYRMacedonia, EU



agencies	Delegation to FYRMacedonia, Council of Europe Office Skopje, USAID Office in FYRMacedonia, GIZ Macedonia, Red cross Macedonia, IOM Macedonia
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## Country Report

In the last twenty-five years the Republic of Macedonia undergoes a reform processes focused on the changes in the system of social and child protection. The main goal of the reform is creating of a modern and efficient system of social and child protection based on international standards for the protection of human rights that will respond to the increased social protection needs of citizens. The main instruments for the realization of the set objective are: harmonization of domestic legislation with the European Union legislation and with key international documents, promoting the principles of good governance, introduction of innovations and transfer of good European practices, as well as promoting multi-sectoral cooperation among governmental, NGOs and the private sector.

Considering the complexity of the area which includes more aspects of politics and different levels and actors of provision of services, the legislation is extensive, widespread and covers a whole range of laws and bylaws adopted in different domains: social protection, child protection, education, health, employment, housing, tax policy and the like. Also, the state has significant activities in adopting soft legislative. However, detailed analysis shows a lack of consistency and coordination of various institutions/sectors in policy making and overlapping of similar activities drafted in certain strategic documents for same groups of beneficiaries from different stakeholders.

## LEGAL FRAMEWORK FOR SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

*Relevant definitions for a child in Macedonian legislation*

The national legislation defines the beginning of childhood with birth and its end by reaching the age of 18 years, when adulthood is achieved, as well as full legal ability and capability to exercise the right to vote. According to Constitution of the Republic of Macedonia every citizen who has reaching the age of 18 years acquires the right to vote (Constitution of the Republic of Macedonia, 1991, art. 22)<sup>103</sup>. The key definition regarding the term **child** is given in the Law on Child Protection<sup>104</sup>, according to which a child is considered as any person until reaching the age of 18 years, as well as persons with impairments in physical and mental development until reaching the age of 26 years (article 11, para. 1). Notwithstanding the provisions from paragraph 1 of this Article, in exercising the right of child allowance as a child is considered a person until reaching the age of 18 years if the person is of school age and is in attending regular education.

The following related law provisions are in accordance with the above mentioned definition of a child:

- The Family Law: Adulthood is acquired by reaching 18 years of age, when adult person acquires legal ability<sup>105</sup>.
- The Law of Justice for children<sup>106</sup> defines as child any person under the age of 18 years.
- Health Insurance Law<sup>107</sup>: The children of insured person are entitled to health insurance until reaching the age of 18 years, and above this age only if they are attending regular education, but latest till reaching age of 26 years.
- Law on Prevention, Prohibition and Protection against Domestic

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<sup>103</sup> Constitution of the Republic of Macedonia, Assembly of the Republic of Macedonia, 1991, <http://www.sobranie.mk/WBStorage/Files/UstavnaRmizmeni.pdf>, last accessed on 19.03.2017

<sup>104</sup> Law on Child Protection (Official Gazette no. of the Republic of Macedonia 23/13, 12/14, 44/14, 144/14, 10/15, 25/15, 27/16)

<sup>105</sup> See Article 10, para. 2 of the Family Law - official consolidated text (Official Gazette of the Republic of Macedonia no. 153/14)

<sup>106</sup> See Article 19, para. 1(1) of the Law on Justice for Children (Official Gazette of the Republic of Macedonia no. 148/13)

<sup>107</sup> See Article 7, para. 1(1) of the Law on Health Insurance - official consolidated text (Official Gazette of the Republic of Macedonia no. 142/2016)

Violence<sup>108</sup>: A child is any person under the age of 18 years.

The Law of Justice for Children (Article 19) for the first time introduces definition of the terms:

- **Child at risk** is any child who has reached seven, and has not reached the age of 18 years with physical disabilities or mental disabilities, victim of violence, educationally and socially neglected, which is in such a condition in which it is difficult or it is restricted achieving of educational function of the parent/s, or guardian/or/s, and which is not included in the system of education and upbringing, is involved in begging, wandering or prostitution, which uses drugs and other psychotropic substances and precursors or alcohol, and which due to these conditions is or may be in contact with the law as a victim or as a witness to an act which by the law is determined as offense or a criminal act.

- **Child victim** is any child under the age of 18 who has suffered harm, including physical or mental injury, emotional suffering, property loss or other injury or jeopardizing the rights and interests as a result of committed action prescribed by law as criminal act.

- **Child in conflict with the law** is any child between the age of 14 and 18 that at the time of committing the act prescribed by law as criminal act for which imprisonment over three years is determined.

The Family Law (Article 177-a) as a **child victim of trafficking** defines a minor under the age of 18 years who, with or without his/her consent, regardless of situation, became a victim of trafficking for exploitation.

But even though the above mentioned regulations are consistent with the Convention on the Rights of the Child, the analysis of the legislation which regulates the rights and opportunities associated with a certain age group, highlights some legal cases that recognize certain rights and provide obligations before reaching the age of 18 years:

- According to the Family Law (Article 16) it is not possible to marry a person under 18 years of age. The competent court may, in non-contentious proceedings, to allow marriage of a person who has reached 16 years of age

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<sup>108</sup> See Article 4, para.1(2) of the Law on Prevention, Prohibition and Protection Against Domestic Violence (Official Gazette of the Republic of Macedonia no. 138/14, 33/15)

if it determines that the person has reached physical and emotional maturity needed to perform the rights and duties that appear in marriage, after acquiring an opinion from a health institution and after administration of specialized assistance from the Center for social work.

- Inheritance Law<sup>109</sup> (122 paragraph. 2) recognizes certain rights for conceived child and allows acquiring of rights before birth, under condition that the child is to be born alive. This is applied in Inheritance law, and in cases of issuing death certificate - in the death certificate specifically emphasizes the expected birth child of the deceased (Art. 145, paragraph. 3, Law on Non-contentious proceedings<sup>110</sup>). The child that is already conceived at the time of opening the inheritance is considered as born if born alive.

- Labor Law<sup>111</sup> - Constitution (Article 42, para. 2) defines the age of 15 years as the minimum age at which an individual is permitted to work. Labor Law regulates the working conditions and working hours for employees that have not reached the age of 18 years. Having in mind the introduction of compulsory secondary education, this provision should be revised in accordance with the provisions of the Convention no. 138 of the International Labor Organization.

#### *Relevant definitions for vulnerable groups in Macedonian legislation*

There is no universal legal definition of the term "**vulnerable adult**" in Macedonian legislation. Specific legal documents offer listings of vulnerable groups for the purposes of coverage of particular legal act. However, vulnerability is not seen as the main criteria for the verification of such beneficiaries, rather it is a situation of social risk of the beneficiaries caused by particular life events that he or she is facing. According to Law on Social Protection<sup>112</sup>, social protection is a system of measures, activities and policies

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<sup>109</sup> Inheritance law (Official Gazette of the Republic of Macedonia no.47/96)

<sup>110</sup> Law on Non-contentious Proceedings (Official Gazette of the Republic of Macedonia no.9/2008)

<sup>111</sup> See article 172, 173, 174, 175,176 of the Law on Labor Relations - official consolidated text (Official Gazette of the Republic of Macedonia no. 167/2015, 27/2016)

<sup>112</sup> See Article 2 of the Law on Social Protection (Official Gazette of the Republic of Macedonia no. 79/09, 36/11,51/11,166/12, 15/13, 79/13, 148/13, 164/13, 187/13, 38/14,

for preventing and overcoming of basic **social risks** to which citizens are exposed throughout life, reducing poverty and social exclusion and strengthening its capacity for its own protection. Social risk in terms of this Act assumes: health risks (illness, injury and disability), risks of old age and aging, risks of single parent family, risks of unemployment, loss of income support on the basis at work, etc., risk of poverty and risk of other kinds of social exclusion. Consequently, the Law on Social Protection does not operate with the term vulnerability or social problem, rather is constructed to mitigate the social risks of citizens. Never the less, the measures provided by the Law refer to protection of specific vulnerable group under certain conditions.

It is important to note that the Law on Prevention and Protection Against Discrimination<sup>113</sup> introduces the definition of the term **marginalized group** as a group of individuals united by a specific position in society, which are an object of prejudices, have special characteristics that make them suitable for certain types of violence, have less possibilities to exercise and protect their rights or are exposed to an increased possibility for further victimization.

The legislation recognizes the following specific visible vulnerable groups:

- **Disabled people** (Law on Social Protection, Law on Child Protection, Law on Employment of Disabled Persons<sup>114</sup>, Law on Labor Relations, Law on Pension and Disability Insurance<sup>115</sup>, Law on Invalid Organizations<sup>116</sup>): The analysis of the above mentioned laws shows that most of them use different terms and definitions depending on the coverage of people with different types and degree of disability to which the relevant rights are referring. In the legislation, these terms are used: persons with disabilities, invalid persons,

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44/14, 116/14, 180/14, 150/15, 192/15, 33/15, 72/15, 104/15, 173/15, 30/16)

<sup>113</sup> See Article 5, paragraph 1 (11) of the Law on Prevention and Protection of Discrimination (Official Gazette of the Republic of Macedonia no. 50/2010, 127/10, 44/14, 150/15)

<sup>114</sup> Law on Employment of Persons with Disabilities (Official Gazette of the Republic of Macedonia no. 44/2000, 16/2004, 62/2005, 113/2005, 29/2007, 88/2008, 161/2008, 99/2009, 136/2011, 129/15, 147/15, 27/16)

<sup>115</sup> Law on Pension and Disability Insurance (Official Gazette of the Republic of Macedonia no. 98/12, 166/12, 15/13, 170/13, 43/14, 44/14, 97/14, 113/14, 160/14, 188/14, 20/15, 61/15, 97/15, 129/15, 147/15, 154/15, 173/15 and 217/15, 27/2016)

<sup>116</sup> Law on Invalids Organizations (Official Gazette of the Republic of Macedonia no. 89/08, 59/12, 23/13)

people with special needs, disabilities, people with handicap, children with developmental and special needs, developmental problems, special needs, special developmental needs, etc. In most of the definitions the medical approach of disability is accepted according to which disability is an individual problem directly related to illness, injury or other impairment of health which causes the necessity of medical assistance and care.

- **Victims of domestic violence:** Law on Prevention, Prohibition and Protection against Domestic Violence, Article 3, defines domestic violence as harassment, insulting, threatening the safety, physical abuse, sexual or other psychological, physical or economic violence that causes a feeling of insecurity, threat or fear, including threats of such acts, spouse, parent, child or other persons living in marital or other community or household, as well as against a current or former spouse, common-law partner or persons who have a common child or are in close personal relationships, whether the perpetrator shares or has shared the same habitat with the victim or not. This law classifies the types of violence:

- **Physical violence** is any act of use of physical force or action that undermines the health of the victim;
- **Psychological violence** is any act that causes the feeling of fear, revulsion, distress or injury to the dignity and integrity of the victim;
- **Stalking**, is deliberately repeated threats to the victim, causing it to fear for his safety;
- **Sexual violence** is any act of sexual intercourse and sexual harassment on the person without given permission;
- **Economic violence** is any act of restriction or intrusion in handling with personal income and financial resources, for maintenance of common household and for child care, which causes economic dependency of the victim;
- **Gender-based violence** against women assumes violence directed against woman because she is a woman or which affects her disproportionately.

***Relevant legal instruments for the protection of children and vulnerable***

## **adults**

The Constitution of the Republic Macedonia in article 8 sets the basic values of the constitutional order, including fundamental human freedoms and rights, rule of law and separation of powers, humanism, social justice and solidarity. Particularly, the Constitution guarantees: personal physical and moral integrity and prohibits of kind of torture, unhuman and humiliating behavior and punishment, as well as forbids forced labor (Article 11), right of health protection (Article 39), special care and protection of families, as well special care for children without parents and parental care (Article 40), special care and protection of maternity, children and minor persons (Article 42), right of education (Article 42). The Republic guarantees the right of assistance for the weak and unable for work as well as special protection for disabled persons and their inclusion in society (Article 35). The constitution also sets provisions for procedurals guarantees for fundamental freedoms and rights.

Based on the Macedonian Constitution and ratified international treaties and standards, the national regulatory framework consists of a series of laws and regulations dealing with the protection of children and vulnerable adults.

The first group of laws refers to systemic laws that regulate specific areas such as:

**Family Law:** The Law regulates marriage and family relations in marriage and family, certain types of special family protection, adoption, custody, alimony as well as the court procedure in matrimonial and family disputes. Relations between parents and children are based on the rights and duties of parents to provide for the raising, upbringing and education of their children and to develop their work skills and habits. The Republic through guardianship provides protection for children without parents or without parental care and adults under terms and conditions determined by this law. The parent, who abuses performance of parental rights or grossly neglects performing parental duties after receiving an opinion from the Centre for Social Work, will be deprived of parental rights with court decision, in a non-contentious procedure. According to Article 91, a procedure for deprivation of

parental rights may be initiated by the other parent, the center or the public prosecutor.

**Law on Social Protection:** The Law regulates the system and organization of social protection, the right to social protection, funding and procedures for exercising the right to social protection. The measures in the system of social protection are grouped in: social prevention, non-residential protection, residential protection and rights to financial assistance for social protection. Non-residential protection that is exercised in or by the Centre for social work includes the right to: initial social service on social protection of beneficiaries, individual assistance, assistance of families, home care and assistance of an individual and the family, daily and temporary sheltering and protection as assistance to an individual and family, placement in a foster family, placement in a small group home and organizing supported living. Institutional protection includes the right to training for work-productive activity and the right to accommodation in social protection institution. The right to training for work-productive activity has a person with moderate and severe mental disabilities. The right to training for work-productive activity includes referral to social protection institution or other legal entity that meets the required conditions, reimbursement for accommodation and meals, reimbursement for training for work-productive activity and compensation for transportation costs.

**Law on Child Protection:** This law regulates the system and organization for protection of children as an organized activity based on children's rights, rights and responsibilities of parents for family planning, and responsibilities of the state and local government units to conduct a humane population policy. The protection of children is accomplished by provision of the conditions and standard of living that meet the physical, mental, emotional, moral and social development of children. The implementation of the law is guided by the principles of the protection of the right to life and development of the child, protecting the best interests of the child, providing a minimum standard for every child under equal conditions, excluding any form of discrimination, respecting the child's right to freedom and personal security, the personal opinion and freedom of expression, associating and education,



conditions for a healthy life and achieving other social rights and freedoms of the child. Ensuring of protection of children and their rights under the law involves: parents, family, guardians of the child and the foster family and institutions for children, educational, social, health and cultural institutions and individuals, state institutions and institutions of the local government units, organizations and other individuals and legal entities whose activities are related to administering support and assistance to children.

**Law on Juvenile Justice** for first time was adopted in July 2007 and came into force on June 30, 2009. In line with international standards and with the Convention on the Rights of the Child, the Law included principles of protection of juveniles and their rights; promoted reintegration in the society and principles of restorative justice to ensure that juveniles are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and offence. After the adoption of Law on Juvenile Justice, two Action Plans were adopted for the implementation of the Law on Juvenile Justice, one for 2008–2009 and the second covering the period 2009–2012. In parallel, a secondary legislative framework **Law on justice for children** was developed and adopted. The objectives of this Law are to prioritize the best interests of the child and protection of children from crime, violence and any form of threat to their freedoms, rights and proper development; protection of children who have committed acts envisaged by law as criminal act and misdemeanors and protection of children from recidivism; children's social integration, education and rehabilitation; children's assistance and protection in proceedings before courts and other authorities, as well as protection of their freedoms and rights guaranteed by the Constitution of the Republic of Macedonia, the Convention on the Rights of the Child and other ratified international agreements on the status of children. It also has provisions that regulate access to free legal aid, and introduces measures for protection of children victims and witnesses.

**The Law in the area of education:** The right to education and upbringing of children is regulated by several legal regulations, including the

Law on Child Protection, the Law on Primary Education<sup>117</sup>, Law on Secondary Education<sup>118</sup>, and Law on Textbooks for Elementary and Secondary education<sup>119</sup>. The corresponding laws prohibit corporal punishment and mental harassment of pupils.

**The Health Insurance Law:** Compulsory health insurance is established for all citizens of the Republic of Macedonia for provision of health services and benefits based on the principles of universality, solidarity, equality and effective use of funds (Article 2 para. 2). Based on Article 5 of this Law insurance of vulnerable groups of persons is compulsory for person beneficiary of financial assistance, a person placed in foster families and in institutions for social protection, beneficiary of financial assistance for care and assistance, and financial assistance to a person that until 18 years of age had the status of a child without parents and without parental care according to the regulations of social protection, if it cannot be insured under other grounds, as well as juvenile person who is serving execution of an educational measure of referral to a upbringing correctional institutions or social institution for children with behavioral problems.

**The Labor Law:** This Law regulates the working conditions of minors, which provides that workers who have not yet attained the age of 18 years cannot be requested by the employer to perform heavy physical work, works that are performed underground or underwater, works with sources of ionizing radiation and other things that can harm and with increased risk of affecting health or health development having in mind their psychophysical specifics.

The second group of laws regulates the institutional setting and administrative procedures: **Law on Local Self-Government**<sup>120</sup>, **Law on**

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<sup>117</sup> Law on Primary Education (Official Gazette of the Republic of Macedonia no. 103/2008, 33/2010, 116/2010, 156/2010, 18/2011, 42/2011, 51/2011, 6/2012, 100/2012, 24/2013, 41/2014, 116/2014, 135/2014, 10/2015, 98/2015 и 145/2015)

<sup>118</sup> Law on Secondary Education (Official Gazette of the Republic of Macedonia no. 44/1995, 24/1996, 34/1996, 35/1997, 82/1999, 29/2002, 40/2003, 42/2003, 67/2004, 55/2005, 113/2005, 35/2006, 30/2007, 49/2007, 81/2008, 92/2008, 33/2010, 116/2010, 156/2010, 18/2011, 42/2011, 51/2011, 6/2012, 100/2012, 24/2013, 41/2014, 116/2014, 135/2014, 10/2015, 98/2015 и 145/2015)

<sup>119</sup> Law on Textbooks for Elementary and Secondary education (Official Gazette of the Republic of Macedonia no. 98/2008; 99/2009; 83/2010; 36/2011; 135/2011; 46/2012; 24/2013; 120/2013 и 29/2014)

<sup>120</sup> Law on Local Self-Government (Official Gazette of the Republic of Macedonia no. 5/2002)

**Institutions<sup>121</sup>, Law on Associations and Foundations<sup>122</sup>, Law on Administrative procedure<sup>123</sup>, Law on Ombudsman<sup>124</sup>.**

The third group of the laws includes regulations for prevention of discrimination and equal treatment on different grounds: **Law on Prevention and Protection against Discrimination** and the **Law on Equal Opportunities for Men and Women<sup>125</sup>**. Specific provisions for protection against discrimination are incorporated in the Law on Social Protection, the Law on Child Protection and other laws. However, there are some problems related to the scope of the law (sex discrimination is not included; the children are neither mentioned explicitly nor pregnant women who are often subjected to discrimination, especially in case of employment).

Persons with disability distinguish as a separate vulnerable group given the fact that it is most visible in society. Therefore, a number of legal and institutional measures to improve their condition and social integration in society are undertaken. There is no unified legal text regarding their rights, but the regulation is distributed in several legal texts: Law on Social Protection, Law on Child Protection, Law on Employment of Persons with Disabilities, Law on Employment and Insurance in Case of Unemployment<sup>126</sup>, Law on Prevention and Protection of Discrimination, Law on Labor Relations, Law on Invalids Organizations, Law on Pension and Disability Insurance<sup>127</sup>, Law on Vocational Education and Training<sup>128</sup>, Law on Use of Sign Language<sup>129</sup>, Law

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<sup>121</sup> Law on Institutions(Official Gazette of the Republic of Macedonia no. 32/2005, 120/2005, 51/2011)

<sup>122</sup> Law on Associations and Foundations (Official Gazette of the Republic of Macedonia no. 52/10, 135/11, 55/2016)

<sup>123</sup> Law on Administrative procedure (Official Gazette of the Republic of Macedonia no. 124/2015)

<sup>124</sup> Law on Ombudsman (Official Gazette of the Republic of Macedonia no. 60/2003, 114/2009, 181/2016)

<sup>125</sup> Law on Equal Opportunities for Men and Women (Official Gazette of the Republic of Macedonia no. 6/12)

<sup>126</sup> Law on Employment and Insurance in Case of Unemployment *official consolidated text* (Official Gazette of the Republic of Macedonia no. 112/14, 113/14)

<sup>127</sup> Law on Pension and Disability Insurance (Official Gazette of the Republic of Macedonia no. 98/12, 166/12, 15/13, 170/13, 43/14, 44/14, 97/14, 113/14, 160/14, 188/14, 20/15, 61/15, 97/15, 129/15, 147/15, 154/15, 173/15 and 217/15, 27/2016)

<sup>128</sup> Law on Vocational Education and Training (Official Gazette of the Republic of Macedonia no. 71/2006, 117/08)

<sup>129</sup> Law on Use of Sign Language (Official Gazette of the Republic of Macedonia no. 105/09)

on Construction<sup>130</sup>.

Also, commendable is the adoption of the special **Law on Prevention, Prohibition and Protection against Domestic Violence** that regulates responsible and compulsory treatment of institutions and associations, their mutual coordination and collaboration for prevention of domestic violence and providing protection to victims of violence.

At the same period, the state, through implementation of the open method of coordination and consultation processes adopted extensive soft legislation focused on:

- specific age groups (children, elderly): The National Action Plan on Children's Rights (2006-2015), National Action Plan for Prevention of Abuse and Neglect of Children 2013-2015, National Strategy for the Elderly,
- problem-oriented (domestic violence, poverty and social exclusion, trafficking, labor exploitation, disability, etc.): National Strategy for Reducing Poverty and Social Exclusion 2010-2020, National Strategy for Equality and non-discrimination on grounds of ethnicity, age, disability and gender, National Strategy for Prevention and Protection from Domestic Violence 2012-2015, National Housing Strategy, the National Strategy for Equal Rights Persons with Disabilities (revised) 2010-2018, Strategy for Roma in the Republic of Macedonia, Strategy for combatting trafficking in human beings and illegal migration in the Republic of Macedonia, National action plan for combatting trafficking in human beings and illegal migration in the Republic of Macedonia, Program for Social Inclusion, Action plan for the prevention sexual abuse and pedophilia, Action plan for street children 2013-2015, Action plan for combatting trafficking in children.
- documents that envisage development in specific areas: National Program for Development of Social Protection 2011-2021, National Strategy for Deinstitutionalization 2008-2018<sup>131</sup>.

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<sup>130</sup> Law on Construction (Official Gazette of the Republic of Macedonia no. 130/09, 124/10, 18/11, 36/11, 54/11, 13/12, 144/12, 25/13, 79/13, 137/13, 163/13, 27/14, 28/14, 42/14, 115/14, 149/14, 187/14, 44/15, 129/15, 217/15, 226/15, 30/16, 31/2016)

<sup>131</sup> All strategic documents are available on <http://www.mtsp.gov.mk/dokumenti.nsp>. last

The large number of legal acts, especially soft legislation that intertwines with regulations in relation to the same category of persons, makes phenomenon the overregulated. This complicates the implementation, while at the same time the lack of specific standardized operating procedures interrupts parts of statutory rights to be realized in practice.

### ***Safeguarding policies in Macedonian legislation***

Macedonian legislation is not familiar with the term “safeguarding policy” in relation to children and vulnerable adults. It rather operates with the terms “child protection”, “measures of support and protection” and “assistance”. Such initiative for introduction of safeguarding policies can be noted through intensification of the process of standardizing and licensing of services for social protection of vulnerable groups.<sup>132</sup>

Even though Macedonian legislation does not employ the term “safeguarding policies”, efforts for introducing these policies can be recognized in initiatives for adopting protocols for protection of specific vulnerable groups. The process of drafting environmental and social safeguards procedures is in its initial phase and so far several protocols and referral mechanisms were adopted: Protocol on cooperation between the competent institutions in cases of child sexual abuse and pedophilia<sup>133</sup>, Multidisciplinary protocol for dealing with street children/street children in the Republic of Macedonia, Mutual Protocol for Acting in Case of Family Violence<sup>134</sup>, Protocol for Mutual Collaboration between Competent Institutions and Organizations for Prevention and Protection from Family Violence<sup>135</sup>, Protocol on procedure in cases of sexual abuse of children and paedophilia<sup>136</sup>

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accessed on 18.03.2017

<sup>132</sup>The Institute for Social Activities has intensified the process of drafting the standards for establishment and work of social protection institutions and standards and normative for licensing of professionals. Nonetheless, there are shortfalls in their implementation as a result of unfinished processes of decentralization and pluralization as well as inadequate allocation of material and human resources.

<sup>133</sup> [http://mtsp.gov.mk/WBStorage/Files/protokol\\_zloupotreba\\_deca.pdf](http://mtsp.gov.mk/WBStorage/Files/protokol_zloupotreba_deca.pdf). Last accessed on 20.03.2017

<sup>134</sup> [http://www.mtsp.gov.mk/content/pdf/Protocol\\_MKD.pdf](http://www.mtsp.gov.mk/content/pdf/Protocol_MKD.pdf). Last accessed on 20.03.2017

<sup>135</sup> [http://www.mtsp.gov.mk/content/pdf/protokol\\_1.9.2015.pdf](http://www.mtsp.gov.mk/content/pdf/protokol_1.9.2015.pdf). Last accessed on 20.03.2017

<sup>136</sup> [http://mtsp.gov.mk/WBStorage/Files/protokol\\_zloupotreba\\_deca.pdf](http://mtsp.gov.mk/WBStorage/Files/protokol_zloupotreba_deca.pdf). Last accessed on

and Standard operating procedures for treatment of victims of trafficking in human beings<sup>137</sup>.

## **RELEVANT GOVERNMENTAL AND NON-GOVERNMENTAL STAKEHOLDERS**

The state performs social protection of citizens in accordance with the principle of social justice. The state establishes the system of social protection and enables its functioning, provides conditions and measures for conducting social protection activities and develops forms of self-help. The Republic, the municipality, the City of Skopje and the municipalities in the City of Skopje (Article 3) are carriers of social protection. The system is accomplished through professional work in institutions for social protection, implementation of developmental programs, professional development of staff depending on beneficiaries' needs and international standards, monitoring phenomena and the planning of the work, keeping records as well as through conducting surveillance and research in this area. Besides the measures for social protection of citizens, the state care for the prevention of social risks is accomplished through undertaking measures in taxation policy, employment, scholarship policies, housing, family protection, health and education and in other areas in accordance with the law.

The **Ministry of Labor and Social Policy** is the central institution for policy-making, strategic planning, management, and monitoring of legality, especially through inspection over the implementation and enforcement of laws and other regulations in the field of social protection. The **Institute for Social Activities** is a public institution that studies social phenomena and promotes social activities. The Institute has its jurisdiction and monitoring over professional work in social protection institutions as well as over other legal and personal entities that perform certain activities in the sector.

In order to accomplish the tasks within the in system a set up social protection institutions have been established: **Centers for Social Work** and **institutions for social protection**. Centers for social work are public

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21.03.2017

<sup>137</sup> [http://www.mtsp.gov.mk/content/pdf/operativni\\_eng.pdf](http://www.mtsp.gov.mk/content/pdf/operativni_eng.pdf). Last accessed on 21.03.2017

institutions with public authorization responsible for administration of cash benefits and provision of social services. The CSWs have a key role in the identification of and support of children at risk of being abandoned, in providing support to vulnerable families, and promoting parental care and family reintegration. In addition, CSWs decide on the transfer of a child to alternative care or in being given for adoption and act in these circumstances as legal guardians. Social institutions can be established as institutions for residential care<sup>138</sup> and institutions for non-residential care<sup>139</sup>.

A citizen's association which is registered in the Book of records by the Ministry of Labor and Social Policy, and the person who has a work permit issued by the Ministry of Labor and Social Policy may carry out activities in the area of social protection, under the conditions, manner and procedure determined by the Law on social protection. Religious communities, religious groups and their associations registered in the country, can assist persons who have a need of certain types of social protection. Besides public institutions, private institutions for social protections are established with the aim to provide social protection services within the social protection system.

Protection and upbringing of preschool children is provided in **kindergarten and a center for early childhood development**. Kindergartens can be established as public and private institutions. The kindergartens implements all-day and half-day programs, shortened and pilot programs and noninstitutional forms of activities with children. The concept for primary upbringing and education is established by the Ministry of Education

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<sup>138</sup> Institutions for residential care for placement of: infants and young children without parents and parental care under the age of three; children without parents and parental care above three years of age and of youth; children and youth with educational and social problems; children and youth with behavioral problems; children and youth with moderate and severe mental disabilities; children and youth with physical disabilities; elderly; adults with physical disabilities; persons with mental disabilities and persons, asylum seekers (Law on Social Protection, Article 115),

<sup>139</sup> Institutions for nonresidential care: center for social work, daycare center and clubs for elderly people, daycare center for street children – children on the streets, a daycare center for persons who use or abuse drugs and other psychotropic substances and precursors, a daycare center for people who abuse alcohol or are being treated for alcohol dependence, center for homeless persons, center for persons - victims of domestic violence, center for persons - victims of trafficking, daycare center for persons with mental or physical disability, center for administering assistance at home, center for social rehabilitation of persons that use or abuse drugs and other psychotropic substances and precursors, a small group home and counseling centers (Law on Social Protection, Article 132).

and Science.

The key institution to protect the rights of citizens when violated by state bodies and other bodies and organizations that have public authority is the **Ombudsman**. The position of Ombudsman was strengthened in 2003 with the establishment of regional branches of the Office in six cities and most important with the establishment of the special department for children's rights in 2009, led by the Deputy Ombudsman. Ombudsman's office plays an important role in monitoring human rights violations and regularly reports to the Parliament. Following the recommendations of the Subcommittee on Prevention of Torture of the United Nations, within the Ombudsman established a special unit - National Preventive Mechanism (NPM), whose main task is to prevent torture and other cruel, inhuman or degrading treatment or punishment.

The concluding observations of the Committee on the Rights of Children about the lack of any mechanism responsible for the coordination and evaluation of the implementation of the Convention on the Rights of the Child led to the establishment of a **National Commission for Children's Rights**. The Chairman of this Commission is the general secretary of the Government, while the members of the commission are nominated by their Ministers and are appointed by the government. Also, in the work of this Commission participates a representative from the office of the Ombudsman in charge of children's rights, representative of UNICEF office, a representative of the First Children Embassy in the world Megjashi, a representative of the Youth Parliament as well as a representatives from the civil society in accordance to the discussed topic. The National Commission submits an annual report to the Government.

A **National Council for the Prevention of Child Delinquency** is established based on new regulation on justice for children. The National Council is composed of 15 members elected by the Parliament of the Republic of Macedonia with the mandate of five years, eligible for re-election. Also, the regulation predicts establishment of municipal councils and the council of the City of Skopje for prevention of child delinquency. The members of municipal council are representatives from regional offices of the Ministry of



Interior, Ministry of Labor and Social Policy, Social Work Centers, representatives of the parents council/or/s from primary and secondary schools, the Union of high school students, Bar Association of the Republic Macedonia, associations and foundations, public prosecutor who works in the field of child delinquency and judge for children from courts of general jurisdiction or a judge appointed by the president of the court.

**Commission for Protection against Discrimination** is autonomous and independent body that works in accordance with the competences determined within this Law on Prevention and Protection against Discrimination. The Commission is consisted of seven members who are appointed by the Assembly of the Republic of Macedonia with a five-year mandate, and with right to be re-elected. The Commission monitors the implementation of this Law, undertakes activities for promotion and education of equality, human rights and non-discrimination and acts upon complaints, gives opinion and recommendations for the concrete cases of discrimination.

**National Commission for Combatting Trafficking in Human Beings and Illegal Migration** is established with the task of monitoring and analysing the situation with trafficking in human beings and illegal migration, and coordination of the activities of the competent institutions, as well as the relevant international and non-governmental organisations. Within the National Commission, a **Sub-group for Combatting Trafficking in Children** has been established.

Mapping of the existing **NGOs**<sup>140</sup> in the Republic of Macedonia which work in the area of protection of the rights of children and vulnerable adult indicates a well develop organizational network with rather equal representation in all regions of the country. Nonetheless, there are several viable stakeholders that play a crucial role in the area of policy making and

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<sup>140</sup> More significant NGOs: SOS Children's Village Macedonia, First Children's Embassy in the World Megjashi, Association for Happy Childhood, "Open Gate - Women Lobby and Action against Violence and Trafficking in Women", Polio Plus Movement against Disability, Association for Assistive Tehnology „Open the Windows”, Association for emancipation, solidarity and equality of Women ESE, Open Society Institute Macedonia, Union of Womens Oranization, Citizen's Association Sumanal, Roma Centar, Associations of Roma AVENA, National Center for Support of Persons with Intellectual Disabilities – "Poraka", Union of the Deaf and Hard of Hearing of the Republic of Macedonia, Union of the Blind People of the Republic of Macedonia, Union of Physically Disabled People of Macedonia – "Mobility Macedonia" etc.

delivery of social services. Major areas of influence of the NGO sector are promotion and public awareness for the problems of the specific group, advocacy of the rights of particular vulnerable groups, capacity building of target groups and organizations, analysis of the quality of services as well as identification of implementation gaps and obstacles. Most of them are engaged in immediate work with the particular vulnerable group offering psychosocial support, legal assistance, and daycare protection and accommodation services. Several organizations have signed contracts with the Ministry of Labor and Social Policy in delivery of services for vulnerable groups such as children without parents and parental care, children and adults with intellectual disabilities. In such cases, as a mechanism for financing services the state uses the payment per capita. Also, on an annual basis the state gives grants for organizations that are registered in the book of registry by the Ministry of Labor and Social Policy. Yet, most of the organizations provide their sustainability through grants and financial aid from foreign donors. Currently, the Republic of Macedonia is drafting the model of social contracting that will enable decentralization and pluralization of social service delivery on regular bases.

The **international organizations** play an important role in instigating changes and improvement in the domestic legislation related to children and vulnerable adults. In this regards key stakeholders are UN organizations (UNDP, UNICEF, UNW, ILO), World Bank and EU Commission with its pre-accession funds. It is also important to note the position of a vast number of marginalized groups has been improved as a result of initiatives by foreign government developmental institutions and programs such as USAID, SIDA, DFID, and other programs supported by the missions of the European countries in the Republic of Macedonia.

## **RECOMMENDATIONS**

Protection of children and vulnerable adults requires constant adjustment and adaptation to their social protection needs as well as the political willingness of the state to implement adopted policies. Despite the

undertaken reform activities, the system faces certain obstacles and weaknesses that affect the quality of protection and care. In that respect, the key recommendations include:

- Promotion of safeguarding policies for children and vulnerable adults.
- Identification and recognition of all forms of discrimination and strengthening mechanisms of protection against discrimination.
- Internal reorganization of social protection institutions for utilization of available capacity, development of environmental and social safeguards procedures and improvement of professional work.
- Improvement of working with beneficiaries in terms of enhanced participation, involvement in planning and decision-making.
- Strengthening the non-institutional care through the development of existing and introduction of new types of social services as well as development of integrated services.
- Continuation of the initiated processes of decentralization, pluralism and deinstitutionalization in the system of social protection.
- Development and implementation of effective cooperation protocols between the sectors of health, social protection, education and employment.
- Promotion of multi-sectoral cooperation through the introduction of various modalities of financing social services such as grants, social contracts, payment vouchers and payment per capita.
- Strengthening the capacity of professionals through provision of continuous informal education.

## MOLDOVA

## **Desk research**

### **Question n.1: What is the definition of “child”?**

The definition of “*Child*” is provided in the legislation of the Republic of Moldova and refers to - a person who has not reached the age of 18 and does not have full legal capacity.

According to the Law no. 338 of 15.12.1994 on the Rights of the Child, a person is considered a child from birth until the age of 18. This provision is reconfirmed in art. 51 of the Moldavian Family Code no. 1316 of 26.10.2000, every person is considered to be a child until the age of 18. Moreover, the definition is defined by the Law no. 140 of 14.06.2013 on the special protection of children at risk and of children separated from their parents: as child is considered a person who has not reached the age of 18 and does not have full legal capacity.

In addition, according to the Convention on the child’s rights from 20.11.1989, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is reached earlier.

### **Question n.2.: Is the notion “vulnerability” or “vulnerable” (for child and adult) used in legislation in your country? What other words, notions are used in your national legislation to describe this phenomenon?**

There is no definition of vulnerability, although this term is used in national legislation.

In the Republic of Moldova are used the following legal terms:

“*Position of vulnerability*” and “*situation of vulnerability*” (art. 165 and art. 206 of the Criminal Code no. 985 of 18.04.2002),

“*State of vulnerability*” (art. 2 pt. 10 of the Law no. 241 of 20.10.2005 on preventing and combating trafficking in human beings),

“*Vulnerable persons*” (art. 20 para. 2 of the Law no. 241 of 20.10.2005 on preventing and combating trafficking in human beings, see also art. 9 par. 2,

letter e) of the same Law),

*“Particularly vulnerable victims”* (art. 12 par. 4 of Law no. 45 of 01.03.2007 on preventing and combating domestic violence),

*“(Applicant’s) vulnerability”* (art. 55 par. 4, letter c) of the Law no. 270 of 18.12.2008 on Asylum in the Republic of Moldova),

*“Increased level of vulnerability”* and *“level of vulnerability”* (pt. 14 para. 1 and 3 of the Government Decision no. 228 of 28.03.2014 on approving the Regulation of the Territorial Multidisciplinary Teams’ Activity in the National Referral System),

*“Young people from socially vulnerable families”* and *“socially vulnerable youth”* (art. 5 and art. 9 of the Law no. 215 of 07.29.2016 about youth).

*“Social risk”* and *“disadvantaged person and family”* (art. 1 of the Law no. 547 of 25.12.2003 on social assistance),

*“Child at risk”* (see art. 3, complemented by art. 8 of Law no. 140 of 14.06.2013 on the special protection of children at risk and of children separated from their parents).

These terms are used in order to describe a special situation, regarding a category of people with special needs having the need of special treatment from the state authorities. Particularly, shall be considered as follows:

*Position of vulnerability* - crime committed by abuse of position of vulnerability (with reference to “Trafficking in human beings”, art. 165 par. 1, letter c) of the Criminal Code no. 985 of 18.04.2002)

*Situation of vulnerability* - when is taken advantage of the child’s vulnerability (with reference to “Trafficking in children”, art. 206 par. 2, letter c) of the Criminal Code no. 985 of 18.04.2002).

*State of vulnerability* - special state in which a person is found such that he/she is inclined to be abused or exploited, especially due to: a) his/her precarious situation from the standpoint of social survival; b) situation conditioned upon age, pregnancy, illness, infirmity, physical or mental deficiency; c) his/her precarious situation due to illegal entry or stay in a

country of transit or destination (art. 2 pt. 10 of the Law no. 241 of 20.10.2005 on preventing and combating trafficking in human beings).

A person who is presumed to be a victim of trafficking in human beings shall be deemed a *vulnerable person* (art. 20 para. 2 of the Law no. 241 of 20.10.2005 on preventing and combating trafficking in human beings, see also art. 9 par. 2, letter e) of the same Law),

*Particularly vulnerable victims* on grounds of disability or reduced intellectual capacity (art. 12 par. 4 of Law no. 45 of 01.03.2007 on preventing and combating domestic violence).

*The vulnerability (of the applicant)* shall be taken into consideration during the examination of the application for asylum (art. 55 par. 4, letter c) of the Law no. 270 of 18.12.2008 on Asylum in the Republic of Moldova).

In the process of identifying victims or potential victims of human trafficking, is taken into account the special situation of women and children, as groups with *increased level of vulnerability* (pt. 14 par. 1 of the Government Decision no. 228 of 28.03.2014 on approving the Regulation of the Territorial Multidisciplinary Teams' Activity in the National Referral System).

Affirmative actions shall be taken in order to reduce people's *level of vulnerability* to trafficking in human beings (pt. 14 par. 3 of the Government Decision no. 228 of 28.03.2014 on approving the Regulation of the Territorial Multidisciplinary Teams' Activity in the National Referral System).

*Young people from socially vulnerable families and young socially vulnerable* in the context of providing gratuities on admission fees and tuition, as well as support for participation in programs, projects and activities (art. 5 and art. 9 of the Law no. 215 of 07.29.2016 about youth).

*Social risk* - the danger for a person or family to be affected by the negative economic consequences of the loss of potential physical, occupational or social status (illness, accident, disability, aging, death, maternity, unemployment, social maladjustment, etc.) (art. 1 of the Law no. 547 of 25.12.2003 on social assistance).

*Child at risk* - child who, after the assessment, is in one or more of the situations mentioned in art. 8 (art. 3, complemented by art. 8 of the Law no. 140 of 14.06.2013 on the special protection of children at risk and of children separated from their parents).

*Disadvantaged person and family* - social vulnerable person and family in situations that hamper their normal activity from economic, educational, social, and other points of view (art. 1 of the Law no. 547 of 25.12.2003 on social assistance).

The definition of vulnerable children is not expressly defined. In the legislation with reference to children is mentioned about the “*child at risk*” - child who, after the assessment, is in one or more of the following situations:

- a) children are victims of violence;
- b) children are neglected;
- c) children practice vagrancy, begging and prostitution;
- d) children are without parental care and supervision because their parents are not at home for unknown reasons;
- e) children’s parents have died;
- f) children live in the streets, have run away or been expelled from home;
- g) children’s parents refuse to fulfil their parental duties regarding the child’s growth and care;
- h) children have been abandoned by parents;
- i) children’s parents have been deprived of their legal capacity by court decision.

The list of legislation:

- Criminal Code no. 985 of 18.04.2002,
- Law no. 241 of 20.10.2005 on preventing and combating trafficking in human beings,
- Law no. 547 of 25.12.2003 on social assistance,
- Law no. 45 of 01.03.2007 on preventing and combating domestic violence,
- Law no. 270 of 18.12.2008 on Asylum in the Republic of Moldova,
- Law no. 140 of 14.06.2013 on the special protection of children at risk and



of children separated from their parents,

- Government Decision no. 228 of 28.03.2014 on approving the Regulation of the Territorial Multidisciplinary Teams' Activity in the National Referral System, etc.

Even though the vulnerability is not defined in the Moldovan legal provisions, some situations are described as cases of vulnerability. These cases may refer to children, young people/youth, elder people, victims of trafficking, victims of violence, women.

- Position of vulnerability,
- Situation of vulnerability,
- State of vulnerability,
- Vulnerable person(s),
- Particularly vulnerable victims,
- (Applicant's) vulnerability,
- Increased/level of vulnerability,
- Young people from socially vulnerable families,
- Socially vulnerable youth,
- Social risk,
- Child at risk,
- Disadvantaged person and family

**Question n.3.: Is the expression of “safeguarding policy” or any synonym (safeguarding requirement, safeguarding measures, obligatory procedures of protection /measures of care, etc.) mentioned in these acts and/or regulations in relation to vulnerability?**

Yes, synonyms of the expression of “safeguarding policy” are mentioned in various legal provisions, which are outlined below:

- Law no. 270 of 18.12.2008 on Asylum in the Republic of Moldova mentions about the asylum seekers as beneficiaries of international protection, temporary protection and asylum, as well as the procedure for granting, ceasing and cancelling protection.

- Law no. 547 of 25.12.2003 on social assistance provides that social assistance is a component of the national social protection system, in which the state and civil society undertake to prevent, limit or eliminate the temporary or permanent effects of events considered social risks, which may cause social exclusion or marginalization of individuals and families in need.
- Law no. 123 of 18.06.2010 on social services mentions about the right of the beneficiaries of social services to be informed about their fundamental rights and the legal measures of social protection.
- Government Decision no. 177 of 31.10.2007 on the Commission for the Protection of the Child in Difficulty and Approval of the Framework Regulations on the activity of the Commission regulates the choice of the optimal form of care for each child in need, focusing on family services, placement in a residential service, which is the ultimate measure of child protection.
- Law no. 121 of 25.05.2012 on ensuring equality states that one of the ways to end discrimination may be introducing special measures, including positive measures to protect persons in conditions disadvantage to others.
- Law no. 140 of 14.06.2013 on the special protection of children at risk and of children separated from their parents regulates the principles, the protection measures, the duties of the guardianship authorities in child protection, the cooperation in the field of child protection.
- Government Decision no. 270 of 08.04.2014 on approving Instructions on the inter-sector cooperation mechanism for the identification, assessment, referral, assistance and monitoring of child victims and potential victims of violence, neglect, exploitation and trafficking provides several procedures that ensure the protection of child victims of violence, neglect, exploitation, child trafficking, in particular the procedure of providing urgent child protection measures in case of imminent danger to his/her life and health.

- By the Government Decision no. 228 of 28.03.2014, the Regulation of the Territorial Multidisciplinary Teams' Activity in the National Referral System was introduced. These multidisciplinary teams exist at district and local level, consisting of professionals from public bodies and organisations involved in preventing and combating trafficking in human beings. The members of the multidisciplinary teams identify and refer to assistance victims of trafficking.
- Law no. 45 of 01.03.2007 on preventing and combating domestic violence regulates the "protective order" - a legal act, by which the court applies victim protection measures and the "emergency restraining order" - a provisional protection measure for the domestic violence victim applied by police aimed at the immediate removal of the perpetrator from the family home and establishing certain legal interdictions in order to prevent recurrence / committing of violent actions, thus ensuring safety for the victim and other family members in their home.
- Law no. 241 of 20.10.2005 on preventing and combating trafficking in human beings states general provisions on the protection and assistance of the victims of trafficking in human beings.
- Law no. 215 of 07.29.2016 about youth regulates the social protection of youth through: a) the preparation and conduct of educational programs; b) the creation of social infrastructure for providing psychological, educational, legal and other type of help.
- Law no. 137 of 07.29.2016 on the rehabilitation of victims of crime regulates the organization and operation of the mechanism of protection and rehabilitation of victims of crime, the terms and conditions for financial compensation by the state for damage caused by crime.
- Criminal Procedure Code no. 122 of 14.03.2003 regulates the right of the witness to be informed about the all protection measures that are available, and the special conditions for the hearing of witnesses and their protection, including minors.

**Question n.4.: Does your national legislation on vulnerable children and adults specify the stakeholders who are expected by law to provide care and protection?**

Yes, various stakeholders are stipulated in the:

- Law no. 547 of 25.12.2003 on social assistance;
- Law no. 140 of 14.06.2013 on the special protection of children at risk and of children separated from their parents;
- Law no. 241 of 20.10.2005 on preventing and combating trafficking in human beings;
- Law no. 45 of 01.03.2007 on preventing and combating domestic violence;
- Law no. 320 of 27.12.2012 on the activity of Police and policeman status;
- Law no. 215 of 29.07.2016 about youth;
- Law no. 137 of 29.07.2016 on rehabilitation of victims of crimes;
- Government Decision no. 228 of 28.03.2014 on approving the Regulation of the Territorial Multidisciplinary Teams' Activity in the National Referral System; etc.

At a central level of the state:

- Ministry of Labour, Social Protection and Family, including the National Agency for Employment;
- Ministry of Education;
- Ministry of Healthcare;
- Ministry of Internal Affairs, including the Center for Combating Trafficking in Persons;
- Ministry of Justice;
- Ministry of Youth and Sports, including the National Agency for Development of Youth Programs and Activities;
- Ministry of Information Technology and Communications;
- Ministry of Foreign Affairs and European Integration;

- Ministry of Economy;
- General Prosecutor's Office;
- Security and Intelligence Service;
- National Committee for Combating Trafficking in Human Beings;
- National Council for Child Rights Protection;
- Commission for the Protection of the Child in Difficulty;
- Service for Assistance to and Protection of the Victims of Human Trafficking;
- Centre for protection and assistance of victims of trafficking in human beings

At a local level of the state:

- District/local Councils for Child Rights Protection;
- Local guardianship authorities (the mayor);
- Social assistance and family protection sections/departments;
- General education, youth and sports departments;
- Healthcare organizations (Health centres);
- Internal affairs' territorial organizations;
- Territorial commissions for combating trafficking in human beings. In the Chisinau Municipality, such commissions shall also be created within sectors;
- Territorial multidisciplinary teams within the National Referral System;
- Territorial agencies for employment;
- Municipal Department for Child Protection (only in the Chisinau Municipality);
- Commissions for youth policies;
- Youth centers, local councils of youth

**Question n.5.: What other stakeholders are you aware of concerning vulnerable children and adult in your country? (NGOs, international bodies, etc.)**

We have outlined the most important NGOs and International Bodies:

NGOs Networks:

- Alliance of NGOs in the field of social protection of children and families (APSCF),
- National Youth Council of Moldova (CNTM),
- Alliance of Organizations working with the disabled people (AOPD),
- Coalition “Life without Domestic Violence” (“*Viața fără Violență în Familie*”),

NGOs:

- National Center for Child Abuse Prevention,
- Moldova - Child, Community, Family (CCF-Moldova),
- Center for Information and Documentation on Child Rights (CIDDC),
- International Centre for Protection and Promotion of Women’s rights “La Strada”
- Women’s Law Center, Moldova (CDF),
- Rehabilitation Center of Torture Victims “Memoria”,
- Promo-LEX Association,
- Human Rights Information Center (CIDO),
- Moldovan Institute for Human Rights (IDOM),
- Center for Legal Assistance for Persons with Disabilities (CAJDP),
- “Keystone Human Services International Moldova Association”,
- Health for Youth Association “Neovita”

**Question n.6.: Anything else that you find relevant, interesting to mention from what you have found during your desk research on this topic**

As we have outlined above, there are numerous provisions in different laws, implementing normative acts, rather than a single law that refers to a special treatment of the vulnerable people. Moreover, there is no definition for “vulnerability” or “vulnerable” as such.

After analyzing the national legal framework, it was found that certain social categories are not addressed in terms of vulnerability, but in terms of their

discrimination against other groups of people (eg. the case of the Roma people, the minorities).

The Moldovan primary regulatory framework that governs the protection, the procedures and the mechanisms for assisting child victims of trafficking and victims of domestic violence is quite complexly. However, arrears are recorded with reference to the adoption of the secondary normative framework provided for the implementation of the basic legal provisions, as well as related to their implementation in practice (eg. the access to social services is limited).

Besides, is not regulated enough the protection of elderly persons. There is a need in adopting a special law in this regard; accordingly, amendments *de lege ferenda* shall be carried out.

The national NGOs are consolidated in networks targeting categories of persons as beneficiaries of the provided services. The NGOs play an important role by carrying out activities of advocacy, informative campaigns, participation in the legislative process, etc.

#### **Question n.7.: Registration of NGOs**

In the Republic of Moldova, the social services are accredited under the Law no. 129 of 08.06.2012 on accreditation of social service providers, which sets the framework for the creation and functioning of the national accreditation system of the social service providers. Besides, this law provides the basic principles, the general criteria, terms and conditions for the accreditation of social service providers.

The social service providers, including NGOs, are accredited if they meet the following conditions:

- a. have been set under the law;
- b. their constitution acts provide including social service activities;

- c. confirm the possibility of obtaining additional financial resources in order to ensure financial stability and sustainability of the process of providing social services;
- d. have adequately trained staff to the type of social services for which are seeking accreditation;
- e. apply quality standards for the social services for which are seeking accreditation.

The Social Services Nomenclature, approved by the Order no. 353 of 15.12.2011 of the Minister of Labour, Social Protection and Family, contains 41 types of social services; for the majority of them are approved quality standards. There are no additional requirements on accreditation of services for the NGOs.

### **Country report**

- **Legal framework including relevant definitions according to national legislation (who falls under “vulnerable adults,” how is “child”, “harm”, “abuse”, etc. defined in the relevant laws)**

In the Republic of Moldova, the protection of the children and vulnerable adults has strengthened in time. The legislative and policy measures adopted in the field contain provisions related to the identification of vulnerable categories of people. The primary and secondary legislation relating to children, youth, women, elderly people, disabled persons, the victims of trafficking in human beings, and the victims of domestic violence define numerous definitions describing a special situation, regarding a category of people with special needs having the need of special treatment from the state authorities.

Accordingly, “a person is considered to be **a child** from birth until the age of



18” (Law no. 338 on the rights of the child of 1994<sup>141</sup> - Art. 2 par. 2, Moldavian Family Code of 2000<sup>142</sup> - Art. 51, Law no. 140 on the special protection of children at risk and of children separated from their parents of 2013<sup>143</sup> - Art. 3).

The legislator went further by defining “**violence against the child** - forms of maltreatment applied by parents/legal representatives/caregivers or any other persons that produce actual or potential harm to the child’s health and endanger his/her life, development, dignity or morality and include the types of violence defined in art. 2 of Law no. 45-XVI of 01.03.2007 on preventing and fighting domestic violence” (Law no. 140 of 2013 - Art. 3).

The “**types of violence**” (such domestic, psychical, sexual, psychological, spiritual, and economic) as provided in the law allow the correct qualification of the actions, inactions or omissions, which resulted in moral and material damages (Law no. 45 of 2007<sup>144</sup> - Art. 2). In addition, we find the definition of “**child neglect** - voluntary or non-voluntary omission or ignorance of responsibilities to raise and bring up the child, which endangers the child’s physical, mental, spiritual, moral or social development, corporal integrity, physical and psychical health.”, given the forms that the neglect can take (Law no. 140 of 2013<sup>145</sup> - Art. 3).

The legislation of the Republic of Moldova develops definitions that reflect states, situations, positions of vulnerability.

Hence, the “**state of vulnerability is the special state in which a person is**

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<sup>141</sup> Legea nr. 338 din 15.12.1994 privind drepturile copilului, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=311654>

<sup>142</sup> Codul familiei nr.1316 din 26.10.2000, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=286119>

<sup>143</sup> Legea nr. 140 din 14.06.2013 privind protecția specială a copiilor aflați în situație de risc și a copiilor separați de părinți, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=348972>

<sup>144</sup> Legea nr. 45 din 01.03.2007 cu privire la prevenirea și combaterea violenței în familie, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=327246>

<sup>145</sup> Legea nr. 140 din 14.06.2013 privind protecția specială a copiilor aflați în situație de risc și a copiilor separați de părinți, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=348972>

*found such that he/she is inclined to be abused or exploited, especially due to:*

- a) his/her precarious situation from the standpoint of social survival;*
- b) situation conditioned upon age, pregnancy, illness, infirmity, physical or mental deficiency;*
- c) his/her precarious situation due to illegal entry or stay in a country of transit or destination” (Law no. 241 on preventing and combating trafficking in human beings 2005<sup>146</sup> - Art. 2 pt. 10).*

The **“position of vulnerability”** (of the victim) is considered while incriminating trafficking in human beings, particularly when someone makes abuse of it (Criminal Code of 2002<sup>147</sup> - Art. 165 par. 1, letter c)). As for the **“situation of vulnerability”** this is the circumstance when is taken advantage of the child’s vulnerability (Criminal Code of 2002 - Art. 206 par. 2, letter c)). At the same time, *“a person who is presumed to be a victim of trafficking in human beings shall be deemed a **vulnerable person**”* (Law no. 241 of 2005 - Art. 9 par. 2, letter e) and art. 20 para. 2).

Furthermore, *“the victim’s consent (for reporting) is not required in cases of medium or grave bodily or health injuries, and in cases where the victims are **particularly vulnerable** on grounds of disability or reduced intellectual capacity* (Law no. 45 on preventing and combating domestic violence of 2007<sup>148</sup> - Art. 12 par. 4). The **“vulnerability”** (of the applicant) shall be taken into consideration during the examination of the application for asylum (Law no. 270 on Asylum in the Republic of Moldova of 2008<sup>149</sup> - Art. 55 par. 4, letter c)). In the context of providing gratuities on admission fees and tuition, as well as support for participation in programs, projects and activities a special consideration is given to the **“young people from socially**

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<sup>146</sup> Legea nr. 241 din 20.10.2005 privind prevenirea și combaterea traficului de ființe umane, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=313051>

<sup>147</sup> Codul Penal al Republicii Moldova no. 985 din 18.04.2002, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=331268>

<sup>148</sup> Legea nr. 45 din 01.03.2007 cu privire la prevenirea și combaterea violenței în familie, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=327246>

<sup>149</sup> Legea nr. 270 din 18.12.2008 privind azilul în Republica Moldova, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=330978>

**vulnerable families”** and **“socially vulnerable youth”** (Law no. 215 about youth of 2016<sup>150</sup> - Art. 5 and Art. 9).

In the process of identifying victims or potential victims of human trafficking, is taken into account the special situation of women and children, as groups with **“increased level of vulnerability”**. Besides, affirmative actions shall be taken in order to reduce people’s **“level of vulnerability”** to trafficking in human beings (pt. 14 par. 1 and 3 of the Government Decision no. 228 on approving the Regulation of the Territorial Multidisciplinary Teams’ Activity in the National Referral System of 2014<sup>151</sup>).

Moreover, special attention should be paid to the provisions related to the states of **“social risk”**, **“child at risk”**, **“disadvantaged person and family”**, given that they enable the professionals to properly identify the cases and undertake accurate individualised measures addressing the assistance and protection of vulnerable people. The law regulates more clearly the risk situations for children, which standardized the national procedures for registration of notifications and for assessment and recording of children at risk.

Accordingly, as **“social risk is identified the danger for a person or family to be affected by the negative economic consequences of the loss of potential physical, occupational or social status (illness, accident, disability, aging, death, maternity, unemployment, social maladjustment, etc.)”** (Law no. 547 on social assistance of 2003<sup>152</sup> - Art. 1). A **“child at risk is a child who, after the assessment, is in one or more of the situations mentioned in art. 8** (Law no. 140 of 2013<sup>153</sup> - Art. 3, complemented by Art. 8). The legislation provides

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<sup>150</sup> Legea nr. 215 din 29.07.2016 cu privire la tineret, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=366763>

<sup>151</sup> Hotărîrea Guvernului nr. 228 din 28.03.2014 cu privire la aprobarea Regulamentului de activitatea echipelor multidisciplinare teritoriale din cadrul Sistemului național de referire, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=352498>

<sup>152</sup> Legea nr. 547 asistenței sociale din 25.12.2003, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=312847>

<sup>153</sup> Legea nr. 140 din 14.06.2013 privind protecția specială a copiilor aflați în situație de risc și a copiilor separați de părinți, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=348972>

as well the definition of “*disadvantaged person and family as social vulnerable person and family in situations that hamper their normal activity from economic, educational, social, and other points of view*” (Law no. 547 of 2003<sup>154</sup> - Art. 1).

### **Analysis of the laws and regulations relevant to the safeguarding and protection of children and vulnerable adults applicable in Moldova**

The Constitution<sup>155</sup> of the Republic of Moldova guarantees the protection of several categories of people: employees, young children (especially orphans), persons with disabilities, families:

- The State shall ensure the measures of protection related to the labour safety and hygiene, working conditions for women and young people, introduction of a minimum wage per economy, weekly rest and annual paid leave, as well as difficult working conditions and other specific situations (Constitution of 1994 - Art. 43).
- The State shall ensure the right to social assistance and protection (Constitution of 1994 - Art. 47).
- The State shall protect motherhood, children and young people, by fostering the development of the required institutions (Constitution of 1994 - Art. 49).
- The exploitation of minors and their involvement in activities which might be injurious to their health, moral conduct, or which might endanger their life or proper development are forbidden (Constitution of 1994 - Art. 50).
- The disabled persons shall enjoy special protection from the whole of society. The State shall ensure normal conditions for medical treatment and rehabilitation, education, training and social integration of disabled persons (Constitution of 1994 - Art. 51).

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<sup>154</sup> Legea nr. 547 asistenței sociale din 25.12.2003, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=312847>

<sup>155</sup> Constituția Republicii Moldova din 29.07.1994, available at [http://lex.justice.md/document\\_rom.php?id=44B9F30E:7AC17731](http://lex.justice.md/document_rom.php?id=44B9F30E:7AC17731)

It has been noticed already that the definition of “*child*” is provided in the legislation of the Republic of Moldova and refers to - *a person who has not reached the age of 18 and does not have full legal capacity.*

There is a new trend of intersectoral strategies with focus on children, for example, the Strategy on Child Protection 2020<sup>156</sup> (Government Decision no. 434 on approving the Strategy on Child Protection for 2014-2020 of 2014) and the Strategy on Education 2020<sup>157</sup> (Government Decision no. 944 on approving the Strategy of Development of Education for 2014-2020 “Education 2020” of 2014). Besides, children and their rights are included as part of other more general strategies, e.g. health (Government Decision no. 1032 on approving the National Public Health Strategy for 2014-2020<sup>158</sup> of 2013).

The National Action Plan (NAP) of the EU-Moldova Association Agreement (AA)<sup>159</sup> is the most comprehensive strategy from the perspective of children and their rights. The AA and the corresponding NAP have a separate chapter (Chapter 27) on the cooperation in promotion and protection of children’s rights. The NAP includes strengthening and establishing of GMI such as coordination, rights-based monitoring (data collection and analysis, ombudsman office, etc. and a number of actions related to juvenile justice, education, protection from violence, family-based and alternative care.

At the same time, since 2014, the legislation of the Republic of Moldova establishes the procedures of identification, evaluation, assistance, referral, monitoring and record keeping of children at risk and children separated from

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<sup>156</sup> Hotărîrea Guvernului nr. 434 din 10.06.2014 privind aprobarea Strategiei pentru protecția copilului pe anii 2014-2020, available at <http://lex.justice.md/md/353459/>

<sup>157</sup> Hotărîrea Guvernului nr. 944 din 14.11.2014 cu privire la aprobarea Strategiei de dezvoltare a educației pentru anii 2014-2020 “Educația-2020”, available at <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=355494&lang=1>

<sup>158</sup> Hotărîrea Guvernului nr. 1032 din 20.12.2013 cu privire la aprobarea Strategiei naționale de sănătate publică pentru anii 2014-2020, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=350833>

<sup>159</sup> The National Implementation Plan of the EU-Moldova Association Agreement (Government Decision no. 808 of 07.10.2014), available at <http://dcfta.md/uploads/0/images/large/title-iv-economic.pdf>

their parents, as well as the authorities and structures in charge of the enforcement of these procedures (Law no. 140 on the special protection of children at risk and of children separated from their parents<sup>160</sup> of 2013). The law regulates the duties of the guardianship authorities at the national, regional or local level in child protection, protection of children separated from their parents (including the procedures of the planned placement and the emergency placement of a child), the identification of the status of the child and the inter-sectorial cooperation in the field of child protection. The Intersectoral cooperation mechanism for the identification, assessment, referral, assistance and monitoring of children victims and potential victims of violence, neglect, exploitation and trafficking (Government Decision no. 270 of 2014)<sup>161</sup> provides several procedures that ensure the protection of children victims of violence, neglect, exploitation, child trafficking, in particular the procedure of providing emergency child protection measures in case of imminent danger to life and health. The Commission for the Protection of the Child in Difficulty is the body mandated to issue notification papers on the approval and monitoring of protection measures of the child in difficulty. The Commission has as objective to ensure the best care for each child in difficulty, with priority given to the family-type services. The placement in a residential institution shall be the last option (Government Decision no. 7 on approving the Regulation on the organisation and functioning of the Commission for Protection of Children in Difficulty of 2016).<sup>162</sup>

Children up to 14 years, victims or witnesses of sexual crimes, trafficking in children or domestic violence receive special protection in the process of hearing. Therefore, they are heard in special places through a specially

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<sup>160</sup> Legea nr. 140 din 14.06.2013 privind protecția specială a copiilor aflați în situație de risc și a copiilor separați de părinți; available at: <http://lex.justice.md/md/348972/>

<sup>161</sup> Hotărârea Guvernului nr. 270 din 08.04.2014 cu privire la aprobarea Instrucțiunilor privind mecanismul intersectorial de cooperare pentru identificarea, evaluarea, referirea, asistența și monitorizarea copiilor victime și potențiale victime ale violenței, neglijării, exploatării și traficului; available at: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=352587&lang=1>

<sup>162</sup> Hotărârea Guvernului nr. 7 din 20.01.2016 cu privire la aprobarea Regulamentului-cadru privind organizarea și funcționarea Comisiei pentru protecția copilului aflat în dificultate, available at <http://lex.justice.md/md/362785/>

trained interviewer (Criminal Procedure Code of 2003<sup>163</sup> - Art. 110<sup>1</sup>).

The analysis of the national legislation highlights several legal provisions on protection of victims of domestic violence and trafficking in human beings, victims of crimes, disadvantaged persons and families, and socially vulnerable youth.

Thus, since 2005, the victims of trafficking in human beings receive protection and assistance (covering the identification, rehabilitation, assistance, repatriation, etc.) based on the Law no. 241 on preventing and combating trafficking in human beings.<sup>164</sup> In 2015 is regulated the Service for Assistance to and Protection of the Victims of Trafficking in Human Beings (Government Decision no. 898 for approval of the Framework Regulation on Organisation and Operation of the Service for Assistance and Protection of the Victims of Trafficking in Human Beings and the Minimal Quality Standards of 2015).<sup>165</sup> The Service's aim is to provide assistance and protection to the victims of trafficking in human beings, socialization and their reintegration their own families and communities while respecting human rights.

The victims of domestic violence (persons in relationship of marriage, divorce, intimate cohabitation, guardianship and tutorship, their direct or collateral relatives, relatives' spouses, or other persons who are maintained by such persons; their children, including adopted children; those born outside the marriage) receive specific rights since 2007 (Law no. 45 on preventing and fighting domestic violence of 2007<sup>166</sup>). Thus, *“the victim is entitled to assistance for physical, mental and social rehabilitation, through medical, psychological, legal and social actions. The rendering of protective services and assistance shall not be conditioned by the victim's willingness to testify*

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<sup>163</sup> Cod de Procedură Penală nr. 122 din 14.03.2003, available at <http://lex.justice.md/md/326970/>

<sup>164</sup> Legea nr. 241 din 20.10.2005 privind prevenirea și combaterea traficului de ființe umane, available at <http://lex.justice.md/md/313051/>

<sup>165</sup> Hotărârea Guvernului nr. 898 din 30.12. 2015 pentru aprobarea Regulamentului-cadru cu privire la organizarea și funcționarea Serviciului de asistență și protecție a victimelor traficului de ființe umane și a standardelor minime de calitate, available at <http://lex.justice.md/md/362690/>

<sup>166</sup> Legea nr. 45 din 01.03.2007 cu privire la prevenirea și combaterea violenței în familie, available at <http://lex.justice.md/md/327246/>

*and participate in the judicial prosecution of the aggressor. The right to privacy and the confidentiality of information regarding the victim is guaranteed.”* (Law no. 45 of 2007<sup>167</sup> - Art. 11 par. 2<sup>1</sup>). Besides, *“the victim of domestic violence is entitled to demand compensation under the law from the aggressor for the moral and material damage caused by the acts of violence and from the State - for moral and material damages as a result of failure to provide adequate protection and assistance.”* (Law no. 45 of 2007<sup>168</sup> - Art. 11 par. 4). *“The victim of domestic violence that suffered grave bodily or health injuries receive financial compensation from the State for damage caused by the crime, as determined by law.”* (Law no. 45 of 2007<sup>169</sup> - Art. 11 par. 4<sup>1</sup>). *“The victim is entitled to free of charge primary and proficient legal assistance, in accordance with legislation on legal assistance guaranteed by the state.”* (Law no. 45 of 2007<sup>170</sup> - Art. 11 par. 5).

The victims of domestic violence, including children are provided with protection by regulating the *“protective order”* - a legal act, by which the court applies victim protection measures and the *“emergency restraining order”* - a provisional protection measure for the domestic violence victim applied by police aimed at the immediate removal of the perpetrator from the family home and establishing certain legal interdictions in order to prevent recurrence/committing of violent actions, thus ensuring safety for the victim and other family members in their home (Law no. 45 of 2007<sup>171</sup>).

The victims of crimes are entitled to benefit from the protection and rehabilitation mechanism, conditions for financial compensation by the State for damage caused by crime (Law no. 137 on rehabilitation of victims of crimes of 2016<sup>172</sup>). The rehabilitation of the victims of crimes is achieved through the provision of support services, public or private services, to the victims of abuse, physical, psychological or sexual

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<sup>167</sup> *Ibidem*

<sup>168</sup> *Ibidem*

<sup>169</sup> *Ibidem*

<sup>170</sup> *Ibidem*

<sup>171</sup> *Ibidem*

<sup>172</sup> Legea nr.137 din 29.07.2016 cu privire la reabilitarea victimelor infracțiunilor, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=366518>



violence. The victims receive philological counselling, legal and social assistance (Law no. 137 of 2016<sup>173</sup> - Art. 2).

- **Analysis of relevant governmental and non-governmental stakeholders (who is involved in safeguarding and the protection of children and vulnerable adults in the respective country and what is the mandate or scope of work of the individual organisations)**

In order to ensure full respect for the rights and interests of socially vulnerable people, each relevant governmental stakeholder shall honor its functional duties with due diligence and maximum competence. Currently, several ministries share responsibility on the protection of children and vulnerable adults, such as the **Ministry of Labour, Social Protection and Family (including the National Employment Agency), Ministry of Healthcare, Ministry of Education, Ministry of Internal Affairs, Ministry of Youth and Sports (including the National Agency for Development of Youth Programs and Activities), Ministry of Justice.**

Within the limits of their authority, these ministries are responsible to<sup>174</sup>:

- Ensure the development and promotion of policies in the field, preventing family violence, trafficking in human beings, the violation against children, women, elderly people, and disabled persons, and in offering protection and assistance;
- Implement and monitor the implementation of the Strategies in the field and the relevant Action Plans;
- Assess the legal framework and prepare draft normative acts aiming to regulate the relations in field particularly from the perspective of full compliance with the international and regional legal instruments;
- Develop proposals for development of new programs and projects

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<sup>173</sup> *Ibidem*

<sup>174</sup> According to the Law on social assistance of 2003, Law on Preventing and Combating Trafficking in Human Beings of 2005, Law on preventing and fighting domestic violence of 2007, Law on the activity of Police and policeman status of 2012, Law on the special protection of children at risk and of children separated from their parents of 2013, Law about youth of 2016, Law on rehabilitation of victims of crimes of 2016, related Government Decisions, etc.

- according to the needs of vulnerable people;
- Coordinate the field activity of decentralized/deconcentrated structures;
  - Establish procedures for identifying, recording, examining, monitoring the states/situations of vulnerability/risk and providing social assistance, rehabilitation and protection;
  - Create and provide access to specialized services for all categories of vulnerable people, including services of psychological counselling, legal assistance;
  - Develop quality standards for the social services; accredit the providers;
  - Coordinate, assess and monitor the activity of centers/services for victims of violence, of trafficking in human beings, youth, women, elderly people, etc.;
  - Strengthen the capacities of human resources;
  - Ensure specialized training for the professionals;
  - Develop educational and training programmes for teachers, parents, children, the risk groups aimed at eliminating all the causes and conditions that encourage trafficking in human beings, especially in women and children, on preventing domestic violence, etc.;
  - Organize informational awareness-raising campaigns for the population and shall develop and distribute publicity materials on topics related to the categories of vulnerable people, in active collaboration with mass-media.
  - Collaborate with non-governmental organizations and natural and legal persons involved in activity of preventing and combating trafficking in human beings, violence, working in the field of assistance to children, elderly people, etc.

***The Ministry of Internal Affairs (including the Center for Combating Trafficking in Persons within the General Police Inspectorate) General Prosecutor's Office, Security and Intelligence Service***, within the limits of their authority, are responsible for preventing and combating family violence,

trafficking in human beings, any act of abuse, neglect or violence, as well for identifying and solving each case, ensuring the protection of victims.

**The Ministry of Information Technology and Communications, Ministry of Foreign Affairs and European Integration, the Ministry of Economy** have a narrower competence, eg by intervening in certain segments, such as the identification of people, issuance of identity cards/residence permits, granting of assistance to the citizens abroad, development and implementation of socio-economic programmes in the field.

The **National Committee for Combating Trafficking in Human Beings** is a consultative body of the Government, set in order to coordinate the activity of prevention and combating trafficking in human beings (Law no. 241 of 2005<sup>175</sup> and Government Decision no. 472 of 2008)<sup>176</sup>. Among its main functions, the National Committee performs the coordination of the activity related to preventing and combating trafficking in human beings, as well as the cooperation with local and international partners; submits to the Government proposal on the principles of the State policy in the field of prevention and combating trafficking in human beings and recommendations; monitors the performance of actions provided in the National Plan for Prevention and Combating Trafficking in Human Beings and of the legal provisions on prevention and combating trafficking in human beings by the state organizations and institutions; organizes awareness-raising campaigns for the population; coordinates the activity of territorial committees and specialized institutions; etc.

**National Council for Child Rights Protection** was established by Government Decision no. 1001 of 2005<sup>177</sup>, and reactivated in 2010. The Council is a government body whose mission is to ensure the development

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<sup>175</sup> Legea nr. 241 din 20.10.2005 privind prevenirea și combaterea traficului de ființe umane, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=313051>

<sup>176</sup> Hotărîrea Guvernului nr. 472 din 26.03.2008 cu privire la aprobarea componenței Comitetului național pentru combaterea traficului de ființe umane și a Regulamentului Comitetului național, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=327523>

<sup>177</sup> Hotărîrea Guvernului nr. 1001 din 30.09.2005 privind instituirea Consiliului național pentru protecția drepturilor copilului, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=293964>

and implementation of policies to protect the rights of children and women. Based on the Regulation of activity of the National Council for Child Rights Protection (Government Decision no. 409 of 1998<sup>178</sup>), the Council has the following objectives: a) to ensure compliance with the UN Convention on the Rights of the Child, other relevant international documents to which Moldova is a party and national legislation on child and family protection; b) to identify priority directions of intervention in the field of child and family protection; c) to promote national policies on child and family protection; d) to coordinate the development of strategies and government programs on child and family protection; e) to strengthen social partnership in the field of child and family protection. The National Council for Child Rights Protection provides cross-sectoral collaboration and interaction between governmental structures and non-government organizations in the field. In order to facilitate the activity of the National Council at the local level operate the District/local Councils for Child Rights Protection.

The ***Commission for the Protection of the Child in Difficulty*** (Government Decision no. 7 of 2016<sup>179</sup>) is the body established within the local public administration of the second level and the Executive Committee of Gagauzia. The Commission is mandated to issue notification papers on the approval and monitoring of protection measures of the child in difficulty. Through these Commissions are developed alternative services for the protection, care and development of the child and family.

At a local level of the state:

According to the Law no. 140 on the special protection of children at risk and of children separated from their parents of 2013, the ***“local guardianship authority”*** are the mayors of villages (communes) and cities. They are responsible for the identification, recoding and examinations of the cases of

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<sup>178</sup> Hotărîrea Guvernului nr. 409 din 09.04.1998 privind aprobarea Regulamentului Consiliului Național pentru Protecția Drepturilor Copilului, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=296260>

<sup>179</sup> Hotărîrea Guvernului nr. 7 din 20.01.2016 cu privire la aprobarea Regulamentului-cadru privind organizarea și funcționarea Comisiei pentru protecția copilului aflat în dificultate, available at <http://lex.justice.md/md/362785/>

children in situations of risks, takes in cooperation with the territorial guardianship authority the necessary actions to prevent child separation from family and to ensure child's (re) integration. In addition, in cases of imminent danger for child's life and health, they take the child and put him/her in safe placements, monitors the families at risk and ensures the intersectoral cooperation among local stakeholders.

The only territorial guardianship authority, as a separate structure of the Municipality, is the **Chisinau Municipal Department for Child Protection**. This entity has the same duties and competences as the local guardianship authorities, with more functional structures and services that contribute to full fulfilment of its tasks.

Through **social assistance and family protection sections/departments** the victims of violence, trafficking in human beings, other vulnerable people are provided with appropriate assistance, including rehabilitation, with psychological and psychosocial counseling, with the facilities provided by law for socially marginalized persons. All the activities within these sections/departments are orientated to protect the lawful rights and interests of victims, including minor victims, of social vulnerable people. The social services are carried out the social assistants within mayoralities. Moreover, they carry out informational programs to prevent domestic violence, trafficking in human being, abuse and neglect in families, schools, etc.

The **General education, youth and sports departments** ensure that teachers are informed on the peculiarities of socially vulnerable categories, are trained how to deal with difficult social cases, how to prevent violence/abuse/neglect and to report the cases to the appropriate authorities (the guardianship authority and the police). These bodies shall conduct appropriate educational programs for parents and children. Also, shall ensure counseling activities for the psychological and psychosocial rehabilitation, for instance, for minor victims of domestic violence, etc.

**Healthcare organizations (Health centres)** of all types and levels organize awareness campaigns and initiate/accomplish programs and services for

vulnerable people. These organisations provide medical services for all categories of vulnerable people; ensure medical counseling and assistance for the victims. Report the cases of domestic violence through medical employees, to the guardianship authority and to the police. Besides, establish permanent partnerships with all programs dealing with mother and child health, youth and elderly medical assistance, etc.

***Internal affairs' territorial organizations***, at the specialized unit level, shall:

- identify record and report any case of violence/abuse (including domestic violence, trafficking in human beings, etc.), ensure basic records of aggressors, and notify the guardianship and tutorship authorities in cases of minor victims of crimes;
- shall examine the requests and notifications submitted by citizens, medical institutions, forensic medicine centers and other institutions that deal with conflicts within families, acts of violence, death threats or the immediate danger of the same;
- apply a emergency restraining order and obtain a protective order from the court in emergencies; ensure there enforcement;
- carry out preventive and prophylactic activities, monitor and administrate, jointly with social assistants, cases of domestic violence;
- ensure the security and safety of the victims; etc.

***Territorial multidisciplinary teams within the National Referral System***<sup>180</sup> are created within the first or second level of local public authorities, gathering specialists delegated by the stakeholders from the National Referral System in order to ensure the intervention (identification of the potential victims, awareness activities, assessment of the major social problems at the local level for the purpose of decreasing the level of vulnerability of the population towards the phenomenon of trafficking in human beings, and development of social services).

The ***territorial agencies for employment*** implement information activities for

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<sup>180</sup> Hotărîrea Guvernului nr. 228 din 28.03.2014 cu privire la aprobarea Regulamentului de activitatea echipelor multidisciplinare teritoriale din cadrul Sistemului național de referire, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=352498>

the social vulnerable people on topics related to the situation in the labour market, vocational training programmes, or incentives for employment, by offering labour mediation services, professional information and counselling, vocational orientation and training, as well as consultations and assistance in starting a business activity.

According to the Law no. 215 about youth of 2016, the “**commission on youth politicians**” is consultative body in the field of youth the politician created at the central and local level by representatives of bodies of the public power and the non-governmental sector. The “**local council of youth**” is a representative and authorized youth structure to which the status of non-profit organization which mission consists in ensuring participation of youth in development of community, in particular, in decision making process can be given. The “**youth center**” is the non-profit organization representing public service or the complex of the services available to all categories of youth, aiming to provide informing, professional orientation, consultation, training and the organization of leisure of young people, promoting thereby preparation of their social and professional integration.

For the purpose of coordination of activities to prevent and combat trafficking in human beings in districts, municipalities, and the autonomous territorial unit of Gagauzia, **territorial commissions for combating trafficking in human beings** (Law no. 241 on preventing and combating trafficking in human beings 2005<sup>181</sup> - Art. 9) are created within the executive bodies of the respective representative authorities. In the Chisinau Municipality, such commissions are created within sectors. The territorial commissions have their own Regulation. Their main function are to organize and coordinate the activity to prevent and combat trafficking in human beings, protection and assistance to victims of such trafficking, and to ensure the collaboration between local public administration authorities, law enforcement authorities, non-governmental organizations, institutions and other representatives of civil society working in this field. The territorial commission shall submit to the

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<sup>181</sup> Legea nr. 241 din 20.10.2005 privind prevenirea și combaterea traficului de ființe umane, available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=313051>

respective representative authority and the National Committee a periodic activity report not less frequently than once per year, by the 15th of January.

- **Situation of the NGO scene: e.g. Is safeguarding a new topic? Is the topic of safeguarding already an issue? Are there any campaigns/lobbying ongoing relevant to safeguarding?**

The Moldovan civil society organizations are active in various fields, assisting different social groups. The NGOs activities are targeted mainly on promoting and protecting the rights of **children and youth (60.3%)**. **Elderly people, pensioners and veterans have the support of 17.8%** of the organizations; in the interest of **women activate 4.6%** of NGOs. Finally, 7.8% of the organizations are working for all citizens.<sup>182</sup> Shall be noted that the NGOs are very active both in providing social services for different vulnerable groups and in advocacy and awareness activities in the field.

***Strategy for Developing the Civil Society for 2012–2015 and the Action Plan for Implementing the Strategy*** were approved by the Parliament on 28 September 2012. The purpose of the Strategy is to create a favorable framework for developing an active civil society, capable to contribute progressively to the democratic development of Moldova, to stimulate its social cohesion, and to develop its social capital. The document aims to implement three general objectives: (I) Strengthen the framework of participation of the civil society in developing and monitoring the implementation of public policies; (II) Promote and strengthen the financial sustainability of the civil society; (III) Develop the active civic and volunteering spirit. After assessing the Strategy's implementation, it was found that overall the results are below expectations. The objective concerning the NGOs participation in policy formulation and monitoring was implemented in proportion of 36%.<sup>183</sup>

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<sup>182</sup> Strategia de dezvoltare a societății civile pentru perioada 2012–2015. [On-Line]. 2012. <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=346217>

<sup>183</sup> <file:///C:/Users/ASUS%20PC/Downloads/Raport%20Evaluarea%20SDSC%202012-2015%20Rom.pdf>



Since December 2016, public consultations are held with reference to a new Action Plan (AP) for 2017-2020. One of the AP draft's specific objectives is “to enhance the access and participation of the civil society in the implementation of the State's policies through social contracting”, which means among other things, drafting amendments to the **Law no. 129 on accreditation of social services providers** of 2012.<sup>184</sup>

All NGOs that provide social services are required to follow an accreditation process in order to receive contracts from public authorities (Law no. 129 of 2012)<sup>185</sup>. In 2015, 50 out of 70 applicant organizations were accredited, compared to 2014, when only 27 out of 63 applicants have received this accreditation.<sup>186</sup> However, there are still obstacles for the accreditation of some services provided by the NGOs. For certain categories of beneficiaries, the provision of social services is NGOs main mission. For example, in the case of the victims of domestic violence, the figures show clearly that private funding covers what the Government is unable to cover on services. Thus, 60% of social services are covered by NGOs.<sup>187</sup> Another example is that of specialized services for children victims of violence, which are underdeveloped at the country-level, and the only specialized service is provided by a NGO (the National Center for Child Abuse Prevention).

If we look at the role of NGOs in the context of advocacy activities in social protection of various vulnerable groups, since 2003 we highlight several examples of good practice, when with the civil society's effort were approved laws/regulations and national policy documents relevant in the field: promoting the Law on social assistance (2003), Law on preventing and combating trafficking in human beings (2005), Law on preventing and fighting domestic violence (2007), Law on social services (2010), Law on ensuring equality

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<sup>184</sup> Legea nr. 129 din 08.06.2012 privind acreditarea prestatorilor de servicii sociale, available at <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=344610&lang=1>

<sup>185</sup> *Ibidem*

<sup>186</sup> INDEXUL SUSTENABILITĂȚII ORGANIZAȚIILOR SOCIETĂȚII CIVILE 2015 – REPUBLICA MOLDOVA, 2016, available at <http://management.md/wp-content/uploads/2016/07/Moldova-.pdf>

<sup>187</sup> Raportul de estimare a costurilor violenței în familie și a violenței împotriva femeilor în Moldova, UN Women, Centrul de Drept al Femeilor, 2016, available at <http://cdf.md/files/resources/102/Raport%20UN%20RO.pdf>

(2012), Law on the special protection of children at risk and of children separated from their parents (2013), as well as the Government Decision on approving the Intersectoral cooperation mechanism for the identification, assessment, referral, assistance and monitoring of children victims and potential victims of violence, neglect, exploitation and trafficking (2014), etc.

Additional efforts have been made by the civil society to:

- achieve the reform of the childcare system, particularly the protections of the children in difficult situations, based on the National Strategy and Action Plan for the Reform of the Residential Childcare System in Moldova 2007-2012;
- develop social services to protect the victims of domestic violence and trafficking in human beings;
- regulate effective tools for victim protection (protective order and emergency restraining order);
- special protection in the procedure of hearing children victims of sexual crimes, domestic violence and trafficking in human beings, etc.

However, in NGOs strategies for the coming years we can find advocacy actions targeting various aspects of protection of vulnerable groups:

- The National Coalition “Life without Domestic Violence” (*“Viața fără Violență în Familie”*), which is an unique platform, non-institutionalized, consisting of 18 non-governmental organizations and public institutions that provide services to women victims of domestic violence and promote the rights of women and girls in Moldova, has proposed for 2017-2019 to carry out at national level actions of lobbying and advocacy for the signature and ratification of the Istanbul Convention and the adjustment of the Moldovan legal framework, to contribute to develop and strengthen the policies/international standards in the field, to participate in developing the minimum quality standards for the services for the subjects of domestic violence;
- The Alliance of NGOs in the field of social protection of children and

families, which is a forum of 70 national and local NGOs, a non-institutionalized entity operating on a voluntary basis, which can be joined by any NGO in the field, has proposed itself for 2016-2020 to promote and contribute to the development of appropriate and working public policies in the field of child and family protection by monitoring the compliance with the EU-Moldova Association Agreement and strengthening the national political dialogue between the Government and the civil society on the segment of child protection;

- The National Youth Council of Moldova (NYCM) is an associative structure of 58 youth organizations representing their interests in the development of youth policies. One of the strategic objectives of the youth organizations for 2014-2018 is to facilitate the social inclusion of young people by promoting the inclusion of young people from vulnerable groups and those affected by migration. Another NYCM's concern is to promote, in the context of the National Strategy for Employment for 2017-2021, the protection of inactive young people not attending any education program, training, nor have a job; in 2015 representing 30.8%<sup>188</sup>.
- **Assessment and recommendations (identification of gaps and challenges related to safeguarding and protection of children and vulnerable adults, recommendations on how to ensure that grantees implement safeguarding measures in line with the international organization's requirements).**

There are numerous provisions in different laws, implementing normative acts, rather than a single law that refers to a special treatment of the vulnerable people. Moreover, there is no definition for "vulnerability" or "vulnerable" as such. Accordingly, it is necessary to be expressly regulated the definition for "vulnerability".

After analyzing the national legal framework, it was found that certain social categories are not addressed in terms of vulnerability, but in terms of their

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<sup>188</sup> Strategia Națională privind Ocuparea Forței de Muncă pentru perioada 2017-2021, available at [http://particip.gov.md/public/documente/139/ro\\_3477\\_strategie.pdf](http://particip.gov.md/public/documente/139/ro_3477_strategie.pdf)

discrimination against other groups of people (eg. the case of the Roma people, the minorities). In this respect, further assessment shall be conducted in order to analyse the correlation of the “vulnerability” versus “discrimination”. The results of this assessment shall be disseminated to the stakeholders to be considered in the policies and service providing. As well, it is very important that this information be acquainted by the society.

The Moldovan primary regulatory framework that governs the protection, the procedures and the mechanisms for assisting child victims of trafficking and victims of domestic violence is quite complexly. However, arrears are recorded with reference to the adoption of the secondary normative framework provided for the implementation of the basic legal provisions, as well as related to their implementation in practice. For instance, although there are many provisions providing for the right to services, the access to social services is limited. Another example is the impossibility of the implementation of the provisions of the Law no. 137 on rehabilitation of victims of crimes of 2016 due to the absence of its mechanism of implementation. It is urgent to develop implementation mechanisms, including financial sustainability.

Also are identified discrepancies in regulating the multidisciplinary response for treating some vulnerable groups of people. For instance, the Government Decision no. 228 of 2014 and Government Decision no. 270 of 2014 provide in a different manner the activity of the multidisciplinary intervention in cases of children victims of trafficking. It is important to settle a monitoring mechanism both at the national and local level. This mechanism will contribute to the identifications of the best response for treating some vulnerable groups of people.

Besides, is not regulated enough the protection of elderly persons. There is a need in adopting a special law in this regard; accordingly, amendments *de lege ferenda* shall be carried out. Besides, due consideration shall be paid to the strategies, national plans covering the protection of young people.

Although the Moldovan legal framework provides quite comprehensively the

duties of the governmental and non-governmental stakeholders in the field of protection of children and vulnerable adults, in practice the responsibilities of each stakeholder are not fully fulfilled. This is a direct consequence *inter alia* of the absence of proper mechanisms of implementation.

The national NGOs are consolidated in networks targeting categories of persons as beneficiaries of the provided services. The NGOs play an important role by carrying out activities of advocacy, informative campaigns, participation in the legislative process, etc. Yet, NGOs participation in policy formulation and monitoring was implemented in proportion of 36%. A non-efficient mechanisms of cooperation between the Government and the NGOs, and insufficient financing of the non-governmental sector have caused this rate of participation.

## **MONTENEGRO**

## Desk research

### Question n.1: What is the definition of “child”?

Definitions of ‘child’ are found in several different legislations related to children’s rights; however not in the Constitution of Montenegro. A separate law on the rights of the child does not exist. ‘Child’ has therefore been defined as following:

- **Law on Social and Child's Protection** (Zakon o socijalnoj i dječjoj zaštiti) Art 19(1.6), defines child as everyone under the age of 18.
- In the **Law on Conduct towards Minors in Criminal Proceedings** (Zakon o postupanju prema maloljetnicima u krivičnom postupku 2012); Art 2 – Children under the age of 14 cannot be prosecuted in a criminal proceeding, nor punished according to the measures enlisted in this law. Minors are considered to be all persons between ages 14 and 18, separated in two categories between 14 and 16, and 16 and 18. Similarly, **the Law on changes and additions to the Criminal Code** (Zakon o izmjenama i dopunama Krivičnog zakonika 2013) defines child as everyone who is under the age of 14 (Art 142(7)).
- Art 13 of **the Family Law** (Porodični zakon) suggests that people come of age, and therefore gain the right to legal personality, at the age of 18. Marriage rights for persons from ages 16 to 18 are granted only in special circumstances.
- **Labor Law** (Zakon o radu) Art 16 identifies the minimum age for signing a contract as 15 years of age.

### Question n.2.: Is the notion “vulnerability” or “vulnerable” (for child and adult) used in legislation in your country? What other words, notions are used in your national legislation to describe this phenomenon?

The notion of “vulnerability” can be translated into Montenegrin in several ways, such as “osjetljivost”, “ranjivost” and “ugroženost”. However, this

research has shown that in the Montenegrin legislation, the term is most often referred to as “osjetljivost” or “osjetljive grupe” (vulnerable groups), whereas other times it has to be observed in the context of addressing groups of people who need special protection (posebna zaštita). Vulnerability was in one way or the other included in the following legislations:

A. In Art 4 of the **Law on Social and Children's Protection** (Zakon o socijalnoj i dječijoj zaštiti 2013), special protection (posebno se štite) is given to children:

- without parental care
- whose parents are unable to take care of them
- with learning or physical disabilities
- in the conflict with the law
- who have suffered from the abuse of alcohol, drugs or other dangerous substances
- who have been a victim of molesting, negligence, violence in the family and exploitation, or are likely to become one
- who have been a victim of trafficking
- who parents are not in accord regarding exercising their family rights
- who find themselves without parental care
- who are pregnant and without parental support
- who are single parents without parental support
- who due to special circumstances and social risk need special protection

But also adults who:

- are disabled
- have suffered from the abuse of alcohol, drug or other dangerous substances
- have been a victim of molesting, negligence, violence in the family and exploitation, or are likely to be one
- have been a victim of trafficking
- are homeless
- who are pregnant and without parental support



- who are single parents without parental support
  - who due to special circumstances and social risk need special protection
- B. **Strategy for the Protection against domestic violence 2016-2020** (Strategija zaštite od nasilja u porodici 2016-2020) considers vulnerable groups (osjetljive grupe) to be:
- people with disabilities
  - old and incapable persons
  - LGBT persons
  - women of Roma and Egyptian origin who are exposed to a special form of violence, that of arranged marriages
- C. **Law on the Protection from Domestic Violence** (Zakon o zaštiti od nasilja u porodici 2010) in Article 4 states that special help and protection (posebna pomoć i zaštita) are enjoyed by children, elderly, disabled and persons who are not capable of taking care of themselves.
- D. **Law on changes and additions to the Criminal Code** (Zakon o izmjenama i dopunama Krivičnog zakonika 2013), Art 224 talks about 'special protection at workplace' (posebna zaštita na radu) which young people, women and people with disabilities are entitled to
- E. **Strategy for the development of the system of social and children's protection 2013-2017** (Strategija razvoja sistema socijalne i dječje zaštite 2013-2017) mentions vulnerable group (osjetljive grupe) in the context of demanding additional cooperation between state and local administration in order to ensure their protection but does not define them.
- F. **National Action Plan for Children 2013-2017** (Nacionalni plan akcije za djecu 2013-2017), Section 2.7 mentions vulnerable and excluded

children (ranjiva i isključena djeca) and their families in the context of the reforms undertaken in the system of social and child's protection, and lists Roma and Egyptian (hereinafter RE) children, children with disabilities and other children with special needs. When talking about health care, the document warns that only a small number of children from the vulnerable groups (osjetljive grupe) (RE, children with disabilities, children refugees) have their chosen pediatrician. When it comes to promoting regular check-ups among pregnant women, those vulnerable include Roma and Egyptians, refugees, people with disabilities, rural population, and populations who live in underprivileged conditions. As particularly vulnerable adolescents – and therefore more exposed to sexually-transmitted diseases, the document identifies the same four groups. Finally, when it comes to vulnerable children and pre-school education, children with special learning needs, RE, refugees and rural populations are identified, however the list is non-exhaustive.

- G. **Montenegrin Constitution** (Ustav Crne Gore 2007), Art 73 states that mother and child enjoy special protection (posebnu zaštitu). Art 74 is a separate article on the rights of the child, in which special protection is ensured to combat psychological, physical, economic and any other exploitation and violence.
- H. **Strategy for the development of fosterage** (Strategija razvoja hraniteljstva 2012-2016) lists children and youth are identified as the most vulnerable groups (najosjetljivije grupe).
- I. **Social Housing Law** (Zakon o socijalnom stanovanju) gives priority to single parents, people with disabilities, people older than 67 years of age, young people who grew up without parental care, families with children with disabilities, members of RE communities, displaced people, internally displaced people from Kosovo, foreigners with permanent residence who had the status of a displaced person prior to coming to

Montenegro, and victims of domestic violence.

- J. **Strategy for Combatting Human Trafficking 2012-2018** (Strategija za borbu protiv trgovine ljudima za period 2012-2018) recognizes Roma and Egyptian children as particularly vulnerable (posebno osjetljivi) category in the context of human trafficking.

**Question n.3.: Is the expression of “safeguarding policy” or any synonym (safeguarding requirement, safeguarding measures, obligatory procedures of protection /measures of care, etc.) mentioned in these acts and/or regulations in relation to vulnerability?**

Safeguarding policy is exclusively referred to through its synonyms such as measures of protection (mjere zaštite, zaštitne mjere) or special obligations (posebne obaveze). Most legislations observed make some mention of these measures of protection, however, they are not always elaborated on in detail.

- A. **Law on Social and Children's Protection** (Zakon o socijalnoj i dječijoj zaštiti) Art 166 mentions measures of social and child protection (mjere inspektora socijalne i dječje zaštite)
- B. **Law on Protection from Domestic Violence** (Zakon o zaštiti od nasilja u porodici 2010) Section 2 includes measures of protection (zaštitne mjere)
- C. **Law on the Prohibition of Discrimination** (Zakon o zabrani diskriminacije 2010) Art 5 talks about special measures (Propisi i posebne mjere)
- D. **Law on the Prohibition of Discrimination of People with Disabilities** (Zakon o zabrani diskriminacije lica sa invaliditetom 2015) has a section on special measures of protection (posebne mjere)
- E. **Law on changes and additions to the Criminal Code** (Zakon o izmjenama i dopunama Krivičnog zakonika 2013), Art 91 talks about special obligations that come with the monitoring of juveniles (posebne obaveze)

- F. **Strategy for the development of the system of social and children's protection 2013-2017** (Strategija razvoja sistema socijalne i dječje zaštite 2013-2017) delineates measures and activities related to protection that need to be undertaken in this period in accordance with the goals listed in the document.
- G. **National Action Plan for Children 2013-2017** (Nacionalni plan akcije za djecu 2013-2017) envisages measures of protection for especially vulnerable (posebno osjetljiva) children.
- H. **Strategy for the development of fosterage** (Strategija razvoja hraniteljstva 2012-2016) mentions training of professionals as a strategy to enable better protection of children without parental care.
- I. **Strategy for the Integration of Persons with Disabilities** (Strategija za Integraciju Lica sa Invaliditetom u Crnoj Gori 2016-2020) has special measures and activities for each goal identified with regards to the betterment of the status of the disabled people, who have been identified as a major vulnerable group in a variety of documents.

**Question n.4.: Does your national legislation on vulnerable children and adults specify the stakeholders who are expected by law to provide care and protection?**

Some of the legislations listed above (mostly strategies and action plans) include a wide range of relevant stakeholders, yet, others omit them completely or provide very vague narratives regarding who is responsible for providing care and protection.

- A. **Ombudsman** for human rights and freedoms (Zaštitnik ljudskih prava i sloboda) established by the Law on the Prohibition of Discrimination.
- B. Law on Social and Children's Protection (Zavod za socijalnu i dječju zaštitu, inspektor socijalne i dječje zaštite) Art 120, 166 list: **the Committee for social and children's protection and Inspector for social and children's protection** as relevant stakeholders.
- C. Law on Protection from Domestic Violence (Zakon o zaštiti od nasilja u

porodici 2010) Articles 5, 9 list a variety of stakeholders, including: **the police, State Prosecutor, Center for Social Work and other institutions for social and child's protection, health care institutions and other authorities (organi) or institutions in charge of protection.** In addition, **NGOs, and other legal and private persons** are identified as capable of protecting victims. **Health and social workers, teachers and educators** have a duty to report violence when they identify it.

According to Articles 11 and 17, **expert teams** are formed and obliged to address questions of protection of victims of domestic violence.

- D. Under Art 4 of the Law on the Prohibition of Discrimination of the People with Disabilities (Zakon o zabrani diskriminacije lica sa invaliditetom 2015), **authority (organ)**, often listed in other legislations as responsible for offering protection, is defined as public authority (state or local), public institution, commercial unions (privredna drustva) and other legal persons.

The same law under Art 20 lists **the state, municipalities, the capitol, NGOs and other legal or private persons** as those who can introduce special measure for social inclusion of people with disabilities, who are considered to be vulnerable.

- E. Strategy for the development of the system of social and children's protection 2013-2017 (Strategija razvoja sistema socijalne i dječje zaštite 2013-2017) lists the following actors as stakeholders: **Ministry of Labor and Social Welfare, centers for social work, local governments, Ministry of Education, Ministry of Internal Affairs, Ministry of Justice, social care givers, NGOs, Ministry of Health, and Ministry of Finances.**

- F. National Action Plan for Children 2013-2017 (Nacionalni plan akcije za djecu 2013-2017) serves as an instrument of mobilization of a variety of institutions that need to work together in order to enable better protection of children's rights, namely, **the government, the Parliament, local governments, citizens, NGOs, socially responsible business sectors, schools, media, families and**

**parents, children, experts and expert institutions that work on children's rights issues.**

- G. Strategy for the Protection against domestic violence 2016-2020 (Strategija zaštite od nasilja u porodici 2016-2020) lists **centers for social and child's protection, Ministries, Center for education of the judicial practitioners (Centar za edukaciju nosilaca pravosudnih funkcija), international organizations and NGOs** as stakeholders.

Law on Protection and Realization of the Rights of the Mentally Ill Persons (Zakon o zaštiti i ostvarivanju prava mentalno oboljelih lica 2013) identifies **courts and caregivers** as those with an obligation to take all the necessary measures of protection of the rights and interests the person in question.

**Question n.5.: What other stakeholders are you aware of concerning vulnerable children and adult in your country? (NGOs, international bodies, etc.)**

Most of the stakeholders listed below are not included in the legislations in questions, but rather found their place on the list through other children's and vulnerable groups' rights-related projects they have initiated in the past.

- **Savjet za prava djeteta** (Council for the rights of the child) in charge of following the implementation of the National Action Plan for Children, aims to protect children's rights in the fields of social protection, health care, education and others.
- **UNICEF** – they have been listed as a funding agency for many of the child protection initiatives started by local authorities
- **Tim za podršku RE populaciji** (Team for the Support of the Roma-Egyptian Population), formed by the Center for Security in Podgorica, acts to prevent children from this particular group from arranged and premature marriages and begging.
- **Council of Europe** started a number of initiatives in Montenegro

aiming towards better child protection. For instance, together with the Ministry of Internal Affairs, they launched a project "Jedno od petoro" (One out of five) to protect children (as a particularly vulnerable group) from various forms of exploitation such as trafficking and begging.

- **Djeca prije svega** NVO (Children First NGO) composed of experts on social and children's protection.
- **Centar za demokratiju i ljudska prava CEDEM** (Center for Democracy and Human Rights), inter alia, has projects on human trafficking and rights of migrants.

**Question n.6.: Anything else that you find relevant, interesting to mention from what you have found during your desk research on this topic**

*In the absence of a separate law on the rights of the child, the Convention on the Rights of the Child is considered to be a part of the domestic judicial system and holds supremacy in relation to national legislation.*

**Question n.7.: Registration of NGOs**

Montenegrin Law on non-governmental organizations (Official Gazette of Montenegro, No. 39/11) does not prescribe any safeguarding policies an NGO needs to have upon registering. They differentiate among local NGOs, foundations and foreign-funded NGOs, with the list of requirements being the longest for the first one (goals, members, finances etc.).

**Country report**

*Relevant definitions in national legislation*

In Montenegro legislation, the term child mainly relates to any person under the age of eighteen. The legal definition of the child, as a person of up

to the age of eighteen, is contained in the **Law on Social and Child Protection** (Zakon o socijalnoj i dječjoj zaštiti).<sup>189</sup> In addition, the **Family Law** (Porodični zakon) regulates that the majority is attained at the age of eighteen, including the full business capability.<sup>190</sup> However, certain laws, such as the **Criminal Code** (Krivični zakonik), and **the Law on the Treatment of Minors in Criminal Proceedings** (Zakon o postupanju prema maloljetnicima u krivičnom postupku), use the term „child” to refer to a person under the age of fourteen, while children between fourteen and eighteen years of age are defined as minors.<sup>191</sup>

The notion of vulnerability is not explicitly defined. The term „vulnerability“ can usually be found in relation to the term „vulnerable groups” (osjetljive grupe). This expression is often used as a referral to certain groups which require special protection.

The **Constitution of Montenegro** (Ustav Crne Gore) guarantees special protection to mothers and children, particularly children who are victims of psychological, physical, economic, and any other form of exploitation or abuse.<sup>192</sup>

The **Law on Social and Child Protection** recognizes various groups for which special protection has been guaranteed, with the aim of the improvement of life quality, and strengthening of an individual and the family for independent and productive life. These include children without parental care, children whose parents are not able to take care of them, children with disabilities, in conflict with the law, that use alcohol, drugs or other narcotic substances, victims of abuse, neglect, domestic violence or exploitation, or at risk of becoming a victim, victims of trafficking, children whose parents do not

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<sup>189</sup> See Art. 19 para. 1(6) of the Law on Social and Child Protection, „Official Gazette of Montenegro”, No. 27/2013, 1/2015, 42/2015, 47/2015, 56/2016, 66/2016, and 1/2017.

<sup>190</sup> See Art. 13 of the Family Law, „Official Gazette of Montenegro”, No. 1/2007, and 53/2016, available in English at <http://landwise.resourceequity.org/record/1763>, last accessed on 28.02.2017.

<sup>191</sup> See Art. 142. para. 8-9 of the Criminal Code, „Official Gazette of Montenegro”, No. 70/2003, 47/2006, 40/2008, 25/2010, 32/2011, 63/2011, 40/2013, and 58/2015; and Art. 2-3. of the Law on the Treatment of Minors in Criminal Proceedings, „Official Gazette of Montenegro”, No. 64/2011.

<sup>192</sup> See Art. 73 para. 1 and Art. 74 para. 2 of the Constitution of Montenegro, „Official Gazette of Montenegro”, No. 1/2007, and 38/2013, available in English at [https://www.constituteproject.org/constitution/Montenegro\\_2007.pdf](https://www.constituteproject.org/constitution/Montenegro_2007.pdf), last accessed on 28.02.2017.



agree on the manner of exercising the parental right, who find themselves out of the place of residence without the supervision of a parent, adoptive parent or guardian, who are pregnant and without family support and adequate living conditions, who are single parents with a child and without family support and adequate living conditions, as well as children that need adequate form of social protection due to special circumstances and social risk.<sup>193</sup> According to this Law, vulnerable adults include persons with disabilities, persons who use alcohol, drugs or other narcotic substances, who are victims of neglect, abuse, exploitation and violence in the family, or at risk of becoming a victim, victims of trafficking, who are homeless, pregnant and without family support and adequate living conditions, who are single parents with a child and without parental support and adequate living conditions, as well as persons who need an adequate form of social protection due to special circumstances and social risk.<sup>194</sup>

**The Law on the Protection from Domestic Violence** (Zakon o zaštiti od nasilja u porodici) refers to certain groups that are guaranteed with the right to special assistance and protection in cases of domestic violence, such as children, elderly, persons with disabilities, as well as persons who are not able to take care of themselves.<sup>195</sup>

Some laws recognize groups who are given the priority in exercising certain rights (priority groups). For example, the **Social Housing Law** (Zakon o socijalnom stanovanju) determines that the priority in exercising the right to social housing is particularly given to: single parents, or legal guardians, persons with disabilities, persons over 67 years old, young people who grew up without parental care, families with children with disabilities, members of Roma and Egyptians, displaced persons, internally displaced persons from Kosovo who reside in Montenegro, foreigners with permanent residence or temporary stay who have the status of displaced or internally displaced

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<sup>193</sup> See Art. 4 para. 2(1) of the Law on Social and Child Protection.

<sup>194</sup> See Art. 4. para. 2(2) of the Law on Social and Child Protection.

<sup>195</sup> See Art. 4. Para 3 of the Law on the Protection from Domestic Violence, "Official Gazette of Montenegro", No. 46/2010, available in English at file:///C:/Users/Jelena.Arsic/Downloads/Montenegro\_Law%20against%20Family%20Violence\_2010\_en%20(1).pdf, last accessed on 28.02.2017.

person, as well as victims of family violence.<sup>196</sup>

In addition to the above mentioned regulations, a number of strategic documents adopted in Montenegro acknowledge various vulnerable groups, emphasizing the importance of the state assistance and protection.

The **Strategy for the Development of the System of Social and Child Protection** (Strategija razvoja sistema socijalne i dječje zaštite) gives the priority to establishing mechanisms which guarantee the protection of vulnerable groups. Although the term “vulnerable groups” is not specified<sup>197</sup>, the Strategy emphasizes the importance of inter-sectoral cooperation at the national level, as well as cooperation of the systems at the local level with regard to the protection of particularly vulnerable groups. According to this document, „timely and effective protection of vulnerable groups is ensured through the development of social and child protection policy, which prevents the emergence of social problems in the society by harmonized action of various systems (social and child protection, health care, employment, education, justice, etc.)“<sup>198</sup>.

The **Strategy for the Protection against Domestic Violence 2016-2020** (Strategija zaštite od nasilja u porodici 2016-2020)<sup>199</sup> under the term „vulnerable groups“ considers: people with disabilities, old and incapable persons, and LGBT persons as particularly vulnerable to specific forms of violence because of the lack of understanding of their needs, and inadequate treatment in the society. In addition, as common victims of violence, the Strategy refers to children and women, particularly Roma and Egyptian girls who are often victims of forced marriages. Although these groups are not directly recognized as vulnerable groups, indirectly the Strategy indicates their

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<sup>196</sup> See Art. 4 of the Social Housing Law, „Official Gazette of Montenegro“, No. 35/2013, available in English at <file:///C:/Users/Jelena.Arsic/Downloads/Social%20Housing%20Law.pdf>, last accessed on 28.02.2017.

<sup>197</sup> Indirectly, it can be concluded that these groups certainly include children, young people, elderly, persons with disabilities, substance users, victims of domestic violence, and women. See Strategy for the Development of the System of Social and Child Protection, pp. 13, available at <http://www.minradiss.gov.me/biblioteka/strategije>, last accessed on 28.02.2017.

<sup>198</sup> *Ibid*, pp. 19.

<sup>199</sup> See Strategy for the Protection against Domestic Violence 2016-2020, available at <http://www.minradiss.gov.me/biblioteka/strategije>, last accessed on 28.02.2017.

vulnerability.<sup>200</sup>

**National Plan of Action for Children 2013-2017** (Nacionalni plan akcije za djecu 2013-2017) uses the term “vulnerable groups” to describe various groups of children in need of special protection in different circumstances. For example, related to health care, this document emphasizes that not all children are provided with chosen pediatrician, and recognizes vulnerable groups of Roma and Egyptian children, children with disabilities, and children refugees as the ones that do not have their chosen pediatrician. In terms of promoting healthy life style and regular check-ups among pregnant women, vulnerable groups include Roma and Egyptians, refugees, people with disabilities, rural population, and groups who live in underprivileged conditions. As adolescent groups, that are the most vulnerable in terms of access to prevention services of reproductive health and sexual behaviors, the document also recognizes Roma and Egyptians, refugees, people with disabilities, and rural population. In the field of pre-school education, vulnerable groups refer to children with special learning needs, Roma and Egyptian, refugees and rural population, although the list is non-exhaustive<sup>201</sup>.

Children and youth are also recognized as most vulnerable groups (najosjetljivije grupe) in the **Strategy for the Development of Foster care** (Strategija razvoja hraniteljstva), as well as in the **Strategy for Combatting Human Trafficking** (Strategija za borbu protiv trgovine ljudima), which indicates that Roma and Egyptian children are particularly vulnerable (posebno osjetljiva) in the context of human trafficking.<sup>202</sup>

#### *Relevant legal instruments for the protection of children and vulnerable adults*

The **Constitution of Montenegro** (Ustav Crne Gore) guarantees the fundamental human rights and freedoms, including prohibition of infliction of hatred (Art. 7), prohibition of discrimination (Art. 8), dignity and inviolability of

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<sup>200</sup> *Ibid*, pp. 5.

<sup>201</sup> See National Plan of Action for Children, pp. 51-68, available at <http://www.minradiss.gov.me/biblioteka/strategije>, last accessed on 28.02.2017.

<sup>202</sup> Both strategies are available at <http://www.minradiss.gov.me/biblioteka/strategije>, last accessed on 28.02.2017.

person (Art. 28) , protection of the persons with disability (Art. 68), special protection and rights of the child (Art. 73-74), etc.

**Family Law** (Porodični zakon) is the first domestic regulation which guarantees some of the most important rights of the child. The basic provisions of the Act establish the duty of every person to be guided by the best interests of the child in all actions concerning children, and obliges the state to undertake all necessary measures to protect the child from neglect, abuse and exploitation.<sup>203</sup> The Law does not define these forms of violence against children, nor does it contain legal rules exclusively governing the protection of children from violence. However, such protection is directly supported through a number of other legal institutes - deprivation of parental rights and supervision over the exercise of parental rights (in addition to the above mentioned Law on the Protection from Domestic Violence).

Under the Family Law, Custodial body shall give appropriate forms of help and support to parents, and undertake necessary measures to protect the rights of a child, in its best interest, on the basis of direct knowledge or notification. Related to this, judicial authorities, other bodies, medical, educational and other institutions, non-governmental organizations and citizens, are obliged to notify custodial body in all cases where they recognize that a parent is unable to exercise parental right. This particularly refers to situations of child abuse, neglect and other forms of violence.<sup>204</sup> In addition, related to the protection of children and vulnerable adults, the **Criminal Code** (Krivični zakonik) regulates various offences with elements of violence.

**The Law on the Protection from Domestic Violence** (Zakon o zaštiti od nasilja u porodici) guarantees the right to assistance and protection for all victims of violence. This includes the right to psycho-social support, legal aid, social protection, and medical care.<sup>205</sup> The Law lists numerous bodies and institutions that have a duty to act in terms of full and coordinated protection of victims, i.e. the police, misdemeanour body, public prosecution, centre for social work or other social and child protection agency, health care institution, and other agency or institution acting as care provider. It also determines that

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<sup>203</sup> See Art. 5 of the Family Law.

<sup>204</sup> See Art. 80. of the Family Law.

<sup>205</sup> See Art. 4 para 1. of the Law on the Protection from Domestic Violence.

a non-governmental organization, other legal entity or a person, may provide protection in accordance with law.<sup>206</sup> For the purpose of organizing, monitoring and promoting a coordinated and efficient protection, these bodies or institutions may set up a team composed of experts in social and child care, health care, judiciary, police protection, human rights and freedoms, as well as representatives of non-governmental organizations dealing with protection.<sup>207</sup>

Center for social work has been recognized as a key actor in the protection system. The Center designs the victim assistance plan, and may set up an expert team composed of its representatives as well as representatives of local government bodies and service agencies, police, non-governmental organizations and experts for family issues. It also coordinates victim assistance activities, in accordance with victim's needs and choices.<sup>208</sup> Orders of protection that may be issued are the ones that should prevent and suppress violence, remove its consequences, and take efficient measures to change abuser and eliminate circumstances that may make him susceptible to or encourage reoffending. Namely, the abuser may be issued one or more of the following orders of protection: 1) order of removal from place of residence or other premises; 2) restraining order; 3) prohibition of harassment and stalking; 4) mandatory addiction treatment; 5) mandatory psycho-social therapy.<sup>209</sup>

Responsibilities of each sector, as well as mechanisms of multi-sectoral cooperation in response to domestic violence are additionally specified by the **Protocol on the Treatment, Prevention and Protection from Domestic Violence** (Protokol o postupanju, prevenciji i zaštiti od nasilja u porodici)<sup>210</sup>. The Protocol regulates joint work of all systems and operation of the competent bodies and institutions in cases of domestic violence, especially the police, center for social work, health care institutions, and judiciary. This document particularly refers to the treatment procedures in

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<sup>206</sup> See Art. 5 para. 1-2 of the Law on the Protection from Domestic Violence.

<sup>207</sup> See Art. 17 of the Law on the Protection from Domestic Violence.

<sup>208</sup> See Art. 11 of the Law on the Protection from Domestic Violence.

<sup>209</sup> See Art. 19-20 of the Law on the Protection from Domestic Violence.

<sup>210</sup> Available at <http://sudovi.me/podaci/vrhs/dokumenta/641.pdf>, last accessed on 28.02.2017.

situations where children are involved in domestic violence cases, when these are implemented by the police, center for social work, health, justice and education institutions. Relevant procedures that should be commenced by the expert team are specified in relation to the identification of cases of violence against children, treatment upon reporting, the initial assessment, protection measures planning and monitoring its implementation, administration of the case within the expert team, termination of the case, reporting and public outreach.

**The Law on Free Legal Aid** (Zakon o besplatnoj pravnoj pomoći)<sup>211</sup> guarantees the right to free legal assistance to children and vulnerable adults. Free legal aid is particularly guaranteed to users of the right to financial assistance and other social protection rights, children deprived of parental care, disabled persons, victims of domestic violence, victims of human trafficking, and indigent citizens.<sup>212</sup> Free legal aid in Montenegro includes the provision of necessary fund to fully or partially cover the costs of legal advice, preparation of pleadings and other legal documents, representation in legal proceedings, as well as in the out of court processes.<sup>213</sup>

### *Safeguarding policies*

Safeguarding policies are not recognized to the full extent in Montenegro legislation, both in the governmental and in non-governmental sector. Safeguarding policies mainly relate to the measures of protection existing in current regulations related to the cases of domestic violence. Such a system is based on the inter-sectoral approach aiming to secure coordinated, timely and effective response of all sectors involved. Therefore, it can be concluded that in recent years the system was primarily upgraded in the field of procedures and measures of protection from domestic violence.

## **RELEVANT GOVERNMENTAL AND NON-GOVERNMENTAL STAKEHOLDERS**

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<sup>211</sup> See the Law on Free Legal Aid, "Official Gazette of Montenegro", No. 20/2011.

<sup>212</sup> See Art. 13 of the Law on Free Legal Aid.

<sup>213</sup> See Art. 2 of the Law on Free Legal Aid.

In the previous years, the protection of children and vulnerable adults in Montenegro has been developed mostly in the field of protection from domestic violence. The Law on the Protection from Domestic Violence and Protocol on the Treatment, Prevention and Protection against Domestic Violence have established intersectoral cooperation among different stakeholders in response to violence. In these terms, main stakeholders are the **Center for Social Work and other social welfare institutions, the Police, the State Prosecution, health care institutions and other institutions involved in the protection of children and vulnerable adults from violence.**

Additionally, as above said, **NGO's and other legal and private persons** can also provide protection in accordance with the law. All these institutions are authorised to establish team of experts in the field of social and child protection, health care, justice, police protection, protection of human rights and freedoms to organize, monitor and improve the coordinated and effective action. Based on these regulations, today **the Multidisciplinary teams for prevention and protection from domestic violence** are existing in the centers for social work in most cities of Montenegro.

Centers for Social Work assess the situation, needs, strengths and risks of users, decide in the first instance on the requirements for exercising the rights in the field of social and child protection, take measures, initiate, and participate in, judicial and other proceedings, provide accessibility with the aim of carrying out urgent interventions, etc.

In addition to the center for social work, as a key stakeholder in the field of social protection, some other social protection institutions can also be relevant, such as **the day care centers, the centers for children and youth, and the Committee for social and children's protection**<sup>214</sup>. Also, within the Ministry of Labour and Social Welfare there is a **Directorate for Social Welfare and Child Protection**. The Directorate carried out activities related to the protection of individuals, families, children without parents, children with

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<sup>214</sup> For more information, see Art. 120-121 of the Law on Social and Child Protection; also, see <http://www.minradiss.gov.me/organizacija/ustanove-socijalne-i-djecije-zastite>, last accessed on 28.02.2017.

disabilities, children who are victims of abuse, neglect, violence and exploitation, pregnant women without family support and appropriate conditions for life, single parents without family support and appropriate conditions for life, adults and old persons with disabilities, adults and old persons who are abusing alcohol, drugs or other intoxicating substances, the adults and the old persons who are the victims of neglect, abuse, exploitation, etc<sup>215</sup>.

In educational system, there are several bodies in the Ministry of Education in charge for the improvement of system of education, and monitoring the work of preschools and schools such as: **the Directorate for Preschool Education, Primary Education and Education of Persons with Special Educational Needs, the Directorate for Secondary Education, Vocational Education and Adult Education, the Directorate of Education of National Minorities, and Educational Inspection**. Beside that, according to the Protocol on Treatment, Prevention and Protection against Domestic Violence, every school should form an expert team in respond to violence.

Within the Ministry for Human and Minority Rights there are also several stakeholders authorised, within their jurisdiction, to take actions to promote and protect rights of children and vulnerable groups, such as **the Department for Gender Equality<sup>216</sup>, the Directorate for the Promotion and Protection of Human Rights and Freedoms<sup>217</sup>, and the Department for the Promotion and Protection of Rights of RAE Communities<sup>218</sup>**.

Important stakeholder in this area is also **the Protector of Human Rights and Freedoms** (Ombudsman). Protector of Human Rights and Freedoms (Ombudsman) is an independent and autonomous institution that

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<sup>215</sup> More information about this can be found at <http://www.mrs.gov.me/organizacija/direktoratzasocijalnostaranjeidjecjuzastitu>, last accessed on 28.02.2017.

<sup>216</sup> For more information about the activities and projects of the Department for Gender Equality, see <http://www.mmp.gov.me/organizacija/odjeljenje-za-poslove-rodne-ravnopravnosti>, last accessed on 28.02.2017.

<sup>217</sup> For more information about the activities and projects of the Directorate for the Promotion and Protection of Human Rights and Freedoms, see [http://www.mmp.gov.me/rubrike/Direktorat\\_za\\_unapredenje\\_i\\_zastitu\\_ljudskih\\_prava/](http://www.mmp.gov.me/rubrike/Direktorat_za_unapredenje_i_zastitu_ljudskih_prava/), last accessed on 28.02.2017.

<sup>218</sup> For more information about the activities and projects of the Department for the Promotion and Protection of Rights of RAE Communities, see [http://www.mmp.gov.me/organizacija/OUZ\\_RAE](http://www.mmp.gov.me/organizacija/OUZ_RAE), last accessed on 28.02.2017.



has the competence to take measures to protect human rights and freedoms when they are violated by an act, action or omission of state authorities, state administration, local authorities and local government, public services, as well as measures to prevent torture and other forms of inhuman or degrading treatment or punishment, and measures for protection against discrimination.<sup>219</sup>

In the area of children protection from violence, it is relevant to mention **the Council for Children's Rights**, a body established by the Government of Montenegro. The task of this body is to protect and promote children's rights in the field of social and child protection, health care, education and other areas that are important for the protection of the rights of the child, to monitor the implementation of legislation and fulfillment of international obligations in the field of children's rights, to inform the public about the rights of the child, etc.

Various strategies and action plans, although all based on a multi-sectoral approach in respond to violence, have appointed different actors as key stakeholders. Thus, Strategy for the development of the System of Social and Child Protection, and its Action Plan recognize the following stakeholders: **Ministry of Labor and Social Welfare, centers for social work, local governments, Ministry of Education, Ministry of Internal Affairs, Ministry of Justice, social care providers, NGOs, Ministry of Health, and Ministry of Finances**<sup>220</sup>.

Strategy for the Protection against Domestic Violence 2016-2020, and its Action Plan recognize: **Ministry of Labour and Social Welfare, Ministry for Human and Minority Rights, Ministry of Interior, Ministry of Health, Ministry of Education, Ministry of Finance, Supreme State Prosecutor's Office, Supreme Court, Judicial Council, Police Academy, Local Government, Ombudsman, NGOs, media, international organizations, Gender Equality Committee of the Parliament of Montenegro, Institute for Education, Institute for Social and Child Protection, Human**

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<sup>219</sup> For more information, see [http://www.ombudsman.co.me/O\\_instituciji.html](http://www.ombudsman.co.me/O_instituciji.html), last accessed on 28.02.2017.

<sup>220</sup> See Strategy for the Development of the System of Social and Child Protection 2013-2017, pp. 31-36.

**Resources Administration**, as key stakeholders<sup>221</sup>.

In order to achieve strategic goals, the National Plan of Action for Children 2013-2017 recognized wide range of stakeholders that need to work together in the field of children's rights protection, such as: the **Ministry of Labour and Social Welfare, Ministry for Human and Minority Rights, Ministry of Interior, Ministry of Health, Ministry of Education, Ministry of Justice, Ministry of Finance, Ministry of Culture, Ministry of Foreign Affairs and European Integration Parliament, Ombudsman, local governments, NGOs, media, businesses, schools, school parliaments, health institutions, Institute for Public Health of Montenegro, Office for Combating Trafficking in Human Beings of the Government of Montenegro, National Coordinator for Combating Human Trafficking, UNICEF.**<sup>222</sup>

Additionally, there is a number of international organizations that are very active in this field in Montenegro such as **UNICEF, UNDP**, etc.

Taking all into account, it can be concluded that in Montenegro safeguarding policies represent a new topic. Many NGO's are working in the field of protection of children and vulnerable adults from various forms of violence, but their projects are mainly focused on raising awareness about the prohibition of violence, means of protection and positive techniques of parenting. A number of projects are also related to capacity building of professionals to adequately respond and implement the protection measures. Some NGO's provide services to victims of violence or participate in the work of multidisciplinary teams as active members. However, safeguarding policies are still not recognized in its full extent in the non-governmental sector, not even in its advocacy actions.

## **RECOMMENDATIONS**

The current status of legislation in Montenegro confirms that there is a respectable state and institutional framework for the protection of children and

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<sup>221</sup> See, Strategy for the Protection against Domestic violence 2016-2020, pp. 28-39.

<sup>222</sup> National Action Plan for Children 2013-2017

vulnerable adults from violence. Also, there is an apparent development, particularly in terms of improving legal mechanisms for the protection of children's rights. This was also confirmed with recently announced initiatives, such as the expected adoption of the new Strategy for the Prevention and Protection of Children from Violence for the period of 2017-2012.<sup>223</sup> Still, the implementation of existing regulations, as well as the capacities of relevant bodies and institutions to provide effective prevention and protection of children and vulnerable adults, remains a challenge.

With the aim of supporting the existing initiatives, overcoming the above stated gaps, and ensuring better implementation of current regulations, the following recommendations could be given:

- Increase awareness of the importance of the development of safeguarding policies in Montenegro;
- Develop safeguarding policies to provide reducing the risk of harm by staff, volunteers and associates in any environment where children and vulnerable adults are present;
- Stimulate child-safe projects and programmes, and secure safe events and activities for children;
- Create awareness programs for professionals that work with children and vulnerable adults;
- Provide children and vulnerable adults with better quality information on their rights;
- Ensure accessibility to high-quality free legal aid services for all children and vulnerable adults;
- Improve the system of protection from violence beyond the protection mechanisms in domestic violence cases, particularly in terms of the protection of children from any form of violence;
- Improve existing children protection mechanisms in the sector of education and health;
- Strengthen the system of psychosocial support services for children

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<sup>223</sup> More about this announcement, see <http://www.rtcg.me/vijesti/drustvo/155670/efikasna-zastita-djece-od-nasilja-i-dalje-izazov.html>, last accessed on 28.02.2017.

and vulnerable adults, primarily at the local level;

- Stimulate socially responsible behavior through family protection models;
- Improve multi-sectoral cooperation between providers of services that are significant for realization of rights of children and vulnerable adults;
- Improve cooperation between the state authorities and institutions with the civil society organizations dealing with problems of safeguarding children and vulnerable adults;
- Establish effective governmental body or bodies to monitor and coordinate policies in the field of protection of children and vulnerable adults from any form of violence;
- Ensure complete and efficient implementation of the existing, well-defined legal solutions and safeguarding policies and programs.

**POLAND**

## Desk research

### Question n.1: What is the definition of “child”?

For the definition of “child” in the Polish language are used the following terms:

- minor (in Polish “małoletni”, “”) – used in civil law;
- juvenile (in Polish “nieletni”) – used in criminal law
- child (in Polish “dziecko”) – used in Family and Guardianship Code

In Polish language for the child (Polish „dziecko”) is used „małoletni”, “osoba małoletnia”, „niepełnoletni”, „nieletni” i „dziecko” describing the state of being a minor (under 18 years old).

According to the Civil Code persons below 18 years old are minor (“małoletni”, “osoba małoletnia”). Individuals who are at least 18 years old and elder are adults (in Polish “pełnoletni”, “osoba pełnoletnia”). Exception: women who are at least 16 years become an adult on marriage. According to the Family and Guardianship Code, a child (in Polish “dziecko”) remains under the parental responsibility until the age of civil majority.

### Articles related to child in The Constitution of the Republic of Poland

English	Polish
<p><b>Article 72.</b></p> <p>1. The Republic of Poland shall ensure protection of the rights of the child. Everyone shall have the right to demand of organs of public authority that they defend children against violence, cruelty, exploitation and actions which undermine their moral sense.</p> <p>2. A child deprived of parental care shall</p>	<p><b>Art.72.</b></p> <p>1. Rzeczpospolita Polska zapewnia ochronę praw dziecka. Każdy ma prawo żądać od organów władzy publicznej ochrony dziecka przed przemocą, okrucieństwem, wyzyskiem i demoralizacją.</p> <p>2. Dziecko pozbawione opieki</p>

<p>have the right to care and assistance provided by public authorities.</p> <p>3. Organs of public authority and persons responsible for children, in the course of establishing the rights of a child, shall consider and, insofar as possible, give priority to the views of the child.</p> <p>4. The competence and procedure for appointment of the Commissioner for Children's Rights shall be specified by statute.</p>	<p>rodzicielskiej ma prawo do opieki i pomocy władz publicznych.</p> <p>3. W toku ustalania praw dziecka organy władzy publicznej oraz osoby odpowiedzialne za dziecko są obowiązane do wysłuchania i w miarę możliwości uwzględnienia zdania dziecka.</p> <p>4. Ustawa określa kompetencje i sposób powoływania Rzecznika Praw Dziecka.</p>
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#### Articles related to minors in the Civil Code

English	Polish
<p><b>Art. 10 Age of majority</b></p> <p>§ 1. An adult is any individual who has attained eighteen years of age.</p> <p>§ 2. A minor becomes an adult on marriage. He does not lose that status in the event of the marriage being annulled.</p>	<p><b>Art. 10 [Uzyskanie pełnoletności]</b></p> <p>§ 1. Pełnoletnim jest, kto ukończył lat osiemnaście.</p> <p>§ 2. Przez zawarcie małżeństwa małoletni uzyskuje pełnoletność. Nie traci jej w razie unieważnienia małżeństwa.</p>
<p><b>Art. 12. No capacity for legal acts.</b></p> <p>Individuals who have not attained thirteen years of age and persons fully legally incapacitated do not have</p>	<p><b>Art. 12 [Brak zdolności]</b></p> <p>Nie mają zdolności do czynności prawnych osoby, które nie ukończyły lat trzynastu, oraz osoby ubezwłasnowolnione całkowicie.</p>

capacity for legal acts.	
<p><b>Art. 13. Full legal incapacitation.</b></p> <p>§ 1. A person who has attained thirteen years of age may be fully legally incapacitated if, due to mental illness, mental retardation or other mental disorder, in particular alcoholism or drug addiction, he is incapable of controlling his behavior.</p> <p>§ 2. A guardian is appointed for a fully legally incapacitated person unless the person is still under parental authority</p>	<p><b>Art. 13 [Ubezważnowolnienie całkowite]</b></p> <p>§ 1. Osoba, która ukończyła lat trzynaście, może być ubezważnowolniona całkowicie, jeżeli wskutek choroby psychicznej, niedorozwoju umysłowego albo innego rodzaju zaburzeń psychicznych, w szczególności pijaństwa lub narkomanii, nie jest w stanie kierować swym postępowaniem.</p> <p>§ 2. Dla ubezważnowolnionego całkowicie ustanawia się opiekę, chyba że pozostaje on jeszcze pod władzą rodzicielską.</p>
<p><b>Art. 15 Limited capacity for legal acts.</b></p> <p>Minors who have attained thirteen years of age and persons partially legally incapacitated have limited capacity for legal acts.</p>	<p><b>Art. 15 [Ograniczona zdolność]</b></p> <p>Ograniczoną zdolność do czynności prawnych mają małoletni, którzy ukończyli lat trzynaście, oraz osoby ubezważnowolnione częściowo</p>

According to the Act on the Ombudsman for Children, “a child is every person from the moment of conception until the age of majority”.

Article 2. 1. Within the meaning of the Act,.

The notion “juvenile” (in Polish “nieletni”) is used in the Penal Code. According



to the Penal Code, 17 years old offender is “adult” in the meaning of the Polish criminal law. According to article 10 of Polish Penal Code, any person who commits a prohibited act after having attained the age of 17 years shall be liable under the provisions of this Code. However, a juvenile, who after attaining the age of 15 years shall commit the prohibited act specified in the following articles of Polish Penal Code may be liable under the provisions specified in this Code, under certain conditions. These conditions are the following: if the circumstances of the case and the mental state of development of the perpetrator, his characteristics and personal situation warrant it, and especially when previously applied educational or corrective measures have proved ineffective.

**The Penal Code Act, 1977:**

English	Polish
<p><b>Article 10.</b></p> <p>§ 1. Whoever commits a prohibited act after having attained the age of 17 years shall be liable under the provisions of this Code.</p> <p>§ 2. A juvenile, who after attaining the age of 15 years shall commit the prohibited act specified in the following: Article 134, Article 148. § 1, 2 or 3, Article 156 § 1 or 3, Article 163 § 1 or 3, Article 166, 4 Article 173 § 1 or 3, Article 197 § 3, Article 252 § 1 or 2 and in Article 280, may be liable under the provisions specified in this Code, if the circumstances of the case and the mental state of development of the perpetrator, his characteristics and</p>	<p><b>Art. 10.</b></p> <p>§ 1. Na zasadach określonych w tym kodeksie odpowiada ten, kto popełnia czyn zabroniony po ukończeniu 17 lat.</p> <p>§ 2. Nieletni, który po ukończeniu 15 lat dopuszcza się czynu zabronionego określonego w art. 134, art. 148 § 1, 2 lub 3, art. 156 § 1 lub 3, art. 163 § 1 lub 3, art. 166, art. 173 § 1 lub 3, art. 197 § 3 lub 4, art. 223 § 2, art. 252 § 1 lub 2 oraz w art. 280, może odpowiadać na zasadach określonych w tym kodeksie, jeżeli okoliczności sprawy oraz stopień rozwoju sprawcy, jego właściwości i warunki osobiste za tym przemawiają, a w szczególności, jeżeli poprzednio stosowane środki wychowawcze lub poprawcze okazały</p>

<p>personal situation warrant it, and especially when previously applied educational or corrective measures have proved ineffective.</p> <p>§ 3. In the case specified in § 2, the penalty imposed may not exceed two-thirds of the statutory maximum penalty for the offence imputed to the perpetrator; the court may also apply an extraordinary mitigation of punishment.</p> <p>§ 4. With regard to the perpetrator who commits a prohibited act after having attained 17 years of age but before having reached the age of 18 years, the court shall, instead of a penalty, adopt educational, therapeutic, or corrective measures prescribed for juveniles, if the circumstances of the case and the mental state of development of the perpetrator, his characteristics and personal situation warrant it.</p>	<p>się bezskuteczne.</p> <p>§ 3. W wypadku określonym w § 2 orzeczona kara nie może przekroczyć dwóch trzecich górnej granicy ustawowego zagrożenia przewidzianego za przypisane sprawcy przestępstwo; sąd może zastosować także nadzwyczajne złagodzenie kary.</p> <p>§ 4. W stosunku do sprawcy, który popełnił występki po ukończeniu lat 17, lecz przed ukończeniem lat 18, sąd zamiast kary stosuje środki wychowawcze, lecznicze albo poprawcze przewidziane dla nieletnich, jeżeli okoliczności sprawy oraz stopień rozwoju sprawcy, jego właściwości i warunki osobiste za tym przemawiają.</p>
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In addition, the notion „juvenile” is used in the Act on Juvenile Delinquency Proceedings, 1982 describing the situation of the child (under 18 years old) in the reformatory.

Poland ratified the UN Convention on the Rights of the Child in 1991. The Optional Protocol to the Convention on the sale of children, child prostitution and child pornography as well as the Optional Protocol on the involvement of

children in armed conflict was ratified in 2005.

**Question n.2.: Is the notion “vulnerability” or “vulnerable” (for child and adult) used in legislation in your country? What other words, notions are used in your national legislation to describe this phenomenon?**

The notion “vulnerability” or “vulnerable” does not have a literal translation to Polish. The term is rather descriptive: Vulnerable – in Polish „wrażliwe na” , “podatne na”, “narażone na”. My starting point was the translation to the Polish language the *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*. The terms connected with vulnerability are translated in a descriptive way:

- vulnerability – in Polish “to, co wymaga szczególnego traktowania
- vulnerable children – in Polish „dzieci w szczególnie trudnej sytuacji” or „dzieci, które wymagają szczególnego traktowania”
- inherent vulnerability – in Polish [dzieci] szczególnie wrażliwe
- “socially vulnerable” – in Polish „[w] trudnej sytuacji społecznej”

Examples of using terms “vulnerable” and “vulnerability” in Polish translation the *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*.

## 1. In what context is it used

English	Polish
<p><b>III. Fundamental principles / D. Protection from discrimination / pos. 2 (page 19)</b></p>	
<p>2. Specific protection and assistance may need to be granted to more vulnerable children, such as migrant children, refugee and asylum-seeking children, unaccompanied children, children with disabilities, homeless and street children, Roma children, and children in residential institutions.</p>	<p>2. Może zajść konieczność przyznania szczególnej ochrony i pomocy dzieciom w szczególnie trudnej sytuacji, na przykład dzieciom będącym migrantami, ubiegającym się o azyl lub będącym uchodźcami, dzieciom bez opieki, dzieciom niepełnosprawnym, bezdomnym, dzieciom romskim i dzieciom przebywającym w zakładach opieki.</p>
<p><b>IV. Child-friendly justice before, during and after judicial proceedings A. General elements of child-friendly justice 4. Training of professionals (page 24)</b></p>	
<p>27. Police should respect the personal rights and dignity of all children and have regard to their vulnerability, that is, take account of their age and maturity and any special needs of those who may be under a physical or mental disability or have communication difficulties</p>	<p>27. Policja powinna przestrzegać praw osobistych i godności wszystkich dzieci, a także mieć wzgląd na to, że wymagają szczególnego traktowania, tj. uwzględniać ich wiek i dojrzałość, a także wszelkie szczególne potrzeby tych dzieci, które mogą być niepełnosprawne fizycznie lub umysłowo albo mieć trudności z komunikacją.</p>
<p><b>IV. Child-friendly justice before, during and after judicial proceedings A.</b></p>	

<b>General elements of child-friendly justice (page 66)</b>	
6. Deprivation of liberty  73. Particular attention should be paid to the way detained children are treated given their inherent vulnerability.	6. Pozbawienie wolności 73.  Ze względu na fakt, że dzieci są szczególnie wrażliwe, należy zwracać szczególną uwagę na sposób, w jaki traktuje się zatrzymane dzieci
<b>D. Child-friendly justice during judicial proceedings / 2. Legal counsel and representation<sup>74/</sup>  (page 78, table)</b>	
In Georgia, the right to legal aid for persons under the age of 18 in criminal cases is granted ex officio, since they are considered to be “socially vulnerable”. No other condition is required for those children to benefit from this service.	W Gruzji w sprawach karnych prawa do pomocy prawnej dla osób, które nie ukończyły 18 roku życia, udziela się z urzędu, ponieważ uznaje się takie osoby za znajdujące się w „trudnej sytuacji społecznej”. Nie musi zostać spełniony żaden inny warunek, aby dzieci te mogły korzystać z takiej usługi.

**Is a child considered vulnerable by definition; provide the legal place of the definition (which act and/or regulation); provide the list of legislation where this definition is used (list acts, regulations); if vulnerability does not exist as a notion, or is not defined**

In national legislation the Ombudsman provides the protection of the child against violence, cruelty, exploitation, demoralisation, neglect and other forms of maltreatment, provide disabled children with special care and help,

promotes the rights of the child and ways to protect them.

**Article 3.** The Ombudsman shall take measures to provide the child with full, harmonious development, respecting the dignity and subjectivity of the child, on terms set forth in this Act.

2. The Ombudsman acts for the rights of the child, in particular:

- 1) the right to life and health protection,
- 2) the right to be raised in a family,
- 3) the right to decent social conditions,
- 4) the right to education.

3. The Ombudsman shall take measures aiming at protection of the child against violence, cruelty, exploitation, demoralisation, neglect and other forms of maltreatment.

4. The Ombudsman shall provide disabled children with special care and help.

5. The Ombudsman shall promote the rights of the child and ways to protect them.

## **Article 9.**

1. The Ombudsman shall take measures under the Act on his own initiative, considering particularly the information submitted by citizens or their organisations indicating infringement of the rights of the child or violation of the wellbeing of the child.

2. The Ombudsman shall give notice to the person or organisation who reported the infringement of rights or violation of the wellbeing of the child on his position on that matter and in case measures are taken – on effects of such measures.

## **2. Possible contexts of using the term**

### **2.1. Child protection system**

The protection of a child is regulated by the Family and Guardianship Code, 1964 .One of the main terms used in this Code in Polish “**dobro dziecka**” – defines protection of the **child’s interests**.

Article 92, 93, 96, 96 (1), 109: protection and care of the child and parents’

responsibilities; prohibition of physical punishment

Article 96 § 1: protection of the physical and mental health

Article 95: upbringing of the child, respecting his dignity and rights

Article 112(3). 113(3): kinship placement, custody, legal care in the cases of threat to life and health.

### **Protection of persons helpless due to his mental or physical condition**

Protection of persons helpless due to his mental or physical condition is defined in the Article 210 and 211 of the Penal Code. Also, Family and Guardianship Code presumes the establishing of legal guardian for a person with disabilities by the guardianship court in specific matters.

### **Articles 210, 211 of the Penal Code:**

English	Polish
<p><b>Article 210.</b></p> <p>§ 1. Whoever despite a duty of care to a person under 15 years of age or to a person who is helpless by reason of his mental or physical condition abandons such a person shall be subject to the penalty of deprivation of liberty for up to 3 years.</p> <p>§ 2. If the consequence of the act is the death of the person specified in § 1, the perpetrator shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years.</p>	<p><b>Art. 210.</b></p> <p>§ 1. Kto wbrew obowiązкови troszczenia się o małoletniego poniżej lat 15 albo o osobę nieporadną ze względu na jej stan psychiczny lub fizyczny osobę tę porzuca, podlega karze pozbawienia wolności do lat 3.</p> <p>§ 2. Jeżeli następstwem czynu jest śmierć osoby określonej w § 1, sprawca podlega karze pozbawienia wolności od 6 miesięcy do lat 8. Art.</p>
<p><b>Article 211.</b></p> <p>Whoever, contrary to the will of the person appointed to take care of or supervise, abducts or</p>	<p><b>Art. 211.</b></p> <p>Kto, wbrew woli osoby powołanej do opieki lub nadzoru, uprowadza lub zatrzymuje małoletniego poniżej lat</p>

detains a minor person under 15 years of age or a person who is helpless by reason of his mental or physical condition shall be subject to the penalty of deprivation of liberty for up to 3 years.	15 albo osobę nieporadną ze względu na jej stan psychiczny lub fizyczny, podlega karze pozbawienia wolności do lat 3.
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## Disability

Legislation related to the people with disabilities:

Constitution of Poland, Act of 27 August 1997 on Vocational and Social Rehabilitation and Employment of Persons with Disabilities, Resolution of the Polish Sejm on 1 August 1997. - The Charter of the Rights of Persons with Disabilities, The Act of 17 December 1998 on pensions from the Social Insurance Fund.

The rights of disabled persons are regulated mainly by the Article 69 of the Constitution of Poland: "Public authorities shall provide, in accordance with the statute, aid to disabled persons to ensure their subsistence, adaptation to work and social communication"; and by the Articles 30, Article 32, Article 68.

### The Article 68 (§1-3) of the Constitution of the Republic of Poland:

English	Polish
1. Everyone shall have the right to have his health protected.	1. Każdy obywatel ma prawo do ochrony zdrowia.
2. Equal access to health care services, financed from public funds, shall be ensured by public authorities to citizens, irrespective of their material situation. The conditions for, and scope of, the	2. Obywatelom, niezależnie od ich sytuacji materialnej, władze publiczne zapewniają równy dostęp do świadczeń opieki zdrowotnej finansowanej ze środków publicznych. Warunki i zakres udzielania świadczeń określa ustawa.



<p>provision of services shall be established by statute.</p> <p>3. Public authorities shall ensure special health care to children, pregnant women, handicapped people and persons of advanced age.</p>	<p>3. Władze publiczne są obowiązane do zapewnienia szczególnej opieki zdrowotnej dzieciom, kobietom ciężarnym, osobom niepełnosprawnym i osobom w podeszłym wieku.</p>
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### **Harm, abuse**

Legislation related to the offences against sexual liberty and decency in the Penal Code:

- Article 198: taking advantage of the vulnerability of another person
- Article 199, 200, 201: Other forms of child sex abuse, sexual intercourse without the use of violence
- Article 203, 204: child prostitution
- Article 202: Child pornography

#### **Articles 198, 207 of The Penal Code:**

English	Polish
<p>Article 198.</p> <p>Whoever, taking advantage of the vulnerability of another person, or of the lack of ability to recognise the significance of the act or ability to control his/her conduct, resulting from mental disability or disorder, subjects such a person to sexual intercourse or makes him/her submit to another sexual act or to perform such an act shall be subject to the penalty of the deprivation of liberty for a term of between 6 months and</p>	<p><b>Art. 198.</b></p> <p>Kto, wykorzystując bezradność innej osoby lub wynikający z upośledzenia umysłowego lub choroby psychicznej brak zdolności tej osoby do rozpoznania znaczenia czynu lub pokierowania swoim postępowaniem, doprowadza ją do obcowania płciowego lub do poddania się innej czynności seksualnej albo do wykonania takiej czynności, podlega karze pozbawienia wolności od 6 miesięcy do lat 8.</p>

8 years.	
<p><b>Article 207.</b></p> <p>§ 1. Whoever mentally or physically mistreats a person close to him, or another person being in a permanent or temporary state of dependence to the perpetrator, a minor or a person who is vulnerable because of his mental or physical condition shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.</p>	<p><b>Art. 207.</b></p> <p>§ 1. Kto znęca się fizycznie lub psychicznie nad osobą najbliższą lub nad inną osobą pozostającą w stałym lub przemijającym stosunku zależności od sprawcy albo nad małoletnim lub osobą nieporadną ze względu na jej stan psychiczny lub fizyczny, podlega karze pozbawienia wolności od 3 miesięcy do lat 5.</p>
<p><b>Article 210.</b></p> <p>§ 1. Whoever despite a duty of care to a person under 15 years of age or to a person who is helpless by reason of his mental or physical condition abandons such a person shall be subject to the penalty of deprivation of liberty for up to 3 years.</p> <p>§ 2. . If the consequence of the act is the death of the person specified in § 1, the perpetrator shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years.</p>	<p><b>Art. 210.</b></p> <p>§ 1. Kto wbrew obowiązkowi troszczenia się o małoletniego poniżej lat 15 albo o osobę nieporadną ze względu na jej stan psychiczny lub fizyczny osobę tę porzuca, podlega karze pozbawienia wolności do lat 3. § 2. Jeżeli następstwem czynu jest śmierć osoby określonej w § 1, sprawca podlega karze pozbawienia wolności od 6 miesięcy do lat 8.</p>
<b>Article 211.</b>	<b>Art. 211.</b>

<p>Whoever, contrary to the will of the person appointed to take care of or supervise, abducts or detains a minor person under 15 years of age or a person who is helpless by reason of his mental or physical condition shall be subject to the penalty of deprivation of liberty for up to 3 years.</p>	<p>Kto, wbrew woli osoby powołanej do opieki lub nadzoru, uprowadza lub zatrzymuje małoletniego poniżej lat 15 albo osobę nieporadną ze względu na jej stan psychiczny lub fizyczny, podlega karze pozbawienia wolności do lat 3.</p>
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**Question n.3.: Is the expression of “safeguarding policy” or any synonym (safeguarding requirement, safeguarding measures, obligatory procedures of protection /measures of care, etc.) mentioned in these acts and/or regulations in relation to vulnerability?**

**Safeguarding policy campaigns by The Ombudsman for Children:**

- Social campaign “React to violence against children” (in Polish “Mam prawo. Reaguj na przemoc wobec dzieci”)
- Campaign Biting is stupid (in Polish: “Bicie jest głupie”)

**Programs held by the Committee of the Rights of The Child (Komitet Ochrony Praw Dziecka):**

- Protection of the rights and needs of children in crisis situations in the family
- Report on good practices
- Protection of the rights and needs of children in crisis situations in the family
- The support program for families at risk of violence

**State Fund for the Rehabilitation of the Disabled (PFRON) – in Polish Państwowy Fundusz Rehabilitacji Osób Niepełnosprawnych (PFRON)**

implements policy tasks and programs for persons with disabilities, including children, on social and vocational rehabilitation).

**Question n.4.: Does your national legislation on vulnerable children and adults specify the stakeholders who are expected by law to provide care and protection?**

The Social Assistance Act, 2004

Act on the Ombudsman for Children, 2000

**Names of laws and regulations provided in Polish where not officially translated to English:**

- Obwieszczenie Ministra Edukacji Narodowej z dnia 18 grudnia 2013 r. z dnia 18 grudnia 2013 r. w sprawie ogłoszenia jednolitego tekstu rozporządzenia Ministra Edukacji Narodowej w sprawie warunków organizowania kształcenia, wychowania i opieki dla dzieci i młodzieży niepełnosprawnych oraz niedostosowanych społecznie w przedszkolach, szkołach i oddziałach ogólnodostępnych lub integracyjnych (Dz.U. 2014 poz. 414)U S T AWA z dnia 4 lutego 2011 r. o opiece nad dziećmi w wieku do lat 3, Opracowano na podstawie t.j. Dz. U. z 2016 r. poz. 157.
- Rozporządzenie Ministra Edukacji Narodowej z dnia 18 sierpnia 2015 r. w sprawie zakresu i form prowadzenia w szkołach i placówkach systemu oświaty działalności wychowawczej, edukacyjnej, informacyjnej i profilaktycznej w celu przeciwdziałania narkomani, Dz.U. 2015 poz. 1249
- Rozporządzenie Ministra Edukacji Narodowej z dnia 24 lipca 2015 r. w sprawie warunków organizowania kształcenia, wychowania i opieki dla dzieci i młodzieży niepełnosprawnych, niedostosowanych społecznie i zagrożonych niedostosowaniem społecznym, Dz.U. 2015 poz. 1113
- Ustawa z dnia 26 września 2014 r. o ratyfikacji Konwencji Rady Europy o ochronie dzieci przed seksualnym wykorzystywaniem i niegodziwym

traktowaniem w celach seksualnych, sporządzonej w Lanzarote w dniu 25 października 2007 r., Dz.U. 2014 poz. 1623

- Oświadczenie Rządowe z dnia 11 lipca 2013 r. w sprawie zmiany zakresu obowiązywania Protokołu fakultatywnego do Konwencji o prawach dziecka w sprawie angażowania dzieci w konflikty zbrojne, przyjętego dnia 25 maja 2000 r. w Nowym Jorku, Dz.U. 2013 poz. 1094
- Ustawa z dnia 9 czerwca 2011 r. o wspieraniu rodziny i systemie pieczy zastępczej, Opracowano na podstawie: t.j. Dz. U. z 2013 r. poz. 135, z 2012 r. poz. 1519, z 2013 r. poz. 154, 866, 1650, z 2014 r. poz. 619, 1188, 1198
- Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 31 marca 2011 r. w sprawie procedury postępowania przy wykonywaniu czynności odebrania dziecka z rodziny w razie bezpośredniego zagrożenia życia i

**Question n.5.: What other stakeholders are you aware of concerning vulnerable children and adult in your country? (NGOs, international bodies, etc.)**

- The Ombudsman
- The Ombudsman for Children
- Minister of Social Policy
- The Minister of National Education and Sport
- Minister of Health
- Government Plenipotentiary for Equal Treatment
- The Government Plenipotentiary for Disabled People
- Joint Commission of Government and National and Ethnic Minorities
- **Child protection** (UNICEF Poland, HIA Poland, Fundacja Dzieci Niecyrze, Komitet Ochrony Praw Dziecka)
- **Disabled People**

National Consultative Council for Matters relating to Disabled Persons as well as a National Fund for the Rehabilitation of

## Country report

### Legal framework relevant definitions according to national legislation

The Polish legislation does not provide comprehensive standards for safeguarding and protection of children and vulnerable persons. These matters are regulated selectively in several legal documents. Still, Poland lacks a single legal act that would comprehensively regulate standards and rules applicable to safeguarding and protection of children and vulnerable persons. In the Polish language there is no literal equivalent of the terms “vulnerability” or “vulnerable”.

Some sources of law include notions with a meaning similar to the English term “vulnerability”. For instance the **Act on Social Assistance**<sup>224</sup> specifies a category of persons in a difficult life situation (in Polish: “osoba w trudnej sytuacji życiowej”). Social assistance is granted to persons and families in a difficult life situation, in particular in cases of: poverty, helplessness, domestic violence, disability, long-term illness, difficulties in running the household, random events and crisis situations.

The rules of providing assistance to persons with disabilities in Poland are set forth in the Act on Vocational and Social Rehabilitation and Employment of Person with Disabilities<sup>225</sup>.

The provisions of the **Criminal Code**<sup>226</sup> mention an adult who is helpless due to his or her mental or physical condition (in Polish: “osoba nieporadna ze względu na jej stan fizyczny i psychiczny”). The same piece of legislation also includes a list of offences committed against persons who are

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<sup>224</sup> Ustawa z dnia 12 marca 2004 r. o pomocy społecznej, t.j. Dz.U. z 2016 r. poz. 930 with subsequent amendments; available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20040640593>, last accessed on 25.02.2017

<sup>225</sup> Ustawa z dnia 27 sierpnia 1997 r. o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych, t.j. Dz.U. z 2016 r. poz. 2046, available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19971230776>, last accessed on 25.02.2017

<sup>226</sup> Ustawa z dnia 6.30.1997 r. Kodeks karny, t.j. Dz.U. z 2016 r. poz. 1137 with subsequent amendments; available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970880553>, last accessed on 25.02.2017

helpless due to their mental or physical condition, such as: kidnap, physical and mental maltreatment, abandonment.

**National program for preventing domestic violence**<sup>227</sup> recognizes particularly vulnerable groups of people in the family (children, spouses, partners in informal relationships, elderly people, disabled people). The focus is on family members who can suffer from multiple forms of violence.

**National Program for Poverty Reduction and Social Exclusion**<sup>228</sup> recognizes vulnerable groups: children from poor families, elderly people, disabled people.

There are several terms in the Polish legal texts used to denote a child; the Civil Law applies the term “minor” (in Polish: “małoletni”), the Criminal Law prefers “juvenile” (in Polish “nieletni”), while the Family and Guardianship Code settled for a “child” (in Polish: “dziecko”). According to the Polish Civil Code, a person under 18 years of age is a minor (in Polish: “małoletni”, “osoba małoletnia”). Consequently, a person who attains 18 years of age acquires full capacity to perform acts in law and becomes an adult (in Polish: “pełnoletni”, “osoba pełnoletnia”). *Article 11. Full capacity for legal acts is acquired at the moment of becoming an adult. Article 12. Individuals who have not attained thirteen years of age and persons fully legally incapacitated do not have capacity for legal acts. Article 13. §1. A person who has attained thirteen years of age may be fully legally incapacitated if, due to mental illness, mental retardation or other mental disorder, in particular alcoholism or drug addiction, he is incapable of controlling his behaviour. §2. A guardian is appointed for a fully legally incapacitated person unless the person is still under parental authority.*<sup>229</sup> (Civil Code, 1964 – Art. 11, Art. 12, Art. 13) Women have an exceptional status under the Polish law, because they may acquire full legal capacity after attaining 16 years of age if they enter into

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<sup>227</sup> See [https://ms.gov.pl/Data/Files/\\_public/ppwr/krajowy\\_program/krajowy-program-przeciwdzialania-przemocy-w-rodzynie-na-lata-2014-2020.pdf](https://ms.gov.pl/Data/Files/_public/ppwr/krajowy_program/krajowy-program-przeciwdzialania-przemocy-w-rodzynie-na-lata-2014-2020.pdf)

<sup>228</sup> See <http://www.mpips.gov.pl/bip/akty-prawne/programy/krajowy-program-przeciwdzialania-ubostwu-i-wykluczeniu-spolicznemu-2020-nowy-wymiar-aktywnej-integracji/#akapit1>

<sup>229</sup> Ustawa z dnia 23 kwietnia 1964 r. - Kodeks cywilny, t.j. Dz.U. z 2016 r. poz. 380 with subsequent amendments; available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640160093>, last accessed on 24.02.2017

matrimony. According to the Act on the Ombudsman for Children “A *child is everyone person from the moment of conception until the age of majority*<sup>230</sup>” (Act on the Ombudsman for Children 2000 – Art. 2). The notion of “juvenile” (in Polish: “nieletni”) is applied in the Criminal Code. Article 10 of the Criminal Code stipulates that any person who commits a prohibited act after attaining 17 years of age shall be liable under the provisions of that Code. By way of exception, a juvenile may face criminal liability for some prohibited acts also after attaining 15 years of age; however, it is possible only if it is deemed appropriate given the circumstances of the case and the state of mental development of the offender, his or her characteristic and personal situation, and especially if previously applied educational or corrective measures have been ineffective.

The Polish legislation does not include definitions of “abuse” and “harm”. The Criminal Code lists offences against sexual liberty and decency involving the use of physical and mental violence. The following Articles can be mentioned as examples: Article 198 – taking advantage of helplessness of another person, Articles 199, 200 and 201 regarding other forms of sexual abuse of children, sexual intercourse with the use of violence, Articles 203 and 204 on child prostitution, Article 202 on child pornography and Article 207 on mental or physical maltreatment.

### **Analysis of the laws and regulations relevant to the safeguarding and protection of children and vulnerable adults**

Poland does not have a coherent, centrally-coordinated and comprehensive child and vulnerable adults protection system. To an extent, it is possible to reconstruct the protection system by extracting elements from other systems, such as the system of alternative care, social assistance, healthcare, education, and system of combating domestic violence which has a crucial importance regarding child protection and vulnerable adults. The system thus obtained proves fragmentary and “derivative” in character, and

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<sup>230</sup> Ustawa z dnia 6 stycznia 2000 r. o Rzeczniku Praw Dziecka; Dz.U. 2000 nr 6 poz. 69, available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20000060069>, last accessed on 24.02.2017



the absence of a central coordinating body is visible. The system is not based on one devoted piece of legislation, such as for example the Children Act or Care Act in the UK, or one type of centred services, but on diverse institutions, numerous international acts signed and ratified by Poland and various domestic legal documents.

Regulation regarding children and helpless adults are present in all branches of law which are civil law (legal capacity), family and guardianship law (child's position in family), criminal law (child and helpless adults as a victim or witness of crime and in scope of the juvenile justice child as a perpetrator of crime) and administrative law (child's right to education, access to health care, combating domestic violence, social care).

**Constitution** contain provision on children's rights and child protection. The Constitution states in Article 72 „1. *The Republic of Poland shall ensure protection of the rights of the child. Everyone shall have the right to demand of organs of public authority that they defend children against violence, cruelty, exploitation and actions which undermine their moral sense.* 2. *A child deprived of parental care shall have the right to care and assistance provided by public authorities*<sup>231</sup>”(Constitution of the Rep. of Poland 1997 – Art. 72).

The rights of persons with disabilities are enshrined in Article 68 of the Constitution of the Republic of Poland. „*Public authorities shall ensure special health care to children, pregnant women, handicapped people and person of advanced age*” and Article 69 „*Public authorities shall provide, in accordance with the statute, aid to disabled persons to ensure their subsistence, adoption to work and social communication*<sup>232</sup>”. (Constitution of the Rep. of Poland 1997 – Art. 68, Art. 69) .

**The Code of Criminal Procedure** imposes a basic duty to report cases of abuse, exploitation, crime etc. However, it treats it as a social, not legal duty. There are no sanctions for failing to comply with this duty. According to Article 304 § 1 of the Code of Criminal Procedure, *everyone who*

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<sup>231</sup> Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., Dz.U. 1997 nr 78 poz. 72; available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483>, last accessed on 24.02.2017

<sup>232</sup> Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., Dz.U. 1997 nr 78 poz. 72; available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970780483>, last accessed on 24.02.2017

learns about an offence prosecuted *ex officio* has a duty to report it to the prosecutor's office or to the police. Also, the state and local government institutions, if they discover in the course of their activity that an offence was committed, are required to report it<sup>233</sup>. (Code of Criminal Procedure, 1997 – Art. 304) These institutions must, without unnecessary delay, communicate the information on the possibility of committing an offence to the police or to the prosecutor's office. On 24 February 2017 the lower chamber of the Polish Parliament (Sejm) amended the Criminal Code<sup>234</sup> in order to grant better protection to children and persons who are helpless due to their mental or physical condition. The legislative work is still underway and the adopted amendment has not yet entered into force. It is quite likely that the amendment becomes legally binding in May this year (when this report was drafted the exact date was still unknown). When the amendment enters into force, every person who learns about, for instance, a grave offence committed against a child will have not only a social, but also a legal duty to notify the law enforcement agencies. Failure to notify such agencies shall be punishable by deprivation of liberty of up to 3 years. Also, the amendment introduces harsher penalties for offences against children and persons who are helpless due to their mental or physical condition, including (but not limited to): causing damage to health, kidnap, abandonment, maltreatment.

If a child's welfare is in danger (for various reasons, including – but limited to – lack of data on its parents or in case of gross neglect of the child by its parents), the family court is obliged to secure the child's interest. The family court has the right to interfere in the parental authority; it may limit the parental authority to a varying extent by applying various means, for instance by appointing a custodian for the child, ordering parents to take specific actions and even depriving the parents of exercising care over the child, suspending the parental authority and depriving parents of their parental authority. Article 572 § 1 of the Code of Civil Procedure “*obliges all persons to*

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<sup>233</sup> Ustawa z dnia 6 czerwca 1997 r. - Kodeks postępowania karnego, t.j. Dz.U. z 2016 r. poz. 1749 with subsequent amendments; available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970890555>, last accessed on 24.02.2017

<sup>234</sup> See amended the Criminal Code available at: <http://www.sejm.gov.pl/sejm8.nsf/PrzebiegProc.xsp?nr=846>, last accessed on 24.02.2017

*inform the Guardianship Court of circumstances that require ex officio initiation of proceedings. This obligation rests primarily on civil registry offices, courts, prosecutors, notaries, debt collectors, self-government and state bodies, Police, education institutions, social workers, organisations and institutions providing care to children or mentally-ill persons<sup>235</sup>.*

On the basis of Article 12 (1) of the **Act on the Prevention of Domestic Violence**, persons who – in the course of their professional duties – get a suspicion that a publicly-prosecuted crime involving domestic violence has been committed, immediately report it to the Police or the prosecutor. In accordance with Article 12 (2) of the Act, persons who are witnesses of domestic violence should inform the Police, the prosecutor or any other entity working for the prevention of domestic violence<sup>236</sup> (Act on the Prevention of Domestic Violence, 2005 – Art. 12) .

The so-called **procedure of “Blue Card”** is regarded in the provisions of the Act on the Prevention of Domestic Violence. The procedure may be initiated by the Police, the Committee for Solving Alcohol Problems, educational, healthcare and social welfare institutions. The objective of the “Blue Card” is to establish cooperation with the family affected by violence and to cover its members. The specialists (interdisciplinary team) analyze the data included in the documents and elaborate an individual plan of assistance to the family affected by violence.

### **Analysis of relevant governmental and non-governmental stakeholders**

The Constitution of the Republic of Poland sets up the institution of the Ombudsman for Children. **The Ombudsman for Children** protects children’s rights, in particular the right to life, healthcare, education, being brought-up in a family and the right to adequate standards of living. The *“Ombudsman takes action in order to ensure that all children have the possibility to enjoy full and*

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<sup>235</sup> Ustawa z dnia 17 listopada 1964 r. - Kodeks postępowania cywilnego, t.j. Dz.U. z 2016 r. poz. 1822 with subsequent amendments; available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640430296>, last accessed on 24.02.2017

<sup>236</sup> Ustawa z dnia 29 lipca 2005 r. o przeciwdziałaniu przemocy w rodzinie, t.j. Dz.U. z 2015 r. poz. 1390 with subsequent amendments; available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20051801493>, last accessed on 24.02.2017

*harmonious development, and that their dignity and right to be recognized as people before the law are respected.*<sup>237</sup>” (Act on the Ombudsman for Children, 200 – Art. 3). The Ombudsman exercises his or her rights in line with the principles enshrined in the Constitution of the Republic of Poland, the Convention on the Rights of the Child and in the Act on the Ombudsman for Children, in particular: the principle of child’s welfare, the principle of equality and striving to protect the rights of all children. The Ombudsman tackles also individual cases which were not adequately solved despite taking all available legal measures. The Ombudsman does not replace specialised agencies, institutions and associations that protect children’s interests; he or she intervenes only if the existing procedures turn out to be inefficient or if they were abandoned.

**The Commissioner for Human Rights** safeguards human and civic freedoms and rights specified in the Constitution and other legal acts. In order to fulfill this task the Commissioner investigates whether actions undertaken or abandoned by the entities, organizations or institutions obliged to observe and implement human and citizen rights and freedoms have not led to infringement of the law or the principles of social coexistence and justice, and undertakes appropriate measures<sup>238</sup>.

**Social assistance** in Poland is organised by units of central and local administration in cooperation with organisations such as foundations, associations, religious groups, employers and both natural and legal persons. Units of social assistance are as follows: in municipalities and communes – social assistance centres; in districts – powiat centres for family support; in voivodships – regional social policy centres. The majority of social assistance services are provided by social assistance centres and powiat centres for family support. Regional social policy centres focus on cooperation with providers and organisers of social assistance (for example NGOs). NGOs provide services such as: shelters for the homeless, homes for single

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<sup>237</sup> Ustawa z dnia 6 stycznia 2000 r. o Rzeczniku Praw Dziecka; Dz.U. 2000 nr 6 poz. 69, available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU2000060069>, last accessed on 24.02.2017

<sup>238</sup> <https://www.rpo.gov.pl/en/content/about-commissioner-human-rights>

mothers, day-care homes and other support centres, and many others. Social assistance is granted to persons and families, in particular for the following reasons: poverty, orphanage, homelessness, need to protect motherhood, unemployment, disability, prolonged illness, incompetence in childcare matters likewise in running a household, particularly in case of incomplete and large families, alcoholism or drug addiction, difficulties in adjusting to life after discharge from penitentiary institution, natural or ecological disasters.<sup>239</sup>

**The Minister of Family, Labour and Social Affairs** is responsible, among others, for family and social welfare administration areas. Within the area of family, the Minister deals with such matters as: the care of children under 3; protection and support to families with children, especially in difficult situations; development of the system of alternative care; coordination and enabling of cooperation between public administration bodies and institutions with respect to the rights of the family and the rights of children; and international cooperation with respect to the rights of the family and the rights of children. The Minister is also responsible for such matters as prevention of domestic violence or policies related to persons with disabilities.

**The Ministry's of National Education** responsibility is child protection in the area of education and it covers legislation, training of professionals, monitoring of institution. Other stake holders who are expected by law to provide care and protection vulnerable people: Minister of Health, The Ombudsman, The Government Plenipotentiary for Disabled People, The Government Plenipotentiary for Equal Treatment.

**The Government Plenipotentiary for Equal Treatment** is a state institution that aims to implement government policies on equal treatment, including anti-discrimination, due to gender, race, ethnicity, nationality. One of the tasks of the Plenipotentiary is to take steps to eliminate or reduce the effects of the breach of the principle of equal treatment.

**The Government Plenipotentiary for Disabled People** supervises execution of tasks specified by the Act of 27 August 1997 on vocational and social rehabilitation and employment of persons with disabilities. The tasks of the Plenipotentiary include among others: drafting governmental programmes

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<sup>239</sup> <https://www.mpips.gov.pl/en/social-assistance/>

aimed at the solution of problems of persons with disabilities, undertaking activities aimed at limiting effects of disability and barriers which make it difficult for persons with disabilities to function in society.

The major non-governmental actors involved in protecting children against abuse are: Fundacja Dajemy Dzieciom Siłę (English: “Empowering Children Foundation”), Komitet Ochrony Praw Dziecka (English: “Children’s Rights Protection Committee”) and UNICEF Poland. The major non-governmental actors involved in protecting persons in a difficult life situation are: Polish Red Cross, Caritas Poland, Blue Line.

### **NGO scene**

Safeguarding is a new issue for Polish non-governmental organizations. There are no legal regulations that obligate NGOs to develop and implement safeguarding policies. Some of the NGOs, inspired by international standards, try to create and implement their own safeguarding policies. In 2014, Fundacja Dajemy Dzieciom Siłę launched an initiative “Chronimy Dzieci” (English: “We Protect The Children”), which may serve as an example of good practices. “Chronimy Dzieci” is a program aimed at preventing violence against children, authored and coordinated by Fundacja Dajemy Dzieciom Siłę. This program is addressed at nurseries, kindergartens, primary schools, middle schools, educational care facilities, non-governmental organizations and other institutions acting in support of children. It is the first program in Poland that promotes safe organizations and that responds to the needs of professionals and parents connected with implementation of standards of institutions that are safe for children. The concept of this program is to award the “Chronimy Dzieci” certificate to those facilities that meet elevated standards of children protection and that run high quality programs of protecting children against abuse. Organizations join this program on a voluntary basis and they themselves decide if they want to implement these standards. Persons who put children safety in danger cannot be employed in facilities that meet those standards. All employees of such facilities must know how to recognize signs of child abuse and how to intervene if they suspect that a child is a victim of violence in the facility or at home. All children learn

how to avoid dangers in contacts with adults and peers. Also, all children have permanent access to information on where to seek help in difficult life situations. Parents on the other hand receive advice on how to raise children without violence and how to talk to them about safety rules.

It should be stressed that adhering to the “Chronimy Dzieci” program and developing a safeguarding policy (in Polish: “Polityka Ochrony Dzieci przed Krzywdzeniem”) constitute an example of good practices. There is no legal obligation to create safeguarding policies. Only centers for foreigners are legally bound to develop and respect such standards, following a decision of the Office for Foreigners (in Polish: Urząd ds. Cudzoziemców). Until today 3754 facilities joined the “Chronimy Dzieci” initiative. A majority of facilities has only started working on meeting all the standards 353 facilities have completed the process of implementation of standards and were awarded a certificate.

There are no good practices or legal duties with regard to implementation of safeguarding policy by non-governmental organizations, institutions and facilities working with vulnerable adults.

### **Assessment and recommendations**

In Poland there is no institution coordinating and monitoring actions in support of children that would adopt a holistic approach to the child, its needs and problems, instead of tackling them from the perspectives of individual ministries. There are plenty of agencies and institutions providing support to children and families, but they rarely act in a coordinated manner and there is no systemic cooperation between them. The same applies to organizations acting in support of vulnerable adults (the disabled, the elderly, or persons who need assistance due to their mental condition). Poland also lacks agencies that protect children and that would at the same time assume coordination responsibilities and act as the first point of contact in case of suspected child abuse (there are such agencies in other countries). What is also missing is a system that allows to identify families at risk and to apply preventive measures.

Non-governmental organizations working with children and vulnerable

adults in Poland are not legally required to establish internal procedures, or to implement a safeguarding policy. Each non-governmental organization that protects welfare of children and vulnerable adults may adopt such a document. Introducing internal procedures of this kind may help to safeguard welfare and interest of children and vulnerable adults. In Poland there are not enough educational initiatives targeted at persons and organizations working with children. Even though the legislation introduces an obligation to notify competent authorities about a committed offence or a threat to a child's welfare, not all persons working with children know how to intervene if they suspect that a child is abused, or how to recognize signs of abuse in children. There is no system of vetting and monitoring employees in order to prevent mistreatment of children. Only some of the professional groups working with children (e.g. teachers) are obliged to provide a certificate of clear criminal record. A teacher must provide the headmaster with an appropriate certificate from the National Criminal Record before signing an employment contract. However, this obligation does not apply to volunteers, employees of non-governmental organizations, interns, employees at private nurseries and nannies. Risks arising from employing persons posing a threat to children may be minimized by adopting a rule on voluntary provision of certificates of clear criminal record or certificates confirming that a given person does not face pending criminal proceedings.



**ROMANIA**

## **Desk research**

### **Question n.1: What is the definition of “child”?**

The definition of “child” is stipulated in the Romanian provisions and it refers to the person below the age of 18 and without the full legal competence.

This definition is defined by Law no. 272/2004 regarding the protection and promotion of child rights.

In addition, according to the Convention on the child's rights from 20.11.1989, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

### **Question n.2.: Is the notion “vulnerability” or “vulnerable” (for child and adult) used in legislation in your country? What other words, notions are used in your national legislation to describe this phenomenon?**

Yes, the notions “vulnerability” or “vulnerable are used in Romanian legislation (in Romanian language *persoane vulnerabile*).

This term is used in order to describe a special situation, regarding a category of people with special needs having the need of special treatment from the state authorities.

The children constitute the particular social group of vulnerable people in the Romanian legal provisions.

The legal provisions which provide the definitions of “vulnerability” or “vulnerable” are law no. 122/2006 regarding Asylum in Romania and Emergency Ordinance no. 194/2002 regarding the regime of foreigners in Romania.

List of legislation:

- Law no. 122/2006 regarding the international protection in Romania;
- Government Emergency Ordinance no. 194/2002 regarding the regime of foreigners in Romania;
- Social assistance Law no. 292/2011;
- The Romanian Criminal Code (Law no. 286/2009);
- Law no. 197/2012 regarding the assurance of quality in the field of social services.

Even though the vulnerability is defined in the Romanian legal provisions, there are some situations that are described as cases of vulnerability. These cases may refer to minors, unaccompanied minors, disabled people, elder people, pregnant women, single parents with their minor children, victims of trafficking, persons suffering from serious illnesses, people with mental illnesses and individuals who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, or under other special circumstances.

**Question n.3.: Is the expression of “safeguarding policy” or any synonym (safeguarding requirement, safeguarding measures, obligatory procedures of protection /measures of care, etc.) mentioned in these acts and/or regulations in relation to vulnerability?**

Yes, synonyms of the expression of “safeguarding policy” are mentioned in various legal provisions, which we have outlined below:

- Law no. 122/2006 regarding the international protection in Romania;
- Government Emergency Ordinance no. 194/2002 regarding the foreigners’ regime in Romania;
- Social assistance law no. 292/2011;
- Law no.197/2012 regarding the assurance of quality in social services domain;
- Law no. 678/2001 regarding the prevention of human trafficking and its implementing norms;
- Multidisciplinary and interinstitutional intervention methodology on exploited children dated on 19.01.2011;

- Decision no. 1238/2007 regarding the approval of National Standards for specialized assistance and protection of trafficked persons.

**Question n.4.: Does your national legislation on vulnerable children and adults specify the stakeholders who are expected by law to provide care and protection?**

Yes, various stakeholders are stipulated in the i) Multidisciplinary and interinstitutional intervention methodology on exploited children dated on 19.01.2011 and the ii) Law no. 678/2001 regarding the prevention of human trafficking and its implementing norms.

At a central level of the state:

- Ministry of Labour, Family and Social Protection;
- Child Protection Directorate General;
- Ministry of Internal Administration;
- The National Anti-Drug Agency;
- National Agency against human trafficking;
- Ministry of Education, Research, Youth and Sports;
- Ministry of Health;
- National Crime Prevention Committee (composed by members from each of the: Ministry of Justice, Ministry of Foreign Affairs, The Ministry of Labour and Social Solidarity, The Ministry of Education and Research, Ministry of Health and Family, The National Authority for Child Protection and Adoption).

At a local level of the state:

- Territorial (County) Labour Inspection Labour Inspectorates;
- General Directorate of Social Assistance and Child Protection;
- County drug centres;
- County school inspectorates, Bucharest School Inspectorate;
- County Departments of Public Health and Department of Public Health Bucharest;
- Territorial (County) Labour Inspectorates.

**Question n.5.: What other stakeholders are you aware of concerning vulnerable children and adult in your country? (NGOs, international bodies, etc.)**

We have outlined the most important NGOs and International Bodies:

- Save the Children Romania (in Romanian *Salvați copiii*) involved in the education and caretaking of vulnerable children;
- Always Close (in Romanian *Mereu Aproape*) involved in the education and caretaking of vulnerable children and persons with disabilities, elderly people;
- Queen Marie (in Romanian *Regina Maria*) involved in the education and caretaking of vulnerable children and their mothers;
- Children, Souls and Hopes (in Romanian *Copii Suflete Sperante*) involved supporting children with health problems;
- Children (in Romanian *Asociația Copii*) involved in improvement of quality life of the vulnerable children that need protection;
  
- Unicef as well as Unicef Romania, involved in the protection of children, their health and nutrition);
- The European Centre for children with disabilities rights (in Romanian *Centrul European pentru Drepturile Copiilor cu Dizabilitati*) involved in promoting the rights of the children with psychological disabilities.

**Question n.6.: Anything else that you find relevant, interesting to mention from what you have found during your desk research on this topic**

The Romanian legal framework provides a very organized and detailed system of protection, especially in respect to children.

As we have outlined above, there numerous provisions in different laws, rather a single law that refer to a special treatment of the vulnerable people.

The authorities are developing and expanding their activity, by covering their protection over more vulnerable people and persons with special needs.

The legal provisions also state in a very clear manner the special procedures which are taken, in respect to immigrant under aged children (as defined at point 1 above), considering them a vulnerable category of people that need special care.

In addition, NGOs are undertaking numerous programs and are becoming involved more in this area, their contribution has been very important in the past years. For example, NGOs are developing campaigns to persuade companies or professional individuals to redistribute a certain percent of their profits in order to save vulnerable children.

## Country Report

### 1. Legal framework

Under the Romanian legislation, the core definition of “vulnerable group” is found in the provisions of the Law No. 292/2011 (Social Assistance Law). Thus under Art. 6 pgf. p: *“Under the present law, the terms and expressions bellow have the following meaning:*

(...)

*p) vulnerable group refers to persons or families at risk of losing their capacity of meeting the daily needs because of situations of illness, disability, poverty, substance or alcohol addiction or other situations that lead to economic and social vulnerability,, (Social Assistance Law, Art. 6, pgf. p)<sup>240</sup>*

The National Strategy on Social Inclusion and Poverty Reduction 2015-2020, approved under the Government Decision No. 383/2015<sup>241</sup>, provides a comprehensive list of vulnerable groups. Thus, under Chapter 1.2, the Strategy lists the following vulnerable groups:

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<sup>240</sup> Legea asistenței sociale nr. 292 din 20 decembrie 2011, M.Of. nr. 905/ 2011, art. 6 lit. p, available at <http://www.mmuncii.ro/pub/imagemanager/images/file/Legislatie/LEGI/L292-2011.pdf>, last accessed on 28.02.2017

<sup>241</sup> Hotărâre pentru aprobarea Strategiei naționale privind incluziunea socială și reducerea sărăciei pentru perioada 2015 – 2020 și a Planului strategic de acțiuni pentru perioada 2015 – 2020 Nr. 383 din 27 mai 2015, M. Of. nr. 463/2015, available at [http://www.mmuncii.ro/j33/images/Documente/Familie/DGAS/Acreditare/2015-07-28\\_HG\\_Strategie\\_incluziune\\_sociala.pdf](http://www.mmuncii.ro/j33/images/Documente/Familie/DGAS/Acreditare/2015-07-28_HG_Strategie_incluziune_sociala.pdf), last accessed on 28.02.2017

- (1) Poor people
- (2) Children and youth deprived of parental care and support
- (3) Lone or dependent elderly
- (4) Roma
- (5) Persons with disabilities
- (6) Other vulnerable groups,
- (7) People living in marginalized communities

Moreover, an exhaustive list of vulnerable groups is included in Annex 1 of the abovementioned Strategy<sup>242</sup>.

As State party to the UN Convention on the rights of the child, Romania follows the international definition of the “child”. The definition as well as the most relevant provisions on the rights of the child and thereof safeguarding is included in the Law No. 272/2004 on the protection and promotion of the rights of the child. Under article 4 of this law:

*“For the present law, the terms and expressions below have the following meanings:*

- a) *child - a human being below the age of 18, who has not acquired full capacity of exercise, according to the law; (...)*<sup>243</sup>

The same law provides a clear definition of abuse and neglect in relation to children. Thus, under art. 94:

*“(1) Child abuse means any voluntary action of a person who has a relation of responsibility, trust or authority towards the child, through which the life, the physical, mental, spiritual, moral and social development, the bodily integrity, the physical and mental health of the child are endangered and it is classified as physical, emotional, psychological, sexual and economical abuse*

*(2) Child neglect means the omission, either voluntary or involuntary, of a*

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<sup>242</sup> The English version of the National Strategy on Social Inclusion and Poverty Reduction 2015-2020 (including Annex 1) is available at [http://www.mmuncii.ro/j33/images/Documente/Familie/2016/StrategyVol1EN\\_web.pdf](http://www.mmuncii.ro/j33/images/Documente/Familie/2016/StrategyVol1EN_web.pdf)

<sup>243</sup> Legea privind protecția și promovarea drepturilor copilului nr. 272 din 21 iunie 2004, republicată, M.Of. nr. 159/2014, art. 4 lit. a, available at <http://www.mmuncii.ro/j33/images/Documente/Legislatie/L272-2004-R.pdf>, last accessed on 28.02.2017

*person who is responsible for upbringing, caring for or educating the child, to undertake any measure which is subordinated to this responsibility, and which results in endangerment of the life, physical, mental, spiritual, moral and social development, the bodily integrity and the physical and mental health of the child and may take several forms: nutritional, clothing, hygiene neglect, educational neglect, emotional neglect or living the child/family abandonment which represents the most severe form of neglect.*"<sup>244</sup>

In an effort of creating a common language for professionals from different systems relevant for child protection, the Romanian authorities developed and approved two relevant methodologies under Government Decision No. 49/2011: Framework methodology for multidisciplinary and network prevention and intervention in cases of violence against children and domestic violence (Annex 1) and the Methodology for multidisciplinary and interinstitutional intervention on exploited children and those at risk of child labour, child victims of human trafficking, and Romanian migrant children victims of other forms of violence on the territory of other states (Annex 2). The legal act promotes the complex concept of violence against children by integrating all forms of violence: *"Violence against children is a complex concept integrating the various forms of physical, verbal, emotional and sexual abuse, neglect, economic exploitation/child labour, sexual exploitation, abduction and/or disappearance, high-risk migration, trafficking, Internet violence, and more, relating to all players that have contact with the child: the family, educational, medical and protection institutions, prosecution and rehabilitation/detention centres, the Internet, the media, workplaces, sports facilities, the community, etc. According to the particularities of the violent act and the relationship between the perpetrator and the child, all these forms of violence against children may be subsumed under the following types of violence: violence against oneself, interpersonal violence and collective violence.*"<sup>245</sup>

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<sup>244</sup> Ibidem, art. 94

<sup>245</sup> Hotărârea nr. 49/2011 pentru aprobarea Metodologiei-cadru privind prevenirea și



The same Government Decision promotes operational definitions for all standard forms of violence against children (physical abuse, emotional/psychological abuse, sexual abuse, neglect, sexual and economic exploitation, trafficking) and for specific ones (non-accidental poisoning, shaken baby syndrome, Munchausen syndrome by proxy, Stockholm syndrome, and Internet violence).

## 2. Analysis of the laws and regulations

When analysing in parallel the definition and the list of vulnerable groups and the legal provisions safeguarding each of them, it becomes clear that while **children benefit of a - prima facie - integrated and comprehensive legal protection** (one core law that regulates their rights, the state actors in charge with safeguarding these rights, the obligations of relevant institutions, special protection measures etc as well as secondary legislation on particular aspects of safeguarding the rights of the child), not the same could be said about other vulnerable groups such as persons with disabilities, people living in poverty or elderly.

For instance, with regard to the **persons with disabilities**, although on November 11, 2010, Romania ratified the UN Convention on the Rights of Persons with Disabilities, there is even now terminological confusion in various norms and official documents over terms such as “disability”, “handicap”, “deficiency”, “impairment”, which are not correlated with the terminology found in the Convention or in the International Classification of Functioning. Even the title of core law for the protection of persons of persons with disabilities refers to the term “handicap” (Law No. 448/2006 on the protection and promotion of the rights of persons with handicap). It is worth

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intervenția în echipă multidisciplinară și în rețea în situațiile de violență asupra copilului și de violență în familie și a Metodologiei de intervenție multidisciplinară și interinstituțională privind copiii exploatați și aflați în situații de risc de exploatare prin muncă, copiii victime ale traficului de persoane, precum și copiii români migranți victime ale altor forme de violență pe teritoriul altor state, din 19 ianuarie 2011, M.Of. No. 117/2011, Annex I, section II.2, pgf. 3, available at <http://lege5.ro/Gratuit/ge2daobxgu/hotararea-nr-49-2011-pentru-aprobarea-metodologiei-cadru-privind-prevenirea-si-interventia-in-echipa-multidisciplinara-si-in-retea-in-situatiile-de-violenta-asupra-copilului-si-de-violenta-in-familie->, last accessed on 28.02.2017

noting that the provisions of the above mentioned law, while listing the rights of persons with disabilities, are rather focused on the health dimension as well as on the social benefits and facilities available.

Both Romanian civil society and the UN Committee against Torture<sup>246</sup> have expressed concerns about the way people with disabilities (children and adults) live and are treated in psychiatric hospitals or institution care. The large number of death cases left uninvestigated and independent monitoring reports<sup>247</sup>, both point to the need to improve the legal framework meant to protect the rights of people with disabilities and prevent torture or other cruel, inhuman or degrading treatment or punishment.

A process of amending the domestic legislation on disability was initiated by the Romanian authorities, but there is no available information on the expected timeframe for this process and no public consultation was yet initiated by the Government.

Although **people living in poverty** are recognised as vulnerable group and Romania is the EU member state with the second highest rate of people living at risk of poverty or social exclusion, there are few legal provisions aimed at protecting this vulnerable group. The social benefits are regulated in disparate legal instruments and social transfers have a limited impact on reducing poverty. The level of the main social benefits, including unemployment benefits, is determined on the basis of the social reference index which has not been updated since its introduction in 2008.

Adopted in 2016, the minimum inclusion income (MII) law<sup>248</sup>, due to enter into force on 1 April 2018, consolidates three means-tested programmes

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<sup>246</sup> UN Committee against Torture, *Concluding observations on the second periodic report of Romania*, available at [http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ROU/CAT\\_C\\_ROU\\_CO\\_2\\_2\\_0493\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ROU/CAT_C_ROU_CO_2_2_0493_E.pdf), last accessed on 28.02.2017

<sup>247</sup> Centrul de Resurse Juridice, <http://www.crj.ro/pledoarie-pentru-demnitate/lagarele-de-langa-tine-descrierea-proiectului/rapoarte-de-monitorizare/> last accessed on 28.02.2017

<sup>248</sup> Legea nr. 196/2016 privind venitul minim de incluziune, din 31 octombrie 2016, M. Of. No. 882/2016, available at <http://lege5.ro/Gratuit/geztgnzwm3q/legea-nr-196-2016-privind-venitul-minim-de-incluziune>, last accessed on 28.02.2017

(minimum guaranteed income, family support allocation and heating allocation).

While estimated to almost doubling the current budget, it is expected to increase the adequacy and coverage of the benefits, aiming to lift 10 % of the population out of extreme poverty. The MII will combine passive support with more attractive active labour market measures by maintaining a part of the benefits for those taking up work and introducing compulsory active labour market measures for this group. The activation potential of these compulsory measures, however, remains modest with a target to reach only 25 % of MII beneficiaries by 2021<sup>249</sup>.

In the Romanian **institutional establishment**, the National Authority for the Protection of the Rights of the Child and Adoption (NAPCRA) is playing a key role in the protection and promotion of the rights of the child. The responsibility for coordinating the protection of persons with disabilities is shared between the National Authority for Persons with Disabilities - NAPD - (for the disabled adults) and NAPRCA (for the disabled children). Both NAPD and NAPCRA are functioning under the Ministry of Labour and Social Justice and only play a coordinating role for the corresponding institutions functioning at county level – the General Directions for Social Welfare and Child Protection, subordinated to and financed by the County Councils. As for coordination at county level, the institutional roles and mandates suffer from poor delimitation, with almost nonexistent mechanisms meant to ensure cooperation and coordination between relevant actors (e.g. there is no unified framework of cooperation between the General Directions for Social Welfare and Child protection and the General School Inspectorates, but rather ad-hoc agreements and inter-personal dialogue and cooperation between representatives of the above mentioned local institutions).

On local level, although the main responsibility to extent adequate support to

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<sup>249</sup> European Commission, *Country Report Romania 2017*, available at <https://ec.europa.eu/info/publications/2017-european-semester-country-reports>, last accessed on 28.02.2017

vulnerable groups through primary social services (including services to prevent separation of the child from his or her parents) lies with local authorities, data shows that in many cases there is no local expertise or financial and human resources to provide this kind of support.

Law 272/2004 provides that each local administrative unit (LAU) shall put in place Public Social Assistance Services (PSAS), but the actual implementation of this provision has been put off, especially in smaller rural localities. In spite of the progress made in the past years, the PSAS census conducted by the World Bank in May 2014 showed that more than one third (34%) of the LAUs in rural areas and very small towns (under 10,000 inhabitants) did not put in place such services, but added to the responsibilities of the existing staff. The share varies considerably, from 47% in small communes (under 2,000 inhabitants) to 18% in the larger ones (over 5,000 inhabitants).

Besides insufficient local structures, official data<sup>250</sup> indicate an alarmingly deep shortage of staff. At the end of 2012, rural areas and towns under 50,000 inhabitants were short of overall 2,300 – 3,600 people, whereas the social assistance system was short of 11,000 people, globally.

In terms of **independent monitoring**, there is no specialised independent body in Romania to take over this task for each (or any) of the vulnerable groups, such as the Children’s Ombudsman. The office of the Ombudsman includes a semi-specialised department charged with “the rights of the child, family, youth, pensioners and people with disabilities”. In 2015, a total number of 12164 petitions were registered. Although both civil society and the UN Committee on Rights of the Child have underlined the importance of a specialised office for the rights of the child within the Ombudsman, the Parliament rejected in 2009, 2012 and 2015 three draft laws that aimed at founding such an office (a specialised deputy of the Ombudsman).

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<sup>250</sup>) National Strategy on Social Inclusion and Poverty Reduction 2015-2020 available in English at [http://www.mmuncii.ro/j33/images/Documente/Familie/2016/StrategyVol1EN\\_web.pdf](http://www.mmuncii.ro/j33/images/Documente/Familie/2016/StrategyVol1EN_web.pdf)

Furthermore, the arguments raised in the parliamentary proceedings related to the three initiatives raise concern about how the legislator understands to comply with the principle of the best interests of the child. To illustrate that, one of the arguments the Committee for Legal Matters within the Senate raised in its negative opinion<sup>251</sup> was that such a specialisation would give rise to a difference between the deputies of the People's Advocate, which would violate their equal rights.

### 3. Situation of the NGO scene

Romania has a strong NGO presence and many of the strongest non-governmental organisations are oriented towards providing services to vulnerable groups, advocating for and protecting thereof rights or both.

If local NGOs are more oriented towards providing services to vulnerable groups and, sometimes, are less specialised (meaning that the services provided by some of them are targeting more than one vulnerable groups), the NGOs active on national level are rather streaming their efforts towards a specific category of vulnerable persons (eg. either children, or Roma, or persons with disabilities, or elderly).

Some of the national – level NGOs rather focus on advocating for the rights of the vulnerable groups they target as well as on providing support and representation in domestic and European procedures aimed at sanctioning the breaches of these rights, such as :

- The Romanian Anti-AIDS Association (HIV/AIDS patients),
- The Roma Centre for Social Intervention and Studies – Romani Criss (Roma)
- The European Centre for the Rights of Children with Disabilities (children with disabilities)

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<sup>251</sup> Senatul României, Comisia juridică, de numiri, disciplină, imunități și validări, Raport asupra proiectului de lege pentru modificarea și completarea Legii nr. 35/1997 privind organizarea și funcționarea instituției Avocatului Poporului, republicată (nr. 658/18.06.2012), available at <http://www.senat.ro/legis/PDF/2011/11L658CR.pdf> , last accessed on 28.02.2017

- The Legal Resource Centre (persons with disabilities, in particular adults with mental disabilities living in institutions)
- ACCEPT Association (LGBT)

Other national level NGOs are both providing specialised services to vulnerable groups (including counselling in accessing the rights and benefits) and, at the same time, advocate for the improvement of the relevant legal frame work or for a better implementation of the existing safeguarding provisions:

- Save the Children Romania (that provides educational and social support to vulnerable categories of children and legal counselling to their families, but also represents one of the strongest actors in advocating for the improvement of the legal framework relevant for safeguarding the children's rights)
- Habitat for Humanity Romania (improvement of housing conditions for vulnerable families and advocacy on the right to decent housing)
- "Pentru Voi" Foundation (direct services for persons with disabilities and advocacy on the rights of persons with disabilities)
- Hope and Homes for Children Romania (direct services and advocacy for the children without parental care)
- World Vision Romania (community support services and advocacy for the reduction of poverty)

In terms of cooperation between the NGOs and the public authorities, there is a tendency to limit consultation of civil society (when developing and implementing legislation and public policies) to sectorial measures only (such as education, child health, social welfare) and only in rare instances to extend it to decision-making processes regarding fiscal measures, the development of public budgets or infrastructure projects with a significant impact on vulnerable persons' wellbeing. The development of the draft national education act for instance, relied on a vast consultation process with NGOs, whereas the adoption of the austerity package implemented by the Romanian Government in 2010-2011 was not preceded by any consultation with organisations active in the protection and promotion of the rights of vulnerable

persons.

#### **4. Assessment and recommendations**

With respect to the regulations with an impact on children, the main reasons of concern are the following: at the level of legislative procedures, the absence of a strategy that would make it mandatory to assess the impact of legislation on safeguarding the rights of the child, unequal opportunities for experts to participate in the public consultations around legal initiatives and delays in developing secondary legislation needed to implement legal acts.

Lack of concern for the consequences that policies and legislation may have on children or other vulnerable groups can find a concrete illustration in the effects of the package of austerity measures that the Romanian government implemented in 2010-2011 as a response to the financial and economic crisis. This package of legislative measures had a serious impact on the rights of the child and the economic security of families, through measures such as the increase in the VAT rate, wage cut offs and the freezing of jobs in the public sector (including key sectors such as education, healthcare and social welfare), the merging of schools, closing down hospitals, the reduction of some social benefits such as the unemployment benefit, the disbandment of central institutions with a key role in the protection of child rights.

In regards to key documents, public consultations are either totally lacking or lacking transparency. The best example in this regard concerns the Budget Law: the government announced for the first time at the end of 2015 a public consultation on the draft budget for 2016. The invitation was announced through a press release on the 7th of December, which demanded comments and opinions by the following day, December 8th, with the public debate announced to take place on December 9th. Even beyond the short notice on a crucial legal instrument, at the time of the public debate, the Government had already approved the draft to be submitted to the Parliament.

There were also instances when legislative changes were initiated by civil

society or were based on lengthy public consultations involving all relevant stakeholders (one example in this regard are the amendments made to law 272/2004 on the protection and promotion of children's rights).

Another important concern relates to persons (children or adults) who fall under more criteria of vulnerability.

The situation of children with disabilities in Romania is illustrative for how belonging to more than one vulnerable groups combined with the lack of reliable and segregated data as well as with the inadequate coordination between relevant institutions further endangers the safeguarding and the realisation of rights.

The National Authority for the Protection of the Rights of the Child and Adoption is the body charged with monitoring the number of children with disabilities, but this institution provides segregated data only by age group and the seriousness of the "handicap". There is no data available by type of disabilities or the services tailored for these children. Moreover, if by the end of 2013, NAPCRA statistics also captured access to education of the children with disabilities (including the type of education they attend), starting 2014, such data are no longer available.

Deficiencies emerge also in the institution care of the children with disabilities. Although the Law No 272/2004 on the protection and promotion of the rights of the child was amended and the age limit for placing children in institution care was raised from 2 to 3 years old, institutionalisation is still allowed even under this age limit "*when a child shows a severe handicap that makes him or her dependent on specialised residential care.*"<sup>252</sup> At the end of 2015, this age group (children under 3) accounted for 2.8% of the children in institution care.

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<sup>252</sup> Legea 131/2014 pentru modificarea alin. (1) si (2) ale art. 64 din Legea nr. 272/2004 privind protectia si promovarea drepturilor copilului, din 8 octombrie 2014, M. Of. No. 740/2014, art. I, pgf. 2, available at [http://www.dreptonline.ro/legislatie/legea\\_131\\_2014\\_modificare\\_lege\\_272\\_2004\\_protectia\\_promovarea\\_drepturi\\_copilului.php](http://www.dreptonline.ro/legislatie/legea_131_2014_modificare_lege_272_2004_protectia_promovarea_drepturi_copilului.php), last accessed on 28.02.2017



Equally worrisome is the lack of continuation of tailored services when children with disabilities are placed in foster care or in a family residential centre. Once they grow up, these children are forced to return to a residential institution.

There subsist major problems with regard to assuring an inclusive education for children with disabilities. By the end of 2013, official statistics in Romania showed over 70.000 children with disabilities. Out of the 70.000, over 40% did not attend any school and only one third attended mainstream education.<sup>253</sup>

Children with mental disabilities are facing big difficulties with regard to their inclusion in mainstream education. In the absence of special training, expert support and financial incentives offered to teachers, inclusion in mainstream education comes with a wave of discontent from the teaching staff, the school boards, the parents of the other colleagues ending up in pressure to transfer these children to another place.

The limitation of access to and efficiency of remedies available to vulnerable persons (especially children) for cases where their rights are breached represents another significant concern for the safeguarding of vulnerable groups in Romania. Thus, the only direct channel available to children is the office of the Ombudsman. On the other hand, the very representatives of this institution admitted that the number of complaints regarding children that they received was overall low and that though they received some direct complaints from children, as a rule, children (independently or through their parents) do not lodge a direct complaint with the Ombudsman, but they choose to contact the NGOs or the GDSACPs.<sup>254</sup>

Given that discrimination continues to affect major categories of children - and adults - in Romania (Roma, children with disabilities, LGBT etc.) it is very

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<sup>253</sup> NAPRCA, data on 31 December 2013

<sup>254</sup> Salvați Copiii România, *Administrație Publică În Beneficiul Copiilor – măsurile generale de implementare a convenției cu privire la drepturile copilului la nivel central și local în România* (București: Salvați Copiii România, 2011),

worrisome that the regulations that govern the functioning of the National Council for Combating Discrimination do not allow for the children's direct access to it, though the Council is the highest state authority in the field of discrimination<sup>255</sup>.

Even in the instances when the NCCD learns about and analyses cases of discrimination against children brought to their attention by NGOs such as those promoting the rights of HIV/AIDS patients (The Romanian Anti-AIDS Association), the rights of the ethnical minorities (such as The Roma Centre for Social Intervention and Studies – Romani Criss) or the rights of children with disabilities (such as The European Centre for the Rights of Children with Disabilities), the penalties would be minor and they would not deter similar wrongdoings.

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<sup>255</sup> OG 137/2000 privind prevenirea si sanctionarea tuturor formelor de discriminare, din 31 august 2000, republicata. M. Of. No. 166/2014, available at <http://www.mmuncii.ro/pub/imagemanager/images/file/Legislatie/ORDONANTE-DE-GUVERN/OG137-2000.pdf>, last accessed on 28.02.2017

**RUSSIA**

## **Desk research**

### **Question n.1: What is the definition of “child”?**

The Constitution of the Russian Federation gives the description of the majority (in Russian “совершеннолетие”) at the age 18 years old in Article 60: “A citizen of Russia may exercise his or her rights and duties in full from the age of 18”. Under 18 years old, the term “несовершеннолетний” is used to describe a child. The notion “child” (in Russian “ребенок”) defines the Family Code of Russian Federation. Term child is used in the Family Code in Articles 54 “Child’s right to live and be brought up in family”. This Article clearly defines a child as anyone younger than 18 years old. The Articles 53, 54 and 56-70 define child’s rights to protection, the right of the child to communication with parents and other relatives, the right to have and express an own opinion, right to have name, surname and father's name, and economic rights of the child. In the Criminal Code the term minor “несовершеннолетний” is used to describe a person older 14 but below 18 years old at the time of committing the crime.

### **Question n.2.: Is the notion “vulnerability” or “vulnerable” (for child and adult) used in legislation in your country? What other words, notions are used in your national legislation to describe this phenomenon?**

In Russia, the following basic laws regulate the rights of children and vulnerable adults (including people with disabilities):

- The Constitution of the Russian Federation (Конституция Российской Федерации);
- The Family Code of the Russian Federation (Семейный кодекс Российской Федерации);
- Fundamentals of Russian legislation on health care (Основы законодательства Российской Федерации об охране здоровья граждан);
- Federal Law on Education (Федеральный закон об образовании);

– The law on the Fundamental Guarantees for the Rights of the Child in the Russian Federation (Закон об основных гарантиях прав ребенка в Российской Федерации).

– The law on additional guarantees for the social protection of orphans and children left without parental care (Закон о дополнительных гарантиях социальной защиты детей-сирот и детей, оставшихся без попечения родителей);

– Law on Social Protection of Disabled Persons in the Russian Federation (Закон о социальной защите инвалидов в Российской Федерации).

Notion “**vulnerability**” is not used in Russian legislation. The closest term that describes vulnerable children is “**дети, находящиеся в трудной жизненной ситуации**”, which is translated from Russian as “**children in a difficult life situation**”. We can find this description in the Federal Law on the Fundamental Guarantees for the Rights of the Child in the Russian Federation. The categories and groups of children who described as “children in the difficult life situation” are the following:

English	Russian
children left without parental care;	дети, оставшиеся без попечения
disabled children;	родителей;
children with disabilities,	дети-инвалиды;
deficiencies in physical and (or)	дети с ограниченными возможностями
mental health;	здоровья, то есть имеющие
children - victims of armed and	недостатки в физическом и (или)
ethnic conflicts, environmental	психическом развитии;
and technological disasters,	дети - жертвы вооруженных и
natural disasters;	межнациональных конфликтов,
children from families of refugees	экологических и техногенных
and internally displaced persons;	катастроф, стихийных бедствий;
children living in extreme	дети из семей беженцев и
conditions;	вынужденных переселенцев;
children - victims of violence;	дети, оказавшиеся в экстремальных
children who are imprisoned in	условиях;

<p>juvenile offenders; children in educational institutions for students with deviant (socially dangerous) behaviour, who need special education, training and require special pedagogical approach (special educational institutions open and closed types);</p> <p>children living in poor families;</p> <p>children with behavioural problems; children whose livelihoods objectively impaired as a result of the circumstances and which cannot overcome these circumstances alone or with the help of their family</p>	<p>дети - жертвы насилия;</p> <p>дети, отбывающие наказание в виде лишения свободы в воспитательных колониях; дети, находящиеся в образовательных организациях для обучающихся с девиантным (общественно опасным) поведением, нуждающихся в особых условиях воспитания, обучения и требующих специального педагогического подхода (специальных учебно-воспитательных учреждениях открытого и закрытого типа);</p> <p>дети, проживающие в малоимущих семьях;</p> <p>дети с отклонениями в поведении;</p> <p>дети, жизнедеятельность которых объективно нарушена в результате сложившихся обстоятельств и которые не могут преодолеть данные обстоятельства самостоятельно или с помощью семьи</p>
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One of the biggest and incalculable vulnerable groups are street children (in Russian “**безнадзорные дети**”, “**беспризорные дети**”) from broken families. These children formally live in the families, but their parents are not involved in their upbringing. These children are left to themselves and their rights to normal life conditions, to educations, care and protection are violated. Such situation could also be described as “**социальное сиротство**” (“**social orphanhood**”).

“**Vulnerable**” also could be translated as “**уязвимый**”. In the context of

**socially vulnerable groups** often used term “**социально-уязвимый**”.

The definition of **vulnerable children** is used in meaning “**children in the difficult life situation**” – in Russian “**дети в трудной жизненной ситуации**”). For example, it is used in the Federal Act on State Social Assistance. Term “**difficult life situation**” (in Russian “**трудная жизненная ситуация**”) is defined in the Act on social services in the Russian Federation as “circumstance or circumstances that worsen the conditions of life of the citizen and the consequences of which the citizens cannot overcome on their own”. It is also used in defining the Federal Program of Social Adaptation as “social protection authority (safeguarding) created together with a citizen to overcome their **difficult situation**”.

**Question n.3.: Is the expression of “safeguarding policy” or any synonym (safeguarding requirement, safeguarding measures, obligatory procedures of protection /measures of care, etc.) mentioned in these acts and/or regulations in relation to vulnerability?**

**a. disability**

Articles 7, Article 38 and Article 39 of the Constitution of Russia describe the rights of disabled persons and disabled children.

The Constitution of Russian Federation Article 38:

1. Maternity and childhood and the family shall be protected by the State.
2. Care for children; their upbringing shall be equally the right and obligation of parents.
3. Non-disabled children over 18 years of age shall take care of disabled parents.

The Constitution of Russian Federation Article 39:

1. Everyone shall be guaranteed social security at the expense of the State in old age, in the case of illness, disabledness, loss of the bread-

winner, for the upbringing of children and in other cases established by law.

2. State pensions and social allowances shall be established by law.

3. Promotion shall be given to voluntary social insurance and the creation of additional forms of social security and charity.

#### **b. Harm, abuse**

The Criminal Code of Russian Federation defines a harm and different forms of abuse against minors in the following articles:

- **Article 117:** Torture
- **Article 127, 127.1:** trafficking
- **Articles 133, 134, 135:** sexual abuse, sexual intercourse or other sexual acts with a person under 16 years old
- **Article 150, 151:** Involvement of a minor in the commission of a crime Involving a minor in antisocial actions
- **Article 228.1, 230:** drugs
- **Article 240, 241:** prostitution
- **Article 242:** pornography

#### **c. Social status**

Social assistance of the children in the “difficult life situation” regulates the Presidential Decree N 404 on the Foundation of the creation of the Federal Russian Children In Need Fund

#### **d. Other legal acts which describe the situation close to vulnerability.**

**Names of laws and regulations provided in Russian where not officially translated to English:**

- Федеральный закон "Об основных гарантиях прав ребенка в Российской Федерации"
- Федеральный закон "О дополнительных гарантиях по социальной поддержке детей-сирот и детей, оставшихся"



без попечения родителей"

- Федеральный закон "О государственных пособиях гражданам, имеющим детей"
- Федеральный закон "Об опеке и попечительстве"
- Федеральный закон "О дополнительных мерах государственной поддержки семей, имеющих детей"
- Федеральный закон "О предупреждении распространения в РФ заболевания, вызываемого вирусом иммунодефицита человека (ВИЧ-инфекции)"
- Федеральный закон "О государственном банке данных о детях, оставшихся без попечения родителей"
- Федеральный закон "О государственной поддержке молодежных и детских общественных объединений"
- Федеральный закон "Об основах системы профилактики безнадзорности и правонарушений несовершеннолетних"
- Федеральный закон "Об обязательном социальном страховании на случай временной нетрудоспособности и в связи с материнством"
- Федеральный закон "О защите детей от информации, причиняющей вред их здоровью и развитию"
- Федеральный закон "Об основах социального обслуживания граждан в Российской Федерации" от 28.12.2013 N 442-ФЗ
- Концепция демографической политики РФ до 2025 года
- Постановление Правительства РФ от 9 июля 2016 г. № 649 "О мерах по приспособлению жилых помещений и общего имущества в многоквартирном доме с учетом потребностей инвалидов"
- Федеральный закон от 4 апреля 2005 г. N 32-ФЗ "Об Общественной палате Российской Федерации" (с изменениями и дополнениями)
- Федеральный закон от 21 июля 2014 г. N 212-ФЗ "Об основах общественного контроля в Российской Федерации"

(с изменениями и дополнениями)

- Федеральный закон "Об основах социального обслуживания граждан в Российской Федерации" от 28.12.2013 N 442-ФЗ (последняя редакция)
- Федеральный закон "О некоммерческих организациях"

#### 4. Child safeguarding policy in Russia

a) Federal Target Programmes (FTP) (in Russian Федеральные Целевые Программы (ФЦП) related to vulnerable groups financed by federal budget:

"Children of Russia"	«Дети России»
«Gifted Children»	«Одаренные дети»
«Organization of summer holidays for children.»	«Организация летнего отдыха детей»
«Children of families of refugees and internally displaced persons.»	«Дети семей беженцев и вынужденных переселенцев»
«Children of Chernobyl»	«Дети Чернобыля»
«Orphaned children," "Children with disabilities.»	«Дети-сироты», «Дети-инвалиды»
«Children of the North»	«Дети Севера»
«Family Planning»	«Планирование семьи»
«Development of the baby food industry.»	«Развитие индустрии детского питания»
«Safe Motherhood»	«Безопасное материнство»
«Prevention of neglect and juvenile delinquency.»	«Профилактика безнадзорности и правонарушений несовершеннолетних»
«Development of social assistance for families and children.»	«Развитие социального обслуживания семьи и детей»

- Federal Russian Children In Need Fund (or “Children in difficult life situation” – in Russian “Фонд поддержки детей, находящихся в трудной

жизненной ситуации”.

**Question n.4.: Does your national legislation on vulnerable children and adults specify the stakeholders who are expected by law to provide care and protection?**

- Federal Law on State Social Assistance.
- Federal Law On the Fundamental Guarantees for the Rights of the Child in the Russian Federation
- Act on social services in the Russian Federation.

**Question n.5.: What other stakeholders are you aware of concerning vulnerable children and adult in your country? (NGOs, international bodies, etc.)**

The main stakeholders expected by law to provide care and protection of children:

- Presidential Commissioner on children’s rights who’s duties does not regulate the Law but the Decree
- Commissioners for Children in Regions of Russian Federation
- Ministry of Health and Social Development of the Russian Federation
- Ombudsman on Human Rights (whose responsibilities include protection of people with disabilities. In Russia there is no position of the Commissioner for Disabled People)
- Children’s Rights Association in subjects of Russian Federation

Organizations (NGO) which improve the legislation and work for children’s rights:

- «Право ребенка», «Соучастие в судьбе», комитет «За гражданские права»;
- Work with children with disabilities, creating good conditions for them to adapt to society, integration («Ковчег», «Даун Синдром», «Дорога в

мир»).

- Association of regional organizations "Civil Society - for Children of Russia" (in Russian "Союз общественных региональных организаций «Гражданское общество – детям России»
- Fund for children in difficult life situation

**Question n.6.: Anything else that you find relevant, interesting to mention from what you have found during your desk research on this topic**

Monitoring the implementation of the National Action Strategy for Children for 2012-2017 (Мониторинг реализации национальной стратегии действий в интересах детей на 2012-2017 годы). (<http://xn--c1ackabuhcbecyrh.xn--p1ai/>)

## **Country report**

### ***Vulnerable children***

The Constitution of the Russian Federation gives the description of the majority (in Russian "совершеннолетие") at the age 18 years old in Article 60: "A citizen of Russia may exercise his or her rights and duties in full from the age of 18". Under 18 years old, the term "несовершеннолетний" is used to describe a child. The notion "child" (in Russian "ребенок") defines the Family Code of Russian Federation. Term child is used in the Family Code in Articles 54 "Child's right to live and be brought up in family". This Article clearly defines a child as anyone younger than 18 years old. The Articles 53, 54 and 56-70 define child's rights to protection, the right of the child to communication with parents and other relatives, the right to have and express an own opinion, right to have name, surname and father's name, and economic rights of the child. In the Criminal Code the term minor "несовершеннолетний" is used to describe a person older 14 but below 18

years old at the time of committing the crime.

There are two framework documents that have guided recent developments in child protection and welfare activities: the National Strategy of Actions for the Interests of Children for 2012 – 2017<sup>256</sup> and the Conceptual Bases for State Family Policy in the Russian Federation till 2025<sup>257</sup>.

The National Strategy was elaborated with consideration of the Council of Europe Strategy for the Rights of the Child (2012-2015); it is aimed at facilitation of development of child-friendly services and systems, cessation of all types of violence towards children, and provision of guarantees of children's rights in situations of their vulnerability. The National Strategy is the first and the only document that introduces the notion of “уязвимые группы детей” that literally means “vulnerable groups of children”. The National Strategy indicates “social exclusion of vulnerable groups of children” as one of the most topical systemic issues in the country. “Vulnerable groups” are defined via their enumeration: “orphaned children and children out of parental care, disabled children and children in threatening social conditions (дети в социально опасном положении)”.

The Conceptual Bases for State Family Policy has both family-centered and child-centered stances. It proclaims “provision of social welfare for families and children in need for special state support (нуждающихся в особой заботе государства) such as orphaned children, disabled children and children with limited abilities (дети с ограниченными возможностями<sup>258</sup>); emphasizes prevention of family adversity (семейного неблагополучия), child neglect and loss of parental care (безнадзорности и беспризорности); calls for “increase of efficiency of social protection system for families with children under 18 y.o. who are involved into civil, administrative or criminal

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<sup>256</sup> Указ Президента РФ от 1 июня 2012 г. N 761 "О Национальной стратегии действий в интересах детей на 2012 - 2017 годы".

<sup>257</sup> Концепция государственной семейной политики в Российской Федерации на период до 2025 года. Introduced by Распоряжение Правительства Российской Федерации от 25 августа 2014 г. N 1618-п <https://rg.ru/2014/08/29/semya-site-dok.html>

<sup>258</sup> This term is close to “special needs” but “limited abilities [of health]” historically became more widespread in Russian legislation and academic writing.

court proceedings”. The Conceptual Bases for State Family Policy uses “threatening social conditions” in regard to a family (with children) as a whole, and claims the need to set a unified guidance for referring families to that category.

“A minor in threatening social conditions” is defined by the Federal law № 120 On the bases of the system for prevention of lack of supervision and delinquency in minors (art. 1) as “a person who is influenced by lack of parental neglect or loss of parental care and thus his/her life or health are endangered, or the requirements to the conditions of his/her upbringing and care are not met, or he/she performs offences or antisocial acts”<sup>259</sup>.

Another close term that describes vulnerable children is “*дети, находящиеся в трудной жизненной ситуации*”, which is translated from Russian as “*children in a difficult life situation*”. We can find this description in the Federal Law № 124 on the Fundamental Guarantees for the Rights of the Child in the Russian Federation<sup>260</sup>. The categories and groups of children who described as “children in the difficult life situation” are the following:

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<sup>259</sup> «Лицо, которое вследствие безнадзорности и беспризорности находится в обстановке, представляющей опасность для его жизни и здоровья либо не отвечающей требованиям к его воспитанию или содержанию, либо совершает правонарушения или антиобщественные действия». Федеральный закон от 24.06.1999 № 120-ФЗ «Об основах системы профилактики безнадзорности и правонарушений несовершеннолетних», ст. 1.

<sup>260</sup> Федеральный закон от 24 июля 1998 г. N 124-ФЗ "Об основных гарантиях прав ребенка в Российской Федерации" <https://rg.ru/1998/08/05/detskie-prava-dok.html> According to this law, the Russian Federation government (currently, the Ministry of Labor and Social Welfare) has to publish annual report on the situation with children In the Russian Federation. The most recent report (2015) can be found here: <http://www.rosmintrud.ru/docs/mintrud/protection/355>

English	Russian
<p>children left without parental care;  disabled children;  children with disabilities,  deficiencies in physical and (or)  mental health;  children - victims of armed and  ethnic conflicts, environmental  and technological disasters,  natural disasters;  children from families of refugees  and internally displaced persons;  children living in extreme  conditions;  children - victims of violence;  children who are imprisoned in  juvenile offenders; children in  educational institutions for  students with deviant (socially  dangerous) behaviour, who need  special education, training and  require special pedagogical  approach (special educational  institutions open and closed  types);  children living in poor families;  children with behavioural  problems; children whose  livelihoods objectively impaired as  a result of the circumstances and  which cannot overcome these  circumstances alone or with the</p>	<p>дети, оставшиеся без попечения  родителей;  дети-инвалиды;  дети с ограниченными возможностями  здоровья, то есть имеющие недостатки  в физическом и (или) психическом  развитии;  дети - жертвы вооруженных и  международных конфликтов,  экологических и техногенных  катастроф, стихийных бедствий;  дети из семей беженцев и вынужденных  переселенцев;  дети, оказавшиеся в экстремальных  условиях;  дети - жертвы насилия;  дети, отбывающие наказание в виде  лишения свободы в воспитательных  колониях; дети, находящиеся в  образовательных организациях для  обучающихся с девиантным  (общественно опасным) поведением,  нуждающихся в особых условиях  воспитания, обучения и требующих  специального педагогического подхода  (специальных учебно-воспитательных  учреждениях открытого и закрытого  типа);  дети, проживающие в малоимущих  семьях;  дети с отклонениями в поведении; дети,</p>

help of their family	жизнедеятельность которых объективно нарушена в результате сложившихся обстоятельств и которые не могут преодолеть данные обстоятельства самостоятельно или с помощью семьи
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Federal Law on the Fundamental Guarantees for the Rights of the Child settles the relationships in the context of realization of the main guaranties of the rights and legal interests of children. It establishes the main goals of “the state policy for children’s interests”, and three of them are directly linked to child protection: execution of their constitutional rights; prevention of children’s discrimination; building stronger foundation for the main guaranties of rights and legal interests of children; restoration of violated rights; protection of children from the factors that negatively influence their physical, cognitive, psychological, spiritual and moral development.

Federal Law on the Fundamental Guarantees for the Rights of the Child deals with general social and legal guaranties<sup>261</sup>; child protection is regarded through the lens of “protection of children from information, propaganda and agitation that harms their health, moral and spiritual development”, including “national, social class, and social intolerance; advertising of alcohol and tobacco; propaganda of social, racial, national, and religious inequality”, and different media that “propagate violence and cruelty, drug and chemical addictions, antisocial behaviors” as well as “pornography materials” (art. 14). The suggested means of protection are various types of expertise<sup>262</sup> of toys, computer games, playgrounds etc. Regional authorities can define public places harmful for children’s development, also basing on opinions of expert commissions<sup>263</sup>.

<sup>261</sup> Such as students’ right to create unions at educational institutions, free healthcare at municipal and state institutions, vocational counselling and labor rights for adolescents, facilitation of recreational activities, and social infrastructure for children.

<sup>262</sup> Social, psychological, educational, sanitary

<sup>263</sup> Such commissions are organized according to the regional law.



Direct definitions of various types of child abuse are provided in the Criminal Code of Russian Federation in the following articles: Article 117: Torture; Article 127, 127.1: trafficking; Articles 133, 134, 135: sexual abuse, sexual intercourse or other sexual acts with a person under 16 years old; Article 150, 151: Involving a minor into the commission of a crime; involving a minor into antisocial actions; Article 228.1, 230: drugs; Article 240, 241: prostitution; Article 242: pornography.

In 2013 major international documents were ratified in the Russian Federation with Federal law № 76 On Ratification of Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse<sup>264</sup> and Federal law № 75 On Ratification of Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.<sup>265</sup>

The idea of child neglect / abuse in general is introduced in art. 156: “a parent’s or another legal guardian’s failure to fulfil the childrearing duties or inappropriate fulfilment of these duties... if this deed is linked to abusive treatment of a minor (жестокое обращение с несовершеннолетним). This wording was clarified by the Supreme Court: “not just physical or psychological abuse of minor or an attempt to violate their sexual integrity but also unacceptable means of upbringing (harsh or disparaging treatment humiliating human dignity, offence or exploitation)<sup>266</sup>”.

Similar framework definition close to the notion of “child neglect and abuse” is presented in the Family Code: “parents’ evasion of caring after children or

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<sup>264</sup> Федеральный закон от 7 мая 2013 г. N 76-ФЗ г. Москва "О ратификации Конвенции Совета Европы о защите детей от сексуальной эксплуатации и сексуальных злоупотреблений" <https://rg.ru/2013/05/13/zashita-dok.html> The Convention is ratified with several exceptions.

<sup>265</sup> Федеральный закон от 7 мая 2013 г. N 75-ФЗ г. Москва "О ратификации Факультативного протокола к Конвенции о правах ребенка, касающегося торговли детьми, детской проституции и детской порнографии" <https://rg.ru/2013/05/13/protokol-dok.html> The Optional Protocol is comprehensively ratified.

<sup>266</sup> Постановление Пленума Верховного Суда РФ от 27 мая 1998 г. № 10 «О применении судами законодательства при разрешении споров, связанных с воспитанием детей», п. 11

protection of their rights and interests” and “in case of parents’ actions or lack of actions that create a threat for children’s life or health or hinder their normal upbringing and development”<sup>267</sup>. Notably, the Family Code limits the scope of the definition to private persons (parents of guardians) whilst the Criminal Code adds the responsibility for abuse for educational, medical and the other professionals or organizations entitled to care of the minor.

Alongside with prohibition of the most prominent types of child abuse, there are more attempts to protect children from harmful information, such as Federal Law of Russian Federation № 436 On Protection of Children from Information Harmful to Their Health and Development<sup>268</sup> (2010). Information is considered harmful if it may cause fear, horror, or panic in children; depicts violence, unlawful activities, substance abuse, or self-harm. This law has more recent amendments introducing mandatory ratings of media production with age limitations for consumers (e.g. 12+)<sup>269</sup> in 2012 and defining “propaganda of non-traditional sexual relationships” as another harmful factor<sup>270</sup> in 2013.

### ***Vulnerable adults***

Lack of legal capacity (недееспособность) (Civil Code, art. 29<sup>271</sup>) is established by a court decision if a person cannot understand the meaning of his/her actions or perform self-control due to a psychiatric condition. A guardian is assigned to act on his/her behalf taking all the available data on

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<sup>267</sup> The Family Code of Russian Federation, ст. 121.1

<sup>268</sup> Федеральный закон Российской Федерации от 29 декабря 2010 г. N 436-ФЗ «О защите детей от информации, причиняющей вред их здоровью и развитию»

<sup>269</sup> Федеральный закон от 28 июля 2012 г. N 139-ФЗ "О внесении изменений в Федеральный закон "О защите детей от информации, причиняющей вред их здоровью и развитию" и отдельные законодательные акты Российской Федерации" <https://rg.ru/2012/07/30/zakon-dok.html>

<sup>270</sup> Федеральный закон от 29 июня 2013 г. N 135-ФЗ г. Москва "О внесении изменений в статью 5 Федерального закона "О защите детей от информации, причиняющей вред их здоровью и развитию" и отдельные законодательные акты Российской Федерации в целях защиты детей от информации, пропагандирующей отрицание традиционных семейных ценностей"

<sup>271</sup> Гражданский кодекс Российской Федерации, ст. 29 [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_5142/97405e31b8cb1f1e528d52e98e8e60a7a2da9dea/](http://www.consultant.ru/document/cons_doc_LAW_5142/97405e31b8cb1f1e528d52e98e8e60a7a2da9dea/)

his/her views and preferences into consideration. If the situation improves, lack of legal capacity can be changed into limited capacity (and, consequently, custody) or even full capacity via court hearing.

Limited legal capacity (ограничение дееспособности) (Civil Code, art. 30<sup>272</sup>) is established by a court decision in cases of

Game addiction, alcohol or drug abuse that lead to financial hardships for a person's family. Such people can perform small everyday trades independently of their custodians; they are fully responsible for them.

Psychiatric condition that allows a person to understand the meaning of one's actions or perform self-control only with help of others<sup>273</sup>.

If the situation improves (or worsens), limited capacity (and, consequently, custody) can be cancelled (or changed into complete lack of capacity) via court hearing.

Disability (инвалидность) is defined with the Federal law № 181 On social protection of disable persons in the Russian Federation (1995, edited 2016)<sup>274</sup>. A disabled person (инвалид) is "a person who has a health disorder persistently violating one's functioning, caused by deceases, traumas or defects, limiting one's everyday activities<sup>275</sup> and leading to the need for social protection" (art. 1). Disability is not necessary related to limitation of capacity, since it may be caused by somatic conditions without hindering decision-making.

## Stakeholders

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<sup>272</sup> Гражданский кодекс Российской Федерации, ст. 30 [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_5142/a7eba7d96ab59aedad870b2adf2bba34dcc30c3e/#dst100173](http://www.consultant.ru/document/cons_doc_LAW_5142/a7eba7d96ab59aedad870b2adf2bba34dcc30c3e/#dst100173) Note that limited legal capacity was first introduced in 2012 with the Federal law № 302 On amendments to chapters 1, 2, 3, 4 of the Russian Federation Civil Code (Федеральный закон от 30 декабря 2012 г. N 302-ФЗ "О внесении изменений в главы 1, 2, 3 и 4 части первой Гражданского кодекса Российской Федерации" <https://rg.ru/2013/01/11/izmenenia-dok.html>)

<sup>273</sup> Possibilities for independent decisions in such cases are explained in the Civil Code in details. It is necessary to note that the legislation provides some space for maneuver in giving a person more or less independence but does not introduce any ideas of assessment criteria for individual cases.

<sup>274</sup> Федеральный закон от 24.11.1995 N 181-ФЗ (ред. от 19.12.2016) "О социальной защите инвалидов в Российской Федерации"

<sup>275</sup> Self-care, independent moving / transportation, orientation, communication, behavioral self-control, ability to learn or work.

## **Federal level**

The **federal government** establishes the bases of policy in the interests of children and its priorities; executes federal programs on children's rights protection and support; develops procedures of juridical protection of children's rights and interest. It is also responsible for implementation of international binding agreements in the field of child protection (124-FL, art. 15). The Government commission for minors and protection of their rights was introduced in 2006<sup>276</sup> to become the coordinative body to ensure unified state approach to child protection challenges<sup>277</sup>.

The apparatus of **the Commissioner (Ombudsperson) for Human Rights**<sup>278</sup> (since 1997) includes the Office for protection of civil human rights (Управление защиты гражданских прав человека) and the Office for protection of provision rights (Управление защиты социальных прав) that deal with addresses from vulnerable adults. The latter Office also includes the Department for protection of the child's rights (Отдел защиты прав ребенка).

The institute of the **Commissioner (Ombudsperson) for Children's Rights**<sup>279</sup> was established later, in 2009. The Ombudsperson for Children's Rights is entitled to ensure exercise of children's rights and restoration of violated rights through independent monitoring of actions of the federal, regional, and local governments, organizations and professionals who deal with children.

## **Local levels**

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<sup>276</sup> Постановление Правительства Российской Федерации от 6 мая 2006 г. N 272 г. Москва О Правительственной комиссии по делам несовершеннолетних и защите их прав <https://rg.ru/2006/05/11/deti-komissia-dok.html>

<sup>277</sup> Actually there are separate working groups (with NPOs participation as well) for various issues, whilst the activity of this Government commission is rather weak.

<sup>278</sup> Федеральный конституционный закон от 26.02.1997 N 1-ФКЗ (ред. от 31.01.2016) "Об Уполномоченном по правам человека в Российской Федерации" [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_13440/](http://www.consultant.ru/document/cons_doc_LAW_13440/)

<sup>279</sup> Указ Президента Российской Федерации от 1 сентября 2009 г. N 986 "Об Уполномоченном при Президенте Российской Федерации по правам ребенка" <https://rg.ru/2009/09/04/ukaz-dok.html>

The Federal Law on the Fundamental Guarantees for the Rights of the Child makes protection of children in difficult life situation<sup>280</sup>, their social welfare, organization of leisure and health promotion the responsibility of regional state bodies that act according to regional legislation (124-FL, art. 15).

**Guardianship and custody agencies** (органы опеки и попечительства, ООиП) are the core bodies that arrange legal guardianship or custody of minors out of parental care and adults deprived of their legal capacity. They operate as local-level executive agencies on the basis of the Family Code, the Civil Code, the Federal law № 48 On guardianship and custody<sup>281</sup> and a range of legislative acts concerning organizational issues<sup>282</sup>. Guardianship and custody agencies are entitled to identify people in need for guardianship, apply to the court to declare an adult lacking (or partially lacking) of legal capacity, monitor the activities of guardians/custodians/residential care institutions, and act in the interests of children / vulnerable adults if their guardians/custodians fail to do this. In small towns or municipalities these powers may be executed by local governments that are empowered to act as guardianship and custody bodies (уполномоченный орган по опеке и попечительству). Some of their functions, not related to protection<sup>283</sup>, may be

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<sup>280</sup> Excepting the children who live and study in federal boarding schools – they are protected by federal government.

<sup>281</sup> Федеральный закон № 48-ФЗ Об опеке и попечительстве от 24.04.2008 <https://rg.ru/2008/04/30/opeka-dok.html>

<sup>282</sup> Федеральный закон от 27 июля 2010 г. № 210-ФЗ «Об организации предоставления государственных и муниципальных услуг» («Российская газета», № 168, 30.07.2010 г., «Собрание законодательства РФ», 02.08.2010 г., № 31, ст. 4179 г.)

Федеральный закон от 8 мая 2010 г. № 83-ФЗ «О внесении изменений в отдельные законодательные акты Российской Федерации в связи с совершенствованием правового положения государственных (муниципальных) учреждений» («Собрание законодательства РФ», 10.05.2010 г., № 19, ст. 2291, «Российская газета», № 100, 12.05.2010 г., «Парламентская газета», № 24, 14-20.05.2010 г.)

Федеральный закон от 2 мая 2006 г. № 59-ФЗ «О порядке рассмотрения обращений граждан Российской Федерации» («Российская газета», № 95, 05.05.2006 г., «Собрание законодательства РФ», 08.05.2006 г., № 19, ст. 2060, «Парламентская газета», № 70-71, 11.05.2006 г.)

Федеральный закон от 6 октября 1999 года N 184-ФЗ "Об общих принципах организации законодательных (представительных) и исполнительных органов государственной власти субъектов Российской Федерации", Федеральный закон от 6 октября 2003 года N 131-ФЗ "Об общих принципах организации местного самоуправления в Российской Федерации"

<sup>283</sup> Such as preparation of potential adoptive or foster parents.

granted to local state organizations (educational, medical, social welfare) as well as NPOs.

Commissions for Minors and Protection of their Rights (Комиссии по делам несовершеннолетних и защите их прав, КДНиЗП) also operate on local levels on the basis of 120-FL; they employ an executive secretary and one (for small municipalities) or more specialists whose expertise is related to children's issues, such as educators, social or healthcare workers, policemen<sup>284</sup>. The Commissions' duty is to collect and process information about minor in threatening social conditions and their families. They perform preventive (such as legal consultations and talks with adolescent offenders) and punitive (such as administrative fines for "parents' or legal guardians' failure to perform their duties on provision and upbringing of minors" (Administrative Code<sup>285</sup>, art. 5.35) functions. They are also supposed to be coordinators of local interagency networks of child protection services and professionals but it is not always the case<sup>286</sup>.

124-FL obliges all the specialists who are responsible for child upbringing, education, healthcare, and welfare (e.g. psychologists, social workers, nurses, teachers etc.) to participate in protection of rights and legal interests of children on assignment of guardianship and custody agencies<sup>287</sup> or other competent bodies.

**Non-profit organizations** (NPOs) are active participants of child welfare and child protection systems. The landscape of Russian NPOs is diverse: it includes numerous small local NGOs with scarce professional resources as well as large regional / federal-level leaders that function as resource centers

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<sup>284</sup> Usually a secretary is the only full-time employee at a Commission for Minors and Protection of their Rights; the other members are engaged in their own professional activities and gather only for internal meetings / meetings with families under monitoring.

<sup>285</sup> Кодекс об административных правонарушениях Российской Федерации, статья 5.35 [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_34661/8c909d7721021e06a0cd78ded36d20014e532670](http://www.consultant.ru/document/cons_doc_LAW_34661/8c909d7721021e06a0cd78ded36d20014e532670)

<sup>286</sup> Each region has its regional statutory guidance on interagency child protections activities (регламент межведомственного взаимодействия) that may assign coordinator's functions to Commissions for Minors and Protection of their Rights, to guardianship and custody agencies or (seldom) to large state social welfare organizations.

<sup>287</sup> Note that 124-FL grants primary coordinative function to guardianship and custody agencies.

and have much to offer to the state in terms of evidence-based practices, operational guidance etc.

### **Regulations relevant to the safeguarding and protection activities**

**Legal representation.** *Guardianship* is a form of care about minors at the age under 14 and adults judicially declared lacking of legal capacity. Guardians become their legal representatives and perform all the legally valid actions of their behalf. *Custody* is a form of care about minors at the age of 14 – 18 and adults judicially declared partially lacking of legal capacity. Custodians are to facilitate their wards' exercise of rights and performance of duties, (dis)approve their legal actions, and protect from abuse (art. 2). Guardians / custodians of children in residential care<sup>288</sup> / adults (partially) lacking legal capacity and living in psycho-neurological residential homes (психоневрологические интернаты) are those institutions (in the person of a director).

**Protection from abuse and neglect.** The Family Code of Russian Federation states that children should be protected by guardianship and custody agencies (*органы опеки и попечительства*) in a range of situations when they lose parental care (such as parental death or serious illness) including “parents’ evasion of caring after children or protection of their rights and interests” and “in case of parents’ actions or lack of actions that create a threat for children’s life or health or hinder their normal upbringing and development”<sup>289</sup>. Thus certain parents’ behaviors are regarded as the reason for intervention resulting into out-of-family placement. Presence of “immediate threat to a child’s life or health” empowers guardianship and custody agencies to immediately remove the child from the family (or other legal guardians)<sup>290</sup>. But operationalization of these notion is absent in the

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<sup>288</sup> Excepting children who were placed there temporarily on request of their parents because of difficult life situation. These children are under parental guardianships unless parents fail to return them home.

<sup>289</sup> The Family Code of Russian Federation, ст. 121.1

<sup>290</sup> Семейный кодекс РФ, ст. 77.

legislation. It may be included into regional statutory guidance on interagency child protections activities (регламент межведомственного взаимодействия) that differs widely between the regions.

**Access to social services.** Most of child protection activities are related to provision of social services (социальных услуг) such as home visitation, counseling, non-violent parenting training etc. that is regulated with Federal law № 442 On the bases of provision of social services for citizens in the Russian Federation<sup>291</sup>. It evaluates (art. 15) a citizen’s need for social services depending on presence of the following “circumstances that actually worsen or can worsen his/her life conditions” (обстоятельства, которые ухудшают или могут ухудшить условия его жизнедеятельности)<sup>292</sup>.

<b>Situations related to vulnerable children</b>	<b>Situations related to vulnerable adults</b>
<ul style="list-style-type: none"> <li>● Presence of (a) child(ren) with difficulties in social adaptation (including those under guardianship/custody)</li> <li>● Lack of certain place of living, including residential care alumni at the age under 23 y.o.</li> </ul>	<ul style="list-style-type: none"> <li>● Complete or partial loss of the capacities for independent performance of routines, transportation, and fulfilment of basic needs because of illness, trauma, old age or disability.</li> </ul>
<b>Situations related to family as a whole</b>	

<sup>291</sup> Федеральный закон от 28 декабря 2013 г. N 442-ФЗ "Об основах социального обслуживания граждан в Российской Федерации", ст. 15 <https://rg.ru/2013/12/30/socialka-dok.html>

<sup>292</sup> This concept and the following attempt to outline “circumstances that actually worsen or can worsen one’s life conditions” may be regarded as another definition of vulnerability in the field of social welfare legislation.



- Family conflicts, including ones provoked with a person's alcohol, drug, game addiction, a person's psychiatric condition or family violence.
- A family with a disabled person, including child(ren), who cannot function independently.
- Lack of possibilities to provide care of a disabled person or (a) child(ren) as well as lack of proper supervision of them.

**Children in state care institutions.** In 2014 the Russian Federation Government adopted the Resolution № 481 On functioning of institutions for orphaned children and children out of parental care and on institutional placement of children<sup>293</sup>. Its aim is to humanize state care institutions on the basis of several principles including “best provision of children’s interests” and “protection of children’s rights and interests”. It introduces measures to shorten the period of institutional placement (via birth family reunification or adoptive/foster placement); to raise children’s awareness of their own rights and hear their voices (via free access to information and possibility to ask for help / give feedback); to make institutions more open to civil society (via establishing collegiate managerial bodies or boards of trustees in care institutions).

**Expertise** is crucial for protection of rights of vulnerable adults with mental / neurological disorders to prevent abuse of legal capacity limitations or unnecessary compulsory admissions to psychiatric hospitals. General framework to prevent voluntarism in this field is outlined in the Federal law № 323 On the foundations of healthcare for the Russian Federation citizens (edited 2011)<sup>294</sup> that introduces the principles for different types of medical expertise. According to the Federal law № 3185-I On psychiatric treatment

<sup>293</sup> Постановление Правительства Российской Федерации от 24.05.2014 № 481 «О деятельности организаций для детей-сирот и детей, оставшихся без попечения родителей, и об устройстве в них детей, оставшихся без попечения родителей» <https://rg.ru/2014/05/27/detdom-site-dok.html>

<sup>294</sup> Федеральный закон от 21 ноября 2011 г. N 323-ФЗ "Об основах охраны здоровья граждан в Российской Федерации" <https://rg.ru/2011/11/23/zdorovie-dok.html>

and guarantees of civil rights during its provision<sup>295</sup> compulsory psychiatric admission and treatment is possible only in cases of threat to life and health of the other people or the person in question him/herself. Since limitation / lack of legal capacity is established by the court, expert conclusions on appropriateness of such measures are made on the basis of the Federal law № 73 On state expert activity in the courts in the Russian Federation<sup>296</sup>. Further details are given in decrees by the Ministry of Health<sup>297</sup>.

To officially acknowledge disability status (and thus gain access to payments, social and rehabilitations services and devices) one has to address the bureau for medical and social expertise (бюро медико-социальной экспертизы)<sup>298</sup> that operates in the frames of the Russian Government Decree № 95 On the procedure and conditions of acknowledging disability of a person<sup>299</sup>. There are 3 levels of disability (группы инвалидности) that differ in severity of conditions and volume of social support. Typical breaches of rights include repeated expertise (i.e. once in several years) for unchanging conditions (e.g., amputations), underestimation of severity of disability as well as hindered access to rehabilitation in spite of correctly established disability

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<sup>295</sup> Федеральный закон от 2 июля 1992 г. N 3185-1 "О психиатрической помощи и гарантиях прав граждан при ее оказании" <https://rg.ru/1992/08/25/psixpomosch-site-dok.html>

<sup>296</sup> Федеральный закон от 31 мая 2001 г. N 73-ФЗ "О государственной судебно-экспертной деятельности в Российской Федерации" <https://rg.ru/2001/06/05/sudeks-dok.html>

<sup>297</sup> Приказ Минздрава России от 12.08.2003 N 401 "Об утверждении отраслевой учетной и отчетной медицинской документации по судебно-психиатрической экспертизе" (вместе с "Инструкцией по заполнению отраслевой учетной формы N 100/у-03 "Заключение судебно-психиатрического эксперта (комиссии экспертов)", "Инструкцией по заполнению отраслевой учетной формы N 105/у-03 "Журнал учета судебно-психиатрических экспертиз", "Инструкцией по заполнению отраслевой отчетной формы N 38 "Сведения о работе отделений судебно-психиатрической экспертизы")" [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_128655](http://www.consultant.ru/document/cons_doc_LAW_128655) ; Приказ Министерства здравоохранения и социального развития Российской Федерации (Минздравсоцразвития России) от 30 мая 2005 г. N 370 Об утверждении Инструкции об организации производства судебно-психиатрических экспертиз в отделениях судебно-психиатрической экспертизы государственных психиатрических учреждений <https://rg.ru/2005/07/19/expertiza-dok.html>

<sup>298</sup> It has a hierarchical structure with the Federal bureau, main regional bureaus and their branches in cities / districts.

<sup>299</sup> Постановление Правительства РФ от 20.02.2006 N 95 (ред. от 10.08.2016) "О порядке и условиях признания лица инвалидом" [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_58610](http://www.consultant.ru/document/cons_doc_LAW_58610)

status.

### **Situation of the NGO scene**

According to the Federal Law on the Fundamental Guarantees for the Rights of the Child, public associations and non-profit organizations<sup>300</sup> (NPOs), including Russian branches of international NPOs, can participate in child protection. They can judicially challenge decisions of state institutions / workers if they violate or restrict rights of children in difficult life situations (art. 15).

Representatives of NPOs become members of public, expert and coordination councils (общественные, экспертные и координационные советы) at federal and regional ministries / departments; they participate in discussion of draft bills and execution of enforced laws. For instance, in 2013-2014 NPOs suggested approximately 40 amendments to the legislation in the field of family placement of children in state care; part of these amendments was promptly changes as soon as actual problems with their implementations were revealed by the NPOs<sup>301</sup>.

In 2015 the President assigned to the Federal Assembly the task to transfer to NPOs up to 10% of budgetary funds channeled for social welfare provision in the regions. In 2016 the Russian Ministry for Economic Development introduced Comprehensive measures to facilitate stage-by-stage access to budgetary funds for SO NPO acting in the social welfare field in 2016-2020<sup>302</sup>.

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<sup>300</sup> This wording is more popular than “non-governmental organization” in Russian legislation and on the media. Since NGOs/NPOs may be established for the aims of social entrepreneurship there is a clarification term “socially-oriented non-profit organization” (SO NPO) that refers to NPOs dealing with social issues and social provision for vulnerable groups. This term is introduced with the Федеральным законом от 05.04.2010 г. № 40-ФЗ «О внесении изменений в отдельные законодательные акты Российской Федерации по вопросу поддержки социально ориентированных некоммерческих организаций».

<sup>301</sup> Семья Г.В., Телицина А.Ю. Роль некоммерческих организаций и института добровольчества в реализации Национальной стратегии действий в интересах детей на 2012– 2017 годы // Психологическая наука и образование. 2016. Т. 21. № 1. С. 168–183. doi: 10.17759/pse.2016210115

<sup>302</sup> №3468п-П44 от 23.05.2016 Комплекс мер, направленных на обеспечение поэтапного доступа СО НКО, осуществляющих деятельность в социальной сфере, к бюджетным

The Russian Federation Government introduced the Roadmap “Support of non-governmental organizations’ access to social welfare provision”<sup>303</sup>. These documents are aimed at enhancing competition at social services “market” and thus increase quality of provision and optimize state expenses.

There are two registries that allow NPOs that meet their entry requirements to obtain support from the local authorities. Federal law On the bases of social provision for citizens in the Russian Federation<sup>304</sup> regulates the “Registry of social services providers in the field of social welfare” (реестр поставщиков социальных услуг в сфере социального обслуживания) (art. 25). This registry may include all types of providers (municipal, commercial or non-profit organizations). It offers compensation for their activities in social welfare provision. The compensations come from regional budgets, according to local nomenclature of relevant services and local tariffs.

The recent Russian Government Decree № 89 On the Registry of Non-commercial Organizations – Providers of Public Services<sup>305</sup> introduces a new type of registry, targeted at NPOs and more accessible for them. It allows NPOs to apply for relatively long-term (2 years+) subsidies.

There is also the Federal law № 212 On the foundations of public control in the Russian Federation<sup>306</sup> that grants private persons and NPOs the right to control a range of legal/social processes. Its scope includes such activities as control of life conditions of orphaned children and children out of family care

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средствам, выделяемым на предоставление социальных услуг населению, на 2016-2020 гг <http://nko.economy.gov.ru/Files/NewsDocuments/2f35c1d4-ef97-4e30-8959-dae82e102732.pdf>

<sup>303</sup> Распоряжение Правительства РФ №1144-р от 08.06.2016 <http://nko.economy.gov.ru/Files/NewsDocuments/4c1ca94e-6786-4f6d-8e40-66f340f89cca.pdf>

<sup>304</sup> Федеральный закон от 28.12.2013 N 442-ФЗ (ред. от 21.07.2014) "Об основах социального обслуживания граждан в Российской Федерации" , статья 25

<sup>305</sup> Постановление Правительства РФ от 26.01.2017 N 89 "О реестре некоммерческих организаций - исполнителей общественно полезных услуг" (вместе с "Правилами принятия решения о признании социально ориентированной некоммерческой организации исполнителем общественно полезных услуг", "Правилами ведения реестра некоммерческих организаций - исполнителей общественно полезных услуг") [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_211967](http://www.consultant.ru/document/cons_doc_LAW_211967)

<sup>306</sup> Федеральный закон от 21 июля 2014 г. N 212-ФЗ "Об основах общественного контроля в Российской Федерации" <https://rg.ru/2014/07/23/zakon-dok.html>

and monitoring of provision of psychiatric treatment. NPOs can participate in all the existing forms of public control as well as initiate such forms as public monitoring (общественный мониторинг) and public debates (общественное обсуждение). Russian NPOs were active participants of the public monitoring of implementation of the Governmental Resolution № 481 On functioning of institutions for orphaned children and children out of parental care and on institutional placement of children.

A risk for development of NPOs is posed with the Federal law № 121 On Amendments to the Russian Federation Legislative Acts on Regulation of Activities of Non-Commercial Organizations Functioning as Foreign Agents<sup>307</sup>, i.e. NPOs that obtain financial support or properties from foreign sources and participate in political activity. The law requires such organizations to voluntarily register as “foreign agents”<sup>308</sup>, otherwise they are subject to fines. The law claims that “social welfare and protection, protection of motherhood and childhood” as well as “charitable activities” are not related to political activities but the cases of its actual implementation is sometimes controversial. For instance, a leading NPO in the field of family abuse prevention and victims rehabilitation – Regional public organization for support of women and children in crisis situations “Anna” – was included into the registry of “foreign agents” at the end of 2016.

### **Assessment and recommendations**

Lack of unified definitions for vulnerable children is a well-recognized issue. Human Rights Ombudsmen (2014<sup>309</sup>) emphasized “lack of comprehensive approach in the state policies... of unified informational, analytical and legal

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<sup>307</sup> Федеральный закон от 20 июля 2012 г. N 121-ФЗ "О внесении изменений в отдельные законодательные акты Российской Федерации в части регулирования деятельности некоммерческих организаций, выполняющих функции иностранного агента" (art. 1)

<sup>308</sup> The consequences include serious increase in auditing and reporting workload as well as requirement to label all their print materials with a “foreign agent” logo (that may undermine people’s motivation to turn for help to such organizations).

<sup>309</sup> <http://ombudsmanrf.org/www/upload/files/docs/appeals/doklad2014.pdf>

field, of clear thesaurus” as a negative factor for both law enforcement and statistics processing. Though definitions of both “informational” threats and severe abuse are well-elaborated in the Russian legislation, the cases of child abuse and neglect that fall in-between (such as harsh parenting, neglect, institutional violence) are much more difficult to define. What is more, rough equivalents of “child abuse and neglect” are used both in criminal and in family legislation and their difference/similarities in these contexts are not addressed.

The National Strategy for Actions for Children calls to monitor the federal law in the field of child protection for clarification of the legal essence of the terms “children in a difficult life situation”, “children and families in threatening social conditions”, “children in need of state support”, “children without parental care”, “child abuse” but this work is still to be done.

Another aspect of this issue is lack of consensual operationalization of art. 77 of the Family Code and art. 156 of the Criminal code. There are cases of unsubstantiated removal of children out of family care and/or criminal prosecution of their parents, some of them having great public resonance and thus heavy negative impact on public opinion about child safeguarding practices. Though such system failures can occur elsewhere, in the Russian context they are provoked by voluntarism in safety assessment procedures, lack of reliable assessment tools and professional preparation of guardianship and custody agencies. The models of interagency networking in the field of child protections also need revision for clarity and unambiguous assignment of responsibility. At the same time low levels of social trust and widespread fears of state “intrusion” into private family sphere make it difficult to initiate meaningful discussion of child abuse assessment criteria, tools, and stakeholders’ responsibilities. This situation is currently recognized as a crisis and is being addressed at the federal level.

The situation with vulnerable adults has been rapidly improving. Now it is important to use the momentum and continue to develop legislation in support

of people lacking legal capacity / with limited legal capacity, e.g. to deepen the legal understanding of supported decision-making and provide some procedures / mechanisms for its implementation. Granting NPOs the right to become legal guardians / custodians of vulnerable adults who live in state residential care would help to prevent their segregation and, in many cases, to establish a milder level of capacity limitations (limited capacity instead of total lack of capacity).

The position of child protection NPOs is ambiguous. On the one hand, they have achieved state recognition and their repertoire of impact mechanisms has widened. On the other hand, there are such problems as mutual mistrust between NPOs and state organizations (the latter perceive NPOs as competitors at the social services “market”), unrealistic implementation of support mechanisms (e.g. extremely low tariffs for social services provision), and lack of clear standards for social services provision. The Federal law № 121 On Amendments to the Russian Federation Legislative Acts on Regulation of Activities of Non-Commercial Organizations Functioning as Foreign Agents also contributes into the atmosphere of mistrust. It would be beneficial to take reflective step-by-step approach to implementation of reforms of social welfare and protection (and inclusion of NPOs into this sector) since now this process might seem to be an implicit shift to neoliberal social services market model.

**SERBIA**



## **Desk research**

### **Question n.1: What is the definition of “child”?**

There is no unified definition of the “child” in Serbian legislation. The different acts define or fail to define at all the notion of “child” for the purposes of coverage of particular act.

The Law on Social Protection in its Article 41 defines a minor (child) and a young person up to the age of 26 as the beneficiaries of the right related to social protection when, due to family and other life circumstances, their health, safety and development are endangered, i.e. if it is certain that they cannot reach an optimal development level without the support of the social welfare system. Law on Youth defines young people as the ones from 15 to 30 years of age. The Family Law which elaborates state obligations related to protection of child’s rights in its Article 6 does not define the child at all.

However, the Family Law in its Article 85 introduces the notion of “Extended parental rights” stating the following:

“Parental rights can be extended after the child reached the age of 18 if the child, due to sickness or psycho-physical development impairments, is incapable to take care of itself and to protect its rights and interests or if by its actions endangers its own rights and interests.”

In that way status of the child is assigned also to persons who are not minors but for the reasons above are regarded as ones requiring extended parental guardianship.

The Law on protection of persons with mental health issues (Mental Health Law) in its Article 2, paragraph 12 defines child as “the person who still have not reached the age of 18”.

The comprehensive Child’s act which would define “child” has still not been adopted although the draft is made in 2012 but it still has not entered the Parliamentary procedure. This is also raised as a concern by CRC Committee.

**Question n.2.: Is the notion “vulnerability” or “vulnerable” (for child and adult) used in legislation in your country? What other words, notions are used in your national legislation to describe this phenomenon?**

The notion of vulnerability is not consistently used in Serbian legislation nor there exist comprehensively defined groups of vulnerable people. Rather, different legal acts offer listings of vulnerable groups for the purpose of coverage of particular legal act. When it comes to national laws, in the internal regulatory framework for this area of a particular relevance is the Law on Social Protection , which in the framework of its provisions stipulates significant principles of social protection, such as the principle of respect of the integrity and dignity of beneficiaries and the principle of non-discrimination and regulates the access of users to material support (financial assistance) and social services.

Article 41 of the Law on social protection defines the groups of users which can benefit from the types of support envisaged by the law. The focus of identification of groups is not on vulnerability as a consequence of personal characteristic but on social needs of the users caused by the particular situations they are facing with. The article 41 lists the situations when person is experiencing the pressing social need and requires the support from the system of social protection. Listed situations are the closest which Serbian legal acts come to defining the vulnerability.

Hereby, the perspective of the Article 41 is set out:

*“The user of the rights of services of social protection is the individual or family which is facing the barriers in satisfying its needs because of what it can not reach or maintain the standard of living or does not have enough means to satisfy the basic life needs and it can not obtain them through work, income from property or any other sources...”*

Article differs between users up to 26 years of age and users, users between

26 and 65 and people older than 65 identifying the situations indicating that people are in the state of social need. Some of those situations are lack of parental care, aggravated economic circumstances, disability causing enhanced needs for care which exceed the capacities of family, conflict with parents, guardian or community, abuse of alcohol and drugs, victims of violence, victims of human trafficking, stateless people, disability causing functional limitations, risk of exploitation or domestic violence.

However, it is certainly worth noting that social services envisaged by the law such as residential services (providing placement in the residential institutions of social care for children and adults with disabilities, dominantly intellectual disability) can be a cause of vulnerability and social exclusion as placement in the residential institutions on the basis of disability is contrary to international human rights law. Furthermore, adults with intellectual disabilities and psychosocial disabilities are often at risk of judicial deprivation of legal capacity which makes them vulnerable to abuse and social exclusion and prevents them to exercise autonomy and choice and control over their lives.

The most comprehensive attempt to define the vulnerable groups in society at heightened risk of discrimination can be found in National Strategy for Prevention and Protection against Discrimination 2013-2018. In its section 4.1. the term “vulnerable social groups” is used and lists following groups: (1) national minorities; (2) women; (3) LGBT persons; (4) persons with disabilities; (5) elderly people; (6) children; (7) refugees, internally displaced people and other endangered migrant groups; (8) religious groups (9) persons whose health status can be basis of discrimination (e.g. people living with HIV).

The list is made on the basis of analysis of legal acts, the reports of National Human Rights Institutions (Commissioner for Protection of Equality and Ombudsman), the reports of European Commission, civil society organizations acting in the field of human rights.

The other terms used in Serbian legal acts as similar to “vulnerable” are: marginalized (marginalizovan), in the risk of social exclusion and poverty (u riziku od socijalne iskljucenosti i siromastva), multiple discriminated and

excluded groups (visestruko diskriminisane i isključene grupe).

**Question n.3.: Is the expression of “safeguarding policy” or any synonym (safeguarding requirement, safeguarding measures, obligatory procedures of protection /measures of care, etc.) mentioned in these acts and/or regulations in relation to vulnerability?**

The expression “safeguarding policy” is not used in Serbian legislation in relation to vulnerability. The closest synonyms used are “provision of support” or “support measures”.

The key policy regulating the “provision of support” and introducing safeguards of protection of vulnerable children and adults in Serbia is the Law on Social Protection mentioned above. References to type of support provided to users of social protection are made in Articles: 4, 5, 40, 41, 79. Safeguards are also embodied in principles of social protection outlined in the said law, emphasizing that it is necessary to provide social services in the immediate and the least restrictive environment, timely, high-quality, accessible in the economic, physical and geographical terms to meet individualized approach and expertise of employees. Article 36 guarantees the right to free choice of services, which includes selection of social service providers by the beneficiary.

Furthermore, the mentioned law contains safeguards in form of prohibitions regulating provision of social services, for example the prohibition of admission of children under age of 3 in the residential care institutions (Article 52).

The Law on Social Protection stipulates Rulebooks aimed at its implementation, including: the Rulebook on Detailed Conditions and Standards for the Provision of Social Protection Services, the Rulebook on Licensing Experts in Social Protection, the Rulebook on Licensing Social Welfare Organizations and Rulebook on Prohibited Practices of the Employees in Social Protection. These regulations contain important

safeguards ensuring the minimal standards of social protection for the users and quality of social services making sure that not only the principle of “no harm” to users is respected but that the efficient response to the social need of vulnerable individuals is provided.

In the system of education the Law on fundamentals of system of education is considered as safeguarding policy since it guarantees the equal opportunities in education for all children including the ones with disability, prohibits discrimination and guarantees the appropriate support for those having additional educational needs (Articles 3-6, 44, 77).

**Question n.4.: Does your national legislation on vulnerable children and adults specify the stakeholders who are expected by law to provide care and protection?**

**Note:** The list of vulnerable groups in the tables below was compiled on the basis of existing legal acts and policies tackling the issues faced by those groups. The list is not exhaustive. Some of the groups like youth living in the streets, sex workers, poor, young parents, refugees and internally displaced persons have not been dealt with specifically by legislation but listed legal acts below contain specific or general provisions applicable to them.

Table 1. Public Stakeholders

<b>Type of the activity or target group</b>	<b>Public Stakeholders</b>
Child rights	Council for the rights of the child of Government of Serbia, social services for children (including residential care and foster care)
Rights of women	Coordinating body for gender equality of Government of Serbia
Rights of elderly	Ombudsman’s council for the rights of elderly people

People living with HIV	Ministry of Health, National Office for HIV/AIDS of Government of Serbia, Institute of Public Health of Serbia Dr Milan Jovanovic Batut, Clinic for infectious diseases of Clinical Centre of Republic of Serbia.
Persons with disabilities (including cross-disability organizations and impairment based organizations: physical disability, intellectual, psychosocial and sensory (visual or hearing))	Ministry of Labour, Employment, Veteran and Social Affairs (Sector for protection of persons with disabilities is part of the Ministry)
LGBT rights	No specially appointed public body
National minorities	National Councils for Minorities
Human Rights in general	Ombudsman Office, Commissioner for Protection of Equality, Commissioner for Information of Public Importance and Personal Data Protection, Office for human and minority rights of Government of Serbia.
Youth	Ministry of Youth and Sport, Offices for Youth (municipal level), National Council for Youth of Government of Serbia, Youth clubs.
Social Protection	Ministry of Labour, Employment, Veteran and Social Affairs, Republic Institute for Social Protection, Chamber of Social Protection, Centers for Social Work (at municipal level) and state-run social service providers as defined in the Law on Social Protection.
Employment	Ministry of Labour, Employment, Veteran

	and Social Affairs, National Employment Service.
Education	Ministry of Education, National Education Council of Republic of Serbia, Institute for teaching curricula (Zavod za udzbenike), education institutions (elementary, secondary schools and universities), Intersectorial commissions for special educational needs assessment (at municipal level), Center for Promotion of Science.
Social Inclusion	Social Inclusion and Poverty Reduction Unit of Government of Serbia

Table 2. List of legal acts and policy documents defining stakeholders

<b>Type of the activity or target group</b>	<b>List of legal acts or other policy documents defining stakeholders</b>
Child rights	Family Law, Law on Social Protection, Law on youth, Law on fundamentals of system of education, Law on Financial Support to Families with Children Key policies: National Strategy for Prevention and Protection against Discrimination 2013-2018 (applies to all fields below), National Strategy for Prevention and Protection of Children from Violence
Rights of women	Law on Criminal Code Amendments, Law on Prohibition of Discrimination, Law on Prevention of Domestic Violence, Law on Gender Equality. Key policies: National Strategy for Gender Equality (2016 -2020) and Action Plan (2016

	- 2018)
Rights of elderly	Law on Social Protection, Law on pension and disability insurance
People living with HIV	Law on Health Protection, Law on Health Insurance Key policies: National Strategy for Fight against HIV infection 2005 – 2015 (not renewed)
Persons with disabilities (including cross-disability organizations and impairment based organizations: physical disability, intellectual, psychosocial and sensory (visual or hearing))	Law on prohibition of discrimination of persons with disabilities, Law on social protection, Law on prohibition of discrimination, Law on basics of system of education, Law on usage of sign language, Law on professional rehabilitation and employment of persons with disabilities, Law on protection of people with mental health issues Key policies: National Strategy for Improvement of Position of Persons with Disabilities (the new one is being drafted)
LGBT rights	Law on prohibition of discrimination Key policies: National Strategy for Prevention and Protection against Discrimination 2013-2018
Minority Rights	Law on protection of rights and freedoms of national minorities, Law on National Councils of National Minorities Key policies: National Strategy for Improvement of Position of Roma
Youth	Law on youth Key policies: National Youth Strategy 2015 -



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**Question n.5.: What other stakeholders are you aware of concerning vulnerable children and adult in your country? (NGOs, international bodies, etc.)**

Table 3 List of NGO Stakeholders and international organizations and agencies

<b>Type of the activity</b>	<b>List of NGOs</b>
Child rights	Center for Rights of the Child, The Center for Youth Integration, VelikiMali, NETWORK OF ORGANISATIONS FOR CHILDREN OF SERBIAN - MODS
Rights of women	Autonomous women's center, ASTRA, Atina, ...Out of Circle (Iz Kruga), Victimology Association of Serbia
Rights of elderly	NGO Amity
People living with HIV	Union of People living with HIV (USOP) encompassing 7 local associations of people living with HIV, Center AS, Q Club.
Persons with disabilities (including cross-disability organizations and impairment based organizations: physical disability, intellectual, psychosocial and sensory (visual or hearing))	NOOIS (National Organizations of Persons with Disabilities of Serbia), Center for Independent Living Serbia, Center for Development of Inclusive Society (CRID), Mental Disability Rights Initiative – Serbia, International Aid Network (IAN), Serbian Association for Promotion of Inclusion (API), Creative Education Center (KEC), Association for Accessibility Audit, Association of Students with Handicap (USH), Forum of Youth with Disabilities.

LGBT rights	LABRIS, Human Rights Defenders, Queeria, Gay-straight Alliance
Minority rights	Center for Minority Rights (CPM)
Human Rights in general	Belgrade Center for Human Rights, YUCOM, PRAXIS, Transparency Serbia, Civic Initiatives, Youth Initiative for Human Rights
Youth	KOMS (Umbrella Association of Serbian Youth), NAPOR (National association of youth workers)
International organizations and agencies	UNICEF Serbia, OSCE Mission to Serbia, UNDP Serbia, OHCHR Serbia, EU Delegation to Republic of Serbia, Council of Europe Office in Belgrade, USAID Office in Serbia

### **Question n.6.: Registration of NGOs**

In Serbia the Law on associations is regulating the processes of NGO foundation and registration and sets out the requirements to be fulfilled in the process.

Article 11 prescribes that in order to be registered a NGO has to submit the Foundational Act and the Statute along with the data of founding persons and of a person chosen as a legal representative by NGO's Assembly. Foundational Act has to stipulate the field in which the NGO acts and implements its goals as well as the objectives for which it is being established.

Article 3 prohibits the objectives for which the NGO is being founded prohibiting following grounds: violent destruction of constitutional order and territorial integrity of Republic of Serbia, violation of guaranteed human and minority rights or causing or inducing the inequality, hatred and intolerance based on racial, national, religious or other affiliation or determination, as well

as based on sex, gender, physical, mental or other personal characteristics and abilities.

Article 12 sets out the requirements for NGO's Statute and clarifies what it has to contain. Among the rest it has to include the field in which NGO realizes its goals, its objectives, work area (as listed in the classification of businesses of Business Registry Agency). It should also contain the decision-making procedures and the organs and their roles in a NGO.

There are no any other safeguarding policy requirements.

## **Country Report**

Within the last few decades, the legal system of the Republic of Serbia follows a gradual improvement and harmonization of the protection mechanisms with relevant international standards, expressed primarily in a number of international agreements (e.g. Convention on the Rights of the Child, Convention on the Rights of the Persons with Disabilities), recommendations, studies and other documents which determine major principles for the protection of children and vulnerable adults. In previous years there has been an attempt to develop systemic approach to solving the problem of abuse and neglect, both at the legislative and at the institutional level. Development stage in which such a system currently functions is still unfinished, but its basis is laid in the Constitution of the Republic of Serbia, as well as numerous laws and regulations, strategic and other documents in the field of protection of children and vulnerable adults from any form of violence. Within given legal framework, the notion of the importance of prevention mechanisms continues to grow, aiming to secure both welfare and safeguarding of vulnerable groups.

Important role in the protection system is given to a large number of state bodies and institutions, e.g. centers for social work and other providers of social assistance, health and educational institutions, police, judiciary and

other, as well as civil society organisations which provide various services to vulnerable groups. In this regard, particular significance is given to cross-sectoral cooperation and coordinated action of all stakeholders in the protection system.

## **LEGAL FRAMEWORK FOR SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

### *Relevant definitions in Serbian legislation*

Serbian legislation does not have a general legal definition of the „child“. Indirectly, based on the provisions of the **Constitution of the Republic of Serbia** (Ustav Republike Srbije), and **Family Act** (Porodichni zakon), it can be concluded that the term „child“ refers to any person below the age of eighteen years, since under relevant Serbian laws the majority is attained at this age.<sup>310</sup> However, there is an apparent terminology confusion in relation to the use of the term “child” in certain Serbian laws. For example, the **Law on the Protection of Persons with Mental Disabilities** (Zakon o zastiti lica sa mentalnim smetnjama<sup>311</sup>) follows the above mentioned understanding of the „child“ as a person below the age of eighteen, while the **Criminal Code** (Krivicni zakonik), determines numerous offences with elements of violence, distinguishing between three categories of children: the term *child* refers to a person below the age of fourteen, the *minor* – a person that has reached the age of fourteen, but not the age of eighteen, while the term *juvenile person* refers to all who have not reached the age of eighteen.<sup>312</sup>

Serbia still has not adopted a separate law on the rights of the child, although a comprehensive draft has been prepared in 2011, and is waiting to be put on National Assembly agenda since then. The **Draft Law on the**

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<sup>310</sup> See Art. 37. para. 2. of the Constitution of the Republic of Serbia, „Official Gazette RS“, No. 98/2006, and Art. 11. of the Family Act, “Official Gazete RS”, No. 18/2005, 72/2011, and 6/2015, in relation to Art. 1 of the Convention on the Rights of the Child.

<sup>311</sup> See Art. 2. para. 1(12) of the Law on the Protection of Persons with Mental Disabilities, “Official Gazette RS“, No. 45/2013.

<sup>312</sup> See Art. 112. para. 8-10. of the Criminal Code, „Official Gazette RS“, No. 85/2005, 88/2005, 107/2005 , 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, and 94/2016.

**Rights of the Child** (Zakon o pravima deteta) <sup>313</sup>, defines a child as any person who has not reached the age of eighteen.<sup>314</sup>

Related to the notion of vulnerability, there is no universal legal definition of the term „vulnerable adult“ in Serbian legislation. In fact, even the term vulnerability has not been consistently used. Rather, different regulations and other legal documents offer listings of vulnerable groups for the purposes of coverage of particular legal act. For example, the **Law on Social Protection** (Zakon o socijalnoj zastiti) defines the groups of users which can benefit from the types of social support envisaged by the law.<sup>315</sup> However, vulnerability is not seen as the main criteria for the verification of such users, rather it is a situation of social need of the user caused by a particular life events that he or she is facing. The Law lists the situations that cause social needs and require the support from the system of social protection. Some of those mentioned are: lack of parental care, aggravated economic circumstances, disability causing enhanced needs for care which exceed the capacities of a family, conflict with parents, guardian or community, abuse of alcohol and drugs, victims of violence, victims of human trafficking, stateless people, disability causing functional limitations, risk of exploitation or domestic violence.<sup>316</sup> Listed situations are the closest to what can be considered as the notion of vulnerability in Serbian legislation.

In addition, **Regulation on the protection of the rights of minors in the field of media services** (Pravilnik o zaštiti prava maloletnika u oblasti pružanja medijskih usluga) defines as a particularly vulnerable minor (Serb.

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<sup>313</sup> Draft of the Law on the Rights of the Child, prepared by Serbian Protector of Citizens – Ombudsman of Serbia, available at: [www.ombudsman.rs/attachments/Nacr%2009.11.11..doc](http://www.ombudsman.rs/attachments/Nacr%2009.11.11..doc), last accessed on 26.02.2017.

<sup>314</sup> The existing terminology inconsistencies are certainly not good, and could easily be overcome by introducing a unified legal definition of the term „child“ (a person below the age of eighteen), in accordance with ratified international treaties. Then, within this category, and depending on the nature of certain forms of protection, further classifications could be developed.

<sup>315</sup> See Art. 41. of the Law on Social Protection, „Official Gazette RS“, No 24/2011. This provision states:

*“The user of rights or social protection services is an individual or family who face the obstacles in satisfying their needs, which is why it does not achieve or maintain the quality of life or does not have enough resources to satisfy their basic needs, and can not accomplish this through work, income from property or from other sources.”*

The Law differs between users of up to 26 years of age, users between 26 and 65 and older than 65 years of age.

<sup>316</sup> *Ibidem.*

„posebno osetljiv maloletnik“) one who has serious mental issues or finds himself or herself in a vulnerable life situation (e.g. victim of family, sexual, peer or other form of violence, mental illness, perpetration of a criminal act, suicide attempt, prostitution, alcohol or drug abuse, whose parents are in prison or have abandoned him or her).<sup>317</sup>

Other than in regulations, the notion of vulnerability is more often used in various strategic documents. These documents usually define vulnerable groups, seen through the objectives and activities of concrete strategies. The term „vulnerability“ has been mainly used in the context of „vulnerable“ or „particularly vulnerable“ groups (Serb. „osetljive grupe“, „posebno osetljive“, „ranjive grupe“, „marginalizovane grupe“). It has been repeatedly and explicitly used in a variety of national strategies, in order to refer to different social groups that are seen as vulnerable, mainly children, women, elderly, and disabled.

The most comprehensive attempt to define the vulnerable groups in society, at heightened risk of discrimination, can be found in the **National Strategy for Prevention and Protection against Discrimination** (Strategija prevencije i zaštite od diskriminacije)<sup>318</sup>. In the section 4.1. the term “vulnerable social groups” is used as a referral to the following groups: (1) national minorities; (2) women; (3) LGBT persons; (4) persons with disabilities; (5) elderly people; (6) children; (7) refugees, internally displaced people and other endangered migrant groups; (8) religious groups (9) persons whose health status can be basis of discrimination (e.g. people living with HIV).

**National Plan of Action for Children** (Nacionalni Plan akcije za decu)<sup>319</sup> elaborates on particularly vulnerable children (Serb. „posebno ugrozena deca“), including: children from families with disturbed familial relations, children without parental care, children in social care institutions, children with development impediments, children in the conflict with the law,

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<sup>317</sup> See Art. 27. of the Regulation on the protection of the rights of minors in the field of media services, “Official Gazette RS”, No. 25/2015.

<sup>318</sup> See „Official Gazette RS“, No. 60/2013.

<sup>319</sup> See National Plan of Action for Children, Government of the Republic of Serbia, Belgrade, February 2004, [https://www.unicef.org/serbia/NPAfinalEnglish\(1\).pdf](https://www.unicef.org/serbia/NPAfinalEnglish(1).pdf), last accessed on 26.02.2017.

children victims of war, children refugees and displaced children, children from national minorities (especially Roma children). Within the same document, another categorization of particularly vulnerable children is made, encompassing: children without a family, children living and/or working on the street, children victims of violence, children affected by drug addictions or alcoholism, children drop outs, non-registered children, etc.

**National Strategy for the Prevention and Protection of Children from Violence** (Nacionalna strategija za prevenciju i zastitu dece od nasilja)<sup>320</sup> recognizes particularly vulnerable groups of children (Serb. „posebno ugrozene grupe dece“), under section 4.2. These groups include: children from poor families, Roma children, children from immigrant and displaced families, children without parental care, or those who have been separated from their parents, children in social care institutions, children with development impediments, and children in the process of readmission.

**National strategy for the Prevention and Combating Violence against Women in the Family and in Intimate Partner Relationships** (Nacionalna strategija za sprecavanje i suzbijanje nasilja nad zenama u porodici i u partnerskim odnosima)<sup>321</sup> recognizes particularly vulnerable groups of women. The focus is on women who can suffer from multiple forms of violence, more specifically, Roma women, disabled women, women from rural areas, older women, and displaced women.

A number of other strategic documents refers to some of the above mentioned vulnerable groups.<sup>322</sup> Serbian legislation also uses other terms as similar to “vulnerable”, such as „marginalized“ (Serb. „marginalizovan“), in the risk of social exclusion and poverty (Serb. „u riziku od socijalne iskljucenosti i siromastva“), multiple discriminated and excluded groups (Serb. „visestruko diskriminisane i iskljucene grupe“), etc.<sup>323</sup>

Finally, it should be noted that relevant Serbian legislation accepts

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<sup>320</sup> See "Official Gazette RS", No. 122/2008.

<sup>321</sup> See "Official Gazette RS", No. 27/2011.

<sup>322</sup> See, for example, Strategy for the improvement of the status of the people with disabilities, Strategy for the Improvement of the Status of the Romani Community in the Republic of Serbia, National Action Plan for Combatting Human Trafficking, National strategy for gender equality, National Youth Strategy, etc.

<sup>323</sup> See, for example, National Youth Strategy, para. 3, pp. 3.

definitions of abuse, neglect and other forms of violence adopted by the World Health Organisation in Geneva in 1999 (see document WHO/HSC/PVI/99.1).<sup>324</sup> In addition, Criminal Code defines numerous unlawful violent activities involving children and vulnerable adults.<sup>325</sup>

### *Relevant legal instruments for the protection of children and vulnerable adults*

Based on the Serbian Constitution and ratified international treaties and standards, the national regulatory framework consists of a series of laws and regulations dealing with the protection of children and vulnerable adults. The integrity of the protection system is reflected in the regulations of family and criminal law, but also in a series of regulations containing rules for the functioning of other relevant mechanisms for the protection of children and vulnerable adults from violence, such as: the Law on Social Protection, the Law on the Foundations of the Education System (Zakon o osnovama sistema obrazovanja i vaspitanja)<sup>326</sup>, Health Care Act (Zakon o zdravstvenoj zastiti)<sup>327</sup>, Police Act (Zakon o policiji)<sup>328</sup>, and other laws and by-laws.

The **Constitution of the Republic of Serbia** guarantees the fundamental human rights and freedoms, including the right to life (Art. 24), the inviolability of the physical and mental integrity (Art. 25), protection from slavery, servitude and forced labor (Art. 26), the right to liberty and security (Art. 27), prohibition of discrimination (Art. 21), etc. It also guarantees special protection of children from psychological, physical, economic and any other form of exploitation or abuse, as well as certain specific rights of children that children enjoy suitable to their age and maturity (Art. 64).

**Family Act** is the first domestic regulation which guarantees some of the most important rights of the child and regulates the system of civil protection from domestic violence. The basic provisions of the Act provide that

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<sup>324</sup> See, for example, National Strategy for the Prevention and Protection of Children from Violence, para. 2.2, pp. 3.

<sup>325</sup> See, for example, Art. 178-185. of the Criminal Code.

<sup>326</sup> See "Official Gazette RS", No. 72/2009, 52/2011 и 55/2013, 35/2015, 68/2015, and 62/2016.

<sup>327</sup> See "Official Gazette RS", No. 107/2005, 72/2009, 88/2010, 99/2010, 57/2011, 119/2012, 45/2013, 93/2014, 96/2015, and 106/2015.

<sup>328</sup> See „Official Gazette RS“, No. 6/2016.



a child shall enjoy special protection of the state and establish the duty of every person to be guided by the best interests of the child in all actions concerning children.<sup>329</sup> Family Act requires the state to take all measures necessary to protect the child from neglect, physical, sexual and emotional abuse and all forms of exploitation.<sup>330</sup> The Law, does not define these forms of violence against children, nor does it contain legal rules exclusively governing the protection of children from violence. However, such protection is directly achieved through a number of other legal institutes - protection from domestic violence, deprivation of parental rights and supervision over the exercise of parental rights. Therefore, the protection of children from various forms of violence has been placed within the wider context of comprehensive civil legal protection from domestic violence. In any case which requires that a child is protected from violence, all health care institutions, educational institutions and social care institutions, judiciary and other authorities, associations and individuals have the obligation to inform the public prosecutor or a centre for social work.<sup>331</sup>

As previously mentioned, related to the protection of children and vulnerable adults, the **Criminal Code** regulates various offences with elements of violence. In addition, the **Law on Juvenile Offenders and Criminal Protection of Juveniles** (Zakon o maloletnim uciniocima krivicnih dela i krivcnopravnoj zastiti maloletnih lica)<sup>332</sup> provides for special mechanisms to protect juvenile victims in criminal proceedings. Special protection measures apply to all criminal offenses, with the aim to protect minors from various forms of violence, and include additional procedural mechanisms in order to prevent further or repeated victimisation of the minor.

**The Law on Special Measures for the Prevention of Crimes against Sexual Freedoms Involving Minors** (Zakon o posebnim merama za sprečavanje vršenja krivičnih dela protiv polne slobode prema maloletnim licima)<sup>333</sup> was adopted in order to ensure better protection of minors from

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<sup>329</sup> See Art. 6. para. 2. of the Family Act.

<sup>330</sup> See Art. 6. para. 2. of the Family Act.

<sup>331</sup> See Art. 273. para. 3. of the Family Act.

<sup>332</sup> See "Official Gazette RS", No. 85/2005.

<sup>333</sup> See "Official Gazette RS", No. 32/2013.

sexual violence, and the emphasis is on the prevention of sexual violence by deterring the offender in repeating the crime (since the measures are implemented after the offence has already taken place, the offender has been convicted, and has served his sentence<sup>334</sup>). The Law prohibits mitigation of sentence and parole, and provides that the special records of these offenders are kept. Furthermore, it has been regulated that the statute of limitations no longer applies to sexual acts against children.

Recently, the National Assembly of Serbia adopted the **Law on the Prevention of Domestic Violence** (Zakon o sprečavanju nasilja u porodici)<sup>335</sup> in order to ensure more efficient and coordinated response in domestic violence cases, and secure better protection of victims. This Law will come into force as of 1 June 2017.

The above mentioned **National Plan of Action for Children** represents the main strategic state document, which is based on the fundamental principles of the Convention on the Rights of the Child. It defines the general policy of the state towards children, determining the protection of children from abuse, neglect, exploitation and other forms of violence as one of the main priorities. The National Plan determines several objectives, and a list of activities to be undertaken in order to establish a comprehensive system of protection of children, in accordance with the ultimate principle of the best interests of the child.<sup>336</sup>

As one of the specific objectives defined by the National Plan, in 2008 the Government of Serbia adopted the **National Strategy for the Prevention and Protection of Children from Violence** (*Nacionalna strategija za prevenciju i zaštitu dece od nasilja*). This strategy detects the presence of violent behaviors against children in all environments – within family, schools, social care institutions and other places where children are present, and could be exposed to violence. In order to secure effective resolution of the cases of violence against children, the Strategy emphasizes the importance of involvement and cooperation of all sectors in the society - state institutions,

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<sup>334</sup> See Art. 7. of the The Law on Special Measures for the Prevention of Crimes against Sexual Freedoms Involving Minors.

<sup>335</sup> See „Official Gazette RS“, No. 94/2016.

<sup>336</sup> See National Plan of Action for Children, pp. 63-68.

international and local organisations, local government bodies, academic institutions and the media.

Additionally, the National Plan of Action for Children served as a basis for the adoption of the **General Protocol on the Protection of Children from Abuse and Neglect** (Opsti protokol za zastitu dece od zlostavljanja i zanemarivanja), adopted in 2005 by the Government of the Republic of Serbia. The General Protocol is a legally binding document which regulates the procedure for the protection of a child that has been or may be abused or neglected, including guidelines for appropriate identification, assesment, intervention, recovery and overall conditions for the safe development of the child. The General Protocol supports the development of a network of multidisciplinary teams in charge of protection of children in local communities and the application of a unified model for these teams at the municipal level. Based on the provisions of the General Protocol, relevant ministries adopted **special protocols** further regulating roles and procedures concerning child protection **for providers of social services, police, educational institutions, health care services, and judiciary.**<sup>337</sup> In addition to these protocols, the General Protocol Implementation Guidelines was published and distributed to all professionals in the protection system. Today, all centres for social care in Serbia have mandatory 24-hour duty when urgent intervention is needed to protect a child from abuse and neglect, which is implemented in cooperation with the police and health care services.

It might be said that these strategic documents, in conjunction with the relevant regulations, provide basis and potential for more efficient resolution of the problem of violence against children in Serbia. However, the implementation of adopted strategies and plans is still not fully realized, including continuous monitoring of implementation of the aforementioned

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<sup>337</sup> See: Special Protocol for the Protection of Children from Abuse and Neglect in Social Care Institutions, Ministry of Labor and Social Policy, 2006; Special Protocol on the Conduct of Police Officers in the Protection of Minors from Abuse and Neglect, Ministry of Interior, 2006 and amended in 2012; Special Protocol on the Protection of Children and Students from Violence, Abuse and Neglect in Educational Institutions, Ministry of Education, 2007; Special Protocol on the Protection of Children from Abuse and Neglect in Health Care System, Ministry of Health, 2009; Special Protocol on the Conduct of Judiciary in the Protection of Minors from Abuse and Neglect, Ministry of Justice, 2009; All protocols are available at [https://www.unicef.org/serbia/resources\\_14632.html](https://www.unicef.org/serbia/resources_14632.html), last accession on 27.02.2017.

objectives and activities, which represents the biggest drawback of the state policy in this area.

### *Safeguarding policies in Serbian legislation*

The expression “safeguarding policy” is not used in Serbian legislation in relation to vulnerability. The closest synonyms used are “provision of support” or “support measures” or „protection measures“. Safeguarding policy is exclusively referred to through its synonyms such as measures of protection (mere zaštite). As above stated, most legislations make some mention of these measures of protection, however, they are not always elaborated on in detail.

The key regulation supporting the protection measures and introducing certain safeguarding policies for the protection of children and vulnerable adults in Serbia are presented above, i.e. the Law on Social Protection, the Family Act, etc. For example, references to types of support provided to users of social protection are made in Articles 4, 5, 40, 41, and 79 of the Law on Social Protection. Safeguards are also embodied in principles of social protection outlined in the Law, emphasizing that it is necessary to provide social services in the immediate and the least restrictive environment, timely, high-quality, accessible in the economic, physical and geographical terms to meet individualized approach and expertise of employees<sup>338</sup>. Furthermore, the mentioned law contains safeguards in form of prohibitions regulating provision of social services, for example the prohibition of admission of children under age of 3 in the residential care institutions.<sup>339</sup> The Law on Social Protection is supported with the Rulebooks aimed at its implementation, including: the Rulebook on Detailed Conditions and Standards for the Provision of Social Protection Services<sup>340</sup>, the Rulebook on Licensing Experts in Social Protection<sup>341</sup>, the Rulebook on Licensing Social Welfare Organizations<sup>342</sup>,

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<sup>338</sup> See Art. 24-33 of the Law on Social Protection.

<sup>339</sup> See Art. 52. Of the Law on Social Protection.

<sup>340</sup> Rulebook on Detailed Conditions and Standards for the Provision of Social Protection Services, “Official Gazette of the Republic of Serbia“, No 42/2013

<sup>341</sup> Rulebook on Licensing Experts in Social Protection, “Official Gazette of the Republic of Serbia“, No 42/2013

Rulebook on Prohibited Practices of the Employees in Social Protection<sup>343</sup>, etc. These regulations contain important safeguards ensuring the minimal standards of social protection for the users and quality of social services making sure that not only the principle of “no harm” to users is respected but that the efficient response to the social need of vulnerable individuals is provided.

Perhaps the closest to the internationally recognized safeguarding policies, existing in Serbia, are protocols for the protection of children from abuse and neglect (further presented in more detail). Related to vulnerable adults, protocols exist only regarding the protection of women in cases of domestic violence. In addition, some NGOs develop their own safeguarding policies, but this is not based on any legislative requirement. Therefore, it might be concluded that safeguarding policies represent a new topic which is not yet fully recognized by the state, or by the NGO sector. At the level of state bodies and organisations, safeguarding is currently based on the implementation of protection measures provided by laws and other regulations in relation to the cases of violence.

## **RELEVANT GOVERNMENTAL AND NON-GOVERNMENTAL STAKEHOLDERS**

Based on the current regulations, the system of protection from violence includes intersectoral approach, in order to secure effective and timely response by different sectors acting within its jurisdiction – the social protection, police, health, justice, education, and non-governmental sector.

In the social protection sector, the key role is given to the **center for social work** which assesses the needs and strengths of users of social assistance, and the potential risks, implements the needed protection measures, initiates relevant proceedings before the court, provides financial and advisory support, keeps records and documentation on the victims of

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<sup>342</sup>Rulebook on Licensing Social Welfare Organizations, “Official Gazette of the Republic of Serbia”, No 42/2013

<sup>343</sup>Rulebook on Prohibited Practices of the Employees in Social Protection, “Official Gazette of the Republic of Serbia”, No 8/2012

violence, as well as on the persons against whom the measure of protection from violence is executed. Center for social work as a guardianship authority is obliged to provide assistance to the courts in obtaining the necessary evidence related to the procedures for protection from violence and gives an opinion on the appropriateness of required protection measures.<sup>344</sup> In the process of protecting children from violence and protecting women from domestic violence and violence in intimate relationships, the Center has the role of a coordinator of all sectors involved in the protection system. Upon receipt of the suspected abuse or neglect of a child, the Center assesses the status, risks and needs of the child and his or her family, initiates planning and the provision of required services, applies the immediate intervention, when needed, and monitors and evaluates all implemented protection measures. In dealing with cases of domestic violence and violence against women in intimate relationships, center for social work also undertakes series of measures such as urgent intervention, initial assessment, focused assessment, planning and preparation of findings and opinions. Each center for social work has formed an Internal team of experts to deal with the phenomenon of domestic violence, violence in partner relationships and to provide assistance and support to victims.<sup>345</sup>

In addition to the centers for social work, there are other institutions in the social protection system that are involved in the process of safeguarding children and vulnerable adults, such as **shelters for the protection of children from abuse and neglect, the center for the protection of trafficking victims, safe houses, foster care** and other.

In the health care system, **health workers and associates** are required to adequately respond to all cases of violence, particularly in terms of children victims. Thus, every medical doctor is obliged to provide immediate medical care of injuries/illness, to document the child's condition, report suspected child abuse and neglect to the expert team of medical institution, police and the center for social work. An important role in protecting children from abuse and neglect in the health care system is given to **expert teams**

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<sup>344</sup> See Art. 120 of the Law on Social Protection, and Art. 286 and 289 of the Family Act.

<sup>345</sup> See Special Protocol on the Conduct of the Center for Social Work – Guardianship Authority in Cases of Domestic and Intimate Partner Violence against Women, pp. 19-34.

**for the protection of children from abuse and neglect**, which is required to be formed within each medical institution. The expert team provides professional assistance to the medical doctor who reported suspected abuse or neglect, makes a diagnosis, conducts the whole protection procedure within the institution, makes further reports to the center for social work, carries out preventive and educational measures, and cooperates with the **Special working group on the protection of children from abuse and neglect**, formed as a part of the **National expert commission for improving the health of women, children, students, and youth**.<sup>346</sup>

Within the education system, all **educational institutions** are also required to take measures of protection from violence, including both measures of prevention and intervention. Each institution is required to form the **team for the protection of students from violence** which is authorized to organize needed consultations in an institution and to assess levels of risk for the safety of students, monitor the effects of the measures taken to protect students from violence, cooperate with other bodies and institutions, and inform and raise the capacity of staff in relation to the recognition and reaction to violence against students.<sup>347</sup> In addition, the Ministry of Education, Science and Technological Development has established the **Violence Prevention Unit** in order to strengthen the capacities of school administration in providing the necessary support to school staff, develop a system of regular monitoring and reporting on violence in the education system, secure expert assistance in the development of strategies and regulations related to the prevention of violence, etc.<sup>348</sup>

One of the key roles in the protection system is given to the **police**, which has an obligation to undertake appropriate measures to prevent violent behaviors, and improve the security in the community. In cases of violence, the police acts to protect life, rights and freedoms of citizens and takes steps that are necessary to detect crimes and other offenses, secure evidence and

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<sup>346</sup> See Special Protocol on the Protection of Children from Abuse and Neglect in Health Care System, pp. 13-15.

<sup>347</sup> See Special Protocol on the Protection of Children and Students from Violence, Abuse and Neglect in Educational Institutions, pp. 20.

<sup>348</sup> More on this, available at <http://www.mpn.gov.rs/grupa-za-prevenciju-nasilja/>, last accessed on 28.02.2017.

file criminal charges with the prosecutor's office or request the initiation of misdemeanor proceedings.<sup>349</sup>

In the system of justice, there are many stakeholders acting in the civil and criminal proceedings, such as **judges, public prosecutors, lawyers and court experts**. The new Law on the Prevention of Domestic Violence provides for the establishment of a **group for coordination and cooperation** in the area of each basic public prosecutor's office. This group is authorised to consider cases of domestic violence before the final court decision is made, by preparing an individual plan for the protection and support to the victim and by proposing measures to be implemented by the public prosecutor in terms of initiated court proceedings.<sup>350</sup>

In terms of improving the status of vulnerable groups, various bodies are established by the Government of the Republic of Serbia, such as: the **Coordination Body for Gender Equality**, the **Council for Children's Rights**, the **Team for Social Inclusion and Reduction of Poverty**, the **Council for the Advancement of Roma**, and other. In addition, the Ministry of Labour, Employment, Veteran and Social Affairs formed a group to improve the protection of persons with disabilities and group to improve gender equality.

Finally, very important state bodies related to the protection of children and other vulnerable groups are independent government bodies – the Protector of Citizens (Ombudsman of Serbia) and the Commissioner for the Protection of Equality.

**Ombudsman of Serbia** „protects and promotes the fulfillment of citizens' rights by controlling whether the bodies and organizations exercising public authority perform their job in a legal and regular manner. In addition to overseeing the formal compliance with laws and regulations, the Protector of Citizens examines ethics, conscientiousness, impartiality, expertise, expediency, effectiveness, respect of the citizen's dignity and other features that should characterize public authorities.”<sup>351</sup>. The Protector of Citizens has

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<sup>349</sup> See Art. 30 of the Police Act.

<sup>350</sup> See Art. 25 of the Law on the Prevention of Domestic Violence.

<sup>351</sup> More information about the work of the Protector of Citizens is available at [http://www.ombudsman.org.rs/index.php?option=com\\_content&view=article&id=1&Itemid=2](http://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=1&Itemid=2),



four deputies – for children's rights and gender equality, for the rights of persons with disabilities, for the rights of national minorities, and for the protection of rights of persons deprived of liberty.

**Commissioner for the Protection of Equality** receives and considers complaints of discrimination, issues opinions and recommendations in concrete discrimination cases, and stipulates other protection measures defined by the Law.<sup>352</sup>

Related to the existing **NGOs** in Serbia, a number of organisations is active in the field of protection from violence of children and vulnerable adults.<sup>353</sup> NGO sector mainly focuses on projects aimed at capacity building of professionals for more efficient treatment and implementation of measures for protection from violence, and raising awareness about the prohibition of violence in all settings. Certain number of NGOs are licensed as providers of various social protection and other support services for victims of violence, such as psychosocial support, legal support, accommodation services (e.g. safe houses), etc. Depending on the goals of the organizations, support services are often directed towards certain vulnerable groups. A number of organizations, in the context of their monitoring activities, monitors the respect for the right to protection from any form of violence.

Recently, some civil society organizations (mostly NGOs that work with young people), are recognising the importance of safeguarding policy and are developing safeguarding documents. These documents establish procedures with the aim to ensure that their employees, members, and volunteers are capable to work with children in a way that secures the appropriate response to the situations where the presence of violence is suspected, while

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last accessed on 28.02.2017.

<sup>352</sup> See Art. 33 of the Law on the Prohibition of Discrimination, „Official Gazette RS”, No. 22/2009; more information available at <http://ravnopravnost.gov.rs/en/>, last accessed on 28.02.2017.

<sup>353</sup> These organisations are: the Center for Youth Integration, the Centre for the Rights of the Child, VelikiMali, the Network of Organisations for Children of Serbia, Autonomous woman's centre, Anti Trafficking Action – ASTRA, Atina, Victimology Association of Serbia, Amity, NOOIS – National Organizations of Persons with Disabilities of Serbia, Menatal Disability Rights Initiative Serbia, International Aid Network, Association of Students with Handicap, Belgrade Centre for Human Rgihts, YUCOM – Lawyer's Committee for Human Rights, PRAXIS, etc.

respecting the principles of confidentiality and professional conduct.<sup>354</sup>

In addition to the above mentioned stakeholders, there is a number of international organisations, such as UNICEF, Save the Children, and other, active in Serbia, which continuously develop and support various initiatives related to the improvement of protection mechanisms for children and vulnerable adults. Thereby, in a broader sense, such organisations could also be seen as stakeholders in this field.

## **RECOMMENDATIONS**

In the Republic of Serbia, a number of strategic documents, adopted on the Government level, confirm the readiness of the state to make a commitment to solving certain problems that are particularly significant for children and vulnerable adults. By trying to improve the status of vulnerable groups in certain segments of social life, these documents support the systemic approach and, in correlation with relevant regulations, represent a potential for more efficient resolution of relevant protection issues. However, implementation of adopted strategies and plans has still not been fully realized in practice, including the continuous monitoring of fulfillment of established objectives and activities, which is, at the same time, the major deficiency of the state policy in this field. Regarding the national regulations, greater number of laws and bylaws exist which directly or indirectly regularize the children's rights in general, as well as special rights of adults from vulnerable groups. But, in the field of protection from abuse and neglect, our legal system is far from complete. Safeguarding policies do not exist on the institutional level, while the existing regulations, even when supporting certain safeguarding mechanisms, are often implemented selectively, wrongly, or are not enforced at all.

With the aim of overcoming the above stated gaps, ensuring better

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<sup>354</sup> For example, some youth clubs, such as the Sombor Education Center, and SOS Children Village, have developed safeguarding policies for the protection of children, which are implemented in relation to their programs and activities. More information is available at <http://sec.org.rs/wp-content/uploads/2014/12/Politika-za-zastitu-i-sigurnost-dece-i-mladih-SEC.pdf>, and [www.sos-decijasela.rs/wp-content/.../05/Politika-zastite-dece.doc](http://www.sos-decijasela.rs/wp-content/.../05/Politika-zastite-dece.doc), last accessed on 28.02.2017.

implementation of existing regulations, as well as the development and improvement of the safeguarding policies for children and vulnerable adults, the following recommendations could be given:

- Define the term “child” and „vulnerable adult” in relevant regulations;
- Increase awareness about the necessity of safeguarding policies in Serbia;
- Develop safeguarding policies to provide reducing the risk of harm by staff, volunteers and associates in any environment working with children and vulnerable adults;
- Stimulate child-safe projects and programmes, and secure safe events and activities for children;
- Create awareness programs for professionals that work with children and vulnerable adults;
- Provide children and vulnerable adults with better quality information on their rights;
- Provide accessibility to free legal aid services for children and vulnerable adults;
- Strengthen the system of psychosocial support services for children and vulnerable adults, primarily at the local level;
- Stimulate socially responsible behavior through family protection models;
- Improve multi-sectoral cooperation between providers of services that are significant for realization of rights of children and vulnerable adults;
- Improve cooperation between the state authorities and institutions with the civil society organizations dealing with problems of safeguarding children and vulnerable adults;
- Ensure complete and efficient implementation of the existing, well-defined legal solutions and safeguarding policies and programs;
- Establish effective governmental body or bodies to monitor and coordinate policies in the field of protection of children and vulnerable adults from any form of violence.

**SLOVAKIA**

## Desk research

### **Question n.1: What is the definition of “child”?**

According to §8 (2) of the Civil Code („Občiansky zákonník,” Act. No. 40/1964 Coll.) majority (“plnoletost”) is acquired by achieving the age of eighteen years. According to §8 (1) majority also implies legal capacity (“spôsobilosť na právne úkony”). Prior to that, majority in the sense of legal capacity, can be acquired only by entering into a marriage.

Under § 94 of the Criminal Law („Trestný zákon“, Act. No. 300/2005 Coll.) persons older than 14 and younger than 18 are considered underage or juvenile (“mladistvý”) for the purposes of criminal law.

### **Question n.2.: Is the notion “vulnerability” or “vulnerable” (for child and adult) used in legislation in your country? What other words, notions are used in your national legislation to describe this phenomenon?**

On the basis of the desk research, the notion of vulnerability („zraniteľnosť “), vulnerable or at risk („zraniteľná/ý,“ „ohrozená/ý“) does not appear to be a self-standing, precisely-defined concept in Czech law. Vulnerability of certain groups is, however, to some extent reflected in a variety of laws.

Act on social and legal protection of children and on social custody (“Zákon o sociálnoprávnej ochrane detí a o sociálnej kuratele,” Act No. 305/2005 Coll.)

Slovak legislature and executive operates with the term „social and legal protection of children“ („socialno-právna ochrana detí“), which is regulated in the Act on social and legal protection of children and on social custody. It identifies the situations giving rise to measures of social and legal protection rather broadly. According to § 1, such measures aim at preventing crisis situations in families and at reducing negative effects putting at risk the psychical, physical or social development of a child or an adults person.

Education Act („Zákon o výchově a vzdělávání,“ Act No. 245/2008 Coll.)

§ 2 (lit. j-k ) of the Act defines „children and pupils with special upbringing and education needs“ dieťa so špeciálnymi výchovno-vzdelávacími potrebami alebo žiakom so špeciálnymi výchovno-vzdelávacími potrebami“). These include children with physical and mental disabilities, children from socially deprived backgrounds but also talented children.

Social Services Act ( „Zákon o sociálních službách,“ Act No. 448/2008 Coll.)

Social Services are defined in § 2 of the Act in particular in the connection with the notions of „unfavorable social situation“ („nepříznivá sociální situace“), „basic existential needs“ (základné životné potreby“), „crisis social situation“ („krízová sociální situace“) and „social exclusion“ („sociálně vyloučení“). All of these terms are defined in greater detail in § 2 of the act.

Anti-Discrimination Act („Zákon o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou, Act. No. 365/2004)

The Anti-Discrimination Act defines in §2a direct and indirect discrimination. It prohibits discrimination on the basis of the following grounds: gender, religion or belief, race, belonging to a national or ethnic group, disability, age, sexual orientation, marital or family status, skin color, language, political or other opinion, national or social origin or other status (z dôvodu pohlavia, náboženského vyznania alebo viery, rasy, príslušnosti k národnosti alebo etnickej skupine, zdravotného postihnutia, veku, sexuálnej orientácie, manželského stavu a rodinného stavu, farby pleti, jazyka, politického alebo iného zmýšľania, národného alebo sociálneho pôvodu, majetku, rodu alebo iného postavenia. Sexual harassment is also considered discrimination (§ 2a (1)).

**Question n.3.: Is the expression of “safeguarding policy” or any synonym (safeguarding requirement, safeguarding measures, obligatory procedures of protection /measures of care, etc.) mentioned in these acts and/or regulations in relation to vulnerability?**

Act on social and legal protection of children and on social custody (“Zákon o sociálnoprávnej ochrane detí a o sociálnej kuratele,” Act No. 305/2005 Coll.)

With regard to children, the Slovak legislature and executive operates with the term “social and legal protection of children“ (sociálně-právní ochrana dětí).

§ 1 (2) of the Social and Legal Protection Act defines social and legal protection as a set of measures in order to ensure:

- a. protection of the child which is indispensable for its well-being and which respects the best interest of the child in accordance with international treaties
- b. upbringing and overall development of the child in its natural family environment
- c. a supplementary environment for a child which cannot be brought up in his/her own family

§ 1 (3) defines the set of safeguarding measures understood under social custody (sociálna kuratela).

The Act on Social and Legal Protection of Children recognizes that protection should be afforded to the family as a whole. Under § 3 (1) social and legal protection is granted to children, adult persons, family or group. Concrete measures are defined in Chapter 2, financial measures are specified in Chapter 5. Responsibilities of individual stakeholders are further identified in Chapter 6. Social and legal protection of children is furthermore regulated in the Family Act (“Zákon o rodine”, Act No. 36/2005 Coll.).

Social Services Act („Zákon o sociálnych službách,“ Act No. 448/2008 Coll.)

Types and scope of social services to be provided are defined in Chapter 2.

**Question n.4.: Does your national legislation on vulnerable children and adults specify the stakeholders who are expected by law to provide care and protection?**

Act on social and legal protection of children and on social custody (“Zákon o sociálnoprávnej ochrane detí a o sociálnej kuratele,” Act No. 305/2005 Coll.)

The Act distinguishes between public stakeholders and other, delegated subjects. § 71 enumerates the following subjects as responsible for providing social and legal protection:

- a) Ministry of Labor, Social Affairs and Family (“Ministerstvo práce, sociálnych vecí a rodiny”)
- b) Central Office of Labor, Social Affairs and Family (“Ústredie práce, sociálnych vecí a rodiny”)
- c) offices of labor, social affairs and family (“úrady práce, sociálnych vecí a rodiny”)
- d) Center for International Legal Protection of Children and Youth (“Centrum pre medzinárodnoprávnu ochranu detí a mládeže”)
- e) municipality (“obec”),
- f) higher municipal authority (vyšší územní celek),
- g) accredited subject, meaning a legal or physical person with accreditation according to § 77 (“akreditovaný subjekt (právnická nebo fyzická osoba, která byla udělena akreditace dle § 77 Zákona o sociálněprávní ochraně dětí”)),
- h) legal or physical person which implements measures of social and legal protection of children and measures of social custody (“právnická nebo fyzická osoba, která vykonává opatření sociálně-právní ochrany dětí a sociální kurately”).

The first two are specifically defined as „organs of social and legal protection of children and social custody („orgány sociálněprávní ochrany dětí a sociální kurately“) and called also „SPOD organs“ (“orgány SPOD“). The division of responsibilities among these stakeholders is further specified in § 72-76.

Social Services Act ( „Zákon o sociálních službách,“ Act No. 448/2008 Coll.)

Responsible stakeholders are defined in § 3 1. The Act sets concrete responsibilities for the providers of social services in § 7-10.

Ombudsman Act („Zákon o veřejném ochráncovi práv,“ Act No. 564/2001



Coll.)

The Ombudsman Act identifies the responsibilities of the Ombudsman with regard to issues submitted to its office.

**Question n.5.: What other stakeholders are you aware of concerning vulnerable children and adult in your country? (NGOs, international bodies, etc.)**

Ombudsman for children (Detský Ombudsman): <http://www.detskyombudsman.sk/dohovor-o-pravach-dietata>

Commissioner for children (Komisar pre deti): <https://www.komisarpredeti.sk/>

Center for International Legal Protection of Children and Youth (Centrum pre medzinárodnoprávnu ochranu detí a mládeže): <http://cipc.sk/>

Council for Children and Youth (Výbor pre deti a mladez): <https://www.employment.gov.sk/sk/vybor-deti-mladez/>

Childrens' Rights Council (Rada pre prava dieťa): <http://www.prava-deti.sk/>

Coalition for Children Slovakia (Koalícia pre deti Slovensko ()): <http://www.koaliciapredeti.sk/>

Human Rights League (Liga za ľudské prava): <http://www.hrl.sk/>

UNICEF Slovakia: <https://www.unicef.sk/>

Open Society Foundation Slovakia: <http://osf.sk/>

Children of Slovakia Foundation (Nadácia pre deti Slovenska): <http://www.nds.sk/>

**Question n.6.: Registration of NGOs**

Registration of NGOs or associations is regulated in Act on Non-profit, Nongovernmental Organisations Providing Charitable Services (Zákon o neziskových organizáciách poskytujúcich všeobecne prospešné služby, No. 213/1997 Coll.). In § 2(1) nonprofit organisations are defined, among others, as organisations delivering charitable services. Charitable services are further listed in § 2(2). § 5 regulates formal requirements for establishing a non-profit

organisation. Again, the requirements are formalistic, no safeguarding policy is needed.

## Country report

### Analysis

Vulnerability is one's inability [or reduced] ability to withstand the effects of a hostile environment<sup>355</sup>. Vulnerable is any person who is in need of protection and care for any reason, and who is unable, for whatever reason, to represent his/her own interest.<sup>356</sup>

In its Article 21, Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection names following groups being vulnerable persons: children/minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of mental, physical or sexual violence, such as victims of female genital mutilation.

### Notion of Vulnerability or Resembling Concepts

In its terminology Slovak legislation includes neither the self-standing term nor the precisely definition of vulnerability (“*zraniteľnosť*”), vulnerable adults (“*zraniteľný*”) and at risk (“*ohrozená/ý*”).

Notion of **vulnerable person(s)** (“*zraniteľná osoba*”) can be found in the Act no. 480/2002 Coll. on Asylum (“*Zákon o azyle*”, hereinafter the “**Asylum**”

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<sup>355</sup> In Wikipedia: The Free Encyclopedia. Wikimedia Foundation Inc. Encyclopedia on-line. Available from <https://en.wikipedia.org/wiki/Vulnerability>. Retrieved February 28, 2017.

<sup>356</sup> [citation missing – copied from the desk research]

**Act**”), in its para. 39, in connection of giving special care to vulnerable persons within asylum policy. Similarly to the EU legislation, the vulnerable persons are enumerated being mainly minor persons, persons with disabilities, elderly persons, pregnant women, single parents with minor children, victims of people trafficking, persons with serious disease, persons with mental disorder and persons who are victims of torture, rape, or other serious forms of mental, bodily or sexual violence.

### **Concept: Protected Person**

Slovak criminal law deals with a *terminus technicus* that very much resembles the term vulnerable person and it is the term **protected person** (“*chránená osoba*”) defined in the para. 139 of the Act no. 300/2005 Coll., Criminal Act (“*Trestný zákon*”, hereinafter the “**Criminal Act**”).

Beyond others, the protected persons include higher protection of children (“*dieťa*”) para 139, lit. a) Criminal Act), pregnant women (“*tehotná žena*”) para 139, lit. b) Criminal Act), persons of higher age (“*osoba vyššieho veku*”) para 139, lit. e) Criminal Act), i.e. persons older than 60 years (para 127 (3) Criminal Act), ill persons (“*chorá osoba*”) para 139, lit. f) Criminal Act), i.e. disabled people or people with mental disorder (para 127 (6) Criminal Act). Committing certain crimes to a protected person implies higher sentence (punishment). Such crimes are e.g. murder or manslaughter (para. 144 and following of the Criminal Act), participation in suicide (para. 154 Criminal Act), bodily injury (para. 155 and following of the Criminal Act), crimes threatening life or health (para. 161 and following of the Criminal Act), crimes against freedom, such as human trafficking, deprivation of freedom or kidnapping, etc. (para. 179 and following of the Criminal Act), crimes against human dignity, such as rape or sexual abuse, etc. (para 199 and following of the Criminal Code), and many more.

The safeguarding of protected person is however a principle criminal law only. That implies that the extraordinary protection other the above mentioned

provision applies to the named groups only in case of criminal acts.

### **Concept: Negative Social Situation**

Slovak act no. 448/2008 Coll. on Social Services (“*zákon o sociálnych službách*”, hereinafter the “**Social Services Act**”), uses in its para. 2(2) the term **negative social situation** (“*nepriaznivá sociálna situácia*”). Negative social situation is defined as threat of an individual of social exclusion or limitation of individual’s ability for social inclusion due to (i) missing conditions for satisfaction of one’s substantial needs for living (accommodation, nutrition, clothing, personal sanitation), (ii) one’s habits, addictions or way of life, (iii) threat of development due to disability, (iv) severe disability or negative health condition, (v) seniority, (vi) care for a person with disability, (vii) threat by another person’s behavior or being a victim of another person’s behavior, or (viii) living in a segregated poor environment.

Under para. 2(1) social service are any measures to prevent, to solve or to mitigate negative social situation. Each individual has the right to such social service that by its form and extent helps this individual to realize its fundamental rights and freedoms, maintains his/her dignity, supports his/her individuality, prevents his/her social exclusion and supports his/her inclusion in the society (para. 6(2) of the Social Services Act). The rights defined by the Social Services Act are granted to each individual in compliance with the principle of equal treatment (para. 5 of the Social Services Act).

The provision of social services is in the capacity of Slovak Ministry of Labour, Social Affairs and Family.

This research focuses on Slovak legislation providing certain protection to following vulnerable groups: children, minorities, elderly persons, persons with disabilities, pregnant women, and single parents with minor children. The list of vulnerable persons enlisted in previous sentence might not be exhausting and there might be other groups protected by the authorities, laws and NGOs

in Slovakia.

## **General on Human Rights Protection in Slovakia**

Slovak republic is member state of the United Nations and European Union safeguarding the principles of a democratic country established under the rule of law and protection of fundamental human rights and freedoms. In this respect, Constitution of Slovak Republic (“*Ústava Slovenskej republiky*”, Act no. 460/1992 Coll., hereinafter the “**Constitution**”), in Part Two (“*druhá hlava*”), Articles 12 to 54, protects fundamental rights and freedoms. Based on the provisions of the Constitution, each person is free and equal in dignity and rights.

In this context, Slovakia has established several bodies and authorities for human rights safeguarding, some of them protecting the human rights’ principles as such (including the protection of vulnerable groups’ rights) and some of them focusing on safeguarding the rights of a certain specific group.

One of the bodies protecting human rights as such is the **Committee of the Slovak Parliament for Human Rights and Minorities** (“*Výbor NR SR pre ľudské práva a národnostné menšiny*”, hereinafter the “**Human Rights Committee**”) within the Slovak Parliament (“*Národná rada Slovenskej republiky*”, hereinafter the “**NR SR**”).<sup>357</sup> The major role of the Human Rights Committee is to evaluate the proposed wording of future acts on compliance with human rights protection, protection of rights of minorities, vulnerable groups and gender equality with emphasis on anti/discrimination. The Committee focuses on acts regulating the activity of independent human rights’ institutions, such as Ombudsman, Commissioner of Children, Commissioner of Persons with Disabilities, Slovak National Center for Human Rights, etc.). The Human Rights Committee follows the fulfilment of certain governmental programs and projects linked to human rights’ protection. It

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<sup>357</sup> Information on the Committee for Human Rights and Minorities: <https://www.nrsr.sk/web/?sid=vybory/vybor&ID=147&View=short>. Retrieved on March 2, 2017.

deliberate on current communal issues based on motions from the Committee's members or public, if there is a doubt on compliance with human rights of a concrete (specific) group.

The Slovak Government's **Council for Human Rights, Minorities and Gender Equality** ("*Rada vlády SR pre ľudské práva, národnostné menšiny a rodovú rovnosť*", hereinafter the "**Human Rights Council**") is a permanent, expert, coordination, consultancy and counselling body of the Slovak government in aspects of human rights protection and the development of civil society. The Human Rights Council is chaired by the Minister of Justice. The Human Rights Council has following committees: Committee for Children and Youth, Committee for Minorities and Ethical Groups, Committee for Persons with Disabilities, Committee for Gender Equality, Committee for Research and Education in the Area of Human Rights and Development Education, Committee for Prevention and Elimination of Racism, Xenophobia, Anti-Semitism and other Forms of Intolerance and Committee for the Rights of Lesbians, Gays, Bi-sexual, Transgender and Intersexual Persons.<sup>358</sup>

In 2002 Slovak Parliament amended the Constitution with the Article 151a and adopted the Act no. 564/2001 Coll. on public commissioner of rights ("*zákon o verejnom ochrancovi práv*") establishing the institution of the **Ombudsman** ("*verejný ochranca práv*") as an independent body safeguarding the fundamental rights and freedoms of individuals. Ombudsman is a mediator between subjects and state with the mission to control and safeguard subjective rights of each individual in decision and processes of state bodies and authorities. Ombudsman has no right to revoke any state decision, it may give recommendation and launch a proceeding in Constitutional court for breach of fundamental rights and obligations.<sup>359</sup>

## **Discrimination**

In Slovakia discrimination prohibition is governed by the Constitution and the

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<sup>358</sup> Webpage of the Human Rights Council: <http://www.radavladylp.gov.sk/>. Retrieved on March 2, 2017.

<sup>359</sup> Webpage of the Ombudsman: <http://www.vop.gov.sk/>. Retrieved on March 3, 2017.

Act no. 365/2004 Coll. on equal treatment in some areas and on protection from discrimination (“*Zákon o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou*”, hereinafter the “**Anti-Discrimination Act**”).

In the Constitution, Part Two (“*druhá hlava*”) Articles 12 to 54 govern the protection of fundamental rights and freedoms. Based on the provisions of the Constitution, each person is free and equal in dignity and rights. As per Article 12 (2) of the Constitution, fundamental rights and freedoms are guaranteed to all, regardless of gender, race, skin color, language, belief or religion, political or other opinion national or social origin, belonging to a national or ethnic group, property, family or other status.

In its para. 2 (1), the Anti-Discrimination Act prohibits discrimination on the basis of the following grounds: gender, religion or belief, race, belonging to a national or ethnic group, disability, age, sexual orientation, marital or family status, skin color, language, political or other opinion, national or social origin or other status. As per para 2a of the Anti-Discrimination Act, harassment, sexual harassment, and hostile, intimidating or humiliating treatment are also considered discrimination. Discrimination due to pregnancy or parenthood is also prohibited by the same paragraph.

The Anti-Discrimination Act governs also permitted and legitimate unequal treatment in its para. 8. Beyond others, such legitimate unequal treatment in labour law or in law on social security is permitted due to age, health disability or pregnancy and parenthood subject to legitimate objective and adequacy.

Prohibition of discrimination is governed also by other legal acts, such as par. 13 of Act no. 311/2001 Coll. Labor Code (“*Zákoník práce*”, hereinafter the “**Labor Code**”), para. 3 of the Act no. 245/2008 Coll. on Education (“*Zákon o výchove a vzdelávaní (školský zákon)*”, hereinafter the “**Education Act**”), para. 4 (3) of the Act no. 250/2007 Coll. on the Protection of Customer (“*Zákon o ochrane spotrebiteľa*”). Further, some legal acts, such as Criminal Act, have anti-discriminatory context despite do not prohibiting discrimination expressly.

As per para. 10 of the Anti-Discrimination Act, in cases of violation of equal treatment each person can be represented by an organization protecting from

discrimination (e.g. NGOs) or by the Slovak National Center for Human Rights (“*Slovenské národné stredisko pre ľudské práva*”, hereinafter the “**Center**”).

The Centre was established by the Act no. 308/1993 Coll. on the Establishment of the Slovak National Centre for Human Rights with effect from 1 January 1994, following the international agreement between the Slovak government and the United Nations on the establishment of the Slovak National Centre for Human Rights. The Centre is an independent legal entity and a non-profit organization. The Centre is a member of the European Network of National Human Rights Institutions.<sup>360</sup>

Based on the para. 1(3), the Center is only Slovak anti-discrimination body for assessing compliance with the principle of equal treatment.

Upon the Center’s request, all institutions (e.g. courts, administrative bodies, governmental institutions, municipalities, non-governmental organizations etc.) are obliged to provide to the Center information on compliance with human rights.

One of the major nongovernmental organization safeguarding the anti-discrimination protection is the civil association “*Občan, demokracia a zodpovednosť*” ([www.ods.sk](http://www.ods.sk)) who maintains the webpage [www.diskriminacia.sk](http://www.diskriminacia.sk) with all helpful information on what is discrimination, who to deal with it and what are the possible means to fight it.

Within its anti-discrimination campaign Ministry of Labour, Social Affairs and Family maintains an informative and counselling webpage “*(ne)diskriminácia*”.<sup>361</sup>

## **Protection of Child/Children**

Under Slovak civil law, a person’s capacity to acquire legal rights and obligations with the age of 18. (para. 7 and 8 of Act. No. 40/1964 Coll., Civil Code (“*Občiansky zákonník*”, hereinafter the “**Civil Code**”)), i.e. until the age of 18, one is protected from many legal responsibilities, and it is the legal representative (e.g. parent, curator, fosterer). Prior to that legal capacity can

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<sup>360</sup> Webpage of the Center: <http://www.snspl.sk/>. Retrieved on February 28, 2017.

<sup>361</sup> Webpage: <http://www.gender.gov.sk/diskriminacia/>. Retrieved on February 28, 2017.



be acquired only by entering into a marriage.

Criminal responsibility is acquired by the age of 14 under para. 22 of the Criminal Act. Persons older than 14 and younger than 18 are considered underage or juvenile (*“mladistvý”*) for the purposes of criminal law, as per para. 94 of the Criminal Act. Juveniles, despite criminally responsible, are protected by lower sanctions and imprisonments, obligatory representation by advocate (para. 37 of the Act no. 301/2005 Coll. on Criminal Proceedings, hereinafter the **“Criminal Proceedings”**), support and presence of body of social and legal protection of children (*“orgán sociálnoprávnej ochrany detí”*), etc.

In criminal proceedings a child witness younger than 18 years old can be called in for witnessing with extreme delicacy and only once if possible (para. 135 of Criminal Proceedings). On crimes against human dignity, on torturing and on people trafficking, child witness can be called in for witnessing only exceptionally and if necessary for resolving the case; in these cases a face to face confrontation with the offender is not permitted with a child younger than 15 years old (para. 125 (4) of Criminal Proceedings).

The Constitution, Part Two (*“druhá hlava”*) Article 41 provides for safeguarding of children and juvenile, whereby the details are regulated by acts specified in this analysis.

The Act no. 305/2005 Coll. on social and legal protection of children and social custody (*“Zákon o sociálnoprávnej ochrane detí a o sociálnej kuratele”*, hereinafter the **“Protection of Children Act”**) ensures an extraordinary protection of children identifying legal means and capacities of bodies for social and legal protection of children. The goal of the legislation is to prevent crisis situations in families, to protect children and their rights, to prevent and reduce disorders of the psychical, physical or social development of a child (para. 1 of the Protection of Children Act). The Protection of Children Act provides legal protection until the age of 25 years or even longer if provided

by the Protection of Children Act (para. 2 of the Protection of Children Act).

Everyone is obliged to notify the authority of social and legal protection of children and social custody on any breach of the rights of the child (para. 7 of the Protection of Children Act).

The child has the right to apply for assistance in the protection of his or her rights to the relevant authority and the respective authority is obliged to (i) provide the child with immediate assistance in the protection of its life and health and (ii) implement measures to ensure its rights and interests (para. 8 of the Protection of Children Act).

The rights resulting from the Protection of Children Act are guaranteed to all in compliance with the anti-discrimination principle (para. 5 of the Protection of Children Act).

The Protection of Children Act keeps in mind the international protection of minors, including the protection of unaccompanied minors. Further in order to protect and realize the available rights to Slovak children in the international area or context, the Protection of Children Act establishes the **Center for International Legal Protection of Children and Youth**.<sup>362</sup>

As per para. 71 of the Protection of Children Act, the Ministry of Labor, Social Affairs and Family (*“Ministerstvo práce, sociálnych vecí a rodiny”*), Central Office of Labor, Social Affairs and Family (*“Ústredie práce, sociálnych vecí a rodiny”*), and Offices of Labor, Social Affairs and Family (*“úrady práce, sociálnych vecí a rodiny”*) bear the major responsibility in safeguarding the children’s rights hereunder. Further the Act defines other authorities responsible for social and legal protection of children: Center for International Legal Protection of Children and Youth (*“Centrum pre medzinárodnoprávnu ochranu detí a mládeže”*), municipalities (*“obec”*), higher municipal authority

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<sup>362</sup> Webpage of the Center for International Legal Protection of Children and Youth: <http://cipc.sk/>. Retrieved on March 1, 2017.

("vyšší územný celok"), and subject with necessary accreditation ("akreditovaný subjekt").

Fundamental articles of the Act no. 36/2005 Coll. on Family ("Zákon o rodine", hereinafter the "**Family Act**") provide further legal grounds for the protection of children. In its Article 5, the Family Act defines that the child's interest shall be the primary consideration when deciding on any aspect that it concerns. By defining the child's interest one shall consider the level of child care, child's safety and stability of its environment, protection of dignity and mental, physical and emotional development of the child, aspects that are linked to the health or disability of the child, etc.

In compliance with the anti-discrimination principle, the **Education Act** provides for equal access to education taking into consideration the one's educational needs. In respect of these needs, in its para. 2 the Act defines several groups of children, such as children with special education needs, with physical and mental disabilities, children from socially disadvantaged background and also talented children. Further within safeguarding the Education Act for bids any kind of torture or punishments within education (para.3 of the Education Act). Education is granted to each person also by the Constitution in Article 42.

In Slovakia, **child labour** is prohibited by the Labor Code (para. 11(4)) until the age of 15. Only jobs related to culture, sports and commercials may be performed by younger persons always subject to approval of respective authorities. Juvenile persons (15 to 18 years old) enjoy special protection in labour relationships, such as shorter working times, special right to terminate labor relationship, etc .under the Labor Code. Special protection of juvenile persons in labor relationships is also guaranteed by the Constitution (Art. 38 of the Constitution).

Finally, Slovak legislation protects children being foreigners by the Asylum Act implementing the safeguards of the **unaccompanied minors** as established

by the European legislation.

In 2015 with the Act no.176/2015 Coll. on the Commissioner for Children and Commissioner for Persons with Disabilities, the NR SR introduced a new state bodies, the **Commissioner for Children** (“*Komisár pre deti*”) and the **Office of the Commissioner for Children** (“*Úrad komisára pre deti*”). This Commissioner of Children is elected by the NR SR, is an independent body and his/her role is co-operate in protection and safeguarding of rights of children. Since October 2016, the Commissioner for Children is a member of the European network of Ombudspersons for Children.<sup>363</sup>

The **Ombudsman** (mentioned above in General on Human Rights Protection in Slovakia) acts also in the sphere of protection of rights of children. In this respect the Office of Ombudsman created a specific webpage [www.detskyombudsman.sk](http://www.detskyombudsman.sk) (children’s ombudsman) in order to emphasize their vulnerability and special care needed.<sup>364</sup>

One of the Committees governed by the Government’s Council for Human Rights (mentioned above in General on Human Rights Protection in Slovakia) is **Committee for Children and Youth** (“*Výbor pre deti a mládež*”). The Committee’s mission is to provide for the fulfillment of the obligations of Slovak republic within the implementation of rights of children and youth provided by the UN Convention on the Rights of the Child. The Committee for Children and Youth protects the children rights and supports participation of children and youth in policy creation concerning them. The Committee for Children and Youth follows the yearly updated **National action plan on children for the years 2013-2017** (“*Národný akčný plán pre deti na roky 2013-2017*”).<sup>365</sup> The Committee for Children and Youth is chaired by the

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<sup>363</sup> Webpage of the Commissioner for Children: <https://www.komisarpredeti.sk/>. Retrieved on March 2, 2017.

<sup>364</sup> Webpage of the Children’s Ombudsman: [www.detskyombudsman.sk](http://www.detskyombudsman.sk). Retrieved on March 3, 2017.

<sup>365</sup> The English version of the National Action Plan for Children 2013-2017 is available on: <https://www.employment.gov.sk/files/slovensky/ministerstvo/konzultacne-organy/rada-vlady-sr-ludske-prava-narodnostne-mensiny-rodovu-rovnost/vybor-deti-mladez/napd-eng.pdf>.

Minister of Labour, Social Affairs and Family.<sup>366</sup>

In 2014, taking into consideration the vulnerability of children, the Slovak Government adopted “**National Strategy for Protection of Children from Violence**” (“*Národnú stratégiu na ochranu detí pred násilím*”, hereinafter the “**National Strategy**”) and established a **National Coordination Center for the Resolution of Issues of Violence Performed on Children** (“*Národného koordinačného strediska pre riešenie problematiky násilia na deťoch*”, hereinafter the “**National Coordination Center**”)) as an organizational part of the Ministry Labor, Social Affairs and Family. The mission of the National Coordination Center is the coordination of resolution of cases of violence performed on children in cooperation with defined representatives responsible for the protection of children’s lives and health as well as the coordination of the application of the UN Convention on the Rights of the Child.<sup>367</sup>

One of the accomplishment of the National Strategy is the creation of a web page “childhood without violence” (*detstvo bez násilia*)<sup>368</sup> created with the intention to unveil the issues of violence performed on children in public and to provide information on possible support. It is important to inform that lot of information is available on webpages of other organizations, governmental or non-governmental, domestic or international.

Here some of the NGOs and webpages focusing of protection of children:

*Rada pre práva dieťaťa* (Council for Children Rights), civil association:  
[www.prava-deti.sk](http://www.prava-deti.sk),

*Koalícia pre deti Slovensko* (Coalition for Children Slovakia), civil association:  
[www.koaliciapredeti.sk](http://www.koaliciapredeti.sk),

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Retrieved on March 2, 2107.

<sup>366</sup> Information on the Committee for Children and Youth is available on the webpage of the Ministry of Labour, Social Affairs and Family: <https://www.employment.gov.sk/sk/vybor-deti-mladez/>. Retrieved on March 2, 2017.

<sup>367</sup> Information on the National Coordination Center is available on the webpage of the Ministry of Labour, Social Affairs and Family: <https://www.employment.gov.sk/sk/ministerstvo/NKSpreRPNnD/>. Retrieved on March 2, 2017.

<sup>368</sup> Webpage: [www.detstvobeznasilia.gov.sk](http://www.detstvobeznasilia.gov.sk). Retrieved on March 2, 2017.

UNICEF Slovensko: [www.unicef.sk](http://www.unicef.sk),

Nadácia pre deti Slovenska (Children of Slovakia Foundation): [www.nds.sk](http://www.nds.sk),

Asociácia krízových stredísk (Association of Crisis Centers), civil association:  
[www.asociaciaks.webnode.sk](http://www.asociaciaks.webnode.sk),

Centrum Slniečko, n.o. (Center Sun), non-profit organization:  
[www.centrumslniecko.sk](http://www.centrumslniecko.sk),

Linka Detskej Istoty, n.o. (Wire of Children's Safety), non-profit organization:  
[www.lidi.sk](http://www.lidi.sk),

and many more.

### **Protection of Minorities**

Protection and equal treatment of minorities and ethnic groups (“*národnostné menšiny a etnické skupiny*”) is a topic in Slovakia, mainly due to its strong representation of other national minorities in the country. Based on the provisions of the Constitution Slovakia guarantees the protection of minorities and ethnic groups (Articles 33 and 34 of the Constitution). Membership to any national minority or ethnic group must not be to anyone's detriment. Minorities and ethnic groups (hereinafter only as “**minorities**”) have the right to develop their own culture, the right to information in their mother tongue, to associate in national minority associations, and to establish and maintain educational and cultural institutions. Citizens belonging to minorities have right to education in their own language, right to use their language in official communications, right to participate in the decisions on affairs concerning national minorities and ethnic groups. The details shall be governed by an individual act.

Still keeping in mind the protection of the democratic establishment of the country and anti-discrimination principle, Article 34 of the Constitution governs that the application of the rights of minorities must not jeopardize of the sovereignty and integrity of the Slovak Republic, and create discrimination against its other inhabitants.

Despite this major guarantees, until today Slovakia is lacking any more detailed law on the safeguards specified in the Constitution. The only more detailed legislation of minorities is the Act no. 184/1999 Coll. on using the languages of minorities (*“zákon o používaní jazykov národnostných menšín”*).

In the sphere of protection of rights of minorities, certain changes have been ongoing since a representative from Hungarian minority entered the office of the **Government’s Representative for Minorities** (*“Splnomocnenec vlády SR pre národnostné menšiny”*, hereinafter **“Minorities’ Representative”**). The Minorities’ Representative is chairing the Committee for Minorities and Ethical Groups established within the Human Rights Council (mentioned above in General on Human Rights Protection in Slovakia). The mission of the Minorities’ Representative is to maintain, develop and support the rights of minorities and to adopt systematic measures for the improvement of the status of the minorities.<sup>369</sup>

Creation of the **“Action Plan for the Protection of Rights of Persons belonging to Minorities and Ethnic Groups for the Years 2016-2020”** (*“Akčný plán ochrany práv osôb patriacich k národnostným menšinám a etnickým skupinám na roky 2016 – 2020”*) and its adoption by the Government is one of the achievements of the Minorities’ Representative since his entering in the office. It is the first document that creates conceptually and on the level of concrete steps a plan for implementation of governmental policy in relation to the minorities.<sup>370</sup>

Another governmental institution in respect to protection of rights of minorities is the **Government’s Representative for Romany (Gipsy) Community** (*“Splnomocnenec vlády SR pre rómske komunity”*).<sup>371</sup> This year, the

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<sup>369</sup> Webpage of the Minorities’ Representative: <http://www.narodnostnemensiny.gov.sk/>. Retrieved on March 3, 2017.

<sup>370</sup> Webpage of Most-Híd, political party: <http://www.most-hid.sk/sk/aktivity-splnomocnenca-vlady-sr-pre-narodnostne-mensiny-maju-sirokospektralny-rozmer>. Retrieved on March 3, 2017.

<sup>371</sup> Webpage of the Government’s Representative for Romany (Gipsy) Community: <http://www.romovia.vlada.gov.sk/>. Retrieved on March 3, 2017.

Government approved the update of the Strategy of Slovak Republic on Integration of Gipsy People until 2020 (*“Stratégia Slovenskej republiky pre integráciu Rómov do roku 2020”*, hereinafter the **“Strategy”**). The Strategy was adopted by the Slovak Government in 2012. It is the basic document for integration of Romany people. The updates (action plans) proposed by the Government’s Representative for Romany (Gipsy) Community focus on creation employment opportunities and education – mainly education in regions, education in pre-schools and development of inclusive education. The action plans’ objective is to support inclusion of roman communities and shall help in fighting poverty. Currently further action plans (on non-discrimination and access to the majority community) are under preparation and shall be presented in the coming periods.<sup>372</sup>

Some NGOs and webpages focusing of protection of minorities and ethnic groups:

*Syndróm Róm*, webpage maintained by civil association *Ľudia proti rasizmu* (People against racism): [www.syndromrom.sk](http://www.syndromrom.sk),

*Ľudia proti rasizmu* (People against racism), civil association: [www.rasizmus.sk](http://www.rasizmus.sk),

*Nadácia otvorenej spoločnosti* (Open Society Foundation), foundation: [www.ofs.sk](http://www.ofs.sk),

and similar.

## **Protection of Persons with Disabilities**

One of the Committees governed by the Government’s Council for Human Rights (mentioned above in General on Human Rights Protection in Slovakia) is **Committee for Persons with Disabilities** (*“Výbor pre osoby so zdravotným postihnutím”*). The Committee’s mission is to improve the level of support, protection and compliance of rights of persons with disabilities. The Committee for Persons with Disabilities cooperates with state authorities, non-

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<sup>372</sup>Information retrieved from the Ministry of Interior: [http://www.minv.sk/?spravy\\_rk&sprava=vlada-dala-zelenu-novym-prioritam-v-oblasti-integracie-romov](http://www.minv.sk/?spravy_rk&sprava=vlada-dala-zelenu-novym-prioritam-v-oblasti-integracie-romov). Retrieved on March 3, 2017.



governmental organizations and academic institutions in the area of persons with disabilities. The Committee for Persons with Disabilities supports research and information exchange in context of rights of persons with disabilities. The Committee for Persons with Disabilities controls and evaluates the fulfillment of the **National Program on the Development of the Living Conditions of Persons with Disabilities for the Years 2014-2020** (“*Národný program rozvoja životných podmienok osôb so zdravotným postihnutím na roky 2014 – 2020*”) in order to provide periodical reports to the Human Rights Council.<sup>373</sup> It further cooperates on application of the international deeds and conventions, mainly the UN Convention on the Rights of Persons with Disabilities. The Committee for Children and Youth is chaired by the Minister of Labour, Social Affairs and Family.<sup>374</sup>

Together with the establishment of the Commissioner of Children, the Act no.176/2015 Coll. on the Commissioner for Children and Commissioner for Persons with Disabilities, introduced a **Commissioner for Persons with Disabilities** (“*Komisár pre osoby so zdravotným postihnutím*”) and the **Office of the Commissioner for Persons with Disabilities** (“*Úrad komisára pre osoby so zdravotným postihnutím*”). This Commissioner for Persons with Disabilities is elected by the NR SR, is an independent body and his/her role is participate in protection and safeguarding of rights of persons with disabilities.<sup>375</sup> The objective of the Commissioner for Persons with Disabilities is to support individuals with disabilities who think that their rights have been breached by the state authorities.

Other indirect means of protection of persons with disabilities are (i) financial state aid in order to support disadvantaged employees and employees with

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<sup>373</sup> National Program on the Development of the Living Conditions of Persons with Disabilities available on the webpage of the Slovak Government: [http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Mater-Dokum-162002?prefixFile=m\\_](http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Mater-Dokum-162002?prefixFile=m_) . Retrieved on March 3, 2017.

<sup>374</sup> Information on the Committee for Persons with Disabilities is available on the webpage of the Ministry of Labour, Social Affairs and Family: <https://www.employment.gov.sk/sk/vybor-pre-osoby-so-zdravotnym-postihnutim/>. Retrieved on March 2, 2017.

<sup>375</sup> Webpage of the Commissioner for Persons with Disabilities: <http://www.komisarprezdravotnepostihnutych.sk>. Retrieved on March 3, 2017.

disabilities as per para. 3(2) lit. g, of the Ac no. 358/2015 on State Aid Coll. (“*zákon o štátnej pomoci*”), (ii) as well as the state support of employment of persons with disabilities granted by the Act no. 5/2004 Coll. on Services of Employment (“*zákon o službách zamestnanosti*”). The Act on Services of Employment stresses the equal treatment principle and protects from any kind of discrimination on the labour market. It grants to the state offices of labour, social affairs and family (“*úrad práce, sociálnych vecí a rodiny*”), established on central and local level, the competency to perform activities in order to integrate persons with disabilities on the labour market.<sup>376</sup> Beyond other supporting legislative measures, the Act on Services of Employment regulates the obligation of any entity employing more than 20 employees to employ a certain percentage of persons with disabilities or to cooperate an entity employing persons with disabilities (para.63 and following of the Act on Services of Employment).

In respect to employment, the Labour Code also provides for the safeguarding of employees with disabilities. As per Art. 8 of the Labour Code, an employer shall create such working conditions in order for the employee(s) with disabilities to develop and realize their abilities. Further the Labour Code protects employees with disabilities in respect to the working time, working conditions, and termination (para. 66, 87, 158 and following of the Labour Code). An employer may terminate a working relationship with a person with disabilities only subject to a prior approval of the respective office of labour, social affairs and family.

Here some of the NGOs and webpages focusing of protection of persons with disabilities:

*Národná rada občanov so zdravotným postihnutím* (National Council of Citizens with Disabilities, hereinafter the “**NROZP**”), civil association that

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<sup>376</sup> Information on competencies of offices of labour, social affairs and family available on: [http://www.upsvar.sk/sluzby-zamestnanosti/zakladne-informacie-o-sluzbach-zamestnanosti/kompetencie-uradov-prace-socialnych-veci-a-rodiny.html?page\\_id=12821](http://www.upsvar.sk/sluzby-zamestnanosti/zakladne-informacie-o-sluzbach-zamestnanosti/kompetencie-uradov-prace-socialnych-veci-a-rodiny.html?page_id=12821). Retrieved on March 3, 2017.

associates more than 20 member organizations protecting the rights of persons with disabilities (of various forms). The membership is based on mutual cooperation in promoting improved living conditions for citizens with disabilities on national, regional and international level. NROZP is an independent and relevant partner of the Slovak Government in the area of policy of persons with disabilities. It has been established since 2003 and since 2004 it is a member of the (European Disability Forum).<sup>377</sup>

*Slovenský zväz telesne postihnutých* (Slovak League of Persons with Bodily Disabilities): [www.sztp.sk](http://www.sztp.sk),

*Slovenský zväz zdravotne postihnutých* (Slovak League of Persons with Disabilities), civil association: [www.szzp.sk](http://www.szzp.sk),

*Združenie na pomoc ľuďom s mentálnym postihnutím v SR* (Association for Helping Persons with Mental Disorder, hereinafter “ZPLMP”), civil association, promoting rights and interests of persons with mental disorder against state bodies and legislation. Its mission is to make sure that also fundamental human rights of persons with mental disorder are taken for granted. It fights discrimination of persons with mental disorder, cooperates with experts and initiates legislation process in respect to the protection of persons with mental disorder,<sup>378</sup>

and many, many more.

## **Protection of Elderly Persons**

Committee for Elderly Persons created within the Human Rights Council was transformed to a **Government’s Council for Rights of Elderly Persons and for Adoption of Public Policies on the Aging process of Population** (“*Rada vlády SR pre práva seniorov a prispôsobovanie verejných politík procesu starnutia populácie*”, hereinafter “**Council for Rights of Elderly Persons**”). The Council for Rights of Elderly Persons is a permanent expert, consultancy and coordination body of the Government in the sphere of rights

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<sup>377</sup> Webpage of NROZP available on [www.nrozp.sk](http://www.nrozp.sk). Retrieved on March 3, 2017.

<sup>378</sup> Webpage on the ZPLMP available on [www.zpmpvsr.sk](http://www.zpmpvsr.sk). Retrieved on March 3, 2017.

of elderly persons, in the sphere of equal treatment policy and within resolving of issues of living conditions of elderly persons.<sup>379</sup> The Council for Rights of Elderly Persons proposes and controls measures focusing on the rights of elderly persons and on the elimination of negative impacts of aging of the population. The Council for Rights of Elderly Persons is chaired by the Minister of Labour, Social Affairs and Family/ The Council also focuses on the realization of the National Program of Active Aging for the Years 2014-2020 (“*Národný program aktívneho starnutia na roky 2014-2020*”, hereinafter the “**Program**”) that was created based on the requirements of the Government. The Program focuses on creation of better opportunities and working conditions for elderly employees, prevention of social exclusion, promotion of healthy aging, support for better quality of life, public transport, lifelong education, accommodation, cultural opportunities and health care of elderly people, in order for them to have an independent, safe and active life in age.

NGO focusing on safeguarding of rights of elderly persons:

*Fórum pre pomoc starším* (Forum for Help to Elderly Persons):  
[www.forumseniorov.sk](http://www.forumseniorov.sk).

### **Protection of Pregnant Women and Protection of Single parents with Minor Children**

The Labour Code protects pregnant women, parents with minor children and single parents with minor children. Based on Article 8 of the Labour Code, labour relationships are more protected during pregnancy and parenthood, mainly in respect to working hours, working conditions and termination. An employer must not terminate a labour relationship with a pregnant woman (para. 64, 160 and following of the Labour Code).

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<sup>379</sup> From the Articles of Association of the Council for Rights of Elderly Persons available on <https://www.employment.gov.sk/files/legislativa/dokumenty-zoznamy-pod/statut.pdf>. Retrieved on March 3, 2017.

Projects supporting women in need:

*Zachráňme životy* (Saving Lives), aid to pregnant women, mothers and children in need: [www.zachranmezivoty.sk](http://www.zachranmezivoty.sk),

*Kmotričky* (Godmothers), aid to mothers in need: [www.kmotricky.sk](http://www.kmotricky.sk).

### **Protection of Victims**

Act on protection of victims (“*ochrana obetí*”) is under preparation and one of the goals of Slovak Ministry of Justice for the first semester of the year 2017, said Minister of Justice of Slovak republic Mrs. Lucia Žitňanská in an expert conference dedicated to the rights and necessities of victims of crimes on February 21, 2017.<sup>380</sup>

European commission launched a proceeding against Slovakia in case of the **gap of transposing the Directive 2012/29/EU** of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime. The deadline for transposing this directive passed in November 2015. Slovak government instructed the Slovak Ministry of Justice to remedy this transposition deficit.<sup>381</sup>

On February 22, 2017, on the European Day for Victims of Crime, NR SR presented its support on the creation of the new act on victims. NR SR informed that the on expert conference occurred the day before and was chaired by the Slovak Minister of Justice, Mrs. Lucia Žitňanská and the Chairman of the Committee established by NR SR for human rights and rights of minorities (hereinafter “**Human Rights Committee**”), Mrs. Erika Jurinová. Mrs. Janka Šípošová, Chairman of the non-governmental organization for protection of victims of violence “*Pomoc obetiam násilia*” was the expert sponsor of the conference.<sup>382</sup>

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<sup>380</sup> In 24hod.sk, 24 hodín s.r.o. Available from <http://www.24hod.sk/zitnanska-pripravujeme-zakon-ktory-zakotvi-prava-obeti-trestnych-cinov-cl495368.html>. Retrieved February 22, 2017.

<sup>381</sup> In Teraz.sk, spravodajský portál tlačovej agentúry TASR, Tlačová agentúra Slovenskej republiky. Available from <http://www.teraz.sk/slovensko/rezort-spravodlivosti-pripravuje-zakon/225007-clanok.html>. Retrieved February 22, 2017.

<sup>382</sup> In Nrsr.sk, Národná rada Slovenskej republiky. Available from: <http://www.nrsr.sk/web/Default.aspx?sid=udalosti/udalost&MasterID=54264>. De

Some NGOs and webpages focusing of protection of victims:

Pomoc obetiam násilia (*Aid to Victims of Violence*), civil association:  
[www.pomocobetiam.sk](http://www.pomocobetiam.sk),

Náruč (*Embrace*), civil association protecting children from violence:  
[www.naruc.sk](http://www.naruc.sk),

Brána do života (*Gateway to Life*) civil association protecting victims of domestic violence: [www.branadozivota.sk](http://www.branadozivota.sk).

### **Gaps and Recommendation**

Based on this Report it seems that in Slovakia there is a functional system of protection of fundamental rights of vulnerable groups. Nonetheless I am not convinced this system works properly in practice. Information from newspaper and talks from persons concerned rather point to dissatisfaction and improper application of the system, as well as missing implementation of protective measures in the everyday life. It seems that the system is rather declaratory than put in place.

Slovakia faces a strong movement of racism, discrimination and intolerance. Missing education is the major problem.

Another gap is the insufficient system of information. Gathering and searching for information for this Report was complicated, long-lasting and confusing. Vulnerable persons seeking for support and help with limited means and opportunities must have hard time searching the respective solutions and aid.

## UKRAINE

## Desk research

### Question n.1: What is the definition of “child”?

- The **definition of a child** is given in *Article 6* of the *Family Code of Ukraine* (2002)
- A **child** is a person before reaching the age of adulthood (18 years).
- A *minor* is a child before reaching the age of 14.
- An *underage person*\* is a child from 14 to 18 years old.
- **LEGISLATIVE ACT: Article 6** of the *Family Code of Ukraine* (2002)
- **Ukrainian name of the Act:** *Сімейний Кодекс України* (Відомості Верховної Ради України (ВВР), 2002, № 21-22, ст.135)
- **UKRAINIAN VERSION AVAILABLE AT:**  
<http://zakon0.rada.gov.ua/laws/show/2947-14>

\* In Ukraine, the minimum age of consent to a marriage for both men and women is the age of adulthood (18). However, an underage person can consent to a marriage and reach the full legal capacity from the age of 16 if a court agrees that this is in the best interest of the underage person.

### Question n.2.: Is the notion “vulnerability” or “vulnerable” (for child and adult) used in legislation in your country? What other words, notions are used in your national legislation to describe this phenomenon?

The answer is affirmative. The notion “**vulnerability**” or “**vulnerable**” (for child and adult) is used in legislation of Ukraine.

“**Vulnerability**” (Ukrainian: *вразливість*), “**Vulnerable**” (Ukrainian: *вразливий*).

The legislation of Ukraine contains the notion of vulnerability. *Article 1* (Definitions of main terms) of the Law “*About social services*” describes vulnerable social groups that are recipients of state social services. In particular, such social groups include people that find themselves in difficult life situations and cannot resolve them independently. Difficult life situations,



in turn, are defined in the context of disability, age, health condition, social status, life habits and the way of life, as a result of which a person partially or fully lost the ability to have his or her private (family) life or participate in social life.

Because the state considers a child (0-18) vulnerable by definition, the national legislation grants a special protection to all children. For instance, the preamble of the Law “About protection of childhood” describes the protection of childhood as a strategic national priority, whose goal is the protection of children’s rights to life, health care, education, social services, universal development and upbringing in a family. The law stipulates the main principles of state policies that are based on the best interests of a child.

- **LEGISLATIVE ACT:** Law of Ukraine “About protection of childhood”
- **Ukrainian name of the Act:** Закон України «Про охорону дитинства», (Відомості Верховної Ради України (ВВР), 2001, № 30, ст.142)
- **UKRAINIAN VERSION AVAILABLE AT:**  
<http://zakon3.rada.gov.ua/laws/main/2402-14>

- Provide the legal place of the definition (which act and/or regulation)

There is no single legal place, which provides the principle notion of vulnerability in Ukrainian legislation. It can be found in various legislative acts, bylaws and state social programs aimed at providing support to the following categories: pensioners, invalids, families with many children, orphans, young people, women, unemployed, victims of the Chernobyl nuclear accident, people living in poverty, families with low income, marginalized groups such as homeless people, alcoholics and people with previous criminal record, families that suffered from domestic or sexual violence, single parents, HIV-positive people and their families, representatives of ethnic minorities, immigrants and refugees, people with various disabilities, people of old age that require care and support etc.

- Provide the list of legislation where this definition is used (list acts,

regulations)

- **LEGISLATIVE ACT (1)**: Decree by the Cabinet of Ministers of Ukraine d.d. 28 December 2011, № 1381 “About increasing the level of social protection for *the most vulnerable social categories*”
- **Ukrainian name of the Act**: Постанова Кабінету Міністрів України від 28 грудня 2011 р. № 1381, «Про підвищення рівня соціального захисту найбільш вразливих верств населення»
- **UKRAINIAN VERSION AVAILABLE AT:**  
<http://zakon3.rada.gov.ua/laws/show/1381-2011-%D0%BF>
- **LEGISLATIVE ACT (2)**: Memorandum of Mutual Understanding on Cooperation in the Implementation of Projects Against Human Trafficking in Ukraine and the Protection of *Vulnerable Children* between the Ministry of Family, Children and Youth and the US Agency for International Development (USAID) (2004)
- **Ukrainian name of the Act**: Меморандум про взаєморозуміння між Міністерством України у справах сім'ї, дітей та молоді та Агентством США з міжнародного розвитку про співробітництво в реалізації проектів з подолання торгівлі людьми в Україні та захисту вразливих дітей (2004)
- **UKRAINIAN VERSION AVAILABLE AT:**  
[http://zakon3.rada.gov.ua/laws/show/840\\_127](http://zakon3.rada.gov.ua/laws/show/840_127)
- List the words describing “vulnerability”, the search of which finds relevant national legislation, in your own language and in English

There are several words/terms that are used in the national legislation to describe vulnerability:

- a) People that are in difficult life situations (Ukrainian: *Особи, які перебувають у складних життєвих обставинах*);
- b) Socially unprotected citizens - (Ukrainian: *Соціально незахищені громадяни*);

c) Persons that need special protection of the state – (Ukrainian: *Особи, які потребують особливого захисту держави*).

- List the places in your national legislation where these situations are described in relation to vulnerability (list the acts and/or regulations)

The above-mentioned situations related to vulnerability can be found in several legislative acts of Ukraine:

- **LEGISLATIVE ACT (1)**: Law of Ukraine “About protection of childhood”  
See *Section V* of the Law “*Children that need special protection of the state*” (i.e. orphans, children deprived of parental care, children that suffered as a result of a military conflict, children in difficult life situations, children separated from their families, homeless children, children with disabilities, children-refugees, children that need additional protection and children that need temporary protection).
- **Ukrainian name of the Act**: Закон України «Про охорону дитинства», (Відомості Верховної Ради України (ВВР), 2001, № 30, ст.142)
- **UKRAINIAN VERSION AVAILABLE AT**:  
<http://zakon3.rada.gov.ua/laws/main/2402-14>
- **LEGISLATIVE ACT (2)**: The procedure of identifying families (persons) that are in difficult life situations, providing social services to and accompanying such families (persons).
- **Ukrainian name of the Act**: Порядок виявлення сімей (осіб), які перебувають у складних життєвих обставинах, надання їм соціальних послуг та здійснення соціального супроводу таких сімей (осіб)
- **UKRAINIAN VERSION AVAILABLE AT**:  
<http://zakon5.rada.gov.ua/laws/show/896-2013-%D0%BF>
- **LEGISLATIVE ACT (3)**: Decree # 44 d.d. 01.04.97 “About approval of standard (sample) regulations on the territorial

centre of social services for pensioners and single unemployed citizens and provision of social support at home.”

See *Section 1* of the Decree on the territorial centres that provide social services to pensioners, invalids, single unemployed people and other socially unprotected citizens.

**Ukrainian name of the Act:** Наказ N 44 від 01.04.97. Міністерство Соціального Захисту Населення України «Про затвердження типових положень (взірцевих) про територіальний центр соціального обслуговування пенсіонерів та одиноких непрацездатних громадян і про відділення соціальної допомоги вдома»

- **UKRAINIAN VERSION AVAILABLE AT:**  
<http://zakon2.rada.gov.ua/laws/show/z0442-97>

**Question n.3.: Is the expression of “safeguarding policy” or any synonym (safeguarding requirement, safeguarding measures, obligatory procedures of protection /measures of care, etc.) mentioned in these acts and/or regulations in relation to vulnerability?**

The answer is affirmative. The expression of “**safeguarding policy**” or its **synonyms** (i.e. social protection, care and support, custody and guardianship etc.) are mentioned in the acts and regulations in relation to vulnerability.

- If yes, please list the acts and regulations, where it is mentioned

- Acts that contain “**safeguarding policy**” or any synonym:

1) Amendments to Laws related to strengthening of **social protection** of persons that provide **care and support** for children with disabilities and invalids of the first category

**Ukrainian name of the Act:** Текст Про внесення змін до деяких законів України щодо посилення соціального захисту осіб, які доглядають за дітьми-інвалідами та інвалідами I групи. Закон України від 17.05.2016 №

1369-VIII

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<http://zakon2.rada.gov.ua/laws/show/1369-19>

2) Law of Ukraine "About the endorsement of the all-national state program on HIV-prevention, treatment, **care and support** for HIV-positive people and people living with AIDS for 2009-2013"

**Ukrainian name of the Act:** Закон України "Про затвердження Загальнодержавної програми забезпечення профілактики ВІЛ-інфекції, лікування, догляду та підтримки ВІЛ-інфікованих і хворих на СНІД на 2009-2013 роки". Закон України від 05.06.2012 № **4888-VI**

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<http://zakon2.rada.gov.ua/laws/show/4888-17>

3) Amendments to the Law of Ukraine "About state **social support** for persons that do not have the right to pensions, and invalids" regarding state **social support and care** for war invalids

**Ukrainian name of the Act:** Текст Про внесення змін до Закону України "Про державну соціальну допомогу особам, які не мають права на пенсію, та інвалідам" щодо державної соціальної допомоги на догляд інвалідам війни. Закон України від 15.03.2011 № **3137-VI**

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<http://zakon2.rada.gov.ua/laws/show/3137-17>

4) Amendments to Laws regarding state **support and care** for children before the age of three

**Ukrainian name of the Act:** Текст Про внесення змін до деяких законів України з питань надання державної допомоги по догляду за дитиною до досягнення нею трирічного віку. Закон України від 21.02.2006 № **3446-IV**

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<http://zakon2.rada.gov.ua/laws/show/3446-15>

5) Presidential Decree on strengthening care for former military personal, their

legal and social protection, improvement of military and patriotic education among young people

**Ukrainian name of the Act:** Про додаткові заходи щодо посилення турботи про захисників Вітчизни, їх правового і соціального захисту, поліпшення військово-патріотичного виховання молодіУказ Президента України від 21.02.2002 № 157/2002.

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**  
<http://zakon2.rada.gov.ua/laws/show/157/2002>

6) Law of Ukraine “About organizational and legal conditions for social protection of orphans and children deprived of parental care”

**Ukrainian name of the Act:** Текст Про внесення змін до Закону України "Про забезпечення організаційно-правових умов соціального захисту дітей-сиріт та дітей, позбавлених батьківського піклування". Закон України від 08.09.2016 № 1504-VIII

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**  
<http://zakon2.rada.gov.ua/laws/show/1504-19>

7) Amendments to Laws concerning strengthening material support for families that have children in custody and guardianship

**Ukrainian name of the Act:** Текст Про внесення змін до деяких законів України щодо посилення матеріальної підтримки сімей, в яких виховуються діти, над якими встановлено опіку чи піклування. Закон України від 16.05.2013 № 244-VII

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**  
<http://zakon2.rada.gov.ua/laws/show/244-18>

8) Amendments to some legislative acts of Ukraine regarding protection of housing rights of orphans and children deprived of parental care

**Ukrainian name of the Act:** Текст Про внесення змін до деяких законодавчих актів України щодо захисту житлових прав дітей-сиріт та дітей, позбавлених батьківського піклування, а також осіб з їх числа. Закон України від 01.07.2010 № 2394-VI

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**  
<http://zakon2.rada.gov.ua/laws/show/2394-17>

9) Amendments to some legislative acts of Ukraine regarding protection of rights of a child, who is in **custody or guardianship**

**Ukrainian name of the Act:** Текст Про внесення змін до деяких законодавчих актів України щодо забезпечення прав дитини, над якою встановлено опіку чи піклування. Закон України від 21.05.2009 № **1390-VI**

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**  
<http://zakon2.rada.gov.ua/laws/show/1390-17>

10) Amendments to some legislative acts of Ukraine regarding **state support of families** that adopted orphans or children deprived of parental care

**Ukrainian name of the Act:** Текст Про внесення змін до деяких законодавчих актів України щодо державної підтримки сімей, які усиновили дитину з числа дітей-сиріт або дітей, позбавлених батьківського піклування. Закон України від 23.09.2008 № **573-VI**

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**  
<http://zakon2.rada.gov.ua/laws/show/573-17>

11) Law of Ukraine "About **state support of families** with children"

**Ukrainian name of the Act:** Закон України "Про державну допомогу сім'ям з дітьми". Закон України від 15.04.2008 № **269-VI**

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**  
<http://zakon2.rada.gov.ua/laws/show/269-17>

12) Amendments to some legislative acts of Ukraine regarding **social protection of orphans or children** deprived of parental care

**Ukrainian name of the Act:** Текст Про внесення змін до деяких законів України щодо соціального захисту осіб із числа дітей-сиріт та дітей, позбавлених батьківського піклування. Закон України від 05.10.2006 № **230-V**

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**

<http://zakon2.rada.gov.ua/laws/show/230-16>

**13)** Law of Ukraine “Primary Act on provision of organizational and legal conditions of **social protection** for children deprived of parental care”

**Ukrainian name of the Act:** Первинний акт «Про забезпечення організаційно-правових умов соціального захисту дітей-сиріт та дітей, позбавлених батьківського піклування.» Закон України від 13.01.2005 № **2342-IV**

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**

<http://zakon2.rada.gov.ua/laws/show/2342-15>

**14)** Law of Ukraine “About **prevention of violence** in family”

**Ukrainian name of the Act:** Закон України «Про попередження насильства в сім’ї», (Відомості Верховної Ради України (ВВР), 2002, N 10, ст.70)

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**

<http://zakon3.rada.gov.ua/laws/show/2789-14>

**15)** Law of Ukraine “About state **social support** of invalids since childhood and children with disabilities”

**Ukrainian name of the Act:** Закон «Про державну соціальну допомогу інвалідам з дитинства та дітям-інвалідам». (Відомості Верховної Ради України (ВВР), 2001, N 1, ст.2)

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**

<http://zakon3.rada.gov.ua/laws/main/2109-14>

**16)** Law of Ukraine “About HIV/AIDS **prevention and social protection** of population”

**Ukrainian name of the Act:** Закон «Про запобігання захворюванню на синдром набутого імунodefіциту (СНІД) і соціальний захист населення»

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**

<http://zakon3.rada.gov.ua/laws/show/2861-17>



17) Law of Ukraine “About **state social support** of families with low income”

**Ukrainian name of the Act:** Закон України «Про державну допомогу малозабезпеченим сім'ям»

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**

<http://zakon3.rada.gov.ua/laws/show/1768-14>

18) Law of Ukraine “About the status of veterans of war and guarantees of their **social protection**”

**Ukrainian name of the Act:** Закон України «Про статус ветеранів війни, гарантії їх соціального захисту»

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**

<http://zakon3.rada.gov.ua/laws/main/3551-12>

19) Law of Ukraine “About health care and leisure activities for children”

**Ukrainian name of the Act:** Закон України «Про оздоровлення та відпочинок дітей»

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**

<http://zakon3.rada.gov.ua/laws/main/375-17>

20) Law of Ukraine “About refugees and persons that require **additional or temporary protection**”

**Ukrainian name of the Act:** Закон «Про біженців та осіб, які потребують додаткового чи тимчасового захисту»

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**

<http://zakon2.rada.gov.ua/laws/show/3671-17>

21) Law of Ukraine “About **probation**”

**Ukrainian name of the Act:** Закон України «Про пробацію»

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**

<http://zakon3.rada.gov.ua/laws/main/160-19>

22) Law of Ukraine “About principles of preventing and fighting against

discrimination”

**Ukrainian name of the Act:** Закон України «Про засади запобігання та протидії дискримінації в Україні»

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**

<http://zakon3.rada.gov.ua/laws/main/5207-17>

***Soft Legal Instruments (Protocols, Standards, Policies)***

**23)** Decree d.d. 19.08.2014 # 564/836/945/577 by the Ministry of Interior, the Ministry of Health and the Ministry of Education and Science “About the review of applications and complaints in relation to **cruel treatment of children** or its threat”

**Ukrainian name:** Наказ Мінсоцполітики, МВС, МОН, МОЗ від **19.08.2014 № 564/836/945/577** «Про затвердження Порядку розгляду звернень та повідомлень з приводу жорстокого поводження з дітьми або загрози його вчинення»

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**

<http://zakon2.rada.gov.ua/laws/show/z1105-14>

**24)** Decree d.d. 09.12.2013 № 1723 by the Ministry of Education and Science of Ukraine “About activities of sanatoria and **specialized boarding schools**”

**Ukrainian name:** Наказ Міністерства освіти і науки України від **09.12.2013 № 1723** «Про діяльність санаторних та спеціальних загальноосвітніх шкіл-інтернатів»

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**

[http://old.mon.gov.ua/ua/activity/education/56/693/normativno\\_pravova\\_baza\\_11/](http://old.mon.gov.ua/ua/activity/education/56/693/normativno_pravova_baza_11/)

**25)** Decree d.d. 15.05.2013 № 512 by the Ministry of Education and Science of Ukraine “About establishment of a working group on pre-school education of **children with special needs** in Ukraine.”

**Ukrainian name:** Наказ МОН від **15.05.2013 № 512** «Про створення робочої групи з питань дошкільної освіти дітей з особливими потребами в

Україні»

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**

<http://osvita.ua/legislation/doshkilna-osvita/35904/>

**26)** Decree d.d. 07.09.2011 №649 by the Ministry of Internal Affairs “About approval of rules on review and production of documents that are necessary for receiving **a refugee status** by a person who needs **additional protection** and cancellation of such status.”

**Ukrainian name:** Наказ Міністерства внутрішніх справ України від **07.09.2011 №649** «Про затвердження Правил розгляду заяв та оформлення документів, необхідних для вирішення питання про визнання біженцем або особою, яка потребує додаткового захисту, втрату і позбавлення статусу біженця та додаткового захисту і скасування рішення про визнання особи біженцем або особою, яка потребує додаткового захисту»

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**

<http://zakon5.rada.gov.ua/laws/show/z1146-11>

**27)** Decree d.d. 07.07.2012 № 604/417/793/499/518 by the Ministry of Interior, the Ministry of Health and the Ministry of Education and Science and the State Border Administration “About procedure of cooperation among state executive bodies supporting children separated from their families that are not citizens of Ukraine and applied to relevant state organs with a request to receive a refugee status or a status of a person who needs additional protection.”

**Ukrainian name:** Наказ від 07.07.2012 № 604/417/793/499/518 Мінсоцполітики, МВС, МОН, МОЗ та Адміністрації Державної Прикордонної Служби України «Про затвердження Інструкції про взаємодію органів виконавчої влади в роботі з дітьми, розлученими із сім'єю, які не є громадянами України і звернулися до компетентних органів із заявою про визнання біженцем або особою, яка потребує додаткового захисту»

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**

<http://zakon3.rada.gov.ua/laws/show/z1292-12>

28) State **targeted social program** against HIV/AIDS for 2014-2018, adopted in 2014

**Ukrainian name:** Загальнодержавна цільова соціальна програма протидії ВІЛ-інфекції/СНІДу на 2014–2018 роки, затверджена 2014

**UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**

<http://zakon3.rada.gov.ua/laws/show/1708-18>

**Question n.4.: Does your national legislation on vulnerable children and adults specify the stakeholders who are expected by law to provide care and protection?**

The answer is affirmative. National legislation on vulnerable children and adults specify the stake holders who are expected by law to provide care and protection.

- **LEGISLATIVE ACT(1):** Law of Ukraine on amendments to the Civil Code of Ukraine regarding designation of institutions responsible for care and protection as well as amendments that elaborate on the categories of persons that can be put in custody and guardianship
- **Ukrainian name of the Act:** Текст Про внесення змін до Цивільного кодексу України щодо визначення органів опіки та піклування і уточнення категорії осіб, над якими встановлюється опіка та піклування. Закон України від 21.12.2010 № 2825-VI
- **UKRAINIAN**                      **VERSION**                      **AVAILABLE**                      **AT:**  
<http://zakon2.rada.gov.ua/laws/show/2825-17>

The above-mentioned national legislation designates the following institutions of care and protection: executive organs of district, city and village state administrations. According to *Article 55* of the *Civil Code of Ukraine*, the state organs listed above provide custody and guardianship to ensure rights of minors, underage persons as well as adults that due to their health condition cannot independently protect their rights and fulfill their duties.

Besides the above mentioned organs of care and protection, several legislative acts designate state institutions that provide care and support for separate social groups:

- **LEGISLATIVE ACT (2):** Law of Ukraine “About state institutions and services for children”
- **Ukrainian name of the Act:** Закон України «Про органи і служби у справах дітей»

The legislative act designates the following authorities, organizations, institutions responsible for children at risk:

- Relevant departments of the National Police;
- State day care centres for children operated by the National Police;
- Schools of social rehabilitation and vocational schools within the state system of education;
- Centres of medical and social rehabilitation for children within the state health care system;
- Special educational establishments of the state penal service;
- Shelters for children;
- Centres for social and psychological rehabilitation of children.

- **UKRAINIAN VERSION AVAILABLE AT:**  
<http://zakon2.rada.gov.ua/laws/show/20/95-%D0%B2%D1%80>
- **LEGISLATIVE ACT (3):** Law of Ukraine “About Social Services”
- **Ukrainian name of the Act:** Закон України «Про соціальні послуги». (Відомості Верховної Ради України (ВВР), 2003, N 45, ст.358)

The legislative act designates the following authorities, organizations, institutions responsible for various categories of vulnerable persons (adults and children):

*Providers of Social Services* – individuals, institutions and organizations that regardless of their form of property provide social services to persons that are in difficult life situations and in need of external support.

- **UKRAINIAN VERSION AVAILABLE AT:**

<http://zakon0.rada.gov.ua/laws/show/966-15>

- **LEGISLATIVE ACT (4): Law of Ukraine “About prevention of violence in family”**

The legislative act designates the following authorities, organizations, institutions responsible for the prevention of violence in family: central executive bodies responsible for state policies on the prevention of violence in families, relevant departments of the National police, organs of custody and guardianship, crisis centres for persons who suffered from violence or are potential victims of violence in family, centres of medical and social rehabilitation for victims of violence in family, local executive bodies, organizations regardless of the form of their property and associations of citizens.

- **Ukrainian name of the Act:** Закон України «Про попередження насильства в сім'ї» (Відомості Верховної Ради України (ВВР), 2002, N 10, ст.70)
- **UKRAINIAN VERSION AVAILABLE AT:**  
<http://zakon2.rada.gov.ua/laws/show/2789-14>
- **LEGISLATIVE ACT (5):** Decree d.d. 19.08.2014 # 564/836/945/577 by the Ministry of Interior, the Ministry of Health and the Ministry of Education and Science “The procedure for complaining about cruel treatment of children.”

The legislative act designates the following authorities, organizations, institutions responsible for the prevention of cruel treatment of children: providers of services for children, law enforcement agencies, educational establishments, health care establishments, centres of social services for families, children and youth.

- **Ukrainian name of the Act:** Наказ Мінсоцполітики, МВС, МОН, МОЗ

від 19.08.2014 № 564/836/945/577 про «Порядок про звернення з приводу жорстокого поводження щодо дітей»

- **UKRAINIAN VERSION AVAILABLE AT:**  
<http://zakon2.rada.gov.ua/laws/show/z1105-14>
- **LEGISLATIVE ACT (6):** Decree d.d. 14.06.2006 N 1983/388/452/221/556/596/106 by the Ministry of Interior, the Ministry for Family, Youth and Sport, the Ministry of Health, the State Penal Department, the Ministry of Education and Science and the Ministry of Transport “About the procedure for coordinating activities of social services that are provided to families in difficult life situations”

The legislative act designates the following authorities, organizations, institutions responsible for providing support to families in difficult life situations: the Ministry for Family, Youth and Sport, the Ministry of Health and the Ministry of Education and Science, the Ministry of Labor and Social Politics, the State Penal Department, the state social services for family, children and youth.

- **Ukrainian name of the Act:** Наказ Мінсоцполітики, МВС, МОН, МОЗ, Міністерства Транспорту та Зв'язку України, Державного Департаменту України з Питань Виконання Покарань від 14.06.2006 N 1983/388/452/221/556/596/106, «Про затвердження Порядку взаємодії суб'єктів соціальної роботи із сім'ями, які опинилися у складних життєвих обставинах»
- **UKRAINIAN VERSION AVAILABLE AT:**

[http://www.moz.gov.ua/ua/portal/dn\\_20060614\\_388.html](http://www.moz.gov.ua/ua/portal/dn_20060614_388.html)

**Question n.5.: What other stakeholders are you aware of concerning vulnerable children and adult in your country? (NGOs, international bodies, etc.)**

**I. Stakeholders - Child Protection**

- 1) UNICEF Office in Ukraine**  
<https://www.unicef.org/ukraine/>
- 2) Save the Children Ukraine**  
<https://www.savethechildren.net/our-humanitarian-programme-ukraine>
- 3) AIDS Foundation East-West**  
Міжнародний благодійний фонд «СНІД Фонд Схід Захід» (AFEW-Україна)  
<http://afew.org.ua/en/>
- 4) Danish Refugee Council**  
<https://drc.ngo/where-we-work/europe-and-caucasus/ukraine>
- 5) All-Ukrainian Civic Organization “Women’s Consortium”**  
Всеукраїнська громадська організація «Жіночий консорціум України»  
<http://wcu-network.org.ua/>
- 6) All-Ukrainian Charitable Foundation “Right to Protection”**  
Всеукраїнська благодійна фундація «Право на захист»;  
[www.vpl.com.ua](http://www.vpl.com.ua)
- 7) Charitable Fund “Rokada”**  
Благодійний фонд «Рокада»  
<http://rokada.org.ua/>
- 8) All-Ukrainian Foundation “Children’s Rights Protection”**  
Всеукраїнська фундація «Захист Прав Дітей»  
<http://aufcr.com.ua/>
- 9) Civic Organization “Mart”**  
Громадська організація «MART»  
<http://mart-ngo.org.ua/en/itemlist/>
- 10) Civic Movement “Faith, Hope, Love”**  
Громадський рух «Віра, Надія, Любов»  
[http://www.vnl.com.ua/index.php?option=com\\_content&view=article&id=283%3Anews6&catid=37%3A2012-02-09-22-37-38&Itemid=148&lang=ru](http://www.vnl.com.ua/index.php?option=com_content&view=article&id=283%3Anews6&catid=37%3A2012-02-09-22-37-38&Itemid=148&lang=ru)
- 11) Environmental Civic Organization “Flora”**  
Екологічна громадська організація «Флора»  
<http://childflora.com.ua/>
- 12) Partnership “To Every Child”**  
Партнерство «Кожній дитині»



<http://www.p4ec.org.ua/>

**13) Human Rights Center “Postup”**

Правозахисний центр «Поступ»

[www.postup.lg.ua/](http://www.postup.lg.ua/)

**14) Sumy Civic Organization “Kalynove Grono”**

Сумська громадська організація «Калинове гроно»

<http://4family.org.ua/>

**15) Sumy Oblast Civic Organization, Center of Civic Initiatives “Intellect of Sumy Region”**

Сумська обласна громадська організація «Центр громадських ініціатив «Інтелект Сумщини» <http://intellect.sumdu.edu.ua/>

**16) Kharkiv Oblast Foundation “Civic Alternative”**

Харківська обласна фундація «Громадська Альтернатива»

[http://www.childrights.in.ua/Xarkvska\\_oblasna\\_fundacija\\_Gromadska\\_Alternativa](http://www.childrights.in.ua/Xarkvska_oblasna_fundacija_Gromadska_Alternativa)

**17) Kharkiv Institute of Social Research**

Харківський інститут соціальних досліджень

<http://khisr.kharkov.ua/en/>

**18) Human Rights Information Center**

Центр інформації про права людини

<https://humanrights.org.ua/en>

**19) Association of Young Professionals “Class”**

Асоціація молодих професіоналів «Клас»

[http://www.childrights.in.ua/Asocacija\\_molodix\\_profesonalv\\_Klas](http://www.childrights.in.ua/Asocacija_molodix_profesonalv_Klas)

## **II. Stakeholders – Organizations working in the area of HIV/AIDS**

See the *Directory of Organizations Working in the Field of HIV/AIDS*, which was prepared by the International Charitable Foundation “International HIV/AIDS Alliance in Ukraine” (Alliance Ukraine). The Directory consists of supplemental and contact information about Government executive bodies, Committees of Verkhovna Rada (the Parliament) of Ukraine, State social service for family, children and youth, medical and preventive treatment

institutions, research organizations, All Ukrainian Organizations, regional NGOs, International Organizations.

The Directory is available at <http://www.aidsalliance.org.ua/cgi-bin/index.cgi?url=/en/library/our/aidsdirectory/index.htm>

### **III. Stakeholders – Organizations that provide support to refugees and internally displaced persons (IDPs)**

1. International Organization for Migration (IOM), Mission in Ukraine  
<http://www.iom.org.ua/>
2. The UN Refugee Agency (UNHCR), Mission in Ukraine  
<http://unhcr.org.ua/en/>
3. Crimea SOS, legal and social support for internally displaced persons  
[www.krymsos.com/en/](http://www.krymsos.com/en/)
4. International Fund for healthcare and environment protection “Carpathian Region” (NEEKA)  
<http://neeka.org/en.html>
5. Civic Organization “April 10”  
<http://www.desyatekvitnya.com/>
6. Charitable organization, Kharkiv Charitable Fund “World”  
tel.: +38 (057)756-45-72  
tel.: +38 (057)756-01-88

**Question n.6.: Anything else that you find relevant, interesting to mention from what you have found during your desk research on this topic**

During my desk research on the topic, I have identified three general issues with the national legislation relevant to safeguarding of children and vulnerable adults in Ukraine.

***ISSUE 1 - New categories of vulnerable groups*** emerged due to the ongoing military conflict in eastern Ukraine. Although some of these categories, their rights and needs are reflected in the national legislation, the state cannot ensure the actual implementation of these legal provisions.

The most recent Ukrainian legislation outlines various categories of people that suffered as a result of the conflict in eastern Ukraine and the annexation of Crimea. For instance, under the Law of Ukraine “*About protection of childhood*” the amended version of the *Section V “Children who need special protection of the state”* contains *Article 30*, which stipulates protection of children in a war zone and military conflicts, and children who suffered due to military activities and military conflicts. Another example is the new Law of Ukraine “*About the protection of rights and freedoms of internally displaced persons (IDPs)*”, which regulates the status of people who left their homes in eastern Ukraine and in occupied Crimea.

Despite the legal protection granted under the law, the new categories of vulnerable groups cannot often protect their rights in reality. For instance, many IDPs face the incompetence of state institutions, scarcity of necessary resources at the national and regional levels as well as lack of public awareness about relevant state policies and sometimes-hostile attitudes towards IDPs in local communities.

***ISSUE 2 – Formalistic approach to rights and freedoms*** shows that the national legislation relevant to safeguarding of children and vulnerable adults remains declaratory and lacks practical implementation.

For instance, the Law of Ukraine “*About refugees and persons that require additional or temporary protection*” includes protective measures for children

that arrived to Ukraine without their families. In particular, the Law guarantees that a translator must be provided to a child separated from his or her parents when the legal guardian is assigned to this child. However, in reality the state migration service often cannot provide a translator. The necessary translation services are rather provided by local NGOs that assist refugees. In the absence of such NGOs, a translator may not be provided at all.

***ISSUE 3 – Although some groups are vulnerable, their rights are not clearly outlined and protected under the national legislation.*** These groups include *Injecting Drug Users (IDUs)*, *Children Living or Working on the Streets*, *Sexual Minorities*, *Commercial Sex Workers (CSW)* and other vulnerable categories, whose presence remains a sensitive social and political issue in Ukrainian society. Major political forces represented in the Parliament avoid an open discussion about these vulnerable groups that are not included into the political agenda of electoral campaigns.

According to the UN reports, Ukraine “has one of the highest rates of HIV infection in Europe.” The HIV/AIDS epidemic spreads mostly among most-at-risk populations such as IDUs, CSWs and other categories that are especially vulnerable to HIV infection. Despite their vulnerability, the national legislation in many instances does not provide sufficient safeguarding mechanisms to protect human rights of these vulnerable groups.

For instance, *IDUs* often have limited access to necessary social services and the Opiate substitution therapy (OST) in Ukraine. According to *Article 181* of the *Code of Administrative Offences* of Ukraine, commercial sex work is an administrative offence. The illegality of sex work makes *CSWs* especially vulnerable to the violation of their human rights. In particular, according to a mapping report on sex work in Ukraine, “[s]ex workers are heavily stigmatized and discriminated against in Ukraine. Stigmatization and discrimination strongly impacts sex workers’ safety and wellbeing, and often ends up in social exclusion and discrimination against them.” The national legislation does not contain sufficient legal mechanisms to protect *representatives of*

*sexual minorities* from stigma and discrimination in Ukrainian society. *Children living or working on the streets* and other *most-at-risk adolescents* in many cases do not receive social support and protection guaranteed to all children and young people under the national legislation.

In my opinion, the above-mentioned three issues should be taken into consideration while assessing the current situation with the safeguarding of children and vulnerable adults in Ukraine.

### **Question n.7. Registration of NGOs**

The national legislation of Ukraine does not require an NGO to have a separate safeguarding policy before getting officially accredited/registered. However, NGOs are required to outline goals and main activities in their founding documents that must comply with laws on safeguarding policies for specific vulnerable groups (children, youth etc.)

For example, according to *Article 9* of the Law of Ukraine “*About Civil Associations*”, a decision to establish a civil association is formulated in a protocol of its founding meeting, which also indicates a goal (aims) and main activities of the association.

*Article 11* of the same law also envisages that the charter of a civil association must contain information about a goal (aims) and activities of the association.

Both the protocol and the charter are required for the process of NGOs’ accreditation/registration, which is outlined in the Law of Ukraine “*About state registration of legal and physical entities – entrepreneurs and civic organizations.*”

Charters and other founding documents must be in compliance with principles and provisions of relevant laws that govern activities of NGOs. For instance, according to *Article 12* of the Law of Ukraine “*About youth and children’s civic organizations*”, founding documents of youth and children’s civic

organizations, registered before the above-mentioned law came into force, must be brought in compliance with the law.

## Country report

**SECTION 1.** *Legal Framework including relevant definitions according to national legislation (who falls under “vulnerable adults,” how is “child”, “harm”, “abuse”, etc. defined in the relevant laws).*

**A.** The notion of **vulnerable adults** (Ukrainian: *вразливі категорії населення*) is outlined in various legislative acts listed below. For instance, *Article 1 (Definitions of main terms)* of the Law “About social services”<sup>383</sup> enumerates vulnerable groups that are recipients of state social services. Such social groups include people that find themselves in difficult life situations and cannot resolve them independently. Difficult life situations are defined in the context of disability, age, health condition, social status, life habits and the way of life, as a result of which a person partially or fully lost the ability to have private (family) life or participate in social life.

**B.** The definition of a **child** (Ukrainian: *дитина*) is given in *Article 6* of the *Family Code of Ukraine (2002)*.<sup>384</sup>

- A *child* is a person before reaching the age of adulthood (18 years).
- A *minor* is a child before reaching the age of 14.
- An *underage person*\* is a child from 14 to 18 years old.

\* In Ukraine, the minimum age of consent to a marriage for both men and women is the age of adulthood (18).<sup>385</sup> However, an underage person can

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<sup>383</sup> Закон України «Про соціальні послуги». (Відомості Верховної Ради України (ВВР), 2003, N 45, ст.358); available at: <http://zakon0.rada.gov.ua/laws/show/966-15>, last accessed on 11.02.2017.

<sup>384</sup> *Сімейний Кодекс України* (Відомості Верховної Ради України (ВВР), 2002, № 21-22, ст.135); available at: <http://zakon0.rada.gov.ua/laws/show/2947-14>, last accessed on 20.02.2017.

<sup>385</sup> See *Article 22 (Marriage Age)* of the *Family Code of Ukraine*, available at 478

consent to a marriage and reach the full legal capacity from the age of 16 if a court agrees that it is in the best interest of the underage person.<sup>386</sup>

**C.** There are several notions of **harm** (Ukrainian: *шкода*) in criminal and civil law under the Ukrainian legislation.

- In the **Criminal Code of Ukraine** harm includes several categories:
  - 1) Intentional grievous bodily harm (*Article 121, part 3 of Articles 345, 346, 350, 377, 398 of the Criminal Code of Ukraine*),<sup>387</sup>
  - 2) Intentional bodily injury (*Article 122, part 2, Articles 345, 346, 350, 377, 398*),<sup>388</sup>
  - 3) Intentional damage of property (part 2 of *Articles 194, 347, 352, 378, parts 2 and 3 of Article 399*).<sup>389</sup>
  
- In the **Civil Code of Ukraine** harm is subdivided into the following categories:
  - 1) Material damages (real losses and loss of profit, *Article 22 of the Civil Code*);
  - 2) Moral damages (causing physical pain and suffering, moral suffering, degrading treatment, *Article 23 of the Civil Code*).<sup>390</sup>

**D.** The notion of **abuse** (Ukrainian: *насильство*) is outlined in several legal provisions.

- The Law of Ukraine “*About prevention of violence in family*” defines violence in family as any intentional actions of physical, sexual, psychological or economical character of one family member towards another family member when such actions violate constitutional rights

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<http://zakon5.rada.gov.ua/laws/show/2947-14>, last accessed on 11.02.2017.

<sup>386</sup> See *Article 23 (Right to Marriage) of the Family Code of Ukraine*, available at <http://zakon5.rada.gov.ua/laws/show/2947-14>, last accessed on 11.02.2017.

<sup>387</sup> Кримінальний Кодекс України, Закон від 05.04.2001 № 2341-III; available at: <http://zakon0.rada.gov.ua/laws/show/2947-14>, last accessed on 20.02.2017.

<sup>388</sup> Ibid.

<sup>389</sup> According to *Article 22 of the Criminal Code of Ukraine*, only persons who reached the age of 16 could be held criminally liable if they committed a crime. Persons who committed a crime at the age between 14 and 16 can be held criminally liable for intentional murder (*Articles 115-117*) and other crimes that caused serious harm.

<sup>390</sup> Цивільний Кодекс України, (Відомості Верховної Ради України (ВВР), 2003, № 40-44, ст.356); available at: <http://zakon0.rada.gov.ua/laws/main/435-15>, last accessed on 21.02.2017.

and freedoms of the affected family member, cause moral harm and undermine physical and psychological health.<sup>391</sup>

- Ukraine has also ratified several international treaties that outline the notion of abuse in relation to children and vulnerable adults. For instance, the Council of Europe *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*,<sup>392</sup> or the *International Convention for the Protection of All Persons from Enforced Disappearance*.<sup>393</sup>

**SECTION 2.** *Analysis of the laws and regulations relevant to the safeguarding and protection of children and vulnerable adults applicable in the respective country (rights and obligations stipulated by the law);*

- Examples of laws and regulations relevant to the safeguarding and protection of some vulnerable groups (*children, disabled people, victims of violence and HIV-positive people*):

a) The Law of Ukraine “*About state social support for persons that do not have the right to pensions, and disabled persons.*”<sup>394</sup>

*Rights and obligations stipulated under the Law:*

- *Article 2* of the Law stipulates the right to state social support.
- *Article 4* of the Law envisages conditions for providing state social support (obligation of the state to provide social support to the following categories of people outlined in the law: people of the retirement age that do not have the right to pension, a person with low income, disabled persons of various categories with a low level of income.)

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<sup>391</sup> Закон України «Про попередження насильства в сім'ї». (Відомості Верховної Ради України (ВВР), 2002, N 10, ст.70; available at: <http://zakon2.rada.gov.ua/laws/show/2789-14>, last accessed on 20.02.2017.

<sup>392</sup> Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/201>, last accessed on 21.02.2017.

<sup>393</sup> Convention for the Protection of All Persons from Enforced Disappearance, available at <http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>, last accessed on 21.02.2017.

<sup>394</sup> Закон України "Про державну соціальну допомогу особам, які не мають права на пенсію, та інвалідам" Закон України від 15.03.2011 № 3137-VI, available at <http://zakon2.rada.gov.ua/laws/show/3137-17>, last accessed on 21.02.2017.



- *Article 7* of the Law outlines the procedure for providing state social support and care (according to the law, the state is under the obligation to provide support to the following vulnerable categories that require external care: disabled persons with low income, people with disabilities of various categories and single persons that need support).

**b) The Law of Ukraine “*About state support of families with children*”<sup>395</sup>**

*Rights and obligations stipulated under the Law:*

- *Article 1* of the Law stipulates the right of families with children to state support. In particular, citizens of Ukraine and foreigners, whose families have underage children, have the right to receive state social support.
- *Article 3* of the Law envisages the state obligation to provide several categories of social support: help due to pregnancy and delivery of a baby, support to families with a new-born child, support to a family that adopts a child, support to children who are in custody and guardianship, support to single mothers. Furthermore, local state organs of executive power, organizations and associations can provide additional forms of social support by using their own resources.

**c) Law of Ukraine “*Primary Act on provision of organizational and legal conditions of social protection for children deprived of parental care*”<sup>396</sup>**

*Rights and obligations stipulated under the Law:*

- *Articles 2* of the Law declares that it is a national priority and an obligation of the state to provide social support to orphans and children deprived of parental care.

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<sup>395</sup> Закон України "Про державну допомогу сім'ям з дітьми". Закон України від 15.04.2008 № 269-VI, available at <http://zakon2.rada.gov.ua/laws/show/269-17>, last accessed on 21.02.2017.

<sup>396</sup> Первинний акт «Про забезпечення організаційно-правових умов соціального захисту дітей-сиріт та дітей, позбавлених батьківського піклування.» Закон України від 13.01.2005 № 2342-IV, available at <http://zakon2.rada.gov.ua/laws/show/2342-15>, last accessed on 21.02.2017.

- *Article 3* of the Law outlines the principles of state safeguarding policies that provide children deprived of parental care with the right to be raised in family, material and housing rights, the right to physical, intellectual and spiritual development of a child, to have proper conditions for receiving psychological, medical and pedagogical support, the right to healthy development, the right to choose once profession and access free social services provided by the state.

**d) Law of Ukraine “*About prevention of violence in family*”<sup>397</sup>**

*Rights and obligations stipulated under the Law:*

- *Article 17* of the Law safeguards rights and lawful interests of family members who are protected by measures aimed at preventing violence in family. The same article guarantees the confidentiality of information provided to state officials by persons who suffered from violence in family.
- According to *Article 9* of the Law, victims of violence in family, have the right to stay in centres of medical and social rehabilitation during their psychological and social rehabilitation. Employees of such centres provide to victims of violence in family medical and psychological support as well as various types of psychiatric support.

**e) Law of Ukraine “*About HIV/AIDS prevention and social protection of population*”<sup>398</sup>**

*Rights and obligations stipulated under the Law:*

- *Article 6* outlines the right to HIV-testing, which is provided free of charge to foreigners and citizens of Ukraine.
- *Article 4* stipulates the obligation of the state to raise awareness of the

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<sup>397</sup> Закон України «Про попередження насильства в сім’ї», (Відомості Верховної Ради України (ВВР), 2002, N 10, ст.70), available at <http://zakon3.rada.gov.ua/laws/show/2789-14>, last accessed on 21.02.2017.

<sup>398</sup> Закон «Про запобігання захворюванню на синдром набутого імунodefіциту (СНІД) і соціальний захист населення», available at <http://zakon3.rada.gov.ua/laws/show/2861-17>, last accessed on 21.02.2017.

population about HIV/AIDS, promote a healthy way of life, exercise continuous control of the epidemiological situation, ensure availability and quality of anonymous HIV-testing and counselling, ensure safety of medical staff involved in HIV-testing, ensure access of the population to means of HIV prevention, provide emergency kits to persons who were exposed to a high risk of HIV infection in cases of sexual violence and other instances, ensure effective prevention of HIV transmission from mother to child.

- f) Law of Ukraine “*About refugees and persons that require additional or temporary protection*”<sup>399</sup>

*Rights and obligations stipulated under the Law:*

- According to *Article 3* of the Law, the state is obliged not to return a refugee or a person, who needs additional or temporary protection, to a country of origin, where life and freedom of this person would be under threat.
- Under *Article 4*, the state is obliged to ensure the unity of families of refugees and persons who need additional protection.
- *Section III* of the Law regulates rights of refugees. A person, who received a refugee status, or a status of a person, who needs additional protection, has the right to employment, education, health care, the right to be accommodated with his or her family in facilities for refugees, the right to receive free legal aid, to maintain confidential correspondence with employees of the Office of the UN High Commissioner for Refugees (UNHCR) as well as to have other rights and freedoms envisaged by the Constitution of Ukraine for foreigners or persons without citizenship.

**SECTION 3.** *Analysis of relevant governmental and non-governmental stakeholders (who is involved in safeguarding and the protection of children*

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<sup>399</sup> Закон «Про біженців та осіб, які потребують додаткового чи тимчасового захисту», available at <http://zakon2.rada.gov.ua/laws/show/3671-17>, last accessed on 16.02.2017.

and vulnerable adults in the respective country and what is the mandate or scope of work of the individual organizations);

#### **A. Governmental Stakeholders:**

- 1) Ministry for Youth and Sports of Ukraine** (Ukrainian: *Міністерство молоді та спорту України*), <http://dsmsu.gov.ua/index/ua/>

The mandate and the mission of the Ministry is defined by a Decree of the Cabinet of Ministers.<sup>400</sup> In particular, the Ministry has the following responsibilities:

- Development and implementation of state policies for youth and physical culture.
- Development of relevant social programs, laws and legislative proposals as well as provision of support to youth and sports organizations.
- Organization of medical rehabilitation events for people with disabilities.

- 2) Ministry of Social Policy of Ukraine**, (Ukrainian: *Міністерство соціальної політики України*), <http://www.msp.gov.ua/en/>

The mandate and the mission of the Ministry is defined by a Decree of the Cabinet of Ministers.<sup>401</sup> In particular, the main tasks of the Ministry include:

- Developing and ensuring implementation of state social policies;
- The Ministry is a special central organ of executive power responsible for ensuring equal rights of women and men as well as providing

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<sup>400</sup> Постанова Кабінету Міністрів України, від 2 липня 2014 р. № 220 «Про затвердження Положення про Міністерство молоді та спорту України», available at <http://zakon3.rada.gov.ua/laws/show/220-2014-%D0%BF/paran8#n8>, last accessed on 16.02.2017.

<sup>401</sup> Постанова Кабінету Міністрів України від 17 червня 2015 р. № 423, «Про затвердження Положення про Міністерство соціальної політики України», <http://zakon3.rada.gov.ua/laws/show/423-2015-%D0%BF/paran8#n8>, last accessed on 16.02.2017.

humanitarian aid.

- The Ministry is also responsible for implementing state policies aimed at safeguarding vulnerable populations. In particular, the Ministry implements state policies to facilitate adoption of children, prevent domestic violence, protect representatives of ethnic minorities, whose rights were violated, and protect rights of pensioners, veterans and other vulnerable groups who need state social support.

**3) Regional and local Centres of Social Services for Family, Children and Youth** (Ukrainian: *Центри Соціальних Служб для Сім'ї, Дітей та Молоді*) that operate in line with a Decree issued by the Cabinet of Ministers of Ukraine.<sup>402</sup>

- According to the above-mentioned decree, state Centres of social services for family, children and youth have the following mandate: identifying families, children and youth that are in difficult life situations and need additional support, promoting responsible parenthood, monitoring state standards of social services provided by local centres for family, children and youth, ensuring social accompaniment of family, children and youth in difficult life conditions, engaging local communities to provide social support to vulnerable categories of population.

**4) Ukrainian Centre for Control over Socially Dangerous Diseases at the Ministry of Health of Ukraine** (Ukrainian: *Український центр контролю за соціально небезпечними хворобами Міністерства охорони здоров'я України*)

**Mission:** Protecting and promoting the health of the population of Ukraine through the development and implementation of evidence-based programs

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<sup>402</sup> «Про затвердження Загального положення про центр соціальних служб для сім'ї, дітей та молоді». Постанова Кабінету Міністрів України від 1 серпня 2013 р. № 573, available at <http://zakon0.rada.gov.ua/laws/show/573-2013-%D0%BF#n11>, last accessed on 16.02.2017.

for the transformation of public health in Ukraine, based on modern international standards and methods of prevention, diagnosis and treatment of socially significant diseases.

**Mandate:** The protection and improvement of public health in Ukraine is possible only through an inter-sectoral approach to planning and implementing solutions in the field of public health. To this end, the UCDC as the lead agency of public health in Ukraine follows its mandate (More detailed information at <http://ucdc.gov.ua/en/pages/about/documents>).

**5) Ukrainian Parliament Commissioner for Human Rights – Ms. Valeriya Lutkovska** (Ukrainian: *Уповноважений Верховної Ради з Прав Людини* – Валерія Лутковська)  
<http://www.ombudsman.gov.ua/>

The Commissioner is vested with a broad range of rights, namely to:

- be received, without any delay, by the President, Chairman of Parliament, Prime Minister, chairmen of the Constitutional, Supreme and higher specialized courts, the Prosecutor General, chairmen of other state bodies;
- visit, without hindrance, anybody of state authority, body of local self-government, enterprise, institution, organization, including penal institutions and psychiatric hospitals, interview the persons staying there, and obtain information about their custody and upkeep. (More detailed information is available at <http://www1.ombudsman.gov.ua/en/>)

**6) Commissioner of the President of Ukraine for Children's Rights - Mr. Mykola Kuleba** (Ukrainian: *Уповноважений Президента України з прав дитини* - Микола Кулеба)  
<http://www.president.gov.ua/en/administration/apu-structure/upovnovazhenij-prezidenta-ukrayini-z-prav-ditini>

The mandate and the mission of the Commissioner are defined in the Presidential Decree “About the Commissioner of the President of Ukraine

for Children's Rights":<sup>403</sup>

- 1) Conducting continuous monitoring of children's rights guaranteed in the Constitution, ensuring implementation of international obligations by Ukraine in this area and making proposals to the President of Ukraine concerning prevention and discontinuation of violations perpetrated against lawful rights and interests of children.
- 2) Making proposals to the President of Ukraine regarding draft laws and Presidential decrees on issues related to lawful rights and interests of children.
- 3) Implementing activities aimed at protecting and restoring lawful rights and interests of children as well as informing the public about such activities.
- 4) Preparing activities with participation of the President of Ukraine including international events in relation to children's rights.
- 5) Coordinating activities among organs of executive power and local organs of self-government in relation to protection of lawful rights and interests of children. (More detailed information is available in Ukrainian at <http://zakon3.rada.gov.ua/laws/show/811/2011#n14>).

## **B. Non-Governmental Stakeholders:**

### **I. Stakeholders – Care of Elderly People**

- 1) **International Foundation “Mutual Understanding and Tolerance”**, «Міжнародний фонд «Взаєморозуміння і толерантність» (<http://www.toleranz.org.ua/project-support/medsocproject?lang=>);
- 2) **Center of social support Charitable Fund “Caritas – Lviv”**, Центр соціальної допомоги БФ «Карітас – Львів УГКЦ» (<http://caritas-lviv.org/index.php/diialnist/proekty-fondu/tsentr-sotsialnoi-dopomohy>);
- 3) **Ukrainian Charity Fund “Social Partnership”**, Благодійний Фонд Соціальне Партнерство, (<https://socpartnerstvo.org/en/about/>).

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<sup>403</sup> Указ Президента України «Питання Уповноваженого Президента України з прав дитини», available at <http://zakon3.rada.gov.ua/laws/show/811/2011#n14>, last accessed on 16.02.2017.

## **II. Stakeholders – Care of Mental Patients**

**1) All-Ukrainian NGO “Coalition for Persons with Intellectual Disabilities”**, Коаліція захисту прав осіб з інвалідністю внаслідок інтелектуальних порушень, Ukraine, 01033, Kyiv, vul. Shota Rustaveli 39-41, office 801, tel. (+38044)4965292, e-mail: [vgo.coalition@gmail.com](mailto:vgo.coalition@gmail.com). (<http://inteldisabilities-coalition.kiev.ua/>); **2) Non-profit Organization “Independent living home”**, Благодійна організація “Благодійна установа “Дім самостійного життя”, м. Львів, Ukraine, vul. Dnisterska, 12, Lviv 79035, tel. (38032) 270-34-58, E-mail: [indlivhome@gmail.com](mailto:indlivhome@gmail.com). **3) “Djerela” Charity Association for Persons with Intellectual Disabilities**, Благодійна установа допомоги інвалідам та особам із інтелектуальною недостатністю “Джерела”, Ukraine, 04209, Kyiv, vul. Bogatyrska 16a, kindergarten 607, tel. (38044) 4118213, E-mail: [raisa.djerela@gmail.com](mailto:raisa.djerela@gmail.com). Web-site: (<http://www.djerela.org/index.php/en/>).

A more detailed list of regional organizations that protect rights of mental patients is available at <http://inteldisabilities-coalition.kiev.ua/index.php/katalog-ndo>.

## **III. Stakeholders – Child Protection**

**1) UNICEF Office in Ukraine** (<https://www.unicef.org/ukraine/>); **2) Save the Children Ukraine** (<https://www.savethechildren.net/our-humanitarian-programme-ukraine>); **3) AIDS Foundation East-West**, Міжнародний благодійний фонд «СНІД Фонд Схід Захід» (AFEW-Україна) (<http://afew.org.ua/en/>); **4) Danish Refugee Council** (<https://drc.ngo/where-we-work/europe-and-caucasus/ukraine>); **5) All-Ukrainian Civic Organization “Women’s Consortium”**, Всеукраїнська громадська організація «Жіночий консорціум України» (<http://wcu-network.org.ua/>); **6) All-Ukrainian Charitable Foundation “Right to Protection”**, Всеукраїнська благодійна фундація «Право на захист», ([www.vpl.com.ua](http://www.vpl.com.ua)); **7) Charitable Fund “Rokada”**, Благодійний фонд «Рокада», (<http://rokada.org.ua/>); **8) All-Ukrainian Foundation**



“**Children’s Rights Protection**”, Всеукраїнська фундація «Захист Прав Дітей» (<http://aufcr.com.ua/>); **9) Civic Organization “Mart”**, Громадська організація «MART», (<http://mart-ngo.org.ua/en/itemlist/>); **10) Civic Movement “Faith, Hope, Love”**, Громадський рух «Віра, Надія, Любов» (<http://www.vnl.com.ua>); **11) Environmental Civic Organization “Flora”**, Екологічна громадська організація «Флора», (<http://childflora.com.ua/>); **12) Partnership “To Every Child”**, Партнерство «Кожній дитині», (<http://www.p4ec.org.ua/>); **13) Human Rights Center “Postup”**, Правозахисний центр, «Поступ», ([www.postup.lg.ua/](http://www.postup.lg.ua/)); **14) Sumy Civic Organization “Kalynove Grono”**, Сумська громадська організація «Калинове гроно», (<http://4family.org.ua/>); **14) Sumy Oblast Civic Organization, Center of Civic Initiatives “Intellect of Sumy Region”**, Сумська обласна громадська організація «Центр громадських ініціатив «Інтелект Сумщини» (<http://intellect.sumdu.edu.ua/>); **15) Kharkiv Oblast Foundation “Civic Alternative”**, Харківська обласна фундація «Громадська Альтернатива» (<http://www.childrights.in.ua>); **16) Kharkiv Institute of Social Research**, Харківський інститут соціальних досліджень (<http://khisr.kharkov.ua/en/>); **17) Human Rights Information Centre**, Центр інформації про права людини, (<https://humanrights.org.ua/en>); **18) Association of Young Professionals “Class”**, Асоціація молодих професіоналів «Клас» ([http://www.childrights.in.ua/Asocacja\\_molodix\\_profesonalv\\_Klas](http://www.childrights.in.ua/Asocacja_molodix_profesonalv_Klas)).

#### **IV. Stakeholders – Organizations working in the area of HIV/AIDS**

See the *Directory of Organizations Working in the Field of HIV/AIDS* prepared by the International Charitable Foundation “International HIV/AIDS Alliance in Ukraine” (Alliance Ukraine). The Directory consists of supplemental and contact information about Government executive bodies, Committees of Verkhovna Rada (the Parliament) of Ukraine, State social service for family, children and youth and other organizations working in the area of HIV/AIDS. The Directory is available at <http://www.aidsalliance.org.ua/cgi->

**V. Stakeholders – Organizations that provide support to refugees and internally displaced persons (IDPs)<sup>404</sup>**

**1) International Organization for Migration (IOM)**, Mission in Ukraine, (<http://www.iom.org.ua/>); **2) The UN Refugee Agency (UNHCR), Mission in Ukraine** (<http://unhcr.org.ua/en/>); **3) Crimea SOS, legal and social support for internally displaced persons** ([www.krymsos.com/en/](http://www.krymsos.com/en/)); **4) International Fund for healthcare and environment protection “Carpathian Region” (NEEKA)**, (<http://neeka.org/en.html>); **5) Civic Organization “April 10”** (<http://www.desyatekvitnya.com/>); **6) Charitable organization, Kharkiv Charitable Fund “World”** (tel.: +38 (057)756-45-72, tel.: +38 (057)756-01-88).

**SECTION 4.**

- *Situation of the NGO scene: e.g. Is safeguarding a new topic? Is the topic of safeguarding already an issue? Are there any campaigns/lobbying ongoing relevant to safeguarding?*

The topic of safeguarding is not new in Ukraine. It remains an important issue in relation to many groups traditionally qualified as vulnerable by national law (elderly, children deprived of parental care, victims of domestic violence, people with disabilities etc.) and newly qualified categories like IDPs and children who suffered due to a military conflict.<sup>405</sup>

The importance of safeguarding is addressed in ongoing campaigns, some of which are mentioned below.

**1) National Campaign “16 Days of Activism against Gender Based**

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<sup>404</sup> See key messages on internal displacement in Ukraine prepared by UNHCR, available at <http://unhcr.org.ua/attachments/article/317/2016%2011%20UNHCR%20UKRAINE%20Key%20Messages%20Briefing%20Note%20FINAL%20EN.pdf>, last accessed on 11.02.2017.

<sup>405</sup> The amended version of the Law of Ukraine “*About protection of childhood*” contains *Article 30*, which envisages a new category such as children in a war zone and military conflicts, and children who suffered due to military activities and military conflicts. Закон України «Про охорону дитинства», (ВВР, 2001, № 30, ст.142), at <http://zakon3.rada.gov.ua/laws/main/2402-14>, last accessed on 27.02.2017.

**Violence**” in Ukraine. (<http://www.un.org.ua/en/information-centre/news/3989-16-days-of-activism-campaign-in-ukraine-additional-materials>). As of November 25 during the 16 days of activism, events are organized in all parts of Ukraine to draw attention to the issue and stimulate action.<sup>406</sup>

**2) National Campaign against Discrimination** was initiated by a Coalition of Ukrainian civic and charitable organizations that would like to educate young people how to address the issue of discrimination in the everyday life.<sup>407</sup>

**3) National Campaign ‘You are among friends. Let’s be together’.** The Campaign is organized by the UNICEF Office in Ukraine in cooperation with the Ministry of Temporarily Occupied Territories and Internally Displaced Persons, and the Office of the United Nations High Commissioner for Refugees (UNHCR) to help displaced children from areas affected by the military conflict integrate in new setting, raise awareness on available services, including psychological support, for conflict-affected families. The Campaign is aimed at alleviating tensions between displaced people and host communities.<sup>408</sup>

**4) National Campaign for social inclusion and cohesion “We need Each Other”.** The Campaign was launched by the United Nations Development Program (UNDP) Office in Ukraine to foster mutual understanding, inclusion and social cohesion in communities. It will also raise awareness about the challenges and hardships that Internally Displaced Persons (IDPs) face when seeking housing, employment and a place in their new community.<sup>409</sup>

**5) International Campaign “Emergency Lessons”** organized by the European Union and the UNICEF Office in Ukraine to share personal

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<sup>406</sup> For more information see the UNDP Ukraine factsheet, available at <https://goo.gl/Xijkmm>, last accessed on 26.02.2017.

<sup>407</sup> More information about the Campaign is available in Ukrainian at <http://discrimi.net/>, last accessed on 26.02.2017.

<sup>408</sup> More information about the Campaign is available at [https://www.unicef.org/ukraine/media\\_29928.html](https://www.unicef.org/ukraine/media_29928.html), last accessed on 26.02.2017.

<sup>409</sup> More information about the Campaign is available at <http://www.un.org.ua/en/information-centre/news/3987-we-need-eachother-join-the-national-campaign-for-social-inclusion-and-cohesion>, last accessed on 26.02.2017.

stories of children living through an emergency caused by the military conflict in eastern Ukraine. The Campaign is aimed at showing how important it is to continue education even in situations of emergency.<sup>410</sup>

**6) Global Advocacy Campaign “Support. Don’t Punish”**, which calls for better drug policies that prioritize public health and human rights. The campaign aims to promote drug policy reform, and to change laws and policies which impede access to harm reduction interventions.

In Ukraine, the Campaign is organized with support of the International HIV/AIDS Alliance in Ukraine and the Eurasian Network of People Who Use Drugs (ENPUD) in order to support the continuation of the methadone program, attract public attention to repressive drug policies in Ukraine and persecution of drug users in occupied Crimea and eastern Ukraine.<sup>411</sup>

## SECTION 5.

- *Assessment and recommendations (identification of gaps and challenges related to safeguarding and protection of children and vulnerable adults).*

Based on the assessment of the national legislation, this country report identifies *three general challenges* and illustrates them by giving specific examples of loopholes and legal issues related to safeguarding and protecting such vulnerable groups as *IDPs, children affected by the military conflict, representatives of minorities* etc.

**Challenge 1:** *Capacities of the state have been significantly weakened*<sup>412</sup> due

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<sup>410</sup> See the UNDP Ukraine website at <http://www.un.org.ua/en/information-centre/news/3853-emergencylessons-campaign-highlights-importance-of-education-for-children-in-conflict-and-disaster-zones> and the EU website at [http://ec.europa.eu/echo/resources-campaigns/campaigns/emergencylessons\\_en](http://ec.europa.eu/echo/resources-campaigns/campaigns/emergencylessons_en), last accessed on 26.02.2017.

<sup>411</sup> More detailed information about the Campaign is available at <http://supportdontpunish.org/country/ua/>, last accessed on 26.02.2017.

<sup>412</sup> However, it does not relieve Ukraine of its responsibility to protect vulnerable groups even in times of austerity. The Committee on Economic, Social and Cultural Rights notes in its General Comment # 3 “that even in times of severe resource constraints whether caused by a process of adjustment, of economic recession, or by other factors the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes.” *General Comment No. 3, The Nature of States Parties Obligations, art. 2, para. 1 of the Covenant; adopted 14 Dec. 1990, available at*

to the ongoing military conflict in eastern Ukraine<sup>413</sup> and the illegal annexation<sup>414</sup> of Crimea by Russia.

According to an Analytic Report prepared by Ukrainian Think Tanks, “[t]he conflict in the East has exacted a heavy toll on the Ukrainian economy due to the loss of major industrial centres and fertile agricultural land.”<sup>415</sup> Besides the economic impact, the military conflict affected numerous vulnerable categories of population. UN reports show that approximately 1,7 million children suffered from the conflict.<sup>416</sup> According to the recent estimates of the International Organization for Migration (IOM) and the Ministry of Social Policy, “[t]he total number of internally displaced persons (IDPs) from Crimea and Eastern Ukraine is 1,641,895 as of 30 January 2017.”<sup>417</sup> Under these circumstances, the Government is often not capable of implementing safeguarding policies under the national legislation. In particular, the state budget contains little funds to combat trafficking in human beings and support *victims of human trafficking*.<sup>418</sup> In 2013, the Government has adopted the National Strategy on the integration of the *Roma population* into the Ukrainian society until 2020. However, no funds were allocated in the state budget to

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<http://www.refworld.org/docid/4538838e10.html>, last accessed on 27.02.2017.

<sup>413</sup> See Thematic Reports, the OSCE Special Monitoring Mission to Ukraine, available at <http://www.osce.org/ukraine-smm/156571>, last accessed on 26.02.2017.

<sup>414</sup> The UN General Assembly Resolution ‘Territorial Integrity of Ukraine’, 27 March 2014 calling upon States not to Recognize Changes in Status of Crimea Region, available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/68/262](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/262), last accessed 26.02.2017.

<sup>415</sup> Think Tanks Report „*Not So Quiet on the Eastern Front: An Audit of the Minsk Agreements and Ukraine’s Reintegration Options*”, October 2016, available at <https://drive.google.com/file/d/0B9hjPQHwO4IMQnRsbXBTRmNiTWc/view>, last accessed on 23.02.2017.

<sup>416</sup> See UNICEF Report, “Number of Ukrainian children needing aid nearly doubles to 1 million over the past year”, available at [https://www.unicef.org/media/media\\_94886.html](https://www.unicef.org/media/media_94886.html), last accessed on 23.02.2017.

<sup>417</sup> See the Report on IOM's assistance to conflict-affected people in Ukraine, January 2017, available at [http://www.iom.org.ua/sites/default/files/iom\\_ukraine\\_assistance\\_report\\_january\\_2017\\_eng.pdf](http://www.iom.org.ua/sites/default/files/iom_ukraine_assistance_report_january_2017_eng.pdf), last accessed on 24.02.2017.

<sup>418</sup> The IOM research shows that “over 160,000 Ukrainians became victims of human trafficking since 1991, which makes Ukraine one of the largest source countries for trafficking in human beings in Europe.” See the IOM data on human trafficking in Ukraine, available at <http://www.iom.org.ua/en/combating-human-trafficking>, last accessed on 24.02.2017. However, according to the 2015 Shadow Report prepared by a coalition of stakeholders in the framework of the Universal Periodic Review (UPR), the Government of Ukraine allocated only 5,080 EUR for the implementation of the *State Program against Human Trafficking* and 15,000 EUR for victims of trafficking in human beings. The 2015 Shadow Report is available at [http://helsinki.org.ua/wp-content/uploads/2017/02/UPR\\_Ukraine\\_Stakeholders\\_Mid-Term\\_FullReport\\_2015\\_ukr.pdf](http://helsinki.org.ua/wp-content/uploads/2017/02/UPR_Ukraine_Stakeholders_Mid-Term_FullReport_2015_ukr.pdf), last accessed on 24.02.2017.

actually enforce the Strategy and its Action Plan.<sup>419</sup> Lack of state funding for these and other safeguarding measures aimed at protecting vulnerable groups demonstrates that the Government of Ukraine is often not capable of implementing its own policies.

**Recommendation:** An independent monitoring mechanism can help identify gaps in state resources that should be allocated for safeguarding of children and vulnerable adults in Ukraine. The international community and private donors could use the same mechanism to determine the scope of their cooperation and assistance to the Government of Ukraine.

**Challenge 2:** State organs responsible for safeguarding policies are often plagued with *embedded formalism*, which tends to disregard the logic of rights guaranteed by law and focus rather on excessive procedural formalities that render the very same rights inoperable.

Ukraine has numerous laws and regulations that outline safeguarding policies aimed at protecting children and vulnerable adults. However, besides the lack of state funding, many safeguarding policies are unenforceable in practice due to contradicting procedures and administrative practices that prevent representatives of vulnerable groups from effectively exercising their rights and protecting their legitimate interests. A good example of such a formalistic approach would be the situation with Internally Displaced Persons (IDPs). According to *Article 9* of the Law “About the protection of rights and freedoms of internally displaced persons (IDPs)”,<sup>420</sup> IDPs have the right to receive humanitarian or other types of aid. However, the Decree of the Cabinet of Ministers of Ukraine envisaged a very lengthy and complex procedure, which made it difficult to receive such aid. IDPs’ children, whose parents live separately and who reached the age of sixteen, often cannot

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<sup>419</sup> See a report on the civic monitoring over the situation with the state policy for Roma, available at [http://www.irf.ua/knowledgebase/publications/stan\\_realizatsii\\_derzhavnoi\\_politiki\\_schodo\\_romiv/](http://www.irf.ua/knowledgebase/publications/stan_realizatsii_derzhavnoi_politiki_schodo_romiv/), last accessed on 24.02.2017.

<sup>420</sup> Закон України «Про забезпечення прав і свобод внутрішньо переміщених осіб» (Відомості Верховної Ради (ВВР), 2015, № 1, ст.1), available at <http://zakon5.rada.gov.ua/laws/show/1706-18>, last accessed on 11.02.2017.

receive their first passport, because state authorities demand that both parents provide their passports.<sup>421</sup> Although the applicable Decree<sup>422</sup> of the Ministry of Interior does not require original identification documents or copies of passports from both parents, the State Immigration Service requests original passports of both parents to issue a passport to a sixteen year old person, whose parents are IDPs.<sup>423</sup> Therefore, the formalistic approach of state institutions and their administrative practices often prevail over rights guaranteed by the national legislation.

**Recommendation:** In order to expose formalistic practices of state organs, representatives of vulnerable groups should have more opportunities to complain<sup>424</sup> about violations of their rights and legitimate interests before national and international institutions.

**Challenge 3:** Ukraine has not yet brought its national legislation fully in line with *international standards* on safeguarding vulnerable groups by failing to implement recommendations, opinions and judgments delivered by international institutions.

Ukraine is still lagging behind in the implementation of international standards on safeguarding rights of vulnerable persons. In this regard, the Government does not take effective measures to enforce judgments delivered

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<sup>421</sup> See Maria Yasenovska and Anastasia Bondarenko's Report "Children's Rights" from 07.02.2017, the Ukrainian Helsinki Human Rights Union, available at <http://helsinki.org.ua/prava-dytny-m-yasenovska-a-bondarenko/>, last accessed on 11.02.2017.

<sup>422</sup> Міністерство Внутрішніх Справ України, Наказ № 320, 13.04.2012, «Про затвердження Порядку оформлення і видачі паспорта громадянина України», <http://zakon3.rada.gov.ua/laws/show/z1089-12>, last accessed on 24.02.2017.

<sup>423</sup> See Maria Yasenovska and Anastasia Bondarenko's Report "Children's Rights" from 07.02.2017, the Ukrainian Helsinki Human Rights Union, available at <http://helsinki.org.ua/prava-dytny-m-yasenovska-a-bondarenko/>, last accessed on 11.02.2017.

<sup>424</sup> It does not relieve Ukraine of its obligation to investigate human rights violations even in the absence of a formal complaint. ECtHR reasoned in its case law that "even in the absence of an express complaint, an investigation should be undertaken if there are other sufficiently clear indications that...[grave violations] might have occurred." See Case of *97 Members of the Gldani Congregation of Jehovah's Witnesses and 4 other v. Georgia*, no. 71156/01, § 97, 3May2007, available: <http://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2271156/01%22%2C%22itimid%22:%5B%22001-80395%22%5D%7D>, last accessed on 28.02.2017.

by the European Court of Human Rights (ECtHR) in relation to Ukraine.<sup>425</sup> Furthermore, Ukraine has not fulfilled a number of recommendations given in the framework of the *Universal Periodic Review (UPR)*.<sup>426</sup> In particular, Ukraine has not yet ratified the *Rome Statute of the International Criminal Court (ICC)*, which would give an opportunity to investigate grave crimes committed against various vulnerable groups including children.<sup>427</sup> Though Ukraine ratified the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*,<sup>428</sup> the national legislation does not envisage an opportunity to apply the Protocol directly in Ukrainian courts. Furthermore, the Parliament of Ukraine has postponed several times the ratification of the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*.<sup>429</sup> Despite international recommendations,<sup>430</sup> Ukraine has also not yet ratified the Council of Europe *Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)*.<sup>431</sup> These and other issues related to the implementation of international standards on safeguarding children and vulnerable adults require urgent measures that

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<sup>425</sup> In the beginning of 2016 the ECtHR received 14,250 complaints against Ukraine, 9,000 of which are related to ECtHR's judgments that have not been implemented by Ukraine. See Iryna Yakovets' Report "Prisoners' Rights" from 27.12.2016, the Ukrainian Helsinki Human Rights Union, available at <http://helsinki.org.ua/prava-v-yazniv-i-yakovets/>, last accessed on 11.02.2017.

<sup>426</sup> See Recommendations provided to Ukraine in the framework of the UPR, at [https://www.upr-info.org/database/index.php?limit=0&f\\_SUR=All&f\\_SMR=183&order=&orderDir=ASC&orderP=true&f\\_Issue=All&searchReco=&resultMax=300&response=&action\\_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly](https://www.upr-info.org/database/index.php?limit=0&f_SUR=All&f_SMR=183&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly), accessed 24.02.2017.

<sup>427</sup> See Iryna Yakovets' Report "Prisoners' Rights" from 27.12.2016, the Ukrainian Helsinki Human Rights Union, available at <http://helsinki.org.ua/prava-v-yazniv-i-yakovets/>, last accessed on 11.02.2017.

<sup>428</sup> Факультативний протокол до Конвенції про права дитини щодо участі дітей у збройних конфліктах ( *Протокол ратифіковано із заявою Законом, N 1845-IV від 23.06.2004, BBP*), available at [http://zakon2.rada.gov.ua/laws/show/995\\_795](http://zakon2.rada.gov.ua/laws/show/995_795), last accessed on 24.02.2017.

<sup>429</sup> Contracting states to the Convention, at <https://www.hcch.net/en/instruments/conventions/status-table/?cid=69>, last accessed on 24.02.2017.

<sup>430</sup> See the Media Briefing at the Verkhovna Rada of Ukraine on the ratification of the Istanbul Convention, 16 June 2016, available at <http://www.coe.int/en/web/stop-violence-against-women-ukraine>, last accessed on 24.02.2017.

<sup>431</sup> See the Chart of signatures and ratifications of the Convention as of 24.02.2017, available at [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures?p\\_auth=4AdkLo1u](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures?p_auth=4AdkLo1u), last accessed on 24.02.2017.



should be taken by the Ukrainian Parliament and the Government of Ukraine.

**Recommendation:** The Government of Ukraine should closely cooperate with international partners and national civil society organizations to fulfil its international duties and obligations.

**Conclusions:** Although the Ukrainian legislation contains various laws and regulations on safeguarding policies, the economic and social consequences of the ongoing military conflict, the embedded formalism of state institutions and the incompatibility of national law with key international standards present a significant challenge in protecting rights and legitimate interests of children and vulnerable adults in Ukraine.