

**Organization for Security and Co-operation in Europe  
Mission in Kosovo**

**Department of Human Rights and Rule of Law**

**KOSOVO**

**Report on the Centres for Social Work: Social Services**

February 2003

## **GLOSSARY**

CEDAW	Convention on the Elimination of All Forms Of Discrimination Against Women
CSW	Centres for Social Work
CRC	Convention on the Rights of the Child
DOJ	Department of Justice
DSW	Department of Social Welfare
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
FRY	Federal Republic of Yugoslavia
FRY CC	Federal Republic of Yugoslavia Criminal Code
FRY CPC	Federal Republic of Yugoslavia Criminal Procedure Code
IOM	International Organisation for Migration
ISP	Institute for Social Policy
KPC	Kosovo Penal Code
LMFR	Law on Marriage and Family Relations
LNCP	Law on Non-Contested Procedure
LSP	Law on Social Protection
The Ministry	Ministry of Labour and Social Welfare
OMIK	OSCE Mission in Kosovo
OSCE	Organization for Security and Co-operation in Europe
UN SCR	United Nations Security Council Resolution
SRSG	Special Representative of the Secretary-General
TPIU	Trafficking and Prostitution Investigating Unit
Universal Declaration	Universal Declaration of Human Rights
UNMIK	United Nations Interim Administration Mission in Kosovo

## EXECUTIVE SUMMARY

The human rights mandate of the OSCE is implemented through the work of the Department of Human Rights and Rule of Law.<sup>1</sup> Through its specialised areas, the Department identifies, assesses, notifies the appropriate authorities, discusses and disseminates information on any human rights situation that raises concern or is deemed to mandate particular emphasis. The Department also promotes the development of institutions that ensure compliance with human rights and rule of law standards in their regular activities, and which, in particular, are aware and seek the implementation of effective remedies for the victims of potential human rights abuses or violations.

This report is the first overview of the Centres for Social Welfare (CSWs) in Kosovo conducted by the OSCE Department of Human Rights and Rule of Law, through its Victim Advocacy and Support Section (VASS).<sup>2</sup> Following the conflict in Kosovo in 1999 and the establishment of UNMIK, social services among other parts of the administration resumed functioning. Broadly, the previous legislation together with the institutions established under it continued to exist. UNMIK Regulations introduced structural changes leading to the creation of new Ministries for Labour and Social Welfare (the Ministry) and for Health. Though previous legislation on social welfare applies, some of the institutions established thereunder no longer exist in Kosovo.

The Ministry is responsible for social service in Kosovo and its powers are devolved to its Department of Social Welfare (DSW), which co-ordinates at an operational level with the Municipalities and the different forms of previously established associations for social protection including the CSWs. The CSWs are the main social welfare organ operating at a municipal level to provide assistance to vulnerable persons in society. The performance of the CSWs as observed through monitoring of cases, has raised serious concerns about the exercise of their mandate, awareness of legal obligations and practices which impact human rights. Under international standards, states have a number of obligations towards their citizens for which they can be held accountable. One of these duties is to provide for an effective legislative framework embodying rights and which does not inadvertently (through omission) give rise to violations of human rights. Though states have not been held directly responsible for failure to provide an effective social service, their inaction through not protecting rights, for example, to a family life and not to suffer torture or inhuman or degrading treatment has been criticised by the European Court of Human Rights.

With regard to children, the OSCE observed that CSWs did not perform the full spectrum of responsibilities within their mandate and that knowledge of these obligations was incomplete, the main role of CSWs being to prepare children for reintegration into society. A particular problem was the attention paid to cultural norms more than to legal obligations. This was generally observed in cases of custody or other family disputes, where the CSWs were required to consider the best interests of the child, but, instead, tended to concentrate on the financial aspect of such cases rather than its broader rehabilitative or psychological aspects. Further, the CSWs seemed unaware of their role to act as guardian to protect the interests of children or how to respond to neglected children.

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<sup>1</sup> The mandate of the OSCE in Kosovo in the area of human rights and rule of law derives from UN Security Council Resolution 1244 (UN SCR) which states that one of the primary tasks of the international civil presence is to 'promote and protect human rights' (paragraph 11(j)). In the Secretary General's report of 12 July 1999, the lead role in human rights within the United Nations Interim Administration Mission in Kosovo (UNMIK) was assigned to the OSCE, the Institution-Building Pillar of UNMIK. Accordingly, the tasks and mandate of the OSCE in Kosovo include the monitoring, protection and promotion of human rights (the OSCE Permanent Council Decision No. 305). Paragraph 87 of the Secretary General's report states that, "*UNMIK will have a core of human rights monitors and advisers who will have unhindered access to all parts of Kosovo to investigate abuses and to ensure that human rights protection and promotion concerns are addressed through the overall structures of the Mission.*"

<sup>2</sup> It is to be noted that the scope of this report does not cover social assistance, and only focuses on social services provided by the CSWs.

In relation to women, the CSWs were found to be falling short of their obligations to ensure that females were afforded the rights they were entitled to. A particular concern is to ensure that applicable legislation or practice does not discriminate against females such that they would be unable to realise their rights. Practices were observed in areas of divorce, child custody and property where criteria such as financial situation were found to be applied in a discriminatory manner. Other areas of concern include the social service protection afforded to victims of domestic violence, marital rape and sexual violence. Cases of trafficked victims were another area where CSWs were found to be ill-equipped to deal with their obligations. The increase in cases of trafficking presented another category of clients for the CSWs. It was found that CSWs were unfamiliar of their assistance-related obligations in dealing with such victims, and lacked knowledge of the relevant law and procedures.

Under their mandate CSWs also have obligations to act on behalf of the best interests of the mentally ill; it was, however, observed that CSWs were unaware of their full obligations. The current legislation also does not provide substantive protections incorporating international human rights standards.

In order to address these gaps in knowledge and the confusion existing among CSW staff as to the applicable law, the OSCE observed the need for a review of current legislation and for clearer instructions and social policy guidance from the Ministry and the DSW on practical matters including the improvement of co-operation between different state actors through Memoranda of Understanding. The OSCE has been recently informed of initiatives undertaken by the Ministry and the DSW to review legislation and instruct social workers on new policies and practices. Although such initiatives are laudable, the effects of these recent developments are not yet apparent in the ground work of the CSWs, and the OSCE recommends further efforts to ensure a complete review of the applicable legislation and a proper transposition of any legislative reform into the immediate practices of the CSWs. Greater supervision and involvement by the DSW in the work of the CSWs would be recommended with regular reporting to improve accountability and general performance including case-management. The CSW staff should receive ongoing assistance in problematic cases, with a method of referral as well as training in current and new legislation and procedure. Further action also needs to be taken to protect confidentiality and to ensure that CSW staff is appropriately gender-balanced.

## **CONCLUSIONS AND RECOMMENDATIONS**

Following the observations and analysis of the performance of the Ministry and its components in the area of social protection, the present report sets out concluding remarks and recommendations, with a view to enhancing the capacity of social protection authorities to respond more effectively to the challenges facing them. These concluding remarks and recommendations address four main areas where the authorities need to focus their efforts: development of institutional and organisational framework, legislative reform, training and awareness, and resource allocation.

The assessment made by this report and the corresponding recommendations, especially with regard to the development of the institutional and legislative framework, derive from the practical issues and shortcomings documented by the OSCE in the process of monitoring the activity of the CSWs. Following consultations with the Social Services Division of the DSW, the OSCE has been informed of the initiatives and institutional developments undertaken by the DSW and the CSWs at the central level. Many of these initiatives are relatively recent and, therefore, their impact on the quality and adequacy of the social services in practice is not yet apparent. Nevertheless, the coherence of these new developments and their practical implementation in the work of the CSWs will be relevant indicators for a follow-up assessment on the progress of social protection policies and practices, or the lack thereof.

Consequently, the following recommendations acknowledge the recent initiatives taken by the Ministry and its components at the central level, but aim at ensuring that such initiatives and developments are properly implemented and have the foreseen effects at the de-centralised levels. The recommendations further address the need for co-ordination not only within the social authorities themselves, but also between them and other relevant agencies or organisations whose contributions to or roles into social assistance mechanisms are fundamental.

### **I. DEVELOPMENT OF INSTITUTIONAL AND ORGANISATIONAL FRAMEWORK**

By analysing the performance of the social workers in the cases covered by this report, the OSCE has identified that better co-ordination and guidance of the CSWs by the central social authorities (the Ministry and the DSW) would, on one hand, improve the response of the CSWs to the particular type of cases and, on the other hand, facilitate the reflection of eventual developments at central level into the work of the CSWs at the ground level.

1. It is recommended, therefore, for the Ministry and the DSW to actively direct and supervise the social welfare institutions, especially in the following areas:
  - Develop clear instructions and guidelines for CSWs on their role as Institute of Guardianship, especially in cases involving children and the mentally ill.
  - Draft an instruction on selection and requirements for legal guardians and regulate an evaluation system for legal guardians and caretakers.
  - Develop further safe houses around Kosovo for various categories of vulnerable persons in Kosovo, especially women and children. The OSCE is aware that the DSW participates in the Direct Assistance and Shelter Co-ordination (DAS) group for victims of trafficking. The OSCE recommends that the DSW continue its support and appoint a permanent member to this co-ordination body.<sup>3</sup>

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<sup>3</sup> Accordingly, the OSCE has initiated a working group consisting of IOM, OSCE, TPIU, DOJ, DSW and a Shelter Provider in developing Standard Operating Procedures (SOPs) for internally trafficked victims from Kosovo. In response to the increase in cases of internally trafficked victims in Kosovo, the OSCE initiated a working group to establish a SOP for internally trafficked victims. After seven months of negotiation, the DSW decided to enhance the role and legal responsibilities of the CSWs by agreeing to respond to the cases of victims of trafficking, especially in the case of minors. The SOP for internally trafficked victims has not yet been formally signed by participating organisations/institutions.

- Improve provision of rehabilitation programmes for vulnerable social groups, including counselling, education and re-socialisation assistance.
  - Develop, together with the Institute for Social Policy (ISP), a policy on the role of CSWs in assisting victims of trafficking.
  - The practice of issuing municipal statutes to provide guidance and focus of CSWs work in the respective municipalities should be reinstated, as such statutes have proved effective in identifying specific social situations in a municipality and then tailoring adequate mechanisms to address those situations.<sup>4</sup>
2. The role and institutional function of the ISP should be clearly defined and any shift in its mandate and functions should be properly regulated by law.<sup>5</sup> According to the Law on Social Protection (see article 58 and 70), the mandate of ISP is to function as an active policy and research think-tank, while investigating social phenomenon and shaping up appropriate policies and guidance for the appropriate social protection agencies. Therefore, whereas making use of ISP's expertise and potential is an overall positive initiative, tasking ISP with projects outside its mandate as defined by law may have a detrimental effect on the Institute's capacity to respond to the increasing need of new strategies and policies in the area of social protection. In particular, the ISP could concentrate on the position of women in Kosovo, issues of discrimination in the public sphere, domestic violence, and provide recommendations to these issues. It could also take a leading role in co-ordinating efforts and initiatives of relevant authorities and other interested organisations, towards identifying and drafting new social protection policies and strategies.
  3. There is need for better co-operation and co-ordination between police, medical staff, and courts on one side, and the social protection organs and the local and international NGOs focusing on the needs of victims on the other side. The Ministry and the DSW should focus on identifying relevant partners and enter into memoranda of understanding (MOU) whereby the obligations of the relevant parties and accountability mechanisms for failing to abide by the obligations are clearly defined. Particular emphasis should be placed on entering MOUs with courts and law enforcement authorities (UNMIK Pillar I).

The OSCE further recommends that the DSW establish a referral system in which the CSWs and NGOs would have clear guidelines in the ways in which they can work together in assisting cases.<sup>6</sup> A unified referral system for relevant institutions (i.e. police, hospitals, CSWs and NGOs) should be developed. Close co-operation and co-ordination between the state actors and the NGOs is highly recommended for case management and also as a tool to avoid possible duplication of local efforts and initiatives.<sup>7</sup>

The OSCE recognises the importance of establishing a strong co-ordination mechanism among safe houses for victims of domestic violence. The OSCE encourages the DSW to follow up on the Meeting of Shelter Directors that took place at the DSW in October 2002. Ongoing meetings could be a forum for Directors to share "lessons learned" and "best practices" regarding safe houses that are at varying stages of opening or development. A unified referral system, guidelines for management, protocol for contacting CSWs, hospitals, and the police, in addition to other operational issues that arise, could be addressed at these gatherings.

4. The selection of employees of the CSWs is not sufficiently gender balanced and this affects the quality of the service available to victims especially regarding women and trafficked persons. Accordingly, the recommendation would be to ensure that the gender balance is addressed at caseworker and director levels.

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<sup>4</sup> See footnote 22 for an explanation of municipal statutes in the area of social protection.

<sup>5</sup> According to the Head of the Social Services Division of the DSW, the ISP has been revived after 1999 in accordance with the same mandate that it had prior to its disbandment in 1990. It appears that the role of the ISP, as presented by the DSW, is to supervise, monitor, and provide relevant training for the CSWs.

<sup>6</sup> The OSCE has observed that in some cases the CSWs refer their clients to NGOs and do not ensure proper follow-up of these cases.

<sup>7</sup> Kosovo has a number of local NGOs, which successfully run shelters for victims of sexual abuse. These NGOs have expertise that could be utilised in providing training to the new staff to be appointed by DSW for new safe house.

There should also be designated caseworkers dealing with trafficking, domestic violence, the mentally ill and the protection of children.

## II. DEVELOPMENT OF THE LEGISLATIVE FRAMEWORK

The analysis of the applicable law relevant to social protection and the problems arising from the case studies documented by this report, indicated the necessity for a general review of legislation in the field of social services. Such review should be conducted by a Working Group composed of the relevant authorities (MLSW and DSW) and the interested international and local NGOs or other organisations, under the authority of the ISP, as a body which is supposed to design general policies and to conduct relevant research in the social protection area. According to the DSW, a legislative review has been initiated in November 2002 under the social protection project.<sup>8</sup> Whereas such initiatives are welcomed, the OSCE is concerned that the project will not challenge the existing applicable law that requires immediate reform, but rather focuses on compiling manuals and administrative instructions, which, as long as they do not aim at officially amending the applicable law, will be left with no binding legal authority.<sup>9</sup>

5. Therefore, the OSCE recommends a coherent and comprehensive legislative review, including all the relevant agencies and organisations.

The review should identify issues pertaining to social protection that are not covered by the applicable law, and areas of the legislation that are insufficiently defined or lack proper implementation/enforcement mechanisms. Following the review, the Working Group would be expected to put forward new proposals for addressing the legislative gaps in the area of social protection. Where legislation exists but proper implementation is identified as being problematic, enhanced procedures and mechanisms should be suggested either by way of new legislation passed by the Assembly or internal circulars and instructions of the Ministry and DSW. The legislation relevant to social protection should be compliant with international standards, particularly with regard to mental health and domestic violence.

6. The current code of ethics for the CSW (adopted in December 2002) should be amended as to contain effective and enforceable disciplinary mechanisms against social workers or other employees of social protection authorities breaching the rules on conduct or confidentiality. Further, the issue of lack of separate interview room for clients in some CSWs, which directly impacts the confidential nature of social assistance, requires urgent resolution.<sup>10</sup>

## III. TRAINING AND AWARENESS

A lack of knowledge of relevant legislation, procedure and their role towards various social groups has been observed with the CSWs.

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<sup>8</sup> This information was provided by the Head of Social Services Division of the DSW.

<sup>9</sup> Kosovo social protection project is an initiative financed jointly by the International Development Association (a part of the World Bank) and the Department for International Development of the UK government (DFID). The project funded by the World Bank and DFID in the Ministry of Labour and Social Welfare Report, "Kosovo Social Protection Funded By The World Bank and DFID Description of Project Activities December 2002" states: "legislative review aims to review and update applicable law for delivery of social services." The aim is to create a "comprehensive legislative framework within which manuals and written instructions can be issued and approved by the department" to adjust "current Social Welfare programs and procedure so as to keep in line with best practice." It appears that current social policies might come in conflict with current DSWs and also CSWs legal obligations.

<sup>10</sup> According to information provided by the Head of Social Services Division, the DSW, together with the World Bank Social Protection Project, has recently initiated an upgrade of the social welfare infrastructure. The OSCE welcomes particularly the initiative to build separate interview rooms in the CSWs, while the manner of utilising these new facilities remains to be further assessed.

7. Accordingly, further training for the CSWs would be recommended in the following areas:
  - On the position of victims of trafficking under applicable law, international human rights standards and UNMIK Regulation 2001/4; the exact role of the CSWs towards trafficking victims and the content of “social assistance” in the meaning of UNMIK Regulation 2001/4.
  - On the legal measures available to assist victims of domestic violence under domestic law and international human rights standards.
  - Duties and responsibilities of the CSWs in accordance with domestic law and international human rights standards in providing direct assistance to mentally ill persons should be clearly outlined.
  - On the use of reconciliation in matters of family disputes. Applying criteria such as that used for deciding child custody cases (i.e. particularly economic criteria) in a non-discriminatory manner.
8. The Ministry and its components are recommended to initiate public awareness campaigns focusing on sexual exploitation/violence, domestic violence, family neglect, the mentally ill and other issues affecting society’s views on the position of these socially vulnerable groups.

#### **IV. RESOURCES**

The OSCE is aware of the deficiency of resources available to CSWs, however, the report is not aimed at assessing the resources needed by the social protection authorities for enhancing their overall performance and response to social cases. Nevertheless, there are certain aspects of the CSWs work, which mandate immediate allocation of resources.

9. The Ministry and the DSW should concentrate their efforts on recruiting qualified psychologists, who are either specialised in the type of trauma normally affecting the social groups assisted by CSWs, or are specialised in the various groups as such (i.e. psychologists specialised in children issues, on domestic violence, trafficking, mentally-ill, etc.).
10. In order to improve the efficiency of the CSWs, the current lack of basic office equipment such as computers and vehicles together with an effective filing and archiving system requires addressing.
11. Improved case-management is recommended as a remedy to address the ad-hoc nature of the CSWs response to cases of domestic violence or child neglect and abuse. It would be recommended that cases be prioritised in accordance with urgency and due regard be paid to ongoing problematic cases especially those involving children and victims of sexual violence. To facilitate this it would be necessary to have sufficient trained personnel involved in the different issues, and who follow the cases that are assigned to them in a consistent fashion.

## **SCOPE OF THE REPORT**

The present report highlights the response of the CSWs' to the growing challenges of providing appropriate assistance and protection to those categories of victims or vulnerable persons whose care and well-being fall, according to the applicable law in Kosovo, within the sole competence of social protection authorities.<sup>11</sup>

The CSWs are mandated to provide professional social work services and exercise authority in cases requiring social assistance, in accordance with both the law on social protection and other relevant laws, such as the domestic family law.<sup>12</sup> International human rights instruments dedicated to the protection of victims of crime, women and children are also an integral part of the assessment of the manner in which the CSWs have so far performed their legal obligations.

According to statistics obtained from the DSW for the period December 2001 to November 2002, the CSWs have handled over 3,903 cases, which include 203 cases of domestic violence, 2,834 cases concerning child protection,<sup>13</sup> 34 cases of female victims of trafficking in human beings (trafficking) and 832 cases regarding the mentally ill.<sup>14</sup>

This report concentrates on cases involving child victims of abuse or neglect, female victims of domestic violence, trafficked persons and mentally ill persons. The report will discuss the work and involvement of the CSWs in such cases, while also addressing practical problems faced by CSWs and the compatibility of their duties with the applicable law in Kosovo, including with international human rights standards.

The analysis and arguments in this report are based on data and factual information collected during the reporting period by OSCE field monitors. The OSCE monitors gathered information both through direct monitoring of relevant cases, and also through communication with the DSW and the CSWs in Pejë/Peć, Prizren, Prishtinë/Priština, Mitrovicë/Mitrovica and Gjilan/Gnjilane. VASS has monitored 38 cases involving children, 12 cases involving females and 7 cases of trafficking.<sup>15</sup>

## **THE MANDATE OF THE VICTIM ADVOCACY AND SUPPORT SECTION**

VASS and its specialised approach on victims of crimes in general, and on victims of sexual or domestic violence in particular, evolved from the generalist activities of the Department in the area of victim advocacy and support, which had been present since May 2001 alongside the growing interest and effort invested by the OSCE in anti-trafficking work and strategies.

According to its mandate, VASS focuses on:

- ◆ establishing a broad framework for victims rights, which includes increased access to all mechanisms of justice services to victims, and an appropriate governmental response to those at risk of victimisation;
- ◆ monitoring and reporting, providing direct assistance, liaising and co-ordinating between governmental and non-governmental sectors involved in issues pertaining to victim advocacy and support, as well as providing analysis and policy making;

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<sup>11</sup> The OSCE agreed to produce the report following a meeting with the Department of Social Services on 4 July 2002.

<sup>12</sup> Article 12 in connection with Article 38 of the LSP.

<sup>13</sup> Including children who are orphans, neglected, poor, living in abusive families, with no legal guardian, delinquents and with disturbed psychosocial development. The majority of cases handled by the CSWs on Child Protection cover juvenile delinquency.

<sup>14</sup> These numbers do not include Prishtinë/Priština and Prizren municipality.

<sup>15</sup> Cases of mentally ill persons were monitored where these arose in the context of cases of children and women.

- ◆ responses to, and related structures for, victims of trafficking and gender-based violence, as well as appropriate mechanisms for child protection, with an increased awareness for the needs of other high-risk victims, such as those with mental disabilities, the elderly and minorities.

Protection of victims and prevention of victimisation through legal mechanisms is one part of VASS's work. In its assistance on the preparation of the draft Criminal Code and the draft Criminal Procedure Code, VASS advised on specific areas requiring development, particularly gender-based violence related offences. VASS worked to ensure legal protection for victims and an institutionalised role for victim advocacy mechanisms, by co-ordinating with the drafters of the draft Criminal Procedure Code to provide a legal basis for a victim advocacy system. It also played a major role in drafting UNMIK Regulation 2001/4, On the Prohibition of Trafficking in Persons in Kosovo.

In its work on domestic violence, VASS chairs a working group involving NGOs and relevant UNMIK and UN agencies, which drafted an UNMIK Regulation on protection orders for victims of domestic violence. VASS also involved the working group in advocating for the formal appointment and specialised training of family judges in the courts. Moreover, VASS has been part of a departmental review of the applicable family and social welfare laws and has, accordingly, recommended legal and policy reform.

In its ongoing concern with the response of the relevant authorities, at the central and municipal level, to victims of sexual violence, VASS has worked with international partners to institute standard protocols for the treatment of these victims, both by law enforcement and health authorities. VASS also focused on identifying and developing support and assistance schemes and referral networks for victims of crime and other vulnerable groups.

To address some of the practical concerns in the area of victim advocacy and support, the OSCE is utilising a voluntary contribution from the United States to combat domestic violence, by providing each of the 31 CSWs in Kosovo with a mobile telephone and phone card to ensure an "on-call" system, as a prerequisite of a functioning referral system for victims of crime. These funds are also allocated for the creation of a one-year position for a national Domestic Violence Policy Adviser in the DSW. These measures are intended to enhance the capacity of the CSWs to provide quality care services and properly respond to victim assistance needs.

Furthermore, VASS has placed a significant emphasis on addressing the immediate need for safe houses and shelters throughout Kosovo, to enable all high-risk victims to escape violence. Some of the above-mentioned funds have been, therefore, allocated to support a new shelter operated by a local NGO, especially for victims of trafficking. As part of a comprehensive programme to combat trafficking, VASS works closely with partners such as the International Organisation for Migration (IOM) and the Trafficking and Prostitution Investigating Unit (TPIU) of UNMIK Police.

## **SECTION 1: BACKGROUND ON THE APPLICABLE LAW AND INSTITUTIONAL FRAMEWORK**

### **I. HISTORICAL BACKGROUND**

From a historical perspective, the applicable law governing social protection institutions in Kosovo and their functions was originally enacted following the Constitutions of 1971/1974, during the period of de-centralisation of “self-managing” socialist organisational structures.<sup>16</sup> The laws regulated the creation, funding and obligations of “self-managing interest associations for social protection” which were formed through “self-managing agreements” and regulated by “statute.”<sup>17</sup> The basic functions and obligations of these organisations for social protection were provided by the law, while other “self-managing” institutions could be created by citizens and workers based on their own “free will.” The law provides for the existence of CSWs, as the primary form of associations for social protection.<sup>18</sup> The main tasks and procedures governing the work and responsibilities of CSWs are outlined under the Law on Social Protection<sup>19</sup> (LSP), the Law on Marriage and Family Relations<sup>20</sup> (LMFR), the Law on Non-Contested Procedures<sup>21</sup> (LNCP) and the Municipal Statutes of the CSWs.<sup>22</sup> The LSP sets out the general principles of social protection and also the basic structure of the work and activities of the CSWs. The LMFR defined the meaning of ‘social care’ and outlined procedures in regulating family, marriage and child protection issues including the role of the Institute of Guardianship (IG).<sup>23</sup> The LNCP outlines the procedures (which are not contested) for the courts while deciding personal, family and property matters.<sup>24</sup>

At a central level and with attributes of general policy and strategy making, the above-mentioned law on “self-managing” institutions established the Provincial Assembly for Social Protection (PASP).<sup>25</sup> The former PASP’s responsibility was to formulate general social protection policy, and establish a programme for implementation based on research regarding social issues. In particular, it was obliged to ensure social protection for people suffering from severe mental disability and children, and was responsible for the development, reform and organisation of social protection associations in Kosovo.<sup>26</sup> At the municipal level, the Assembly of Municipal Association of Social Protection (MASP) determined the development of the social protection policy in accordance with community needs and developed schemes for the fulfilment of rights to social protection.<sup>27</sup>

In the present layout of the legal framework in Kosovo, the attributes of the CSWs have not significantly changed, as the relevant domestic laws governing social protection remained virtually the same. The overall executive structure has, however, changed, with the Ministry<sup>28</sup> being responsible for matters relating to social welfare in Kosovo. Annex VII of UNMIK Regulation 2001/19 defines the duties of the Ministry, which include developing labour and social welfare policies and implementing legislation in these areas, promoting policies and practices for the protection of families and minors, directing and supervising social welfare institutions in

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<sup>16</sup> See Appendix I for a list of applicable law.

<sup>17</sup> Articles 9 and 17 of the Law on Self-Managing Associated Institutions for Social Protection.

<sup>18</sup> See Articles 45-58 LSP. These associations include associations for professional training and employment.

<sup>19</sup> The Law on Social Protection, entered into force on 29 March 1976.

<sup>20</sup> The Law on Marriage and Family Relations, entered into force on 24 February 1984.

<sup>21</sup> The Law on Non-Contested Procedures, entered into force on 22 October 1986.

<sup>22</sup> The CSWs previously operated with Statutes (Article 65 of the LSP), which were passed on the decision of the executive board of the CSWs and the Municipal Assembly. These statutes outlined organisational structure, beneficiaries, duties, responsibilities and competencies of the CSW. Currently, the CSWs operate without statutes as these were removed from Kosovo when the previous administration collapsed.

<sup>23</sup> Article 1 of the LMFR.

<sup>24</sup> Article 1 of the LNCP.

<sup>25</sup> PASP was established in accordance with the Law on Self-governing Interests Assembly of Social Protection, and its work was regulated by the Statute of Provincial Assembly of Social Protection. Members of PASP are Municipal Assemblies for Social Protection therefore PASP represents the institution which gathers the work of all MASP. (Article 3 of Statute of Provincial Assembly of Social Protection (SPASP) 1976).

<sup>26</sup> Articles 3 and 15 of SPASP and Article 8 of the Law on Self-governing Associations of Social Protection (LSIJSP).

<sup>27</sup> Article 7 of the LSJISP and Article 38 of the Law on Social Protection (LSP).

<sup>28</sup> Established under UNMIK Regulation 2001/19, On the Executive Branch of the Provisional Institutions of Self-Government in Kosovo.

co-operation with the municipalities, the social welfare offices and other institutions and providing financial assistance.

Prior to the Ministry, the Department of Health and Social Welfare (DHSW), which existed under the JIAS structure, was responsible for the overall management of matters relating to health and social welfare in Kosovo.<sup>29</sup> Following the promulgation of the Constitutional Framework, the Ministry was established with Departments such as the DSW and the Department of Labour. Effectively, the Ministry replaced the DHSW and took over responsibility for labour and social welfare issues though health matters became the responsibility of the Ministry of Health. Under the current structure, the Ministry exercises overall central authority over social policies while the DSW assumes responsibility over the municipal structures including the operation of social protection associations such as the CSWs.

Accordingly, the emphasis of the report is to assess the performance of the Ministry and its components to provide effective social welfare services in line with positive obligations under domestic and international law.

## II. ASSESSMENT UNDER DOMESTIC LAW

From the perspective of the domestic applicable law, the three pieces of legislation mentioned above (the LSP, LMFR and LNCP) continue to regulate the principles of social protection and the basic structure and responsibility for the social protection services.

According to the LSP, the CSWs are responsible for taking actions to accomplish social protection,<sup>30</sup> taking into consideration the needs of the society.<sup>31</sup> The law defines specific classes of persons for whom the CSWs are required to provide social protection, including a general catch-all phrase for persons in need.<sup>32</sup> The CSWs are also responsible for monitoring cases in the field of social protection, including engaging in prevention measures and co-ordination with other established associations for social protection.<sup>33</sup> Before 1999, the CSWs were under the supervision of the Institute of Social Policy (ISP),<sup>34</sup> which was exercising its executive scrutiny every two years. The ISP, established at the central level, is an association/organisation for general research and policy development in the field of social policy (Article 58 of the LSP).<sup>35</sup>

The IG or the institute of legal caretaker and custodian derives from the LMFR and in most cases falls under the responsibility of the CSWs. Social protection and assistance to families is the responsibility of the municipal organ in charge of social protection (i.e. the CSW), unless the Municipal Assembly decides to appoint another organ to act as an IG.<sup>36</sup> The IG has special responsibilities towards children without parental care as well as for those persons whose legal capacity to act has been removed by court decision.<sup>37</sup> This responsibility is extended to all categories of beneficiaries under Article 14 of the LSP. In addition to providing social protection to people of Kosovo, the IG is also responsible for assisting foreign nationals in need of social protection.<sup>38</sup> The responsibilities towards foreign nationals end only when the appropriate authorities of that person's home country take action on behalf of its citizen.

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<sup>29</sup> Established in accordance with UNMIK Regulation 2000/10, On the Establishment of the Administrative Department of Health and Social Welfare.

<sup>30</sup> Article 12 of the LSP.

<sup>31</sup> Article 7 of the LSP.

<sup>32</sup> Users of Social Protection according to the reasons and state of social need, are especially: (a) Children: deprived of parental state; disrupted in their physical and psychological development; educationally neglected; and whose development is disrupted by family circumstances. (b) Adult persons: materially unprotected; completely incapable to work; old-age persons; invalids; and with socially negative behaviour. (c) Other persons in the state of social need for other reasons.

<sup>33</sup> Article 44 of the LSP.

<sup>34</sup> Articles 69 and 70 of the LSP.

<sup>35</sup> Article 3 of the Statute of Institute of Social Policy in Prishtinë/Priština.

<sup>36</sup> Article 22 of the LMFR.

<sup>37</sup> Articles 251 and 260 of the LMFR.

<sup>38</sup> Article 269 of the LMFR.

Under the LNCP, the non-contested procedure can be initiated by a private person, his or her legal representative or by a proposal of an organ determined by law. When cases involving children are heard, the court *ex officio* takes special measures to protect the rights and legal interests of a child who is without parental care or the rights of a person unable to take care of him or herself. The IG, even though mandated by law to initiate court proceedings,<sup>39</sup> can take all appropriate measures before the court procedure, including giving facts and seeking legal remedies for children and other persons in need of social protection. According to the LNCP, the courts can partially or completely remove one's capacity to act legally. This procedure is completed upon the presentation of facts by a parent, child, or another relative, or by an organ acting on "official duty or upon the request of the Institute of Guardianship"<sup>40</sup> to the court. Under the LNCP, medical institutions are responsible for informing the court located in their municipality within 3 days of admitting a mentally ill person for treatment. This specifically pertains to cases of persons/patients with no or limited ability to reason and consent to medical treatment.<sup>41</sup>

### III. ASSESSMENT UNDER INTERNATIONAL HUMAN RIGHTS LAW

This report raises issues of concern with respect to the obligations of social protection authorities under international human rights law, especially under the European Convention of Human Rights (ECHR). The most relevant articles for the CSWs are the rights to respect for family and private life (Article 8), the prohibition of torture (Article 3) and the right to an effective remedy (Article 13).

Under the ECHR, a claim under Article 3 may concurrently raise an issue under Article 8, particularly in connection with the rights to respect for family and private life. In such cases, the approach of the European Court of Human Rights (European Court) has been to balance the issue of controlling the state's authority to interfere in inter-personal relationships and protect persons from harm inflicted by others.<sup>42</sup> Extensive interpretations have been made about the state's duty to respect family life following the European Court's observation in *Marckx v Belgium* that Article 8 (1), does not just prevent the state from interfering but also obliges the state to ensure respect for family life. The European Commission has interpreted this statement very widely, in one case it said: "In shaping the domestic law, the state must act in a manner calculated to allow those concerned to lead a normal family life...The Commission is of the opinion that this consideration applied not only to legislation regulating family relationships, but also to legislation regulating the use of property insofar as it interferes with the possibility to use this property for family purposes."<sup>43</sup>

With regard to the *Marckx* case, the European Court held that the state had a positive obligation to provide a system of domestic law safeguarding an illegitimate child's integration into its family. Furthermore, in the *Airey* case,<sup>44</sup> the state's failure consisted of the absence of an effective and accessible remedy for protection of one family member from the threats of violence of another. However, under European Convention legislation, the state's positive obligation does not extend to support for the substance of family life including financial support; further interference with Article 8 rights can only be justified if there are procedural safeguards against arbitrary treatment.

Apart from the ECHR, the Convention on the Rights of the Child (CRC), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the International Covenant on Civil and Political Rights and Fundamental Freedoms (ICCPR), among others, are directly applicable in Kosovo through the Constitutional Framework for Provisional Self-Government in Kosovo.<sup>45</sup> The European Court has provided

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<sup>39</sup> Article 4 of the LNCP.

<sup>40</sup> Articles 32 and 33 of the LNCP.

<sup>41</sup> Article 46 of the LNCP.

<sup>42</sup> *Marckx v Belgium* A31 (1979) and *X and Y v Netherlands* A 91 (1985)

<sup>43</sup> *Z and E v Austria* (1986).

<sup>44</sup> *Airey v Ireland* (1979).

<sup>45</sup> Established under UNMIK Regulation 2001/9, On a Constitutional Framework for Provisional Self-Government in Kosovo.

guidance through case law regarding the right to family life and the procedural requirements regarding decisions of the authorities to infringe on rights under the ECHR.

For the purposes of this report, particularly relevant provisions of the ECHR include Article 8, the right to respect for private and family life and Article 6 on the right to a fair trial and public hearing which impacts access to impartial and independent trial-like proceedings. Article 6 is also relevant for the possibility to apply for judicial review of IG proceedings enabling courts to examine a local authority's decision regarding access of a parent to his child who is being taken into public care. This remedy is sufficient enough to provide valuable safeguards against exercise by the relevant authority of its discretion in an improper manner.<sup>46</sup> While Article 8 contains no explicit procedural requirements, the decision making process must be fair and afford due respect for the interests guaranteed in Article 8.<sup>47</sup> In addition, the European Court has stated that there are requirements as to the time limit of proceedings intervening in family life. Lengthy proceedings may be regarded as an infringement of family rights, as it may show a lack of respect towards the right to reunification of the family.

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<sup>46</sup> W v UK (1987).

<sup>47</sup> Mc Michael v UK (1995).

## **SECTION 2: CASE STUDIES AND ANALYSIS**

### **I. THE RIGHTS OF CHILDREN**

VASS monitored 38 cases involving children who were victims of crime. Fourteen cases involved victims of sexual violence,<sup>48</sup> seven victims of trafficking, eight abandoned children and nine educationally neglected.<sup>49</sup> While most of the cases involved female-children, cases of male-children were also monitored.

According to ECHR case law, the definition of “family life” should be considered as encompassing married and unmarried couples and children of minor age. Married couples without children are regarded as a family, as well as adoptive parents. The protection under ECHR is, however, not limited to the close family sphere, as even after a divorce, bonds between parents and children will remain, which has particular impact regarding visitation rights with a child.

A child as defined by the LSP and LMFR is a person under the age of 18 in line with the CRC.<sup>50</sup> Children over the age of 14 are often referred to as “minors.” Children have the right to live with their parents, unless living separately is in their “reasonable” interests or the joint interests of the child and the parents.<sup>51</sup> Children born out of wedlock (“illegitimate”) have equal rights regarding parents and family.<sup>52</sup> In judicial proceedings regarding children (excluding criminal proceedings against persons under 18) or the legal capacity of a person, the IG is a party to the procedure.<sup>53</sup> In proceedings where it is not a party, including criminal proceedings against children, it is authorised to participate. It may give proposals, provide evidence, apply legal protections, and initiate court proceedings. The courts are required to notify the IG of all proceedings, engage their participation and deliver to them all decisions.<sup>54</sup>

As the CSWs, in line with their general social protection obligations, retain the substantial legal responsibilities of the IG as defined by law, they essentially function as the child welfare agency of the State. The IG generally supervises the rights of parents to care and custody of their children and is mandated by law to undertake actions to protect children where it is aware of or informed about failure of the parents, or others with parental authority, to properly care and supervise the child.<sup>55</sup>

The IG has the obligation to supervise children, both under and over the age of criminal responsibility, who come in conflict with the law and their parents.<sup>56</sup> The IG undertakes care decisions regarding persons who reside either permanently or temporarily within the jurisdiction of the CSW at the time that the circumstances for care decisions arose.<sup>57</sup> If the person under care moves, then the competent IG changes and may reconsider some aspects of the original care decision.<sup>58</sup>

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<sup>48</sup> Sexual violence means rape, attempted rape and other forms of sexual abuse.

<sup>49</sup> See UNMIK Regulation 2000/51, On the Age of Compulsory School Attendance in Kosovo.

<sup>50</sup> Article 15 of the LMFR states: “adult age is reached at the age of 18. By reaching adult age or in case of marriage before reaching adult age, the person shall have the full capacity to act.”

<sup>51</sup> Article 101 of the LMFR. Note that “reasonable” interests should be interpreted as “best interests” in line with the applicable international law standards (CRC).

<sup>52</sup> Article 7 of the LMFR.

<sup>53</sup> Article 4 of the LNCP.

<sup>54</sup> Article 11 of the LMFR and Article 459 FRY CPC.

<sup>55</sup> In general, there is an extensive duty to report which extends to all citizens to inform the IG “immediately after finding out....if a parent is unable to exercise parenthood, or if the child, respectively the minor person for other reasons need protection.” Article 119 (2) of the LMFR.

<sup>56</sup> Article 16 of the LSP defines “an educationally neglected child” as one who: disturbs generally accepted public norms of behaviour by his actions (running [away] from home and school, tramping and similar); violates the regulations on the maintenance of public peace and order; and violates provisions of the criminal law.

<sup>57</sup> Article 241 of the LMFR.

<sup>58</sup> Article 242 of the LMFR.

The basic legal standard for decisions regarding the protection of children is that any such decision has to be taken in the “child’s best interests,” in line with international human rights standards.<sup>59</sup> Courts and the IG have the responsibility in all cases regarding the care and education of the child to “adequately investigate all the existing circumstances which are important for the child’s proper psychological and physical development, and for his education, and therefore to use as a base, in the first place, the child’s interest.”<sup>60</sup>

### **Case Study 1**

In July 2002, in Vushtrri/Vučitrn municipality of Mitrovicë/Mitrovica region, VASS became aware of a case, in which a husband working in Germany became suspicious of his wife. He believed that only one of four children was his and accused his wife of being involved in prostitution while he was abroad. In 1998, the couple divorced but the wife refused to move out of the house. The husband abused and threatened his ex-wife and in May 2002 shot her dead with a handgun in front of two children, aged one and fourteen. The CSW was informed of the case by the OSCE. However, no special measures were taken to provide counselling to the children. The CSW held the opinion that there was no need for special measures as the “psychological state of the children is quite stable.” Following OSCE intervention, the CSW irregularly visited the children and a guardian was appointed. In this case, the CSW clearly was mandated to exercise its IG function to protect the children where it was aware about the failure of the parents to provide care and supervision. In this capacity, it was required to consider the best interests of the child, which it did so inadequately.

### **Case Study 2**

In Prizren region, Malishevë/Mališevo municipality, VASS monitored two cases in which the CSW showed a passive approach in providing social protection services. The cases involved two victims of rape, one of six years and the other of fifteen years. In the case of the younger victim who was admitted to Prishtinë/Priština hospital on 24 January 2002 in critical condition, the CSW initially complained that the police did not inform them of the case. However, after VASS provided them with details, the CSW did not show any initiative in assisting or monitoring the recovery of the child. In the other case of rape, which occurred on 1 March 2002, the CSW was informed by the police, but failed to provide counselling services to the child stating that they lacked expertise and found the case difficult, thereby not fully considering the best interests of the child.

Due to the lack of action on the CSW’s part, VASS intervened in all aspects of child protection in this case. When VASS identified a local NGO, which assumed responsibility for assisting both victims, the CSW did not contact this NGO to co-operate. On one occasion the director of the CSW stated to VASS that he could not do much to assist with the case, as he was “not a human rights worker” but a “social worker” thus he was not responsible to extend his duties beyond social protection responsibilities. On one hand, this interpretation of CSW duties contravenes UNMIK Regulation 1999/24,<sup>61</sup> which states that all public officials are responsible to observe International Human Rights Standards, including the CRC. On the other hand, the CSW did not fully perform its duties as an IG whereby it could initiate court proceedings on behalf of the minor victims and make proposals for legal protection.

### **Case Study 3**

In Pejë/Peć a passive approach in providing social protection to a neglected child was observed. A ten year old epileptic boy whose mother died was allegedly abused by his father. The CSW admitted knowing of the case

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<sup>59</sup> The CRC obligates signatory state parties to “take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of status.” It states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child should be a primary consideration (Article 3(1) CRC). State parties are obliged to undertake all appropriate measures in the legislative, administrative and other relevant fields to ensure protection of children. In particular, they are to ensure that institutions, services and facilities responsible for the care or protection of children conform with the standards established by competent authorities (Article 3(3) CRC).

<sup>60</sup> Article 116 of the LMFR.

<sup>61</sup> UNMIK Regulation 1999/24, On the Law Applicable in Kosovo.

since November 1999 but did not appoint a legal guardian, or find a safe solution for the child.<sup>62</sup> The lack of appropriate action in this case contravenes the CSW's legal obligations under the LMFR and potentially could amount to a violation of Article 3 of the ECHR. Under Article 119 of the LMFR, the IG is obliged to take necessary measures for the protection of the personal rights of the child. The ultimate sanction would have been for the CSW to have initiated court proceedings to remove the child from the parent. VASS learned of the case in May 2002 and intervened with the CSW who eventually appointed a legal guardian.

If a CSW observes that parents are not providing proper care to their children, they are responsible to direct them to appropriate counselling and other necessary assistance services. However, in serious cases the CSW can decide to closely monitor the parental care towards their child/children.<sup>63</sup> In cases when a CSW determines that the parents present a serious threat to a child's development, the CSW can remove the child through court proceedings from his/her parents and place the child under the care of another person or organisation without removing other rights and duties of the parents.<sup>64</sup>

Decisions regarding the revocation of parental rights due to serious neglect or abuse are made by a court in a non-contested procedure. Parental rights can be reinstated through the same procedure when the grounds for revocation cease to exist. A parent, IG or a public prosecutor may initiate the procedure for revocation, and in cases where the IG is informed of such abuse or neglect, it is obliged to initiate a procedure. Where the IG is aware of the existence of the risk of abuse of parental rights or gross negligence, it is mandated to take any immediate actions necessary to protect the child.<sup>65</sup> Decisions are taken in a hearing, where the parent(s) are summoned to provide testimony and represent their interests. A special guardian may be appointed by the court or by the guardianship authority to represent the child's interest during such proceedings where there is only one parent alive and has custody, and if this is in the best interests of the child.<sup>66</sup>

Similarly, decisions regarding the legal capacity of persons with mental or other illness to make decisions for him/herself, either partially or totally, are also taken by a court. This includes the decision to continue parental rights over a person beyond the age of 18 where the person, due to mental illness, slow development, physical disabilities, or other reason is found to be unable to care for him/herself even though he/she has reached the age of adulthood.<sup>67</sup> In these cases, a special guardian is appointed to represent the child's interests.<sup>68</sup> If such a person requires commitment to an institution for psychiatric treatment or other care, the court must take the decision to detain.<sup>69</sup>

From an international human rights law perspective, there are three situations where care, custody and contact with children may raise issues under the ECHR.<sup>70</sup> The most common issue considered by the ECHR case law is in the case of intervention by state authorities to remove children from their families and related decisions concerning the removal of a child, such as right to contact, custody and adoption. A national law which gives the mother automatic custody has been accepted according to ECHR.<sup>71</sup> The parent who after a divorce does not have custody over a child, should, as a rule, be entitled to visitation rights with the child. There are, however, circumstances where such rights can be limited, at least temporarily. The interests of the parent and the child have to be balanced against each other, but the interest of the child must prevail. If visitation rights are severely

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<sup>62</sup> See Article 47 of the LSP which states that children disrupted in development are taken care of and the consequences of the disruption in their development are to be removed.

<sup>63</sup> Article 120 of the LMFR.

<sup>64</sup> Article 122 of the LMFR.

<sup>65</sup> Article 79 of the LNCP.

<sup>66</sup> Article 81 of the LNCP.

<sup>67</sup> Article 129 of the LMFR.

<sup>68</sup> Article 74 of the LNCP.

<sup>69</sup> Article 375 of the LMFR.

<sup>70</sup> The European Court has stated that regarding applications for judicial review, the court will not review the merits of the decision, but will concentrate on ensuring that the authority did not act illegally, unreasonably or unfairly. Where a decision regarding guardianship or parental rights arises, the scope of the review will normally be similarly confined.

<sup>71</sup> Case 13557/88 v Denmark, D.R. 63 p. 167.

reduced or excluded, it becomes an issue of interference with the parental rights protected in Article 8(2) ECHR. It is then a question of whether that breach is in proportion to the interests of the child.<sup>72</sup> If a child is separated from its parents and is placed in another person's or institution's care, both parents have a right to visit/contact with the child and any limitations should be made on the same criteria as in cases of divorce.<sup>73</sup> If the case regards a grown up child, who because of mental or physical handicap has been taken to an institution, the parents' visitation rights will depend on the circumstances in each individual case, whereby previous contacts between the parents and the child will be taken into consideration. The child's will, as much as it can express its will, should be taken into consideration in decisions regarding parental contact.

When authorities decide to take a child into care, such as a foster home or an institution, by force, which separates the child from its parent(s), the rights provided for in Article 8(2) are at stake. In one case brought before the European Court, the issue was whether the legal provisions used to take three children into care were sufficiently precise to meet the requirement that the authorities' right to interfere with family life is adequately foreseeable.<sup>74</sup> The European Court found that the particular national legislation on conditions for care taking were too general and left considerable discretion to the authorities, but nevertheless specific criteria were impossible to establish because of the nature of the interference by the authorities.

National legislation must also respect Article 8(2), which states that legitimate reasons must be given in order to interfere in family life. The reasons given are protection of health and morals and other persons' rights. When reaching a decision, the authorities have to establish whether the measures taken are justified, namely are "relevant and sufficient" for such interference. In a case where three children had been placed in foster homes, far from each other, the European Court found a breach of Article 8(2) because the long distances limited visitation rights of the parents more than necessary.<sup>75</sup> National authorities are also responsible for ensuring that decisions on visitation rights are implemented. The European Court has put an active duty on national authorities to ensure practical enforcement of such decisions.<sup>76</sup> The ECHR case law has established that the taking into care of children is normally considered as a temporary measure and the respect for family life incorporates a duty for the authorities to ensure family reunion as soon as possible.<sup>77</sup>

#### **Case Study 4**

In May 2002, VASS learned from the police about an abandoned house in Prizren where four girls aged from 12 to 16 and a two year old boy were living without adult care. Men from the neighbourhood were visiting the house and one of the girls had allegedly been raped. The CSW acknowledged knowing about the case since 2000 but claimed that there were problems of security (the children came from a well-known family with a criminal history), that there was a lack of resources and that there was no safe house with services appropriate for the children. This case highlights the option of the CSW to recommend taking the children into care especially as they had been abandoned thereby giving rise to consideration of Article 8 ECHR rights. The CSW could have legitimately under domestic and international law been able to claim that they were protecting the interests particularly the health and morals of the children. The CSW formally fulfilled its duty of appointing a caretaker, who was effectively a housekeeper during the day, but it failed, however, to monitor the work of the caretaker (Article 214 LMFR). The caretaker was unaware of his duties under Article 252 of the LMFR to take care of child development, health, and education. Given resource restraints, the CSW placed the two-year-old boy in a safe house where he received adult care, whereas the four girls continue to live alone. The case also gives rise to potential violation of Article 3 of the ECHR in that the CSW was aware of the case of serious neglect and abuse and failed to take adequate measures to protect the children. Under Article 13 of the ECHR everyone whose rights and freedoms as set forth in the ECHR are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity. Further, the European Court has held a State accountable for a violation of the prohibition against torture,

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<sup>72</sup> See for example Case 9427/78, *Hendriks v the Netherlands*, D.R. 36, p.130.

<sup>73</sup> Case 12402/86, *Price v UK*, D.R. 55, p. 224.

<sup>74</sup> *Olsson v Sweden* (1988).

<sup>75</sup> *Idem*.

<sup>76</sup> *Hokkanen v Finland* (1994).

<sup>77</sup> *Eriksson v Sweden* (1989) and *Eriksen v Norway* (1997).

inhuman or degrading treatment or punishment (Article 3 ECHR) where the child welfare authorities were aware of serious ill-treatment and neglect of certain children but failed to take effective steps to protect them.<sup>78</sup>

### Case Study 5

In March 2002, in Pejë/Peć, VASS monitored a case involving five children whose mother was deceased and who were allegedly being abused by the father. The children had not been attending school, despite being at compulsory school age (9-15) and their father had been conditionally sentenced for indecent exposure. The CSW appointed a legal guardian to the children, but the guardian refused saying that “he had no desire to be a guardian”, as this duty was “imposed on him by the CSW.” The CSW in this case did not fulfil the requirements of Article 210 of the LMFR which clearly states that the guardian should be a person with personal abilities and necessary skills and who has consented to become a guardian. Furthermore, it failed to act as IG in accord with Article 5 of the LNCP, where it could take all action to protect the rights and interests of children, or take action under the LSP, which grants special social protection to children with no parental care.<sup>79</sup> This includes securing mandatory education for children, in accordance with UNMIK Regulation 2000/51.

## II. THE RIGHTS OF WOMEN

VASS followed twelve cases involving domestic disputes, mainly of assaults by husbands. Six of these cases resulted in divorce and in most of the cases children were involved. A study of violence on females carried out by UNIFEM in early 2000 showed that 23 per cent of the sample population (aged between 35-54 years) had experienced physical violence and 18 per cent reported rape by a partner or family member.<sup>80</sup> The report pointed out that under-reporting of domestic violence was common to many countries, which reflects fear of reprisals, publicity, damage to a female’s reputation and lack of trust in institutions and authorities. It further indicated that a connection could be made between the increase of conflict in Kosovo in 1998 and a rise in domestic violence.

Broadly, the applicable international human rights standards for women include the Universal Declaration of Human Rights (the Universal Declaration), CEDAW, the ICCPR and the ECHR.<sup>81</sup> Discrimination against women is prohibited and it includes any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status.<sup>82</sup> CEDAW stipulates that state authorities have the responsibility to develop a “policy of eliminating discrimination against women” including adopting legislative and other measures and taking all appropriate measures in all fields to modify or abolish existing laws, regulations, customs and practices which discriminate against women.<sup>83</sup> Furthermore, under Article 16 of CEDAW, states are responsible to take all appropriate measures to eliminate discrimination in all matters relating to family relations and marriage and ensure equality of men and women in areas such as divorce, children and property rights.

Under the ECHR, states have positive obligations to take action to secure human rights mainly in the areas of economic, social and cultural rights. However, such obligations have also been expressly referred to in articles such as the right to life and prohibition on torture and right to a fair trial. The full extent to which the ECHR places states under obligations to protect individuals against infringements of their rights by other private persons has yet to be established. This is due to the wide discretion allowed to states to determine what is required by respect for rights and what they consider to be necessary in a democratic society, claims of an

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<sup>78</sup> Case of Z and other v UK (2001). The right to an effective remedy in such cases means that victims of the failure of the authorities to act must be able to establish any liability of the state officials or bodies and be provided compensation including, in principle, for non-pecuniary damage.

<sup>79</sup> See Articles 13 and 36 of the LSP.

<sup>80</sup> UNIFEM: *An Assessment on Violence against Women in Kosovo*, 2000, pp36-37.

<sup>81</sup> See Articles 1 and 7 of the Universal Declaration of Human Rights; Articles 2 and 26 of the ICCPR; Article 14 of the ECHR and Article 5 of the Seventh Protocol to the ECHR.

<sup>82</sup> See Article 1 of CEDAW. The convention was adopted and opened for signature, ratification and accession by General Assembly Resolution 34/180 of 18 December 1979 and entered into force on 3 September 1981.

<sup>83</sup> See Article 2, CEDAW.

interest falling within the private sphere are therefore, difficult to establish. In the *Marckx* and *Airey* cases<sup>84</sup> the state's obligation was to grant individuals the legal status, rights and privileges to ensure that their ECHR rights were secured. In a number of cases, the European Court has established that there may not only be an obligation to provide a satisfactory legal framework but also an obligation to protect an individual's rights against interference by other private persons.<sup>85</sup> In *X and Y v Netherlands*, the European Court stated that a positive obligation "may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals themselves." The particular circumstances of that case and that there was a gap in the law suggests that there would not be too wide an obligation imposed on states criminalising private actions. However, rape by a husband and domestic violence, which are not criminalised may be potential areas in which a positive obligation could be argued. Potentially, claims could also be brought under Articles 3, 8 and 13 of the ECHR.

Under the law applicable in Kosovo, female victims of domestic violence do not receive special protection,<sup>86</sup> and domestic violence is not defined as crime.<sup>87</sup> The physical and mental aspects of abuse that occur in domestic relations would be punishable under the criminal law and include murder, grave and light bodily injury and marital rape.<sup>88</sup> Article 18 of the Public Peace and Order<sup>89</sup> legislation defines physical assault that takes place in public, similar to an act of violence in which the safety of another person has been jeopardised as a criminal offence. In order to provide some protection for victims of domestic violence, UNMIK Police have established a Domestic Violence policy according to which police officials<sup>90</sup> are obliged to respond to domestic disputes and investigate alleged incidents, regardless of whether the criminal allegations took place in a domestic or other context.<sup>91</sup>

### Case Study 6

In Prishtinë/Priština, a NGO was handling a case of domestic violence, which involved a foreign female national married to a Kosovo-Albanian. The foreign national had left the conjugal home with her two children because of years of ill treatment by her husband. She testified against the husband before a court and was at risk of retaliation from him. In April 2002, when VASS learned that the husband had been arrested and detained by the police, it was also informed by the CSW that the Court would decide on the guardianship of the children and that such decision would be based on the financial situation of both parents. The CSW stated that because the husband was abusing his wife in front of the children, "does not automatically mean that he is a bad father." The CSW later informed the OSCE that they had reconciled the couple and closed the case.

A number of issues emerged from this case. Considering the domestic law, the position taken by the CSW contradicted Articles 116 and 122 of the LMFR, whereby it is obliged to adequately investigate circumstances important for the child's psychological and physical development and whereby children can ultimately be removed from violent parents. The statement that guardianship would be based on financial situation further discriminates against the female and would potentially call into question state obligations under CEDAW, which provide for equality in family and marriage matters.

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<sup>84</sup> *Marckx v Belgium* (1979) and *Airey v Ireland* (1979).

<sup>85</sup> *Young, James & Webster v UK* (1981); *X and Y v Netherlands* (1985) where the state was liable because its criminal law did not provide a means by which a sexual assault upon a mentally handicapped young woman could be the subject of a criminal prosecution.

<sup>86</sup> The Criminal Code of the Socialist Autonomous Province of Kosovo (1977); the Criminal Code of the Socialist Federal Republic of Yugoslavia (FRY CC) (1977 and 1986); the Criminal Law of the Republic of Serbia (1977 and 1994), the Law on Public Peace and Order (1981) and the Law on Minor Offences (1979).

<sup>87</sup> The draft UNMIK Regulation on Protection Against Domestic Violence gives a definition of "domestic violence" but does not define it as a crime by itself.

<sup>88</sup> *Ibid.* See Article 38. Also see Article 39 of the Criminal Law of the Socialist Autonomous Province of Kosovo. As for marital rape: See UNMIK Regulation 2003/1, promulgated on 6 January 2003

<sup>89</sup> See SAP Kosovo Law on Public Peace and Order in force since 10 April 1981.

<sup>90</sup> See UNMIK Domestic Violence policy dated of 13 September 2000, Section 3.1.3 regarding the specific crimes under which domestic violence could be prosecuted.

<sup>91</sup> See UNMIK Domestic Violence policy dated of 27 September 2001, Section 3.0, which provides the basis for the police officer to respond to and investigate incidents of domestic violence.

### **Case Study 7**

In May 2002, VASS monitored a case in Pejë/Peć in which a female had been abused for eight years by her police officer husband. She left home with her two children and was staying in a safe house for a short time before returning to Pejë/Peć. On a visit to the CSW, the wife met her husband who had been dismissed. She was attacked in front of the CSW staff and her sister recorded the incident. When asked about the lack of action in this case, the CSW responded that this was a domestic affair, and it was not their job to intervene. Apart from their social service responsibilities, the CSWs should have considered that they were witnessing a criminal offence of assault and a breach of the public order. The attitude of the CSW reflected the custom in Kosovo whereby violence against women is often perceived as a family affair and recalls a state's duties under CEDAW as to removing a custom or practice which is discriminatory. Potentially, the case also raises the possibility of an Article 3 claim under the ECHR.

Under domestic civil law, where disputes over marriage are concerned, the court possesses competencies over the divorce petition, which includes a procedure for reconciliation. The role of the CSWs in handling cases of domestic violence is based on their duty to resolve family disputes through family counselling and reconciliation. Under Article 339 of the LMFR, the IG has a mandate to implement the procedure of reconciliation using social workers and other professional methods where there is one or more minor children involved. In other cases, the court implements the procedure of reconciliation. The process of reconciliation can not last longer than three months if spouses do not agree to it and the IG is obliged to report on the process. Where the court implements the reconciliation procedure, special hearings are arranged and the court is obliged to co-operate with the IG, especially where there are minor children involved.<sup>92</sup> VASS has observed the use of the procedure of reconciliation in cases concerning domestic violence where it may not be appropriate to facilitate reconciliation, e.g. a serious case of domestic violence, (see Case Studies 6 and 8).

### **Case Study 8**

In March 2002, in Suharekë/Suva Reka municipality of Prizren Region, VASS monitored a case in which a female was tied to a chair and continuously beaten on the head and face by her husband for four hours in the presence of two children aged nineteen months and six weeks. The incident was reported to the police together with an earlier incident<sup>93</sup> when the female was due to give birth and was stabbed suffering permanent hand injuries. VASS made enquiries about the case and found that the CSW limited its role to considering the need for social welfare benefits and assisting the reconciliation of the couple. Alternatively, it did not consider the need for medical assistance, psychological assistance or legal representation.<sup>94</sup> The husband apologised stating that he had been drunk when the attack took place and the wife dropped the charges.

An important consideration in ensuring protection for women is that CSW female staff are engaged in women's issues. Currently, gender proportions of the CSW are not balanced, there are a hundred and sixty (160) men and ninety-two (92) women. Also, there are few women who hold leading positions in CSWs in Kosovo, while there are six (6) female directors, there are twenty-two (22) male directors.<sup>95</sup> VASS observed that CSWs across Kosovo suffer significant shortages in programmes and services (including lack of shelters) specifically for persons suffering from alcoholism or other addictions that may indirectly be a cause of domestic violence.

## **III. THE RIGHTS OF THE MENTALLY ILL**

The rights of mentally ill persons detained, receiving medical treatment or those in need of special protection are protected by UN standards such as the UN Principles for the Protection of Persons with Mental Illness and the

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<sup>92</sup> See Articles 343 and 345 of the LMFR.

<sup>93</sup> According to Article 39 of the Criminal Law of Kosovo, use of weapon to cause light bodily injury is a crime punishable by up to 3 years in prison.

<sup>94</sup> Article 34 of the LSP.

<sup>95</sup> See Annex II.

Improvement of Mental Health Care (the MI Principles). All persons with disabilities are protected by the Standard Rules on Equalisation of Opportunities for Persons with Disabilities. Dealing with the mentally ill presents a number of challenges to social services in Kosovo such as which institution has the mandate to deal with the mentally ill, the conditions under which persons are held and what protections are afforded. Issues such as the detention of a mentally ill person give rise to potential violations of Articles 3 and 5 of the ECHR. The detention is lawfully permissible where it has been determined that the person is dangerous for public safety and where it is in that person's interest.

VASS monitored cases involving mentally ill persons, which have raised concern over the level of knowledge of the CSW of its role in this area and of the applicable law. Currently in Kosovo, the DSW manages mental health institutions, such as the Shtime/Štimlje Institution for the Mentally Retarded and the Elderly Home in Prishtinë/Priština.<sup>96</sup> The mandate of the CSWs in terms of providing assistance to mentally ill persons remains within the scope of its IG duties. The CSW has the mandate to protect the best interests of a mentally ill person, and, according to the LNCP, the CSW can ultimately propose removal or return of the legal capacity of the alleged mentally ill person.<sup>97</sup> The CSWs are invited by court into the main session to represent the case of a mentally ill person to recommend removal of his/her legal capacity. The CSW has the right to make a special appeal to the court's decision.<sup>98</sup> The LNCP<sup>99</sup> also foresees that when a mentally ill person is placed in a neuro-psychiatric institution, without his/her consent, the medical institution has a duty to inform the IG about it. The IG maintains the right to initiate procedure for the release of the mentally ill person from the medical institution.

Generally, the current guardianship law (LMFR/LNCP) fails to provide substantive and procedural protections as required by international human rights standards. Guardianship decisions are currently made without the right to a hearing by an independent authority, without the right to counsel to represent the expressed rights of the clients, with no requirement that a person's judgements, opinions, or desires be legally respected and represented by an authorised authority and with no protection against the appointment of a guardian whose interests are in clear conflict with those of his/her ward.<sup>100</sup> The law provides that the CSW acts on behalf of the best interests of persons with mental disabilities, which unfortunately, has rarely been observed, leading to serious consequences, as highlighted by Case Studies 9 and 10.

### **Case Study 9**

On 5 March 2002 in Prishtinë/Priština, VASS monitored a case of a female mentally ill foreign national, who was a victim of trafficking. The Moldovan female was arrested by Kosovo Police Service officers for illegal border crossing and charged and sentenced to 8 days imprisonment in Lipjan/Lipljan detention facility. The TPIU who determine whether a person is a victim of trafficking, was not informed of the case. A psychiatrist in Lipjan/Lipljan established the diagnosis for the female who suffered from "autism" and "severe depression." Her mental illness apparently made her unable to make decisions that would be in her best interests. In Lipjan/Lipljan detention centre, the IOM within their mandate to assist victims of trafficking with repatriation and other services, attempted to interview the victim. Since she was heavily sedated, IOM requested that the medication be stopped so that she could be interviewed two days later. Following the interview, the female was identified as a victim of trafficking and she requested repatriation assistance. When she was brought to the safe house her medical condition became worse and she then refused repatriation assistance agreeing only to stay in the shelter for a short time. The IOM contacted the CSW Prishtinë/Priština asking for assistance. The CSW in Prishtinë/Priština refused to take responsibility for the case as they believed they had no legal responsibility to help trafficked women, or mentally ill persons, especially a foreign national. Nevertheless, provisions of the LMFR and the LNCP would have been applicable. In particular, Article 269 of the LMFR obligates the CSW to undertake measures to protect the rights and interests of a foreign national. The DSW eventually admitted that

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<sup>96</sup> UNMIK Administrative Instruction 2/2000.

<sup>97</sup> See LNCP, Articles 32 and 42 as well as Articles 45-55.

<sup>98</sup> See Article 39 of the LNCP.

<sup>99</sup> See Articles 45 to Article 55 of the LNCP.

<sup>100</sup> For more in depth information on illegal detention of people with mental disabilities see the OSCE's Review of the Criminal Justice System (September 2001- February 2002) Report and Mental Disability Rights International Report on Human Rights of People with Mental Disabilities in Kosovo (2002).

the case fell under its mandate, but that it did not have resources to assist. Upon the DSW's decision, the case was referred back to the CSW in Prishtinë/Priština which proceeded with the request for a second psychiatric opinion.

### **Case Study 10**

From 30 January 2002, VASS monitored a domestic violence case in Malishevë/Mališevo with tragic consequences where the mentally ill abuser was eventually killed by his son after years of violence and abuse.

The circumstances of the case were that the family asked the CSW for assistance and the mentally ill man was consequently sent to Prishtinë/Priština University clinic, Department of Neuropsychiatry for a diagnostic exam. He was found ill with "paranoid psychosis" and released home. The hospital had asked the family prior to the release to find someone who would stay in hospital with the mentally ill person as his "caretaker." As the family could not provide a "caretaker," the hospital released him. The CSW was not involved in the communication between the hospital and the family but knew that the mentally ill person had a weapon at home. The mentally ill person became violent and attacked his minor son, who killed him in self-defense with a piece of firewood. One of the issues that VASS observed in this case which affected the assistance provided was difficulty in communication between the Department of Neuro-Psychiatry and the CSW.

## **IV. VICTIMS OF TRAFFICKING**

Trafficking is one of the most pressing and complex human rights issues in Kosovo. According to IOM records, every year, an estimated 200,000 persons, mostly women and girls, are trafficked from Eastern Europe and Central Asia. The women are trafficked into other European countries, including Kosovo and live in conditions that amount to slavery. Kosovo is considered a "destination point" for trafficking and recent reports indicate that Kosovo is also an origin point. The major players in anti-trafficking activities include the OSCE, IOM, UNMIK Pillar II and local and international NGOs which are parties to the Standard Operating Procedures (SOP) which outline all the steps in identifying the victims—foreign nationals, and providing direct assistance to them.<sup>101</sup>

The obligation of states to protect victims of trafficking derives from Article 6 of CEDAW, which declares that "State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of women." In addition to CEDAW, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, supplemented by the United Nations Convention Against Transnational Organised Crime,<sup>102</sup> as internationally legal binding documents, prohibit trafficking in persons, and define a wide range of state responsibilities through prevention, protection, assistance and re-integration of trafficked victims. Article 4 of the ECHR prohibits slavery and forced labour, as well as Article 4 of the Universal Declaration, which states that "[n]o one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."

Domestic criminal and civil laws,<sup>103</sup> and later UNMIK Regulation 2001/4 provide further specific legal remedies for victims of trafficking. According to the applicable law, social welfare services with the mandate to act as IG in their respective municipalities, are responsible for providing social protection and supervision for managing the cases of victims of trafficking especially minors.<sup>104</sup> Further, the law does not discriminate against foreigners, since Article 269 of the LMFR states that the IG is responsible for "foreign persons in Kosovo who require protection in cases under the law." The CSWs are "required to take legal steps to protect the interests and wealth" of a foreign national "until appropriate action is taken by that person's State."

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<sup>101</sup> The SOP is effective since September 2000 and it was last updated in August 2002. The DSW, UNMIK Police and the OSCE are currently working towards creating a similar Standard Operating Procedure with a local NGO, which would provide direct assistance to internally trafficked victims.

<sup>102</sup> Adopted by the General Assembly of the United Nations in New York, 2000 and is still open for signatories of state parties until December 2002.

<sup>103</sup> These laws provide for the right to file claim under property law and the right to prosecute and/or to initiate criminal proceedings.

<sup>104</sup> See LMFR, re role and responsibilities of the IG.

UNMIK Regulation 2001/4, goes a step further and defines all the elements of trafficking, relying on applicable human rights principles. Section 1 of the Regulation defines trafficking in human beings as a criminal act involving:

Recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.<sup>105</sup>

Section 1.1 (b) defines purposes of exploitation as that of “sexual exploitation, forced labour, slavery or practices similar to slavery services, servitude or the removal of organs.” In accordance with Section 1.2 of the Regulation, the consent of the victim to be exploited is irrelevant.

With respect to their response to trafficking, the CSWs expressed that they receive little or no guidance from the DSW. Most social workers stated to VASS that they are not familiar with the social assistance and support framework introduced by UNMIK Regulation 2001/4. The CSWs further claim to be uncertain on their legal responsibilities towards victims of trafficking, especially when the victims are foreign nationals. Concerning internally trafficked victims, it has been observed that the police are reluctant to work on these cases together with the CSWs. The CSW social workers complained that when police interrogate child victims in police stations, they are not allowed to conduct an interview with the victim, which makes the CSW unable to assess the situation and determine the social protection needs of the child. Police argue that they treat the personal information of the victims, as confidential and fear that the breaching of confidentiality may jeopardise the safety of victims.

### **Case study 11**

From March to April 2002, the case of a fifteen-year-old Romanian girl raised serious human rights concerns. The girl was identified in a bar raid by the TPIU as a victim of trafficking. The girl agreed to testify against the bar owners who forced her into prostitution and physically abused her. At that time the suspects had still not been detained and the victim’s life was consequently in danger. The court ordered no protective measures for her.<sup>106</sup> The girl refused to be assisted and said that she did not want to be repatriated to her home country.<sup>107</sup> The CSW, as the guardianship institution for minors was urgently required to act, and provide a safe solution for the child.<sup>108</sup> The CSW was required to appoint a legal guardian, as soon as possible<sup>109</sup> where the guardian would have acted to “protect the best interests of the child.”<sup>110</sup>

Nevertheless, in the following period of two months, the CSW showed a passive approach in finding a solution to this case. They failed to consider how risky the child’s decision to testify against the suspects with no security arrangements was, and there was no quick intervention on the CSW’s part to ensure the victim’s safety. The CSW argued that the police did not inform them of the child’s correct address, which slowed the CSW’s process

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<sup>105</sup> See UNMIK Regulation 2001/4, On the Prohibition of Trafficking of Persons in Kosovo.

<sup>106</sup> See UNMIK Regulation 2001/20, On the Protection of Injured Parties and Witnesses in Criminal Proceedings. Also, Section 5 of UNMIK Regulation 2001/4: “Appropriate measures shall be taken for witness protection during any investigation and/or court proceedings arising under the present.” For example measures for witness protection can include police surveillance of the movements and accommodations of the victims, safe transport from the accommodations to court and vice versa.

<sup>107</sup> IOM, OSCE and TPIU have agreed upon SOP providing assistance to the victims of trafficking. However, only victims who agree to receive assistance can be helped.

<sup>108</sup> According to Article 36 of the LSP, social protection will be given, on official duty, to a person who is in a state of social need and without his/her consent or respectively without the consent of his/her legal representative, when that is in the interest of a person and social community or when there exists the interest of a third person.

<sup>109</sup> In judicial proceedings regarding children or legal proceedings on giving legal capacity to act on behalf of another person, the CSW may submit proposals to the court, provide evidence, apply legal protection and counsel and initiate court proceedings.

<sup>110</sup> See Article 3 of the CRC.

of appointing a legal guardian. Two months later, the CSW Ferizaj/Uroševac was still showing confusion about their role in combating trafficking and in providing direct assistance to the victim.<sup>111</sup>

### **Case study 12**

In Mitrovicë/Mitrovica on 6 June 2002, a case of a sixteen year old child came to VASS's attention. The child was married according to local custom by her father's decision, when she was fourteen years old, contrary to Article 33 of the LMFR, which stipulates 16 years as the age for marriage. The husband was a local bar owner who was physically abusing her and forcing her into prostitution. He eventually sold her to three brothers to serve them sexually. These brothers brought the sixteen year old child to Prishtinë/Priština and sexually abused her, forcing her to have sex with them and with other men. After the brothers had been detained, the female, who was now neglected by her family, returned to the bars and prostitution, this time voluntarily. The CSW in the municipality where the child resided knew about her case, but did not undertake any measures. This inaction is contrary to Article 14 of the LSP, which provides for CSWs to provide social protection to educationally neglected children. Furthermore, the same law under Article 16 states that the IG has the duty to protect those who disturb public norms and violate public peace and order (i.e. those who turn to prostitution).

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<sup>111</sup> In a case management meeting called by the OSCE with CSW, TPIU and IOM, the CSW team leader expressed that prostitution is a new phenomenon. He said that this has caused some difficulties in developing an understanding of how to tackle this problem.

## APPENDIX I

### IDENTIFIED APPLICABLE LAWS IN THE FIELD OF SOCIAL SERVICES

- (1) Law on Social Protection from 1976 (Official Gazette 18/76)
- (2) Law on Marriage and Family Relations from 1984 (Official Gazette 10/84) (amending, among others, the Law on Guardianship (Official Gazette 30/76))
- (3) Law on Self-Managing Associated Institutions for Social Protection of 1974 (Official Gazette 35/74)
- (4) Law on Procedure on General Administration of 1986 (Official Gazette 47/86)
- (5) Law on Administrative Disputes of 1977 (Official Gazette 4/77)
- (6) Law on Non-contested Procedure (Official Gazette 24/86)
- (7) Law on Contested Procedure (Official Gazette 69/82)
- (8) FRY Code of Criminal Procedure (Official Gazette 26/86 revised text)
- (9) Kosovo Penal Code (Official Gazette 25/77)
- (10) Law on Penal Sanctions (Official Gazette 50/84).

## APPENDIX II

Region/TOT AL <sup>112</sup>	Prishtinë/ Priština		Mitrovicë/ Mitrovica <sup>113</sup>		Gjilan/ Gnjilane <sup>114</sup>		Prizren		Pejë/Peć	
<i>Female</i>	33		11		8		10		30	
<i>Male</i>	60		17		15		30		38	
<i>Social Worker</i>	F 2 7	M 46	F 10	M 10	F 6	M 7	F 9	M 21	F 26	M 29
<i>Director</i>	F 1	M 6	F 0	M 4	F 0	M 3	F 0	M 5	F 1	M 4
<i>Team leader</i>	F 5	M 8	F 1	M 3	F 2	M 5	F 1	M 4	F 3	M 5

<sup>112</sup> This data was compiled by the CSWs and submitted to OSCE regional offices.

<sup>113</sup> The data for Mitrovicë/Mitrovica does not include the CSWs from Zubin Potok and Leposavić/Leposaviq municipalities.

<sup>114</sup> For Gjilan/Gnjilane, the information does not include Kacanik/Kaçanik and Viti/Vitina.