

REPUBLIC OF MACEDONIA

Report prepared by

Association for Emancipation, Solidarity and Equality of women –ESE

Open Gate/La Strada, Macedonia

and

Coalition „Sexual and health rights of marginalized communities“

**(supported by the USAID within the Women’s Legal Protection Project) in follow up to the
concluding observations: No. 23(a) and 23 (e), CEDAW/c/MKD/CO/4-5 (CEDAW,2013)**



2015

Recommendation 23 (a), „ Strengthen existing criminal and family Law or adopt a comprehensive law addressing all forms of violence against women, including domestic and sexual violence, and ensure that all women and girls who are victims of violence are protected by such legislation and have access to immediate means of redress and protection and further ensure that perpetrators are prosecuted and punished “ has not been implemented in full by Republic of Macedonia.

We can say that the new pieces of primary and secondary legislation about domestic violence, as well as the novelty concerning the regulation of rights of victims in criminal proceedings do not constitute sufficient and improved legal basis for appropriate protection of women victims of violence.

The adopted changes in the laws addressing violence against women are insignificant and are not a result of an exhaustive assessment and analysis of the needs of victims of violence, and of institutional capacities for tackling violence. At the same time, the country has for a considerable length of time been failing to put in place the basic precondition for implementation of a legal framework for protection against violence inflicted on women.

(Domestic violence)

1. Legal regulation and definition of the phenomenon of domestic violence date back to 2004, when amendments and supplements to the Criminal code and Family law were passed. The former sanctions crimes of this type of violence, while the latter regulates the measures for protection of victims and the procedure of petitioning, imposing and enforcing temporary measures of protection. Unsatisfactory results in the area of tackling this type of violence have been resolved with the adoption of a new law – the Law on prevention, combating and protection against domestic violence¹, which took over the measures of protection of victims and the procedure of petitioning, imposing and enforcing the temporary measures of protection from the previous Family law, while the Criminal code was not modified.

2. The new law and the bylaws have failed to introduce significant changes in terms of the number/type of measures of protection and temporary measures of protection. A new protection measure has been introduced – economic empowerment of the victim by way of her active involvement in the labour market. This measure falls into a group of active employment measures of Government and intended for specific target groups which until the adoption of this law was implemented as a project activity. Whether and to which extent such measures help the victims has not as yet been ascertained.

3. The new provisions of the law have introduced some changes in terms of actions taken when providing protection measures. As a result, there are changes in terms of commencement of procedure for provision of protection measures. Instead of „immediately“, it has been envisaged that this procedure shall be initiated by Centers for social care within 24 hours from the moment they have gained knowledge of domestic violence. Also, in the procedure of assessing the needs of the

¹Law on prevention, combating and protection against domestic violence, Official gazette of RM, no.138/14 и 33/2015

victim carried out by the team of experts from Centers for social care, securing consent of the victim for taking protection measures was introduced, which presented an unnecessary administrative burden in this procedure in light of the knowledge that the purpose of such measures is unconditional help offered to the victims through mandatory implementation of such measure. It was envisaged that immediate action be taken by police officers after domestic violence has been reported, although it had been previously regulated in an internal bylaw² of the Ministry of interior in November 2008 and included in the Joint protocol for treatment of domestic violence cases adopted by the Government of Republic of Macedonia in 2010.

4. One of the biggest shortcomings is the enforcement of laws. In this context, it is worth mentioning that the Centers for social care are increasingly being brought into question when we speak about treatment of domestic violence cases. Recently the Public Prosecutor office filed a petition for a crime of failure to exercise due diligence in the performance of duties arising from the service. As a result of their negligent actions a triple murder of family members of the victim was committed by her ex husband. There are frequent cases when social care workers cannot make a judgment about who is a primary offender and they respond to a report by those perpetrating violent acts while the victims are put in a position to prove that they are not the “villains”. On the other hand, the accommodation of victims of domestic violence is still not available to a high number of victims (poor capacities and coverage of the territory of the country), nor is it administered in line with a predefined set of standards and criteria. The new law envisages that the Center for victims of domestic violence “may”, though it is under “no obligation“ to provide psycho-social intervention and treatment of the accommodated victim.

5. There are changes also in terms of imposing temporary measures of protection. The solutions in the new law provide in the event of a serious threat to the life and health of family members, instead of urgent action within three days from the day of receipt of petition, as has hitherto been the case, that the court shall decide within 24 hours without a hearing on the imposition of measures on the basis of a finding issued by an expert and on the basis of an opinion provided by Centers for social care and at a proposal of the Ministry of interior concerning the measure – removal of the offender from the home and a restraining order. Given the track record of inefficient operation of Centers for social care as well as the fact that the law does not set a deadline within which they must make an assessment and prepare a report on their finding and issue an opinion, there is a high likelihood that the implementation of this provision of the law shall not bring about any change. Then again, the Ministry of interior shall attach to the proposal for imposition of the measure of removal from the home a police report on the assessment made of the risk to the live and physical integrity as well as the risk of repeat of the act of violence, which implies that they should receive education which unfortunately has not been put in place on a systemic and continuous basis. Also, it is important to mention that the decision of the court within 24 hours will be contingent upon whether there is a judge on duty in the afternoon and at weekends, as system not yet introduced and not yet functioning in our judiciary. Hence the abidance by this legal obligation for urgent action within 24 hours is unrealistic and unattainable.

6. The data received from the operations of ESE and the analysis carried out³ show that the court fails to respect the urgent deadlines set in the law to impose measure, which is an additional problem which has not been addressed with the new solutions laid down in the law. Namely, the court has acted in line with the deadline of 7 days for setting a date for a hearing only in 46,7% of petitions for imposition of temporary measures of protection against domestic violence.

7. The data on protection of victims of violence under the Criminal code, collected by the USAID's Women's Legal Protection Project show certain weaknesses, which must be thoroughly examined and analyzed. Namely, the number of criminal charges filed with reference to acts of violence against women between 2012 - 2014 shows a trend of increase⁴, unlike the trend of indictments⁵ which is not consistent with the number of criminal charges. The trend of submitted petition for criminal prosecution filed is disconcerting (bodily injury which is the most frequent grounds for sanctioning domestic violence) over the same period is on the decrease⁶. This even more so given that out of the 169 petitions filed in 2014, 117 were withdrawn by the victim. We still have the trend of imposition of milder punishments than those provided in the law through the institute of „issuing milder sentences“. Data received from criminal courts⁷ on cases of violence against women for the period 2012-2015 support this finding. Namely, of the total of 751 judgments, 76% were convictions, 7,3% acquittals, and 16,7% were overturned. Disconcerting is the fact that of the total number of convictions only in 28.8% of the cases the punishment was a sentence of imprisonment imposed by the court, while in 9.2% the offender were punished with a monetary fine, and in 62% of the cases alternative measures were issued with a conditional judgment .

(Sexual work)

8. Sexual work in the Republic of Macedonia is regulated as an offence against public peace and order and it is subject to a fine of EUR 600-800 in denar counter value. Intermediation, or organization of sexual work is sanctioned in line with article 191 of the Criminal Code, as a crime of „Intermediation in prostitution“. This provision is in practice enforced most frequently to initiate criminal prosecution of sexual workers who for safety reasons in most cases work in together (two or more women), and in particular those who work indoors (apartments). Experience has shown tat when several sexual workers work in shared premises of their own will and autonomously, one is accused of solicitation for prostitution while the others are invited to stand witness. This provision in the law results in incrimination of sexual work, marginalization and disrespect of the rights of sex workers and in turn legal insecurity for them.

³ Analysis of courts actions when imposing temporary measures of protection, Association ESE, 2014. The analysis covered 84 court cases in which temporary measures of protection were issued, and 168 court hearings in ten courts in the towns of Bitola, Kumanovo, Shtip, Strumica, Veles, Radovish, Delchevo, Debar, Gostivar and Tetovo.

⁴Data on thirteen of the total of 22 Public prosecutor offices in RM were analyzed. In 2012 a total of 640 criminal charges were filed; 2013-685, and in 2014 the number of criminal charges is 843.

⁵ In 2012 429 indictments were issued, in 2013-436, and 2014-315.

⁶ In 2012 a total of 218 criminal prosecution proposals were filed, 2013-199, and in 2014-169.

⁷ Data were made available by 18 of the total of 27 basic courts in the country.

9. On the other hand, the National HIV strategy for 2012-2016 has identified sex workers as a group of people exhibiting risky behavior on which specific interventions should focus.⁸ The strategy recognizes the associated stigma and discrimination of sex workers as a significant factor that should be taken into account when designing and implementing activities. Therefore one of the strategic objectives is the strengthening and support of sex workers and their inclusion in the processes of planning, implementation and evaluation of policies and services intended to serve them. Also, sensitization of social and health care workers is needed, as well as of the media and members of the police force so that a supportive environment can be created to ensure effective prevention of HIV/AIDS/STD spread amongst sex workers.

10. The above described regulation on sexual work and even more so the restrictive policies exercised by the bodies in charge of enforcement of the laws contribute to the existence and maintenance of systemic discrimination, violence and exploitation of sex workers. Incrimination of sex work of one's free will pushes sex workers underground, which results in a limited access to health, social and legal aid and significantly reduces the chances to identify the victims of trafficking in human beings.

(Trafficking in human beings)

11. Trafficking in human beings was incriminated in February, 2002 with the introduction of article 418-a „trafficking in human beings“ in the Criminal Code. With the subsequent changes of the Criminal code a criminal liability was introduced for legal entities engaged in trafficking in persons, a new stand alone article on trafficking in children and the maximum penalty for trafficking in persons was raised.⁹ The Law on Criminal procedure passed in 2010 regulates the rights of victims in Chapter V with the title „Victim, injured and private accuser“ (article 53 to 56). Under this law, as victim of a crime which is subject to a penalty of imprisonment of a minimum of four years (as is trafficking in human beings) has a right to a legal representative provided by the state when making a statement if there is a serious physical and psychological damage or consequences of the crime, and the victim is also entitled to a compensation of tangible and intangible damage from the state fund under the conditions and in a manner defined in a separate law provided that the damage cannot be compensated by the accused. Although there are cases where victims of trafficking have received a ruling to the effect that they are entitled to compensation, it cannot be enforced because the offenders do not own property or have any money. At present, this method of compensation (through a state fund) is available only to minors who are victims of trafficking. Nonetheless, the functionality of this option provided in the law has been brought into question. In case of adult victims of trafficking the compensation by the state will be postponed until the moment of adoption of the Law on state fund.¹⁰ Also, under the provisions of the new Law on criminal procedure which

⁸ Government of Republic of Macedonia, national HIV strategy 2012-2016.

⁹ At present, Chapter XXXIV of CC entitled „Crimes against humanity and international law “ contains several articles which are relevant to trafficking in human beings: „Enslavement and transportation of enslaved persons “ (article 418), „Trafficking in human beings“ (article 418-a), „Smuggling of migrants“ (article 418-6), „Organized group and incitement to commit the crimes of trafficking in human beings and smuggling of migrants“ (article 418-b), and „Trafficking in children“ (article 418-r).

¹⁰ Compensation of victims of trafficking in the Republic of Macedonia - ESE, Open Gate 2014.

pertain to a compensation to damage of property, the authorized person (victim, legal representative, power of attorney holder) shall file or have prepared an expert witness testimony by a neuro-psychiatrist and bear the costs, which was not the case under the old Law on criminal procedure. Namely, under the provisions of the old law, the expert witness testimony was covered from the budget of Republic of Macedonia.

12. Our legislation does not contain a specific provision which pertains to the impunity of victims of trafficking for their involvement in illegal activities including illegal migration, to the extent where they are forced to engage. There are no instructions for public prosecutors concerning the steps to be taken when prosecuting persons who might be victims of trafficking.

(Access to free legal aid)

13. There is no specific legal provision that regulates legal aid for victims of violence. Women victims as the other citizen in the Republic of Macedonia can apply for the right to free legal aid according to the Law on free legal aid¹¹. Law on free legal aid guarantees equal access to justice by means of provision of free legal aid (in all instances of civil and administrative procedures and preparation for the legal documents) for persons who are financially disadvantaged and who fulfill the criteria/requirements laid down in the Law. Administrative court taxes, costs for expert opinions, costs for obtaining evidence and other costs are not covered with the Law on free legal aid, which represent one major obstacle for using this law by the gender based violence victims. In addition, as a result of the lengthy procedure for approval of free legal aid and the strict criteria for awarding it, the number of victims of violence who have exercised the free legal aid provided by the state is very small. In the absence of access to free legal aid, victims of violence take advantage of the existing services provided by civil organizations such as Association ESE¹², Open Gate/La Strada or Coalition for sexual and health care rights of marginalized communities.

(Mechanisms for protection against discrimination and unequal treatment)

15. Although The Law on protection against discrimination¹³ provides for the application of the principle of shifting burden of proof to the potential discriminator, the experience of the Commission for protection against discrimination shows that there has been failure to apply this principle in practice. The most frequent procedure of producing evidence before the commission boils down to the word of the petitioner (the victim) against the word of the alleged discriminator. This practice is often time discouraging for the victims who seek protection against discrimination, and have no available evidence to present, since it is the discriminator who has the evidence. In addition to the procedure administered by the Commission for protection against discrimination, discriminated persons may also file a petition with a court of competent jurisdiction for protection against

¹¹ Law on free legal aid, official Gazette of RM, no. 169/09.

¹² ESE's legal aid centre has been in operation for 10 years providing free legal aid and representation of victims of domestic violence. Between 2002 to 2012 a total 2859 women sought help from the Center, with a total of 1282 filings, 106 criminal charges and 173 victims of violence represented free of charge.

¹³ Law on protection against discrimination, Official Gazette of RM, no.50/2010.

discrimination. The established mechanism for protection of the right to equal treatment of genders in the Law on equal opportunities for men and women¹⁴, or „equal opportunities advocate,, is inefficient and is not applied in practice.

Recommendation 23 (e) “Enhance the system of data collection to ensure that data are disaggregated by type of violence and by the relationship of the perpetrator to the victim, support research in this field and ensure that information and collected data are available to the public” is not implemented by the Republic of Macedonia.

16. The most recent attempt to overcome this problem by the state was made with the activities of the **UN Joint Programme of “Strengthening National Capacities to Prevent Domestic Violence 2008-2011”**. It is alarming that all funds for the purpose of establishment of the “unified central data collection system for monitoring incidences and trends of domestic violence”¹⁵ are spent and there is no such system established in practice. Moreover, the situation with the collection of data is the same as it was in 2008 i.e. prior to the adoption of the first National Strategy. Furthermore, UN agencies have spent 120.000 EUR for this purpose without even imposing the obligation for data collection for all relevant institutions. This fact can be confirmed with the second National Strategy 2012-2015, where it is noted that only Ministry of Labor and Social Policy and Ministry of Interior are collecting data on domestic violence cases. Moreover, 72.000 EUR were allocated for the “development of central database software application and installment within all data collection instances”¹⁶ which was not established at all.

(Concluding recommendations)

17. The trend of hyper production of new legal solutions which fail to introduce significant changes to the existing is still ongoing. Hence our recommendation is that the state should in future direct its attention to creating the basic preconditions for implementation of the laws which are based on previously made comprehensive analysis of the situation; analysis of the formal response; and experience and knowledge of relevant factors (exert community, professional structures and associations of citizens).

¹⁴ Law on equal opportunities for men and women, Official Gazette of RM no. 6/2012.

¹⁵ UN Joint Program Strengthening National Capacities to Prevent Domestic Violence, Output 2.

¹⁶ UN Program Budget, Output 2,Item 3.