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## **DON'T CLOSE THE DOOR, I AM JUST A CHILD!**

Analysis on the protection of children at risk of falling into conflict with the law and children in conflict with the law without criminal responsibility (under the age of 14)

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**Author:**  
**Armen Mustafa, PhD C.**

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Photo: Kushtrim Tërnavë

Street: Zenel Salihu  
Ob.1, Hy.1, K.3, Nr.16, 10000  
Pristina, Kosovo  
[info@komfkosova.org](mailto:info@komfkosova.org)  
[www.komfkosova.org](http://www.komfkosova.org)  
Facebook: KOMF  
Twitter: @komfkosova

# **DON'T CLOSE THE DOOR, I AM JUST A CHILD!**

**ANALYSIS ON THE PROTECTION OF CHILDREN AT RISK OF FALLING INTO  
CONFLICT WITH THE LAW AND CHILDREN IN CONFLICT WITH THE LAW  
WITHOUT CRIMINAL RESPONSIBILITY (UNDER THE AGE OF 14)**

**January 2015, Pristina**







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- Non-governmental organizations

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Sincerely,  
Blerta Perolli Shehu  
President  
Coalition of NGOs for Child Protection

## Abbreviations

<b>MDE</b>	Municipal Directorate of Education
<b>SC</b>	Steering Committee
<b>CRC</b>	Convention on the Rights of the Child
<b>JJC</b>	Juvenile Justice Code
<b>KOMF</b>	Coalition of NGO for Child Protection
<b>LPUE</b>	Law on Pre-University Education
<b>LSFS</b>	Law on Social and Family Services
<b>MEST</b>	Ministry of Education, Science and Technology
<b>MLSW</b>	Ministry of Labor and Social Welfare
<b>MDHSW</b>	Municipality Directorate for Health and Social Welfare
<b>NGO</b>	Non-Governmental Organization
<b>GA</b>	Guardianship Authority
<b>IEP</b>	Individual Education Plan
<b>KP</b>	Kosovo Police
<b>SOP</b>	Standard Operating Procedures
<b>CSW</b>	Centre for Social Work
<b>AI</b>	Administrative Instruction



## Executive summary

The analysis on the protection of children at risk of falling into conflict with law and children in conflict with the law without criminal responsibility (under the age of 14), comes as a result of an increasing phenomenon of children behaviors contrary to social rules and norms.

The main objective of this analysis is to provide an overview of the situation and the legal framework, gaps and challenges of its implementation in the field of prevention, protection and reintegration of children who are at risk or in conflict with the law without criminal responsibility.

The whole set of primary and secondary legislation related to children who are at risk or in conflict with the law without criminal responsibility has been reviewed, during the drafting process of this analysis. In addition, various stakeholders from institutions mandated to protect children, have been interviewed to obtain their views. These interviews have been conducted with the Centers for Social Work, Kosovo Police, Municipal Directorates of Education, and NGOs in four main centers: Pristina, Peja, Prizren and Ferizaj. The analysis has also taken into account the views of persons who themselves are subjects of the analysis, interviewing children at risk of falling into conflict with the law, children in conflict with the law without criminal responsibility and their parents.

The findings of this analysis indicate that there are legal provisions that enable the treatment and protection of children without criminal responsibility, who have committed criminal offenses, or who are at risk of falling into conflict with the law. However, the current legal framework does not define specific services for such children, except for those generally provided for various categories that are in social need and at the same time doesn't explicitly assign any institution to work with the prevention of this phenomenon. Individual and family counseling is the main service provided to these children (in both CSW and schools, where there are psychologists).

Practice shows that such services are inadequate and often ineffective in the prevention, protection and reintegration of children who are at risk or in conflict with the law without criminal responsibility. This is because cases are often repeated, they remain open for extensive periods and ultimately move to age of criminal responsibility (14 years), when they start to be treated by the justice and order authorities.

Also, the analysis findings indicate that there is a relatively small number of cases referred to the CSW, especially from schools. Police is the institution which refers most cases to the CSW. Other institutions (health, etc.), parents and the community in general, refer only a symbolic number of cases to CSW. This means that the community and institutions with the mandate to protect children in the local level are not sufficiently familiar with the legislation on child protection in general; they don't know the legislation from other areas and often the legislation of the respective field. The situation in schools is not better. Most schools have a lack of psychologists and professional services. In addition, most of the mechanisms established in schools (Steering Committee, Students Council, Parents Council), Codes of Conduct and Internal Regulations of schools, either do not exist, or where they do they are not applied. This makes the cooperation with parents and the community inadequate and therefore their capacity towards prevention, protection and reintegration of these children is not utilized.

Cooperation between institutions on case management of children at risk or in conflict with the law, is not at an appropriate level. There is a reaction from their side when a case happens, especially when it goes beyond the size of an institution (more serious cases), but cooperation, communication and accountability is at a very low level when it comes to activities aimed at the prevention and reintegration of children.

## Working methodology

In accordance to the Methodological Instructions, the following research methods have been used:

- a. Legislation analysis;
- b. Analysis of the relevant documents and literature;
- c. Semi-structured interviews with representatives from institutions, children, parents and the civil society.

## Realization of questionnaires

- Interviews have been conducted with representatives of institutions which have the mandate to protect children at risk or in conflict with the law without criminal responsibility as well as with local and international NGOs that work with children – 2;
- Children in conflict with the law without criminal responsibility – 3;
- Parents of children who are at risk or in conflict with the law without criminal responsibility – 4;
- Officials of Social and Family Services from CSW – 8;
- Community Police Officers – 4;
- Officials of Municipal Directorates of Education (MDE) – 4;
- UNICEF officials – 1;
- NGO “Terre des hommes” – 1;
- NGO “Eye of Vision” – 1.

## Geographical coverage

- Interviews and questionnaires have been conducted in four municipalities of Kosovo: Pristina, Peja, Prizren and Ferizaj.





# Chapter 1

## Legislation

Children comprise a specific and vulnerable part of the society, therefore special attention is paid in the protection of their rights, both in the international as well as the domestic legislation of each country.

## Convention on the Rights of the Child - CRC

In terms of international instruments, the Convention on the Rights of the Child (hereinafter CRC), is the fundamental document that outlines and protects the rights of children in general. According to CRC, “the term child means any person under the age of 18, except when the respective legislation provides that adult age is attained earlier<sup>1</sup>”.

Therefore, given that the practice sees many cases where children have conduct a behavior contrary to the law, or are at risk for such a thing, CRC determines who is considered a child, but moreover includes special provisions to protect the rights of children in conflict with the law<sup>2</sup>, requiring state parties to “set a minimum age below which children are unable to commit a criminal offence”<sup>3</sup>. However, “the beginning of this age should not be set at an extremely low number, taking into account the facts of emotional, mental and intellectual maturity”<sup>4</sup>. This provision as well as many other provisions and procedures that define and clarify the rights of children in conflict with the law and their protection, are also found in many other international documents which were derived by CRC.

## Juvenile Justice Code

From the perspective of local legislation, as the subject of this analysis are children without criminal responsibility in conflict with the law and those whose conduct puts them at risk of falling into conflict with the law, there are several basic laws, as well as administrative instructions and other bylaws regulating the work with children without criminal responsibility in conflict with the law, or those who are at such risk, as well as procedures and services offered to them. Several pieces of legislation will be addressed herein, in terms of the possibility they provide for the prevention of this phenomenon.

Children rights and their protection are a constitutional category, defined in the Article 50 of the Constitution of Kosovo. Moreover, these rights are regulated with specific laws and bylaws, depending on the area related to the rights of the children. Based on the criminal legislation in Kosovo, namely the Criminal Code, the age of criminal responsibility is set at fourteen (14) years of age. This issue is further regulated by the Juvenile Justice Code (hereinafter JJC), according to which:

“1. Judicial proceeding shall not be initiated against a child under the age of fourteen (14) years. If the child is under the age of fourteen years at the time of the commission of the criminal offence, any proceedings that have been initiated shall be immediately terminated, and the Guardianship Authority shall be notified by the prosecutor”.

2. Guardianship Authority undertakes certain necessary steps in accordance with the Law on Family and Social Services based on their programs for treatment of juvenile criminal offenders under the age of fourteen (14) years.

<sup>1</sup> Convention on the Rights of the Child, Article 1

<sup>2</sup> Convention on the Rights of the Child, Articles 37 and 40

<sup>3</sup> Convention on the Rights of the Child, Article 40 (3) (a))

<sup>4</sup> Beijing rules, r. 1.1 to 1.3

This matter might be regulated in detailed way with bylaws that could be issued by the Ministry of Labor and Social Welfare<sup>5</sup>.

Thus, given that such children are under the age of criminal responsibility (under 14 years of age) and the Guardianship Authority (hereinafter GA)<sup>6</sup> is the responsible institution for the protection and treatment of these children, the work of such authority is thus regulated based on the Law on Social and Family Services (hereinafter LSFS), and the bylaw issued by the Ministry of Labor and Social Welfare (hereinafter MLSW). In this regard LSFS, in relation to children without criminal responsibility under the age of 14, recognizes the following two categories:

- Children criminal offenders, without a criminal responsibility, and
- Children with asocial behavior<sup>7</sup>

## Legislation in the area of social and family services

A more precise definition of such definitions is found in the Administrative Instruction No.08/2013 for the Treatment of Children Perpetrators of Criminal Acts without Criminal Responsibility and those with Asocial Behavior, issued by MLSW. According to this AI:

“Children without criminal responsibility are considered all children under the age of 14 who have committed a criminal offense and due to their age, a judicial proceeding may not be conducted, and where such procedure has started, it shall be terminated.”

“A child with asocial behavior is considered any child whose behavior is inconsistent with positive norms, but that has no elements of misdemeanor offense and criminal offense”.

“Asocial behavior is considered any repeated violation of social rules, contrary to the rules of authority, aggressive actions towards peers, family members, teachers and community members in general, petty theft, smoking and alcohol consumption, quarrels in family, escape from home, school dropout, wandering, unspecified categories, etc<sup>8</sup>”.

What stands out in the provisions of LSFS and AI No. 08/2013 issued by MLSW, in addition to definitions of concepts encountered in this AI, is that other provisions of this AI are a repeat of the provisions foreseen for these categories of children without a criminal responsibility under LSFS. In fact, the provisions of these two documents (as well as JJC) determine that the responsible authority for the protection and treatment of children criminal offenders without criminal responsibility and those with asocial behavior, is GA. This body, with the aim of protecting and ensuring a better treatment of children, cooperates with governmental and non-governmental organizations, educational institutions, healthcare institutions, police, families and the community. When dealing with children criminal offenders without criminal responsibility, GA is notified by the prosecutor, while for cases involving children with asocial behavior, cases in the GA, meaning the Centre for Social Work (hereinafter CSW), are referred by families, school, community, health institutions, probation service, police, NGOs, etc. When such cases are

<sup>5</sup> Juvenile Justice Code, no. 03/L-193, Article 41 (1) and 41 (2)

<sup>6</sup> Guardianship Authority is a professional municipal body working on social affairs, responsible for protecting the interests of children and adults, consisting of an expert group operating within the Centre for Social Work. Law Amending the Law on Social and Family Services, nr. 04/L-81, Article 1.7

<sup>7</sup> Law on Social and Family Services, no. 02/L-17, Article 11. A and 11. B (Law amending the Law no. 04/L-081, Article 11)

<sup>8</sup> MLSW, AI no. 08/2013 on Treating children criminal offenders without criminal responsibility and those with asocial behavior, Article 3

referred to the GA, a case manager<sup>9</sup> is appointed for each case referred. The manager then drafts the protection plan and creates a team for protection and treatment<sup>10</sup>.

Services that can be provided to children criminal offenders without criminal responsibility and those with asocial behavior are regulated by LSFS, according to which, people in need can be provided social and family services such as direct provision of social care, or in special cases, material assistance for persons in social need<sup>11</sup>.

What is worth to highlight on a positive note regarding the legal provisions in LSFS, is the fact that the protection and treatment of children at risk or conflict with the law is aimed to occur in the system, considering the children's behavior as a result of what happens in their social circles and treating such problems together with their circle (parents, family, schools, other institutions, community, etc.).

Another positive aspect of the LSFS, but also of the AI No. 08/2013 issued by the MLSW, has to do with the preventive approach the law takes regarding children without criminal responsibility. This applies particularly to provisions dealing with "children with asocial behavior," which in fact are children who are at risk of having their behavior in contradiction with the law in the future. Services that these children receive, are aimed to prevent such children in their rapid psycho-physical and social development, when change is still possible, it is easier and much faster.

Despite the positive side of these provisions in LSFS, however activation of the CSW under these provisions in these cases is only done when a behavior contrary to the law or social norms has occurred.

The application of such provisions to a large extent depends on the cooperation that CSW has with governmental and non-governmental institutions, particularly with schools, police, family and community. This is because the referral of children with asocial behavior to CSW depends on them. Also, this means that CSW has no mandate to work in cooperation with other institutions in the early identification of children at risk of falling into conflict with the law.

## Legislation in the Police area

The Law on Police No. 04/L-076 has no provisions that address the issue of children without criminal responsibility who are in conflict with the law, or those who are at risk for such a thing. However there are Standard Operating Procedures (hereinafter SOP) DDO - 04/041/2013, "Police Access to Cases of Juveniles" that provide for all responsibilities and procedures of KP with children in general, and specifically for children who are in conflict with the law or with asocial behavior, but are under the age of 14.

Under the provisions in such SOPs, in all cases involving children with asocial behavior, KP must notify the parents and the CSW<sup>12</sup>. In cases where children are suspected of having committed criminal offenses and are under the age of criminal responsibility, in addition to parents and CSW, they notify the prosecutor, however without filing criminal charges<sup>13</sup>.

<sup>9</sup> Law on Social and Family Services, no. 02/L-17, Article 11.A and 11.B (Law amending the law no. 04/L-081, Article 11)

<sup>10</sup> MLSW, AI no. 08/2013 on Treating children criminal offenders without criminal responsibility and those with asocial behavior, Article 4.1

<sup>11</sup> Law on Social and Family Services, no. 02/L-17, Article 1.3

<sup>12</sup> Kosovo Police, Standard Operating Procedures. Police access to cases involving juveniles DDO – 04/041/2013, E(1.3), F(1.2) and F(1.3)

<sup>13</sup> Kosovo Police, Standard Operating Procedures. Police access to cases involving juveniles DDO – 04/041/2013, F (1)



Moreover, under this SOP, KP is obliged to also work in preventing asocial behaviors, drafting comprehensive prevention plans, implementing projects in schools in cooperation with various institutions and NGOs in order to raise the awareness of youth and prevent negative phenomena in the society<sup>14</sup>.

## Legislation in the area of education

However, considering that the age of such children is under 14, it results that they are children of school age, under normal conditions children in primary schools. This means that schools as educational institutions are institutions with a primary responsibility, especially in the prevention of asocial behavior, for which children at risk of falling in conflict with the law or to commit criminal acts. However, when considering the basic law governing the education area at the pre-university education level, namely the Law on Pre-University Education in Kosovo, no. 04 / L-032, we realize there is no direct provision that addresses the issues of misbehavior and negative phenomena of children, which might cause a child to be in conflict of the law, or at risk thereof. However, this law addresses many issues related to the aspects of behavior and which indirectly affect the prevention of behavior contrary to established social norms.

These include provisions dealing with school attendance and prevention of dropout<sup>15</sup>, as well as promotion of cooperation of the school with students and parents through the establishment of various Councils: School Steering Committee (hereinafter SC), as the highest governing body of a school<sup>16</sup>, Student Councils<sup>17</sup> and Parent Councils<sup>18</sup>, the responsibility of which bodies is to protect the interests of children and parents in school. In addition, Article 22 of LAP provides that each school must have its own rules which are proposed by the SC of the school and approved by the Municipality. The purpose of such rules is to promote good conduct and to promote the concept of healthy schools and eliminate violence, but also the rights and obligations of students that are not provided under this law<sup>19</sup>. However, what is striking, both in AI 06/2014 of MEST, and Municipal Regulations on the Code of Conduct and discipline of students, as well as in its rules that are issued from schools with the approval of municipalities, is an approach to discipline in schools through the disciplinary measures of students in schools, rather than through a pro-social approach, through education as to how to behave in school, family, community and the society in general.

In relation to the prevention of negative phenomena in schools and the society, Article 23 of LAP provides the opportunity for extracurricular activities<sup>20</sup>. In addition, according to this law, Article 37.1 of LAP, municipalities can also hire professional services in school, including services related to: medical care, pedagogical and psychological support, as well as counseling and social services in school, where the duties and responsibilities of such services includes work with children with behavioral difficulties, parents and teachers, to overcome such difficulties<sup>21</sup>. Such a criterion is very strict in terms of today's social development through which we are going as a society. However, what is even worse from what is seen in practice, is the symbolic number of psychologists and pedagogues

14 Kosovo Police, Standard Operating Procedures. Police access to cases involving juveniles DDO – 04/041/2013, E(1.1 and 1.2)

15 Law on Pre-University Education in Kosovo No. 04/L-032, Article 15

16 Law on Pre-University Education in Kosovo No. 04/L-032, Article 17

17 Law on Pre-University Education in Kosovo No. 04/L-032, Article 18

18 Law on Pre-University Education in Kosovo No. 04/L-032, Article 19

19 Law on Pre-University Education in Kosovo No. 04/L-032, Article 22

20 For more information please see, MEST, AI no. 16/2014, on Extracurricular activities

21 For more information please see, MEST, AI no. 26/2013, on the Selection of staff for the provision of Professional services in Pre-University Education Institutions and MEST, AI. no. 34/2014, on the Functioning of Pedagogical-Psychological Service in Schools

employed in schools, which means that even under this criterion there are still no school psychologist and pedagogical staff in Kosovo's schools.

Finally, inclusion in education and society in general, is one of the guiding principles in Pre-University Education, according to which educational and/or vocational institutions should accommodate all children regardless of their physical, intellectual, social, linguistic conditions or other and should promote integration and contact between children<sup>22</sup>. This is also regulated in the AI No. 18/2013 on the Use of Individual Education Plans, according to which, the right to an Individual Education Plan (hereinafter IEP) "lies with a child who needs additional support in education as a result of the difficulty in access and participation, and when such difficulties affect the outcomes of general education, especially when the child has difficulties in learning due to the specific disability in learning or behavior and emotional development<sup>23</sup>. "Thus, this provision allows students who have particular difficulties in behavior and emotions, to use IEP as a unique educational approach within an inclusive general education, that would help them overcome their difficulties.

A novelty is the adoption of Regulation GORK - No. 21/2013 on the Protocol for the Prevention and Referral of Violence in the Institutions of Pre-University Education, adopted by the Government in June 2013.

This Protocol defines the obligations, clarifies the roles and procedures of institutions for the prevention, identification, data collection, referral, treatment and reporting of violence against children in pre-university institutions, and also strengthens inter-institutional and multidisciplinary cooperation to protect the rights of the child and protect children from violence<sup>24</sup>.

In accordance to the analyzed legislation, there is a number of provisions that allow the treatment and protection of children without criminal responsibility, who have committed criminal offenses, or who are at risk for such a thing. In addition, there are numerous legal provisions mandating various institutions to work in preventing such behavior of children and general negative phenomena that may affect children's lives. However, the actual legal framework does not define specific services for children who are at risk to fall into conflict with the law or those who are in conflict with the law without criminal responsibility, except for those services generally provided for children in need of protection and social services, and at the same time it does not explicitly mandate any institution to work in the prevention of such phenomenon.

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<sup>22</sup> Law on Pre-University Education in Kosovo No. 04/L-032, Article 40 (2.1)

<sup>23</sup> MEST, AI no. 18/2013, on the Use of Individual Education Plans, Article 3(20 and 3 (2.1)

<sup>24</sup> Article 1 Purpose and Scope of the Protocol



# Chapter 2

## Findings

## 2.1 Trend

- The number of children in conflict with the law without criminal responsibility during 2014, assisted by CSWs, is 721 children, while the number of children in conflict with the law without criminal responsibility during 2013, assisted by CSWs, is 599 children.
- The number of children at risk to fall into conflict with the law through their behavior during 2014, is 122 children, while during 2013 there were 91 children. Such cases are obvious especially in schools, but also out of them. However, there is only a relatively small number of these cases referred in the CSW, particularly from schools<sup>25</sup>.
- MDEs do not possess data on the cases when children behave contrary to the Code of Conduct and Rules defined by the school. But, according to MDEs, this trend is growing, particularly those acts related to violence in school, bullying, carrying cold weapons, school dropout, damaging the school property, etc. This is evidenced “by a research that we did for the MDE internal needs, it is noticed that we don’t have a positive situation in this direction, especially regarding school attendance”, says the official from the MDE in Pristina;
- Kosovo Police does not keep evidence (registers) for children who are at risk or who commit criminal offenses while being under 14 years of age even in cases when it deals with these children, since it is sanctioned in JJC. However, SOP referring to the police approach to minors, highlights that this phenomenon is growing and rather concerning<sup>26</sup>.

## 2.2 Profile of children

Disrupted relationships in family, domestic violence, divorces, single parent households, but also the lack of care and parenting skills as well as socio-economic conditions of households, are considered as key factors for children at risk or in conflict with the law without criminal responsibility. However, according to CSWs, cases of children belonging to households with better socio-economic conditions are not excluded.

The most characteristic behaviors of children, which are the reason for referral to CSW are: bullying, violence in school, school dropout, home abandonment, cutting class, theft, carrying cold weapons, etc.

For purposes of this analysis, children at risk or in conflict with the law without criminal responsibility and their parents, currently managed by the CSWs, have been interviewed. According to all interviews conducted with children, they share the same feature as they come from families with distorted relationships, domestic violence, single parent families, they lack care and parenting skills and come from families with poor socio-economic conditions.

<sup>25</sup> CSW in Ferizaj has provided complete data for the cases referred in the last 3 years, other partial data, mainly for 2014

<sup>26</sup> According to statistics provided by Kosovo Police, they include only cases of children above the age of 14 years, where a growing trend is noticed for the last 3 years even for these children

## 2.3 Terminology

The terminology is not unified; there exists a distinction in the terminology usage by institutions. Several institutions such as CSW, MLSW and Police use terms such as “Children perpetrators of criminal offenses without criminal responsibility” and “Children with asocial behavior”. While in the education field (such as schools, MDE, MEST) the used terms are “Problematic children”, “Children with problematic behavior”, “Children with behavioral difficulties”, “Children with behavioral disorder”.

## 2.4 Prevention

In general, preventive activities are absent. There are certain initiatives which are still disconnected and do not involve all the relevant stakeholders. Moreover, there are not joint planned and organized prevention programs that involve all institutions which are responsible for the protection and treatment of children.

There is a lack of organizing preventive activities by schools and MDEs. Generally, schools and teachers are focused in teaching activities based in the regular curricula, rather than in educational activities. The lack of custody class (paid) within the total number of allocated casses, reduces communication related to problems and negative phenomena which concern them. Leisure and extra-curricular activities are mainly focused in organizing particular events, celebrations, evenings or excursions, rather than organizing other activities aiming to raise awareness of students for such negative phenomena.

Occasionally Police engages in different prevention activities such as: lectures in schools, awareness raising campaigns in media and community, publication of brochures. The aim of these activities is to inform children and citizens in general on the consequences of specific negative phenomena in the society. Except cooperation with schools or NGOs, these activities are not conducted in cooperation with other institutions (CSW, etc).

In general, there are not planned activities consisting of activities toward prevention of this phenomenon. In this regard, “as a positive example, it is worth to mention the Municipalities of Gjakova and Pristina, which have already started to draft strategies for the security in schools, which aim to involve all relevant actors in the field of child protection”<sup>27</sup>.

## 2.5 Identification/ / Referral

There is no mechanism of institutions, especially schools for early identification of children who through their behavior are at risk of falling in conflict with the law. Usually these cases are identified only when rules are violated, in which cases the class guardian should be the one who initiates the case for further treatment. In cases when school has a school psychologist, the child is referred to the psychologist for treatment. In this regard, even in cases when children with behavior and emotional difficulties who are at risk or in conflict with the law are identified, “the Individual Education Plan is not used, because IEP is only used for children with special educational needs and not for these children”, thinks the education officer in Ferizaj, even though in most of cases due to their specific

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<sup>27</sup> Syri i Vizionit, quote



behaviors, these children have special educational needs.

Schools have the tendency to close the cases within their institutions and not to further refer them to the MDE, Police and CSW, without providing any specific service or treatment. “This happens because schools and their directors are afraid they might be accused of not succeeding at work and their image might be ruined”<sup>28</sup>. Only in the most severe cases which exceed school boundaries (often fatal cases), are referred to the MDE, Police and institutions, such as CSW.

Police is the institution which refers most cases to CSW. Cases are also referred by schools, although considering the number of such obvious issues in schools, the number of cases referred by schools is small. Referral by schools is higher where there are institutional working groups (Case Management Round Tables) supported by Terre des hommes and referral is also higher in urban areas schools comparing to village schools. In cases where children have committed a criminal offense, referral is done by the Prosecution. The number of cases referred from other institutions (health), as well as parents and the community is insignificant, although they all have the possibility of referral. There is an impression that in some cases, due to the failure to pay the night shift for CSWs social workers, the police only informs the parent, but not also the CSW.

The existing legal framework provides the procedures and services that CSW can offer when such cases occur, based on referrals that may come from other institutions. “There is a cooperation, but this is after the case occurs, rather than prior to occurrences”, said one of the interviewed social workers<sup>29</sup>. In addition, in most cases there is a conviction that other institutions (especially schools, except for the Police), but also parents and the community in general, are not aware on the possibilities to refer children at risk or in conflict with the law without criminal responsibility, to the CSW.

## 2.6 Current services

The current legal framework enables educational institutions and the CSW to deal with cases of children who based on their behavior are at risk of falling in conflict with the law.

Codes of Conduct and Internal Regulations issued by schools are key documents upon which the students are treated when they violate school rules and do not comply with the Code of Conduct. However, “in most cases, rules adopted by schools are not respected”<sup>30</sup>. Therefore, there is a tendency for municipalities to issue unique regulations which apply to all schools in the municipality. In general, the approach of such regulations is toward usage of disciplinary measures when students violate school rules, which disciplinary measures are not applied.<sup>31</sup>

Most of the mechanisms established in schools (Steering Committees, Students Council, Parents Council), in most schools are not functional. This also applies to Codes of Conduct and Internal Regulations of schools, which either do not exist, or when they do they are not applied. They are in place more as a formality. This happens also due to the lack of monitoring the work of such bodies from higher levels.

<sup>28</sup> MDE in Pristina, quote

<sup>29</sup> CSW in Pristina, quote

<sup>30</sup> MDE in Peja, quote

<sup>31</sup> MDE in Pristina, quote

## 2.6.1 The lack of specific services

The legal framework defines the age of 14 as the age of criminal responsibility. Therefore no judicial proceeding is conducted against children in conflict with the law without criminal responsibility, or they are terminated if initiated. This excludes procedures of the judiciary and law enforcement agencies on these children. CSW is the institution responsible for the protection and treatment of children at risk or in conflict with the law, without criminal responsibility, and that body must provide such protection and treatment in close cooperation with government and non-governmental institutions.

The legal framework does not define specific services for such children, except those generally offered on various categories that are in social need, and it doesn't assign any institution to work in the prevention of this phenomenon.

## 2.6.2 Individual and family counseling

The main social and family services offered to children at risk or in conflict with the law without criminal responsibility referred to CSW are individual and family counseling. A similar service is also provided by schools, those that have a school psychologist. Also, these children are allowed to return to school, if they agree; if considered necessary by the protection team established in the CSW, or the case manager after the assessment of the case they may propose the provision of Social Assistance; or even the removal of the child from home and his placement in shelter, referral for treatment in another institution (health psychologist, school, etc.). In addition, there are cases where services are linked with donors (NGOs), providing various courses (foreign languages).

Counseling has been primarily focused on what to do and what not, how parents should behave towards children, and how they should not behave. "They usually tell us how to behave, they tell the girl don't do this, don't do that", said an interviewed parent<sup>32</sup>. As such, counseling is not sufficient and inadequate.

## 2.6.3 Reintegration programs

Children interviewed said they had not taken part in any rehabilitation or reintegration program, since such programs were not even offered. Some cases have been referred to a psychologist of another institution for treatment, one of the cases was housed in a shelter (but then escaped), and some cases were referred to several Day Care Centers, or courses in collaboration with NGOs.

Some of the children interviewed also had unsuccessful requests towards social workers, such as their removal from the household as a result of domestic violence, and housing in a shelter. Some asked for courses (in music, acting, foreign languages), but they were not provided. "I like music, especially Rap music, and I wanted to go to a music course. I asked the CSW, but they don't offer such courses"<sup>33</sup>.

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<sup>32</sup> Parent interviewed in Ferizaj, quote

<sup>33</sup> Child interviewed in Peja, quote

However children and their parents generally consider their referral to CSW as useful, as they believe that the work of social workers has had a positive impact in their lives, at least for a certain period. Even though at the beginning didn't welcome the referral and were reluctant, now they have no difficulties, as they are treated well and with respect.

There are also cases when interviewed children stated that when they didn't follow their advices, social workers threatened them with "if this goes on, you will go to prison"<sup>34</sup>. The same applies to schools, namely school psychologist and school principals, who have threatened children with expelling them from school, "You have many absences and you are not stopping at all. For this we must expel you, there is nothing else to do", said one of the children interviewed<sup>35</sup>.

There are cases where children are labeled either by teachers, or their peers for their behavior or their nationality, which often prevented them in the process of reintegration into society. "In school, they call me a Roma and they accuse me to have broken a chair, but I have not broken the chair..." said one of the children interviewed.<sup>36</sup>

#### 2.6.4 Judicial and law enforcement treatment

Services provided for these children are not sufficient. Thus, the result of lack of services is the fact that "when these children pass the age of criminal responsibility, they continue as before", said an interviewed official from the CSW<sup>37</sup>. Adding the lack of an emergency fund, the lack of reintegration programs and the low level of cooperation with parents, it results that these services are not sufficient for children and because of that results are often missing. The cases often repeat, they remain open for too long and ultimately they pass the age of criminal responsibility (14 years), commit new criminal offenses and restart to be treated by the judicial and law enforcement authorities.

Of the children interviewed, two out of five of them have been re-integrated to some extent into everyday life, although they are still at risk as they still show visible signs of instability. However, for the other three, the services provided by CSW and other institutions have failed to be effective and were not successful to reintegrate them.

### 2.7 Challenges for case management

CSW, schools and institutions generally lack the professional capacity to treat children at risk or in conflict with the law without criminal responsibility. Interviewed social and family officials believe they lack the professional capacities to work with these children. "During this year we worked better with psychologists and this was a big help for us, as working with these children requires specialized staff" said a social worker interviewed in Pristina. This shows that CSWs do not have a profiled staff, they don't have specialized psychologists and social workers, to work with children.

<sup>34</sup> Child interviewed in Peja, quote

<sup>35</sup> Child interviewed in Ferizaj, quote

<sup>36</sup> Child interviewed in Prizren, quote

<sup>37</sup> CSW in Ferizaj, quote



Schools do not have sufficient capacities to manage students who are at risk or in conflict with the law. This is primarily due to the absence of professional capacities of teachers and other staff to manage them, lack of psychologists and pedagogues in schools; inadequate level of cooperation with parents and lack of their responsibility towards children; insufficient space in schools (work in three shifts), lack of spaces for organizing leisure activities, etc.

In addition there is a lack of other institutions for the treatment of children (mental health institutions for children and adolescents), institutions where children could be settled for a prolonged treatment or even for day care, etc. Even within different institutions there is a lack of professionals, mainly psychologists and social workers, such as in the Family Medicine Center, Police, but also at the Court and Prosecution Office.

## 2.8 Cooperation

Cooperation among institutions on the case management of children at risk or in conflict with the law, is not at an appropriate level. There is a reaction from their side when a case occurs, especially when it goes beyond the size of an institution (more serious cases), and they refer cases from one institution to another (usually school – Police – CSW). However, cooperation, communication and accountability are at a low level when dealing with activities aimed at prevention. Thus, institutions with a mandate in child protection at the local level often don't know or are not familiar with the legislation of other areas and even the one of the respective area, which regulates child protection field.

Cooperation of CSWs with the main responsible stakeholders for the protection of children at risk or in conflict with the law without criminal responsibility for the management of such cases is not in an adequate level. This cooperation is better in cases where there is a criminal offense or a misbehavior by a child or group of children. However, there is no coordination and cooperation between CSW and other institutions in the prevention of problems and negative occurrences in a society and in the process of reintegration of children. Cooperation is higher in the areas where there are working groups (Case Management Round Tables), which are a possibility to refer and treat cases in groups for the provision of services<sup>38</sup>.

The cooperation of the Police with institutions such as CSW, Schools, MDE, NGOs, etc. in the case management of children who are at risk or in conflict with the law is at an adequate level. However, this cannot be said for the cooperation with parents and the community in general, for which “we have many difficulties to identify and understand the age of the children, the parents are not found or do not reply<sup>39</sup>”, stated one interviewed police officer. In addition, the Police is usually called when a problem occurs, but only rarely is the police invited to school or another institution (except by an NGO), for a lecture or talk on a certain topic with children and parents.<sup>40</sup>

Cooperation of Schools and MDEs with other institutions (CSW, Police, NGOs), etc. to manage cases involving children at risk or in conflict with the law. This cooperation occurs only when these institutions are invited, when cases are referred to them or through the Case Management Round Tables. This cooperation is also inadequate with parents. Often there is a “lack of a mechanism that conditions parents to submit their contacts in school, as problematic students usually conceal such contacts”<sup>41</sup>.

<sup>38</sup> CSW in Pristina, quote

<sup>39</sup> Police in Peja, quote

<sup>40</sup> Police in Ferizaj, quote

<sup>41</sup> MDE in Prizren, quote

## 2.9 Case study

### Case study 1

*She is only 13 years old and attends the eighth grade in Peja. She lives with her two uncles, after her father has migrated to France while her mother divorced her father and married someone else. Repetition of violence against peers, bullying, appropriation of pocket money, damage of school property, cutting class, running away from home, wandering in streets, etc., are just some of the actions for which this girl, who is part of a “band” of children from Peja, was referred by police. On the other hand, her uncles are suspected to continuously use violence against her.*

*The girl herself says she informed CSW officials in Peja, asking them to take her away from her uncles’ home and send her in a shelter, as violence against her sees no end. “I asked them (CSW officials), to take me away from the house and send me in a shelter as I am being subject to domestic violence from them, morning to evening. Only when I go to school am I away from this violence, but CSW officials said that in order to go to a shelter I have to report my uncles, but I cannot do that, because they are the only ones who took care of me, I can’t...”, she told KOMF.*

*She said she likes to go to CSW because they have helped her go to a place free of violence against her – at school. She said she received the biggest assistance from her class teacher, who appointed her as class president. This makes her feel proud and she said she works hard to ensure that everything goes well in the class. As a child who knows what it means to have needs, she has a great desire to help children with special needs in her school.*

*“Ever since I was a child, when I was in kindergarten, I thought why the teacher was closer to some children than others, and I realized that this is because I simply lacked the motherly love. Now I know that children with special needs lack something (leg, eye, ear, etc.), and I lack the motherly love; so all of us lack something, and that is why I would like to help them,” she added.*

*The 13-year old girl from Peja says she wants to tell the School Director this wish, but she was never able to get his attention and that is why she is afraid to make such a proposal.*

*All this girl wants is not to be treated with physical and other types of violence. “I got used to being treated badly, but they can help me only when they treat me well, not in any other way,” she concludes her story to KOMF.*

## Case study 2

*Since more than 4 weeks he doesn't enjoy the right to be among his peers and classmates. N. from Prizren, was taken this right since the 7th grade, for a certain period, as the 14-year-old is accused of having damaged school property.*

*This is not the only burden, weighing over the 14-year-old. This young man no longer has the desire to return to school. There, he says he feels discriminated and humiliated. "In school they call me Roma and accuse of having broken a chair, but I haven't broken the chair," said N. indignantly.*

*His case, for damage of school property, referred by the prosecution is now in Court. While his family is in an average economic situation, he said he got his only social support in the Center for Social Work in Prizren. Problems of N. with the school began last year. CSW intervened in school to discuss the situation with the then Director and the main class teacher, in the very first year when problems emerged, in order to create a more hospitable environment for the child, and to awaken his desire to return to class.*

*However, the main problem turned out to be that the child is stereotyped as Roma community. Even after numerous attempts of the CSW and the boy's family, his relationship with the school were broken again this year as the new director, in front of the boy, humiliated the boy's father. In fact, this was the time when the boy showed the first signs of stutter.*

*The child has not been provided any service yet, because he was made possible to go to school until the beginning of this year. Meanwhile, the next proposal by CSW was for him to join the daily activities of the PEMA – Day Care Centre in Prizren. Last year, however, at the request of the Prosecutor, the boy was included in a group therapy where he became part of a gathering for the protection of children with asocial behavior.*

*N. stated himself that he finds tranquility in CSW, where he talks more freely because they understand that it was not always his fault. Moreover, he said that they often helped him to fix his relations in school and at home.*

*However, he stated that his biggest wishes are to travel more, have friends and not be prejudiced. He said he was disappointed with the environment in Kosovo. "I will never love the teacher and I do not want to go to school", were just some of his thoughts.*

*He joyfully remembers that sometimes he received the highest mark in school, but now that it has been a while since he is not going to school, he feels ashamed to continue. "When I grow up I will leave Kosovo and will go to Germany", was the last wish he stated to KOMF and the Center for Social Work.*

## Conclusion

There is a growing trend of cases of children who are at risk of falling into conflict with the law, and those who are in conflict with the law without criminal responsibility (under 14 years of age). This phenomenon is particularly evident in schools, but also outside of them.

There are no special services offered for the cases referred to CSW, or in general for children who are at risk or in conflict with the law without criminal responsibility. This makes the current services inadequate and their impact is small in prevention, protection and reintegration of children.

This situation necessitates new services, whose main goal would be to prevent, protect and reintegrate children who are at risk or in conflict with law without criminal responsibility.

In this regard it is very important to empower the CSW, as the authority responsible for the protection of children, in order to provide quality services in general, and for these children in particular. In addition, it is particularly important to strengthen the pedagogical-psychological service in schools, as well as other mechanisms provided by law in schools (Steering Committee, Student Councils and Parent Councils), the main purpose of which is to promote the cooperation of the school with students, parents and the community, and ensure joint decision-making.

Development of new services, strengthening institutions and increasing cooperation between institutions make it possible in the future to reduce the number of children that would be in conflict with the law even after the age of 14 years, respectively decrease recidivism and crime in general in the society.

Institutions must invest in leisure infrastructure, sport, cultural and psycho-educational activities in addition to those in schools.

Investing in this age and focusing on prevention, will, in the long term, cost less to the state than investing in older age groups.



# Chapter 3

## Recommendations

## General recommendations

- It is very important to define a unified terminology for these children, based on the terminology determined according to international standards and criteria. Institutions such as CSW, MLSW, and the Police use terms “children perpetrators of criminal offenses without criminal responsibility” and “child with asocial behavior”. However, in education (in schools, MDE, MEST) terms used are “problematic children”, “children with problematic behavior”, “children with behavioral difficulties”, “children with behavioral disorders”;
  - Amend the legislation framework on the field of social services, to enable children who are at risk of falling into conflict with the law or in conflict with the law without criminal responsibility, to be provided psycho-social safeguards, which may be: educational measures, healthcare (mental health), social, psychological counseling, supervision, reintegration programs and other protective measures;
  - Legislation must also provide for the issuance of such measures for parents of children who are at risk or in conflict with the law, if they do not ensure adequate exercise of parental responsibilities towards children;
  - Establish a Coordination Mechanism of the local level (merging all existing overlapping mechanisms), which would consist of institutions with a mandate to protect children. This mechanism will urge communication between these institutions (CSW, School, Police), coordinate activities for child protection, and ensure a higher accountability for the tasks and responsibilities they have in this field;
  - Children who are at risk or in conflict with the law, have a potential they can’t express in the surrounding environment, thus, investment in sport, culture, art is the best and most promising long term cure of a society. Municipalities must promote and invest in programs for their reintegration;
  - Organization of joint trainings and workshops for all institutions with a mandate in child protection, in order to build the institutions capacities to better acknowledge the work of each other, and legislation in regard of child protection;
  - Develop an Inter-institutional Prevention Strategy. This strategy should also envisage awareness programs, programs for early identification of children who may be at risk of falling into conflict with the law, as well as intervention programs ensuring efforts to educate and treat persons who have already committed violations and are in conflict with the law, in order not to repeat their behavior and reintegrate them in the society. These programs must be certified and included in the pre-university education curriculum.
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## Recommendations for MEST and MDE

- Schools must concentrate in early identification of children who are at risk to behave in contrary to defined norms and rules. In this regard, capacity building of pedagogical-psychological service for the assessment of children, is a necessity. Employment of psychologists, pedagogues or social workers by municipalities is a nowadays need;
- Strengthening various mechanisms in schools, which promote decision-making and cooperation of schools with students, parents and the community, such as the School Steering Committee, Parents Council and Students Councils. These mechanisms can then develop and monitor the implementation of Codes of Conduct and Internal School Regulations, to promote the rights and responsibilities of students, inclusion in education, as well as alternative forms of education for children who behave contrary to such rules. The introduction of mediation in schools between students (peer to peer), is a good way to resolve conflicts at school;
- Building professional capacities in schools, through training the teachers and other school staff to manage the behavior of “difficult” children;
- Implementation of the Regulation QRK-Nr. 21/2013 on the Protocol for the Prevention and Referral of Violence in Pre-University Institutions.

## Recommendations for MLSW and MDHSW

- Strengthening of the CSW through profiling staff members to work with children in general, including those that are in conflict with the law without criminal responsibility and those who are at risk of falling in conflict with the law;
  - Develop special programs for the reintegration of children who are at risk or in conflict with the law without criminal responsibility. These programs must apply a systematic approach, which means that they must be comprehensive in terms of connection of services, involvement of parents, community and all relevant institutions dealing with child protection;
  - Create multidisciplinary teams in CSWs to treat the children from different perspectives and with a multidisciplinary approach; psychologist, social worker, pedagogue, lawyer, etc. Municipalities to employ psychologists within CSW;
  - Municipalities to contract NGOs through the purchase of services, which offer special programs and specialized services for prevention, protection and reintegration of children who are at risk or in conflict with the law without criminal responsibility;
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- MLSW to develop an annual training plan for CSW based on minimum standards of social services for children. Capacity building of CSW through trainings on service provision for children, is a necessity;
- Promote, within institutions and the community in general, the role of Centers for Social Work and the work of this institution in prevention, protection and reintegration of children who are at risk of falling into conflict with the law or are in conflict with the law, without criminal responsibility.

## Recommendations for the Police

- Employment of psychologists and social workers in the Police is necessary to create a friendly environment, to avoid the stress that children in conflict with the law or those at risk of falling into conflict with the law may have when they contact the Police;
  - Strengthen cooperation with CSW. CSW is the institutions with the full mandate for cases in need of protection and social services, including children in conflict with the law without criminal responsibility, thus, no action should be initiated without the full cooperation with CSW.
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## References used for the drafting of this analysis

- Criminal Code;
- Juvenile Justice Code, no. 03/L-193;
- Law on Family, no. 2004/32;
- Law on Social and Family Services, no. 02/L-32;
- Law on Social and Family Services amended, no. 04/L-081;
- Law on Pre-University Education, no. 04/L-032;
- Law on Police, no. 04/L-076;
- Convention on the Rights of the Child;
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)
- MLSW, AI. no. 08/2013, for treatment of children perpetrators of criminal acts without criminal responsibility and those with asocial behavior
- MEST, AI. no. 16/2014, for Extracurricular activities; kontrollo nr e ligjit!!!
- MEST, AI, no. 34/2014, for the Functioning of the Pedagogical / Psychological Service in Schools;
- MEST, AI, no. 26/2013, for the Selection of Employees for Provision of Professional Services in Pre-University Instructive-Education Institutions;
- Minimal Standards for Social Services;
- Kosovo Police, Standard Operating Procedure, Police Approach towards cases that involve Minors DDO – 04/041/2013;
- Regulation for Discipline and Conduct in Schools of Lipjan Municipality, no. 116/724.



## **KOMF:**

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16 non-governmental organizations with extensive experience in the field of child protection in Kosovo, aiming to further coordinate their efforts, with the mission to protect, respect and promote the welfare and rights of children in Kosovo.

Member organizations are: Associazione Amici dei Bambini Association for Social Trainings, Research and Advocacy – ASTRA, Initiative 6, Center for the Protection of Victims and Prevention of Trafficking in Human Beings MVPT, One to One Children's Fund, One To One Kosova - Family Counseling Center, Youth Organization Akti, Save the Children, Hope and Homes for Children in Kosovo, Terre des Hommes, World Vision, SOS Children's Villages Kosovo, OPFA KKOS, Kosovo Education Center - KEC, Civil Rights Program and VoRAE.

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