

## Document 1.1.2 - 4

# ANALYSIS OF THE LEGISLATION OF THE SOCIAL PROTECTION WITH REGARDS TO APPLICATION OF PERSONAL DATA PROTECTION

## Component 1

### Activity 1.1.2



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## ANALYZED LAWS

For the purposes of this Analysis, the following Laws were taken into consideration:

1. **LAW ON SOCIAL CARE** (“Official Gazette of” no. 79/2009, 51/2010, 36/2011, 51/2011) and the respective bylaws
2. **LAW ON CHILD PROTECTION** (“Official Gazette” no. 170/2010) and the respective bylaws
3. **LAW ON FAMILY** (“Official Gazette” no. 80/92, 9/96, 38/2004, 33/2006, 84/2008, 157/2008 , 67/2010, 156/2010) and the respective bylaws
4. **LAW ON ASYLUM AND TEMPORARY PROTECTION** (“Official Gazette” no. 49/2003, 66/2007, 142/2008, 19/2009, 146/2009) and the respective bylaws



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## 1. LAW ON SOCIAL CARE

### 1.1. General comments

This Law stipulates that the social care is activity of public interest. The Law regulates the system and facility of social care; the social care rights; and the financing and procedure for exercising the rights to social care. It also determines the persons entitled to social care, by further defining the persons entitled to social financial aid what is a household. Moreover, it defines the services and measures of the social care which belong to social prevention, out-of-institution protection as well as the right to financial aid under the social care.

The provisions of the Law provide basis for collection, processing, use, and exchange of personal data. The Law envisages establishment of personal data records both of the social care beneficiaries and of the employees in the bodies responsible to act on the rights in this area. The Law does not refer to subsidiary application of the Law on Personal Data Protection. The collected personal data to some extent are ensured by Article 173 which stipulates that each physical person which independently performs matters of social care as professional activity is obliged to respect the personality of the beneficiary, his/her dignity and invulnerability of the personal and family life, and to keep the official and professional secret. Furthermore, Article 207 of the Law stipulates that the procedure for exercising the rights to social care, the legal protection of the family and the responsibility set forth in the criminal regulations, as well as the facts and data determined by these procedures which can harm the reputation, dignity, and the interests of the citizen or his/her family are protected by the responsibility of the facility and its professional employees to keep the professional and official secret in accordance to a law.

It can be concluded that the Law on Social Care which provides for a legal basis for collection, processing, keeping, and exchange of personal data, does not contain direct provisions which refer to application of the personal data protection regulation, and thus their secrecy and legal



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protection is not being secured.

## 1.2. Analysis of the concrete provisions from the Law on Social Care

This analysis will contain concrete provisions from the Law on Social Care which are directly or indirectly related to the personal data protection. For the purpose of clearer presentation of the personal data protection within this Law, according to the author's opinion the provisions in this analysis will be included based on their importance, and not on the basis of their numeration, i.e., based on the article numbers.

### Article 7

*The system and facility of the social care shall be consisted of the facilities, institutions measures, activities, and forms which are accomplished as part of the fulfillment of the rights of the citizens in the area of social care.*

*The system shall be accomplished by the professional work in the social care facilities; implementation of development programs; professional training of the personnel based on the needs of the beneficiaries and the international standards; monitoring of the developments and planning of the labor force; keeping records; as well as by conduct of supervision and research in this area.*

Article 7 determines the issue of the system and facility of the social care while paragraph 2 of article 7 of the Law provides legal basis for recording of data collected and recorded by the subjects constituting the social care system.

### General conclusions from the aspect of the analyzed indicators

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data
2. Personal data records have been envisaged
3. Deadline for keeping of the personal data has not been set



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4. The issue of use of the personal data by another body has not been regulated
5. Subsidiary application of the regulation on personal data protection has not been envisaged

#### Article 75

*The need for aid and care by another person shall be determined with finding, assessment and opinion issued by professional commission which may exist within public facility which within its scope treats problems in the area of psycho-physical development of persons with a certain degree of disability or in another legal entity.*

#### Article 77

*The minister with a decision determines the legal entity referred to in article 75 paragraph 1 of this Law, to which the professional commission gives the finding, assessment and opinion for the incapability to work and the need for aid and care by another person.*

*The minister with a decision shall form a commission to prepare finding, assessment and opinion to decide upon appeal against the first instance decision on the right to aid and care by another person.*

Articles 75 and 77 of the Law in more details refer to the accomplishment of the right to aid and care by another person, that is the professional body which determines the need for aid and care by another person, the manner of its determination and the establishment of professional body to prepare finding, assessment and opinion in the process of deciding upon appeal. Article 78 of the Law provides for adoption of bylaw which among the other will prescribe the manner of maintaining record on the issued findings and opinions. Considering that findings and opinions contain personal data on the beneficiaries of this right of social care, including data on their health condition, the bylaw would also be subject to analysis.

The indicators of analysis are no applicable for these provisions.



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## *Record in the personal protection facilities*

### *Article 113*

*The personal protection facility shall maintain a record on the personal protection beneficiaries and documentation on the professional work.*

*The records on users contain information for unique identification number, sex, age, address and other data for the user and the members of his family or household who are related to determining the personal status and situation of social risk.*

*The minister shall prescribe the manner of maintaining of the record and the documentation referred to in paragraph 1 of this article and shall closer determine the social care beneficiaries.*

Article 113 of the Law gives legal basis for maintaining and keeping records and documentation on the social care *beneficiaries*. *Paragraph 2 of this Article strictly specifies personal information that are collected and processed in the records.* However, there is no reference to special protection of the personal data on the social care beneficiaries which are being collected and processed by the legal entities envisaged by the Law.

Article 254, paragraph 1, line 7 of the Law prescribes misdemeanor sanction – fine in the amount of 3.000 - 5.000 euros in denar equivalency for violation committed by the social care facility or another legal entity, if among the other, it fails to or inadequately maintains the prescribed record or documentation.

### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been clearly determined



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2. Personal data records have been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has not been regulated
5. Subsidiary application of the regulation on personal data protection has not been envisaged

#### Article 114

*The social care facility which accommodates social care beneficiaries shall submit quarterly report on its work to the Ministry.*

Article 114 of the Law provides legal basis for transfer of personal data from the social care facilities which accommodate social care beneficiaries to the Ministry of Labor and Social Policy. However, there is no reference to special legal protection of the transferred personal data.

The indicators of analysis are no applicable for these provisions.

#### Article 129

*The facility for studying of the social developments and problems and promotion of the social activities..... shall perform statistical processing of the data from the record maintained by the social care facilities.....*

.....

#### Article 130

*The Office on Social Activities shall issue and revoke licenses for work of professionals in the social care facilities, maintain registry of issued and revoked licenses, and implement continued training of professional workers within the procedure for issuing licenses.*

*For the purpose of issuing and revoking licenses for work of professional workers in the social care facilities, check of the expertise, and maintaining registry on issued and revoked licenses, the Office on Social Activities shall upon prior consent by the Minister,*



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*establish Commission for Licensing, composed of representatives from the Office on Social Activities, the Ministry, the Institute on Social Labor and Social Policy and other appropriate faculties and institutions.*

Articles 129 and 130 of the Law determine the competences of the Office on Social Activities including statistical processing of data from the record maintained by the social care facilities as well as issuing and revoking licenses for work of professional workers for the purpose of which a registry is maintained. This gives legal basis for collection, processing and use of personal data, but their legal protection by reference to the regulation on personal data protection is not provided for.


### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been clearly determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the regulation on personal data protection has not been envisaged

#### *Article 134*

*Within the scope of public authorizations, the center shall perform the following duties:*

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.....

*- maintain record and collect documentation on the beneficiaries of social and family- legal protection in terms of the applied forms of social care, and*

.....

#### *Article 135*

*During the implementation of the social care as well as the professional work, the center shall:*

.....

*- make direct supervision for the purpose of determining the actual status of the person or family,*

.....

*-submit report on the matters determined in Article 134 of this Law to the Ministry,*

.....

Article 134, paragraph 1, line 6 of the Law gives legal basis for collection, processing, use and maintaining records of collected personal data on the beneficiaries of social and family-legal protection on the forms of received social care form the social centers when performing matters within their scope of public authorizations.

Article 135, paragraph 1, lines 2 and 7 of the Law foresees collecting and processing of personal data of social care beneficiaries in the process of supervision by the social care centre when it determines the actual status of the person or the family. The same article provides legal basis for use of the collected personal data by the Centre which in the form of report are delivered to the Ministry of Labor and Social Policy. Even though the mentioned articles envisage collection, processing, use, and delivery of the personal data, these provisions do not regulate the issue of providing legal protection of the personal data.



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### Article 138

*The professional worker from the centre shall be issued ID card as official document to verify his/her official capacity, the identity, and the authorization to undertake activities related to the social care determined by this or another law.*

*The ID card referred to in paragraph 1 of this article shall be issued by the centre.*

*The centre shall maintain record on the issued ID cards to professional workers.*

*The minister shall define the type and contents of the form of the ID card referred to in paragraph 1 of this article, the manner of its issuing and revoking, the use and the record of issued ID cards.*

Article 138 of the law gives legal basis for collection of personal data of professional worker in the social care centre. It also defines the purpose of issuing of the ID card as official document which will enable him/her to undertake matters within the area of social care. Paragraph 3 of Article 138 of the Law gives legal basis for maintaining evidence on the issued ID cards, that is of the personal data of the abovementioned persons by the social care centers, while paragraph 4 of the same article envisages adoption of bylaw which will further regulate these matters.

### General conclusions from the aspect of the analyzed indicators

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been clearly determined
2. Personal data records have been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has not been regulated



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5. Subsidiary application of the regulation on personal data protection has not been envisaged

#### Article 171

*A physical person that independently performs consulting, works on home care and assistance to an individual and family, and accommodation in foster family as professional activity shall be obliged to notify the competent center in whose area of jurisdiction he/she works on the start of the work.*

*The person referred to in paragraph 1 of this article in the title under which he/she works shall list data on the personal name, address and type of activity.*

#### Article 172

*The Ministry shall maintain record of physical persons who have been issued licenses independently to perform the professional activity referred to in article 165 of this Law.*

*The contents and manner of maintaining the record referred to I paragraph 1 of this article shall be prescribed by the minister.*

#### Article 173

*The physical person who independently performs social care work as professional activity shall be obliged to:*

- *to provide the services to the beneficiary in accordance to the decision of the centre,*
- *when performing social care work in accordance to article 165 of this law to apply methods of professional work, to respect the personality of the beneficiary, his/her dignity and the invulnerability of personal and family life, and to keep the official and professional secret,*
- *to maintain record of the beneficiaries and provided services, and*
- *to deliver semiannual and annual report on his/her work to the Ministry.*

.....



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Article 171 of the Law gives legal basis for collection, processing, and use of personal data of the persons who perform consulting, homecare, assistance to individual and family, and accommodation in foster family as professional activity by the social care centers. Article 172 of the Law provides legal basis for maintaining record of personal data of the physical persons who have been issued license for independent performance of the previously stated professional activity by a body other than the one which collects them, that is the Ministry of Labor and Social Policy. Article 173 of the Law sets forth the obligation on the part of the persons who independently perform social care work to respect the personality of the beneficiary, his/her dignity and the invulnerability of the personal and family life as well as the official and professional secret. Even though this is one of the rare provisions in the Law which defines certain obligation for those having access to the personal data of the social care beneficiaries, the concrete reference to the appropriate regulation on personal data protection would provide for their more comprehensive protection.

Article 254, paragraph, 1, line 3 of the Law stipulates misdemeanor liability and fine in the amount from 3.000 to 5.000 euros in denar equivalency for violation committed by the social care organization or other legal entity if among the other the physical person does not maintain record on the beneficiaries and the provided services.

#### *Article 196*

*The centre shall issue confirmation letter or certificate on the status of the social care beneficiary in accordance to the official record within ten days of the day of submission of the request.*

Article 196 of the Law stipulates legal basis for issuing of confirmation letter or certificate on the



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status of the social care beneficiary which also contains personal data on the beneficiary deriving from the official record of the Social Care Centre.

### Article 203

*The centre on the basis of finding and opinion issued by professional body shall reach a decision on the type and degree of disability and shall record the person with disability.*

.....

Article 203 of the Law envisages collection, processing, use, and maintaining of personal data records of the person with disability by the Social Care Centre, on the basis of finding and opinion issued by professional body. Even though the mentioned article envisages collection, processing, use, and record of the personal data, these provisions do not regulate the issue of providing legal protection of the personal data.

### General conclusions from the aspect of the analyzed indicators

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been clearly determined
2. Personal data records have been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has not been regulated
5. Subsidiary application of the regulation on personal data protection has not been envisaged



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## Article 207

*The procedure for exercising a social care right, legal-family protection and the responsibility set by the criminal regulation, as well as the facts and data determined in these procedures which can harm the reputation, dignity and integrity of the citizen and his/her family shall be protected by the obligation of the organization and its personnel to keep professional and official secret in accordance to a law.*

Article 207 of the Law determines certain legal protection of data on beneficiaries which are collected, processed, recorded and maintained by the professional workers in the organization. They have an obligation to keep professional and official secret in relation to all data they have come to know in the course of the procedures, and which can harm the reputation, dignity, and interests of the citizen and his/her family. This provision ensures certain protection of personal data, but concrete reference to the regulation on personal data protection would be more appropriate.

The indicators of analysis are no applicable for these provisions.

## INSPECTION SUPERVISION

### Article 230

*Inspection supervision shall include:*

.....

*- supervision over the exercising of the rights and fulfillment of the obligations by the beneficiaries set forth by this Law,*

.....

*- preparation of record, documentation and reports on the work of the social care executors and,*



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- *supervision over the implementation of the pronounced measures during previously conducted inspection supervision.*

#### Article 234

*The inspector shall have official ID card as official document to verify his/her official capacity, the identity, and the authorization to undertake inspection supervision.*

*The Minister shall prescribe the type and contents of the form of the ID card referred to in paragraph 1 of this article, the manner of its issuing, use, revoking, and the record of the issued and revoked ID cards.*

*When conducting inspection supervision, the inspector shall be obliged to present the official ID card.*

#### Article 240

*When conducting inspection supervision, the inspector may look around the facility, the working premises, business books, registries, records and documentation, the identification documents and acts in the files, to hear out the beneficiaries, the employees as well as other persons, to establish person's identity by inspection of personal ID documents, to revoke documentation, files and other acts temporarily, to monitor the implementation of the set measures aimed at overcoming the established irregularities, as well as to undertake other matters stipulated by this Law.*

*The inspector has a duty to act lawfully, timely and in accordance with the Code of Conduct for Civil Servants and the Code of Conduct of the inspection service and to maintain the confidentiality of classified information.*

.....

Article 230 of the Law gives legal basis for the inspectors to use collected and processed personal data when conducting supervision over the exercising of the rights and fulfillment of the obligations by the beneficiaries set forth by this Law. Furthermore, there is legal basis for the inspectors in the process of supervision to record the collected personal data on the work of the



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social care executors.

Article 240 of the Law sets forth legal basis for the inspectors in the process of supervision to review the records, registries, documentation, identification documents and acts when collecting, processing and using personal data of social care beneficiaries, employees and other persons. The inspectors have legal authorization to collect personal data when identifying a person with personal ID card, to revoke documentation, files, and other acts temporarily, etc. This article provides some legal protection of data that are collected and processed by inspectors by prescribing the obligation to maintain the confidentiality of classified data. However, there is no reference to application of regulations for personal data protection.

Article 234 of the Law envisages collection, use, and maintaining of personal data records of the inspectors for the purpose of issuing official ID cards which they need for conduct of the inspection supervision. It is also stipulated that a bylaw that would further regulate this issue is to be adopted.

### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been clearly determined
2. Personal data records have been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has not been regulated
5. Subsidiary application of the regulation on personal data protection has not been envisaged



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## **SUPERVISION OVER THE PROFESSIONAL WORK**

### **Article 247**

*The supervision over the professional work in the social care facility and its personnel as well as over any other legal entity or physical person performing social care work shall be conducted by the Office on Social Activity.*

### **Article 249**

*The supervision over the professional work shall be conducted in order to see, monitor, control, inspect and promote the manner and quality of the professional work and efficiency in the performance of the functions in the social care facilities stipulated by this Law and other acts.*

.....

### **Article 251**

*The facilities and persons referred to in article 247 of this Law shall be obliged to enable inspection of the entire work and documentation in the process of supervision over the professional work.*

Articles 247, 249, and 251 of the Law provide legal basis for use of the collected and processed personal data in the social care facilities and the personnel therein, as well as of other legal entities and physical persons who perform social care work by another body, that is the Office on Social Activity. Article 251 of the Law gives legal basis for the Office as a body performing the supervision to inspect the documentation including the collected personal data. However, there is no reference to legal protection of the personal data which are to be used.

### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that



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1. There is legal basis and the aim to collect, process, and use personal data has been clearly determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the regulation on personal data protection has not been envisaged

### 1.3. Provisions from the bylaws

#### RULEBOOK ON THE MANNER OF EXERCISING THE RIGHT TO SOCIAL FINANCIAL AID<sup>1</sup>

##### Article 4

*The submitter of the request for exercising the right to social financial aid for himself/herself and for the members of the household shall submit the following:*

1. *photocopy of valid personal ID card for citizens of the country, permit for permanent residence for foreigner, photocopy of personal ID card for accepted refugee, or photocopy of personal ID card for person under humanitarian or (that is) subsidiary protection;*
2. *photocopy of the excerpt from the birth certificates;*
3. *photocopy of the excerpt from the marriage certificates;*
4. *photocopy of the excerpt from the death certificates (Service for Certificates at the Ministry of Interior);*
5. *photocopy of divorce judgment;*
6. *certificate if the person is taxpayer on property or assets;*
7. *property certificate form cadastre office;*
8. *confirmation on acquired incomes from salary in the country or abroad;*

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<sup>1</sup> Official Gazette no. 146/2009, 59/2011, 123/2011, 139/2011



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9. *confirmation on pension beneficiary (acquired in the country or abroad);*
10. *confirmation from the Agency for Employment on unemployed members of the family;*
11. *an unemployed person that is not registered in the Agency for Employment presents list of recorded data on time of service;*
12. *verdict on a certain legal alimony;*
13. *confirmation of ownership of registered vehicle which has not been alienated in the last six months prior to the submission of the request, vehicle used for commercial need (van, bus, truck, taxi), combine vehicle; and*
14. *confirmation for full-time student.*

*The submitter of the request referred to in paragraph 1 of this article shall confirm the material status of the assets referred to in article 2, paragraph 1, items 7, 8, and 9 and the property referred to in article 3, paragraph 1, item 7 and paragraph 3 of this Rulebook with written statement.*

....

*The professional worker in the Social Care Center shall verify if the documents submitted in photocopy are identical to the original in accordance to the Law on General Administrative Procedure.*

#### Article 5

*The submitter of the request for exercising the right to social financial aid who has a status of asylum seeker, accepted refugee, person under humanitarian or subsidiary protection in accordance to the Law on Asylum and Temporary Protection apart of the documents referred to in article 4, paragraph 1, item 1, for the evidence referred to in the same article 1, items, 2, 3, 4, 5, 6, 7, and 8 shall confirm with written statement if he/she can obtain the same and shall confirm the material and family status for himself/herself and the members of his/her family.*

#### Article 7

*During the exercising of the right to social financial aid, the holder of the right shall confirm the status of the assets for himself/herself and the members of his/her family, as follows:*

- *the holder of the right who is employed delivers documents on the incomes in the family quarterly;*



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- *the holder of the right who receives pension delivers documents on the incomes in the family annually;*
- *the holder of the right who is not employed confirms the status of unemployed person for himself/herself and the members of his/her family each month with personal statement before the competent social care centre on a date set by the centre;*
- *on all other households, the holder of the right delivers documents on the assets of the household quarterly.*

This Rulebook further elaborates the provisions of the Law on Social Care in terms of the manner of determining the status of the assets, property and property rights of the household, determination of the holder of the right and the necessary documentation for exercising the right to social financial aid. Furthermore, there is legal basis in place for collection, processing, and use of personal data of the physical persons which refer to the determination of his/her identity, the special categories of personal data, and their material and family status.

The general conclusion is that the Rulebook does not contain reference to the provisions for personal data protection for the data which are collected and processed for exercising of the right to social financial aid.

## RULEBOOK ON THE MANNER OF EXERCISING THE RIGHT TO PERMANENT FINANCIAL AID<sup>2</sup>

### *Article 4*

*The submitter of the request for exercising the right to permanent social financial aid depending on the family-material status on himself/herself and for the members of the family shall submit the following:*

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<sup>2</sup> Official Gazette no. 146/2009, 59/2011, 123/2011



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1. *photocopy of valid personal ID card for citizens of the country, permit for permanent residence for foreigner, photocopy of personal ID card for accepted refugee, or photocopy of personal ID card for person under humanitarian or (that is) subsidiary protection;*
2. *photocopy of the excerpt from the birth certificates;*
3. *photocopy of the excerpt from the marriage certificates;*
4. *photocopy of the excerpt from the death certificates;*
5. *certificate on reported or acquired net incomes from the Public Revenue Office;*
6. *property certificate form cadastre office;*
7. *confirmation on acquired incomes from salary;*
8. *confirmation on pension beneficiary (acquired in the country or abroad);*
9. *confirmation from the Agency for Employment of the country on unemployed members of the family;*
10. *an unemployed person that is not registered in the Agency for Employment presents list of recorded data on time of service;*
11. *verdict on a certain legal alimony;*
12. *confirmation for full-time student; and*
13. *report on finding and opinion issued by competent body (Form 3 from general practitioner) and medical documentation.*

*The submitter of the request referred to in paragraph 1 of this article shall confirm the material status of the assets referred to in article 2, paragraph 1, items 7, 8, and 9, the property referred to in article 3, paragraph 1, item 6, and the property rights of article 3, paragraph 2 of this Rulebook with written statement.*

*The Social Care Centre shall check if the person is civil disability income beneficiary.*

*The professional worker in the Social Care Center shall verify if the documents submitted in photocopy are identical to the original in accordance to the Law on General Administrative Procedure.*

## Article 6

*Finding, assessment, and opinion to determine the work incapability shall be issued by the*



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*competent professional commission.*

.....

*The finding, assessment, and opinion referred to in paragraph 1 of this article shall be issued on Form no. 1, which is part of this Rulebook.*

#### Article 7

..... In the middle it is written: *FINDING, ASSESSMENT AND OPINION ON THE WORK INCAPABILITY. The following data shall be entered: 1. General data on person to whom the request refers (name, name of one of the parents, surname), EMBG, place of birth, address and place of residence, gender (male, female), professional education, time of service 2. The finding, assessment, and opinion shall be issued on the basis of: a) Direct examination of the person and inspection of the medical and other documentation, b) Inspection of the medical documentation; 3. Joint results of the examination and the inquiries by the members of the professional commission; 4. Diagnosis of the disease by indication of the code; 5. Presented medical documentation; 6. Assessment and opinion on the work incapability ( there is no work incapability, there is work incapability; Control examination : there is no need, there is need (after 6 months, after 12 months, after 24 months from the data of decision by the commission); comments; members of the commission (president and two members); and seal.*

#### Article 10

*The professional commission shall give finding, assessment and opinion on the work incapability based on direct examination of the request submitter.*

*As exception, in cases when the work incapability of the submitter of the request for exercising the right to permanent financial aid can be clearly determined from the presented medical documentation, the professional commission may issue finding, assessment, and opinion on the basis of the presented medical documentation, without direct examination.*

#### Article 11

*In the procedure on filed appeal against the first instance decision on the right for permanent financial aid, the Finding, assessment, and opinion shall be issued by the Second-Instance Commission.*

*The Finding, assessment, and opinion referred to in paragraph 1 of this article shall be issued*



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on Form no. 2 which is part of this Rulebook.

## Article 12

*The finding, assessment and opinion referred to in article 11 of this Rulebook shall contain: SECOND INSTANCE COMMISSION ON ISSUING FINDING, ASSESSMENT AND OPINION ON THE WORK INCAPABILITY; file no. 10-; date; 1. General data on person to whom the request refers (name, name of one of the parents, surname), EMBG; place of residence; text: "Second Instance Commission on issuing Finding, assessment and opinion on the work incapability established by the Ministry of Labor and Social policy, when deciding upon the appeal against the first instance decision on exercising the right to permanent financial aid, reviewed the acts in the file, the Finding, assessment and opinion of the Professional Commission for issuing Finding, assessment and opinion for determining the work incapability and the presented medical documentation and has concluded"; 2. Diagnosis of the disease by indication of the code 3. Assessment and opinion on the work incapability (there is no work incapability, there is work incapability); Control examination: there is no need, there is need (after 6 months, after 12 months, after 24 months from the data of decision by the commission, there is need for re-examination by the Professional Commission for issuing Finding, assessment and opinion on the work incapability; members of the commission (president and two members); and seal.*

## Article 14

.....

*The Second Instance Commission shall issue finding, assessment and opinion on the work incapability on the basis of the medical documentation and acts in the file.*

## Article 16

*The record of issued findings, assessments and opinions by the professional commission for determining the work incapability shall be maintained in the book and shall contain: ordinal number, number and date of the file in Social Care Centre, name and surname and unique citizen number of the requester, number and date of the finding, assessment and opinion, control examination, and comment.*

*The record regarding accepted refugees, persons under humanitarian or subsidiary protection*



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Privacy International



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*shall in no way be exchanged with their country of origin.*

This Rulebook prescribes the manner of determining the status of the assets, property, and property rights and the necessary documentation for exercising the right to permanent financial aid, the composition and manner of work of the professional commission and the second instance commission, the ID card of the professional workers, the manner of maintaining the record of issued findings, and the type and contents of the form for issuing finding, assessment and opinion on the work incapability.

The Rulebook provides legal basis for collection, processing, use of personal data in the process of exercising the right to permanent financial aid and recording of the beneficiaries of this type of social care. In this regard, the necessary documentation should be obtained and concrete personal data, special categories of data, personal data referring to the material, family, and health status of the persons should be collected and processed. The finding, assessment and opinion for determining the work incapability issued by the competent professional commission contains the separately listed personal data on the person as foreseen in Form no. 1, which is part of this Rulebook. The Rulebook sets forth a possibility for filing appeal against the first instance decision on the right to permanent financial aid. Furthermore, the second instance commission of the ministry gives finding, assessment, and opinion to determine the work incapability whereby the personal data it collects and processes are separately listed in the Form no. 2, which is part of the Rulebook.

Article 16 of the Rulebook gives legal basis for the Social Care Centre to maintain record of the listed personal data which are derived from the findings, assessments, and opinions issued by the professional commission for determining the work incapability. It is also stipulated that the personal data collected for the record of accepted refugees, and persons under humanitarian or



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subsidiary protection, will in no way be exchanged with their country of origin.

The general conclusion is that this Rulebook does not contain reference to the regulation on protection of the personal data which are being collected, processed and used and for which registries are being maintained pursuant to this Rulebook.

### RULEBOOK ON THE MANNER OF EXERCISING THE RIGHT TO ONE-TERM FINANCIAL AID AND THE NECESSARY DOCUMENTATION FOR EXERCISING THIS RIGHT<sup>3</sup>

#### Article 2

*The request for exercising the right to one-term financial aid shall be delivered to the locally competent social care centre.*

*The Social care centre shall decide upon the request referred to in paragraph 1 of this article based on the presented documentation prescribed by this Rulebook, upon the minutes form conducted inspection when the person is not social care beneficiary, and upon determining the social risk form suffered natural disaster, as well as upon the finding and opinion of the professional worker.*

#### Article 3

*If the submitter of the request for exercising the right to one-term financial assistance is beneficiary of social care due to suffered natural disaster, fire, flood, earthquake, as well as the convicted person after being released from the penitentiary, shall deliver photocopy of personal ID card, that is excerpt from the birth certificates or other personal id document to verify the address of residence.*

*If the submitter of the request for exercising the right to one-term financial assistance is not beneficiary of social care, shall deliver the following for him/her and the members of the family:*

- 1. photocopy of valid personal ID card for citizens of country, permit for permanent residence*

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<sup>3</sup> Official Gazette no. 122/2009



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*for foreigner, photocopy of personal ID card for accepted refugee, or photocopy of personal ID card for person under humanitarian or (that is) subsidiary protection or filed request for granting asylum;*

- 2. photocopy of the excerpt from the birth certificates;*
- 3. photocopy of the excerpt from the marriage certificates, if married;*
- 4. photocopy of the excerpt from the death certificates, for deceased member of the family;*
- 5. confirmation on the amount of the salary in last three months prior to the submission of the request;*
- 6. pay cheque from the last pension, for pensioners;*
- 7. confirmation from the Agency for Employment on unemployed members of the family; and*
- 8. certificate on reported or acquired net incomes from the Public Revenue Office.*

*The actual status on the basis of the documents referred to in paragraph 1 of this article for the social care beneficiaries shall be determined from the acts in the file.*

*The submitter of the request for exercising the right to one-term financial aid who has a status of asylum seeker, accepted refugee, person under humanitarian or subsidiary protection in accordance to the Law on Asylum and Temporary Protection apart of the documents referred to in paragraph 2, item 1 shall confirm if he/she can obtain the evidence referred to in paragraph , items 2, 3, 4, 5, 6, 7, and 8, and shall confirm the material and family status for him/her and for the members of the family with written statement.*

*The professional worker in the Social Care Center shall verify if the documents submitted in photocopy are identical to the original in accordance to the Law on General Administrative Procedure.*

#### Article 4

*Status of social risk referred to in article 80 of the Law on Social Care shall be determined on the basis of the following documents:*

- 1. minutes from competent body for suffered natural disaster (fire, flood, earthquake);*
- 2. medical documentation for long-term treatment abroad and need for medical intervention for member of the family (joint expert opinion from the appropriate Clinic for*



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*the need for treatment abroad, and decision from the Health Insurance Fund for estimated participation);*

*3. contract for farming agricultural land owned by the state;*

*4. medical documentation for long-term treatment in health facility (from general practitioner, doctor-specialist, or dismissal note);*

*5. decision from the competent social care centre on the type and degree of mental or physical disability;*

*6. decision for termination of the accommodation in Public facility for accommodation of children without parents, or parental care that is foster family; and*

*7. notification on the need of aid for convicted person after the release from the penitentiary as well as sanction verdict reached by judge.*

*Person or family which faced social risk without permanent consequences, as well as for assistance of needed accommodation shall deliver appropriate evidence which are necessary to the professional worker for conduct of the procedure.*

This rulebook stipulates the manner of exercising the right to one-term financial aid and the necessary documentation to exercise this right. There is also legal basis for collection, processing, and use of personal data, special categories of personal data, personal data referring to the health, material and family status of the persons. The Rulebook does not contain provisions which secure legal protection of the personal data which are being collected, processed and maintained.

RULEBOOK ON THE MANNER OF EXERCISING THE RIGHT TO FINANCIAL AID FOR SOCIAL HOUSING FOR PERSON WHO UNTIL THE AGE OF 18 HAD A STATUS OF CHILD WITHOUT PARENTS AND PARENTAL CARE, THAT IS AFTER THE CEASE OF THE GUARDIANSHIP, AT MOST UNTIL THE AGE OF 26<sup>4</sup>

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<sup>4</sup> Official Gazette no. 54/2010



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## Article 10

*In order to exercise the right to financial compensation for social housing, a request for exercising the right to housing is delivered to the social care centre. The following documents are attached to the request:*

- *evidence that he/she does not have a lease on apartment owned by the country;*
- *photocopy of personal ID card or another document to confirm the citizenship of the country and permanent residence;*
- *confirmation from the Public Revenue Office on real estate property in the place of birth and residence;*
- *statement certified by notary that he/she does not own apartment or other real estate property that is he/she did not transfer this type of property and that he/she cannot exercise the right to housing in any other manner;*
- *evidence that inheritance procedure has been initiated whereby he/she can be beneficiary in accordance to a law and that during the procedure he/she denied the right to become beneficiary;*
- *document on paid salary, pension or any other regular income in the last three months;*
- *unemployment certificate;*
- *excerpt from the birth and marriage certificates;*
- *confirmation for full-time education;*
- *contract for dormitory accommodation; and*
- *lease contract.*

## Article 11

*The social care centre based on the submitted request and the accompanying documentation shall verify the actual status and shall decide on the exercising of the right to financial compensation for social housing.*

## Article 12

*The Social Care Centre in charge according to the place of residence of the person without*



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*housing, shall decide on the submitted request for exercising the right to financial compensation for social housing upon previously obtained opinion from the expert team from the Social care Centre which previously had acted on the case.*

### Article 13

*The Social Care Centre shall perform direct inspection at least twice in the year and shall verify if the beneficiary of financial aid for social housing is continuously using the apartment under lease pursuant to the submitted documentation.*

This Rulebook regulates the manner of exercising the right to financial aid for social housing of person who until the age of 18 had a status of child without parents and parental care, that is, after the cease of the guardianship, at most until the age of 26 and is socially endangered – without housing. The Rulebook provides legal basis for collection, processing, using, and maintaining personal data of the beneficiaries of financial aid for social housing by the Social Care Centre. However, there is no reference to special legal protection of the collected data.

RULEBOOK ON THE MANNER OF DETERMINING THE STATUS OF THE ASSETS, PROPERTY AND PROPERTY RIGHTS AND THE NECESSARY DOCUMENTATION FOR EXERCISING THE RIGHT TO FINANCIAL AID TO PERSON WHO UNTIL THE AGE OF 18 HAD A STATUS OF CHILD WITHOUT PARENTS AND PARENTAL CARE<sup>5</sup>

### Article 5

*The submitter of the request for exercising the right to financial aid for a person who until the age of 18 had a status of the child without parents and parental care, for him/her and the family members shall submit the following:*

*1. photocopy of valid personal ID card for citizens of the country, permit for permanent residence for foreigner, photocopy of personal ID card for accepted refugee, or photocopy of*

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<sup>5</sup> Official Gazette no. 122/2009



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- personal ID card for person under humanitarian or subsidiary protection;*
- 2. photocopy of the excerpt from the birth certificates;*
  - 3. photocopy of the excerpt from the marriage certificates;*
  - 4. photocopy of the excerpt from the death certificates, for deceased member of the family;*
  - 5. certificate on reported or acquired net incomes from the Public Revenue Office;*
  - 6. confirmation on acquired incomes from salary;*
  - 7. confirmation on pension beneficiary;*
  - 8. confirmation from the Agency for Employment on unemployed members of the family;*
  - 9. an unemployed person that is not registered in the Agency for Employment presents list of recorded data on time of service;*
  - 10. verdict on a certain legal alimony;*
  - 11. property certificate form cadastre office;*
  - 12. confirmation for full-time student.*

*The professional worker in the Social Care Center shall verify if the documents submitted in photocopy are identical to the original in accordance to the Law on General Administrative Procedure.*

*The submitter of the request referred to in paragraph 1 of this article shall confirm the material status of the assets referred to in article 3, paragraph 1, items 6, 7, and 8, the property referred to in article 4, paragraph 1, item, and the property rights of article 4, paragraph 2 of this Rulebook with written statement.*

#### Article 6

*The submitter of the request for exercising the right to financial aid for a person who until the age of 18 had a status of child without parents and parental care, who does not have assets and property to support himself/herself until the age of 26, who has a status of asylum seeker, accepted refugee, person under humanitarian or subsidiary protection pursuant to the Law on Asylum and Temporary Protection, a part of the documents referred to in paragraph 2 item 1, for the evidence listed in paragraph 2, items 2, 3, 4, 5, 6, 7, and 8 shall confirm if he/she can provide them and shall confirm the material and family status for himself/herself and the members of the family with written statement.*



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This Rulebook stipulates the manner of determining the status of the assets, property, and property rights for exercising the right to financial aid for a person who until the age of 18 had a status of child without parents and parental care, who does not have assets and property to support himself/herself until the age of 26. Moreover, there is also legal basis for collection, processing and use of personal data of these categories of persons, as well as of the special categories of their personal data regarding their material status. There is no reference to special legal protection of the collected personal data.

RULEBOOK ON THE MANNER OF MAINTAINING AND THE CONTENTS OF THE RECORD OF SOCIAL CARE BENEFICIARIES AND THE DOCUMENTATION ON THE PROFESSIONAL WORK<sup>6</sup>

*Article 2*

*The record of the social care beneficiaries shall contain data on the citizens (child, adolescent, adult, old person), family, household, and group of citizens exposed to social risk, type, scope, and duration of the used social care rights).*

*The record referred to in paragraph 1 of this article shall be maintained in the social care centre in registry, in writing and electronic dossier of the beneficiary and electronically in the IT program for administering rights and IT program for administering social care services in a manner, form and contents stipulated by this Rulebook.*

*Other social care facilities shall maintain the record referred to in paragraph 1 of this article in registries and beneficiary dossier in a manner, form and contents stipulated by this Rulebook.*

*The record maintenance shall be preformed regularly, orderly and systematically with readable handwriting and computer entry.*

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<sup>6</sup> Official Gazette no. 171/2011



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## 1. Registry

### Article 3

*Registry of the social care beneficiaries (hereinafter: registry) shall be maintained by the social care centre.*

*The register shall be maintained electronically.*

### Article 6

*The page in the book shall contain nine sections in which are to be entered:*

*- the registry number of the social care beneficiary; archive number; date of registration in the registry; unique citizen number – social care beneficiary; name and surname of the beneficiary and name of one of the parents; address of residence; (street, number, and municipality); acquired right to social care; date of placing on liabilities; and comments.*

*Before the start of use of the registry, on the first page in the right hand lower angle, the total number of pages shall be noted and certified by signature of the authorized person and seal of the social care centre.*

### Article 7

*The registry shall be concluded each year with note on the ordinal number of the last entry, whereby the ordinal number and year are entered with numbers and letter.*

*The certification shall be made by the person maintaining the registry with his/her signature and seal of the social care centre.*

*The next data entry for the next year shall be made on the following first page under the ordinal number 1.*

*The registry shall have a mark of official secret and shall be kept in a manner that secures protection of the official secret and protection against abuse and damage.*

*The registry shall be archive material of permanent value.*

## 2. Beneficiary dossier



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## Article 8

*The social care facility shall open dossier on the social care beneficiary.*

*The dossier shall have ordinal number from the register book maintained by the facility pursuant to the regulations on first instance administrative procedure, archive number pursuant to the regulations on archive working, and registry number from the registry.*

*The dossier shall contain documentation on the exercising of the social care right and documentation on the professional work stipulated by this Rulebook.*

## Article 9

*The social care facility shall ensure systematic arrangement of the entire documentation on each social care beneficiary in a folder for acts.*

*The documentation shall be kept in two cardboard covers on whose front page the name of the social care facility, name and surname of the social care beneficiary, number from the register book, archive number, and number of registry will be entered.*

## Article 10

*The procedure for data recording and collection of the documentation in IT program for administering social care rights and services shall start with the opening of the dossier on the social care beneficiary in the social care centre, that is in another social care facility.*

*The data entry in the program referred to in paragraph 1 of this article shall be done on the basis of the collected documentation and other evidence.*

## 3. Record on the beneficiaries of financial rights under the social care

### Article 11

*The Social Care Centre shall maintain record on the beneficiaries of financial rights under the social care in the IT program for administering of the financial rights under the social care.*

*The record referred to in paragraph 1 of this article shall include identification data on the beneficiary of financial rights under the social care and the members of his/her family, that is household, data on the social status, data on the material status, evidence, data on the health status, and data on conducted inspection.*



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## Article 12

*The identification data on the request submitter, that is the beneficiary of financial aid under the social care and on the members of his/her family, that is household, shall contain data on: submitted request, with date of recording, date of reception of the documents and archive number of document; unique number of the citizen; name and surname; name of the parents; birth date; state of birth; gender; nationality; citizenship; permanent residence in the country; language; number of personal ID card, date of issue and date of validity; place of residence; address of residence; telephone number; bank and number of transaction account; date of death; if she/he had/has status of child without parents or parental care; if he/she is founder of company or facility; if he/she concluded contract for lifetime support with the social care centre; role of the person ( holder of the right or member of the family/household); relationship to the request submitter/the holder of the right; labor invalid; if he/she has made contract for lifetime support with third person; and comments.*

*In addition to the data referred to in paragraph 1 of this article, in accordance to the need for the adequate social care right, data on the social, material and health status, the social risk and terms for housing of the holder of the right to financial aid and the members of this/her family that is household shall be recorded.*

## Article 13

*The evidence, submissions, statements and minutes on the request submitter, that is the beneficiary and his/her family regarding the undertaken activities in the procedure for exercising I using the right to financial aid under the social protection shall be scanned and part of the electronic dossier.*

## Article 14

*Record shall be maintained on the data upon submitted request and during the period of use of the right to financial aid under the social protection.*

## 4. Record on social care beneficiaries

### Article 15

*The social care centre shall maintain record on the social care beneficiaries in the IT program for*



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*administering social care services.*

*The record referred to in paragraph 1 of this article shall be maintained by marks/indicators in the computer program application on social care.*

#### Article 16

*Identification data, data on the risk status and used rights and services on the social care beneficiary shall be entered.*

#### Article 17

*The identification data on the social care beneficiary contain data on: date of opening of the dossier; date of electronic recording; unique number of the citizen; name and surname (maiden surname); date of birth; place and state of birth; gender; belonging to ethnic community; citizenship; place of residence; address of residence; telephone number; marital status; degree of education; if he/she is studying (where and what); employment status; basis for health insurance; and date of putting the dossier on liabilities.*

#### Article 18

*Data depending on the specifications of the determined social risk shall be entered in the record on the social care beneficiaries.*

#### Article 19

*Data on used rights and services, data of exercising, continuation and termination of the right and services shall be entered in the record on the social care beneficiary.*

#### Article 20

*The following data shall be entered on family/household of the right or service beneficiary:*

- 1. identification data on the members of the family/household;*
- 2. data in the material status; and*



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### *3. data on the accommodation conditions.*

### *5. Record on the beneficiaries accommodated in social care facilities.*

#### *Article 21*

*The registry shall be maintained in the social care facilities, except the social care centers and the beneficiaries of social care services for the appropriate facility shall be recorded in it.*

.....

#### *Article 23*

*The page of the registry shall have 12 sections in which the following data shall be entered: unique number of the citizen; surname, father's name, name; gender; date of birth; municipality of birth; address of residence (municipality, street and number); who accommodates the beneficiary; date of admittance in the facility; date of termination of the accommodation; reasons for termination of the accommodation; where he/she would go from the facility; and comments.*

#### *Article 24*

*The data entry in the registry shall be done chronologically on the basis of the data from the document on accomplished social care right and service.*


*Data on the social care beneficiaries shall be entered in the registry until the registry is full, regardless of the calendar year.*

*After the completion of the registry, a new one shall be opened starting with the number 1, whereby the first registry is marked with the Roman number I, the second on with II, and so on.*

*The registry on the social care beneficiaries shall have a mark of official secret and shall be maintained in a manner that ensures protection of the official secret and protection against abuse, destruction and damage.*

*The registry on social care beneficiaries is archive material of permanent value.*

## *II. DOCUMENTATION ON PROFESSIONAL WORK*

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### Article 31

*The professional worker/team shall prepare finding and opinion of the professional worker/team regarding the established status of the social risk, its occurrence, assessments of the potentials and needs of the beneficiary, findings and opinions on the form of protection and recommendations for treatment of the beneficiary.*

*The finding and opinion of the professional worker/team shall contain identification data on the beneficiary, type of beneficiary, and purpose of the finding.*

*Finding and opinion of the professional worker/team shall be prepared on each changed circumstance that implicates change in the form of care or the treatment of the beneficiary.*

This Rulebook prescribes the manner of maintaining and the contents of the record on the social care beneficiaries as well as the documentation for the professional work and closer defines the social care beneficiaries.

Article 2 of the Rulebook provides legal basis for the Social Care Centre to collect, process and record personal data of the social care beneficiaries. Articles 3, 4, and 5 envisage maintenance of registries of social care beneficiaries which include separately listed personal data on the beneficiaries that are being listed and kept. The Rulebook does not have provisions which refer to concrete application of the regulation of personal data protection, but it does foresee a certain level of protection by stipulating that the registry has a mark of official secret and is kept in a manner that ensures protection of the official secret and protection against abuse, destruction or damage. In regard to the keeping of the data, it is stipulated that the registry is archive material of permanent value.

Article 8, 9, and 10 of the Rulebook give legal basis for collection and processing of personal data of the social care beneficiary and for that purpose the social care facility establishes dossier on each beneficiary. The manner of maintaining the dossiers on the beneficiaries is also



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stipulated, which in addition to the hard copy is also maintained electronically.

Articles 11, 12, 13, and 14 of the Rulebook provide legal basis for the Social Care Centre to collect, process, maintain records and keep separately listed personal data of the beneficiaries of financial aid under the social care. This includes special categories of personal data and personal data regarding their health, material, social, and family status as well as personal data on their family members.

Articles 15, 16, 17, 18, and 19 of the Rulebook provide legal basis for collecting, processing, maintaining record and keeping of separately listed personal data on the social care beneficiary, on whom identification data, data on the risk status, and data on used rights and services are being entered. Furthermore, article 20 of the Rulebook gives legal basis for collecting and keeping of personal data on the members of the family/household including data on their material status, accommodation and record on the beneficiaries accommodated in social care facilities.

Articles 21, 22, 23, and 24 of the Rulebook envisage maintaining of registry by the social care centers and the social care facilities to record and keep the separately listed personal data on the social care beneficiary. Certain degree of data protection has been ensured by the reference that the registry on the social care beneficiaries has a mark of official secret and is kept in a manner which ensures that ensures protection of the official secret and protection against abuse, destruction or damage. In regard to the keeping of the data in the registries, it is stipulated that the registry is archive material of permanent value.

Article 31 of the Rulebook stipulates that in the process of preparation of the finding and opinion of the professional worker/team among the other there is basis for collecting and processing of personal data on the beneficiary need to identify him/her.



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The Rulebook does not contain provisions referring to application of the regulation on personal data protection which does not ensure legal protection of the personal data that are being collected, processed and used on which records are being kept pursuant to this Rulebook.

RULEBOOK ON THE FORM OF THE ID CARD OF THE PROFESSIONAL WORKERS IN SOCIAL CARE CENTRE, THA MANNER OF ITS ISSUANCE, USE AND MAINTENANCE OF RECORD OF ISSUED ID CARDS<sup>7</sup>

*Article 2*

*The ID card shall be issued according to the Form which is part of this Rulebook.*

.....

*The front side of the ID card in the upper right hand said shall contain the name of the social care centre, underneath the text: ID CARD OF PROFESSIONAL WORKER”, underneath space for name and surname of the ID card holder, space for the occupation of the professional worker, and on the left hand side space for photography with dimensions 28 x 32 mm, across which a seal of the social care centre is placed, and underneath the serial number of the ID card.*

*Article 3*

*The professional worker in the social care centre who will lose or in other way will stay without ID card shall immediately notify the director of the social care centre thereof.*

*New ID card shall be issued after the lost or in other way missing ID card shall be announced in the “Official Gazette”.*

*Article 4*

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<sup>7</sup> RULEBOOK ON THE FORM OF THE ID CARD OF THE PROFESSIONAL WORKERS IN SOCIAL CARE CENTRE, THA MANNER OF ITS ISSUANCE, USE AND MAINTENANCE OF RECORD OF ISSUED ID CARDS adopted on 6 December 2005



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*The professional worker in the social care centre whose employment has been terminated shall return the ID card no later than seven days after the termination of his/her employment.*

#### Article 5

*The professional worker shall bear the ID card in the working premises of the social care centre.*

*The professional worker shall use the ID card to identify himself/herself when conducting inspection in the home of the beneficiary and before other bodies and institutions, when undertaking activities to determine the actual status of cases he/she is in charge of.*

#### Article 6

*The record of issued ID cards which is maintained in the social care centre shall contain name and surname of the professional worker, registry number of the issued ID card, date of issuance, handover and return of the ID card, signature of the ID card holder and comments.*

This rulebook prescribes the form of the ID card of the professional workers in the social care centers, the manner of its issuance, use and maintenance of record of issued ID cards. In this way, legal basis is provided for collection, processing and use of the listed personal data of the persons employed in the social care centre, where records of personal data are being kept. The Rulebook does not have reference to special legal protection of the personal data which are being collected, processed, and kept pursuant to this Rulebook.

## 2. LAW ON CHILD PROTECTION

### 2.1. General comments

This Law which stipulates that the activity of child protection is of public interest also defines the system, organization and manner of providing child protection. In this regard, the child



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protection is accomplished by ensuring of certain rights, means and forms of child protection.

Pursuant to article 4 of the Law, the following are the rights for child protection: child allowance; special allowance; one-term financial aid for newborn; participation and parental allowance for child. The children rights set forth in article 4 of this law are personal rights and cannot be transferred. These rights, under terms set forth by this Law are secured by the state, while larger part of the rights can be secured by the municipality, the city of Skopje and the municipality within the City of Skopje provided that it ensured means from its own sources.

Pursuant to article 5 of the Law, the forms of children protection in the context of this law include: accommodation and education of children at pre-school age; vacation and recreation for children and other forms of protection.

The Law envisages collection, processing and use of personal data as well as maintaining personal data records, however there is no reference to application of the regulation for personal data protection. Even though there is provision securing certain protection of collected and recorded personal data (for example paragraph 1, line 2 of article 83-f of the Law, imposes protection of the data and information of personal and family character as official secret and protection of the official and professional secret), the general conclusion is that the legal protection of the collected and recorded personal data which are being kept in accordance to this Law has not been ensured.

## 2.2. Analysis of the concrete provisions from the Law on Child Protection

This analysis will contain concrete provisions from the Law on Child Protection which are directly or indirectly related to the personal data protection. For the purpose of clearer presentation of the personal data protection within this Law, according to the author's opinion the provisions in this analysis will be included based on their importance, and not



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on the basis of their numeration, i.e., based on the article numbers.

## II. RIGHTS ON CHILDREN PROTECTION

### 1. Child allowance

#### Article 20

*The material status of the family shall be established based on the incomes of the family and the number of family members.*

Article 20 of the Law sets forth that in the process of determining the right to child allowance, personal data on the material status of the family members are being collected and processed.

The indicators of analysis are no applicable for these provisions.

### 2. Special allowance

#### Article 24

.....

*Finding, assessment and opinion on the need of granting special allowance shall be given by professional body on assessing the type and degree of mental or physical disability of persons.*

Article 24 of the Law provides legal basis for collecting and processing personal data of a child in the process of determining the need for granting special allowance by professional body on assessing the type and degree of mental or physical disability of persons. The provision has no reference to the regulation on personal data protection.

### 5. Procedure for exercising the right to children protection

#### Article 33

*The Social Care Centre shall issue confirmation and certificate on the status of the children protection beneficiary referred to in article 4, paragraph 1, items 1, 2, 3, and 5 of this Law in accordance to the official record within ten days of the day of request submission.*

*Upon request by the Social Care Centre, the legal entities and physical persons shall be obliged to give data to serve as evidence on exercising the children rights stipulated by this Law.*



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Article 33 of the Law provides legal basis for maintaining records of personal data which refer to the beneficiary of children protection rights, the Social Care Centre as body in charge of their collection, processing and maintaining records issues confirmation and certificates on the status of the beneficiaries. Furthermore, an obligation is defined for all legal entities and physical persons to deliver data which serve as evidence on the exercising of the children rights upon request by the Social Care Centre.

### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been clearly determined
2. Personal data records have been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has not been regulated
5. Subsidiary application of the regulation on personal data protection has not been envisaged

#### *Article 36*

*In the procedure for exercising the right to one-term financial aid for newborn, the competent body shall be obliged to reach decision within 15 days of the day of the submission of the request and the necessary documentation.*

*The type and contents of the form of the request and the necessary documentation on exercising the right referred to in paragraph 1 of this article shall be prescribed by the minister.*

#### *Article 37*

*The request on exercising the right to one-term financial aid for newborn and the necessary*



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*documentation shall be submitted to the competent social care centre no later than within three months of lifetime of the child, while for adopted child no later than within three months of registration of the adopted child in the birth registry.*

*The request for exercising the right to parental allowance for child and the necessary documentation shall be submitted to the competent social care centre no later than within three month of lifetime of the child and the right to parental allowance for child is exercised starting from the month of birth of the child.*

Article 36 and 37 of the Law determine legal basis for collecting and processing personal data by the Social Care Centre upon submission of request for exercising the right to one-term financial aid for newborn including the necessary documentation. Moreover, the contents of the request, that is the data that are to be submitted, are set forth by the minister with bylaw.

#### *IV. Kindergarten*

##### *1. Activity*

##### *Article 45*

*Public kindergarten shall enroll and accept children based on applications throughout the year.*

*If bigger number of children applied than the number of available posts in the kindergarten referred to in paragraph 1 of this article, commission on admission of children shall decide on the admission.*

*Upon admission of the child in the kindergarten, the parents shall be obliged to present confirmation form pediatrician on the health condition of the child, that is finding and opinion from appropriate professional institution for child with mental and physical disability.*

*The managing body of the public kindergarten shall pay attention and monitor the condition in regard to the admission of children with disabilities, that is the socioeconomic status in the family.*

*The rights and obligations of the kindergarten and the service beneficiaries shall be regulated by contract which specifically regulates the mutual relations of the service provider and beneficiary, service quality, manner of payment, selection of curriculum, length of stay of the child in the facility and other issues in regard to the child protection and activity of the kindergarten.*



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Article 45 of the Law provides legal basis for collecting and processing personal data of the child upon enrollment in the kindergarten. Paragraph 7 of article 45 of the Law stipulates that upon enrollment the parents are obliged to present confirmation from pediatrician, which contains personal data on the health status of the child or finding and opinion from appropriate professional institution for child with mental or physical disabilities. Furthermore, paragraph 8 of the same article provides legal basis for processing and use of personal data regarding the health, social, and material status in the family with disability children by the managing body of the public kindergarten. Paragraph 9 of article 45 of the Law envisages use of personal data of the beneficiaries of services provided by the public kindergarten in the process of regulation of the mutual relations with the service provider – the kindergarten through a contract regulating their rights and obligations.

### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been clearly determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has not been regulated
5. Subsidiary application of the regulation on personal data protection has not been envisaged

### **VI. CHILDREN RESORT**

#### **Article 62**

*The activity vacation and recreation shall be realized in children resort.*



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*If bigger number of children applied in the children resort than the number of available posts, commission on admission of children shall decide on the admission.*

.....

*The managing body of the public children resort shall take care on the admission of children in regard to the socioeconomic condition in the family.*

*The rights and obligations between the children resort and the beneficiaries of the vacation and recreation services shall be regulated by contract.*

Article 62 of the Law provides legal basis for collecting, and processing of personal data of children accommodated in public children resort regarding the social and economic status of the children's families. It is also foreseen the collected data of the beneficiaries of the vacation and recreation services to be used in the process of regulation of their rights and obligations with the children resort with contract.

### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been clearly determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has not been regulated
5. Subsidiary application of the regulation on personal data protection has not been envisaged

#### *Article 83-c*

*The ministry shall maintain record of the physical persons who have been issued permit to perform independently the professional activity referred to in articles 59-b and 59-c of this*



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## Law.

*The contents and manner of maintaining then record referred to in paragraph 1 of this article shall be prescribed by the minister.*

Article 83-c of the Law gives legal basis for maintaining record of personal data on physical persons who have been issued permit to perform independently professional activity (children accommodation and education, organization and implementation of accommodation and stay, children care and nutrition, as well as of children with mental or physical disability). The data that are to be recorded should be further regulated by bylaw.

### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been clearly determined
2. Personal data records have been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has not been regulated
5. Subsidiary application of the regulation on personal data protection has not been envisaged

### *Article 83-d*

*The physical person who independently performs matters of accommodation and education of children as professional activity under his/her work title shall list data on the personal name, address and activity.*

Article 83-d of the Law gives legal basis for use of personal data of the physical person who independently perform matters of children accommodation and education as professional activity and who under its work title should list data on his/her personal name (composed of



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name and surname) and address.

The indicators of analysis are no applicable for these provisions.

#### *Article 83-f*

*The physical person who independently performs matters of accommodation and education of children as professional activity shall be obliged to:*


- *provide the services pursuant to this Law;*
- *respect the personality of the beneficiary, his/her dignity and the invulnerability of the personal and family life in the course of the work, as well as to keep as official secret the data and information of family character, and to keep the official and professional secret;*
- *maintain record of the beneficiaries and provided services;*
- *give data on his/her work upon request by the Ministry; and*
- *deliver annual report on his/her work to the Ministry.*

*The type, contents, and manner of maintaining of the record of paragraph 1, line 3 of this article shall be prescribed by the minister.*

Article 83-f of the Law gives legal basis for maintaining records of personal data of the service beneficiaries by the physical person independently performing matters of children accommodation and education as professional activity. There is also legal basis for use of the collected data by another body, the Ministry to which the data are being delivered. It is foreseen the contents, type, and manner of maintaining the record to be further regulated by bylaw. This article is one of the few containing provision for certain legal protection of the collected data. Namely, paragraph 1, line 2 of article 83-f imposes protection of the data and information of personal and family character as official secret and protection of the official and professional secret.

#### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

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1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged, even though there is provision securing certain protection of collected and recorded personal data

#### *Article 83-n*

*The Agency for providing services on call shall maintain record of the service beneficiaries and provided services.*

*The type, contents and manner of maintaining the record referred to in paragraph 3 of this article shall be prescribed by the minister.*

Article 83-n gives legal basis for maintaining records of the service beneficiaries and provided services by the Agency for providing services on call, while the contents that is the recorded data are to be further regulated by bylaw.

#### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated



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5. Subsidiary application of the Law on personal data protection has not been envisaged, even though there is provision securing certain protection of collected and recorded personal data

## X. RECORD AND DOCUMENTATION

### Article 106

*Record and documentation shall be maintained in the children facility.*

*The record and documentation shall be maintained and on the rights for children protection.*

*The manner of maintaining of the record and documentation as well as the contents and type of record and documentation shall be prescribed by the minister.*

*The kindergarten shall maintain pedagogical documentation and pedagogical record on the educational activities.*

*The pedagogical documentation as defined by this Law shall include the main registry of children and shall be document of permanent value.*

*The pedagogical record shall include: book on the work of the kindergarten, book on the work of the educational group, planning a preparation of educational activity, and child dossier.*

....

*The type, contents, and manner of maintaining of the pedagogical record and documentation shall be prescribed by the minister.*

Paragraphs 1, 2, and 3 of article 106 of the Law provides legal basis for maintaining record of the collected personal data in the children facilities and on the rights for children protection. The manner and contents that is which personal data are to be collected should be further regulated by bylaw. Paragraphs 4, 5, and 6 of article 106 give legal basis for maintaining pedagogical documentation and pedagogical records which include child's dossier containing his/her personal data. It is stipulated that a bylaw would further regulate the contents that is, the data which are to be collected for the maintaining of the pedagogical documentation. This article does not have provisions that would ensure legal protection of the collected and recorded data.



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## General conclusions from the aspect of the analyzed indicators

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has not been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

### *Record of persons who occasionally keep children*

#### *Article 107*

*Pursuant to article 49, paragraph 3 of this Law, the kindergarten shall maintain record on the persons who occasionally keep children at home.*

*The record on the persons who occasionally keep children at home shall have the following data: name, surname, address, telephone number to contact the person; birth date; gender; unique citizen number; formal education; additional skills; evidence on health status and evidence that he/she have not been banned to perform this activity.*

*The persons who occasionally keep children at home shall be deleted from the record after the expiry of the contract referred to in article 49, paragraph 3 of this Law or if he/she is banned to perform this activity by final decision.*

*The ministry shall maintain record on the persons who have been banned to keep children occasionally at home, thus preventing the possibility for them to keep children again.*

*The record referred to in paragraph 4 of this article shall contain the following data: name, surname and address; birth date and legal basis for ban to keep children occasionally at home.*

*The data from the record shall be secret and can only be delivered to a kindergarten.*

Paragraph 1 of article 107 of the Law provides legal basis for maintaining records of personal data



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on persons who keep children occasionally at home by the kindergarten, while paragraph 2 of the article separately lists the recorded personal data. Paragraph 3 stipulates the deadline for keeping the personal data in the records. Paragraph 4 of article 107 provides legal basis for maintaining records of persons who have been banned to keep children occasionally at home, while in paragraph 5 of the same article the recorded personal data are separately listed. Paragraph 6 of article 107 sets forth certain protection of the personal data on which records are being maintained by the precise emphasis that those are secret and to whom data from the records can be provided. Even though this provision provides certain legal protection, it is our belief that concrete reference to application of the Law on Personal Data Protection would have ensured more comprehensive protection.

### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have been envisaged
3. Deadline for keeping of the personal data has been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

#### *Article 116*

*The ministry in the public children facility shall control the accuracy of the data delivered by the public facility to the Ministry, as well as the legality and regularity in the spending of the finances from the Budget of the country and finances secured from other sources.*

Article 116 of the Law gives legal basis for another body (Ministry of Labor and Social Policy) to



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process and use the personal data collected in the public children facility. However, there are no provisions in regard to personal data protection.

### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

#### *XIII-a. INSPECTION SUPERVISION*

##### *Article 122-a*

*The ministry shall perform inspection supervision on the implementation and application of this Law and other regulations referring to the children protection over the children facilities as well as over other legal entities and physical persons who perform matters of children accommodation and education.*

*The inspection supervision shall include:*

- *inspection over the exercising of the children protection rights and the fulfillment of the beneficiaries' obligations pursuant to this Law,*
- *inspection of the record, documentation and the reports on the work for the children protection rights,*
- *inspection of the record, documentation and reports on the work of the facilities, legal entities, and physical persons performing certain matters of the activity as well as of the executors in the children protection activity, with exception to the pedagogical record and*



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*pedagogical documentation;*

Article 122-a of the Law provides basis for other body than the one collecting and processing the personal body to review and use them. Namely, it is clearly state in which cases during the inspection the ministry can and in which cannot review the personal data records. However, appropriate legal protection of the personal data to be used from the personal data records has not been ensured.

**General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

*Article 122-b*

*The inspection shall be conducted by civil servants authorized by the minister from among the civil servants for children protection authorized to conduct inspection supervision, with higher education, passed exam for civil servant and at least three years of work experience after the passing of the exam.*

*The authorized civil servant referred to in paragraph 1 of this article shall own official ID card issued by the minister to verify his/her official capacity, identity and authorization to undertake inspection matters.*

*The contents and type of the ID card form referred to in paragraph 2 of this article and paragraph 5 of article 122-c of this law, the manner of its issue, use and the recording of the issued and revoked ID cards shall be prescribed by the minister with act.*



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Article 122-b provides legal basis for collection, processing and use of personal data of servants during the conduct of the inspection supervision which are included in the official ID card. It is also regulated that a bylaw would further define the contents, that is the personal data contained in the ID card, the use and record of issued and revoked ID cards, also containing the personal data of the servants.

#### *Article 122-c*

.....

*The authorized person shall own official ID card issued by the mayor.*

Article-c of the Law provides legal basis to collect and process personal data on persons from among the municipal, that is the administration of the city of Skopje who will be authorized to conduct inspection supervision, for the purpose of which he/she is issued official ID card.

#### *Article 122-h*

*The authorized civil servant, that is the authorized person within the scope of responsibilities set forth by this law, during the conduct of the inspection supervision shall at any time have right to enter the premises of the facility and of the other legal entities and physical persons performing certain matters within the activity.*

*During the conduct of the inspection supervision, the authorized civil servant, that is the authorized person shall have right review the object, the premises (playing rooms and other premises), the business books, registries, records, documentation, documents, and acts, to examine the beneficiaries, employees as well as other persons, to verify person's identity by checking the personal ID card, and to undertake other activities set forth by this Law.*

*The senior or other authorized person in the facility and the other legal entities and physical persons performing matters of the activity shall be obliged to ensure smooth conduct of the inspection supervision and to make available for inspection all means and necessary documentation to the authorized civil servant, that is the authorized person within the scope of responsibilities stipulated by this Law.*



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Article 122-h of the Law provides legal basis for the authorized civil servant, that is the authorized person during the conduct of the inspection supervision to collect, process, and use personal data from the records, registries, documentation, acts and documents, as well as to verify person's identity by checking the personal ID card, etc.

The indicators of analysis are no applicable for these provisions.

## XV. PENAL PROVISIONS

### Article 128

*Fine in the amount of 200 to 500 euros in denar equivalency shall be imposed to the responsible person in the social care centre for failing to maintain or inappropriately maintaining of the prescribed records and documentation (article 106, paragraph 2), as well as for failing to act upon decision for removal of noted deficiencies and irregularities within the set deadline (article 122 – j).*

### Article 130

*Fine in the amount of 500 to 1.500 euros in denar equivalency for violation shall be imposed to children facility, that is physical person who independently performs matters of children accommodation and education, as well as to agency for providing services on call, if:*

- *does not maintain the prescribed records and documentation or it maintains it contrary to the manner stipulated by act (article 106),*
- *does not maintain the prescribed records (article 107),*
- *delivers inaccurate data, or illegally or inappropriately uses the finances (article 116),*

*Fine in the amount of 500 to 1.000 euros in denar equivalency for violation shall be imposed to the employee in the facility, if:*

- *physically punishes a child, that is mentally abuses the child, (article 9 ),*
- *maintains the records and documentation contrary to the articles 106 and 107 of this Law*

Articles 128 and 130 of the Law as part of the penal provisions of this Law, envisage fine sanction in cases of failure respect the legal obligation to maintain or inaccurate maintaining of the prescribed records.



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The indicators of analysis are no applicable for these provisions.

## 2.3. Provisions from the bylaws

### RULEBOOK ON THE CLOSER TERMS, CRITERIA, AND MANNER OF EXERCISING THE RIGHT TO ONE-TERM FINANCIAL AID OR NEWBORN AND PARENTAL ALLOWANCE FOR CHILD<sup>8</sup>

#### Article 4

*The submitter of the request for one-term financial aid for newborn in addition to the request for one-term financial aid for newborn shall provide:*

- 1. personal ID card of the mother (photocopy) and the original for inspection;*
- 2. mother's book for the mother for inspection or confirmation form doctor specialist on the order of the child's birth;*
- 3. excerpt from the birth certificates for the child;*
- 4. evidence for citizenship of the requester; and*
- 5. personal ID card of the father (photocopy) and the original for inspection, in the cases referred to in paragraph 2 of article 3 of this Rulebook*

*The submitter of the request for one-term financial aid for newborn in addition to the request for one-term financial aid for adopted child shall provide:*

- 1. personal ID card of the mother (photocopy) and the original for inspection;*
- 2. excerpt from the birth certificates for the child;*
- 3 evidence for citizenship of the requester; and*
- 4. evidence from the social care centre on the order of the adoption.*

#### Article 10

*In addition to the request for exercising the right to parental allowance for child the*

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<sup>8</sup> Official Gazette no. 163/2008, 34/2009



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*mother shall provide:*

- 1. personal ID card of the mother (photocopy) with original for inspection, and for the mothers with new personal ID cards evidence of permanent residence and time period of residing in the municipality, issued by the Ministry of Interior;*
- 2. evidence for citizenship of the mother;*
- 3. . excerpt from the birth certificates for the child;*
- 4. statement by the mother as requester that she does not live and work abroad;*
- 5. . excerpt from the birth certificates for the child that is the children fro the previous order of births and statement by the mother on the order of births of the children according to the date and hour of births registered in the excerpt of the birth certificate of the child;*
- 6. evidence that the children form the previous order of birth are not accommodated in social care facility, foster family or adopted issued by the social care centre;*
- 7. evidence that she has not been deprived of the parental right over the children from the previous order of birth issued by the social care centre;*
- 8. evidence for the mother that she took the mandatory health examinations and controls during the pregnancy issued by the appropriate health institution or health card for inspection;*
- 9. evidence of mandatory vaccination of the child for the second, third, and fourth child born starting from 1 January 2009 issued by the appropriate health institution;*
- 10. confirmation that the child is enrolled and regularly attends teaching in primary, secondary school issued by the institution in which he/she is enrolled – for third and fourth child born starting from 1 January 2009;*
- 11. confirmation on extraordinary continuation of the education issued by the educational institution in which he/she is enrolled - for child who due to illness or injury cannot attend regular education;*
- 12. confirmation for child that due to the type and degree of disability cannot be educated issued by appropriate health institution.*

*The evidences listed under the ordinal numbers 10, 11 and 12 of paragraph 1 of this article shall be submitted at the start of the child's education in accordance to this Law.*

#### *Article 11*

*In cases when the right to parental allowance is exercised by the father that is the guardian of the*



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*child, in addition to the request for exercising the right to parental allowance for child the following shall be provided:*

- 1. personal ID card of the mother (photocopy) that is evidence of permanent of the mother issued by the Ministry of Interior, except for cases when the mother is deceased;*
- 2. . personal ID card of the father that is the guardian (photocopy) with original for inspection, and for the father that is the guardian with new personal ID cards evidence of residence and time period of residing in the municipality , issued by the Ministry of Interior*
- 3. evidence for citizenship of the father that is the guardian;*
- 4. excerpt from the birth certificates for the child;*
- 5. excerpt that is excerpts from the birth certificates for the child that is the children for the previous order of births of the mother and statement by the father that is the guardian on the order of births of the children's mother according to the date and hour of births registered in the excerpt of the birth certificate of the child; evidence on the order of births of the children according to the date and hour of births registered in the excerpt of the birth certificate issued by the Ministry of Interior;*
- 6. evidence that the children from the previous order of birth are not accommodated in social care facility, foster family or adopted issued by the social care centre;*
- 7. evidence that the father that is the guardian has not been deprived of the parental right over the children from the previous order of birth issued by the social care centre, and for the guardian that he/she has not been deprived of the guardianship;*
- 8. excerpt from the death certificates in a case when the mother is deceased;*
- 9. evidence that the mother has abandoned the child issued by the social care centre;*
- 10. evidence from appropriate health institution for longer continued hospitalization of the mother;*
- 11. evidence for seriously impaired health condition of the mother with assessment on the impaired health condition issued by competent commission and appropriate documentation;*
- 12. evidence for studying, training or specialization of the mother issued by appropriate institution that is body;*
- 13. evidence that the mother has been deprived of the working capability issued by the social care centre;*
- 14. statement by the father that is the guardian as requester that he/she does not live and work abroad;*



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15. . *evidence for the mother that she took the mandatory health examinations and controls during the pregnancy issued by the appropriate health institution or health card for inspection;*

16. *evidence of mandatory vaccination of the child for the second, third, and fourth child born starting from 1 January 2009 issued by the appropriate health institution;*

17. *confirmation that the child is enrolled and regularly attends teaching in primary, secondary school issued by the institution in which he/she is enrolled – for third and fourth child born starting from 1 January 2009;*

18. *confirmation on extraordinary continuation of the education issued by the educational institution in which he/she is enrolled - for child who due to illness or injury cannot attend regular education;*

19. *confirmation for child that due to the type and degree of disability cannot be educated issued by appropriate health institution.*

*Depending on the basis under which the father that is the guardian exercises the right to parental allowance for child, he/she shall provide appropriate evidence form the evidence listed under the ordinal numbers 8, 9, 10, 11, 12, and 13 of paragraph 1 of this article.*

#### Article 12

*In addition to the request for extension of the right to parental allowance for child, the mother shall provide photocopy of the personal ID card with original for inspection, and the necessary documents set forth in the items 4, 6, 9, 10, 11 and 12 of paragraph 1 of article 10 of this Rulebook.*

*The evidence referred to in the items 10, 11 and 12 of paragraph 1 of article 10 of this Rulebook shall be provided at the start of the child's education in accordance to this law.*

*If the mother changes the permanent residence, the request for extension of the right to parental allowance for child along with the necessary documentation shall be submitted to the social care centre under whose territory is on the mother's new permanent residence.*

*In cases when the parental allowance is exercised by the father that is the guardian of the child in addition to the request for extension of the right he/she shall provide photocopy of the personal ID card with original for inspection, and the necessary documents set forth in the items 6, 14, 16, 17, 18 and 19 of paragraph 1 of article 11 of this Rulebook.*

*Depending on the basis under which the father that is the guardian exercised the right to*



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*parental allowance for child, in addition to the request for extension he/she shall also provide:*

- confirmation from appropriate health institution on longer hospitalization of the mother;*
- evidence for seriously impaired health condition of the mother with assessment on the impaired health condition issued by competent commission and appropriate documentation;*
- evidence for studying, training or specialization of the mother issued by appropriate institution that is body.*

This Rulebook sets forth legal basis for collecting and processing of separately listed personal data of persons exercising the right to one-term financial aid for newborn and the right to parental allowance for child by the social care centers. There is also provision for collection of sensitive categories of personal data which refer to the health and material status. The Rulebook does not ensure appropriate legal protection of the personal data which are to be collected and processed in regard to these two rights.

### 3. LAW ON FAMILY

This Law regulates marriage and family, relations in marriage and family, certain forms of family protection, family, violence, adoption, guardianship, support and the procedure before the court in marital and family disputes and the procedure for pronouncing temporary measure for protection against family violence.

The Law provides legal basis for collecting, processing, using, and recording of personal data by center for social security, courts, Ministry of Interior, and other bodies when they perform their responsibilities. There is also legal basis for keeping of the collected personal data, but no deadlines for keeping are set. The general conclusion is that the Law does not have provisions referring to subsidiary application of the Law on Personal Data Protection, and thus appropriate legal protection has not been ensured.



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## 2.2. Analysis of the concrete provisions from the Law on Family

This analysis will contain concrete provisions from the Law on Family which are directly or indirectly related to the personal data protection. For the purpose of clearer presentation of the personal data protection within this Law, according to the author's opinion the provisions in this analysis will be included based on their importance, and not on the basis of their numeration, i.e., based on the article numbers.

### Article 16

*A person who has not reached 18 years of age cannot stipulate a marriage.*

*The competent court, in a non-suit procedure, shall allow to a person who has reached 16 years of age to stipulate a marriage, if it has established that the person has reached the required bodily and mental maturity for the exercise of the rights and duties which come to happen in a marriage, and upon previously obtained opinion of a Medical Institution and afforded professional advice in the Centre for Social Work.*

Article 16 of the Law envisages collecting, processing, and using of personal data of a person for conclusion of marriage before legal maturity, but at 16 years of age by health institution, Social Care Centre and the competent court for the purpose of determining that the necessary bodily and mental maturity has been achieved.

### General conclusions from the aspect of the analyzed indicators

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated



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## 5. Subsidiary application of the Law on personal data protection has not been envisaged

### Article 23

*The persons who intend to stipulate a marriage shall submit an application to the administrative body competent for keeping the marriage books.*

*The application for stipulating a marriage may be given in a written form or verbally by minutes.*

*Along with the application, the future spouses shall submit a birth certificate, certificate indicating that they have visited the pre-marriage and marriage counseling service at the Centre for Social Work, when stipulating a marriage for the first time and other necessary documents (a statement authorizing the stipulation of the marriage, a proof that the previous marriage has terminated, authorization, etc.)*


Article 23 of the Law provides legal basis for collecting and processing of personal data of persons who conclude marriage by the body responsible to maintain the marriage registries, which in accordance to the current regulation is under jurisdiction of the Ministry of Justice. This provision does not secure legal protection of the collected personal data.

### General conclusions from the aspect of the analyzed indicators

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

### Article 28

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*In exceptionally justified cases, the competent authority for keeping the marriage books may permit for the marriage to be stipulated only with the presence of one of the future spouses and the proxy of the other spouse.*

*The proxy note contains personal data about the person authorizing the proxy note, the proxy and person with whom the person authorizing the proxy note wants to stipulate a marriage.*

*The proxy note is given in the form of public document.*

Article 28 of the Law provides legal basis for collection and use of personal data in cases when the body in charge to maintain marriage registries will allow for the marriage to be concluded in the absence of one of the spouses, on the basis of issued power of attorney including his/her personal data, the personal data of the proxy, and the person with whom the proxy wants to conclude marriage. The indicators cannot be analyzed in this provisions. However, there is no reference to the regulation on personal data protection.

#### *Article 29*

*The stipulation of a marriage begins by a report of the marriage registrar that the applicants are present and that on the basis of the documents, the statements of the future spouses and the witnesses, it has been determined that there are no obstacles for stipulating of the marriage.*

*If the marriage is stipulated through a proxy, the proxy note issued in the sense of Article 28 of this Law is being read.*

.....

*The marriage registrar shall write the statement by the future spouses declaring that they agree to stipulate the marriage in the marriage registry book, where the future spouses, the committee member of the municipality, the witnesses and the marriage registrar shall sign.*

*The marriage is stipulated once the future spouses have signed in the marriage registry book. After the two future spouses have signed in the marriage registry book, the committee member of the municipality shall pronounce that the marriage has been stipulated between the husband and wife, recorded with their personal names.*



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*Immediately following the registration into the marriage registry book, the spouses shall be issued a marriage certificate.*

Article 29 of the Law provides legal basis for collection, processing and use of the personal data of the future spouses by the body responsible to maintain the marriage registries. They are reordered in the registry and are issued excerpt of the marriage certificate. The provision does not refer to the regulation on personal data protection and thus the legal protection of the data has not been ensured.

#### *Article 43*

*A final verdict for divorce or annulment of the marriage, shall be delivered by the court to the administrative authority competent for keeping the register of marriages, within 30 days at latest, for registration of the changes, as well as to the Centre for Social Work, provided that there are minor children or children to whom the parental right has been extended in the marriage.*

Article 43 of the Law gives legal basis for collection, processing and use of personal data of persons in the process of divorce or annulment of the marriage by the court, the body responsible for maintaining the marriage registry and the social care centre. In this manner use of the personal data by another body has been enabled, but there is no reference to special protection of the personal data.

#### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set



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4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

#### Article 51

*The paternity may be acknowledged in front of the Registrar, Centre for Social Work and Court. The authority to whom this acknowledgement has been given shall have the duty to deliver the minutes for acknowledgment of paternity to the registrar competent for the registration of the child in the register of births, without delay.*

#### Article 52

*The declaration for acknowledgment of paternity for the child born out of wedlock may be also given through a proxy.*

*The proxy note must be attested and contain explicit authorization for the proxy to make a declaration for acknowledgment of paternity for a certain child born of a certain mother.*

Article 51 of the Law gives legal basis for collection, processing and use of personal data by the Center for social security, the court and the registry officer when determining fatherhood. There is also legal basis for delivery and use of the personal data by the body responsible for maintaining the birth registry. Article 52 of the Law envisages collection, processing and use of personal data included in the special power of attorney for recognition of fatherhood of a certain child born by certain mother. There is no reference to special legal protection of the personal data.

#### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined



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2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

#### Article 56

*The acknowledgment of paternity shall have legal consequences and the same shall be registered in the register of births, solely if the mother of the child gives her consent to it, of which she shall be notified by the registrar.*

*Should the mother not be alive or be missing, the declaration shall be given by the guardian of the child, upon the approval of the Center for Social Work.*

Article 56 of the Law gives legal basis to process, use and record personal data in the birth registry during the procedure of recognition of the fatherhood, provided the mother has agreed thereof. Paragraph 3 of the same article stipulates that when the mother cannot give consent due to certain reasons, the statement to be given with approval by the Social Care Centre by the child's guardian. Legal protection of the personal data has not been ensured by this provision.

#### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated



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5. Subsidiary application of the Law on personal data protection has not been envisaged

## 2. Disputing of fatherhood and motherhood

### *Article 68*

*The woman who is registered in the register of births as the mother of the child may repudiate her maternity provided she considers not to be the mother of the child.*

*The charges for repudiation of maternity may be brought within three months from the discovery of the fact that she is not the mother of the child, and until the child becomes of major age at latest.*

### *Article 69*

*The woman who considers herself to be the mother of the child may repudiate the maternity of the woman who is registered in the register of births as mother of the child, provided that together with the same charges she would ask for establishment of her maternity.*

### *Article 70*

*The child may repudiate the maternity of the woman who has been registered in the register of births as his mother.*

*Charges for repudiation of maternity may be brought by the child until s/he has reached 21 years of age.*

Articles 68, 69, and 70 of the Law foresee use of personal data of the mother and child from the birth registry in the process disputing motherhood by the woman who is registered as mother in the birth registry, then by the woman who is considered as child's mother, and the child itself until the age of 21. There is no reference to application of the regulation on personal data protection.

### *Article 84*

*The Center for Social Work shall have the duty to undertake the necessary measures in order to protect the personality, the rights and interests of the child.*



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*Every citizen, authority and legal person has the duty to notify the Center for Social Work immediately upon the discovery of the fact that the parent does not exercise his parental right or that for other reasons the protection of the personality, rights and interests of the child is necessary.*

Article 84 of the Law gives legal basis for the Center for social security as body responsible for performing supervision over the parental right, to take care of the child's personality. The provision does not specifically refer to application of the regulation on personal data protection.

#### *Article 89*

*The Centre for Social Work, when there is a reasonable doubt for abuse, may ask from the parents to be informed on the way of management of the property of the child.*

*The Centre for Social Work may ask from the court, in order to protect the property interests of the child, to allow undertaking measures for securing the property of the parents.*

*The Centre for Social Work may ask from the court, in order to protect the property interests of the child, to decide that the parents with respect to the management of the property of the child, to have the capacity of guardians.*

#### *Article 91*

*The Centre for Social Work, when it shall learn that there is a danger for abuse of the parental right or danger for rough neglect of the parental duties, shall have the duty to undertake immediate measures for protection of the personality, rights and interests of the child.*

Articles 89 and 91 of the Law provide legal basis for collection, processing and use of the personal data of the child and parents by the center for social security in cases when it is in the child's interest. In that regard, article 89 sets forth possibility for transfer of data from the Centre to the court in the process of initiating procedure for protection of the property interest of the child. Paragraph 3 of article 91 envisages obligation on behalf of the Centre to undertake all measures for protection of child's personality in cases when there is danger of abuse of the parental right or severe negligence of the parental duties. These provisions do not refer to



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application of the regulation on personal data protection.

## General conclusions from the aspect of the analyzed indicators

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

### Article 94

*The court upon proposal of the parents or the Centre for Social Work, may in a non-suit procedure decide the parents to continue to exercise their parental right if the child after the majority because of disabilities in his mental development is incompetent to take care by himself of his personality, rights and interests.*

*When the reasons owing to which the parental right has been extended shall cease to exist, the court upon proposal of the parents or the Centre for Social Work, shall decide on the cessation of the parental right.*

*The decision of the court of paragraph 1 and 2 of this Article shall be registered in the register of births and in the register of records of real estate.*

Article 94 of the Law gives legal basis for collection, processing and maintaining personal data record on persons in cases when the parental right is extended and when it is decided on its termination. Paragraph 3 sets forth the personal data to be recorded in the birth registry and the real estate registry. This article also does not refer to application of the provisions on personal data protection.



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## General conclusions from the aspect of the analyzed indicators

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

### *Family violence*

#### *Article 94-d*

*The official person and legal entity referred to in paragraph 3 of this article which in the course of their work undertook certain activities in regard to family violence shall be obliged immediately, but not later than within 72 hours of the undertaking of the activities to deliver the official documentation and notification on the undertaken activities as well as the other documentation (minutes, witness statement, medical findings, etc.) to the competent Social Care Centre.*

*The Social Care Centre whenever it has knowledge of family violence shall undertake the following protection measures:*

- 1) secures necessary accommodation for the person – victim of violence, which can last six months at most, with possibility for extension for another six months;*
- 2) secures appropriate health care;*
- 3) secures appropriate psycho-social intervention and treatment;*
- 4) directs them to appropriate counseling office;*
- 5) if in the family there is a child who is regular student, assists for continuation of the regular education;*
- 6) notifies the body of enforcement;*



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- 7) provides any type of legal protection and representation;
- 8) initiates procedures before the competent court and undertakes measures arising from the relations between the parents and children;
- 9) if necessary, submits request for issuing temporary protection measure to the court; and
- 10) undertakes other measures which it finds necessary for solving the problem.

Association of citizens registered for accomplishing goals and tasks in the area of social care independently or in cooperation with the Social Care Centre may undertake the protection measures referred to in paragraph 5 of this article, with exception of the protection measures defined in the items 8 and 9. The association of citizens shall be obliged to notify the competent Social Care Centre competent according to the place of residence of the family violence victim on the undertaken activities within 24 hours.

The Social Care Centre after the receipt of the notification referred to in paragraph 6 of this article shall prepare appropriate decision within 24 hours. The association of citizens shall be obliged to deliver the entire documentation to the Social Care Centre within 72 hours of the undertaking of the measures for further processing.

Article 94-d of the Law provides legal basis for collection, processing and use of personal data of persons related to family violence by competent entities (Social security center, associations of citizens registered for accomplishing goals and tasks in the area of social care). In this sense, there is legal basis for delivery and use of the personal data by another body. Namely, the Social Care Centre may deliver them to the competent court for initiation of procedure, while the association is obliged to notify the Centre within 24 hours and to deliver the documentation with the personal data within 72 hours of the undertaking of the measures. The article does not envisage special legal protection of the personal data.

### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined



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2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

#### *Conditions and criteria for adoption*

##### *Article 100-a*

*Adoptive parent can be a person who has working capacity, has personal attributes for successful performance of the parental rights and is not older than 45 years.*

.....

*The selection of the adoptive parent shall depend on the following criteria: health condition, psycho-social status, material status, accommodation conditions, time of waiting, degree of education, marital status, and citizenship.*

*The closer criteria for selection of adoptive parent referred to in paragraph 5 of this article shall be prescribed by the Minister of Labor and Social Policy.*

Article 100-a of the Law provides legal basis for collection, processing, using, and recording of concrete personal data (regarding the personal status, health, material, social status and other data) of the person who wants to be adoptive parent. The last paragraph stipulates that the criteria for selection of adoptive parent will be further regulated with bylaw.

##### *Article 104-a*

*After the receipt of the request and the documentation, the Commission checks the documents and after it will conclude that the conditions from article 104, paragraph 2 of this Law are fulfilled, copy of the request along with copy of the entire file shall submit to the Social Care Centre responsible according to the place of residence of the request submitters within 30 days of the day of receipt of the request.*

....



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*If based on the assessment of the documents, the Commission determines that the conditions set forth in article 102 of this Law are not fulfilled it shall reach decision to deny the request.*

Articles 104 and 104-a of the Law provide legal basis for collection, processing and use of personal data in the adoption procedure by the Commission and the Social security center. This provision does not contain reference to the regulation on personal data protection and does not ensure legal protection of the personal data.

### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

#### *Article 104-b*

*The Social Care centre to which the request has been submitted shall perform assessment of the eligibility of the adoptive parents and the motif for adoption through continued monitoring of the potential adoptive parents for a period of at least four months, but not longer than six months, and based on the finding and opinion of the professional team, it shall prepare proposal for registration in the register of potential adoptive parents.*

*In cases when the spouse of the parent is submitter of the request, the period of continued monitoring shall last two months.*

*In cases when the persons referred to in articles 100-b and 101-a of this Law are submitters of the request, in addition to the matters set forth in paragraph 1 of this article, the Social Care Centre shall be obliged to determine the reasons and justification for such adoption.*



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*In the cases referred to in article 104-a, paragraph 3 of this Law, the Social Care Centre to which the request is being resend, shall prepare finding and opinion of the professional team and proposal for registration in the register of potential adoptive parents on the basis of the documents.*

#### *Article 104-d*

*The Social Care Centre after completing the matters referred to in article 104-b of this Law shall deliver all acts along with the finding and opinion of the professional team and the individual findings and opinions of the professional workers, as well as the proposal for registration in the register of potential adoptive parents to the Commission.*

Article 104-b of the Law provides legal basis for collecting, processing and using of personal data of potential adoptive parents by the Social security center in order to evaluate their eligibility. Paragraph 4 of the article gives legal basis for suggesting the collected personal data of the potential adoptive parents to be recorded in separate register. However, their legal protection is not ensured, and there is no deadline set for the period of their keeping pursuant to the regulation on personal data protection. Article 104-d provides legal basis for the Social security center to deliver the collected personal data to the Commission.

#### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

#### *Article 104-e*



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*The Commission within 30 days, but no longer than 60 days of the day of receipt of the matters referred to in article 104-d of this Law shall reach decision and make registration in the register of potential adoptive parents if the conditions stipulated by this Law are fulfilled, or shall return the file for further processing and shall set deadline within which the competent social care centre is obliged to act and eliminate the deficiencies, if it is not done by the Commission itself.*

*The Commission shall reach decision on deletion from the register of potential adoptive parents: after the adoption, if one of the conditions set forth in article 120 of this Law occurs, in case of marriage or termination of the marriage, and due to death of the adoptive parent.*

*The Social Care Centre shall archive the data on the adoptive parent in the Program for electronic selection of the most appropriate adoptive parent within three days of the receipt of the decision referred to in paragraph 2 of this article.*

#### *Article 104-f*

*The Social Care Centre shall monitor minor children without parents and parental care and shall give proposal for registration in the register of potential adoptive children, which is delivered to the Commission.*

*The Social Care Centre shall deliver the proposal of paragraph 1 of this article along with the finding and opinion of the professional team and the individual findings and opinions of the professional workers to the Commission, which is obliged to enter them in the register of potential adoptive children within 30 days of the receipt of the matters of paragraph 1 of this article.*

*After the registration of the child in the register of potential adoptive children, may give consent the guardianship of the child to be responsibility of another social care centre. By giving consent, all rights and obligations cease to exist on part of the social care centre which gave the consent.*

*The Commission shall reach decision for deletion from the register of potential adoptive children: after adoption, if the parent withdraws the consent referred to in article 107 of this Law and due to death of the adoptive child.*

*The Social Care Centre shall archive the data on the child in the Program within three days of the receipt of the matters of paragraph 4 of this article.*

Articles 104-e and 104-f provide legal basis for recording of the collected and processed personal data of potential adoptive parents and adoptive children in register. Paragraph 2



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and 4 of the articles stipulate that personal data are deleted from the register upon occurrence of the conditions set forth by the Law. Paragraph 3/paragraph 5 of the articles envisage archiving of the data on the adoptive parent/child in special program of the Social security center, which imposes keeping of their personal data without a deadline being set. These articles also do not have provisions for protection of the collected and recorded personal data.

### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

#### *Article 104-h*

*The Commission may check the justification of the proposal referred to in articles 104-d, and 104-f of this Law given by the social care centre.*

Article 104-h provides legal basis for the Commission to use the personal data collected and processed by the Social security center, which refer to the (potential) adoptive parents and children. The indicators cannot be analyzed in this provision.

#### *Article 104-i*

*The Commission shall immediately deliver copy of the decision and excerpt from the registers of*



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*articles 104-d and 104-f of this Law along with the entire documentation to the competent social care centre, and shall notify the submitter of the request on the registration.*

*The Social Care Center shall enter the data in the Program within three days of the matters referred to in paragraph 1 of this article.*

*The data entered in the Program which refer to the personal name of the adoptive parent, in accordance to the Program, shall appear as code during the selection of the most appropriate adoptive parent from among the top five potential adoptive parents.*

*If changes occur in the conditions for adoption, the submitter of the request shall be obliged to notify the social care centre thereof within seven days of the occurrence of the change by providing appropriate evidence.*

*The social care centre, after receiving the matters referred to in paragraph 3 of this article, shall enter the change in the Program, and immediately shall notify the Commission thereof, and shall send the original document on the basis of which the change was made.*


*The data entry in the Program is made by official persons in the social care centre authorized by the person managing the social care centre and they are responsible for the accuracy of the entered data.*

*The entry of data on the service beneficiaries (social care centers) or their achieving, as well as entry or change of the data on the basis of which the material status of the adoptive parent is determined shall be entered in the Program by the administrator in the Ministry of Labor and Social Policy.*

Article 104-i gives legal basis for use of the personal data of the adoptive parents and children by the Social security center which also records them in the Program whereby during the selection the personal data referring to the personal name of the adoptive parent are coded. Paragraphs 5 and 6 of the article define the persons who are authorized and responsible to enter and archive data in the Program.

### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

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1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

#### *Article 104-j*

*After the receipt of the matters of article 104-l of this Law, the social care centre electronically shall select the most appropriate adoptive parent and shall notify the Commission on the top five adoptive parents from the list of the program.*

*In exception to the paragraph 1 of this article, when adoptive parents are the persons referred to in articles 100-b, 100-c and 101-a of this Law, the social care center shall be obliged to deliver proposal to the Commission for accommodation of the child in the family of the potential adoptive parents along with the determined reasons and justification for such adoption.*


*After the receipt of the matters of paragraph 1 of this article, on the basis of the documents and the data in the Program, the Commission shall select the most appropriate adoptive parent. The Commission shall be obliged to provide elaboration on the selection.*

*In the cases of paragraph 2 of this article, the Commission shall not select adoptive parent.*

*The Minister of Labor and Social Policy shall prescribe the manner of electronic selection of adoptive parent.*

Article 104-j gives legal basis for collection, processing and use of personal data by the Commission, which the Social security center informs on the top five adoptive parents on the list of the Program. Paragraph 5 sets forth that the electronic selection of the adoptive parent will be regulated with bylaw.

#### **General conclusions from the aspect of the analyzed indicators**

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From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

#### *Article 104-k*

*After the execution of the matters of article 104-j of this Law, the Commission shall reach decision for accommodation of the child in the adoptive family and shall immediately deliver it to the competent social care centre according to the place of residence of the potential adoptive parents.*

*Upon complete adoption, in the decision referred to in paragraph 1 of this article the birth date of the child shall be entered from which the identity of the child's parents and data cannot be discovered.*

Article 104-k provides legal basis for collecting and processing of personal data of the adoptive child and parent by the Commission as well as legal basis for their use by the Social security center. Upon complete adoption data on the birth date of the child are entered in the decision, whereby the identity of the parents and data cannot be discovered. In this manner certain protection of the personal data of the child's parents is ensured in order to secure the secrecy of their identity.

#### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that



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1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

#### *Article 104-I*

*After the expire of the accommodation period, the Social Care Centre shall prepare report on the accommodation and shall give opinion the child to be adopted by the concrete adoptive parents and shall deliver it to the Commission for realizing the adoption.*

*If based on the inspection of the acts, the Commission assesses that the proposal by the social care centre is not in the interest of the child, it shall deny it, or shall return the file for supplementing of the procedure, or shall propose other adoptive parents.*

*The Commission shall reach decision on adoption within 30 days of the receipt of the matters of paragraph 1 of this article.*

Article 104-I provides legal basis for the Commission to process and use the personal data of the child and potential adoptive parents collected by the Social security center and reaches administrative act on the adoption. Legal protection of the personal data has not been envisaged.

#### *Article 105*

*While establishing the adoption, the presence of the adopter, his spouse, the parents, that is the guardian of the adoptee, as well as of the adoptee if he is over 10 years of age, except of the adoptee of paragraph 3 Article 103 of this law, shall be required.*



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*In justified cases, the presence of the spouse of the adopter, who does not figure as adopter shall not be required, if his consent for the adoption, has been given by him/her in front of the Centre for Social Work, upon the minutes in which the adopter and the adoptee must be precisely specified.*

*The establishment of the adoption shall be carried out without the presence of the public.*

Article 105, paragraph 2 gives legal basis for collecting and processing personal data of the adoptive parent and child in the minutes of the Social Care Centre, and that doesn't include the consent of the spouse of the adoptive parent who does not appear as adoptive parent. Paragraph 3 envisages certain protection of the personal data of the persons involved in the adoption, while the public is excluded.

#### *Article 106*

.....

*If the parent who gives the consent for the child to be adopted is illiterate, the statement on consent shall be given in the form of minutes in the premises of the social care centre and in presence of the professional team of the social care centre.*


*The statement shall be signed by the parent who instead of signature shall place fingerprint on the written statement and the members of the professional team.*

*The statement shall be entered in archive book and shall be verified with seal of the social care centre.*

Paragraph 6 of article 106 gives legal basis for collection and processing of personal data of the parent who gives consent of adoption of the child and who due to illiteracy instead of signing the statement in the minutes puts fingerprint. Furthermore, the data are entered in archive book, but no deadline is set for their storage. Also legal protection of the data is not envisage.

#### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

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1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has not been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

#### *Article 106-a*

*The written statement of article 106 of this Law shall contain on: the personal name, date and place of birth, place and address of residence, unique citizen number and number of the personal ID card of the parent or guardian; the personal name, date and place of birth of the child, and if the child is born in marriage or not, consent for adoption of the child without determining the adoptive parent (except when adoptive parents are the person referred to in articles 100-b and 101-a of this Law); type of adoption; reasons for giving consent for child's adoption, as well as that he/she is familiar with all consequences of the statement.*

Article 106-a separately lists the personal data (special categories) of the parent, guardian, and child who is to be adopted and which are included in the written consent for adoption. The indicators cannot be analyzed in this provision.

#### *Article 109*

*The official from the Commission, on the basis of the identity documents and the declarations*

*about the personal identity of the persons present, shall determine that those are the persons of Article 105 of this law, and then he shall acquaint them with their rights and duties, which result from the adoption and shall request declarations for adoption consent,*



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*from the persons who have the duty pursuant to this law to give such a declaration, that is he shall read their previously given declarations for adoption consent.*

Article 109 gives legal basis for collection of personal data in the process of determining the identity of the persons present at the adoption, as well as processing of the data given in the statement for consent. Also legal protection of the data is not envisage.

#### *Article 110*

*At the adoption, minutes shall be made and a decision shall be brought.*

*The minutes and the decision on full adoption shall contain data for the performed adoption, the agreement about the adoptee's personal name and place of birth of the child.*

*In the minutes and decision for incomplete adoption, data for the performed adoption, for the*

*agreement about the personal name of the adoptee, about the place of birth of the child, and about his inheritance rights with respect to the adopter, shall be inserted, if the adoption is partial.*

*The minutes shall be signed by the official who represents the child, the parents, that is the guardian of the child and the adopters.*

Article 110 gives legal basis for collecting and processing of personal data of the persons present at the adoption which are included in the minutes and the decision.

#### *Article 111*

*After complete adoption, the adoptive parents shall be registered as parents of the child in the birth registry while as birth place shall be registered the place which agreeably would be set by the adoptive parents.*

*After incomplete adoption, the surname of the child agreeably set by the adoptive parents shall be registered in the birth registry, with note that the child is incompletely adopted.*

*The registry officer shall be obliged to make new entry in the birth registry and to issue excerpt of*



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### *the birth certificate to the adoptive parents*

Article 111 gives legal basis for recording and keeping of the personal data of the adoptive child and parent in the birth registry maintained by another body, that is the Ministry of Justice.

### *Article 112*

*The Centre for Social Work, shall deliver the decision for adoption, to the competent registrar, within 15 days at latest, for the purpose of registration in the register of births. After the new entry has been made in the register of births, the registrar has the duty to inform the Registrar's Office in order to delete the old entry.*

Article 112 provides legal basis for delivery of the collected and processed personal data from the Commission to the competent registry officer in order to enter them in the record.

### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

### *Rights and obligations of the adoptive parent and adoptive child*

#### *Article 121*

*After the termination of the incomplete adoption, the competent social care centre may impose on the adoptive parent to support the adoptive child until maturity on the expense of the adoptive parent by taking in to consideration his property status.*



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*The competent social care centre may set obligation on the adult adoptive child to support the adoptive parent who is not capable of working and has no means for life.*

Articles 121 and 122 provide legal basis for processing of personal data of the adoptive child (data on the property status and surname) by the Social security center, after the termination of incomplete adoption. There is no provision for their protection.

#### *Article 123*

*The valid decision for cessation of the partial adoption, shall be delivered to the competent registrar for the purpose of registration in the register of births.*

#### *Article 123-a*

*The data on the adoptions shall be considered official secret.*

Article 123 provides legal basis for delivery and use of the personal data of persons involved in incomplete adoption which are included in the final decision to the competent registry officer in order to have them recorded in the birth registry

Article 123-a provides certain protection by stipulating that the data on the adoptions will be considered official secret, however reference to the regulation on the personal data protection would ensure more comprehensive legal protection of the data which are being collected, processed, used and recorded pursuant to this Law.

## GUARDIANSHIP

### Article 128

Concerning the need to place a person under guardianship or to apply upon him some form of protection, afforded by the Centre for Social Work, the following are obliged to inform that body:

1) the registrar and the state authorities when dealing with affairs under their jurisdiction they will learn

of such a case.

2) relatives, family members and neighbours and



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3) enterprises, institutions, local communities and other organisations and associations.

Article 128 provides legal basis for the legal entities when performing their duties or some physical persons having knowledge on the need to place a certain person under guardianship to inform and deliver some personal data to the Social security center.

#### *Article 129*

*When the Centre for Social Work shall learn about the need of placing a certain person under guardianship, it shall immediately undertake appropriate measures, for the protection of the personality, rights and interests of that person and shall initiate a procedure for placement under guardianship.*

*While determining the form of protection for the person who is being placed under guardianship, the Centre for Social Work shall be primarily guided by the interests of the person who is being placed under guardianship and the interests of her/his family, as well as by the material circumstances, wherewith it cooperates with appropriate organizations and bodies in the exercise of the protection.*

Article 129 gives legal basis for the Social security center to collect and process personal data on a given person that needs to be placed under guardianship, including data on the material status of the family. It is also envisaged the centre to undertake measures for protection of the personality of that person. The data are to be delivered and used by other bodies. The article does not have reference to application of the regulation on personal data protection.

#### *Article 134*

*The Centre for Social Work is obliged to keep records about the persons placed under guardianship, the undertaken guardianship measures, and about the property of the person placed under guardianship.*

*The Minister of Labor and Social Policy shall issue instructions on keeping the records and documentation of paragraph 1 of this Article.*

Article 134 gives legal basis for maintaining records on personal data of the persons under guardianship, including data on their material status. It is also envisaged that a bylaw should be adopted to regulate the maintaining of the record.



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## General conclusions from the aspect of the analyzed indicators

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

### Article 141

*The Centre for Social Work notifies the registrar about the placement under guardianship and cessation of guardianship, within 15 days from the day of the entry into legal force of the decision.*

*If the person placed under guardianship has immovable property, the Centre for Social Work shall notify as well the competent body which keeps the registers on immovable properties.*

Article 141 gives legal basis for use of the collected and processed personal data of the persons when placing them under guardianship by another entity (the registry officer and the body maintaining the real estate registries) after the decision becomes final.

## General conclusions from the aspect of the analyzed indicators

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have not been envisaged



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3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

#### Article 142

*The guardian is obliged, within the framework of his authorizations, to conscientiously take care of the personality and the rights and interests of the person placed under guardianship and to conscientiously manage her/his property.*

*The guardian cannot, without a prior approval of the Centre for Social Work, undertake affairs which surpass the framework of the regular running or managing of the property of the person placed under guardianship.*

Article 142 sets forth the obligations of the guardian to take care of the personality, rights and interests of the person under guardianship. The provision does not refer to the regulation on personal data protection.

#### Article 143

*If the person placed under guardianship has property, the Centre for Social Work shall issue a decision to make an inventory and evaluation of the same and to confide the property for management to the guardian.*

*The inventory and the evaluation of the property of the person placed under guardianship shall be made by a commission appointed by the Centre for Social Work.*

*During the inventory and the evaluation of the property of the person placed under guardianship, the guardian and the person placed under guardianship, if in a position to understand what is the issue, as well as the persons under whose rule the property of the person placed under guardianship is, shall be obligatorily present.*

Article 143 gives legal basis for collection, processing and use of the personal data of the guardian and the person under guardianship by the Social security center when making inventory and assessment of the property which is to be transferred to the guardian to manage it.



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## Article 144

*Upon exception of Article 142 of this law, the Centre for Social Work may make an inventory and evaluation of the property and undertake other measures for securing the property of the person that is being placed under guardianship, prior to the issuance of a decision for placement under guardianship as well, provided there are valid reasons for the same.*

*Should there be an imminent danger for the property of the person placed under guardianship relating to her/his immovable property, the Centre for Social Work may request from the court prior to the inventory and the evaluation of the property, a registration entry in the public registers of immovable properties for initiation of a procedure for the placement of that person under guardianship.*

Article 144 provides legal basis for collecting, processing, and recording of the personal data (regarding the property rights) of the person prior to placing him/her under guardianship in certain cases in order to protect his/her interests.

## General conclusions from the aspect of the analyzed indicators

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

## *Custody of minor victims of trafficking with human beings*

### *Article 177-b*

*Social security center, whenever receive notification from the Ministry of Interior that has been identified minor victim of trafficking with human beings, immediately take measures to protect the person, rights and interests of the child and placed him under guardianship.*



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### Article 177-d

*Trustee of the article 177 b, paragraph 2 of this law in the performance of his duties cooperate with the Social security centre, Ministry of Interior, Public Attorney and other relevant institutions and institutions that are competent to take action to protect the person, rights and interests of the child.*

Article 177-b provides a legal basis for the Social security centre to use personal data of a minor- victim of trafficking received from the Ministry of Interior for taking actions for his protection. Legal protection of collected and processed personal data is not provided. Article 177- d is provides also using the personal data from various entities (Ministry of Interior, Social security centre, Public prosecutor, etc.), which according to their powers shall take measures to protect the personality, rights and interests of the minor.

### General conclusions from the aspect of the analyzed indicators

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

### Article 177-d

*The guardian of a minor victim of trafficking with human beings shall be obliged to care as a parent for the personality, rights and interests of the child under guardianship, and in particular: to keep secret of the identity of the child and to keep secret of the identity of the family.*

The 177-d shall specify the obligations of the guardian of minor - victim of trafficking with human beings, among other things to keep secret of the identity of the child and the family, and to took personal documents for the child that will contain personal data for him. This is



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one of the few provisions in the Law which provides for ensuring confidentiality of certain personal data relating to the identity of the child and family.

#### *PROCEDURE IN MARITAL DISPUTES*

##### *Article 245*

*The president of the council shall prepare official note on the reconciliation hearing.*

Article 245 gives legal basis for collection and processing of the personal data of the clients in the reconciliation procedure which are included in the official note prepared by the president of the court council.

##### *Article 274*

*With the verdict with which the marriage has been annulled or divorced, the court shall bring a decision for sustenance of the children established in Article 179 of this law.*

##### *Article 275*

*The verdict for sustenance of the child may be brought by the court also in suits for establishment or repudiation of paternity or maternity, when the bringing of this verdict, in light of the outcome of the suit and the circumstances of the case is possible and indispensable.*


Articles 274 and 275 provide legal basis for the court to process the collected personal data in cases when during divorce or marriage annulment or in disputes for establishing or disputing fatherhood and motherhood, a decision on support of persons is reached.

#### *2010 Amendments*

##### *Article 28*

*The Social Care Centre shall enter in the Program the data on all persons recorded in the register of potential adoptive parents and the register of potential adoptive children within 30 days of the day of entry into force of this Law.*

## **RULEBOOK ON THE CLOSER CRITERIA AND MANNER OF ELECTRONIC SELECTION OF ADOPTIVE**

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## PARENT<sup>9</sup>

### Article 2

*The selection of adoptive parent shall be done electronically in accordance to the following criteria: health status, psychosocial status, material status, accommodation conditions, time of waiting, degree of education, martial status, and citizenship.*

*A number of points for each of these criteria is set by this Rulebook.*

*The specification of the criteria for selection of adoptive parent referred to in paragraph 1 of this article and the number of points by individual criteria is set forth in Chapter 3 of this Rulebook, and it is a basis for the operation of the Program for electronic selection of adoptive parent.*

### Article 15

*After the data entry on a child who is registered in the registry of potential adoptive children, the social care centre shall make the selection of the most appropriate adoptive parent and shall notify the Commission on the top five potential adoptive parents form the list of the Program. The Commission based on the documents, the data in the Program and the finding and opinion of the professional team shall select the most appropriate adoptive parent.*

### Article 16

*In exception, when a sibling of already adopted child is being adopted and the adoptive parent is the spouse of the child's parent or when adoptive parents are relatives who pursuant to the Law of Family can be adoptive parents, the adoption shall only be recorded – archived.*

This Rulebook sets forth the criteria which are taken into consideration for electronic selection of adoptive parent. There is also legal basis for collecting, processing, using and recording of personal data of potential adoptive parents and children by the Social security centre. Paragraph 1 of article 11 of the Rulebook provides legal basis for the Centre to collect and process personal data of the potential adoptive parent in regard to the psychosocial status. Paragraph 2

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<sup>9</sup> Official Gazette no. 12/2011



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determines use of the personal data of the potential adoptive parent, which are recorded in the Registry of potential adoptive parents for the purpose of determining the time of waiting for adoption.

Article 15 provides legal basis for the Social security centre to process and use the personal data collected and recorded in the registry of potential adoptive children and to send them to the Commission, which further uses and processes the personal data from the appropriate documentation and the finding and opinion of the professional team.

Article 16 gives legal basis for recording and keeping of the personal data of persons involved in adoption in cases precisely defined by the Rulebook. There is no provision on the deadline for keeping of the personal data.

The Rulebook sets forth legal basis in cases when interested adoptive parents cannot be found on the territory of that centre, certain data (excluding the name and surname of the child) to be transferred to all Social security centers in the country which should provide an answer if there are interested adoptive parents within given deadline. If from the answers of all social care centers is concluded that there are no interested adoptive parents for that child, the Social security Centre initiates the procedure for electronic selection of adoptive parent for persons who do not reside on the territory of the *country* or for persons who are not citizens of the *country*.

## 4. LAW ON ASYLUM AND TEMPORARY PROTECTION

### 4.1. General comments

This Law regulates the conditions and procedure for granting and cessation of the right of asylum to an alien or a stateless person, seeking recognition of the right of asylum in the



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*country*, as well as the rights and duties of the asylum seekers and persons who have been recognized the right of asylum in the *country*.

This Law regulates also the conditions under which the *country* can grant temporary protection as well as the rights and duties of persons under temporary protection.

The Law provides a legal basis for collecting, processing, usage, recording and exchange of personal data of asylum seekers. Article 67 of the Law provides legal basis for keeping records of personal data on asylum seekers, recognized refugees and persons under subsidiary protection, data by the Department of asylum. The law directs the subsidiary application of the Law on Protection of personal data and provide adequate legal protection of collected and recorded personal data.

#### **4.2. Analysis of the concrete provisions from the Law**

This analysis will contain concrete provisions from the Law on asylum and temporary protection which are directly or indirectly related to the personal data protection. For the purpose of clearer presentation of the personal data protection within this Law, according to the author's opinion the provisions in this analysis will be included based on their importance, and not on the basis of their numeration, i.e., based on the article numbers.

##### *Publicity during the Procedure*

###### *Article 22*

*In the interview of the asylum seeker, the public is excluded.*

*The person who gives legal assistance authorized by the applicant, the interpreter and the representative of the High Commissioner for Refugees, shall not be regarded, as public in the sense of paragraph 1 of this Article.*

*Persons referred to in paragraph 2 of this Article shall be informed in writing about the date, the time and the place of the interview.*



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*Persons present at the interviewing are bound to keep confidential the data learned during the procedure, unless the asylum seeker explicitly allows them to communicate with the public, and the competent official of the Section for Asylum is of the opinion that this would not harm the course of the procedure.*

*The Section for Asylum can share the information regarding policy and practice in the field of asylum, which are of significance for particular scientific researches.*

Article 22 of the Law provides a legal basis for collecting personal data of persons requesting asylum, which prescribes during the hearing to exclude the public. Paragraph 4 of the Article 22 provides certain legal protection of the personal data collected with the prediction that persons attending the hearing have an obligation to keep the information confidential, except for exemptions provided by this provision.

### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

Unaccompanied Minors, Persons with Mental Disabilities and Persons with no Procedural Capacity

### *Article 23*

*Unaccompanied minors, persons with mental disabilities and persons with no procedural capacity, who are in need of protection pursuant to Article 2 of this Law shall be appointed a guardian, as soon as possible, pursuant to the Law on Family.*



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*The unaccompanied minor in the sense of paragraph 1 of this Article is an alien below the age of 18, who arrives in the territory of the country, unaccompanied by his representative by law, or who is left without such accompaniment after he has entered the territory of the country.*

*The Ministry of Interior shall take all necessary measures to trace the members of the family of the unaccompanied minor.*

*The best interests of the child shall be a primary consideration when examining applications for recognition of the right to asylum of unaccompanied minors*

Article 23 of the Law provides a legal basis for collecting, processing and use of personal data of unaccompanied minors, persons with mental disabilities and persons with no procedural capacity, who need protection by the Ministry of Interior and Ministry of Ministry of Labour and Social Policy. Indicators are not applicable in these provisions.

*Vulnerable persons with special needs*

*Article 23-a*

*In the implementation of this Law, the special needs of vulnerable persons who are asylum seekers, recognized refugees, persons under subsidiary protection or persons under temporary protection, shall be taken into account.*

*Vulnerable persons, in the sense of paragraph 1 of this Article, are persons with no procedural capacity, minors, unaccompanied minors, persons with serious medical condition, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.*

*The special needs of vulnerable persons of paragraph 1 of this Article shall be established after an individual evaluation of their situation, undertaken by the competent public institution for social protection.*

*When accommodating and meeting the standard of living of persons of paragraph 2 of this Article their condition shall be taken into account with the provision of appropriate medical, psycho-social and other assistance.*

*It is necessary when assessing the application for recognition of the right to asylum to have regard to gender-specific forms of persecution.*



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Article 23-a of the Law provides a legal basis for public welfare institution to collect, process, use personal data of vulnerable people who are asylum seekers, recognized refugees, persons under subsidiary protection and persons under temporary protection, while providing their housing, adequate health, psycho-social and other protection.

### **General conclusions from the aspect of the analyzed indicators**

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has not been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

### *Rights of Asylum seekers*

#### *Article 48*

*The asylum seekers until the taking of a final decision in the procedure for recognition of the right of asylum have the right to:*

- *residence;*
- *accommodation and care in a Reception Centre or other place of accommodation assigned by the Ministry of Labor and Social Policy;*
- *basic health services;*
- *right to social protection;*
- *work only within the Reception Centre or the other place of accommodation assigned by the Ministry of Labor and Social Policy and as well as the right of free access to the labor market for an asylum-seeker whose application for recognition of the right of asylum has not been decided upon during the period of one year, after the expiry of the one year period.*



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- *communication with the High Commissioner for Refugees, as well as with nongovernmental humanitarian organizations for the purpose of providing legal assistance in the course of the procedure for recognition of the right of asylum.*

*The Ministry of Labor and Social Policy takes care for the provision of means of subsistence and healthcare for the asylum seekers, while they find themselves in the Reception Centre or other place of accommodation assigned by this Ministry.*

### *Duties of Asylum seekers*

#### *Article 49*

*The asylum seeker is obliged to:*

- *reside in the Reception Centre or other place of accommodation assigned by the Ministry of Labor and Social Policy;*
- *co-operate with the asylum bodies, in particular to give his personal data, to hand over the identity and other documents which he may possess, to allow his photographing and fingerprinting, personal search as well as search of his luggage and the vehicle by which he has arrived in the country, as well as to give data about his property and income;*
- *subject himself to medical examinations, treatment and omitted immunization upon request of the bodies competent for the activities in the field of the healthcare, in case of a threat for the public health; and,*
- *to respect the house rules of the Reception Centre or other place of accommodation assigned by the Ministry of Labor and Social Policy.*

Articles 48 and 49 of the Law provide certain rights and obligations of asylum seekers until the final decision in the procedure for asylum has been made. They provide the legal basis for collecting, processing and use of their personal data, carried out on the basis of the obligation laid down in Article 49, paragraph 1, line 2 of the Law, to provide personal information to deliver identity and other documents he may possess, to allow his photography and fingerprinting, etc.. This provision does not provide special protection of collected personal data, or directs the application of regulation for personal data protection.



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## General conclusions from the aspect of the analyzed indicators

From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has not been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

### *Accommodation*

#### *Article 52*

*The recognized refugee will be provided with accommodation, according to the principle of local contribution, through giving an appropriate flat for use or financial assistance necessary for provision of accommodation facilities until the moment when he will secure his means of subsistence but for a maximum period of two years from the day of delivery of the decision for recognition of the status of recognized refugee.*

*The Minister of Labor and Social Policy prescribes the criteria and the manner of use of appropriate flat for accommodation or of financial assistance necessary to provide premises for accommodation of the recognized refugee*

*Should the recognized refugee refuse the allocated accommodation facilities in the municipality, he loses the right of accommodation and he may settle in another municipality of his own choice at his own expense.*

Article 52 of the Law envisages certain rights of social protection of a recognized refugee which provides a legal basis for collection and processing of their personal data. This article does not provide a specific application of regulation for personal data protection.

### *Rights of Social Protection*

#### *Article 53*



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*The recognized refugee, from the day of delivery of the decision for recognition of the status of a recognized refugee shall be equal with the citizens of the country in relation to the exercise of the rights of social protection established with the Law on Social Protection*

#### *Healthcare*

##### *Article 54*

*Until the acquisition of the capacity of an insured person pursuant to the Law on Health Insurance, the recognized refugee has the right to basic health services, same as the nationals of the country.*

##### *Article 60*

*The person under subsidiary protection, from the day of delivery of the decision for recognition of the status of a person under subsidiary protection shall be equal with the citizens of the country in relation to the exercise of the rights of social protection established with the Law on Social Protection, while he shall exercise the right to basic health services pursuant to Article 54 of this law.*

*If not otherwise determined by this or by another law, the persons under subsidiary protection have the same rights and obligations as the foreigners under temporary residence permit in the territory of the country.*

#### *The Rights of Persons under Temporary Protection*

##### *Article 64*

*The persons under temporary protection have the right to:*

- residence and care in the country in the course of duration of the temporary protection, in accordance with the economic possibilities of the country;*
- the rights to work, healthcare, pension and invalid insurance, under the same conditions prescribed by appropriate regulations for aliens under temporary residence permit in the country;*
- humanitarian assistance and basic health services for unemployed persons under temporary protection; and,*
- primary and secondary education, and as regards the higher levels of education, the persons under temporary protection are equal to the aliens under temporary residence permit in the country.*



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- *The residence of paragraph 1 sub-paragraph 1 of this Article shall not be considered as lawful residence in the sense of the Law on Aliens and the Law on Citizenship of the country.*
- *The Ministry of Labor and Social Policy takes care of the realization of the rights of paragraph 1 of this Article.*

Articles 53 and 54 of the Law provides that after receiving the status of refugees person becomes equal to the citizens of the *country* regarding the rights of social protection, and by acquiring the status of insured person has the right to basic health services. Article 60 is establishing rights to social protection and basic health services to persons under subsidiary protection.

Article 64 of the Law provides specific rights of persons under temporary protection for whose exercise care Ministry of Labor and Social Policy which process their collected personal data.

Indicators are not applicable in these provisions.

## *PROCESSING AND PROTECTION OF PERSONAL DATA*


### *Central Database*

#### *Article 67*

*The Section for Asylum pursuant to the Law on Protection of Personal Data, establishes, processes and uses a Central Database which contains the personal data of the asylum seekers, recognized refugees and persons under subsidiary protection, data about their residence and rights which they enjoy in the country.*

Article 67 of the Law provides the legal basis for keeping records of personal data on asylum seekers, recognized refugees and persons under subsidiary protection by the Section of asylum, that collects, processes and uses personal data. This provision provides application of the Law on Personal Data Protection and provide adequate legal protection of collected and recorded personal data.

## **General conclusions from the aspect of the analyzed indicators**

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From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has not been regulated
5. Subsidiary application of the Law on personal data protection has been envisaged

#### *Data Exchange*

##### *Article 68*


*The data of the Central Database may not be exchanged with the country of origin of the person to whom these data are related or with the country of origin of the members of his family.*

*For the purpose of execution of the decision for expulsion from the territory of the country of a person whose asylum application has been effectively rejected or whose asylum in the country has ceased with an effective decision, the Section for Asylum may exchange with the competent bodies of other states the following data:*

- *Name and family name, date and place of birth, sex, citizenship, last place of domicile and address of the flat, data on the number of family members and documents issued by the country of origin; and,*
- *Fingerprints and photography.*

Article 68 of the Law provides for protection of personal data from the records by not allowing them to submit to the country of origin of the person. Paragraph 2 of Article 68 provides the legal basis for exchanging personal data for execution of the decision on expulsion from the territory of the *country* of a person whose asylum application has ceased with an effective decision.

#### **General conclusions from the aspect of the analyzed indicators**

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From the above-stated, it can be concluded that

1. There is legal basis and the aim to collect, process, and use personal data has been determined
2. Personal data records have not been envisaged
3. Deadline for keeping of the personal data has not been set
4. The issue of use of the personal data by another body has been regulated
5. Subsidiary application of the Law on personal data protection has not been envisaged

RULEBOOK ON THE FORM OF A REQUEST FOR ASYLUM, THE MANNER OF TAKING FINGERPRINTS AND PHOTOGRAPHING THE ASYLUM SEEKERS, FORM AND PROCEDURE FOR ISSURANCE AND REPLACEMENT OF DOCUMENTS ON ASYLUM SEEKERS AND PERSONS WITH THE RECOGNIZED RIGHT OF ASYLUM AND TEMPORARY PROTECTION IN REPUBLIC OF MACEDONIA AND THE WAY OF KEEPING RECORDS<sup>10</sup>

This Rulebook prescribes the form of a request for asylum, the method of taking fingerprints and photographs of the asylum seekers, form and procedure for issuing and replacement of documents for asylum seekers and persons who is granted asylum or temporary protection in the *country* and the manner of keeping records.

The Rulebook provides the basis for collecting, processing and use of personal data (including special categories of personal data) of asylum seekers and persons who are granted asylum and temporary protection by the competent authorities. Also it is provided that the Ministry of Interior, Department of asylum keeps records of collected personal data on these individuals. With this Rulebook application of the Law on personal data protection has not been envisaged.

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<sup>10</sup> Rulebook adopted on 24 June 2004, Official Gazette no. 76/2009, 78/2010



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