



# **NORMATIVE LEGAL ANALYSIS**

**IS THE SYSTEM OF REGULATIONS  
READY FOR CSOs TO BE SOCIAL AND  
HEALTH CARE SERVICE PROVIDERS**

**STEPS TO BE TAKEN SO THE  
INVOLVEMENT OF CSOs CONTRIBUTES  
TO THE IMPROVEMENT OF HEALTH  
AND SOCIAL CARE SERVICES**

*This study provides an overview of the legal and institutional frameworks serving to set up a better system of public funding of health and social care services. The study provides a detailed analysis of existing policy gaps, that are restraining further regulation of public services in the field of health and social care. The study is investigating the possibility of introducing programme funding of the services provided by the civil society organizations (hereinafter: CSOs). CSOs are an important actor in providing social services in Montenegro and are substantially filling in the gaps caused by the reduced capacity of public institutions.*

*The services CSOs provide depend on the funding of projects, which is a major disadvantage for the functioning of the health and social care services of CSOs, and therefore for the needs of their beneficiaries. This study investigates the potential of greater involvement of CSOs in the process of providing social services, and the potential of introducing the option that CSOs participate in providing preventive and health care services, which is currently largely limited by the legislation. This study will also touch upon the process of decentralization in the health and social care services system. Since the Law on Social and Child Protection provides the possibility for CSOs to license the services they provide, as well as to accredit training programs, the study also examines if this can be applied to the health care regulations. The study further gives recommendations for decision-makers, aiming to contribute to solving the identified disadvantages and lists specific laws and bylaws that need to be amended.*

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## 1. HEALTH AND SOCIAL CARE SERVICES, BETWEEN BUREAUCRACY AND URGENCY

The health and social care services are defined by several regulations, of which the most important are the two laws specifically regulating this area - the Law on Social and Child Protection and the Law on Health Care. Both laws define services in the areas of their concern, however, neither recognize unique health and social care services. To be specific, in practice there are services involving both health care and social welfare; they can not be separated, but the law treats them separately, which creates certain difficulties in the organization of these services and their funding.

The legal-institutional system in Montenegro provides options for civil society organizations to set up social and health care services, but with certain limitations as well. For years, specific studies, strategic acts and plans have been developed, all of them pointing out to several characteristic conclusions. *The basic one we might take as a starting point is the need for the decentralization of health and social care services. Decentralization should strengthen inclusiveness and - by involving CSOs in the organization of health and social care services system- provide access to all services for every potential beneficiary.*

The basic one we might take as a starting point is the need for the decentralization of health and social care services. Decentralization should strengthen inclusiveness and - by involving CSOs in the organization of health and social care services system- provide access to all services for every potential beneficiary.

**Setting up a system of contracting health and social care services would contribute to the sustainability of CSOs as service providers, and therefore to the public interest.**

There are CSOs that have for years, or some for even more than a decade, had human resources and enthusiasm to provide a number of important social, health and educational services under the uncertainty of maintaining continuity of finances through grants. Due to several circumstances (lack of political will, lack of understanding of the problem, the bureaucratization of procedures, etc.), the state fails to establish a functional system that would acknowledge CSOs as full-fledged service providers. The problem is especially significant in the health care system, which is lacking the sensibility to broaden primary health care services outside health care institutions.

Involving the CSOs shall improve the quality of services, and ensure the most adequate and flexible response to the needs of target groups and/or better coverage of the services. If the overall importance of CSOs would truly be recognized in the areas of social, health and educational services, there would be a system of high-quality services, based on a professional service contract between CSOs and administrative authorities - local self-governments and/or the Government.

## 2. BASIC OVERVIEW OF THE NORMATIVE-INSTITUTIONAL FRAMEWORK

### 2.1. Transferring and entrusting the tasks

By the law, mandatory services are determined or can be determined by the competent state administrative authority following a certain methodology arising from strategic acts.

Article 60 of the Law on Social and Child Protection of Montenegro defines services in the field of social and child protection: support for life in the community; counselling-therapeutic and social-educational services; accommodation; urgent interventions and other services. Paragraph 2 of Article 60 states that more detailed requirements for providing and using services, as well as norms and minimum standards of services, shall be prescribed by the competent state administration authority. The competent state administration authority may as well be the competent local self-government authority under the legal system of Montenegro. This can be interpreted as one of the bases of decentralization as a principle that should, through normative and institutional elaboration, contribute to the functionality of democratic decision-making and significantly higher quality of services.

The foundations for decentralization and the organization of local self-government are laid in the Constitution of Montenegro; it regulates the possibility of decentralization of state affairs and provides the possibility of its elaboration through transferring and entrusting its tasks.

#### CONSTITUTION OF MONTENEGRO, ARTICLE 112

Certain tasks of the state administration may be lawfully transferred to the local self-government or another legal entity.

Certain tasks of the state administration may be entrusted to local self-government or other legal entity by a regulation of the Government.

Article 112 sets a clear constitutional basis for the development of many different social, health care, social-health care and educational services that would be entrusted or transferred to other legal entities. This analysis considers the possibility of entrusting the tasks to CSOs as health and social care service providers.

Following this constitutional provision, the Law on State Administration describes and explains in more detail the procedure for transferring the competencies of state bodies to local self-government. The law does not define the transfer of competencies to other legal entities, however, accordingly, the procedure of transferring competencies to legal entities is being applied. At the local level, the decentralization of social, health care or combined services can be further elaborated. A certain practice is being carried out at the moment, but it is necessary to clearly define norms for the entire system and establish an unambiguous practice.

As mentioned above, the Law on State Administration defines the procedure for transferring and entrusting the tasks of state government to local self-government.

To delegate and entrust authority, it is necessary to pass an Act of Entrustment. The Act of Entrustment determines the manner of financing the entrusted tasks and it is being issued by the Government of Montenegro.

The Act of Entrustment has to be preceded by a procedure in which a study is conducted to determine if the entrustment of tasks is justified. It has to consist of:

- justification for entrusting the tasks;
- precise specification of the tasks to be entrusted;
- attitudes and opinions of state administration bodies competent for the tasks to be entrusted on the possibilities and conditions for performing these tasks by local self-government;
- existence of organizational, personnel, technical, financial and material conditions for performing entrusted tasks;
- manner and conditions for financing the performance of entrusted tasks.

By the affirmation of the decentralization of state administration tasks, the conditions are met for faster and more efficient transfer of tasks from the competence of the state administration to the competence of civil society organizations. After the tasks are entrusted to CSOs, all the principles that are implied for performing state administration tasks remain valid, namely: the principle of legality, the principle of impartiality and political neutrality, the principle of economy and efficiency, the principle of publicity, the principle of efficiency, the principle of control. Exceptionally, for tasks that would be transferred to the competence of CSOs, there would be no principle of state responsibility for the damage caused, and the responsibility would be transferred to the legal entity that caused the damage.

By delegating and entrusting tasks, depending on the need and scope of reforms of public health care and social welfare policies, CSOs would discharge certain tasks in providing social, health care or combined services.

The control over the mentioned services shall be done through the system of administrative supervision. Supervision shall be performed over the legality of administrative acts and other administrative activities of CSOs, but also the legality and expediency of the work of CSOs. Inspection and supervision of CSOs would also control the work of CSOs, which is possible even now. Thus, CSOs would have the competence of public authority, which would enable the full-fledged organization of social and health care services.

## **2.2. What are the possibilities already provided in the Law on Health Care and the Law on Social and Child Protection?**

As the focus of this study is social services and health care, in this section we will also be conducting a special analysis of regulations in this area concerning the possibility that the competence of the public administration is transferred to CSOs. The starting point for the field of health care is found in the **Law on Health Care**<sup>1</sup>. This law prescribes the areas of operation of health care services, but also the priority measures of health care. The priority measures CSOs can be involved in are:

- activities that contribute to education about health, education and information about the most frequent health problems and methods of their identification, prevention and control;
- prevention and protection from environmental factors harmful to health, including all measures and activities contributing to the protection, advancement and improvement of health, living and working conditions and hygiene conditions necessary for the life and work of citizens;

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<sup>1</sup>Law on Health Care "Official Gazette of Montenegro", no. 003/16 of 15 January 2016, 039/16 of 29 June 2016, 002/17 of 10 January 2017, 044/18 of 6 July 2018, 024/19 of 22 April 2019.

- prevention, timely detection and control of communicable, chronic and non-communicable diseases, as well as prevention and control of local endemic diseases;
- protection of citizens' mental health (prevention and promotion of mental health).

Among the above, depending on their competence and their course of action, CSOs may be involved in the areas of:

- prevention;
- education;
- meeting social needs through licenced social services they provide.

This could only be possible by following the norms for transferring the competence from the state administration to the local self-government, explaining why it is significant that certain measures be implemented by CSOs.

However, Article 52 of the Law on Health Care prescribes that, besides health care institutions, health care activities may be provided by other entities, as follows:

- a state administration body in charge of defence affairs;
- a state administration body in charge of internal affairs and police affairs;
- a state administration body in charge of the execution of criminal sanctions;
- social welfare and child protection institutions;
- hospitality establishments in which persons are employed or accommodated;
- international airports and ports for international traffic, for persons entering or leaving Montenegro.

Therefore, it is clear that under the Law on State Affairs it is prescribed that certain tasks can be transferred to local self-government and another legal entity, but tasks related to health care do not fall into this category.

The law recognizes certain legal entities performing tasks concerning the exercise of the right to health care (Article 52 of the Law on Health Care). **Therefore, in this segment of the law, the possibilities for specific activities of CSOs within primary health care may be examined, such as:**

- activities for the improvement of the health of citizens;
- education on health and education on the most common health problems in a particular territory and methods of their identification, prevention and control;
- promotion of healthy lifestyles (including healthy diet and physical activity of citizens, prevention, detection and control of communicable and non-communicable diseases, excluding preventive immunization activities);
- support for the protection, advancement and improvement of living and working conditions and hygiene conditions for the life and work of individuals, support for the preservation of mental health and similar.

In addition to this, Article 1 of the same law states: „This law regulates the organization, implementation and provision of health care, rights and obligations of citizens, social care for the health of citizens, rights and obligations of health workers and health associates, quality of health care and other issues of importance for the functioning of the health care system.“ Given the breadth of the term “other issues of importance to the functioning of health care system”, **the possibilities for the introduction of certain health services provided by CSOs can be examined.**

Example: National Autism Center

Article 16a of the Law on Health Care also points out the unsystematic approach to the law interventions. Namely, this article allows the establishment of the National Autism Center as a special type of health care. For long it has not been defined which of the departments of health and social welfare are responsible for this type of health care. The mere insistence on the term national in the name implies that centres of this kind have to be under the full jurisdiction of the state, which is a wrong approach. Public authorities should determine principles and rules, perform supervision and control. However, services may be provided by various entities, including CSOs.

## LAW ON HEALTH CARE, ARTICLE 16A

*As a special type of protection and improvement of the mental health of citizens, the state establishes the National Autism Center.*

*The National Autism Centre is a highly specialized, multidisciplinary and educational public institution performing activities in the fields of education, research and health care and all other activities that are, directly and indirectly, in favour of understanding the causes and neurological basis of autism. All of this serves the purpose of improving psychosocial methods and procedures in the treatment of people with autism, their living conditions, social inclusion and support to the families of people with autism.*

Article 16a can be interpreted as a kind of *sui generis solution*, and it does not provide the legal recognition of many opportunities for the development of health services that would, among others, be provided by CSOs. Consequently, society remains denied the development of a range of health services that would be both more proactive and accessible to citizens.

In 2020, as part of a public debate on amendments to the Law on Health Care, two CSOs drafted amendment proposals for legal recognition and establishment of health and social care services provided by CSOs.

Amendment proposals<sup>2</sup> for the Law on Health Care were submitted by NGO Juventas and NGO CAZAS. In these proposals, it is emphasized that citizens should exercise health care rights in the field of public health, particularly preventive health programs and services for prevention, combat and control of HIV / AIDS, hepatitis B and C and other communicable diseases, at the referent non-governmental organizations as well. In these amendments, the question of financing these services is raised, as well as - with whom to conclude a contract and whether it is needed to publish a public call. The position of the Health Insurance Fund is especially important here, and it is limited by legal solutions to the detriment of the establishment and necessary financing of these services, which was attempted to be amended. The Health Insurance Fund might partly finance specific preventive services, which are already being provided by some CSOs, within the health system. However, there needs to be a legal basis for that to happen.

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<sup>2</sup>See Annex 1

This attempt to amend the law failed and the amendments were rejected. Even more worrying is the lack of social dialogue and dialogue within the institutions creating and performing public health policy.

**The Law on Social<sup>3</sup> and Child Protection** seeks to establish activity that provides and performs measures and programs intended for individuals and families with unfavourable personal or family circumstances, involving support, prevention and assistance in meeting basic needs in life.

Article 3 of the Law on Social and Child Protection defines that the public interest in the area of social and child protection is protected and provided by the state and local self-government, with the restriction - to do so under the conditions and in the manner prescribed by the Law. Therefore, this article does not explicitly recognize that CSOs may as well perform transferred and/or entrusted tasks in the public interest in the area of social and child protection. In that case, the Law itself would be much more liberal and would indicate the exigency of decentralization of social services. Decentralization of social services may as well refer to some of the principles of social protection.

The principles of social and child protection according to this law are:<sup>4</sup>

- 1) Respecting integrity and dignity of beneficiaries of social and child protection, which is based on social justice, responsibility and solidarity, provided with respect for physical and mental integrity, safety, as well as respect for moral, cultural and religious beliefs, in conformity with the guaranteed human rights and freedoms;
- 2) Prohibition of discrimination against beneficiaries on the grounds of race, sex, age, nationality, social origin, sexual orientation, religion, political, trade union or other affiliation, financial status, culture, language, disability, nature of social exclusion, belonging to a specific social group or other personal characteristics;
- 3) informing the beneficiary about all data that are important for determining his/her social needs and exercising his/her rights, as well as about the manner those needs can be met;
- 4) individual approach to the beneficiary in providing social and child protection rights;
- 5) active participation of beneficiaries in the creation, selection and use of rights in the field of social and child protection, based on participation in the assessment of the situation and needs and making the decision on the use of necessary services;
- 6) respect for the best interests of beneficiaries in exercising their rights in the field of social and child protection;
- 7) prevention of institutionalization and availability of services in the least restrictive surroundings, in the familiar environment or local community whenever it is possible, applying non-institutional forms of protection by different service providers, in order to improve the quality of life and social inclusion;
- 8) pluralism of services and social and child protection services providers, conducted by civil society organizations and other legal and natural persons, under the conditions and in the manner prescribed by law;
- 9) partnership and association of different stakeholders and programs so that the services are available in the least restrictive surroundings and institutionalization is prevented, especially at the local level;
- 10) transparency in terms of informing the public about social and child protection in the media, as well as in other ways, as prescribed by the law.

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<sup>3</sup>Law on Social and Child Protection "Official Gazette of Montenegro", no. 027/13 of 11 June 2013, 001/15 of 5 January 2015, 042/15 of 29 July 2015, 047/15 of 18 August 2015, 056/16 of 23 August 2016, 066/16 of 20 October 2016, 001/17 of 9 January 2017, 031/17 of 12 May 2017, 042/17 of 30 June 2017, 050/17 of 31 July 2017.

<sup>4</sup>Law on Social and Child Protection, "Official Gazette of Montenegro" no. 027/13 027/13 of 11 June 2013, 001/15 of 5 January 2015 and others - Article 7.

<sup>5</sup><https://mrs.gov.me/informacije/Registri>

It is concluded that Principle 7 and Principle 9 advocate and enable the decentralization of services and the involvement of CSOs as providers of health and social care services.

Article 13 of the Law on Social and Child Protection prescribes that social and child protection tasks shall be performed by social and child protection institutions, with the exception - specific social and child protection tasks may be performed by a different entity. The term different entity implies legal entities that have been issued a license to perform activities in the field of social and child protection.

The Registry of Licensed Service Providers is under the jurisdiction of the Ministry of Finance and Social Welfare. Services that are entrusted to CSOs and which they are most often being licensed for are counselling, SOS telephone, home help, personal assistance, accommodation in a refuge/shelter and similar. Daycare and accommodation services for the elderly are most often provided by public institutions, although they have to undergo the same licensing procedure as CSOs. The relevant legal basis for the implementation of the decentralized system of social services is contained in Article 135 of the Law on Social and Child Protection. The title of the article implies the negative premise - Revocation of the license to perform activities, and we consider this wrong.

At the time of writing this study, Paragraph 2, in the Article 135 of the Law on Social and Child Protection contained the basis for the adoption of *Rulebook on detailed requirements for issuance, renewal, suspension and revocation of the license for performing social and child protection activities*<sup>6</sup>. This rulebook formally opens up the possibility that CSOs become official service providers, but with limitations, impracticalities and no clear goal, except for the norm defining the issuance of a license for family accommodation service providers - foster care and family accommodation (introducing unnecessary barriers to licensing services provided by CSOs).

Additionally, The Law on Non-Governmental Organizations ("Official Gazette of Montenegro", No. 39/11 ... 37/17) prescribes: "A non-governmental organization is established as a non-profit organization to achieve common or general goals and interests" (Article 2).

A non-governmental organization has the status of a legal entity and may, among other things, acquire assets from donations, economic activities or in other ways. "

This law stipulates that the state provides funds for financing NGO projects and programs in the public interest in the amount of at least 0.3% of budget funds, while for the protection of persons with disabilities the state provides 0.1% of budget funds. The areas of public interest are considered to be: social and health protection, poverty reduction, protection of persons with disabilities, children and youth social welfare, elderly assistance, etc.

It is stated that a *project* is a set of activities in defined areas, *implemented in a period not longer than one year* and that it represents a long-term development plan of the NGO and implementation of activities in the defined areas. So far, allocating funds for NGO programs (longer than one year) has not been noticed, which causes problems for social service providers.

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<sup>6</sup>Rulebook on detailed requirements for issuance, renewal, suspension and revocation of the license for performing social and child protection activities, "Official Gazette of Montenegro", no. 038/18 of 13 June 2018.

Development strategies of NGOs for the period from 2014 to 2020, constantly involved the obligation to set up legal, institutional and other conditions for the development and smooth operation of NGOs, as one of the prerequisites for strengthening democratic processes, political stability and prosperity of each country. Accordingly, the report acknowledged the need for a higher participation level of NGOs in defining and implementing public policies at the state and local levels, as well as for creating legal and institutional preconditions for the financial sustainability of NGOs.

### **Example contributing to the overall confusion**

Certain examples also show that similar policies are differently regulated in different areas.

During 2010, decisions were made that administrative bodies may license certain programs, services and assistance in the cases when it is needed and justified, and if the requirements are fulfilled.

During that period, the Ministry of Education and Science issued a decision on licensing an organizer of adult education, which was a CSO (in this case the institution may also be a CSO considering it fulfilled all the requirements and received the licence for the program).

This kind of procedure set up is indicated by the example from 2019 when the Ministry of Education decided to issue a license to the NGO "Union of Beekeeping Organization of Montenegro", Danilovgrad. By this Decision, the licence for performing activities was issued to the non-governmental organization "Union of Beekeeping Organization of Montenegro" from Danilovgrad for the implementation of an adult education program for acquiring the professional beekeeper qualification.

Examples from the educational system lead to the conclusion that programs, services and assistance, as public affairs that could be performed by CSOs are differently regulated in different public policies. The educational and social systems are showing progress and these procedures can be the basis for setting up a comprehensive system in which licensed and contracted CSOs would receive public authority

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<sup>7</sup>Decision on issuing a license to the NGO "Union of Beekeeping Organization of Montenegro", Danilovgrad ("Official Gazette of Montenegro", No. 030/19 of 31 May 2019).

### 3. PROVIDING FINANCIAL RESOURCES FOR THE FUNCTIONING OF THE SERVICES

The affairs of the state administration are financed from the state budget, but also other funds, following the legal regulations. Planning of the budget for performing the tasks is being done under the Law on Budget and each spending unit plans its budget for the next year.

The Law on State Administration stipulates that the tasks of the state administration may be entrusted to a legal entity, but first, it is necessary to pass an act that will, among other things, determine the manner of financing the transferred competencies. When the specific tasks of the state administration, to be performed more efficiently and economically, are transferred from the competence of the Government to the competence of the local self-government, the act of transfer determines the manner of financing.

Therefore, the law does not explicitly state that the legal entity, by taking over the tasks, takes over of their financing, but that the financing may as well be provided from the state budget.

If legal obstacles for providing certain health care services by CSOs would be eliminated, these services could be financed by the state budget, precisely - by the Health Insurance Fund of Montenegro.

Article 86 prescribes that health institutions whose founder is the state or municipality, legal or natural person, have the right to acquire financing by the Fund under this law and the law governing health insurance.

***This means that the amendments to the Law on Health Care, in terms of recognizing CSOs as specific health care services providers, may create a legally regulated environment to define the requirements for the constitution of health services that shall be financed by the Health Insurance Fund of Montenegro.***

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<sup>8</sup>Law on State Administration, Article 37, paragraph 1

## 2. RECOMMENDATIONS FOR IMPROVING THE CURRENT SITUATION

Currently, CSOs are implementing their programs and services as project activities, and they are financed by foreign donors and domestic fundings (these funds are distributed to CSOs through administrative bodies, primarily ministries). Often, the ministry in charge of the health department and the ministry in charge of the social welfare department finance health and social care services through certain project grant schemes. This manner of support is inadequate, unreliable and does not allow for the necessary system of social and health services to be developed, and consequently - many potential beneficiaries remain invisible to the system.

Based on the above, by this study the following steps are suggested:

1. Develop a strategy for decentralization of specific social, health care and combined services.
2. Draft legal solutions with a clear specification of laws that need to be amended, to prescribe objective and effective requirements for applying, equipping, licensing or accreditation, supervision, methodology for determining the price of services and stable financing of social and health care services that may be provided by CSOs.
3. Amend the Law on Social and Child Protection and the Law on Health Care to adequately recognize CSOs as service providers, which cannot be disputed because the systemic basis can be found in the Law on Public Administration. Following the possible amendments, harmonize numerous bylaws of the laws mentioned, but also consider the possibility to further improve the norms of the Law on State Administration and the Law on Local Self-Government.
4. Enable the legal possibility that licensed or accredited preventive health care services provided by CSOs, may be financed from the Health Insurance Fund.
5. Find the way to establish the Social and Educational Services Support Fund as a manner of steady funding of this part of public policies.
6. Prescribe the manner, content and character of contracts between CSOs and administrative bodies authorized for licensing or accreditation of services, and also public authorities, in order to finance these services following the law and procedure, through a contractual relationship.
7. Create a precise list of necessary social, health care, combined and educational services that should and can be entrusted or transferred to CSOs, for the improvement of these public policies.
8. Establish a multidisciplinary working group that would conduct an analysis of the current situation, identify requirements and propose the necessary steps to set up a system of social, health care, combined and educational services. This working group shall be established by the Government of Montenegro.
9. Adopt a separate law on HIV/AIDS and define the services for its prevention that could be provided by CSOs (through health care services, under legal regulations).
10. Amend the Law on NGOs to recognize the possibility of financing social, health care and educational programs of NGOs by transferring competencies or setting up another procedure allowing the foundation, financing and quality monitoring of the services.

## 5. CONCLUSION

The analysis points to the conclusion that the legislative framework is not consistent, ie that it is unfeasible and in certain segments contradictory. Therefore, it does not enable or - it can be said that it essentially prevents the entrusting the tasks to CSOs or performing the tasks in the analysed areas.

This analysis especially shows that the constitutional and legal solutions of the Law on State Administration of Montenegro provide a possibility to entrust the performance of certain tasks in the field of health and social care (as well as other tasks of public interest) to a wide range of social entities, and thus to OCDs.

Considering the above, it is especially worrying that the laws that need to further regulate entrusted tasks in the given areas, the manner and requirements of entrustment - directly or indirectly prevents it.

The Law on Non-Governmental Organizations of Montenegro is a glaring example and it prescribes, among the rest, that:

- Programs and projects in areas of public interest implemented by NGOs are financed exclusively through the distribution of funds defined by the Law on NGOs, from the Budget of Montenegro;
- These funds amount to at least 0.3% of the Budget funds, while the funds for the protection of persons with disabilities amount to at least 0.1% of the Budget funds.

This manner of distribution of funds leads to the conclusion that the law does not provide the possibility for NGOs to perform tasks of public interest in any field, neither in the field of social and health care.

The content of programs and projects (as determined by law), as well as the fact that the project activities may not last longer than one year, indicate that the possibility that NGOs perform any social and health care activity is limited.

In the Strategy for Development of NGOs 2014-2016, the Government has obliged to provide legal, institutional and other conditions for the development and smooth operation of NGOs, and thus a higher level of participation of NGOs in defining and implementing public policies at the state and local level, which also implies financial sustainability of NGOs.

It is important to point out that, under this provision, the Law on Social and Child Protection provided possibilities for NGOs to perform certain tasks in these areas.

However, in the Law on Health Care, the normative preconditions to entrust the performance of certain health care tasks to NGOs, are not provided.

Starting from the demand to provide the highest quality and comprehensiveness of health and social care, and therefore improve the quality of life and empower individuals and families for an independent and productive life, which is a prerequisite for better health, and thus lower expenses for secondary health care.

It is necessary to form an interdisciplinary working group with the task to analyze:

- a. the situation of primary health care and social and child protection, especially concerning social and child protection services;
- b. normative solutions in the Law on Non-Governmental Organizations, the Law on Health Care, as well as certain solutions in the Law on Social and Child Protection.

The system for services provided by CSOs, which implies full normative and institutional support, shall be developed.

There are procedures for issuing a license in the social welfare system, which enables the formation of some services prescribed by bylaws.

It is necessary to initiate the founding of a special fund that would provide financial support to CSO services. The Fund already exists in the health system, but there are no legal preconditions to establish health care services that would be provided by CSOs.

Incompleteness and unfeasibility of systemic solutions are possible to overcome and this study seeks to raise awareness among decision-makers about the need to decentralize the social and health care system.

When it comes to the local self-governments - it is necessary to problematize the lack of capacity, which is dominant over systemic problems. Therefore, it is necessary to initiate the process of decentralization and start from the local governments with more capacities, where models, which would serve as an example to other municipalities, can be set up.

Therefore, the recommendations given in this Study shall be accepted and implemented to achieve better results in the field of social and health care services.

## ANNEX 1

\_\_\_\_\_  
NGO JUVENTAS \_\_\_\_\_

(name and last name of the natural person / name of the body, organization or association that submits remarks, proposals and suggestions, contacts)

Ministry of Health

\_\_\_\_\_  
(name of the ministry to which comments, proposals and suggestions are submitted)

### OBSERVATIONS, PROPOSALS AND SUGGESTIONS

Draft of Amendments to the Law on Health Care

\_\_\_\_\_  
(name of the draft law or strategy the remarks, proposals and suggestions refer to)

Observation/proposal/suggestion 1:

Proposal to amend Article 26 by adding new paragraphs (No. 4 and 5) after paragraph 3:

"The citizens may use health care in the field of public health, which refer to the preventive health care programs and services for the prevention and control of HIV/AIDS, hepatitis B and C and other communicable diseases, at the referent non-governmental organizations as well."

The criteria for the selection of the referent non-governmental organizations shall subsequently be prescribed by the Health Fund. "

\_\_\_\_\_  
Rationale for observation / proposal / suggestion 1:

In the available Law on Health Care, it is defined that health care is provided following the principles of comprehensiveness, continuity, availability, comprehensive and specialized approach to health care, as well as the principle of constant improvement of the quality of health care.

In this regard, and in compliance with the basic objectives set out in the amendments to the law - to provide quality, affordable and timely health care to citizens - unequivocal opinion of NGO JUVENTAS it that it is necessary to recognize, prescribe and define the provision of preventive health care programs and services.

This is for the reason that NGOs are currently performing preventive programs and health services, and they have been doing it for years, due to their specificity and sensibility for certain groups of beneficiaries (injecting drug users - IDUs, sex workers - SW and men who have sex with men - MSM), as well as to opportunities for direct communication with target groups. These organizations employ trained professionals with many years of experience, which guarantees the efficiency, effectiveness and quality of health care in this field.

Recognizing and involving non-governmental organizations as providers of health care programs and services in the primary health care system would enable the continuation of comprehensive health policy of Montenegro and activities in the direction of implementing health care measures (in this case HIV prevention and prevention of the spread of epidemics of other blood-borne diseases, as well as diagnosis, treatment and care of persons living with HIV).

We believe that the stand of the NGO JUVENTAS is based on the strategic commitment of Montenegro and many activities of the Ministry of Health, which we encourage to keep up with the measures, activities and support to NGOs. (this support is reflected in financing NGO projects, following the Law on NGOs, but upon our suggestion and through new forms and modalities of cooperation).

This is because the state of Montenegro has committed to implement and apply active policies in the field of HIV/AIDS prevention and other communicable diseases, as evidenced by several international and domestic documents on this topic, including the Declaration of Commitment to HIV / AIDS and the National Strategy for HIV / AIDS 20052009, 20102014 and 20152020, and harmonization with the European Commission recommendations from the previous three reports for Montenegro.

Namely, health care programs and services provided by non-governmental organizations are primarily aimed at supporting the provision of health care in the field of public health - by providing services that are not available at health care institutions, such as HIV / AIDS prevention programs and services, health counselling, support to certain categories of patients and first aid (eg in case of a drug overdose, etc.) by health care workers working for non-governmental organizations. The non-governmental organization shall be obliged to respect all the relevant laws in the field of health care. Thus, the quality of services would be improved, additional supervision over quality by the system would be set up, and the sustainability of services provided by non-governmental organizations would be improved in the future.

NGO JUVENTAS considers that the proposed amendments to the law are fully in line with the objectives and obligations set out in the documents and recommendations to maintain the status of a country with a low prevalence of HIV infection, to provide universal access to prevention and treatment and improve the quality of life of people living with HIV and strengthen the health system and provide conditions for quality and effective health care for all citizens of Montenegro.

Observation / proposal / suggestion 2:

Proposal to amend Article 31 by adding new paragraphs no. 8,9,10 and 11 after paragraph 7:

"Preventive health care programs and services related to HIV/AIDS, hepatitis B and C and other communicable diseases may be provided by referent non-governmental organizations signing a contract with the Fund.

A special act shall regulate the content and character of the contract the referent non-governmental organization signs with the Fund and it shall enable the contract referred to in paragraph 7 of this Article.

The contract between the Fund and the referent non-governmental organization shall be signed after the tendering process is conducted.

More detailed conditions of the tender shall be regulated by an act of the Fund."

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Rationale for observation / proposal / suggestion 2:

NGO JUVENTAS believes that specific conditions, mechanisms and all other necessary details - who, how and under what conditions is eligible and shall provide health care programs and services - must be defined and specified by a special bylaw of the Ministry of Health to ensure quality and sustainable services that are necessary for the citizens of Montenegro to prevent and combat HIV / AIDS, hepatitis B and C and other communicable diseases.

## LITERATURE

1. Rulebook on detailed conditions for the provision and use, norms and minimum standards of counselling-therapeutic and socio-educational services (Official Gazette of Montenegro, No. 076/19 of 31 December 2019)
2. Rulebook on detailed requirements for issuance, renewal, suspension and revocation of the license for performing social and child protection activities (Official Gazette of Montenegro, No. 038/18 of 13 June 2018)
3. Decision on issuing a license to the NGO Association of Beekeeping Organizations of Montenegro, Danilovgrad (Official Gazette of Montenegro, No. 030/19 of 31 May 2019).
4. Constitution of Montenegro (Official Gazette of Montenegro, No. 001/07 of 25 October 2007, 038/13 of 2 August 2013)
5. Law on State Administration, Official Gazette of Montenegro, no. 078/18 of 4 December 2018
6. Law on Non-Governmental Organizations (Official Gazette of Montenegro, No. 39/11 ... 37/17) prescribes:
7. Law on Social and Child Protection (Official Gazette of Montenegro, no. 027/13 of 11 June 2013, 001/15 of 5 January 2015, 042/15 of 29 July 2015, 047/15 of 18 August 2015, 056/16 of 23 August 2016, 066/16 of 20 October 2016, 001/17 of 9 January 2017, 031/17 of 12 May 2017, 042/17 of 30 June 2017, 050/17 of 31 July 2017)
8. Law on Social Welfare of the Republic of Croatia (M.N., no. 157/13; 152/14; 99/15; 52/16; 16/17; 30/17 i 98/19)
9. Law on Social Welfare of the Republic of Serbia (Official Gazette of RS, No. 24/11)
10. Constitution of the Republic of Serbia, (Official Gazette of RS, no.39/11; 37/17)
11. Law on Health Care (Official Gazette of Montenegro, no. 003/16 of 15 January 2016, 039/16 of 29 June 2016, 002/17 of 10 January 2017, 044/18 of 6 July 2018, 024/19 of 22 April 2019, 024/19 of 22 April 2019)
12. Law on Health Care of the Republic of Croatia (N.N. no 100/18 and 125/19)
13. Law on Health Care of the Republic of Serbia (Official Gazette of RS, No. 107/05 and 93/14)

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