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PROGRAM ON THE



IMPLEMENTATION OF THE LAW ON CHILD PROTECTION

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INTRODUCTION

The Law on Child Protection was published in the Official Gazette of the Republic of Kosovo on the 17th of July 2019 (Official Gazette of the Republic of Kosovo No. 14). The Law No. 06/L-084 on Child Protection has entered into force one year after its publication in the Official Gazette (see article 66).

Drafting of the Law on Child Protection (LCP) was preceded by a big number of analyses, studies, consultative meetings, intensive workshops, and public consultations. It was drafted within a period of more than 5 years. Dozens of experts and professionals in the field of child rights and child protection have participated in this process. Children and their best interest have always been the focus of work of the professionals who directly or through other manners have participated in drafting the provisions of LCP. However, the institutions responsible for drafting this law, have taken into consideration and have ensured the participation of children and inclusion of the views of children or their representatives, in all the drafting phases of the law.

The finalization of this draft, which is now a law in force, has gone through very substantial debates and discussions, where there were topics and areas with full consensus, but also areas with objections and disagreements.

The entry into force of the LCP has shaped a new legal momentum in terms of child protection in the Republic of Kosovo. This momentum and legal obligation require from institutions and mechanisms to undertake concrete actions to make the law functional and implement its provisions, which in content and legal framework is the first of its kind in the Republic of Kosovo.

Therefore, we all have a role to play, the entire society, family, schools, institutions, non governmental sector, private sector, media, community, it is necessary to create a supportive, protective environment for children, an environment that does not accept violence, rejects it and at the same time senses its duty to react, to mobilize against this occurrence.

To efficiently apprehend and implement the provisions of the LCP, respectively the protection of child rights, awareness raising and capacity building regarding roles and responsibilities, starting from individuals, family, community and up to the law enforcers and child rights professionals, is needed.

The main aim of the program (which consists of four modules), is capacity building of child protection professionals at the local and central level, to implement the Law on Child Protection, by enabling the provision of quality and sustainable social services for the protection of the child.

The modules and content along with the references, consist of an educational asset which has lacked in the field of child protection, especially in relation with the Law on Child Protection, which is the first law of its kind in Kosovo, and which brings many innovations, and aspects that require increased attention and institutional coordination for its implementation in practice.

ABBREVIATIONS

LCP	Law on Child Protection
CRC	Convention on the Rights of the Child
FLK	Family Law of Kosovo
LSFS	Law on Social and Family Services
UN	United Nations
UNCRC	United Nations Committee on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
JJC	Juvenile Justice Code
CC	Criminal Code
CPC	Criminal Procedure Code
OI	Ombudsperson Institution
Committee	Interministerial Committee for the Rights of the Child
Council	Council for the Rights of the Child
CSW	Centre for Social Work
Team	Team for the Rights of the Child
System	Child Protection System
CPH	Child Protection Houses
ILO	International Labour Organization
Agency	Agency for Free Legal Aid

MODULE I:

PURPOSE, SCOPE AND PRINCIPLES OF THE LAW ON CHILD PROTECTION

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I. TRAINING OBJECTIVES AND EXPECTED RESULTS

The main objective of the First Module is to facilitate the understanding of the general part of the Law on Child Protection, through providing understanding regarding the basic concepts, definitions, purpose, scope, general principles, international standards, etc.

In this module, participants will be able to:

- Learn terms and definitions;
- Understand the concepts and differences between rights and protection;
- Identify legal instruments for child protection;
- Understand the purpose of law;
- Understand beneficiaries and implementers;
- Understand guidance by the main principles;
- Increase analytical skills through case studies, etc.

CHAPTER 1.

GENERAL PROVISIONS

1.1. Who is a child?

In the Republic of Kosovo, we find the definition of child in many laws. Within the definition, we also find age limit, categorization of age (age of criminal responsibility, age categories of minors, age of consent, opinion, etc.). Definition and classifications are provided in these laws, but not only:

- Law on Child Protection (LCP);
- Family Law of Kosovo (FLK);
- Law on Social and Family Services (LSFS);
- Juvenile Justice Code (JJC);
- Criminal Code (CC);
- Criminal Procedure Code (CPC), etc.

LCP, defines that any human being under the age of 18 is considered a child.

The definition provided by the LCP also defines exception of cases where the age of majority is reached earlier in accordance with the legislation to which it is a subject. This part of the definition refers to the possibilities that are foreseen in the relevant legislation such as the Family Law, which provides the reaching of adulthood through emancipation.

The law as further exception foresees the case when the age of the person is not fully determined, but there are reasons that imply that this person is a child, such person is considered a child and benefits from the LCP until his age is fully determined.

These two above mentioned exceptions, in addition to protecting child interests and rights, also help and facilitate the work of professionals in practice. During their work, there are cases when the age of the child can not be understood and concluded correctly, and as a result, some rights can be endangered and violated by law enforcers.

Child – shall mean any human being under the age of **eighteen (18)**, excluding the cases when the adult age is reached earlier, in compliance with the legislation he/she is subject to. In cases when the age of the person is not fully determined, but there are reasons which imply that the person in question is a child, this person is considered as a child and benefits from this Law until his/her age is fully determined.

Article 3 par.1. item 1.1. Law on Child Protection (Law No.06/I-064)

The LCP, without any exception or reservation, has incorporated and adopted the definition provided by the Convention on the Rights of the Child.

A child means every human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier (article 1, CRC)

For the purposes of the Convention, article 1 of the CRC defines “**child**”, as any human being under the age of 18. The content leaves open the starting point of childhood. Does this correspond with birth, conception, or something in between? If the Convention had taken any positioning on abortion and similar issues, its ratification would have been put in danger. For the purposes of the Convention, childhood ends at the age of 18, unless the age of majority, in the respective country, is reached earlier.

1.2. Child rights and child protection

During the law implementation and its referring by various professionals, often happens that the terms “right” and “protection” are used as synonyms, and in some cases, these two concepts are even tangled.

To clarify and differentiate these two concepts, we are offering their definition and explanation through an example:

Child rights encompass a multitude of principles and ideals that children must realize in their lives. They include the right to life, development, health, education, play, and not only, but also many rights which are defined by the International Convention on the Rights of the Child, the Constitution, laws and by-laws or various agreements/contracts.

Protection of rights includes a multitude of actions, individual and institutional responsibilities through which the child rights are protected, who due to the circumstances and conditions in which he/she might be, may be vulnerable or exposed to danger which would harm the realization of these rights. Moreover, it includes procedures and measures through which the prevention, response, rehabilitation, and reintegration of the child is carried out, respectively attainment of denied rights.

EXAMPLE:

According to the relevant legislation and LCP... the child has the right and must live and grow in the family. However, in certain circumstances and in accordance with the best interest of the child, and with the court or guardianship body decision, he must be separated from the family...! (article 27 of LCP).

Since a child has the right to live and to grow with his family, separation from the family and actions undertaken by the child protection system to separate the child from his family represent the protection and realization of this right in practice. Therefore, from the moment when a vulnerable child is identified, the actions and steps taken in case management, removing the child from the family, and placing him/her in guardianship or in any other alternative form of protection, and at the very end when it is possible, reunion and reintegration of the child into the family and community, all these steps constitute what we name as child protection.

Although different definitions and substantial differences exist, these two concepts must be understood and applied:

- As inseparable concepts;
- Actions that are interconnected;
- Their response and implementation must be concurrent;
- The rights are not replaced and diminished.

1.3. Constitution of the Republic of Kosovo

The Constitution as the highest legal and political act, within Chapter II framework; Fundamental Rights and Freedoms, also provides Protection of the Rights of the Child.

Article 21 of the General Principles, determines that:

1. Human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo.
2. The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution.
3. Everyone must respect the human rights and fundamental freedoms of others.
4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.

Comment:

The principles set out in article 21 are appropriately applicable and apply to children equally as to adults.

Considering the inclusion of CRC in the Constitution and the fact that children, due to their physical and intellectual immaturity, need special protection and care, including appropriate legal protection, the Constitution of the Republic of Kosovo in article 50 has regulated some of the main rights and principles, where it is determined that:

[CHILD RIGHTS]

1. Children enjoy the right to protection and care necessary for their well-being.
 2. Children born out of wedlock have equal rights to those born in marriage.
 3. Every child enjoys the right to be protected from violence, maltreatment, and exploitation.
 4. All actions undertaken by public or private authorities concerning children shall be in the best interest of the children.
 5. Every child enjoys the right to regular personal relations and direct contact with parents, unless a competent institution determines that this is in contradiction with the best interest of the child.
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It is important to understand that in article 50, basic rights and principles for child protection are summarized, such as:

- Child care and well-being;
- Equality of all children;
- Protection from violence;
- Best interest of the child;
- Child growth and development in his family and with the parents.

All these rights and principles are reflected and incorporated in the Law on Child Protection.

1.4. Main international instruments for child protection

Although Kosovo is not a signatory party to international conventions, article 22 of Constitution has defined the direct implementation of international agreements and instruments, where jointly with other conventions, it has included the CRC as part of its internal legislation. In addition to the inclusion of the Convention in the legal order of the Republic of Kosovo, it has given priority to the Convention over the provisions of laws and other acts, providing that:

“Human rights and fundamental freedoms guaranteed by the following international agreements and instruments, are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in case of conflict, have priority over provisions of laws and other acts of public institutions”.

One of the main international instruments that is applicable in Kosovo and that directly or indirectly regulates aspects of children’s rights, is the **Convention on the Rights of the Child**.

The Convention on the Rights of the Child is a ratified document of the United Nations (UN) on human rights, which has been ratified by 196 states parties¹ since its unanimous approval by the UN General Assembly in 1989. By ratifying the CRC, a state commits to implementation of a series of defined measures, which include human rights and freedoms, family environment, basic health and well being, education, leisure and cultural activities, and special measures.

In 2002, the two Optional Protocols to the Convention entered into force, the “Optional Protocol to the CRC on sale of children, child prostitution and child pornography” and the “Optional Protocol to the CRC in involvement of children in armed conflicts.

In December 2011, the General Assembly drafted the third Optional Protocol to the CRC, on the Communications Procedure. This protocol which entered into force in April 2014, is a procedural instrument that does not bring new rights and obligations, but creates a mechanism for children or their representatives, to present to the Committee on the Rights of the Child individual or group complaints, regarding the violation of the Convention or Optional Protocols, in cases where national measures have been exhausted, (if they were valid). This enables the Committee to conduct investigations into interstate complaints of serious and systematic violations.

¹ https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=_en#24 (clicked on August 15 2022)

The Convention on the Rights of the Child, which has several internationally agreed non-negotiable standards and obligations, provides protection and support for children's rights.

Article 4 of CRC stipulates the obligation of the States Parties to take all possible measures for the implementation of the Convention rights. The language used in this article is clear and indicates that the measures to be taken **are not only legislative or administrative measures**. States **undertake all necessary measures** to implement the rights of the child. It is not possible to implement the rights of the child in a single manner. Respecting and implementing them requires complex interventions which are often presented in the strategies that States Parties draw up, in accordance with their national situation. However, even the Guideline of the Committee on the Rights of the Child's, for initial reporting on the Convention, highlights two essential steps that must be undertaken by the States:

- 1) Harmonization of internal legislation with the convention by making its comprehensive review**
- 2) Appropriate combination of child-related policies at all levels of government**

The Committee has pointed out that a simple reference that can be made to the Convention by the States Parties in the Constitution, is not sufficient. In addition, domestic legislation should incorporate the Convention's standards. An advisable way to achieve this is to consider the drafting of a law that provides for all aspects related to the child.

The second part of article 4 is particularly related to efforts to implement the social and cultural rights of the child. For this, it is required that the states parties "shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation". International acts related to human rights often provide for rights such as economic, social, cultural, civil, and political rights. Civil and political rights are usually considered those acts to which immediate effect should be given, and for which, states cannot present acceptable reasons to justify delays regarding the implementation of this category of rights. Implementing these rights has its own costs, but these rights are so important that lack of sufficient resources can never be a compelling excuse for delays in implementation.

As for economic, social, and cultural rights, they can be implemented progressively depending on the internal resources of the states, both economic and human resources. However, the fact that the Convention provides the realization over time or progressively of these rights should not be misinterpreted. It does not relieve states of the obligation to take measures.

The obligation of states to implement economic, social, and cultural rights by taking all possible measures for this, based on the resources they have, results in undertaking of measures related to the needed budget. Although states differ in terms of resources available and in measures to be undertaken to implement children's rights, they are obliged to prioritize this, in terms of the budget allocated for human rights.

1.5. Purpose of the Law on Child Protection

During the drafting process of the LCP, the legislator was based on and has taken as a reference the obligations arising from the CRC, where the states are called to undertake all legislative measures for the realization of the rights of the child.

Therefore, even as the first goal, he envisioned: **‘protection of the child, through the completion of the legal and institutional framework, in accordance with the Constitution of the Republic of Kosovo, the United Nations Convention on the Rights of the Child, international acts that act in this field, as well as the legislation in force’.**

In addition, the LCP has foreseen other goals, through which the rights provided for in CRC, the Constitution of the Republic of Kosovo, and the legislation in force, are implemented and enabled. These goals reflect the content and intent of the law regarding rights and the protection of these rights. LCP, in addition to the above-mentioned purpose, has also the following purposes:

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- To protect the child from all forms of physical and mental violence, abuse, misuse, exploitation, neglect or any other form that endangers the life, safety, health, education, and child development;
 - To guarantee and ensure the responsibility of parents, family, guardian body, society and state in the care, protection and development of the child, based on the best interest of the child;
 - To determine the main underlying principles of national policies on the rights of the child, effective mechanisms and the responsible authorities at central and local level as well as their competences in relation to the rights and protection of the child;
 - To guarantee the wellbeing and the improvement of quality of life of the child, by promoting and enabling their development in the society, the effective assistance and care to the child whose health and well-being is at risk;
 - To take measures to ensure that the child exercises their rights, in compliance with the gradual development of child’s skills, based on the best interest of the child;
 - To take measures to ensure subsistence, wellbeing and development of the child;
 - To ensure cooperation between institutions at central and local level, as well as between the child protection organizations;
 - To determine effective mechanisms and functioning of mandatory institutions, as well as take concrete measures to prevent, respond and protect the child;
 - To set up an integrated and functional child protection system, for the prevention and effective response to all the forms of violence, abuse, exploitation and negligence.
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In addition to incorporation and adoption of principles and rights from the CRC, the legislator, in framework process of approximation with the EU legislation “*acqui communautaire*”, has foreseen that the LCP provisions are also compatible with the Directives of the European Union. And in this respect, the LCP is in accordance with Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on Fighting the sexual abuse and sexual exploitation of children and child pornography and replacing Council Framework Decision 2004/68/JHA.

1.6. Scope of the Law on Child Protection

LCP, has a wide scope and which benefits many categories of children, such as:

- Child with Kosovo citizenship
- Stateless child
- Unregistered child
- Asylum-seeker child
- Child refugee or child with foreign citizenship
- Child that is staying within the territory of the Republic of Kosovo, and
- Child with Kosovo citizenship, staying outside the territory of the Republic of Kosovo.

Article 2 paragraph 1 and item 1 - 2 of LCP

Provisions of this law shall not be taken as restriction or reduction of existing child rights as provided by the Constitution of Republic of Kosovo, Convention on the Rights of the Child, or international acts in this field, and other applicable legislation.

Article 2 paragraph 2 of LCP

a provision of the nature of a guarantee is included, where the child cannot limit or diminish any right that has been determined in advance in the CRC, the Constitution or any law that is in force. This provision enables the interpretation and application of the provisions in favor of the rights of the child, and in no circumstances the rights and protection provided for in the LCP can be interpreted against the best interest of the child.

CHAPTER 2.

CHILD PROTECTION PRINCIPLES

The LCP, within the general part, defines the principles of child protection, which derive from the CRC and are an integral part of the law. Although the principles are more declarative in content, they are mandatory in the legal sense, and give instructions to implement and interpret all the provisions which are in the LCP and, when necessary, even the interpretation regarding the provisions of other applicable laws.

Principles must always be read and understood as principles that are interconnected and cannot be applied separately, because they are legal norms (rights) and a tool (guidance).

LCP has incorporated four main principles of CRC:

- ✓ **Best interest of the child (Article 5 of LCP)**
- ✓ **Gradual development of skills (Article 6 of LCP)**
- ✓ **Respecting the child's point of view (Article 7 of LCP)**
- ✓ **Non-discrimination (Article 8 of LCP)**

2.1. Best interest of the child

LCP guarantees many rights for children, which are also guaranteed by other laws applicable in the Republic of Kosovo. However, what is not found in the rights guaranteed in these laws, which is automatically applied to children too, because children are included under the term "person" or "individual", is precisely the principle of the best interest of the child. Therefore, for adults we do not find a similar principle such as the principle of best interest of the individual. For adults, the best interest has been decided by the state by guaranteeing defined rights. As such, under these conditions, the question naturally arises why for the child, in addition to the defined rights, we also have a principle that overlaps the rights? The answer would be due to his age, a child is a subject to whom the state must guarantee special protection. The best interest of the child is the mechanism by which our community of adults will balance institutional decision-making, whether it is public or private, in favor of children. The concept that in all actions and decisions for children, their best interest should be the overriding consideration, will help decision-making in cases where we have competing interests such as between children themselves, between children and their families, between children and the state.

The LCP has defined this principle in article 5 and detailed it in several paragraphs, giving clarification and additional instructions on what it means and how to implement it:

The best interest of the child shall prevail and have the highest consideration regarding all child-related actions and decisions that are taken by parents or guardians, institutions, child protection services, child protection professionals, courts, administrative authorities or legislative bodies' (*article 5 paragraph 1 of LCP*).

This law, and other legal acts that regulate the matters related to child protection, as well as any other individual act based on them, is subject to the principle of the best interest of the child' (article 5 paragraph 2 of LCP).

The best interest of the child requires a comprehensive effort to ensure the child's physical, psychological, moral and spiritual integrity and to promote human dignity, by taking into account the individual characteristics and the social condition of the child' (article paragraph 3 of LCP).

COMMENT:

The principle of the best interest defined in paragraphs 1 - 3 does not constitute only a substantial or procedural right. It constitutes more of a principle to be considered during the implementation of other rights. It should be emphasized that these paragraphs shape obligations for parents, guardians, institutions, services, professionals, courts, administrative authorities, or legislative bodies, to consider the best interest of the child in all actions related to children. It is exactly their obligation to take measures to ensure the best interest of the child as a primary consideration, which constitutes the main prerogative regarding the extension of this concept both in the field of public, state, and private activity.

From the manner in which the paragraphs are formulated, it is understood that the best interest of the child is not the only factor in situations where actions related to children have to be decided. It is precisely the phrase "dominant and highest consideration" which means this and at the same time gives the solution of the priorities in the intertwined interests in a certain situation. The UN Committee on the Rights of the Child of the United Nations (UNCRC)², when interpreting the principle of the best interest of the child, emphasized that it is an obligation of the state to incorporate or reflect the principle of the best interest of the child in domestic legislation and to apply it to each procedure for children.

The legislator in continuation of article 5 in paragraph 4, through the 7 following points, has defined some additional 'principles' to ensure that the best interest of the child must be respected:

The family is primarily responsible for caring for and protecting the children; institutions help families with this obligation and intervene only when the family is unable or incapable or needs help to protect the child' (article 5 par. 4. item 4.1.);

Sustainability should be a key goal, by choosing the intervention that least interferes with the child's life to ensure the stability of the child's personal relation with society, environment and guarantee the continuity of child education, training or employment' (article 5 par. 4. item 4.2.);

Administrative and judicial decisions affecting the child must be taken and enforced promptly and without unreasonable delays' (article 5 par.4. item 4.3.);

Parents, guardians and the child shall take part in all stages of the procedure unless it is in contradiction with the child's best interest' (article 5 par. 4. item 4.4.);

²The Committee is a mechanism established by the UN to monitor the implementation of the CRC and the Optional Protocols.

'Views of the child depending on age and maturity of the child to comprehend the situation' (article 5 par. 4. item 4.5.);

'Background of the child considering special situations of abuse, negligence, exploitation or other forms of violence against the child and the potential risk of occurrence of similar situations in the future' (article 5 par. 4. item 4.6.);

'Continuity of personal relations between the child and persons with whom they have kinship, social and/or spiritual relations, and all decisions and initiatives that are subject of this law, should consider the individuality, age and maturity, mother tongue, sex, gender, identity, health condition and special abilities of the child in order to preserve ethnic, racial, religious and cultural identity of the child, in line with the circumstances' (article 5 par. 4. item 4.7.).

COMMENT:

Additional 'principles' which the LCP has foreseen, have been defined to correlate and implement the provisions that the law has defined. In this aspect, the law has defined the need for protection, where the principle of the best interest of the child should be the main focus of the protection and decision-making process, such as in article 22 par. 2 and 4 (formal institutional system and phone line for children); article 25 par.2 (legal protection measures), article 27 par. 4 and 6 (separation of the child from the family) article 31 par. 2 (monitoring of protective measures), article 45 par. 6 (protection of children in mass media), article 56 par. 2 (legal assistance and access to justice bodies) article 57 par. 8 (medical and psychological assistance, rehabilitation and measures for reintegration). These are typical situations when the rights provided in the law are related to each other and the role of the principle of the best interest of the child, is the main filter between the right of the child Vs. the right of the parents, or the right of the child Vs. the public right to protect them from illegal or criminal activity. The best interest of the child comes as the sole determinant, as the guarantor of the right to grow up in a family environment, in which the adult as guardian, adopter or foster family will appear as a complement and in function of the right of the child, and not at all as the individual who has the right to adopt and raise a child.

Another important aspect of the principle of the best interest of the child is considering and analyzing short-term and long-term aspects of decision-making effects related to the child. Thus, a decision would not be in the child's best interest if this interest exists in the short-term context, but turns out to be unreasonable in long-term context.

Also, the best interest of the child must be guaranteed and be a dominant consideration not only in decision-making for the child as an individual, but also as a group of individuals, e.g., during legislative or administrative activity related to children as direct or interested subjects.

At the end of article 5, specifically, in paragraph 5, there is also a rule based on which the best interest of the child should be interpreted:

'Interpretation of the child's best interests should be in full compliance with the Convention on the Rights of the Child and no supposed interpretation of what is in the best interest of the child can justify the violation of any right recognized by the Convention (article 5 par.4).'

IMPORTANT:

The United Nations Committee on the Rights of the Child emphasizes the importance of understanding the principle of the best interest of the child according to these three concepts³:

■ **This is a substantial and inalienable right:**

The child right to have his or her best interests assessed and taken into account as a primary consideration, when different interests are being considered at the same time, and to ensure that this right will be applied whenever a decision has to be taken in relation to the child, for the identified and non-identified group of children or children in general.

■ **Fundamental legal principle with a dominant character in cases of legal interpretations:**

If a provision is open to one or more interpretations, the interpretation that most effectively serves the child's best interests should be selected. The rights set out in CRC and Optional Protocols provide the framework for interpretation.

■ **Procedural rule that in general guides legislative enforcers:**

Whenever a decision that affects a particular child, an identified group, or children in general must be made, the decision-making process should include an assessment of the potential impact (positive or negative) of the decision on the child or the children. Assessing and determining the best interest of the child requires procedural guarantees. Furthermore, the reasoning must show that a particular right has been considered. In this respect, it should be clarified:

- how the right was respected in that decision;
- what is considered the best interest of the child;
- on what criteria it is based;
- and how the best interest of the child is weighed against other considerations.

2.2. Gradual development of skills

The principle of gradual development of skills should be taken into account in accordance with the development of child skills, the proper orientation and direction for the exercise of the rights acknowledged by the legislation in force and the Convention, and provide due importance regarding all child-related decisions and actions that are taken by parents or guardians, other trusted persons, institutions, child protection services, child protection professionals, courts, administrative authorities or legislative bodies' (Article 6 of LCP).

Even though CRC recognizes this principle as the 'Child's right to life, survival and development', the LCP has incorporated the principle of gradual development of skills as a principle combined between rights and other principles.

Although the term may sound different, it is important to understand its content and what this principle guides us in practice. Even though the right to life and survival are non-negotiable and equally important, the lawgiver has emphasized this principle on the importance of the child's development in a gradual manner, respecting all phases of development from the moment of birth until reaching adulthood.

³General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration. CRC/C/GC/14. Item 6 (a,b,c).

COMMENT:

The principle of the gradual development of skills is recognized by article 5 of CRC, which provides:

'States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention'⁴.

This article recognizes several related notions:

- Parents and other guardians have the right and duty to provide children with guidance and direction to exercise their rights;
- Guidance and direction provided must be 'appropriate';
- Children's capacity to exercise their rights increases personally over time and, as this capacity increases, the need for guidance and direction decreases proportionally;⁵
- The state must respect this dynamic between children and parents.

2.3. Observing child's point of view

This principle provides that the adult, family, community and public or private institutions, can no longer consider the child as a passive being, but as a being that participates actively, progressively in accordance with his intellect, in organizing the course of his life and the environment that surrounds him.

CLARIFICATION:

The term 'point of view' used in the LCP is adapted from the term 'view' used in English by the CRC, although this term, in Albanian language can also be used as a synonym for the terms 'thought' or 'opinion'. Therefore, in various translations of the CRC in Albanian language, as well as in various laws that are in force, you may come across different terms, but which in final purpose of normative, aim the same.

'In all actions and decisions that have to do with the child, taken by parents or guardians, institutions, child protection services, child protection professionals, courts, administrative authorities or legislative bodies, have the obligation to guarantee the child who is capable of having his or her views, the right to freely express such views on any matter pertaining to him/her, by assessing them in accordance with his/her age and degree of maturity, either directly, either through a representative or an appropriate body, in accordance with the rules of procedure of the legislation in force' (article 7 par.1 of LCP).

⁴ Similarly, Article 14.2 of the CRC provides that "States Parties shall respect the rights and obligations of parents and, where applicable, legal guardians to provide guidance to the child in the exercise of his or her right in accordance with the development of the child's abilities.

⁵ General Comment No. 7 on the Implementation of Children's Rights in Early Childhood, from 2005, paragraph 17, General Comment No. 12, Paragraph 84 and General Comment No. 14, Paragraph 44.

COMENT:

In order to define which is the best interest of the child, it is both necessary and logical to listen and take in consideration the views of the child. Respecting the views of the child is one of the fundamental principles of the LCP, and its interpretation and implementation is linked with the implementation of all the other rights and principles of the LCP and CRC. The principle is again mentioned in other articles of the LCP such as in article 27 par. 4; article 34 par. 2 and article 48 par. 4. Moreover, it is also mentioned in the CRC, such as in article 21(1), "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child".

In addition to requiring that the child's views be heard, the LCP also requires them to be taken into consideration. Consideration is precisely the guarantee required under article 7, since, in practice, in some cases the child may offer his views, but they might not be taken into consideration. Opinions can only remain words and expressions if they are not given due importance in accordance with his age and degree of maturity, and based on professional judgment, they should also be taken into consideration.

The LCP has foreseen the establishment of the duty of the child's representative. The duty of the representative is to present the opinions and views of the child in any decision concerning him. The representative can be one of the parents, a guardian or a third party appointed by the state, specifically to represent the interests of the child.

'In all actions undertaken in accordance with this law and the applicable legislation, especially in administrative matters and court proceedings, the views and wishes of the child should be considered in accordance with the age and degree of maturity of the child' (article 7 par.2 of LCP).

'This requires' (article 7 par.3 of LCP):

- *The child to receive adequate information about the procedures and decisions, the right to express his/her views and the potential importance and effects of his/her participation in the manner and language the child can understand (article 7 par. 3 item 1).*
- *The child to have the opportunity to express views and wishes and to obtain the necessary help to do so in a convenient and encouraging environment (article 7 par. 3 item 2).*
- *Adequate importance to be given to the child's view and wishes when a case-by case analysis is conducted and to show that the child can form their views in a reasonable and independent manner (article 7 par. 3 item 3).*
- *The child to be informed about the results of procedure and is given the opportunity to respond to the procedures and decisions (article 7 par. 3 item 4).*
- *The child to receive free legal aid in accordance with the legislation in force (article 7 par. 3 item 5).*

Paragraphs 2 and 3 of article 7, in addition to confirming the child's right to have his views taken into account, also provide further guidance on applying this principle, as follows:

- His point of view should be related to his age and level of maturity;
- Child must receive appropriate information;

- Child participation should be meaningful, in the language and manner that the child can understand instead of the official bureaucratic language;
- The child should always be offered help to express himself in an environment that is in accordance with the age and development of the child, which encourages and motivates the child to express his views;
- The child should have space and opportunity to express himself freely, reasonably and independently;
- The child must be informed in time and given the opportunity to use legal remedies and object the decision;
- Free legal and professional assistance should be provided at all times.

CAUTION:

Since the principle of the best interest of the child is always a priority, the child must also be guaranteed the right not to express his views/opinions if this is in his interest and his wish. Thus, the child does not always have to express himself. Non-expression and silence can be part of the child's views, because that might be the way how he understands and evaluates a circumstance or situation.

Childs' age is an important criterion that makes a difference regarding the consideration of his opinion; however, the LCP has not set a minimum age in terms of the right to express views freely. This is a right that will be linked to the child's ability to make decisions for himself. Consequently, the older the child, the greater the responsibility and the right to self-decision should be given to him, and more importance should be given to his views.

References from some of the applicable laws:

Law on Social and Family Services

'In considering an application for a Guardianship Order the court will pay particular regard to: a. the ascertainable wishes and feelings of the child concerned b. his physical, emotional and educational needs' (article 10 par. 10.15 items a. and b.).

Family Law of Kosovo:

'The opinion of the child who can form his/her views shall be taken into consideration by the court in all cases of parental custody. Such an opinion shall be given due weight in accordance with the age and the ability of the child to understand' (article 140 par.5).

Juvenile Justice Code:

*'Defense counsels should consider the juveniles as clients with full rights, that means that they are obliged to take into consideration and present their thoughts, as well as provide them with all necessary information and explanations related to the possible consequences of **their views and thoughts**' (article 41 par.5).*

'The victim or witness child shall be entitled to freely express his views, opinions and convictions, with his words and shall be entitled to provide contribution on decisions that impact his life, including decisions taken during the court proceeding' (article 111 par.6).

'A child who is unable to have his or her views, the child protection services, institutions, child protection professionals, courts, administrative authorities or legislative bodies are obliged

to guarantee the same protection to the child as in cases where the child can express his or her views in accordance with the rules and procedures of the legislation in force' (article 7 par.4 of LCP).

In principle, the LCP has determined that the right to express views belongs to the child, but starting from the principle of the best interest of the child and in cases where the child is not capable of forming and cannot express them, the institutions must ensure that any decision made for the child is considered as having been made in cases where the child has expressed his or her point of view.

2.4. Non-discrimination

The principle of non-discrimination is one of the basic and very important principles of the Law on Child Protection. Even though for this principle, the LCP has mostly referred to the relevant Law on Protection from Discrimination, it has also given a detailed instruction in terms of protection of the child from discrimination: *'All children are entitled to the same rights recognized by the applicable legislation and the Convention and shall be guaranteed such rights without any distinction, regardless of race, color, gender, language, religion, political or other affiliations, national, ethnic, or social origin, property, disability, family background or any other condition of the child or his parents or his/her legal representatives' (article 8 par.1 of LCP).*

COMMENT:

As seen in this paragraph, the LCP has determined that in addition to the rights recognized in this law, the child must be guaranteed and recognized the rights that are defined in the legislation in force and in the CRC, equally and without any distinction.

The principle of non-discrimination is also incorporated in other laws that provide protection for children:

- Family Law of Kosovo, article 4;
- Law on Social and Family Services, article 2.1;
- Juvenile Justice Code, article 1 and 111;
- Law on Labour, article 1.17 and 5;
- Law on Preschool Education, article 4;
- Law on Health, article 5, etc.

Even the CRC in frame of the principles, has defined the circumstances and situations that are related to the principle of non-discrimination:

'States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, regardless of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic, or social origin, property, disability, birth, or other status'(par.1).

'States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment based on the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members' (par.2).

However, article 2 of the CRC is a broad non-discriminatory statement and the phrase **"any other status"** by being non-exhaustive, is intended to include other elements of discrimination that are not specifically mentioned in article 2.

'All institutions, service providers, child protection professionals must take all appropriate measures, for the child to be protected from all forms of discrimination' (article 8 par.2 of LCP).

'Parents or guardians, family members, trusted persons, professionals for child protection who consider that the principle of equal treatment has not been applied to the child, may initiate the procedure and submit facts before a competent authority in accordance with the provisions of the respective law on protection from discrimination' (article 8 par.3 of LCP).

COMMENT:

The last paragraphs define the obligations and actions that must be taken to protect the child from discrimination. Paragraph 2 foresees and creates obligations for institutions, service providers and professionals, so here the burden of actions and measures to be undertaken falls on public and private institutions. Paragraph 3 foresees and creates obligations for parents, guardians, family members and trustworthy persons, who can initiate procedure and present facts in front of the competent bodies.

It is important to understand that the protection against discrimination should not only be implemented for the child who has the citizenship of the Republic of Kosovo, but it should also be applied without exception to the other children to whom the law acts and offers protection (see above the scope of the Law).

To correlate the implementation of this principle, an increased attention should be given to children who are more vulnerable, such as.:

- Children with disabilities;
- Ethnic origin (minority groups);
- Economic and social situation;
- Displaced children, asylum seekers, refugees, etc.

Preventing discrimination is an obligation of the States Parties, which requires actions such as those provided for in Article 2 of CRC. The concept of affirmative action / positive discrimination - or treating some people differently, aiming to provide them with special support to remedy past or current discrimination - is recognized by the CRC. In fact, the obligation of States Parties to provide support to vulnerable groups of children includes more than simply ensuring that these children are not being discriminated against. Positive measures are also required to improve their situation. UNCRC expects States Parties to take proactive measures to end discrimination. States Parties must ensure that all children have non-discriminatory access to all Convention rights. Furthermore, among groups of children with disabilities, girls are among the most vulnerable children that the Committee expects to benefit from affirmative action in strengthening the CRC principle on non-discrimination.

IV. ANNEXES

A) CASE STUDY

CASE A

Domestic courts' orders to return three children to their father against their will and without an adequate assessment of their best interest constituted a violation of article 8

JUDGMENT IN THE CASE OF N.TS. AND OTHERS v. GEORGIA

(Application no. 71776/12)

2 February 2016

1. Principal facts

The applicant, Ms N.Ts., was a Georgian national born in 1976 living in Tbilisi. Her three nephews – N.B., and twins, S.B. and L.B. – were born in 2002 and 2006 and were minors at the time of the proceedings.

After the mother of the three boys passed away in November 2009, her children went to live with their aunts and maternal grandparents. At the end of December 2009, G.B. – the father of the boys requested the return of his sons, but the maternal family refused it. This was mainly due to his drug abuse (although in 2008 he started a methadone substitution treatment), a couple of previous convictions for drug abuse and the fact that in 2008 he was diagnosed with psychiatric and behavioral disorders. However, according to his medical file in February 2010, his addiction had gone into remission, and he did not pose any threat either to himself or to the people surrounding him. Further, according to another medical certificate, he was not suffering from any psychiatric pathology.

On the 5th of January 2010 G.B. asked the District Court of Tbilisi to order the return of his sons. Despite the court decision to have the Social Service Agency ('SSA') involved in the case by requesting it to appoint a representative to protect the interest of the boys and to assess the living conditions of both the father and maternal family, SSA representatives were not involved at this stage of the proceedings. They participated only in the subsequent appeal proceedings initiated by the maternal family, by holding the status of an "interested party".

In May 2010, the District Court of Tbilisi ordered that the three boys be returned to their father as it considered beneficial and necessary for their physical and intellectual development. It recognized Mr G.B. as fit to resume his parental responsibilities, despite an expert report which recommended that the boys should not change their living environment as they had been suffering from separation anxiety disorder and showed a negative attitude towards their father.

The maternal family filed an appeal to the Appeal Court of Tbilisi criticizing that the court of first instance had put the father's rights at the center of its decision instead of being guided by the best interests of the children.

In February 2011, the Appeal Court quashed the appealed decision and ordered that the three boys should stay with their maternal family. However, in October 2011, the Supreme Court of Georgia remitted the case for re-examination. The Appeal Court of Tbilisi, by decision of the 2nd of February 2012, reversed its previous decision, concluding that the children should live with Mr G.B. The appeal of the aunts and maternal grandparents to the Supreme Court of Georgia, was rejected in May 2012.

Aiming to execute the order of the District Court of Tbilisi, two attempts to return the boys to the father failed as the children refused to move with Mr G.B. At the time of the proceedings before the European Court of Human Rights, the boys were living with their maternal grandparents and aunts.

2. Decision of the European Court on Human Rights

The applicant complained that the right to respect for private and family life enshrined in article 8 of the Convention had been breached due to the decision of the domestic courts to return the children to their father. She maintained that the national authorities had failed to thoroughly assess the best interests of the boys and that the proceedings had been procedurally flawed.

Scope of the application and admissibility

The applicant made it clear that she lodged an application with the Court solely in the name and on behalf of her nephews and was not pursuing any possible complaints on her own behalf. The Government claimed that the aunt did not have locus standi to act on behalf of her nephews.

The Court declared that it would limit its consideration of the current case to the following two questions: whether Ms N.Ts. had locus standi to complain on behalf of her nephews and, if so, whether the boys' right to respect their private and family life had been violated due to the domestic courts' decision to return them to their father.

The Government argued that the applicant lacked necessary status to act on behalf of her nephews as the boys' father had never been deprived of his parental rights and was his sole legal guardian after their mother's death. Moreover, the boys had never been placed under the guardianship of their aunt. Here the Court emphasized that the three boys were clearly in a vulnerable position. They were minors who had lost their mother and had a complicated, if not hostile, relationship with their father. In the present circumstances, there was no doubt that the aunt had a sufficiently close relationship with her nephews to complain on their behalf, because since their mother's death, she had cared for and provided a home to them.

The Court then examined the case to determine if it accomplished two additional criteria: first, the risk that without the aunt's complaint, the boys would have been deprived of an effective protection of their rights; and that there was no conflict of interests between them and their aunt. As to the first criterion, in view of the boys' family situation, there seemed to be no closer next of kin who could have complained on their behalf. There was therefore no alternative source of representation which would render their aunt's assumption of the role inappropriate or unnecessary. As to the second criterion, the core of the complaint was the alleged failure of the domestic authorities to comply procedurally with the requirements of the Convention and to act in the best interests of the children. The Court therefore did not see how there could be a conflict of interests between the aunt and her nephews on this point, because she did not complain in her own name. In view of all the above, the Court considered that the aunt had standing to lodge an application on behalf of her nephews.

Article 8

The Court found that the essence of the case presented in the aunt's submissions regarding her nephews' rights under article 8, had been violated because the domestic courts had failed to fully assess their situation and take in consideration their highest interest. Here there were two fundamental aspects to examine: whether the boys were duly involved in the proceedings, and whether the decisions taken by the domestic courts were dictated by the best interests of the boys.

Although the first-instance court had requested the appointment of an SSA representative for the boys, the Court had reservations as to the specific role the representative had played in the domestic proceedings. The SSA had become formally involved in the proceedings only from the appeal stage and only with an "interested party" status for which the Civil Procedure Code made no provision. Hence, it was unclear how the SSA could have effectively represented the children's interests while lacking a formal procedural role. In addition, it remained ambiguous what such SSA representation implied exactly, as the relevant legislation did not spell out the functions and powers of the representative appointed under the above scheme. During the proceeding which lasted more than two years, SSA representatives had met the boys only a few times with the sole purpose of drafting reports on their living conditions and their emotional state. However, no regular contact had been maintained to monitor the boys and establish a trustworthy relationship with them.

In this context, the Court referred to the instruments of several international bodies where they exist conflicting interests between parents and children, the provision of a guardian ad litem or appointment is required of another independent representative to represent the child's views and to keep him or her informed about the process.

The domestic courts' decision to return the boys to their father was mainly based on two reasons: the boys' best interest to be reunited with their father, and the negative influence of the maternal family on the boys. While the Court considered that motivation, it underlined that the domestic courts had failed to consider the fact that the boys did not want to be reunited with their father. Whatever manipulative role the maternal family might have played in alienating the boys from their father, the evidence concerning the boys' hostile attitude towards him was unambiguous. Moreover, several reports by psychologists had warned of the potential risks to the boys' psychological health in case of a forced return to their father. In those circumstances, such a radical measure without considering a proper transition aimed at assisting the boys and their estranged father in rebuilding their relationship, appeared to be contrary to the boys' interests.

The Court concluded that the incorrect representation and consequential failure to duly present and hear the boys' views, as well as to take into consideration their best interests and emotional state, had undermined the procedural fairness of the decision-making process, in breach of their right guaranteed by article 8.

Article 41

The Court held that Georgia was to pay the boys €10,000 jointly in respect of non-pecuniary damage, and €900 for costs and expenses arising from the case.

CASE B

Segregating Roma children in Croatian primary schools discriminatory in violation of article 14 and article 2 of Protocol No.1

GRAND CHAMBER JUDGMENT IN THE CASE OF ORŠUŠ AND OTHERS v. CROATIA

(Application no. 15766/03)

16 March 2010

1. Principal facts

The applicants were 15 Croatian nationals of Roma origin. They were born between 1988 and 1994 and all lived in northern Croatia. In April 2002 the applicants brought proceedings against their primary school. They claimed that their school curriculum had 30 % less content than the official national curriculum. They alleged that that situation was racially discriminatory and violated their right to education as well as their right to freedom from inhuman and degrading treatment. They also submitted a psychological study of Roma children who attended Roma-only classes in their region, which reported that segregated education produced emotional and psychological harm in Roma children, both in terms of self-esteem and development of their identity.

In September 2002 the Municipal Court dismissed the applicants' complaint, after finding out that the reason why most Roma pupils were placed in separate classes, was their need for extra tuition in Croatian language. Furthermore, the curriculum at Podturen and Macinec Elementary schools was the same as that used in parallel classes in those schools. Consequently, the applicants had failed to substantiate their allegations concerning racial discrimination. The applicants' complaint was also subsequently dismissed on appeal. The applicants' constitutional complaint, lodged in November 2003, was dismissed on similar grounds in February 2007.

2. Decision of the European Court on Human Rights

The applicants alleged that their segregation into Roma-only classes at school, deprived them of their right to education in a multicultural environment and discriminated them. This treatment made them endure severe educational, psychological, and emotional harm, and in particular feelings of alienation. They also complained about the excessive length of the proceedings of the domestic courts. They relied on article 3, article 6 & 1, article 2 of Protocol No. 1 and article 14 of the European Convention on Human Rights.

In a judgment of the 17th of July 2008, the Chamber of the Court held that there had been no violation of article 2 of Protocol No. 1 and article 14 concerning the applicants' complaint that they were placed in Roma-only classes at primary school; and it confirmed a violation of article 6 & 1 of the Convention concerning the excessive length of the proceedings. The case was referred to the Grand Chamber of the European Court of Human Rights, under article 43 at the applicants' request.

Article 6 & 1

The Court found that the length of proceedings (more than four years) in a case of such importance, had been excessive, and concluded that the right of the applicants to a fair trial within a reasonable time had not been respected, in violation of article 6 & 1.

Article 14 and Article 2 of Protocol No. 1

The Court found that this case consisted of a discrimination issue. It recalled its findings and noticed that because of their history, the Roma had become a specific type of disadvantaged and vulnerable minority. They therefore required special protection, including in the sphere of education.

The Court noted the reasons given by the Government for the placement of the applicants in Roma-only classes, namely that they had lacked adequate command of the Croatian language. It considered that while temporary placement of children in a separate class on the grounds of language deficiency was not, as such, automatically contrary to article 14 of the Convention, when this affected as in the present case, exclusively the members of a specific ethnic group, specific safeguards had to be put in place.

Croatian law at the time had not provided for separate classes for children lacking proficiency in the Croatian language. In addition, the tests applied for deciding whether to assign pupils to Roma-only classes, had not been designed specifically to assess the children's command of the Croatian language, but had instead tested the children's general psycho-physical condition.

As regards the curriculum, once assigned to Roma-only classes, the applicants had not been provided with a program specifically designed to address their alleged linguistic deficiency. While additional Croatian classes had been offered to the applicants, they have not been sufficient and have been offered only at some stages of education.

All applicants had spent a substantial period of their education in Roma-only classes. However, there had been no monitoring procedure and, although some of the applicants had attended mixed classes at times, the Government had failed to show that any individual reports had been drawn up in respect of each applicant and his or her progress in learning Croatian. The lack of a transparent monitoring procedure had left a lot of room for arbitrariness.

Furthermore, the statistics submitted by the applicants for the region in which the applicants lived, and not contested by the Government, had showed a drop-out rate of 84% for Roma pupils before completing primary education.

As regards the parents' passivity and lack of objections in respect of the placement of their children in separate classes, the Court held that the parents, being themselves members of a disadvantaged community and often poorly educated, had not been capable of weighing up all the aspects of the situation and the consequences of giving their consent.

Consequently, while recognizing the efforts made by the Croatian authorities to ensure that Roma children received schooling, the Court held that no adequate safeguards had been put in place at the relevant time to ensure sufficient care for the applicants' special needs as members of a disadvantaged group. Accordingly, the placement at times of the applicants in Roma-only classes during their primary education had not been justified, in violation of article 14 and article 2 of Protocol No. 1.

Article 41

The Court held that Croatia was to pay to each applicant €4,500 in respect of non-pecuniary damage and, to the applicants jointly, €10,000 in respect of costs and expenses.

B) Agenda

First day Module I	
09:00 – 09:30	Training objectives and expected results
09:30 – 10:30	Who is a child, child rights and child protection
10:30 – 11:00	Terms and definitions
11:00 – 11:30	International conventions for child rights and applicable legislation
11:30 – 12:00	Objective and scope of LCP
12:00 - 13:00	Lunch
13:00 – 13:30	Child protection principles
13:30 – 14:00	Beneficiaries and implementers of the LCP
14:30 - 15:00	Legal instruments for child protection
15:00 – 15:30	Study cases, group work
15:30 - 16:00	Reflections and closure of the first day

MODULE II:

INSTITUTIONAL MECHANISMS - ROLE AND RESPONSIBILITIES FOR CHILD PROTECTION

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I. TRAINING OBJECTIVES AND EXPECTED RESULTS

The main objective of the Second Module is recognition and familiarization with the institutional mechanisms that have been established or are expected to be established in the Republic of Kosovo, and which in principle or among other principles aim the protection of the child. Institutions and bodies that will be established will be guarantors and safeguards of the implementation of principles and rights that are foreseen in the LCP.

At the end of this module, participants will be able to:

- To understand the main authorities and institutions in Kosovo;
- To be informed regarding the roles and responsibilities of mechanisms and institutions at central and local level;
- What is the difference between mechanisms and institutions at central and local level;
- What are the mechanisms of help and communication with the child;
- Where can children, parents and child protection professionals address a complaint or refer to a case?
- Increase analytical skills through study cases, etc.

CHAPTER 1.

INSTITUTIONAL MECHANISMS AT THE CENTRAL LEVEL

- 1. Central institutions are obliged to develop and implement policies and programs for supporting children and their guardians, with a view to providing child protection, preventing threats to their life, violence, neglect, abuse, mistreatment, abandonment, and exploitation. They shall ensure enforcement pursuant to appropriate standards of these policies and programs by institutions and other organizations providing child protection services.*
- 2. Institutions shall take all legislative, administrative, social, education and health measures for the prevention, reporting, referral, investigation, treatment, and prosecution of child abuse cases described in paragraph 1. of this article and shall provide support to children and their guardians to ensure the protection and well-being of the child.*
- 3. All institutions and services that are responsible for the care and protection of the child shall, while exercising their duties and drafting policies and legislation, act in accordance with the principles and provisions of this law and shall be responsible to ensure the staff capable of performing the duties and responsibilities set forth in this law.*
- 4. The Government, through ministries and relevant units, is responsible for drafting the policies and standards for ensuring that families have access to various forms of child protection support regarding all support measures and programs in local level.*
- 5. When the family places the child at risk of being abandoned, abused, neglected, mistreatment or exploited, or exposes the child to acts of exploitation and abuse, the relevant institutions shall have the responsibility to protect the child and provide appropriate alternative care in compliance with applicable legislation.*
- 6. Relevant ministries, in accordance with the scope and responsibilities defined by applicable legislation, shall be responsible for drafting policies in the field of child protection and ensure their implementation by the responsible institutions at the central and local level, as well as other organizations providing child protection in accordance with the applicable legislation.*
- 7. Relevant ministries shall cooperate with municipalities, relevant municipal units, academia, other ministries and stakeholders to formulate policies and legislation to ensure the maintenance and advancement of child protection.*

Article 11, Law on Child Protection (Law no.06/L-084)

To regulate responsibilities of authorities and mechanisms at central level under article 11, the LCP has defined and reiterated what are the main roles. Therefore, the roles of the central institutions derive from here:

- To develop policies and programs for child protection;
- To draft laws, administrative decisions and undertake other measures in terms of social aspect, educational, health, education, etc.;
- To provide compliance and implementation of principles and provisions of the LCP;
- To coordinate the central and local level;
- To cooperate with the local level, NGOs, academic circles and interested parties in the implementation of role and responsibilities of central institutions.

Structure and institutional mechanisms regarding child rights at the central level are:

- Ombudsperson Institution;
- Relevant ministries, based on their scope covering the rights of the child;
- Relevant unit for Good Governance within the Office of the Prime Minister;
- Inter-ministerial Committee on the Rights of the Child;
- Council for the Rights of the Child.

Article 9 par.1 Law on child protection (Law no.06/L-084)

1.1. Ombudsperson Institution

The Ombudsperson Institution (OI), also known as the Ombudsperson, is one of the main institutions at central level through which the child or the group of children can achieve protection of rights, freedoms and interests.

1. *Ombudsperson is an independent institution which among other things protects the rights of the child, foreseen by the Constitution, laws and other acts as well as by international instruments of the human rights, with the Convention on the Rights of the Child.*
2. *A deputy Ombudsperson within the competences delegated by the Ombudsperson shall also be responsible for protecting the rights of the child.*
3. *Every child, person or group of persons may file a complaint to the Ombudsperson regarding the protection of the rights of the child according to the procedures set forth in the applicable legislation. The Ombudsperson shall issue a regulation on the manner of appeal of the child, as set forth by this law.*
4. *Associations, organizations or other legal entities may initiate or support complaints on behalf of the applicant, upon obtaining the consent of the parents or guardian, as well as the child's opinion when he/she is able to provide it, for conducting the proceedings at the Ombudsperson's office.*
5. *When the Ombudsperson initiates the procedure on his/her own initiative regarding the violation of the rights and freedoms of many children, the consent from paragraph 4. of this article is not required.*

Article 10, Law on Child Protection (Law no.06/L-084)

Ombudsperson is an independent institution that is governed by the principles of impartiality, independence, pre-eminence of human rights, confidentiality, and professionalism.⁶

OI protects children rights by:

- Implementing the Constitution, LCP and other relevant laws, with special emphasis on CRC;
- Appointing a deputy Ombudsperson as responsible official for child protection;
- Receiving complaints directly from the child, group of children or even from associations, organizations, or other legal entities.

OI, to implement its powers and responsibilities, drafts and prepares an internal regulation, through which the rules and procedures regarding the complaint of a child or group of children are defined.

1.2. Relevant ministries, based on their scope covering the rights of the child

Relevant ministries, according to scope they cover in relation to the rights of the child and in accordance with the scope of work and responsibilities defined by the legislation in force, are responsible for drafting policies in the field of child protection, as well as for ensuring their implementation from the responsible institutions at central and local level, and other organizations that provide protection for children, in accordance with the legislation in force.

Ministries of the Government of the Republic of Kosovo, within their scope, have obligations and responsibilities for the protection of the child. with the aim to adapt to the topics structured in LCP, these main areas have been selected:

1.2.1. Social welfare scope

Same as defined in the Regulation of the Government of the Republic of Kosovo, the Ministry for Labor and Social Welfare⁷ has, but is not limited to, the following responsibilities:

'Prepares public policies, drafts legal acts, drafts and adapts by laws, implements them, determines mandatory standards in the field of safety and protection at work, labor relations, safety and health at work, social dialogue, employment, training, social policies, pensions.....'⁸

Regulation (GRK) - no. 02/2021 On the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries⁹

⁶ Article 3, Law no. 05/I -019 on Ombudsperson.

⁷ Wording used here is to adapt to topics regulated by the LCP, and to avoid frequent changes that occur with the names of Ministries from Governments that come to power. At the time when the Module is being written, e.g. this Ministry is called: Ministry of Finance, Labor and Transfers. The designations of the ministries based on the themes will be used in all Modules, and this does not prejudice the trends of change or political determination of government departments.

⁸ According to the regulation, this Ministry and Ministries have other responsibilities, but for the purposes of this module, only those related to child protection have been emphasized.

⁹ Approved at the Government meeting with Decision No. 01/02, date 26.03.2021.

The relevant Ministry of Labor and Social Welfare, within its scope and competences provided by law and other by-laws, coordinates, cooperates, and lines up the actions related to the protection of the child, through the relevant agencies, departments, divisions, offices that are under the mandate and the supervision of Ministry of Labor and Social Welfare.

To know more about the manner of the organization / organogram and mechanisms that are under the mandate and responsibility of this Ministry, click on these websites ¹⁰:

<https://mf.rks-gov.net/>
and
<https://mpms.rks-gov.net/>

In addition to the mandate and responsibilities, as defined in the laws and by-laws, the relevant Ministry for Labor and Social Welfare coordinates and harmonizes the actions in terms of the implementation of the obligations as defined in the LCP, in these fields but not limited to:

- Protection of vulnerable children, such as:
 - Children with disabilities;
 - Children without parental care;
 - Children in the street and trafficked children;
 - Children who have committed criminal offenses without criminal responsibility and with criminal responsibility;
 - Children who abuse with narcotic and psychotropic substances;
 - Children living in extreme poverty and homeless children;
 - Children victims and witnesses of domestic violence.
- Licensing of professionals who work and provide services to children, especially social officials.
- Establishment of a consolidated system to monitor and inspect the quality of social and family services, as well as to review appeals in the second instance

1.2.2. Justice and security scope

a) Relevant Ministry of Justice

As defined in the Regulation of the Government of the Republic of Kosovo, the relevant Ministry of Justice has these responsibilities, in these fields but is not limited to:

'Prepares public policies, drafts legal acts, drafts and adapts by laws, as well as determines the mandatory standards in the field of justice, in compliance with the Constitution and legislation in force....'

Regulation (GRK) - no. 02/2021 On the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries

The relevant Ministry of Justice, within the framework of its scope and competences provided by the law and other by-laws, coordinates harmonizes and lines up actions related to child protection, through relevant agencies, departments, divisions dhe offices that are under the mandate and supervision of the Ministry of Justice.

¹⁰Websites were visited and links copied on August 2022.

To know more about the manner of the organization / organogram and mechanisms that are under the mandate and responsibility of this Ministry, click on this website¹¹:
<https://md.rks-gov.net/>

In addition to the mandate and responsibilities, as defined in the laws and by-laws, the relevant Ministry of Justice coordinates and harmonizes the actions in terms of the implementation of the obligations as defined in the LCP, in but not limited to:

- Protection of children under the age of criminal responsibility and children victim of domestic violence;
- Prevention of juvenile delinquency;
- Fighting negative phenomena where children are participants;
- Resocialization programs for juvenile offenders;
- Rehabilitation programs for minors and their parents;
- Supporting the family and community reintegration program after serving sentences or restrictions;
- Child protection and coordination of processes related to international child abduction;
- Capacity building of professionals who work and provide services to children, especially probation officers, correctional officers and mediators.

b) Relevant Ministry of Internal Affairs

c) As defined in the Regulation of the Government of the Republic of Kosovo, the relevant Ministry of Internal Affairs has the following responsibilities:

'Prepares the public policies, drafts legal acts, drafts and adopts the by laws, and determines the mandatory standards in the field of public order and public safety, cyber security, state borders, emergencies, civil status, migration, asylum, reintegration of repatriated persons and integration of foreigners, readmission and citizenship, forensics, non-governmental organizations, public administrative services, functional organization of institutions of the state administration and governance....'

Regulation (GRK) - no. 02/2021 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries

The relevant Ministry of Internal Affairs, within the framework of its scope and competences provided by the law and other by-laws, coordinates, harmonizes and lines up actions related to child protection, through relevant agencies, departments, divisions, and offices that are under the mandate and supervision of the relevant Ministry of Internal Affairs.

To know more about the manner of the organization / organogram and mechanisms that are under the mandate and responsibility of this Ministry, click on this website ¹²:

<https://mpb.rks-gov.net/>

¹¹ Website have been visited and link copied on August 2022.

¹² Website have been visited and link copied on August 2022.

In addition to mandate and responsibilities, as defined in the laws and by-laws, the relevant Ministry of Internal Affairs coordinates, and lines up actions in terms of the implementation of the obligations as defined in the LCP, in these fields but not limited to:

- Protection of children from domestic violence and all forms of violence that violate their integrity and life;
- Preventing and fighting juvenile delinquency;
- Fighting negative phenomena and crime against children;
- Lead and help in fight against organized crime with special emphasis on trafficking and other forms of exploitation of children;
- Increasing capacities of education and training of professionals to identify, investigate, refer and report cases of children who need protection from any form of violence;
- Making sure the registration of every newborn child;
- Protect and ensure that repatriated children are reintegrated into the family and community;
- Take measures to protect asylum-seeking children and children without citizenship, especially children without parental care;
- Ensure that children are protected while using the Internet and other forms of communication;
- Capacity building of professionals who work and provide services to children, especially police officers and civil registration officials.

1.2.3. Education

As defined in the Regulation of the Government of the Republic of Kosovo, the relevant Ministry of Education and Science has following responsibilities, but not limited to:

Prepares public policies, drafts legal acts, drafts, and adapts by laws, as well as determines the mandatory standards in the field of development of early childhood education, pre-university education, science, technology and innovation in the Republic of Kosovo

Regulation (GRK) - no. 02/2021 On the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries

The relevant Ministry of Education and Science, within the framework of its scope and competences provided by the law and other by-laws, coordinates, harmonizes and lines up actions related to child protection, through relevant agencies, departments, divisions and offices that are under the mandate and supervision of the relevant Ministry of Education and Science.

To know more about the manner of the organization / organogram and mechanisms that are under the mandate and responsibility of this Ministry, click on this website ¹³:

<https://masht.rks-gov.net/>

¹³Website have been visited and link copied on August 2022.

In addition to mandate and responsibilities, as defined in laws and by-laws, the relevant Ministry of Education and Science coordinates and lines up actions in terms of implementation of obligations as defined in the LCP, in these fields but not limited to:

- Ensure comprehensive access and attendance to free and quality education, based on equal opportunities and without discrimination, in accordance with his age and ability to understand at all levels of pre-university education. This right is also guaranteed to the child who wants to continue his education after completing compulsory education.
- Protect the child from all forms of physical and mental violence, abuse, misuse, exploitation, corporal punishment, neglect, or any other form that endangers the life, safety, health, education, training, and development of the child.
- Increase education and training capacities of students and professionals to identify, investigate, refer, and report cases of children who need protection from any form of violence.
- Ensure that children are protected through educational programs, all the time they are using the Internet and other forms of communication.
- Ensure capacity building of professionals who work and provide services to children, especially teachers, educators, assistants for children with special needs.

1.2.4. Health scope

As defined in the Regulation of the Government of the Republic of Kosovo, the relevant Ministry of Health has these responsibilities, but not limited to:

'Prepares public policies, drafts legal acts, adopts by laws, and defines the mandatory standards in the field of health, while respecting important international standards...'
Regulation (GRK) - no. 02/2021 On the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries

The relevant Ministry of Health, within the framework of its scope and competences provided by the law and other by-laws, coordinates, harmonizes and lines up actions related to child protection, through relevant agencies, departments, divisions, and offices that are under the mandate and supervision of the Ministry of Health.

To know more about the manner of the organization / organogram and mechanisms that are under the mandate and responsibility of this Ministry, click on this website¹⁴:

<https://msh.rks-gov.net/sq/>

In addition to mandate and responsibilities, as defined in the laws and by-laws, the relevant Ministry of Health coordinates and lines up the actions, in terms of implementation of obligations as defined in the LCP, in these fields, but not limited to:

- Guarantee the right to free health care, the benefit of high-standard disease treatment and high standard health rehabilitation services.
- Take measures to reduce infant and child mortality.

¹⁴Website have been visited and link copied on August 2022.

- Take measures to combat disease and malnutrition, by taking actions for the safety of food products, clean water and considering the risks of pollution of the natural environment.
- Guarantee the provision of health care services for children with disabilities, with the aim of rehabilitation and equal integration in society.
- Draft policies for the early identification of children’s health problems through home visits and their referral to other relevant sectors for intersectoral treatment.
- Draft policies and programs for the appropriate protective and preventive measures, including advocacy for a healthy lifestyle and discouraging any type of abuse of narcotic and psychotropic substances.
- Capacity building of professionals who work and provide services to children, especially nurses, doctors, psychologists, and psychiatrists.

1.2.5. Coordination of responsibilities and actions of relevant ministries

In addition to the above-mentioned mandates and responsibilities, relevant ministries are also obliged to coordinate following actions and responsibilities, but not limited to:

-
- Drafting by laws deriving from LCP;
 - Organizing basic and advanced trainings regarding the capacity building of child protection professionals;
 - Informing and reporting regarding the development and application of policies, legislation, standards, financial difficulties and other difficulties, as well as the monitoring and inspection results related to child protection;
 - Coordination of actions regarding the mechanisms of the national coordinator against domestic violence, national coordinator against trafficking in human beings, and other coordinators covering the field of child protection;
 - Draft joint protocols for child protection professionals, regarding the aspects of case management;
 - Coordination and assistance to respective training academies and institutes in updating the training curricula for further specialization of child protection professionals;
 - Coordination of actions with relevant public and private universities regarding the inclusion of practical work for students of all levels of studies;
 - Appointment of a relevant official to coordinate the implementation of the Law on Child Protection;
 - Participation in frame of the Interministerial Committee for the Rights of the Child, informing and reporting regarding the implementation protection of children’s rights, as well as advocating so that through the Committee and decisions that are brought.
 - Designated official or unit from the relevant Ministries must cooperate with the relevant Office for Good Governance, to ensure the coordination, referral and reporting regarding the implementation of the Law on Child Protection.
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1.3. Unit of Good Governance within the Office of the Prime Minister

In terms of implementation of the Law on Child Protection, the respective Unit of Good Governance within the Office of the Prime Minister is responsible to:

1. *Support the Committee for coordination of institutions and mechanisms that deal with the rights and protection of the child and monitor and report the implementation of the Committee's recommendations.*
2. *Provide recommendations to Committee and the Government on issues related to child protection.*
3. *Recommend and advise the Prime Minister and relevant ministries in accordance with the principles of this law and the Convention on the Rights of the Child, as necessary, on issues related to the rights and protection of the child.*
4. *Drafts and ensures the compatibility of strategic policies, programs and legislation with standards related to the rights and protection of the child and good governance practices.*
5. *Drafts standard operating procedures for prevention, identification, reporting, referral, investigation, treatment, and persecution of child abuse cases to ensure protection of the child.*
6. *Implements promotional projects to promote public awareness on international standards on child rights, applicable legislation, child education in the spirit of peace, dignity, tolerance, freedom, equality, and solidarity and promotes any new form of child protection.*
7. *Establish a monitoring system for implementation of the rights of the child under the framework of children's rights indicators.*
8. *Cooperate with relevant government bodies of other states as well as with international organizations in matters concerning the rights and protection of the child.*
9. *Prepare a report on the implementation of the Convention on the Rights of the Child for the Committee on the Rights of the Child in Geneva, which was approved by the Committee. After approval by the Committee, the report shall be made public.*
10. *Submit an annual report to the Government of the Republic of Kosovo on the implementation of this law and may also draft special reports regarding its implementation.*

Article 12 par.1 Law on Child Protection (Law no.06/L-084)

In addition to the above-mentioned mandates and responsibilities, the relevant Unit of Good Governance in frame of the Office of the Prime Minister, coordinates, and lines up actions in terms of implementation of obligations as defined in the LCP, in these fields but not limited to:

- It also functions as a central body in coordinating activities of central and local authorities;
- Serves as the Secretariat of the Interministerial-Committee, coordinates, monitors, develops and maintains the necessary activities for the work of the Committee;
- Coordinates the data collection process on behalf of the Interministerial-Committee. All institutions are obliged to provide these requested data and information;
- Establishes the free telephone line for child protection;
- Carries out assessments, studies and awareness programs to influence reduction and eradication of traditions and practices harmful to children, as well as promotion of healthy models and positive alternatives;
- Promotes eradication of discrimination and prejudice against children with disabilities;
- Prepares special programs to increase professional capacities in the scope of child protection, in

order to implement the LCP;

- In cooperation with the institutions mandated by the law and non-governmental organizations, prepares the program for awareness raising of the public through awareness raising campaign, regarding the obligations arising from the LCP;
- Assists and advises the Kosovo Institute for Public Administration, Academy of Justice, Academy for Public Safety to prepare special programs to increase professional capacities in the field of child protection;
- Coordinates the process of data collection and report preparation in accordance with data and information received from central and local authorities;
- Appoints the relevant official to coordinate and report the implementation of the Child Protection Law. The designated official will cooperate and coordinate with all governmental and non-governmental institutions, at central and local level.

1.4. Inter-Ministerial Committee on the Rights of the Child

The Inter-Ministerial Committee for the Rights of the Child (the Committee) is the highest mechanism at political level for children's rights in the Republic of Kosovo. The Committee for the Rights of the Child is established to communicate, coordinate and ensure policies, programs and processes related to the issue of child rights protection, among the institutions of the Government of Kosovo, as well as to facilitate the implementation of the rights of the child and to provide them with equal opportunities for active participation in society.

The Committee also provides advice and coordination of state policies for guaranteeing the rights and protection of the child in all areas, especially in education, justice, social services, health and culture.

The Committee has the following responsibilities:

1. *Coordinates all the institutions and mechanisms that deal with the rights and protection of the child.*
2. *Debates on policies and legislation in the area of the rights and protection of the child.*
3. *Supports the development and implementation of public information campaigns and other pilot projects to raise awareness on the standards of the rights and protection of the child.*
4. *Facilitates and monitors the implementation of policies, programs and other adopted measures regarding the rights and protection of the child.*
5. *Defines the priorities and measures to be taken to improve the current situation regarding the rights and protection of the child.*
6. *Approves the state report on the implementation of the Convention on the Rights of the Child for the Committee on the Rights of the Child in Geneva.*
7. *Takes decisions and provides recommendations for improving the protection of children's rights.*
8. *Approves the annual report on the rights of the child in the Republic of Kosovo.*
9. *Maintains links and cooperates closely with organizations representing children and other relevant factors in the field of the rights of the child.*
10. *Establishes working groups needed for dealing with issues related to the rights and protection of the child.*

Article 16 par.4 Law on Child Protection (Law no.06/L-084)

The Committee is chaired by the Prime Minister and is represented by ministries at ministers' level. In the quality of observer members, shall be the representative of the relevant Parliamentary Committee on Human Rights, Gender Equality, Missing Persons and Petitions, the Ombudsperson, two (2) representatives from student councils, the Head of UNICEF Office in Kosovo and a civil society representative. *The Committee shall meet at least two (2) times a year* ¹⁵.

1.5. Council for the Rights of the Child

The Council for the Rights of the Child (Council) is the highest technical (professional) mechanism for the rights of the child in the Republic of Kosovo. The Council is established to communicate, coordinate, and ensure the implementation of policies, programs and laws related to the issues of child rights and child protection, between the institutions of the Government of Kosovo, to facilitate the implementation of the rights of the child and to offer them equal opportunities for active participation in society.

Council for the Rights of the Child has following responsibilities:

1. *Defines the priorities and necessary measures to be taken for improving the current situation regarding the rights and protection of the child and coordinates the activities necessary for their implementation.*
2. *Advises the Committee on all aspects of the rights and protection of the child.*
3. *Coordinates and monitors the development and implementation of relevant policies and measures for implementation of this law and the strategy and national action plan on the rights of the child.*
4. *Analyses and evaluates the implementation of development policies and legislation related to improving the situation of the rights and protection of the child.*
5. *Recommends to competent institutions undertaking further actions necessary to realize the rights and ensure the protection of the child in accordance with the legislation in force.*
6. *Provides relevant recommendations on cross sector prevention measures for child protection.*
7. *Promotes and develops activities aimed at increasing the participation of the child in the decision-making process related to the rights and protection of the child.*
8. *Implements information campaigns and other promotional projects to raise awareness on the standards of the rights and protection of the child.*
6. *Advances cooperation on the rights and protection of the child at the central and local level with civil society and relevant agencies with the aim of implementing relevant documents (national and sector strategies, programs, action plans, etc.).*

Article 18 par.1 Law on Child Protection (Law no.06/L-084)

*The Council consists of 21 regular members, 2 members are external advisors, while 5 other members are observers*¹⁶. The composition of the Council reflects the mandate and role given to it by the LCP, ensuring the participation and representation at the professional level, from all the main institutions that have the mandate to protect the child.

IMPORTANT:

The Committee and the Council are mechanisms established at the central level; thus it is important to understand that:

- The Committee is a **POLITICAL and DECISION-MAKING** mechanism, and
- **The Council is a TECHNICAL / PROFESSIONAL and ADVISORY** mechanism.

¹⁵ Article 17, Law on Child Protection (Law no.06/L-084).

¹⁶ Article 19, Law on Child Protection (Law no.06/L-084).

CHAPTER 2.

STRUCTURE AND INSTITUTIONAL MECHANISMS AT LOCAL LEVEL

The structure and institutional mechanisms for child rights at the local level are:

- Municipality;
- Relevant department according to the field they cover in relation to the rights of the child;
- Centre for Social Work;
- Team for the Rights of the Child;
- Multidisciplinary Roundtable for Support in Case Management.

2.1. Municipality

The municipality, as the basic unit of local self-government in Kosovo, in frame of its obligations for the implementation of the LCP, has the following roles and responsibilities:

1. *Each municipality is responsible for providing preventive, protection and reintegration measures and services for child protection within its territory according to standards and policies determined by the Government or the relevant Ministries.*
2. *Municipalities shall take steps to identify the nature and extent of the need for child protection within their territory.*
3. *Municipalities shall prepare annual plans and financing for the development and maintenance of child protection services.*
4. *Municipalities are obliged through respective directorates to determine at least one child protection officer, who shall be obliged to cooperate with, exchange information and data with the relevant Unit for Good Governance.*
5. *During the preparation of their annual plans, municipalities are obliged to consult widely with the relevant unit for good governance, relevant ministries, civil society organizations and other relevant groups and professional groups in their territory on the development, planning and delivery of child protection services.*
6. *Each municipality should have at least three (3) foster families for children without parental care, who are evaluated, trained, and approved according to the standards set forth by the relevant Ministry of Social Welfare.*
7. *To realize common objectives and interests related to child protection competences, two or more municipalities may enter into cooperation relationships in compliance with applicable legislation.*

8. *Develops programs and projects to ensure the rights and welfare of the child, prevent and reduce factors endangering the life and moral, physical, psychological, and emotional integrity of the child.*
9. *For the purpose of community awareness and achievement of concrete and certain results for children who do not have access to existing services, municipalities should organize information, education meeting and training for child protection, by coordinating and harmonizing actions through integrated services of the education sectors, social services, health and other governmental, non-governmental and community organizations.*

Article 14 Law on Child Protection (Law no.06/L-084)

In addition to the mandate and responsibilities, as defined in Law on Local Self-Government and by-laws, the municipality coordinates and lines-up actions in terms of implementation of obligations as defined in the LCP, but not limited to, in the following areas:

- Establishes a Centre for Social Work (CSW) as a public institution that will have one or more branches and licensed professional staff with relevant qualifications;
- Through the CSW, the municipality maintains the database of social and family services regarding the identification of the beneficiaries of social services, and provides statistical data according to recommendations of the relevant Ministry for Social Welfare;
- Through the Centre for Social Work, municipalities perform social and family services within their territory and provide financial support or other assistance to NGO's that complement services and activities of CSW for some categories and services;
- Contracts the provision of social services, in those areas where it cannot cover the services, or where specialized services are required;
- Ensures that the CSW in its territory has resources according to the standards specified by ministry, including number and (type) quality of professional staff to be employed;
- Through the relevant directorate, it submits an annual report on activities related to social and family services, and special reports in specific cases of high risk or interest, at the request of relevant ministries;
- Within the relevant directorates, appoints the responsible official to coordinate and report the implementation of Law on Child Protection. The designated official or unit will cooperate with the relevant Office for Good Governance, to ensure coordination, referral and reporting of LCP implementation. Implements and helps other mechanisms in Municipality such as: The Multidisciplinary Roundtable for Support in Case Management and the Team for the Rights of the Child.

2.2. Relevant directorates according to scope that they cover in relation to child rights

In all the municipalities of the Republic of Kosovo, in frame of the directorates that are established according to the Law on Local Self-Government or Municipal regulations, the below listed directorates, but not only, have the responsibility to implement and coordinate activities for the implementation of LCP:

- Relevant Directorate of Health;
- Relevant Directorate of Education;
- Relevant Directorate of Social Welfare;
- Relevant Directorate of Youth, Culture and Sport¹⁷.

Directorates, within their own delegated and extended competencies, undertake actions to facilitate the implementation of LCP.

The relevant directorates are responsible for drafting policies, guidelines, various regulations, advocating for budget planning and adequate allocation, recruiting, and increasing capacities of professional staff.

The relevant directorates coordinate all actions at the local level with the Mayor, Centre for Social Work, Case Management Roundtables, Child Protection Homes, and Team for the Rights of the Child.

At any moment and situation, depending on the need and demand, relevant directorates must coordinate actions with the structures at the central level too, to implement the mandate for child protection, which derives from LCP.

The relevant Directorates of Health and Social Welfare, within the municipality, are obliged to provide budget for specific funding to handle emergencies in cases of children in need.

The Municipal Directorate of Education and the Inspectorate of Education take disciplinary measures against educational personnel and report cases of corporal punishment of children to investigation bodies, in accordance with the laws in force.

In cases where children who do not attend compulsory education are identified, due to non-registration at the civil status registry offices or due to other reasons, the relevant child protection officer within the relevant Municipal Directorate of Education, takes immediate measures to register the child at school, according to the legislation in force.

2.3. Centre for Social Work

In terms of implementation of this law, the Centre for Social Work within the municipality is responsible to:

1. *Coordinate and organize the integrated child protection system within the municipality.*
2. *Implement national and local child protection policies, including the implementation of interventions and measures to prevent and protect the child from abuse, negligence, mistreatment and violence.*
3. *Serve as an information centre where children and families within the municipality can be informed or referred to other support services or institutions, according to their needs.*
4. *Each Centre for Social Work shall designate at least one relevant responsible and specialized officer to coordinate child protection measures and interventions. It shall also exercise other competencies as defined by the legislation in force.*

Article 15 par.1, Law on Child Protection (Law no.06/L-084)

¹⁷Terms used for names of directorates are based on directorates names in majority of Kosovo Municipalities. However, in some municipalities there may be other terms used, based on their role and responsibilities.

In addition to the mandate and responsibilities, as defined in the laws and by-laws, CSW coordinates and lines-up actions in terms of implementation of obligations as defined in the LCP, in following areas, but not limited to:

- CSW establishes the Guardianship Body¹⁸ and performs duties required for this function as defined in the Law on Child Protection and other specific laws for categories and types of social and family services in the Republic of Kosovo;
- CSW is responsible to perform professional evaluations for each child, family or group that lives or is in its territory and that seeks help, or in some other way is identified and assessed as in need of social and family services;
- Regarding each identified and referred case, the CSW appoints a case manager;
- The case manager is a professional official within CSW, who leads the case management process for the provision of social and family services;
- CSW, leads the case management roundtables;
- CSW must be available 24/7 to children, families and any individuals to report any form of violence against the child or any violation of child rights.

2.4. Team for the Rights of the Child

The Team for the Rights of the Child (Team) is established based on the Law on Child Protection, Law on Local Self-Government, Municipal Statutes, in all municipalities of the Republic of Kosovo at the level of political decision-making, and has the following responsibilities:

1. *Define the priorities of the municipality and necessary measures to be taken to improve the current situation regarding the rights and protection of the child and to coordinate the activities necessary for their implementation.*
2. *Coordinate and monitor the implementation of policies and relevant measures for the implementation of this law.*
3. *Ensure the implementation of the recommendations and decisions issued by the structures foreseen under this law on Child Protection.*
4. *Assess and ensure the compliance of policies, legal acts and other measures taken by the Municipality with legislation, policies, strategy on the Rights of the Child and international standards on child rights and protection.*
5. *Develop programs for preventing child involvement in potential negative phenomena and reduce risk factors that could endanger children.*
6. *Recommends the Mayor to undertake further actions necessary to realize the rights and ensure the protection of the child in accordance with the legislation in force.*

Article 20 par.2 Law on Child Protection (Law no.06/L-084)

The Team composition is regulated with a by-law. It reflects the mandate and role given to it by the LCP, ensuring participation and representation at the level of political decision-making of all main institutions that have mandate to protect the child at local level.

In addition to the mandate and responsibilities, as defined in the law and by-laws, the Team coordinates and harmonizes the actions in terms of the implementation of the obligations, as defined in the LCP and the contribution to municipal policies, in following areas, but not limited to:

¹⁸ Responsible body working within the Centre for Social Work, responsible for child protection.

- Local economic development, which is related to empowerment and training of children in specific professions, as well as employment according to age and abilities;
- Urban and rural planning, according to child-friendly city principle;
- Implementation of construction regulations and standards regarding the construction control, paying attention to and defining strict criteria to access and eliminate barriers for children with disabilities;
- Protection of local environment, taking care to eradicate factors that affect environmental pollution and increase of green spaces where children live and spend time;
- Provision and maintenance of public services and municipal services, including water supply, sewerage and drainage, waste water treatment, waste management, local roads, local transport and local heating schemes, with purpose for the child to grow with quality services that affect quality increase of their lives;
- Provision of public pre-school, primary and secondary education, employment, payment of salaries and training of teachers and educators in education, ensuring that every child is involved in education, as well as increasing education quality, and education for every child;
- Promotion and protection of human rights, with special emphasis on children's rights as irreplaceable, indivisible and comprehensive rights;
- Provision of primary public health care, giving special support to home visiting program, and quality of health for each child;
- Provision of family services and other social welfare services, such as care for: vulnerable groups, family housing, child care, care for elderly persons, including registration and licensing of these care centers, employment, payment of salaries and training of social welfare professionals, always prioritizing the best interest of the child, in order for the child to be at the center of attention for his/her needs regarding the adequate social protection and services, cross-sectoral and integrated with other services;
- Public health, with special emphasis on the protection of the child's life and health from all forms that affect or endanger life and health, strengthening preventive services and education of parents and society;
- Civil registration, ensuring that no child remains unregistered;
- Distribution of social assistance payments (with exception of pensions), giving priority to payments to children who are without parental care, or in any of the forms of alternative care, and finding additional opportunities for planning additional incentive payments that affect child's education and health.

2.5. Multidisciplinary Roundtables for Support in Case Management

Multidisciplinary Roundtables for Support in Case Management shall be established in the municipalities of the Republic of Kosovo, at the professional level.

The Multidisciplinary Roundtables for Support in Case Management has the following responsibilities:

1. Treats all cases of child in need of protection, where the degree of risk is of medium or high level.
 2. Treats cases who are at medium or high risk from all forms of abuse, neglect, exploitation, discrimination, violence or any criminal activity, as well as a child under the age of criminal responsibility, who is suspected of having committed a criminal offense, as well as the child in conflict with the law.
 3. Follows up and continuously reviews the assessment made in advance by the case manager by supplementing it with updated information depending on the change in the child's condition or circumstances in the case. The assessment also includes the positive qualities and potentials of the child and family and the resources available.
 4. Defines and develops the process of joint action planning for the protection of the child, including the definition of roles and responsibilities in accordance with the circumstances and the relevant legislation in force.
 5. Coordinates and implements child protection, rehabilitation and integration / reintegration services, in a sustainable way and supports their families or guardian.
 6. Reviews the individualized child protection plan on a monthly basis, unless otherwise specified and agreed in the first TMR.
 7. Drafts the annual report on its work and reports to the Team for the Rights of the Child and in cases that require the attention of the central level to the Council for the Rights of the Child and the relevant Ministry of Finance, Labor and Transfers.
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The implementation, composition, functioning and other operational aspects related to meetings, management and other fields, are regulated according to the Administrative Instruction on TMR.

TMR, within its mandate and scope, deals with the cases, when the child is:

- abused;
- mistreated, and
- neglected.

The main criteria to deal with the case, are children in need of protection from the above mentioned categories, who are at medium and high risk level.

IMPORTANT:

Team and TMR are mechanisms established at local level, it is important to understand that:

- Team is a **POLITICAL and DECISION-MAKING** mechanism, and
 - TMR is a **TECHNICAL/PROFESSIONAL and ADVISORY** mechanism.
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CHAPTER 3.

MECHANISMS OF ASSISTANCE AND COMMUNICATION WITH THE CHILD

3.1. Formal institutional system and phone line for children

LCP in frame of the mechanisms regarding help and communication with the child, has also provided the establishment of the phone line for children.

Purposes of establishing formal system and phone line are:

- *To identify and coordinate the protection and care in any case where a child is suspected or identified as abused, neglected, mistreated or trafficked.*
- *To offer assistance to children who need to ask and receive advice, and to report cases of violence, abuse, negligence and trafficking.*

Article 22, Law on Child Protection (Law no.06/L-084)

The phone line is a mechanism through which the child is offered help as follows:

- 24/7 phone line calling;
- All services free of charge;
- In the entire territory of the Republic of Kosovo;
- Without distinction of age or background;
- Immediate treatment and intervention for children and young people at risk;
- Emotional support for children and teenagers in a condition of crisis;
- Providing professional counseling over the phone regarding the topics that concern children and young people;
- Referring the case to authorities;
- Providing advice and instructions necessary for further treatment;
- Reporting cases to security and justice authorities, and in some cases also to specialized services;
- Informing children, teenagers, youth, parents, or other persons who work for children regarding the services offered by the phone line.

The formal child protection system and the phone line to support cases of children at risk, are managed and implemented by specialized child protection services workers and are free of charge. For children, this system and mechanism provides support, counseling, and service according to the needs expressed in accordance with their best interest¹⁹.

¹⁹At the time of compiling this module, this mechanism was not yet established and was not operational.

3.2. Platform ‘know your rights - njih të drejtat e tua’

The ‘know your rights - njih të drejtat e tua’ platform is an online platform that operates under the mandate of Ombudsperson Institution where to a child or a group of children, is offered:

- instructions regarding their rights in areas of education, health, family, justice system and work in community;
- detailed mapping of institutions responsible regarding the implementation of rights, defined in details, including also addresses of institutions where children can send complaints due to the violation of these rights;
- reporting of complaints is highly confidential and children are protected from any revenge or blackmail;
- All children, being senders of various requests and complaints, receive an answer in the shortest time possible, regardless of the fact if requests/complaints were sent via mail, online platform or directly to one of OI offices.

To know more, please click²⁰:

<https://oik-rks.org/>

Within the Ombudsperson Institution there is also a free of charge telephone line where you can report any violation or report any case.

0800 15555

3.3. The role of natural and legal persons in the provision of services for child protection

LCP, in the sections where roles and responsibilities of the institutional mechanisms are regulated and defined, has also foreseen and defined the role and responsibility of natural and legal persons, in the provision of child protection services.

1. *Natural and legal persons can provide child protection services.*
2. *Natural and legal persons including officials employed by institutions that provide child protection services must be licensed under applicable legislation and must meet the conditions and criteria defined.*
3. *A municipality may contract only natural and legal persons licensed or that meet the conditions and criteria to provide special services for child protection, which cannot be provided by the municipality within their territory, on behalf of the municipality, provided that such contracts are in compliance with the annual plans of the municipality for the services of child protection in its territory, through procedures of commissioning and contracting under the legislation in force.*
4. *Relevant ministries may enter into contract with natural and legal persons and may grant funds and provide any other material assistance, including premises, natural and legal persons licensed or that meet the conditions and criteria to provide special services for child protection in the level of Kosovo through procedures of commissioning and contracting, which cannot be provided by the respective ministry.*

Article 23 Law on Child Protection (Law no.06/L-084)

²⁰ Website have been visited and link copied on August 2022.

The opportunity given by the law to natural and legal persons to provide child protection services, is extremely important because provision of child protection services should not be an obligation and responsibility of public institutions only, it should also be provided by physical and legal persons. Therefore, this norm together with provisions within other laws, is a good opportunity for services to be very resourceful, comprehensive, and based on the need of the child for protection.

Therefore, this also enables the establishment of a chain of providers (institutional and non-institutional) to undertake care based on individual needs and to provide solutions in an integrated and coordinated manner. Networking, coordination, and integration between them is seen as the key to increase quality of child protection services.

To ensure the quality of child protection services, providers of these services must be licensed for specific types of services. These licenses are issued by the authorities based on an assessment of the provider's ability to meet all the conditions recommended by the child protection service standards.

The last part of this article offers the possibility of establishing partnerships through agreements and service contracting (known as out-sourcing) which can be provided by natural and legal persons. Contracting foresees, in addition to the possibility of transferring funds, also the use of premises, different spaces and material assistance.

3.4. Inter-sectoral mechanisms and constitutional institutions

Even though intersectoral mechanisms and constitutional institutions are not listed in in chapter that regulates institutions at central and local level, they play a key role and are very important in providing child protection, respectively, in implementation of LCP provisions.

The inter-sectoral mechanisms and constitutional institutions, fulfill the main role and responsibility in child protection through following ways, but not limited to:

- Identification and investigation of cases;
- Pursuing perpetrators;
- Court decision regarding the child protection;
- Provision of legal, procedural, judicial protection and representation;
- Protection of child interests and free of charge representation;
- Protection of children victims of violence;
- Coordination of policies and actions in the implementation of child protection programs;
- Advocacy and lobbying for protection of the best interest of the child;
- Provision of child protection services.

Institution - Organization

Court

Prosecution

Police

Bar Association

Office for Free Legal Aid

Victim Protection Office

National coordinator against domestic violence

National coordinator against human trafficking

Other local and international organizations working in Kosovo

IV. ANNEXES

C) CASE STUDY

CASE A

Excessive length of custody proceedings and the State's failure to investigate effectively the alleged child abuse is a violation of articles 3 and 8

JUDGMENT IN THE CASE OF M. AND M. v. CROATIA

(Application no. 10161/13)

3 September 2015

1. Principal facts

The applicants, Ms M. and M., mother and daughter, were Croatian nationals born in 1976 and 2001 respectively, living in Zadar, Croatia.

Ms M. married Mr I.M. on the 23rd of June 2001, and on the 4th of September 2001 their daughter was born. However, the couple's relationship deteriorated, and divorce proceedings started. On the 24th of August 2007 the divorce was granted by the District Court of Zadar. According to the domestic court's decision, the father was awarded the custody of their daughter and the mother was granted contact rights, along with the payment for their daughter's growth.

According to M.'s statement given to the police, on the 1st of February 2011 a serious episode of domestic violence happened: her father hit her in the face, squeezed her throat and psychologically abused her. An ophthalmologist diagnosed her with bruising of the left eyeball and eye socket tissue indicating that the injury had been inflicted by a hand blow. M. had also reported other instances of physical and psychological violence by her father which occurred in the past three years admitting that she was afraid of him as he was a violent man.

As a consequence of the problematic situation in the family, a series of inter-connected proceedings started before Croatian criminal courts (to decide on the alleged child abuse), civil courts (to decide on custody and divorce) and social welfare authorities.

Following the incident on the 1st of February, Mr I.M. was indicted by the State Attorney for having committed the criminal offence of bodily injury on the 30th of March 2011. In October 2014 the proceedings were not started yet, as the court in Zadar was waiting to obtain a video-link device with which to examine M. during the hearing.

On the 27th of April 2011 Ms M. filed a criminal complaint against Mr I.M. accusing him of child abuse, citing the incident on the 1st of February 2011 as well as the allegation by their daughter that this episode had not been an isolated one. The criminal complaint was dismissed in January 2012 as no sufficient elements had been found to confirm the abuse.

In parallel, on the 30th of March 2011, Ms M. filed a civil lawsuit to reverse the custody order of the 24th of August 2007, and requested to be awarded the temporary custody of her daughter. However, the request for temporary custody was refused two months later due to lack of proof that the alleged abuse had taken place. These custody proceedings were still pending at first-instance at the time when the case was sent to the European Court for Human Rights.

In the proceedings before the social welfare authorities involved in M.'s case, by decision of the 7th of November 2006, a child protection measure to supervise the exercise of parental authority, was ordered aiming to improve communication between the family members. The measure lasted until August 2008. The same measure was then imposed from September 2011 to March 2014 as the family situation did not improve.

During all of the above legal proceedings, M. was examined by a series of psychiatrists and psychologists who concluded that the child was emotionally traumatized by her parents' separation and conflictual relation, and that she had consistently expressed the wish to live with her mother. However, no danger had been found in the child continuing to live with her father as the allegations that M. had been abused by her father were not convincing enough to justify the removal from his custody.

2. Decision of the European Court for Human Rights

The applicants claimed that domestic authorities had failed to meet their positive obligations under the Convention, as they did not prosecute Mr I.M. for the criminal offence of child abuse against his daughter and did not remove his custody, in breach of article 3 (prohibition of inhuman or degrading treatment) and article 8 (right to respect for private and family life).

Articles 3 and 8

Because M. had been abused and evidence of it had been presented, and in particular to the fact that M. was both a child and alleged victim of domestic violence, the Court considered that the case gave rise to the State's positive obligations under article 3 of the Convention to investigate the alleged cases of abuse and protect her from potential future abuse. When examining the alleged violation of article 8, the Court also examined article 3, to consider M.'s complaints.

The Croatian authorities had launched criminal investigations only in relation to the incident of the 1st of February 2011, thus ignoring all the previous cases of alleged abuse that M. had to endure, not accusing Mr. I.M. for the criminal offense of child abuse and as a result covering all cases of abuse that were previously committed. Consequently, they had failed to address M.'s situation thoroughly. Further, the length of the criminal proceedings had been too long to lead to an effective investigation in breach of the requirement of promptness and reasonable expedition implicit in the context of article 3. Therefore, the Court held that there had been a violation of that article.

As regards the alleged breach of the authorities' positive obligations to prevent future potential abuse by taking all the necessary reasonable measures, the Court found that the domestic authorities had taken all the possible required steps to assess and weigh the risk of potential maltreatment and to prevent it by considering various opinions and recommendations issued by different social authorities, and by carefully considering all the relevant materials. Therefore, the Court held that there had been no violation on this point of article 3.

Article 8

The applicants complained that the domestic authorities had been ignoring M.'s wish to live with her mother, and that she had not been heard in the custody proceedings, which had been pending for more than four years. After three and a half years, M. had started exhibiting self-injuring behavior, which she herself had described as a reaction to the frustration resulting from the fact that she had not been allowed to choose with whom to live, her freedom of action and her right to personal autonomy being limited in that way. These circumstances raised issues regarding the applicants' right to respect for private and family life, and thus, in Court's opinion, this required an examination.

According to the Court, the present case had called for greater diligence by national courts and authorities as it concerned a traumatized child who had suffered great mental anguish culminating in self-harming acts. However, the domestic courts had failed to recognize the seriousness and the urgency of M.'s situation. Even more surprising for the Court, was the fact that no steps had been taken to accelerate the proceedings even after M. had started exhibiting self-injuring behavior.

The forensic experts in psychology and psychiatry involved in the case had found that both parents were equally unfit to take care of their child, a view that had been shared by the local social welfare center. They also had established that M. expressed on various occasions a strong wish to live with her mother. As specified in article 12 of the Convention on the Rights of the Child, children have the right to form their own views, have the right to express them and to have due weight given to those views, in accordance with their age and maturity, in any proceedings affecting them. M. was nine and a half years old at the time of the proceedings and thirteen and a half at the time of the Court's decision. It would thus have been difficult to argue that, given her age and maturity, she had not been capable of forming her own views and expressing them freely.

The Court found that not respecting M.'s wishes as regards the issue with which parent to live constituted an infringement of her right to respect private and family life in violation of article 8 of the Convention. The findings concerning the prolonged custody proceedings equally applied to Ms M.'s situation, as regards to her own right to respect for private and family life.

Article 41

The Court held that Croatia had to pay the child €19,500 and her mother €2,500 in respect of non-pecuniary damage, and €3,600 jointly to both for costs and expenses arising from the case.

CASE B

The State authorities failed in their positive obligations to protect children from severe neglect in violation of article 3

JUDGMENT IN THE CASE OF Z. AND OTHERS v. THE UNITED KINGDOM

(Application no. 29392/95)

10 May 2001

1. Principal facts

The applicants were four siblings, all born between 1982 – 1988. In October 1987, the applicants' family was referred to the social services by its *health care giver* due to concerns about the children, including reports that one of the children, Z, was stealing food. Over the next four-and-a-half years, the social services monitored the family and provided various forms of support to the parents. During this period, problems continued. In October 1989, when investigating a burglary, the police found the children's rooms in a filthy state and the mattresses soaked with urine. In March 1990, it was reported that Z and A were stealing food from bins in the school. In September 1990, A and B were reported as having bruises on their faces. On several occasions, it was reported that the children were locked in their rooms and were smearing excrement on the windows. Finally, on 10 June 1992, the children were placed in emergency foster family on the demand of their mother who said that, if they were not removed from her care, she would batter them. The consultant psychologist who examined the children found that the older three were showing signs of serious psychological disturbance and noted that it was the worst case of neglect and emotional abuse she had seen.

The Official Solicitor, acting for the applicants, commenced proceedings against the local authority claiming damages for negligence on the basis that the authority had failed to have proper regard for the children's welfare and to take effective steps to protect them. Following proceedings which terminated in the House of Lords, the applicants' claims were rejected. In the judgment given on 29 June 1995, it was held that public policy considerations were such that local authorities should not be held liable in negligence in respect of the exercise of their statutory duties safeguarding the welfare of children.

2. Decision of the European Court for Human Rights

The applicants alleged that the local authority had failed to take adequate protective measures in respect of the severe neglect and abuse they were suffering due to mistreatment by their parents. They also complained that they were not allowed access to the court or to another effective legal instrument in respect of this.

Article 3

Article 3 enshrines one of the most fundamental values of a democratic society, prohibiting in absolute terms torture or inhuman or degrading treatment or punishment. States must take measures to ensure that individuals within their jurisdiction are not subjected to inhuman or degrading treatment, including mistreatment by private individuals. These measures should provide effective protection, in particular, of children and other vulnerable people, including reasonable steps to prevent mistreatment, for which the authorities had or ought to have had knowledge.

There was no dispute that the neglect and abuse suffered by the four child applicants had reached the threshold of inhuman and degrading treatment. The Government did not contest the fact that the State had failed in its positive obligation under article 3 to provide the applicants with adequate protection against inhuman and degrading treatment. This treatment was brought to the attention of the local authority, in October 1987, which had the duty to protect the children and had a range of powers available to it, including removing them from their home. The children were, however, taken into emergency care, only after the insistence of their mother, on 30 April 1992.

During the intervening period of four-and-a-half years, the applicants suffered horrific experiences. The Criminal Injuries Compensation Board had also found that the children had been subject to appalling neglect over an extended period and suffered physical and psychological injury directly attributable to a crime of violence. The Court acknowledged the difficult decisions that social services face. However, it left no doubt to ascertain the failure of the system to protect the applicants from serious, long-term neglect and abuse. Accordingly, there had been a violation of article 3.

Article 8

Having regard to the finding of the violation of article 3 of the Convention, the Court considered that it was not necessary that the appeal in relation to article 8 should be considered separately [article 6](#).

The court noted that since the beginning of the process in the local courts, there had been a serious dispute about the existence of the right submitted by the applicants according to the domestic legislation. Therefore, article 6 was applicable to proceedings initiated by applicants alleging negligence from the local authorities.

Concerning compliance with article 6, the Court found that the result of the domestic proceedings, was that the applicants, and any children with similar complaints, could not sue a local authority for negligence for compensation, even though it had been a foreseeable, severe situation which had caused much pain. However, this right did not derive from any procedural bar or any immunity which restricted applicants' access to court.

The dismissal of the applicants' claim resulted from the application of the principles of substantive law by domestic courts. Consequently, it is not the duty of the Court to decide on the appropriate content of the national law. However, the applicants were correct in their claims that the legal vacuum they had identified was the one that raised a case under the Convention. The court assessed that this claim fell under article 13 and not article 6 (1), thus finding no violation of article 6.

Article 13

In deciding whether there had been a violation of article 13, the Court observed that applicants had alleged failure by the authorities to protect people from the acts of other individuals. Legal mechanisms should be available to the victim or the victim's family, to hold officials or state authorities accountable for acts or omissions involving the breach of the rights of individuals under the Convention. Furthermore, in the case of the breach of articles 2 and 3, which ranked as the most fundamental provisions of the Convention, compensation for the non-pecuniary damage resulting from the breach, should in principle exist as part of the range of redress.

The Court found that the applicants did not have any appropriate means available, to obtain a determination of their allegations that the local authority had failed to protect them from inhuman and degrading treatment or the possibility of obtaining an enforceable award of compensation for the damage suffered. Consequently,

they were not given an effective remedy in respect of the breach of article 3 and there had, accordingly, been a violation of article 13.

Article 41

The Court awarded in respect of pecuniary damage 8,000 pounds sterling (GBP) to Z., GBP 100,000 to A., GBP 80,000 to B., and GBP 4,000 to C. The Court also awarded GBP 32,000 to each applicant for non-pecuniary damage and a total of GBP 39,000 for costs and expenses.

B) Agenda

Second day Module II	
09:00 – 09:15	Main objectives and expected results
09:15 – 10:15	Role of main authorities and institutions in the Republic of Kosovo
10:15 – 11:10	Mechanisms and institutions at central level Mandate, functions and responsibilities
11:10 – 12:00	Mechanisms and institutions at local level Mandate, functions and responsibilities
12:00 – 13:00	Lunch
13:00 – 14:00	Difference between mechanisms and institutions at the central and local level
14:00 – 15:00	Mechanisms of assistance and communication with the child
15:00 – 15:45	Study cases, group work
15:45 – 16:00	Reflections and closure of the second day

MODULE III:

CHILD PROTECTION SYSTEM AND MEASURES

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III. TRAINING OBJECTIVES AND EXPECTED RESULTS

The main objective of the Third Module (III) is to provide information and knowledge on the child protection system, on which prerequisites the system is built, based on which principles the system is guided, as well as to continue providing knowledge regarding child protection measures and responsibilities.

At the end of this training module, participants will be able to:

- Understand what the child protection system is;
- Know and become familiar with the prerequisites for setting up the system;
- Understand the principles based on which the system is guided;
- Become acquainted with individual, family, community and institution measures and responsibilities;
- Understand the innovations brought by the law such as the child protection homes;
- Increase analytical skills through the study of practical cases, etc.

CHAPTER 1.

CHILD PROTECTION SYSTEM AND ITS INTEGRATION

1.1. What is the child protection system

The rights guaranteed by the Constitution, CRC and the applied legislation are not enough and have no meaning without their protection. The protection of these rights includes and creates obligations for a large number of authorities, institutions, mechanisms, families and the community, etc. All the above-mentioned, directly or indirectly, are part of the child protection system.

According to the general meaning, the child protection system (System) consists of the following components:

- laws and policies;
- human and financial resources;
- governance;
- data monitoring and collection;
- protection and response services;
- case management.

Child Protection System: shall mean the specific formal and non-formal structure with general and unified functions and capacities to prevent and respond to violence, abuse, negligence, and exploitation of the child.

Article 3 par.1 item 1.37 of LCP

The system also includes various actors, such as:

- children;
- family;
- community;
- officials at the central and local level, not excluding international level.

The functioning of the system depends on interaction and relations between components and actors within this system.

Regardless of meaning and content, the child protection system must have these elements:

Formal elements: which originate and derive from laws, regulations and policies that guide Institutions and bearers of responsibilities;

Informal elements: which do not have any function or protection mandate originating from the state or government. On the contrary, these are elements embodied by values, behaviors, habits, social norms, and traditional practices in society. These elements play an extremely important role in the child protection system.

1.2. Prerequisites for setting up child protection system

To build and integrate a child protection system, public and private authorities, including civil society, the media and bearers of responsibilities in general, must coordinate and line-up actions in order to ensure that a set of prerequisites is met before that construction and integration of child protection system is intended.

All these prerequisites are important and must be thoroughly fulfilled, and in no way or circumstance as single ones. Each prerequisite of the conditions that must be fulfilled, is and must be interconnected with the others. Hence, the implementation of one prerequisite means that the other one must also be accomplished, to create a complete system. The absence of one prerequisite has consequences and an impact on the system, and this inevitably affects the provision of protection to children. Therefore, in order to build and integrate a child protection system, we must have, the following prerequisites, but not only:



- **Legal and political framework** that is drafted, should foresee the protection of children and should be in line and full compliance with the Convention on the Rights of the Child and the Law on Child Protection;
- **The strategy for the rights of the child and the action plan** must be implemented in accordance with the legal framework. Other sectoral strategies or those that affect child interests and child protection, must carefully take into account the connection with the strategy for the rights of the child, but also the compatibility with the Convention on the Rights of the Child and the Law on Child Protection;

- Central and local level authorities **must have meaningful coordination** across all segments and levels, and with all the involved professionals. Coordination is achieved through implementation of responsibilities of all duty-bearers from the field of justice, social welfare, health, education, but not only, including also the civil society, families and children at the center of this process;
- **Strengthening human resources** with special emphasis on professionals who provide services and are in direct contact with children. The child protection system needs adequate, skilled and qualified professionals. All professionals must be trained to provide quality and sustainable protection services;
- **Preventive and response services.** These services should be established and where they exist, they should be strengthened. The main burden of providing these services falls on the local government, community, families, and individuals. All these services must be accessible, oriented toward the sensitivity of the case, fast and sustainable. This also includes case management, reporting, referral and other follow-up manners are linked to improvement, rehabilitation and reintegration;
- **Behaviors and practices** that violate the child rights must be changed through awareness and activities that include the prevention of these harmful behaviors and practices. This awareness should have a wide scope and include all sections, such as: individuals, family, society and the state;
- **Mobilization of financial resources and their adequate allocation** to protect children. This requires an interaction led by the Ministry of Finance and other line ministries to apply the implementation of the law, through budgeting of necessary services. In this aspect, central and local authorities must coordinate and harmonize activities with local and international donors in order to cover the gaps or to support any service not covered by the state budget;
- **System for data collection and management** should be developed through the creation of a central database that would coordinate the collection of information and data from all sources. In addition to the collection of these data, this system should be able to produce regular and updated information which could then be used by law enforcers, with special emphasis on understanding the prevailing issues related to factors of risk and protective factors, issues of greatest concern to the system, best practices and lessons learned.
- **Accountability** should be developed at all levels, central and local, aiming to increase quality of services as well as to increase responsibility and transparency of service providers toward children and their families. Regular and efficient monitoring and inspection, are crucial in advancing accountability.

1.3 Integration of the child protection system and guiding principles

Integration of the child protection system means placing the child at the center of this system, through the implementation and promotion of the Convention on the Rights of the Child, Constitution and all local legislation. This implies and guarantees that the whole system and the participants within it from the education, health, social welfare, justice, media, civil society, community and family sectors, work and contribute in a coordinated way to prevent abuse, exploitation, neglect and other forms of violence as well as to protect and assist the child in these situations.

1.3.1 Every child is recognized, respected and protected as a holder of rights, excluding negotiation of the rights for protection

COMMENT:

Every child including, but not limited to groups of children from vulnerable categories such as (Roma, Ashkali and Egyptian, immigrant or minority children; children with disabilities; children without parental care or children in street situation;) should be treated with dignity and as unique human beings, with value as an individual personality, distinguishing their needs, interests, and privacy, with the inalienable right to participation.

Central and local authorities must provide measures that empower the child to protect himself and his peers, including the right to demand these rights. Reporting mechanisms should be integrated in the child protection system. Children should be participants and involved in all decisions related to their interests, including the development, monitoring and evaluation of child protection strategies, policies, programs, and services.

1.3.2 No child should be distinguished

COMMENT:

All children have access to and benefit from the child protection system on an equal basis, regardless of their status and needs that they may have. This is where the application of the principle of non-discrimination comes into play (see details in First Module).

1.3.3 Child Protection System includes preventive measures

COMMENT:

The system, as a primary focus should have the preventive measures which include:

- *Approval of primary and secondary legislation for child protection;*
- *Political measures that promote children's rights;*
- *Increase awareness and education of children, parents and society in general;*
- *Issuing proactive policies and measures to reach vulnerable groups, parents and to support families; and*
- *Universal and targeted social services, including strategies for the prevention of child poverty and data collection on regular basis;*

1.3.4 Supporting families in their role as primary care providers

COMMENT:

The primary and main position of the family in the provision of care and protection for the child, must be recognized and supported through general and selected services, during each phase of the intervention, especially through prevention services.

1.3.5 Society is aware and supportive of the child's right to be free from all forms of violence

COMMENT:

There should be a harmonized effort to inform the public, including children, about their rights, by encouraging actions that prevent violence against children, and prevent stigmatization of children who are victims of violence.

1.3.6 The system provides care and guidance for all

COMMENT:

Professionals working for and with children should be trained and instructed on children's rights, child protection legislation and procedures, as well as child development in general. The multi-disciplinary protocols should be available to guide all the professionals. The standards, indicators, tools, and a monitoring and evaluation system should be available. The system must be effectively regulated, independently monitored and accountable, ensuring access, quality and sensitive services and care for all children. The monitoring system guarantees an unlimited approach to monitor the quality of services provided, especially for the forms of institutional care. Within the organizations that work with and for children, policies and reporting mechanisms for child protection, should be present. All agencies and service providers, civil society organizations, businesses and private companies that work with children, should have very detailed rules and guidelines regarding child protection.

1.3.7 The system must have interstate cooperation mechanism

COMMENT:

Increase of the number of children emigrating through cross-border points, further infringes their rights and the opportunity to protect them. In this aspect, institutions must undertake coordinated actions, starting from the clarification of the role and responsibilities of officials involved in handling these cases, and continuing with the collection of records and accurate information regarding the country of origin, assigning of a contact point for cross-border cooperation for the protection of these children, and with the development and approval of procedures/guidelines/protocols/ and various procedures.

1.3.8 The child must have support and protection

COMMENT:

No child should at any time be without the support and protection of parents, legal guardians or any other responsible authority. In view of the need for continuous actions, institutions within the child protection system must designate a person as a reference, responsible for the child, starting from reporting, referral to follow-up, and throughout the reintegration, to ensure the connection between different sectors and to ensure a coherent and comprehensive response.

1.3.9 Capacity building regarding the risk identification

COMMENT:

Continuous trainings should be organized to increase capacities for identifying children in potential vulnerable situations, for all professionals in the sector of education, justice, social work, medicine, media, businesses and the private sector in general, religious leaders, etc. The rules on reporting cases of violence against children are clearly defined, and professionals who have reporting obligations must be held accountable.

1.3.10 Creating mechanisms which are safe, confidential and accessible for reporting

COMMENT:

Mechanisms are in place for children, their representatives and others to report all forms of violence, including the use of a 24-hour help and communication phone line. throughout the week.

CHAPTER 2.

MEASURES AND RESPONSIBILITIES FOR CHILD PROTECTION

2.1. Prevention

Prevention is one of the main measures and actions in child protection. LCP within the definitions of child protection, has foreseen two main components through which child protection is ensured: **prevention and response** to violence, maltreatment, abuse, exploitation, negligence, abduction, sexual abuse, trafficking of the child and child labour in and outside the house²¹.

1. *The risks that endanger the well-being and development of the child must be prevented in order to ensure the rights and well-being of the child. Prevention shall include the perception of child-threatening situations and events at the earliest time possible as well as their response, including the identification of child development and behavioral problems, problems occurring in the family environment, the identification of abuse and the increase of protective measures that promote the well-being and development of the child.*
2. *Public and private institutions and non-governmental organizations, according to their mandate, should develop measures to prevent the child's need for assistance and to reduce existing problems. Measures should be based on the needs of the child, support the relationship between the child and the persons raising the child, and support social behavior. Such measures should be achievable, timely, and have a positive longterm effect.*

Article 24 Law on Child Protection (Law no.06/L-084)

To ensure the rights and well-being of the child, the LCP foresees that risks which endanger the well-being and development of the child must be identified and prevented.

Prevention should include measures and actions through which:

- Situations and circumstances that threaten the child are identified;
- Actions are implemented urgently and in the fastest terms;
- Family situations and circumstances are identified;
- Violence and all related forms are identified;
- Protective measures that promote the well-being and development of the child, are increased.

In the second paragraph of this article, the LCP foresees obligations of public and non-public institutions to help the child and the family to reduce threats, always based on the child needs, and to take other measures that support reports and relations between the child and the family.

²¹ Article 3, par.1 (item 1.7) Law on Child Protection (Law no. 06/L-084).

These measures should be:

- Accessible to the child and parents or guardians;
- On time;
- To have positive effect, and
- Long-term.

EXAMPLE:

The child or the children are living with their biological parents, and parents are addicted to alcohol and narcotic substances. Recently the police and the CSW have identified this family as a family with a high risk potential for violence against children, including abuse and neglect.

Although violence against children has not yet been reported, institutions in this case must take measures and actions to prevent violence against children by:

- Added care in the schools;
- Providing extra-curricular programs in school and outside of school;
- Greater involvement of the family and community;
- Recording the case in the database;
- Provision of social services,
- Assisting parents through assistance programs against alcohol and drug addiction;
- Providing long-term rehabilitation programs, etc.

2.2. Legal protection

As mentioned above, according to the LCP, child protection definition has two components: prevention and response or reaction. Legal protection defines measures and actions that must be taken according to the second component, which is the response or reaction to protect the child from danger to life, violence, neglect, abuse and exploitation.

1. *The Centre for Social Work and the Police assist and intervene in families, on referral basis or in cases when there is a grounded suspicion that the family is unable to protect the child from the risk against his or her life, violence, negligence, maltreatment, abuse, and exploitation.*
2. *Child protection shall be realized through undertaking protective measures, implementing interventions to respect the rights of the child and provide services, as needed, which aim at the development and well-being of the child in his or her family environment or by placing him/ her in alternative care, when the child is temporarily or permanently deprived of the care of the parents or when, due to his best interest, he or she cannot be left under the care of the parents.*
3. *Competent institutions support the parents or guardian in raising their child and should try to provide the necessary assistance to the family in need, even in the early phases when such a thing is necessary and to refer the child and family to the child protection services.*

Article 25 Law on Child Protection (Law no.06/L-084)

It is important to emphasize that even though LCP has foreseen obligations for child protection through response and intervention in the family, institutions must always take care that the child removal from family care or from the situation in which he is, whenever possible, must be assessed and decided only as a **last resort** and for the **shortest possible period of time**. The decision to leave the family must be subject to a strict and regular review, always in favor of the opportunity for the child, where possible, and after the removal of obstacles, to return to the parents or to be placed in one of the permanent forms of protection.

2.3. Legal obligation for reporting

Identification is the first and foremost step, before reporting the case. The identification of violence, exploitation, neglect and/or abuse of the child is done by parents or guardians, schools and educational and health institutions, police, prosecutor's office, courts, local and central level administrative bodies, any natural or legal person who comes in contact with the child, and the child himself.

Identification may come as a result of an incident that may occur or due to increased concern for the well-being of a child by persons who are in contact with the child.

It is very important to recognize signs and symptoms and risk factors - to child or child and family behavior that indicate possibilities of child abuse, neglect, and exploitation. Corroboration of reasonable suspicion can be direct, from the child himself or indirectly, from other persons who have knowledge or reasonable suspicion that the child has been abused.

Where to report?

- To the Police;
- To the relevant Centre for Social Work
- To the Victim Advocate Office, or
- To any trustworthy person, bearer of public responsibilities or relevant institution.

How to report?

- In written (mail, email or other manner); or
- Verbally (physical presence, telephone, etc.).

After identifying the case, each person is obliged to report and refer without delay any information received regarding the reasonable suspicion that a child has been abused, exploited, abused and/or neglected. The obligation also includes the identification of all situations and circumstances and is not subject to the statute of limitations to report the case.

IMPORTANT:

All individuals, professionals or institutions that identify a child victim of violence, exploitation, neglect or abuse, must make correct registration of data regarding the child identity, family, suspected author of abuse, and, if it is possible, describing the child's condition, possible injuries, photographing the person or persons, places and injuries, recording child or his friend's child regarding the circumstances of violence, exploitation, neglect and abuse.

Collected documentation can be used as evidence of abuse, exploitation, neglect and/or abuse in further child protection proceedings.

In addition to the obligation to report cases of violence, abuse, mistreatment or neglect, LCP also provides the protection of the informant, exempting him from any criminal and civil liability which may be related to the reported act. Hence, the law has given him the right to special protection and, if necessary, to ensure safety for the informant.

Who is required to report?

- **Every person;**
- **Parent or guardian;**
- **Child protection professionals, that include but are not limited to:** *educators, teachers, doctors, dentists, nurses, psychologists, social workers, police officers, any provider of public or private, child protection services or representatives of non-governmental organizations for the protection of the child, and whoever has reason to suspect that a child has experienced violence...*

1. *Any person who notices or has information of a situation or act that a child may be subjected to or becomes aware that the child has been subject to any form of physical or mental violence, mistreatment, abandonment, abuse, neglect, and exploitation, is obliged to report the case by writing or verbally to the Police or the relevant Centre for Social Work.*
2. *If a parent or guardian as well as any other person has a reason to suspect that a child is subject to violence, is abused, mistreated, exploited, then he is obliged to report the case in written or verbally to the police or at the Centre for Social Work.*
3. *Child protection professional that included but is not limited to: educators, teachers, doctors, dentists, nurses, psychologists, social workers, police officer, any provider of public or private child protection services or representatives of non-governmental organizations for the protection of the child, and whoever has reason to suspect that a child has experienced violence, abuse, mistreatment, abandonment, exploitation or neglect is obliged to report the case, in written or oral form to the police, to Office for Protection and Assistance of Victims or at CSW.*
4. *CSW has the duty to inform the police in any case of referral of protection of the child or otherwise, the police has the obligation to inform the Centre for Social Work, in any case of reporting cases identified as suspected or abused.*
5. *Every person that reports information with credibility to institutions and formal mechanisms should be excluded from any civil or criminal obligation, or an obligation that could be related with the act of reporting. They should have the right to special protection, if necessary, to ensure the safety of the person.*

Article 26 Law on Child Protection (Law no.06/L-084)

Anyone who do not report suspected and identified cases, is criminally liable and may be fined and imprisoned.

It is important to note that the Criminal Code of the Republic of Kosovo provides for 4 qualifying circumstances and persons who can commit a criminal offense if they do not report the case.

- In the first paragraph, “...**anyone**...” can commit a criminal offense
- In the second paragraph, the family circle is foreseen “**parent, adoptive parent or guardian**”
- In the third paragraph, “**professionals**” are foreseen
- In the fourth paragraph, it provides for the most aggravating circumstance “**death or serious damage to health**”

Criminal sanction for non-reporting:

1. *Notwithstanding other provisions of law, whoever has reason to suspect that a child has suffered an incident of child abuse, mistreatment, abandonment, or neglect, and fails to immediately report the abuse or neglect shall be punished by a fine or imprisonment of up to three (3) years.*
2. *When the offense provided for in paragraph 1. of this article is committed by a parent, an adoptive parent or guardian shall be punished by imprisonment of six (6) months to three (3) years.*
3. *Whoever while engaged in a professional capacity related to the child, has reason to suspect that a child has suffered an incident of child abuse, mistreatment, abandonment or neglect or has been subjected to violence or a threat of violence and fails to immediately report it, shall be punished a fine or imprisonment of three (3) months to three (3) years.*
4. *When the offense provided for in paragraphs 1., 2., or 3. of this article results in the death of the child or serious impairment to his or her health, the perpetrator shall be punished by imprisonment of one (1) to eight (8) years.*

Article 247 Failure to report child abuse - Criminal Code of the Republic of Kosovo

2.4. Separation of the child from the family

As we have emphasized in other modules, child’s right to have a family and live together with the family is one of the main rights, which is guaranteed by all International Conventions and the applicable legislation in the Republic of Kosovo.

‘Family enjoys special protection by the state in a manner provided by law’²². *The Constitution has guaranteed protection of the family by giving it a special protection, therefore starting from this constitutional obligation, a lot of laws have been issued which are applicable in the Republic of Kosovo, and which in their purpose and scope have family and its protection.*

The family is primarily responsible for child care and protection. Institutions help the family with this obligation and intervene only when the family is unable or incapable or needs help to protect the child.

²² Article 37, Constitution of the Republic of Kosovo.

Although the child should not be separated from their parents or guardian against his will, there are some situations and circumstances where separating a child from his family is in the child's best interest. Separation must especially occur if the child is in danger and this separation is unavoidable, and if this separation is required by law or by a final court decision.

LCP in article 27 foresees some circumstances and situations in which the child should be separated from the family. As can be seen in paragraphs of this article, separation must be preceded by some strict actions and within rigorous time frames. Also, actions taken after the separation are quite detailed and require everyone's attention so that the separation is completed in the shortest time possible.

- 1. The child shall not be taken away from the care of a parent or parents or guardians without their consent or without a court order.*
- 2. Exceptionally, whenever the guardianship body has grounded reasons to believe that there is serious direct risk to the child's health, safety or well-being, the guardianship body may enter any facility and take the child to a safe place, where he/she will have care for a period not exceeding seventy-two (72) hours.*
- 3. Before the seventy-two (72) hour period has expired, the guardian body must present the case to the competent court, which decides on the custody of the child. If the circumstances so require, the court may issue an assessment order for a period of twenty-one (21) days to allow for further investigation and evaluation, to which time the case must be referred to the court for further consideration.*
- 4. A child cannot be separated from his/her parents or guardian against his/her will and desire, except in cases when such separation is in the best interest of the child, the child is at risk, or such separation is inevitable, and if this separation is required by law or by a final court decision. If the child is separated from his/her parents or guardian, child's opinions and desires should be taken into consideration and documented in the documentation that is developed for this purpose. The opinion of the child should be heard and documented by social services or the court.*
- 5. In all procedures pursuant to paragraphs 1. and 2. of this article, all interested parties shall have the opportunity to participate in the proceedings and give their opinions.*
- 6. A child who is separated from one or both parents has the right to maintain personal contact and regular direct meetings with both parents unless this is not in the best interest of the child.*
- 7. Where such separation results from any action initiated by competent institutions, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that institution, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. Institutions shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.*
- 8. The decision on the placement of the child in alternative care shall be executed, monitored and reported by the Centre for Social Work and reviewed regularly as foreseen by applicable legislation or court decision.*

Article 27 Law on Child Protection (Law no.06/L-084)

Nevertheless, this article contains two important principles of children's rights:

- 1. The child cannot be separated from his parents except when his highest interest requires it and**
- 2. All procedures for separating the child from the family must be legal and just.**

In any similar procedure, interested parties (child and parents) must be participants, they have the right to express themselves before the body that will make the decision regarding the separation of the child from the parent or parents. This article reaffirms the rights of the child to maintain relations and contacts with both parents and determines the obligation of state bodies to provide information on the location of each (parent or child), in cases where the Court or the institution that intervened has created this situation. An almost similar right is foreseen also in CRC.

States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately, and a decision must be made as to the child's place of residence.

Article 9 par.1 of the CRC

With a great similarity, protection of a child from the separation from the family, has also been regulated by the United Nations Guidelines for the Alternative Care of Children, which among other issues, provides instructions for states, institutions, families and individuals that:

Removal of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary and for the shortest possible duration. Removal decisions should be regularly reviewed and the child's return to parental care, once the original causes of removal have been resolved or have disappeared, should be in the best interests of the child, in keeping with the assessment foreseen in paragraph 49 below.

Financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care, for receiving a child into alternative care, or for preventing his/her reintegration, but should be seen as a signal for the need to provide appropriate support to the family.

Attention must be paid to promoting and safeguarding all other rights of special pertinence to the situation of children without parental care, including, but not limited to, access to education, health and other basic services, the right to identity, freedom of religion or belief, language and protection of property and inheritance rights.

Siblings with existing bonds should in principle not be separated by placements in alternative care unless there is a clear risk of abuse or other justification in the best interests of the child. In any case, every effort should be made to enable siblings to maintain contact with each other, unless this is against their wishes or interests.

Recognizing that, in most countries, the majority of children without parental care are looked after informally by relatives or others, States should seek to devise appropriate

means, consistent with the present Guidelines, to ensure their welfare and protection while in such informal care arrangements, with due respect for cultural, economic, gender and religious differences and practices that do not conflict with the rights and best interests of the child.

United Nations Guidelines for the Alternative Care of Children: Item 14, 15, 16, 17 and 18.

2.5. Protection of children without parental care

The protection of a child without parental care and the provision of well-being within another family is guaranteed by the LCP, CRC, and the legislation in force. Same as emphasized above, when the family environment is temporarily or permanently denied to a child, or when it is not in his/her best interest to remain in this environment, he/she has the right of protection and a special assistance from the state which is obliged to offer protection and provide alternative family care services for the child. In addition to the LCP, protection of children without parental care and alternative forms of protection, are mainly regulated through the Family Law of Kosovo No. 2004/32, the Law on Social and Family Services No. 02/L-32 and the amended Law on Social and Family Services No. 2011/04-L-081.

The LCP, guided by the principles and rights guaranteed by the CRC, has not only redefined the existing forms of legal protection for children without parental care, but it has also foreseen a new form of protection "Independent Supervised Living".

1. *The protection of children without parental care is realized through the basic forms of family and legal protection, as follows:*

- 1.1. guardianship;*
- 1.2. foster care;*
- 1.3. residential care;*
- 1.4. adoption and;*
- 1.5. independent supervised living.*

2. Institutions shall provide forms of protection for children without parental care, based on the legislation in force.

Article 28 Law on Child Protection (Law no.06/L-084)

1. The relevant Ministry of Labour and Social Welfare and the municipality are obliged to provide material support to the foster family for taking care of the child while staying in a foster family.

2. *Foster family is not allowed to share any information with unauthorized persons, media and others related to the child during his/her stay and after leaving the foster family.*

Article 29 Law on Child Protection (Law no.06/L-084)

The Family Law mandates the Guardianship Body to exercise general and continuous supervision over the exercise of parental rights and duties. The legal provisions within this law start from the time when the child is born and whose parents are unknown, until the end of the procedure for the application of any of the special forms of protection for children without parental care, including foster care and adoption.

According to the LCP the basic forms of legal and family protection for children without parental care are: **guardianship, foster care; residential care, adoption and independent supervised living.**



It is a form of protection for children without parental care who are placed under guardianship and enjoy special protection from public institutions, when their parents are unable to exercise parental care, because: both parents are dead or unknown, are declared missing, parental care has been taken away or they have lost the ability to act, or for any other reason which, by court decision, gives reasons for placement in the interest of the child's well-being.



It is a form of alternative protection that means fostering the child in a family that can successfully fulfill parental obligations, especially in terms of care, education and proper training of the child for an independent life.



It is a form of child protection without parental care, which is provided through sheltering and fulfillment of basic life needs, and health protection of the child, when it is not in the best interest of the child to continue staying in the biological family.



It is a basic form for protection of the child without parental care, is provided with another family with the same rights and obligations as biological parents.



It is a form of protection and alternative care as a continuation of support for the child who has been part of any form of alternative care to strengthen his skills for independent living in a safe and supportive environment.

2.6. Child protection homes

The Child Protection Homes (Homes) represent perhaps the greatest and most unique innovation in terms of institutional and professional protection for children who are victims of violence. The houses operate and implement concepts and work principles, such as:

- Provision of all child protection services under “one roof” 24 hours a day and seven days a week “24/7”.
- Implementing friendly justice, including respecting child’s right to participation, ensuring that the child is heard and receives appropriate information and support to exercise these rights.
- Urgent response through actions and decisions which must be taken and implemented without unreasonable delay in order to avoid any irreparable damage. Each child protection professional must give priority to cases where the child’s life and interest are at risk.
- Multi-disciplinary and inter-institutional cooperation during investigations, procedures, diagnostics, assessment of needs and provision of services, to avoid further traumatization and achieve results in accordance with the best interest of the child.
- Comprehensive and accessible services that meet basic and complex needs of the child and his/her non-abusive parent or guardian.
- Ensuring highest professional standards, including adequate training and resources for professionals working with child victims or witnesses.
- Ensuring necessary protection and services which must be carried out in a professional manner within the legal deadline.

Term of stay in Home

Houses offer emergency services and child protection, until a solution in best interest of the child is found, **no longer than three (3) days**, re-return to the family or through basic forms of legal and family protection.

1. *This law establishes homes for the protection of children from the respective Ministry of Labor and Social Welfare, under the relevant Law on Local Self-Government, under the Centers for Social Work where relevant basic and prosecution courts operate.*
2. *The Ministry of Labour and Social Welfare sets standards and approves the establishment of the Child Protection Houses.*
3. *Child Protection Homes shall provide emergency child protection services, no longer than three (3) days.*
4. *The homes shall also serve as centres for conducting the procedures in all cases of violence, with special emphasis on offenses against sexual integrity, when the child is a victim or a witness. Provide counselling services, especially for different therapies, and shall also serve as temporary shelter for children who are unable to return home, children who cannot be accommodated in family shelters or children who are at home but are required to leave from there because their lives or health are highly endangered.*
5. *The priority of these centres shall be the implementation of the concept of friendly approach, urgent response, interdisciplinary action and coordination between institutions and stakeholders involved in service delivery and case resolution in the shortest time possible.*

6. *Child Protection Homes shall be funded by the budget of the Republic of Kosovo and by donors.*

Article 30 Law on Child Protection (Law no.06/L-084)

The houses offer these services:

- Emergency services for child protection;
- Services for the development of judicial and legal procedures for all cases of violence, with special emphasis on criminal offenses against sexual integrity, when the child is a victim or witness;
- Counseling services, especially various therapies;
- Temporary sheltering services for the child who cannot return home, cannot be accommodated in foster care, or is at home but requires his removal due to the high risk to his life or health.

Aspects related to the organization and scope of the child protection houses, will be regulated by a by-law proposed by the relevant Ministry of Labor and Social Welfare and approved by the Government.

To know more about Child Protection Homes organizing and operation in member states of European Union, click on this website:²³

<https://www.barnahus.eu/en/>

2.7. Monitoring of protection measures

Assigning of protective measure according to LCP, is applied with the aim to remove danger that threatens the child, but due to the side impact it may have on limitation of other child rights, it must be subjected to a strict monitoring of protective measure implementation. LCP has defined responsibilities and obligations for the case manager and guardian regarding the of monitoring these measures. Deadlines and rules have also been set with the implementation of the progress of measures, as well as proposals for the continuation or termination of measures.

²³ Web site visited and link copied in August 2022.

- 1. The Case Manager in the CSW and the child Guardian are responsible for monitoring the child protection measures and at least once a month, review the progress, advancement of the measure and/or the need to amend or change it, in consultation with other professionals of the Guardian Body.*
- 2. The Case Manager on Child Protection shall have the consent of Guardian Body for the removal of the protection measure and the return of the child to the family, proving with relevant documentation that the parents are able to care for the child and the return of the child in the family is in his/her best interest.*
- 3. If the protective measure is imposed by the Court, the Case Manager submits a request to the court for the removal of the protective measure.*
- 4. If the parent, in the framework of the Individual Protection Plan, is obliged to attend parenting courses, or perform any other activities, the relevant child protection officer shall verify the successful fulfilment of these obligations by the parents and include the relevant information in the proposal to remove the protection measure.*

Article 31 Law on Child Protection (Law no.06/L-084)

LCP has foreseen two situations when the measure is removed and by whom the measure should be removed:

- 1.** Removal of protective measure with consent of Guardianship Body;
- 2.** Removal of protective measure by the Court decision.

It is important to understand that in some cases, through the assignment of protective measure for a child, obligation for parent or parents to attend parenting courses or to perform any other action may also be assigned. Therefore, in parallel, implementation of protective measure for child must be monitored, as well as implementation of course or action assigned to the parent or parents.

2.8. Parenting skills measures

Same as emphasized above, within the framework of protective measures for the child and in accordance with the individual protection plan for the parent or parents, parenting skills measures must be assigned. The plan for the implementation of parenting skills measures is prepared by the child protection official, with the aim of enabling parents to be able to accept their child after the end of protective measure for the child.

The process of assigning measures for parenting skills, is preceded by an assessment of the family situation of each child in need of protection, which is carried out by the child protection officer.

1. The relevant child protection officer, in collaboration with the Multidisciplinary Table, has the duty to assess the family situation of every child in need of protection and, in any case, with priority, aim at ensuring child protection within the family.
2. If the protection measure for placing the child in alternative care is taken, the child protection officer, when possible, shall draft a Parenting Skills Plan, which is part of the Individual Protection Plan for the child and aims at preparing the parents for the return of the child in the family, once the protection measure terminates.
3. The Parenting Skills Plan may contain, but is not limited to, measures obliging parents to attend parenting skills courses, psychological counselling for anger management, medical treatment against alcohol or use of narcotic and psychotropic substances, mental health treatment, as well as interventions to support the family for registration with the civil registry office, the economic aid scheme, employment services, health services, and any other interventions that would improve family situation and guarantee the child protection within the family.
4. Implementation of the Parenting Skills Plan shall be monitored by the child protection officer, in collaboration with the Team for the Rights of the Child.

Article 32 Law on Child Protection (Law no.06/L-084)

LCP, in a binding manner, has foreseen the type of parenting training programs which are mandatory for the parent or parents. This plan includes but is not limited to the following parenting training measures:

- Parental training programs;
- Psychological counseling;
- Anger management;
- Medical treatment against alcoholism or usage of narcotic and psychotropic substances;
- Mental health treatment;
- Providing support to the family for registration in the civil status, social assistance scheme, employment service, health service, and any other intervention that would improve the family situation and guarantee the child protection within it.

The child protection officer is mandated to monitor the implementation of the plan and of any of the above defined programs.

IV. ANNEXES

A) CASE STUDY

CASE A

Slovenian authorities failed in their positive obligations under article 8 to facilitate access of father to his daughter – despite the fact that he could not bring application on behalf of the daughter before the European Court of Human Rights as the mother had full custody

JUDGMENT IN THE CASE OF EBERHARD AND M. v. SLOVENIA

(Applications nos. 8673/05 and 9733/05)

1 December 2009

1. Principal facts

The case originated in two applications by Mr. Johann Ivan Eberhard and Ms M., his daughter. Mr. Eberhard was married to M.E. and they lived together with their daughter, M., until M.E. moved out together with the child and filed for divorce in April 2001. In February 2002 the divorce between the two was finalized and the custody of the child was given to M.E.

On the 4th of May 2001 Mr Eberhard and his wife signed an agreement on access and contacts arrangements. After a month had passed during which the applicant claimed not to have had access to his daughter, he filed a request with the Šentjur Social Welfare Centre to have the agreement formally determined. M.E. continued to oppose contacts. On the 1st of August 2001 the Šentjur Social Welfare Centre issued an order allowing him to have access to the child four hours a week but refused to grant him the possibility of picking up the child at the nursery and ordered instead that M.E. would bring the child to a meeting point. The access order became final and enforceable on the 16th of October 2002.

M.E. failed to comply with the order, so the applicant requested the enforcement of the order in November 2002. The Šentjur Administrative Unit consequently ordered M.E. to allow access to the child and informed that she would be imposed a fine in case this was not respected. As a result of the continued refusal of M.E. to allow access to the child, the Unit issued orders against her imposing the payment of fines. M.E. appealed against these orders successfully as it was found that M.E. had not been informed of the applicant's non-compliance notices. The access order itself was not modified by this decision and thus remained enforceable.

On the 6th of June 2003, Mr Eberhard lodged an application for the custody of the child. Several attempts were made to set a hearing date, however this failed on various grounds including M.E.'s refusal to cooperate and the first applicant's request to appoint an expert psychologist. In December 2005 the applicant urged the domestic court to issue an interim custody order and added an alternative request for an interim access order. The appointment of a new expert was also demanded. On the 22nd of February 2006 Mr Eberhard lodged a complaint about the passivity of the judge.

In March 2006, the request of the applicant was finally examined by the expert so that a hearing could be held regarding the interim order. In May, the same year, the domestic court rejected the applicant's request for interim custody but upheld his alternative request for an interim access order. Mr Eberhard and his daughter were therefore granted time to spend together during the week and on the weekends.

As M.E. continued to deny access to the child on certain occasions, the applicant complained in August 2006 requesting the payment of punitive fees for M.E. A hearing was set but then adjourned and the applicant lodged another supervisory appeal. During a hearing in September 2007, the proceedings were joined within a unique request for access arrangements that the applicant had filed in separate proceedings in 2004. During a hearing on the 10th of January 2008, the parties finally agreed on new access agreements and Mr Eberhard withdrew his custody request.

2. Decision of the European Court on Human Rights

The applicants complained about the State's failure to enforce access arrangements decided in the administrative proceedings as well as the delays experienced in the proceedings concerning child custody and access arrangements, in violation of article 6 and 8.

Admissibility

The Court first addressed the Government's objections that Mr Eberhard had no capacity to act on behalf of his daughter, as it was the mother who had custody of the child.

To this end, the Court recalled its past cases on the issue that in cases arising out of disputes between parents, it was the parent entitled to custody who was entrusted with safeguarding the child's interests. In these situations, the position as a natural parent (without custody) could not be regarded as a sufficient basis to bring an application also on behalf of a child. The first applicant's position as a father was thus in this case insufficient, and consequently, the first applicant had no standing to act on the second applicant's behalf.

The Court thus limited its judgment to the situation of Mr Eberhard as the only applicant.

Article 8

The Court first noted that the tie between the applicant and his daughter fell within the scope of 'family life' within the meaning of article 8. The Court emphasized that under article 8 states have positive obligations to facilitate contacts between parents and their children and that ineffective and delayed proceedings might give rise to a violation of this article. In the context of enforcement of family law decisions, the Court further stressed how the passage of time might have a strong negative influence on the parent-child relationship so that immediate implementation of the measure is required.

The role of the Court was thus to establish whether the national authorities took necessary, adequate, and effective steps to facilitate the execution of the access order considering the mother's refusal to comply. The Court observed that the access order had not been enforced between the moment in which it became final in October 2002 and the domestic court's determination of new arrangements in May 2006, and that no measures were taken by the authorities in response to M.E.'s continued refusal to allow access to the child. The Court concluded that regarding the execution of the access order, the state had failed to create the necessary conditions to have it enforced and ensure contact between the applicant and his daughter.

The proceedings concerning access and custody lasted more than four years, during which the applicant had extremely scarce contacts with his daughter. The Court acknowledged that the domestic courts had the possibility to adopt interim measures of their own motion but failed to do so. In addition, the access agreement should have been treated as urgent by the authorities, however the authorities had failed to make effective efforts to have the measure enforced.

The Court held therefore that the Slovenian authorities failed to ensure the execution of the access arrangements, resulting in a lack of contact between the applicant and his daughter for over four years, and furthermore failed to conduct the proceedings effectively and promptly, in breach of article 8.

Article 6

The applicant's claim under article 6 about the excessive duration of the proceedings, was rejected for non-exhaustion of domestic remedies.

Article 41

The Court held Slovenia was to pay the applicant €7,500 for non-pecuniary damage and €3,000 for costs and expenses.

CASE B

Emergency care order for new born baby constituted a violation of the applicants' right to respect for family life in article 8

GRAND CHAMBER DECISION IN THE CASE OF K. AND T. v. FINLAND

(Application no. 25702/94)

July 12, 2001

1. Principal facts

The applicants, a mother, and her cohabitant T., are Finnish nationals. K. was the mother of four and T. was the father of two of the children in their family.

The applicant K had been hospitalized on several occasions, having been diagnosed as suffering from schizophrenia. In May 1993, when she was expecting her third child J., the Social Welfare Board, considering that K. was unable to care for her second child M., placed him in a children's home as a short-term support measure consented by the applicants. As soon as she was born in June 1993, J. was, placed in public care in the children's ward of the hospital, given K.'s unstable mental condition and the family's long-lasting difficulties. In a further emergency order, issued a few days later, M. was likewise placed in public care.

K.'s unsupervised access to the children was prohibited and she was again hospitalized on account of her psychosis. The emergency care orders were replaced by custody orders in July 1993. These were confirmed by the County Administrative Court. The Supreme Administrative Court rejected the applicants' appeals.

In September 1993 the access restriction was prolonged and in 1994 the children were placed in a foster family some 120 kilometers away from the applicants. Social welfare officials allegedly told both the applicants and the foster parents that the children's placement would last for years. The applicants proposed, in vain, that the care arrangements take place in the home of relatives and that the arrangements should, in any case, be aimed at reuniting the family. In May 1994 both applicants' contact to the children was restricted to one monthly and supervised visit in the foster family. In December 1994 the Social Director informed the applicants that there were no longer any grounds for the access restriction. Nevertheless, only supervised meetings with the children held once a month in premises chosen by the Social Welfare Board were authorized. The Board confirmed this decision in January 1995 and the applicants' appeal was rejected.

Meanwhile, in May 1994, the applicants had also requested that the custody orders be revoked. This request was rejected by the Social Welfare Board in March 1995. In April 1995 K. gave birth to a fourth child, who was not placed in public care. Shortly afterwards K. was taken into compulsory psychiatric care for six weeks, again on account of her schizophrenia.

The care plan was again revised in May 1996 and in April 1997 but the contact restriction of applicants with the children was maintained. In December 1998 the social authorities considered that the reunification of the family was not in sight. In November 2000 the applicants and the children were nevertheless allowed to meet once a month without supervision. These access restrictions remained valid until the end of 2001.

2. Decision of the European Court on Human Rights

In its Chamber judgment of the 27th of April 2000, the Court held that there had been a violation of article 8 in respect of the decisions to take the children into alternative care and the refusal to terminate the care. The Chamber further held that there had been no violation of article 13. The case was referred to the Grand Chamber under article 43 at the Government's request.

The applicants complained that their right to respect for their family life, guaranteed under article 8, had been violated on account of the placement of their children J. and M. in alternative care and the subsequent care measures. They also complained that they had not been afforded an effective remedy, guaranteed under article 13.

Article 8

The Court first established that at the time, the authorities had intervened in the family life within the meaning of article 8 § 1 of the Convention, which extended to both children, M. and J. Hence the Court then moved on to consider whether the interferences with that family life had been justified under article 8 § 2.

The emergency care orders

The Court accepted that when an emergency care order had to be made, it was not always possible, because of the urgency of the situation, to associate in the decision-making process those having custody of the child. Furthermore, it was not possible as these persons were seen as the source of an immediate threat to the child. The Court was however convinced that the Finnish authorities were entitled to consider that in relation to both J. and M. there existed circumstances justifying their removal from the care of the applicants without prior consultation. In particular, Finnish authorities had to ensure that a careful assessment of the impact of the proposed care measure, as well as of the possible alternatives to taking the children into alternative care, had been carried out before implementing any care measures.

The Court found it reasonable for the authorities to believe that if K. had been forewarned of the authorities' intention to take either M. or the expected child J. away from her, there might have been dangerous consequences both for herself and her children. The authorities' assessment that T. would not on his own have been capable of coping with the mentally ill K., the expected baby J. and M. was likewise reasonable. Associating only T. in the decision-making process was not a realistic option for the authorities either, given the close relationship between the applicants and the likelihood of their sharing information.

However, the taking of a new-born baby into alternative care at the moment of its birth was an extremely harsh measure. There needed to have been extraordinarily compelling reasons before a baby could be physically removed from the care of its mother, against her will, immediately after birth, as a consequence of a procedure in which neither she nor her partner had been involved. Such reasons had not been shown to exist. The authorities had known about the forthcoming birth of J. for months in advance and were well aware of K.'s mental problems, so the situation was not an emergency. The Finnish Government had not suggested that other possible ways of protecting J. from the risk of physical harm from K. had even been considered. When a measure so drastic as to immediately deprive a mother of her new-born child was contemplated, it was incumbent on the national authorities to examine whether some less intrusive interference into family life, at such a critical point in the lives of the parents and the child, was possible. The reasons relied on by the authorities were relevant but not sufficient to justify the serious intervention in the applicants' family life. Even having regard to the national authorities' margin of appreciation, the Court concluded that the emergency care

order in respect of J. and the methods used in implementing that care were disproportionate. While there may have been a “necessity” to take some precautionary measures to protect J., the interference in the applicants’ family life could not be regarded as having been “necessary” in a democratic society.

Different considerations came into play as far as M. was concerned. The authorities had good cause to be concerned about K.’s capacity, even with the aid of T., to continue caring for her family in a normal way, following the birth of her third child. M. was showing signs of disturbance and thus a need for special care. The emergency care order in respect of him was not capable of having the same impact on the applicants’ family life as that made in respect of J. He had already been physically separated from his family because of his voluntary placement in a children’s home. The lack of association of T. and K. in the decision-making process was. The national authorities were therefore entitled to consider it necessary to take exceptional action, for a limited period, in the interests of M.

The custody orders

Keeping in mind that the authorities’ primary task was to safeguard the interests of the children, the Court had no reason to doubt that the authorities could consider that the children’s placement in public care as from 15 July 1993, and in a foster family as from early 1994, was called for rather than the continuation of open-care measures or the introduction of new measures of that type. Nor could it be said that the custody orders were implemented in a particularly harsh or exceptional way. Moreover, the applicants were properly involved in the decision-making process leading to the making of the custody orders and their interests were protected.

The alleged failure to take proper steps to reunite the family

The Court recalled the guiding principle that the institutional care of a child should in principle be regarded as a temporary measure, to be discontinued as soon as circumstances permitted. Any measures implementing such temporary care should be consistent with the ultimate aim of reuniting the biological parents and the child. The positive duty to take measures to facilitate family reunification as soon as possible became more pressing the longer the period of care lasted, subject always to its being balanced against the duty to consider the best interests of the child.

The Court noted that some enquiries had been carried out to ascertain whether the applicants would be able to bond with J. and M. They did not, however, amount to a serious or sustained effort to facilitate family reunification. The minimum to be expected of the authorities was that they examined the situation anew from time to time to see whether there had been any improvement in the family’s situation. The possibilities of reunification would progressively diminish and eventually disappear if the biological parents and their children were not allowed to meet each other at all. The restrictions and prohibitions imposed on the applicants’ access to their children hindered rather than helped a possible family reunification. In the present case, the negative attitude of the authorities was striking. There was therefore a violation of the article.

The access restrictions and prohibitions

In so far as the complaint concerning the access restrictions was covered by the finding of a breach of article 8 because of the failure to take sufficient steps for the reunification of the applicants’ family, it was not necessary for the Court to examine the impugned measures as a possible separate source of violation. Regarding the most recent situation, including the period after the delivery of the Court’s initial judgment, the Grand Chamber arrived at the same conclusion as the Chamber. Having regard to the children’s situation during this later period, the authorities’ assessment of the necessity of access restrictions did not fall foul of article 8 § 2.

Article 13

The Grand Chamber saw no reason to depart from the Chamber's above-mentioned finding for article 13.

Article 41

The Grand Chamber upheld the Chamber judgment in so far as it had awarded each applicant FIM 40,000 in just satisfaction for non-pecuniary damage. It also upheld the Chamber's award for costs and expenses (FIM 5,190) but awarded a further FIM 60,000 for the proceedings before the Grand Chamber.

B) Agenda

AGENDA

Third day Module III	
09:00 – 09:15	Main objectives and expected results
09:30 – 10:30	The child protection system
10:30 – 11:30	Preconditions and principles to build and integrate the child protection system
11:00 – 12:00	Measures and responsibilities for child protection
12:00 – 13:00	Lunch
13:00 – 13:45	Prevention, family, community and institutional measures and responsibilities
13:45 – 14:15	Protection of children without parental care Alternative forms of protection of children without parental care
14:15 – 15:00	Child protection homes
15:00 – 15:30	Case studies, group work
15:30 – 16:00	Reflections and closure of the third day

MODULE IV:

CHILD PROTECTION

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I. Training objective and expected results

The main objective of the Module Four (IV) is to recognize and become familiar with the main forms of protection in the family and community and specific protection forms.

At the end of this training module, participants will be able to:

- Understand protection of children in family and community;
- Be informed about family, community and institutional responsibility;
- To understand what are the specific forms of protection;
- Expand knowledge regarding several rights and their specific protection;
- Identify and compare protection from the perspective of other laws;
- Increase analytical skills through the study of practical cases, etc.

CHAPTER 1.

PROTECTION IN FAMILY AND COMMUNITY

1.1. The right to a name, citizenship, knowing his or her parents and preserving the identity

Birth is the first moment when a child acquires legal capacity, respectively, it's time when his rights defined by the law start to be acknowledged. One of the main rights is the right to have a name and to be registered in the Republic of Kosovo civil registry. Birth registration is a permanent and official record of the child's existence and it is of fundamental importance regarding the realization of the child's rights and practical needs.

Ensuring child's right to have a name and to be registered, means that the child is provided with access to basic services, including immunization (vaccination), health care, school registration at the appropriate age and other basic services. Without a known name and citizenship, the child cannot legally prove his age or existence.

Same as CRC, the LCP guarantees the right of the child to know his parents and to have their care, and the right of registration for the child, regardless of whether he was born in Kosovo or not.

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 7, CRC

In addition to realization of other rights, birth registration is also essential for child protection, including also: preventing child labor, ensuring that children in conflict with the law are not treated (legally and practically) as adults; preventing exploitation for the purposes of trafficking, helping children who have been repatriated and reunited with family members, etc.

LCP has also defined the right to preserve the identity, including the determination of the surname, acquisition of citizenship and recognition of family relations. If a child is unlawfully deprived of one or more elements of his/her identity, he or she shall be provided with the appropriate assistance to restore him/her to identity, including ensuring the care of state institutions, give him/her the opportunity of practicing the language of origin, culture, and religion. Assistance may include the provision of genetic information:

- finding the parents;
- finding relatives or family members of the child, refugees and asylum seekers for the purpose of family reunion;
- registration of any change of the child's identity, such as name, citizenship, parental rights.

-
1. Pursuant to the applicable legislation, the child is entitled to:
 - 1.1. register for free, immediately upon birth. This right is also granted to children born outside the territory of the Republic of Kosovo, upon request by the parent or guardian, according to the rules set forth in the legislation in force;
 - 1.2. have a name;
 - 1.3. acquire citizenship;
 - 1.4. know parents and be cared for by his or her parents.
 2. The child has the right to preserve the identity, including the determination of the surname, acquisition of citizenship and recognition of family relations in accordance with the applicable law without unlawful interference.
 3. If a child is unlawfully deprived of one or more elements of his/her identity, he or she shall be provided with the appropriate assistance to restore him/her to identity, including ensuring the care of state institutions, give him/her with the opportunity of practicing religion, culture and language of origin. Assistance may include the provision of genetic information for:
 - 3.1. finding the parents;
 - 3.2. finding relatives or family members of the child, refugees and asylum seekers for the purpose of family reunion;
 - 3.3. registration of any change of the child's identity, such as name, citizenship, parental rights.
 4. The registration and confirmation of the fact of birth shall be made in accordance with the criteria, rules, and procedure provided for with the applicable legislation.
 5. If not possible to determine the identity a child found or abandoned in the facilities of the healthcare institutions, or the identity of the child's parents, one or more employees of the institution where the child is found or abandoned shall be immediately appointed to take care of the child until the necessary measures are taken in accordance with the applicable legislation.
 6. When the child is abandoned by his/her biological parent/s, or the same declare that they will abandon the child, the social and medical staff in the maternity or other healthcare institutions shall, within twenty-four (24) hours, notify by phone and in writing the Centre for Social Work in the respective municipality.
 7. In cases of child abandonment by unknown parents at the premises outside healthcare facilities, whereby the life and health of the child is threatened, the Centre for Social Work, in cooperation with the Police, prepare a written report on the abandonment of the child, which is signed by both sides.
 8. The Centre for Social Work, in the capacity of the Guardianship body, shall take the necessary measures to protect the child based on the child's needs assessment.
 9. If one of the parents is identified, the Centre for Social Work in the respective municipality shall, with the purpose of taking the necessary measures to return the child to the biological family and issues a birth certificate, advises the parent on the importance of taking the biological child in parental care and the legal consequences of abandoning a child.

If the child's mother is not identified after the police investigation, the child protection official in the municipality where the child was born prepares the file containing the act of birth, the report prepared according to paragraph 6. of this Article, the decision on the child protection measure and the information sent by the police about the outcome of the investigations carried out.

- 10.** *All legal and natural persons, in particular healthcare institutions, social services, residential services that identify pregnant women or children without identification documents, notify the Centre for Social Work in the municipality where they are operating. The Centre for Social Work in cooperation with other institutions in the municipality takes concrete actions to determine the identity of the pregnant woman or the child according to the legislation in force.*

Article 33 Law on Child Protection (Law no.06/L-084)

The importance of children knowing their parents is also provided for in LCP, since not every child may have the opportunity to know his parents at the time of birth. In practice, there are cases of abandoned children or children whose parents cannot be identified.

Recognizing the importance and dangers to the child without identity and parental care, LCP has defined duties and obligations for health, social services and police institutions, to offer the necessary protection and care to the child (see paragraphs 5 - 10). All the above mentioned institutions, during the implementation of the mandate and obligations arising from this article, must undertake measures to:

- Respect the best interest of the child;
- Urgent action;
- Cooperate and coordinate actions;
- Provide services based on the child's needs, etc.

REFERENCE:

To learn more regarding the conditions and procedures for birth registration and citizenship acquisition in the Republic of Kosovo, please read the laws below:

1. *Law No. 04/L-003 on Civil Status (please click here below):*

<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2743>

2. *Law No. 04/L-215 on Citizenship of Kosovo (please click here below):*

<https://gzk.rks-gov.net/ActDetail.aspx?ActID=8873> ²⁴

1.2. Family, institutional, and individual responsibilities

The primary responsibility for the care, growth, well-being, education and child protection, remains to the parent or parents. The family must create conditions and opportunities for the child to develop and grow in a happy environment, where love and understanding are guiding values. Moreover, the child's dignity, value and personality must be protected and respected in the manner and in way that promotes the achievement of his/her full potential. As mentioned in the first module, views, and wishes should be taken in accordance with the age, maturity and gradual development of the child's abilities.

²⁴Website have been visited and link copied on August 2022.

By fulfilling the conditions and respecting child rights, parents and guardians ensure that the child is not exposed to circumstances and situations that put him/her at risk. They are also responsible to protect the child from all forms of physical and mental violence, neglect, abuse, maltreatment, and exploitation.

In addition to the parents, the responsibility of caring for and supporting the child's development belongs also to other family members and designated guardians. All these separately or together are obliged to provide the child, with the following:

- Offer advice, guidance and assistance in order to prepare him/her for independent and responsible life in society;
- Take into account views and wishes;
- Promote the right to health, education, education, well-being and participation;
- Protect the rights and interests;
- Ensure that the child is not left without parental or guardian care under any circumstances and situations.

-
1. *The family, being a fundamental unit of society and the natural environment, has as its main responsibility the growth, well-being, education and child protection. The family should ensure that the child grows up in an atmosphere of happiness, love and understanding that promotes the development of the full potential of the child.*
 2. *Parents, other family members and guardians must protect the child's life and development and respect the dignity, values and personality of the child. Educational methods should evaluate and protect the child's individuality, sex, health status, disability, and the ethnic, racial, religious and cultural identity of the child. The child's opinions and desires should be taken into account in accordance with the age, maturity and gradual development of the child's ability to make decisions that affect his or her life.*
 3. *Parents, other family members and guardians are responsible for protecting children from all acts and situations that put the child at risk of all forms of physical and mental violence, neglect, abuse, maltreatment, and exploitation.*
 4. *Parents, other family members and guardians shall be obliged to:*
 - 4.1. *provide good advice and guidance and assistance to the child in accordance with his/her development to prepare him/her for an independent and responsible life in society;*
 - 4.2. *take into account the position of the child and his/her desires in accordance with his/her age and maturity;*
 - 4.3. *respect and promote the right of the child to health, education, social welfare and participation;*
 - 4.4. *protect the rights and interests of the child protected by law and the Convention; and;*
 - 4.5. *ensure that in the temporary absence of parent or guardian, the child has adequate care by the designated person, parent, guardian or competent body.*

Article 34 Law on Child Protection (Law no.06/L-084)

Seeing the primary importance and vital role that the family (parents or guardian) has in the child growth and development, CRC in several articles (3, 5, 7, 9, 10, 18, 19, 20) has foreseen the role and responsibility of the family (parent and parents) for the child, and instructed the states to take legislative, administrative and judicial measures and actions to ensure child protection by the family.

Parents or guardians have the right to seek and receive help and support from institutions to fulfill responsibilities set out in the LCP. Institutions help the family with this obligation and intervene only when the family is unable or incapable or needs help to protect the child. The child shall not be separated from his parents or guardian against his will, unless such separation is in the best interests of the child, if the child is in danger and such separation is unavoidable, and if such separation is required by the law or by a final court decision.

IMPORTANT:

Help and support offered to parents or guardian by the institutions should not mean replacing or weakening the authority that parents or guardian have over the child. According to the law, institutions must understand and respect the primary and irreplaceable responsibility that parents have towards the child.

This principle is confirmed by paragraph 4 of article 35 of the LCP:

Only in cases when support and measures available to the families under paragraph 1. of this article prove to be insufficient in preventing violence, disregard, negligence, abuse, maltreatment, exploitation or when the child is at high inevitable risk, institutions shall be responsible to intervene with the measures provided by this law and the legislation in force and to ensure the safety and well-being of the child.

Help and support should be provided only in those situations and circumstances where parents or guardians are unable to fulfill their responsibilities according to the law.

Paragraph 3 of article 35 precedes paragraph 4 of the same article, where the exception to the above-mentioned principles is defined, regarding the issue that the child must grow up and develop in a family environment. According to the first part of paragraph 3, the family fails to protect or puts the child in situations of danger... **“when a family fails to protect or places the child at risk of all forms of physical and mental violence, negligence, abuse, sexual abuse, maltreatment, abandonment, economic exploitation and all other forms of exploitation”** and the second part of the paragraph defines the situation when ... **“the parent, guardian or family members”** are perpetrators. It is sufficient to fulfill one part of the responsibility according to paragraph 3 and then institutions intervene in the family by removing the child from the temporary care of parents or guardian and provide him alternative care and protection.

1. *Parents or guardians shall be entitled to support from institutions to fulfil the responsibilities specified in this article. Institutions must respect the primary responsibility of the parents or guardians for education of the child and the relationship between the child and the parents or legal guardian, while at the same time respecting and considering the gradual development of skills of the child.*
2. *Institutions should undertake all necessary measures to ensure that the parents or guardians, who are unable to perform their responsibilities, receive the necessary support to fulfil their responsibilities and provide the necessary infrastructure and services in this direction.*
3. *When a family fails to protect or places the child at risk of all forms of physical and mental violence, negligence, abuse, sexual abuse, maltreatment, abandonment, economic*

exploitation, and all other forms of exploitation by parents, other family members and guardian, the competent municipal institution is responsible for protecting the child and ensuring the appropriate alternative care or permanent legal care with the legislation in force.

4. *Only in cases when support measures available to the families under paragraph 1. of this article prove to be insufficient in preventing violence, disregard, negligence, abuse, maltreatment, exploitation or when the child is at high inevitable risk, institutions shall be responsible to intervene with the measures provided by this law and the legislation in force and to ensure the safety and well-being of the child.*

Article 35 Law on Child Protection (Law no.06/L-084)

The last part of this sub-chapter is related to articles 35 and 36 and foresees the responsibility of any person, whether **natural or legal**, when by **his actions or inactions**, he committed a violation. It is important to understand that liability is determined not only by LCP provisions, but also by the relevant legislation.

Every legal and natural person shall be responsible pursuant to the provisions of the present law and relevant legislation when, by his actions or omissions, he or she violates the law.

Article 36 Law on Child Protection (Law no.06/L-084)

LCP, within its definitions, has defined situations and circumstances when a violation is committed by action or inaction. A few definitions from the LCP are introduced below:

EXAMPLES:

Violence against the child – shall mean any intentional **act** or **omission** through which any form of physical or mental violence, injury or abuse, negligence or negligent treatment, maltreatment or exploitation, including sexual abuse is caused.

Physical violence – shall mean any form of physical abuse including beating by any means, slapping with hands or with other means, grabbing by the throat and any **other acts** that cause physical pain.

Child negligence – shall mean the **omission**, whether or not intentional, by a person who is responsible for the upbringing, care or education of the child, as a consequence of which the life, physical and mental well-being and development of the child may be at risk.

Abuse - shall mean any **act** or **omission**, whether or not intentional, by a parent, guardian, trustworthy person or any other person in the position of trust or authority, that causes or is likely to cause physical, psychological, emotional or social harm to the child.

All violations that are committed in the meaning and against the rights of the child are committed by action or by inaction.

1.3. Education

LCP, at the beginning of the article on education, emphasizes the importance of child education, therefore it has prohibited to deprive a child of his/her right to education. After the deprivation ban, another provision follows, which obliges the relevant Ministry of Education and authorities at the local level to provide comprehensive, free and quality education and training, etc. Through this, a provided for in the Constitution in article 47 (right to education), as well as in the CRC articles 28 (right to education) and 29 (education), is implemented and re-confirmed.

Educational institutions are obliged to make schools and other educational institutions “attractive and safe” for children, pupils and teachers/educators, in order that all of them to be protected from “*from all forms of physical and mental violence, abuse, maltreatment, exploitation, corporal punishment, negligence or any other form that puts at risk the life, safety, health, education and development of the child*”. Protection defined in paragraph 3 of this article applies to all levels of pre-university education, and creates obligations for educational personnel, peers and every person within the educational system.

In addition to the ministry and local authorities, parents or guardians are also obliged to ensure that the child attends the compulsory education or other levels of education. Moreover, they must also guarantee the child's regular and unobstructed attendance.

1. *It is prohibited to deprive a child of his/her right to education.*
2. *The respective ministry of education should provide inclusive and equal access for all students in quality and free education on the basis of equal opportunities and non-discrimination, in accordance with age and ability to understand at all levels of pre-university education. This right shall also be granted to a child who is willing to continue education upon completing compulsory education.*
3. *A child attending all forms of pre-university education shall be protected from all forms of physical and mental violence, abuse, maltreatment, exploitation, corporal punishment, negligence or any other form that puts at risk the life, safety, health, education and development of the child. The child shall be protected from violence exercised by the educational personnel, their peers and any other person within the educational system. During the educational process, it shall be forbidden to promote hate speech, violence, intolerance, or discrimination and other forms which incite human conflict.*
4. *The parent or guardian shall take appropriate measures in order for the child to attend the compulsory education or other levels of education, according to the child's desires, and to ensure their regular and unobstructed attendance.*
5. *The Ministry responsible for education, as the responsible public authority, and the local education units shall take concrete measures in order to:*
 - 5.1. *encourage lifelong learning, develop the child's respect for cultural identity, language and national values, respect for different cultures and environmental preservation;*
 - 5.2. *enable the child access to preschool education as well as compulsory free education for all children, even in cases where the children may have passed the age for compulsory education but have been unable to attend it;*
 - 5.3. *develop parental education programs, in cooperation with relevant institutions, including programs for preventing domestic violence;*

- 5.4. *organize special lesson plans for a child who fails to reach the appropriate levels of the curriculum, in order to prevent the barriers to further education of the child;*
 - 5.5. *identify and address the cases of children at risk of dropping-out and undertake concrete actions according to national policies for dealing with cases at school and municipality level;*
 - 5.6. *organize special education learning plans for drop-out children, children who never attended school or returning from abroad, in order to integrate them into the national education system;*
 - 5.7. *monitor the child's right to rest, as well as the right to participate in cultural and artistic activities;*
 - 5.8. *address the prevention of child involvement in serious and dangerous labour, addressing this issue with curricular, cross-curricular and extracurricular approaches;*
 - 5.9. *provide effective mechanisms for prevention, treatment within the school and reporting situations of violence and other negative phenomena to responsible authorities;*
 - 5.10. *foresee and enforce appropriate sanctions for educational staff in cases where it exercises, allows, encourages, tolerates or does not report violent actions in educational institutions, according to this law;*
 - 5.11. *ensure child protection on the Internet, promoting the use of Information and Communications Technology in a useful and responsible manner;*
 - 5.12. *address the prevention of child trafficking by raising awareness, and treating children at risk of being trafficked with a proactive approach;*
 - 5.13. *include modules for protection against the risk of abuse and sexual exploitation in pre-university and higher education institutions curricula;*
 - 5.14. *relevant Ministry on Education, Science and Technology to guarantee attendance to primary and secondary education institutions for children of families who are in enmity.*
6. *In cases when a child not attending compulsory education, due to non-registration in the civil status offices or other reasons, are identified, the appropriate child protection officer within the relevant Directorate in Municipality shall take immediate measures to register the child at school, according to the legislation in force.*
 7. *During the educational process, the child is treated with dignity by the teachers and the staff, and is informed about his rights and means of exercising them, according to this law.*

Article 37 Law on Child Protection (Law no.06/L-084)

In paragraph 5, through 14 points, some additional tasks are defined for the relevant Ministry of Education and the Municipal Directorates of Education, which are charged with undertaking concrete measures in order to ensure quality, continuity, but above all, the implementation of child protection rights, which are foreseen in this law and other laws, with special emphasis on:

- Encouraging learning and child development;
- Access and inclusion to education and educational processes for all children;
- Inclusion of parents in awareness raising programs regarding the domestic violence prevention;
- Eliminating barriers for the achievements of the child;
- Preventing and combating school drop-out, and integration of children who have dropped-out of school;
- The child participation in leisure, cultural and artistic activities;
- Preventing child involvement in hard labor;
- Prevention of school violence;
- Sanctioning of the educational personnel;
- Child protection in internet;
- Awareness and prevention of child trafficking;
- Inclusion of modules in the curriculum plan regarding protection of the child from the risk of abuse and sexual exploitation;
- Ensuring continuity in schools for children whose families are in enmity.

In this article, child education, who due to not being registered in civil registers has not been able to realize this right is protected and ensured.

Teachers and educational personnel must inform children about their rights and the means or mechanisms for exercising their rights according to this law.

REFERENCE:

To learn more regarding the children's rights to education and training, please click and read the most relevant laws in the scope of education for children:

Law No. 02/L-52 ON PRESCHOOL EDUCATION
<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2401>

Ligji Nr. 08/L-153 for Education in Early Childhood
<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=79000>

Regarding the institutions and mechanisms about child or their parents/guardians exercising their rights, please go back and read the Second Module (II).

1.4. Prohibition of physical punishment

Physical punishment or as it is known globally '**corporal punishment**' is a physical punishment which causes pain, discomfort and stigmatization to the child.

This punishment has historically been used in schools, homes and communities, and unfortunately it is still present. According to recent studies, it is being used at quite high levels. According to the findings of MICS 2019-2020 *"While 24 percent of children aged 1 - 14 years are disciplined with only non-violent methods, a large*

proportion of children (72 percent) are reported to be violently disciplined (psychological aggression and/or physical punishment)".²⁵

Due to the fact that corporal punishment is still used as a form of discipline and punishment for the child, LCP within its definitions has determined the elements that describe corporal punishment in detail.

*Corporal punishment*²⁶ -- shall mean any form of punishment in which physical force is used and intended to cause pain or discomfort to the child, by any person who is legally responsible for the child. Corporal punishment includes the following forms such as: smacking, torturing, shaking, pushing, burning, slapping, and pinching, scratching, biting, scolding.

Moreover, article 38 strictly prohibits corporal punishment and child disciplinary measures. Initially, in paragraph 1, it is prohibited in all settings, in homes and families, educational institutions, care institutions, law enforcement and justice system bodies, work and community settings. Whereas in paragraph 2, it prohibits corporal punishment committed by any person.

Recognizing the fact that corporal punishment as a mean of discipline is used to a great extent in school premises and by the teaching staff, in paragraphs 3, 4 and 5, prohibitions in the educational system to use corporal punishment as a mean of discipline are defined, as well as the obligations and measures to be taken against educational and non-educational personnel in case of law violations in this respect.

1. *Physical punishment and disciplinary measures that undermine and weaken the child's human dignity, including forms of physical and mental violence, as well as behaviors that degrade, disgrace and put the child into a difficult situation are prohibited in any environment at home and families, educational institutions, care institutions, law enforcement and justice systems, working environments and community.*
2. *It is prohibited for a child to be subjected to torture and non-human, non-dignified treatment, corporal punishment and degrading treatment by any person.*
3. *Educational personnel and school related personnel should not use corporal punishment as a means of discipline and rule, but rather should work and build on the basis of respect and justice.*
4. *The Municipal Directorate of Education and the Education Inspectorate shall take disciplinary measures against the educational personnel and reports the cases of corporal punishment of the child to the investigative bodies in accordance with the laws in force.*
5. *The relevant ministries shall provide the issuance and establishment of awareness-raising programs regarding the harmful effects of corporal punishment and design and create:*
 - 5.1. *education and awareness-raising regarding the degrading consequences of corporal punishment.*
 - 5.2. *parenting programs that promote non-violent methods of disciplining in family and educational institutions and in care institutions.*

Article 38 Law on Child Protection (Law no.06/L-084)

²⁵ KAS-UNICEF. Multiple Indicator Cluster Survey (MICS) program. 'MICS ASK' https://ask.rks-gov.net/media/5740/3-alb-mics6kos-statistical-snapshot-child-discipline_20201015_20201119.pdf (visited on 30.08.2022).

²⁶ Article 3, par.1 item 1.26, Law on Child Protection (Law no.06/L-084).

The UNCRC in General Comment number 8 regarding corporal punishment declares:²⁷ *The Convention on the Rights of the Child and other international human rights instruments recognize the right of the child to respect for the child's human dignity and physical integrity and equal protection under the law.* The Committee is issuing this general comment to highlight the obligation of all States parties to move quickly to prohibit and *eliminate* corporal punishment and all other cruel or degrading forms of punishment of children and to outline the legislative and other awareness-raising and educational measures that States must take.

The Committee, due to the fact that corporal punishment is a widespread phenomenon in most member states, in continuation of this comment in point 3, appeals to States Parties in '*addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings, is not only an obligation of States parties under the Convention. It is also a key strategy for reducing and preventing all forms of violence in societies*'.

According to the UNCRC, not only the child and family, but also society and the state itself, will benefit from the elimination of corporal punishment. This is because fewer cases of corporal punishment of children we have, fewer cases of violence in the family and society will occur.

1.5. Right to privacy, leisure and play

Despite the fact that in theory the right to privacy, respectively the protection of this right, is extremely promoted, in practice it is not implemented at the desired level. Privacy as a term, even though it is used in daily communication, by adults or children, it is not properly understood or even misused for certain interests and purposes. LCP, within this article, in addition to guaranteeing the child's right to privacy, it has further clarified the protection of privacy for:

- The life of the child
- The family of the child
- The residence or place where he lives
- The correspondence (electronic or physical communication).

The privacy of the child must be protected from malicious, arbitrary and unlawful interference that affects the child's morality and dignity.

The right to privacy is also guaranteed by the Constitution of the Republic of Kosovo, which in article 36 has guaranteed this right for every person in the Republic of Kosovo: '*Everyone enjoys the right to have her/his private and family life respected, the inviolability of residence, and the confidentiality of correspondence, telecommunication and other communication*'.

PROTECTION THROUGH CRIMINAL SANCTIONS:

Protection of child privacy from interventions that affect his/her moral and dignity is also done through the Republic of Kosovo Criminal Code, where in article 202 (Unauthorized photographing and other recording), it provides as a criminal offense privacy violation:

'Whoever, without authorization, photographs, films, or videos or in any other way records another person in his or her personal premises or in any other place where a person has a reasonable expectation of privacy, and in that way fundamentally violates another's privacy, shall be punished by a fine or by imprisonment of one (1) to three (3) years.'

²⁷ Please see Point 2 of General Commentary no.8 (2006). Committee on the Rights of the Child, Forty-second session. Geneva, 15 May-2 June 2006.

In addition, the LCP as part of privacy, also foresees the child's right to have an opinion, which is related with the main principle to express his views (please see the first module). This right is protected and related to the expression of the child's views in the family, in healthcare, social and service institutions. The law has defined these institutions, because, in many cases, receiving and providing health and social services is also related to information or circumstances that affect child's privacy.

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1. *A child's right to privacy, respect of private, family life, housing, and correspondence is guaranteed and must be protected from malicious, arbitrary and unlawful interference affecting the morality and dignity of the child.*
 2. *The child's privacy includes the right of the child to have an opinion and to be protected in all situations, within the family and healthcare, social and service institutions.*
 3. *No child shall be subject to illegal or arbitrary intervention to his/her private, family life or correspondence, nor attacks to his/her reputation and dignity.*
 4. *A child's privacy shall be respected in all stages of court or administrative proceedings, including their publication in the media.*
 5. *Such actions are punishable under the legislation in force.*

Article 39 Law on Child Protection (Law no.06/L-084)

The child's privacy and private life are protected even in judicial and administrative proceedings. This protection includes all stages of procedure that take place without public presence and also the protection from publication in media.

Juvenile Justice Code in article 111 has defined the protection of private life and standards where the child is a victim and witnesses: '*Interference in the private life of the child shall be limited at the necessary minimum, as provided by law, in order to ensure high standards of testifying and an objective and impartial result of proceedings*'. Further, defining in article 115 the responsibility of the persons who work with child victims and witnesses to keep all information confidential regarding the child victims and witnesses: '*Apart from existing legal protection for the private life of victim or witness child, except article 12 paragraph 3 of this Chapter, all persons working with the victim or witness child shall keep the confidentiality of all information on victim and witness children that may have obtained when performing their task*'.

Article 40 of the LCP includes several different rights '*to rest, to have fun, to play games, and recreational activities and to participate freely in the cultural, artistic and sports life, in accordance with the age of physical and mental development*', which are necessary for the full development of the child.

The second part of the paragraph includes supporting free participation of the child in cultural, sports and artistic activities. The right to full participation in cultural, sport and artistic life includes child right to participate in cultural, sport and artistic activities of adults, as well as in their children activities. In order to support and encourage such opportunities for the child, institutions within their competences, take concrete measures to create suitable premises and equal opportunities for all children to participate in cultural, artistic and recreational activities. Measures undertaken with specific emphasis should enable and include children with disabilities, children from minority groups and children living in poverty.

Special attention should also be paid to children whose freedom has been restricted by being placed in various institutions, such as correctional institutions or hospital facilities.

In the last part of paragraph 2, it has created obligations for central and local institutions to undertake measures which include:

- Approval of urban regulatory framework and legal acts of local self-government bodies, to guarantee suitable urban spaces and safe access to sports facilities, playgrounds or other recreational facilities for all children, regardless of age, gender, race, ethnicity, ability or social economic conditions;
- Establishing of safety standards and access to all recreational facilities and playgrounds, in order to protect the child from possible health damage;
- Creating suitable spaces to enable the safe and comprehensive exercise of sports, cultural and recreational activities in school and community environment;
- Drafting school curricula, which create opportunities for children to have sufficient time for games, recreation and sports activities.

1.6. Harmful practices

Although in the context culture and traditions in Kosovo harmful practices are not very current and expressed, the LCP through this article, has determined in a very general way the practices and rituals from which the child should be protected. Harmful practices are social, cultural, customary practices, rituals and practices that endanger safety, health, development or well-being of the child.

Despite the fact that the law has not defined in detail what harmful practices are, professionals must be guided by the principle of the best interest of the child, to determine in which situations or circumstances, a practice, custom or 'tradition' as it is popularly known, can be considered harmful to the child.

The LCP article which is mentioned below, derives from the right guaranteed to the child according to the CRC, which defines: 'States Parties to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children'.²⁸

1. Child is protected from any social, cultural, customary, rituals and traditional practices which damage security, health, development or the child welfare.
2. In particular, discriminatory practices and habits against child based on gender or any other status contrary to article 8 of this law is prohibited.
3. Child that has experienced and passed through a harmful practice will have full and free access to social, legal, health care and other services provided by applicable legislation.
4. The relevant unit of Good Governance in cooperation with other institutions and civil society organizations, in central and local level, in order to protect children conducts assessments, studies and programs for raising awareness in order to influence the reduction and eradication of traditions and practices that are harmful for children as well as to promote healthy models and positive alternatives.

Article 41 Law on Child Protection (Law no.06/L-084)

²⁸ Article 24 par.3 of CRC.

1.7. Healthcare

Health and health care represents one of the rights which is guaranteed to the child even before he acquires his legal capacity, that is, even before his birth. This is due to the fact that all actions taken before and during pregnancy (awareness, medical care during pregnancy, nutrition, etc.), are considered to be part of providing care and health protection so that a child is born alive and healthy. Therefore, health and health care is a twofold issue, before and after the birth of the child. Protection during these two stages contributes to child survival, development and reaching full potential in life.

Childs' health must be protected through the main principles defined in CRC and LCP, and in perspective based on other related child rights, especially the fundamental right to live, grow and develop.

The Convention on the Rights of the Child in article 6 defines *"that every child has the inherent right to life"* and that *"States Parties shall ensure to the maximum extent possible the survival and development of the child"*. Commenting and providing necessary clarifications regarding this article, the CRC defines that *"article 6 refers to the child's right to life and States parties' obligation to ensure, to the maximum extent possible, the survival and development of the child. States parties are urged to take all possible measures to **improve perinatal care for mothers and babies, reduce infant and child mortality, and create conditions that promote the well-being of all young children** during this critical phase of their lives. **Malnutrition and preventable diseases** continue to be major obstacles to realizing rights in early childhood. **Ensuring survival and physical health are priorities**, but States parties are reminded that article 6 encompasses all aspects of development, and that a young child's health and psychosocial well-being are in many respects interdependent. Both may be put at risk by adverse living conditions, neglect, insensitive or abusive treatment and restricted opportunities for realizing human potential. Young children growing up in especially difficult circumstances require particular attention (see section VI below). The Committee reminds States parties (and others concerned) that the right to survival and development can only be implemented in a holistic manner, through the enforcement of all the other provisions of the Convention, including rights to health, adequate nutrition, social security, an adequate standard of living, a healthy and safe environment, education and play (arts. 24, 27, 28, 29 and 31), as well as through respect for the responsibilities of parents and the provision of assistance and quality services (arts. 5 and 18). From an early age, children should themselves be included in activities promoting good nutrition and a healthy and disease-preventing lifestyle.*

Based on great importance that health has in child life and development, Convention on the Rights of the Child, in a very detailed manner, has regulated this right by defining standards and principles, based on which states must ensure children, health and the rights related to it 'States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services'.

Law no. 02/I-78 on Public Health

<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2573>

Law no. 04/I-125 on Health

<https://gzk.rks-gov.net/ActDetail.aspx?ActID=8666>

Law no. 02/I-109 for Prevention and Fighting Against Infectious Diseases

<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2587>

Law no. 2004/38 for the Rights and Responsibilities of the Kosovo Residents in the Health Care

<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2454>

In the Republic of Kosovo, there are many laws through which the right to health and health care is guaranteed:

Regarding the protection of health and health care, LCP begins by guaranteeing free health care, which is based on a comprehensive approach, without discrimination and with equal opportunities for all children, and further stipulates that, this right cannot be limited, under no circumstance. Paragraph 2 of this article, defines Ministry of Health obligation to undertake a multitude of measures which are listed from item 2.1 to item 2.10.

Paragraph 3, the obligation of parents to seek health care is determined in order for the child to enjoy highest health standard and to prevent situations that endanger child's life, growth and development.

- 1.** *A child's right to a free-of-charge healthcare and the benefit from high standards disease treatment and health recuperation services is guaranteed. This right cannot be limited, regardless of whether the child is registered or not in the civil status register, or for any other reason.*
- 2.** *This right is guaranteed by the ministry responsible for healthcare, which takes measures to:*
 - 2.1. reduce infant and child mortality;*
 - 2.2. provide the child with free and quality healthcare, with emphasis on the development of primary healthcare;*
 - 2.3. combat disease and malnutrition, by taking measures for the security of the food products, clean drinking water and taking into account the risks of pollution of the natural environment;*
 - 2.4. provide the proper health care to mothers before and after childbirth;*
 - 2.5. enable, in cooperation with the ministry responsible for education, that all social groups, and in particular parents and children, receive information, have access to education and are support on health and nutrition of the child, advantages of breastfeeding, hygiene and environmental improvement and prevention of accidents;*
 - 2.6. develop preventive health care ensuring optimal development of children, parental and child counselling, education, and reproductive health services for parents and children, depending on age and ability to comprehend;*
 - 2.7. ensure periodic verification of treatment provided to a child in health care institutions or in temporary or permanent protection, by a court decision;*

- 2.8. *protect confidentiality during and after the child's medical examination against third parties, except in cases where the health or life of the child is endangered, in accordance with article 23 of this law;*
- 2.9. *provide health care services for children with disabilities, aimed at rehabilitation, equal integration in society;*
- 2.10. *early identification of health issues of children through home visits and their referral to other relevant sectors for cross-sector treatment.*
3. *Parents have the obligation to seek medical care in order for the child to enjoy the highest standard of health and prevent situations that may be hazardous to the child's life, growth and development.*
4. *Regular home visits to pregnant woman and children to the age of three (3) years are mandatory. They are conducted under the standards of these visits and carried out within the basic package of the primary health care services. Home visits aim to protect the mother's and child health, including counselling for proper child development, preventing and avoiding abandonment, abuse, exploitation and neglect or any other kind of violence against the child.*

Article 42 Law on Child Protection (Law no.06/L-084)

In the last paragraph of article 42, the **"home visit"** program is provided for pregnant women and children up to 3 years old. This program sets protection into practice, in practical terms, since, actions undertaken within this program aim to protect mother and child health, through counseling for the child's well-being, to prevent and avoid abandonment, abuse, exploitation, neglect of any kind other forms of violence, and above all, identification and reporting violence cases.

1.8. Protection of children from harmful and prohibited substances

Article 43 has defined the protection of the child from harmful and prohibited substances such as:

- Narcotics;
- Alcohol;
- Tobacco;
- Toxic substances;
- Psychotropic substances; and
- Other substances that are declared harmful by the relevant authorities.

Every person or economic operator is obliged to prohibit selling and serving the child with the above listed products. Otherwise, there are sanctions according to the Criminal Code:

PROTECTION THROUGH CRIMINAL SANCTIONS:

1. *Whoever, in a hotel, bar or any other store in which alcoholic beverages are sold, serves, sells or makes alcoholic beverages available to a person under the age of sixteen (16) years shall be punished by a fine or by imprisonment of up to six (6) months.*
2. *When the criminal offense provided for in paragraph 1. of this article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to three (3) months.*

Article 266 - Serving alcoholic beverages to persons under the age of sixteen years

Criminal Code of the Republic of Kosovo

In addition to selling and serving, it is also prohibited to use or engage a child in distribution or trafficking of prohibited substances. For not implementing this prohibition, there are sanctions in accordance with the Criminal Code:

PROTECTION THROUGH CRIMINAL SANCTIONS:

Article 267 Unauthorized purchase, possession, distribution and sale of narcotic drugs, psychotropic substances and analogues (see paragraphs 1 to 5).

Article 268 Unauthorized production and processing of narcotic drugs, psychotropic substances, analogues or narcotic drug paraphernalia, equipment, or materials (see paragraphs 1 to 5).

Article 269 Unauthorized possession of narcotic drugs, psychotropic substances, or analogues (see paragraphs 1 to 3).

Article 270 Intoxicating another person with a narcotic drug or psychotropic substances.

Article 271 Facilitating acquisition or use of narcotic drugs, psychotropic substances, or analogues (see paragraphs 1 and 2).

Article 275 Punishment for serious cases of criminal offenses from this Chapter (see paragraph items 1.4 and 1.7).

Criminal Code of the Republic of Kosovo

1. *Children must be protected from use of narcotic substances, alcohol, tobacco products, toxic products, psychotropic substances and other substances that are declared harmful by the relevant authorities.*
2. *Every person and economic operator shall be prohibited to sell and serve the children, until the age of eighteen (18), alcohol, tobacco products, products containing toxic substances and other substances that are declared harmful by the relevant authorities, otherwise will be sentenced under the legislation in force.*
3. *Use or engagement of a child in production, distribution or trafficking of such substances is prohibited and sanctioned by the relevant legislation in force.*
4. *Adequate protective and preventive measures, including advocacy of a way of healthy living and discouraging of any kind of abuse with drugs and psychotropic substances shall be regulated by a sub-legal act approved by the Government with a proposal by the relevant ministry of health.*
5. *Treatment of children who are addicted to drugs and abuse of other narcotic substances should be offered a closed environment only as a last resort and only with the consent of the legal representative or a court order.*

Article 43 Law on Child Protection (Law no.06/L-084)

Through this article, in addition to the measures and sanctions (punishment), the LCP has determined obligations for the institutions, family and community, to undertake preventive measures, the purpose of which is:

- Child protection from causes and circumstances that enable the use of narcotics, alcohol and other harmful substances, as well as addiction to them;
- Raising the child, family and community level of knowledge and awareness, regarding the dangers of using narcotics and alcohol, and consequences that alcohol and narcotics abuse bring to society;
- Ensuring effective and informative communication regarding the harmful health consequences, addiction issues, life threatening issues from consumption of harmful substances;
- Providing advice against the use of harmful substances;
- Encouraging quitting the use of harmful and prohibited substances by users;
- Promoting a healthy lifestyle, etc.

Details regarding the preventive measures and child protection, including promotion of healthy lifestyle and discouraging any kind of use of narcotic and psychotropic substances, are regulated with the Government approved sub-legal act.

1.9. Prohibition to attend nightclubs and games of chance

Child protection in the context of this topic is done by prohibiting child entry to all night club premises, no matter if they are indoor or outdoor premises. Prohibition is implemented by forcing night clubs to take measures to verify participants age, in order to prevent the children entering in the night club.

Regarding the prohibition of games of chance, they are prohibited in the Republic of Kosovo according to the Law No. 06/L-155 on the Prohibition of Games of Chance, through which the Law No. 04/L-080 on the Games of Chance was repealed. The prohibition applies to both classic games and organized online gambling. The implementation of this prohibition, is done through cooperation and coordination of actions, by the institutions at central and local level, such as:

- Relevant Ministry of Internal Affairs and Police;
- Relevant Ministry of Trade and Industry;
- Ministry of Education, Science, Technology and Innovation;
- Centers for Social Work;
- Relevant inspectorates;
- Relevant municipal Directorates of Education;
- Electronic and print media;
- Schools;
- Non-Governmental Organizations.

1. Children are not allowed to enter nightclubs, games of chance facilities, have access to online games of chance and adult entertainment centers or similar facilities. Children are not allowed to sell and buy products that are dangerous to their health and safety.
2. The relevant municipal body should impose the request to an operator of a public event to limit access to the child in general or to a child under the certain age, if the event is likely to adversely affect the physical or psychological well-being of the child.
3. If the child is present in a place described under paragraph 1. of this article, the service provider of child protection should request to remove the child from that place and handle the case in accordance with the legislation in force.
4. Adequate protective and preventive measures, for the prohibition of a child in facilities referred to in paragraph 1. of this article shall be regulated by a sub-legal act adopted by the Government upon proposal by the relevant Ministry of Internal Affairs.

Article 44 Law on Child Protection (Law no.06/L-084)

Details regarding the preventive measures and child protection through prohibition of his participation in night clubs, gambling, entertainment centers for adults and similar, are regulated by the Administrative Instruction²⁹. This Administrative Instruction includes determination of prohibitions and actions required by the authorities at central and local level, as well as the responsibility of businesses, parents, guardians for the child protection from what endangers the health and safety of the child.

1.10. Protection of children in mass media

Mass media in all societies plays an important role in informing the public and in creating and respecting a positive image for every citizen, including children. The media with its products should serve the child's well-being and development as a responsible actor. In publishing and broadcasting of any material, the relevant media must take into account if this material can and should be accessible by the child and what consequences this material can have on the child's development.

In paragraph 1 of article 45, the protection of the child from broadcasts or publications harmful to his health, well-being and development is foreseen, such as:

- Publications;
- Movies;
- Video games;
- Music;
- Broadcasts or other types of electronic or printed media.

Paragraph 2 has defined details related to the prohibition of sell, lease, or distribute through books, newspapers, magazines, and other types of publications, *"including films and recordings of pornographic, erotic or violent content or those that promote atrocities or discrimination, including racial, religious, sexual, national and ethnic or any other type of discrimination"*. This is prohibited to all individuals and organizations.

In addition to the above mentioned prohibitions, the LCP has also determined the obligation to contribute to the promotion of child protection through awareness-raising activities and by advising the public regarding the possible negative effects that exposure to the media may have on the child. Furthermore, institutions should encourage the production and distribution of books and information by the media, in order to have a positive impact, increase cultural awareness and embrace proper values. Special emphasis should also be given to the needs of children from communities, in order to provide programs and information in the language that these children speak.

The obligation to provide these programs, information and awareness activities belongs to:

- Electronic or printed media;
- TV Stations;
- Radio Stations;
- Publishing houses;
- Advertising companies;
- Cinemas;
- Companies that provide and distribute internet;
- Web portals, etc.

²⁹ Administrative Instruction on the appropriate preventive and protective measures for the prohibition of the participation of children in night clubs and gambling.

1. *Child is protected from publications, films, video games, music, broadcasting, or other types of electronic or print media which are harmful to their health, welfare or development.*
2. *No person or organization is allowed to show, sell, lease, or distribute through books, newspapers, magazines, and other types of publications, including films and recordings of pornographic, erotic or violent content, or those that promote atrocities or discrimination, including racial, religious, sexual, national and ethnic or any other type of discrimination that are harmful to the child. It is prohibited for child to participate in any presentation of such materials.*
3. *Mass media, including printed and electronic media, publications, television, radio, advertising, cinema, internet and online media, portals, are obliged to contribute actively to affirm child protection through awareness-raising activities and by advising the public on the potential negative impacts that exposure to the media can have on the child.*
4. *The Government should encourage: production and distribution of children books; distribution of media information and materials of social and cultural benefit to children, which promote the mentioned values.*
5. *The Government, through incentive measures, encourages mass media to have useful childcare schemes, taking into account the language needs of children belonging to minorities.*
6. *The media are obliged to report in an ethical manner by protecting the dignity of the child and taking into account the best interest of the child.*
7. *Independent Media Commission (IMC) based on the relevant law on Independent Media Commission has the legal mandate to ensure the protection of children and minors from harmful program contents transmitted by the licensees of the IMC, as audio and audio-visual media service providers and distribution operators.*
8. *The IMC, in cooperation with other institutions, with sub-legal shall define the ways of protection of children in the mass media, with special emphasis for children who are under the institutional care.*

Article 45 Law on Child Protection (Law no.06/L-084)

IMC, through the sub-legal act, defines the ways of protecting the child in the mass media with special emphasis on children who are under institutional care.

To know more about the IMC mandate and works, click on this website³⁰:

<https://www.kpm-ks.org/en/ballina>

To learn more about IMC current Regulation on the Protection of Children, click here:

<https://www.kpm-ks.org/assets/cms/uploads/files/Legislacioni/1370439037.589.pdf>

³⁰ Web site visited and link copied on August 2022.

1.11. Protection of children with disabilities

In Kosovo, there is still no comprehensive law on disability. Disability is still regulated through other thematic laws that have a narrow scope of regulating disability issues. Moreover, the existing laws that aim to provide protection, do not clearly include children and are not all inclusive in terms of disability.

Law no. 05/I-067 on the Status and the Rights of Persons with Paraplegia and Tetraplegia

<https://gzk.rks-gov.net/ActDetail.aspx?ActID=12554>

Law no. 04/I-092 for Blind Persons

<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2837>

Law no. 05/I-025 on Mental Health

<https://gzk.rks-gov.net/ActDetail.aspx?ActID=11229>

Law no. 04/I-131 on Pension Schemes Financed by the State

<https://gzk.rks-gov.net/ActDetail.aspx?ActID=9517>

Law no. 03/I-022 on Material Support for Families of Children with Permanent Disability

<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2582>

Before providing protection, it is important to understand what '**disability**' is. Through the laws that regulate the scope of disability in Kosovo, there are different definitions that are more dedicated to the scope they cover (e.g., Definition of disability from the perspective of hearing, sight, body movement, body limbs etc.). On the other hand, the Convention on the Rights of Persons with Disabilities gives this general definition which includes all individuals.

Persons with disabilities³¹ include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

However, the description of persons with disabilities proposed by convention results from the progression of time of how disability is understood. Disability has evolved in essential ways.

The last model, the 'social model' has evolved through greater understanding of the barriers that stand in the way of the participation of persons with disabilities. The social model finds that disability results from interactions between individuals with specific physical, intellectual, sensory or health impairments mental and social and cultural environment. Disability is understood as a socio-political construct, where barriers in environmental and institutional attitudes in society systematically exclude and discriminate persons with disabilities.

The Social Model (also known as the bio-psycho-social model) is consistent with the human rights-based approach, or the human rights model of conceptualizing disability and is consistent with the World Organization's International Classification of Functioning, Disability and Health, known as ICF³²

³¹ Article 1, item 2, Convention on the Rights of Persons with Disabilities.

³² International Classification of Functioning, Disability and Health (ICF), <https://www.who.int/standards/classifications/international-classification-of-functioning-disability-and-health>.

LCP, has selected a definition that is based in the CRPD definition, but also the one which is based in the CRC (article 23).

Children with Disabilities³³ - shall mean the child with long-term physical, mental, intellectual or sensory impairments which, in interaction with different barriers, may hinder its full and effective participation in the society just as the rest of the society.

Article 46, starts the protection of children with disabilities, by guaranteeing equality and the application of the principle of non-discrimination, where all children must be treated equally and enjoy their rights, regardless of the status related with their physical or psychological ability or disability.

In paragraph 2 of this article, protection includes ensuring a normal life and in conditions that guarantee dignity, self-confidence, rehabilitation, and reintegration, as well as facilitation of the child's active participation and physical access in the community.

Whenever possible, health, social and educational services should be provided free of charge and as close as possible to the child.

According to paragraph 4, the provision of health, rehabilitative and educational services is foreseen in a different municipality from the one where the child has his residence. In order to accomplish common goals and interests related the exercise of child protection competencies, two or more municipalities have the right to enter into cooperative relations for provision of services, when the respective municipality cannot provide such service.

If the services for the child, detailed in the individual plan, are not provided in the municipality where he or she lives, or for some other reason the child must receive services in another municipality, then the educational, health and rehabilitation services can be provided by the other municipality.

- 1.** *A child with disabilities enjoys all the rights provided for in this law in full and equally to other children.*
- 2.** *Child with disabilities must be provided a normal and good life and conditions that guarantee the dignity that promote self-confidence, rehabilitation and reintegration and facilitate the active participation and physical access of the child in the community.*
- 3.** *The child with disabilities shall be entitled to health, social, educational, and any other service, as needed, determined by the structures responsible for assessing the disability. The responsible institutions shall ensure that these services are provided as close as possible to the child and free of charge whenever possible, taking into account the economic situation of the parent or guardian.*
- 4.** *A child with disabilities may be provided with educational, health or rehabilitation services, in accordance with his or her specific needs, in a municipality other than where he or she lives that satisfies the criteria for such purpose. In this case, the expenditures are covered by the budget of both local self-government units. The rules and procedures for*

³³ Article 3 par.1. item 1.2 of Law on Child Protection (Law No.06/L-084).

covering these expenses are determined by a sub-legal act approved by the Government with the proposal of the relevant ministry for social affairs, in cooperation with the relevant ministry of health and the ministry responsible for education.

- 5.** *Child with disabilities should be protected from discrimination, all forms of physical and mental violence, neglect, abuse, maltreatment and exploitation, and stigmatization. This requires among other things:*
 - 5.1. promoting the respect for disparities and the acceptance of people with disabilities as part of human diversity and humanity, as well as developing the skills of child with disabilities;*
 - 5.2. provision of qualified assistance and medical treatment, including appropriate corrective and rehabilitation methods and equipment;*
 - 5.3. provision of early identification and intervention programs as well as services designed to minimize and prevent further limited abilities;*
 - 5.4. provision of treatment, equipment and programs that allow children with disabilities to maintain maximum personal mobility and independence;*
 - 5.5. provision of alternative communication means for children with disabilities;*
 - 5.6. provision of help and special care in accordance with the specific needs of the child, namely to the child and his or her parents or guardians.;*
 - 5.7. competent institutions are obliged to periodically review the treatment of all children placed in institutions for treatment or rehabilitation purposes.*
- 6.** *One of the parents of the child with disabilities or a child in need of special care has the right to work half-time until the child reaches two (2) years of age. Also, in coordination and with permission from the institution, organization or company where he/she works, he/she can use flexible forms of employment as described in the relevant legislation.*
- 7.** *The responsible authorities, according to this law, shall eliminate all infrastructure, social, environmental, institutional and legal barriers in the areas of education, employment and vocational education, health care, rehabilitation, cultural, recreational and sports activities so that children with disabilities exercise the rights provided for in this law.*
- 8.** *The responsible authorities' guarantee the participation of children with disabilities at all levels of policy-making and legislation by providing tailored information based on the type of disability, age, and children's comprehensive abilities.*
- 9.** *The relevant Unit for Good Governance and other institutions for the protection of the child, promote the elimination of discrimination and prejudice against children with disabilities.*
- 10.** *The principles set out in paragraph 2. of this article apply to all natural and legal persons.*

Article 46 Law on Child Protection (Law no.06/L-084)

In paragraph 5, child protection from discrimination and all forms of violence is determined. In order to achieve this, it is necessary to:

- Promote respect for disparities and the acceptance of persons with disabilities;
- Provide qualified assistance and medical treatment;
- Early identification and intervention;
- Provide treatment to maintain mobility and maximum personal independence;
- Provide alternative communication means for children with disabilities;
- Provide special help and care to the child and his or her parents/guardians;
- Periodically review the treatment of all children placed in institutions.

As part of special opportunities and treatment, LCP has provided that one of the parents of a child with disabilities or a child who needs special care, will work half-time until the child turns 2 (two) years old, as well as will use the possibilities of flexible forms of work.

Whereas at the end of this article, responsible authorities are obliged to eliminate all infrastructural, social, environmental, institutional and legal barriers in the areas of education, employment and professional education, health care, rehabilitation, cultural, entertainment and sports. In addition, the authorities must guarantee the participation of the child with disabilities at all levels of policy-making and legislation through information tailored to the type of disability, the age and the child's comprehensive abilities.

1.12. Prohibition of abduction, sale and trafficking

The article 47 of the LCP, through paragraph 1 and 2, with the aim to protect the child, has defined as a reference regarding these criminal offences, punishments for perpetrators of these offences. It is important to note that punishments provided for perpetrators of these criminal offences must be strict and proportionate to those foreseen for comparable serious offenses.

1. *Abduction, sale and trafficking of the child for any purpose or in any form is prohibited and is a criminal offence. The punishments provided must be strict and proportionate to those foreseen for comparable serious offences.*
2. *The child is protected from abduction, trafficking, selling and any form of sexual exploitation and abuse, including illegal sexual activity, exploitation of the child in prostitution or other illegal sexual practices, exposure, appearance or involvement in pornographic material or sexual abuse of children, according to the provisions of the Criminal Code and other applicable laws.*

Article 47 Law on Child Protection (Law no.06/L-084)

Criminal offenses in the Criminal Code of the Republic of Kosovo:

Article 165 Trafficking in persons

Article 191 Kidnapping

Criminal offenses against sexual integrity

Article 247 Failure to report child abuse

Criminal Code of the Republic of Kosovo

1.13. Protection from all forms of violence

The LCP, in terms of definition of violence, has defined two types of definitions. The first definition is a general one and contains all elements of violence, while the second definition focuses on the child and the main forms of violence against the child. Definitions must be interpreted in favor and in the interest of the child, regardless of which element or form of violence is inflicted on the child.

Violence³⁴ – shall mean all physical and/or emotional forms of maltreatment, sexual abuse, negligence or negligent treatment, commercial exploitation or any exploitation resulting in a potential or actual harm to the child's health, survival, development or dignity in terms of responsibility, trust, or power. Violence includes but is not limited to intentional acts or actions of a person to another, such as: the use of physical force, the psychological pressure, any act that causes or leads to physical and psychological pain; causing a sense of fear, personal danger, violation of dignity; physical attack regardless of the consequences; offending, insulting, calling by insulting names and other ways of harsh harassment; continuous repetition of behaviours in order to humiliate another person; putting another person in a position where he/she is afraid of the physical, emotional and economic condition.

Violence against the child – shall mean any intentional act or omission through which any form of physical or mental violence, injury or abuse, negligence or negligent treatment, maltreatment or exploitation, including sexual abuse is caused.

Based on the narrow definition and the CRC definition (please see article 19), the LCP in article 48 paragraph 1 has defined following forms of violence from which the child must be protected:

- Physical and mental violence;
- Abuse;
- Negligence;
- Mistreatment;
- Exploitation;
- Trafficking;
- Kidnapping;
- Pornography;

³⁴ Article 3 par.1. item 1.22 and 1.23 of the Law on Child Protection (LAW No. 06/L-084).

- Sexual abuse;
- Other forms of violence, regardless of where it is performed.

Paragraph 1 defines the forms of violence from which the child must be protected, paragraph 2 defines the institutional and family obligation to help the child victim of violence, to whom it must be offered physical, psychological and emotional rehabilitation programs, as well as integration in the family and community.

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- 1. A child shall be protected against all forms of physical and mental violence, abuse, negligence, mistreatment, exploitation, trafficking, kidnapping, pornography, sexual abuse, and other forms of violence, regardless of where it is performed, according to the applicable legislation.*
 - 2. The child's parents or guardian, in cooperation with institutions that provide child protection services, shall take all necessary measures to enable physical, psychological and emotional rehabilitation as well as the social integration of the child victim of violence, negligence, mistreatment, exploitation or abuse, according to the legislation in force.*
 - 3. The subjects mentioned in paragraph 2. of this article shall provide all necessary conditions for the purpose of integrating the child into a normal life and respecting the dignity and views of the child in accordance with his/her age.*
 - 4. Corporal punishment or some other form of punishment, which has implications on the child's physical and mental development, is prohibited.*

Article 48 Law on Child Protection (Law no.06/L-084)

In order to achieve efficient protection based on the child needs and interest, all professionals, but not only, must take into account these main steps:

- *Identification*
- *Reporting*
- *Referral*
- *Investigation*
- *Treatment and follow-up*
- *Rehabilitation, and*
- *Reintegration.*

CHAPTER 2.

PROTECTION FROM ECONOMIC EXPLOITATION

2.1. Principles of child labour

The child's right to work and his protection from prohibited forms of work, is defined in articles within the Chapter on child protection from economic exploitation. The CRC and the ILO Conventions consider employment as an activity of an economic nature and as a result the potential for misuse and exploitation is extremely big.

Despite the fact that child labor is used and understood as synonymous regarding the child exploitation and abuse, the child has however the right and can be employed for works that are allowed and in accordance with the child's development and his long-term interest.

LCP, starting from these principles, has determined and defined what is meant by work allowed for the children and what are the minimum standards that must be guaranteed, so the child can be involved in that work.

Work allowed for children³⁵ - shall mean the participation of the child in economic activities that are not harmful to the development and health of the child, especially if they do not prevent them from attending school and using leisure time. Allowed is also the work that is part of the professional internship and under the respective supervision after all the risks have been identified and eliminated.

According to article 49, the child's right to work and employment must be realized only under the conditions when it does not endanger his physical and mental well-being, as well as his rights to education, health and the right to leisure and play.

In cases where the child is engaged in allowed work, he has the right to receive adequate remuneration in accordance with the work performed.

The monitoring of employment and working conditions, decent behavior and safety is, is carried out by the Labor Inspectorate.

What is allowed and what is prohibited in this chapter, also applies to private businesses, and they are responsible for any violation of the law.

³⁵ Article 3 par.1. item 1.12 of Law on Child Protection (law No.06/L-084).

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1. *The child is entitled to decent work. The child allowed labor should not endanger any of the rights set forth in this law, including the right to physical and mental well-being, the right to education, health and the right to leisure and play.*
 2. *A child employed in accordance with legislation in force has the right to receive adequate remuneration for the work performed.*
 3. *The Labor Inspectorate is responsible for monitoring the employment of the child to guarantee decent behavior, safety and working conditions.*
 4. *This chapter will apply, also, to private employment agencies. The private employment sector as defined in Article 1. of Convention 181 of the International Labor Organization is responsible as a legal person for any violation of this law.*

Article 49 Law on Child Protection (Law no.06/L-084)

In addition to eliminating risks and conditions that make a work allowed for children, the allowed work must contribute in these aspects:

- **Economic:** the child must be remunerated for his work. Remuneration can be in monetary value or any other form that affects the child's motivation to continue with his work, as well as his practical and professional advancement.
- **Psychosocial:** it should influence the development of self-confidence, especially in cases of children who are vulnerable and marginalized. It should also affect psychological development and character building, increasing family and social responsibility.
- **Educational:** it should teach the child about practical skills and certain life skills, especially survival skills, interaction with others, learning to respect others. It should increase his skills of understanding and applying in practice the subjects that he learns in theory such as: mathematics, language, civic education, physical education, etc.
- **Gradual development:** affects the child's independence and maturity in comparison with his age, etc.

2.2. The minimum age for the child's employment

According to the LCP, the minimum age is determined in order to set the minimum age and time needed for the child to reach the necessary maturity and complete the necessary years of education and training.

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1. *The minimum age for employment is determined by law, taking into account the time required for the child to achieve the appropriate physical and mental maturity and to complete basic education. It is forbidden to engage a child under the minimum age for employment in any paid or non-paid employment relationship.*
 2. *No employer can hire and enter into an employment contract with any child under the age of fifteen (15).*
 3. *The employment relationship can be established with a child from fifteen (15) to eighteen (18).*
 4. *The child can only be employed in economic activities that are not harmful to the development and health of the child, especially when they do not prevent them from attending school and use of leisure time, and if such labor is not prohibited by the legislation in force. The labor that is part of the professional practice and under the respective supervision, after all risks have been identified and eliminated, is also allowed.*

5. *In regards to the payment of contributions and other legal obligations, the employer shall be obliged to register the employed child in the Tax Administration of Kosovo, and other institutions that manage and administer mandatory pension schemes and others.*
6. *Preventing and Prohibiting Dangerous Forms of Child Labor in Kosovo is regulated by an administrative instruction issued by the Government upon proposal by the relevant Ministry of Labor and Social Welfare.*

Article 50 Law on Child Protection (Law no.06/L-084)

Also, the ILO Minimum Age Convention No. 138³⁶, in article 1, it provides the obligation of the states that have ratified this convention stating: 'states must undertake measures to ensure elimination of child labour and to progressively raise the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons'.

Same criteria of age and employment conditions the Republic of Kosovo are regulated by the Law on Labor:

An employment relationship may also be established with a person between fifteen (15) and eighteen (18) years of age, who may be employed for easy labour that do not represent a risk to their health or development and if such a labour is not prohibited by any Law or sub-legal act.

Article 7, par.2 Law on Labour law No. 03/L-212

<https://gzk.rks.gov.net/ActDocumentDetail.aspx?ActID=2735>

2.3. Prohibited labour for children

Prohibited child labor is the work that harms a child's well-being and hinders his or her education and development as well as future standard of living. Prohibited child labor is the work which, by its nature and/or the way it is performed, damages, abuses and exploits the child, and denies the child's right to education. Furthermore, child labor also refers to circumstances where a child of compulsory school age is engaged in paid or unpaid activities, inside or outside the family, in formal or informal contexts, in legal or illegal activities and in any case denies the rights guaranteed by the Constitution and international standards to reach the full potential of physical and psychological development of the child.

Work forbidden for children³⁷ - shall mean the work or activity that harms the safety, health, morale and psycho-physical development of the child as a result of lack of experience and knowledge for performing the work tasks and duties.

Dangerous forms of child labour - shall mean the works that can result in death, (often permanent) injury or (often permanent) illness of the child as a result of the inconsistency of the nature of work with the age and psychophysical development of the child, and as a result of insufficient safety at the workplace.

³⁶ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ilo_code:C138 (visited August 2022).

³⁷ Article 3 par.1. item 1.13 and 1.14. of Law on Child Protection (law No.06/L-084).

ILO Convention (No. 182)³⁸ on the worst forms of child labour, defines the worst forms of child labor and mentions some measures to be undertaken by the states, to effectively protect the child against worst forms of child labour. The Convention, in article 3 defines the worst forms of child labor, which are:

- a) *All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;*
- b) *The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;*
- c) *The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;*
- d) *Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.*

LCP based on the spirit of the CRC and other international instruments, through the prohibition of the employment of children in heavy work, aims to prevent and protect children from activities that would harm:

- Safety;
- Health;
- Morale;
- Child's psychophysical development, etc.

Paragraph 2 of this article has defined hazardous works:

- All forms of slavery or similar practices such as the sale and trafficking of children, slavery due to debts, forced labor, and forced recruitment of children to engage them in armed conflict;
- Use, provision or offering of a child for prostitution, production of pornographic materials or pornographic performance;
- Use, provision or offering of a child for illegal activities, especially for the production and trafficking of narcotics, as defined under the relevant international treaties;
- Labor which, by nature or the circumstances in which it is carried out, may harm the health, safety or morale of children.

1. *It is prohibited to hire a child in activities that impair safety, health, morale and psycho-physical development of the child, as a result of lack of experience and knowledge to perform the tasks and duties.*

2. *A child under the age of eighteen (18) cannot work in hazardous work, as follows:*

- 2.1. *all forms of slavery or similar practices such as the sale and trafficking of children, slavery due to debts and compulsory or forced labor, including compulsory or forced recruitment of children to engage them in armed conflict;*
- 2.2. *use, provision or offering of a child for prostitution, production of pornographic materials or pornographic performance;*
- 2.3. *use, provision or offering of a child for illegal activities, especially for the production and trafficking of narcotics, as defined under the relevant international treaties;*
- 2.4. *labor which, by nature or the circumstances in which it is carried out, may harm the health, safety or morale of children.*

³⁸ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182 (visited August 2022).

- 3. Dangerous forms of child labor are prohibited, especially all forms of slavery or practices similar to slavery. These include, but are not limited to, compulsory or forced labor, debt servitude, slavery, sale and trafficking of children for the purpose of economic exploitation and for the purpose of sexual exploitation.*
- 4. Children victims who have been subject to allowed child labor or the child labor that is not in compliance with this law and applicable legislation shall be provided with medical and psychological assistance, rehabilitation and reintegration measures, legal aid and the right to compensation in accordance with the law on Crime Victim Compensation.*

Article 51 Law on Child Protection (Law no.06/L-084)

Article 51 in the last paragraph has defined the obligations in providing medical and psychological assistance, rehabilitation and reintegration measures, legal aid and the right to compensation, in accordance with the law on Crime Victim Compensation.

The Government of the Republic of Kosovo through the Administrative Instruction, has determined the dangerous forms of child labor, as well as the responsible mechanisms that are obliged to supervise and effectively intervene to prevent and stop dangerous forms of work for all children.

Administrative Instruction GRK No. 05/2013 to Prevent and Prohibit Hazardous Child Labour in Kosovo

<https://gzk.rks-gov.net/ActDetail.aspx?ActID=10297>

CHAPTER 3.

SPECIFIC CHILD PROTECTION FORMS

3.1. Protection of a child from pornography

The child must be protected from all elements that are described in the definition of pornography by the LCP, for the reason that, they are elements of criminal offense defined identically by the Criminal Code (please see article 225 par.8, of the Criminal Code).

Child pornography³⁹ - shall mean any visual image or visual depiction or representation, including any photograph, film, video, picture or computer generated image or picture, whether made or produced by electronic, mechanical or other means, which shows or represents: the genitals (vagina, penis or anus) or the pubic area of a child primarily for sexual purposes; a real child engaged in actual or simulated sexually explicit conduct; a person appearing to be a real child engaged in actual or simulated sexually explicit conduct; or realistic images of a non-existent child engaged in actual or simulated sexually explicit conduct.

Authorities and institutions protect the child by closing physical and digital spaces used for the production and distribution of child pornography or for pornographic performances involving the child. This obligation also applies to the prohibition of any representation, in any way, of a child involved in real or simulated explicit sexual activities or any representation of intimate parts of a child's body.

- 1.** Any appearance, in any manner, of a child involved in explicit real sexual activities or simulated or any appearance of intimate parts of the body of a child is prohibited.
- 1.** The relevant authorities are authorized to close the premises used for the production of child pornography or for pornographic performances involving the child even in the absence of a criminal conviction.

Article 52 Law on Child Protection (Law no.06/L-084)

The Criminal Code has provided for two criminal offenses where children can be victims of abuse in pornography.

³⁹ Article 3 par.1. item 1.31 of Law on Child Protection (law No.06/L-084).

Criminal offenses in the Criminal Code of the Republic of Kosovo:

Article 231 Offering pornographic material to persons under the age of sixteen years

Article 232 Abuse of children in pornography

3.2. Measures against websites of pornographic content and those that damage the health and life of the child

The LCP has created obligations for responsible authorities and institutions to take measures to provide safe internet in public spaces, especially in spaces frequented by children, including setting filters and restrictions on web sites that have inadequate content for children. These child protection measures include to the elements below:

- Displaying pornography;
- Ability of uploading or downloading photos, videos or other forms that have pornographic content;
- Internet bullying;
- Emotional abuse;
- Sexting⁴⁰;
- Grooming⁴¹.
- Violence and/or fear content;
- Content/websites that display child abuse;
- Advertisements (pop-up) with harmful / inappropriate content;
- Bullying and forms associated with it;
- Websites with racist content;
- Sites that display abuse and violence;
- Spam emails or unsolicited emails;
- Website content showing how suicide is committed;
- Content of websites displaying human and animal abuse;
- Content of websites advising on how to carry out terrorist attacks;
- Computer viruses;
- Internet scams/ Phishing email - designed to trick a child victim into sensitive data disclosure, or to monitor/track the victim's internet browsing.

Regarding the protection from the influence of Internet-café and video games, responsible authorities shall identify and assess the dangers of games that are played online or offline, and which may adversely affect the health and life of the child. This cooperation should result in compiling and updating constantly a list of games that carry a high risk of impact on the health and life of the child. The list should be accessible on the state portal of the Republic of Kosovo.

⁴⁰ Sexting – means sending and receiving sexually explicit words, pictures, photos, and videos using technology, with an emphasis on phones, tablets, or computers.

⁴¹ Grooming: Grooming means and refers to the preparation of child sexual abuse, motivated by the desire to use the child for sexual pleasure. This also includes approaching the child for seemingly friendly purposes, by adults who pretend to be a child or young person, who then end up attracting the child to discuss intimate matters, and gradually exposing the child to explicit materials in order to reduce resistance or even threatening.

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1. *Responsible institutions shall provide a safe internet in public spaces, including filtering and restrictions on sites containing non-adequate content for children.*
 2. *Internet cafes and video games service providers must ensure that:*
 - 2.1. *the content of these services is appropriate for the age of a child and in accordance with international norms;*
 - 2.2. *spaces in which these services are provided comply with the standards and do not harm the child`s health;*
 - 2.3. *the time available for games is limited, according to the age of the child.*
 3. *Upon proposal by the relevant Ministry of Internal Affairs, the Government shall issue a sublegal act, regarding the protection of children from internet cafes and video games, including specific measures against pornographic content, punishing online child abusers, reducing child`s access to health and life-threatening material, providing assistance to a child at risk due to all forms of online violence.*

Article 53 Law on Child Protection (Law no.06/L-084)

Child protection can be done by taking some of the following measures:

- Blocking websites, and other forms of communication and Internet usage;
- Installation of filters;
- Parental control programs;
- Safe search and clicking;
- Age verification.

Details regarding the protection of children from Internet cafes and video games, including specific measures pornographic content, punishing online child abusers, restricting child acces to content that is harmful for his health and life, as well as providing assistance to children at risk of all forms of online violence , are regulated by a sub-legal act issued by the Government of the Republic of Kosovo.

To learn more about the A.I. on Measures for the Protection of Children Against Websites with Pornographic Content and those that Harm the Health and Life of the Child:

Administrative Instruction

<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=60529>

Ministry of Internal Affairs

<https://mpb.rks-gov.net/>

Ministry of Industry, Entrepreneurship and Trade

<https://mint.rks-gov.net/page.aspx?id=1,79>

Kosovo Police

<https://www.kosovopolice.com/>

Regulatory Authority of Electronic and Postal Communication (RAEPC)

<http://www.arkep-rks.org/>

3.3. The child's capacity to undertake legal actions

The LCP has determined, in principle that the right to express the views belongs to the child, as well as in the moment when he reaches the ability to act through emancipation to undertake legal actions. However, in cases when the child is not able to form and cannot express his views, or cannot take legal actions, the child must be enabled to take legal actions, firstly from parents, guardians or even child protection professionals.

1. *Parents have the right and obligation to legally represent their child.*
2. *In case of absence or incapacity of parents to exercise parental duties, a guardian is appointed to protect the rights and interests of the child during the legal procedures.*
3. *Child legal representatives are obliged to take into account opinions and the best interests of the child when deciding how to represent his or her interests.*
4. *Courts and other authorities are obliged to give due importance to the opinions of the child and are obliged to provide professional assistance to the child to understand the nature and the possible consequences of procedures as well as their role thereto.*

Article 54 Law on Child Protection (Law no.06/L-084)

The LCP, firstly, has obliged the parent or parents to be responsible for the protection of the child and to undertake legal actions on his behalf. In the absence or impossibility of the parent or parents the aforementioned obligation falls on the guardian.

Also, the Family Law has identically defined and regulated the aspects of legal representation of the child.

OBLIGATION TO REPRESENT THE CHILD:

Article 128: 'Parental responsibility includes rights and obligations, aiming to ensure emotional, social and material welfare of the child, by looking after the child, preserving personal relations, providing proper growth, education, vocational training, legal representation and administration of property'.

Article 133: '*Parents are obliged and have the right to legally represent their minor children*'.

Article 246: (1) '*The custodian legally represents the person under custody (legal representative)*'. (2) '*If the obligations of the custodian are fulfilled directly by the Custodian Body or the custodian has only limited authority, the Custodian Body represents the person under custody through one of its representatives or other authorized professional personnel*'.

Law No.2004/32 Family Law of Kosovo

Regarding the last paragraphs of article 54 of the LCP, which are related to the best interest and respect regarding the views of the child, please go to First Module (I).

3.4. Child friendly justice

Children, in addition to being victims of criminal offenses, may also be perpetrators of criminal offenses, or in one way or another may participate in civil or administrative judicial proceedings where their interests are affected or violated.

Regardless of the capacity of which children have come into contact with justice, they find this fact difficult to understand and, moreover, this is an embarrassing moment, which in some cases and circumstances can be shocking and with elements of emotional torture.

Taking these reasons into account, the LCP has determined the rules through which the child must be protected when in conflict or in contact with the justice.

In this aspect, the LCP within the definitions has described what is meant by child-friendly justice:

Child friendly justice⁴² - shall mean the justice system that ensures observance and effective implementation of the rights of children at the highest level, primarily taking into account the best interest of the child, non-discrimination, dignity protection, and child participation by giving the proper attention to the level of maturity and understanding of the child, and to the circumstances of the case;

Therefore, friendly justice includes the entire justice system and applies to all criminal, civil or administrative procedures. According to this definition, the rights of the child in justice procedures must be respected in full and include children in procedures, when they are in the following situations:

- Victims of criminal offences;
- Victims of crime;
- Perpetrators;
- Divorce of parents;
- Trust and care;
- Adoption;
- Foster care or residential care;
- Inheritance;
- Paternity and maternity, etc.

Friendly justice must be and must be applied in:

- Appropriate and compliant to the child's age;
- Urgent and according to the principle of fair judgment and in reasonable time;
- Careful toward the child and other parties who are participants in the procedure;
- In friendly environments that avoid trauma and child stigmatization;
- Focused on the child's needs.

⁴² Article 3 par.1. item 1.9 of Law on Child Protection (Law No.06/L-084).

- 1.** *Child friendly justice applies to criminal, civil or administrative proceedings and ensures all the rights of the child in such procedures are fully observed, maintaining the right balance with the rights of the other parties involved.*
- 2.** *The child friendly justice in particular is:*
 - 2.1. age appropriate;*
 - 2.2. fast;*
 - 2.3. cautious;*
 - 2.4. tailored, and;*
 - 2.5. focused on the needs and rights of the child*
- 3.** *Child friendly justice sustains the child's rights, including the right to a fair trial, to participate and understand the procedures, to respect the private and family life, integrity and dignity.*
- 4.** *The Government shall, upon the proposal by the Ministry of Justice in cooperation with relevant Ministry of Internal Affairs and the Ministry of Labour and Social Welfare, adopt a sublegal act that will regulate the rights of the child in administrative and judicial proceedings. Also, on legal assistance and access in the justice bodies, for realization of the legal aid respectively for child friendly justice, based on the guidance of the Council of Europe on Child-Friendly Justice.*
- 5.** *Any child, whose age and maturity allow the said child to provide comprehensible and reliable evidence, with or without appropriate forms of assistance, must be considered as a witness or a competent party.*
- 6.** *Interviews and other investigative acts should be conducted in a sensitive and respectful manner by trained professionals.*
- 7.** *Interventions should be made in an environment that meets the particular needs of the child.*
- 8.** *Professionals working with children should coordinate their actions to ensure continuity and avoid the child being subjected to unnecessary interventions.*
- 9.** *Child victims and witnesses must have access to assistance and support services, whereby services should provide a child friendly interview room including financial, legal advisory services, medical, social and psychological services.*
- 10.** *Supporting persons must be allowed to accompany and when appropriate, to help the child during the preliminary interviews and during the testimony.*
- 11.** *The child victim and witness should be allowed to testify and to be questioned away from the alleged perpetrators.*
- 12.** *Investigations, procedures and enforcement of judicial rulings, which include a child victim, should be given priority.*

Article 55 Law on Child Protection (Law no.06/L-084)

To learn more about friendly justice, as well as rules and procedures on how the friendly justice concept is applied, you can refer to these two local and international documents:

Please click on these web sites⁴³:

Council of Europe:

<https://www.coe.int/en/web/children/child-friendly-justice#:~:text=Children%20come%20into%20contact%20with,witnesses%20or%20perpetrators%20of%20crimes.>

Official Gazette of the Republic of Kosova:

<https://gzk.rks-gov.net/ActDetail.aspx?ActID=36550>

3.5. Legal assistance and access to justice bodies

Although, the LCP in the article 56 has determined that free legal aid is provided to the child who has been victimized by the violation of the legislation in force, in fact legal aid as a free legal service is guaranteed and provided to every child who is in need of such aid.

In the Republic of Kosovo, free legal aid is provided by the Agency for free legal aid (Agency), which was established according to the law and is financed by the state budget.

The Law on Free Legal Aid (Law No. 04/L-017) has determined this definition:

Free Legal Aid⁴⁴ is a right in a free legal professional service for the citizens that fulfill the criteria determined by this law.

According to the Law on Free Legal Aid, the Agency is obliged to provide free legal aid to the child who does not have sufficient financial means. The Agency, through the Offices for Free Legal Aid throughout the territory of the Republic of Kosovo, enables access to justice for children, parents or guardians, regardless of their legal status (children in conflict with the law and children victims/witnesses) and/or their economic status.

Free Legal Aid is provided for the following types of services⁴⁵:

- Information and legal advices relating to legal procedures;
- Drafting the paper-work and other technical assistance that has to do with the completion of the case; and
- Representation in civil, administrative, minor offence and criminal procedure.

Any lawyer licensed and registered in the Kosovo Bar Association (KCA) is obliged to offer free legal aid for the child, 'KCA shall regulate pro bono legal aid for persons in difficult social situation, in legal issues, where such persons claim rights directly related to their status and in other instances prescribed in the sub-legal acts of the KCA⁴⁶.

⁴³ Web sites visited and links copied on September 2022.

⁴⁴ Article par.1. item 1.1 of Law on Free Legal Aid (LAW No.004/L-017).

⁴⁵ Ditto, article 4 paragraph 3.

⁴⁶ Article 15 of Law on the Bar (Law No.04/L-193).

1. A child victimized by a violation of the applicable law shall be provided with free legal assistance for the realization and protection of his/her rights.
2. Legal assistance includes legal representation and advising on human rights and best interests of the child in legal procedures.
3. A child victim, perpetrator or witnesses, and his or her parents or guardians shall be informed immediately on the rights of the child during the proceedings, with regard to the availability of support services, the role of the child, the ways in which he or she will be questioned before and during the trial, place and time of the sessions/hearings and other important events, the progress of the issue, and all important decisions taken and mechanisms or procedures available to request a review of decisions.
4. A child should be allowed to freely express his/her thoughts and their concerns about his or her involvement in the justice process, including concerns about safety in relation to the accused, the manner in which he/she prefers to give testimony and his/her opinion on the outcome of the process, attention should be paid to the views and concerns of the child and to the extent to which it is not possible to consider them, reasons must be explained to the child.

Article 56 Law on Child Protection (Law no.06/L-084)

In addition to being protected by providing free legal aid and services, through free legal aid the child is provided also with access to justice, as one of the main child rights. According to paragraph 3, access to justice becomes possible through the following measures and actions, but not only:

- Immediate information about the rights of the child during the proceedings;
- Availability of support services;
- The role of the child;
- The ways in which he or she will be questioned before and during the trial;
- Place and time of the sessions/hearings;
- The progress of the issue;
- Mechanisms or procedures available to request a review of decisions.

To learn more regarding the Agency and provision of free legal aid, click on following websites ⁴⁷:

Agency for free legal aid:

<https://anjf.rks-gov.net/>

Kosovo Bar Association:

<https://www.oak-ks.org/>

⁴⁷Websites visited and links copied on September 2022.

3.6. Medical and psychological assistance, rehabilitation, and measures for reintegration

LCP, in continuation of the provisions through which support and protection are offered to the child, has defined, and regulated the medical and psychological assistance, as well as the measures required for the rehabilitation of a child victim.

Same as for legal aid, medical is free of charge and aims to support the child to regain physical and mental health and rehabilitation from the trauma he may have experienced.

Medical assistance includes treatment of the child:

- Quickly and without delays in accordance with the concept of “emergent” assistance;
- Psychological counseling;
- Long-term rehabilitation measures.

During the time that the child is receiving medical and psychological treatment, he must not be left alone, except in cases where it is estimated that this is in the child’s interest, and in no way and situation the child should be left to face or meet the abuser or offender.

Also, the child is protected from any pressure, or other coercive or manipulative forms through which the extraction of information or any other data is intended.

-
1. *Victimized child is supported with free medical assistance in order to regain mental and physical health and be rehabilitated from physical and mental trauma that he/she might have experienced.*
 2. *Medical assistance includes the proper emergent treatment for physical health and psychological counselling, as well as for long-term rehabilitation measures.*
 3. *Child victim of abuse and other illegal abusive actions shall receive specialized medical treatment free of charge covered by the state.*
 4. *It is prohibited for a child victim of abuse to be left alone, except in cases when the child so requests with his/her will and this is considered appropriate by the psychologist of the child, who is specialized in the field of child protection.*
 5. *Child victim of abuse should not be left without psychological assistance or other forms of assistance.*
 6. *Child victim of abuse should not be left to face, have contacts with the abuser for as long as he/she is not sufficiently psychologically prepared to do so.*
 7. *Child victim of abuse should not be subject to pressures or other manipulative forms to obtain the necessary information.*
 8. *The child receives continued assistance to be reintegrated into society. These measures of reintegration should be developed based on specific needs of the child and specific forms of harm caused to the child. The ultimate goal of rehabilitation should be dignified family reunion, when possible and in the best interests of the child, reintegration in the community and social life. These measures include medical and psychological care, as well as educational support, vocational training and continued counselling until full*

rehabilitation of the child has been achieved. The child is offered constant support and counselling to avoid re-victimization and social exclusion.

- 9.** *The measures prescribed in support of the child in this chapter shall be taken in a favorable environment to the safety, health and welfare of the child and provide careful treatment of child privacy. Measures should include child protection from confrontation with the offenders/abusers, accommodation in a safe place and psychological preparation for the future.*
- 10.** *The relevant unit of Health, Labour and Social Welfare, within the municipality, is obliged to provide a budget for a special fund to address emergency cases of children in need of protection and establishment of emergency services according to standards defined by sublegal act approved by the Government and proposed by the relevant Ministry of Health.*

Article 57 Law on Child Protection (Law no.06/L-084)

Continuous and long-term treatment aimed at protecting the child from re-victimization and social exclusion, includes the following measures and actions:

- Complete rehabilitation against physical or mental damage suffered;
- Reunion with the family;
- Return to the educational process;
- Inclusion in activities aimed at professional training;
- Life skills training;
- Reintegration in the community and social life.

All measures and actions taken toward the child, are provided in an environment favorable to the child's safety, health and well-being, always ensuring that the child's privacy is not violated.

In order to ensure that measures and actions required for the protection of the child through medical and psychological treatment are in place, LCP at the end of article 57, respectively in par. 10, has defined the obligation for the relevant unit for health, work and welfare within the municipality to provide budget for a special fund, to handle emergency cases of children in need. While other aspects related to the functioning of this service, are regulated by a by-law.

3.7. Persons sentenced for sexual abuse or exploitation of child

The inclusion of this Article in the LCP has been done to prevent the re-victimization of the child or the possibility of re-committing any criminal offense against the child, from the category of criminal offenses for sexual abuse or exploitation of the child.

With special emphasis, persons who are convicted of criminal offenses of child trafficking or any criminal offense against sexual integrity, as provided for in chapter XX of the Criminal Code of the Republic of Kosovo, shall not be allowed to exercise their profession.

In this aspect, the Criminal Code, in frame of additional sanctions for perpetrators of a criminal offence, has provided sanctioning of an additional punishment, by which exercising a profession, activity or duty is prohibited.

ACCESSORY PUNISHMENT: PROHIBITION ON EXERCISING A PROFESSION, ACTIVITY OR DUTY

The court shall impose on a perpetrator of a criminal offence from Article 165 or Chapter XX of this Code committed against a child, a prohibition on exercising a profession, activity or duty that involves regular contact with children. The court may impose this punishment for life, subject to periodic judicial review by the court after expiration of ten (10) years from the start of the execution of the measure imposed. The court may stop its execution on a proposal from the convicted person if it has established that the reasons for the prohibition no longer exists. The convicted person may resubmit his or her proposal but no sooner than one (1) year after the previous review.

Article 63 par.5 Criminal Code of the Republic of Kosovo

It is important to note that the prohibition to exercise the profession, compared to other accessory punishments, can be imposed for life, with the possibility of periodical judicial review by the Court after the expiration of ten years from the start of the execution of the measure imposed.

1. *Persons sentenced for sexual abuse, child exploitation, enabling prostitution and child pornography shall not be allowed to exercise their professions that include any contact with children, in accordance with the provisions of the Criminal Code of Kosovo.*
2. *Kosovo Judicial Council by a sub-legal act defines the rules and procedures for maintaining the database of the DNAs of persons convicted for criminal offences against sexual integrity. The DNA database should include persons convicted for these criminal offences, regardless of whether their victims are children or adults.*
3. *The relevant Ministry of Education and relevant Municipal Education Directorates should make sure that the persons sentenced of sexual abuse or child exploitation are not included in the educational system through employment.*

Article 58 Law on Child Protection (Law no.06/L-084)

The Kosovo Judicial Council is obliged to maintain a database with the DNA of persons convicted for criminal offenses against sexual integrity. Also, the relevant Ministry of Education and relevant Directorate of Education of Municipality, must ensure that convicted persons are not included and employed in educational system.

3.8. Child participation in armed conflicts

Prohibitions provided in articles 59 and 60 derive from the Optional Protocol of the Convention on the Rights of the Child, on the involvement of children in armed conflict. In addition to prohibitions, Article 60 has also determined forms and measures that must be taken for the protection of the child, if he has been affected or has participated in an armed conflict. Regardless of whether he directly participated in the fighting, the child is provided for:

- Food and clothing;
- Leaving from the area where the war is taking place;
- Removal to a safe area;
- Accompaniment by persons responsible for their safety and welfare;

- Continued access in educational vocational programs;
- Child reunion with his family.

Child participation in armed conflicts and in any form of regular or irregular armed group, as provided in the Optional Protocol of the Convention on the Rights of Children in involvement of Children in Armed Conflicts, is prohibited.

Article 59 Law on Child Protection (Law no.06/L-084)

1. *The child affected by armed conflicts enjoys special protection to guarantee his/her safety and welfare. Child should be provided with all special measures of protection and regardless of whether he or she has or has not been directly part of the combat.*
2. *No war crimes or crimes against humanity should be conducted against a child, and especially children should not become victims of sexual abuse, sexual exploitation and forced labour, economic exploitation, abduction, trafficking in human beings, or internal displacement.*
3. *Children should be provided with basic food and clothing.*
4. *Children should be moved away from the area where war is taking place and sent to a safe area, accompanied by persons responsible for their safety and welfare and, when possible with the consent of their parents or guardians/s.*
5. *Children must have continued access to institutions and educational vocational programs.*
6. *Competent authorities shall undertake all necessary measures to facilitate the reunion of temporarily separated families.*

Article 60 Law on Child Protection (Law no.06/L-084)

3.9. Protection of internally displaced children

Last form of protection that LCP guarantees to the child, is protection when he is internally displaced. Although this provision is general, it implies, but is not limited to, the protection of the child in circumstances where he is displaced due to:

- Conflicts or violence;
- Earthquakes;
- Floods;
- Economic development projects;
- Revenge or blood feud and other traditional forms;
- Any circumstance or situation caused by 'force majeure'.

Internally displaced children shall be given special protection to guarantee their safety and welfare and enjoy all the rights defined by this law and relevant applicable legislation.

Article 61 Law on Child Protection (Law no.06/L-084)

IV. ANNEXES

A) STUDY CASE

CASE A

The Croatian authorities investigation into the applicant's complaint that she had been forced into prostitution was not adequate and hence violated the procedural obligation under Article 4

JUDGMENT IN THE CASE OF S.M. v. CROATIA163

(Application no. 60561/14)

19 July 2018

1. Principal facts

The applicant, Ms. S.M., was born in 1990, and from 2000 to 2004 she lived with a foster family. She then moved to a public home for children and young persons, where she stayed until she completed a professional training as a waiter.

On the 27th of September 2012 the applicant lodged a complaint at the police against T.M., a former policeman, alleging that between the summer of 2011 and September of the same year, he had forced her into prostitution using physical and psychological pressure. The applicant related that she had met T.M. in 2011 through a social networking site and that he had offered to find her a job as a waitress. Instead, he had begun demanding that she performs sexual services for other men and threatened that he would beat her if she did not comply. He gave her a mobile phone so that clients could contact her. The applicant said that she had been too scared of T.M. to resist. T.M. then rented a flat where the applicant and him lived together and she provided sexual services to other men. Whenever she refused, he would beat her, which he did every couple of days. Since T.M. lived in the same flat with her, he controlled everything she did.

The applicant said that once when she was left at home, she called a friend, M.I., and asked her help. She stayed for about ten days at M.I. home.

M.I. related to the police that at the end of summer 2011 the applicant suddenly returned to M.I.'s home where she was living with her mother. Only after the applicant came to live with M.I. and her mother, M.I. learned that the applicant was involved in prostitution.

On the 6th of November 2012, the County State Attorney's Office indicted T.M. on the charges of forcing another to prostitution, as an aggravated offence of organizing prostitution. On the 21st of December 2012 the applicant was officially given the status of human trafficking victim by the Office for Human and Minority

Rights of the Government of Croatia. The Croatian police contacted the Croatian Red Cross, who provided individual counselling for the applicant. The applicant was also provided with legal aid by a non-governmental organization within the legal-aid scheme supported by the state.

During the applicant's testimony in the court, she elaborated on her first statement to the police. T.M. however denied the applicant's version of events and instead claimed that she had entered into prostitution by her own will, in order to pay her debts and to gain money. T.M. had lived with her in the flat where the applicant sometimes met clients, but never understood anything in this regard. On the 15th of February 2013, the domestic court acquitted T.M. on the grounds that although it had been established that he had organized a prostitution ring, it had not been established that the applicant had been forced into prostitution. As he had been indicted on the aggravated charge, he could not be convicted on the basic charge of organizing prostitution. The applicant's testimony was given less weight in the court's deliberations because the domestic court had found her statement to be incoherent, unsure, and that she had paused and hesitated when speaking.

The State Prosecution Office appealed against the decision, arguing that the first instance court had erred when it did not accept the applicant's testimony. The Appeal Court dismissed this appeal, upholding the original judgment and its findings. On the 31st of March 2014 the applicant lodged a complaint with the Constitutional Court. On the 10th of June 2014 the Constitutional Court declared the complaint inadmissible, asserting that the applicant had no right to bring a constitutional complaint regarding criminal charges.

2. Decision of the European Court on Human Rights

Relying on Articles 3, 4, and 8 the applicant complained that the inadequacy of the domestic legal framework and the response of the domestic authorities to her allegations against T.M. violated her rights. In particular, she alleged that the domestic authorities had failed to elucidate all the circumstances of the case, had not secured her adequate participation in the proceedings and had not properly qualified the offence.

Article 4

The Court considered that the complaint should be analyzed from the standpoint of Article 4 (prohibition of slavery and forced labour). It stated that trafficking as well as the exploitation of prostitution fell within the scope of that provision.

The Court stated that it was irrelevant that there were no international elements to the case, since Article 2 of the Convention of the Council of Europe Against Trafficking encompasses "all forms of trafficking in human beings, whether national or transnational" and the United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others refers to exploitation of prostitution in general.

Article 4 contains a positive obligation of member States to penalize and prosecute effectively any act aimed at maintaining a person in a position of slavery, or forced labour. Therefore, States are under a positive obligation to put in place a legislative and administrative framework to prohibit and punish trafficking and also to protect victims. The Court was convinced that at the time of the alleged offence, there was an adequate framework in Croatia for its examination within the context of the trafficking in human beings, forced prostitution and exploitation of prostitution. The Court also accepted that the applicant was provided with support and assistance by the Government. This included recognition of her status as a victim of human trafficking and the free legal assistance she was provided through state-funded programs carried out by NGOs. There had hence been an adequate legal framework in place to support the applicant.

However, while the initial investigation was prompt, the Court stated that more individuals should have been interviewed by the police, especially M.I.'s mother and M.I.'s boyfriend. This suggested to the Court that the Croatian authorities did not investigate the case in depth and did not attempt to gather all available evidence.

Further, the authorities had never made a serious attempt to investigate the psychological pressure inflicted on the applicant by T.M. as a relevant factor in assessing whether T.M. forced the applicant into prostitution. Nor did they investigate the presence of a gun in T.M.'s flat and the applicant's economic dependence on T.M.

The Court went on to point out that according to Croatian law, the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, and the Anti-Trafficking Convention, the consent of the victim is irrelevant.

The national authorities did not consider the possible impact of psychological trauma on the applicant's ability to coherently relate the circumstances of her exploitation. The Court also ruled that the presence of T.M. in the courtroom could have had an adverse effect on the applicant even though he was subsequently removed.

The Court considered that in this case the Croatian authorities did not fulfil their procedural obligations under Article 4, and that therefore there was a violation of this Article.

Article 41

The Court held that the applicant should be awarded €5,000 in respect of non-pecuniary damages.

CASE B

International child abduction – authority failure to consider allegations of “risk” to a child

GRAND CHAMBER JUDGMENT IN THE CASE OF X v. LATVIA

(Application no. 27853/09)

26 November 2013

1. Principal facts

The applicant, Ms. X, was a Latvian national born in 1974. At an undetermined date she moved to Australia where she married a Mr. R.L. In 2004, while still married to R.L., the applicant met Mr T. with whom she moved in at the end of the year. In February 2005 the applicant gave birth to a daughter, E., and in November 2005 the applicant formally divorced from R.L. The paternity of the child was not established at this stage. The applicant continued to live with T, at a flat that T was renting while the applicant was receiving single-parent benefits. The applicant acquired Australian nationality in 2007. The relationship between the applicant and T. deteriorated and in 2008 she left Australia for Latvia taking the child, aged three years and five months, with her.

Subsequently, T. submitted an application to the Australian Family Court to establish parental rights in respect of E. and applied for the return of the child under The Hague Convention on the Civil Aspects of International Child Abduction. The Family Court established his paternity and that the applicant and T. had had joint parental responsibility for their child since birth. The applicant had been invited to attend the hearing in person or to follow the hearing by telephone but she had not done so. She did not appeal the decision.

In September 2008 the Latvian Central Authority received a request for the return of the child, issued by the Australian Central Authority. The applicant was heard in Latvia by both the District and the Regional Court with T. being present for the proceedings. In those hearings, the applicant argued that T. had no grounds for being recognized as the father of E. as at the time of her birth the applicant had been married to another man. Furthermore T. had never expressed a desire to have his paternity recognized before she returned to Latvia. The applicant also argued that T. had acted abusively towards her and that the child had developed a connection to Latvia. At the appellate stage the applicant also produced a certificate from a psychologist stating that the child would suffer trauma if separated from the applicant. The Latvian Courts ordered the return of the child to Australia, having found that the removal had been unlawful and carried out without the consent of T. The Appeal court decided that it could not consider the psychologist report on E. as it concerned the merits of the custody issue, which was to be decided by the Australian courts.

The applicant refused to comply with the domestic court order to return the child to T. and requested a stay of execution of the return order. In response the domestic court ordered a further hearing in April 2009. In March 2009 T. unexpectedly encountered the applicant and the child whilst in Latvia and was able to take the child back to Australia with him. Once in Australia, the Australian national courts ruled that T. had sole parental responsibility for the child and that the applicant was only allowed to visit her daughter in the presence of a social worker. She was also forbidden from speaking to her daughter in Latvian.

2. Decision of the European Court on Human Rights

The applicant complained that there had been a violation of Article 8 of the Convention on account of the Latvian courts decision to order the return of her daughter to Australia. In its Chamber judgment of the 15th of November 2011, the Court concluded that there had been a violation of Article 8. The case was referred to the Grand Chamber under Article 43 at the Government's request.

Article 8

The Court noted that the decision to return the child to Australia had amounted to an interference with the applicant's right to respect for her private and family life. That interference had been in accordance with the domestic legislation and aimed to protect the rights of the child and those of her father.

With regard to the necessity of the interference, the Court noted that there was a broad consensus in support of the idea that in all decisions concerning children, their best interests had to be paramount. The best interest of the child might not be the same as the interest of the parents. The European Court's role here lays in verifying whether the decision-making process of the domestic courts, which led to the decision to return the child to Australia, had been fair and that her best interests had been defended.

In the present case, the Court noted that the applicant had submitted to the Riga Regional Court a certificate, prepared by a psychologist after the first-instance judgment, indicating inter alia, that an immediate separation from her mother was to be excluded due to potential psychological trauma that the child could suffer. In the Court's opinion, it was unacceptable for the domestic courts to rule the expert report inadmissible on the ground that it concerned the merits of the custody issue. In fact, the psychological report drew attention to a risk of psychological trauma, directly linked to the best interests of the child, and represented an arguable allegation of a "grave risk", which ought therefore to have been examined in the light of Article 13 (b) of the Hague Convention, as should have been the issue of whether it was possible for the mother to follow her daughter to Australia and to maintain contact with her.

In conclusion, the Court held that in refusing to examine a certificate issued by a professional which disclosed the possible existence of a "grave risk" for the child within the meaning of Article 13 (b) of The Hague Convention, the Latvian authorities had failed to comply with their procedural obligations. It followed that there had been a violation of Article 8 of the Convention.

Article 41

The Court held that Latvia was to pay the applicant €2,000 in respect of costs and expenses.

B) Agenda

AGENDA

Fourth day of training Module Four	
09:00 - 09:15	Main objectives and expected results
09:30 - 10:30	Protection of children in the family and community
10:30 - 12:00	Family, institutional, and individual responsibilities
12:00 - 13:00	Lunch
13:00 - 14:00	Education, health, and social welfare
14:00 - 14:45	Protection from all forms of violence Prohibition of abduction, sale and trafficking Protection from harmful and prohibited substances
14:45 - 15:15	Protection of the child with disabilities
15:15 - 16:00	Case studies, group work
16:00	The conclusion of the fourth day

Fifth day of training Module four	
09:00 - 09:15	Main objectives and expected results
09:15 - 10:00	Protection from economic exploitation
10:00 - 12:00	Specific forms of protection (continuation)
12:00 - 13:00	Lunch
13:00 - 14:30	Case studies, group work
14:30 - 15:00	Child friendly justice
15: - 16:00	Legal aid, medical and psychological support, rehabilitation and reintegration
16:00	The conclusion of the fifth day Evaluation of training

A) Law terms and definitions

Terms and definitions used in this program, should be interpreted and read in accordance to the meaning given in the Law on Child Protection, and have the following meanings:

1.1. **Child** – shall mean any human being under the age of eighteen (18), excluding the cases when the adult age is reached earlier, in compliance with the legislation he/she is subject to. In cases when the age of the person is not fully determined, but there are reasons which imply that the person in question is a child, this person is considered as a child and benefits from this law until his/her age is fully determined;

1.2. **Children with disabilities** - shall mean child with long-term physical, mental, intellectual or sensory impairments which, in interaction with different barriers, may hinder its full and effective participation in society just as the rest of the society;

1.3. **Minor** – shall mean the child who is between the age of fourteen (14) and eighteen (18) years;

1.4. **Parent** - shall mean a person or persons who have given birth to or have adopted a child, as a couple or alone, whether married or not, or who have acknowledged maternity or paternity of the child born out of wedlock;

1.5. **Parental responsibility** – means the parent's obligation to ensure the rights and duties aimed at ensuring the child's emotional, social and material well-being, by caring for and maintaining relation with the child and the obligation to provide upbringing, parenting, education, legal representation, and property management of the child;

1.6. **Guardian** – shall mean the person as it is defined in the Law on Family;

1.7. **Child protection** - shall mean the prevention of and response to violence, maltreatment, abuse, exploitation and negligence, kidnapping, sexual abuse, trafficking of the child and child labour in and outside the house;

1.8. **Victim's Advocate** - shall mean the official public person who represents the damaged party in court and administrative proceedings, including the child. The Victim's Advocate shall provide support and assistance to crime victims, represent the victim in proceedings before the court, notifies the victim of his/her rights, represent the victim's interests before the court and the prosecution and acts on behalf of the victim, when appropriate, in accordance with the applicable laws;

1.9. **Child-friendly justice** - shall mean the justice system that ensures observance and effective implementation of the rights of children at the highest level, primarily taking into account the best interest of the child, non-discrimination, dignity protection, and child participation by giving the proper attention to the level of maturity and understanding of the child, and to the circumstances of the case;

1.10. **Child in need of protection** - shall mean the person under eighteen (18) years of age, irrespective of having the capacity to act, according to the legislation in force, who may be a victim of abuse, negligence, exploitation, discrimination, violence or any criminal activity, and also the individual under the age of criminal responsibility, who is alleged to have committed or accused of the commission of a criminal offence, and the children in conflict with the law;

1.11. **Child displaced within the territory of Kosovo** – shall mean a child who, due to various reasons, migrates from one municipality to another and needs protection service(s);

1.12. **Work allowed for children** - shall mean the participation of the child in economic activities that are not harmful to the development and health of the child, especially if they do not prevent them from attending school and using leisure time. Allowed is also the work that is part of the professional internship and under the respective supervision after all the risks have been identified and eliminated;

1.13. **Work forbidden for children** - shall mean the work or activity that harms the safety, health, morale and psycho-physical development of the child as a result of lack of experience and knowledge for performing the work tasks and duties;

1.14. **Dangerous forms of child labour** - shall mean the works that can result in death, (often permanent) injury or (often permanent) illness of the child as a result of the inconsistency of the nature of work with the age and psychophysical development of the child, and as a result of insufficient safety at the workplace;

1.15. **Children at risk** - shall mean any child experiencing an intense and/or persistent risk factor, or a combination of risk factors in personal, environmental and/or relational circumstances that prevent them from pursuing and fulfilling full potential development;

1.16. **Child without parental care** - means a child whose parents are not alive, or whose parents are unknown or missing, or whose parents for whatever reason temporarily or permanently fail to perform their parental duties or parental care;

1.17. **Family in need** – shall mean any family where one or both of the parents, the guardian and the caregiver need assistance in taking care of the child because of their condition or child's condition, in circumstances where the child is suffering serious injury due to being neglected or abused by his/her parent(s)/guardian, or due to his/her parent(s) or guardian inability to adequately take care of him/her, or in circumstances where he/she is exposed to the possibility of experiencing such a thing;

1.18. **Legal representative** - shall mean a parent or guardian who, within the responsibilities conferred by the legislation in force or by the court, protects the child's interests by performing or not the legal actions on behalf of the child;

1.19. **Child protection services** – shall mean all services the purpose of which is to provide protection to the child according to the principles foreseen in this law;

1.20. **Professionals for child protection** - shall mean all persons who, within the mandate of their work and in the context of their work, are in contact with the child in need of protection, or whose duty is to meet the needs of the child under this law or any other applicable law, and national or international standards;

1.21. **Trustworthy person** - shall mean any person, other than the parent or legal guardian, who takes care of the child as a result of a professional or non-professional relationship;

1.22. **Violence** – shall mean all physical and/or emotional forms of maltreatment, sexual abuse, negligence or negligent treatment, commercial exploitation or any exploitation resulting in a potential or actual harm to the child's health, survival, development or dignity in terms of responsibility, trust, or power. Violence includes but is not limited to intentional acts or actions of a person to another, such as: the use of physical force, the psychological pressure, any act that causes or leads to physical and psychological pain; causing a sense of fear, personal danger, violation of dignity; physical attack regardless of the consequences; offending, insulting, calling by insulting names and other ways of harsh harassment; continuous repetition of behaviours in order to

humiliate another person; putting another person in a position where he/she is afraid of the physical, emotional and economic condition;

1.23. **Violence against the child** – shall mean any intentional act or omission through which any form of physical or mental violence, injury or abuse, negligence or negligent treatment, maltreatment or exploitation, including sexual abuse is caused;

1.24. **Psychological violence** – shall mean the acts that cause or are likely to cause harm to the health or to the physical, mental, spiritual, moral or social development of the child. These acts may be under the control of the parent or of a person who has the responsibility, is entrusted with or has power, and includes the restriction of movements, mockery, denigration, blaming, threat, intimidation, discrimination, sneering, or other non-physical forms of hostility or rejecting treatment;

1.25. **Physical violence** – shall mean any form of physical abuse including beating by any means, slapping with hands or with other means, grabbing by the throat and any other acts that cause physical pain;

1.26. **Corporal punishment** – shall mean any form of punishment in which physical force is used and intended to cause pain or discomfort to the child, by any person who is legally responsible for the child. Corporal punishment includes the following forms such as: smacking, torturing, shaking, pushing, burning, slapping, and pinching, scratching, biting, scolding;

1.27. **Child negligence** – shall mean the omission, whether or not intentional, by a person who is responsible for the upbringing, care or education of the child, as a consequence of which the life, physical and mental well-being and development of the child may be at risk;

1.28. **Abuse** - shall mean any act or omission, whether or not intentional, by a parent, guardian, trustworthy person or any other person in the position of trust or authority, that causes or is likely to cause physical, psychological, emotional or social harm to the child;

1.29. **Maltreatment** - shall mean all forms of physical and/or emotional maltreatment, sexual abuse, negligence or negligent treatment or commercial exploitation, or any other exploitation that leads to real or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power;

1.30. **Child prostitution** – shall mean the use of a child for sexual activities where money or any other form of remuneration or consideration is given or promised as payment in exchange for the child engaging in sexual activities, regardless of whether that payment, promise or consideration is made to the child or to a third party;

1.31. **Child pornography** - shall mean any visual image or visual depiction or representation, including any photograph, film, video, picture or computer generated image or picture, whether made or produced by electronic, mechanical or other means, which shows or represents: the genitals (vagina, penis or anus) or the pubic area of a child primarily for sexual purposes; a real child engaged in actual or simulated sexually explicit conduct; a person appearing to be a real child engaged in actual or simulated sexually explicit conduct; or realistic images of a non-existent child engaged in actual or simulated sexually explicit conduct;

1.32. **Child abduction** - shall mean the illegal departure of a child from his/her place of residence by force, threat, fraud, abuse of power or seduction, into a place under the control of a perpetrator or a third person, or illegally taking the child from the parent, guardian, or trustworthy person, regardless of whether this is done, facilitated or coordinated within the territory of the country or involving transit to or through the country;

1.33. **Child trafficking** - shall mean the recruitment, transportation, transfer, accommodation, taking children for the purpose of exploitation or acceptance of persons, including the exchange or transfer of control to such persons, by threat or use of force or other forms of coercion, abduction, fraud, misuse, abuse of power or misuse of a sensitive position or by giving or receiving payments or benefits to obtain the consent of a person having control over another person for the purpose of exploitation;

1.34. **Exploitation** - includes, but is not limited to, exploitation of prostitution of others, pornography or other forms of sexual exploitation, charity, services or forced labour, slavery or acts similar to slavery, removal of body organs or cells;

1.35. **Child sexual abuse** - shall mean the expression of abuse within the home or the family, but does not exclude cases of abuse by persons outside the family by taking advantage of either social or official position for sexual benefit from the victim of abuse. Sexual activity which implies sexual intercourse and any other form performed by, with, and before the child, where the presence or the participation of the child is for the purpose of sexual satisfaction of the other person;

1.36. **Institution** – shall mean all public, central and local institutions, as well as other private legal persons in the Republic of Kosovo, who have the responsibility for the child protection under this law and the legislation in force;

1.37. **Child Protection System** - shall mean the specific formal and non-formal structure with general and unified functions and capacities to prevent and respond to violence, abuse, negligence and exploitation of the child. In general terms, the child protection system consists of the following components: human and financial resources, laws and policies, governance, monitoring and data collection, protection and response services, and case management. The system also includes different stakeholders such as children, the family, the community, the civil servants and officials of the central and local level, not excluding those working at international level. The functioning of the system depends on the interaction and the relationships between the components and stakeholders within this system;

1.38. **Committee** - shall mean the Inter-Ministerial Committee on the Rights of the Child;

1.39. **Council** - shall mean the Council on the Rights of the Child; 1.40. **Team** – shall mean the Team on the Rights of the Child;

1.41. **Multidisciplinary Roundtable for Support in Case Management** - shall mean a multidisciplinary group that includes professionals from relevant child protection institutions and other stakeholders representing a variety of disciplines, who are responsible for child protection, interact and coordinate their efforts to address specific cases of child abuse, child ill-treatment and neglect based on the best interests of the child;

1.42. **Relevant Unit for Good Governance** - shall mean the Office for Good Governance within the Office of the Prime Minister;

1.43. **Case manager** – shall mean the responsible officer, appointed by the Guardian Body, for case management of a child, who, in cooperation with relevant stakeholders, assesses needs of the child and drafts care plans;

1.44. **Centre for Social Work (CSW)** - shall mean the public professional institution at municipal level, competent for protection of the child in need;

1.45. **Guardian Body** – shall mean the body responsible for child protection, which acts within the Centre for Social Work;

1. 46. **Social Service Official** - shall mean the social and family service professional with adequate qualifications in the field of social work, psychology, sociology, justice, pedagogy or any other field closely related to social and family services, who is licensed and registered in the register of General council for social and family services.

B) Sources and reading materials

- Law on Child Protection (Law No. 06/L-064). Official Gazette of the Republic of Kosova / no.14/ July 17, 2019, Pristina;
- Constitution of the Republic of Kosovo;
- United Nations Convention on the Rights of the Child;
- Universal Declaration of Human Rights;
- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights;
- Convention for the Protection of Human Rights and Fundamental Freedoms;
- International Convention on the Elimination of all Forms of Racial Discrimination;
- International Convention on the Elimination of all Forms of Discrimination Against Women;
- Convention on Contact concerning Children;
- European Convention on the Exercise of Children's Rights;
- ILO Convention Nr.138;
- ILO Convention Nr.132;
- Family Law of Kosovo (Law no. 2004/32);
- Law on Social and Family Services (Law no.02/L-17) and Law no. 04/I-081 on amending and supplementing the Law on Social and Family Services (Law no. 02/L-17);
- Juvenile Justice Code (Code No.06/L-006);
- Law on Ombudsperson (Law No.05/L-019);
- Law on Free Legal Aid (Law No. 04/I-017);
- Law on The Bar (Law No. 04/L-193);
- Regulation (GRK) - no. 02/2021 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries;
- Administrative Instruction deriving from Article 9 par.3 of LCP (Authorities for the rights of the child);
- Administrative Instruction deriving from Article 9 par.4 of LCP (Authorities for the rights of the child);
- Administrative Instruction deriving from Article 18 (The Council for the Rights of the Child);
- Administrative Instruction deriving from Article 20 (Team for the Rights of the Child);
- Administrative Instruction deriving from Article 43 (Protection of Children from Harmful and Prohibited Substances);
- Administrative Instruction deriving from Article 44 (Prohibition to Attend Nightclubs and Games of Chance);
- Administrative Instruction deriving from Article 53 (Measures Against Websites of Pornographic Content and those that Damage the Health and Life of the Child);
- Administrative Instruction deriving from Article 57 (Medical and Psychological Assistance, Rehabilitation and Measures for Reintegration);
- Administrative instruction GRK no. 05/2013 to Prevent and Prohibit Hazardous Child Labour in Kosovo.

