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# POSITION PAPER ON THE LAW ON SOCIAL AND FAMILY SERVICES

April 2020





The Position paper on the Law on Social and Family Services has been drafted by the Thematic Group for Child Protection in frame of the Coalition of the NGOs for Child Protection KOMF, in cooperation with the Ombudsperson Institution, the Association of Kosovo Municipalities and the Association of Centers for Social Work of Kosovo.

This document contains seven key proposals, as well as the respective reasoning for each and every proposal, to be included in the Law on Social and Family Services. This Position paper shall be presented and be of assistance to the Ministry of Labor and Social Welfare, which has the ownership and leads the process of the drafting of the Law on Social and Family Services

The common Position paper between KOMF, the Ombudsperson Institution, the Association of Kosovo Municipalities, and the Association of CSWs, will be available also to all partners, institutions and other stakeholders.

This Position Paper was prepared thanks to the financial support of the European Union. Its content is the sole responsibility of the Coalition of NGO-s for the Protection of Children KOMF, and does not necessarily reflect the views of the European Union.

The Position Paper on the Law on Social and Family Services was prepared in frame of the project “Joint Action for Decentralization”, funded by the European Union, managed by the European Union Office in Kosovo, and implemented by Coalition of NGOs for Child Protection KOMF in partnership with SOS Children’s Villages, Organizata për Fëmijët pa Kujdes Prindëror OFAP and Social Action and Innovation Center KMOP.

# INTRODUCTION

Kosovo is developing the process for the reform of social and family services. An important matter in this process is the legislation which is aimed to guarantee the social and family services for persons in need, in compliance with the Constitution, the Convention on the Rights of the Child (CRC), Voluntary European Quality Framework for Social Services, and other international instruments. In this regard, one of the legislative initiatives is by all means the drafting of the new Law on Social and Family Services.

The Coalition of NGOs for Child Protection in Kosovo –KOMF, according to the decision of the Ministry of Labor and Social Welfare (MLSW) was part of the working group for the drafting of the Concept document for supplementing and amending the Law on Social and Family Services, where it has addressed its position and the recommendations for this concept document. KOMF has proposed that the concept document on Law on Social and Family Services, has to address and include the proposals in relation to: a) Defining of the types of social services, empowering of prevention and integration services; b) Organizing of social and family services (empower an open-type scheme for offering of services between the public and non-governmental/private providers); c) Integration of social and family services with health and education services; d) Developing and empowering of family services and community based services, reforming of the types of protection; e) Increase of the quality of services; f) Accountability and g) Funding of social services.

KOMF appreciates the fact that MLSW has included and addressed in full the proposals introduced by KOMF within the concept document for drafting of the Law on Social and Family Services, which was approved by the Government of Kosovo in February 2019.

Now, being part of the working group for drafting of the new Law

on Social and Family Services, KOMF is supporting the reform in the area of social services through the drafting of the Law on Social and Family Services.

KOMF has had a number of consultations with member organizations in order to bring forward the positions of the key actors coming from the civil society, in relation to the drafting of the Law on Social and Family Services. Along with the consultations, the Thematic Group for on Child Protection consisting of KOMF member organizations, the Ombudsperson Institution, the Association of Kosovo municipalities and the Association of Kosovo CSWs, held a workshop to draft the joint Posi-

tion Paper on the drafting of the Law on Social and Family Services.

This document contains the position of KOMF, the Ombudsperson Institution, the Association of Kosovo municipalities and the Association of Kosovo CSWs, with the proposals and reasoning pertinent to the drafting of the Law on Social and Family Services.

KOMF, the Ombudsperson Institution, the Association of Kosovo municipalities and the Association of Kosovo CSWs, propose that the Law on Social and Family Services, must address and include the following proposals.

# PROPOSAL 1

It is recommended for the Law on Social and Family Services to envisage a reform regarding the provision of social services, by defining the prevention, protection, rehabilitation and reintegration services, as well as by classifying them into three categories/levels, thus guaranteeing the right to social services for all children and persons in need of social services, regardless of the level of urgency or risk.

## ■ **Category 1:**

Primary social services of prevention are general services, offered as an early intervention in the family, community and the society.

Primary social services are offered to lessen the risk for persons identified as vulnerable or at risk of getting victimized. Primary services include, but are not limited to: Advice for improving the condition of the individual and of the family, their orientation towards the opportunities in the social services system for their needs; Counseling for good parenting, assistance in overcoming of family difficulties; assistance for housing; Day care services for children and adults, social integration and entertainment activities; Trainings and vocational professional training to help a person get employed; Legal support and free legal aid; Psychological support in social welfare institutions, educational and healthcare institutions, as well as in the non-governmental and private sector; Direct assistance at home with food supplies or medicines, support for keeping personal hygiene and covering for the daily needs, etc.;

## ■ **Category 2:**

Secondary social services are specialized services, intervening in a person's life when the person is at risk and in need of protection.

These services are necessary for the purpose of treating and minimizing of the risk and also treating of the consequences deriving from the bad experiences, such as:

trauma, violence, etc. Secondary services include, but are not limited to: Specialized medical services, such as medical forensic examination for victims of rape, gender-based violence survivors, etc; Therapeutic counseling for cases of trauma, depression, suicidal ideas, etc; The program and the rehabilitation and reintegration services; Preparatory services that support programs for empowering the individuals for an independent living; Programs for the treatment of the victims of abuse with psychotropic substances and of users of these substances, etc.

### **Category 3:**

Tertiary services are intensive social services provided on 24/7 basis for persons at risk or the victims. These services include, but are not limited to: Guardianship service; Foster care; Community-based home services/residential housing for child care; Support / semi-independent living.

### **Reasoning:**

The current Law on Social and Family Services is mainly oriented towards the services for the protection of citizens in need of such social services, by leaving aside the prevention and reintegration services. Due to human resources and budgetary limitations, the social services are currently focused in the provision

of emergency protection services, and there is lack in providing of prevention and reintegration services, which are most needed for the welfare of children and persons in need of social services<sup>1</sup>. The legislation in force, but also the limited financial and human resources have led to a system of social services in Kosovo, in which the system tackles and manages serious life-threatening, security or welfare emergency cases, or “cases with victims of some form of abuse”. As a consequence, only a small number of citizens in need are entitled and have the opportunity to benefit from social services and programs. Moreover, for some children or persons in need of social services, the system does not offer any services at all, such as cases with children or persons that were victims of drug abuse.

The social service system in Kosovo has to develop prevention, rehabilitation and reintegration services, in order to help the citizens; prevent abuse and violation of human rights, as well as offer support for their rehabilitation and reintegration.

Moreover, planning and provision of prevention services, reduces the state financial cost for protection and social services, as well as lowers the rate of re-victimization and recidivism.

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<sup>1</sup> Child Protection Index 2.0, KOMF 2018

# PROPOSAL 2

It is proposed that the Law on Social and Family Services must define the integration of social services with health and educational services.

There are different models for the integration of social services with those from other sectors. KOMF member organizations, the Ombudsperson Institution, the Association of Kosovo municipalities and the Association of Kosovo CSWs offer some of the alternatives that enable the integration of these services.

Integration of social services can be achieved by hiring of professional social workers within the educational and health institutions or by having a number of current health and educational professionals specialize in social areas through training and capacity building. The first alternative ensures more quality services, but with a higher financial cost for its implementation. The second alternative however, does not provide quality as in the first alternative, but is more cost effective.

For the purpose of integrating the social services in other sectors, the Law on Social Services, has to define that the CSW social workers conduct regular systematic visits in preschool education facilities and schools for the purpose of early identification and managing of cases.

Law on Social and Family Services has to envisage the integration of social services with the health sector by conducting systematic home visits together with health professionals, for the purpose of identifying and recording vulnerable cases within the municipality.

Law on Social and Family Services has to envisage the integration of social services with other sectors by establishing integrated protocols for referral and treatment of cases, and by creating an integrated database with other sectors, namely the education and health sectors.

Knowing that the integration of services requires a consensus with other sectors, it is recommended to ensure the compliance between the sectors involved at the central level, prior to the adoption of



this law. The integration models of the services which will be applied in frame of this law, have to be discussed and defined in cooperation with the above-mentioned sectors.

## **Reasoning:**

According to the reports and studies conducted in Kosovo, child protection services are not integrated with the sectors that tackle children's rights. As a consequence, the social services are not integrated with the health and education sectors. Realizing the great importance of an integrated system of services for children, it is recommended to address the integration of social and family services with other sectors, in frame of the Law on Social and Family Services.

Currently, due to lack of sufficient number of social workers in the educational institutions, there is no social work conducted for the prevention of negative occurrences among children, early identification and managing of the cases. There are psychologists in several schools, however their role is more oriented in the area of psychological counseling.

The Centers for Social Work do not have any data about problems or social cases existing in educational institutions. Currently, the approach of the CSWs is a reactive one, waiting to handle clients or social cases, while there is no proactive approach that would deal with the identification of cases by

conducting visits or working in families and community. This approach makes it impossible for the municipal authorities to know about the social problems or to get data on the vulnerability within the municipality.

Systematic home visits are a good model of integration of services. Currently, such model is being practiced in Kosovo by the professionals from primary healthcare service, through systematic medical home visits conducted from the professionals of the Family Medicine Centers. The aim of these visits is to ensure health protection for vulnerable groups of population, particularly for the category of mothers and children. This model would be also suitable for the social services, specifically for the identification of cases in need of social services. Given that home visits are a responsibility of the health sector, a prior consent and coordination is needed between the MLSW and the MH, before this model is included in the Law. Systematic home visits may be carried out jointly with the health professionals, thus providing health and social services in an integrated manner.

Currently, there are no integrated identification and referral protocols for cases involving children. In Kosovo there are specific protocols about the referral of cases of domestic violence, but not for other categories. Moreover, there is no integrated database across all sectors for cases involving children. Each sector is in possession of data according to their own database.

# PROPOSAL 3

It is proposed that the Law on Social and Family Services defines the organization of social and family services and empowers an open-type scheme for service provision among the public, non-governmental and private service providers.

It is also recommended to clearly define the social services that may be contracted, services that may be provided in cooperation with other service providers and services which cannot be contracted but are exclusively provided by the public sector.

## **Reasoning:**

Kosovo is pursuing the partnership development policy between the service providers coming from public authorities and the non-governmental organizations, thus establishing an open-type and sustainable scheme of cooperation and funding for social services. However, this policy and partnership needs to be empowered within the Law on Social and Family Services<sup>2</sup>.

In most European countries, the legal framework allows the national, regional and local authorities to transfer child protection services to the non-governmental/private sector and/or to subcontract civil society organizations and the private sector.

In Europe, the civil society organizations are playing an increasingly important role by becoming service providers for the protection of children, such as the primary social services, alternative care services, residential care, daycare services, and community based services. Traditionally, all these services have been provided exclusively by the public institutions.

In at least 18 countries (Austria, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Ireland, Italy,

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<sup>2</sup> Financing of Social Services in Kosovo, 2017 KOMF

Latvia, Lithuania, Malta, the Netherlands, Spain, Sweden and the United Kingdom) the legal framework allows sub-contracting and/or outsourcing of alternative care services toward the non-governmental and the private institutions.

In other countries such as Bulgaria, Croatia and Lithuania, despite the existing legal provisions, the practice so far shows that social services are sub-contracted and/or are given to civil society organizations only<sup>3</sup>.

The open and sustainable scheme for the provision of social services among the public institutions, non-governmen-

tal and private sector, offers the possibility for a wider range in provision of social services, specialized an quality services and at the same time a lower budgetary cost for Kosovo.

It is recommended to specifically regulate this matter in the Law on Social and Family Services, by defining which social services cannot be contracted (namely those services that are to be provided by public institutions only), services that may be provided in cooperation with non-governmental and private organizations, as well as social services that may be contracted by the non-governmental and the private sector.

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<sup>3</sup> Study on Child Protection System, European Union Agency for Fundamental Rights (FRA)

# PROPOSAL 4

It is proposed to develop and strengthen family services and community based services, as well as increase the forms of protection by:

- a) Developing foster care after reaching the age of 18
- b) Developing the protection form of “Supervised Independent Living”

## **Reasoning:**

### **Developing foster care after reaching the age of 18**

This proposal is based on the respect of child’s best interests, needs of children without parental care in Kosovo in order for them to develop in a family after the age of 18, laws and best practices from the European countries and the UN Guidelines for the Alternative Care of Children.

According to this proposal, this form of protection enables for the child to continue and stay in the foster family even after reaching the age of 18, that is, until the age of 26. This as a model is more beneficial for the physical and psychological development, and is of less financial cost for the state institutions, knowing that foster care has been calculated to have three times less cost, compared to the residential care.

The current Law on Social and Family Services envisages family housing only up to the age of 18. Due to legal impediments and the impossibility for a child to remain in the foster family after the age of 18, the Guardianship Authority is compelled to terminate the provision of care and services, or in case the child is with disabilities, to place the child in the Institute in Shtime (Residential care), which then will have a negative impact for the overall welfare of the child.

Practice in Kosovo shows that the child after the age of 18 is not necessarily prepared to cope with living in an independent way. This becomes a consequence in the situation when the child continues with the studies or vocational professional training, there may be difficulties to find housing, provide incomes for living, obstacles in the psycho-social development, or the child is not in a position to look after himself/herself.

The UN Guidelines for the Alternative Care of Children (2009) pay extensive attention to the needs and rights of children and youth who because of their age are removed from the care system. Because of this, many countries are extending the age limit for those under care, whereby children even after the age of 18 continue to enjoy support and services until the age of 25-26, until they complete their education, vocational professional training and become independent.

### **Developing the Protection form of “Supervised Independent Living”**

It is recommended that the Law on Social Services regulates the protection form through “Supervised Independent Living”, as one of the newest forms of specific protection for children and youth, which means an extension of care and provision of services for them even beyond the age of 18.

The main purpose of this form of protection is that the children and youth that are entrusted to the alternative care institutions/organizations, to be able to live independently. In order to reach this goal, the work starts at the moment when the child is admitted for alternative care and remains there until the day when he/she leaves, and this can be achieved only with efforts made by all alternative care actors. The purpose is that the children that are under alternative care should start looking after themselves, to start managing their daily life and get a job that would generate sufficient incomes.

The UN Guidelines for the Alternative Care of Children, qualifies the Supervised Independent Living as an important part for the fulfilment of the international criteria for children’s rights. Articles 130, 132 and 135 of the UN Guidelines for the Alternative Care of Children, stipulate that:

“Agencies and facilities should have a clear policy and should carry out agreed procedures with youth, to ensure appropriate aftercare and/or follow-up of the case. Throughout the period of care, they should systematically aim at preparing children to assume self-reliance and to integrate fully in the community, notably through the acquisition of social and life skills, which are fostered also by their participation in the life of the community”

# PROPOSAL 5

For the purpose of increasing the quality of social services, it is proposed that the Law on Social and Family Services envisages the following:

- Profiling of social workers/social services officials according to the category of service beneficiaries
- Accreditation of programs for social service trainings and continued education, according to the profiling
- Licensing of public services offered by CSW, licensing of entities (non-governmental and private sector) and of social workers

## **Reasoning:**

Currently, the social workers/social services officials are not profiled and as a consequence of this, they handle all cases and categories in need. In order to increase the quality of services, as well as the performance of service providers, it is recommended for the new law to envisage the profiling of social workers/social services officials, according to the beneficiaries of these services. Given the limited human resources, it is therefore recommended for this process to be developed gradually and in a progressive manner. As first phase it is recommended to profile social workers/social services officials to work with children and with adults and following this, as a second phase, to further continue with planning for the profiling and also the division according to the categories. It is also recommended that the Law on Social and Family Services is harmonized with the Law on Child Protection, in relation to the organization of the social services officials, knowing that this law envisages for the child protection officers to be part of the CSW.

Currently, there are no accredited training programs for social services. The current Law on Social and Family Services does not envisage the way of accrediting of programs for social services.

The new law has to address this issue which will have an impact in the increase of the quality.

The current Law on Social and Family Services does not envisage the licensing of the public services offered by CSWs or other public institutions. It is recommended to implement the compulsory licensing process for the public

services that are offered by CSWs or other public institutions.

The licensing for the services offered by the public institutions would ensure accountability and further monitoring of all public service providers. This would lead to an impact for having an increased quality of social services.

# PROPOSAL 6

For the purpose of increasing the accountability, it is proposed that the Law on Social and Family Services envisages the following:

- Clear definition of reporting and monitoring mechanisms
- Empowering of inspection/establishing independent inspection
- Apply measures, fines and sanctions
- Monitoring and external evaluation made by the non-governmental and private sector

## Reasoning:

Despite of the fact that the purpose of the MoU for Decentralization of Services was to decentralize social services and to define the role and responsibilities of the central and local level institutions in Kosovo, there are still uncertainties in relation to the responsibilities among the representatives of the institutions. The providers of social services from CSWs and the representatives of the municipalities are stating that there are still uncertainties about the division of tasks, competencies and responsibilities between the two levels, namely the central and the local level, which does cause a confusion<sup>4</sup>. According to the Administrative Instruction No. 17/2013 on Licensing of the Legal Entities/Organizations that provide Social and Family Services, in Article 19 under “Monitoring and Inspection”, it is stipulated that monitoring and inspection should be conducted by the central level. But, based on the practices from other countries, KOMF proposes that monitoring should be separated from inspection, and that duties and responsibilities should be defined for each level. KOMF therefore proposes that the process of the monitoring is to be conducted by the municipality, while the inspection is to be conducted by the MLSW.

The conclusions from the Child Protection Index 2.0, published by KOMF, indicate on the poor results of accountability in all areas of

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<sup>4</sup> Data from the Process of the Monitoring of the Social Services Decentralization Process from KOMF, 2019



social service. Poor results derive due to the fact that the inspection is conducted from the unit that is operating within the ministry, lack of clarity and differentiation between the monitoring and inspection mandates within the very same unit of the MLSW, lack of executive powers and lack of implementation of measures, fines and sanctions.

Currently, the Monitoring/Inspection Unit operates within the DSFP and its scope of activity is also the monitoring and inspection of the Panel on the Placement of Children in Foster Care and Adoption, which also operates within the DSFP, thus by creating a conflict of interest and breaching the independence of the inspection process.

The proposal is to transform the internal inspection unit into an external unit or agency that would operate outside the ministry. This would lead to having an independent inspection conducted for the purpose of evaluation of the quality of the rendered services and the administration of licensing. Inspection should evaluate all service providers, public and private ones.

The consequence of not having any executive powers is that the recommendations issued from this unit for social services providers, are not implemented. This is due to the lack of the definition of the role of inspection,

whereby the inspection unit does not have any executive mandates. Also, within the existing inspection unit there is lack of human and financial resources to conduct effective field visits, that is, to cover the entire territory of Kosovo. Therefore it is strongly recommended to invest in creating and empowering of an inspection unit by granting executive powers to the unit and offering of necessary capacities to carry out the required functions.

Also, there is no proper monitoring from the municipalities. Based on the data from KOMF monitoring process, the monitoring at the local level is conducted only through the reports that are submitted to the municipal directorates by the service providers. Whereas monitoring in the field is not conducted due to lack of capacities. On the other hand, service providers have stated that they are facing uncertainties in relation to the reporting, monitoring and inspection. CSWs on regular basis (daily, monthly and annually), prepare different reports for the MDHSW and the MLSW. For this reason, it is recommended to clearly define the reporting mechanisms.

The current Law on Social and Family Services, does not envisage the implementation of measures, fines and sanctions in case of violation of the provisions of this law, and as a consequence of this, the beneficiaries

consider that the accountability remains very low. Therefore, the implementation of measures, fines and sanctions will increase accountability. It is proposed that the Law on Social and Family Services, envisages measures, fines and sanctions, in case of violation of the legal provisions of this Law. Measures, fines and sanctions may include: revocation of the license for social service providers, issuing fines, criminal measures according to the Criminal Code of Kosovo and the Criminal Procedure Code of Kosovo.

It is recommended that the money from the imposed fines and sanctions

is allocated for social categories and social services.

In the area of social and family services, there is no external monitoring conducted by the civil society, and this is considered a deficiency. Along to the monitoring conducted from the municipalities and the independent inspection from the MLSW, it is recommended for the new law to envisage the possibility of conducting monitoring from the non-governmental/private sector. This would increase the quality of social services, as well as the accountability.

# PROPOSAL 7

For the purpose of ensuring a sustainable and proper financing for social services in Kosovo, KOMF, the Ombudsperson Institution, the Association of Kosovo Municipalities, and the Association of Kosovo CSWs, recommend that the Law on Social and Family Services, envisages the following:

- Drafting of financial standards for each and every social service (costing of services, establishment of the financing formula)
- Establishing the Specific Grant for Social Services, financing according to the social indicators and the number of beneficiaries

## **Reasoning:**

Lack of a Specific Grant for Social Services does not enable the provision of minimum quality services for the protection of children, and it impedes the protection and realization of their rights. If this form of funding is continued, the situation may deteriorate to the extent that these Centers for Social Work and the non-governmental organizations may become non-functional, or in cases of centers and organizations having a lower performance, they would not be in a position to offer such services any longer.

Currently, the costing of social services has not been done, the financing formula for social services has not been drafted and the plan for sustainable funding of social services has not been created. Municipalities have not created a sustainable contracting scheme for the purchase of social services from the non-governmental or the private sector. Currently, the support for the NGOs is provided on ad hoc basis and through subsidizing.

This way of funding is leading to the extinction of services provided by the non-governmental sector, therefore immediate intervention is

recommended for the establishment of the Specific Grant for Social Services.

The solution would be: To create a plan for a sustainable and proper financing of social services in Kosovo through establishment of the Grant for Social Services.

It is also recommended to draft the financial standards for every service (costing of services, financing formula) in order to guarantee the funding of social and family services in a proper way, and at the same time to place them in line with

the minimum quality standards. Without financial standards, it is difficult to ensure an adequate, sustainable and sufficient budget for the services.

It is necessary to define the percentage from the national budget and from other municipal budgets allocated for social services. The national budget has to be distributed based on a financing formula, which is created by taking into account the number of inhabitants, number of cases in need of protection and services, social indicators, etc.

*KOMF member organizations are:*

Association for Social Training, Researches and Advocacy – ASTRA, Action for Mothers and Children, Balkan Sunflowers Kosova, Childproof/CIPOF, Education Comes First – ECF, Initiative 6, Youth Organization Akti – Ora, Organization for Children without Parental Care – OFAP, OPFAKKOS, Program for Civil Rights – CRP/K, PL4Y International, Kosovo Education Center – KEC, Daily Care Center PEMA, Center for the Protection of Victims and Prevention of Trafficking in Human Beings – MVPT, Center for Advanced Studies – FIT, Kosova Rehabilitation Centre for Tortured Victims – KRCT, Save the Children, SOS Children’s Villages, Kosovo, Hope and House for Children in Kosovo – SDSF, The Association of Patient’s Rights in Kosovo – PRAK Kosova, The Association of Paraplegics and Child Paralysis in Kosovo – HANDIKOS, Terre des Hommes, The Ideas Partnership, VoRAE, World Vision, Public Organization for Local Initiatives and Supports – POLIS, Network of Peace Movement – NOPM, SOS Kindergarden, Nevo Koncepti, Qendra “Labyrinth” and Organizata Jo-Qeveritare Peer Education Network – PEN.

**Coalition of NGOs for Child Protection**

Zenel Salihu, OB.1 HY.1 K.3 No.16, 10000  
Prishtina, Kosovo

**Phone:** +381 (0) 38 220 287

**Email:** [info@komfkosova.org](mailto:info@komfkosova.org)

**Web:** [www.komfkosova.org](http://www.komfkosova.org)



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