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# Regional Report

On the implementation of the "UNICEF Guidelines for the Protection of the Rights of Child Victims of Trafficking in South Eastern Europe"

Assessment of the situation in Albania, Kosovo and the Former Yugoslav Republic of Macedonia

Regional report on the implementation of UNICEF Guidelines on the protection of the rights of child victims of trafficking

Assessment of the situation in Albania, Kosovo and the Former Yugoslav Republic of Macedonia

This study has been produced with the assistance of the European Union in the framework of the project “Enhancing capacity to address trafficking in especially children from a human rights perspective in Southeast Asia, Southeast Europe and Latin America” (DDH/2006/117-929).

Project co-financed by the European Commission

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Cover photos: photos taken by Karl Blanchet, summer camp activities run by Terre des hommes and partners, 2006, Albania.

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Founded in 1960, Terre des hommes is a Swiss organization which helps to build a better future for disadvantaged children and their communities, with an innovative approach and practical, sustainable solutions. Active in more than 30 countries, Tdh develops and implements field projects to allow a better daily life for over one million children and their close relatives, particularly in the domains of health care and protection. This engagement is financed by individual and institutional support, of which 85% flows directly into the programs of Tdh.

# Acknowledgements

I would like to thank all the persons and organizations who contributed to this publication.

First and foremost I would like to thank for their availability, kindness and dedication to their work, all the persons that accepted to take part in the interviews and with the help of whom the report was made possible.

I would like to send my special thanks to Maja Varoslija and Stojne Atanasovska from Open Gate – La Strada in Skopje, Ms. Hamijet Dedolli from the Centre for the Protection of Victims and Prevention of Trafficking in Pristinë and to Rezarta Abdiu from the Legal Clinic for Minors in Tirana. Not only their help in the organization of the study but also their useful comments and advices were invaluable to this study.

I am also grateful to the whole team of the Regional Child Protection Project of Terre des Hommes in Budapest, for their support throughout the research as well as their useful comments and review of the report.

In particular, I express my gratitude to Zsofia Farkas for her continuous support and useful advice in the preparation of the report.

Finally, I would like to thank Mirela Shuteriqi whose help on the content was particularly appreciated.

Pierre CAZENAVE

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# Acronyms

BAS – Border Affairs Sector  
 CPC – Criminal Procedure Code  
 CPU – Child Protection Unit  
 CSW – Centre for Social Work  
 DAAV – Division for Advocacy and Assistance to Victims  
 FYROM – Former Yugoslav Republic of Macedonia  
 G.O.S. – Special Operations Group  
 HHC – Hopes and Homes for Children  
 ICMPD – International Centre for Migration Policy Development in human beings  
 IOM – International Organization for Migration  
 KPS – Kosovo Police Services  
 Mol – Ministry of Interior  
 MEST – Ministry of Education, Science and Technology  
 MIA – Ministry of Internal Affairs  
 MLSAEO – Ministry of Labour, Social Affairs and Equal Opportunities  
 MLSP – Ministry of Labour and Social Policy  
 MLSW – Ministry of Labour and Social Welfare  
 NGO – Non-governmental Organization  
 NRM – National Referral Mechanism  
 NCRVT – National Centre for the Reception of Victims of Trafficking  
 OG – Open Gate - La Strada  
 ONAC – Office of the National Anti-trafficking Coordinator  
 OSCE – Organization for Security and Cooperation in Europe  
 PVPT – Centre to Protect Victims and Prevent Trafficking  
 SEE – South-Eastern Europe  
 SOPs – Standard Operating Procedures  
 SSS – State Social Services  
 TRM – Transnational Referral Mechanism  
 THBS – Trafficking in Human Beings Section  
 UNICEF – United Nations Children’s Fund  
 UNHCR – Office of the United Nations High Commissioner for Refugees  
 WPU – Witness Protection Unit

# 1. Introduction

*“The care of human life and happiness, and not their destruction, is the first and only object of good government”.*  
 T. Jefferson

Trafficking in Human Beings still remains a major human rights violation affecting South Eastern Europe. Although many efforts have been made and progress achieved in combating this human tragedy throughout Europe in general, and South-Eastern Europe in particular, human beings are still victims of trafficking and children, as a particularly vulnerable group, are not an exception and represent an important proportion of the persons being trafficked.

While governments devoted important means, commitments and efforts to combating trafficking in human beings especially within the wider framework of the combat against organized crime, an emphasis on victims’ protection still need to be put. Even though efforts were made to protect victims and therefore prevent them of being re-trafficked, as it is often the case, proper protection measures and rehabilitation alternatives need to be created, enhanced and/or implemented.

In 2003, UNICEF released its “Guidelines on the protection of child victims of trafficking for South Eastern Europe”<sup>1</sup> thus creating a set of standards favourable to the recognition of the status and rights of child victims of trafficking. These guidelines were also adopted for other countries when UNICEF in 2006 launched the guidelines without particular geographical coverage.

6 years after the launch of the UNICEF guidelines, the EIDHR project on “Enhancing capacity to address child trafficking from a Human Rights perspective in South

<sup>1</sup> *Guidelines for Protection of the Rights of Child Victims of Trafficking in Southern Eastern Europe, UNICEF (hereinafter referred as: UNICEF Guidelines), 2006, see annex; see also Mike Dottridge, Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe, UNICEF, 2006, available at: [http://www.unicef.org/ceecis/protection\\_4440.html](http://www.unicef.org/ceecis/protection_4440.html)*

East Europe” started to contribute to the development of effective policies and practices against trafficking in especially children, safeguarding and promoting the rights of boys and girls. One of its aim was to enhance the intervention of national authorities in their combat against child trafficking and protection of child victims. The research on the implementation of UNICEF guidelines was logically a component of this activity. Within this framework, it was necessary to determine whether or not UNICEF guidelines led to legislative changes and positive policy developments, but also to assess the level of their implementation by all stakeholders, at every stage of the child victims’ protection process. As a consequence, the consideration given to practice was paramount.

Even though reports, studies and analyses available offer a global panorama of the situation of victims of trafficking in the three countries subject to this study, the added value of this thorough study lies in the regional approach as well as the focus on child victims of trafficking.

This report voluntarily left aside considerations regarding prevention of child trafficking, since the purpose of this study was to identify the measures taken by governments to ensure the protection of children already considered as victims of trafficking. However, the part on identification of child victims analyzes whether the situation of a child not yet granted the status of victim was properly evaluated, since wrong assessment can leave children that truly are victims of trafficking without any kind of assistance and deny them the rights attached to their victim status.

## Rationale

The reason behind the study and the choice of three countries lies in two words: interrelatedness and coherence.

**Interrelatedness of the trafficking routes** affecting the three countries: As neighbouring countries, Kosovo, Albania and the Former Yugoslav Republic of Macedonia (FYROM) share common borders and therefore common issues to tackle among which trafficking in human beings. One cannot address in a holistic way the issue of trafficking without exploring its transnational dimension. Although trends are changing and internal trafficking has been increasing in recent years in the SEE region, trafficking between countries remains a major challenge to be addressed. Trafficking of Albanian children to Kosovo and FYROM is still occurring, the latter being countries of destination but also countries of transit due to the easier access to wealthier European countries from there.

**Interrelatedness of the mandate of each institution/agency:** the work of a ministry is less efficient without the support of NGOs and/or their government’s counterparts. As a consequence, the report addresses the work of each institution in relation with the others.

The whole process of protection has to be addressed in a holistic way to ensure that every link in the chain of protection is institutionally anchored and fully operational; hence the approach privileged in the report.

All the aforementioned obviously drove us to undertake a regional study that would better answer the reality of the situation and encompass two trafficking aspects: internal and transnational. While assessing on a regional scale the compliance of countries’ approaches and actions with UNICEF standards, we could not leave unanswered the questions raised solely by internal problem. Consequently, the national aspects are not left aside and a country analysis is also provided in the second part of the report.

Finally, coherence is also a key aspect looked at in the analysis of protection systems set up within the three countries: **coherence in designing laws**, policies and strategies that address trafficking phenomena and the diagnosis made prior to their enactment; and **coherence in the approach** privileged in transnational cooperation, as tackling the problem in an uncoordinated way may lead to powerless attempts to solve it.

## Objective

The research’s main objective is thus trying to find out whether State and non State actors undertook actions (if any) to protect victims of trafficking that are respecting the principles set out in UNICEF guidelines, as well as in the UN Convention on the rights of the child and other relevant international treaties. Are these actions tailored to the needs of the child and do they allow each and every child victim of trafficking to pursue his/her right inherent to his/her status of victim, and to his/her status of being a child? Are child rights safeguarded and not infringed by the protection process?

The aim of the regional analysis is also to put an emphasis on good practices that were implemented by one state in order to facilitate the exchange of information and therefore reinforce the understanding and the capacity of governments to further improve the protection measures for the benefit of child victims.

## Scope

The scope of the research is encompassing all aspects regarding protection. Therefore prevention activities are not taken into account as they are not addressed in the guidelines. As a consequence, the research is not focussing on issues such as birth registration or awareness raising activities.

The three countries were chosen since they are, though on a different scale, considered as countries of source, transit and destination for victims of trafficking. The Republic of Kosovo and FYROM are presented as source, transit and destination countries of trafficking, while Albania is primarily considered as a source and transit country.<sup>2</sup>

The choice was made for obvious geographical reasons that correspond to trafficking fluxes: the common borders they share are often described as a green line<sup>3</sup> for an easier entry into the European Union.

## Methodology

The first phase of the research consisted of a desk review, completed by Terre des Hommes' researchers, on legislation and policies related to child trafficking issues in the relevant countries.

It was necessary to complete the theoretical findings with empirical research made in the field and therefore we proceeded with interviews of the main stakeholders in the three countries - government officials and public authorities, non-governmental organizations, social workers and judges, etc. The information obtained through interviews is reflecting how far UNICEF guidelines are actually implemented in practice.

The interviews were conducted in a semi-directed way, thus allowing the interviewee to detail sufficiently their own experience and impression while providing a set of information that could be comparable.

<sup>2</sup> United States Department of State, *Trafficking in Persons Report 2009*, Macedonia, Kosovo, Albania.

<sup>3</sup> Sonila Danaj, *Report: Situational Analysis on Child Trafficking in Albania*, BKTf, 2008, p. 17.

## Challenges

1. The countries object of this review are very different in their approaches, in their traditions as well as in their administrative organization, which rendered the analysis not only challenging,<sup>4</sup> but also more interesting. While after the collapse of Yugoslavia, former republics were evolving in a post-war context but with an heritage and net of solid institutions, Albania was getting out of isolation and had to manage a severe transition.

2. The study did not go as far as exploring the situation in many countries of destination, especially outside the zone. The ambit of the research is therefore narrowed to the three countries subject to this study and does not encompass the main countries of destination. The dimensions of return, international cooperation and durable solution are therefore only looked at from the point of view of Albania, Kosovo and FYROM. This point remains however crucial and should be subject to other in-depth studies.

3. The collection of information and its analysis was subject to different challenges:

### a) Choice of interviewees

The choice of interviewees was made upon recommendations of Tdh country offices and/or Tdh partners on the field. The interviews were however dependent on the availability of the persons selected.

Priority was given to interviewing key actors such as social workers and police officers, but also institutional actors working at the coordination level such as national coordinators or head of anti trafficking units within the police.

A total of 46 persons were interviewed accounting for more than 70 hours of discussions with different partners. Thanks to the interviewees, we managed to gather accurate, important and representative data.

### b) Information processing

The processing of information was difficult as numerous discrepancies between NGO and State figures were identified. It was therefore hard to identify reliable sources of information that would reflect the actual situation of trafficking in the region.

<sup>4</sup> An interesting comparative tool can be found in the report drafted for the European Commission on "social inclusion and social protection" in South-Eastern Europe countries, available at [www.ec.europa.eu](http://www.ec.europa.eu)

However, discrepancies were considered as a finding in itself: the main outcome of the report is not to draw a panorama of trafficking trends but of protection mechanisms and their efficiency. Therefore differences between State and NGO figures were in some cases used as evidence of identification and collaboration shortcomings.

## 2. Regional Analysis

The regional analysis is highlighting the core common issues of the countries in the region. It acknowledges both progress achieved by governments and other stakeholders, International Organizations (IOs) and NGOs, in the fight against child trafficking as well as shortcomings of the management of child trafficking cases.

The main challenges and acknowledgements are listed without any hierarchy and do not prejudge of their overall importance. Consequently, none of the measures should be interpreted as taking precedence over another one.

The information provided in the regional analysis part of the report draws from the information given in each country. Therefore, for information on specific mechanisms, procedures or facts, the reader should consult the relevant part of the country analysis to get further explanation.

## 2.1. Legislative and institutional frameworks - similarities and differences

In the three countries subject to this study, many efforts were focussed on setting up legislative and institutional frameworks that are able to cope with the challenge of trafficking in human beings in general, and children in particular. To this end, each country developed its own strategy to combat trafficking in persons, with Albania and FYROM having adopted strategies specifically focusing on the combat against trafficking in children and the actions to be taken accordingly. Overall the strategies are well designed and answer directly the main problems of the actual situation. The consultation with civil society was encouraged in each country, improving the quality of the strategies.

At the legislative level, **Criminal Codes/Laws** distinguish in each country the offence of trafficking in adults from the children, making the penalties more stringent in the case of children. Every country's legislation makes provisions for the attribution of a reflection period prior to return.

**Temporary Residence Permits** (TRP) are also available if foreign child victims wish to stay on the territory or if their safety requires it. The provisions of the laws and/or procedures in FYROM and Kosovo are however unclear and the attribution of a temporary residence permit seems to be made conditional on the victim's collaboration in criminal proceedings. This is especially true in FYROM, where victims are even obliged to testify in the court if summoned.

**Family Codes/ Laws** generally address the challenge of custody properly. However, the procedure embedded in the law is not always the one applicable to the case of child victims of trafficking. In some cases, a simple Memorandum of Understanding between governmental bodies and NGOs is detailing the procedure to be followed, and in others the court is designated by law to address the issue of appointment of a guardian. This point will be detailed in the specific parts of the regional analysis.

At the procedural level, however, disparities have been noticed. FYROM and Kosovo, with the help of ICMPD, have been in the process of drafting **Standard Operating Procedures** (SOPs) to provide a clear framework of action followed by practitioners, be they state or non-state actors. In that regard, the government of FYROM developed the most advanced and thorough procedures, detailing every step that has to be undertaken by authorities, from identification and reintegration of victims, to criminal proceedings. The SOPs in the Republic of Kosovo are less developed but still provide a clear definition of what has to be undertaken upon identification of a victim.

In these countries, however, shortcomings were identified and procedures are not always respectful of UNICEF guidelines and/or international law due to



their inherent ambiguities, such as the **unclear division between procedures applied to adults and to children**. Although both documents make a distinction between specific procedures for children and adults at certain instances, it does not go far enough to provide a framework adapted to child victims. Furthermore, none of these documents form part of national legislation and are not binding. Their implementation is consequently not binding, and their opposability during court proceedings not possible.

For the Republic of Albania the document used as a reference for practitioners is the **National Referral Mechanism agreement**<sup>5</sup>. This document describes the referral process of a victim of trafficking in a much less detailed way than in the two other countries, and, as we will see later, efforts in its implementation are still needed. However, the agreement clearly draws specific procedures to be applied to children, such as specific templates of identification form. Furthermore, the document possesses a binding force and therefore can be claimed during court proceedings for failure of state authorities to implement it, which is not the case in FYROM for example.

The institutional frameworks have also been dramatically changed and improvements achieved. In the three countries, a **national anti trafficking coordinators** were appointed with the strategic role of mainstreaming protection of child victims into national policies as well as monitoring the implementation of the strategies, and provision of advice and initiatives accordingly. As a general rule, the work of the anti-trafficking coordinators enhanced not only the inclusion of protective policies at the national level but also the coordination of actions as well as the collaboration with foreign countries.

The institutional organization of public agencies (and their competences) also varies from country to country. While in Albania and in Kosovo **State Police** is decentralized and **anti-trafficking units** are present and active at the regional level, FYROM only has its police anti-trafficking unit located at the central level in Skopje. Hence the unit's capacity to rapidly reach the place where there are suspicions that a person is a victim of trafficking is reduced. Also if such identification is made at night, local police officers might not be prone to phone the unit at the central level and refer the victim. Consequently, identification or initial questioning might not be undertaken by trained personnel in a child

<sup>5</sup> Cooperation agreement to establish a national referral mechanism for the enhanced identification of and assistance to victims of human trafficking, Republic of Albania, July 18<sup>th</sup> 2005.

sensitive manner. The decentralization of the units in the regions of Albania and Kosovo are therefore welcome.

That being said, the **decentralization process** can also have negative impacts if not done properly. The example of Kosovo is striking in that sense, as a transfer of skills to local managers did not accompany the transfer of competences operated from the central to the local level. Consequently, the Centres for Social Work do not have the capacity to handle their new tasks adequately. The same applies to FYROM.

## 2.2. Underfinanced services for victims

In all three countries **social services are all underfinanced**. Their capacity to provide services to child victims of trafficking is thus limited due to lack of funds, human resources and logistical means.

The **lack of sustainability in funding schemes** is affecting the provision of services to child victims at different stages of the protection process:

**At the level of state agencies**, and in each country, most of state social workers reported that they neither have logistical means - such as a car or a telephone - nor sufficient human resources to undertake their daily tasks of outreach work.

As a result, their potential in **the identification process is seriously limited** while they clearly have a paramount role to play in identifying victims due to their close and daily relationship with vulnerable groups. Their possibility to undertake a proper follow up of cases of child victims that were returned to their families or community of origin is also seriously hampered by the lack of logistical or financial means.

The example of Albania, and the funding of Child Protection Units (CPUs), is also conspicuous. The CPUs have a direct role to play in the identification of child victims and in their protection. Their creation was initiated and funded by non-States actors and they were supposed to be fully financed by municipalities. However, a substantial part of their activities is still funded by the international community and not by the municipalities.

Similarly, at the coordination level, the NRM office staff in FYROM was previously funded by the OSCE. As of 2009, the staff ceased to receive salaries and had to find complementary activities in order to ensure an income. The efficiency of the NRM is therefore jeopardized by the lack of availability of these individuals that have to undertake two tasks at the same time in order to ensure a way of living. The lack of sustainability of such a situation does not necessarily foster the motivation of employees, which is of utmost importance for these coordinating positions. The situation however changed in January 2010 when the positions started to be entirely funded by the state.

**This situation also applies to NGOs** participating in the direct provision of services.

The example of Macedonian NGOs sheltering child victims of trafficking is notable as, even though they supplement state duties, they do not benefit from any public funds allowing them to ensure **sustainability of service**

**provision.** Their reliance on international donors makes them dependent on external programmes and obliges them to devote substantial part of their time to fundraise and report on their projects.

The same applies in Kosovo, where state funding is not always sufficiently covering direct service providers which are supplementing the state in running rehabilitation centres and shelters.

However, the creation of State shelters in Kosovo, FYROM and Albania is an important undertaking in ensuring the sustainability of the provision of immediate services to child victims of trafficking.

On the other hand, the **durable solutions are also lacking**, partly due to shortage of funds.

In every country, service providers complained about the limited set of opportunities they were able to propose to victims of trafficking, especially children. While all ministries are not always contributing to the reintegration of victims, NGOs have to supplement these shortcomings and sometimes pay for them. An alarming example is the vocational trainings offered to child victims in FYROM. The costs are covered by NGO funds and not by the State. The Ministry of Education does not offer alternatives to this situation.

Shelters in Albania and Kosovo also reported that they did not have enough fund to offer a sufficient range of reintegration possibilities. This is critical when we know that immediate services needed for reintegration of child victims are more challenging than for adults, due to even more specific needs.

## 2.3. An overall lack of capacity of stakeholders

One of the most important issues to address is related to the training and awareness-raising of every institutional player on the identification and care of children victims of trafficking.

As it will be underscored in the country analyses, many obstacles in the implementation of UNICEF guidelines (which often result in a violation of international standards) are related to the capacity of state and non-state stakeholders to take quality and informed decisions or actions in their work with child victims of trafficking. Currently there is a lack of skilled officers within the state police and state social services of the three countries. Many reasons support this argument.

A high turnover is affecting each state agency with a crucial role in the protection of child victims. This is particularly true for social services where the high mobility of social workers is greatly affecting the capacity of their agency to provide quality work and therefore proper protection of victims. The same is applicable to law enforcement agencies, particularly police, anti-trafficking units included.

The majority of trainings provided by International Organizations (IOs) or Non Governmental Organizations (NGOs) are targeting specific relevant units within a state agency. Anti-trafficking Units were therefore targeted for trainings on identification and interviewing techniques of victims of trafficking. Interviews on child victims of trafficking were also provided by the international community and local NGOs as well to the Police. However, the mobility of workers and turnover among the different services resulted in a waste of efforts.

#### **Good Practice: Albania**

An example of good practice is the practice within the border police to work in the same section for a minimum period (of three years in that case). This solution allows for sustainable training schemes to be implemented.<sup>6</sup>

Moreover the work undertaken by trainers was not sufficiently monitored. Neither international organizations and NGOs nor state authorities that provided trainings undertook any training impact assessment to verify whether these have brought significant and positive changes in practice.

<sup>6</sup> For further information see: USAID, *The state of efforts in Albania to combat trafficking in persons*, October 2008, p. 36.

Among other reasons is also the multidisciplinary nature of intervention. A wide variety of skills are required to find and implement **a durable solution** for the child. Therefore, many different stakeholders across sectors are required to improve their professional skills in a coordinated manner while training was provided often to the same stakeholders/sector on the same topic.

A lack of coordination between training providers, often lead to an overload on inefficient training programs for states in SEE.

Therefore, in every country continuous training schemes could be a solution to fill in the gap. A **training impact assessment**, must be undertaken prior to designing a training strategy verifying to verify the extent to which the lack of capacities of state social workers and police officers affects their work. Including and/or mainstreaming anti-trafficking and child rights issues in curricula of police officers and social workers would also be a positive step to improve the actual situation.

## 2.4. Narrow definitions of trafficking and denial of rights of child victims

The capacity of state institutions and other relevant actors to identify child victims of trafficking is of crucial importance in their protection. A child who has not been identified as a victim can obviously not benefit from the assistance and care that identified victims can receive. Therefore, all the rights that are embedded in the status of victims and to which they are entitled become void if the identification is not done properly.

Overall, the **identification capacity of the three countries is not developed** enough to allow child victims to pursue their rights.

Besides the **lack of a comprehensive and coordinated training strategy** of all actors involved in the identification process, the definition used to qualify victims of trafficking as such is also hampering the identification of child victims and jeopardizing the whole protection system. The authorities of the three countries tend not to give importance to the potential victims of trafficking and therefore they do not dig further into these cases and do not investigate thoroughly their social and family situation. This might leave a significant proportion out of the protection system, while identification opportunities were missed.

This is further supported by the huge discrepancies observed between NGO and state figures on presumed and identified victims of trafficking: In 2007 in Albania, Terre des hommes (Tdh) identified 740 presumed victims while the Anti-trafficking Police identified 32 victims; In Kosovo in 2008, 69 suspected victims and 387 children at high risk were identified by Tdh, while government reported assistance to 24 victims. These discrepancies speak for themselves.

The European Court of Human Rights (ECtHR) - in its *Rantsev vs. Cyprus and Russia* case<sup>7</sup> - recently highlighted that national authorities had the positive obligation to investigate effectively a case when they have suspicions that a trafficking situation might be occurring, and that it must be treated as a matter of urgency.

This lack of identification is further hampered by the too narrow understanding of who a “victim of trafficking” is: existing national protection measures for

<sup>7</sup> The Court stated in the case *Rantsev vs. Cyprus and Russia* (ECHR, nb. 25965/04, January 7<sup>th</sup> 2010, pt. 288) that: “(...) article 4 (of the ECHR) also entails a procedural obligation to investigate situations of potential trafficking. The requirement to investigate does not depend on a complaint from the victim or next-of-kin; once the matter has come to the attention of the authorities they must act of their own motion” And the Court to pursue: “A requirement of promptness and reasonable expedition is implicit in all cases but where the possibility of removing the individual from the harmful situation is available, the investigation must be undertaken as a matter of urgency”.

victims of trafficking are not available for potential victims except in Albania.<sup>8</sup> A **too narrow definition of victims excludes from the scope of protection children at high risk to be**. Excluding those children from assistance and protection that are likely to fall into the hands of traffickers can legitimately be considered as a shortcoming in the identification process of victims. As indicated in the UNICEF guidelines: “*Social services, health or education authorities (... as well as NGOs/civil society organizations) should contact the relevant law enforcement agencies where there is knowledge or suspicion that a child is exploited or trafficked or is at risk of exploitation and trafficking*”.<sup>9</sup> This is regrettably poorly implemented in practice.

**Good Practice: Albania**

In its agreement on the establishment of a NRM Albania included potential/presumed victims as persons who qualify for assistance programmes -traditionally only afforded to recognized victims. Therefore a child victim at a border point being identified as a potential victim is entitled to receive all the assistance and protection as “official” victim of trafficking.

**Second**, there is an urgent need for operational information management systems to be set up or enhanced, breaking down data by age and by information able to reveal the specificity of trafficking in children.

To this date, only Albania has an **operational database dedicated to victims of trafficking**. It is placed under the responsibility of the Office of the National Coordinator (ONAC) and, it can be considered as a good example although the privacy and the data protection issues can raise concern. The ICMPD is developing a project on a database in FYROM and Kosovo allowing for proper registration and controls at border points of victims of trafficking, duly taking into consideration the situation of children. This project was not followed in Albania since the ONAC and “Responsible Authority” databases already exist. The projects have not yet seen the light of day despite many efforts undertaken by this NGO.

<sup>8</sup> Cooperation agreement to establish a national referral mechanism for the enhanced identification of and assistance to victims of human trafficking, op. cit. Article 3.

<sup>9</sup> UNICEF guidelines, op. cit., pt. 3.1.1.4/5.

## 2.5. National referral mechanism on the right track

Under the guidance of the OSCE, National Referral Mechanisms have been implemented and incorporated into domestic legislation. By National Referral Mechanism one should understand the procedure established in order to foster inter-agency cooperation all the steps that have to be undertaken in the process of protection of a victim of trafficking. NRM can also take the form of a state body or agency responsible for the referral of victims to relevant services, as is the case in FYROM.

In the countries subject to this study, the implementation of NRMs has been an overarching objective of the governments in their efforts to combat trafficking in human beings. The successful creation of such coordination bodies working at the operational level is an important step towards improving the quality of protection systems offered to child victims.

In Kosovo, on the initiative of Tdh, a “Task Force” was created in 2007. It is a roundtable involving different partners that have a role to play in the identification and protection of children that are victims (or at high risk to be) of trafficking. The Task Force coordinates the referral of individual cases of children facilitating their protection on a case by case basis.

#### **Good Practice: FYROM**

In FYROM the Office of the National Referral Mechanism was created to have a single and institutionalized agency that is able to refer and orient victims in a timely manner to appropriate services that have a role to play in victim’s protection, from identification to witness protection.

Albania is however lagging, by far, behind its neighbours as the National Referral Mechanism agreement is, five years after its adoption, still not implemented.

## 2.6. An improved coordination at regional level

Coordination and dialogue on the combat against child trafficking between countries has been improved but there is still a long way to go before the situation is entirely satisfactory.

The cooperation between the three countries has been enhanced through bilateral meetings and regular dialogue, but the project on Trans National Referral Mechanisms (TRM) run by ICMPD was an engine in enhancing the dialogue. TRM guidelines must be understood as the procedure established between countries in order to foster inter-agency cooperation in all the steps that have to be undertaken in the process of protection of a victim of trafficking. TRMs are facilitating the return process of child victims of trafficking should they express their informed consent to do so.

The TRM is now under implementation and the Republics of Kosovo, Albania and FYROM are part of the project together with 7 of their SEE neighbours.

Furthermore, countries have signed several **bilateral agreements** between them, especially in the area of organized crime, police cooperation and Justice.

#### **Good Practice: The Albania-Greece Agreement**

It is worth to note the signing of an agreement between Greece and Albania in 2007 on the “protection and assistance to children victims of trafficking” on February 27th 2006. The provisions of the agreement are clearly focussing on the respect of UNICEF guidelines in many regards and should be reproduced throughout the region.

The document, drafted with the help of NGOs such as Terre des hommes must be mainstreamed in the cooperation between countries in the region.

Unfortunately, there are strong concerns about its real implementation in practice. There is evidence that deportation continues with no proper communication between authorities of governments from countries of destination and the country of origin. As a consequence, family tracing as well as risk and security assessments are not conducted properly and the best interests of the child are not upheld. The same is true in every country subject to this study.

## 2.7. A diverse supervision of cases



There is a great disparity in the guardianship mechanisms throughout the region especially regarding custodian bodies, guardian status and guardian appointment.

The term **guardian** as described in the second part of the specific principles of the guidelines<sup>10</sup> must be understood as the person that will follow the child victim throughout the whole process of protection and reintegration and uphold his/her best interests on an individual basis. Therefore it must not be understood as a legal representative who has the legal responsibility of the child.<sup>11</sup> All the countries subject to this study make this distinction and assign case managers to child victims.

While in Albania no custody units as such exist, the appointment process going through court, specific bodies are mandated to appoint guardians in Kosovo and FYROM. The presence of custody units is important and should be implemented at the regional level. They allow a transparency in the appointment process, while offering to the guardian a structure on which to defer, and also to make sure that accountability for the acts of the guardian towards the victims is in place.

While in Kosovo social workers of the Centres for Social Work (CSW) are the only ones entitled to become guardians, Albania and FYROM adopted a more flexible system where staff from shelters or other types of residential care can be case managers for child victims of trafficking.

Overall, FYROM's system is fast and efficient but offering little guarantees in terms of accountability. Albania's process of appointing a guardian is very often bureaucratic and lengthy but offering the guarantees of independence and legal accountability. Kosovo is clearly lagging behind with a lack of proximity between guardians and child victims.

Follow up in FYROM and Albania is ensured by persons having daily relationships with children allowing a proper best-interest determination and the endorsement of informed decision on the future of the child.

The advantages of the Macedonian solution are the following: first they solve the problem of the availability of social workers and their lack of regular visits where victims are accommodated. It also ensures that the guardian will be rapidly appointed within a matter of hours. Moreover, it allows a single person to be responsible for the case and to follow the child throughout the whole process.

<sup>10</sup> UNICEF guidelines, *op. cit.*, Pts. 3.2.

<sup>11</sup> For further explanation on this point see: UNICEF reference guide, *op. cit.* p. 51.

### **Good Practice: FYROM**

The appointment of persons working in shelters is wise in many aspects. Working on a daily basis in the residential institution (such as a shelter), the social workers appointed as guardians cultivate daily contact with the child victims and are able to answer immediately to their queries, fears or questions, thus building a meaningful relationship that is essential to establish confidence between them. The child is therefore more prone to confide in his/her guardian who is better able to listen to the views of the child than a simple visitor would. A guardian will therefore be able to draft an action plan together with the child, tailored to his/her needs.

The system is however not entirely satisfactory as supervision from the CSW should be ensured in order to provide support to the guardians and their structures. The financial sustainability of such a solution is also subject to doubts as in FYROM no state subsidies are granted to the structures ensuring guardianship for domestic victims. Moreover, the appointment process of a guardian does not offer enough transparency as opposed to the Albanian solution where the appointment is made through court. A proper balance should therefore be found between efficiency and transparency, always keeping the best interests of the child in mind.

## 2.8. Adequate provision of immediate services but critical absence of durable solutions

Each country has NGO-run shelters and State-run shelters (where NGOs are active in the provision of services for the latter). There are very few shelters throughout the region that can accommodate male victims of trafficking or very young children aged from 0 to 12 years old. In that regard, the shortcomings of shelters exist in terms of infrastructures able to accommodate and welcome them, but also in terms of capacities of the staff working in these shelters. They are simply not trained to tackle the case of a very young minor and how to handle it.<sup>12</sup>

Furthermore, there is no shelter in the region that is exclusively dedicated to children, with specially trained professionals. All accommodated child victims cohabit with adults. Foreign and national child victims are often separated, the former ones being sometimes accommodated in places together with illegal migrants. The situation was subject to improvements, since the creation of state run shelters.

Apart from this alarming situation, **basic services are available** in the residential institution and both the infrastructure and the capacities of social workers from shelters to manage child victims cases is meeting children needs.

The wide range of skills that can be found in residential care in the region was a very positive finding made during our visit. Psychologists, social workers, lawyers, doctors and nurses, education specialists were represented in almost every institution we could reach.

The situation differs however when it comes to the supervision made by the state social bodies over the shelters and as well on their capacity to provide standards of care that are meeting child victims' needs. For example in FYROM, there is very little follow up or mentoring ensured by the Centre for Social Work or the Ministry of Labour and Social Policy (MLSP). Even in FYROM where the process of guardianship delegation goes the furthest, there is no supervision ensured to verify whether this delegation is implemented properly. As we have been told by a Macedonian social worker: "They say yes to all what we propose".<sup>13</sup>

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<sup>12</sup> Interview with a Shelter representative, Skopje, Macedonia, November 29<sup>th</sup> 2009.

<sup>13</sup> Interview with a Social Worker from a shelter, Skopje, Macedonia, November 29<sup>th</sup> 2009.

**Good Practice: Albania and Kosovo**

In Albania, standards of care were drafted together with the national coalition of anti-trafficking shelters in order to define what the minimum services were, as well as to detail the quality of the provision of services that shelters should offer to child victims during their stay. A monitoring of all shelters is ensured twice a year by the State Social Services.

The same situation applies in Kosovo, where minimum standards of care were drafted in 2009 with the help of local NGOs and IOs through a participatory process. The licensing process of shelters by MLSW is based on the respect of these standards.

Apart from the conditions that can be found in the shelters or other residential care institutions, a **dramatic lack of alternatives offered to child victims** of trafficking was reported.

In all three countries, child victims tend to stay in the shelters over a long period that can last up to 5 years in one case as demonstrated in the country analysis. This situation is the result of wrong diagnosis made in the individual plan or of the absence of durable solutions offered to trafficked children.

In the three countries shelters are the most common solutions offered to children victims of trafficking, while **foster care remains at the project stage**. Foster care options are difficult to put in place due to an absence of families sensitized on the case of exploited children<sup>14</sup>, a problem that can be addressed, here again, through the set up of trainings. For example, FYROM is foreseeing the training of 10 foster families by the end of the national strategy 2009-2012.

Another good example is offered by Albania where shelters offer, according to the needs and progress achieved by victims, support to them and their families. This includes for example the provision of an apartment under semi-independent living programmes.

Although the UNICEF guidelines clearly indicate the necessity to develop options that would favour non-residential care, such alternatives remain largely under-considered. If the situation is to improve, suitable follow up undertaken by Social Services or other appropriate mandated institutions must be fostered.

<sup>14</sup> Interview with a Social Worker from CSW, Skopje, Macedonia, November 29<sup>th</sup> 2009.

The lack of availability, logistical and financial means as already noted, might also be a problem that will have to be addressed to ensure the provision of services adapted to child victims.

## 2.9. Doubts over best interests determination prior to return

As mentioned above, the lack of identification capacity together with a lack of common understanding of who a child victim of trafficking is, often leads to procedures of return that are violating the very essence of the child's rights and his/her best interests. The return procedures between the three countries<sup>15</sup> are organized differently whether we are in the presence of a child identified as a victim or a child that is a presumed victim. The obligations of national authorities that are inherent to the status of victims are however not the same in every country.

Albania takes the lead of the countries with a definition that includes potential/presumed child victims in the beneficiaries of assistance and protection.

However, Kosovo and FYROM only provide assistance to children who qualify for victim status according to their national definition. As a result child victims are often denied their rights as well as assistance. This is particularly true for Albanian children who are begging in the streets of Pristine and Skopje.

In these countries, when a child does not comply with the criteria set out in domestic legislation to be afforded the status of victims, the procedure of return is summary, and does not include the very basic safety measures that a person in a situation of trafficking should benefit from. Too often, governments tend to believe that return is in the child's best interest and that a rapid procedure should be taking place. Therefore, the "state of play" in the field is the absence of real family investigation and, as a result, the lack of an informed risk and security assessment.

Prior to return, authorities of all countries should, according to UNICEF guidelines,<sup>16</sup> undertake **the tracing of the family** of an alleged or potential trafficked child, followed by a **risk and security assessments** formalized through an in-depth family and social investigation. These steps must be undertaken to allow an informed decision on what the best interests of the child are.

The decisions of return are, in the three countries, taken against the very basic rights of the child as enshrined in the UN Convention on the rights of the child<sup>17</sup> and the UNICEF guidelines. The term deportation is used even by top level officials

<sup>15</sup> The study could not explore the situation in the main countries of destination due to time and logistics constraints. The study is therefore limited at the three countries subject to this study.

<sup>16</sup> UNICEF guidelines, *op. cit.*, pt.3.7, 3.8.

<sup>17</sup> United Nations Convention on the Rights of the Child, November 20<sup>th</sup> 1989, available at: [www2.ohchr.org/english/law/crc.htm](http://www2.ohchr.org/english/law/crc.htm)

in Albania to qualify the procedures taking place with their neighbours. Too often, presumed child victims are deported without any prior risk and safety assessment.

The principle of a durable solution includes the decision on whether the child should return or not to his or her country of origin or not. The opportunity to identify a durable solution is therefore severely affected by this situation. In such a case, neither family tracing nor consideration of the views of the child are applied, no assessment of the family situation is undertaken while the possibility to relocate in the host country is not even considered. As a consequence, **there is no best interest determination in the process of returning (presumed) child victims of trafficking throughout the region.**

Regarding foreign victims formally identified and afforded the status of victims of trafficking however, procedures are foreseen in the TRM project of ICMPD and included in the national SOPs of FYROM and Kosovo as well as in the NRM agreement of Albania. At the same time **most of the risk and security assessments, if any, rely on NGOs and their networks**<sup>18</sup>.

The government is lacking capacity to undertake them and NGO networks are supplementing the work of state authorities.

As mentioned in the introduction of this report, we could not reach information regarding procedures followed by the authorities of the main countries of destination. This should be subject to further investigation. The interviews conducted in the three countries clearly supported the assumption that serious breaches of UNICEF guidelines occur when their children are returned from other European countries.

## 2.10. Re-victimizing judicial procedures

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<sup>18</sup> Interview with a project officer from an international NGO, Tirana, Albania, December 3<sup>rd</sup> 2009.

The situation of justice is of deep concern as it regards the judicial processes for child victims of trafficking.

Based on the country analyses, criminal proceedings are often a very difficult and **re-victimizing experience** for child victims of trafficking. However, other important issues were raised

First, the **lack of properly trained judges and prosecutors** and sometimes the absence of specifically dedicated judicial structures do not allow for a proper protection of child victims of trafficking during the investigative and trial phases.

Moreover, free legal counsel in every country is available for child victims but do not always offer a guarantee of a provision of quality service, as demonstrated in Kosovo by the body of the Victim's advocate.

Countries in the region however all foresee in their laws/procedures the possibility for child victims to benefit from a "**reflection period**" (or "recovery period") in order to decide whether or not they are willing to collaborate with authorities through, inter alia, testifying against their alleged trafficker in criminal proceedings.

In that regard, evidence of **direct confrontation between perpetrators and child victims** was found in recent years by international bodies and was confirmed during the interviews. This practice should be avoided as it is leading to a deepened trauma experienced by child victims.

More alarming yet, **mistreatment and pressures of child victims have been reported** in two of the three countries, namely Kosovo and FYROM.

Moreover, in these two countries, the possibility to benefit from the **assistance child victims are entitled to is made conditional to their collaboration** with justice. This practice is further supported by law or in specific procedures, in FYROM and in Kosovo respectively. This kind of unacceptable provision is clearly in breach of UNICEF guidelines standards or other international instruments.<sup>19</sup>

In the three countries, a major issue of concern remains **functional witness protection schemes**. To this date, there is no law enforcement agency in the region that is able to cope with the challenge of protecting victims against the alleged perpetrators. This is very well revealed in Albania. While the IOM and

<sup>19</sup> Council of Europe Convention on action against trafficking in human beings, article 28, May 16<sup>th</sup> 2005.

OSCE were undertaking this duty, a law was passed on witness protection. At this occasion, the Albanian government took over the responsibilities of the whole witness protection program. Since then, there has been a dramatic drop of witnesses during trials, due to the incapacity of national authorities to ensure their protection.

The access to the right of child victims to **compensation is also still not ensured**. In Macedonia, while child victims have the possibility to claim for compensation, the decision on compensation are not enforced. The creation of a fund for compensation of child victims is still at the planning stage while the juvenile justice law that foresees this measure is several years after its adoption, still not implemented. The same applies in Kosovo as regards compensation claims.

## 3. Country Analysis

Following an analysis of national legislative frameworks, each point of the UNICEF guidelines is addressed and compared to the practice of state and non-state actors in the Republic of Kosovo, FYROM and the Republic of Albania. To have a better picture of the structure of the guidelines, please refer to them in annex.

### 3.1. The Republic of Kosovo

## Satisfactory legislative framework

Kosovo, as an independent country since 2008, possess a legislative and institutional framework that, if fully implemented, would allow a proper protection of victims of trafficking in general,<sup>20</sup> and children in particular.

### Appropriate legislative and procedural framework

International Human Rights Instruments are included in the **Constitution of the Republic of Kosovo** and are directly applicable into the domestic legislative system. They therefore have precedence over any domestic law or regulation that would contradict them and can be raised by individuals before the court.

However, when putting laws, codes, administrative instructions and policies through the riddle, one would acknowledge that shortcomings exist and that the situation can be improved.

The poor implementation of the first **National Action Plan 2005-2007** against trafficking in Human Beings as expressed in several reports, lead to the drafting of a new strategy.

The **Strategy and action plan 2008-2011**, is taking stock of the shortcomings of the previous text and reiterates previous commitments that were not respected.

It is striking that the Strategy “vision” highlights the fact that combat against trafficking aims at creating an image of Kosovo as a peaceful country with high security standards. The focus is at the very beginning placed on restoring Kosovo’s image. Prevention and protection of victims are therefore not a state priority at this point.

**Standard operational procedures** (SOPs) for the protection of victims of trafficking (streamlining NRM and TRM procedures), which entered into force in 2008, more or less comply with UNICEF guidelines although they do not cover the entire protection spectrum. Furthermore, it is regretful that the SOPs melt into a single document the procedures for protection of adults and child victims of trafficking. However a strong emphasis is put on children, with different procedures to be applied for underage victims, ensuring a better protection of their rights. For example, in the case of return of CVT, a risk assessment shall be conducted immediately, while this is not the case for adults. When criminal

<sup>20</sup> Report of the Council of Europe commissioner for Human Rights’ special mission to Kosovo, CommDH (2009)23, Strasbourg, 2<sup>nd</sup> July 2009, §184, p. 31.

proceedings are initiated, the victims of trafficking shall be informed and their well being shall take precedence over the collection of evidence.

SOPs address five issues: Identification, Crisis intervention care, Rehabilitation and reintegration assistance, Return, Criminal proceedings and compensation claims.

On the overall SOPs are protective tools to serve children but, regrettably, some shortcomings have been identified. For instance, the SOPs leave room for the deportation of child victims of trafficking under the label of “illegal migrants”, while they previously underline the importance of the reflection period and identification process.<sup>21</sup> This provision is highly ambiguous in so far as an opportunity to deport foreign child victims of trafficking as illegal migrants is made legally possible, while leaving the “burden” of identification to the authorities of the country of origin. It is very likely for such a scenario to happen as numerous potential foreign child victims of trafficking have been identified by NGOs but not by authorities, as demonstrated by the discrepancy between authorities’ and NGOs’ figures. In that case, neither risk assessment nor best interests determination or social investigation will be undertaken in the country of origin by authorities of the country of destination, jeopardizing the future of the child and denying him/her the possibility to pursue the rights inherent to his/her condition of being a victim of trafficking.

Another provision of the SOPs is also ambiguous in so far as the provision of service to victims of trafficking, whether children or adults, seems to be conditional<sup>22</sup>. The paragraph states that an individual (potential victim) is provided information “about the service options available and any obligations or conditions associated with receiving services”. This ambiguity should be solved by deleting this provision from the SOPs as access to care for victims of trafficking should under no circumstances be conditional.

Further on, the “Development of an assistance and security plan” part of the SOPs is supposed to respond to the challenge of reintegration by finding a durable solution for victims of trafficking.<sup>23</sup> This part is addressed in the UNICEF guidelines under the chapters on “*individual case assessment*” and “*identification of a durable solution and the implementation of a durable solution*”. The SOPs do not give a detailed description of this crucial step in the reintegration of victims of

<sup>21</sup> Standard Operational Procedures for victims of trafficking in Kosovo, Ministry of Internal Affairs, Republic of Kosovo, p. 27, last paragraph.

<sup>22</sup> Ibid, p. 33.

<sup>23</sup> Idem, pp. 34-38



trafficking, especially children. Mere statements on “communication”, “assistance and security plan” and “care plan” are made without detailing further what these plans actually consist of. The SOPs are not providing a suitable framework for the reintegration of CVT that would allow practitioners to rely on them and properly implement a durable solution for victims. This will be illustrated in the next chapters, as interviews demonstrated that this structural gap is *contaminating* the practice.

Again, when tackling the issue of rehabilitation and reintegration assistance, the wording seems to allow a foreign victim of trafficking to stay in the country of destination only if he or she is involved in criminal proceedings as a witness<sup>24</sup>, which is obviously in breach with UNICEF guidelines.

### **Institutional progress hampered by a blurred decentralization process**

Several governmental and non-governmental actors are involved in the protection of victims of trafficking, from identification to rehabilitation and reintegration.

The **Kosovo Police Services** (KPS) through the **Trafficking in Human Beings Section** (THBS) is responsible for combating trafficking in human beings through identification of victims, inquiry and referral of victims to relevant authorities. THBS is decentralized in seven regional police stations, which allows a good coverage of the country and a proper reactivity when suspected victims of trafficking are identified.

**Community police** belongs to KPS and is acting as a bridge between police and society. They conduct field work, have daily relations with schools, families and communities and organize psychosocial activities for children begging in the streets. They are at the frontline of the combat against child begging, together with social workers and were involved in the process of return of Albanian begging children to their country of origin.

The **Ministry of Labour and Social Welfare** has overall responsibility for the organization of the provision of Social and Family Services in Kosovo.<sup>25</sup> Victims of human trafficking directly fall under the competence of the Ministry<sup>26</sup> and its services for prevention and protection purposes.

24 *Idem*, p.37

25 Law No. 02/L-17 on Social and Family Services, Article 2.

26 *Ibid*, article 1.

The **Department of Social Welfare** within the Ministry has the overall responsibility to give, propose, suggest and advise the Ministry and the Government of Kosovo on the development of policies relating to Social and Family Services.<sup>27</sup> Direct assistance and implementation are undertaken at the local level, through the **Centres for Social Work** (CSW) in each municipality.

Consequently, assistance and services are never provided directly by the central level but only in exceptional circumstances.<sup>28</sup>

The **National Anti-Trafficking Coordinator** position, deputy Minister of internal affairs, was created by the Government decision 029, dated 10/04/2008.

Under his chair, the Inter Ministerial Group against Trafficking in Human Beings (IMTHB, replacing former Direct Assistance Group - DAST) is gathering representatives of each Ministry involved in the fight against trafficking. Contrary to its predecessor, IMTHB is not providing direct assistance and individual cases are not referred to it. Its mandate is to coordinate policy implementation and monitor achievements.

The Ministry of Justice, **Division for Advocacy and Assistance to Victims** (DAAV), is involved through the institution of the **victim's advocate** (VA), who is providing legal assistance for victims. There are 11 victim's advocate offices throughout Kosovo, with 23 officers<sup>29</sup>. As an institution belonging to the government, the independence of the victims advocate is questionable. However, in the case of children, a private legal counsel must be appointed. The DAAV is also the body responsible for providing protection to victims/witnesses, during and after trial. As we will see, many improvements need to be done in this field.

**Prosecutors and judges** also play a fundamental role in the protection of child victims of trafficking, in the investigative phase as well as during trial. However, only one Judge is specialized on children issues in Kosovo, while prosecutors are not specialized for this at all.

**As far as decentralization of social services is concerned**, the process was initiated at the end of 2008 and is still ongoing. As a consequence, municipalities are responsible for the overall management of the Centre for Social Work through the Directorate for Health and Social Welfare in each municipality.

27 *Ibid*, article 3.

28 *Ibid*, Article 3.3 *al. h.*

29 Interview with an official from the DAAV, Pristine, Kosovo, November 24<sup>th</sup> 2009.

Transfer of competence from central to local level is not yet fully operational, and the transition was not smooth and certainly too quick. Services were not prepared or trained to work on issues such as human trafficking or domestic violence. With an increase of funds to be dealt with not accompanied by an increase in human resources, their capacity to undertake new competences is raising concerns. Within the CSWs, social workers themselves acknowledge that they are still confused about the organization of the service they belong to.

Moreover, persons in charge of directorates within municipalities are appointed by elected persons (i.e. politicians). Their appointment therefore might not always respond to objective criteria of competence but more to fidelity or affinity with a particular trend or political party/person.

## Insufficient identification capacities

The drafting of the SOPs in Kosovo is a positive step to be acknowledged. Despite their shortcomings, their entry into force and implementation has been a progress achieved by the Kosovo Government in establishing a set of procedures to enhance effective identification of child victims of trafficking. Moreover, Human Rights focal points responsible for trafficking-related issues in each Ministry have been appointed, thus streamlining exchange of information. However, coordination of all stakeholders' actions is still unsatisfactory and dialogue between all institutions can be improved.

Good examples of proactive measures are the raids conducted by the KPS, under supervision of THBS, in bars or private places when they have evidence that exploitation and/or trafficking occur.

Procedures of identification at the entry points at the borders are implemented by border police but a lack of identification capacity, at both institutional and resource levels, is hampering progress.<sup>30</sup>

Many efforts were made to set up a database that would allow a proper registration, storage and processing of information on child victims of trafficking. However, there is no such database available to this date.

A high turnover within the KPS' staff in general, and the THBS in particular, as well as within the border police is a problem of growing concern as new staff is generally not trained on trafficking issues. Although numerous trainings were

30 Interview with International NGO staff, Pristine, Kosovo, November 21<sup>st</sup> 2009.

provided to police officers, an important proportion of team members did not attend trainings or did not have a sufficient knowledge of anti-trafficking techniques and, certainly raising more concerns, on child rights issues.

Reports highlight the lack of identification capacity of police officers (as well as social workers) who often fail to recognize victims of trafficking and do not take into consideration their status as potential victims.<sup>31</sup>

Likewise, Centres for Social Work, social workers do not stay a long time in the same position and lack childcare expertise or knowledge on how to deal with trafficking victims, especially children. Therefore a continuous training scheme should be implemented and made mandatory for service providers entering a new position. A training impact assessment is highly needed to have a better picture of the situation and configure training strategies accordingly.

Numerous reports underline the inefficiency of KPS in the identification of victims of trafficking.<sup>32</sup> Reports were made of procedural abuse and threats made to child victims in order to get information.<sup>33</sup>

The resources of the community police should be used more wisely as their status and mandate naturally allow them to fill in this gap. To this end, a series of trainings should be organized, to build community police capacity on child trafficking as no community police officers ever attended a training on this issue, despite their daily contacts with children at risk. The top management of the community police recognized that they could play a role and declared that they would be available and ready to contribute to the identification.<sup>34</sup>

Moreover, social workers' capacity to identify child victims of trafficking or at risk of trafficking is seriously hindered by lack of human and financial resources. Often focussing only on case management of identified trafficked, children, social workers have neither time nor resources (car, telephones...) to undertake their daily tasks of outreach. Their identification capacity through street work or field visits is therefore almost nonexistent.

The Ministry of Education, Science and Technology (MEST) is on the other hand also taking an active role in the identification of child victims of trafficking. The

31 *Human Rights, Ethnic Relations and Democracy in Kosovo, OSCE, 2008, p.28.*

32 *Human Rights, Ethnic Relations and Democracy in Kosovo, OSCE, 2008, p. 28.*

33 *A legal analysis of trafficking in persons. Cases in Kosovo, OSCE Legal system monitoring section, 2007, p.12.*

34 *Interview with an official from the community police, Pristine, Kosovo, November 24<sup>th</sup> 2009.*

Human Rights Unit within the Ministry developed inter- and extra-curricular methods. As regards the former, trainings of teachers have been organized with the help of IOM and the Centre to protect victims and prevent trafficking (PVPT). For the period 2004-2008 more than a thousand teachers have been sensitized on trafficking issues and participated in the identification of children. In 2009, 120 teachers were trained. Through this program 505 schools out of 547 (+ 422 antennas) for children aged 6 to 15 were covered by the trainings. Moreover, 600 pupils were sensitized on trafficking through a project implemented by the MEST and PVPT.

As for extra-curricular activities, schools are involved in different projects, providing extra teaching hours, exhibitions and theatre performances addressing the trafficking phenomenon.

Each school has teachers acting as “human rights counsellors”. More than 3000 teachers played this role in 2009 on a voluntary basis.

The age determination of a victim of trafficking by law enforcement authorities or other competent bodies complies with UNICEF guidelines. The procedure is detailed in the SOPs and respected in practice. Children are not subject to medical examination for the purpose of age determination without their informed consent. The criteria applied in the process of age determination takes into account the physical appearance, the apparent maturity of a child as well as the documentation he/she might carry on him/her.

In the case of foreign children (alleged victims of trafficking) further information and checks (processed in civil registries for example) are sought with the help of embassies or consulates.

## Inadequate guardianship solutions

The process of guardian appointment is respecting the UNICEF guidelines, but the guardians have neither capacity nor means to fulfil their responsibilities.

Family Law of the republic of Kosovo is detailing the procedure of a guardian appointment and mandates competent services to do so: the custodian body within the centre for social work.<sup>35</sup>

When a child victim of trafficking is referred to the centre for social work, the custodian body immediately appoints a case manager who will appoint a

35 *Family Law of the Republic of Kosovo, nr. 2004/32.*

guardian. Guardians are generally members of the family (parents or relatives) or of the community. During the interviews information was provided revealing that students had been appointed legal guardians for the only reason that they belonged to the same community as a victim, while they had no relevant childcare expertise or experience in that field.<sup>36</sup>

For child victims of trafficking, a case manager in Kosovo corresponds to the concept of “guardian” as expressed in the UNICEF guidelines. The case manager is in charge of all the procedural aspects related to the placement of the child, assessment of his/her immediate and medium-term needs and ensuring that a tailor made plan is drafted for reintegration of the child.

There is no objective reason to believe that custodian bodies lack independence towards central or local governments even though they are under the direct supervision of the municipalities. The appointment of a case manager is made independently by the coordinators of the CSW and chosen from a pool of social workers taking due account of their expertise to fit the specific situation of each child when possible. The custodian body is accountable for the acts of the case manager.

The capacity of the social workers can be improved. As previously mentioned, a high turnover leaves CSW with social workers that do not necessarily have relevant child care expertise for child victims of trafficking. Some social workers do not even recall the subject of the trainings they received and are often unsure about procedures they are supposed to follow. It was reported that CSW often do not succeed to have access to children neither their families as they were using “old-fashioned method of work” and were not skilled or sensitized enough to approach individuals, families or communities with special needs.<sup>37</sup> Therefore, continuous trainings must be provided for social workers to improve their capacity.

Likewise, the human and financial resources of the CSW urgently need to be increased, bearing in mind the financial difficulties of the republic of Kosovo. Social workers reported having to supervise more than 240 cases at the same time, among which two child victims of trafficking. In these conditions management of the cases is virtual, almost nonexistent.

Lack of human resources is also affecting the possibility for social workers to accompany a child victim of trafficking throughout the entire process until a

36 *Interview with a CSW official, Vushtri, Kosovo, November 23<sup>rd</sup> 2009.*

37 *Interview with an NGO representative, Pristina, Kosovo, November 24<sup>th</sup> 2009.*

durable solution is found and implemented. Cases were reported where social workers interchangeably cared for the same child. In this context, there is no real case manager exclusively accompanying the child, but different persons. How can a best interests determination be undertaken where the knowledge is dispersed and confidence between a case manager and a child is not built?

Discussions with service providers, especially in shelters, lead us to the assumption that CSW case managers do not often meet or visit child victims of trafficking, even though they should do so every two weeks according to their internal procedures. The situation is better in Pristine but alarming in province cities such as Peja or Prizren. However, social workers are always present during police interviews even though allegations were reported that on-duty phones are not always available for social workers, which might be problematic when children are identified at night.

Moreover, social workers do not have the financial means to conduct field visits to follow up on child victims of trafficking situation. Knowing that child victims of trafficking are at high risk of being re-trafficked, there is an urgent need to solve this problem.

Even if the good will and dedication of social workers is shown beyond any doubt, they do not have the means to bear their responsibilities for child victims of trafficking due to their lack of availability and hence for safeguarding the best interests of the child and find a durable solution for his/her disposition.

## Heavy interviewing procedures

In Kosovo initial questioning is respecting the UNICEF guidelines, while judicial procedures are raising many concerns.

Most child victims of trafficking in Kosovo are identified by the police, whether during raids or border checks. The procedure is in line with basic requirements. Upon identification or suspicion, initial questioning takes place and a basic data form is filled out by the police officers, containing general information such as name and place of origin, allowing the establishment of the identity of the child, as well as the tracing of his/her family. The presence of THBS in regions allows us to think that interviews are conducted in a child sensitive way, by trained officers. However, according to officials of the THBS, non-THBS police conducts raids as well. They might get in contact with victims of trafficking and might proceed to initial questioning in a non tactful manner, as not all police officers have been trained on the protection of victims of trafficking. Moreover,

information was reported that the interviews were not always conducted by police officers from the same gender as the victims.

During the initial questioning, information regarding the trafficking experience of children are not sought. Generally, questioning is taking place at the police station, but in specific rooms devoted to interviewing victims (but unfortunately not children), thanks to UNDP funding.

Police always and immediately informs the Centre for social work of the locality and do not proceed to interview without the presence of an authorized social worker, when there is suspicion of trafficking. All police stations have been provided with CSW phone numbers and addresses.

A document is signed between the officer conducting the interview (not necessarily by senior staff) and the social worker present at the interview to hand-over the child. Police is also transferring children to safe locations. After a reflection period and stabilization of a CVT, formal interviewing and investigation can take place.

At this point, the procedure is not protective anymore of the rights of CVT. While numerous reports highlighted threats and misconducts of police officers towards victims of trafficking to gather evidence, **the process per se is also re-victimizing CVT.**<sup>38</sup> If a case is to be brought before court, child victims of trafficking might be heard more than 5 times. Questions are repeatedly asked to children and information is not necessarily asked to case managers or shelter staff when it is possible to do so, due to irregular information sharing between law enforcement authorities. Moreover, there are no specialized prosecutors on underage victims in Kosovo, and only one person is a Judge for minors. Although prosecutors have to closely collaborate, they are never present during interviews and often ask to hear the child again to further the investigation. This situation is highly likely to deepen trauma and distress of child victims of trafficking.

## A referral process in need of institutional progress

Overall coordination has improved, but meetings between all stakeholders active in the protection process are not held regularly at central level, and

<sup>38</sup> According to a Kosovo Judge for minors.

communication between national and local level is not satisfactory<sup>39</sup>. The latter is crucial especially since the decentralization of Kosovo was initiated.

At the operational level, the SOPs describe the procedure to be followed and state relevant authorities to be contacted within the country or in other South East European countries. Contact details of relevant authorities and service providers are made available in all police stations. Therefore appropriate procedures are in place in Kosovo for referral and assistance to child victims.

In each Ministry a human rights unit or focal point has been created and is, among other tasks mandated to liaise with stakeholders and relevant authorities in the referral of victims of trafficking.

Victims are referred to relevant services expeditiously, as soon as they have been identified, especially children.<sup>40</sup> CSW efficiently appoints case managers and victims are rapidly placed in safe locations where services meeting their specific needs are available. This situation however relies on the personal commitment and professionalism of law enforcement agencies or civil society identifying victims.

The reason behind is that the “Direct Assistance Partners Group” (DAS Group) that included seven governmental and non-state agencies, which used to gather once a month to discuss about general issues as well as individual cases, does not meet as often as it used to, thus hampering a proper referral process. The seven agencies that were active among the DAS group are however part of the “Inter-institutional group against trafficking in Human Beings” created in 2005 that gathers on a regular basis. Regrettably, individual cases are not anymore discussed within the inter-institutional group.<sup>41</sup> A good opportunity is therefore missed to relaunch individual referral of cases within an already existing structure.

At the local level, although Task Forces (created with the help of Terre des hommes in 2007) were set up at the local level, it was determined that the participation of municipal directorates of Education as well as Social Welfare is not sufficient.

39 Interview with NGO director, Pristine, Kosovo, November 24<sup>th</sup> 2009.

40 According to shelter's staff referral of victims is more efficient for children than for women

41 Interview with Shelter staff, Pristine, Kosovo, November 22<sup>nd</sup> 2009.

## Suitable short term care and protection options remaining underfunded by the state

The most common places offered for victims of trafficking are shelters run by NGOs, while an “Interim Secure Facility (ISF)” is run by the state. The ISF is the only shelter accommodating foreign child victims of trafficking.

Upon identification of a child victim of trafficking, procedure of placement in a safe accommodation is fast and efficient. During the initial questioning, police is determining the level of risk that victims of trafficking could be exposed to (retaliation from traffickers or risk of being re-trafficked), and together with a social worker from the CSW and the victim's advocate, evaluate their immediate needs and place them in relevant shelters accordingly. The Interim Secure Facility receives victims that are at high risk while other shelters run by NGOs care for victims at low or medium risk.

On the overall, basic services available in the shelters are meeting children's needs. So far all child victims of trafficking in Kosovo could have access to medical, psychosocial and legal advices. Shelter's teams combine different skills and include at least a doctor/nurse, a psychologist, social workers and lawyers, which allow them to answer efficiently to victims' general and more particular needs.

All shelters, as already mentioned, have standards of care drafted and staff follows procedures accordingly. However and as previously mentioned, a high turnover in human resources is also affecting the work of some shelters around Kosovo. This is not true for all shelters but raising concerns in a number of others.

Therefore an important proportion of the staff in a some shelters is not properly trained on protection of victims of trafficking, especially children. Although their academic and professional background corresponds to their role, their capacity to meet the needs of child victims of trafficking and to adequately provide assistance and defend their rights can be questioned, especially when handling cases of children with special needs.

The contribution of case managers from CSW in drafting an individual needs assessment and short-term plan is also of concern. We found out that their lack of availability did not allow them to make a meaningful contribution to this assessment and plan. In some cases they literally do not take part in the procedure and the shelter staff is the only one able to carry out the assessment. This situation is problematic as shelter staff generally acts as substitutes of case

managers without having the power to decide and act in the best interests of the child through the procedure, power that remains in the hands of case managers. Furthermore, there are no social workers from CSW that carry out their work in the ISF. The handling of foreign child victims of trafficking is therefore highly questionable.

The acknowledgement of this situation is made in the Action Plan 2008-2011 where the appointment of shelter's staff as case managers is foreseen<sup>42</sup>. However, this provision is still not implemented and will need to be carefully applied, ensuring that case managers and licensed NGOs are monitored by independent authorities as prescribed by UNICEF guidelines.

We also found out during the interviews that funds are lacking and investment in shelters is sometimes needed. When visiting a shelter in the north of Kosovo, we noticed that the conditions they work in are limited and the premises where they accommodate victims are not suitable for children. As a striking example all the shelters in Kosovo but two (run by the NGO Hope and Homes for Children) are mixing adults and children.

Apart from the ISF, state funding of shelters is insufficient and their budget relies on international donations, although they are supplementing state duties. This led one shelter to stop its activities for more than one year and a half and only reopen recently.

Finally, there is no shelter in Kosovo that is only accommodating child victims of trafficking<sup>43</sup>. All residential care institutions are mixing either adults with children, or children with different experiences and traumas (for example victims of domestic violence, drugs addiction).

There is no evidence that detention of children victim of trafficking occurred in Kosovo.

## Vague regularization procedures

The law on Asylum<sup>44</sup> is regulating the asylum procedure for unaccompanied minors. Child victims applying for asylum fall into this category. A guardian

42 National Strategy and Action Plan against trafficking in Human Beings, Republic of Kosovo, Prevention, Specific Objective n°3, Activity n°1, p. 48.

43 Human Rights, Ethnic Relations and Democracy in Kosovo, OSCE, 2008, p. 28.

44 Law on Asylum, nr 03/L-066, article 20.

has to be appointed prior to the beginning of the procedure<sup>45</sup> and he/she has the duty to assist the child through the procedure and preserve his/her best interests. The views of the child should be duly taken into account and his/her best interests are described as to be of primary consideration, while these cases have priority over the ones of adults. A tracing process of their families also has to be undertaken by competent authorities.

This text only describes the asylum procedure, but the granting of a temporary residence permit is governed by the law on foreigners<sup>46</sup>. The provisions of this law are not detailed enough when it comes to children and the possibility to stay remains vague. The article 65 states that "a foreigner may remain in the Republic of Kosovo on Temporary Presence if he/she cannot be deported". This includes children as well, and we already know that children are deported.

Article 60 of the same law on "holding and detention of foreigners" prescribes that "children shall receive all necessary assistance required by their age and shall be treated in accordance with the provisions and principles of the Convention on the Rights of the Child of 1989", and that underage persons shall be held separately from adults (except for close family members). The clear contradiction between the convention on the rights of the child and the possibility to hold minors as quoted from the article, makes clear that the legislative framework on the determination of status provisions is still not adapted to international standards generally, and UNICEF guidelines specifically.<sup>47</sup>

Apart from a Temporary Residence Permit, Kosovo makes possible the application for asylum of child victims of trafficking. A victim of trafficking may be granted a "complementary protection" and benefit with this status of the possibility to have identification documents issued by Kosovo authorities<sup>48</sup>. The specific status of children is acknowledged in the law on asylum with provisions on unaccompanied minors<sup>49</sup>. A series of rights are announced such as prioritization of the assessment of their case and best interests determination.

Based on the interviews, there is no reason to believe that child victims of trafficking cannot pursue their right to initiate an asylum procedure that would be processed in a fair and equitable way.

45 According to the provisions of the family law on custody.

46 Law on foreigners, nr 03/L-126, article 65.

47 See UNICEF guidelines for SEE, pt. 3.6.

48 Law on Asylum, nr. 03/L-066, Article 5.3.

49 Idem., Article 20.

## Return and best interests determination in conflict

The procedure of return as described in the UNICEF guidelines is not respected in Kosovo due to the lack of identification capacity of law enforcement agencies and social workers. The situation of children begging in the streets coming from Albania is a typical example.

Most of suspected child victims of trafficking by Terre des hommes<sup>50</sup> are deported<sup>51</sup> without any prior assessment of their situation. Although children are often accompanied by one of their parent, there is no in-depth inquiry made by the authorities in Kosovo to determine whether or not there is a probability of trafficking. As demonstrated in the table below reflecting a situation in Greece but replicable in Kosovo, the fact that children are accompanied by one or both of their alleged parent(s) does not necessarily mean that they are not in a situation of trafficking and that returning them to their home country is in their best interests.

*“In the last year anti-trafficking police in Greece reported an increase in trafficking of children by their parents. Albanian Roma parents bring their children to Greece, where they force them to beg or sell goods on the street. According to some NGOs, Roma parents in Greece also rent or sell their children to third parties for forced labour”.*

Social Trafficking in persons report 2009, US State Department, p. 7

The return process is organized around a summary procedure that only requires the consent of the “parent” of the child. Even though the IOM is sometimes involved, especially through its voluntary assisted return and reintegration program (VARRP),<sup>52</sup> there is suspicion that decisions are not always taken in best interests of the child.

<sup>50</sup> Terre des Hommes in Kosovo identified 69 suspected child victims of trafficking and 387 children at high risk in 2009. There is a high discrepancy with police estimations, and government reported to have assisted only 24 victims in 2008.

<sup>51</sup> The term deported is used by law enforcement agencies themselves.

<sup>52</sup> The IOM also implements a project “Fostering sustainable re-integration in Albania, the Kosovo Province and FYROM by reinforcing local NGO capacity for service provision to returnees”, for migrants who illegally entered the EU area and the one willing to return voluntarily are assisted with re-integration alternatives. For further information see: [www.iom.org](http://www.iom.org)

Therefore there is not only a violation of the basic rights of the child, but also a violation of Kosovo’s national commitments as expressed in the SOPs. According to the SOPs, a “plan for a durable solution” should be drafted, the child’s willingness to return should be assessed, the safety of return determined, a risk assessment conducted, family tracing undertaken and information shared with the child at every stage of the procedure. All the aforementioned is to be formalized in a pre-departure reintegration plan. Unfortunately none of these steps are actually taken in reality.

The contribution of the country of origin is not always asked and most of the time no social or family investigation is made in the country of origin prior to return. If collaboration is to take place so as to undertake family tracing as well as risk and security assessments, the cooperation mostly relies on NGOs networks more than on governmental exchanges between countries.

We acknowledge that, when the victim of trafficking is recognized as such and afforded the status of victim, efforts are made by Kosovo authorities to respect the procedure detailed in the SOPs.

## Durable solutions, but how?

The implementation of a durable solution is interlinked with the capacity of social workers to draft an individual action plan based on the child’s needs, to ensure an individual follow up of each child victim of trafficking. The availability of a temporary residence permit and the implementation of an informed decision to return a child victim of trafficking to his/her country of origin (or to resettle him/her in a third country when his/her security is at stake) is also important.

As previously demonstrated, none of these steps are taken in a satisfactory way. Most of the victims of trafficking do not stay on a short-term basis in shelters as they should. We found out that child victims of trafficking had stayed more than two years in shelters. Social workers are supposed to release a report after 6 months to assess the results achieved within the shelter and evaluate the implementation of the individual plan but this is regrettably not always the case.

This is the consequence of a **critical lack of alternative care** that hinders Kosovo’s progress towards the implementation of UNICEF guidelines. The availability of alternatives to non residential care is almost non existent for minors not able to be reintegrated in their families/communities. Opportunities such as foster families, semi independent living or other options are not sufficiently looked at by governments.

When children are reintegrated in their original family environment, the lack of availability and workload of social workers do not allow them to make a follow up on the situation of child victims of trafficking after reintegration in their family/community of origin. Cases were reported where in 2009 two underage girl victims (14 years old) disappeared after their relocation in their family. Their case manager visited their family only several weeks after “reintegration” and could not have access to the victims.

When the child victim of trafficking is a non-Kosovo national, return is the only example we can give so far. Neither relocation of child victims of trafficking in third countries nor local integration of foreign children has taken place. However, procedures are detailed in the SOPs and respectful of basic standards and child rights.

The inclusion of a transnational referral mechanism (TRM) between 10 countries in SEE (among which is Kosovo) as characterized by the creation of the SOPs must be acknowledged. However, and as confessed by an official from the Ministry of Justice,<sup>53</sup> the TRM is still new and Kosovo did not yet have the occasion to implement it.

The return of Kosovo nationals CVT to Kosovo is in compliance with the guidelines. Social workers or NGO staff is present to accompany the child and welcome him/her upon return. Children are placed under custody of the State and can benefit the same services than other trafficked children.

A best interests determination is however subject to doubts when children are returned. Conversations with NGOs from countries of origin and Kosovo revealed that views of the child are not always respected and risks and security assessments can be summary. In-depth investigations in the country of origin are not always conducted, and if they are, the work is done by NGOs.

As described in the other country analyses, most of UNICEF guidelines procedures on return, such as family tracing, risk and security assessments, which are paramount findings for a durable solution in the best interests of children to be taken, mostly rely on NGO networks and expertise.

Therefore, procedure might be in line with the requirements enshrined in the UNICEF guidelines as long as the collaboration of NGOs is functioning and the cases referred to them. This situation is still not acceptable as processes

<sup>53</sup> Interview with an official from the division of advocacy and assistance to victims, MoJ, Pristine, November 24<sup>th</sup> 2009.

and undertakings like family tracing and risk and security assessments must be institutionalized and implemented on every single cases of potential or actual child victim of trafficking.

The situation is however completely in breach of UNICEF guidelines where child victims of trafficking are treated as irregular migrants (c.f. chapter on interim care and protection) and returned through a summary procedure.

No information was however provided on the procedures of other countries of destination, especially the question whether family tracing and risk and safety assessments were asked prior to returning Kosovo trafficked children to their homes.

Moreover, cooperation at the international level is not fostered by the ratification of international agreements between Kosovo and border countries, while an important number of identified victims of trafficking come from the zone. The drafting, signature and ratification of bi lateral agreements to ensure a dignified return of child victims of trafficking, in their best interests and as it is required by UNICEF guidelines, should be at the agenda of the Kosovo government.

## Appropriate access to justice, deficiencies in practice

In Kosovo victims of trafficking are entitled to legal counsel provided by the victim’s advocate. However, a private legal counsel has to be appointed by the prosecutor for underage victims. Therefore the victim’s advocate does not play a role in informing and protecting children rights.

Legal services are offered to child victims of trafficking such as legal representation as previously mentioned, but also translation during court proceedings or investigating interviews.

Child victims of trafficking have the possibility to refuse giving testimony and are afforded a reflection period should they need time to consider the possibility to testify or not. The lack of specialized prosecutor or judge is of serious concern as interrogating techniques might not be child sensitive and can add to the trauma of the child victim. The possibility to testify in a separate room than in the court hall (videotaping techniques are used) is available to avoid confrontation between the victims and perpetrators. However, it was reported



that direct confrontation between victims and offenders happened several times<sup>54</sup>.

The level of information of child victims on their rights and the consequences of being involved in criminal proceedings is also subject to doubts. The Victims' advocates have often been reported as not being competent enough to undertake their work, due to the lack of specialized education on legislation and victim's rights, but also the lack of incentives given by the Ministry of Justice (MoJ) to increase their level of motivation.<sup>55</sup>

As previously mentioned, SOPs are ambiguous as far as provision of care is concerned.<sup>56</sup> The paragraph states that an individual (potential victim) is provided information "about the service options available and any obligations or conditions associated with receiving services".

### Failed witness protection schemes

The Victims and Advocacy Assistance Division is the body in charge of witness protection.

Interviews held with members of the judiciary revealed that there is no proper witness protection scheme able to offer security assistance to those willing to testify during court proceedings. The only judge for minors of Kosovo is wondering what is happening to the child victims of trafficking once they testified in the courtroom.

A law on witness protection was considered but so far is not approved. Therefore there are no proper legislative mechanisms regulating witness protection in Kosovo and as a consequence the witness protection system is more virtual than real and contrary to international treaties to which Kosovo is a party.<sup>57</sup>

<sup>54</sup> Interview with an official from MoJ, Pristine, November 24<sup>th</sup> 2009

<sup>55</sup> Assessment for establishing a referral mechanism for victims of trafficking in Human Beings in Kosovo, OSCE, October 2007, p.31.

<sup>56</sup> Standard Operational Procedures for victims of trafficking in Kosovo, Ministry of Internal Affairs, Republic of Kosovo, p. 27, last paragraph.

<sup>57</sup> Council of Europe Convention on action against trafficking in human beings, article 28.

## 3.2. The Former Yugoslav Republic of Macedonia

## A strong legislative and institutional framework

### Sound legislative and procedural framework

As noted by several reports on the situation of victims of trafficking in FYROM,<sup>58</sup> the legislative framework for combating trafficking in Human beings in FYROM complies with international standards and would be sufficient if fully implemented.

The Macedonian Government recently adopted its **National Action Plan 2009-2012** against trafficking in human beings. This Action Plan is divided into four axes: Supporting framework, Prevention, Support and protection of victims and migrants, Investigation and criminal prosecution of trafficking in human beings and smuggling of migrants. The document is clear and establishes reasonable objectives within a realistic timeframe, but is mixing adults and children.

To address this issue, a **National Action plan to combat trafficking in children in the republic of Macedonia 2009-2012** was drafted. The document is a strategic document that doesn't go as far as it could have and is clearly lacking a strategic vision at the structural and operational levels. Only mere statements but no real concrete actions or commitments are included. It can be summarized as a document advising more coordination and training for every agency (which is indeed highly needed), implementation of the SOPs as well as more prevention, setting up of a database and better collaboration with foreign countries.

In January 2008 modifications and amendments to the **Macedonian criminal code** were enacted and an article 418 (g) "Human Trafficking of Minors" was added making a clear distinction between trafficking in children and human trafficking in general. Sanctions are therefore more stringent and trafficking qualification is easier to make as consent of the minor victims is not an element in the definition.

The government as well enacted in the first months of 2009 the **Standard Operating Procedures for treatment of victims of trafficking**. They tackle 5 issues: Identification and referral, Initial care and mid-term assistance, Return, Reintegration and Criminal Proceedings.

The Macedonian SOPs are the most advanced amongst the three countries subject to this study and detailed enough to combat the trafficking phenomenon

58 Trafficking in Persons report 2009, Macedonia, US State Department.

as well as protect victims. However, several shortcomings can be identified such as the lack of differentiation between children and adults. These shortcomings will be addressed later on.

### Strong institutional framework

The **Ministry of Interior** is a key partner in the fight against trafficking in Human Beings and protection of victims.

Within the **Police**, an **Organized crime police department** has been created to address different issues such as money laundering or fight against drugs and weapons as well as trafficking in Human Beings. Among the **trafficking in human being section**, the work is divided between two informal sub-units: one devoted to trafficking exclusively and the other to smuggling in human beings. Although the section on trafficking used to be dispatched in the regions, today there is no decentralization of the Trafficking in Human Being section of the police which only works from Skopje. An efficient information sharing process is therefore necessary to allow the 14 specialized police officers to complete their work properly. The **Border Affairs Sector** is part of the Mol and also plays an important role in the identification at Border Points. It is also competent to receive and process claims for Temporary residence Permit.

The **Ministry of Labour and Social Policy** also plays a crucial role in the provision of services and assistance to the victims of trafficking through its Centres for Social Work. 27 Centres for Social Work exist in FYROM with a total of 58 trained Social workers on the issue of trafficking in children.<sup>59</sup>

A **National Referral Mechanism (NRM)** office was launched by the OSCE and the national commission. It was set up within the MLSP's equal opportunities sector in 2005 with the aim of assisting victims of trafficking, be they adults or children, but with the primary goal of coordinating all services involved in the protection of victims. Three persons<sup>60</sup> are working in the office and as of December 2009, the government should pay their work after one-year shortage of funds and several years of international donors' reliance. It is worth to note that the NRM works exclusively for domestic victims except in cases involving foreign children where they also take part in the process.

The **Ministry of Foreign Affairs** is also contributing to the protection and assistance of victims when foreign child victims are identified. If these children are to be returned, the consular services will play a role in contacting their

59 Interview with an officer of the MLSP-NRM, Skopje, November 29th 2009.

60 The NRM office comprises a legal advisor, a field coordinator and a coordinator.

foreign counterparts as long as they are not included in the TRM project initiated by ICMPD and covering South East Europe.

**Civil Society and international organizations** also play a notable role in the process of assistance to victims of trafficking. Two NGOs run shelters or intervene in shelters run by another entity. OG La Strada is responsible for domestic victims of trafficking and the NGO “Happy childhood” provides services in the reception centre where foreign victims are accommodated. The latter is run by the state, while Open Gate receives no subsidy from the State and relies on external donations.

In FYROM there is no shelter exclusively dedicated to children, nor any kind of facility or capacity to accommodate children under 12 years old or male child victims of trafficking.<sup>61</sup>

At the national level a **National Commission** was set up to coordinate the work of all institutions involved in the prevention, protection and prosecution of trafficking in human beings process and is chaired by the **National Anti-Trafficking coordinator** who has the status of counsellor of State.

It is composed of a **secretariat** which is the executive arm of the commission and composed of representatives of international organizations, non governmental organizations, embassies and government officials.<sup>62</sup> It gathers 6 times a year while a **subgroup on child victims of trafficking** has been created to tailor the work of the commission according to children specific cases.

The work of the national commission is more structural than practical and consists mainly in drafting policies and strategies such as the national action plan, as well as to monitor their implementation, report on it and recommend activities.

As it is foreseen in the National Action Plan, the national commission should have a stronger coordination role while the secretariat should enhance its executive capacity, and the subgroup for counter trafficking in children should better coordinate its activities with the activities of the National commission.

<sup>61</sup> Interview with shelter's staff, Skopje, 30 November 2009.

<sup>62</sup> The institutions represented are: Ministry of Interior, Ministry of Labor and Social Policy, Ministry of education, Open Gate – La Strada, Happy Childhood, UNICEF, IOM, OSCE, ICMPD, NGO “Semper”, American and British embassies, MARRI, Red Cross, Center for Civic initiatives, Coalition “All for fair trials”, The “Union of Women”.

To this end, an action plan for counter trafficking in children was drafted, and its current implementation is subject to biannual reports submitted to the national commission.

## An identification capacity that must be improved

Although a lot of progress was achieved in the recent years, particularly with the drafting of the SOPs, the capacity of stakeholders involved in the identification of victims of trafficking can be improved.

On the overall, the identification and referral part of the SOP is satisfactory and complies with UNICEF guidelines. It sets up procedures to be followed when confronted to trafficking cases and handling of cases is different for children than adults. However, the unclear division made in the SOPs between adult victims and underage ones does not always allow for child sensitive practice. For example, the form used by the police in the identification<sup>63</sup> comprises a section asking how contacts were established by the victims with the perpetrator(s): “voluntarily or by force?” This ambiguous question results in a breach of UNICEF guidelines as well as other international instruments as consent should never be asked to underage victims.

Another provision of the first SOPs also infringes UNICEF guidelines as a result of the unclear division between adults and child victims: the attribution of a temporary residence permit for children does not seem to be automatic but rather conditional. This issue is treated separately in the regularization of status part of this report.

In practice and as previously mentioned, the Unit against Trafficking in Human Beings and smuggling migrants of the Police, and especially its informal subunit more dealing only with Human Trafficking issues, are responsible for identification of victims of trafficking. To this end, the police conduct proactive measures such as raids in bars and cafés, and information is shared and referred immediately to the THBS if police comes across any information related to human trafficking. The same applies to border police who takes part in the identification process at border points.

However, major problems of identification occur in FYROM due to the organizational structure of the THB section. All Police officers specialized in Trafficking issues are located in Skopje. As a consequence of this centralization,

<sup>63</sup> Standard Operating Procedure, Republic of Macedonia, p. 21.

many cases of trafficked persons, including children, are first handled by local police officers who do not have the capacity to deal with victims of trafficking, especially children. Therefore, when police conduct raids, officers from the THBS are always present, but when identification is out of this pattern, initial action raises concern.<sup>64</sup>

As well, the NRM office provides a suitable referral system for every agency or institution involved in the identification process to contact relevant authorities when confronted to such a case.

In FYROM as in the other countries, information management is absolutely not satisfactory. Despite several attempts there is no general database allowing for information sharing and efficient cooperation between agencies in the registration, storage and processing of information on trafficking cases. Police has its own database which is not shared with other institutions and it does not disaggregate data<sup>65</sup> to allow a meaningful processing of information. It results in an insufficient identification capacity that could be enhanced through the establishment of such a database.

Finally, a great level of turnover is affecting the CSW Social workers and Macdonian Police, THB unit not being an exception. Therefore, knowledge of police officers on procedures might not always be satisfactory. No specific trainings on UNICEF guidelines were provided to police officers. Last training on trafficking issues took place one year and a half before this study and until then a part of the THB staff has already changed.<sup>66</sup>

Moreover, the Centres for Social Work and social workers also have a role to play in the identification of child victims of trafficking at the local level. However, all the interviewees agreed that the financial situation of the Centres for Social Work did not allow them to participate in the identification process. Visits to families and follow up of cases are not undertaken as often as it should be by the state social workers. Their financial situation does not allow them to have enough cars at their disposal to undertake their work, and their dedication has limits.<sup>67</sup> Moreover, and as for police, the extremely high turnover existing

<sup>64</sup> Interview with international non governmental organization's officer, Skopje, November 30th 2009.

<sup>65</sup> For example, there is no differentiation made by age group, type of trafficking etc.

<sup>66</sup> Interview with police officer within the trafficking unit of Police, Skopje, November 24th 2009.

<sup>67</sup> Interviews with police officers, NGO representatives, Skopje, November 26th, 27th and 30th 2009.

within MLSP staff leads to a high rate of untrained social workers on trafficking issues. Their capacity of identification is therefore seriously handicapped. Consequently, there is a high potential for breaches with national procedures and international instruments in the handling of the cases made by the THB unit.

The role of civil society must also be highlighted, especially through services such as the SOS hotline for prevention of trafficking run by OG – La Strada<sup>68</sup> through which victims of trafficking can find assistance should they be willing to look for help. It is however regrettable that no funds are provided to OG for this activity since the OSCE and UNICEF stopped to finance it.

The age determination of a victim of trafficking by law enforcement authorities or other competent bodies complies with UNICEF guidelines. The procedure is detailed in the SOPs and respected in practice. Children are not subject to medical examination for the purpose of age determination without their informed consent. The criteria applied in the process of age determination takes into account the physical appearance, the apparent maturity of a child as well as the documentation he/she might carry on him/her.

In the case of foreign children (alleged victims of trafficking), further information and checks (processed in civil registries for example) are said to be sought with the help of embassies or consulates, however little information was provided to us in this regard.

## A fast guardian appointment process needing more guarantees

The process of guardian appointment is regulated by the Family Law.<sup>69</sup> However, the process is different when it comes to child victims of trafficking. In each Centre for social work, a guardianship service - the unit of custody is responsible to appoint a guardian (a temporary one, i.e. a case manager). Social workers belonging to the CSW are appointed according to family law, but as regards child victims of trafficking, staff of the shelter where the child is accommodated take over the management of the case.

The two NGOs *OG La Strada* (that runs a shelter for domestic victims) and *For Happy Childhood* (which intervenes in the state-run Reception Centre for

<sup>68</sup> Since 2002, 2615 calls were made to the hotline as of January 2010.

<sup>69</sup> Family Law, 2004 | 2th November, Republic of Macedonia, Part V: Guardianship.

foreign victims) are providing direct services to child victims and as such are in daily contact with them. Their proximity and thorough knowledge of each case of child victim they are responsible for, allow them to listen to the children's views and take proper decision in their best interests and to safeguard their rights during the whole process. This was not the case when Social workers from the CSW were responsible for children that they barely had the time to visit, reason why the management of their case is much more satisfactory today.

Social workers of these NGOs are appointed as guardians according to their availability and competences after a proposition made by them to the CSW. Once identification is made, the referral process through the NRM is working efficiently in most cases and the appointment of guardian is therefore made in a timely manner. However, cases were reported when victims of trafficking were held more than 15 hours in the police station, being questioned, while no guardian was appointed.<sup>70</sup>

This situation is made possible by a formal agreement of the above mentioned NGOs through a Memorandum of Understanding (MoU) signed between the MLSP and respective NGOs, thus licensing their structure. The question whether a MoU is sufficient to regulate a situation that is otherwise provided by law must be posed. The provision of a MoU do not offer legal guarantees as a family law does.

This is clearly in the lack of clear determination of responsibility in the memorandum signed between the NGOs and the MLSP, leading to a gap as to who will be held accountable for the acts of the appointed guardian. As well the supervision (if any) made by the CSW of the NGOs is not standardized and the communication between both is not always sufficiently developed. The memorandum of understanding should therefore include regular supervision and visits made by CSW professionals to the NGOs and include a clause of responsibility. Consequently, child protection policies reviewed and monitored by state institutions should be developed by licensed NGOs so as to guarantee a protection against potential mismanagement or child abuse concerns.

Furthermore, the availability of CSW's social workers is far from being sufficient. Their working hours stop at 4.30 p.m. and the set up of an on-duty telephone is more virtual than real.<sup>71</sup> Therefore, when child victims of trafficking are identified after 4.30 p.m., the formal appointment of a guardian is delayed until

<sup>70</sup> Interview with an NGO Social Worker, Skopje, November 24th 2009.

<sup>71</sup> Interviews with police officers, NGO representatives, Skopje, November 26th, 27th and 30th 2009.

the CSW reopens its doors.

Despite these shortcomings, it has to be acknowledged that great improvements in the management of cases were achieved. Cases are referred in a much timelier manner than if the appointment of a guardian had to go through a formal and bureaucratic process.

Finally, there is no doubt about the capacity of the individuals to handle cases of child victims of trafficking as they all possess relevant backgrounds, continuous trainings and a high level of motivation. However, there is a consensus amongst NGO social workers that they have **no capacity to handle cases of child victims of trafficking under 12 years of age**, and no facility adapted to the needs of the very young victims.

That said, NGO workers appointed as guardians in FYROM follow the children they are responsible through the entire process and ensure that the best interests of the child are upheld.

Collaboration with the police in the entire process (i.e. after placement in the shelter) is good, and there is no reasons to believe that any of the rights conferred to the child have been violated during the interviews conducted by police.

## Room is left for improvement in interview and Initial action processes

The first SOP is addressing the questioning and interview and initial action part of the UNICEF guidelines. The procedure described in the SOP fulfils the criteria set out in the guidelines and the THB unit is closely following it.

Police officers are always registering child victims through initial questioning and a specific form is filled out in this regard. The form contains basic information about name, nationality, place of birth, etc. and is used solely for registration purposes. Initial questioning in trafficking cases is conducted by professional police officers who received specialized trainings on interviewing techniques.<sup>72</sup>

The presence of female police officers within the THB unit also allows an initial questioning of victims by persons of the same sex. However, most of police

<sup>72</sup> IOM was closely working with MIA officials and police and built their capacity for this kind of activity under an IPA funding.

stations are not equipped with specialized rooms creating a child friendly atmosphere for interviews.

The referral process when a suspected victim is identified is timely thanks to the establishment of the NRM. As soon as the THB unit receives information, the NRM is contacted to coordinate the work of different agencies. Initial action is therefore efficient and procedures set out in the SOPs fulfil UNICEF guidelines requirements.

Although the hand-over of a child victim is not done by the most senior staff within the THB unit as recommended by UNICEF guidelines, victims are transferred to shelters and a form is signed between the police officer in charge of the case and shelter staff to formally hand-over the child.

Two factors (might) however hamper the enforcement of these provisions: the lack of training on the SOPs of THB unit and the handling of cases by non THB police officers. Therefore the same situation for the identification part applies to initial questioning. Lack of training of THB officers due to a high turnover within services in the police or handling of cases by local police officers is jeopardizing the quality of initial questioning and could lead to re-victimization of child victims.

The interviews conducted by law enforcement agencies on the child's trafficking experience are raising concern. Different allegations were made that police does not always interview child victims of trafficking in the presence of their guardian. This situation is in breach of UNICEF guidelines, especially when referral is not fast enough due to identification made by police officers based at the local level. This might also lead to inappropriate interviews with length and scope that go beyond what a child victim of trafficking can psychologically endure.

*“We had a child victim of trafficking that was referred to us. The child had to stay between 12 to 15 hours in the police station and was interviewed without the presence of any social worker or psychologist. I think police is seeking to obtain as many information as possible without the guardian, and then calls us to say that they might have a case”.*

Social Worker from an NGO, Skopje, November 27<sup>th</sup> 2009

A great majority of police stations in FYROM are not equipped with child friendly rooms and cases occurred where police proceeded to initial questioning in their premises. Some of the Centres for Social work have child friendly rooms, but as

admitted by social workers are not always used for that purpose. For example, a CSW equipped with a child friendly room uses it to store equipment.<sup>73</sup>

While there is no pre-determined format of interviewing a child victim, the number of interviews conducted by law enforcement agencies, especially when the victim is giving her testimony, are too numerous. Victims might be heard more than 5 times. Initial questioning is first undertaken, followed by a formal interview on the experience. Then, if a case is to be investigated, the prosecutor will hear the child, as well as the investigative judge, should he decide to do so. If the case is to be brought to trial, the children might be heard at the court during the trial, sometimes more than once. Although law enforcement agencies accept to refer to the guardian for information instead of the victim, this situation is not appropriate and does play in favour of child's best interests.

As noted above, provisions in the SOPs and forms used do not make difference between children and adults. The use of the identification form where consent is indirectly asked is therefore infringing UNICEF guidelines and international agreements to which FYROM is a party.

## An exemplary referral and coordination lacking sustainability

The referral and coordination/cooperation process is certainly FYROM's strongest point in the fight against child trafficking. The establishment of a national commission with a secretariat and a sub group specialized on counter trafficking of children makes the design of informed policies and strategies possible. The national coordinator position is paramount for the well functioning of these bodies.

The establishment of the national referral mechanism office is also a positive step to be praised. The office has a clear mandate and its operational side is efficient. Law enforcement agencies, social workers as well as service providers from civil society such as NGOs are aware of its existence and make good use of its capacity. On each and every case, the NRM is one of the first agencies, if not the first, to be contacted when there is presumption of a trafficking case.

The referral system has therefore been properly streamlined in FYROM and is running properly when victims are identified. However, there was no financial

<sup>73</sup> Interview with a CSW Social Worker, Skopje, November 27<sup>th</sup> 2009.

sustainability in the establishment of these bodies, especially for the NRM office. A striking example is that the salaries of the three employees of the NRM were not paid after the withdrawal of OSCE and IOM from its funding. As a result the employees were not paid for the whole year 2009. Their work within the office was therefore only relying on their good will, but the situation changed and as of January 2010, positions are fully financed by the government.

Nevertheless, a weak point in the process is the result of the lack of identification capacity at the local level that, since happening at the first link of the chain, is impeding the whole referral of potential victims. The identification capacity of local police officers as well as social workers from CSW must therefore be enhanced. As a consequence, the project on continuous training and education schemes of every personnel active in the fight against trafficking, as mentioned in the national action plan, is welcome.

At the transnational level, the SOPs make available the contact details of every relevant authority from South Eastern Europe. When Macedonian child victims of trafficking are returning from foreign countries or foreign children are coming from countries that do not belong to the ICMPD project on TRM guidelines, the cooperation is made through INTERPOL. The TRM project has the advantage to provide a multi disciplinary approach in the return procedure or relocation in a third country of child victims, therefore complying with the UNICEF guidelines. However, the collaboration with third country, through INTERPOL does not offer such guarantees, as child protection is not the first objective of an international police structure. Their capacity and knowledge of child rights and child friendly practices is therefore questionable. Efforts have to be deployed in that regard so as to ensure a dignified procedure of return in the best interest of trafficked children as foreseen in the UNICEF guidelines.

## Appropriate short term care and protection services remaining underfinanced

In FYROM two options are available for victims of trafficking as of December 2009: if the child is a domestic victim of trafficking, it might find accommodation as well as adapted services in the shelter run by the NGO OG – La Strada. If the child is a foreigner and in need of a safe accommodation, he/she can be placed in the Reception Centre run by the State and where the NGO Happy Childhood is providing services.

The placement of children is made immediately after identification. No child victims of trafficking were placed in any detention-like facility. The shelters accommodating children developed and apply standards of care in the process of protection and assistance of victims.<sup>74</sup>

On the overall short term services offered to child victims of trafficking are consistent with their condition of victim and specific needs. A wide range of different services are available: psychological, legal, medical, social and educational. All these services are provided in a professional manner by competent and specially trained personnel. A diversity of backgrounds can be found in the teams working in shelters, allowing an adequate answer to the diversity of needs of victims of trafficking.

However, and as recognized by shelter's staff, there is neither facility or persons with the capacity to handle the case of a child that is under 12 years old nor facility to accommodate young male victims of trafficking. As well, there is no facility that is exclusively dedicated to children. Both adults and children are mixed in the centres.

*“Once we had a case of a child victim of trafficking. The child was 6 or 7 years old and was put in an orphanage”.*

Discussion with an official of MLSP, Skopje, November 30th 2009

The previous situation of the Transit centre has improved: it does not accommodate illegal migrants and victims of trafficking together but still mixes adults and children. The project of creating a shelter that would mix foreign and domestic victims of trafficking would improve the actual situation. It should be operational as of March 2010 according to planning made by the MLSP.

Financial sustainability is however not ensured in the provision of services. The NGO OG – La Strada receives no funding from the State, although it is supplementing State duties. The NGO is obliged to secure funding through projects, sometimes on a yearly basis so as to ensure the provision of services.<sup>75</sup> As a striking example, the NGO is obliged to pay for the rehabilitation activities undertaken by the victims, and more particularly for the educational programs they attend. The collaboration of the Ministry of Education is not sufficient and should be enhanced in this regard.

<sup>74</sup> These standards have different names such as “rules of the house” etc.

<sup>75</sup> Their budget is 99 % funded by external donors.

## Ambiguous status provisions

The provisions of the Macedonian law regarding the provision of a temporary residence permit are highly questionable. The SOPs are also contaminated by this ambiguity as in the SOPs “Identification and referral part”, the provision of a temporary residence permit is conditional and subject to the cooperation of victims with authorities:

*“If a foreign victim decides to cooperate with the competent authorities, he/she may be granted a temporary residence permit following the decision-making period.*

*A temporary residence permit may be issued to victims of trafficking if:*

*- their presence in the Republic of Macedonia is necessary for conducting the court proceedings;*

*- they demonstrate a clear intention to cooperate with the competent authorities in the discovery of the criminal acts and the finding of their perpetrators, and if they have terminated their contacts with the people who are reasonably suspected of having been involved in the commission of the crime of “trafficking in human beings”.<sup>76</sup>*

However, child victims of trafficking are systematically offered a contemplation period of two months that is renewable. Neither law nor practice details how many times it can be renewed. There is no sustainable solution offered in this regard in FYROM.

The Law allows to initiate an asylum application and no evidence was found that it would be processed in a way contrary to the best interests of the child.

## Deportation or dignified return, two options available

The process of return in FYROM is addressed in the SOPs. According to those rules, the process of return should be “voluntary and safe”.<sup>77</sup>

The SOPs provide a very detailed framework of risk and safety assessment, first step undertaken by the authorities prior to return and upon the informed

<sup>76</sup> Macedonia, Standard Operating procedures for treatments of victims of trafficking in human beings, Measure 7: Deciding Period and temporary residence permit, p. 26.

<sup>77</sup> Standard Operating Procedures, Republic of Macedonia, 2009, p. 37

agreement of the victim (during the “contemplation” period)<sup>78</sup> to be repatriated. For domestic victims, the risk assessment is conducted by the THBS police together with CSW and NGOs. For foreign victims, the TRM as detailed in the national SOPs is used to communicate with partners in countries of origin if they are part of ICMPD project; if not, INTERPOL is the platform through which FYROM collaborates. As already mentioned, the collaboration through INTERPOL does not offer the same guarantees as with the TRM projects, the latter detailing precisely steps that have to be undertaken in the process of family tracing, risk and security assessments and determination of the best interests of the child. INTERPOL is therefore not a suitable platform to ensure that the best interests of the child are upheld due to the lack of multidisciplinary assessment in their approach.

Specific forms and standardized mechanisms are used to determine the level of risk that a victim willing to return to his/her country or community of origin would face. Family tracing and assessment is undertaken in the process and duly taken into account in the risk and safety report. It is worth to note that a non-Macedonian child victim cannot be returned if the country of origin has not conducted a family assessment according to the clear criteria outlined in the SOPs.

Therefore, if procedures detailed in the SOPs were followed, the situation would fully comply with UNICEF guidelines and the return procedure would be undertaken in the best interests of the child. Unfortunately this is not always the case.

*“When we conduct an investigation, they (victims) are generally regularly staying on the territory so the only thing we can do is to deport them. After the return, they want to come back and if we catch them, we charge the owner of the bar where they stay”.*

Official from the THB unit, Skopje, November 30th 2009

On the overall, the TRMs are being implemented and the situation is improving. Although there were no foreign child victims of trafficking identified in FYROM for more than one year, the procedures complied with the SOPs, especially when victims originated from countries part of the TRM project.

<sup>78</sup> Standard Operating Procedures, Republic of Macedonia, 2009, p. 27



The hand-over between authorities of countries of origin and FYROM was done adequately; family tracing undertaken and bodies providing assistance were identified prior to return. However, and as in other countries, the cooperation between NGOs from country of origin and country of destination seem to play a prominent role in the return process. The collaboration between foreign agencies does not seem to be developed enough. NGOs are therefore supplementing state duties in this regard, and very often conduct themselves risk and security assessments.

*“I conducted the initial interview and had a proof of labour exploitation. I took her to the Transit Centre where Happy Childhood works. A guardian, through the NRM was appointed. Through the TRM, I liaised with Kosovo Police. She had to give a statement to the prosecutor together with the guardian. I contacted Kosovo Police and we met at the border to hand-over the child. Kosovo authorities organized themselves together with the CSW and carried out a risk assessment. It took less than two months between the identification and return of the child to her family”.*

Official from the THB unit, Skopje, November 30th 2009

However, deportation is an option available and considered by the authorities. If this option is made available, it is due to the lack of identification of authorities and the criteria they apply to qualify a victim. Therefore victims of trafficking not recognized as such do not benefit from the protection afforded to recognized victims and as a consequence are deported without any prior risk assessment and family evaluation, just as illegal migrants. This situation is worrying and inquiries into each cases of potential abuse made to a child must be more thoroughly undertaken.

On the other hand, when Macedonian juvenile victims are returned to their country evidence of abuse was found.

*“A Macedonian child was found in Croatia in 2006. OG – La Strada called the CSW of Berovo to tell that a child from the city would soon be returned. She was indeed returned, but without any risk assessment made prior to her departure from Croatia. We provided a medical check, psychological, and gave money to the family”.*

Former social worker in Berovo, Skopje, December 30th 2009

The adoption of the SOP on return is therefore welcome, and continuous efforts in implementing it must be considered paramount.

## Lack of durable solutions

Child victims of trafficking are according to the SOPs entitled to receive assistance and protection with the aim of their reintegration.

When child victims of trafficking are nationals (or foreign children willing to cooperate), the services provided in the shelters or in other non-residential solutions, and after a durable solution is found are meeting UNICEF standards.

As already mentioned such services are primarily provided by NGOs and funded through non-state grants. NGOs are paying the educational fees of involvement of their beneficiaries in educational programs and it happened that health care had to be paid by the shelter in urgent situations.<sup>79</sup>

The assistance and arrangements taken for children under 12 and male child victims is raising concerns. There is neither capacity of social workers nor facilities to accommodate the very young children in FYROM. In such a situation, it is needless to say that long-term care arrangements are nonexistent.

While specific procedures for return are established for return of child victims, the provisions of Macedonian Law on Foreigners render the assistance for foreign nationals, without distinction for children, conditional to their collaboration with the authorities during criminal proceedings. By law, there is no automatic granting of temporary residence permit and as a consequence no possibility for child victims of trafficking to stay on the Macedonian territory when they do not want to testify. This situation is in direct contradiction, not only with UNICEF guidelines, but also with the Council of Europe Convention on Action against Trafficking in Human Beings, which entered into force in FYROM September 1<sup>st</sup> 2009.<sup>80</sup>

The Law on foreigners grants foreign victims a contemplation period of two months that can be extended several times for children. The continuous renewal of the period afforded to children for stabilization is too precarious to be

<sup>79</sup> Interview with a Social Worker, Skopje, November 27th 2009.

<sup>80</sup> The article 12 § 6 provides that : “each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness”.

considered as a viable solution to replace a temporary residence permit. This situation might imply a forced return and therefore would deny the rights of foreign child victims of trafficking (who do not wish to cooperate) to be locally integrated, if their safety requires it.

That said, hand-over of child victims do comply with the standards set out in the UNICEF guidelines. Children are accompanied until the border of their country of origin in a safe and dignified manner by Macedonian authorities, together with their guardian. The same is true when a Macedonian child is repatriated to its country; social workers always come to the location of arrival to protect the child.

Noteworthy is the fact that the exchange of information upon return of Macedonian citizens to their country mostly relies on the cooperation between NGOs. The communication between state agencies of different countries is less efficient than NGO networks.

The process of implementation of a durable solution is following a standardized method implemented by case managers, and drafted by them together with the child and social workers from the CSW. The first plan is drafted to meet the child's urgent needs. Several options are available, from local integration to return of country of origin, as well as resettlement to a third country should the safety of the child victim require it.

The "contemplation" period allows the child to stabilize, and only after that stage a long-term plan is drafted, where are taken into consideration conclusions drawn by experts such as psychologists. The plan is then first implemented in the shelter. After, if a reintegration in the original environment is to take place, the main challenge that the Macedonian State has to cope with is the follow up.

There is no doubt that the plan is properly implemented when the child is still in a residential facility such as shelter, since shelter staff is available, close and prone to listen to the views of the child and to monitor the progress. The participation of CSW social workers would be necessary together with supervision from CSW bodies; however this does not happen in practice. Individual Action plans are most of the time drafted only by the case managers from the shelters without any involvement with CSW social workers, who are supposed to monitor the progress after victims have left the shelter. When back to their original environment, children are often left aside by the Macedonian state, without any follow up undertaken by CSW Social workers. This is due to the lack of involvement of CSW social workers prior to reintegration as well as lack of staff, financial and material means. This situation is extremely worrying

as monitoring of cases is crucial in the protection process and is also the only means of preventing children from being re-trafficked.

However, foster family options are still under study for child victims and the training of 10 foster families is foreseen in the Action Plan for child victims. This option is unfortunately not always privileged in the long-term arrangements, obviously due to little availability of foster families in FYROM. While family-based arrangements are always favoured where it is possible, wards who are accommodated in shelters tend to stay a long time: cases were reported of persons entering as children and leaving the structure three years after as adults. Bearing in mind the specificity of each case, this situation reflects inadequate arrangements.

An attempt was made to streamline the process of reintegration by the MLSP which elaborated a "program on re-socialization and reintegration". So far, this program remained underfinanced and not implemented at all. The Action Plan 2009-2012 for children mentions it as one of its main priorities.<sup>81</sup>

FYROM has to increase its efforts in alternative solutions to residential care, that being one of the main challenge to be faced by the Macedonian authorities.

## An accessible justice system that can be improved

The procedures detailed in the SOPs establish a suitable framework to inform victims of trafficking about the criminal procedures they might be involved in if they decide to testify. The decision to give testimony must be made by the victim within the contemplation period timeframe (30 days for domestic victims, 2 months for foreign victims, with a possibility of extension in both cases for minors).

However, it is mandatory according to Macedonian Law for a witness called at the court to testify. Even though in practice witnesses might not be always involved, the provisions of the law are there and it is up to the judge to decide whether or not child victims will have to testify.

Efforts were made to take into consideration the particular situation of children in 2008, allowing the court not to oblige a minor to testify if it deems it

<sup>81</sup> Action Plan to combat trafficking in children, Republic of Macedonia, 2009-2012, par. 5.1 - 6.2.

necessary.<sup>82</sup> Nevertheless, the situation is not acceptable and remains clearly in breach of international standards<sup>83</sup> amongst which UNICEF guidelines.

As well, cases were reported where direct confrontation between perpetrator and a child victim occurred.

*“I remember a case where the Judge decided to summon the child for testimony in front of the perpetrator. It was the father. They destroyed 5 months of work that we had done with the child. She was really disturbed after that.”*  
Social Worker from an NGO, Skopje, November 27th 2009

The presence of social workers (case managers) and/or psychologists is required at every stage of the criminal procedure (see chapter on initial action) and the same applies in the court hall. However, cases still occur where neither social workers nor psychologists are present in the court hall<sup>84</sup>.

Since the creation of the NRM, free legal representation is always ensured. A lawyer (together with interpreter if needed) from the NRM is present to inform children about their rights and is available should a need for legal counsel arise. The independence of lawyers directly belonging to a governmental institution might be an issue to be ensured, even though we have no reasons to believe that their representation was biased during any procedures.

The inclusion of foreign child victims of trafficking has caused some delay in the repatriation process but generally measures such as videotaping are available and were previously used for a Moldovan child in order to accelerate return.<sup>85</sup>

One of the main problems that Macedonian judiciary has to cope with is the process of indemnification of victims of trafficking through the enforcement of decisions regarding compensation claims.

82 Law on Juvenile Justice, Chapter 16, Amendment 138, Republic of Macedonia.

83 See for example: United Nations standard Minimum Rules for the Administration of Juvenile Justice, (often referred as the “Beijing rules”), UN General Assembly resolution 40/33, November 29th 1985.

84 Interview with an official from MLSP, Skopje, November 26th 2009.

85 Interview with a legal officer, local NGO, Skopje, November 30th 2009.

*“The possibility to testify in another room exists, but it is an exception”*  
*“The current problem is that we have a compensation approved, but we cannot give it to the child victim, since there is nobody to pay the victims. The provisions of the law are there but they are not implemented.”*  
Official from the NRM, Skopje, November 26th 2009

In 2008, 25 perpetrators were charged and 11 victims were minors.

## Witness security protection, an occasional option

As a consequence of the legal obligation to be present when summoned to testify, a witness protection unit exists within the Macedonian Police. To benefit from their protection, a status is granted to person “willing” to testify. The witness is benefiting from protection prior to his/her testimony and is informed by the NRM lawyer about the process.

Considering the fact that to decide whether or not to testify is an obligation more than a right, the right of being informed about the risks that witnesses might face is not pursued in FYROM, neither for children nor for adults.

*“The witness protection unit of the police? They do a good job... occasionally. Sometimes the police did not do enough and children fell back in the hands of traffickers”.*  
Official of MLSP, Skopje, November 26th 2009

## 3.3. The Republic of Albania

### Appropriate legislative and institutional framework

#### **A non-implemented legislative framework**

The **National Strategy on combating trafficking in persons 2008-2010** that was drafted based on the achievements and shortcomings of the previous strategy is under implementation. Two years after its entry into force issues of importance such as implementation of training strategies, better referral and protection of victims, are still not implemented.

The specific situation of child victims was taken into consideration and a **National strategy for the fight against child trafficking and protection of child victims of trafficking 2008-2010** was enacted.

It was on the initiative of international organizations and NGOs and under the responsibility of the MLSAEOEO that a **National Referral Mechanism** agreement was reached. Its aim is “to enhance inter-agency coordination of the initial reception, protection and medical and social assistance provided to victims and presumed or potential victims of human trafficking in or from Albania”, (...) by “regulating the obligations of and cooperation amongst all Parties involved in the identification and referral, accommodation and assistance, family reunification, voluntary return and longer-term reintegration of victims.”

The agreement includes “presumed” or “potential” victims of trafficking as beneficiaries of the NRM, which is a positive step as it acknowledges the rights of presumed victims of trafficking to benefit from the dispositions and the assistance of the National Referral Mechanism.

Its article 3 states that “Due to the high vulnerability of children, making them easy potential targets for exploitation, the Parties in particular recognize the need to enhance the protection and assistance provided to identified, presumed or potential child victims, and to implement specific measures for their assistance and protection within the framework of this Agreement”. To be recognized as a presumed victim, a standard set of questions is provided in the agreement, and if one of the answers of a child indicates that there is a probability that he/she has been trafficked, their inclusion in a file and offer for assistance is made automatic and mandatory. However, and as we will notice, these provisions are not respected.

The **Penal Code** of the Republic of Albania provides for an adequate repressive framework. The main provisions in combating trafficking in persons are contained in articles 110/a “Trafficking in persons”, 114/b “Trafficking in women” and 128/b “Trafficking in minors” of the Penal Code, which were enacted immediately after the signing of the Palermo Protocol<sup>86</sup>. The two latter ones are aggravated forms of trafficking in persons provided under Article 110/a “Trafficking in persons” of the Penal Code, amendments made by the Law no. 9188, dated 12.2.2004.<sup>87</sup> Reports noted that penalties are sufficiently stringent<sup>88</sup> as perpetrators may be imprisoned from 5 to 15 years.

In January 2008 amendments were brought to the Penal Code. The article 124/b, on the “Ill-treatment of minors” that criminalizes the phenomenon of child exploitation for forced labour to ensure incomes, begging and other forced actions that harm the child’s development, was introduced.

As well an addendum was brought to the article 117 with a paragraph on “Pornography”. The article 128/b “Trafficking in minors” criminalizes the recruitment, hiding and reception of children and their selling.

The Law on foreigners also provides adequate arrangements made available for victims of trafficking. The article 31 of this Law titled “Issuance of a Temporary Residence Permit in exceptional cases”, refers to victims of trafficking as beneficiaries of this exceptional measure and even enounces rights of the person who is issued a temporary residence permit. The Border and Migration police is the body responsible for issuance of the permit.

The law also provides in its article 60(g) that foreign victims of trafficking, as well as potential foreign victims, may be delivered a work permit to work on the territory.

### A wide institutional framework

Under the direct supervision of the **Ministry of Interior**, the State Police is a major actor involved in the identification of child victims of trafficking. The **Anti-trafficking Office** is the body responsible for the coordination of the combat against trafficking at the police level. In each **regional directorate**

<sup>86</sup> Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nation convention against transnational organized crime, 2000, available at: <http://untreaty.un.org/English/TreatyEvent2003/Texts/treaty2E.pdf>

<sup>87</sup> For a full brief on the legislative framework, see : National strategy for the fight against child trafficking and the protection of child victims of trafficking 2008-2010, p. 12

<sup>88</sup> Trafficking in Persons Report 2009, Albania, US Department of State, 2009.

there is a specialized unit on Organized crime divided in two subgroups: one is responsible for fight against drugs and weapons, and the other on **Trafficking in Human Beings**. State Police, through these units, plays a crucial role in the identification and initial action for child victims of trafficking.<sup>89</sup> The **Border and Migration Police** has the mandate to control border points and has an active role to play in the identification of victims of trafficking as well as in the regularization of their status.

At the coordination level, a **National Anti-Trafficking coordinator** - deputy Minister of Interior position, has been created in October 2005 to oversee the implementation of the National Strategies on combating trafficking in persons. The National Coordinator’s Office is not an executive body but rather a monitoring one. Its role is to follow up and report to the government on all issues related to trafficking, propose legislative amendments or specific allocation of funds in the state budget.

Still under the responsibility of the Ministry of interior is the **State committee on combating trafficking in Human Beings**, which is a political coordination body involved in policy matters and which fosters coordination amongst all actors involved in the combat against trafficking.

At the Technical level, a **National Task Force for the implementation of the strategy on combat against trafficking** has been set up and meets every three months according to their mandate. The role of the Task Force is primarily to solve technical issues, especially allocation of money.

Under the hierarchy of the **Ministry of Labour, Social Affairs and Equal Opportunities** (MLSAEO) is the State Social Services (SSS), an agency which is the operational arm of the MLSAEO. It is responsible for the direct implementation of MLSAEO policies and assistance programs by providing direct services. The SSS is represented at the regional level through the Regional Directorates of State Social Services that are contributing to the identification work as well as to the protection of identified child victims of trafficking (or at risk to be).

At the municipal level, **Child Protection Units** (CPU) were established, through the help of the international community, in 15 municipalities in Albania. CPUs are composed of at least one person, a child protection specialist, and

<sup>89</sup> For the year 2008, out of 64 “recognized” victims of trafficking referred to the national reception centre for victims of trafficking, 70 % were referred by Anti trafficking offices placed within regional directorates. See: National Reception Center for victims of trafficking, Annual Report 2008, p. 10.

belong to the social assistance and services agency of the municipalities. They are mandated with the identification and protection of vulnerable children and to take necessary measures accordingly. All measures ranging from identification and referral to implementation of a durable solution fall within the competence of the specialists that work in coordination with other actors.

Furthermore, the Joint Order on the functioning of National Referral Mechanism, enacted in 2005 and revised in May 2006,<sup>90</sup> creates a “**Responsible Authority**” in Albania to coordinate and supervise the work of state and non-state agencies involved in the victims protection process. Its mandate is also to liaise and coordinate the work with countries of destination in the return process. The Joint Order is detailing thoroughly the duties of the “responsible authority” as well as of each signatory institutions of the order: the Ministry of Interior, the Ministry of Labour, Social Affairs and Equal Opportunities (MLSAEOEO) and the Ministry of Foreign Affairs (MFA). The Responsible Authority is operational.

In Albania, despite an on going decentralization process, power remains mostly at the central level. Consequently, different state agencies are represented at the regional level. Therefore **many regional directorates have a role to play in the combat against trafficking.**

Main regional players are: Regional Directorate of State Social Services, Regional Anti-Trafficking Police, Regional Education Directorate and Regional Health Directorate. The specificity of the Judiciary must be noted (there are no Regional Directorates of Justice) as both judges and prosecutors belong to the Ministry of justice while acting at the district level.

In this framework, **Regional Committees for the fight against trafficking in Human Beings** were created in 2006<sup>91</sup> in order to monitor and coordinate the work of all partners (state institutions and NGOs) at the regional level. Therefore it is still central institutions acting, but at the local level. Prefects, who are the representatives of central government within the region, are chairing the regional committees, where all directorates, playing a role in the combat against trafficking, are represented.

<sup>90</sup> See: Joint Order “on the establishment of Responsible Authority for protection and assistance to victims of trafficking and the assignment of duties to the institutions involved in this process”, May 17<sup>th</sup> 2006, Republic of Albania, MoI, MLSAEO, MFA.

<sup>91</sup> Prime Minister Order n° 139 “for the establishment of regional committees for the fight against trafficking in humans at Qarku level”, June 19<sup>th</sup> 2006, Council of Ministers of the Republic of Albania.

All stakeholders must participate at the meetings of the committee upon invitation of the prefect. According to the order, a report must be issued every three months to the national anti-trafficking coordinator, to report on the situation and on the measures undertaken at regional level.

The implementation of such committees is a good practice to be acknowledged, offering a platform of dialogue and information sharing at the local level, with the presence of central government representatives. However, it seems that members of the committees do not give much importance to the tasks they are responsible for.<sup>92</sup>

Civil society in Albania plays a central role in the protection of child victims of trafficking. A coalition of NGOs, BKTF (Bashkë Kundër Trafikimit të Fëmijëve)<sup>93</sup> was created in November 2002. It consists of twenty-two national and international non-governmental organizations working to assist and protect vulnerable Albanian children. Its activities are framed within the Albanian National Strategy on Combating Child Trafficking and the National Strategy on Children. Based on these strategies State institutions are coordinating their activities with the civil society to fight the phenomenon and provide various services for vulnerable children and offer alternative solutions to their families.<sup>94</sup> The inclusion and collaboration of civil society with state institutions proved to be crucial in the progress on victim protection achieved in Albania.

A national coalition of anti-trafficking shelters was also created in 2007. It includes both government and civil society service providers that are part of the National Referral Mechanism for the identification and assistance of victims of trafficking. Member institutions include the *National Reception Centre* (MLSAEO), *Different and Equal* in Tirana, *Another Vision* in Elbasan, and the *Vatra Psychosocial Centre* in Vlora.

## Identification: conflict of definitions and lack of trainings

The identification capacity of all stakeholders in Albania has been a subject of tensions between civil society and government authorities for long, and still

<sup>92</sup> Sonila Danaj, *op. cit.*, p. 21.

<sup>93</sup> All together against Child Trafficking.

<sup>94</sup> Information available on their website: <http://www.bktf-coalition.org>

remains a challenge that has to be addressed by the Albanian authorities in their combat against trafficking in human beings, especially children.

Even if the regional units of the anti-trafficking police conduct proactive measures such as raids in motels, especially during summer time,<sup>95</sup> there are several reasons to believe that their identification capacity is not developed enough.

First, although trainings were provided (even recently) to police officers from THB units on identification, the turnover is a serious problem affecting the police in general and the THB unit in particular. We were informed that a drop in 2008 in the number of referrals made by the police was noticed, certainly due to the high turnover in THB and Border police but also the important decrease in the number of staff in 2008. Information was also provided revealing that Police was sometimes making up figures or trying not to recognize potential victims of trafficking as such.<sup>96</sup>

Second, a problem of definition is also hampering the improvement of identification capacity of Albanian authorities in so far as State police often do not make thorough inquiries into the cases of children that they consider as smuggled children or irregular migrants. Therefore, and as highlighted in the situational analysis on Albania,<sup>97</sup> many children might have been disqualified from state assistance available for “recognized” victims of trafficking. This situation is also alarming when observing the discrepancy between State figures on child trafficking and figures from NGOs or civil society at large.<sup>98</sup>

Third, information management systems are not sufficiently implemented at national level. The Total Information Management System (TIMS) managed by the border police is a database registering information on persons entering and leaving Albania, although available at national level, does not provide detailed information on trafficking cases or persons at risk to be. The National Strategy on combating trafficking in persons foresaw the establishment of a database on trafficked victims, a joint order has been enacted<sup>99</sup> and it became operational in March 2008 with OSCE funding and support. Four kind of information can be

95 Interview with Police officers, Durrës, Albania, December 4<sup>th</sup> 2009.

96 Interview with an NGO official, Vlorë, Albania, December 4<sup>th</sup> 2009.

97 Sonija Dalaj, *op. cit.*, p. 7.

98 According to Sonila Danaj, in 2007 *Terre des Hommes* together with ARSIS identified more than 740 presumed victims of trafficking in Albania and Greece while the Anti Trafficking Police identified 32 victims.

99 See: General Directorate of State Police Duty Order no. 865, date 26.12.2007 “On the data entry on the database for victims of trafficking”.

entered in the database: Detailed generalities, Identification method, History of exploitation and Treatment at Centre. The creation of a database is a very welcome step furthering the capacity of Albania to protect victims. However, concerns were raised on the confidentiality of information entered into the database, especially regarding names that were also included in it.<sup>100</sup> That said a positive measure foreseen in the National Strategy for the fight against child trafficking is the inclusion in the database of information broken down on child and entrance and exit of the territory “in conjunction with the TIMS and/or the Victim’s database”.<sup>101</sup>

Fourth, procedures on identification exist but remains largely inefficient and/or unimplemented. The identification relies on a template provided in the NRM agreement that is filled by Police officers,<sup>102</sup> while procedures supposed to be followed by police officers are in place<sup>103</sup> but not implemented.

On the other hand, the NRM agreement is the only procedure amongst the three countries that provides an identification form tailored to situation of trafficking of juveniles. However, the questions detailed in the NRM agreement are making direct references to the trafficking experience of the child. This form being used at the initial stage of identification is therefore not appropriate as children are not likely to speak openly about their experience at that stage and in a place such as a border check point or a police station. Furthermore this might lead to a re-victimization of children.

Moreover, the NRM agreement has a binding force and as such offers legal guarantees to child victims of trafficking that cannot be found in other countries.

At the coordination level the “Responsible Authority”, is composed of representatives from each aforementioned Ministry. However to this date meetings were not held regularly and there is neither real institutionalized system of referral that is managing individual cases nor an adequate framework of action able to meet the challenge. The Office of the National Coordinator seems to be supplementing the duties of the Responsible authority, and without its impulse,

100 The state of efforts in Albania to combat trafficking in persons, USAID, October 2008, p. 27.

101 National strategy for the fight against child trafficking and the protection of child victims of trafficking 2008-2010, I.(a).3.

102 Interview with Police Officers, Durres - Vlorë and Korçë, Albania, December 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> 2009.

103 Order No. 714 of November 3<sup>rd</sup> 2006, General Directorate of Police, Republic of Albania

it is likely that meetings would not be held. The national strategy on combating trafficking in persons is addressing this shortcoming and foresees in its action plan the reinforcement of existing structures and creation of new ones.<sup>104</sup>

At the municipal level, the recent creation of Child Protection Units (CPU) within the municipal social services is a great step in the improvement of the identification capacity and must be cited as an example of good practice throughout the region. However, the CPU can only act within the boundaries of the municipality they belong to, and cannot work even in neighbouring villages. The narrow geographical scope of their mandate renders likely that a wide range of identification opportunities of trafficked children or at high risk to be missed by CPUs.

Civil Society is also playing an important role in the identification process. Some NGOs such as ARSIS conduct field work activities of identification and collaborate with the authorities in the prevention, protection and reintegration processes. However, it seems that national authorities do not always take into account their assertions, as a huge difference exists between the number of victims referred by State authorities and the one identified by NGOs in Albania.

Organizations offering reintegration assistance or shelter are also taking part in the identification process. Through their support to vulnerable persons or at risk, they might get in contact and identify child victims.

Also, since the end of 2007, a hotline - telephone number both aiming at denouncing cases of trafficking or looking for help, is operational under the responsibility of police officers that received training on Emergency Call unit. It is entirely funded by the Ministry of Interior.

The age determination of a victim of trafficking by law enforcement authorities or other competent bodies complies with UNICEF guidelines. Children are not subject to medical examination for the purpose of age determination without their informed consent. The criteria applied in the process of age determination takes into account the physical appearance, the apparent maturity of a child as well as the documentation he/she might carry on him/her.

In the case of foreign children (alleged victims of trafficking) further information and checks (processed in civil registries for example) are sought with the help of embassies or consulates.

<sup>104</sup> Republic of Albania, National strategy on combating trafficking in persons 2008-2010, pp. 15-17.

## Heavy procedures in guardian appointment

The Family Code of Albania<sup>105</sup> describes the procedure to be followed in the process of the appointment of a legal guardian in its Title V. The Court is the body responsible to appoint guardian in general civil matters, including cases of child victims of trafficking.

Based on the provisions of the code, two different processes might apply: if the trafficked child is to be placed in an institution or residential care facility by the court due to the absence of relatives willing to exercise custody, "the director of the institution will delegate to one of its employees the right to exercise guardianship of the minor".<sup>106</sup> If the child victim still has his/her parents but those are not willing or able to exercise custody, then "the court shall appoint as a guardian the person designated by the parent with current parental responsibility for the child, by a will, or by a notary declaration"<sup>107</sup>. However, "if the parent who has custody of the child did not designate a guardian, the court must give priority for the selection among antecedents, the relatives of the minor, a foster family and, as a last alternative, a public or private institution".

Moreover, the article 281 prescribes that "the court may on its own decision or upon the request of the prosecutor, a relative or any interested person, assign a temporary guardian or take other urgent measures, necessary for the protection of the minor (...)".

All these decisions might apply to child victims of trafficking, and have the advantage of being issued by an independent body, the judiciary. Moreover, the guarantees offered by procedures detailed in the law offer guarantees and legal remedies for the child<sup>108</sup> should breaches of law in the appointment process occur. In that regard, the code details the rights and responsibilities of guardians, by addressing their accountability<sup>109</sup> and makes it clear that any misconduct in undertaking their role might have serious consequences. The procedure of guardian appointment as foreseen in the family code is therefore compliant with UNICEF guidelines.

<sup>105</sup> Family Code of Albania, Law nb 9062, May 8<sup>th</sup> 2003.

<sup>106</sup> *Idem.*, Article 271.

<sup>107</sup> *Idem.*, Article 263.

<sup>108</sup> *Idem.*, Article 303.

<sup>109</sup> *Idem.*, Article 299.



However, several serious challenges must be addressed by the authorities in the implementation of these procedures, to provide a suitable guardianship for child victims of trafficking.

In practice, the State Social Services are not involved in the process of guardian appointment, but only supervise the implementation of standards of care in shelters.<sup>110</sup> The guardian appointment is made through the placement of child victims of trafficking in shelters. The centers directors are appointed as guardians by the Judge. Then the directors delegate the guardianship to one of his staff according to law. For example, if a trafficked child is identified as such by police, then police calls appropriate institutions and refers the case to them. A social worker (who is not and will not be the guardian of the juvenile) is then designated to attend an interview with the child victim and accompany the child to a shelter should he/she wish to be placed in such an institution.

Then the court has to issue an order of placement, procedure that might be lengthy. For identified trafficked children, the first contact with the person designated as his/her guardian takes time due to bureaucratic deficiencies. The process of guardian appointment in Albania, although offering strong legal and independence guarantees should be streamlined in order to meet child urgent needs. Guardian play an essential role in the process of protection of child victims and their appointment should not be delayed. As a consequence, Albania does not entirely meets the standards set out in UNICEF guidelines.

The staff working in the shelters has generally relevant child care expertise and long lasting commitment in social work. A continuous training scheme is said to be in place but stakeholders recognize the need to improve their knowledge and skills.<sup>111</sup> It was reported that no trainings, or very few, specifically devoted to UNICEF guidelines was provided in Albania to social workers from NGOs or State Social Services.

## Questioning, interview and initial action subject to improvements

Albania being mainly a source country for trafficking has two challenges to cope with: internal trafficking and return of domestic victims of trafficking, among which are also children.

110 Interview with an official from the NRCVT, Tirana, December 3<sup>rd</sup> 2009.

111 Interview with a social worker, Vlorë, Albania, December 4<sup>th</sup> 2009.

The fact that anti-trafficking units exist at the regional level is a guarantee that if police comes across any kind of evidence or suspicions of trafficking cases, they can refer the case expeditiously to the appropriate services and that victims will be interviewed by trained law enforcement officers. This is true as long as the unit by which children have been identified received trainings on child rights issues and have sufficient knowledge of child friendly interviewing techniques.

Initial questioning is however most generally conducted in the police stations which are, in the vast majority of the cases, not equipped with child friendly rooms and social workers or other persons are not always attending the interviews, even though a psychologist is supposed to be present according to the NRM agreement. The presence of female police officers among every anti-trafficking unit was foreseen but the measure is not entirely implemented, although efforts in that sense have to be acknowledged. The aforementioned is true within the Albanian territory but not at border points. A striking example is the situation of the G.O.S. (Special Operations Group, a facility to receive migrants at the Greek-Albanian border point of Kapshtica), which is really alarming. Police Officers have to interview sometimes more than 50 people in a day, among which child victims of trafficking could be found. The G.O.S. does not have child friendly rooms for interviews and child victims “are waiting in a line together with illegal migrants or adult victims”.<sup>112</sup>

“Kids are caught in Greece and when the Greek police gathers enough of them, they contact the Albanian Border Police. They give them a list of names and send them to the G.O.S., where authorities are supposed to interview and check in their database (TIMS) some information. It is catastrophic; there is no heating and no food.

Then they are supposed to conduct an interview with a Social worker from the regional State Social Service but there is no social worker or psychologist at the border. They don't have a car and no one is trained. According to the NRM, they are supposed to fill in a form with the social worker, but no one fills it and the CPU is therefore not informed of the situation. If the child mentions exploitation, the Border police will inform the Anti-trafficking Unit at the Regional Directorate.

A declaration is filled out by the police officer and signed by him and the child. The police is supposed to inform the family but when the child comes from the North parents do not come and sometimes they do not call them

112 Interview with an NGO worker, Korçë, Albania, December 5<sup>th</sup> 2009.

*due to logistics constraints. Sometimes when children are above 14, they just release them.”*

Social Worker from an NGO, Korçë, Albania, December 4th 2009

The registration process is not standardized either and the information is not well exchanged between all actors, even though it is mandatory according to the NRM. The lack of a proper database to store, process and exchange the information is hindering a proper registration and an efficient referral of child victims.

The expeditious referral of victims relies more on the collaboration between individuals than on the implementation and respect of procedure provided in the NRM. Transfer to safe accommodation is sometimes delayed as we have seen above. However contact details of appropriate services are made available to police stations.

Children are formally handed-over and a form is signed to acknowledge the transfer of the child and the subsequent responsibilities. The hand-over is not done by the most senior ranking official but generally by the police officer who conducted the interview.

Later on, when interviewing children about their trafficking experience, law enforcement authorities do ask for the presence of a social worker who is supposed to be the guardian of the child. The interview conducted at this stage therefore seems to comply with UNICEF guidelines.

So far, there is no evidence that in Albania the consent of the children has been used as a mean to convict them or to retain them in any kind of detention-like facility. The fact that direct references are made to the Palermo Protocol in documents such as the joint order establishing the National Referral Mechanism is also reinforcing this assumption. However, Albanian authorities and local NGOs clearly stated that this might not apply in the return process when child victims are waiting for being returned to Albania as demonstrated in the box below. The return of Albanian trafficked children from several countries of destination is raising many concerns.

*“Three child victims of trafficking were caught in Greece. I got information from ARSIS Greece which was contacted by the Greek authorities. We did a social investigation within three days. A lot of criminal activities were involved. We contacted authorities of both countries. It took Greek authorities one month to return the children. They stayed detained in a pre-detention centre while the Albanian authorities were not responsive at all.”*

Social Worker from a local NGO, Tirana, Albania, December 3rd 2009

## A failed referral and coordination system

As we have already mentioned, even though the “Responsible authority” that was supposed to ensure the liaison between all agencies has been appointed and specific procedures detailed in the NRM agreement, the referral of individual cases and coordination of agencies is far from being satisfactory due to a important gaps in implementation. Most of time, the liaison between social authorities, police and guardians relies on the personal commitment, professionalism and knowledge of individuals.

*“Despite some encouraging efforts, the implementation of the NRM is far from being satisfactory and the Responsible Authority is not yet functioning fully. Neither the mechanism nor most of the structures (e.g. Border Police, Albanian Consulate Offices and the Regional State Social Services) that support its implementation are sufficiently competent”.*

The state of efforts in Albania to combat trafficking in persons, USAID, October 2008, p. 34.

The National Referral Mechanism is therefore not as operational as it should be. As of December 2009, the Responsible Authority was working but mainly under the impulse of the Office of the Anti-trafficking coordinator. The latter reported that it is trying to supplement the shortcomings and act as a mediator.

The inefficiency of the referral system in Albania is further revealed by the declarations of shelters, who report that they are most often contacted by police who refers the victims directly to them. Social workers from shelters are even the one called to attend the interviews instead of the supposedly trained social workers from the regional directorate of the state social services.

Furthermore, the Border Police tend to refer suspected victims of trafficking only when they declare that they are victims. It is however very unlikely that a child victim of trafficking will acknowledge in front of a border police officers, in a room where he/she does not feel comfortable, and without social workers that he/she is a victim of trafficking. Therefore, it can be argued that an important rate of child victims of trafficking remain unidentified in the countries of destination as well as in Albania.

When it comes to relations with foreign countries, a bilateral agreement was signed with Greece in Tirana on “the protection and assistance to the children victims of trafficking” on February 27<sup>th</sup> 2006. This was an important step in the implementation of the UNICEF guidelines as a high number of Albanian children are trafficked to Greece. However, despite the ratification in August 2008 of the international agreement by the Greek authorities, it remains largely unimplemented as demonstrated by the high number of Albanian children at the Kapshtica border where Greek authorities deport them without prior assessment of their situation.

It however remains the first and only legally binding agreement that was implementing the UNICEF guidelines at the international level and the first meetings between representatives of anti-trafficking units of both countries were held in June 2009. These encouraging efforts must be furthered as the implementation of the agreement still seems to be at the level of discussion.

The National strategy for the fight against child trafficking and the protection of child victims of trafficking 2008-2010 states that in the period 2005–2007, “14 agreements and conventions on international and regional cooperation in the areas of justice, police cooperation, legal assistance against trafficking and organized crime, protection of child victims of trafficking, readmission of persons, illicit trafficking of narcotics, parental responsibility and civil aspects of the international child abduction were signed and ratified.”

In the framework of drafting and signing regional bilateral agreements, the Office of the National Coordinator has held cross-border meetings with the neighbouring countries (FYROM and Kosovo) that resulted in the signing of agreements and protocols on police and cross-border cooperation for the exchange of information in the framework of combating trafficking in human beings. Similar meetings are soon to be organized with Montenegro and Greece.

Finally, the role played by the MFA (if any) seems to be insufficient. The vast majority of interviewees pointed out that the MFA is not playing an active role

in the combat against child trafficking and its involvement is more virtual than real. This was confirmed at the top level of Albanian Government.<sup>113</sup>

## Satisfactory interim care and protection

Following their referral made by relevant authorities, child victims are accommodated in shelters or institutions where adequate services are available to ensure their protection and well being.

There are a total of 5 shelters able to accommodate victims of trafficking, including children, spread throughout the country. They formed a coalition of shelters and were involved in a participatory way in the drafting of standards of care in their institutions based on which State Social Services are monitoring them. Two of the shelters are also part of the NRM agreement, namely Tjeter Vision and the VATRA psychosocial centre, the latter being specialized in accommodating and providing services to victims returned from abroad.

Most of the shelters employ staff who are appropriately trained and possess a relevant background to provide proper care for victims of trafficking, including children, and cope with the diversity of victim’s needs. For example, in the NRCVT 23 persons with varied backgrounds allow access to different services: lawyers, social workers, psychologists, teachers and doctors are providing a wide range of services able to meet the diversity of children’s needs.<sup>114</sup> The same is true for the other shelters accommodating victims of trafficking in Albania.

The Albanian state developed guidelines on standards on residential care centres. Every state- or NGO-run institution of residential care have to comply with these guidelines and the State Social Services ensure a regular follow up (twice a year according to shelters) to verify if the guidelines are respected in practice. The NGOs were part of the working group on the development of the guidelines and they are applied in a satisfactory way in all 5 shelters for victims of trafficking in Albania.<sup>115</sup>

However, the capacity of those institutions to accommodate victims is not always sufficient. Shelters or reintegration centres had to refuse people due to their limited capacity. Moreover, adults and children are mixed within the institutions and there is no shelter exclusively dedicated to child victims. Finally,

113 Interview with an official from the Mol, Tirana, Albania, December 3<sup>rd</sup> 2009.

114 Interview with a Social worker, Tirana, Albania, December 3<sup>rd</sup> 2009.

115 Interview with a Social Worker in a shelter, Vlorë, Albania, December 4<sup>th</sup> 2009.

the accommodation of male child victims is also problematic as, besides the NRCVT, only one shelter in Elbasan is able to accommodate them.

Delays in providing an appropriate and secured accommodation are unfortunately still occurring in Albania as demonstrated in the box below:

*“We are in charge of conducting interviews at G.O.S. There we verify who the person is and we check in the database. There are cases where we accommodate victims in the police stations. Once unaccompanied minors at risk stayed here two days before we could identify the family.”*  
Police Officer, Korçë, Albania, December 5th 2009

Although the article 5 of the NRM is clearly indicating that in the event police is not able to enter in contact with the Responsible Authority “they should refer cases in need of immediate accommodation and assistance to the nearest service provider, using the directory of service providers issued by MOLSA”, this kind of situations, in breach of UNICEF guidelines, are still occurring.

However, there is no reason to believe that children have been placed in a detention-like facility at this stage of the process, apart from the example provided in the above box, during the return procedure from Greece.

## Satisfactory status determination procedures

As regards regularization of status, Albania offers a suitable framework allowing child victims to pursue their right to stay on the territory, if they fear for their security in their country of origin.

As already mentioned the Law on Foreigners in its article 31 (titled “Issuance of a Temporary Residence Permit in exceptional cases”) refers to victims of trafficking as beneficiaries of this exceptional measure and even announces rights of the person who is issued a temporary residence permit. The Border and Migration police is the body responsible for issuance of the permit but there is no automatic granting of this permit. The law also provides in its article 60g that foreign victims of trafficking, as well as potential foreign victims, may be delivered a work permit to work on the territory.

The Asylum Law contains a provision in its article 5 on the application for a Temporary protection on humanitarian ground.<sup>116</sup> Its first sub paragraph (a) specifies that a person (although not fulfilling Refugee convention criteria) “shall not be subjected to an expulsion or deportation (...) owing to the relevant reasons stated in (...) the UN convention on the rights of the child (...).

Moreover, the NRM agreement is also providing that victims of trafficking shall be automatically granted a temporary residence permit and an Identification Document, should they express the wish to stay on the territory for the purpose of reflection, or assisted repatriation.<sup>117</sup>

There is so far no example of applications made by a child victim of trafficking in Albania, neither are there any reasons to believe that such an application would not be treated in the best interests of the child.

## Return – relation state / NGOs, inextricable and indispensable

Albania is also part of the TRM project initiated by ICMPD. Therefore communication and collaboration is facilitated by the participation in this process. The NRM agreement in Albania does not detail the return procedure as much as its SEE counterparts. However, the strategy 2008-2010 foresees the adoption of Standard Operating Procedures on return.

As a country of source mainly, Albania is not as much concerned as its foreign counterparts by repatriating foreign victims of trafficking to their homeland, but is more focusing attention on national children returned to Albania. However, the NRM agreement provides orientation in the process of identification of a durable solution for foreign child victims of trafficking prior to return. According to it, victims should not be returned against their will and their views being duly taken into account. A pre- screening process is made mandatory prior to any return procedure and social services and TRP made available upon request.<sup>118</sup>

Furthermore, the NRM differentiate the situation of child and adult victims. For foreign and national minor victims, risk and security assessments by SSS

116 Law on Asylum in the Republic of Albania No. 8432, Article 5, 14 December 1998, available at: <http://www.unhcr.org/refworld/docid/3ae6b5c07.html>

117 National referral Mechanism agreement, Article 5 (A) & 9, Republic of Albania.

118 National Referral Mechanism agreement, Article 5 (A) par. 10, Republic of Albania.

are to be conducted to determine the level of risk a child would have to cope with upon reintegration in his/her original social and family environment. If it would be unsafe or too risky for the child to be returned, other solutions are suggested with a preference given to non residential care placement, such as foster families.<sup>119</sup>

The NRM also highlights the importance of the role played by the MFA in the return process, as it should “cooperate with host country authorities in helping identify, protect and facilitate the assisted return and referral of actual, presumed or potential victims” with the aim “to reduce the number of victims returned without prior notification, or the prior activation of the assistance and referral mechanisms envisaged in” the NRM agreement.<sup>120</sup>

Consequently, the provisions of the NRM - if fully implemented - would allow a proper decision making on a durable solution in the best interests of the child. However, as already mentioned, the NRM is far from being implemented and the shortcomings identified previously are also applicable here.

First and foremost, the risk and security assessments rely mostly on the cooperation of NGOs, their networks and international organizations such as the IOM. Neither risk and security assessment nor any kind of investigations are undertaken by State authorities prior to the arrival of (potential) child victims on the Albanian territory in most of the cases. Therefore the role played by NGOs such as ARSIS in that process is being acknowledged and praised by the Albanian government.<sup>121</sup>

Secondly, and as highlighted by the situation at the G.O.S. Centre, the deportation<sup>122</sup> of Albanian children from Greece is a “daily task” undertaken by the Greek government. In such a case, the return process does not allow children to pursue their rights and it is completed in a way scoffing at their dignity.

The use of the “percent of all returned child victims for whom pre-notification and return assistance was given” as an indicator in the National Strategy for children<sup>123</sup> is both alarming and supporting the assumption that cooperation

119 National Referral Mechanism agreement, Article 5 (B) par. 9, Republic of Albania.

120 National Referral Mechanism agreement, Article 5 (D) par. 3, Republic of Albania

121 Interview with an official at the Mol, Tirana, Albania, December 3<sup>rd</sup> 2009.

122 Albanian authorities consider the return process operated by their Greek counterparts as simple deportation: Interview with an official at the Mol, Tirana, Albania, December 3<sup>rd</sup> 2009.

123 National strategy for the fight against child trafficking and the protection of child victims of trafficking 2008-2010, under action nb 2 p. 19.

between Albanian and Greece as well as other countries is not sufficiently developed to ensure a return that would comply with UNICEF guidelines.

The collaboration with Kosovo and FYROM is by far more respectful of the NRM standards but here again the IOM or NGOs are supplementing state duties in that process.

Finally and as already mentioned, the action of the MFA and its representations abroad are subject to much criticism<sup>124</sup> as not being enough involved and collaborative.

## Availability of programs and meaningful durable solutions

Albania still has much progress to make in offering victims of trafficking long lasting alternatives for their future. Nevertheless, one must acknowledge the improvement of the situation and the quality of services provided in shelters and diversity of options available at this stage of the child victims’ protection process.

Child victims of trafficking that are accommodated in shelters have access to a wide range of opportunities aimed at fostering their reintegration. While health care is a priority, social services, education, vocational trainings as well as legal advice and psychosocial support are not out of reach thanks to the capacity of the professionals working in shelters.

Procedures are in place to design plans for child victims of trafficking at both medium and long-terms by a social worker specifically appointed to their case. Upon acceptance of victims to be accommodated in shelters, and generally within a short period,<sup>125</sup> an inter-disciplinary group composed of experts is assessing the situation of the child and evaluating his/her needs. A “support plan” (or “individual reintegration plan”) is then designed accordingly. The standards for the accommodation of victims in shelters, elaborated by the SSS, together with the shelter’s coalition provide the measures to be followed to elaborate such a plan.<sup>126</sup>

124 See note 56 above.

125 Two weeks in the NRCVT: Interview with a social worker, Tirana, Albania, December 3<sup>rd</sup> 2009.

126 Interview with a social worker at the NRCVT, Tirana, Albania, December 3<sup>rd</sup> 2009.

Implementation of a durable solution for child victims will thus be based on these documents and progress made on the path of its implementation will be reported, assessed and the plan revised accordingly, on a regular basis.

Shelters, which are all licensed and monitored by the State, can provide different services better adapted to certain type of cases, depending on their competences. Therefore the good collaboration between shelters, highlighted by the creation of and their collaboration through the coalition of shelters is allowing for a suitable placement for victims.

NGOs and international organizations have programs to foster the rehabilitation of child victims of trafficking, through financial or in-kind support, or inclusion into educational programs such as vocational training etc. In that regard, the opportunity is offered to victims to participate in a (semi) independent leave, where free placement in an apartment is proposed to the family of the victim after her stabilization. Other examples of relevant project implemented by shelters such as “Different and Equal” through its reintegration centre have also been identified. It is also worth to mention the pilot project that was launched in early 2009 on Foster families in Shkodrë and Tirana. We have no information on the level of its implementation but this initiative deserves to be welcomed.

As in other countries, the opportunity of placement in foster families for child victims of trafficking is not sufficiently looked at, even though non residential care alternatives are privileged in the UNICEF guidelines.

The placement of child victims in biological extended families is also overlooked. Many challenges can be identified to implement such solutions. One of the greatest lies in the fact that State Social Services and social services at the local level do not always have the means or the time (not to say the competence) to ensure a regular follow up on each case. Therefore the arrangements made and the individual plan drafted might be a loss of time if a regular monitoring is not undertaken by state social workers. Although NGOs are often involved in this activity, they do not have the capacity to cover all cases.

Moreover, the child protection units, as already mentioned, only have the competence to work within the administrative boundaries of the local government they are working for. In this regard, a vast proportion of victims of trafficking living out of their area of competence cannot be benefit from the follow up of the specialists.

This lack of family- or community-based arrangement for internally trafficked or returned children might be one of the most serious breaches of the UNICEF guidelines in Albania.

## A victimizing justice

In Albania Judges and Prosecutors are not trained enough to deal with child victims of trafficking cases and do not always handle cases sensitively. As of mid-2008, a report highlighted the complete failure of the implementation of the strategy 2005-2007 in the area of investigation and prosecution of offenders.<sup>127</sup> The report emphasizes a great gap in the selection and training of prosecutors and judges on child trafficking investigations and prosecutions.

More alarming, the report highlights that the collaboration of children has been abused in several cases, by making the assistance and access to social services conditional on their collaboration.

Within several district courts, departments are dealing with cases of minors. As already mentioned, the training of judges and prosecutors is far from being satisfactory and their capacity to decide upon cases of children has to be strengthened. An acknowledgement is made in the national strategy for the fight against child trafficking and the protection of child victims 2008-2010, which foresees the implementation of regular specialized trainings for police judges and prosecutors on the specific treatment of cases of child victims. This step must be encouraged.

As mentioned by the head of a reintegration institution: “Trafficked women are being victimized twice (...) first by the traffickers, then by the Albanian justice system.”<sup>128</sup> The same might apply to children.

A project under the auspices of ICMPD and currently under implementation is to create a database for prosecution of traffickers within the General Prosecutor’s Office.

The availability of compensation for child victims of trafficking during civil proceedings exists but is hardly accessible. As in other countries, the enforce-

<sup>127</sup> Sonila Danaj, *op. cit.*, p. 63.

<sup>128</sup> Cited in: *On Speedboats, Albania’s sex trade could flare*, New York Times, July 19<sup>th</sup> 2009, available at: <http://www.nytimes.com/2009/07/17/world/europe/17albania.html?pagewanted=all>

ment of compensation decision is facing difficulties, and solutions have to be. Therefore, the ability of child victims to pursue their rights as enshrined in the UNICEF guidelines are far from being respected.

## Failed witness protection schemes

A witness protection program is available in the Republic of Albania and regulated by Law. The Law N° 9205 of 15 March 2004 on “the protection of witnesses and collaborators of Justice” has been enacted, and includes victims of trafficking through a specific reference to the criminal code in its article 2. In its article 16 provides: “In the shortest time possible and at any case not later than 15 days from the approval of the special protection measures, the Department for the Protection of Witness and the Justice Collaborators prepares the agreement for the application of the special protection measures and takes the measures for discussing and signing it by the witness, the justice collaborator and other protected persons (...)”. Paragraph 4 of the same article pursues: “In case of a minor, the approval and signing of the agreement is done by the parent or legal custodian appointed by law, by taking into consideration the highest interest of the child and also the limited legal capacity as provided by law.” However from April 2005 to 2008 there was only one case where a woman was involved in the witness protection program.<sup>129</sup>

The majority of the interviewees agreed on the fact that this law remains largely unimplemented and that the Albanian State today fails in its witness protection mission. As a paradox, before the entry into force of the law, the witness protection program was ensured by IOM and the OSCE. People trusted these institutions, but the responsibility was transferred when the law was adopted. Since then, victims - including children - refuse to testify against their alleged traffickers as they fear reprisal and do not trust police officers.

This situation is raising many concerns in the light of the allegations that law enforcement agencies exercised pressure and made social assistance conditional to the collaboration of child victims of trafficking in the investigative and prosecution phases of the criminal proceedings.

*“We offered security and protection for 6 victims of trafficking. No one was protecting them. The law is not implemented at all. The US Embassy and the IOM put a protection program in place and two organizations made the risk assessment while the government did nothing.”*  
Official from a shelter, Albania, 2009

<sup>129</sup> Sonila Danaj, *op. cit.*, p. 26.

# 4.

## Conclusions & recommendations

In general, the study concludes that each government has made substantial progress along the path of improving the protection of child victims of trafficking.

However, the research identified numerous shortcomings based on the specific principles as set out in the UNICEF guidelines. The principles set out in the UNICEF guidelines and the spirit of the UN convention both consider the best interests of the child as the overarching principle that should be guiding governments' actions.

As a consequence, **the right to information** for child victims are violated by the inappropriate legal counsel and/or guardians appointed to the victims. **The right to non-discrimination** is abandoned when national legislation differentiates procedures of assistance for national and foreign child victims. The example of temporary residence permit is striking in this regard. **Views of the child** are not always respected, and sometimes not even taken into consideration, as demonstrated by the summary return procedures implemented by the countries, as well as a consequence of inappropriate guardianship systems not allowing the child's views to be heard. Finally, **the right to be protected** is directly violated due to lack of identification, leaving behind child victims while others benefit from protection and assistance.

The report found that **legislative frameworks** have been designed in a satisfactory way, leaving room for improvements. In the three countries, the legislative, administrative or procedural frameworks are more or less compliant with UNICEF guidelines.

The main shortcomings identified in the report were consequently a matter of implementation of internal rules and international standards. Specifically procedures are not respectful of the guidelines due to the unclear division between procedures for children and adults. Effective implementation of the UNICEF guidelines is also hindered by negative effects of the decentralization process throughout the region.

### Recommendation 1

- **Amend legislative and procedural provisions** that do not comply with the rights enshrined in the UN Convention on the rights of the child and the UNICEF guidelines as addressed in the report.
- **Set up an effective monitoring program** for the implementation of the respective strategies and revise strategies based on its findings.
- **Improve decentralization** of social services while ensuring the trainings of Directorate of Social Welfare at all levels.

As a general rule, the lack of implementation is the result of **a lack of capacity of stakeholders**. In Kosovo, FYROM and Albania, stakeholders are not sufficiently familiar with the implications of UNICEF Guidelines on their every day work, or even sensitized to child rights practices as recommended by the UNICEF guidelines. Consequently, the standards enshrined in this document are breached and violate children's rights.

Service providers not only lack skills, competences and knowledge to fulfill their duties of protecting children but they also often fail to do so due to an overall lack of funds or capacity to manage them. Most social services in the three countries did not have the logistical means to complete their mission in a satisfactory way. This is particularly true for outreach activities.

The lack of sustainability of financing these agencies, coupled with an extreme dependence on international donors also makes a change necessary in the funding approach to child protection systems throughout the region.

### Recommendation 2

- **Ensure that funds are allocated** to implement the national strategies to combat trafficking in Human Beings and the national strategies to combat trafficking in children. **Sustainable funding strategies must be put in place** by central as well as local governments.



- **Undertake a training impact assessment** at the national and local levels of all staff involved in the process of protection of child victims, and design a comprehensive training strategy accordingly.

The lack of capacities is even more striking when it comes to the **identification** of child victims of trafficking. Besides the absence of a comprehensive training strategy for all actors involved in the identification process, the definition used to qualify victims of trafficking as such is also hampering the identification of child victims and jeopardizing the whole protection system. In addition the non-inclusion of potential victims of trafficking or children at high risk under the umbrella of the protection measures provided by state to victims is also a very serious concern, in most of the countries.

### Recommendation 3

- **Enhance identification efforts**, not only through raids or at border point, but ensure that child victims are identified where the child is exploited.
- **Enhance efforts to build a database** allowing a proper filing of foreign unaccompanied minors, as well as children at risk or being trafficked and ensure secure access to its content. Databases should be shared between service providers and law enforcement agencies in the three countries in order to facilitate a cross-border case management.

On the positive side, mechanisms of **coordination and referral** of child victims have greatly improved and they function well. Local level structures of coordination however need to be improved and/or reinforced.

The research also shed the light on the lack of collaboration at the regional and international level, only one international bilateral agreement has been concluded between Greece and Albania for the protection of children victims of trafficking. Despite efforts showed in that field, no international treaty on the protection of children victims of trafficking and their potential reintegration has been concluded between the countries subject to this study. The efforts to coordinate through formal meetings and exchanges on a regular basis cannot be considered as efficient as a formal binding agreement signed between all parties.

### Recommendation 4

- **Increase the participation of all ministries** in the process of identification, referral and reintegration of victims.

- **Improve collaboration of actors responsible for protection of child victims of trafficking at the local level.**
- **Ensure that on-duty social workers are reachable at any time.**
- **Mainstream the use of resources of, and collaboration with, civil society, NGOs and international community** in the provision of services and coordination of child victims of trafficking cases.
- **Take steps to sign bi-lateral agreements** with neighboring countries on protection of child victims.

**Cases of child victims are supervised** in a different way in all three states, with satisfactory measures in FYROM and less adequate solutions in Kosovo and Albania. Efforts in the guardianship processes must therefore be sustained.

The report found immediate **provision of interim care** satisfactory but often used as a long-term solution for child victims. As a consequence, children tend to stay in shelters or residential care institutions for extended periods.

The report also pointed out the critical lack of alternatives favouring family or community-based durable solutions. Governments' actions are not sufficient in favour of alternative solutions in developing, funding and/or providing incentives for foster care and other case-by-case durable solutions. Shelters and other type of residential care are too often the only solution available for child victims.

### Recommendation 5

- **Ensure that the principle of accountability is duly respected in the process of guardian appointment.**
- **Establish facilities exclusively dedicated to accommodate child victims of trafficking.**
- **Develop, fund and/or provide incentives for foster care and other case-by-case durable solutions.**
- **Duly take into account the views of the child** in the design and implementation of an individual action plan preparing for durable solution.

The procedures **of return of child** victims are raising many concerns. No best interests determination in the process of return of presumed child victims of trafficking exists throughout the region. Governments return them without proper family tracing, and risk and security assessments conducted. Government should seek for legislative and administrative provision compliant with international standards, and implement them so as to allow a dignified return of children who freely consented to it.

### Recommendation 6

- **Immediately cease to return foreign children**, even accompanied ones, without a proper assessment of their case, on an individual basis, according to a regular and standardized procedures, including checks and thorough assessment of their situation in the countries of origin, options in the countries of destination and the will of the child.
- **Ensure that a framework of action is standardized** and accurately followed in return procedures according to the best interests of (presumed) child victims of trafficking.

The study showed the serious difficulties faced by all the three countries to ensure justice for child victims of trafficking. Judicial proceedings involving child victims of trafficking are usually difficult and re-victimizing. All countries lack specialized and well-trained prosecutors and judges on cases of child trafficking and child rights. Legal procedures or already existing one are not sufficiently used or implemented during testimony.

### Recommendation 7

- **Increase the number of judges for minors and specialized prosecutors.**
- **Build capacities of the prosecution offices and the judiciary** as part of any anti-trafficking effort in the region. Such trainings are to be included in the formal educational curricula of the profession, could also cover in specific part of UNICEF guidelines dealing with the judicial proceedings involving child victims of trafficking.
- Enhance the quality of juvenile justice systems and its compliance with international standards.
- **Decrease the number of hearings and interviews of child victims** of trafficking, for example by making mandatory the participation of prosecutors in interviews conducted by the Police.

- **Children testimonies during legal procedures must be limited** through recording and accepted as such as evidence at court. **Testimonies through video-links** and other techniques should also be made applicable and not only recognize by law.
- **Provide functional witness protection programs for children.**



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This project is funded by the European Union.



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