



Save the Children

THE CHILD'S RIGHT TO QUALITY CARE

REVIEW OF THE IMPLEMENTATION
OF THE UNITED NATIONS GUIDELINES
FOR THE ALTERNATIVE CARE OF CHILDREN
IN WESTERN BALKAN COUNTRIES





Save the Children

Save the Children is the world's leading independent organization for children.

OUR VISION is a world in which every child attains the right to survival, protection, development and participation.

OUR MISSION is to inspire breakthroughs in the way the world treats children, and to achieve immediate and lasting change in their lives.

The child's right to quality care - Review of the implementation of the United Nations Guidelines for the alternative care of children in western Balkan countries

Publisher:

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CIP: 342.726:364.4-053.2

ISBN: 978-9958-0998-3-0

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Proofreading: Profis Sarajevo

Design: Arch Design Sarajevo

Print: Amos Graf Sarajevo

Circulation: 200

This publication was produced within the project "Protection of children in migration in north west Balkans". Save the Children implemented this project with support of Save the Children Norway.

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During the preparation of this analysis, I had a great support from the organization Save the Children, which recognized the need and importance for this study and initiated its development. I owe special thanks to Aida Bekić for the substantial discussions we maintained during the last year. The wholehearted support came from the entire team of this organization, especially from Nevena Milutinović. SOS Children's Villages in Bosnia and Herzegovina also deserve great appreciation for the courtesy of allowing me to use the methodology for assessment of guidelines developed within this organization, as well as the results of analysis they conducted in Bosnia and Herzegovina. During data collection and analysis, Jasmina Ivanović provided valuable help and assistance. Her knowledge, awareness and commitment to the rights of the child are an outstanding support and resource for the development of policies in this area.

Nevenka Žegarac, February 2014, Belgrade

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FOREWORD

You are holding in your hands the publication “The child’s right to quality care - Review of the implementation of the United Nations Guidelines for the Alternative Care of Children in Western Balkan countries”, intended for decision makers and practitioners working to secure the rights of the child to live in their own family or in alternative care and possibly reunite with family when possible. The review of the implementation of the United Nations guidelines for alternative care of children provides information on the capabilities, achievements and problems that Bosnia and Herzegovina, Montenegro and Serbia are facing in trying to operationalize the standards defined in the document entitled “Guidelines for the Alternative Care of Children” adopted by the General Assembly of the United Nations in 2009.

Save the Children is dedicated to improving the situation of children without adequate care and to promoting children’s right to live in a family setting. Our global objective for the protection of children is a world in which “all children develop in a healthy family environment, and no child is placed in the institution that is damaging to them”.¹ In this respect, Save the Children is committed to strengthening the capacity of families to care for their children as well as supporting the development of alternative forms of family-based care for children who cannot remain with their families. The need for some form of residential services for children may be appropriate only as a short-term solution, for small groups of children and should be the last option when no other solution is possible.

Researches show that the number of children who grow up without adequate, quality and continuous support and who are in need of alternative forms of care is on the increase. Unfortunately, this usually happens due to rising impoverishment of families, and poor preventive activities aimed at strengthening and promotion of the parenting skills. It has been proved that the lack of timely and quality support to the child inflicts additional damage to children’s physical, emotional and intellectual development, especially when it comes to the placement of children of early age in institutions. It leads to adverse outcomes for the child and ultimately represents a form of child neglect by the institutions and by the society as a whole.

In recent years, dramatic progress has been made in reforming the social welfare system, especially

¹ Save the Children Child Protection Strategy 2013-15, available at <http://resourcecentre.savethechildren.se/>

in the process of de-institutionalization, development of social services, approach to beneficiaries and general understanding of social work, in terms of making the minimum quality standards. However, there are fears that the current capacities of countries do not promote strongly enough the proactive actions and procedures for reunification with the family. That way these children are brought into a special situation of vulnerability and are additionally exposed to risk of abuse and exploitation. Therefore, the intent of this publication is to review existing practices and highlight the need for affirmation of proactive versus reactive measures, primarily aimed at supporting families to overcome the current situation and provide optimal conditions for the full development of the child in the family environment. It is also important to note that the Guidelines and their application do not concern only the state institutions, but all stakeholders in the various communities. Therefore, this publication is an important starting point and a tool that can serve as information and guidance to practitioners and decision makers, organizations and institutions working on the best possible rights-based solutions for children.

In this regard, we hope that this document will serve to decision and policy makers as well as to practitioners themselves, and to provide guidelines for the development of policies, decisions and practices in different activities and sectors.

Sarajevo, February 24, 2014

Andrea Žeravčić, Director

Save the Children

INTRODUCTION

When the biological family is not able to provide care, the child should be provided with alternative care in the extended (relatives, kinship) or a substitute (replacement, foster or other) family in the community in order to avoid the unfavourable consequences of institutionalisation². Respect for human rights and the child's rights represent core values of the European Union and an important part of the enlargement policy for the Republic of Serbia, Montenegro, Bosnia and Herzegovina and other countries of the Western Balkans. These countries have recognised a need to take the necessary measures to reform the child welfare system in order to ensure that the rights and needs of every child are respected and protected in accordance with the United Nations Convention on the Rights of the Child and the European Convention on Human Rights.

Situation of children without parental care has for many years been in focus of the UN Committee on the Rights of the Child which, on a global scale, indicates that in a considerable number of countries a large number of children are removed from their biological families and referred to alternative care, often due to parents' poverty, and the conditions of accommodation, care and upbringing are often not suitable for the child's needs. It was also noted that the countries that signed the Convention on the Rights of the Child give very low priority to the prevention of removal of children from their families and do not provide adequate support to family preservation. Countries have an obligation to support family preservation but this aspect is often missing, partly due to lack of clarity in the Guidelines on what is considered as alternative care.

In order to put into practice the general standards from the Convention on the Rights of the Child (hereinafter: "the Convention"), the United Nations General Assembly adopted the Guidelines for the Alternative Care of Children (hereinafter: "the Guidelines")³ in 2009. This is a practical instrument directed at supporting the implementation of the Convention and the relevant provisions of other international instruments related to the protection and welfare of children deprived of parental care and children at risk of losing parental care. The Guidelines are an international instrument that represents a closer interpretation of the Convention provisions on alternative care and "desirable orientations for policy and practice"⁴, similar to other internationally recognised standards for the implementation of the Convention⁵. The purpose of the Guidelines is to assist and

2 United Nations (2011) Status of the Convention on the Rights of the Child: Report of the Secretary-General. New York: United Nations; Council of Europe (2008) Recommendations and guidelines to promote community living for children with disabilities and deinstitutionalization, as well as to help families to take care of their disabled child at home. (Adopted 31 December 2007). Strasbourg.

3 United Nations (2009) Guidelines for the Alternative Care of Children, UN General Assembly (UNGA), 64/142, <http://www.alternativecareguidelines.org/Portals/46/Guidelines/English/English%20UN%20Guidelines.pdf>

4 Cantwell, N.; Davidson, J.; Elsley, S.; Milligan, I.; Quinn, N. (2012) Moving Forward: Implementing the 'Guidelines for the Alternative Care of Children'. UK: Centre for Excellence for Looked After Children in Scotland, www.alternativecareguidelines.org, visited on 10.10.2013.

5 In addition to the UN Guidelines for the Alternative Care of Children, a number of additional documents was adopted concerning standards on juvenile justice, such as United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), <http://www.un.org/documents/ga/res/40/a40r033.htm>, United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), <http://www.un.org/documents/ga/res/45/a45r112.htm>, and in the area of international adoption the Hague Convention (Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, http://www.hcch.net/index_en.php?act=conventions.text&cid=69), as well as the UNHCR Guidelines on Formal Determination of the Best Interests of the Child, <http://www.unicef.org/violencestudy/pdf/BID%20Guidelines%20-%20provisional%20release%20May%202006.pdf>, visited on 15.10.2013.

support governments in appropriate application of the rights of the child, in order to guide policies, decisions and practice in various functions and sectors. The status of the Guidelines, as a United Nations approved set of principles, is undoubtedly very important and they, inter alia, represent a fundamental document in the operation of the Committee on the Rights of the Child for providing recommendations to individual countries on improving the position of children.

In the course of the last decade (since 2002), countries of the Western Balkans are undergoing major reforms in many social areas. In the child protection sector, numerous mechanisms have been developed for the protection of the rights of children against abuse, neglect and exploitation, as well as for social welfare services with the introduction of modern methods and approaches in the social work. At the same time, globally and particularly in Europe, strong support was directed towards deinstitutionalization processes. This effort was supported by substantial evidence of unfavourable outcomes and damaging, sometimes irreversible consequences, especially in children institutionalised at an early age.⁶ Numerous research studies have indicated that family and continuity of community services, including different types of family-based care, successfully satisfy the needs of children. Further, the experiences of deinstitutionalisation in a significant number of countries have shown that this process benefits children and their families, as well as communities and decision makers.⁷

Deinstitutionalisation processes for children and youth deprived of parental care in the Republic of Serbia have been underway since 2002, and since 2006 have intensified in Montenegro and Bosnia and Herzegovina. Numerous mechanisms, standards and tools have been constructed and numerous changes have been introduced in the practice of child welfare. The UN Guidelines for the Alternative Care of Children have come about in the course of this process (they were under preparation since 2006, and adopted in 2009), therefore this document did not direct or inform these reforms.

Review of the Implementation of the United Nations Guidelines for the Alternative Care of Children in the Western Balkan Countries provides information on the capacities and efforts of the Republic of Serbia, Montenegro and Bosnia and Herzegovina⁸ in ensuring the protection and actualization of the child's right to live with his/her own family, or the right to alternative care and reunion with the family, where appropriate.

The purpose of this document is to review the current situation and accomplishments in the process of reforming the social welfare of children, from the standpoint of application of standards and principles prescribed by the Guidelines in these three countries, for a regional perspective and in order to create recommendations for decision makers, practitioners and other interested parties for further development of the welfare system suitable and accordant with the rights of the child.

6 Gudbrandson, B. (ed.) 2006) *Rights of children at risk and in care*. Council of Europe, pp.36-40, Provisional Edition, http://www.iin.oea.org/2006/Lecturas_Sugeridas_2006/Rights_of_Children.pdf

7 Mulheir, Georgette & Browne, K. (2007) *De-institutionalising and transforming children's services, A guide to good practice*. Birmingham: University of Birmingham, WHO Collaborating Centre for Child Care and Protection.

8 Acronym: „BiH“.

NECESSITY AND SUITABILITY – BASE PRINCIPLES OF THE GUIDELINES

The Guidelines indicate a need for an integrated approach ranging from services to support the parents and keep the child together with the biological family, highlighting selection of suitable care for the child, when appropriate and only for as long as necessary to create conditions for the child's return to his/her family, or other solutions that provide permanency, continuity, stability and safety in the child's life, according to the child's best interests. Continuous (preferably quarterly) reviews are required to check the necessity and suitability of the care provided for the child.⁹ Emphasis is placed on developing a range of community services to address the needs of families of different status and age, giving preference to family-based over residential environments, while at the same time expecting a certain standard of care.¹⁰

The principle of *necessity*¹¹ indicates a need to prevent the occurrence of situations that could lead to separation of the child from the family. Children and families need various services and family support measures. This includes different forms of financial assistance, support services for families exposed to stigmatisation and discrimination, training in parenting skills, intensive family welfare services, day centres, house visitation programmes and the like¹². Separation of a child from the family should be seen as a last resort measure and such decisions must be preceded by a rigorous and comprehensive evaluation to establish whether the child can, with appropriate support, stay with the parents or within the biological (kinship) family. This evaluation is carried out by competent professional services acting as *gatekeepers*^{13 14}. The gate keeping function in Serbia, Montenegro and BiH is performed by centres for social work, institutions that are central in the system of social and child welfare. Also, the necessity of alternative care must be regularly reviewed and revisited. The principle of necessity has a clearly preventive role, it directs efforts towards the development of policies and practices and allocation of resources (funds, facilities, equipment, personnel, programmes, etc.) to support services to the parents and biological family of child. These services aim to prevent the need to remove a

9 Paragraphs 32 -52. of the Guidelines.

10 Paragraphs 53, 23, 123, 126. of the Guidelines.

11 Paragraph 21. of the Guidelines.

12 Paragraphs 34, 36-37, 44- 45. of the Guidelines.

13 United Nations Children's Fund and World Bank Group (2003) *Changing Minds, Policies And Lives: Improving Protection Of Children In Eastern Europe And Central Asia, Redirecting Resources To Community-Based Services*. UNICEF Innocenti Research Centre. <http://www.unicef-irc.org/publications/pdf/redirecting.pdf>

14 Bilson, A. (2010) *The Development of Gate-Keeping functions in Central and Eastern Europe and the CIS. Lessons from Bulgaria, Kazakhstan and Ukraine*, UNICEF and University of Central Lancashire <http://www.ceecis.org/ccc/CCCregional.php>, visited 25.10.2013.

child, facilitate the return of a child to the biological family and his/her reintegration, according to the best interests of the child.

The principle of *suitability*¹⁵ indicates that each child in need of alternative care has individual needs and circumstances, e.g. short-term or long-term placement, placement together with siblings, etc. The Guidelines define a set of types of alternative care and the type most suitable for the child should be selected. Fundamentals for selecting the most suitable type of alternative care are the availability of quality care in the community and an appropriate selection procedure. The selected care placement should be adapted to the individual needs of each child. Suitability of care must be regularly reviewed in order to ascertain whether the child still needs the current alternative care arrangement and whether it is possible to reintegrate the child into his/her family. The explicit recommendation in developing different types of alternative care is to prioritise family- and community-based types of alternative care.¹⁶

Guidelines also accentuate the fact that family- and community-based care and residential care are complementary¹⁷, and that each type of care should be used when it represents the most suitable solution for the child's needs¹⁸. An alternative care placement is considered suitable if it complies with minimum requirements in terms of equipment, space, number and structure of personnel, financing and access to health and educational services. Also, organizations, families and institutions service providers have to be registered and regularly monitored.

In the implementation of the Guidelines to date, decision makers, relevant services and institutions and civil society organisations in many countries have directed a wide range of activities towards prevention, preservation and reunion of the family¹⁹.

15 Paragraph 21. of the Guidelines.

16 Paragraph 53. of the Guidelines.

17 Paragraph 23. of the Guidelines.

18 Paragraph 21 of the Guidelines.

19 Alternative forms of care for children without adequate family support: sharing good practices and positive experiences. The proceedings of the ChildONEurope Seminar on out-of-home children. Florence, Istituto degli Innocenti, 4 October 2012. ChildONEurope Series. (Page 11), available at <http://www.childoneurope.org/issues/publications/COEseries%207.pdf>

HOW THIS DOCUMENT IS ORGANISED – WHAT QUESTIONS ARE ANSWERED?

This document aims to provide answers about the degree of practical compliance in Serbia, Montenegro and Bosnia and Herzegovina with the Guidelines, in terms of application of the principles of necessity and suitability in the separation of a child and his/her placement in alternative care while respecting the best interests of the child, through evaluation of the following areas:

- 1) Institutional mechanisms and development of alternative care policies in countries of the Western Balkans,
- 2) Measures and programmes for the prevention of separation of children from parental care and for return and reintegration of children from alternative care,
- 3) Gatekeeping mechanisms:
 - a. Development of adequate procedures for intake, assessment and referral to alternative care,
 - b. Clear setting of goals for alternative care and development of individual plans,
 - c. Existence of a review procedure for alternative care,
- 4) Capacities for alternative childcare in the Western Balkan countries and the deinstitutionalisation process,
- 5) Existence of a range of different types of alternative care and the extent of their availability to certain groups of children, including children aged 0-3, children with disabilities and children from minority ethnic and other groups, placement of siblings, regulations concerning the status and treatment of unaccompanied children and children on the move, as well as adoption,
- 6) Children leaving alternative care, questions concerning preparation and support after leaving care,
- 7) Quality of formal alternative care in terms of structural conditions and personnel, best interests of the child and the participation of children and young people in alternative care in decisions that concern them,
- 8) Application of restrictive interventions,
- 9) Existence and operation of mechanisms for handling complaints and appeals,
- 10) Recording and documentation practices,
- 11) Support to informal childcare arrangements,
- 12) Questions concerning financing, supervision and quality assurance in alternative care – supervision, inspection and independent monitoring,
- 13) Recommendations and implications for further policy development.

METHODOLOGY

This review of the implementation of the Guidelines in Serbia, Montenegro and Bosnia and Herzegovina is based on a comprehensive review of the existing laws, by-laws and strategic documents in this area. A review was conducted of many relevant formal and informal documents, reports and analyses dealing with social inclusion, status of children and families and analyses of the functioning of centres for social work and other institutions and services in the social welfare system. An analysis was conducted of all research published in observed countries in the last 40 years on topics relevant to the issue of alternative care of children. I consulted databases of foreign academic papers of significance, numerous international documents, guidelines, reference manuals, handbooks and methodical reference books concerning the global context or comparative practices that were accessible via the Internet or through exchanges with colleagues and partners.

For Bosnia and Herzegovina, to a great extent the data and results were used from the analysis of alternative care prepared by SOS Children's Villages International in Bosnia and Herzegovina²⁰ as well as numerous other documents, relevant legislation, analyses and studies available to the author. Analysis of the implementation of Guidelines in Bosnia and Herzegovina was carried out using the method developed by the organisation SOS Children's Villages International²¹. This method was used and adapted to suit the requirements of the regional overview for countries of the Western Balkans, with methodological inputs from several other documents^{22 23}.

In addition to the desk study, the analysis is based on the author's many years of direct experience in defining and implementing policies and practical work in child protection in Serbia and Montenegro, as well as numerous analyses and scientific studies prepared independently or in cooperation with other authors. This experience created many opportunities for meeting and exchanges with domestic and international consultants, decision makers, dedicated practitioners, lobbyists, enthusiasts and sceptics, but also with a large number of children and young people in alternative care. They all greatly contributed to personal insight into the situation and needs of children in alternative care.

As the author possesses modest first-hand experience in Bosnia and Herzegovina, the conclusions and insights in this case are based mainly on the desk review and analyses of secondary data. This certainly added depth to the overall insight and offered an exciting opportunity to make a comparison between systems in the three countries which had an identical system of social and child welfare, and the variants we find today offer a chance to reflect and learn from good and less-than-good practices.

This analysis has its limitations. Targeted interviews and focus groups with decision makers, practitioners, children and their families and others familiar with this topic would certainly contribute to the quality of the text, the depth of insight into the present situation and would help to provide more substantial recommendations for further development. The quality of available data and the time limitation also had an effect on the final result.

20 *Care for me! Quality Care for every Child* (2013) Assessment Tool for the Implementation of The UN Guidelines for the Alternative Care of Children, Version 2.0, Final paper, updated 09/01/13 SOS Children's Villages International.

21 *Care for me! Quality Care for every Child* (2013) Assessment Tool for the Implementation of The UN Guidelines for the Alternative Care of Children, Version 2.0, Final paper, updated 09/01/13 SOS Children's Villages International.

22 Cantwell, N.; Davidson, J.; Elsley, S.; Milligan, I.; Quinn, N. (2012) *Moving Forward: Implementing the 'Guidelines for the Alternative Care of Children'*. UK: Centre for Excellence for Looked After Children in Scotland, www.alternativecareguidelines.org, visited on 10.10.2013.

23 Application of the Guidelines for the Alternative Care of Children: A Guide for Practitioners, Red Latinoamericana de Acogimiento Familiar (RELAF), and United Nations Children's Fund (UNICEF), May, 2011, <http://resourcecentre.savethechildren.se/sites/default/files/documents/4990.pdf>

TERMS USED IN THIS DOCUMENT

Domestic and local literature uses different terms to denote children who do not live with their parents and children in the welfare system, as well as types of care and services and measures for the legal protection of the family used by these children. Agreed and standardised terminology is a fundamental prerequisite for all involved to know what they are striving towards; it facilitates collection and comparison of data and contributes to further development of ideas, concepts, programmes and services in support of children.

Generic definition of **children without parental care** is provided in the UN Guidelines for the Alternative Care of Children²⁴, where this term represents:

“All children not in the overnight care of at least one of their parents, for whatever reason and under whatever circumstances.”

Children without parental care who are outside of their country of residence or are in need of urgent protection may be designated as:

- (i) **“Unaccompanied”**, if they are not cared for by another relative or an adult who by law or custom is responsible for doing so; or
- (ii) **“Separated”**, if they are separated from a previous legal or customary primary caregiver, but who may nevertheless be accompanied by another relative.

The term **children on the move** represent children who, for different reasons, forcefully or voluntarily, migrate outside or within the borders of the country, with or without adult company. Movement makes these children potentially vulnerable to risks of inadequate care, economic and sexual exploitation, abuse and neglect and other forms of violence, and it includes refugees, internally displaced children, asylum seekers, illegal migrants, child victims of human trafficking, children living and/or working in the street, children returning after the reintegration process.²⁵

In our work we use the definition provided by World Health Organization, therefore the term **child with disabilities** indicates:

*„a child who is experiencing developmental difficulties and is not able to achieve or sustain a satisfactory state of health and development, or whose health and development may significantly deteriorate if left without additional support or special services in terms of healthcare, rehabilitation, education, social welfare and other types of support “:*²⁶

From the perspective of child welfare, children with disabilities and developmental difficulties actually belong to the group of children whose *special care needs exceed the capacities of their families*. Their parents often need assistance in providing suitable care and welfare to the child, and the child needs access to services that will stimulate his/her development and participation in the society.

24 Paragraph 28a) of the Guidelines.

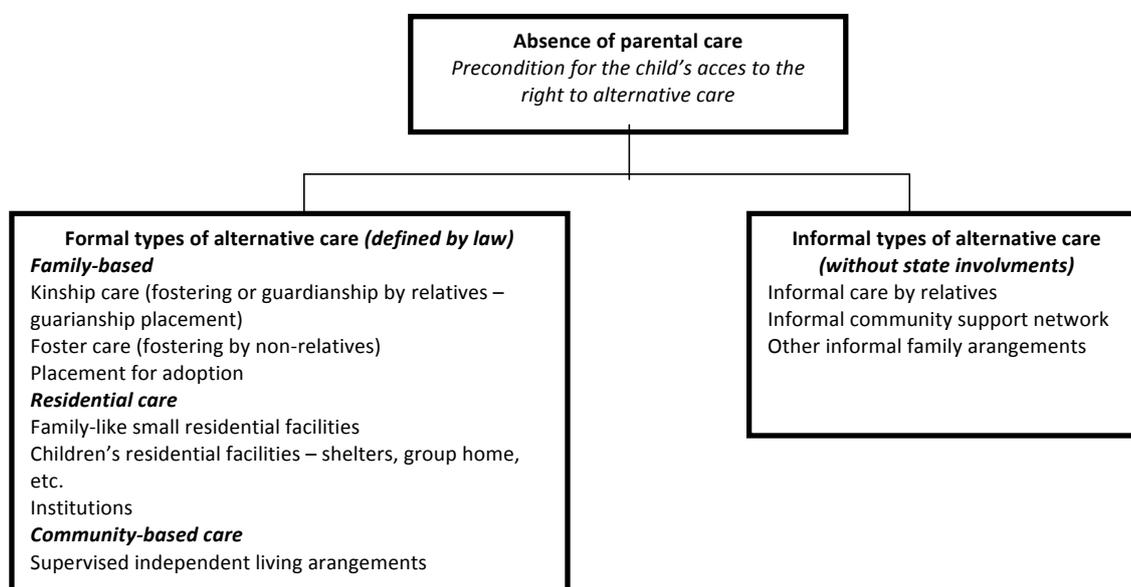
25 Definition by the organisation *Save the Children*, taken from the study „Children on the Move: Status and programmes of support and protection of children on the move in the Republic of Serbia“, 2013 (Page 7), <http://atina.org.rs/biblioteka/deca%20u%20pokretu.pdf>

26 International Classification of Impairments -ICIDH 2. (1997) World Health Organization. Geneva

According to the Guidelines²⁷, **alternative care** (i.e. care not provided by at least one parent), or **looking after and raising children** may be:

- **Informal**, any private arrangement provided in a family environment, whereby the child is looked after on an ongoing or indefinite basis by relatives or friends (informal kinship care) or by others in their individual capacity, at the initiative of the child, his/her parents or another person, without this arrangement having been ordered by an administrative or judicial authority or a duly accredited body, and
- **Formal**, whether provided in a family environment or in a residential environment, including in private facilities, which has been ordered by a competent administrative body or judicial authority, and whether or not as a result of administrative or judicial measures.

Slika 1. Oblici alternativnog staranja dece u skladu sa Smernicama UN za alternativno staranje²⁸



Formal types of alternative care of children without parental care include: family and residential care, and supervised independent living arrangements for children.

According to the Guidelines, versions of **family, or family-based**²⁹ formal alternative care of children are as follows:

- **Kinship care**, which is a formal, approved and supervised type of family care, including living with and caring for the child by a person related to him/her or by a close friend of the family that the child is familiar with. Kinship care in a wider sense includes situations where the child lives with a relative who is also a **legal guardian, without a formal foster care** arrangement, which is designated as **guardianship placement**. As a form of alternative care, guardianship placement implies that the child lives with the guardian and excludes

27 Paragraph 29. b) of the Guidelines.

28 Roby, J. L. (2011) *Children in Informal Alternative Care, Discussion Paper*. New York: United Nations Children's Fund, Child Protection Section.

29 Paragraph 29. c) of the Guidelines.

situations where the guardian also has a foster care arrangement (kinship or otherwise) and where the guardian does not live with the child. For the purposes of this document we will mainly consider fostering by relatives as kinship care.

- **Foster care:** family care where children are placed, by the competent authority, in the care of a family that was selected, trained, approved or licensed and supervised in caring for children with which it has no biological or other ties;
- **Placement for adoption** is a special sub-type of family care (not foreseen by the law or developed in practice in Serbia, Montenegro, nor Bosnia and Hercegovina) which, in certain countries, represents a specially supervised type of alternative care. Here the prospective adoptee and adopter are joined together, with a likely but not certain adoption outcome, considering the possibility that other options, more favourable for the child, may appear in the meantime. A version of this type of care exists in Serbia in the form of the so-called “placement of the child into a prospective adoption family for mutual adaptation”³⁰, which may last up to six months. In the formal social welfare records such children are not considered as children in alternative care. At the same time, this “placement” is a compulsory part of the adoption procedure in Serbia, unless the child is adopted by foreign citizens or by a parent’s spouse, and in terms of its purpose it does not correspond to placement for adoption as a special sub-type of alternative care.
- **Other types of family-type care** are mentioned but not specified in the Guidelines. Some documents³¹ make a mention of a „family upbringing group“; denoting families that provide care for the children from specialised institutions and care for the child with active assistance from the personnel of the institution. „Replacement family“ is a family that hosts the child for a certain period of time in order for the child to gain the experience of living in a family environment, and other arrangements where the caretakers are selected and prepared to provide such care, regardless of whether they receive compensation or other forms of reimbursement for doing so.

Residential care includes group living arrangements designed specifically for alternative care of children, where the care is provided by paid personnel or volunteers. This includes shelters, transit centres and other alternative care institutions that provide short-term or long-term care, whether large institutional centres, children’s group homes, so-called ‘children’s villages’, etc.

Two other terms are mentioned in connection with residential care, designating two polarities of residential care:

- **Family-like** care implies care provided in small groups of children³², in a manner and in an environment that provides a way of life, daily routine and atmosphere similar to that of a family, and where each child receives personalised care³³. Family-like care includes so-called *small home communities* with 6 to 10, in some countries up to 15 children and provides

30 Family Law, *Official Gazette of the Republic of Serbia*, no. 18/05, Article 318, Paragraph 1.

31 Identifying Basic Characteristics of Formal Alternative Care Settings for Children: Discussion paper – March 2013, NGO Working Group on Children without Parental Care in Geneva, (a sub-group of the NGO Group for the Convention), http://www.fice-inter.net/wp-content/uploads/2013/04/Formal_care_settings_characteristics_March_2013_final.pdf, visited on 16. 11. 2013.

32 The Rights of Children Living in Residential Institutions, Council of Europe/Committee of Ministers Recommendation 2005(5) [https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=Rec\(2005\)5&Language=lanEnglish&Ver=original&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=Rec(2005)5&Language=lanEnglish&Ver=original&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75), visited on 28. 11. 2010.

33 Explanatory Report to the Council of Europe’s Committee of Ministers Recommendation 2005(5). http://www.coe.int/t/dg3/familypolicy/enfance/rapport_en.asp, visited on 28. 11. 2010.

personalised care; these are located within the local community in the form of a 'common house (or apartment) in a common neighbourhood'.

- Hybrid models with a varying degree of family-like settings include so-called *children's villages* with 8 to 15 houses, each accommodating 4 to 10 children living with an SOS foster mother or under supervision of a pedagogue³⁴.

Guidelines do not offer a definition of an *institution*, but group it together with *large residential facilities*³⁵. Eurochild³⁶, on the basis of the Guidelines, recommended that the term *institution or establishment for children* is defined as a usually large residential environment not suited to the needs of children, unlike a family environment, and demonstrating qualities characteristic for a total institution³⁷, because it follows strict routines, contact with the outside environment is limited, social distance exists between the personnel and service users, it encourages a subordinated position of the service users, etc. According to the Council of Europe recommendation, all institutions should strive to provide a *family-like environment and atmosphere*, which is sometimes achieved by redesigning large facilities to group children in different parts of the institution in 'family' groups. This concept was attempted in Serbia under the name of 'home-family' but was abandoned due to a lack of cooperation from the personnel who, in accordance with the Labour Law, insisted on working set shifts rather than working hours adjusted to suit the children's needs³⁸, and in Sweden it is called *hybrid homes*³⁹. This grouping of children in large institutions should under no circumstances be equated to family-like alternative care⁴⁰.

- **Institutional** care denotes residential care centres with collective living arrangements for the institutionalised children, usually with large capacities, and where paid personnel, in strictly set work shifts, take care of the children.

Different criteria are used to designate an alternative care arrangement as 'family-like' or institutional, as follows: size of the institution, ratio between the number of personnel and children in their care (a family-like care should have a ratio of 1:6), duration of care, quality of life, geographic isolation, etc.

Supervised independent living arrangements for children and youth, primarily for young people aged 16 and over (in comparative practice usually up to 21 or 23 years of age), implies accommodation, usually in an apartment and sometimes in a hostel or similar, where young people who leave care as well as older adolescents preparing to leave care develop skills and competencies they will need for independent living, with more or less intensive support. Personnel who support these youths usually

34 Council of Europe Working Group on Children at Risk and in Care, *Children in institutions: prevention and alternative care*, Final Report by Bragi Gudbrandsson (Council of Europe, May 2003).

35 Paragraph 23 of the Guidelines.

36 <http://www.eurochild.org/>

37 Contemporary living arrangements allow an individual to sleep, work and entertain himself or herself in different places with different people and under different guidance, without an overarching plan, and the characteristic of total institutions is that they eliminate the barriers between these three life domains: a) all aspects of life take place under a single, centralised management; b) all activities take place in a large group of others, all treated equally by the management which insists that all activities are performed together; c) all daily activities are strictly scheduled, so that one activity precedes another; activities are planned within a fixed schedule created to accomplish the formal objective of the institution. This term was first used by Ervin Goffman in 1957. Erving, G (1961) *Asylums: essays on the social situation of mental patients and other inmates*. Anchor Books.

38 Veljić, M. (1977) *Društvena zaštita dece bez roditeljskog staranja [Social Protection of Children Without Parental Care]*. Beograd: Institut političkih nauka..

39 Stockholm Declaration from the Second International Conference on Children and Residential Care, May 2003. <http://www.cyc-net.org/cyc-online/cycol-0903-stockholm.html>.

40 Identifying Basic Characteristics of Formal Alternative Care Settings for Children: Discussion paper – March 2013, NGO Working Group on Children without Parental Care in Geneva, (a sub-group of the NGO Group for the Convention), page 1, <http://www.childrightsconnect.org/index.php/child-rights-issues/children-without-parental-care> visited on 16. 11. 2013.

do not live with them and the youths are supposed to take care of most of their personal needs (shopping, housekeeping, preparation of food, laundry, paying the bills, etc.) by themselves.

Formal types of alternative care of children **do not include children** deprived of their freedom by decision of a competent authority, children placed in the care of future adopters (the 'adaptation period', i.e. mutual adaptation, as foreseen by the Family Law in Serbia) as part of the adoption procedure and informal arrangements where the child resides with relatives or friends for reasons not related to the parent's inability or unwillingness to provide suitable care for the child.

Review of definitions used in the legislation of the Republic of Serbia, Montenegro and Bosnia and Herzegovina

The family law of the Republic of Serbia offers a much wider and somewhat confusing definition of a child without parental care, in the section of the law dealing with foster care⁴¹. This definition encompasses a much wider definition of children without parental care than the definition provided by the UN, to include children with direct parental care (e.g. a child whose parents are minors under 16, and a child under... "inappropriate"... parental care). At the same time, the definition does not include children that are not in the care of at least one parent if the parents themselves organised alternative care for the child (informal, e.g. the child lives with relatives or under a different arrangement) or if the parents agreed to place the child in formal alternative care (e.g. foster family or children's residential institution, with parental consent). This legal definition usually consistently describes situations where legal issues are involved (representation, management and handling of the child's property in contact with the relevant authorities), without the requirement to include the element of direct parental care of the child. Parental care is legally defined as:

„...safeguarding, raising, upbringing, education, representation, financial support and management and handling of the property belonging to the child“⁴²

The family law in Montenegro⁴³ does not provide a definition of a child without parental care, but defines that “a child without parental care and a child experiencing developmental difficulties due to circumstances within his/her own family may be placed in a different family for safeguarding, care and upbringing“, and that “alternative family care may also be arranged for a child with poor parental guidance as well as a child with physical and mental disabilities“⁴⁴. This law defines parental care⁴⁵ identically as in Serbia. The Law on Social and Child Welfare in Montenegro⁴⁶ also does not offer a definition of a child without parental care. However such children receive special protection⁴⁷.

In BiH, in the Law on Social Welfare of the Republic of Srpska⁴⁸ a social welfare user may, inter alia, be a child without parental care, or a child experiencing developmental delays due to family circumstances, i.e. a child “*without parents, abandoned by parents, or with parents unable to provide full care due to limitations or termination of their parental rights*“, then children “*whose parents, due to illness or death of one parent, unresolved family affairs, financial or other reasons are not able to provide suitable conditions for proper upbringing, physical and mental development*“, as well as „...*neglect and failure to provide for the basic necessities of*

41 Family Law, *Official Gazette of the Republic of Serbia*, no. 18/05, Article 113, Point 3.

42 Family Law, *Official Gazette of the Republic of Serbia*, no. 18/05, article 68, Point 2.

43 Family Law, *Official Gazette of Montenegro*, no. 01/07

44 Family Law, *Official Gazette of Montenegro*, no. 01/07, Article 157.

45 Family Law, *Official Gazette of Montenegro*, no. 01/07, Article 69.

46 Law on Social and Child Welfare, *Official Gazette of Montenegro*, no. 27/13

47 Law on Social and Child Welfare, *Official Gazette of Montenegro*, no. 27/13, Article 4, Point 2, Item 1.

48 Law on Social Welfare, *Official Gazette of the Republic of Srpska*, no. 37/12, Articles 17-18.

the child, thus preventing the child from enjoying his or her rights and liberties“ . Legislation in the Federation of BiH offers a relatively similar definition of children in need of alternative care⁴⁹.

In Serbia and Montenegro, the Family Law and the Law on Social Welfare^{50 51} regulate the issues of care, upbringing, guidance, education and legal representation of children in need of temporary or long-term alternative care. The Family Law in Serbia primarily dictates that the state is obliged to provide a child without parental care with alternative care in a family environment wherever possible⁵², and closely regulates foster care, adoption and guardianship as legal forms of family relations.

According to the laws in Serbia and Montenegro, placement in a **foster family** may be arranged if a child is without parental care, also if the child has physical or mental disabilities or behavioural difficulties^{53 54}, and the rule is to keep siblings in the same family. This law makes no distinction between kinship and other types of family care. **Guardianship** is a special arrangement intended for children without parental care and children who, under certain circumstances, need legal representation that the parents are unable to provide, or for adults lacking mental capacity^{55 56}. Guardianship does not necessarily imply direct care of the person under guardianship. It deals primarily with legal representation and actions concerning the protection of rights of the person under guardianship, in accordance with his or her best interests. Guardianship is usually granted to spouses, relatives or foster parents of a child or adult in need of guardianship, unless this is contrary to his or her best interests⁵⁷. The Centre for Social Work in Serbia acts as the authority responsible for guardianship⁵⁸, and may decide, in the best interest of the user, to not award guardianship to a third person but to act as a direct guardian, appointing one of the Centre staff as the responsible guardian⁵⁹.

Similar provisions exist in the family laws of Montenegro, Federation of BiH and Republic of Srpska⁶⁰. The Family Law of the Federation BiH specifies that “guardianship is a form of protection of minors without parental care” and that guardianship represents an alternative to parental care⁶¹. The Centre for Social Work, as the guardianship authority, may appoint a guardian or carry out this function directly.⁶²

The Law on Social Welfare of Serbia, in addition to the services of evaluation and planning, day

49 Law on Principles of Social Protection, Protection of All Civilian Victims of War and Protection of Families with Children, *Official Gazette of FBiH* 36/99, 39/06, Family Law of the Federation of Bosnia and Herzegovina.

50 Law on Social Welfare, *Official Gazette of the Republic of Serbia*, no. 24/11, Law on Social and Child Welfare of Montenegro, *Official Gazette of Montenegro*, no. 27/13.

51 Law on Social Welfare, *Official Gazette of the Republic of Serbia*, no. 24/11, Law on Social and Child Welfare, *Official Gazette of Montenegro*, no. 27/13 and Family Law, *Official Gazette of the Republic of Serbia*, no. 18/05, Family Law, *Official Gazette of Montenegro*, no. 01/07.

52 Family Law, *Official Gazette of the Republic of Serbia*, no. 18/05, Article 6.

53 Family Law, *Official Gazette of The Republic Of Serbia* no. 18/05, Article 113, Points 2 and 3.

54 Family Law, *Official Gazette of Montenegro*, no. 01/07, Article 157.

55 Family Law, *Official Gazette of the Republic of Serbia*, no. 18/05, Article 124.

56 Family Law, *Official Gazette of Montenegro*, no. 01/07, Article 178.

57 Family Law, *Official Gazette of the Republic of Serbia*, no. 18/05, Article 126, Point 2.

58 According to the data from the Report on the Work of Centres for Social Work in 2012 in Serbia, in the previous five years the number of children and young people in alternative care was as follows: around 6,100 under guardianship (2007-6,071, 2008-6,185, 2009-6,222, 2010-6,162), in 2011 the number of children aged 0-17 under guardianship grew by 54.4%, and in 2012 this growth continued for another 2.1%. Text available at: <http://www.zavodsz.gov.rs/PDF/izvestajoradu2013/IZVESTAJ%20CSR%202012%20FINI.pdf>

59 Family Law, *Official Gazette of the Republic of Serbia* no. 18/05, Article 131, Point 1.

60 Family Law, *Official Gazette of the Republic of Montenegro*, no. 01/07; Family Law, *Official Gazette of the Brčko District* 23/97, 3/07; Family Law, *Official Gazette of the FBiH* 35/05, 41/04; Family Law, *Official Gazette of the Republic of Srpska* 54/02, 41/08.

61 Family Law, *Official Gazette of the Federation of BiH*, no. 35/05, Articles 160-161.

62 Family Law, *Official Gazette of the Federation of BiH*, no. 35/05, Article 163.

services, support services for independent living, counselling-therapy and socio-educational services, defines alternative care as follows: “care in kinship, foster or other family for children, adults and seniors; placement in children’s homes; placement in shelters and other types of care”⁶³. The law also defines that family care is usually provided by relatives, when in the best interest of the user, and may also be provided by third persons certified as suitable, which have completed training and obtained a license to provide such services, and that relatives and foster caregivers are provided with support, training and licensing by the Centre for Foster Care and Adoption⁶⁴.

The situation is almost identical in Montenegro. The Law on Social and Child Welfare defines alternative care as services that: “imply residence of the user: in family care – foster care, family care, in an institution, in a shelter and in other types of alternative care. Alternative care may be temporary, occasional or long-term”⁶⁵. Foster care is regulated by the Family Law, and family care⁶⁶ is defined as available also to pregnant women and single parents with a child up to 3 years of age⁶⁷. Foster care in Serbia is regulated by a by-law of the Family Law⁶⁸. This document defines the types of foster care, standards of service and structural and functional standards.

63 Law on Social Welfare, *Official Gazette of the Republic of Serbia*, no. 24/11, Article 40, Point 5.

64 Law on Social Welfare, *Official Gazette of the Republic of Serbia*, no. 24/11, Article 50.

65 Law on the Social and Child Welfare, *Official Gazette of Montenegro*, no. 27/13, Article 64.

66 Law on the Social and Child Welfare, *Official Gazette of Montenegro*, no. 27/13, Articles 65-68.

67 Montenegro also introduced licensing for foster and kinship family care, as well as compulsory training of foster caregivers.

68 Rulebook on Foster Care, *Official Gazette of the Republic of Serbia*, no. 36/2008.

THE CONTEXT OF CHILD WELFARE IN COUNTRIES OF THE WESTERN BALKANS

By adopting the Law on the Ratification of the Convention of the Rights of the Child⁶⁹, the Republic of Serbia, Montenegro and Bosnia and Herzegovina agreed to honour the rights of the child stipulated by the Convention and to take all relevant measures to implement and protect the rights of the child. International contracts ratified in these countries are applied directly and, by their legal force, laws on ratification of international agreements come immediately after the Constitution. In the period from 1991 until independence, these countries were constituent members of the Federal Republic of Yugoslavia (after the breakdown of the Socialist Federal Republic of Yugoslavia and until 2003 this country consisted of Serbia and Montenegro) and later the State Union of Serbia and Montenegro. Montenegro gained independence in June of 2006. Social welfare systems in Montenegro and Serbia and Bosnia and Herzegovina developed, or actually were reformed, independently of each other although they maintained close cooperation and still cooperate in various areas. Until 1991 the social welfare system in all three observed countries of the Western Balkans had the same political, economic and social structure as in all former ex-Yugoslav republics (Slovenia, Croatia and Macedonia).

The three observed countries have in the final decade of the 20th century, each in its own way, undergone traumatic wars and political conflicts, breakdown of the common state and creation of new states, economic collapse and impoverishment of substantial portions of the population. They also had a large influx of victims of war, refugees and displaced persons, as well as the phenomenon of 'brain drain', where young educated people leave for more developed countries with their families in search of a better future. Under these circumstances, the issue of child welfare was given low priority and it only became more prominent in the early years of the 21st century.

In Bosnia and Herzegovina and in Serbia, the proportion of children in the total population is low and children account for approximately one fifth of the population. Montenegro has a slightly younger population with approximately ¼ children in the total population⁷⁰. Populations in these countries are aging, with a growing population of people over the age of 65 and a decrease in the percentage of children under 18 years of age⁷¹.

Table 1. Essential demographic and economic indicators for Serbia, Montenegro and Bosnia and Herzegovina

| Country | Year | Population | Number of children 0-18 | % children 0-18 | GDP in 2011. ¹ | Social welfare budget (% of GDP) ² | Area km ² |
|-------------------------------------|-------------------|------------|-------------------------|---------------------|---------------------------|---|------------------------|
| Republic of Serbia | 2011 ³ | 7,186,862 | 1,563,279 | 21.7% | 1,224 | 23.0 ⁴ | 88,361 km ² |
| Montenegro | 2011 | 625,266 | 145,126 ⁵ | 23.4% | 2,293 | 10.3 ⁶ | 13,812 km ² |
| Bosnia and Herzegovina ⁷ | 2012 ⁸ | 3,839,737 | 837,774 ⁹ | 21.8% ¹⁰ | 2,225 | 17.1 ¹¹ | 51,209km ² |

This is also illustrated by the results of the projections of the Serbian National Institute for Statistics⁷² for the period 2011–2041, which indicate that in the next thirty years population will continue to undergo the process of demographic aging. The percentage of young people is low and with a tendency to decrease, while the high proportion of the elderly continues to grow⁷³.

69 Law on the Ratification of the Convention of the United Nations on the Rights of the Child, *Official Gazette of the SFRJ — International Contracts*, no. 15/90, and the *Official Gazette of the SRJ — International Contracts*, no. 4/96 and 2/97.

70 In comparison with census data from eight years ago, Montenegro has 11,557 less children than in 2003.

71 Byrne, K. (2103) *Child Protection Situation Analysis. The North Western Balkans Context*. Save the Children.

72 National Institute for Statistics, Projection of the Population of Serbia 2011-2041. Published on 31 January 2014. <http://webzns.stat.gov.rs/VWebSite/public/PublicationView.aspx?pKey=41&pLevel=1&pubType=2&pubKey=2208>, visited on 04.02.2014.

73 According to the estimates, the percentage of population under 15 would drop from 14.4% to 11.7%, while the percentage of population over 65 would grow from 17.3% to 25.2%.

INSTITUTIONAL MECHANISMS AND DEVELOPMENT OF POLICIES FOR ALTERNATIVE CARE OF CHILDREN IN THE WESTERN BALKAN COUNTRIES

In accordance with the international standards, policies must be developed that guarantee complete and indivisible respect for the rights of the child, and their full implementation⁷⁴.

All three countries of the Western Balkans worked on developing and strengthening the **mechanisms of responsibility for the protection of human rights, including the rights of the child**. The greatest progress was made in the establishment of institutions for the protection of human rights. Office of the Ombudsman was founded in Serbia, with a Deputy responsible for the rights of the child and an Equality Officer in charge of discrimination against children; in Montenegro these roles are carried out by the Deputy Ombudsman⁷⁵. The Institution of the Human Rights Ombudsman of Bosnia and Herzegovina was established in 1995⁷⁶, and in the Republic of Srpska there also exists a Children's Ombudsman⁷⁷. Serbia also has two Assembly committees: Committee for the Rights of the Child and the Committee for Human and Minority Rights and Gender Equality; Montenegro has a Committee for Human Rights and Liberties working within the National Assembly of Montenegro.

Serbia, Bosnia and Herzegovina and Montenegro, following the recommendations from the document titled: "A World Fit for Children", have adopted **action plans for children**⁷⁸. Governments of these three countries established **special bodies for the monitoring of policies related to the rights of the child**, as follows: Serbia – Council for Child Rights⁷⁹, Montenegro Council for Child Rights⁸⁰, and Bosnia and Herzegovina Council for Children⁸¹.

The National Action Plan for Children 2004-2015⁸² is the first strategic document in Serbia

74 Paragraph 8 of the Guidelines.

75 Deputy Ombudsman for human rights and freedoms in charge of the rights of the child was appointed in July 2009.

76 <http://www.ombudsmen.gov.ba/Default.aspx?id=0&lang=SR>

77 The Council for Children was established in late 2002, with the aim of monitoring the implementation of the Action Plan for Children for the period 2002-2010. From its establishment, the Council for Children acted to enable close monitoring of child rights throughout the country and creation of relevant policies for overcoming challenges faced by children throughout BiH. This body ceased to exist in 2007 due to different interpretation of the Council's new competencies by entity ministries and, due to the current political situation, currently there doesn't exist a body responsible for monitoring the implementation of Government policies on the rights of the child in BiH.

78 In Serbia the National Action Plan for Children 2004-2015, in Montenegro the Action Plan for Children 2004-2010 and the newly adopted Action Plan for Children 2013-2017, and in BiH the Action Plan for Children 2011-2014.

79 The Council for Child Rights was founded by the Government of the Republic of Serbia in 2002 and it completed many of the tasks entrusted to it. The Council did not meet since March 2010 and efforts were made in January 2014 to reconvene it. By a decision of the Government, the Council was re-established on 29 January 2014 for a period of 4 years.

80 In 2007 the Government of Montenegro established the Council, with the main tasks of monitoring the implementation of the National Action Plan for Children, protection and promotion of child rights.

81 The Council for Children was established in late 2002, with the aim of monitoring the implementation of the Action Plan for Children for the period 2002-2010. From its establishment, the Council for Children acted to enable close monitoring of child rights throughout the country and creation of relevant policies for the children of BiH.

82 Adopted by a conclusion of the Government of the Republic of Serbia, 2004.

which emphasises the right of the child to grow in a family environment and indicates a need for deinstitutionalisation of alternative care for children and a gradual transition towards other forms of care that allow children to be raised in a family setting. Serbia, Bosnia and Herzegovina and Montenegro have adopted, at the state level as well as on the local level, strategic documents concerning social welfare. In Serbia this is the Strategy for Development of the Social Welfare System⁸³, in Montenegro the Strategy for Development of the Social and Child Welfare 2013-2017 with an Action Plan for the period 2013-2014, and the Strategy for the Development of Foster Care with an Action Plan for the period 2012–2016. BiH adopted the Strategy for Promotion of Social Welfare of Children without Parental Care with an Action Plan for the period 2009-2014 and the Welfare Policy for Children without Parental Care and Families at Risk of Separation in the Federation of Bosnia and Herzegovina (FBiH) 2006-2016. All above listed strategies and action plans promote the development of foster care and community services, support within the family, and some point towards the goals of the deinstitutionalisation process.

The Serbian Law on Social Welfare⁸⁴ from 2011, which incorporates all previously adopted policies, stipulates a series of legal solutions for the implementation of the rights of the child in the social welfare system. Since 2005 Serbia is systematically developing a normative framework which honours the right of the child to grow up within a biological – primarily parental family, achieved through developing services for supporting children and families at the local level. For children who, for whatever reason, cannot live with their parents either temporarily or for an extended period of time and for children without parents (who do not have living parents, or whose parents are unknown or missing), alternative forms of family care and other solutions are developed in order to secure continuity and stability in a safe and stimulating environment, and permanence for the child.

In addition to these activities, the general opinion is that in all three countries the visibility of children in policies adopted by the state remains at a low level⁸⁵, and the implementation of policies concerning the status and rights of the child proceeds with difficulties and without the necessary support. Also apparent is the lack of reliable statistical data that would allow monitoring of child rights, which greatly hinders the formulation and monitoring of child-related policies. It has been noted that much greater energy and resources are directed at formulating and adopting these policies than at their implementation. The key problems lie in inadequate mechanisms for the implementation and monitoring of policies, sometimes due to a lack of cooperation between different sectors or complicated relationships between central and local authorities, non-allocation and insufficiency of resources, lack of political resolve and unwillingness to change some of the key laws. Additionally, outdated and complicated public administration and insufficient number of technically competent staff in institutions responsible for designing or implementation of child-related policies, lack of public interest and weak and disoriented civil society complete this picture⁸⁶.

Both Serbia and Montenegro created strategic documents on the *deinstitutionalisation of child care facilities*. During 2000 **Serbia** started working on reforms of the social welfare system, where priority reform areas include issues such as development of alternative forms of care, establishment of standards for the *gatekeeping* mechanism, development of community services and inclusion of the non-governmental sector in service provision. Upon adoption of the Strategy for Development of the Social Welfare System a large number of day services were developed in numerous local

83 This document proclaims the “support and affirmation of the family as the best framework for protection of vulnerable groups” (Paragraph 2.3.2. of the Strategy).

84 Law on Social Welfare, *Official Gazette of the Republic of Serbia*, no. 24/11.

85 E.g. in Serbia, none of the 18 ministries, formed after the reconstruction of the Government in mid-2012, holds the responsibility for continuous monitoring or coordination of the implementation of the Convention and the word “child” is mentioned only once in the Law on Ministries which defines the jurisdictions of these Government institutions.

86 Byrne, K. (2103) *Child Protection Situation Analysis. The North Western Balkans Context*. Save the Children.

communities, especially in terms of services for children with disabilities and their families (day centres, assistance in the house, time-out care), shelters for women and children victims of family violence, abuse and neglect, programmes for work with street children, etc. The Ministry of Labour and Social Policy, with the assistance of UNICEF and other partners, developed a *Comprehensive Plan of Transformation of Social Welfare Institutions for Children 2009-2013* (so-called: *Master Plan*)⁸⁷ in order to attain strategic goals that were later built into the Law on Social Welfare. As part of reform activities different programmes were developed for strengthening and expansion of family-based care. Policies and procedures were developed for recruitment, evaluation, training, support, monitoring and financing of kinship and foster families.

In 2011, **Montenegro** created the strategic document titled *Master Plan for the Transformation of Child Welfare Services (for the reform of healthcare, education and social services for vulnerable children and their families)*. The document, which was never adopted, anticipated the development of a range of valuable and accessible activities and family- and community-based services, and the systematic closure of large children's institutions, while providing that each child receives alternative care suitable for his or her needs⁸⁸. The Protocol on Strengthening Inter-Sectoral Cooperation for the Prevention of Institutionalisation is currently in the final stages of preparation. This plan was prepared on the basis of results of the Strategic Review of the System of Caring for Vulnerable Children⁸⁹.

In **Bosnia and Herzegovina**, Policy on the Protection of Children Without Parental Care and Families at Risk of Separation in FBiH, 2006 -2016, Strategy for the Promotion of Social Welfare of Children Without Parental Care, with Action Plan, 2009-2014 and the Strategy for the Development of the Family in the Republic of Srpska for the period 2009-2014, are the entity documents emphasising the importance of the prevention of separation of children from their parents, modernisation of the social welfare system and services and the transformation of institutional children's homes, i.e. deinstitutionalisation. The deinstitutionalisation process has slowed down and one of the main reasons cited was the lack of funding that would accelerate this process⁹⁰. Funds for the implementation of the Policy in the Federation of Bosnia and Herzegovina, planned for the transformation of institutions and deinstitutionalisation, were allocated from the Federation Bosnia and Herzegovina budget for the first time in 2013, and in the amount insufficient for the deinstitutionalisation process⁹¹. Such decentralisation is seen as a major disadvantage in child welfare and implementation of the rights of the child. However, entity policies on children, laws that govern family law and social welfare and organisation and methodology used by centres for social work are relatively similar in all entities of Bosnia and Herzegovina.

87 Ministry of Labour and Social Policy (2009) *Comprehensive Plan of Transformation of Social Welfare Institutions for Children 2009 – 2013*, unpublished document.

88 The reform programme anticipated the creation of versatile health, education and social services throughout Montenegro, in order to replace the existing five institutions and close the children's section of the "Komanski most" Institute, as well as a plan for the return of children placed in different institutions in Serbia.

89 Mulheir, G., Velimirovic, M., Gyllensten, L. and Trebosc, L. (2011) *Strategic Review of the System of Caring for Vulnerable Children in Montenegro. Recommendations for the Reform of Health, Education and Social Services*, unpublished document.

90 *Care for me! Quality Care for every Child* (2013) *Assessment Tool for the Implementation of The UN Guidelines for the Alternative Care of Children*, Version 2.0, Final paper, updated 09/01/13 SOS Children's Villages International.

91 According to the *Overview of Alternative Care in Bosnia and Herzegovina* (2013), Page 16, funds in the amount of 75,000.00 KM were scheduled for this purpose.

MEASURES AND PROGRAMMES FOR THE PREVENTION OF SEPARATION OF CHILDREN FROM PARENTAL FAMILIES AND FOR FAMILY REUNIFICATION AFTER ALTERNATIVE CARE

Guidelines encourage countries to develop a complete set of preventive programmes aimed at preservation and strengthening of families. This includes support measures and services to families in order to prevent the abandonment of children, prevent placement of children in alternative care if the primary reason is poverty of the family, also to preclude placement of children in alternative care due to child's disabilities, provide care for children whose primary caretakers are imprisoned, and to ensure sustainable reintegration of children and their parents after alternative care.⁹²

The transition from institutional care to a system of continuous community care services is a complex and demanding process and it is important to note that not all countries start at the same point⁹³, however they don't have to create identical welfare systems. For a relatively short period in history institutions were considered the best form of care for children in need and at risk. However, it was undeniably proven that residential accommodation consistently produces less favourable outcomes for children in different aspects of their lives, than is the case with community based services. Scientific research proves that even a short period of institutionalisation may negatively impact brain development in younger children, and that it leaves lasting effects on their emotional development and behaviour. Therefore institutionalisation is progressively recognised as bad policy and violation of child rights, and has become subject of many instruments for the promotion of human rights⁹⁴.

The area of prevention of separation of the child from the family implies a review of legislation to confirm whether it actually prescribes specific measures and services for the prevention of separation of children, and how this legislation is implemented in practice. As the primary social welfare service in the local community and the authority responsible for guardianship, the Centre for Social Work (hereinafter: CSW) in all Western Balkan countries has the authority to provide assistance to all children whose life, health, safety and development are at risk, for any reason.

CSW personnel are qualified to undertake all necessary measures and services to protect the child within the family. The main child welfare measures and activities are aimed at strengthening the family and protecting the child. Interventions and measures for strengthening of the family consist of the following: financial assistance (monetary or in-kind), counselling for the child and parents, legal aid⁹⁵,

92 Paragraphs 8, 10, 23, 34, 38, etc. of the Guidelines.

93 Ad Hoc Expert Group on the Transition from Institutional to Community-based Care (2009), European Expert Group on the Transition from Institutional to Community-based Care (published 2012); Common European Guidelines on the Transition from Institutional to Community-based Care. These Guidelines were created on the basis of recommendations from the Report, Brussels: European Commission. Available at: http://deinstitutionalisationguide.eu/wp-content/uploads/2013/09/smernice_korigovane_pripredma.pdf, 28.05.2013.

94 Convention on the Rights of Disabled Persons, Convention on the Rights of the Child, European Convention on Human Rights.

95 Law on Social Welfare, *Official Gazette of the Republic of Serbia*, no. 24/11, Articles 40 and 81-111.

referral to other relevant community services and advocacy with those services⁹⁶, warning parents of their failings in exercising their parental rights⁹⁷. Very similar and at times identical provisions can be found in the legislation in Montenegro and BiH entities.

Actually, the CSW may, individually or simultaneously, undertake one or more measures and interventions aimed at strengthening of the family.

The Law on Social Welfare of the Republic of Serbia defines groups of social services⁹⁸. In addition to evaluation and planning, daily community services, services supporting independent living, counselling-therapy and social-education services there are services which provide support to families in crisis, counselling and support to biological, foster and adoptive parents, support to families in providing care for their child or adult members with disabilities, maintaining family relations and family reintegration, counselling and support in case of violence, as well as family therapy, mediation and other counselling and educational services and activities.

The area of social, family and child welfare in Bosnia and Herzegovina is under exclusive responsibilities of the two entities and Brčko District. This area is regulated by laws that specify financial assistance and direct social welfare support for different groups of children. Due to differences in legislation, the available types of rights and their enforcement are unevenly distributed across the territory of Bosnia and Herzegovina. The social welfare system is regulated by the laws of the Federation BiH and the cantons, Republic of Srpska and Brčko District of BiH.⁹⁹

Families with children using financial assistance in Serbia, Montenegro and Bosnia and Herzegovina

The Guidelines clearly state that financial poverty, or circumstances that can be directly or indirectly attributed to poverty, must never be the only or the main reason for the separation of a child from the family and placement of the child in alternative care, or an obstacle to the child's reunion with the family. Poverty should be viewed as a signal of the need to provide the family with appropriate support¹⁰⁰.

In all three observed countries the area of financial assistance is regulated by the law, mostly at the national level. In **Serbia** a number of local administrations provide additional one-off payments¹⁰¹ and other types of financial assistance¹⁰². Growing poverty, especially among families with children demands a long-term, planned intervention by the state, mainly in terms of providing employment for the users of financial assistance that are able to work, keeping in mind that the amounts received through such financial assistance are not sufficient to satisfy even the most basic needs of families with children.

96 Family Law, *Official Gazette of the Republic of Serbia*, no. 18/05, Article 80, Paragraph 2 and the Law of Social Welfare, *Official Gazette of the Republic of Serbia*, no. 24/11, Articles 69-70.

97 Family Law, *Official Gazette of the Republic of Serbia*, Article 80, Paragraph 1.

98 Law on Social Welfare, *Official Gazette of the Republic of Serbia*, no. 24/11, Article 40 Similar provisions are found in Article 61 of the Law on Social and Child Welfare of Montenegro.

99 *Care for me! Quality Care for every Child (2013) Assessment Tool for the Implementation of The UN Guidelines for the Alternative Care of Children, Version 2.0, Final paper, updated 09/01/13 SOS Children's Villages International.*

100 Paragraph 15 of the Guidelines.

101 These types of financial assistance are provided to families with children in all three countries, depending on the funds available in the local budgets.

102 Examples may be found in decisions reached by local administrations in Niš, Belgrade, Kragujevac, Jagodina and other towns concerning the social welfare rights and services.

In 2010, the social welfare expenditure amounted to 24.6% of GDP (of which 53.7% was dedicated to retirement pensions), and financial assistance for families and children amounted to 5.4% of the total welfare expenditure. The number of families using financial assistance – financial aid increased by 22% after the adoption of the new law (2011). Still, this right has a limited effect on poverty reduction as it can cover less than 50% of needs of an average family¹⁰³.

In Serbia, every fourth child receives child welfare allowance, financial assistance available to children from poor families and awarded after an evaluation of family income and property, but only for the first four children in the family. Families receive support through other financial assistance schemes, most often using benefits for new mothers, parental leave and newborn babies. As at October 2013, a total of 390,889 children were receiving child welfare allowance and the amount of individual monthly allowance was 2,568.07 Dinars for the regular allowance and 3,338.46 Dinars for the enhanced allowance^{104 105}. The UNICEF analysis of child welfare allowance from 2012 demonstrated poor targeting of users within this programme, although it covers 25 percent of all children in Serbia, because the allowance does not reach three of five children entitled to receive it¹⁰⁶. The allowance for external care and assistance (an allowance for care provided to an individual with disability by a third person) was granted to 3,178 children in Serbia in early 2013, and the enhanced allowance for external care (for children with severe disabilities) was granted to 3,379 children under the age of 18¹⁰⁷.

In late 2012¹⁰⁸ the right to monetary welfare assistance was used by 94,482 families, or 241,778 persons. Of the total number of families using monetary welfare assistance, the majority are families of 4 (14,804 families in total, with almost 60,000 members many of which are children). In Serbia, 92,139 children under the age of 18 are using monetary welfare assistance and the number of families using this type of assistance is on the rise, as in October 2013¹⁰⁹ there were 104,662 registered families using monetary welfare assistance.

According to data provided by the Ministry of Labour and Social Welfare, in April of 2013 in Montenegro there were 481 users of one-off payments for newborn children, 11,309 families with 21,659 children were using the child welfare allowance, there were 5,139 users of compensation for the birth of a child and half-time salary compensation for stay-at-home parents, and the right to rest and recreation benefit for children was used by 3,400 users, annually¹¹⁰. The amount of monthly child welfare allowance was 19.00 €; for a child with severe physical, mental or sensory disability, “able to achieve independent life and work”, 25.50 €; for a child with a severe physical, mental or sensory disability, “not able to achieve independent life and work” 31.80 € and for a child without parental care 31.80 €. The one-off payment for newborns amounted to 105 €¹¹¹.

103 Report on the implementation of the cooperation programme between the Government of the Republic of Serbia and UNICEF for the period 2011-2015 (2013), UNICEF office in Serbia, materials from the conference held on this topic in October 2013 in Belgrade.

104 Data provided by the Ministry of Labour, Employment and Social Policy, information system, October 2013.

105 Approximately 22€ for the regular and approx. 30€ for the enhanced child welfare allowance.

106 Matković, G. and Mijatović, B. (2012) Child Welfare Allowance Programme in Serbia. Evaluation and recommendations for improvement. Center for Liberal-Democratic Studies and UNICEF, Belgrade. Available at: http://www.clds.rs/newsite/Program%20decijih%20dodataka_final.pdf.

107 Data provided by the Ministry of Labour, Employment and Social Policy, information system, March 2013.

108 Data provided by the Ministry of Labour, Employment and Social Policy, information system, December 2012.

109 Data provided by the Ministry of Labour, Employment and Social Policy, information system, October 2013

110 The monthly amount of child welfare allowance was 19,00€; for a child with severe physical, mental or sensory disability able to achieve independent life and work, 25.50 €; for a child with severe physical, mental or sensory disability not able to achieve independent life and work 31.80 € and for a child without parental care 31.80 €. The one-off payment for newborns amounted to 105 €.

111 Operations Report for 2012, Ministry of Labour and Social Welfare (2013) Available at: <http://www.mrs.gov.me/informacije/planrada> visited on 04.02.2014.

For **Bosnia and Herzegovina**, in the Federation of BiH, The Law on the Principles of Social Protection, Protection of All Civilian Victims of War and Protection of Families with Children¹¹² stipulates the fundamental rights of families with children (child welfare allowance and salary compensation for working women-mothers during the period of pregnancy/maternity leave). This Federal law stipulates that the cantons will adopt their own legislation, however more than half of the cantons failed to do this, or adopted such legislation with long delays¹¹³, thus bringing a large number of children into disadvantage. Where laws were passed, child welfare allowance amounts are 10-33 KM¹¹⁴. Salary compensation for women (mothers) is mainly lower during pregnancy, childbirth and subsequent maternity leave than during regular employment. Financial assistance for unemployed mothers ranges from 10-20% of the average net salary. In the Republic of Srpska, the availability and support to families with children was improved and child welfare allowances for the second and fourth child amounted to 45 KM, and 100 KM for the third child. The first, fifth, etc. child are not eligible to receive child welfare allowance. However in early 2011 allowances for the child and mother were reduced by 30%¹¹⁵.

Although the area of financial assistance to families with children is relatively well regulated, along with budgetary allocations, children in all three countries are at an extremely high risk of poverty. In Serbia, data concerning the absolute poverty line¹¹⁶, which in 2010 was 9.2, and children under 13 were among the most vulnerable with 13.7¹¹⁷. The latest report by the National Institute for Statistics puts¹¹⁸ the poverty risk factor in 2012 at 24.6%. Children under 18 are most exposed to the risk of poverty (30.0%), and the highest risk factor is borne by households consisting of two adults with three or more dependent children (44%) as well as single parents with one or more dependent children (36.2%). By MONSTAT¹¹⁹ data, the poverty rate in Montenegro in 2012 was 11.3%, while in 2010 it was 6.6%. Another study¹²⁰ finds that children have higher poverty risk exposure (10%) than adults (6.1%), and every tenth child in Montenegro lives in poverty. Children under five are the most vulnerable, at 13%. A similar study¹²¹ in BiH shows the poverty rate among children of 19-22% in rural areas and 13% in urban areas. 18.9% of population, or one million citizens, live under the general poverty line. According to the same study from 2011¹²², almost every eleventh household in BiH with children under 16 years of age cannot provide the children with new clothes, and 2% of households are unable to provide three meals per day for their children.

112 Law on Principles of Social Protection, Protection of All Civilian Victims of War and Protection of Families with Children, *Official Gazette of FBiH* 36/99, Articles 89 and 103.

113 Law on principles of social protection in FBiH stipulates that the cantons must adopt their legislation within three months from the adoption of this law, in 1999.

114 From 5€ to almost 17€.

115 The Right to Social Protection in Bosnia and Herzegovina (2012) Concerns on Adequacy and Equality. OSCE, Mission to Bosnia and Herzegovina; <http://www.osce.org/bs/bih/107169>, visited on 14.01.2014.

116 http://www.inkluzija.gov.rs/?page_id=1490, visited on 04.02.2014.

117 http://www.inkluzija.gov.rs/?page_id=1490, visited on 04.02.2014.

118 National Institute for Statistics (Dec 2013) Announcement: Poverty and social inequality in the RS. This Announcement followed the Survey on Income and Living Conditions - SILC, after it was conducted for the first time in Serbia. <http://webrzs.stat.gov.rs/WebSite/public/PublicationView.aspx?pKey=41&pLevel=1&pubType=2&pubKey=2134>, visited on 04.02.2014.

119 <http://www.monstat.org/cg/page.php?id=193&pageid=73> visited on 02.02.2014.

120 IPSOS Poverty of Children in Montenegro, UNICEF (2012)

121 Survey on Consumption in Households in BiH 2007. Agency for Statistics of BiH, http://www.fzs.ba/Anketa/APD07_Siromastvo_bos.pdf.

122 Survey on Consumption in Households in BiH 2007. Agency for Statistics of BiH, http://www.bhas.ba/saopstenja/2014/BHAS_HBS_BH_dv5-2.pdf.

Community services available to children and families in Serbia, Montenegro and Bosnia and Herzegovina

It is necessary to develop services that can prevent separation of children from their parents and biological families, wherever possible. This requires a strategic approach that will prevent the placement of children in alternative care unless this is absolutely necessary. This includes development of strategies to combat poverty, strengthening child protection and welfare services, provision of community services capable of addressing the different needs of children and families, support to parenting and focused family services for families in special circumstances (families with children with disabilities, families in crisis, young parents, etc.)¹²³

There are some 15,600 civil associations in **Serbia**, and the results of the study conducted by the organisation Civic Initiatives¹²⁴ shows that as much as 52% of associations were established after 2000. The majority of associations are engaged in social services (27%). Research conducted by the Centre for Liberal-Democratic Studies (CLDS)¹²⁵ shows that 8.1% of the total population in Serbia uses social welfare services. However, availability of these services is not evenly distributed, it varies greatly and at the municipal level it ranges from 1.6% to 37.1%. Children (0-18, representing 19% of the population) account for 27.6% of the total number of users of CSW services in Serbia.

According to CLDS research, in 2012 social welfare services were offered in 138 of the total 145 local administrations (95%). Much progress was made in the recent years with regard to availability of services for the most vulnerable groups. From 2002 to 2009, the total number of users of day care services from all age groups more than tripled. In addition to day centres, other services for children are being developed, such as help in the house and 'time-out'¹²⁶.

In 2012, approximately 3.500 users were using services for children and youth with disabilities, however it is unclear whether and to what extent these overlap, i.e. how many users use 2 or all 3 services, so the total number of users should be treated with caution. Another thing to consider is that not all users of these services fall within the under-26 age group., However they represent 82% of the users. The state sector still dominates in the provision of these services. Day care and time-off services are almost equally provided by state and non-governmental providers, which may be explained by the fact that various NGOs, including associations of parents of children with disabilities, have a particularly strong interest in such services. New legislation in Serbia and Montenegro¹²⁷ explicitly lists non-governmental organisations as providers of social services and requires them to obtain licenses, work according to applicable standards and provide services in cooperation with, and in line with instructions provided by, the CSW case manager.

¹²³ Paragraphs 3, 9, 15, 32, 15, 32, 33 - 38 of the Guidelines.

¹²⁴ This research was conducted by the association Civic Initiatives in cooperation with the Civil Society Cooperation Office of the Government of the Republic of Serbia, with financial support from USAID and Institute for Sustainable Communities, and resulted in the first set of data on NGOs since the introduction of the new Law on Associations (2009). The research was carried out on a sample of 1,650 associations, from July to September 2011 and included 67 municipalities in Serbia and 13,375 associations. Available at <http://www.slideshare.net/ISCSerbia/stanje-u-civilnom-sektoru-istraivanje> visited on 16.12.2013.

¹²⁵ Mapping of Social Welfare Services at the local level (2013) Centre for Liberal-Democratic Studies with support from the Social Inclusion and Poverty Reduction Team and UNICEF. Report available at http://www.clds.rs/newsite/mapiranje_usluga_socijalne_zastite_izvestaj.pdf

¹²⁶ Day care, home assistance and respite services, as a group of services for children and youth with disabilities and their families, are offered in 94 of the total 145 local administrations in Serbia.

¹²⁷ Law on Social Welfare, *Official Gazette of the Republic of Serbia*, no. 24/11 and Law on Social and Child Welfare, *Official Gazette of Montenegro*, no. 27/13.

Research conducted during 2012 and 2013 by the Centre for Research in Social Policy and Social Work of the Faculty of Political Sciences at the University of Belgrade¹²⁸ monitored the use by children with disabilities and their families of community services available or supported in the 41 less-developed municipalities in Serbia, the advantages and disadvantages of such services and main benefits for the users from the user's perspective¹²⁹. Home assistance was used by 50.7% of children of parents included in the research, day care was used by 34.8%, and 14.5% families used multiple services in a flexible manner. The large majority of users (80%) were using these services for the first time.

The results indicated that these services produced the largest effects in families who needed them the most. In families whose quality of life was evaluated as low at the outset, the difference between the findings of the initial survey and the survey carried out one year later was two standard deviations. Use of these services contributed to a significant reduction in stress in parents who previously were under intense stress. Significant reduction in perceived stress was achieved mainly through the flexibility of using and combining services. At the same time, services had a lesser effect on parents whose stress seemed to originate from poor parenting skills. One of the major factors limiting the impact of services on stress reduction is the financial situation of families with children with disabilities. If the family is in a very poor financial situation, i.e. if they are unable to provide for the basic needs, services do not contribute to stress reduction in parents.

Parents are mostly satisfied with the services, however not with their participation and ability to influence the content and manner of service provision. However, children made progress and gained more from these services than was expected. Suggestions from parents mostly express the need to achieve sustainability of services for children with disabilities. These services are much needed, they are important and beneficial and have become an important support and aid in overcoming challenges typically faced by families of children with disabilities. At the same time, children perceived the service as part of their 'personal space' and 'world', allowing them to build autonomy and meaningful relationships outside the family and school. To a certain extent, children have the ability to influence the environment and activities within the services and to adapt them to their needs, primarily through negotiation with adults¹³⁰.

In **Montenegro**, by mid-2012 there were more than 5,000 active non-governmental organisations, however after the introduction of the Law on Non-governmental Organisations¹³¹ in 2011, this number was dramatically reduced. In the period 2012-2013, 275 services were available, provided by 173 providers to 26,861 users¹³². Most available were the services of social education and counselling/therapy (57.8%), and least available were the shelters (2.9%). Of the 173 service providers, majority were NGOs (80.9%). Municipal Red Cross organisations account for 9.8% and public institutions for 8%. Local administrations provide shelters and public kitchens for all socially vulnerable population categories. Available sub-types of child services were: day centres, home assistance,

128 Žegarac, N. Džamonja Ignjatović T. and Milanović, M. (2013) *Kada nam nedelja dolazi sredom: Usluge za decu sa smetnjama u razvoju i njihove porodice* [When Sunday Comes on a Wednesday: Services for Children with Disabilities and Their Families] Belgrade: Faculty of Political Science <http://www.fpn.bg.ac.rs/2013/12/06/nedelja-koja-dolazi-sredom/>

129 Research conducted in 33 of 41 municipalities, including a total of 358 parents of children with disabilities who were using services, surveyed at the start of using the services and one year later. In the qualitative part of the survey results were analysed from 9 focus groups that used semi-structured interviews, in which 49 parents participated, and participative research "Me in the centre" surveyed 20 children with disabilities aged 7 to 17 who were using the services.

130 Žegarac, N. Džamonja Ignjatović T. and Milanović, M. (2013) *Kada nam nedelja dolazi sredom: Usluge za decu sa smetnjama u razvoju i njihove porodice* [When Sunday Comes on a Wednesday: Services for Children with Disabilities and Their Families] Belgrade: Faculty of Political Science <http://www.fpn.bg.ac.rs/2013/12/06/nedelja-koja-dolazi-sredom/>

131 Law on Non-governmental Organisations, *Official Gazette of Montenegro*, no. 39/2011.

132 Mapping of Extra-Institutional Social Welfare Services in Montenegro. Taken from: <http://media.institut-alternativa.org/2013/12/mapiranje-usluga-socijalne-zastite-u-crnoj-gori.pdf>

personal assistance, creative workshops, counselling, education, therapy, SOS phone service, assistance with studying, mediation. There were 21 services available for young people. Services are mainly of social-educational in character, with emphasis on counselling and education, while services supporting community living included only supported living for youth without parental care. Budgetary allocations dedicated to social programmes amount to approximately 1.25% of total local administration budgets¹³³. Local administrations state that lack of financing represents a major obstacle to the development of community services.

In **Bosnia and Herzegovina** there is no reliable data on the number of civil society organisations. Some studies¹³⁴ estimate the number at 4,629 active organisations. A review of allocation of government funding to non-governmental organisations has shown that organisations involved in social welfare received just over 9%, and that the bulk of funding awarded to organisations was awarded without public tenders and transparency, without visible criteria¹³⁵. In terms of social welfare, there are no clear overviews of what is financed and how, therefore the contribution of civil society organisations in this area remains invisible. A clear summary of budgetary allocations for social welfare in Bosnia and Herzegovina does not exist¹³⁶.

Methodologically, the estimated number of NGOs in BiH in 2008¹³⁷ is 12,189 NGOs, operating in different areas. In comparison, in Serbia there are 18,119 registered NGOs, 11,326 in Macedonia and 3,454 in Montenegro, demonstrating that Bosnia and Herzegovina is one of the Western Balkan countries with the highest number of registered NGOs per capita. In the middle of the last decade NGOs provided services to 29% of Bosnia and Herzegovina citizens, and 60% of them operated at the local, municipal level. Majority of donors, especially international donors, do not place high priority on solving social issues.

Due to the lack of reliable information, it remains unclear which types of community services and of what size are provided mainly by non-governmental organisations (including religious organisations), and are available to children and families in various entities in Bosnia and Herzegovina. In this respect CSWs seem to be faced with outdated legislation and work methods, they are reliant on local (often scarce) resources, and lack inter-sectoral cooperation. This was also noted by the Committee on the Rights of the Child in their report from 2009¹³⁸, and recommendations were made to clarify procedures for child welfare and to promote cooperation between different departments at the local level. A number of reports indicate that even with all the difficulties, overload with large number of cases, insufficient staffing and unfamiliarity with modern methods of some of the available staff¹³⁹, the Centres in Bosnia and Herzegovina seem to be making the most out of the locally

133 Average funding for social programmes in local administrations amounts to 155,560.22€. Participation of the social budget in the total local budget ranges from 0.12% to 2.97%.

134 Civil society: Strategy for establishing supportive environment for developing self-sustainable civil society in Bosnia and Herzegovina, HTSPE Ltd and Kronauer Consulting, 2009.

135 Žeravčević, G. (2008) Analysis of Institutional Cooperation between Governmental and Non-Governmental Sectors in BiH, Sarajevo, Kronauer Consulting. http://www.delbih.ec.europa.eu/documents/delegacijaEU_2011121406573268eng.pdf

136 SeConS (2013) Comparative Analysis of the Role of Civil Society in Social Welfare Services in the Western Balkans. Belgrade: Arbeiter Samariter Bund.

137 http://www.ibhi.ba/cms/index.php?option=com_docman&task=doc_download&gid=131&Itemid=3&lang=hr, visited on 02.02.2014.

138 The First Periodic Report of Bosnia and Herzegovina on Its Implementation of the Convention on the Rights of the Child, 2009, Page 23.

139 *Care for me! Quality Care for every Child* (2013) Assessment Tool for the Implementation of The UN Guidelines for the Alternative Care of Children, Version 2.0, Final paper, updated 09/01/13 SOS Children's Villages International.

available resources¹⁴⁰ by using potentials and programmes offered by domestic and international non-governmental organisations aimed at the promotion of child and family services¹⁴¹.

Measures in support of deinstitutionalisation in Serbia, Montenegro and Bosnia and Herzegovina

The Guidelines encourage countries to develop their own path towards gradual and progressive deinstitutionalisation of alternative care. National policies and legislation should ensure that different, suitable forms of alternative care and alternatives to institutional care are available to children, with a range of different forms of family-based care¹⁴². This implies creation of national strategic deinstitutionalisation plans, measures for the prevention of placement of children in alternative care, prohibition of placement of young children in institutions, exit plans for already institutionalised children, development of a range of services and alternative forms of care, for example group-homes, small home communities, different forms of family-based care, support to kinship care, support to parental families and support for independent living of children and young people.

The first instance that parents of newborns with developmental delays come into contact with is the health system¹⁴³, therefore its role in the prevention of institutionalisation is of utmost importance. Trends from several years in **Serbia** point to the fact that, of all pre-school children under institutional care, more than 70% arrived directly from the birth clinics or specialised hospitals and departments. Mostly these are children with various health and developmental risks or previously diagnosed medical problems connected with developmental difficulties and disabilities later in life.

In **Montenegro**, research was carried out in 2011 on the participation of healthcare and social sectors in the process of institutionalisation of children¹⁴⁴. Research results demonstrate the need to strengthen the cooperation between health institutions and CSWs in order to provide support to families and prevent the institutionalisation of newborns. During 2012, joint training seminars were organised for health and service professionals in areas of social and child welfare and skills and know-how in supporting parents at risk of relinquishing or abandoning their newborn children.

Experiences and a review of health practices have shown that, with a predominantly medical approach to this issue, parents of newborns with disabilities do not receive adequate support and counselling. A practice of implicit encouragement of parents to place their child in an institution was recognised. When parents, regardless of the lack of support, decide to take home their newborn child with a disability, the service of in-home visiting nurses is extremely important in providing healthcare and counselling. It seems that the potential of this particular service, as an agent of social

140 Pobrić, B., Mujčinović, A. Drnda, Z. (2010) Study of the situation of vulnerable groups of children and policy framework and strategies that support the services of social welfare and inclusion of children in BiH: Strengthening Social Welfare and the Inclusion of Children in BiH. Sarajevo: INNOVA Management Consulting, http://www.unicef.org/bih/protection_inclusion_18720.html, visited on 23.05.2013.

141 For example, the organisation Hope & Homes for Children BiH has implemented numerous activities and programmes in several cantons and municipalities, in cooperation with the relevant Centres for Social Work in the areas of: deinstitutionalisation support, prevention of separation of children from families and reintegration of families – return of children back to the family after a period of alternative care, training of foster parents, establishment of the 'small family home' in Tenica (as a family-like residential care facility – up to 12 children living in a house in the community), support programmes for youth exiting alternative care, etc. <http://www.hhc.ba/index.php>, visited on 15.01.2014.

142 Paragraph 23 of the Guidelines.

143 Transformation of Residential Institutions for Children and the Development of Sustainable Alternatives – project brief – UNICEF text, visited on 17.12.2013 at: http://www.unicef.rs/files/ec_projekat_rezimet_final_srb.doc.

144 <http://www.vijesti.me/vijesti/svaka-peta-beba-bijelu-stize-direktno-porodilista-clanak-64536>, visited on 16.12.2013.

inclusion and linkage with other services and stakeholders in the local community, is not sufficiently recognised and utilised. As part of the project *A Child's Place is within the Family – Transformation of Residential Institutions for Children and Development of Sustainable Alternatives*¹⁴⁵, one of the components was the development of a functional model of support for parents of newborn children, in order to prevent a strictly medical approach and prevent institutionalisation. A Professional/Methodological Instruction was created for the implementation of the National Programme of Women, Children and Youth Healthcare¹⁴⁶ as well as Guidelines for counselling work with families of newborns with disabilities in healthcare institutions – *A Child's Place is within the Family*¹⁴⁷.

The data shows that in countries that developed support to mothers (families and children) at childbirth, in terms of presence of an appropriate expert in birth clinics who can provide support to the child and mother, the number of separations of children from mothers drops by up to 90%¹⁴⁸. Countries of the Western Balkans do not provide this type of support for mothers and their children.

In Serbia and Montenegro, during the reforms, different temporary or permanent administrative, legislative and developmental mechanisms were put in place in order to encourage the deinstitutionalisation process, with varying results. Some analyses show that the deinstitutionalisation process in Bosnia and Herzegovina has slowed down over the last few years, it is visible only in policy documents and few effective mechanisms and other resources were developed for its implementation¹⁴⁹¹⁵⁰.

Prior to the establishment of a gatekeeping system in centres for social work in **Serbia**, the Ministry of Labour, Employment and Social Policy attempted to use administrative measures to prevent the placement of children in institutional care. In November 2006 a document was introduced, titled *Measures for the elimination of irregularities in placing the children in residential institutions*¹⁵¹. All CSWs and residential institutions for children were required to obtain a written approval from the ministry for any institutional placement of children under 18, as well as to periodically review the need to keep children in institutions and to inform the ministry and social welfare institutes. The Measures prescribe the procedures and deadlines for obtaining Ministry approval and periodical reviews (every 3 months for children under 7 and 6 months for other children). Since February 2007, social welfare institutes (national and regional) monitor the implementation of these Measures and report their findings to the Ministry on a set schedule.

The Measures provided significant support to the deinstitutionalisation process in Serbia, together with parallel application of other mechanisms, training of social workers in CSWs, development of foster care and recruitment and training of a significant number of foster families, creation of the Master Plan for the transformation of institutions, etc. The effects are obvious, as in the period from 2000 (when the first reform projects started) until 2011 the total number of children in residential institutions fell by 48% (in 2000-3,554 and in 2011-1,854), and the total number of children and

145 The project was implemented by the Ministry of Labour and Social Policy with support from the European Commission and in partnership with the UNICEF Office in Serbia.

146 <http://www.imd.org.rs/files/strucno-metodolosko-uputstvo.pdf>

147 <http://www.cpd.org.rs/gallery/prirucnici.html>

148 Child Abandonment and its Prevention in Europe (2012). The European Commission's Daphne Programme (Directorate-General Justice), available at: <http://crin.org/docs/MANUAL%20OF%20GOOD%20PRACTICE.pdf>

149 *Care for me! Quality care for every child* (2013) Assessment Tool for the Implementation of the UN Guidelines for the Alternative Care of Children, Version 2.0, Final Paper, Updated 09/01/13 SOS Children's Villages International.

150 Byrne, K. (2103) *Child Protection Situation Analysis. The North Western Balkans Context*. Save the Children.

151 Measures for the elimination of irregularities in placing the children in residential institutions. Ministry of Labour and Social Policy, number 560-03-619/2006-14 dated 26 November 2006, available at: http://www.zavodsz.gov.rs/index.php?option=com_content&task=view&id=206&Itemid=167&lang=1250

youth with disabilities fell by 36% (in 2000-2,020 and in 2011-1,280)¹⁵².

However, the disadvantages of some of these mechanisms quickly became apparent as the number of children in shelters started to rise rapidly, as well as the length of their stay in these institutions, which indicated that “there is something wrong with the system, even in the middle of the reform”¹⁵³. Problems related to implementation of the Measures with regard to children with disabilities were the most obvious, as these children continued to be placed in residential institutions with the Ministry’s consent¹⁵⁴.

New services for family preservation and prevention of separation of children

The Guidelines indicate a need to implement effective measures for the prevention of abandonment, relinquishment and separation of children from their families. State, with its own capacities, civic society organizations, media and other relevant actors should work together on the development of family support measures. Family support measures should include: a) services aimed at strengthening of the family (education and workshops in parenting skills, promotion of positive relationships between parents and children, conflict management skills, employment opportunities, income generation and, where necessary, financial assistance); b) support services, such as (inclusive) kindergartens and day care centres, mediation and reconciliation services, treatment of addiction, financial assistance and services for parents of children with disabilities. Such services, preferably integrated with healthcare and education and based on voluntary participation, should be available in the local community and actively involve the child and the parents as partners¹⁵⁵.

Although the laws and all strategic documents in the Western Balkan countries make provisions for assistance and support to parents in order to prevent the separation of children from the family, to date this support was effectively reduced to occasional contact and counselling provided by social workers in CSWs to some families that were at risk of separation of children, and sporadic and generally inadequate financial assistance. In addition, the criteria and characteristics for determination of eligibility of a family for a certain type of support and intervention were never clearly defined. Not one of the three countries under observation adopted the laws or allocated the necessary funding for the prevention of separation of children from their families or for assistance in the reintegration of children and their families after alternative care, which is an explicit recommendation of the Guidelines¹⁵⁶.

One of the problems encountered in practice was the lack of readiness and willingness to establish flexible funds for assistance to these families, which, among other issues, face significant financial difficulties so that poverty complicates their situation and gives both parents and social workers

152 Ministry of Labour and Social Policy and UNICEF Office in Serbia (2011).

153 Čirić Milovanović, D. (2012) *Sklonjeni i zaboravljeni: Segregacija i zanemarivanje dece sa smetnjama u razvoju i odraslih osoba sa intelektualnim teškoćama u Srbiji* [Removed and Forgotten: Segregation and Neglect of Children with Developmental Difficulties and Adults with Intellectual Difficulties in Serbia]. Beograd: Inicijativa za prava osoba sa mentalnim invaliditetom MDRI-S, Page 55.

154 Republic Institute of Social Protection Belgrade, Evaluation reports on the implementation of the Measures available at: http://www.zavodsz.gov.rs/index.php?option=com_content&task=view&id=208&Itemid=138

155 Paragraph 34 of the Guidelines.

156 Paragraphs 24 of the Guidelines.

less space to 'manoeuvre'. According to a recent study^{157 158} which encompassed children placed in alternative care in Serbia in the period from 2006-2011 (period of intensive child welfare reform and deinstitutionalisation in Serbia), the families of children in alternative care are facing poverty and serious difficulties in providing for the most basic needs. Half of the families live in inadequate accommodation and more than 60% subsist on income insufficient for even the basic necessities. The reasons for separation of children indicate an accumulation of different factors, dominated by child neglect and poverty.

The development of community services lead to some innovative practices and new services and approaches to families with children at risk of separation. These approaches (for family preservation and reunification^{159 160}) work on encouraging the development, wellbeing and safety of the child in the family environment and provide flexible, intensive and timely support to the parents and the extended family, while relying on community resources.

Family assistant is the new service in **Serbia** introduced in 2013 in the form of a project, and currently treated as an *innovative practice*. The service aims to preserve families at risk and prevent the separation of children from parents or biological families, or to enable the reintegration of a child into his or her family after temporary placement in foster care or residential institution, and by its nature this service falls into the category of counselling/therapy and socio-educational services and treatment programmes¹⁶¹. The project is implemented in four cities: Belgrade, Kragujevac, Niš and Novi Sad, and includes 53 families with 118 children. The plan is for the families to use this service in a flexible and intensive manner for a maximum of six months¹⁶².

Users of the family assistant service are families with children which face serious poverty, challenges related to mental health or disability of the child or the parent – in other words, these families face multiple deprivations and have an acknowledged risk of child neglect. The service is provided by 16 family assistants with support from expert teams in their respective institutions. Families are selected by CSWs, which ensures that access to this service is provided to those who need it the most. The family assistant regularly visits the family and provides practical support in dealing with everyday challenges, resolving family disputes and problems, and mediates between the family and the community.

Beneficiary groups are families with children at moderate risk of child neglect or abuse, i.e. separation of children, or with notable risk of deterioration of the safety of children; families preparing for the return of their child and after the return of the child from alternative care, families that were subject to emergency interventions, in situations when the safety of the non-violent parent and the child is secured; families or parents subject to corrective supervision, as well as families or parents whose child was sentenced to reinforced parental supervision.

157 Žegarac, N. (ed.) (2014) *U lavirintu socijalne zaštite: puke istraživanja o deci na porodičnom i rezidencijalnom smeštaju* [In the labyrinth of social protection: lessons learnt from research on children in care]. Beograd: Fakultet političkih nauka i UNICEF.

158 Research carried out on a stratified random sample of case files from the population of 5155 children and youth under 18 placed in kinship foster care, foster families and residential alternative care institutions within the social welfare system from 1.06.2006 to 31.05.2011 and includes 347 children from 29 centres for social work in Serbia.

159 Barth, R., & Price, A. (2005) Shared Family Care: Child protection and family preservation. In J. Scott & H. Ward (Eds.), *Safeguarding and promoting the well-being of children, families and communities* (pp. 197-227). London: Jessica Kingsley Publishers.

160 Nelson, K., Walters, b. Schweitzer, D. Blythe, B. J. & Pecora, P. J. (2009) *A Ten-Year Review of Family Preservation Research: Building the Evidence Base*. Casey family program.

161 Law on Social Welfare, *Official Gazette of the Republic of Serbia*, no. 24/11, Article 40.

162 Project is supported by Novak Foundation and UNICEF office in Belgrade
http://www.gcsrbg.org/Magazin_Zivot_zajedno_broj%2011.pdf

Family conference¹⁶³ is a model of support to families in crisis. The concept is grounded in the traditional way of resolving family disputes, i.e. family gathering. It is organised in the form of a formal meeting, which in cases of family crisis and need for intervention brings together the family and members of its extended social network for the purpose of solving problems, survival of the family and wellbeing of its members. The main goal of the family conference is the preservation of the family as a whole, by returning to the family the responsibility for making decisions important for the future of its members. The family conference is always focused on the child (children), wellbeing and security of the child, regardless of the nature of the problem. Family conferences are usually organised in order to prevent the institutionalisation of children, although it has proven to be an effective model of welfare intervention for other target groups as well. A family conference is organised when the case manager (from the CSW) evaluates that the family has the capacity to deal with the problem independently, with support from the family network and organisations implementing this service¹⁶⁴. In Serbia this model was introduced in 2007 and is applied as an innovative practice since 2009. In the period from 2009 to 2012, the Association of Professionals for Children and Families Support - FICE Serbia, an organisation promoting this concept in Serbia, implemented three pilot projects with the goal to adapt the model in cooperation with the City CSW in Belgrade, for future use in Serbia. To date, training was provided to 200 professionals from the City CSW Belgrade, social welfare institutions and civil society organisations, in addition to the successful organisation of some 100 family conferences. This model is also applied in Bosnia and Herzegovina¹⁶⁵.

Since 2003 in **Bosnia and Herzegovina**, the British non-governmental organisation Hope and Homes for Children (HHC) is implementing the **Programme of Support to Families** in Canton Sarajevo. The work is focused on the **prevention of separation of children from biological parents and reunification** – return of children back to their parents or biological families after alternative care. Services are provided directly in the family home and encompass a flexible package consisting of financial assistance, assistance with housekeeping and organizing daily life, improvement of parenting skills, restructuring family dynamics towards more efficient models, establishment and improvement of contact with community services, etc. According to the organisation, these interventions had long-lasting and sustainable effects on the functioning of the family and the separation of children from parents was prevented in 98% of the families included in the programme¹⁶⁶. Also, of the 18 children in alternative care, 15 were successfully reintegrated into their biological family. From 2003 until the end of 2009, the programme assisted 459 children in 235 families.

Since 2008, SOS Children's Villages in Bosnia and Herzegovina have been implementing the **Family Strengthening Programme** in Sarajevo, Goražde and Mostar, with the objective to prevent the separation of children from parent families and improve quality of life and respect of the rights of the child in families that are, according to the Family Law and SOS documents, recognised as 'vulnerable'¹⁶⁷. In 2013, the programme assisted 535 children from 214 families¹⁶⁸.

163 http://www.ficesrbija.rs/?page_id=52

164 For example, if the case manager and the child's parent(s), through discussion of the family issue, agree that a family conference is a good way to plan the child's wellbeing and security, the case manager will connect the family with an organisation – service provider that organises family conferences.

165 In the Republic of Srpska, within the project *Family at Work*, implemented by the Association Family Network.

166 http://www.hhc.ba/index.php?option=com_content&task=view&id=44&Itemid=68.

167 SOS Children's Villages BiH; <http://www.sos-ds.ba/index.php?otvori=3&pod=16>, visited on 15.04.2014.

168 *Care for me! Quality Care for every Child* (2013) Assessment Tool for the Implementation of The UN Guidelines for the Alternative Care of Children, Version 2.0, Final paper, updated 09/01/13 SOS Children's Villages International.

THE GATEKEEPING MECHANISM

The countries must establish procedures for reviewing applications, referrals, assessment of needs and approval of alternative care for the child, provided that it is necessary and suitable. The competent department, equipped with a sufficient number of adequately educated professionals, acts as the gatekeeper and carries out the overall assessment, planning and review. The decision-making process must be documented and written plans prepared, detailing the objectives of alternative care and the timeframes for review. The work of these professionals must be supervised and evaluated, and they must be competent to carry out this role. The process of assessment, planning and review must include full participation of the child and the child's views must be taken into consideration in any decisions affecting him or her. Full participation of the child's parents and family must be ensured, and the child and his/her family should be supported in this process¹⁶⁹.

Gatekeeping services ensure that only those children who really need alternative care are placed in alternative care; they ensure accessibility of services to children with access difficulties as well as an individual approach to the needs of each child. Through application of basic principles (best interests of the child, participation, non-discrimination, quality of life, survival and development, early intervention, family support, institutionalisation as the last resort, regular periodic reviews of alternative care, preparation for exiting alternative care through reunification or other permanent solutions for the child), this mechanism aims to allow access to children in need of alternative care, while restricting access to alternative care, and to ensure that alternative care ends when the child no longer needs it.

Therefore, the gatekeeping mechanism must be operational not just at the intake stage but in all stages of service provision. The gatekeeping function in the whole Western Balkan region is provided by the CSWs, in their role of central institutions in the social welfare and child protection system. The CSW is an essential, polyvalent social service for children and youth, adults and the elderly, and the agency competent for decision-making in social welfare services. The centre is an agency that makes decisions about the needs, type and intensity of services and it is not possible to obtain any form of financial assistance, placement in an alternative care institution or foster family, or use any type of local service without prior assessment and decision of this agency. In addition, the CSW has an important role in guardianship – it acts as a guardianship authority on the municipal level in all ex-Yugoslav countries, except in Slovenia since 2010. This agency has specific responsibilities in the domain of local planning of social policy, monitoring social issues and participation in creation of new programmes and services in the local community. Besides procedural services, CSW provides some services directly to clients (counselling, mediation, evaluation of foster and adoptive families, in-home assistance, etc.). These circumstances directed systematic efforts towards consolidation of the gatekeeping mechanism into regular operations of the CSW. Basic components of a CSW are as follows:

- Intake and emergency intervention services;
- Assessment, planning, monitoring and coordination of services for children and youth, adults and the elderly;
- Interventions in legal protection of the family,

¹⁶⁹ Paragraphs 11, 12, 57 -68 of Guidelines.

- Financial assistance for social welfare, and
- Development of community services.

In the Republic of Serbia, the case management method started to be developed in 2002 and is progressively introduced in practice since 2006¹⁷⁰. Case management standards were introduced in the CSWs in Serbia in 2008¹⁷¹, and in Montenegro, after several years of consultations and preparations, the regulations were adopted in December of 2013¹⁷², with the aim to ensure the following: a holistic approach to the assessment of needs, strengths and risks faced by the child and the family, individual approach to planning of services and measures, introduction of the principle of planning for permanency in child welfare and participation from the users – children and parents.

According to this methodology, every user in the centre for social work is assigned to a dedicated case manager who is responsible for the initial assessment and organises further targeted and specialist assessments. The task of the case manager is to develop, in cooperation with the user, an individual plan of services, to gather up a multidisciplinary team for the user, arrange access to services, and monitor the progress and dynamics of the use of services and to evaluate the outcomes¹⁷³. The new work method is based on the modern concepts of social welfare practices which have adopted the social ecology and strength perspective, recognising the interconnectedness of family in community and individual needs of all members^{174 175}.

Modern models of practice stress the importance of forming a relationship between the professional, the parent and especially the child, based on respect, trust and open communication. Professionals are expected to have developed skills in various communication techniques and strategies to enable them to effectively work with families and children^{176 177}. This person is the case manager, who holds a key role in gatekeeping activities, including the assessment of the possibility to return the child to the parent family or his/her placement in another suitable family. The essential role of the case manager is to provide clear information about the process to the child and the parents, and to use his/her authority and responsibilities in the overall process of assessment and support to the child and family to maintain regular contact with the child and family and enable adequate use of the services^{178 179}.

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- 170 Decision on Testing of the Model Regulations on CSWs, dated 01.09.2007, 6 CSWs were included in pilot testing of the new work method and another 20 CSWs were added in Phase II. The Regulation came into force for all CSWs in Serbia in 2008.
- 171 Rulebook on organisation, norms and standards of work of centres for social work. *Official Gazette of Republic of Serbia*, no. 59/2008 and 37/2010.
- 172 Rulebook on organisation, norms, standards and manner of work of social welfare centres of Montenegro, *Official Gazette of Montenegro*, no. 58/13.
- 173 Žegarac, N. (2011) Dete sa smetnjama u razvoju u sistemu socijalne zaštite [Child with Developmental Difficulties in the Social Welfare System.] U: M. Mitić (ur.) *Deca sa smetnjama u razvoju – potrebe i podrška*. [Children with Developmental Difficulties – Needs and Support] Beograd: Republički zavod za socijalnu zaštitu, 47-55., str. 53.
- 174 Brown, J., Nolan, M., & Davies, S. (2001) Who's the expert? Redefining lay and professional relationships. In M. Nolan, S. Davies & G. Grant (Eds.) *Working with older people and their families*. Buckingham: Open University Press.
- 175 McDonald, C and Coventry, L. (2009) Uses and abuses of case management: A critical analysis of contemporary practices in E. Moore (ed.) *Case Management for Community Practice*, Oxford University Press, Melbourne, pp. 414-435.
- 176 Ferguson, H. (2011) *Child Protection Practice*. Basingstoke: Palgrave Macmillan.
- 177 Keigher, S. M. (2000) Communication in the Evolving World of Case Management. *Health and Social Work*, 25, 227-231.
- 178 Bilson, A. and Cox, P. (2007) Caring about poverty. Alternatives to institutional care for children in poverty. *Journal of Children and Poverty*, 13:1, 37-55
- 179 United Nations Children's Fund (2013) *Children under the age of three in formal care in Eastern Europe and Central Asia: A rights-based regional situation analysis*. http://www.unicef.org/UNICEF_Report_Children_Under_3_FINAL.pdf, visited on 10.01. 2013.

The gatekeeping practice in Serbia and Montenegro prior to social welfare reforms

Research and analyses that preceded the social reform in Serbia indicated that the social welfare system suffers from flaws in all three key aspects of protection of children without parental care: preparation for alternative care, monitoring children during alternative care, and preparation for leaving care¹⁸⁰. The results pointed to dominance of management and legal procedures and excessive teamwork with an prevalent medical approach to social welfare. This affected the assessment process, cooperation with users and resulted in treatment of everyday life problems as pathologies and separation of children from their families¹⁸¹.

Also, one review of child welfare practices in Serbia carried out in 2002¹⁸² indicated that the practice of planning was underdeveloped, as the so-called 'protection plan' often contained a to-do list for professionals, while the strategy of the intervention often remained unclear and unrecorded. At the same time, the plans were mainly 'open-ended', without a specified timeframe and delegation of duties, and the parents, or family, were rarely involved in the creation of the plan. This is also true for the children and youth, who were rarely engaged in the process. Also, once the decision is reached to remove the child from the family, the majority of efforts were directed at maintaining alternative care and solving legal issues (especially property interests). No record was made of strategies for maintaining family or kinship bonds or the reintegration of the family. 'Protection plans' in institutions dealt with practical issues (health, schooling, recreation) and contact with the family was not considered.

The 2011 analysis of the child welfare system in Montenegro indicated that CSWs have large workloads but lack formal methodological instructions for prioritisation of cases, case management or closing of cases, therefore once 'opened' the case was effectively never closed. The review of cases indicated that social welfare services use a reactive approach, belated and ineffective interventions. Recommendations in this regard included the establishment of an operational gatekeeping mechanism¹⁸³.

Another analysis of the operation of CSWs in Montenegro¹⁸⁴ indicated the lack of guidelines and methodology for different aspects of practice (intake, assessment, planning, documentation, organisation of work, etc.). Reviews of case files and reports from professional teams dealing with welfare and protection of children and youth have shown that appropriate documentation and clear chronology of events and interventions is often missing.

The practice of preparing individual welfare plans for children in alternative care, introduced in 2008, somewhat improved the situation as all children now have an individual report from the pedagogue from residential institution and an individual plan, however the work of CSWs remains insufficiently visible. The individual welfare plan for children in alternative care is revised every six months and from 2010 the Ministry increased their efforts on reviewing plans for children in residential institutions. A review of several individual plans from case files has shown that the plans are mainly formal, they

180 Kuzmanović, B. i sar. (2002) *Deca bez roditeljskog staranja*. [Children without parental care]. Beograd: Institut za psihologiju.

181 Žegarac, N. (2002) Standardizacija funkcija ili funkcionalna standardizacija – prilog redefinisaju pristupa socijalnoj zaštiti dece. [Standardization of functions or functional standardization – redefining the approach to social welfare for children] *Socijalna misao*, br. 4.

182 VanDissel, E. (2002) Report from the Re-evaluation of Cases of Children Placed in Social Welfare Institutions for Children Without Parental Care. CARE/UNICEF social welfare project.

183 Mulheir, G., Velimirovic, M., Gyllensten, L. and Trebosch, L. (2011) Strategic Review of the System of Caring for Vulnerable Children in Montenegro. Recommendations for the Reform of Health, Education and Social Services, unpublished document.

184 Žegarac, N. (2011) Izveštaj o kapacitetima centara za socijalni rad u Crnoj Gori. Izazovi i mogućnosti reorganizacije, standardizacije i unapređenja stručne prakse. [Report on the capacities of centres for social work in Montenegro. Challenges and opportunities for reorganisation, standardisation and improvements of professional practice]. UNICEF, office in Podgorica. Unpublished document.

do not engage users or members of their family, and have no defined objectives or timeframes. The child and parent, i.e. family members, are not involved in the planning process but this is not visible in the written documents.

The centres also fail to carry out a needs assessment for the child once the child is placed in alternative care, and the majority of efforts seem to be directed at maintaining alternative care arrangements. Recurring, periodical reviews are not visible in the documentation – once the opinion is given and a decision reached, according to the same study, it becomes hard to revise. After an assessment and a formal opinion, the manner and organisation of further work with the user is unclear.

The results of these reviews and studies have been introduced, through their inclusion in the relevant laws and by-laws, into practice in the CSWs in Serbia in 2008 and only recently in Montenegro, in December 2013.

The gatekeeping practice in Bosnia and Herzegovina

Same as in Serbia and Montenegro, the gatekeeping practice in Bosnia and Herzegovina is entrusted to CSW which also perform the guardianship role, representing a legacy from the practices used in social and child protection in ex-Yugoslavia. They are in charge of counselling and support to families aimed at prevention of separation of children, assessment of the ‘most suitable form of protection’ and creation of the ‘alternative care plan’. Such solutions, with minor differences, are present in all Bosnia and Herzegovina entities^{185 186} (an exception exists in the Law on Social Welfare of the Republic of Srpska, where the plan, in addition to the CSW and the body appointed as guardian, may be created by the court)¹⁸⁷. According to a survey carried out by SOS Children’s Villages BiH, the majority of centres for social work (84%) indicate that a ‘mixed team of professionals’ is engaged on determining the most suitable form of protection and the ‘protection plan’, and in some situations the decision is made by the relevant ministry (14%). Also, the decision to change the form of alternative care for the child is usually made upon review by the CSW, except in the case of adoption when this falls under the authority of the relevant entity ministry. The reviews in Bosnia and Herzegovina are apparently conducted annually, and a balanced system for reviewing different forms of alternative care apparently does not exist¹⁸⁸.

According to the available data, Bosnia and Herzegovina does not appear to have clear procedures or methodological guidelines regarding the prioritisation of work, assessment of needs, strengths, safety and risks, determination of suitable (least restrictive) solutions which includes alternative care modalities, as well as planning, evaluation, review and closure of the entire work cycle.

It appears that the centres for social work in Bosnia and Herzegovina still use a version of the so-called ‘teamwork’ methodology developed in the 1980s in former Yugoslavia. This methodology included a ‘multidisciplinary team’, usually consisting of a social worker, pedagogue and psychologist (and possibly a lawyer) who, within the CSW and without consultation with community services, focused mainly on ‘diagnostics’ and a category-based approach (work with children without parental care, children with disabilities, children with behavioural problems, etc. so children who wouldn’t ‘nicely fit into a category’ often remained unrecognised). This approach remained within the medical

185 Law on Social Welfare, *Official Gazette of the Brčko District BiH* 4/00, 1/03, 4/04, 19/07, Article 51

186 Law on the Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children, *Official Gazette FBiH*, no. 36/99, 54/04, 39/06, 14/09, Article 33.

187 Law on Social Welfare, *Official Gazette of the Republic of Srpska*, no. 37/12, Article 38.

188 *Care for me! Quality Care for every Child* (2013) Assessment Tool for the Implementation of The UN Guidelines for the Alternative Care of Children, Version 2.0, Final paper, updated 09/01/13 SOS Children’s Villages International.

model of practice, where the problem is defined by professionals (and mainly reduced to the level of individual or family pathologies) without general perspective and utilisation of individual, family and community strength and risk factors, and with a strictly passive role of the child and the family.

Reformed procedures for intake, assessment and care in Serbia and Montenegro

The intake procedure is regulated in detail by the Regulation on CSWs in Serbia and Montenegro. The intake procedure includes reception of verbal and written information, requests and reports from users, citizens and professionals from other services, institutions and organisations. The information is evaluated for relevance and completed with other information that can be obtained from available sources. Each request is evaluated and categorised as 'immediate' (immediate reaction, organise an emergency intervention within 24 hours), 'urgent' (start working with the user and family no later than 3 days from receipt of the request) or 'regular' (start working with the user and family no later than 7 days from receipt of the request), the requesting party is provided with complete information and advice; if required he/she may be referred to another institution or provided with relevant feedback. If the intake officer opens the case, it is then forwarded to the appointed case manager.

The assessment model is child-centred and includes assessment of three interrelated aspects: the needs of the child, the ability of parent(s) to address those needs and family and environmental factors affecting the parent's capacities and the child's needs^{189 190 191}, which should provide a "balanced, in-depth perspective of the essential features of the child's situation: needs, strengths, existing or potential risks, resilience and protection factors"¹⁹².

In the initial phase of working with the child and family, **within the initial assessment**, it is necessary to collect a series of details that will guide further efforts with the child and family, and which will be supplemented by focused assessments. The initial assessment is made within 7 days from opening the case, or some 15 days after the CSW first learned of the case¹⁹³ and it includes the following:

- Observation and conversation with the child and all other children in the household,
- Observation and conversation with members of the family,
- Direct observation of the living conditions of the child and family,
- Collection and analysis of available information from different sources.

Focused assessment is performed after the initial assessment in all cases where the child is removed from the family¹⁹⁴ and placed in alternative care. It may take up to 30 days from the start of work on the case. The deadline may be extended by another 30 days with permission from the supervisor. The focused assessment often involves an more comprehensive, in-depth, team- based or specialist assessment of the target areas.

189 Bentovim, A., Cox A., Bingley Miller, L., and Pizzey, S (2009) *Safeguarding Children Living with Trauma and Family Violence. Evidence-Based Assessment, Analysis and Planning Interventions*. London: Jessica Kingsley Publishers.

190 Horwath, J. (2009) *The Child's World: The Comprehensive Guide to Assessing Children in Need*. 2nd edition. London: Jessica Kingsley Publishers.

191 Holland, S. (2011) *Child and Family Assessment in Social Work Practice*, 2nd edition. London: Sage Publications

192 Žegarac, N. (2011) Dete sa smetnjama u razvoju u sistemu socijalne zaštite [Child with Developmental Difficulties in the Social Welfare System.] U: M. Mitić (ur.) *Deca sa smetnjama u razvoju – potrebe i podrška*. [Children with Developmental Difficulties – Needs and Support]. Beograd: Republički zavod za socijalnu zaštitu, 47-55., str. 53.

193 Rulebook on organisation, norms and standards of work of centres for social work. *Official Gazette of Republic of Serbia*, no. 59/2008 and 37/2010, and 1/12, Article 55.

194 Rulebook on organisation, norms, standards and manner of work of social welfare centres, *Official Gazette of Montenegro*, no. 58/13, Article 61.

Reformed procedures for defining objectives of alternative care and creation of individual plans in Serbia and Montenegro

Regulations in Serbia and Montenegro stipulate that the **Initial Plan** must be created no later than 15 days after the start of work with the child and family, in order to define the direction of work and provide the initial package of measures and services as soon as possible¹⁹⁵.

After the Initial Plan and no later than 60 days after the start of work with the child and family, the **plan of services and measures for the family with the plan for permanence for the child (Family plan of services)** must be prepared in all instances when there is a need for continued provision of services and measures. Such situations exist when the child is removed from the parent family and placed in alternative care. This plan specifies the measures for legal protection in accordance with the opinion of the guardianship authority and the case manager form CSW have to, together with other community services and members of the family, make all reasonable efforts to keep the child with the parents, to prevent or remove any circumstances that would require separation of the child, or make all efforts to provide conditions suitable for the child's reunion with the family¹⁹⁶.

Permanence plan for the child is a part of the family plan of services¹⁹⁷ and requires formulation of permanence goals and actions required to reach those goals. The permanence plan specifies the date (month and year) by which one of the following permanence goals will be reached, in accordance with the best interest of the child:

- Child remains with the parents (both or one parent);
- Child returns to the parent family;
- Child is placed in the care of a relative, foster caregiver or guardian (implying that the relative or foster caregiver assumes guardianship and lifelong care for the child, not just provide accommodation for the child);
- Child is adopted;
- Other permanent living arrangements for young persons, leading to independence.

The Regulation stipulates that the plan must include activities to allow the child to exercise his/her right to maintain personal relationships¹⁹⁸ with parents, relatives and other significant persons.

Visitation and contact plan for parents and other family members to a child in alternative care is a component of the family plan of services and should establish adequate visits and contact between the child and other members of the family, representing the foundation for work on family reunion. The Regulations on CSWs stipulate that the visitation plan for parents to children in alternative care should specify the frequency and type of contact (supervised or unsupervised)¹⁹⁹.

195 Rulebook on organisation, norms and standards of work of centres for social work. *Official Gazette of Republic of Serbia*, no. 59/2008 and 37/2010 and 1/12, Article 69, and Rulebook on organisation, norms, standards and manner of work of social welfare centres of Montenegro, *Official Gazette of Montenegro*, no. 58/13, Article 43.

196 Rulebook on organisation, norms and standards of work of centres for social work. *Official Gazette of Republic of Serbia*, no. 59/2008 and 37/2010, 1/12, Article 70, and the Rulebook on organisation, norms, standards and manner of work of social welfare centre, *Official Gazette of Montenegro*, no. 58/13, 3, Article 45.

197 Rulebook on organisation, norms and standards of work of centres for social work. *Official Gazette of Republic of Serbia*, no. 59/2008 and 37/2010, 1/12, Article 71, and the Rulebook on organisation, norms, standards and manner of work of social welfare centres, *Official Gazette of Montenegro*, no. 58/13, Article 45.

198 Convention on the Rights of the Child, UN (1989), Article 9 and the Family Law, *Official Gazette of Republic of Serbia*, no. 18/05, Article 61.

199 Rulebook on organisation, norms and standards of work of centres for social work. *Official Gazette of Republic of Serbia*, no. 59/2008 and 37/2010, 39/11 and 1/12, Article 7 and Rulebook on organisation, norms, standards and manner of work of social welfare centres, *Official Gazette of Montenegro*, no. 58/13, Article 46.

Contacts are recorded in the user file and the case manager notifies the parents and family members about the rules and limitations of these visits and records any events and decisions in the user file.

The Regulations also stipulate that children, i.e. youth in alternative care (who do not live with their parents), including young people living with relatives, guardians, foster families and in residential institutions and other youth who in the process of assessment and during their use of services are identified as in need of emancipation support, and no later than age 14, should receive a plan for leaving care and emancipation²⁰⁰.

The Regulation on Centres for Social Work defines the requirements for contact with users²⁰¹. They specify that contact with a child receiving services outside his/her home (therefore a child in alternative care, regardless of the type of care) implies at least one immediate contact during the first month after separation from the family, and at least three times per year after that. It is also specified that the contact with the child is done with the child alone and at least once a year the contact should include an observation of the place where the child lives, and all contacts of the case manager with the user must be recorded in the appropriate document in the user's case file. In addition, children will receive visits from family care counsellors²⁰².

Reformed procedures for review of alternative care arrangements in Serbia and Montenegro

States should ensure the right of any child who has been placed in temporary care to regular and thorough review – preferably at least every three months – of the appropriateness of his/her care and treatment, taking into account, notably, his/her personal development and any changing needs, developments in his/her family environment, and the suitability and necessity of the current placement in these circumstances. The review should be carried out by duly qualified and authorized persons, and should fully involve the child and all relevant persons in the child's life²⁰³.

The review is scheduled to take place every six months, to reassess the situation and needs of the child and the reasons for placement in alternative care. In the period of intense reforms and during full implementation of the *Measures for the elimination of irregularities in placing the children in residential institutions*²⁰⁴, from 2006 to 2010, for children under the age of 3 years such reviews were carried out every three months.

The regulations stipulate that for all children separated from their parent families, permanence plans must be reviewed no later than 12 months after their creation and consideration should be given to additional measures and adequate actions to provide permanency for the child. The regulations also stipulate obligatory participation of the child, parents and other persons close to the child in the assessment, planning and review proceedings, recording and reporting requirements, etc.

200 Rulebook on organisation, norms and standards of work of centres for social work. *Official Gazette of Republic of Serbia*, no. 59/2008 and 37/2010 and 1/12, Article 75 and Rulebook on organisation, norms, standards and manner of work of social welfare centres, *Official Gazette of Montenegro*, no. 58/, Article 47.

201 Rulebook on organisation, norms and standards of work of centres for social work. *Official Gazette of Republic of Serbia*, no. 59/2008 and 37/2010 and 1/12, Article 76, and Rulebook on organisation, norms, standards and manner of work of social welfare centres, *Official Gazette of Montenegro*, no. 58/, Article 49.

202 Rulebook on Foster Care, *Official Gazette of the Republic of Serbia*, no. 36/08, Article 6, Paragraph 1, Item 6.

203 Paragraph 67 of the Guidelines.

204 Ministry of Labour and Social Policy of the Republic of Serbia (2006) Measures for the elimination of irregularities in placing the children in residential institutions, document number: 560-03-619/2006-14, dated 3. 11. 2006.

Implementation of newly introduced procedures for alternative care of children

Research and analyses of the implementation of new standards in the work of centres for social work are scarce. A recent study conducted by the University of Belgrade in cooperation with UNICEF²⁰⁵ included data on the total population of children in foster and residential care who entered alternative care arrangements in the period from June 2006 - June 2011²⁰⁶, as well as data collected from case files on a representative stratified random sample of children placed in alternative care in the period under observation. The results indicated that in almost half of the families no measures were taken to attempt to keep the child with the family and that professional staff of the CSW during contacts (probably contacts during the assessment of needs) attempt to provide counselling to the parents, while they have less contact with the children, extended family and other significant persons. Financial assistance was provided to approximately one third of the families, while in-kind assistance, especially assistance offered for house repair and household equipment, is used almost sporadically. This structure of CSW interventions is surprising, considering the extremely unfavourable financial status and living conditions of the families that, according to statements of CSW staff, put the child at risk. Only 5% of children were referred to some of the available community services as a means of support and prevention of separation.

CSWs, according to study results, attempted to provide assistance and support to keep the child with the family for an insufficiently long period of time (60.5% of children were placed in alternative care in the first year of working with them, more than 70% of which in the first two months following first contact). It appears that the resources in the child's family network are not utilised in order to provide the least restrictive environment for the child (only 14% of sampled children were placed in kinship family care, 74% in non-related family-based care and other children in institutions). The other parent or the child's relatives often were not contacted or, in other cases, were evaluated as 'inadequate', 'disinterested' or 'lacking financial means'. CSWs failed to contact 1/3 of the relatives of children in alternative care, probably producing the low proportion of children under kinship care in Serbia (12-14%).

Children and parents often were not prepared for separation and alternative care (approximately 40%), while more than half of children (approx. 60%) do not have a plan for contact with parents, relatives and other significant persons. Approximately the same percentage of children still maintain such contacts, mainly with some relatives and court decisions regulating or banning contact are rare. The research has shown that case files of children in alternative care lack a significant amount of information about the characteristics of the child, parents and circumstances of family life relevant for understanding needs, risk assessment, decisions on initial and subsequent interventions by the CSW. Individualisation of documentation was evaluated unfavourably (almost half of the assessments and two thirds of the plans prepared by the CSWs for children in alternative care were evaluated as 'non-individualised'). These results demonstrate the serious challenges faced by CSW personnel in maintaining records in accordance with newly introduced standards, resulting from objective and subjective, external and internal causes. In addition to the challenges of accepting new procedures and practices, there are contradictory requirements, parallel and unconnected management of various documents related to professional activities, management procedures, office routines and cost reimbursements, all without an appropriate information system and greatly increasing an already enormous scope of work for professional staff in centres for social work.

205 Žegarac, N. (ed.) (2014) *U lavirintu socijalne zaštite: puke istraživanja o deci na porodičnom i rezidencijalnom smeštaju* [In the labyrinth of social protection: lessons learnt from research on children in care]. Beograd: Fakultet političkih nauka i UNICEF.

206 This period is significant as it includes the period of intense reform activities in the social welfare system in Serbia and intensive deinstitutionalisation in child welfare.

CAPACITIES FOR ALTERNATIVE CARE OF CHILDREN IN THE COUNTRIES OF THE WESTERN BALKANS

According to the Guidelines, a range of alternative care forms must be developed to ensure suitable and least restrictive care for children, where such care is suitable, necessary and constructive in a given moment. In this case the priority is given to family-based and community-based forms of alternative care²⁰⁷.

At the municipal level in **Serbia**, the authority and responsibility for the welfare of children without parental care lies with centres for social work. There are 140 CSWs and they provide good geographical coverage. The work of these centres is standardised and supervised by the Ministry of Labour, Employment and Social Policy²⁰⁸. Centres for foster care and adoption²⁰⁹ are responsible for the selection, evaluation and training of potential foster families as well as for capacity building, regular monitoring of children in alternative care and foster caregivers and they closely cooperate with the CSW where the appointed case manager monitors the child. In early 2014 there were five regional centres for foster care and adoption in Serbia, with a total of 106 employees, of which 73 are professional staff²¹⁰.

There are 19 residential institutions for children and youth in Serbia, three of which are for children with behavioural difficulties and five for children with disabilities. Five institutions have specialised departments for children with complex disabilities (during the transformation of institutions these were transformed into 'small home communities' with up to 12 children). Serbia has no private institutions for children at this time. Most institutions have a maximum capacity of 48 children, as stipulated by the law²¹¹, and six institutions can accommodate between 100 and 250 children²¹². The majority of children with moderate, severe, profound and combined disabilities are still placed in large institutions. Also, three institutions which still accept new children users, have departments for adults with intellectual difficulties. In addition to alternative care services, during the transformation the majority of institutions started to provide some local services to their communities, such as shelters, day care, supported living or time-off services. This practice greatly contributed to the opening of institutions towards the community and improvement of the position of children.

The territory of **Montenegro** is covered with a network of 10 centres for social work, of which seven are inter-municipal centres with 11 dislocated services/departments and three municipal centres. This situation did not provide equal access to services for all citizens and is not in accordance

207 Paragraphs 21, 29 and 53 of the Guidelines.

208 Rulebook on organisation, norms and standards of work of centres for social work. *Official Gazette of Republic of Serbia*, no. 59/08, 37/10, 39/11 i 1/12.

209 Founded in 2008 in Belgrade and in 2011 in Čuprija, Kragujevac and Niš. Residential children's homes in Čuprija and Kragujevac have been closed and the Home in Niš has reduced capacities. Another such centre exists in Miloševac and there are a total of 4 in the territory of Serbia proper.

210 Three more foster care and adoption centres are planned in the territory of Vojvodina, where there are currently approximately 1,600 foster families.

211 Bylaw on on the Network of Social Welfare Institutions, *Official Gazette of the Republic of Serbia*, no. 16/12 and 12/13.

212 The Law on Social Welfare limits the capacity of children's residential institutions to 50 children.

with the strategic objective of decentralisation of the social welfare system. Notable difficulties in terms of access to services are noted in the central part of the Republic that is covered with CSW services/departments that greatly rely on their head offices. A broad reform of the CSW is under way, in terms of their reorganisation, standardisation and introduction of modern work methods²¹³. In December 2013 a decision was reached to expand the CSW network and now there are 11 centres and 14 dislocated services/departments. Alternative formal care in Montenegro is arranged in public institutions for social and child welfare established by the state. The single institution for children without parental care is Children's Home "Mladost" in Bijela, with the capacity for 160 children. This home accommodates children and youth aged 0 - 24²¹⁴. In Podgorica there is the Centre for Children and Youth "Ljubović", operating as a shelter and treatment centre for children with behavioural difficulties. Children that cannot be placed in institutions in Montenegro are institutionalised outside of Montenegro (in 2013, 30 children were placed in homes in Serbia and 1 in Bosnia and Herzegovina)²¹⁵.

The Public Institute "Komanski most" in Podgorica started operation in mid-1970's as a residential institution for children and youth with moderate, severe and profound intellectual disabilities. Due to the fact that an 'exit' system was never created for such institutions, the Institute became an institution for adults with "serious limitations in social functioning due to mental disabilities or other combined disabilities"²¹⁶. Since 2006 the Institute is not accepting children and a number of children were removed from this institution after the *Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*²¹⁷. According to the available data, at the end of 2013 four children remain in this institution.

Montenegro does not have dedicated services for family-based alternative care, however in 2013 a number of professional CSW staff was trained to carry out specialised work on selection, assessment, training, monitoring and professional support to foster caregivers and children in alternative care.

In **Bosnia and Herzegovina** there are 117 municipal centres for social work, 72 in the Federation BiH and 45 in the Republic of Srpska, where since 2009 there are 17 dislocated social welfare services acting in support of municipalities, and in Brčko District the competent authority is the Sub-department for Social Welfare – Centre for Social Work. In the territory of Bosnia and Herzegovina, the work and services of CSWs and the method of recording the number of children without parental care are not standardised²¹⁸. Although major variances have not been noted in (predominantly reactive, medical) methods and approach to work with children and families.

Social welfare institutions exist at the entity level (so-called homes for children and youth without parental care) and provide direct services and institutional care for this group of children. There are 12 institutions in the Federation that primarily provide care for children without parental care

213 Žegarac, N. (2011) Izvještaj o kapacitetima centara za socijalni rad u Crnoj Gori. Izazovi i mogućnosti reorganizacije, standardizacije i unapređenja stručne prakse. [Report on the capacities of centres for social work in Montenegro. Challenges and opportunities for reorganisation, standardisation and improvements of professional practice]. UNICEF, office in Podgorica. Unpublished document.

214 The unusual aspect of this institution is that it includes a modern hotel facility "Villa Jadranska straža"/Villa Adriatic Guard/ with a four star rating where a certain number of children in care receive training in tourism and catering vocations. All proceeds from the operation of the hotel go to the Home budget.

215 Strategy for the Development of Social and Child Protection in Montenegro 2013-2017, adopted in 2013, data relates to mid-2013. <http://webcache.googleusercontent.com/search?q=cache:CXzAJo3YUdQJ:www.mrs.gov.me/ResourceManager/FileDownload.aspx%3Frid%3D130948%26rType%3D2+&cd=1&hl=sr&ct=clnk&gl=rs>, visited on 16.12.2013.

216 <http://juzkomanskimost.me/>, visited on 23.01.2014.

217 Report to the Government of Montenegro on the visit to Montenegro carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), published in September 2008.

218 *Care for me! Quality Care for every Child* (2013) Assessment Tool for the Implementation of The UN Guidelines for the Alternative Care of Children, Version 2.0, Final paper, updated 09/01/13 SOS Children's Villages International.

and 10 institutions that primarily provide care for children in “other categories”, however some children without parental care are present. In the Republic of Srpska, as at early 2014, there is one public institution for children without parental care (“Rada Vranješević”), and there are no residential children’s institutions in Brčko District (children from Brčko District are most often placed in institutions in the Federation and Republic of Srpska). Available capacities and actual number of resident children without parental care are not known, however all institutions can accommodate more than 15 children. Children’s Home in Tuzla, for example, has the capacity of 137 and accommodates children aged 0-18; the Home also houses a shelter. This institution is certainly different from, for example, Children’s Centre “Duga” with its capacity of 24 children, providing care for children aged 0 - 6, and with a significantly different ratio of children and employees compared to the Children’s Home in Tuzla²¹⁹. In terms of alternative care for children with disabilities in Bosnia and Herzegovina, due to poorly developed community services these children are placed in large residential institutions that often accommodate adults as well (in some places these were referred to as “institutions for permanent care”). It appears that the dominant view is that this is the ‘only’ solution for persons with serious disabilities and persons with multiple disabilities. Rare studies indicate that children and adults with intellectual disabilities who remain at home usually face extreme isolation²²⁰.

The Special Report of the Ombudsman in BiH on the situation in institutions for intellectually disabled persons provides data concerning the number of children found in the institutions during an inspection of the situation in institutions carried out in 2010²²¹. Children are placed in large institutions, with capacities between 200 and 500 users. For example:

- Home for Children and Youth with Developmental Disabilities “Prijeđor“, at the time of the visit had 211 users, of which 30 were children;
- The Institute “Drin” had approximately 520 users, primarily persons with severe and profound conditions, psychiatric patients and perpetrators of severe criminal acts, and 60-70 children of all ages and with different conditions.
- The Institute for the Protection of Children and Youth in Pazarić, at the time of the Ombudsman’s visit had 384 users, of which 20 were minors;
- The Institute in Višegrad has a maximum capacity of approximately 190 persons and during the visit it housed 150 users, of which 20 were aged 10-18.

Actually, all categories of users were found in all institutions, due to the fact that there is no systematic placement in alternative care and the arrangements, especially in Federation BiH, are made on the principle of ‘availability’, which greatly depends on the decision of the director of the institution. Centres for social work here do not function as gatekeepers because there are waiting lists for institutional placement and the ‘needs’ (due to underdeveloped community services) are greater than the available capacities. Alternative care arrangements are, in the opinion of the Ombudsman, arbitrary and subjective.

219 <http://www.google.rs/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=2&ved=0CDgQFjAB&url=http%3A%2F%2Fwww.ficesrbija.rs%2Fsee%2Fwp-content%2Fuploads%2F2011%2F07%2FPrezentacija-Portreta-Domova.pps&ei=OnPzUpWuCqjoywO72ILAAQ&usg=AFQjCNFOWWzwwqBZSHB4kRiRgCthU9ioUg>, visited on 06. 02. 2014.

220 Adams, L. (2008) *The right to life in the community: Realisation of this right for persons with intellectual disability in Bosnia and Herzegovina, Montenegro, Serbia and Kosovo*. Disability Monitor Initiative. Handicap international Regional Office for South East Europe.

221 Special report on the situation of human rights in institutions for accommodation of mentally disabled persons in BiH, November 2010. http://www.ombudsmen.gov.ba/documents/obudsmen_doc2013020401071133bos.pdf, visited on 15. 12 2013.

Concerning innovative forms of alternative care in Bosnia and Hercegovina, the Republic of Srpska has formed so-called **social-pedagogical living communities**, treated as a form of foster care by the family law. This form of family-type alternative care²²² implies that an actual family from the community is provided with a house, and in addition to own children the family integrates three, up a maximum of five, children and takes care of them until they achieve independence or exit alternative care. Caregivers are prepared and educated, their work is monitored and supported by the professional staff from CSWs. Caregivers mutually connect, creating a support network, which further contributes to the quality of care and promoting fostering and family-based alternative care of children.²²³

222 Social-pedagogical communities were introduced to the social welfare system through a project funded by the Government of Switzerland, through the Swiss Agency for Development and Cooperation (DEZA) and in cooperation with the Ministry of Health and Social Welfare of the Republic of Srpska and municipalities of Banja Luka, Laktaši, Gradiška and Novi Grad.

223 *Care for me! Quality Care for every Child* (2013) Assessment Tool for the Implementation of The UN Guidelines for the Alternative Care of Children, Version 2.0, Final paper, updated 09/01/13 SOS Children's Villages International.

AVAILABILITY OF DIFFERENT FORMS OF ALTERNATIVE CARE

In order to provide continuity of community services capable of addressing the needs of children, countries must make a state-level commitment to provide each child with adequate, individualised, quality care. Children must have access to competent, supervised short (urgent), respite, short-term and long-term care. Care must be taken to avoid frequent changing of alternative care arrangements as it disrupts the child's development and ability to create intimate bonds. Children in alternative care must have permanency through reunification with the parent or biological (kinship) family in the shortest time possible, or be provided with an alternative stable family environment or residential care, when this type of care is necessary, constructive and suitable²²⁴.

Table 2. Parallel overview of children in various forms of alternative care in Western Balkan countries, from 2000 to 2012.

| YEAR | 2000 | | | 2005 | | | 2010 | | | 2012 | | |
|------------------|--------------------|-------------------|------|--------------------|---------------------------|-------|--------------------|-------------------|------|--------------------|-----|----------------------------|
| COUNTRY | RS | MN | BiH* | RS | MN | BiH | RS | MN | BiH | RS | MN | BiH |
| Guardianship** | 5713 ¹² | / | 4998 | 6214 ¹³ | 192 *** | 10853 | 6162 | 203 | 2355 | 5999 ¹⁴ | 207 | 1190 |
| Adoption | 169 ¹⁵ | / | 177 | 123 ¹⁶ | 11 *** | 83 | 106 | 5 | 58 | 108 ¹⁷ | 7 | 67 |
| Residential care | 2672 ¹⁸ | 151 ¹⁹ | 644 | 2264 ²⁰ | 169 ²¹ **** | 669 | 1106 ²² | 156 ²³ | 527 | 1117 ²⁴ | 122 | 977 ²⁵ ***** |
| Family care | 2098 | 243**** | 1066 | 3145 | 270 *** | 941 | 5130 | 313 | 640 | 5828 | 321 | 522 |

* Data for BiH is for the year 2001²²⁵

** Guardianship includes data for children under guardianship in Serbia and Montenegro, and in BiH children under guardianship due to special circumstances.

*** Data for Montenegro is for the year 2008

**** Data for Montenegro is for the year 2006²²⁶

*****Data for BiH is for the year 2011.

224 Paragraphs 29, 53-54 and 60 of the Guidelines.

225 *Care for me! Quality care for every child* (2013) Assessment Tool for the Implementation of the UN Guidelines for the Alternative Care of Children, Version 2.0, Final paper, updated 09/01/13 sos Children's Villages International.

226 Available at: <http://www.monstat.org/cg/page.php?id=80&pageid=80>, visited on 01.12.2013.

Table 2 displays the number of children in different forms of alternative care in the three observed countries, according to all available data. It is important to note that some children are likely to be reported under multiple categories. That is, a number of children in alternative care is under guardianship, the majority of adopted children resided in residential or family care placements for one year prior to adoption, and were under guardianship throughout that time.

Guardianship, as a form of legal family protection, is on the rise in the observed period in Serbia. However there was a major change in the work practices of CSWs which now use temporary guardianship measures much more frequently than before. The number of temporary guardianships doubled after the introduction of the Family Law in 2005.²²⁷ In 2012 in Serbia, 3,133 children were under temporary guardianship at some point and temporary guardianship became an almost routine procedure in the separation of a child from the family. The majority of guardians are relatives (38.51%), and CSW staff are appointed as direct guardians to a significant number of children and youths (25.5%)²²⁸. In Montenegro, the number of children and youth under guardianship is mostly stable and a noticeable fact is that some 1/3 of the children in alternative care are not under guardianship, which requires further investigation. In Bosnia and Herzegovina there was a sharp increase in the number of children under guardianship in 2005, which then sharply decreased, and in 2012 the number of children under guardianship is 4 times less than in 2000, the first year of the observed period.

Adoption is the least frequent form in all three countries, and in the observed period there is a notable downward trend in the number of adopted children. Almost one third of the children enter alternative care under the age of three (and often immediately after birth) and then remain in alternative care for a long period, most often until they come of age (children with disabilities sometimes remain in care for life), and such rare use of this form of alternative care cannot be justified and illustrates the necessity of further study.

The number of children in **residential care** in the observed period has a slight downward trend in Montenegro. In Bosnia and Herzegovina as well the number of institutionalised children is falling (for children without parental care). However it is unlikely that the actual number of children in residential care was reduced as, when children with developmental delays are also taken into consideration, the total number of children in residential institutions in BiH was 977 in 2011. In Serbia the number of children in residential care halved in the period 2000-2012.

Family-based care (family-type) has undergone an expansion in Serbia and the number of children placed in kinship or professional foster families almost tripled. The number of children in family-based care in Montenegro is mainly stable. In BiH, the number of children in foster families fell by 1/3 in the observed period.

Evaluation of data from Serbia allows an estimate that 900-1000 children under the age of 18 who are under guardianship (just under 10%), are not in some form of alternative care. These children are probably without parental care, under guardianship, they live within their biological families with relatives who are also their guardians, with annual supervision and support of CSW, as required. Data available for the other two countries is insufficient to make this type of estimate.

227 Analysis of the data from centres for social work in 2006, Ministry of Labour and Social Welfare of Republic of Serbia.

228 Synthesized report on the work of centres for social work in 2012 in Serbia, Republic Institute of Social Protection Belgrade, <http://www.zavodsz.gov.rs/PDF/izvestajoradu2013/IZVESTAJ%20CSR%202012%20FINI.pdf>

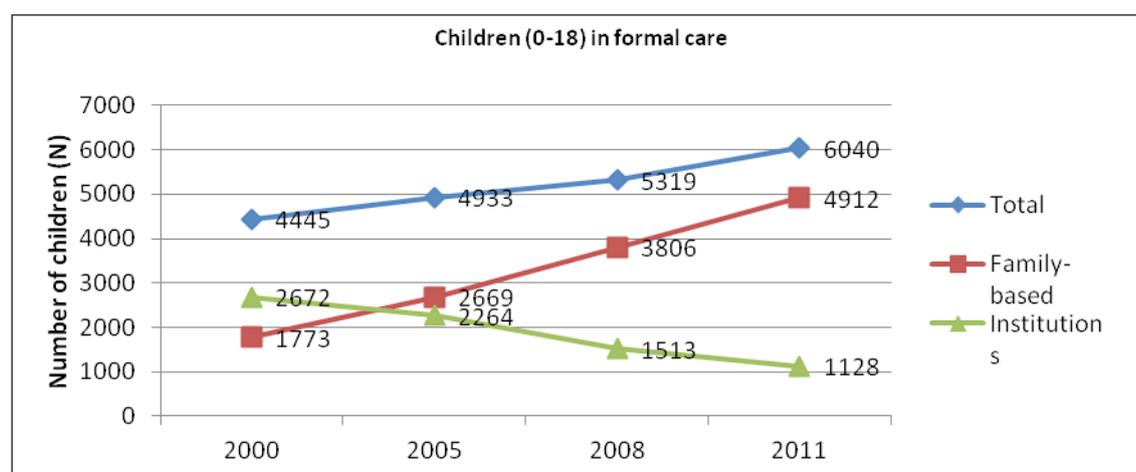
Deinstitutionalisation and development of family-based care in Serbia

Within the reform activities in **Serbia** different programmes were developed to strengthen and expand family-based care. Policies were developed for recruitment, evaluation, training, support, monitoring and financing of kinship and non-related (professional) foster families. Significant results were achieved in deinstitutionalisation and transformation of social welfare institutions for children and youth. A large number of children were placed in foster and kinship families: of 6,040 children in formal care in 2011, four fifths of children under 18, or 81.9% of children, are in family-based care²²⁹. The total number of children and youth (0-26) in family-based care in Serbia increased 2.8 times in the period from 2000 to 2011 (Table 3 and Diagram 2).

Table 3. Children and youth in formal care in Serbia from 2000 to 2011²³⁰

| | 2000 | | | | 2005 | | | | 2008 | | | | 2011 | | | |
|----------|--------------|----|-------------------|----|--------------|----|-------------------|----|--------------|----|-------------------|----|--------------|----|-------------------|----|
| | Institutions | | Family-based care | | Institutions | | Family-based care | | Institutions | | Family-based care | | Institutions | | Family-based care | |
| | N | % | N | % | N | % | N | % | N | % | N | % | N | % | N | % |
| 0-18 | 2672 | 60 | 1773 | 40 | 2264 | 46 | 2699 | 54 | 1513 | 28 | 3806 | 72 | 1128 | 19 | 4912 | 81 |
| Subtotal | 4445 | | 80.5% | | 4963 | | 81.2% | | 5319 | | 81.1% | | 6040 | | 81.9% | |
| 19-26 | 882 | 82 | 188 | 18 | 842 | 73 | 307 | 27 | 818 | 66 | 423 | 34 | 726 | 55 | 603 | 45 |
| Subtotal | 1070 | | 19.4% | | 1149 | | 18.8% | | 1241 | | 18.9% | | 1329 | | 18.0% | |
| Total | 3554 | 64 | 1961 | 36 | 3106 | 51 | 3006 | 49 | 2331 | 36 | 4229 | 64 | 1854 | 25 | 5515 | 75 |
| Total | 5515 | | | | 6112 | | | | 6560 | | | | 7369 | | | |

Diagram 2. Children (0-18) in formal care in Serbia from 2000 to 2011²³¹



229 Data from the Ministry of Labour, Employment and Social Policy of the Republic of Serbia, 2011.

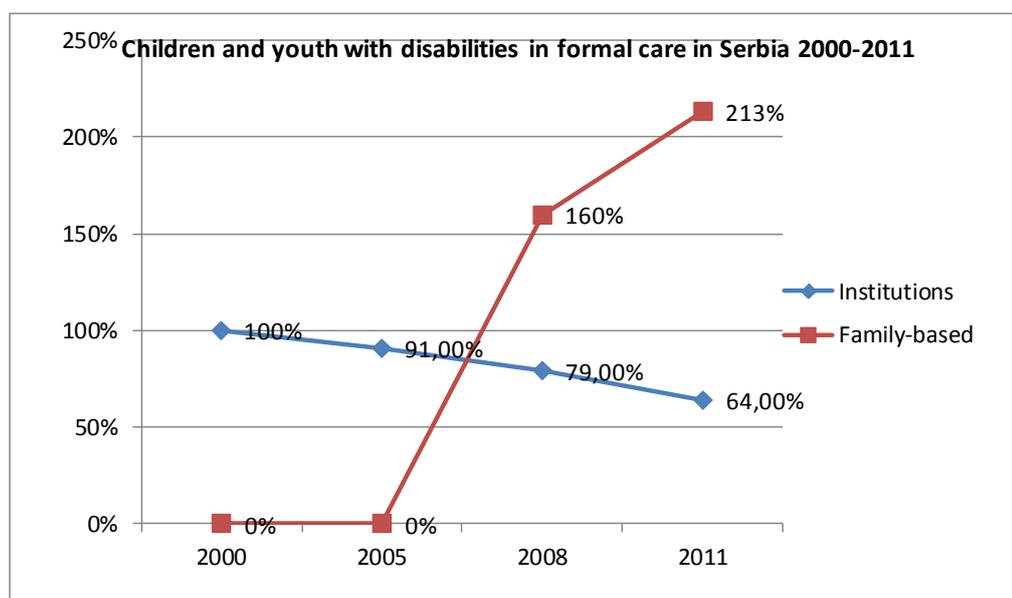
230 Data from the Ministry of Labour, Employment and Social Policy of Republic of Serbia, 2011.

231 Data from the Ministry of Labour, Employment and Social Policy of Republic of Serbia, 2011.

In Serbia, in the period from 2000 to 2011, the total number of children and youth (0-26) in institutional care was reduced by 48% and for children with disabilities by 30%. If we consider only children (0-18) in institutions, the total number was reduced by 58% and the proportion of children with disabilities in institutions in 2011 (N=697) is 47% lower than in 2000 (N=1322).

The number of children and youth with disabilities in foster care continues to grow. Since 2005 this number has doubled. At the same time the number of children and youth with disabilities is falling (Diagram 3).

Diagram 3. Children and youth with disabilities in formal care in Serbia from 2000 to 2011²³²



According to the results of a study carried out by the Faculty of Political Sciences and UNICEF²³³, in the period 2006-2011 in Serbia a total of 5,155 children entered foster, kinship or residential care. There is a notable upward trend in the number of children entering alternative care (26.9% since 2007). The results indicate that 8 of 1000 children in Serbia enter alternative care. The numbers greatly vary between municipalities, from 1-30 per 1000 children, indicating uneven practices in different CSWs. A quarter of all children entering alternative care placements are aged 0-2, representing the largest group. At the same time, children aged 15 and older least frequently enter alternative care. There is an increase in the number of children in alternative care, especially very young children, growth of family-based care and significant successes in the prevention of placement of children into residential institutions as well as deinstitutionalisation. The majority of children (76.4%) are placed in non-relative foster families and the remaining children are placed in kinship families or institutionalised. The fact that only 12% of children in the observed period were placed in kinship care raises concerns, since it is significantly below the average of many developed countries²³⁴ and neighbouring countries that are not considered developed countries.

232 Ministry of Labour and Social Policy of the Republic of Serbia, 2011.

233 Žegarac, N. (ed.) (2014) *U lavirintu socijalne zaštite: puke istraživanja o deci na porodičnom i rezidencijalnom smeštaju [In the labyrinth of social protection: lessons learnt from research on children in care]*. Beograd: Fakultet političkih nauka i UNICEF.

234 Thoburn, J. (2009) *Reunification of children in out-of-home care to birth parents or relatives: a synthesis of the evidence on processes, practice and outcomes*. Expertise für das Projekt: Pflegekinderhilfe in Deutschland, Deutsches Jugendinstitut.

Deinstitutionalisation and development of family-based care in Montenegro

Each year in **Montenegro** an average of 114 children are placed in residential care, including children with multiple stays in the two available shelters in Montenegro. This estimation is derived from the average number of placements in all institutions in the period 2007-2010²³⁵.

The number of children placed in alternative care in the only large children's institution in Montenegro (Children's Home "Mladost" in Bijela) from 2008 to 2012 was slightly reduced, while the number of children with disabilities and developmental difficulties in this institution grew slightly. Since no children were admitted to the "Komanski most" Institute since 2008, children with disabilities (usually severe and multiple) are usually placed in one of the institutions in Serbia and recently in Bosnia and Herzegovina. According to the available data, in 2012, 32 children from Montenegro were placed in institutions outside of their home country. This is a practice that requires adequate planning of the development of appropriate services for children with severe and multiple disabilities.

Table 4. Children in institutional care in the Children's Home "Mladost", Bijela, 2008-2012²³⁶

| Number of children/Year | 2008 | | 2009 | | 2010 | | 2011 | | 2012 | |
|-------------------------|-------------------|----------------------|-------------------|----------------------|-------------------|----------------------|-------------------|----------------------|-------------------|----------------------|
| | With disabilities | Without disabilities |
| No. of children aged <3 | 1 | 27 | 2 | 21 | 0 | 36 | 1 | 18 | 0 | 20 |
| No. of children aged 3+ | 18 | 129 | 21 | 109 | 27 | 91 | 30 | 68 | 31 | 71 |
| Total | 19 | 156 | 23 | 130 | 27 | 127 | 31 | 86 | 31 | 91 |
| Total/Year | 175 | | 153 | | 154 | | 117 | | 122 | |

Table 5. Children from Montenegro placed in institutions in Serbia and BiH, 2007-2012

| | 2007 | | 2008 | | 2009 | | 2010 | | 2011 | | 2012 | |
|--------------|-----------|-----|-----------|-----|-----------|-----|-----------|-----|-----------|-----|-----------|-----|
| | Srbija | BiH |
| Per year | 24 | 0 | 25 | 0 | 25 | 0 | 26 | 0 | 27 | 2 | 30 | 2 |
| Total | 24 | | 25 | | 25 | | 26 | | 29 | | 32 | |

Montenegro is facing a long-term deficiency in foster care, especially by families not related to the child. One of the priorities of the reform efforts is to increase the number of children in foster care, together with a reduction in the number of institutionalised children. It appears that CSWs use the benefit of family solidarity and relatively often place children in kinship care (foster care by relatives). So in 2012, 307 children were placed in 220 related families. At the same time, there were only 10 professional foster families which provided care for only 14 children. The number of children in family-based care grew by 18% (N=51) in the period 2008 - 2012, and in the same period a slight increase was noted in professional, non-relative, foster families (from 6 to 14). The number of children with disabilities in family-based care is noticeably low (4%, N=13, in 2012). An interesting fact is that unlike other children, children with disabilities are almost equally represented in kinship

235 Master Plan for the Transformation of Child Protection Services (for the Reform of Healthcare, Educational and Social Services for Children At Risk and Their Families) (2011), unpublished document.

236 UNICEF, office in Podgorica, December 2013.

and other foster care families. Data is also available for children and single parents in family-based care in Montenegro (32 children and 6 single parents in 2012). The accuracy of this data is not certain, as there is still no uniform recording system or an adequate information system that would collate the information about children in alternative care in Montenegro²³⁷.

Table 6. Children in family-based care in Montenegro (*kinship and foster care*) 2008-2012²³⁸

| | 2008 | | 2009 | | 2010 | | 2011 | | 2012 | |
|--|--------------------|-----------------|-------------------|-----------------|------------------|------------------|------------------|-----------------|------------------|-----------------|
| | Kinship | Foster | Kinship | Foster | Kinship | Foster | Kinship | Foster | Kinship | Foster |
| By year | 264 | 6 | 274 | 6 | 304 | 9 | 317 | 12 | 307 | 14 |
| Total | 270 | | 280 | | 313 | | 329 | | 321 | |
| CHILDREN WITH DISABILITIES IN FOSTER CARE | | | | | | | | | | |
| By year | 6 | 2 | 9 | 2 | 9 | 5 | 10 | 5 | 7 | 6 |
| Total | 8 | | 11 | | 14 | | 15 | | 13 | |
| FOSTER FAMILIES | | | | | | | | | | |
| By year | 201 | 5 | 208 | 7 | 229 | 5 | 229 | 9 | 220 | 10 |
| Total | 206 | | 215 | | 234 | | 238 | | 230 | |
| CHILDREN (C) AND SINGLE PARENTS (SP) IN FAMILY-BASED CARE | | | | | | | | | | |
| By year | 10 (C) n/a (SP) | 5 (C) 2 (SP) | 14 (C) NP (SP) | 5 (C) 3 (SP) | 23 (C) 2 (SP) | 6 (C) 11 (SP) | 25 (C) 3 (SP) | 8 (C) 7 (SP) | 26 (C) 3 (SP) | 6 (C) 3 (SP) |
| Total | 15 (C) & 2 (SP) | | 19 (C) & 3 (SP) | | 29 (C) & 13 (SP) | | 33 (C) & 10 (SP) | | 32 (C) & 6 (SP) | |

Professional staff from CSWs indicated in direct discussions that the interest of general public in foster care and adoption is extremely low, which was confirmed by a public survey carried out in Montenegro in 2013²³⁹. The results show a mostly positive general attitude towards foster care and adoption and the dominant opinion is that replacement families unrelated to the child can provide everything that the child would otherwise have in his/her biological family. In terms of acceptability of children with different characteristics, the majority of surveyed citizens were not willing to provide care for a child whose parents are imprisoned or addicted to narcotics or alcohol, or for children with intellectual and other disabilities, chronic diseases or Roma children. The support of extended family to the foster family role was, in addition to the mental and physical health of the child, the most influential factor driving decisions on foster care.

In late 2013 and early 2014, a campaign was conducted in Montenegro, titled *Every child needs a family* and *Foster care – support to healthy development of the child*²⁴⁰. The campaign included a TV video created to popularise foster care and the CSWs held 'open days', where they provided information to the public and promoted foster care in all municipalities. The objective of the campaign, publicly announced by the competent Ministry of Labour and Social Welfare, was to reduce the number of children in institutional care by 30% by 2016.

237 Records and documentation are discussed in a separate section of this document.

238 Data by UNICEF, Office in Podgorica (December 2013)

239 Ipsos Strategic Marketing and UNICEF, 2013., <http://www.slideshare.net/unicefceecis/hraniteljstvo-i-usvojenje-u-cg>, visited on 16.12.2013.

240 The campaign "Every child needs a family" was carried out as part of the project "Reform of the Social and Child Welfare System: Promotion of Social Inclusion" implemented by the Government of Montenegro, with technical assistance from UNICEF and UNDP and financial backing of the European Union.

Deinstitutionalisation in Bosnia and Herzegovina

Although certain strategic documents promote consideration of all forms of alternative care prior to the decision on where to place the child²⁴¹, the opinion was that the country of Bosnia and Herzegovina (at state, entity and cantonal levels of government) dedicates insufficient, irregular and short-lived attention to deinstitutionalisation issues, as was cautioned by the Committee on the Rights of the Child²⁴². In 2012 the Committee pointed out the insufficiency and inadequacy of capacities for family-type forms of alternative care, resulting in placement of most children in institutions, as well the inadequacy of efforts on reunification of children with their parents.

Also, there do not appear to be adequate financial means or efforts invested in the deinstitutionalisation process. The efforts are often reduced to the promotion of foster care, which is insufficiently regulated, standardised and financed in many parts of Bosnia and Herzegovina; the financial means for stable and uniform financing of foster care have not been allocated, thus putting children from different parts of BiH in an unequal position²⁴³.

241 Action Plan for Children 2011 – 2014 and Policy on Protection of Children Without Parental Care and Families At Risk of Separation in FBiH 2006 – 2016.

242 Closing remarks of the Combined Second, Third and Fourth Periodic Report for Bosnia and Herzegovina, adopted at the 61st session of the Committee in 2012, Page 14, Item 48.

243 *Care for me! Quality care for every child* (2013) Assessment Tool for the Implementation of the UN Guidelines for the Alternative Care of Children, Version 2.0, Final paper, updated 09/01/13 SOS Children's Villages International.

CHILDREN IN ALTERNATIVE CARE

It is necessary to create a series of preventive and intervention measures for assistance to families in taking care of their children (financial assistance, counselling, education and other measures), and poverty must not be the reason for placement of children in alternative care but can only be treated as a signal that the family needs help. As a rule, siblings are never separated in alternative care unless this is in best interest of the child, which must be justified and documented. Children under 3 should not be placed in residential care but in family-based care. Alternative care policy should recognise culturally and religiously specific forms of alternative care, including gender issues, in addition all specific norms and practices must be respected to the extent they are appropriate in relation to the child's rights and best interests. Furthermore, children must be able to satisfy their religious and spiritual needs in accordance with their will, and with adequate support²⁴⁴.

Reasons for alternative care of children in Western Balkan countries

In **Serbia**, where significant results have been achieved in the area of deinstitutionalisation, there was also an increase in the number of children in formal care, especially very young children (0-2). A recent study by the Faculty of Political Sciences and UNICEF, monitoring the effects of the social welfare reform for children in alternative care²⁴⁵, indicates that reasons for separation of children from their families are a result of accumulation of different factors, dominated by child neglect and poverty. Results of the latent class analysis point to five groups of reasons. The predominant reason is relinquishment or abandonment (30.5%), poverty and neglect (25.4%) and abuse and neglect (23.6%). Some 13% of children are placed in alternative care primarily due to disability, and 7% after the death of their parents. Child neglect is more prominent than abuse – in 70.9% of cases one or more types of neglect were noted, and abuse was noted in 19.3% of children. The most frequent forms of neglect were abandonment (including relinquishment) of the child, inadequate care and neglect of health and physical needs of the child.

In **Bosnia and Herzegovina**, the most common reasons listed for placement of a child in alternative care²⁴⁶ are: death of one or both parents, abandonment or relinquishment of the child by one or both parents, child neglect, difficult financial situation, illness of the parent, unknown parents or child abuse. There is no reliable data or records of reasons for separation of children from families in Bosnia and Herzegovina, and according to data collected through a survey carried out by SOS Children's Villages BiH in 60 CSWs in September-October 2013²⁴⁷, the most common reasons for

244 Paragraphs 15, 17, 22, 34, 41, 44 -45, 75 and 88 of the Guidelines.

245 Žegarac, N. (ed.) (2014) *U lavirintu socijalne zaštite: pouke istraživanja o deci na porodičnom i rezidencijalnom smeštaju* [In the labyrinth of social protection: lessons learnt from research on children in care]. Beograd: Fakultet političkih nauka i UNICEF.

246 Hope and Homes for Children, Ministry of Labour and Social Policy and UNICEF BiH (2010) *Situation Analysis in the Protection of Children Without Parental Care in FBiH and Implementation of the Policy on the Protection of Children Without Parental Care and Families At Risk of Separation in FBiH 2006-2016*.

247 *Care for me! Quality care for every child* (2013) Assessment Tool for the Implementation of the UN Guidelines for the Alternative Care of Children, Version 2.0, Final paper, updated 09/01/13 SOS Children's Villages International, Page 39.

placement of children in alternative care were: parents neglected the care and/or upbringing of the child (887), death of one or both parents (210), parents absent and unable to take regular care of the child (225), illness of one or both parents (102), financial difficulties (85), parents deprived of parental rights (43), parents missing or their address not known for more than 3 months (11), parents unknown (9) and other reasons (31) (disturbances in marital relations, voluntary, child given for adoption, abandonment immediately after birth, etc.). It is possible that some children were included in more than one category.

In 2011 in **Montenegro**, the organisation LUMOS²⁴⁸ conducted a review²⁴⁹ of children placed in residential institutions, using a sample of 52 cases involving 68 children institutionalised by decision of CSW Podgorica, Pljevlja and Bar. A trend, already seen in many countries, is represented in the sample: the children were previously, prior to institutionalisation, in contact with the CSW but no timely and adequate interventions were carried out at that time. The cases were reported again but this time the problems were more serious and mostly involved a serious family crisis²⁵⁰. The report states that 90% of children were institutionalised directly from their families and 90% of children maintain contact with their families. The report does not mention whether legal proceedings were brought against the parents for breach of parental rights. Research from 2011²⁵¹ indicated that the majority of children who were placed in residential care directly from the birth clinic (18%) were separated from their families for social reasons.

It appears that the reasons for placement of children in alternative care are very similar, if not identical, across the Western Balkan region and they seem to point to poverty and neglect on the one hand, and shortage of systemic support through prevention and intervention programmes on the other, as joined 'factors' that contribute to the placement of children. Also, the child welfare system is still primarily reactive, support to families with children at risk of separation is scarce, irregular, uneven and not quite successful in targeting families that need it the most, i.e. where it would have the most effect.

In Serbia the proportion of male and female children in alternative care is almost identical (48.9% male and 51.1% female)²⁵². At the time of the preparation of this review there was no reliable data for the other two countries on gender distribution in children in alternative care.

248 <http://wearelumos.org/>, visited on 10.12.2013.

249 Strategic Review of the System of Caring for Vulnerable Children in Montenegro - Recommendations for the Reform of Health, Education and Social Services (2011) This review of children in institutions in Montenegro was prepared by a group of independent experts gathered around the NGO LUMOS from Great Britain, with support by the UNICEF Office in Podgorica. Recommendations from this report were used to create the Master Plan for Transformation of Social Services in Montenegro.

250 The percentage of cases already familiar to the centre for social work, according to the LUMOS review, is 25% in CSW Podgorica, 54% in CSW Bar and 33% in CSW Pljevlja.

251 <http://www.vijesti.me/vijesti/svaka-peta-beba-bijelu-stize-direktno-porodilista-clanak-64536>, visited on 16.12.2013.

252 Data from Ministry of Labour and Social Policy of the Republic of Serbia, 2011.

Children from minority groups

Until 2011 Serbia did not have centralised data concerning the ethnic distribution of children in the social welfare system. Centres for social work provided information that there are 51,128 Roma users of rights and services in 2012 (in 2011 the number was 45,050), of which 36.5% were children. Children and youth in alternative care are mainly ethnically Serb (70.21%) and of Christian Orthodox religion (89.2%), followed by Roma (27.6%). With regard to religion, the second largest group are Muslim children. The majority of children and youth are placed in foster families with the same ethnic and religious preferences (86.3%).

Table 7. Roma children users of social welfare services in Serbia²⁵³

| Year | 2011 | 2012 |
|--|--------|--------|
| Total Roma children using CSW services | 17,318 | 19,134 |
| Adoption | 16 | 10 |
| Guardianship | 352 | 353 |
| Temporary guardianship | 197 | 176 |
| Supervision of parental rights | 68 | 52 |
| Placement in shelter | 38 | 47 |
| <i>In alternative care</i> | | |
| Foster care (kinship) | 76 | 65 |
| Foster care (other) | 355 | 398 |
| Social welfare institution | 88 | 62 |

The study titled “In the labyrinth of social protection: lessons learnt from research on children in care”²⁵⁴ included 92 Roma children (26.5%) in the sample of children in alternative care and their data was analysed separately. The results indicate a disproportionately high number of Roma children in alternative care. Similar to results of other studies that pointed to a disproportional percentage of Roma children in alternative care throughout Europe (in some countries from 20 to 60%²⁵⁵ of children in alternative care are Roma children). Estimates of disproportion (unequal proportion) of Roma children in Serbia put the disproportionality rate at 3.7, i.e. this number indicates the additional number of children in alternative care in relation to the percentage of Roma children in the total population. Also, Roma children frequently enter alternative care at a lower age and are less likely to be placed in kinship care than other children. The extremely poor education structure of parents is notable, as well as the fact that in comparison to other children represented in the sample a significantly larger number of Roma children prior to alternative care lived in conditions that were unfavourable for their development or dangerous to the child’s safety. Although no difference was noted with regard to abuse and neglect of children in Roma and other families in the sample, there is a difference in neglect of health and inadequate supervision of the child, as specific forms of neglect. Poverty of the family and poor financial situation is a characteristic of the majority of Roma families whose children are in alternative care, however it is unclear how and to what extent this affects the system intervention threshold. Also, even with the specific challenges faced by these children, no substantial differences were noted in the manner in which the professional staff in CSW’s work with

253 Synthesized report on the work of centres for social work in 2012. Republic Institute of Social Protection. <http://www.zavodsz.gov.rs/PDF/izvestajoradu2013/IZVESTAJ%20CSR%202012%20FINI.pdf>

254 Žegarac, N. (ed.) (2014) *U lavirintu socijalne zaštite: pouke istraživanja o deci na porodičnom i rezidencijalnom smeštaju [In the labyrinth of social protection: lessons learnt from research on children in care]*. Beograd: Fakultet političkih nauka i UNICEF.

255 Carter, R. Childcare Family matters: A study of institutional childcare in Central and Eastern Europe and the former Soviet Union. http://p-ced.com/reference/Family_Matters_summary.pdf, visited on 25.12.2013.

Roma children, except that these children are much more likely to remain in alternative care for a long time.

Data from the Ministry of Labour, Employment and Social Policy of Serbia concerning children adopted in the preceding period indicates that almost 50% of children in the Registry of Adoptions as 'generally eligible for adoption' are of Roma origin. A number of these children have serious developmental and health conditions. Adoption families for these children are hard to find in-country so they are mostly adopted internationally (on average up to 10 Roma children annually).

In **Montenegro**, the study of children in alternative care conducted by NGO LUMOS²⁵⁶ indicated that there is a large percentage of children of Muslim religion accommodated in the Children's Home "Mladost" in Bijela. The number of Roma children was 4.7²⁵⁷, and according to the last census only 1.1% of population of Montenegro declared their ethnicity as Roma, and there were 0.33% Egyptians²⁵⁸

For **Bosnia and Herzegovina**, in the course of writing this report there was no information available concerning the ethnic background of children in alternative care. There are 17 ethnic minorities living in Bosnia and Herzegovina, of which Roma are the largest minority, from the last census conducted in 1991. An analysis prepared by SOS Children's Villages BiH states that no measures have been prescribed or implemented to identify and remove the causes of disproportion in numbers of children from any group (based on gender, age or ethnic background). Such measures could not be implemented due to a lack of consistent method and manner of registration of children²⁵⁹.

Alternative care of children aged 0-3

The Guidelines²⁶⁰ stipulate that alternative care of very young children, especially children under the age of 3, should be provided in a family-based environment. Exceptions from this rule are allowed to keep siblings together and for urgent placement of the child, or if this arrangement is known to be of specific and short duration, with plans for reintegration of the child or other solutions that will guarantee permanency for the child.

In Serbia, the first regulation to introduce restrictions on placement of young children in institutions was the Bylaw on the Work of CSWs from 2008²⁶¹ where it is stipulated that a child under the age of seven may not be placed in a residential institution without his/her parents for a period longer than three months, unless health indications are present. In Serbia and Montenegro in 2011²⁶² and 2013²⁶³ respectively, the laws that regulate social welfare introduced a restriction on residential care

256 Mulheir, G., Velimirovic, M., Gyllensten, L. and Trebosc, L. (2011) Strategic Review of the System of Caring for Vulnerable Children in Montenegro. Recommendations for the Reform of Health, Education and Social Services, unpublished document.

257 Carter, R. Childcare Family matters: A study of institutional childcare in Central and Eastern Europe and the former Soviet Union. http://p-ced.com/reference/Family_Matters_summary.pdf, visited on 25.12.2013.

258 2011 census, MONSTAT; Strategy for the Improvement of Position of Roma and Egyptian Minorities in Montenegro 2012-2016, <http://www.mmp.gov.me/rubrike/strategija-za-poboljsanje-polozaja-roma?alphabet=lat>

259 *Care for me! Quality care for every child* (2013) Assessment Tool for the Implementation of the UN Guidelines for the Alternative Care of Children, Version 2.0, Final paper, updated 09/01/13 SOS Children's Villages International.

260 Paragraph 22 of the Guidelines.

261 Rulebook on organisation, norms and standards of work of centres for social work. *Official Gazette of Republic of Serbia*, no. 59/08, 37/10, 39/11 and 1/12, Article 70, Item 5.

262 Law on Social Welfare, *Official Gazette of the Republic of Serbia*, no. 24/11

263 Law on Social and Child Welfare, *Official Gazette of Montenegro*, no. 27/13

of children under the age of 3 years²⁶⁴, with the exception of temporary placements (the law in Serbia stipulates that a child under the age of 3 may spend a maximum of two months in residential care²⁶⁵), only when justifiable reasons exist and with permission from the ministry competent for social welfare, or another competent authority. In Bosnia and Herzegovina such provisions have not been adopted, except in the Law on Social Welfare of the Republic of Srpska which stipulates that a child under the age of three may temporarily be placed in a residential social welfare institution, with permission from the competent ministry²⁶⁶.

Thus the legislation in Serbia, in terms of very young children, fully complies with the UN Guidelines for the Alternative Care of Children (UN, 2009) and the recommendations of the World Health Organisation²⁶⁷ which, after a study carried out in 33 European countries²⁶⁸, demonstrated the consequences of early institutionalisation and variations in alternative care arrangements. The fundamental recommendation is that no child under the age of 3 should be placed in an institution without the presence of his/her parents or another appropriate caregiver. When high quality institutions are used as a solution in urgent situations, the recommended length of stay must not exceed 3 months. Montenegro²⁶⁹ and the Republic of Srpska in Bosnia and Herzegovina are partially compliant with the Guidelines in this area.

The Republic of Serbia, using different measures in the process of deinstitutionalisation and transformation of institutions, reduced by 80% the number of children under 3 in residential institutions²⁷⁰. A study²⁷¹ carried out in 2012 indicated that more than one third of children in the sample (36%) were placed in alternative care under the age of 3, and 11.2% immediately after birth, in the first three months of life. Starting from 2008, infants are increasingly placed in family-based care immediately from the birth clinics, without transition through shelters²⁷².

UNICEF data from 2010 shows that 59% of children under the age of 3 were placed in the Children's Home "Mladost" in Bijela immediately after birth²⁷³. According to the TransMonee database²⁷⁴, in Montenegro there were 76 children aged 0-3 in residential care in 2000, and in 2010 this number was reduced to 18, representing a significant decrease. In the same database, the data for BiH shows children aged 0-10 and in 2010 there were 376 children. An examination of data from the year 2000 shows that the number of children remains relatively unchanged. Data from the Agency for Statistics

264 Law on Social Welfare, *Official Gazette of the Republic of Serbia*, no. 24/11, Article 52 and Law on Social and Child Welfare, *Official Gazette of Montenegro*, no. 27/13, Article 70.

265 This part of the provision is contained in the law in Serbia and not in Montenegro.

266 Law on Social Welfare, *Official Gazette of the Republic of Srpska*, no. 37/12, Article 40. Available at: <http://www.narodnaskupstinars.net/lat/stranica/859-zakon-o-socijalnoj-zastiti-lat>

267 Browne K. (2009) *The Risk of Harm to Young Children in Institutional Care*. Save the Children.

268 Browne, K. et al. (2004) Mapping the number and characteristics of children under three in institutions across Europe at risk of harm. European Union Daphne Programme. Final Project Report no. 2002/017/c, Publication 26951. Birmingham, University of Birmingham.; Browne, K., Hamilton-Giacritsis, C.E., Johnson, R., Ostergren, M., Leth, i. M., Agathonos, H., Anaut, M., Herczog, M., Keller-Hamela, M., Klimakov, A., Stan, V., Zeytinoglu, S. (2005) A European survey of the number and characteristics of children less than three in residential care at risk of harm. *Adoption and Fostering*, 29(4): 1-12

269 The law in Montenegro does not limit the length of stay of children in an institution to a maximum of 3 months, while this provision exists in Serbia.

270 Data from the Ministry of Labour, Employment and Social Welfare and UNICEF Office in Belgrade Republic of Serbia, 2012

271 Žegarac, N. (ed.) (2014) *U lavirintu socijalne zaštite: pouke istraživanja o deci na porodičnom i rezidencijalnom smeštaju [In the labyrinth of social protection: lessons learnt from research on children in care]*. Beograd: Fakultet političkih nauka i UNICEF.

272 The Centre for the Protection of Infants, Children and Youth in Belgrade (Zvečanska) is the only institution in Serbia that provides shelter services for children under 3, with a capacity for 30 children. During 2012 a total of 92 children under than 3 were placed there and on 31.12.2012. there were 32 children. The number of admissions grew in comparison to 2011. 63 new users were admitted in 2012, as compared to 29 in 2011.

273 http://www.unicef.org/montenegro/15868_24768.html

274 <http://www.transmonee.org/>

of BiH²⁷⁵, shows the number of children aged 0-3 in residential institutions for children without parental care (77 children in 2011). In addition, data for children placed in “institutions for children with disabilities and mental and physical disabilities“ is kept for children aged 7 and under. In 2006 there were 129 such children, and 151 in 2011.

A major influence in all three countries was the participation of high government officials in the International Ministerial Conference in Sofia, held in November 2012. Serbia made an official commitment to, in accordance with the law, completely extinguish the practice of institutionalisation of children under three, and Montenegro²⁷⁶ announced that by 2017 the total number of children in institutions will be reduced by 30% and that priority will be given to children aged 0-3²⁷⁷. Bosnia and Herzegovina made a commitment to, in the next several years, develop a system for prevention of abandonment of children aged 0-3 and their institutionalisation²⁷⁸.

The reduction in number, leading to a complete cessation of placement of children in residential care is the key international indicator of good practice and the Western Balkan countries continue to face the challenge of demonstrating, in actual practice with youngest children, a real dedication to the best interests of children, in accordance with the Convention on the Rights of the Child and the Guidelines.

To prevent the placement of children under 3 in residential care (unless placed together with a parent or other caregiver), it is necessary to develop a series of preventive and developmental programmes in cooperation with gynaecology/maternity wards in primary healthcare institutions (in order to as early as possible identify pregnant women at risk of abandoning the child), birth clinics, neonatology departments and other paediatric wards in hospitals. Parent support programmes should include parents and children during pregnancy, childbirth and first months after the birth of the child, with flexible and individualised assistance (financial and other) and social and educational support.

275 Agency for Statistics of BiH, Thematic Bulletin TB 07: Social Protection in Bosnia and Herzegovina 2006-2011 (2012).

276 According to the data stated at the Conference, in the period 2005-2009, 59% of the total number of children aged 0-3 entered institutions directly from birth clinics or hospitals in Montenegro. It is such practices that motivated the work on the Protocol for the Prevention of the Institutionalisation of Children with Special Emphasis on Children Aged 0-3.

277 Ending the placement of children under three in institutions: Support to nurturing families for all young children. Report from the International Ministerial Conference, Sofia, 21-22 November 2012. http://crin.org/docs/UNICEF_Sofia_Conference_Report_En_Web.pdf, visited on 15.12.2013.

278 Ibid., Page 31.

Siblings in alternative care

The Guidelines indicate that siblings should in principle not be separated by placements in alternative care unless there is a clear risk of abuse or other justification in the best interests of the child. In any case, every effort should be made to enable siblings to maintain contact with each other, unless this is against their wishes or interests²⁷⁹.

A long-standing practice in all three countries was that children were placed in institutions according to age, thus often separating siblings even if they were placed in the same institution, and at times they were placed in very distant institutions. This practice was also applied in the placement of children in foster care and separated children often lost contact, or maintained it with great difficulty and often without the necessary support.

In Serbia, by law and as a rule, siblings are placed in the same foster family. In practice separations do happen, however in the recent years this issue is receiving more attention. Results of the study carried out by the Faculty of Political Sciences in Belgrade and UNICEF²⁸⁰ show that in **Serbia** children are placed in alternative care together with all their siblings in 23.6% of cases, or with some siblings (23.3%). Of the total number of children, 19% have no siblings while for 10% of children their user file does not contain a justification or reasons for separation from their siblings. The most frequent reason for separation of the child from his/her brothers and sisters is that siblings remain with one of the parents, either they have no problems or they are half-siblings, although usually no explanation is given. The second most frequent reason is that other brothers and sisters are in other foster families or with other relatives. Only in 2 cases all siblings could not be placed in the same foster family as they were too numerous according to the prescribed standard of maximum number of children in a foster family. Other reasons include a sibling exiting care (reaching maturity and emancipation) or placement in another institution.

In **Montenegro**, according to the LUMOS study²⁸¹ from 2011, at the time of the study the Children's Home "Mladost" in Bijela had 83% of children who were placed there without siblings. Children residing in the Home in Bijela who have siblings are mainly placed together in the same institution. Still, 23% of children in this Home have siblings who remain with the parents, which begs the question of their safety and best interests, or requires a review of the best interests of all children in the family, and vice versa, whether the children in alternative care still need to remain there.

In **Bosnia and Herzegovina** state policy does not explicitly specify the procedures for siblings in alternative care. In a survey carried out among professional staff in the CSWs, they report that in 84% of cases siblings remain together in the alternative care system and 16% stated that there is a practice of separating siblings in the public welfare system, without stating the reasons for such practice²⁸².

279 Paragraph 17 of the Guidelines.

280 Žegarac, N. (ed.) (2014) *U lavirintu socijalne zaštite: pouke istraživanja o deci na porodičnom i rezidencijalnom smeštaju* [In the labyrinth of social protection: lessons learnt from research on children in care]. Beograd: Fakultet političkih nauka i UNICEF.

281 Mulheir, G., Velimirovic, M., Gyllensten, L. and Trebosc, L. (2011) Strategic Review of the System of Caring for Vulnerable Children in Montenegro. Recommendations for the Reform of Health, Education and Social Services, unpublished document.

282 *Care for me! Quality care for every child* (2013) Assessment Tool for the implementation of the UN Guidelines for the Alternative Care of Children, Version 2.0, Final paper, updated 09/01/13 SOS Children's Villages International.

Unaccompanied children and youth

The Guidelines indicate the necessity and significance of identification, registration and documentation of data on unaccompanied children or separated children. The confidentiality of data, data exchange among authorised services, coordination of all parties involved and compatibility of procedures and processes in child protection, as well as family reunion, when justified and possible, are a part of the standard²⁸³.

Precise statistical data on the number of **unaccompanied children** is almost impossible to ascertain and in that sense **Serbia** does not differ from other European countries. As for children on the move, the presence of a growing number of irregular migrants who have never been found, is evident. An estimate may be given on the basis of data on the number of so-called *juvenile foreign unaccompanied persons* who expressed their intention to seek asylum, irregular migrants who were subject to certain measures, statistical data of the CSWs, residential institutes for children and youth, data of the Ministry of Interior on readmission of citizens of third countries, data of NGOs who help migrants. A certain number of identified unaccompanied children passed through several institutions or organisations and each registered them separately, sometimes even several times²⁸⁴. The Law on migration management from 2012²⁸⁵ stipulates the establishment of a single system of collection, organisation and exchange of data necessary for migration management.

The practice of care for unaccompanied children in Serbia is partially standardised within the protection of children from human trafficking and trafficking in unaccompanied foreign children²⁸⁶. There are two shelters, Centres for placement of juvenile foreign persons unaccompanied by parents or guardians, which function within the residential institutions for children and youth in Belgrade and Nis²⁸⁷, with a total capacity of 22 users (12 in Belgrade and 10 in Nis). According to the reports on the work of these institutions²⁸⁸, the majority of young people state that they are 15-16 years old, and when they do not have any personal documents there are no other mechanisms to verify their age. It often happens that persons who are evidently not minors, state that they are juveniles. In all cases, they are treated as juveniles and handled accordingly²⁸⁹. According to the procedure, during the inception the children are given the information on their rights and requirements during their stay in the centre. If they express an intention to seek asylum, which most of them do immediately, an interpreter is provided to them as soon as possible. According to the rules of procedure, juvenile asylum seekers are taken to the police and as a rule their solicitors, as well as the representatives of UNHCR Office, and an interpreter and guardian, will be present during the interview.

283 Paragraphs 162-167 of the Guidelines.

284 Jelačić, M. (2013) Deca pred zakonom - u međunarodnom tranzitu i kao tražioci azila [Children facing the Law - in international transit and as asylum seekers], Grupa 484, Beograd, 2013. Available at: <http://www.grupa484.org.rs/sites/default/files/Deca%20pred%20zakonom,%202013.pdf>

285 The Law on migration management, *Official gazette of Republic of Serbia*, no. 107/12

286 When authorised police officials conclude, either by looking into the documents or on the basis of a personal statement, that they are dealing with a juvenile and when they establish that he/she is unaccompanied, there is an obligation from that moment on to inform the local CSW, which is in charge of making a decision on appointment of a temporary guardian (most often a CSW staff member) and this shall be done urgently. After that the child, accompanied by the guardian, shall be referred to a reception institution.

287 They were accredited as specialised units for reception of unaccompanied children in 2009, i.e. 2010.

288 Synthesized report on the work of the institutions for placement of children and youth in 2012. Republic Institute for Social Protection. <http://www.zavodsz.gov.rs/PDF/izvestajoradu2013/izvestaj%20za%20decu%20i%20mlade%202012%20FIN.pdf>, visited on 10 October 2013.

289 Placement is provided for them, three meals a day and a snack, obeying principles of food consumption for the members of certain religions.

After the request for asylum has been submitted, the child may be sent to Asylum Centres in Banja Koviljaca or Bogovadja. Children who seek asylum, often young persons aged 15 years or older, stay at the first reception institution between 20 days and 2 months on average, and that period is being gradually prolonged due to the lack of free space in asylum centres. After the reception in the asylum centre, the juvenile asylum seeker needs to be provided with a solicitor²⁹⁰. During 2012, a total of 119 unaccompanied children, 7 to 18 years of age, were placed in the Centre for placement of juvenile unaccompanied foreigners. CSWs in Serbia have recorded a total of 98 foreign unaccompanied children, and in 2012, this number tripled – and reached 288.²⁹¹

Montenegro received a recommendation from ECRI, EU Delegation and UNHCR, for the authorities to complete the construction of a reception centre as soon as possible to accommodate asylum seekers and to make sure that the centre has all necessary contents and personnel. For the time being, Montenegro is more of a transit country than a destination country for asylum seekers and the legal system for asylum still does not function. From 2008 to April 2013, there was a total of 2113 asylum seekers in Montenegro²⁹². Out of the total number of submitted requests for asylum, only 1.1 % refers to children asylum seekers²⁹³. A total of 12 persons from the category of juvenile unaccompanied persons submitted an asylum request in Montenegro; all of them are males between 14 and 18 years of age²⁹⁴. While in Montenegro, children asylum seekers have the right to social welfare, health care and the right to education. Children asylum seekers (usually accompanied by parents) are placed in the reception centre. If there is not enough room, care is provided in private houses rented for this purpose. A guardian is assigned to unaccompanied children and the CSW is in charge of the assignment.

In **Bosnia and Herzegovina** as well, children on the move are not recognised in the legislative and institutional legal framework, and certain legal and strategic documents deal with issues of certain groups of these children. The children who seek asylum in Bosnia and Herzegovina are mostly accompanied by their parents. Asylum seekers are foreigners who are placed in the asylum centre while waiting for the decision on their status. From 2010 to 2012, 21 children seeking asylum, out of which 3 were not accompanied by their parents, were recorded. A child who enters the country illegally without being accompanied, is placed in the safe house of the organization International Solidarity Fund in Klokotnica by the Service for Foreigners' Affairs. The CSW in the location where the child was detained appoints a temporary guardian, who looks after the rights of the child until the child is placed in the safe house. The centre issues a decision on humanitarian stay to the child, which lasts for 6 months with a possibility of extension. In this period, efforts are made to solve the case or to ensure the return of the child to his/her country of origin²⁹⁵.

All three countries of the Western Balkans improved their legislation and appointed or delegated certain capacities to address current developments in migration of children and adult persons in the region. This is a significant challenge for these countries, which struggle with a chronic lack of capacities and resources for solving social issues. The children are thereby insufficiently recognised and the services, processes and procedures, which are adjusted to children and ensure their best interests, are not sufficiently developed. The issues of suitable care of unaccompanied children, contents and activities that are adapted to children in reception centres, children's rights to education and true representation

290 The CSW in Loznica (Banja Koviljaca), and CSW Ljig, Department Lajkovac (Bogovadja), is in charge of assigning a guardian.

291 Ministry of labour and social policy of Republic of Serbia, January 2014.

292 Stated according to the data of the Department for refugees care in Montenegro.

293 20 children submitted an asylum request in the same period.

294 Data of the Legal centre in Montenegro.

295 Children on the move in Serbia, Montenegro and Bosnia and Herzegovina (2014) Regional Report, Save the Children UK. Currently in print.

of their rights are still not solved. Guardianship of unaccompanied children in all three countries is highly formalised and although it complies with international regulations, it essentially does not seem to contribute to the interests of this specific group of children. Simultaneously, it additionally engages (already insufficient) capacities of the Centres for Social Work. The establishment of a mechanism such as, for instance, a special guardian for unaccompanied children of foreign nationality and child victims of human trafficking, would probably enhance child rights in this field. Specific groups of children on the move would thus have better access to specialised legal aid, guardianship which considers the specificity of their living circumstances and adjusted procedures which may include culturally accustomed manners of treatment of those children, and similar.

Adoption

It is necessary to consider whether adoption is in accordance with the best interests of children in alternative care. Adoption is not a subject of the Guidelines, other than placement for adoption as a form of alternative care, because it is considered that adopted children establish a relationship with their adopters typical of parents and children. During periodical reviews, it is necessary to also consider adoption, especially when there is no possibility for family reunion, in order to provide permanency for the child as soon as possible.²⁹⁶

In the Republic of **Serbia**, according to the Family Law, the adoption is based on the decision of the guardianship authority (CSW), if this is in the best interest of the child. One may adopt only a child which: does not have living parents; whose parents are not known or their residence is not known; whose parents' parental rights have been terminated; whose parents have completely lost their working ability; whose parents consented to adoption²⁹⁷. A child may only be adopted with consent of the parents²⁹⁸, and the parent gives his/her consent for adoption either with designating the adopters or without doing so. Also, the parent may not give his/her consent for adoption before the child is older than two months and the given consent may be withdrawn within 30 days of the date when the consent was given, and the parent may use this right only once.

In order to be adopted, a child without parental care goes through a process of confirmation of "general eligibility" for adoption, i.e. an appropriate procedure is implemented in order to determine that the child cannot live with his/her biological parents or relatives permanently. The determination of the general eligibility of the child for adoption is often preceded by termination of their parents' parental rights or loss of working ability, which are sometimes long-lasting court procedures. Only a person who is prepared for adoption according to a special programme may adopt, unless the adopter is a spouse or an extramarital partner of the parent or of the adopter²⁹⁹. The programme of preparation for adoption is prescribed by the minister in charge of family matters. The guardianship authority determines whether future adopters are eligible for child adoption (general eligibility of the adopter) and whether the child is eligible to be adopted (general eligibility of the adoptee) on the basis of statements of future adopters, parents or guardians, on the basis of enclosed documents, and in other ways³⁰⁰.

After the selection, the guardianship authority which selected the future adopters is obliged to hand

296 The Convention on the Rights of the Child, Article 21, Item 30.b of the Guidelines.

297 Family Law, *Official Gazette of the Republic of Serbia*, no. 18/05, Article 95.

298 Family Law, *Official Gazette of the Republic of Serbia*, no. 18/05, Article 98.

299 Family Law, *Official Gazette of the Republic of Serbia*, no. 18/05.

300 Family Law, *Official Gazette of the Republic of Serbia* no. 18/05, Article 314.

over the child to them for “mutual adaptation”, unless the adopter is a foreign citizen. The period of adaptation must not last more than six months³⁰¹. The Family Law anticipates that foreign citizens may become adopters only if no adopters can be found among the citizens, and provided that the minister in charge of family matters approves the adoption³⁰². Apart from the Family Law, the adoption in Serbia is also regulated by an obligatory instruction which elaborates the legal procedure and provides an outline of the professional procedure. As of 2006, there is also a Single Adoption Registry, which is maintained by the competent ministry and contains data on potential adoptees and adopters on the country level. The adoption in **Montenegro** is regulated in a similar way as in Serbia, but the Law there recognizes the so-called complete and incomplete adoption³⁰³, there is no special instruction or methodological instruction in this field and the adoption procedures are strictly controlled by the authorised Ministry.

Republic of Serbia signed two Conventions of Council of Europe in 2009: European Convention on Exercise of Children's Rights (ETS 160) and European Convention on the Adoption of Children – Revised (CETS 202). Also, at the end of 2013, a Law on Ratification of the Convention on child protection and cooperation in the field of international adoption³⁰⁴ was passed.

Table 8. Number of adopted children in Serbia 2006 - 2013³⁰⁵

| Year | Number of adoptions | Domestic | International |
|------|---------------------|----------|---------------|
| 2006 | 97 | 88 | 9 |
| 2007 | 138 | 126 | 12 |
| 2008 | 149 | 137 | 12 |
| 2009 | 135 | 120 | 15 |
| 2010 | 106 | 92 | 14 |
| 2011 | 97 | 85 | 12 |
| 2012 | 108 | 100 | 8 |
| 2013 | 150 | 137 | 13 |

In 2013, in the records of the CSWs in **Montenegro** there were about fifty potential adopter pairs, out of which six from Montenegro.

Table 9. Number of adopted children in Montenegro 2009- 2012

| Year | Number of adoptions | Domestic | International |
|--------------------|---------------------|----------|---------------|
| 2009 ²⁶ | 5 | 3 | 2 |
| 2010 ²⁷ | 6 | 5 | 1 |
| 2011 ²⁸ | 6 | 5 | 1 |
| 2012 ²⁹ | 7 | 5 | 2 |

In **Bosnia and Herzegovina**, the current laws regulate adoption in a similar way as in Montenegro, as complete and incomplete. Regarding adoption, all entity laws have some minor differences. The upper limit for adoption of a child in the Republic of Srpska is “set” to five years and in the Federation

301 Family Law, *Official Gazette of the Republic of Serbia*, no.18/05, Article 318.

302 Family Law, *Official Gazette of the Republic of Serbia*, no.18/05, Article 103.

303 Family Law of Montenegro, *Official Gazette of Montenegro*, no. 01/07.

304 http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/579-13Lat.pdf, visited on 23 December 2013.

305 Data from the Single personal registry of adoption on completed adoptions for the period 2006 – 2013, Ministry of Labour, Employment and Social Policy of the Republic of Serbia, January 2014.

BiH this limit is ten years³⁰⁶. It seems that there is no reliable data in Bosnia and Herzegovina on the number of adoptions and it is not possible to determine reliable numbers of domestic and international adoptions. According to the data provided in Table 2 of this analysis, the number of adoptions in BiH from 2000 to 2012 significantly decreased (from 177 to 67 adoptions).

None of the three observed countries have regulations or procedures to encourage or give priority to adoption of siblings by the same family.

However, it is evident that the number of adopted children in all three countries is very low despite of a wide-spread belief that this is “the highest quality” and “the best” form of child protection. The procedures in all three countries take a very long time from a child’s point of view (and the child’s sense of time!), and an unusually high number of children is seemingly never considered as possibly “eligible” for adoption although they spend years in alternative care without any chance of family reintegration and even without any contact with their relatives. Also, the adoption of children with disabilities and Roma children is especially challenging. In Serbia these children mostly “go” for international adoption, since most of the domestic adopters (about 95%) would like to adopt a “healthy” child, as young as possible and of their own ethnicity. It is interesting that nobody is actively engaged on tackling such attitudes and beliefs of potential adopters. According to the above-mentioned research of the Faculty of Political Science and UNICEF³⁰⁷, a very low number of sampled children was adopted (11 of 347), whereby 10 of those children entered alternative care when they were less than one year old. The findings indicate slow adoption procedures that are not attuned to the child and apparently difficult to achieve or complicated criteria or standards that a child, who does not live with his/her family, needs to meet in order to gain an adoptive family.

It is visible that none of the countries has developed pre-adoptive and post-adoptive services (specialised counselling services, adopters’ clubs, adoptees’ clubs and similar). Serbia is the only country which introduced an obligatory preparatory training for adopters before adoption and compulsory special services - Centres for Foster Care and Adoption to work in that field. As at early 2014, these activities and services are still not implemented in practice.

306 Family Law, *Official Gazette of Republika Srpska* 54/02, 41/08; Family Law, *Official Gazette of FBiH* 35/05, 41/04

307 Žegarac, N. (ed.) (2014) *U lavirintu socijalne zaštite: pouke istraživanja o deci na porodičnom i rezidencijalnom smeštaju* [In the labyrinth of social protection: lessons learned from research on children in care]. Belgrade: Faculty of Political Science and UNICEF.

Duration of alternative care

Family reunion, i.e. return of a child to its parents or biological family is the first desired goal of the Guidelines. Separation of the child from the family will be a measure of last resort, it is considered a temporary measure and the recommendation is to keep it as short as possible and to conduct regular reviews of the necessity of alternative care. In all cases, it is necessary to consider the possibility of returning the child to its parents or relatives and to provide regular and appropriate contacts between the child and the parents and family members. Care is provided as close as possible to the child's family and community, while avoiding unnecessary interruptions and frequent change of placements because this often has damaging consequences to the child. Family reunification should be supported and supervised³⁰⁸.

Substantial research is required in this area of application of the Guidelines, because it essentially deals with the quality and character of alternative care. It seems that in all three observed countries a very small number of children, once they enter alternative care, has a chance to leave care before 18 years of age.

In **Montenegro**, children are referred to the only available residential institution in Bijela, so many of them break contact with their families and communities from which they came, which creates many difficulties once they leave care. In **Serbia**, thanks to the network of foster families which was developed in the recent years, the research conducted on a sample of children placed in alternative care between 2006 and 2011 indicates that just under two thirds of children have their first placement in the same municipality, but also that one third of school-age children need to change schools after the first separation. One half of children are with their brothers and sisters in the first placement (half of which join all their siblings and the other half join only some of their siblings). For about 10% of the cases there are no explanations in the records as to why the children are not placed together with their siblings³⁰⁹. Regarding the issue of placing the children close to their families or original communities, the survey from Bosnia and Herzegovina indicates that 43% of CSWs state that the children live far away from their families or original communities. According to the Report of the Child Rights Committee,³¹⁰ „children are placed in institutions which are outside the territory of their recorded residence and therefore cannot exercise their right to healthcare due to administrative barriers related to their movement.“

In the research of the Faculty of Political Science and UNICEF³¹¹, out of 5,155 children who entered alternative care between 2006 and 2011, 22.6% left care during that period. The leaving rate is the highest for children below two years of age and over 15 years of age, and it amounts to 30 to 50 %. School-age children, from 5 to 12 years of age, have the least chance to leave care (leaving rate about 10%). This leads to a conclusion that once children have entered the system, they stay in it for a very long time. Also, almost 60% of sampled children interrupted the first placement. Sampled

308 Paragraphs 2a, 3, 14-15, 49-52, 60, 123, 166-167 of the Guidelines.

309 Žegarac, N. (ed.) (2014) *U lavirintu socijalne zaštite: pouke istraživanja o deci na porodičnom i rezidencijalnom smeštaju* [In the labyrinth of social protection: lessons learnt from research on children in care]. Beograd: Fakultet političkih nauka i UNICEF.

310 Concluding remarks of Combined second, third and fourth report of Bosnia and Herzegovina, adopted in the 61st session of the Committee (17 September – 5 October 2012).

311 Žegarac, N. (ed.) (2014) *U lavirintu socijalne zaštite: pouke istraživanja o deci na porodičnom i rezidencijalnom smeštaju* [In the labyrinth of social protection: lessons learnt from research on children in care]. Beograd: Fakultet političkih nauka i UNICEF.

children changed their care placements once or twice at the most. The highest number of placements is 7, which indicates problems in providing stability of care for a significant number of children. A very low number of sampled children (N=38 or about 11%) returned to their parents after care, which is much lower than in the available comparison data³¹², and an exceptionally low number of sampled children was adopted (N=11 or 0.3%). The research also showed for more than a half of sampled children contacts between parents and children are neither maintained nor encouraged in an appropriate manner, and that for most children there is no “exit strategy”.

In **Bosnia and Herzegovina**, relevant and reliable sources of statistical data relating to the number of children who leave the system of alternative care every year and return to their biological families, are not available. In a recent survey,³¹³ CSWs reported that no children left the alternative care system (58%), a total of 22% CSWs stated that more than 5% of children left care and returned to their biological families, and 17% of the centres stated that more than 20% of children returned to their biological families. A total of 4% of surveyed centres stated that a little more than 10% of children returned to their biological families. At the same time, it is not clear whether these figures include young adults who had returned to their biological families after legal limitations of duration of care.

Planning and preparation for leaving care

Preparation of children and young persons for change of care placements, leaving care and services provided to young persons after they leave care (also including supervised independent living arrangements), are regulated by the Guidelines. The significance of adequate assessment and timely individual planning, which directly involve children and young persons in the process, preparation for self-care, learning practical living and interpersonal skills, is emphasised.³¹⁴

The research which preceded the period of social welfare system reform in Serbia³¹⁵ indicated significant omissions in the process of planning, preparation and support for leaving care, so that 75% of “protégés” of both residential and foster care stated that the CSWs did not appropriately prepare them for “release”. Also, one of the evaluations of child protection practices in 2002 indicated an undeveloped practice of planning, especially with adolescents where “active planning of discharge, including preparation for an independent life is missing”³¹⁶. Also, the analyses conducted so far and reviews of practices in the centres and institutions in Montenegro indicated a sporadic and late practice of preparation of young persons for leaving care³¹⁷.

Since this field required clearer regulations, procedures for planning of release were stipulated from 2008 in Serbia (through a by-law and through a Law in 2011)³¹⁸ and 2013 in Montenegro.

312 Sinclair, I., Baker, C., Lee, J. and Gibbs, I. (2008) *The pursuit of permanence: a study of the English care system*. London, Jessica Kingsley.

313 *Care for me! Quality care for every child* (2013) Assessment Tool for the Implementation of the UN Guidelines for the alternative care of Children, Version 2.0, Final Paper, Updated 09/01/13 SOS Children's Villages International.

314 Paragraphs 131-136 of the Guidelines.

315 Kuzmanović, B. i sardanici (2002) *Deca bez roditeljskog staranja [Children without parental care]*. Beograd: Institut za psihologiju.

316 VanDissel, E. (2002) Report on repeated review of cases of children that are placed in social welfare institutions for children without parental care. CARE/UNICEF Social Welfare Project. Page 16

317 Žegarac, N. (2011) Izvještaj o kapacitetima centara za socijalni rad u Crnoj Gori. Izazovi i mogućnosti reorganizacije, standardizacije i unapređenja stručne prakse. [Report on the capacities of centres for social work in Montenegro. Challenges and opportunities for reorganisation, standardisation and improvements of professional practice]. UNICEF, office in Podgorica. Unpublished document.

318 Law on Social Welfare, *Official Gazette of the Republic of Serbia*, no. 24/11, Article 43 Point 2.

The Regulation on organisation, norms and standards of work of centers for social work³¹⁹ stipulates the **Plan for independent living and emancipation of young people** for all young persons older than 14 years and in alternative care, including also the ones living in foster and kinship care or with guardians. This plan was later defined in the Law on Social Protection as the **Plan for an independent life of a young person**. The Regulation describes the procedure for the evaluation of skills for daily living of a young person, his/her capacities, needs and motivation, which will precede the plan for emancipation. A similar regulation also exists in the Regulation which regulates the work of CSWs in Montenegro³²⁰, which became effective in December 2013 and appropriate education is necessary for its implementation.

In the research of the Faculty of Political Science³²¹, conducted on a random, representative and stratified sample of 347 children and young persons referred to alternative care in the period between 1 June 2006 and 31 May 2011, it can be noticed that the plan for independent living, i.e. for leaving care, is *the least updated document* in children's records kept by the authorised CSWs (updated for 9.1% of children in care over 14 years of age).

According to the data of the analysis conducted by Children Villages BiH for Bosnia and Herzegovina³²², there are no state or entity level practical programmes implemented with a goal to prepare young people for independent life, including provision of counselling or mentor assistance by young people who are experienced in leaving the system of alternative care. State laws, policies and strategies did not include appropriate recommendations for the development of practice in this field. Preparation for leaving care seems to be most often implemented with the assistance and support of non-governmental, domestic and international organisations.

Since 2009, BiH SOS Children's Villages are implementing the project titled **It is important to me: Preparation for an independent life**³²³, where young people preparing to leave care are empowered to express their opinions and expectations, as well as to give recommendations to professionals and public about the manner how they can provide assistance in the process of becoming independent. This process is supported by young people who already left care.

In the residential institution „Rada Vranješević“ in Banja Luka, young persons enrolled in the final year of secondary school are included in a **special educational group for preparation for independent living**³²⁴. Activities aimed at development and enhancement of life skills and at gaining a higher level of independency are planned within the Programme. In cooperation with a young person and the relevant CSW, an individual plan is created and it includes the needs, desires and interests of the young person. From 2009 to 2013, 31 young persons participated in the programme. The inability of CSWs to provide any kind of support to a young person who is returning to his/her place of origin after many years is considered to be a problem, and the problem of employment of young people is very much evident.

From 1998, the Organisation Hope & Homes for Children BiH implements the **Programme**

319 Rulebook on organisation, norms and standards of work of centres for social work. *Official Gazette of Republic of Serbia*, no. 59/2008 and 37/2010, Article 75.

320 Rulebook on organisation, norms, standards and manner of work of centres for social work, *Official Gazette of Montenegro*, no. 58/13, Article 47.

321 Žegarac, N. (ed.) (2014) *U lavirintu socijalne zaštite: pouke istraživanja o deci na porodičnom i rezidencijalnom smeštaju* [In the labyrinth of social protection: lessons learnt from research on children in care]. Beograd: Fakultet političkih nauka i UNICEF.

322 *Care for me! Quality care for every child* (2013) Assessment Tool for the Implementation of the UN Guidelines for the Alternative Care Of Children, Version 2.0, Final Paper, Updated 09/01/13 SOS Children's Villages International.

323 The Project is a part of the international SOS Kinderdorf International Project.

324 The Project is being implemented with educational support of the organisation "Flexus" from Holland.

of support for young persons leaving institutional care. The Programme consists of several components: support to additional training and education (driving lessons, English language lessons, computer lessons and similar); assistance in searching for employment through cooperation with local companies that employ young people, while HHC provides financial support during a one-year period; financial support provided for a young person who is still in the system of regular education and one year after leaving the institution, intended to cover living expenses; development of life skills, as well as assistance in finding accommodation, searching for employment, organisation of spare time and managing money. From 2002 to 2009, 75 young persons participated in this Programme³²⁵.

Supervised independent living arrangements

Apart from the emancipation plans³²⁶, the Law on Social Protection defines groups of services for independent living such as supported living, training for an independent life and other forms of support necessary for active participation of users in the society. Minimum standards for provision of services were completed and adopted in 2013 for the supported living service in **Serbia**³²⁷. The purpose of the **supported independent living for young persons leaving care** service is to assist and support service users in gaining full independence and integrating into the community. The service provides appropriate accommodation for a limited period and professional support in the development of skills necessary for independence and inclusion into the community. This enables young persons who were in alternative care to make better use of possibilities offered by the community. The intensity of professional support decreases as the young person progressively gains independence, and terminates completely when the time for service provision elapses.

In practice, support to young persons is provided through service of independent living in apartments, initially funded by the National Investment Fund and lately mostly from local self-governance units' funds and partially from the national level which provides continuous support for furnishing the apartments and for professional support to service development and application of standards. From 2008, the Republic Institute of Social Protection³²⁸ implements a Project "Supported living for young care leavers – one step to independence". By 2012, 19 cities and municipalities participated in the Project which established the supported independent living service. This greatly facilitated the specification, standardisation and incorporation of this service into the system of social welfare in the community. The total number of housing units³²⁹ which the system in public sector had available at the end of 2012 is 40, out of which 33 for young care leavers and 7 units for persons with disabilities. This service was used by 119 users in 2012.

According to the data of the research on community services in **Montenegro**³³⁰, there are 3 services available for youth without parental care. Only one non-governmental organisation (Centre for Child Rights) provides services to this user group. Apart from a special club for fosterers, this non-governmental organisation also developed a club "Mladost" on voluntary basis and provides

325 http://www.hhc.ba/index.php?option=com_content&task=view&id=46&Itemid=69, visited on 5 February 2014.

326 Law on Social Welfare of Republic of Serbia, *Official Gazette of Republic of Serbia*, no. 24/11, Article 40.

327 Rulebook on detail conditions and standards for provision of social welfare services, *Official Gazette of Republic of Serbia*, no. 42/13, Article 88-98.
http://www.zavodsz.gov.rs/PDF/podzak/pravilnik_o_blizim_uslovima_final.pdf

328 More information on the project: http://www.zavodsz.gov.rs/index.php?option=com_content&task=view&id=217

329 Synthesised report on the work of CSWs in Serbia for 2012:
<http://www.zavodsz.gov.rs/PDF/izvestajoradu2013/IZVESTAJ%20CSR%202012%20FINI.pdf>

330 Report: Mapping services of social welfare in Montenegro:
<http://media.institut-alternativa.org/2013/12/mapiranje-usluga-socijalne-zastite-u-crnoj-gori.pdf>

the service of supported independent living in cooperation with the relevant bodies in local self-governance units. Besides Podgorica, this service was also introduced by the CSW in Bijelo Polje as assistance for young persons without parental care after leaving residential care.

In **Bosnia and Herzegovina**, there are several innovative programmes which encourage such form of alternative care for youth. One of the recent programmes is the **Halfway house**³³¹ and the purpose is that young people go through a number of educational programmes and workshops for solving everyday life problems. Young persons go through a number of psychological and social support workshops and activities, according to their own interests and schedules that they select. Eight tenants can live in the Halfway house at any one time. Most of the CSWs which do not have such programmes available (mostly in small municipalities) stated that they do not implement such programmes due to a lack of financial assistance from the state or entity, or lack of educated personnel³³².

331 The programme is currently being implemented in Mostar and Sarajevo Canton.

332 *Care for me! Quality care for every child* (2013) Assessment Tool for the Implementation of the UN Guidelines for the Alternative Care of Children, Version 2.0, Final paper, Updated 09/01/13 SOS Children's Villages International.

QUALITY OF FORMAL ALTERNATIVE CARE

In accordance with the principle of suitability, the Guidelines approach formal and informal care differently. Formal care will meet certain general standards³³³, which relate to the conditions in which a child lives, fulfilment of specific needs of a child, staff number and training, promotion of a stable long-term living arrangement for a child and other standards ensuring quality care of children.

Structural conditions

In Serbia, Provision on network of social welfare institutions³³⁴ defines the number of institutions, their capacities, locations, as well as activities of residential institutions and Centres for foster care and adoption and groups of users. Currently, the Provision stipulates the capacities of 21 residential institutions for children and youth, out of which 19 currently have users, i.e. 11 children's and youth centres, 5 centres for children and youth with disabilities and 3 institutions for children and youth with behavioural issues³³⁵, which will not be shown here. The institutions are regionally distributed (4 are located in Belgrade, 6 in Vojvodina, 3 in Sumadija and Western Serbia, and 6 in East and South Serbia)³³⁶.

The Provision defines total capacities of residential institutions for children and youth, divided into placement capacity and capacity for additional services. The so-called „**capacity for additional services**“ was created in the process of deinstitutionalisation and transformation of institutions, with the decrease in numbers of children and young persons in care space was freed for development of community based services in those residential facilities. The placement capacity for children and youth in residential institutions remains at 912 places, and in the residential institutions for children and youth with disabilities at 1476 places (2,388 places in total).

At the end of 2012, residential institutions for children and youth had a total of 663 users, so that the capacity was not fully used (249 “vacant” places) and only 5 places were vacant in the institutions for children and youth with disabilities. This data illustrates a well-known occurrence that the reform of care for children with disabilities is implemented at a slower pace than for other groups and that the principles of the Guidelines are not applied consistently.

In Serbia, the Law on Social Protection stipulates that residential institutions for children and youth will not have capacity for more than 50 users and what is expected from the so-called “institutions in the process of transformation”³³⁷. The reports of the residential institutions for 2012 indicated that out of total 19 institutions for children and youth, 6 institutions (32%) have more children in care than is prescribed by the law (prescribed number is 50 children) and that these institutions will

333 Paragraphs 71 of the Guidelines.

334 Provision on the network of social welfare institutions, *Official Gazette of RS*, no. 16/12 and 12/13.

335 The Provision lists 21 institutions for children and youth, however, the centre in Kragujevac no longer has children in placement and the Centre for autistic children in Sabac did not start working yet.

336 Synthesised report on the work of institutions for placement of children and youth for 2012 in Serbia. Republic Institute for Social Protection. <http://www.zavodsz.gov.rs/PDF/izvestajoradu2013/izvestaj%20za%20decu%20i%20mlade%202012%20FIN.pdf>

337 Those are most often the institutions with a large number of service users, which need several years to respond to requirements of the new minimum standards, to transform their work and reformulate which services, in which manner and in which structural conditions are being provided to children, in order to receive the license to work. Until then, a temporary license is foreseen for them, which can be received only once according to the Law.

have to adjust placement capacities and number of service users to minimum standards through the transformation process in the upcoming period. Compared to 2011 when the share of institutions which exceeded the standard number of residents was 35%, not much progress was made in 2012. Within the residential institutions for children and youth, out of the total 11, two institutions will have the obligation to work on reducing the number of residents in the future. Residential institutions for children and youth with disabilities, where all residential facilities except one exceed legally prescribed capacities, face the biggest challenge. This refers to four large institutions which provide care for about 350 service users on average.

Structural and functional standards for all social welfare services³³⁸ are presented as common minimum and special minimum standards and they are defined by the Regulation on detailed conditions and standards for provision of social welfare services³³⁹, which was adopted mid-2013 on the basis of Article 57 of the Law on Social Protection. Standards related to the number of square meters of dorms in the centres are stipulated by the new Regulation. According to previous requirements, only two institutions for children and youth with disabilities did not meet previously stipulated size of dorms (5 m²), i.e. they had less than 5 m² per resident. The new Regulation sets far more demanding standards and gives a precise number of square meters for single dorms (at least 10 m²) and the space in dorms with several beds will have at least 5 m² per resident. The new Regulation does not provide a precise number of beds, i.e. number of service users in one dorm.

Regarding the number of beds in the institutions for children and youth in 2012, the data shows a continuation of an unfavourable trend where rooms with three beds are prevalent in residential institutions for children and youth with disabilities, and 3 out of 11 institutions have rooms with four or more beds. According to the new standards, residential institutions for children and youth with disabilities will work on adjusting the placement capacities to meet the minimum structural standards in the upcoming years. This is certainly not a simple task as it requires substantial funds necessary to adapt and adjust the architectural structure of buildings, in order to enhance conditions for proper life and development of children. In 2012, 64% of the residential institutions for children and youth invested in arrangement of their premises, in comparison to 80% of residential institutions for children and youth with disabilities. Still, in the institutions which provide care to a large number of children with disabilities, no significant results were achieved regarding the enhancement of living conditions, primarily in reducing the number of children per dorm, the architectural accessibility of the buildings was not significantly improved, etc. From the aspect of the deinstitutionalisation process, it is important to review the justification of investments “in the buildings”, and to ensure that the funds are primarily directed towards the development of services in the community.

One of the activities within the transformation of residential institutions for children and youth is the establishment of the so-called **small home communities** which will provide a family-like and stimulating environment and care for a maximum of 12 children with severe and multiple handicaps. During 2011 and 2012, four small home communities were established in the transformed residential institutions for children and youth in Nis, Aleksinac, Negotin, and Banja Koviljaca, where 35 children were placed by the end of 2012. A challenge for these communities is for them to actually stay “small” and “family-like”, so that the children with disabilities can receive quality residential care in the situations when such care is suitable, necessary and constructive³⁴⁰.

338 The Rulebook stipulates conditions and standards for all social welfare services: alternative care service (residential care, small home communities, shelters and respite care; other types of care), daily services in the community (day care centre, help in the house, drop-in centre and personal escort of a child), support services for independent living (supported living, personal assistance). Standards for counselling-therapy and socio-educational services, which are very significant for support of parenthood and prevention of separation of children from parent families, as well as for return of a child to parents or biological family, are not stipulated.

339 The Rulebook on detail conditions and standards for provision of social welfare services, *Official Gazette of RS*, no. 42/13.

340 Paragraphs 11 of the Guidelines.

Serbia experienced an expansion of family-based care and a special by-law³⁴¹ defined the forms of **foster care** (standard, specialised, urgent and occasional)³⁴² and **standards of service**³⁴³. The following standards are applied in foster care, in the best interest of the child: 1) selection of the foster family is made within relatives, or alternatively other foster families which meet certain conditions; 2) selection of the foster family is made primarily in the original community of the child; 3) as a rule, siblings are placed in the same foster family; 4) a foster family can provide care for a maximum of three children, or two if they have developmental difficulties unless they are siblings; 5) a child in foster care will be prepared for placement in a foster family, reunification with the biological family, change of type of care and emancipation; 6) development and advancement of the child in foster care will be monitored continuously and an insight into fulfilment of the purpose of foster care will be given by visiting the foster family more frequently during the adjustment period and at least once a month later; 7) the CSW is in charge of the child in foster care, in cooperation with the Centre for foster care and adoption, and it makes a plan of services which includes a support plan for the child and the foster family, and the implementation of this plan will be checked twice a year; 8) the child and foster family will be provided with various forms of support in accordance with the needs of the child and foster family; 9) in order to provide foster care, an estimate of general eligibility of foster care providers will be made and re-examined after two years, and in crisis situations right after the change occurred causing that crisis; 10) foster care providers will be prepared to provide foster care through the educational Programme for foster care preparation; 11) educational programmes for strengthening of fostering competencies will be organised at least once a year for foster care providers; 12) educational programmes for strengthening of professional competencies will be organised at least once a year for professionals who engage in foster care.

It is necessary that the foster care family meets all conditions in regard to space and equipment³⁴⁴, and the space for the child in foster care will meet certain conditions (e.g. that the child has a separate room or uses the room together with another child of the same sex, with at least 6 m² per child; to have a separate bed for sleeping, etc.).

By establishing the Centre for foster care and adoption, capacities were created for quality control in the provision of such services, especially with regard to monitoring and insight into the work of foster care providers. The family-based care counsellors are professionals who observe the living conditions of a child during their visit to the foster family. The Regulation defines the obligation of counsellors to have separate interviews with the child in foster care and to directly check the conditions in which the child lives. After the adoption of the Law on Social Protection, the process of adoption of the new Regulation on family-based care is in progress.

In **Montenegro**, the development of foster care is currently on the list of priorities in the system reform, in order to recruit and train a necessary number of foster families while preserving and enhancing the quality of traditionally present kinship foster care. The adoption of the Regulation on family care is under way and it will regulate standards in this field. Regarding living conditions in residential institutions for children, as well as other parameters for defining the quality of care, their definition will be regulated by the future Regulation on minimum standards of services, which is being drafted.

In **Bosnia and Herzegovina**, the state policies and applicable laws do not contain detail definitions on how foster care providers, as alternative care service providers, will be qualified and educated for the provision of foster care to children. State and entity policies broadly define the field of

341 Rulebook on foster care, *Official Gazette of Republic of Serbia*, no. 36/2008.

342 Rulebook on foster care, *Official Gazette of Republic of Serbia*, no. 36/2008, Article 3.

343 Rulebook on foster care, *Official Gazette of Republic of Serbia*, no. 36/2008, Article 6.

344 Rulebook on foster care, *Official Gazette of Republic of Serbia*, no. 36/2008, Article 7. For instance that the living space of foster care providers is in a populated area, that the structure and surface meet the needs of all family members, etc.

evaluation, preparation and education of potential foster care providers. The Law on Social Welfare of the Federation BiH uses the term “placement in another family” and the person who provides care to the child is termed “foster care provider”. The CSW selects potential foster care providers. During the selection of the family where the child will be placed, personal characteristics of the child and foster family are taken into consideration, as well as accommodation and other family conditions and needs of the child. None of the laws in Bosnia and Herzegovina refer to the best interests of the child. After the conclusion of a contract, the CSW has a supervisory role. The Law on Social Welfare of the Republic of Srpska from 2012 refers to the Regulation on foster care (still not adopted, as at October 2013) which prescribes the detailed terms and conditions, and the Law of the Federation BiH stipulates consent as a precondition to placement of a child into a foster family (written consent from parents, adopters or guardians, unless they were deprived of custody rights, and consent of the child if older than 15).

Anything not precisely defined by policies or strategies at the entity level is determined by the Minimum standards for placement of a child in another family³⁴⁵, which were drafted and promoted for Bosnia and Herzegovina by Save the Children UK, in cooperation with the Ministry of Labour and Social Policy of The Federation BiH, Ministry of Health and Social Welfare of the Republic of Srpska, and Subdepartment of Social Welfare of the Brcko District. These standards stipulate that every foster family will complete foster care training and a minimum of one foster family in a certain area will also be trained for urgent foster care. This document is not obligatory, so that CSWs do not have to use the procedures specified in this document. Due to a lack of financial and human resources, the practice in use of these standards, which are seemingly welcomed in practice, is not harmonised³⁴⁶. Based on the existing data (indicating better developed foster care in the Republic of Srpska in comparison to the Federation BiH), one may presume that foster care services are not equally available to all children in Bosnia and Herzegovina.

The establishment and work of residential institutions for children is regulated by cantonal regulations and is under jurisdiction of the cantonal authorities as their founders³⁴⁷. Public institutions are not equally distributed in Bosnia and Herzegovina. The Law on Social Welfare of the Republic of Srpska³⁴⁸ is the most precise in regard to defining specific criteria and preconditions for establishment of a social welfare residential institution for children without parental care and other social welfare institutions.

There are minimum standards applicable to the work of public institutions which provide care for children without parental care,³⁴⁹ that are determined by the Regulations in the Republic of Srpska and the Federation BiH. These Regulations define standards of work and provision of services in social welfare institutions, but they do not deal specifically with institutions for children. The only regulations which are defined in the Regulations refer to “joint minimum standards”. The Regulations stipulate that one institution cannot have more than 100 service users, and forms of residential care for a small number of residents are neither mentioned nor encouraged.

345 Save the Children UK (2009) Minimum standards for placement of children in another family.

346 *Care for me! Quality Care for every Child* (2013) Assessment Tool for the Implementation of The UN Guidelines for the Alternative Care of Children, Version 2.0, Final paper, updated 09/01/13 SOS Children's Villages International.

347 For instance: In accordance with Article 82 of the Law on Social Welfare of the Republic of Srpska, in order to establish an institution of social welfare it is necessary to meet the conditions with regard to space, equipment and the required number of professionals and other employees. The Minister adopts a Rulebook on meeting the conditions and on the basis of the decision on establishment and decision from Paragraph 3 Article 82 of the Law on Social Welfare, the Social Welfare Institution shall be entered into the registry (Minister adopts the Rulebook on contents and manner of keeping the registry of social welfare institutions).

348 Law on Social Welfare, *Official Gazette of Republika Srpska*, no. 37/12, available at <http://www.narodnaskupstinars.net/lat/stranica/859-zakon-o-socijalnoj-zastiti-lat>

349 Save the Children UK (2009) Minimum standards for institutional placement of children without parental care contain a total of 29 defined criteria/standards which an institution must meet in order for a child to be placed there.

Minimum standards for establishment and work of institutions for children without parental care, which were made upon an initiative of Save the Children UK, are largely harmonised with the Guidelines, but financial support for the implementation of these standards is missing.³⁵⁰

According to the Law in Serbia and Montenegro, all institutions and service providers (public or private) will be licensed, i.e. will receive a work permit³⁵¹. **The license** is issued for a period of 6 years and must be renewed after that. The process of issuing the license and harmonising the work of residential institutions with the minimum standards in Serbia is only just beginning, and it is early to speak about experiences. In Bosnia and Herzegovina, there are no State level, but Entity level criteria, based on which the work permit (license) of the institutions is issued. It seems that the existing regulations do not stipulate the obligation to renew the license (re-registration).

Almost all residential institutions for care of children in Serbia, Montenegro and Bosnia and Herzegovina, were built several decades ago and they remind of multiple floor “bachelor hotels” or bureaucratic institutions which, by their appearance, do not give away their purpose or look like places for children. The institutions for care of children with disabilities are often isolated, non-functional and primarily built outside of settlements as “asylum type” institutions. The equipment in the premises and organisation of life with regard to respecting individuality and initiative of every child and creation of a family-like surrounding varies from centre to centre. It is not rare to see buildings where furniture and equipment are obsolete, common rooms are empty and unattractive for children and there were also several anecdotal descriptions of “locked-away toys”. Some residential institutions are made of small houses which contain “educational groups” or “families” and they are placed in the same yard. The awareness of personnel and decision makers about environments tailored for children is gradually increasing and it is necessary to truly involve the children in the enrichment of space and design of daily events in the residential setting.

Personnel

According to the report from 2012³⁵², in the centers for social works in **Serbia**, the total number of employees was 3922³⁵³, while the average ratio between CSW employees and number of residents is 1:2,586. Also, 2,381 employees (77.3%) are funded from the budget and 700 employees are funded from the resources of the local-governance³⁵⁴. Out of the total number of employees, 1,967 (50.01%) are professionals. Professionals engaged in social welfare issues in CSWs are mostly social workers (858 or 43.6%), psychologists (323 or 16.4%) and legal professionals (209 or 17%)³⁵⁵. After the method of case management was introduced, in 2012 there were 1,035 professional case managers

350 Although these standards are not obligatory, the Sub-department of social welfare in Brcko District applies these standards in daily work whenever this is possible and application of these standards in FBiH and RS is not recorded (data from: *Care for me! Quality Care for every Child* (2013) Assessment Tool for the Implementation of The UN Guidelines for the Alternative Care of Children, Version 2.0, Final paper, updated 09/01/13 SOS Children's Villages International.

351 Law on Social Welfare, *Official Gazette of the Republic of Serbia*, no. 24/11. Articles 178-184. Law on Social and Child Welfare, *Official Gazette of Montenegro*, no. 27/13.

352 Synthetized report on the work of institutions for placement of children and youth for 2012. Republic Institute of Social Protection. <http://www.zavodsz.gov.rs/PDF/izvestajoradu2013/IZVESTAJ%20CSR%202012%20FINI.pdf>

353 Out of which 3,081 are employed for a fixed term and 841 with unlimited duration. Compared to 2008 and 2011, one may conclude that this is a slight increase of 6.4%, which is certainly not sufficient, considering a continuous increase of the number of service users each year and regulations on personnel stipulated in the Rulebook on CSW, which are not fully applied due to limitations in employment defined at the national level.

354 The Law on Social Protection stipulates that the local self-governance, as the founder of CSWs, shall be involved in providing or financing appropriate personnel or jobs in CSWs, especially those jobs that involve professional activities in order to provide daily services in cooperation with the local service providers.

355 Pedagogues are in the fourth place, represented with 209 employees or 10.6%, but if they are counted with special pedagogues and andragogues, together they make a larger group of 325 employees or 16.5%. There are 63 or 3.2% sociologists.

or 61.9% of professionals in CSWs, and supervision of case management is performed by 186 or 14.5% of professionals.

During 2012, in the residential institutions for children and youth in Serbia, there were a total of 1,526 employees.³⁵⁶ In the residential institutions for children and youth with disabilities, the number of employees is slightly higher than was foreseen in the regulations (770 according to the regulations, 792 actually employed). The increased number of employees compared to the number stipulated in regulations refers to the care nurses and technical workers. All residential institutions heavily rely on the central budget in financing of personnel, while contributions through other means of funding are small. Actually, 83% of employees are being funded from the Republic budget, the residential institutions themselves fund 13% of employees and the least share in funding is with local governance and amounts to 4%.

At the beginning of 2014 in Serbia, five regional Centres for foster care and adoption also function with a total of 106 employees, out of which 73 are professionals³⁵⁷. These centres do not cover all children in foster care in Serbia, therefore foster care is still covered by a certain number of CSWs. Out of the total of 5,828 children in 2012, the Centres for foster care and adoption provided support to 45% of children in family care, while the rest was covered by the CSWs³⁵⁸. The new Regulation on minimum standards implies employment of an increased number of professionals in residential institutions, especially the ones which provide care for children, licensing and renewal of licenses, as well as obligatory professional trainings and continuous professional development of professionals and associates³⁵⁹.

In **Montenegro**, according to the research from 2011³⁶⁰, 290 persons were employed in the CSWs, out of which 55.9% were employees with university level education and 44.1% administrative and technical personnel. 16 various professional profiles are represented, out of which a little less than a half have job descriptions harmonised with the tasks formally entrusted to CSWs. The share of auxiliary professions, i.e. professionals engaged in direct work with service users, in comparison with other employees, is 32.4% on average or 1:3, i.e. one out of three employees is educated for auxiliary professions. On average, there is one professional employee of a CSW (auxiliary, legal or other profession) for every 3,827 inhabitants of Montenegro, which is significantly unfavourable in comparison to the situation in Serbia, which introduced regulations concerning personnel and does not have such significant discrepancies in professional profiles for work with service users. Personnel regulations introduced in 2013³⁶¹ stipulate a much more favourable structure of employees of adequate professions and decrease of the number of administrative personnel. In the children's home "Mladost" in Bijela, which has a capacity of 160 places, there are 160 employees in total, out of which 27 are nurses, 8 pre-school teachers, 18 school teachers, and 3 professionals who work directly

356 Synthesised report on the work of residential institutions for children and youth for 2012 in Serbia. Republic Institute of Social Protection, Belgrade.

<http://www.zavodsz.gov.rs/PDF/izvestajoradu2013/izvestaj%20za%20decu%20i%20mlade%202012%20FIN.pdf>

357 Establishment of three such centres in the Vojvodina territory, where there are currently 1,600 foster families, is also planned.

358 According to the data from the Information System in the Ministry of labour, employment and social policy, in December 2013, a total of 5928 children and young persons were placed in 4319 families in Serbia.

359 The Rulebook on detail conditions and standards for provision of social welfare services, *Official Gazette of RS*, no. 42/13.

360 Žegarac, N. (2011) Izveštaj o kapacitetima centara za socijalni rad u Crnoj Gori. Izazovi i mogućnosti reorganizacije, standardizacije i unapređenja stručne prakse. [Report on the capacities of centres for social work in Montenegro. Challenges and opportunities for reorganisation, standardisation and improvements of professional practice]. UNICEF, office in Podgorica. Unpublished document.

361 Rulebook on organisation, norms, standards and manners of work in the centers for social work, *Official Gazette of Montenegro*, no. 58/13.

with children. Other employees work in the kitchen, laundry, technical service, administration, etc.³⁶². According to the law, bylaws on minimum standards are expected to be adopted and will define the number and structure of personnel in residential care institutions and community-based services, as well as regulations on licensing of professionals.

In **Bosnia and Herzegovina** in 2011³⁶³, in 117 CSWs there were 1,265 employees in total, out of which 472 social workers (37.3%), 54 pedagogues, 52 psychologists, 13 health care workers, 152 legal professionals (12.1%), 325 administrative workers (25.7%) and “others” 176 (13.9%). It is not known who is included in the group “others”, but it is the third largest group in comparison to other groups of profiles. Such structure of employees is exceptionally unfavourable and indicates a shortage of professional personnel which can respond to specific tasks of the CSW in various fields and specifically in the field of child protection. Data from the same year³⁶⁴ indicates that there are a total of 359 employees in the residential institutions for children and youth without parental care, out of which 93 care workers (25.9%), 59 health care workers (16.4%), 36 auxiliary professionals (10%), 33 administrative staff (9.2%) and 138 “others” (38.4%). In the residential institutions for children and youth with disabilities, in 2011 there were 699 employees³⁶⁵, out of which 166 care workers (23.7%) and 306 “others” (43.8%), which makes almost a half of the total number of employees in these institutions. 32.5% or 393 employees are health care workers (66), social workers (24), psychologists and pedagogues (10), defectologists (70), administrative workers (54) and instructors (3).

The basic condition for provision of quality alternative care is ensuring a sufficient number of adequate, educated staff, provided with the support required to address the challenging task of working with children who do not live with their parents. Social welfare and child protection systems in all three observed countries are chronically burdened with a small number of professionals who are specialised to work with children in the context of child protection, inadequate preparation for certain professions employed in the CSWs, outdated approaches to work, insufficient number of social workers, etc. An additional problem in the social welfare system is the lack of budgetary funds for financing of continuous trainings for employees. Also, it seems that there is little, if any, attention paid to the need for continuous training of auxiliary and support staff, actually all those who come into any form of contact with children in alternative care.

Best interests of the child

In order to understand the best interests of the child, for children referred to in the Guidelines, it is necessary to consider all available interventions and activities in order to select the ones most appropriate for fulfilling the needs and rights of an individual child. The comprehensiveness of development and entirety of the child's rights must be taken into consideration in the context of parental, i.e. biological family, as well as the social and cultural environments of the child, whereby these circumstances are considered when deciding about the best interests of the child, but also in the long-term perspective. During the process of determination of the best interests of the child, it is necessary to protect the child's right to be heard, to have its views considered, as well as to consider his/her opinion in accordance with

362 <http://www.google.rs/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=2&ved=0CDgQFjAB&url=http%3A%2F%2Fwww.ficesrbija.rs%2Fsee%2Fwp-content%2Fuploads%2F2011%2F07%2FPrezentacija-Portreta-Domova.pps&ei=OnPzUpWuCqjoywO72ILAAQ&usq=AFQjCNFOVVWzWqBZSHB4kRiRgCthU9ioUg>, visited on 6 February 2014.

363 BiH Agency for Statistics, Thematic Bulletin TB 07: Social welfare in Bosnia and Herzegovina 2006-2011 (2012).

364 BiH Agency for Statistics, Thematic Bulletin TB 07: Social welfare in Bosnia and Herzegovina 2006-2011 (2012).

365 BiH Agency for Statistics, Thematic Bulletin TB 07: Social welfare in Bosnia and Herzegovina 2006-2011 (2012).

his/her evolving capacities, age and maturity. With a range of provisions, the Guidelines strongly promote the best interests of the child as a guiding principle in all issues related to the child in alternative care³⁶⁶.

When determining the best interests of the child in alternative care or exposed to the risk of separation from his/her family, it is necessary to consider the whole situation for each individual child: the circumstances, vulnerability and resilience, need for protection, developmental needs, relations and affection relationships which the child established, the need of the child to feel loved, accepted and rooted³⁶⁷, to have a continuity of the surroundings, relationships and way of life, as well as the issues of culture. It is thereby necessary to consider the perspective of the child itself – his/her viewpoint, attitudes, wishes and opinion. It is necessary to make timely decisions, well thought through but without postponement, and the ones that follow the child's sense of time, because a month or a year in the life of a young child certainly represents a proportionally long period of life³⁶⁸.

Normatively, in Republic of Serbia and in Montenegro, an identical provision is contained in Article 5³⁶⁹, i.e. Article 6.³⁷⁰ of the Law which determines family relations and states that “everybody is obliged to follow the best interests of the child in all child-related activities.” In Bosnia and Herzegovina, the “interest of the child” (but not the best interests of the child) is the definition used by all laws in the field of social welfare and family and legal protection of children.

However, none of the three countries defined the criteria for determining the best interests of the child in alternative care, nor for other groups of children. **Procedures for permanency planning**, which were introduced in the CSWs in Serbia in 2008, provide criteria for definition of permanency goals for children (staying with one or both parents, return to parental family, kinship placement, guardianship placement, adoption, emancipation, other permanent living arrangements)³⁷¹ and indicate full participation of the child and parents in all procedures of assessment, planning and review. Similar solutions recently came into effect in Montenegro as well.

According to the findings of the UN Committee on the Rights of the Child³⁷², it was stressed that the principles of the best interests of the child and participation of the child are not sufficiently considered in the legislation and practice of social welfare in Montenegro. In concluding remarks for the Republic of Serbia, the Committee on the Rights of the Child to Republic of Serbia³⁷³, concluded that several laws refer to the principle of the best interests of the child, but expressed concerns that this principle is not being sufficiently applied in practice, especially due to non-understanding or misinterpretation. Similarly, in Bosnia and Herzegovina, the Committee expressed concerns about inconsistent application of the principle of the best interests of the child in key areas of children's lives, especially the right to education, healthcare and social welfare, and life with parents³⁷⁴.

366 Paragraphs 2, a - c; 6-7, 14, 17- 18, 21, 44, 48- 49, 56- 57, 75, 81, 101, 103- 104, 146- 148, 150- 151, 155, 161 of the Guidelines.

367 Siegel, D. & Solomon, M. (2003) *Healing Trauma: Attachment, Mind, Body and Brain*. New York: Norton & Company.

368 Fahlberg, V. (2012) *A Child's Journey through Placement*. London: Jessica Kingsley.

369 Family Law, *Official Gazette of Republic of Serbia*, no. 18/2005.

370 Family Law, *Official Gazette of Montenegro*, no. 1/2007.

371 Rulebook on organisation, norms and standards of work of centres for social work. *Official Gazette of Republic of Serbia*, no. 59/2008 and 37/2010. Rulebook on organisation, norms, standards and manner of work centres for social work, *Official Gazette of Montenegro*, no. 58/13.

372 Recommendations of the UN Committee on the Rights of the Child. <http://www.minradiss.gov.me/biblioteka?query=zakona%20o%20maloljetni%u010Dkom%20pravosu%u0111u&sortDirection=desc>, visited on 20 December 2013.

373 Concluding remarks of the Committee on the Rights of the Child to Republic of Serbia, Item 27 (2008).

374 Concluding remarks of combined second, third and fourth Periodical Report of Bosnia and Herzegovina, adopted in the 61st session of the Committee (17 September – 5 October 2012). <http://www.fbihvlada.gov.ba/bosanski/budzet/2013/Rashodi2-bos-srp.pdf>, visited on 20 December 2013.

Modern global changes in technology, economy and the way of life, as well as changes of laws and social values did not largely affect the basic needs of children in alternative care. Children need normality, family care and surrounding, respect of their origin, possibility for their views to be expressed and attitudes to be articulated, as well as hope for the future³⁷⁵.

The work practices of social welfare services in all three countries of the Western Balkans required a stronger direction towards application of principles of best interests, especially in relation to children included in the Guidelines. The results of recent research and analyses indicate that the best interests of children are not fulfilled due to the lack of preventive measures and programmes for family preservation and support to parenthood, that their best interests are not considered consistently when making decisions on separation and care placement, during family reunification, and especially in determining the permanency goals for a child.

Participation of children and youth and how children's views affect their living arrangement

The Guidelines define that all decisions, initiatives and approaches will fully respect the child's right to be consulted and to have his/her views duly taken into account in accordance with his/her evolving capacities, and on the basis of his/her access to all necessary information, with appropriate support to the child to understand all necessary information. Every effort should be made to enable such consultation and information provision to be carried out in the child's preferred language³⁷⁶.

The Council of Europe documents also promote these principles³⁷⁷, especially the protection of the child's right to participate in court and administrative proceedings, to complain and appeal, to promotion and information about participation, and the creation of possibilities for reasonable participation of children in all surroundings and on all matters that concern them, including participation in creating and evaluating policies and practices³⁷⁸.

In the family legislation of Serbia and Montenegro^{379,380}, it is identically defined that a child able to "form his/her own opinion", has the right to express that opinion. A child also has the right to receive, in a timely manner, all information necessary to form an opinion. The opinion of the child must be given due consideration in all issues related to him/her and in all procedures in which a decision will be made about his/her rights, in accordance with his/her age and maturity. Also, a child over 10 years of age may freely and directly express his/her opinion in all procedures in which a decision is made about his/her rights and may, either by himself/herself or through another person or institution, refer to the court or administrative body in order to seek assistance in exercising his/her rights to free expression of opinion. The authorised body determines the opinion of the child in a so-called "informal interview" performed in an appropriate place, in cooperation with the school psychologist or the guardianship authority (CSW), family counselling center or another institution specialised for

375 Berridge, D. (2005) *Fostering Now: Messages from Research, Adoption and Fostering* 29 (4) pp. 6-8.

376 Paragraph 6 of the Guidelines.

377 Recommendation CoE Rec (2012) 2 on the participation of children and young people, <https://wcd.coe.int/ViewDoc.jsp?id=1927229>, visited on 10 December 2013.

378 Among other things, this means that the children need to be given a possibility to participate in creation, provision and evaluation of services, establishment of bodies on local, regional and national level, etc.

379 Family Law, *Official Gazette of Montenegro*, no. 01/07, Article 67.

380 Family Law, *Official Gazette of Republic of Serbia*, no. 18/05, Article 67.

family relations, and in presence of a person selected by the child. Also, before deciding on family care placements, the guardianship authority is obliged to enable the child to freely express his/her opinion regarding the care placement and to consider his/her opinion in accordance with the age and maturity of the child³⁸¹.

In Republic of **Serbia**, Article 35 of the Law on Social Protection explicitly states, inter alia, that, according to his/her age and maturity, a child has the right to participate and freely express his/her opinion in all procedures leading to decisions about his/her rights in the field of social protection. The child, as a service user, has the right to participate in the assessment of his/her situation and needs and in deciding whether to accept the service, as well as to receive in time all information necessary to make a decision, including the description, objective and benefits of the proposed service, as well as information on the availability of alternative services and other information significant for the provision of the service. No service may be provided without consent of the service user or his/her legal guardian, except in cases stipulated by the law. The Law on Social Protection and Child protection in Montenegro from 2013 does not contain similar provisions.

However, in the Family Law of Montenegro, Article 357, Item 3, and Serbia, Article 247, Article 357, Item 3, there is also an identical controversial provision:

“the opinion of the child will be determined in a manner and place which is in accordance with his/ her age and maturity, unless this would obviously be contrary to the best interests of the child”.

In **Bosnia and Herzegovina**, present laws anticipate that parents, children and families will be involved and consulted in the process of making a decision on any change of the child's place of residence. In accordance with the Family Law of FBiH³⁸², when assigning a guardian, the guardianship authority “will take into consideration the opinion of the protégé, if he/she is able to express it”, as well as preferences of the close relatives of the protégé. An identical provision is contained in the relevant laws of the Republic of Srpska and Brcko District³⁸³³⁸⁴.

In practice, these norms are not adequately represented in the countries of the Western Balkans and there seems to be an inadequate understanding of the purpose and significance of child participation, or of the methods of direct work with children based on participatory approaches and values. A general statement of professionals in the CSWs and employees in the Ministry, as well as the NGO activists, is that in Montenegro the participation of service users in the processes and use of services is not sufficiently represented³⁸⁵. This is further confirmed by the fact that case records hardly contain any evidence of adequate participation of service users, be they children or adults. The LUMOS study³⁸⁶ showed that in most cases, when decisions were made about children placed in institutions, there was no communication from the child to the CSW. Only 32% of children were informed about the decision, even when it was related to a new care placement.

According to the data collected during a survey in Bosnia and Herzegovina, the CSWs stated that in 85% of cases the children were introduced to their rights and consulted during the process of considering

381 Family Law, *Official Gazette of Republic of Serbia*, no. 18/05, Article 164.

382 Family Law, *Official Gazette of FBiH* 35/05, 41/04, Article 179.

383 Family Law, *Official Gazette of Republika Srpska*, 54/02, 41/08.

384 Family Law *Official Gazette of BDBiH*, 23/97, 3/07.

385 Žegarac, N. (2011) Izvještaj o kapacitetima centara za socijalni rad u Crnoj Gori. Izazovi i mogućnosti reorganizacije, standardizacije i unapređenja stručne prakse. [Report on the capacities of centres for social work in Montenegro. Challenges and opportunities for reorganisation, standardisation and improvements of professional practice]. UNICEF, office in Podgorica. Unpublished document.

386 Mulheir, G., Velimirovic, M., Gyllensten, L. and Trebosc, L. (2011) Strategic Review of the System of Caring for Vulnerable Children in Montenegro. Recommendations for the Reform of Health, Education and Social Services. Document not published.

options of alternative care³⁸⁷. It is however not clear what the content of that “introduction” is, how it is implemented and when, i.e. whether it is a single act or a continuous process of informing and encouraging a child to accumulate information about him/herself, his/her future and past, and to give that information adequate meaning.

In-depth interviews with 16 youths between 13 and 18 years of age, in various forms of alternative care in Serbia, which were done in a quality part of the research conducted by the Faculty of Political Science³⁸⁸, showed that young people think that they are not sufficiently involved in the decisions which concern them. Only one third of these youths stated that they have selected their schools themselves and it seems that the selection of school is adjusted to the needs of care maintenance and leaving care after high school. The degree of participation in selecting the care placement is largely dependent on the age of the child. The ones that were referred to alternative care at an earlier age, stated that they were not consulted or expressed their view of the situation in any way, but were only told where they were going, in the best case scenario. Case managers stated that questioned young persons were “too small” at the time of their placement, in order to understand the situation, which speaks about the manner in which the professionals see the children and their role in work with the children. Also, some of the interviewed youths stated that they had no memory of separation, because it was a long time ago, and that they do not speak with anybody about those experiences. The adults agree that youths have little participation in the decisions that concern them, but they also think that this is in their “best interests”, because they are either not “mature enough” to make a decision or “realistic enough” in estimating their possibilities. Thus, it seems that in this relationship there is a mutual “omerta” – code of silence, and it would be difficult to assume that it contributes to development, wellbeing, safety and exercise of the rights of the child.

It is noticeable that the right of the child to express opinions, especially in court and administrative proceedings, is guaranteed by a range of legal provisions by the laws in Serbia and Montenegro, while the provisions in Bosnia and Herzegovina in this sense are much less dispersed. This, however, does not guarantee that children actually participate in the processes, because many of these legal standards and especially the manner in which the Convention considers the evolving capacities of the child in the context of child participation³⁸⁹, still do not seem to be familiar to either practitioners in CSWs and other services or the courts.

The terms that commonly used in the laws and practice of work with children (“child’s opinion”, “forming an opinion”, “in accordance with age and maturity”, “best interest of the child”, “determining the opinion of the child in an informal conversation”), are often not friendly to children, do not consider the child’s perspective and exclude most children from the process of participation (e.g. children of young age, children with disabilities, children with communication difficulties). Actually, these “standards” exclude everyone from participating except children considered by adults to be able to communicate and children with at least average intellectual development at an adolescent age. Adults define which child, when, how, and about what, may form an opinion and how much they will consider that opinion in a specific case. Therefore, it remains completely unclear in which circumstances the expression of “the opinion” (not the view or standpoint of the child, as the Convention states) may be damaging for the child and how (through which professional procedures and scientific knowledge) this will be determined. Also, the procedures for documenting child participation are not clearly defined, let alone in a way that would be adjusted to the child.

387 *Care for me! Quality care for every child* (2013) Assessment Tool for the Implementation of the UN Guidelines for the Alternative Care of Children, Version 2.0, Final Paper, Updated 09/01/13 SOS Children’s Villages International

388 Žegarac, N. (ed.) (2014) *U lavirintu socijalne zaštite: pouke istraživanja o deci na porodičnom i rezidencijalnom smeštaju* [In the labyrinth of social protection: lessons learnt from research on children in care]. Beograd: Fakultet političkih nauka i UNICEF.

389 Lansdown, G. (2005) *The Evolving Capacities of the Child*, Florence: UNICEF Innocenti Research Centre.

Also, there are no clear indicators whether children and youth in alternative care in all three countries know their rights, how they understand them and whether there are promising practices in this field (practices which exceed the framework of mere information, distribution of leaflets and printed materials without any feedback from the children on how they understand their rights and what they are prepared to do to protect those rights).

The principles of good practice of child participation developed by the organisation Save the Children³⁹⁰, indicate various aspects which ensure a meaningful participation of children, and not manipulation and “quasi-participation”. These are: ethics, voluntarism and relevance, equality of all children (non-discrimination), supporting environment, trained and reliable adults, safety and protection of children, as well as feedback from children. The participation of a child is not only the right of the child, but also a moral task of adults who take care of them³⁹¹. At the same time, participation is a developmental imperative which enables the children and youth to gradually take over responsibilities and mature behaviour during their development and later in adulthood.

390 Save the Children (2005) *Practical Standards in Child Participation*, London: International Save the Children Alliance.

391 Munro, E. (2005) Improving practice: child protection as a systems problem. *Children and youth services review*, 27 (4). 375-391.

RESTRICTIVE INTERVENTIONS

All disciplinary measures and behaviour management constituting torture, cruel, inhuman or degrading treatment, including closed or solitary confinement or any other forms of physical or psychological violence that are likely to compromise the physical or mental health of the child, must be strictly prohibited in conformity with international human rights law. States must take all necessary measures to prevent such practices and ensure that they are punishable by law. Restriction of contact with members of the child's family and other persons of special importance to the child should never be used as a sanction. Use of force and restraints of whatever nature should not be authorized unless strictly necessary for safeguarding the child's physical or psychological integrity. It is necessary to train the staff to recognise all forms of violence and to apply appropriate non-violent techniques of behaviour modification³⁹².

In 2008, in its concluding remarks, the Committee on the Rights of the Child³⁹³ gave a recommendation for **Serbia** to take all necessary measures in order to finally abolish practices applied with children with disabilities in some institutions, and which may be defined as abuse or torture, as well as to intensify efforts to solve the causes and prevent severe and prolonged restraint and isolation of children. It is also recommended to ensure a systematic training of health care and social workers on human rights of children with disabilities. The recommendations of the Committee are not consistently applied in practice, although there were several incidents and attempts to prevent and sanction such practices.

A range of documents were enacted in the last couple of years: Special protocol on protection of children from abuse and neglect in social protection institutions³⁹⁴, Regulation on forbidden actions of employees in social protection³⁹⁵, internal regulations, protocols or decisions relating to application of restrictive actions were drafted in some social protection institutions, but the practice is not harmonised and it is not clear whether there are mechanisms for monitoring and supervision. After the Regulation on minimum standards for provision of social protection services³⁹⁶ and the Regulation on licensing social protection organisations³⁹⁷ were adopted, service providers are obligated to draft internal procedures regulating the field of application of restrictive actions towards service users, in order to get a license.

Another regulatory mechanism was introduced in practice, so that all social protection institutions for placement of service users in Serbia are obliged to immediately, orally, within 24 hours, and in writing, inform the inspection of the Ministry of Labour, Employment and Social Policy about every incident in a residential institution. The instruction for application of restrictive procedures and measures

392 Paragraphs 96 and 97 of the Guidelines.

393 Concluding comments given to the Republic of Serbia about the Initial Report on application of UN Convention on the Rights of the Child (2008), Paragraph 36.

394 Special protocol on protection of children from abuse and neglect in the social protection institutions. Ministry of Labour and Social Policy, 2006.

395 Rulebook on forbidden actions of employees in social protection, *Official Gazette of Republic of Serbia*, no. 24/11.

396 Rulebook on detail conditions and standards for provision of social welfare services, *Official Gazette of Republic of Serbia*, no. 42/13, Article 5, Paragraph 1, Item 2, Indent (14), stipulating that restrictive interventions towards service users are to be applied exclusively on the basis of planned, monitored, supervised and timely limited interventions.

397 Rulebook on licensing organisations of social welfare, *Official Gazette of RS*, no. 14/11.

by social protection service providers³⁹⁸ was drafted in the end of 2013. A challenge remained in regard to the implementation of this document and training of institution staff in application of measures for positive regulation and modification of behaviour (*behaviour management and modification*) and selective and controlled application of appropriate restrictive procedures.

In 2010, in its concluding remarks to **Montenegro**, the UN Committee for the Rights of the Child³⁹⁹, indicated the problem of exposure of children to torture in residential care institutions and that there is a lack of legal framework which explicitly prohibits such practices, and that there are no complaint mechanisms for the children placed in residential institutions. In the Report of the European Committee *for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (CPT)⁴⁰⁰, that also visited the Institute for persons with disabilities “Komanski most” where 15 juveniles were placed⁴⁰¹, although it is an institution for placement of adults, it is stated that “the conditions in which protégés are forced to live could really be described as inhumane and degrading.” The Delegation required the Montenegro authorities to conduct a thorough review of the situation in the institution and to solve all problematic aspects (material conditions, hygiene, organisation, personnel, use of restrictive means), and to “draft a strategy for relocation of children and appropriate alternative care...”. After this Report, with support of UNICEF, juvenile users were relocated from the Institution “Komanski most”⁴⁰², but there is no data to confirm that personnel were trained in applying preventive and restrictive measures and actions.

The newly adopted Law on social and child welfare of Montenegro stipulates forbidden actions of employees⁴⁰³. The question on how this prohibition will be applied and how this will be controlled remains open.

In any case, neither Serbia, Montenegro, nor Bosnia and Herzegovina prohibited physical punishment of children in all environments. The prohibitions which were enacted so far refer to schools and the penal system, but not the family and alternative care⁴⁰⁴. In 2011, Draft Law on the rights of the child in Serbia was prepared, but a debate about provisions referring to prohibition of corporal punishment of children divided the public and even mocked the need to abolish violence against children in family relations in the context of corporal punishment. The process of law drafting is put on hold⁴⁰⁵.

The European Committee for prevention of torture and inhumane treatment (CPT), in its Report to the Bosnia and Herzegovina Government from 2011⁴⁰⁶, stated that, during the visit to the Care Institute for mentally ill persons “Drin”, the Institute, although otherwise recommended, continued to work as an institution for long-term care of heterogenous groups of service users, including children. The Committee recommended to the authorities of the Federation of Bosnia and Herzegovina to

398 This document is still a Draft.

399 UN Committee for the Rights of the Child, 51st Session: 1 September to 13 October 2010.

400 Report to Montenegro Government on the visit of the European Committee for prevention of torture and inhumane or degrading treatment and punishment (CPT) to Montenegro, published in September 2008.

401 A total of 131 persons, 15 juvenile users, visit conducted in September 2008.

402 According to available data, four more children stayed in this institution in the end of 2013.

403 Law on Social and Children Welfare, *Official Gazette of Montenegro*, REF Article 8 „...an employee is forbidden to commit any form of violence against a child, an adult and an elderly person, physical, emotional and sexual abuse, use of users, abuse of trust and authorities which he/she has in relation to the user, neglect of the user and other actions which harm health, dignity and development of the user“.

404 <http://www.endcorporalpunishment.org/pages/pdfs/GlobalProgress.pdf>, visited on 27 January 2014.

405 Serbia accepted the recommendation of the UN Council for Human Rights on prohibition of corporal punishment of children in all surroundings, 2008.

406 Report to the Government of Bosnia and Herzegovina on the visit of the European Committee for prevention of torture and inhumane or degrading treatment and punishment (CPT) to BiH, CPT/Inf (2012) 15 <http://www.cpt.coe.int/documents/bih/2012-15-inf-bih.pdf>, visited on 27 January 2014.

take energetic measures in order to develop alternatives to residential care by developing community based services. The CPT concluded that there are no legal provisions for prohibiting restrictive interventions and evidence on abuse of service users was not collected.

In Serbia, domestic and international non-governmental organisations, as well as the Ombudsman, indicated problems related to the use of restrictive interventions in the residential institutions for persons with intellectual disabilities, in several basic reports. The last report of the organisation MDRI (Initiative for the rights of persons with mental disability) from 2012⁴⁰⁷ indicates use of various physical and chemical restraint measures for both children and adults.

407 Ćirić Milovanović, D. (2012) *Sklonjeni i zaboravljeni: Segregacija i zanemarivanje dece sa smetnjama u razvoju i odraslih osoba sa intelektualnim teškoćama u Srbiji* [Removed and Forgotten: Segregation and Neglect of Children with Developmental Difficulties and Adults with Intellectual Difficulties in Serbia]. Beograd: Inicijativa za prava osoba sa mentalnim invaliditetom MDRI-S..

COMPLAINTS MECHANISM

The Guidelines define that every decision on separation of a child from the family must be made by the authorised bodies, with possibility of revision, whereby children and parents must be ensured the right to complain and access to appropriate legal representation. It is necessary to make an efficient and neutral mechanism, which may record remarks, complaints and appeals, available to children. This mechanism must enable consultations for children, application of measures, and a feedback from the person who is proficient in working with children and youth. It is necessary to involve young persons, who had previous experiences in alternative care, in this process.⁴⁰⁸

In all three observed countries of the Western Balkans, the conditions and manner of separation of a child from one or both parents are normatively regulated by provisions of the family and social policy legislation. In cases when separation is not voluntary, a child may be separated from his/her parents only by a court order. This decision is always made if it is in the best interest of the child and it can be made in all situations when the parent is deprived (partly or completely in Serbia) or limited or deprived (in Montenegro) of parental rights, i.e. as a protective measure against domestic violence. In the family legislation of these two countries, decisions on separation of a child from parents is exclusively made by the court under legally prescribed conditions and procedure, whereby there is a preventive and consultation role of the guardianship authority.

In the Republic of Serbia and Montenegro, authorised ministries directly apply provisions from Article 12 of the Convention, when deciding on appeals against a decision of the CSW concerning any of the family relations rights that directly affect a child, and where the decision was made by the CSW and not the Court. The new laws in Serbia and Montenegro⁴⁰⁹ introduce the **right of the service user to file a complaint**. Namely, a service user who is not satisfied with provided service, procedure or behaviour of the service provider, may file a complaint to the authorised body. Draft Instruction regulating this field was made in Serbia in 2011, but this instruction was not available to service providers in the social welfare system at the time when this analysis was written.

In the institution of Ombudsman in Serbia, the Assistant Ombudsman manages a special field of work of child rights, within which actions are being taken for and on behalf of children in cases of breach of their human rights. About 9.5 percent of cases dealt with by the Ombudsman in 2012 were related to child rights⁴¹⁰. Most complaints were related to the work of social welfare institutions, schools, local self-governance, ministries and the judiciary system, with regard to complying with the best interests of the child, inclusion in education and protection from violence, abuse and neglect.

408 Paragraphs 47, 99 of the Guidelines.

409 Law on Social Welfare, *Official Gazette of Republic of Serbia*, no. 24/11, Article 39; Law on Social and Child Welfare, *Official Gazette of Montenegro*, no. 27/13, Article 10.

410 Situation analysis on children in Serbia (2013) UNICEF Office in Serbia. Unpublished document.

Example: Complaint to the Commissioner for Equality

An interesting and informative example is the case of *complaint of A.Ž.C (NGO Alternativni ženski centar) against centres for social work on account of discrimination in the field of social welfare on the grounds of material poverty* submitted to the Commissioner for Equality. In that case a non-governmental organisation complained about 15 CSWs because of their decisions to separate a certain number of children from their parental families and to place them in foster families on the basis of the requirement “social and financial vulnerability”. The complainant received the data about the cases from the Report on the work of CSWs. The Commissioner gave the Opinion that during the procedure it was not determined that the poverty of children and their families was the only requirement for relocation of those children from their original families to foster care, but that most of the families, apart from obvious poverty, had other problems which may have contributed to the decision to place the child/children in foster care. However, it is evident that the CSWs in their statements did not offer a detail explanation for their decisions on the children’s placements in foster care, but only some professional qualifications, so that in certain cases the requirements for decisions to place “socially and financially vulnerable children” in foster care are not completely clear. In the justification of the Opinion, the Commissioner referred directly to the UN Guidelines. Also, she gave a recommendation that “with regard to children from the beneficiary group “socially and financially vulnerable children”, which are still in foster care, the decisions relating to placement of these children will be reviewed and a detailed explanation will be given to the Commissioner for Equality for every decision to place a child in the foster family, as well as detailed data on measures of support and assistance which were taken prior to making a decision on placement of the child in foster care”.

In **Montenegro**, the Assistant Ombudsman for human rights and freedoms acts upon complaints in the field of exercising child rights. During 2010, the Ombudsman for human rights and freedoms sent 11 recommendations to the bodies aimed at protecting and enhancing the rights of the child, and complying with the Convention on the Rights of the Child. During 2011, 20 recommendations, and 83 cases during 2012 were dealt with. The Ombudsman sent nine recommendations to various national and local institutions in the field of education, health care, social and child protection, judiciary, etc. Breach of rights was removed during the procedure in 26 cases.

Example: Complaints of children in alternative care to the Ombudsman

In July 2013, an Opinion was sent to the Minister in charge of social welfare in Montenegro stating that “through the appeals, complaints and suggestions box for children placed in residential institutions for children, the Ombudsman received a certain number of letters from children relating to problems in exercising the rights of social and child protection. The children stated in their letters that they were not satisfied with the actions of the CSWs while establishing and maintaining contacts between a child and its family, exercising right to personal documents, as well as the attitude of the CSWs towards the children, since they think that the centres do not have sufficient sense and sensibility for their actual needs. In the recent period, citizens’ complaints relating to professional capacities of employees, insufficiently educated and sensitive personnel working with children, as well as unjustified prolongation of procedures in problematic family relations are becoming more frequent”.

In Serbia and Montenegro, in an extrajudicial procedure, while performing official duties, the court pays special attention and takes measures to protect the rights and legal interests of children without parental care and involves the guardianship body. Republic of Serbia and Montenegro signed but still did not ratify the 3rd Optional Protocol to the Convention on the Rights of the Child in

communication procedures, i.e. complaint procedure⁴¹¹.

According to the survey conducted by SOS Children's Villages BiH, carried out in 60% of CSWs in **Bosnia and Herzegovina**⁴¹², professionals in the CSWs stated that more than 80% of children were introduced to basic rights and the possibility to file a complaint. It would certainly be more appropriate to ask the children about this, in order to receive more reliable data. During 2011, the institution of Ombudsman for children of the Republic of Srpska acted in 451 cases in total and a total of 601 cases in 2012. The most complaints were related to children's rights to education, manner of maintaining personal relations and contacts with the other parent with whom the child does not live and his/her close relatives, the right to protection against violence, especially neglect of the child, and following bodies are considered responsible in the complaints: CSWs, courts, schools, rarely education inspections, authorised relevant ministries in the field of social protection and education.

The problem of so-called *high-conflict divorces*, i.e. the rights of the child during court and administrative procedures of parents (contacts and seeing the parent with whom the child does not live, disagreement about custody rights, etc.), is the biggest problem that the institution of Ombudsman in BiH sees in contacts with CSWs, while dealing with individual complaints. The situation is very similar in Serbia and in Montenegro, where situations in which two interested (mostly competent) parents dispute about the manner of child or children custody, and this is an obvious drain on the modest resources available to services and institutions for the protection of child rights in all three countries, without contributing to improvement in the child's situation. Obviously the institutional set-up and legal solutions in this field are not adequate and do not refer parents to peaceful conflict resolution. At the same time, the rights of the child for which apparently nobody "fights" or "complains" remain unrecognised, the children seem to be insufficiently informed about their rights and they do not see the available appeals and complaints options as user friendly.

411 <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>, visited on 16 December 2013.

412 *Care for me! Quality care for every child* (2013) Assessment Tool for the Implementation of the UN Guidelines for the Alternative Care Of Children, Version 2.0, Final Paper, Updated 09/01/13 SOS Children's Villages International.

RECORDS AND DOCUMENTATION

It is necessary to keep a comprehensive and updated documentation on alternative care, which includes detailed individual records of all children in care, records of personnel and evidence of financial transactions. The records of children in care will be complete, updated, confidential, and kept in safety. It is necessary for the child record to contain data on the circumstances of intake and discharge from care, personal documents of the child, data on the family and data on conditions and needs of the child obtained from periodical assessments. The personal record will be available to the child, parent or guardian, with limitations relating to child's rights to privacy and confidentiality⁴¹³.

In the Law on Social Protection of Republic of Serbia⁴¹⁴, regulating the records and documentation in more detail remains to be achieved by a by-law. The Regulation on records and documentation was not adopted at the time when this analysis was written. The draft of this document from 2012 included the guidelines dictated by international contractual bodies on the data that will be collected, indicators to be monitored, as well as protection of personality data and confidentiality of service user data. The parts referring to release of confidentiality rights, in explicitly stated cases, were also analysed. In Montenegro, the Law on Social and Child Protection deals with the issue of protection of personal data⁴¹⁵, and further with the issue of records⁴¹⁶, establishes clusters of data⁴¹⁷ and defines confidentiality of information on service users⁴¹⁸.

From 2008, in **Serbia**, Regulation on the work of CSWs and Regulation on foster care introduced a range of forms which follow a professional procedure, in order to ensure process monitoring and to improve data collection, which enabled numerous recent analyses and research and contributed significantly to the quality of data about children in alternative care. Also, the Regulation on foster care introduced the so-called Child Informer “My life path”⁴¹⁹. This is a domestic version of the “book of life” of a child in alternative care, as known good practice⁴²⁰, to which the Guidelines refer, where information on the child during the process of growing are collected, and it serves to acquaint the child with his/her past, establish continuity in the child's life and to cultivate his/her identity. The Regulation stresses that the “Informer will be filled in by the foster parent in cooperation with the professionals from the CSW in charge of the child and the Centre for foster care and adoption, and the child or youth in foster care“, which once again demonstrates the passive position “recommended” for the child. Unfortunately, this form of collecting information from interactive work with children is not foreseen for children in other forms of alternative care.

A closer representation of the situation in the application of the Guidelines in practice of social

413 Paragraphs 109 – 112 of the Guidelines.

414 Law on Social Welfare, *Official Gazette of Republic of Serbia*, no. 24/11, Article 23.

415 Law on Social and Child Welfare, *Official Gazette of Montenegro*, no. 27/13, Article 9.

416 Law on Social and Child Welfare, *Official Gazette of Montenegro*, no. 27/13, Article 15.

417 Law on Social and Welfare, *Official Gazette of Montenegro*, no. 27/13, Article 148.

418 Law on Social and Child Welfare, *Official Gazette of Montenegro*, no. 27/13, Article 150.

419 Rulebook on foster care, *Official Gazette of Republic of Serbia*, no. 36/2008, Article 4.

420 See e.g. <https://www.childwelfare.gov/outofhome/casework/children/lifebooks.cfm>, visited on 28 January 2014.

services in Serbia is given by the research⁴²¹ of the Faculty of Political Science, where, on the basis of childrens' records, an evaluation of record keeping was made (representation of prescribed documents, their updates, individuality and copies). The analysis showed that in the records of children in alternative care, there is a notable amount of information missing on the characteristics of the child, parents, living conditions of the birth family, which are relevant for understanding the needs, assessing risks, deciding about the first and further interventions of the centre. The data on school education, exposure of the child to violence, emotional and behavioural problems of the child, were not recorded in one third to one half of children. It is notable that much of the basic data on parents, contacts, family living conditions, etc. is missing in the records. About a half of total prescribed documentation in the CSWs for children in care is not present. Also the individuality of documents was rated unfavourably, because almost a half of estimates and two thirds of plans made by the CSWs for children in care were rated as not individualised. Thereby, one part of the documentation (about 10%) is simply reproduced without entering updated data.

This data demonstrates severe difficulties faced by CSWs staff in responding to professional work requirements for keeping records in accordance with the newly introduced standards. There are objective and subjective, external and internal reasons for this. Apart from the difficulties to accept novelty, there are also contradictory requirements, parallel and non-connected maintenance of various documents about professional procedures, administrative procedures, office work and payment of costs, all without an appropriate information system, which significantly increases an already impressive volume of work.

In the field of social protection in Serbia, as a progress of the above-mentioned, a comprehensive project "Provision of enhanced services on local level" (so-called DILS) is ongoing, where introduction of single electronic record and documentation keeping system in CSWs and residential care institutions for service users is contained in one of the components and it will enable automatic accumulation of all data recorded about the service users and integration of the data into a single information system. It is expected that, once the system becomes operational (likely in 2015), the documents on service users and children covered by the Guidelines will be better updated and individualised. The availability of data on the local level is improved thanks to the cooperation with the Republic institute for statistics and the initiation of the municipal DevInfo database.

The analyses of present practice in **Montenegro** indicate a significant problem of non-existent systematic mechanisms for collection and analysis of data, in order to ensure systematic and comprehensive quantity and quality data for all fields important for monitoring and estimation of influence of adopted policies on children.

The analysis of the work of CSWs from 2011⁴²² indicates non-existence of written rules for keeping of documentation and records, so that the practice of documenting, as well as the practice of submitting necessary requests and documents necessary to exercise certain rights, varied from one centre to another. The registry of CSW service users was not centralised, so that one user could be reported in two or more places. Direct insight into the records and reports of professional teams who deal with children and youth protection showed that documentation and clear chronology of events and actions taken is often missing. The participation of service users, especially children, is mostly not visible in professional documentation. The findings are also often insufficiently structured; data and

421 Žegarac, N. (ed.) (2014) *U lavirintu socijalne zaštite: pouke istraživanja o deci na porodičnom i rezidencijalnom smeštaju* [In the labyrinth of social protection: lessons learnt from research on children in care]. Beograd: Fakultet političkih nauka i UNICEF.

422 Žegarac, N. (2011) Izveštaj o kapacitetima centara za socijalni rad u Crnoj Gori. Izazovi i mogućnosti reorganizacije, standardizacije i unapređenja stručne prakse. [Report on the capacities of centres for social work in Montenegro. Challenges and opportunities for reorganisation, standardisation and improvements of professional practice]. UNICEF, office in Podgorica. Unpublished document.

conclusions are mixed. The manner of data collection stated by professionals indicate an insufficient, methodologically based and in some cases ethically problematic and unlawful practice.

Long standing problems with collection and processing of data in the field of child welfare recently started being systematically resolved in Montenegro. In the beginning of 2013, UNICEF presented a National database on child welfare, created to ensure reliable data on the situation of children and their needs, as well as measures and services provided to them by the CSWs⁴²³. The data from this database was not available at the time when this report was written. During 2012 and 2013, activities related to introduction of an Information reporting system – ISSS (popular name “social card”) were intensified. This system, whose introduction is expected in 2014, is marked as a priority of the Ministry of Labour and Social Welfare⁴²⁴, and it will enable better allocation of funds for social contributions, reduction of system administration costs, improvement of quality and availability of data from the social welfare system, but also enhancement and better accessibility of public services, especially for at-risk and vulnerable groups⁴²⁵.

From a normative side, in Montenegro, Regulation on organisation, norms, standards and manner of work of the centres for social work and Regulation on contents of the database and contents and manner of keeping records in social and child welfare⁴²⁶ were enacted in December 2013.

The Report of SOS Children Villages BiH indicates non-existence of a single methodology for children without parental care and other children referred to in the Guidelines in **Bosnia and Herzegovina**. Thus, there is no reliable statistical data on the number of children without parental care or the number of children simultaneously registered as children with disabilities. It is very likely that one child gets recorded in several observed categories at the same time, due to unclear definitions and not harmonised methodology of recording. A common base called SOTAC was supposed to solve the problem of recording, but it did not become operational, except for recording of persons with non-war disabilities and civilian victims of war⁴²⁷. While writing this analysis, the author did not have any available data or insight into the quality and manner of keeping case records on children in alternative care.

423 http://www.unicef.org/montenegro/media_23928.html, visited on 18 January 2014.

424 <http://www.mrs.gov.me/vijesti/119198/Susret-ministra-rada-i-socijalnog-staranja-mr-Predraga-Boskovic-sa-stalnim-predstavnikom-misije-UNDP-u-Crnoj-Gori-Rastislavom-Vr.html>, visited on 18 January 2014.

425 <http://portalanalitika.me/ekonomija/vijesti/125161-socijalni-karton--informacioni-sistem-socijalnog-staranja>, visited on 18 January 2014.

426 Both published in the *Official Gazette of Montenegro*, no. 58/13.

427 *Care for me! Quality Care for every Child* (2013) Assessment Tool for the Implementation of The UN Guidelines for the Alternative Care of Children, Version 2.0, Final paper, updated 09/01/13 SOS Children's Villages International.

INFORMAL CARE ARRANGEMENTS

Support to informal forms of care is one of the preventive strategies for enrolment of children in the system of formal alternative care. The Guidelines stipulate clear responsibilities of the State in the field of formal care and refer to an appropriate balance of the need to protect children and compliance with informal family arrangements, with respect to the best interests of the child. The State will offer appropriate support to the families providing informal care of children and protect the children from abuse and neglect⁴²⁸.

The Guidelines do not regulate informal care arrangements⁴²⁹, where the child stays with relatives or friends for reasons not related to the general inability and unwillingness of parents to provide suitable care. There is a recommendation that, where appropriate⁴³⁰, caregivers should be encouraged to inform the authorised bodies about such arrangements. This way, both the caregivers and the child itself could receive necessary financial, psychological and social support. Where possible and appropriate, with approval of the child and parents, it should be encouraged and enabled for some of the informal arrangements to become formalised into a guardianship or another form of alternative care of the child, in the best interest of the child and if such alternative care is expected to continue in the future.

An informal family placement is usually the most represented form of alternative child care all over the world – both in modern days and historically^{431 432}. Some children live with their relatives or, rarely, with friends of the family, while the parents work outside of the place or the country of residence, or in situations when parents are facing temporary difficulties which currently interfere with provision of suitable care for the child. The advantages of such arrangements for the child are obvious, because except for staying in familiar surroundings, the child has a possibility to preserve his/her identity and to establish continuity and sense of belonging with fewer difficulties. These arrangements are as a rule more stable than some other forms and efficiently keep the children away from formal care arrangements^{433 434 435}.

The disadvantages are that there are many practical difficulties for monitoring and providing support to these families and for providing safety for children. It is possible to a certain extent only in cases when relatives care for the child directly and fulfil the guardianship role, which represents a form of alternative care, although the practice of CSWs in Serbia, Montenegro, and Bosnia and Herzegovina,

428 Paragraphs 76-79 of the Guidelines.

429 Paragraph 30 (c) of the Guidelines.

430 Paragraph 56 of the Guidelines.

431 United Nations Children's Fund (2009) Progress for children: A report card on child protection. [http://www.unicef.org/protection/files/Progress_for_Children-No.8_EN_081309\(1\).pdf](http://www.unicef.org/protection/files/Progress_for_Children-No.8_EN_081309(1).pdf), visited on 14 January 2013.

432 United Nations Children's Fund (2013) *Children under the age of three in formal care in Eastern Europe and Central Asia: A rights-based regional situation analysis*. http://www.unicef.org/UNICEF_Report_Children_Under_3_FINAL.pdf, visited on 10 January 2013.

433 Ingram, C. (1996) Kinship care: From last resort to first choice, *Child Welfare*, 75,550-566.

434 Terling-Watt, T. (2001) Permanency in Kinship Care: An Exploration of Disruption Rates and Factors Associated with Placement Disruption, *Children and Youth Services Review*, Vol. 23, No. 2, pp. 111-126.

435 Doolan, M., Nixon, P., & Lawrence, P. (Eds.) (2004) *Growing up in the care of relatives or friends: Delivering best practice for children in family and friends care*. London: Family Rights Group.

does not have mechanisms or awareness on the systematic approach, even for the marked guardianship families which are officially in the alternative care system. Supervision is mostly reduced to a yearly report of the guardian to the guardianship authority, without actual insight into the life and needs of the child and, on the other hand, it seems that support is neither offered nor asked for. Actions are reactive when a problem arises, which also demonstrates the scope of work faced by this service.

It is justified to assume that in all three countries of the Western Balkans, there is a significant number of children living in informal care and neither recognised nor recorded by the social services, and there are no special preventive programmes or services which may respond to the needs of the child in informal care or the (replacement) families that care for them. The number of these children cannot be estimated and it certainly varies in various regions in the three countries, and it may be linked to seasonal job search of the parents, parents' work abroad, short-term or long-term medical treatment of parents, poverty of parental family, or other circumstances which may lead to various family and other paid or unpaid temporary or long-term arrangements. Also, there is no data about households independently led by youths aged 15 and over, or data about households where young juveniles care for the ill and weak members of the family. It is justified to assume that such cases exist, just like in any other country in the world, and it is possible that these young people avoid contact with social services because they do not expect any form of adequate assistance.

It is very important for professionals in CSWs, and especially for employees in schools (which are probably the only ones who have an insight into the living arrangements of these children), to develop positive attitudes about such living arrangements and to be open to offering various forms of assistance and support adjusted to their specific living circumstances, which are acceptable to them and ensure safety and wellbeing of the children.

FINANCING, SUPERVISION, ENSURING QUALITY OF ALTERNATIVE CARE – SUPERVISION, INSPECTION AND MONITORING

Budgets and financing

It is necessary to allocate adequate funds to the prevention of separation of children from their families, development and functioning of family care, including the allowance for foster care, funds for development of services in the community and for functioning of residential care. It is necessary to ensure that the allocated funds are used adequately⁴³⁶.

The Law on budget may be a good indicator of implementation of child rights. Budget lines in the countries of the Western Balkans are not set-up in a way which would show the amounts actually allocated to final users. It is impossible to conclude from the budget lines how much is allocated for the implementation of child rights – i.e. how much does the State provide for education, healthcare and rights of children on social welfare.

In 2010, in **Serbia**, the expenditures for social welfare were 24.6% of GDP (out of which 53.7% was for pensions), while financial allowances for the families and children were 5.4% of total expenses for social welfare. Total expenses for social welfare in Serbia are a little below the EU average of 29.4% of GDP, but above expenditures of most neighbouring countries and new EU member states. It is planned in the budget for 2013 to transfer 35.3 billion dinars to local budgets (for supporting development of local services), which is about 1.1% of GDP of Serbia. The share of expenditure for social welfare in the total expenditure of self-governance units in Republic of Serbia (150 municipalities, 23 cities and the City of Belgrade, total 174) increased from 2.5% in 2005 to 4.5% in 2010. The expenditure for social welfare, in comparison to other categories of expenditure, had the fastest growth. The uniformity in the manner of data presentation is still not ensured in practice, which makes monitoring and analysis more difficult, and budgetary funds that are allocated to children are difficult to be recognised in these figures.

The social protection services are financed from the budget of the Republic of Serbia, Autonomous District of Vojvodina and local self-governance units, as well as through other service providers. Basic social allowances, care of the victims of human trafficking, care provided in the residential social welfare institutions, foster care services and adoption, are funded from the Republic budget. Also the maternity allowance, parental allowance, child allowance and allowance for assistance and care by another person are also funded from the Republic budget. The local self-governance units are in charge of financing services in the community. This includes shelters, safe houses, day care and

⁴³⁶ Paragraphs 20, 24-25, 108 of the Guidelines.

service of supported independent living and residence, as well as support for persons and children with disabilities and youth leaving the alternative care system. Local funds also finance the work of social welfare institutions based and managed at the local level.

The share of expenses for social allowances in the total expenses of local self-governance units increased from 2.5% in 2005 to 4.5% in 2010. Compared to other categories, the expenses related to the social welfare increased the most. Within the expenses for local social welfare, the largest part is reserved for monetary allowances (71%), while an average of 29% is being allocated to the work of institutions founded by the local self-governance⁴³⁷. In Serbia, the community-based social services were so far largely funded through projects (mostly donor funds) and they usually ceased after the project completion, because the local self-governance units did not allocate funds for their sustainable funding. The new aspect in the new Law on Social Protection is the support to funding of such services through Republic budget via purpose transfers for all municipalities which are under Republic average, by the degree of their development. During 2013, two calls for selection of projects were successfully implemented, which will ensure development of local social services through purpose transfers. From 2008 to 2013, in Serbia, the sum of funds allocated from the budget for funding of foster care increased and the sum for funding of residential care decreased at the same time⁴³⁸.

In **Montenegro**, the funds for work of institutions are provided from the state budget. The institutions may also receive funds from service users, donors, contributions, presents, legacy, and other sources. For illustration purposes, the planned funds for financing of current and capital expenditures of the consumption budget line for five institutions in the field of social and child protection in the Law on budget for 2008 amount to 24.8% of the budget, while the remaining funds are allocated to the ten CSWs, primarily for funding of expenses based on the rights in the field of social, child and soldier protection (65.2% of Republic budget). The expenditures for social welfare in Montenegro, according to the balance sheet of the budget for 2007, amounted to 426.9 million euro or 17.44% of the estimated GDP. The expenditures for rights and allowances in the field of social welfare amounted to 15.8% of GDP, while 0.52% of GDP in 2007 was spent for social welfare and social services. Other expenses, which primarily refer to the expenses of residential social welfare institutions amounted to 1.13% of GDP. Social welfare rights represented 1.13% of GDP, while the rights to social insurance amounted to 14.57% of GDP.

In **Bosnia and Herzegovina**, based on the Law on budget of BiH institutions and international obligations of BiH for 2013,⁴³⁹ no funds were planned for financing of the Children's Council. Action plan for children, and the grants and allocations for children in alternative care were not specifically stated. The budget of the Federal Ministry of Labour and Social Welfare for 2013 represents about 16.4% of the federal budget and since it is not transparent, it remains unclear which funds were allocated to certain groups of children. The budget of the Ministry of Health and Social Welfare of the Republic of Srpska is also not transparent, so it is not visible which funds are allocated for financing of running costs of alternative care which would potentially be allocated for development.

437 Data of the Ministry of Labour, Employment and Social Policy of Republic of Serbia, 2012.

438 Data of the Ministry of Labour, Employment and Social Policy of Republic of Serbia, 2013.

439 Proposal of the Law on budget of BiH institutions and international obligations of BiH for 2013.

https://www.parlament.ba/sadrzaj/zakonodavstvo/u_proceduri/default.aspx?id=38100&langTag=bs-BA&pril=b

Supervision, inspection and monitoring

The Guidelines indicate the necessity of services, institutions and professionals involved in child care to be responsible to an appropriate State body, which will ensure frequent inspections (announced and unannounced visits), involving interviews and observation of employees and children. Thereby, the inspectors not only have a control role, but also work on the strengthening of capacities of service providers. Also, independent monitoring mechanisms are necessary, in accordance with the principles relating to the Status of national institutions for enhancement and protection of human rights (*Paris principles*). The States will establish an independent mechanism for monitoring which will be easily accessible to children, parents and persons in charge of children in alternative care⁴⁴⁰.

In all three countries of the Western Balkans, the regulation mechanisms for supervision and inspection are implemented by authorised ministries.

In **Serbia**, the Law on Social Protection recognises *supervision of work*⁴⁴¹, and *supervision of professional work of the service provider*⁴⁴², which is performed by the authorised ministry in order to determine whether conditions are met concerning the application of prescribed professional procedures and use of professional knowledge and skills during intake, assessment, planning, review of effects of implemented activities and finalisation of work with the service users, on the basis of insight into the documentation and the process of provision and effect of services. The Law established *inspection supervision*⁴⁴³. In Serbia, within the ministry in charge of social welfare, there is a Department for inspection supervision, structured as a separate organisational unit. The inspectors perform a number of planned and unplanned inspection visits during the year and act according to the information on incidents. The Law on Social Protection defines the authorities of inspectors, which have the status of an official. Until 2012, only 5 inspectors were employed in the Ministry, who controlled all institutions and social protection services and organizations in Serbia, and in the last two years the number of inspectors doubled. Appropriate instructions, which would regulate the work of inspectors in this field have not been adopted to date⁴⁴⁴.

In **Montenegro**, the Ministry of Labour and Social Welfare is authorised to perform professional supervision, which is organised by forming an ad-hoc commission and visiting CSWs and alternative care institutions. The supervision is most often reactive and organised in case of incident situations. There is an old Regulation on performing professional supervision from 1994⁴⁴⁵, which regulates basic organisational issues but not the precise methodology and outcomes of professional supervision. Second-instance procedures about citizens' appeals are within the authority of the relevant Ministry. Cooperation and exchange intensified since the Ministry got more involved in the work of CSWs

440 Paragraphs 128-130 of the Guidelines.

441 In Serbia, Article 166 of the Law on Social Welfare. Supervision of work is being performed by the authorised Ministry, as control of work of bearers of public authorisations.

442 Law on Social and Child Welfare, *Official Gazette of Montenegro*, no. 27/13, Article 163; the the Law on Social Welfare of Republic of Serbia, *Official Gazette of Republic of Serbia*, no. 24/11, Article 167.

443 Law on Social and Child Welfare, *Official Gazette of Montenegro*, no. 27/13, Article 164; Law on Social Welfare, *Official Gazette of Republic of Serbia*, no. 24/11, 168.

444 By enacting the Rulebook on licensing of organisations of social service provider, the inspectors of social protection are authorised to also implement complete procedure of licensing organisations of service providers, maintaining at the same time all legally assigned authorisations of inspection supervision. The Rulebook on licensing of social protection organisations, *Official Gazette of Republic of Serbia*, no. 42/2013.

445 Rulebook on supervising professional work of institutions for social and child protection and workers in these institutions, *Official Gazette of Montenegro*, no. 11/94.

and residential institutions in 2012, performing control by visiting residential institutions for children (Ministry gives final approval for placement in an institution on the basis of a justified opinion of the CSW).

In **Bosnia and Herzegovina**, the Federal Ministry of Labour and Social Policy⁴⁴⁶ has the authority to make policies, strategies and standards, for monitoring and supervision of various forms of care for children without parental care, as well as professional activities of the institutions established by the Federation BiH, which includes inspection. In accordance with the relevant laws, there are provisions for labour inspection referring both to public and private institutions and they are implemented by the social protection inspectors according to the provisions of the Law on inspections in the Federation BiH⁴⁴⁷, the Law on inspections in the RS⁴⁴⁸ and the Law on inspections of the Brcko District of BiH⁴⁴⁹. On the other hand, by proposing, adopting and upholding cantonal laws, the cantonal authorities regulate the activities in the field of social protection in detail, supervise the work of institutions and organizations and finance child welfare on the cantonal level. In Bosnia and Herzegovina, there is no data about the number of institutions inspected each year⁴⁵⁰. However, it is encouraging that there are bodies which periodically visit institutions and make conclusions about the suitability of the care of children without parental care. One of such reports is also the specific report⁴⁵¹ which is periodically published by the Institution of Human Rights Ombudsman of BiH. According to the report, the majority of existing residential institutions for children without parental care have certain deficiencies which need to be removed and adjusted to a child. Eleven public institutions for children without parental care were covered by the last special report.

In all three countries of the Western Balkans, a **National preventive mechanism** was established as an independent monitoring mechanism⁴⁵², in order to enhance citizens' rights and prevention of torture and other cruel and inhumane or degrading treatments. In Montenegro, the work of this body is performed by the Human Rights and Freedoms Ombudsman, in Serbia the Citizens Ombudsman and in Bosnia and Herzegovina the Ombudsman. Reports are being made after the visits, which are forwarded to the institutions or organisations which were the subject of monitoring. The reports contain potential recommendations in the sense of enhancing human rights of persons residing in these institutions.

446 <http://www.fmrsp.gov.ba/s/index.php>

447 The Law on inspection in FBiH, Official Gazette of FBiH, no. 69/05.

448 The Law on inspection in RS, Official Gazette of RS, no. 113/05.

449 The Law on inspection of BD, Official Gazette of BD, no. 24/08.

450 *Care for me! Quality care for every child* (2013) Assessment Tool for the Implementation of the UN Guidelines for the Alternative Care of Children, Version 2.0, Final Paper, Updated 09/01/13 SOS Children's Villages International.

451 Institution of Human Rights Ombudsman (2010) Special Report on the rights of children placed in institutions, with a special overview of regulations and standards.

452 The signatory States of the Optional Protocol to the Convention against torture and other cruel, inhumane or degrading punishments establish an independent preventive mechanism as an obligation determined by this Optional Protocol.

VISIBILITY OF THE UN GUIDELINES FOR THE ALTERNATIVE CARE OF CHILDREN IN THE NATIONAL POLICIES AND PRACTICE

The data on insufficient use of the Guidelines by decision makers are troublesome, so we may indirectly conclude that such situation is present in the professional circles as well. In Serbia and in Montenegro, international organisations which deal with child rights made occasional efforts to make this document visible. It is interesting that the Guidelines were seemingly never promoted in these two countries and it seems that there is a completely superficial knowledge about their purpose and sense. It seems that the phrase “alternative placement” or “alternative care”, being influenced by the strong deinstitutionalisation processes in the field of child protection from 2006 to date, got a meaning in the minds of the professionals of an alternative to institutional care. Thus, the parents and biological family got “pushed aside” in some way and the “alternative” is something that is second or “better choice” than residential placement for children, and not a comprehensive observation of measures and complex decision-making in accordance with the best interests of the child.

It seems that the situation in Bosnia and Herzegovina is somewhat different, where the Guidelines were promoted since their adoption, with support of SOS Children Villages BiH, which translated, printed and distributed the Guidelines to the CSWs and other interested parties⁴⁵³, who mostly stated that they were introduced to the Guidelines in the conducted survey. Unfortunately, it is not further explained to which extent the professionals in the centre know and how they perceive the Guidelines, which certainly may be a good topic for further research.

⁴⁵³ *Care for me! Quality care for every child (2013) Assessment Tool for the Implementation of the UN Guidelines for the Alternative Care of Children, Version 2.0, Final Paper, Updated 09/01/13 SOS Children's Villages International.*

CONCLUSION: WHAT IS THE SAME AND WHAT IS DIFFERENT FOR CHILDREN IN ALTERNATIVE CARE IN THE THREE COUNTRIES?

Alternative care for children in the countries of the Western Balkans is integrated into the non-differentiated system of social and child welfare, which has limited capacities for responding to children's needs. Policies were developed and certain legislation reforms in the field of child protection were implemented in all three countries, but there are still inconsistencies, gaps and difficulties related to harmonisation with international standards⁴⁵⁴. The largest difficulties may be noticed in application of newly introduced standards and mechanisms. It seems that proportionally more attention and resources is given to creation of policies and laws, than is the case with their implementation. The changes in the field of child welfare are not managed and evaluated systematically and they are not supported by adequate funds. The issue of children in the society and especially the issue of child welfare is not a priority in Serbia, Montenegro, nor in Bosnia and Herzegovina.

Also, the existing structures at the national and local levels of authority do not enable an efficient application of child welfare policy from the aspect of capacities which would ensure a quality system of alternative care in accordance with the Guidelines. Montenegro has a highly centralised system of social welfare and does not have developed mechanisms for linking central and local initiatives in this field. Serbia maintained a highly centralised system and gave one part of the responsibility for development of community social services, as well as founding rights for CSWs, to local self-governance units. However, a regional level is missing, which is necessary for efficient functioning of various systems, including the social welfare system, in a country of that size. Complex organisation of Bosnia and Herzegovina (two entities, ten cantons and one administrative district, each having budgetary and administrative autonomy) is usually estimated as a severe obstacle to introduction of any kinds of changes. However, there are no essential differences in the systems of alternative care in the entities and the possibilities ensured by decentralisation (regarding response to local needs) are seemingly not appropriately used in Bosnia and Herzegovina.

When many changes are being introduced in a short time period, simultaneously or successively, then some of them may produce unexpected effects⁴⁵⁵, which should certainly be additionally analysed as effects of the current course of reforms in the three observed countries. Also, when reforms are not supported by sufficient resources or are subject to changing political circumstances with unclear goals and twofold messages, the practitioners working directly with children can quickly grow tired. The question is how the people who work in direct practice "consume" the changes, how they understand and interpret them, and to what extent they see those changes as "their own". If the practitioners do not see the reforms as "their own", as something that enhances and gives a positive sense to their work, it is very likely that they will strive to limit the application of certain new aspects.

454 Byrne, K. (2103) *Child Protection Situation Analysis. The North West Balkans Context*. Save the Children.

455 Munro, E. (2011) *The Munro Review of Child Protection: Final Report – A child-centered system*. London: Department for Education.

Expansion of community-based social services occurred in all three observed countries and the issue of sustainability and linking of services into a system remains open. Legal reforms in Serbia and in Montenegro are still at an early stage to allow us to rate their effects in this sense, but this certainly is an issue which needs attention. It is necessary to make appropriate analyses of how much the community-based social services developed so far actually respond to the needs of citizens in a community and how are priorities being determined. In the process of deinstitutionalisation, Serbia undoubtedly achieved the largest and most visible success, while progress was the smallest in Bosnia and Herzegovina. The focus on development of professional foster care in Serbia has good, but also controversial effects on the wellbeing of children. Since measures of support to parents and biological families were not simultaneously developed, the issue of necessity remained open, especially in the light of the fact that a very small number of children leave care once they have entered it. Also, the set standards certainly improved the quality of care, but the extremely small share of kinship foster families (12%) is a clear sign of alert.

From the aspect of the Guidelines, the measures for prevention of relinquishment and abandoning infants are insufficiently developed in all three countries. Although there are several new and promising examples, adequate measures to support the parental families, maintaining the family and return of the children to their families after leaving care, are not developed or included in the official system of services. In a range of provisions, the Guidelines stress the necessity of such measures and services, because alternative care for a child cannot be deemed necessary if there are no specific programmes which prevent separation of children from their families and support the return of children as soon as possible.

Thus, what is different and what is the same for the children in Serbia, Montenegro, and Bosnia and Herzegovina, with regard to alternative care?

According to available data and insight, a child has much better chances to be placed in foster care in Serbia than in the other two countries, and to be placed in a foster (non-relative) family, but the child would have much smaller chances to live in a kinship foster family than children in the other two countries. In Bosnia and Herzegovina, a child has much better chances to be referred to institutional care than is the case in the other two countries, especially for a child with disabilities. In Montenegro, a child has the best chances to live with relatives in a foster care arrangement (in kinship care), and if there are no interested parties and appropriate relatives, he/she goes to a residential institution. Children with minor disabilities and developmental delays go to the same residential institution and the ones with severe disabilities are placed in institutions in the Republic of Serbia. Also, a child in Serbia has much better chances that their parents will be deprived of parental rights (completely or partially) as compared to a child in Bosnia and Herzegovina and Montenegro.

The reasons for referring children to alternative care are identical in all three countries and relate to accumulation of various factors, predominantly poverty and neglect of children, as well as abandonment of a certain number of children at an early age. This occurs in the context of non-existence of preventive and intervention services which target specific population of children and families at risk of separation.

Further, the children who once enter care stay in care for a very long time. Only a small number of children leave care by returning to parents, biological family or by getting adopted. It seems that existing procedures for review are not used as an opportunity to consider the suitability of care for a child and proactive strategies for finding solutions which provide permanency for a child are not being used.

With some specificities, in all three countries of the Western Balkans, insufficient investment of the state into the CSWs and social services is evident, which is certainly also related to insufficient

and sometimes even obsolete professional knowledge of persons who work directly with children. There is also the not knowing, not understanding, and even wrong interpretation of some of the key concepts of child welfare. This especially relates to participation of children, where a severe lack of understanding, insufficient knowledge and fear seem to exist among professionals. A family is also not considered as a partner in child welfare, therefore it is very significant to introduce the contemporary models of practice and gaining and maintaining professional knowledge.

It seems that professionals in the system see their task as finding and maintaining care placements for a child. Therefore, there is no clear data on the stability of care for children and the only reliable research suggests that more than a half of children change the first placement, and that after the second change of placement (maximum seven changes were found in the sample), reactive reasons and behavioural problems of the child are noted as the dominant reason for change. This is a field which requires further research.

RECOMMENDATIONS

This analysis certainly did not manage to respond to all aspects of alternative care for children in the countries of the Western Balkans. It remains to be seen whether, and to which extent, the children and youth in alternative care know their rights and what they do in order to exercise those rights and protection, i.e. who and how helps them or not⁴⁵⁶. We do not have sufficient knowledge about how children actually feel in alternative care, whether they are fine, whether they make progress, feel accepted, loved and considered. Also, the issues of optimal development of children with disabilities, infants and small children, and the issue of affection between caregivers and children in care, as well as the issues of stigmatisation and religion, were not dealt with⁴⁵⁷. The recommendations arising from this analysis are as follows:

1. It is necessary to **create policies which promote family life and support parenthood** in all three countries of the Western Balkans. This includes access to quality universal services in health care, education, residence, etc., and then also selective and indicated programmes and services aimed at certain groups of families and children, as follows:
 - Services which assist in overcoming short-term problems in child raising,
 - Services aimed at children and families with specific needs,
 - Indicated and intervention programmes and services for various groups of families at risk,
 - Enhancement of early intervention services for families of children with disabilities,
 - Enhancement of coordination and services for pregnant women at risk of abandoning or relinquishing their infants.
2. In order to enhance and reform the system of alternative care, **appropriate comprehensive and updated plans for the transformation of residential institutions are necessary**. These plans must be carefully made, their application observed and evaluated, simultaneously with legal and administrative measures. Apart from that, it is necessary to develop **services in the community which support family and various forms of residential care with small capacities**, but also creation of “ownership” in professionals who must be assisted in overcoming their fear of change.
3. It is very significant to **clearly allocate existing institutional care capacities** and to direct one part of those capacities to the development of community-based services.
4. It is important to calculate how potential investments in adapting centres in order to improve the living standards of service users pay off. From the aspect of the deinstitutionalisation process, it is necessary to **consider justification of investments “in the buildings” and to ensure that the funds are primarily directed to development of services in the community**.

456 Paragraph 72 of Guidelines.

457 Paragraphs 20, 86 -87, 80, 88, 90 and 95 of Guidelines.

5. It is necessary to **monitor and evaluate the process of implementation of new regulation mechanisms in Serbia and Montenegro** (licensing, inspection and appeals) **and to develop these mechanisms in Bosnia and Herzegovina.**
6. Centres for Social Work in all three countries can hardly respond to the needs of protection of children with their current job descriptions, number and structure of professionals, so that it is **necessary to work on restructuring this service and employing appropriate personnel, especially many more social workers.**
7. It is necessary to **support the gatekeeping mechanism in Serbia and Montenegro, and to develop procedures for intake, assessment, planning, review and termination of work in Bosnia and Herzegovina.**
8. It is important that the existing standards for case management do not “merge” into the organisational scheme of the CSWs and to **clearly nominate organizational units which will gather professionals who work with children and youth** and separate and functionally link the work on cash benefits and work with adults and elderly persons into separate organizational units.
9. It is necessary to work on **changing public attitudes, especially among professionals, regarding:**
 - What are the “best interests of the child”,
 - What makes a parent competent or incompetent to take care of children,
 - How to work with people and families from culturally different or minority groups, as well as with those with an unconventional lifestyle,
 - Myths about family care (whether and to which extent it may or may not respond to the needs of the child),
 - Defectology model of segregation and “specialist” treatment of children with difficulties in “good” institutions.
10. It is very important to have **continuous educations of professionals and other staff working with children**, especially with regard to recognising and reacting to symptoms of trauma, emotional difficulties and behavioural problems.
11. It is necessary to **develop procedures and skills ensuring thoughtful participation of children and youth** in all aspects of life during alternative care and in all decisions concerning them. It is very significant to also **develop programmes** which will empower the children and youth in alternative care for participation.
12. It is necessary to work on introducing **unambiguous standards in all three countries regarding selection, qualification, continuous education and safety, when it comes to auxiliary professionals and all other support and technical staff working with children in alternative care**, in accordance with the Guidelines⁴⁵⁸. This field is very “colourful” in all three countries, so that it is necessary to introduce some order and promote professionalism and safety of children.

458 Paragraphs 71, 105-107, 113-117 of the Guidelines.

13. **Some version of the “book of life” is necessary for every child in alternative care** as a tool to work with children and space to preserve and design a personal, family and cultural identity.
14. **Promotion of the UN Guidelines for Alternative Care** of Children may represent a powerful new incentive for deinstitutionalisation and reform of the system of child welfare in the region. The Guidelines were never adequately promoted so they may serve as a corrective measure in the future to return the focus to the child in the reform processes.

(Footnotes)

- 1 <http://www.transmonee.org/> visited on 06.02.2014.
- 2 <http://www.transmonee.org/>, without data for BiH, visited on 06.02.2014.
- 3 <http://popis2011.stat.rs/>
- 4 Data for 2010.
- 5 UNICEF & MONSTAT (2012) Children in Montenegro, Data from the 2011 Census.
- 6 Data for 2010.
- 7 The last official census in BiH took place in 1991. According to that census the total population was 4,377,033, and children aged 0-18 comprised 1,387,399 or 31.7%.
- 8 The table shows an estimate prepared by the Agency for Statistics of BiH concerning the total population. (BHAS, Agency for Statistics of BiH, Demographics for Bosnia and Herzegovina. Thematic Bulletin 02. Sarajevo: Agency for Statistics: (2012) <http://www.bhas.ba/tematskibilteni/demografija%20konacna%20bh.pdf>
- 9 Byrne, K. (2013) *Child Protection Situation Analysis. The North Western Balkans Context*. Save the Children.
- 10 <http://www.transmonee.org/>, visited on 06.02.2014.
- 11 UNICEF (2013) *GAP Analysis in the Area of Social Protection and Inclusion Policies in Bosnia and Herzegovina*, available at: <http://www.unicef.org/bih/ba/GAPanaliza.pdf>
- 12 Data in the table is taken from the Initial Report of the Republic of Serbia on the Implementation of the Convention on the Right of the Child for the period 1992-2005, <http://www.ljudskaprava.gov.rs/index.php/yl/ljudska-prava/konvencije/55-konvencija-o-pravima-deteta>
- 13 Ibid.
- 14 Synthesized report on the work of CSWs in 2012, Republic Institute of Social Protection, <http://www.zavodsz.gov.rs/PDF/izvestajoradu2013/IZVESTAJ%20CSR%202012%20FINI.pdf>
- 15 Initial Report of the Republic of Serbia on the Implementation of the Convention on the Rights of the Child for the period 1992-2005, <http://www.ljudskaprava.gov.rs/index.php/yl/ljudska-prava/konvencije/55-konvencija-o-pravima-deteta>
- 16 Additional questions from the Committee on the Rights of the Child (2008) to the Republic of Serbia concerning the implementation of the Convention on the Rights of the Child for the period 1992-2005.
- 17 Data from the Register of Adoptions kept by the Ministry of Labour, Employment and Social Policy, January 2014.
- 18 Source: Ministry of Labour and Social Policy of Republic of Serbia, 2011.
- 19 Available at: <http://www.monstat.org/cg/page.php?id=80&pageid=80>, visited on 01.12.2013.
- 20 Data from the Ministry of Labour, Employment and Social Policy of Republic of Serbia, 2011.
- 21 Data from the Ministry of Labour, Employment and Social Policy of Republic of Serbia, 2011.
- 22 Report on the work of institutions for alternative care of children without parental care and institutions for care of children and youth with developmental difficulties in Serbia, Republic Institute of Social Protection, Belgrade. The data consists of the number of children without parental care under the age of 18 (604, as at 31.12.2010) and the number of children with developmental difficulties (502, as at 31.12.2010).
- 23 Ibid.
- 24 Synthesized report on children and youth in alternative care in 2012, data does not include correctional facilities but includes children and youth in residential institutions for children and youth (without parental care) and institutions for children and youth with disabilities.
- 25 Agency for Statistics of BiH, Thematic Bulletin TB 07: Social Protection in Bosnia and Herzegovina 2006-2011 (2012), data shown for children placed in social welfare institutions in 2011 for children without parental care (559) and institutions for children with developmental difficulties (418); available at: <http://www.bhas.ba/tematskibilteni/socijalna%20skrb%20bh.pdf>
- 26 Report on the work of the Ministry of Labour and Social Welfare for 2009, <http://webcache.googleusercontent.com/search?q=cache:fExw4AM2GB0J:www.minradiss.gov.me/ResourceManager/FileDownload.aspx%3Frid%3D59723%26rType%3D2%26file%3DRRezime.doc+&cd=2&hl=sr&ct=clnk&gl=rs>.
- 27 Report on the work of the Ministry of Labour and Social Welfare, for 2010, <http://www.mrs.gov.me/informacije/planrada/133157/Plan-rada-Ministarsva-rada-i-socjalnog-staranja-za-2010-godinu.html>.
- 28 Report on the work of Ministry of Labour and Social Welfare for 2011, available at http://webcache.googleusercontent.com/search?q=cache:RARFU_SK7i0J:www.mrs.gov.me/ResourceManager/FileDownload.aspx%3Frid%3D105814%26rType%3D2+&cd=3&hl=sr&ct=clnk&gl=rs;
- 29 Report on the work of the Ministry of Labour and Social Welfare for 2012, available at <http://www.mrs.gov.me/informacije/planrada/133161/lzvestaj-o-radu-Ministarsva-rada-i-socjalnog-staranja-za-2012-godinu.html>

