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# Country report

## Gender equality



North Macedonia  
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# **Country report**

## **Gender equality**

How are EU rules transposed into national law?

### **North Macedonia**

Biljana Kotevska

Reporting period 1 January 2019 – 31 December 2019

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## 1 Introduction

### 1.1 Basic structure of the national legal system

The national legal system of the Republic of North Macedonia,<sup>1</sup> one of the successors of the Yugoslav legal system, is a continental, civil-law system in a unitary semi-parliamentarian republic. According to the Constitution, there are three branches of government in place: the legislature (the Assembly,<sup>2</sup> hereinafter the Parliament), the executive (the Government<sup>3</sup> and the President),<sup>4</sup> and the judiciary (the regular courts, the constitutional court and the prosecutors).<sup>5</sup> The country has a decentralised local self-government consisting of 81 local self-government units – 80 municipalities and the City of Skopje.<sup>6</sup>

The court system is based on a strict hierarchy, with 27 first instance courts, four second instance courts (courts of appeal) and one Supreme Court. The competence for administrative cases lies with the administrative Court of First Instance and the Higher Administrative Court (the Court of Second Instance, Court of Appeal). In addition, there is the Constitutional Court, tasked with deciding on the constitutionality of laws and bylaws.<sup>7</sup> Courts at all levels and instances have some competences to decide on anti-discrimination cases. In addition, the Ombudsperson and the equality body (the Commission for Prevention and Protection against Discrimination (formerly Commission for Protection against Discrimination)) – two national human rights institutions with an equality mandate including gender issues – can also decide on discrimination cases submitted to them. The latter<sup>8</sup> has competences in both the public and the private sphere, whereas the former operates in the public sphere only. The most important part of the executive government with regard to gender equality law is the Ministry of Labour and Social Policy. The legislature – the Parliament – has a working body: the Commission on the Rights of Women and Men. Any text dealing with gender equality has to be discussed and approved by this body, alongside the general commission on laws.

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<sup>1</sup> Please note that the name 'Republic of North Macedonia' entered into force on 13 February 2019 and is used herein accordingly. The name is a result of the Prespa Agreement – a bilateral agreement ending the two decades long 'name dispute' between Greece and the Republic of Macedonia – a subject recognised in international law and by the European Union under the reference 'the former Yugoslav Republic of Macedonia'.

<sup>2</sup> In Macedonian 'Собрание на Република Македонија' and after the Prespa Agreement 'Собрание на Република Северна Македонија'.

<sup>3</sup> In Macedonian 'Влада на Република Македонија' and after the Prespa Agreement 'Влада на Република Северна Македонија'.

<sup>4</sup> In Macedonian 'Претседател на Република Македонија' and after the Prespa Agreement 'Претседател на Република Северна Македонија'.

<sup>5</sup> Note that the wire-tapping affair has cast doubt on whether there is *de facto* separation of powers and rule of law in the country in general. On this, see: Kotevska, B. (2017) *Country report. Non-discrimination – FYR Macedonia*, European network of legal experts in gender equality and non-discrimination, available at: [www.equalitylaw.eu/downloads/4460-fyr-macedonia-country-report-non-discrimination-2017-pdf-1-79-mb](http://www.equalitylaw.eu/downloads/4460-fyr-macedonia-country-report-non-discrimination-2017-pdf-1-79-mb).

<sup>6</sup> Law on Territorial Organisation of Local Self-government, 2004, Article 16. Full title: Republic of North Macedonia, Law on Territorial Organisation of Local Self-government (*Закон за територијална организација на локалната самоуправа*), *Official Gazette of the Republic of Macedonia*, Nos. 55/2004, 12/2005, 98/2008, 149-2014; Constitutional Court Decision: U.no. 40/2005 (26 October 2005).

<sup>7</sup> Note, however, that this mechanism has not proved to be effective. Namely, the Constitutional Court has either rejected or not found discrimination in all but one case since 1991. The dominant reason for the court to reject a claim were legal technicalities, followed by the determination of the Constitutional Court not to act as a supervisory third-level court, and finally, the failure of the petitioner to present sufficient evidence. The court does not shift the burden of proof either, i.e. the burden of proof still lies with the claimant. In 2017 the Constitutional Court accepted only two cases on discrimination on the basis of personal or social status (according to Article 3 of the Law on the Prevention of and Protection from Discrimination). In both cases the court recognised that there had been discrimination. [www.akademik.mk/ustavniot-sud-sopstvenitsite-na-vikend-kukite-vo-mavrovo-so-protivustavni-obvrski-i-tseni-na-uslugi-za-chistene-na-sneg/](http://www.akademik.mk/ustavniot-sud-sopstvenitsite-na-vikend-kukite-vo-mavrovo-so-protivustavni-obvrski-i-tseni-na-uslugi-za-chistene-na-sneg/).

<sup>8</sup> However, please note that, while the former Commission for Protection against Discrimination ceased to exist as of August 2019, the new body (the Commission for Prevention and Protection against Discrimination), has not yet been established. See section 11.7 of this report.



Under the 1991 Constitution, equality is enshrined as a fundamental value.<sup>9</sup> The Constitutional Court deals with discrimination complaints on the grounds of sex, race and religious, ethnic, social and political affiliation. Discrimination has been a criminal offence under the Criminal Code since 1996 (Articles 137(1) and 417), albeit without generating any case law.

From 2006 onwards, anti-discrimination and equality matters have been regulated by comprehensive laws, while the anti-discrimination provisions that existed in other laws remained in force (even if they were not aligned with the provisions in the comprehensive laws).

## 1.2 List of main legislation transposing and implementing the directives

The main national laws transposing the relevant EU directives are:

- Law on Equal Opportunities for Women and Men (Official Gazette No. 6/2012) and its amendments (last amendment Official Gazette No. 150/2015);<sup>10</sup>
- Law on the Prevention of and Protection against Discrimination (Official Gazette No. 101/2019)<sup>11</sup> (which replaced the 2010 law of the same name, published in Official Gazette No. 50/2010);<sup>12</sup>
- Law on Protection from Harassment in the Workplace (Official Gazette No. 79/2013) and its amendments (Official Gazette No. 147/2015);<sup>13</sup>
- Law on Labour Relations (Official Gazette No. 62/2005) and its amendments (last amendment<sup>14</sup> Official Gazette No. 110/2019);<sup>15</sup>
- Law on Volunteering (Official Gazette No. 85/2007) and its amendments (last amendment Official Gazette No. 124/2019);<sup>16</sup>
- Law on Voluntary Financed Pension Insurance (Official Gazette No. 7/2008) and its amendments (last amendment Official Gazette No. 13/2013);<sup>17</sup>

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<sup>9</sup> Constitution of the Republic of North Macedonia (*Устав на Република Северна Македонија*). Official Website of the Assembly of the Republic of North Macedonia, [www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx](http://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx).

<sup>10</sup> Law on Equal Opportunities for Women and Men, 2013. Full title: Law on Equal Opportunities for Women and Men (*Закон за еднакви можности на жените и мажите*), *Official Gazette of the Republic of Macedonia*, Nos. 06/2012, 30/2013, 166/2014, 150/2015.

<sup>11</sup> Anti-Discrimination Law, 2019. Full title: Law on the Prevention of and Protection against Discrimination (*Закон за спречување и заштита од дискриминација*), *Official Gazette of the Republic of North Macedonia*, No. 101/2019.

<sup>12</sup> Anti-Discrimination Law, 2010. Full title: Law on the Prevention of and Protection against Discrimination (*Закон за спречување и заштита од дискриминација*), *Official Gazette of the Republic of Macedonia*, Nos. 50/10, 44/2014, 150/2015, 31/2016, 21, 2018; Constitutional Court Decision: U.no. 82/2010.

<sup>13</sup> Law on Protection against Harassment in the Workplace (2013), Full title: Law on Protection against Harassment in the Workplace (*Закон за заштита од вознемирување на работно место*), *Official Gazette of the Republic of Macedonia*, Nos. 79/2013 and 147/2015.

<sup>14</sup> In 2017 there was a citizens' initiative to amend the Law on Labour Relations, with the aim of extending pregnancy leave up to 18 months ([www.pravdiko.mk/predlozheni-izmeni-vo-zakonot-za-rabotni-odnosi-2/](http://www.pravdiko.mk/predlozheni-izmeni-vo-zakonot-za-rabotni-odnosi-2/)). The proposal was refused based on technical grounds ([www.sobranie.mk/materialdetails.nspx?materialId=9cf2b8cf-94ba-41fc-8d5c-d3580ea7428d](http://www.sobranie.mk/materialdetails.nspx?materialId=9cf2b8cf-94ba-41fc-8d5c-d3580ea7428d)).

<sup>15</sup> Labour Law, 2005. Full title: Law on Labour Relations (*Закон за работните односи*), *Official Gazette of the Republic of Macedonia*, Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014, 20/2015, 33/2015, 72/2015, 129/2015, 27/2016, 120/2018, and *Official Gazette of the Republic of North Macedonia*, No. 110/2019; Constitutional Court Decisions: U.no. 139/2005, U.no. 161/2005, U.no. 134/2005, U.no. 187/2005, U.no. 111/2006, U.no. 188/2006, U.no. 170/2006, U.no. 200/2008, U.no. 20/2009, U.no. 176/2009, U.no. 263/2009, U.no. 62/2013, U.no. 114/2014.

<sup>16</sup> Law on Volunteering, 2007. Full title: Law on the Volunteering (*Закон за волонтерство*), *Official Gazette of the Republic of Macedonia*, Nos. 85/2007, 161/2008, 147/2015, and *Official Gazette of the Republic of North Macedonia*, No. 124/2019.

<sup>17</sup> Law on Voluntary Financed Pension Insurance, 2008. Full title: Law on Voluntary Financed Pension Insurance (*Закон за доброволно капитално финансирано пензиско осигурување*), *Official Gazette of the Republic of Macedonia*, Nos 7/2008, 124/2010, 17/2011, 13/2013, Constitutional Court Decisions: U.no. 117/2008, U.no. 162/2008.

- Law on Social Protection (Official Gazette No. 104/2019) and its amendments (last amendment Official Gazette No. 275/2019)<sup>18</sup> (which replaced the 2009 law of the same name, published in Official Gazette No. 79/2009);<sup>19</sup>
- Law on Patients' Rights (Official Gazette No. 82/2008) and its amendments (last amendment Official Gazette No. 190/2019);<sup>20</sup>
- Law on Public Health (Official Gazette No. 22/2010) and its amendments (last amendment Official Gazette No. 37/2016);<sup>21</sup>
- Law on Health Protection (Official Gazette No. 43/2012) and its amendments (last amendment Official Gazette No. 275/2019);<sup>22</sup>
- Rulebook on minimum safety standards for safety and health in the workplace in relation to pregnant workers, workers who have recently given birth or are breastfeeding (Official Gazette No. 119/2011, as amended in 2017 – Official Gazette No. 197/2017).<sup>23</sup>

### 1.3 Sources of law

The main sources of gender equality law in North Macedonia are (in hierarchical order): the Constitution; international law; national laws and national bylaws. The Constitution is the highest legal act in the country. It is followed by international law. Under the Constitution, international treaties ratified in line with the Constitution are part of the national law.<sup>24</sup> Then come national laws and bylaws (see list in Section 1.2 and others cited throughout this report).

There is no tradition of using case law as a source of law. This is not unusual considering the legal history and tradition of the country (i.e. being a civil law system). However, some formal rules have been made regarding the use of case law as a source of law. The Law on Courts provides that the courts implement the final judgments of the European Court of Human Rights in its decision making. It also provides that, in deciding individual cases, the courts apply the final decisions of the European Court of Human Rights, the International Criminal Court and other courts whose jurisdiction over the country is established.<sup>25</sup> Also, the Supreme Court can issue positions on matters which seem to be the subject of conflicting practice by the lower courts.

<sup>18</sup> Law on Social Protection, 2019. Full title: Law on Social Protection (*Закон за социјалната заштита*), *Official Gazette of the Republic of North Macedonia*, Nos. 104/2019, 146/2019, 275/2019.

<sup>19</sup> Law on Social Protection, 2009. Full title: Law on Social Protection (*Закон за социјалната заштита*), *Official Gazette of the Republic of Macedonia*, Nos. 79/2009, 36/2011, 51/2011, 166/2012, 15/2013, 79/2013, 187/2013, 38/2014, 44/2014, 116/2014, 180/2014, 33/2015, 72/2015, 104/2015, 150/2015, 173/2015, 192/2015 33/2015, 72/2015, 104/2015, 150/2015, 173/2015, 192/2015, 30/2016, 163/2017, 51/2018; Constitutional Court Decision: U.no. 165/2009.

<sup>20</sup> Republic of North Macedonia, Law on Patients' Rights, 2009. Full title: Law on Patients' Rights (*Закон за заштита на правата на пациентите*), *Official Gazette of the Republic of Macedonia*, Nos. 82/2008, 12/2009, 53/2011, 150/2015, and *Official Gazette of the Republic of North Macedonia*, No.190/2019.

<sup>21</sup> Republic of North Macedonia, Law on Public Health, 2010. Full title: Law on Public Health (*Закон за јавно здравје*), *Official Gazette of the Republic of Macedonia*, Nos. 22/2010, 136/2011, 144/2014, 149/2015, 37/2016.

<sup>22</sup> Law on Health Protection, 2012. Full title: Law on Health Protection (*Закон за здравствена заштита*), *Official Gazette of the Republic of Macedonia*, Nos. 43/2012, 145/2012, 87/2013, 164/2013, 39/2014, 43/2014, 132/2014, 188/2014, 10/2015, 61/2015, 154/2015, 192/2015, 17/2016, 37/2016, 20/2019 and *Official Gazette of the Republic of North Macedonia*, Nos. 101/2019, 153/2019, 180/2019, 275/2019; Constitutional Court Decisions: U.no. 59/2012, U.no. 69/2012, U.no. 101/2014.

<sup>23</sup> Republic of North Macedonia, *Правилник за минималните барања за безбедност и здравје при работа на бремени работнички, работнички кои неодамна се породиле или дојат (Rulebook on minimum safety standards for safety and health in the workplace in relation to pregnant workers, workers who have recently given birth or are breastfeeding, 2011. Full title: Rulebook on minimum safety standards for safety and health in the workplace in relation to pregnant workers, workers who have recently given birth or are breastfeeding)*, *Official Gazette of the Republic of Macedonia*, Nos. 119/2011, 197/2017.

<sup>24</sup> Constitution of the Republic of North Macedonia. *Official Website of the Assembly of the Republic of North Macedonia*, available at: [www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx](http://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx), Article 118.

<sup>25</sup> Law on Courts, 2006. Article 18(5, 6). Full title: Law on Courts (*Закон за судовите*), *Official Gazette of the Republic of Macedonia*, Nos. 58/2006, 62/2006, 35/2008, 150/2010, 83/2018, 198/2018 and *Official Gazette of the Republic of North Macedonia*, No. 96/2019; Constitutional Court Decisions: U.no. 256/2007, U.no. 61/2008, U.no. 118/2008, U.no. 16/2009, U.no. 39/2012, and partially amended by the Law on Use

The opinions of equality bodies or quasi-judicial bodies are important since most of the cases are raised before them, and not the courts. However, they are not legally binding thus effectiveness of this protection pathway is questionable. In addition, the courts do not seem to take into consideration the opinions of the equality bodies in the cases that ultimately end up before the courts after they have been argued in front of the equality bodies. Authoritative scholarly interpretations are not considered a source of law.

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of Languages Spoken by at least 20 % of the Citizens in the Republic of Macedonia and in the Units of Local Self-government, *Official Gazette of the Republic of Macedonia*, No. 101/2008.

## 2 General legal framework

### 2.1 Constitution

#### 2.1.1 Constitutional ban on sex discrimination

The national Constitution prohibits sex discrimination. Article 110(1-3), which is on the competences of the Constitutional Court, provides a legal ground for protecting human rights and freedoms, including the prohibition of discrimination based on sex.

#### 2.1.2 Other constitutional protection of equality between men and women

The Constitution addresses equality (Article 9) of all citizens regardless of sex, race, skin colour, national and social origin, political and religious beliefs, property and social status. However, it does not have a separate provision on equality between women and men as do some constitutions of the EU Member States (for example, Finland and Germany).

### 2.2 Equal treatment legislation

North Macedonia has specific equal treatment legislation. Chronologically, the first law dealing with equality between men and women is the 2006 Law on Equal Opportunities for Women and Men. This law dealt exclusively with sex and gender discrimination. The prohibition of sex discrimination was addressed in depth in Articles 3, 4, 5, 7 and 9. The implementation of this law was lacking, and so were any visible results from it in the field of gender equality. It was therefore replaced by a new law with the same title in 2012, which was intended to enhance the implementation potential by introducing many new legal obligations. It also transposed three EU Directives: 2002/73/EC, 2000/78/EC and 2004/113/EC. Its adoption procedure was, however, problematic. The first public consultation (discussion) took place only after the proposal reached Parliament (there were no consultations before this). The law was adopted regardless of the many critical comments and concerns raised during the public consultation.<sup>26</sup>

The first comprehensive equality and non-discrimination legislation was the 2010 Law on the Prevention of and Protection against Discrimination (also 2010 Anti-discrimination Law, 2010 ADL). Under Article 3, discrimination is prohibited on the following grounds: sex, race, colour, gender, belonging to a marginalised group, ethnic origin, language, nationality, social background, religion or religious belief, other types of beliefs, education, political affiliation, personal or social status, 'mental' and physical impairment, age, family or marital status, property status, health condition, and any other ground protected under the law or a ratified international treaty.

However, it was highly criticised for several reasons, including the lack of explicit protection of sexual orientation, the weak position of the equality body and lack of alignment with EU law with regard to certain equality law institutions, such as the shifting of the burden of proof.<sup>27</sup> In May 2019,<sup>28</sup> a new Law on the Prevention of and Protection against Discrimination was adopted. The text offers definitions that are mostly in accordance with international standards; equality becomes part of the general definition; the role of the

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<sup>26</sup> For more on the public debate, the comments and the concerns, please see: EELN (2012), *European Gender Equality Law Review*, No. 1/2012, p. 83, available at: <https://www.equalitylaw.eu/downloads/2798-european-gender-equality-law-review-1-2012>.

<sup>27</sup> Kotevska B., (2016), *Analysis of the harmonisation of the national equality and non-discrimination legislation*, OSCE and CPAD.

<sup>28</sup> The law was first adopted in March 2019. However, the (then) President Gjorgje Ivanov refused to sign the act promulgating the law because it carried the new name of the country, North Macedonia, to which he was opposed. He therefore used his constitutional right to veto and returned the laws to the Parliament. In the meantime, presidential elections took place and a new president was elected – Stevo Pendarovski. The Parliament adopted the law for a second time and, after President Pendarovski signed it, it was published in the Official Gazette on 22 May 2019.

Commission for Protection against Discrimination is enhanced; gender identity is included as a protected discrimination ground; fines are increased; and *actio popularis* (associations/organisations/trade unions can act in the public interest on their own behalf, without a specific victim to support or represent) is explicitly permitted.<sup>29</sup> It also introduces intersectional discrimination including by providing a definition thereof and by subjecting it to higher fines.

Although drafted in a more inclusive manner, especially in terms of participation of CSOs in the working group which drafted the law, the new ADL was blocked in the Parliament and only progressed to adoption following significant protests by CSOs and pressure from representatives of international organisations and institutions in the country, including the European Union. The main reason for the blockage in Parliament was that some MPs opposed the fact that the law included sexual orientation and gender identity among the explicitly protected discrimination grounds.<sup>30</sup>

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<sup>29</sup> Akademik (2017), 'Јавна дебата за новиот закон за спречување и заштита од дискриминација' ('Public debate on the new Law on prevention and protection against discrimination'), 20 October 2017, Akademik website: <http://www.akademik.mk/javna-debata-za-noviot-zakon-za-sprechuvane-i-zashtita-od-diskriminatsija/>.

<sup>30</sup> See flash report: <https://www.equalitylaw.eu/downloads/4814-fyr-macedonia-the-proposed-new-law-on-anti-discrimination-blocked-in-parliament-pdf-134-kb>.

### 3 Implementation of central concepts

#### 3.1 General (legal) context

##### 3.1.1 Surveys on the definition, implementation and limits of central concepts of gender equality law

A 2015 study of the harmonisation of the national legislation on equality and non-discrimination found a clear lack of harmonisation of the national legislation with international standards, and of the other national laws and bylaws with the comprehensive ADL, such as issues with the definitions of several central concepts, including indirect discrimination and the shifting of the burden of proof.<sup>31</sup> This analysis was used in the process of preparing the 2019 ADL. The issues raised there were addressed in the newly adopted ADL. A 2019 study by Reactor – Research in Action, a think-tank focused on gender equality issues, confirmed these findings regarding issues with the central concepts and also noted that these will be largely addressed by the new ADL.<sup>32</sup>

##### 3.1.2 Other issues

The notion of 'sex' under the law within the concept of pregnancy and birth is limited to women. The law does not in any instance extend to cover pregnant men or men that have given birth, thus excluding transgender persons.

No other issues, save the ones outlined under 3.1.1, have been identified. There have been no differing interpretations among the various institutions shaping the general context.

##### 3.1.3 General overview of national acts

The general legislation on gender equality is the Law on Equal Opportunities for Women and Men adopted in 2012 (Gender Equality Law, GEL).<sup>33</sup> It was preceded by the 2006 act with the same title. The 2006 law was considered too weak in terms of potential for effective implementation, in particular because of the weak institutional and enforcement provisions. It was replaced with the enhanced 2012 law. This law defines equal opportunities for women and men, equal treatment, discrimination on grounds of sex, direct and indirect discrimination, harassment and sexual harassment, full equality of women and men, equal representation, and gender mainstreaming.

The Anti-discrimination Law regulates direct and indirect discrimination (Article 8), incitement, encouragement and instruction to discriminate (Article 9) and harassment and sexual harassment (Article 10). Positive action is also part of the ADL, as a measure or action that will not be considered to be discrimination (Article 7).

The Labour Law was adopted in 2005 and amended many times since (Labour Law). It regulates labour relations between workers and employers in the public and the private sphere, self-employment, and full-time and part-time working arrangements. The law contains several definitions of main concepts of gender equality law, including direct and indirect discrimination, harassment, sexual and psychological harassment, and discrimination on grounds of pregnancy, giving birth and parenthood.<sup>34</sup>

##### 3.1.4 Political and societal debate and pending legislative proposals

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<sup>31</sup> Kotevska B., (2016), *Analysis of the harmonisation of the national equality and non-discrimination legislation*, OSCE and CPAD.

<sup>32</sup> Leshoska, V. et al (2019), *Gender-based discrimination and labour in North Macedonia*, Reactor - Research in Action, available at: <http://reactor.org.mk/CMS/Files/Publications/Documents/kwn-final14.pdf?fbclid=IwAR3LEdGHIbtwse6tuPGkHN-oS3LSsr2vSWSpCuUjN1LmsmAkng122dehoKw>.

<sup>33</sup> Gender Equality Law, 2012. Full title: Law on Equal Opportunities for Women and Men, *Official Gazette of the Republic of Macedonia*, 6/2012, 30/2013, 166/2014, 150/2015.

<sup>34</sup> Labour Law, 2005, Articles 7, 9, 9a and 9b.

The Ministry of Labour and Social Policy and the OSCE – Mission to Skopje prepared two analyses of the implementation of the GEL – one for the central level<sup>35</sup> and one for the local level.<sup>36</sup> These analyses were produced to serve as the basis for discussions on possible legislative amendments which are to be prepared in 2020. It is planned that a fully new GEL will be drafted in 2020. To this end, a working group is to be established at the beginning of the upcoming reporting year.

### 3.2 Sex/gender/transgender

#### 3.2.1 Definition of 'gender' and 'sex'

The terms 'gender' and 'sex' are used in the national legislation (Law on the Prevention of and Protection against Discrimination; Law on Equal Opportunities for Women and Men and Law on Labour Relations) however, they are not defined in any of the laws. It should be noted that Article 5(2) of the Law on Labour Relations envisages that the terms 'worker' and 'employer', although used in the masculine form, have a neutral meaning and are used for men and women equally. The term transgender is used in the Guidelines for the practice of evidence-based medicine in the treatment of transgender, where the definition is set as: 'gender identity disorder'.<sup>37</sup>

The Commission for Protection against Discrimination (CPAD), with the support of the OSCE Mission to Skopje, published a Guide on Discrimination Grounds in 2013. The Guide is not a legally binding document, nor is it adopted in any CPAD procedure, but it is put forward as a source to assist (potential) applicants and institutions working with the ADL to understand the discrimination grounds. It includes the following definitions of sex and gender:

'Sex refers to the biological makeup, such as primary and secondary sexual characteristics, genes, and hormones. Gender, on the other hand, refers to people's internal perception and experience of maleness and femaleness, as well as the social understanding of behaviours that can be considered as male or female. These perceptions and experiences vary across history, societies, cultures, etc.'<sup>38</sup> (references omitted).

One complaint was submitted to the CPAD, based on transgender identity, which was admitted and was followed by a decision which found that there had been discrimination. The case concerned a transgender person's access to a service: they were denied admission to a swimming pool. The Commission recommended that the impediment be removed, and compensation paid to the applicant. There is no information on whether these recommendations were implemented.<sup>39</sup>

Another case from 2017 dealt with a legal gender recognition request. In that case, having completed a gender reassignment procedure, the applicant applied to the competent administrative bodies requesting that their personal documents reflect this change, including a change in their unique citizen's number. This number is assigned upon birth to

<sup>35</sup> Chalovska-Dimovska, N. (2019), *Извештај за проценката на имплементацијата на Законот за еднакви можности на жените и мажите на централно ниво (Assessment report regarding the implementation of the Law on Equal opportunities for Women and Men at the central level)*, OSCE – Mission to Skopje and Ministry of Labour and Social Policy, available at: <http://www.mtsp.gov.mk/rodova-ramnopravnost.nspix>.

<sup>36</sup> Savovska, M. (2019), *Извештај за проценката на имплементацијата на Законот за еднакви можности на жените и мажите на локално ниво (Assessment report regarding the implementation of the Law on Equal opportunities for Women and Men at the local level)*, Akcija Združenska, OSCE – Mission to Skopje and Ministry of Labour and Social Policy, available at: <http://www.mtsp.gov.mk/rodova-ramnopravnost.nspix>.

<sup>37</sup> Ministry of Health (2015), *Упатство за практикување на медицина заснована на докази при третман на транссексуализам (Practising evidence-based medicine in treating transsexualism)*, available at: <http://zdravstvo.gov.mk/wp-content/uploads/2015/08/Transeksualizam.pdf>.

<sup>38</sup> Kotevska, B. (2013), *Guide on discrimination grounds*, Skopje, OSCE and CPAD, [www.osce.org/skopje/116789?download=true](http://www.osce.org/skopje/116789?download=true).

<sup>39</sup> Commission for Protection Against Discrimination (2016), Opinion No. 07-1117/4 (10.06.2016).



all people born in the country and part of it is an inbuilt numerical sex marker (450 for men and 410 for women). However, their claim was rejected. The individual therefore took their case to the first instance Administrative Court in Skopje. The Court decided in the applicant's favour, instructing the administrative bodies to implement the requested changes.<sup>40</sup>

### 3.2.2 Protection of transgender, intersex and non-binary persons

The national non-discrimination and equality law framework does not protect transgender, intersex and non-binary persons from discrimination on grounds such as gender identity or sex characteristics. Transgender, intersex and non-binary persons may seek protection on grounds of the open-ended provision of the ADL, Article 3, which prescribes explicit protection to a number of discrimination grounds. Widening the interpretation of the ground 'sex' beyond the traditional binary scope can expand its personal scope enough to protect intersex persons. However, such interpretation has not yet been attempted before the courts and equality bodies.

The new ADL provides explicit protection for gender identity as a ground for discrimination. This covers trans and non-binary persons. There is no definition of this ground in the law, which overlaps with the lack of legal framework regulating transgender rights. Furthermore, contrary to international law, there is no legal standard at present to establish whether gender reassignment will be a condition. The cases where people have been able to change their sex as it is entered on their personal ID documents were cases where the individuals had undergone gender reassignment surgery and thus do not help in clarifying this matter. In 2019, the ECtHR found that the country is in violation of the ECHR because the 'the current legal framework in the respondent State does not provide "quick, transparent and accessible procedures" for changing on birth certificates the registered sex of transgender people'.<sup>41</sup>

### 3.2.3 Specific requirements

While the new ADL provides explicit protection on grounds of gender identity, the legal framework does not go beyond this. It does not provide any definition or subsequent clarifications to answer questions such as whether transgender people are required to undergo gender confirmation or sterilisation surgery before they are protected by non-discrimination law, or whether transgender people are required to change their legal gender before they are protected by non-discrimination law.

## 3.3 Direct sex discrimination

### 3.3.1 Explicit prohibition

Direct discrimination is explicitly prohibited in national legislation: in the ADL (Article 8(1)); the Law on Labour Relations (Article 7(2)); the Law on Employment of and Work by Foreigners (Article 4); the Law on the Protection of Children (Articles 13(1) and 14(1)); and the Law on Equal Opportunities for Women and Men (Article 4). Article 8(1) of the ADL replicates the definition from EU Directive 2006/54/EC. It states that direct discrimination occurs, 'where a person or a group is treated, has been treated or would be treated less favourably than another person or group in an actual or a probable comparable or similar situation, based on grounds of discrimination'.

The Law on Labour Relations fully replicates the definition from the Recast Directive (2006/54/EC). The definition in the Law on the Protection of Children was amended in 2019 and is now in line with the directives.

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<sup>40</sup> Administrative Court (2015), Judgment U-6, No. 909/2015.

<sup>41</sup> ECtHR, *X vs The former Yugoslav Republic of Macedonia*, Application no. 29683/16, 17 January 2019.



### 3.3.2 Prohibition of pregnancy and maternity discrimination

Pregnancy and maternity discrimination are explicitly prohibited in legislation as forms of direct sex discrimination. Article 9(b) of the Law on Labour Relations explicitly prohibits pregnancy, maternity and parenthood discrimination. The provision complies with Article 2(2)(c) of Directive 2006/54.

### 3.3.3 Specific difficulties

Under the current law, the lack of definition of 'sex' in the national legislation can pose difficulties for processing transgender claims of direct discrimination on grounds of sex. However, like other systems with an open-ended list of grounds, lack of definitions of the individual grounds does not usually pose challenges for applicants in getting their application within the personal scope of protection of the law.

No other particular difficulties specifically arise in relation to the concept of direct sex discrimination. It should be noted, however, that general rule of law difficulties which the country faces, for example judicial independence, can also have an impact on addressing direct discrimination.

## 3.4 Indirect sex discrimination

### 3.4.1 Explicit prohibition

Indirect sex discrimination is prohibited in national legislation in the Law on the Prevention of and Protection against Discrimination (Article 8(2)); the Law on Labour Relations (Article 7(3)); the Law on Employment of and Work by Foreigners (Article 4(6)); the Law on the Protection of Children (Article 14(2)) and the Law on Equal Opportunities for Women and Men (Article 4(5)).

Indirect discrimination is defined in Article 4(5) of the Law on Equal Opportunities for Women and Men as:

'when an apparently neutral provision, criterion or customary law places people of one gender into a particularly unfavourable position compared with people of the opposite gender, unless that provision, criterion or customary law is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.'

The Law on the Prevention of and Protection against Discrimination, in Article 8(2), prescribes that indirect discrimination occurs when,

'an apparently neutral provision, criterion, programme or practice put a person or a group in a less favourable position in relation to a discrimination ground compared with other persons or groups of persons, unless it stems from a legitimate objective, and the means for achieving that objective are proportionate, that is appropriate and necessary' (Article 8(2)).

Article 7(3) of the Law on Labour Relations prescribes that indirect discrimination,

'shall exist when a certain apparently neutral provision, criterion or practice, places or would place the job candidate or the employee in a less favourable position in relation to other persons due to a certain feature, status, orientation or belief.'

Because of the open-ended nature of the ADL provision on discrimination grounds, the lack of definition of gender does not pose challenges for getting a discrimination claim within the personal scope of the law. However, this will not be the case with the Law on Equal

Opportunities for Women and Men, which is a single ground law. For this law, such an issue may arise. The definitions comply with the EU definitions.

#### 3.4.2 Statistical evidence

From the publicly available cases, it seems that statistics have not been used in litigation. They are, however, widely used for designing public policy documents (including regarding positive action). As of 2019, with the adoption of the new ADL, they are also allowed as evidence in discrimination cases (Article 38 of the ADL).

#### 3.4.3 Application of the objective justification test

There is no relevant case law from the courts or the equality bodies available.

#### 3.4.4 Specific difficulties

Due to the scarcity of case law, which can be attributed to a number of reasons (such as procedure costs; CSOs which work on legal aid provision in relation to sex; distrust in the judicial system and in the state institutions in general), no comment can be made on the specific difficulties in applying the concept of indirect sex discrimination.

### **3.5 Multiple discrimination and intersectional discrimination<sup>42</sup>**

#### 3.5.1 Definition and explicit prohibition

Multiple discrimination is prohibited in the Anti-Discrimination Law as a graver form of discrimination (Article 13) and is defined as 'discrimination practised against a person or a group based on multiple grounds of discrimination' (Article 4(1(10))). Multiple discrimination is explicitly prohibited in the ADL, in Article 13, as a 'grave form of discrimination'. It is defined in Article 4(1(10)) as 'discrimination practised against a person or a group based on multiple grounds of discrimination'. Intersectional discrimination is also explicitly outlawed in Article 13. It is defined as 'any discrimination based on two or more grounds of discrimination which are concurrently and inseparably related' (Article 4(1(13))). There is a separate article on fines for multiple discrimination, prescribing higher fines for multiple and intersectional discrimination (Article 42).

The national legal framework for the anti-discrimination remedies, and the way it is applied, causes no problems for the applicants to invoke several grounds of discrimination in the same claim. In fact, this seems to be quite a frequent practice, especially in front of the equality bodies. Also, the comprehensive ADL provides an equal material and personal scope across grounds, thus no issues arise similar to the ones which may arise under EU law, where the scope between the directives differs.

#### 3.5.2 Case law and judicial recognition

There is case law on multiple discrimination. The equality body, the CPAD, has consistently reported over the years that it has dealt with cases where discrimination was alleged on more than one discrimination ground. A third of the cases that the CPAD received in 2016 alleged discrimination on several grounds.<sup>43</sup> A case put forward by the CSO, the Helsinki Committee for Human Rights of the Republic of Macedonia (MHC) to the CPAD in 2017 was

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<sup>42</sup> For more information, see Fredman, S. (2016), *Intersectional discrimination in EU gender equality and non-discrimination law*, European network of legal experts in gender equality and non-discrimination, available at: <https://www.equalitylaw.eu/downloads/3850-intersectional-discrimination-in-eu-gender-equality-and-non-discrimination-law-pdf-731-kb>.

<sup>43</sup> Commission for Protection Against Discrimination (Комисија за заштита од дискриминација) (2017), *2016 annual report*.

in relation to potential multiple discrimination on the grounds of sex and age in the field of employment. Namely:

'in March 2017, a hotel in Skopje published a vacancy, stating that it was looking for a woman between 30 and 45 years of age for kitchen work – serving breakfast. The Helsinki Committee filed a claim with the CPAD alleging multiple discrimination. CPAD agreed and found that there had been direct multiple discrimination in access to employment on the ground of sex, as well as discrimination against women younger than 30 and older than 45 years of age. The CPAD did not ask the hotel to respond as it found that the text of the advertisement was sufficient proof of discrimination and, because of the nature of the advertised position, the discriminatory action could not be subject to any of the exceptions to discrimination, and so could not be justified. The CPAD requested the hotel to withdraw the original advert and to republish it without the discriminatory criteria.'<sup>44</sup>

In cases of multiple discrimination, the grounds were considered separately as well as in their additive form. None of the cases was raised as an intersectional discrimination case, thus no interactions of the grounds of that sort have been considered in the case law. The fact that no case was argued as an intersectional discrimination case might be attributed to the fact that intersectional discrimination was not explicitly recognised as a form of discrimination under the law until 2019.

As for the comparator – there is no one unified practice in front of the CPAD. Examples range from requiring comparators for both grounds, to a single-comparator and to requiring no comparator at all. With the Ombudsperson, we cannot draw any conclusion since the Ombudsperson does not allow access to its cases; the only information we can get on the Ombudsperson's cases is from the brief overviews in its annual reports. A similar issue exists for analysing the court cases, which are also not made public by default, with the exception of the Constitutional Court cases.

### **3.6 Positive action**

#### **3.6.1 Definition and explicit prohibition**

Positive action is explicitly allowed in national legislation and is considered as a measure or action that is not deemed to be discrimination. Article 7 of the ADL, paragraphs 1 and 2, state:

'Measures and actions taken for the sole purpose of eliminating any unequal enjoyment of human rights and freedoms until equality in fact is achieved for all persons and groups shall not be deemed discrimination, provided that the distinction is justified and objective and the means for the achievement of the objective are proportionate, that is adequate and necessary.' (para.1)

'The measures and actions referred to in paragraph (1) of this Article shall be of limited duration and applicable until equality in fact is achieved for persons or a group in terms of the enjoyment of their rights.' (para.2)

In the GEL, Article 3 states: 'The different treatment promoted in the Law on Equal Opportunities for Women and Men in accordance with the aims of this or another law shall not be considered discrimination.'

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<sup>44</sup> The case, *Helsinki Committee vs Hotel Glam* (19 May 2017), was reported on the Helsinki Committee's website: <http://mhc.org.mk/announcements/594#.WrgmULaZPox>. See Kotevska, B. (2017), *Country report. Non-discrimination – FYR Macedonia*, European network of legal experts in gender equality and non-discrimination, available at: [www.equalitylaw.eu/downloads/4460-fyr-macedonia-country-report-non-discrimination-2017-pdf-1-79-mb](http://www.equalitylaw.eu/downloads/4460-fyr-macedonia-country-report-non-discrimination-2017-pdf-1-79-mb).

Article 7 of the GEL (special measures) states:

'(1) Special measures shall be temporary measures taken for the purpose of overcoming an existing unfavourable social status of women and men, resulting from a systematic discrimination or structural gender inequality resulting from historical and socio-cultural circumstances. The special measures shall be aimed at eliminating the barriers or giving special contribution and motivation for the purpose of achieving equal starting positions for women and men, equal treatment, balanced participation or equal social status, development of individual potentials that contribute to social development and equal use of the benefits of the referred development. The special measures referred to in Paragraph (1) of this Article shall include:

- positive measures are measures whereby under equal conditions priority is given to persons of the less-represented gender, until equal representation is reached or the aim for which the measures are taken is achieved. The positive measures shall particularly be implemented in all bodies and at all levels in the field of legislative, executive and judiciary authority and in other bodies and organisations, in the local government, as well as in all other public institutions and services, in the political parties in carrying out political functions, commissions and boards, including the participation in bodies representing the State at international level, until equal participation is achieved;
- encouraging measures are measures that ensure special incentives or introduce special advantages with the purpose of eliminating the circumstances that cause unequal participation of women and men, or unequal status of one gender compared with the other or unequal distribution of social goods and resources; and
- programme measures are measures directed at awareness-raising, organising activities and drafting and implementing action plans for the purpose of motivating and promoting equal opportunities.'

In the view of the author these definitions comply with the EU definitions and relevant case law.

### 3.6.2 Conceptual distinctions between 'equal opportunities' and 'positive action' in national law

The GEL does consider 'equal opportunities' to be a separate concept from positive action. In Article 4(1), it stipulates that equal opportunities for women and men

'is promotion of the principle of introduction of equal participation of women and men in all spheres of the public and private sector, equal status and treatment in the exercise of all the rights and in the development of their individual potentials through which they contribute to the social development, as well as equal benefits of the results arising from that development'.

As opposed to this, positive measures are defined in Article 7(3), as:

'positive measures are measures whereby under equal conditions priority is given to persons of the less represented gender, until equal representation is reached or the aim for which the measures are undertaken is achieved. The positive measures shall be particularly implemented in all bodies and on all levels in the field of legislative, executive and judiciary authority and in other bodies and organisations, in the local government, as well as in all other public institutions and services, in the political parties in carrying out political functions, commissions and boards, including the participation in bodies representing the state at international level, until equal participation is achieved'.

### 3.6.3 Specific difficulties

There are no specific difficulties in relation to implementing positive action measures. There are difficulties in the sense of how few positive action measures have been prescribed under the law (mainly in relation to election quotas), or how different the priority in relation to positive action is on other grounds compared to gender (such as ethnicity, for example, which has a high political and security significance for the country because of the 2001 ethnic conflict and the Ohrid Framework Agreement which ended that conflict). However, these do not stem from specific difficulties related to implementing positive action specifically on grounds of sex. Doubts as to the usefulness of the classification of the various measures under the GEL persist.<sup>45</sup>

### 3.6.4 Measures to improve the gender balance on company boards

There are no measures that aim to improve the gender balance on company boards nor provisions on quotas for women on company boards in any Macedonian law in force. Neither the Law on Commercial Companies, which regulates the work of private companies, nor the Law on Public Enterprises, which regulates the work of state-owned companies, nor the Law on Institutions, which regulates the work of public institutions, include any provision on quotas for women on company boards.

The only law that has a provision related to the issue of quotas for women on company boards is the Law on Equal Opportunities for Women and Men. In Article 6, under Special Measures, it stipulates that '...priority [should be given to the under-represented gender] when there is no equal participation of women and men in the bodies of power...' in all spheres of public life including public institutions.

Based on the National Plan 2007-2012, in 2013 the Association of Macedonian Women Business Leaders was established with the aim of supporting the representation of women in the business hierarchy.<sup>46</sup> However, there have been no visible results. According to the Association of Economic Chambers, women hold only 2 % of managerial posts in large companies.<sup>47</sup>

Furthermore, there are no legislative proposals on quotas for women on company boards, available data on codes of conduct or corporate governance codes. Some research has been conducted by international development agencies on the regional level,<sup>48</sup> as well as by some international organisations,<sup>49</sup> such as the study, 'Women on the Boards of Directors'.

One of the conclusions of the conference 'EU Representation: the Process of Harmonisation to the EU from a Gender Perspective' (10 March 2016) was that there had been no visible improvement in the gender balance on Macedonian company boards.<sup>50</sup>

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<sup>45</sup> Savovska, M. (2019), *Извештај за проценката на имплементацијата на Законот за еднакви можности на жените и мажите на локално ниво (Assessment report regarding the implementation of the Law on Equal opportunities for Women and Men at the local level)*, Akcija Združenska, OSCE – Mission to Skopje and Ministry of Labour and Social Policy, available at: <http://www.mtsp.gov.mk/rodova-ramnopravnost.nspix>.

<sup>46</sup> Promotion of the Association of Women Leaders: [http://www.mchamber.org.mk/\(S\(bpiyarmkvfi1nz55pxhqx345\)\)/default.aspx?Id=1&mId=55&evId=17226](http://www.mchamber.org.mk/(S(bpiyarmkvfi1nz55pxhqx345))/default.aspx?Id=1&mId=55&evId=17226).

<sup>47</sup> Statement made in March 2016, available at: <https://sitetel.com.mk/ssk-samo-dva-otsto-od-zhenite-vo-makedonija-se-na-rakovodni-pozicii-vo-golemite-kompanii>.

<sup>48</sup> Women on corporate boards in Bosnia and Herzegovina, FYR Macedonia and Serbia, <https://www.ifc.org/wps/wcm/connect/798acce5-c8ef-4b18-81e2-5a79d0dc251b/PublicationBalkansBD2013.pdf?MOD=AJPERES&CVID=jX1cIVp>.

<sup>49</sup> Cigna, G., Kobel, Y., v Sigheartau, A., *Corporate governance in transition economies FYR Macedonia country report*, available at: <https://www.ebrd.com/documents/legal-reform/dpdf-corporate-governance-fyr-macedonia.pdf>.

<sup>50</sup> [www.reactor.org.mk/NewsDetails.aspx?id=20&&newsID=212&lang=en-US](http://www.reactor.org.mk/NewsDetails.aspx?id=20&&newsID=212&lang=en-US).

Local public enterprises' boards are usually formed by the mayor and the municipal councils. Only a few municipalities have undertaken strategies for a better gender balance, which include the issue of gender balance on company boards.<sup>51</sup>

### 3.6.5 Positive action measures to improve the gender balance in other areas

Article 4 of the Law on Political Parties<sup>52</sup> stipulates that the political parties will take care of the implementation of the principle of gender equality but only in the area of accessibility of functions within their own political party. This actually includes positive action measures.

Article 4(3) of the Law on Elections<sup>53</sup> stipulates that each sex will be represented at a level of at least 40 % in the electoral bodies. The same quota is envisaged in the lists of candidates for Members of Parliament and for municipal councils, although worded slightly differently – every third place must go to the under-represented sex, amounting to 4 out of 10 places being reserved for women. This does not, however, apply to mayoral lists. From 2013 to 2017 only 4 of the 81 local self-government units were headed by women. In the local elections of 2017, the number of women mayors increased to six. Although this is an improvement, the total number of municipalities where the mayor is a woman still only amounts to 7 %.

The lack of political participation by women at all levels still persists regardless of the changes in local and national governments that occurred in 2017. Where participation is ensured with gender quotas, it remains at around one third (for example, the participation of women in Parliament remains at 36 % even though the recent amendment to the electoral legislation increased the quota for women on electoral lists to 40 %, because the quotas apply to electoral lists, not electoral results, and the obligation applies to every third place, thus women often make it to the bottom end of the lists, making them less likely to be elected). However, the participation of women in parliamentary bodies was and still remains limited. In particular, women are mostly members of parliamentary bodies and committees relating to health, education and equal opportunities as opposed to defence or security. At present on the parliamentary Commission for Defence and Security, only two of the 12 members are women and on the Commission for Economic Affairs only three of the nine members are women.<sup>54</sup> In contrast, on the Commission for Equal Opportunities for Women and Men, only two of the 10 members are men, indicating that women dominate in bodies dealing with advancing women's rights and gender equality in the country, but are notably excluded from key reform sectors.

Women continue to be under-represented in key decision-making positions, including ministerial positions. This is the case for both the previous and current government. Within the previous government, there were only 3 female ministers out of 22 (14 %). At the end of 2019, 5 out of 23 ministerial positions were held by women (21 %). Furthermore, if we take the first wave of staffing for the new government as an indicator, women are significantly under-represented in all government bodies (at one point, of the 68 newly

<sup>51</sup> The 2019 Assessment of the GEL implementation at the local level mentions the municipality of Delchevo. Source: Savovska, M. (2019), *Извештај за проценката на имплементацијата на Законот за еднакви можности на жените и мажите на локално ниво (Assessment report regarding the implementation of the Law on Equal opportunities for Women and Men at the local level)*, Akcija Združenska, OSCE – Mission to Skopje and Ministry of Labour and Social Policy, available at: <http://www.mtsp.gov.mk/rodova-ramnopravnost.nspх>.

<sup>52</sup> Law on Political Parties (2004). Full title: Law on Political Parties (*Закон за политичките партии*), *Official Gazette of the Republic of Macedonia*, Nos. 76/2004; 5/2007; 8/2007; 5/2008 and 23/2013, and Constitutional Court Decisions U.no. 12/2007, U.no. 15/2007, and U.no. 23/2007.

<sup>53</sup> Electoral Code (2006). Full title: Electoral Code (*Изборен законик*), *Official Gazette of the Republic of Macedonia*, Nos. 40/2006; 136/2008; 148/2008; 155/2008; 163/2008; 44/2011; 51/2011; 142/2012; 31/2013; 34/2013; 14/2014; 30/2014; 196/2015; 35/2016; 97/2016; 99/2016; 136/2016; 142/2016; 67/2017; 125/2017; 35/2018; 99/2018; 140/2018; and 208/2018, and Constitutional Court Decisions U.no. 87/2006, U.no. 93/2014 and U.no. 25.2017.

<sup>54</sup> Please note that, at the cut-off date for this report, pre-term elections were announced for April 2020, which means that the information regarding the composition of the parliamentary bodies will soon be out of date.

appointed state positions, only 8 (11 %) were women). Even though the current government has included gender equality as a strategic priority in its election campaign, and the new Prime Minister has publicly stated that gender equality is a government priority, this is not currently reflected in the government's appointments.<sup>55</sup>

### **3.7 Harassment and sexual harassment**

#### **3.7.1 Definition and explicit prohibition of harassment**

Harassment is explicitly prohibited in national legislation.

In the Law on the Prevention of and Protection against Discrimination, the definitions of both harassment (Article 10(1)) and sexual harassment (Article 10(2)) are transposed fully in line with the EU directives. Article 10(1) states that harassment is:

'unwanted behaviour towards a person or a group of persons on discrimination grounds the purpose or consequence of which is to undermine the dignity or to create a threatening, hostile, demeaning, or fear-provoking environment, approach or practice.'

Article 10(2) defines sexual harassment as:

'any form of unwanted verbal, non-verbal or physical behaviour of a sexual nature, which aims to or results in the violation of a person's dignity or the creation of a hostile, intimidating, degrading or humiliating environment, approach or practice.'

In the Law on Equal Opportunities for Women and Men, the wording concerning harassment and sexual harassment was actually based on the definitions in the directives (Article 3(3)):

'Discrimination, harassment and sexual harassment on the grounds of gender shall be prohibited in the public and private sector in the spheres of employment and labour, education, science and sports, social security, including social protection, pension and disability insurance, health insurance and health protection, judiciary and administration, housing, public information and media, information and communication technologies, defence and security, membership and active participation in union organisations, political parties, associations and foundations, other membership-based organisations, culture and other spheres defined by this or another law.'

According to this law:

'Gender-based harassment is unwanted behaviour associated with the gender of a person, aimed at or resulting in violation of the dignity of a person, and the creation of an intimidating, hostile, degrading, humiliating or offensive environment'.

The same goes for the definitions in Article 9 of the Law on Labour Relations, which deals with harassment and sexual harassment. The last and specific formulation of these two definitions was introduced in 2008, thus aligning them with the EU directives ('Harassment and sexual harassment shall constitute discrimination in terms of Article 6 of this Law. Harassment, in terms of this Law, shall be considered any unwanted behaviour caused by any of the events referred to in Article 6 of this Law that aims at or constitutes a violation

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<sup>55</sup> Reactor – Research in Action (2018), *Information submitted for consideration to the Committee on the Elimination of Discrimination against Women in its adoption of a list of issues regarding the Sixth Periodical Report of the Republic of Macedonia under the Convention on Elimination of All Forms of Discrimination against Women, 71<sup>st</sup> Pre-Sessional Working Group, 12-16 March, 2018*, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MKD/INT\\_CEDAW\\_NGO\\_MKD\\_30045\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MKD/INT_CEDAW_NGO_MKD_30045_E.pdf).



of the dignity of the job candidate or the employee, and which causes fear or creates a hostile, humiliating or offensive behaviour. Sexual harassment, in terms of this Law, shall be considered any verbal, non-verbal or physical behaviour of a sexual nature that aims at or constitutes violation of the dignity of the job candidate or employee, and which causes fear or creates hostile, humiliating or offensive behaviour’).

The definitions in the three laws are in line with the directives, including references both to the purpose or effect of violating the dignity of a person. Thus, harassment ‘...is an unwanted conduct ... with the purpose or effect of violating the dignity of a person ... and of creating an intimidating, hostile, humiliating or offensive environment’. Sexual harassment ‘...is every verbal, nonverbal or physical conduct of sexual character with the purpose or effect of violating the dignity of a person ... and of creating an intimidating, hostile, humiliating or offensive environment’.

However, further on, there is a stipulation (Article 9-a(2)) on so-called ‘mobbing’ or psychological harassment:

“Psychological harassment” is any negative and repetitive (lasting at least six months) conduct with the purpose or effect of violating the dignity of the applicant for employment or the worker and of creating an intimidating, hostile, humiliating or offensive environment, and whose final objective is ending the working relationship or causing the worker to leave that working position.’

The Law on Protection from Harassment in the Workplace<sup>56</sup> lays down a ban on any kind of harassment, as well as a concept of ‘abuse of the rights on [non]harassment’ (Article 4), defining sexual harassment as ‘every verbal, non-verbal or physical behaviour of a sexual character aimed at or constituting a violation of dignity... and which causes a feeling of fear or creates inconvenience or humiliation’. The legislator seems to have intended to create a distinction between harassment in the workplace and other activities that would not be considered as such, including ‘any unjustified distinction during unequal treatment towards the employee on any ground of discrimination which is prohibited and for which protection is provided for under a law’.<sup>57</sup> However, the law does leave room for a conflict between the concept of harassment as prescribed in the Labour Law and the ADL, and that in the Law on Harassment.

This is well illustrated in Case No. ПОЖ-316/15 of 15 September 2016. In this case, the Skopje Court of Second Instance upheld the decision of the Court of First Instance, rejecting the complaint of the claimant that the Court of First Instance had itself selected which part of the case it would deal with under the Law on Labour Relations and which part under the Law on Protection from Harassment in the Workplace, in such a way that it could rule against her mobbing complaint.

The Macedonian Criminal Code does not follow these changes in the Law on Equal Opportunities for Women and Men. The only possibility to address harassment in a criminal procedure is Article 143 on ‘In-service Maltreatment’ in addition to the general article on discrimination – Article 137 on ‘Violation of Citizens’ Equality’.

### 3.7.2 Scope of the prohibition of harassment

The definition of harassment covers a broader scope going beyond the field of employment and it is related to all fields of discrimination mentioned in the Law on the Prevention of and Protection against Discrimination (Article 3(2)). These fields are: labour and employment; education, science and sport; social security, including social protection,

<sup>56</sup> Law on Protection against Harassment in the Workplace, 2013. Full title: Law on Protection against Harassment in the Workplace (*Закон за заштита од вознемирување на работно место*), *Official Gazette of the Republic of Macedonia*, No. 79/2013.

<sup>57</sup> Law on Protection against Harassment in the Workplace, 2013, Article 8(3).



pension and disability insurance, health insurance and health protection; judiciary and governance; housing; public information and the media; access to goods and services; membership of and activity in political parties, associations, foundations, trade unions and other membership organisations; and culture. Article 3(2) is an open-ended provision, ending in 'any other field'.

### 3.7.3 Definition and explicit prohibition of sexual harassment

Sexual harassment is explicitly prohibited in national legislation.

The distinction between 'harassment' and 'sexual harassment' is included in the Law on the Prevention of and Protection against Discrimination (see Article 10(2), quoted above in Section 3.7.1) and in the Law on Equal Opportunities for Women and Men. However, in the special Law on Protection from Harassment in the Workplace of 2013, both types of harassment are combined.

The Law on Equal Opportunities for Women and Men states:

'Gender-based sexual harassment is any type of unwanted verbal, non-verbal or physical behaviour of sexual nature, aimed at or resulting in the violation of the dignity of a person, especially when an intimidating, hostile, degrading, humiliating or offensive atmosphere is created.'

Both definitions comply with the EU definition in Article 2(1)(d) of Directive 2006/54.

Article 9 of the Law on Labour Relations explicitly prohibits harassment and determines it as discrimination, while copying the EU definition (Article 9(4)).

In the Law against harassment in the workplace, the definition of a harasser is sexually neutral, thus covering both men and women. In addition to the harassed worker, those who are legally entitled to submit a case on his/her behalf as legal representatives based on his/her written consent are:

- 1) a trade union representative or an employees' representative;
- 2) a person in charge of health and safety or of human resources.

A good aspect of this Law is the provision stipulating protection from victimisation, meaning that the person who initiates a procedure for protection from harassment in the workplace, or takes part as a witness, is protected against less favourable treatment in working relations and dismissal. This protection lasts for two years from the initiation of the procedure.<sup>58</sup> However, a CSO study on legal protection from harassment in the workplace has found that

'the adopted Law has not contributed to significant progress in the fight against this phenomenon in our country nor has it gained the citizens' confidence that its provisions guarantee a firm basis for positive settlement through the procedures against harassment in the workplace.'<sup>59</sup>

Even the latest research<sup>60</sup> highlights the problem that '[s]exual violence is one of the most widespread forms of violence in Macedonia, and yet at the same time it is one of the least

<sup>58</sup> Law on Protection against Harassment in the Workplace, 2013, Article 30.

<sup>59</sup> Association for Emancipation, Solidarity and Equality of Women (2016), Преглед на правната заштита на жртвите од вознемирување на работното место (*Survey on legal protection of the victims of harassment at the workplace*), available at: [www.esem.org.mk/pdf/Publikacii/2016/Pregled%20na%20pravната%20zastita%20-%20voznemiruvanje.pdf](http://www.esem.org.mk/pdf/Publikacii/2016/Pregled%20na%20pravната%20zastita%20-%20voznemiruvanje.pdf).

<sup>60</sup> National Network against Violence against Women and Domestic Violence, *Студија за сексуално насилство во Република Македонија (Study on different forms of sexual violence)*, available at:

reported'. So far, none of these forms of sexual violence has been recognised as gender-based violence, while women and girls are neither recognised nor treated as a particularly vulnerable category.

#### 3.7.4 Scope of the prohibition of sexual harassment

In the same way as the definition of harassment, the definition of sexual harassment covers a scope that is broader than employment and is related to all fields of discrimination mentioned in the Law on the Prevention of and Protection against Discrimination (Article 3(2)). These are the same fields in which harassment is outlawed (see Section 3.7.2): labour and employment; education, science and sport; social security, including social protection, pension and disability insurance, health insurance and health protection; judiciary and governance; housing; public information and media; access to goods and services; membership of and activity in political parties, associations, foundations, trade unions and other membership organisations; and culture. In addition, Article 3(2) is an open-ended provision, ending in 'any other field'.

#### 3.7.5 Understanding of (sexual) harassment as discrimination

The national legislation specifies that harassment and sexual harassment, as well as any less favourable treatment based on the person's rejection of or submission to such conduct, amounts to discrimination.

#### 3.7.6 Specific difficulties

A study on labour relations discrimination and harassment in the period 2014-2016 conducted by the Association for Emancipation, Solidarity and Equality of Women (ESE) identified several obstacles. On harassment, the study found that the most common type of harassment claimed before the courts is psychological harassment and that all cases were in the area of employment in the private sector. The study also found that a majority of the claims on harassment were rejected, which the authors identify as conspicuous considering that, under the national procedural law, even if the applicant did not state clearly the legal ground on which they are resting their case, the court is not obliged to reject the claim and can identify a correct ground and process the case. The authors attribute this to a lack of sensitivity of the judges and lawyers regarding the nature of harassment.<sup>61</sup>

### 3.8 Instruction to discriminate

#### 3.8.1 Explicit prohibition

Instruction to discriminate is explicitly prohibited in national legislation.

Article 9 (Call for, incitement and instruction to discrimination) of the Law on the Prevention of and Protection against Discrimination states: 'Any activity with which the practising of discrimination on grounds of discrimination is, directly or indirectly, encouraged, stimulated, instructed or incited, shall be deemed encouragement, incitement and instruction to discriminate.' Article 5(4) of the Law on Protection from Harassment in the Workplace includes a provision along the same lines.

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<http://www.glasprotivnasilstvo.org.mk/wp-content/uploads/2013/11/studija-za-seksualno-nasilstvo-vo-rm.pdf>.

<sup>61</sup> Association for Emancipation, Solidarity and Equality of Women (2017), *Overview of court cases related to violations of labour rights, with a focus of discrimination and harassment in the workplace*, available at: <http://www.esem.org.mk/en/pdf/Publikaciji/2017/Overview%20of%20court%20cases.pdf>.

### 3.8.2 Specific difficulties

There are some reports on this issue,<sup>62</sup> yet there are no cases dealing with it in relation to sex. A case on an instruction to discriminate in relation to racial or ethnic origin was reported to the equality body in 2013 by Sumnal (a CSO dealing with Roma rights).<sup>63</sup>

'A company that was contracted by a large (now closed) supermarket located in one of the largest malls in the country had instructed its sub-contracted company to "remove" all employees of Roma ethnic origin who worked in the food department. Although the instruction to discriminate was evident, the case was found to be one of direct discrimination by the contracted company and there was no deliberation on the element of an instruction to discriminate.'<sup>64</sup>

### 3.9 Other forms of discrimination

Discrimination by association<sup>65</sup> and assumed discrimination<sup>66</sup> are prohibited under the ADL.

Article 4(1(8)) of the ADL defines discrimination by association as 'any distinction, exclusion or restriction of a person due to being associated with another person or a group based on any grounds of discrimination'. Article 4(1(9)) of the ADL defines discrimination by perception as 'any distinction, exclusion or restriction of a person due to a presumed belonging to a particular group based on any grounds of discrimination'.

In addition, repeated discrimination (Articles 4(1(11)) and 13) and extended discrimination (Article 4(1(12)) and 13) are also outlawed. Article 12 outlaws segregation and Article 11 victimisation.

### 3.10 Evaluation of implementation

Overall, implementation is improving. With the adoption of the new ADL, the legal framework has been significantly improved and aligned with EU law.

### 3.11 Remaining issues

No other issues remain in relation to the central concepts of gender equality law.

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<sup>62</sup> Macedonian Helsinki Committee, *Annual report 2013*, available at:

[http://www.mhc.org.mk/system/uploads/redactor\\_assets/documents/681/Helsinki\\_Godisen\\_2013.pdf](http://www.mhc.org.mk/system/uploads/redactor_assets/documents/681/Helsinki_Godisen_2013.pdf).

<sup>63</sup> Commission for Protection against Discrimination (2013), Opinion on Application No. 07-633/4 *Association for the Development of the Roma Community Sumnal v Marcem DOO Skopje*, 23 May 2013.

<sup>64</sup> Kotevska, B. (2017), *County report. Non-discrimination Report – FYR Macedonia*, European network of legal experts in gender equality and non-discrimination, available at: <https://www.equalitylaw.eu/downloads/4460-fyr-macedonia-country-report-non-discrimination-2017-pdf-1-79-mb>.

<sup>65</sup> See the Coleman case in relation to disability discrimination: C-303/06, *S. Coleman v Attridge Law and Steve Law* [2008] EU:C:2008:415.

<sup>66</sup> A person assumes, for example, that a woman wearing a headscarf is a Muslim, even though that turns out to be an incorrect perception or assumption.

## **4 Equal pay and equal treatment at work (Article 157 of the Treaty on the Functioning of the European Union (TFEU) and Recast Directive 2006/54)**

### **4.1 General (legal) context**

#### 4.1.1 Surveys on the gender pay gap and the difficulties of realising equal pay

According to a CSO analysis '...women in Macedonia are paid 14.1 % less than men before adjusting for human capital characteristics. With the adjustments the gap increases to 19.2 %'.<sup>67</sup> An econometric analysis by the ILO reveals the existence of a large gender pay gap up to 19 % of the general wage and up to 28 % of the wage for non-qualified labour.<sup>68</sup> The CPAD also conducted its own analysis, supported by the OSCE. It found that the average salary paid out to men is EUR 323 (MKD 19 864), whereas the average salary paid to women is EUR 237 (MKD 14 590).<sup>69</sup>

#### 4.1.2 Surveys on the difficulties of realising equal treatment at work

A 2017 study of the participation of Roma women in the labour market confirmed that the widespread 'traditional views' or simply 'tradition' is a major factor for exclusion of women from the labour market, when looking at the case of Roma women. It found that traditional views and attitudes feature only among the views of some of the local self-government representatives, whereas they do not feature among Roma women themselves. Roma women, and the majority of interviewees, including social service centres and the state employment agency, all agree that the top reason for unemployment of Roma women is discrimination, stereotypes and prejudice. Another reason which features prominently is lack of skills and formal education.<sup>70</sup> The findings of this study, compared to the official statistics on women in general, clearly point to the very particular ways in which discrimination works and excludes Roma women from the labour market, compared to other women.

#### 4.1.3 Other issues

No other issues of particular difficulty can be singled out in relation to the application of the principle of equal pay for equal work and work of equal value in practice and/or to equal treatment at work.

#### 4.1.4 Political and societal debate and pending legislative proposals

In addition to the analyses of the implementation of the GEL at the central and local levels (see Section 3.1.4), the preparation of the new Labour Law is underway. While no text has yet been put forward for public discussion, CSOs have already published demands as to what the new law should contain. Reactor – Research in Action, has set four key demands: (1) protection of pregnant workers who work on fixed-term contracts during pregnancy, birth and parenthood; (2) the right to protection during pregnancy, birth and parenthood for workers doing unpaid work and workers without formal employment contracts; (3) the

<sup>67</sup> Vchkov, I. and Petreski, M. (2017), Gender and motherhood wage gaps in Macedonia, *Finance Think*, available at: [https://issuu.com/financethink/docs/gender\\_wage\\_and\\_motherhood\\_gaps\\_-\\_m](https://issuu.com/financethink/docs/gender_wage_and_motherhood_gaps_-_m).

<sup>68</sup> Petreski, M. and Mojsoska Blazevski, N. (2015), *The gender and motherhood wage gap in the former Yugoslav Republic of Macedonia: An econometric analysis*, ILO, Working Paper 6/2015, available at: [www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/publication/wcms\\_447699.pdf](http://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/publication/wcms_447699.pdf).

<sup>69</sup> Ananiev, J. (2015), *Истражувачки извештај - Разлика во плати врз основа на пол на национално ниво (Research report – Gender pay gap at the national level)*, CPAD and OSCE, available at: <https://www.osce.org/mk/mission-to-skopje/230251?download=true>.

<sup>70</sup> Luludi (2017), *Учеството на жената ромка на пазарот на труд во Република Македонија (Participation of Roma Women on the labour market in the Republic of Macedonia)*, available at: [http://luludi.mk/wp-content/uploads/2016/04/Luludi-Istrazuvanje-Finalna-verzija-MK-30052017\\_Web-version.pdf](http://luludi.mk/wp-content/uploads/2016/04/Luludi-Istrazuvanje-Finalna-verzija-MK-30052017_Web-version.pdf).

introduction of paternity and parenthood leave; and (4) the right to flexible working arrangements for early care for children and other people.<sup>71</sup>

## 4.2 Equal pay

### 4.2.1 Implementation in national law

The principle of equal pay for equal work or work of equal value is implemented in national legislation. The Law on Labour Relations,<sup>72</sup> both in the anti-discrimination provisions (Articles 6 and 7) and in the provisions on salaries (Article 108), clearly states that for equal work, male and female workers should be equally paid.

Article 108 of the Law on Labour Relations contains a special and explicit provision concerning equal remuneration for men and women, providing that 'an employer has a duty to determine equal remuneration for men and women for the same kind of work or work of equal value.' According to the same Article, all provisions in a contract for employment or in a collective contract and general actions of the employer that deviate from this rule will be annulled. The equal pay provisions under the Law on Labour Relations are also applicable to civil servants.

The Law on Civil Servants has a whole range of provisions introducing so-called salary scales. Salaries are elaborated on in detail, but without naming specific categories of employees.<sup>73</sup>

The Law on Agencies for Temporary Employment,<sup>74</sup> has a provision (Article 14) declaring that temporary employees (employees hired via the agency; subcontractors) cannot be paid less than non-agency employees for the same or similar work.

This is not the case, however, for seasonal and part-time workers and for those working in the home.<sup>75</sup> There are no clauses on their protection except for part-time workers, where the word 'proportionally' is used concerning pay. For all these categories, the issue of remuneration should be regulated exclusively by the employment contract between the employer and the employee.

So far, no claims have been brought before the courts. There is also a large gap between the formal recognition of the principle of equal pay and its implementation in practice, including by reflecting the principle in relevant laws. For example, despite the amendments to the Law on the Minimum Wage, adopted in February 2014, the difference between the minimum wage in the textile industry and all other sectors had remained,<sup>76</sup> and until September 2017, when this law was amended, employees in the textile industry (mainly women) used to receive 10 % less than all other workers.<sup>77</sup>

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<sup>71</sup> Reactor – Research in Action, *Што треба да содржи новиот закон за работните односи? (What should the new Labour Law contain?)*, available at: <http://reactor.org.mk/CMS/Files/Publications/Documents/Барања%20за%20ЗПО.pdf>.

<sup>72</sup> Labour Law, 2005.

<sup>73</sup> Law on Administrative Servants (2014), Full title: Law on Administrative Servants (*Закон за административни службеници*), *Official Gazette of the Republic of Macedonia*, No. 27/2014, 199/2014, 48/2015, 154/2015, 5/2016, 142/2016, 11/2018; Constitutional Court Decisions: U.no. 163/2014 (27.12.2016), U.br. 121/2015 (01.02.2017).

<sup>74</sup> Law on Agencies for Temporary Employment, 2006. Full title: Law on Agencies for Temporary Employment (*Закон за агенции за привремено вработување*), *Official Gazette of the Republic of Macedonia*, Nos. 49/2006, 102/2008, 145/2010, 136/2011, 13/2013, 38/2014, 98/2015, 147/2015, 27/2016.

<sup>75</sup> Labour Law, 2005.

<sup>76</sup> For further information see: European Network of Legal Experts in the Field of Gender Equality, Najcevska, M. (2013), 'FYR of Macedonia' in: *Law Review 1/2013* pp. 89-91, European Commission 2013, available at: [http://ec.europa.eu/justice/gender-equality/files/law\\_reviews/egelr\\_2013-1\\_final\\_web\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/law_reviews/egelr_2013-1_final_web_en.pdf).

<sup>77</sup> Law on the Minimum Wage, 2012. Full title: Law on the Minimum Wage (*Закон за минималната плата*), *Official Gazette of the Republic of Macedonia*, Nos. 11/2012, 30/2014, 180/2014, 81/2015, 129/2015, 132/2017, 140/2018.

One of the priority strategy goals of the National Strategy on Equality and Non-discrimination 2016-2020 is in fact 'raising public awareness of the employers for equal validation of the work of people with a disability, as well as based on sex'. The pay gap is also mentioned in the National Employment Strategy 2016-2020:

'Hence, the pay gap between men and women (providing that they have the same level of education, the same work experience, work in the same sector, profession etc.) is 17.5 %. The pay gap is the largest in industry and traditional services.'<sup>78</sup>

Low economic participation rates remain high. In 2017, 44.3 % of women were economically active, compared to 69.3 % of men; 39.2 % of women are employed, compared to 60.8 % of men.<sup>79</sup> The economic inactivity rates remain consistently high among women, and gaps between men and women are even more pronounced for the group between the ages of 55 and 64, where 32.6 % of women are active compared to 67 % of men. On average, women feature significantly more among higher education graduates – 59 % of graduates are women, compared to 41 % of men. However, this gap closes in employment. For example, although women are more widely represented among university graduates, out of the full-time employees who have completed higher education, 51.5 % are women and 48.5 % are men.<sup>80</sup>

Despite the fact that many government documents attribute the lack of women's participation in the labour market to traditional attitudes, this claim is not supported by evidence. Research has shown that, actually, discrimination in the labour market, the lack of policies to reconcile work and family life, the lack (and the cost) of care and childcare facilities all contribute to the high economic inactivity rates among women.

Economically inactive women have not been specifically targeted with the active employment measures introduced by the Agency for Employment – nor, for that matter, with any other systematic measures or policies to integrate economically inactive women into the labour market.<sup>81</sup> One of the most important problems and challenges that Macedonia's labour market is facing is the very high degree of gender segregation.

The economic (in)activity issue is related to women's entrepreneurship. In 2018, the Government adopted the Strategy on Women's Entrepreneurship in 2019-2023 (the first of its kind in the Republic of Macedonia). The strategy aims to create a favourable business climate for developing women's entrepreneurship, to provide systemic support and to create infrastructure for women's entrepreneurship and to undertake promotion, networking and advocacy activities.<sup>82</sup>

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<sup>78</sup> Ministry of Labour and Social Policy, Национална Стратегија за Вработување на Република Македонија 2016-2020 (National Employment Strategy 2016-2020), available at: [www.mtsp.gov.mk/content/pdf/strategii/Nacionalna%20Strategija%20za%20Vrabotuvane%20na%20Republika%20Makedonija%20za%20Vlada%2016102015.pdf](http://www.mtsp.gov.mk/content/pdf/strategii/Nacionalna%20Strategija%20za%20Vrabotuvane%20na%20Republika%20Makedonija%20za%20Vlada%2016102015.pdf).

<sup>79</sup> State Statistical Office (2019), *Women and men in North Macedonia*, available at: <http://www.stat.gov.mk/Publikacii/Gender2019.pdf>.

<sup>80</sup> State Statistical Office (2019), *Women and men in North Macedonia*, available at: <http://www.stat.gov.mk/Publikacii/Gender2019.pdf>.

<sup>81</sup> Reactor – Research in Action (2018), *Information submitted for consideration to the Committee on the Elimination of Discrimination against Women in its adoption of a list of issues regarding the Sixth Periodical Report of the Republic of Macedonia under the Convention on Elimination of All Forms of Discrimination against Women, 71<sup>st</sup> Pre-Sessional Working Group, 12-16 March, 2018*, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MKD/INT\\_CEDAW\\_NGO\\_MKD\\_30045\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MKD/INT_CEDAW_NGO_MKD_30045_E.pdf).

<sup>82</sup> Ministry of Economy (2018), Стратегија за развој на женско претприемништво 2019-2023 (Strategy for Development of Women's Entrepreneurship 2019-2023), available at: <http://www.economy.gov.mk/Upload/Documents/Стратегија%20за%20развој%20на%20женско%20претприемништво%20во%20Република%20Македонија%202019-2023.pdf>.



CSOs remain the primary source of in-depth analyses and proposed tools and solutions.<sup>83</sup> Their recommendations have already been implemented in the public policies of the Government or have been included in strategic documents.<sup>84</sup> However, some CSOs still believe that plans and programmes are being adopted without sufficient and appropriate analyses of the situation.<sup>85</sup>

#### 4.2.2 Definition in national law

The concept of pay is defined in national legislation as an 'obligation for job payment'. Article 41 of the Law on Labour Relations states that the employer shall be obliged to ensure the employee receives appropriate remuneration for their work. Article 105(3) and Article 106 of the Law on Labour Relations envisage that the pay is composed of three components: basic pay in accordance with the conditions of the place of work; work results; and pay supplements related to shift work, night work, etc.

There is no leading national case law on the definition of pay.

#### 4.2.3 Explicit implementation of Article 4 of Recast Directive 2006/54

The definition of 'pay' complies with the definition of Article 157(2) TFEU.

#### 4.2.4 Related case law

There is no leading national case law (including opinions of equality bodies and other quasi-judicial bodies, if relevant) related to the article(s) described in 4.2.3.

#### 4.2.5 Permissibility of pay differences

In the public sphere, pay differences are prohibited by Article 6 of the Law on Labour Relations. Legally, the only general justification for pay differences is the variable 'work results' envisaged in Article 106(2) of the Law on Labour Relations (see 4.1.2).

In the private sector, in addition to work results, a specific justification for pay difference applies to managers for whom Article 54 of the Law on Labour Relations envisages total freedom to fix the pay at any level that the employer and the manager would agree upon.

#### 4.2.6 Requirement for comparators

The comparator is mentioned only in the Law on Labour Relations, Article 7: Direct discrimination, in terms of Paragraph (1) of this Article, shall be any action conditioned by any of the discrimination grounds referred to in Article 6 of this Law by which the person has been, is or could be put in a less favourable position than other people in comparable circumstances.

No relevant case law (including opinions of equality bodies and other quasi-judicial bodies, if relevant) can be singled out.

<sup>83</sup> Vchkov, I. and Petreski, M. (2017), Gender and motherhood wage gaps in Macedonia, *Finance Think*, available at: [https://issuu.com/financethink/docs/gender\\_wage\\_and\\_motherhood\\_gaps\\_-\\_m](https://issuu.com/financethink/docs/gender_wage_and_motherhood_gaps_-_m); Finance Think (2016), *On the economic aspects of the National Strategy for Gender Equality 2013-2020*, [www.financethink.mk/wp-content/uploads/2017/04/FT-comment\\_10.pdf](http://www.financethink.mk/wp-content/uploads/2017/04/FT-comment_10.pdf); Petreski, B. and Petreski, M. (2018) 'Does motherhood explain lower wages for women in Macedonia?', *Economic Research-Ekonomska Istraživanja*, 31:1, 352-375.

<sup>84</sup> Ministry of Labour and Social Policy (2017), *Employment and Social Reform Programme 2020*, [www.mtsp.gov.mk/content/word/esrp\\_dokumenti/ESRP%20Macedonia%20-%20final%20\(ENG\).pdf](http://www.mtsp.gov.mk/content/word/esrp_dokumenti/ESRP%20Macedonia%20-%20final%20(ENG).pdf).

<sup>85</sup> Akcija Združenska (2018), *Предлог приоритети, предизвици, препораки и мерки за Националниот акциски план на РМ за родова еднаквост 2018-2020 (Proposed priorities, challenges, recommendations and measures for the National Gender Equality Action Plan 2018-2020)*, available at: <http://zdruzenska.org.mk/wp-content/uploads/2018/02/Предлог-приоритети-предизвици-препораки-и-мерки-за-Националниот-акциски-план-на-РМ-за-родова-еднаквост-2018-2020.pdf>.

#### 4.2.7 Existence of parameters for establishing the equal value of the work performed

National law does not entirely lay down the parameters for establishing the equal value of the work performed. However, there is a general phrase in Article 108 of the Law on Labour Relations stating that equal pay is based on equal work and 'equal requirements for the job'. The term 'requirements' usually means qualification requirements (educational level and work experience), sometimes training of the worker in order to respond to the working conditions.

Article 105 of the Law on Labour Relations states that '(1) The employee shall be entitled to payment of earnings – salary, in accordance with the law, collective agreement and employment contract'.

Article 106 of the Law on Labour Relations includes an explanation of the structure of the salary and elements for its calculation.

The Ministry of Information Society and Administration publishes a job classification system without determining pay but based on the same criteria for both men and women.

#### 4.2.8 Other relevant rules or policies

There are no other relevant rules or policies, save the ones discussed thus far.

#### 4.2.9 Job evaluation and classification systems

No examples of good practice or guidance on job evaluation and classification systems can be singled out.

#### 4.2.10 Wage transparency

Although there is no specific legal provision on wage transparency, there are cases where pay is considered, in practice, to be covered by worker confidentiality. There are no court cases; however, employers are using protection of privacy to treat wage levels as confidential data. Some employers include a confidentiality clause regarding wages in the employment contract.

#### 4.2.11 Implementation of the transparency measures set out by European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women

The European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency is not applied in North Macedonia.

#### 4.2.12 Other measures, tools or procedures

No other activities have been undertaken to increase pay transparency and the closure of the equal pay gap.

### **4.3 Access to work, working conditions and dismissal**

#### 4.3.1 Definition of the personal scope (Article 14 of Recast Directive 2006/54)

Article 5 of the Law on Labour Relations includes a definition of 'employee' as 'any natural person employed on the basis of a concluded employment contract'. According to the view of the author, this definition complies with the CJEU definition.



Article 25(11) of the Law on Labour Relations also envisages equal access concerning vocational training for fixed-term workers. Self-employed workers are not mentioned in this context.

Article 3 read together with Article 5 of the new ADL includes the full scope of the Recast Directive.

The Law on Agencies for Temporary Employment,<sup>86</sup> in Articles 3-b, 3-c and 3-d, stipulates a clause of non-discrimination and equality between regular and temporary employees in all of the above-mentioned aspects, except promotion, which is not mentioned at all.

#### 4.3.2 Definition of the material scope (Article 14(1) of Recast Directive 2006/54)

Article 6(2) of the Law on Labour Relations enumerates the areas of the material scope:

'Women and men must be provided equal opportunities and equal treatment in connection with: access to employment, including promotion and work-related vocational and professional training; working conditions; equal payment for equal work; occupational social security schemes; absence from work; working hours, and termination of employment contract.'

The scope is along the lines of the EU scope.<sup>87</sup>

Article 1 of the Law on Equal Opportunities for Women and Men states that it will be applied in the fields of health protection and health insurance, social protection, access to goods and services, economy, labour relations and employment, education and professional development, economic and proprietary relations, use of public products and services (consumer rights), culture and sport, information and communication technologies, defence and security, judiciary and administration, housing, public information and media, state and public administration and other spheres of social life.

Article 3 of the Law on the Prevention of and Protection against Discrimination includes employment and vocational training. This article is an open-ended provision, extending the material scope of the law to 'any other field', which includes the full scope of the Recast Directive.

#### 4.3.3 Implementation of the exception on occupational activities (Article 14(2) of Recast Directive 2006/54)

The exception on occupational activities has been implemented into national law.

Under the title 'Exceptions to the ban on discrimination', Article 8 of the Law on Labour Relations (Paragraph 1) states that

'[a]ny distinction, exclusion or preference in respect to certain work shall not be considered discrimination when the nature of the work or the conditions in which it is performed are such that the characteristics related to some of the [protected grounds of discrimination] referred to in Article 6 of this Law represent a real and determining occupational requirement, provided that the goal that is aimed to be accomplished is legitimate and the requirement is proportionate.'

This exception is also included in the Law on the Prevention and Protection against Discrimination. Article 7 includes the following under actions that will not be considered discrimination: 'Different treatment of persons based on any of the discrimination grounds due to the nature of their occupation or activity or due to the context in which such

<sup>86</sup> Law on Agencies for Temporary Employment, 2006.

<sup>87</sup> Labour Law, 2005, Article 6.

occupation is performed, which constitute a genuine and determining requirement, the purpose of which is legitimate, while such conditions do not breach the required level in the course of their fulfilment.’ (Article 7(3(2))).

#### 4.3.4 Protection against the non-hiring, non-renewal of a fixed-term contract, non-continuation of a contract and dismissal of women connected to their state of pregnancy and/or maternity

There is national case law on non-prolongation of contracts and dismissal of women connected to pregnancy. In 2016, the first such case was decided by the regular courts. This is, however, still too little in order for the protection to be considered as effective.

#### 4.3.5 Implementation of the exception on the protection for women in relation to pregnancy and maternity (Article 28(1) of Recast Directive 2006/54)

The new ADL moved on from the approach of making ‘exceptions’ in relation to discrimination. Thus, it no longer includes such an exception. However, there is nothing in the ADL which suggests any impact from the existence of such an exception on the ‘provisions concerning the protection of women, particularly as regards pregnancy and maternity’.

#### 4.3.6 Particular difficulties

There are no particular difficulties. However, instead of systematic solutions addressing the employment gap between women and men, public support for the active exercise of women’s rights is led through individual projects and programmes.<sup>88</sup>

#### 4.3.7 Positive action measures (Article 3 of Recast Directive 2006/54)

There are no positive action measures being implemented in line with Article 157(4) of the Treaty, and on grounds of the ability to maintain or adopt positive action measures, as per Article 3 of the Recast Directive. Special measures that are being implemented are part of project activities, initiated by CSOs, and, even if conducted in collaboration or partnership with the state, cannot be considered as falling within the scope of Article 3.

### 4.4 Evaluation of implementation

The legal framework does not put forward more guarantees and pressure on pay transparency and on effectively closing the gender pay gap. Together with the lack of systematic solutions addressing the employment gap between women and men, the implementation in this area cannot be considered as satisfactory. A promising development is that the gender pay gap is increasingly talked about and that it is the subject of many CSO activities, thus currently the ground for pressure for change is being set.

### 4.5 Remaining issues

There are no remaining issues regarding national law on equal pay and/or equal treatment at work that have not already been discussed above.

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<sup>88</sup> MRFP, *Пристап на ромите до (само)вработување (Access for Roma to Self-employment)*, available at: [www.mrfp.org.mk/mk/za-nashata-rabota/promocija-pretpriemnistvo/partnerstva-za-razvoj-na-mali-pretprijatija/pristap-do-samo-vrabortuvanje.html](http://www.mrfp.org.mk/mk/za-nashata-rabota/promocija-pretpriemnistvo/partnerstva-za-razvoj-na-mali-pretprijatija/pristap-do-samo-vrabortuvanje.html).

## **5 Pregnancy, maternity, and leave related to work-life balance for workers (Directive 92/85, relevant provisions of Directives 2006/54, 2010/18 and 2019/1158)<sup>89</sup>**

### **5.1 General (legal) context**

#### 5.1.1 Surveys and reports on the practical difficulties linked to work-life balance

While surveys and reports on workers and gender equality in the labour relations area have been published, they do not seem to concern themselves with work-life balance issues.

#### 5.1.2 Other issues

A serious pending issue stems from employment contracts concluded for a definite period of time. These contracts are concluded for an established duration, usually for one year, and are automatically renewed until they have been terminated by one or both parties. This has been used by employers to not renew an ending fixed-term contract with women while they are on maternity leave. Employers will just notify the female worker that they do not want to renew the contract. In this way, the worker is not fired, but her contract has 'merely' expired and is not being renewed. Considering that this a frequent (if not the most frequent) form of employment relations, it is a cause for serious concern. The case law on this matter is, at best, not settled (see case law discussed in Section 5.2.11).

#### 5.1.3 Overview of national acts on work-life balance issues

The main regulation of work-life balance is done through the Law on Labour Relations. It contains provisions regulating pregnancy and maternity leave and other matters in relation to work-life balance. The relevant provisions are discussed in the relevant sections herein. No steps have been undertaken yet to align the national legislation with the Work-Life Balance directive.

#### 5.1.4 Political and societal debate and pending legislative proposals

There are ongoing CSO-led initiatives on increasing access to leave for fathers and to getting fathers more involved in the upbringing of their children.<sup>90</sup> The current rights regarding maternity leave are not to be revised, so the length of leave and the modalities in relation to criteria for award and payments should remain unchanged. It is the leave for the fathers which is to be changed. The current possibility for the fathers to use the leave only if the mother is not using it, and having no mandatory leave for fathers, should be changed. This is the most recent proposal from the Reactor – Research in Action, a think-tank focusing on gender equality. This think-tank also included paternity and parenthood leave as one of its four key demands for the new Labour Law, which is currently in the process of being drafted.<sup>91</sup> The current Minister on Labour and Social Policy expressed

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<sup>89</sup> See Masselot, A. (2018), *Family leave: enforcement of the protection against dismissal and unfavourable treatment*, European network of legal experts in gender equality and non-discrimination, available at: <https://www.equalitylaw.eu/downloads/4808-family-leave-enforcement-of-the-protection-against-dismissal-and-unfavourable-treatment-pdf-962-kb> and McColgan, A. (2015), *Measures to address the challenges of work-life balance in the EU Member States, Iceland, Liechtenstein and Norway*, European network of legal experts in gender equality and non-discrimination, available at: <https://www.equalitylaw.eu/downloads/3631-reconciliation>.

<sup>90</sup> Bashevsk, M. and Malevska, T. (2017), *Родителско отсуство за сите (Parental leave for all)*, Radio Slobodna Evropa, available at: <https://www.slobodnaevropa.mk/a/28617105.html>.

<sup>91</sup> Reactor – Research in Action, *Што треба да содржи новиот закон за работните односи? (What should the new Labour Law contain?)*, available at: <http://reactor.org.mk/CMS/Files/Publications/Documents/Барања%20за%20ЗП.pdf>.

support for the proposal and vouched to make sure it enters into the amendments of the labour legislation.<sup>92</sup>

CSOs have also been proposing solutions regarding flexible time arrangements. The Edplako Platform<sup>93</sup> has proposed measures such as combined working hours (work from home combined with work from the office), shorter working day, compressed working weeks (work day of more than eight hours, in order to save up for a free Friday), split working day (split in several shifts), project work (focus on project task for a certain period of time, until an aim has been realised).<sup>94</sup> Reactor – Research in Action asked for the establishment of a right to flexible working arrangements for early care for children and other persons.<sup>95</sup>

## 5.2 Pregnancy and maternity protection

### 5.2.1 Definition in national law

National law defines a pregnant worker as a worker who has recently given birth and/or a worker who is breastfeeding. Article 2 of the Rulebook on the minimum safety standards for safety and health in the workplace in relation to pregnant workers, workers who have recently given birth or who are breastfeeding<sup>96</sup> defines a pregnant worker as ‘a worker who in order to exercise her rights and protection of her health or the health of her child, has informed the employer of her condition’. This definition is in line with Article 2 of Directive 92/85. In addition, Article 42 of the Law on Labour Relations does not directly define a pregnant worker, but it does prescribe a list of duties for the employer at all stages of the pregnancy upon receiving information that a female worker is pregnant. This is in line with Article 2 of Directive 92/85.

### 5.2.2 Obligation to inform employer

The law does not explicitly set a rule as to how a pregnant worker has to inform her employer of their condition.

### 5.2.3 Case law on the definition of a pregnant worker, a worker who has recently given birth and/or a worker who is breastfeeding

There is no case law on the definition of a pregnant worker, a worker who has recently given birth and/or a worker who is breastfeeding.

### 5.2.4 Implementation of protective measures (Article 4-6 of Directive 92/85)

According to the Law on Labour Relations, the employer should evaluate and adjust the working environment in order to create safe working conditions and must not place a pregnant worker in a risky position (Articles 42, 162-164); may not require work longer than full-time work unless the pregnant worker voluntarily agrees to work overtime (Articles 120, 164); and may not redistribute the working hours of a pregnant worker (Article 124).

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<sup>92</sup> Nova TV (2019), *Споделено родителско отсуство ќе овозможи поголема родова рамноправност (Shared parental leave will facilitate gender equality)*, available at: <https://novatv.mk/spodeleno-roditelsko-otsustvo-ke-ovozmozhi-pogolema-rodova-ramnopravnost/>.

<sup>93</sup> Edplako is a platform of CSOs working towards equal opportunities for women and men in the labour market which has a particular focus on equal pay.

<sup>94</sup> Edplako Platform: [www.edplako.mk/zheni-i-majki/](http://www.edplako.mk/zheni-i-majki/).

<sup>95</sup> Reactor – Research in Action, *Што треба да содржи новиот закон за работните односи? (What should the new Labour Law contain?)*, available at: <http://reactor.org.mk/CMS/Files/Publications/Documents/Барања%20за%20ЗПО.pdf>.

<sup>96</sup> *Rulebook on the minimum safety standards for health and safety in the workplace in relation to pregnant workers, workers who have recently given birth or are breastfeeding* (2011).

The measures are elaborated upon in detail in the 'Rulebook on minimum requirements for health and safety at work of pregnant workers, workers who have recently given birth or breastfeeding workers'.<sup>97</sup>

#### 5.2.5 Case law on issues addressed in Article 4 and 5 of Directive 92/85

There is no national case law in relation to the issues addressed in the Articles 4 and 5 of Directive 92/85.

#### 5.2.6 Prohibition of night work

Night work is generally prohibited only for female workers in the industry and construction sectors for the period from 10 p.m. to 5 a.m. (Article 131 of the Labour Law). As a special protection this is envisaged (Article 164 of the Labour Law) for pregnant workers and mothers until the child is one year old. The prohibition may be lifted for one of the parents of a child aged up to seven years, or a child with medical problems, only with written consent from that worker.

#### 5.2.7 Case law on the prohibition of night work

There has been no case law on the prohibition or protection against night work.

#### 5.2.8 Prohibition of dismissal

In Article 101 of the Law on Labour Relations, there is a general and complete ban on dismissal from work on the basis of pregnancy, maternity, paternity, parental, adoption, childcare and care leave. Exceptions are permitted only in relation to very serious violations of work duties and/or work discipline (Article 101(4)).

#### 5.2.9 Redundancy and payment during maternity leave

Although Article 95 on collective dismissal due to redundancy does not specifically mention pregnancy, maternity etc., the enumeration of the exceptions in Article 101(4) supports the interpretation that the dismissal of a pregnant worker based on redundancy is not allowed.

#### 5.2.10 Employer's obligation to substantiate a dismissal

The employer is obliged to give substantiated grounds for the dismissal in writing (Articles 72, 74 & 75) in order to acquire the consent of either the trade union (Article 101(5-7)) or the Labour Inspectorate (Article 101(9 & 10)). If there is no such consent, the employer has to institute legal proceedings in a court of law (Article 101(8)).

However, it seems that private employers have found a way to circumvent these provisions. They hire workers for six months or one year and if, in the meantime, a female worker becomes pregnant, they simply do not renew the contract (see case law, in Section 5.2.11).

#### 5.2.11 Case law on the protection against dismissal

The Court of First Instance Skopje 2 found discrimination based on gender/pregnancy, where a worker's contract ended during her pregnancy and it was not extended. However, the Skopje Court of Second Instance (POЖ-12/17) revoked this decision and instructed the first instance court to review the case. The outcome is still pending. Regardless of this,

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<sup>97</sup> <http://www.mtsp.gov.mk/WBStorage/Files/bremeni.pdf>.

the two courts agreed that the dismissal of pregnant workers during a fixed-term employment contract is prohibited.

In case PO-980/1 the Court of First Instance first accepted that there had been discrimination against a pregnant worker and compensated her both for the dismissal and for the following period, presuming that she would have been hired for a further period of time had she not become pregnant. The Court of Second Instance dismissed that decision and sent the case back to the Court of First Instance. The case is still to be decided.

In November 2018, the CPAD found that there was no discrimination in a case where the contract of a woman who was on maternity leave was not renewed. The woman worked for a private company on a one year contract (working in insurance sales), and while she was on maternity leave she got a notice from the employer that her contract would not be renewed. The CPAD was satisfied with the reply from the private company which simply stated that she was not fired and her contract was not terminated, but it was not renewed. In this, the CPAD concluded, there can be no case of discrimination. It further supported this with the fact that the discontinuation of the contract does not affect in any way the maternity leave allowance payment.<sup>98</sup> This last statement is correct considering that the allowance is paid out by the state, and not the private company. The CPAD in no way touched upon the potential discriminatory nature of the events, nor did it try to investigate the issue further.

### **5.3 Maternity leave**

#### **5.3.1 Length**

According to Article 165 of the Law on Labour Relations, female workers are entitled to a maternity leave of nine months. The maternity leave is longer in the event of a multiple birth (15 months). In cases when the child is retained in medical care and the mother or father is back at work, leave due to childbirth and parenting is temporarily suspended and they have the right to use the unused part later.

After the paid maternity or adoption leave, there is a possibility of prolonging this leave in the form of unpaid parental leave, although only as an individual right for the employed mother, transferable to the father. This is unpaid leave of a total duration of three months that can be used until the child reaches the age of three (Article 170-a), regardless of the reasons for using it.

Hence, the overall maternity (non-medical) leave is 52 weeks (in cases of a multiple birth, 78 weeks).

#### **5.3.2 Obligatory maternity leave**

According to Article 166 of the Law on Labour Relations, at least 28 days must be taken before the birth. Concerning the leave after the birth, the female worker may decide to stop her paid parental leave 45 days after the birth of the child. In such a case she is entitled not only to her full salary paid by the employer, but also to 50 % of the so-called salary compensation (i.e. allowance) paid by social security. This right is not transferable from the mother to the father. Hence, compulsory maternity leave is 73 days, or 45 days in the event of a premature birth.

#### **5.3.3 Legal protection of employment rights (Article 5, 6 and 7 of Directive 92/85)**

The legal provisions quoted in 5.1.2 stipulate the same protection as for the pregnant worker.

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<sup>98</sup> Commission for Protection against Discrimination (2018), Opinion dated 30.11.2018 in the case *I.N. v Vienna Insurance Group Skopje* (Case no. 08-322/1 received on 10.04.2018).

#### 5.3.4 Legal protection of rights ensuing from the employment contract

The allowance is paid by the authorised state body, thus it cannot be altered by the employer.

#### 5.3.5 Level of pay or allowance

During maternity leave, women receive salary compensation (allowance) paid from the State Budget. According to Article 16 of the Law on Health Insurance<sup>99</sup> this compensation is the average amount of pay of that worker in the last 12 months for which the contributions for compulsory health insurance were paid.

The ceiling of the salary compensation amounts to four average monthly wages paid in the country in the previous calendar year. For 2014 this amounted to approximately EUR 1 400.

#### 5.3.6 Additional statutory maternity benefits

Statutory maternity benefits are not supplemented by employers up to the normal remuneration.

#### 5.3.7 Conditions for eligibility (Article 11(4) of Directive 92/85)

The condition for receiving the compensation for maternity leave is continuous health insurance cover for at least six months before the start of the maternity leave and regularly paid contributions to this end.<sup>100</sup>

#### 5.3.8 Right to return to the same or an equivalent job (Article 15 of Directive 2006/54)

Article 166 of the Law on Labour Relations, which covers both the private and public sectors, contains a provision guaranteeing the right of a woman after maternity leave to return to her job or to an equivalent job, on terms and conditions that are no less favourable to her. There is no provision concerning benefiting from any improvement in working conditions to which she would have been entitled during her absence. However, the rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are at least maintained as they stand (*'мирување'*; Law on Labour Relations, Article 147) until the end of the parental leave. This formulation theoretically allows the worker to be granted improvements in working conditions. This also applies to the status of the employment contract or employment relationship for the period of the parental leave.

The guarantees of the rights related to pregnancy and maternity leave in private companies were significantly improved with amendments made a few years ago, in 2015. Private employers who need to employ a replacement for a worker on maternity leave were given the possibility to waive some of their tax duty. Furthermore, private employers are obliged, after a worker returns from maternity leave, to return the worker to her job or to an equivalent job, on terms and conditions that are no less favourable to her, and for at least the period during which their tax duties were waived.

<sup>99</sup> Law on Health Insurance, Official Gazette No. 25/2000 (last amendment No. 26/2012).

<sup>100</sup> Law on Health Insurance (*Закон за здравственото осигурување*), Official Gazette of the Republic of Macedonia, Nos. 25/2000, 34/2000, 96/2000, 50/2001, 11/2002, 31/2003, 84/2005, 37/2006, 18/2007, 36/2007, 82/2008, 98/2008, 6/2009, 67/2009, 50/2010, 156/2010, 53/2011, 26/2012, 16/2013, 91/2013, 187/2013, 43/2014, 44/2014, 97/2014, 112/2014, 113/2014, 188/2014, 20/2015, 61/2015, 98/2015, 129/2015, 150/2015, 154/2015, 192/2015, 217/2015, 27/2016, 37/2016, 120/2016, 142/2016 и 171/2017; Constitutional Court Decision: U.no. 85/2000, U.no. 173/2000, U.no. 37/2001, U.no. 60/2006, U.no. 40/2007, U.no. 167/2006, U.no. 45/2006, U.no. 199/2008, U.no. 109/2009, U.no. 185/2009, U.no. 112/2011, Article 15.

### 5.3.9 Legal right to share maternity leave

Under the Law on Labour Relations, '[i]f the female employee does not take the maternity leave referred to in Article 165 of this Law, the child's father or the adoptive parent shall be entitled to take a parenthood leave.' The provision does not differentiate between the public and the private sector.

### 5.3.10 Case law

In 2018, the CPAD decided a case where J.A. – a woman working in the public sector (in one of the first instance courts) – was denied benefits for career progression upon return from maternity leave.<sup>101</sup> Namely, under the particular rules for service of the persons working in the court administration, a worker that earns six consecutive 'stands out' grades, is to receive an extra allowance for career progression. When on maternity leave, J.A. had skipped one year of evaluation. Once she received her six 'stands out' grades, she was expecting to get the extra allowance. However, her employer considered that, due to her maternity leave, her grades cannot be considered as 'consecutive', and rejected her claim for extra allowance. She brought her case to the CPAD. In the meantime, she got the seventh 'stands out' grade.

In an extremely well argued and elaborate opinion, the CPAD found direct discrimination in the area of employment and labour relations on grounds of family status under the ADL and direct discrimination on grounds of pregnancy, birth and parenthood under the Labour Law. The CPAD made a distinction between 'consecutive' and 'uninterrupted', and found that the employer had wrongly applied an 'uninterrupted' grading criterion instead of a 'consecutive' one. According to the CPAD, the applicant was exercising her basic human right of creating a family and procreating, and she should be protected against discrimination for doing so. The CPAD also argued that it applied the discrimination on the grounds of 'family status' because applying discrimination on grounds of gender might have failed the comparator test. Namely, according to the CPAD, since fathers can also take leave in relation to the birth of a child, the appropriate grounds on which to argue this case are not gender, but family status, as this would put the focus on people who are using leave because they decided to have a child. In addition, other women may decide not to have children, so persons with that particular family status are especially vulnerable to this type of discrimination.

While the CPAD did not have that intention, the way this opinion has been formulated opens the possibility for separating birth and women, and allowing the inclusion not just of 'fathers' but also of pregnant men. At present, this is far from what may happen under the national legal system. However, this opinion sets good ground for providing protection in such cases in the future.

## 5.4 Adoption leave

### 5.4.1 Existence of adoption leave in national law

Adoption leave is treated as, and regulated by, the same legal provisions as maternity and parental leave. Since it can be taken after an adoption, the only difference is with regard to the age of the child when adopted. If the adopted child is older than nine months, there is a period of 'accommodation' that should not be less than two months or more than three months. If the child is younger than nine months, the same conditions apply to adoption leave as those that apply to maternity leave, commencing on the date of the child's adoption, including transferability of the leave to the father. However, adoption leave is until the child is nine months old; if more children (two or more) are adopted, leave is until the children are 15 months old.

<sup>101</sup> Commission for Protection against Discrimination (2018), *Opinion on Application No. 08-161 in the case of J.A. v Court of First Instance Skopje 1* (05.07.2018).



After this, there is the possibility, as for maternity leave, of unpaid leave of a total duration of three months that can be used until the child reaches the age of three.

The pay and the conditions for adoption leave are the same as for maternity leave.

#### 5.4.2 Protection against dismissal (Article 16 of Directive 2006/54)

National law provides for protection against dismissal of workers who take adoption leave and their rights after the end of adoption leave, as per Directive 2006/54. Adoptive parents are legally in the same position as biological ones.

#### 5.4.3 Case law

There is no court or equality body case law on adoption leave, related employment rights and/or return after adoption leave.

### 5.5 Parental leave

#### 5.5.1 Implementation of Directive 2010/18

Directive 2010/18 has not been transposed into national legislation and no implementation is foreseen in the immediate future. Macedonian legislation does not conform to some of the obligations of the Directive and some of the clauses of the Directive do not have any corresponding provision in Macedonia's legislation. This is the case, for example, for Clause 2 of the Directive which introduces a non-transferable part of parental leave, and also for Clause 7 concerning measures to entitle workers to time off from work on grounds of *force majeure*, for urgent family reasons in the event of sickness or accident making the immediate presence of the worker with family indispensable.

However, Macedonia has developed a complex family policy, providing childcare services, universal child benefits and various types of leave for family reasons, in order to facilitate the reconciliation of work, private and family life.

#### 5.5.2 Applicability to public and private sectors (Clause 1 of Directive 2010/18)

National legislation is applicable to both the public and the private sector.

#### 5.5.3 Scope of the transposing legislation

The scope envisaged by national legislation includes contracts of employment or employment relationships related to part-time workers, fixed-term contract workers or people with an employment contract or employment relationship with a temporary agency. This can be derived from Article 9(b) of the Law on Labour Relations:

'all forms of discrimination against workers because of pregnancy, childbirth and parenting, irrespective of the duration and type of employment are prohibited if the work relationship is established according to the law'.

#### 5.5.4 Length of parental leave

The duration is the same as that of maternity leave (see 5.2.1). Article 167 states: '[i]f the female employee does not take the maternity leave referred to in Article 165 of this Law, the child's father or the adoptive parent shall be entitled to take a parenthood leave'. Hence, the overall maternity (non-medical) leave is 52 weeks (in the event of a multiple birth, 78 weeks).

The provision does not differentiate between the public and the private sector.

### 5.5.5 Age limits

For maternity leave, the unpaid leave is a total duration of three months and it can be used until the child reaches the age of three.

Adoption leave can last until the child is 9 months old; if more children (two or more) are adopted, until the children are 15 months old. After this, there is a possibility, as with the unpaid maternity leave, for three months of unpaid leave until the child reaches the age of three.

Article 169 of the Law on Labour Relations stipulates that, until the age of 18, one of the parents of a child with 'developmental' disabilities has the right to work half of the full-time hours if both parents are employed or if it is a single-parent family. The part-time work shall be considered as full-time, and the compensation of salary will be paid from the State Budget.

### 5.5.6 Individual nature of the right to parental leave

The right to parental leave is individual only for the mother. The paid leave can be exercised by either of the parents, but not by both at the same time (see next Section 5.5.7).

### 5.5.7 Transferability of the right to parental leave

Fathers can use the leave only if the mother does not use it (cannot or does not want to). For unpaid leave this is unclear, as the wording of the relevant article only refers to the mother, yet the title is 'Unpaid Parental Leave'.<sup>102</sup> Hence, it could be concluded that fathers are entitled to the right by substitution.

### 5.5.8 Form of parental leave

According to the Law on Labour Relations, which in practice is the only law dealing with these issues, parental leave can only take the form of full-time leave. The only exception is for a child with a disability or long-term illness. In such a case, one of the parents is entitled to work half of the full-time hours.

There is no provision on the possibility to postpone parental leave for justifiable reasons related to the operation of the organisation and there are no special arrangements for small firms.

### 5.5.9 Work and/or length of service requirements (Clause 3(b) of Directive 2010/18)

The length of service requirement in order to benefit from parental leave is six months before the birth or adoption of a child. In the case of successive fixed-term contracts with the same employer, the sum of these contracts is taken into account for the purpose of calculating the qualifying period.

### 5.5.10 Notice period

The parent is obliged to announce the beginning and end of parental leave to the employer 30 days before beginning/ending the leave (both for paid and for unpaid leave).<sup>103</sup> No adjustments seem to be offered in relation to the length or the manner of giving the notice.

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<sup>102</sup> Labour Law, 2005, Article 170-a.

<sup>103</sup> Labour Law, 2005, Article 170-a.

#### 5.5.11 Postponement of parental leave (Clause 3(c) of Directive 2010/18)

There are no circumstances defined in which the employer is allowed to postpone the granting of parental leave for justifiable reasons related to the operation of the organisation.

#### 5.5.12 Special arrangements for small firms (Clause 3(d) of Directive 2010/18)

There are no special arrangements for small firms.

#### 5.5.13 Special rules and exceptional conditions for parents of children with a disability or long-term illness (Clause 3(3) of Directive 2018/18)

Article 169 of the Law on Labour Relations stipulates that one of the parents of a child (until the age of 18) with developmental disabilities and special needs has the right to work half of the full-time hours if both parents are employed or if it is a single-parent family. The part-time work shall be considered as full-time, and the compensation of salary will be paid from the State Budget.

#### 5.5.14 Measures addressing the specific needs of adoptive parents (Clause 4 of Directive 2010/18)

There are no additional measures established that can address the specific needs of adoptive parents, besides the adoption leave.

#### 5.5.15 Provisions protecting workers against less favourable treatment or dismissal (Clause 5(4) of Directive 2010/18)

During maternity/parental leave, the worker enjoys very strong protection against dismissal. Article 77 of the Law on Labour Relations entitled 'Unfounded Reasons for Dismissal' stipulates that the worker should not be dismissed while on approved leave for pregnancy, birth or parenthood, including unpaid parental leave.

#### 5.5.16 Right to return to the same or an equivalent job (Clause 5(1) of Directive 2010/18)

After parental leave the worker has the right to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract (Law on Labour Relations, Article 166).

#### 5.5.17 Maintenance of rights acquired or in the process of being acquired by the worker (Clause 5(2) of Directive 2010/18)

The rights are maintained, as they are for maternity leave.

#### 5.5.18 Status of the employment contract or relationship during parental leave

The status is maintained, as it is for maternity leave. Article 166 of the Law on Labour Relations contains a provision guaranteeing the right of a woman after maternity leave to return to her job or to an equivalent job, on terms and conditions that are no less favourable to her. There is no provision concerning benefiting from any improvement in working conditions to which she would have been entitled during her absence. However, the rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are at least maintained as they stand ('мирување'; Law on Labour Relations, Article 147) until the end of the parental leave. This formulation theoretically allows the worker to be given improvements. It also applies to the status of the employment contract or employment relationship for the period of the parental leave.

#### 5.5.19 Continuity of entitlement to social security benefits

There is continuity, as is the case for maternity leave.

#### 5.5.20 Remuneration

Parental leave is remunerated by the State. Voluntary parental leave is unpaid leave.

#### 5.5.21 Social security allowance

There is no allowance; the contributions for health insurance are paid from the State Budget.

#### 5.5.22 More favourable provisions (Clause 8 of Directive 2010/18)

The maternity leave is much longer than that provided for by the Directive, as it can last nine months for one child (as paid leave) and an additional three months (as unpaid leave). After the birth of the child, the father may substitute the mother. Moreover, this is an unrestricted right and the social security system provides for an allowance for the parents to be able to take this parental leave. The parent's job is secured during the parental leave. Also, if the parent decides to end the leave early, she/he will receive an additional 50 % of the payment for parental leave as well as the regular salary. The impact of this (or the lack thereof) on encouraging women to return to work earlier has not been researched.

However, some very essential issues of the Directive have not been implemented (e.g. the non-transferable character of at least part of the parental leave, and parental leave granted also to the father as an individual right, and not as a right to substitute the mother).

In addition, some detrimental effects of the parental leave scheme have been noted. An extended leave, especially for unskilled women, could have a negative impact on women's careers and earnings profiles (it could also be reflected in their future pension amount).

Another problem is the confusion in terminology. For instance, the general title of parental leave covers articles that are clearly related only to maternity leave, or female pronouns are used in relation to the rights of both parents. For this reason, there is a growing debate about ensuring the use of clear concepts and precise terminology along the lines of the EU Directive.

Another point where national law provides more favourable provisions than Directive 2010/18 is in relation to care infrastructure, care facilities and accessibility of childcare for all working parents. This is an extremely important issue, especially for the reconciliation of family and working life. The Law on the Protection of Children<sup>104</sup> regulates the system and organisation for the protection of children. According to this Law,

'[s]tate and local governments ensure the provision of adequate financial assistance to parents for support, awareness, care and protection of children and organising and ensuring the development of facilities and services for the protection of children' (Article 2(3)).

Institutions for the care and nurture of children in kindergartens and centres for early childhood development can be public (state, municipal and municipality in Skopje) and private. The Macedonian system incorporates state subsidies for kindergartens which allow parents to divide the tasks related to their children, thus enabling mothers to balance their professional and family duties. However, because of the high level of poverty and

<sup>104</sup> Law on the Protection of Children, 2013. Full title: Law on the Protection of Children (*Закон за заштита на децата*), *Official Gazette of the Republic of Macedonia*, Nos. 23/2013, 12/2014, 44/2014, 144/2014, 10/2015, 25/2015, 150/2015, 192/2015, 27/2016, 163/2017.

unemployment and the overall limited capacity (in terms of available spaces) and geographically uneven distribution of the kindergarten network, even with such large subsidies and keeping the overall price quite low (starting from about EUR 25 per child per month), only 11 % of children of the relevant age are in kindergartens. There is only a small number of private kindergartens (which are not subsidised); they work on a commercial basis, but there are no data on the number of children they take care of. An additional form of childcare is day care in schools for children from the first to the fourth grade of elementary education.

#### 5.5.23 Case law

There is no case law on unfavourable treatment and/or dismissal related to the uptake of parental leave.

### **5.6 Paternity leave**

#### 5.6.1 Existence of paternity leave in national law

Employed fathers enjoy up to seven days of paid leave for the birth of their child (Article 146 of the Law on Labour Relations) as a sort of exclusive, individual right of the father in parallel with that of the female worker who has given birth to their child.

Otherwise, there is a general clause (Article 167 of the Law on Labour Relations) enabling the father, after the birth or adoption of a child, to use the same leave as the mother in cases where the mother does not use it. It could therefore be concluded that fathers are entitled to this right by substitution.

#### 5.6.2 Protection against unfavourable treatment and/or dismissal (Article 16 of Directive 2006/54)

Since paternal rights are activated in cases of substitution when the mother does not or cannot use her maternal rights, the way the legislation is formulated leads to the conclusion that the protection granted to the mother in such cases also applies to fathers.

#### 5.6.3 Case law

There is no national case law on unfavourable treatment and/or dismissal related to the uptake of paternity leave.

### **5.7 Time off for *force majeure***

#### 5.7.1 Time off for *force majeure*

There is no provision on time off for *force majeure*. There is, however, a provision in the Law on Labour Relations stating that, 'If a worker cannot do his work due to *force majeure*, he has the right to half of the salary to which he would be entitled if he was working.' (Article 112(7)).

#### 5.7.2 Case law

There is no national case law on time off for *force majeure*.

## 5.8 Care leave

### 5.8.1 Existence of care (or carers') leave in national law

National legislation entitles workers to time off from work on grounds of *force majeure* for urgent family reasons in the event of sickness or accident. But this applies to all workers. Otherwise, this clause has not been implemented at the national level in direct relation to pregnant workers or working parents as an entitlement to time off from work on grounds of *force majeure* for urgent family reasons in cases of sickness or accident. However, paid leave is recognised in cases of the sickness of a child. Every employee is eligible for paid leave to care for a sick child under the age of three. For other close members of the family (or a child over the age of three) paid leave is possible but limited to 30 days per year.

### 5.8.2 Case law

There is no relevant case law.

## 5.9 Leave in relation to surrogacy

According to the Law on Biomedical Assisted Insemination<sup>105</sup> both the surrogate and the social mother are entitled to the pregnancy and maternity rights as stipulated by the Law on Labour Relations, as well as social and health insurance. The surrogate mother is entitled to 45 days of birth leave, while the social mother is entitled to maternity and other parental leave.<sup>106</sup> If the social mother cannot or will not use the parental leave, then the social father can substitute for her in accordance with the Law on Labour Relations.

## 5.10 Flexible working time arrangements

### 5.10.1 Right to reduce or extend working time

The only possibility is related to children with disabilities. In 2017, CSO MHC was approached by the mother of a child with a disability complaining, firstly, that her private employer had not allowed her to work on a part-time basis and, secondly, that she was subsequently denied her annual leave allowance. After the involvement of this CSO, the employer agreed to both requests.<sup>107</sup>

For quite some time, CSOs have been proposing solutions regarding flexible time arrangements.<sup>108</sup> This issue was also part of the electoral programmes of some of the political parties that took part in the December 2016 parliamentary elections, including the winning coalition which formed a government in June 2017.<sup>109</sup> However, at the cut-off date for this report, there had still been no further developments on this matter.

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<sup>105</sup> Law on Biomedical Assisted Insemination (2008). Full title: Law on Biomedical Assisted Insemination (*Закон за биомедицинско потпомогнато оплодување*), *Official Gazette of the Republic of Macedonia*, Nos. 37/2008, 164/2013, 149/2014, 192/2015, 37/2016.

<sup>106</sup> Fakulteti.mk (2017), *Родено едно бебе од сурогат мајчинство, се чекаат уште две (One baby from surrogacy born, two more are awaited)*, available at: <https://www.fakulteti.mk/news/17-12-30/rodено-edno-bebe-od-surogat-majka-se-chekaat-ushte-dve>.

<sup>107</sup> Macedonian Helsinki Committee (2018), *Submission to United Nations Committee on the Elimination of Discrimination Against Women in its adoption of a list of issues regarding the Sixth Periodical Report of the Republic of Macedonia under the Convention on the Elimination of All Forms of Discrimination Against Women*, available at: [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MKD/INT\\_CEDAW\\_NGO\\_MKD\\_30018\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MKD/INT_CEDAW_NGO_MKD_30018_E.pdf).

<sup>108</sup> Edplako Platform: [www.edplako.mk/zheni-i-majki/](http://www.edplako.mk/zheni-i-majki/).

<sup>109</sup> A1 On (2017), *Флексибилно работно време за самохраните родители (Flexible working hours for single parents)*, available at: <http://a1on.mk/archives/703065>.

### 5.10.2 Right to adjust working time patterns

Workers returning from parental leave can request changes to their working hours and/or patterns for medical reasons until the child is three years old.

### 5.10.3 Right to work from home or remotely

National law provides workers with a legal right to work from home or remotely (temporarily or otherwise) on request. According to Article 50 of the Law on Labour Relations,

'[b]y virtue of the employment contract for work at home, the employer and the employee may agree that the employee carries out the work, which falls within the employer's activity or which is necessary for carrying out the employer's activity, at home'.

This right is not limited to certain groups only and there are no eligibility criteria. This means that the provision does not mention parenthood in any way.

The size of the employer is not a qualifying condition in any of the previous three cases.

There is no obligation on the side of the employer to comply with a request to work remotely, and any other related issues have to be regulated in the employment contract.

### 5.10.4 Other legal rights to flexible working arrangements

There are no other legal rights to flexible working arrangements.

### 5.10.5 Case law

There was a situation which – although it did not formally develop into a case because it was resolved after a CSO providing legal aid got involved in the case – is worth mentioning. In 2017, the Macedonian Helsinki Committee was approached by the mother of a child with a disability who claimed that her private employer had not allowed her to work on a part-time basis and that she was denied her annual leave allowance. After the Macedonian Helsinki Committee got involved in the case, the employer agreed to both requests.<sup>110</sup>

## 5.11 Evaluation of implementation

The national law still lacks further development of the possibilities for additional measures of protection, which are offered by EU law. Thus, although some minimal protection is ensured, the development of new measures such as parental leave, additional measures for all types of leave and for facilitating the work-life balance are needed.

## 5.12 Remaining issues

No issues remained undiscussed.

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<sup>110</sup> Macedonian Helsinki Committee (2018), *Submission to United Nations Committee on the Elimination of Discrimination Against Women in its adoption of a list of issues regarding the Sixth Periodical Report of the Republic of Macedonia under the Convention on the Elimination of All Forms of Discrimination Against Women*, available at: [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MKD/INT\\_CEDAW\\_NGO\\_MKD\\_30018\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MKD/INT_CEDAW_NGO_MKD_30018_E.pdf).

## 6 Occupational social security schemes (Chapter 2 of Directive 2006/54)

### 6.1 General (legal) context

#### 6.1.1 Surveys and reports on the practical difficulties linked to occupational and/or statutory social security issues

No surveys on occupational and statutory social security issues have been published within the last five years.

#### 6.1.2 Other issues related to gender equality and social security

While the Law on the Family prescribes that, for the purposes of, inter alia, social security matters, married and unmarried (different sex) partners are considered equal as long as the unmarried partners have been living in a community akin to marriage for at least two years, other laws, including the ones on occupational social security schemes, show that this is not the case. Namely, unmarried partners, for the purposes of occupational social security schemes, do not enjoy any rights akin to married partners.

#### 6.1.3 Political and societal debate and pending legislative proposals

There is no ongoing political and social debate regarding legislative proposals on this issue for the reporting period. However, please note that a proposal for a new Law on Labour Relations is being prepared; no text has yet been made public.

### 6.2 Direct and indirect discrimination

The pension system is composed of three pillars established by three laws: the Law on Pension and Disability Insurance; the Law on Mandatory Fully-Funded Pension Insurance; and the Law on Voluntary Fully-Funded Pension Insurance. The composition of this three-pillar system was introduced in 2000,<sup>111</sup> following a World Bank proposal, and it is different from the pillars in the EU countries.<sup>112</sup>

There are no articles on discrimination or equality in the Law on Pensions and Disability Insurance.<sup>113</sup> The Law on Mandatory Fully-Funded Pension Insurance (last amended in 2009) states in Article 59: 'The form of contract for membership under paragraph (1) of this Article is the same for all members of the pension fund that manages the company'. This might be interpreted as guaranteeing equal treatment, although no case law has been identified thus far. Only the Law on Voluntary Fully-Funded Pension Insurance explicitly mentions the prohibition of discrimination (in Article 3).

In addition, Article 6 of the Law on Labour Relations specifically declares that men and women have equal opportunities and treatment related to professional insurance schemes.

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<sup>111</sup> Finance Think, *Pension system in North Macedonia*, available at: [www.financethink.mk/models/pension-system-of-macedonia/](http://www.financethink.mk/models/pension-system-of-macedonia/).

<sup>112</sup> Law on Pension and Disability Insurance (2012), Full title: Law on Pension and Disability Insurance (*Закон за пензиско и инвалидско осигурување*), *Official Gazette of the Republic of Macedonia*, Nos. 98/2012, 166/2012, 15/2013, 170/2013, 43/2014, 44/2014, 97/2014, 113/2014, 160/2014, 188/2014, 20/2015, 61/2015, 97/2015, 129/2015, 147/2015, 154/2015, 173/2015, 217/2015, 27/2016, 120/2016, 132/2016, 35/2018, 220/2018, 245/2018; Law on Voluntary Fully Funded Pension Insurance (*Закон за доброволно капитално финансирано пензиско осигурување*), *Official Gazette of the Republic of Macedonia*, Nos. 7/2008, 124/2010, 17/2011, 13/2013, Constitutional Court Decisions, U.no. 117/2008, U.no. 162/2008; Law on Mandatory Fully Funded Pension Insurance (*Закон за задолжително капитално пензиско осигурување*), 2002, *Official Gazette of the Republic of Macedonia*, Nos. 29/2002, 85/2003, 40/2004, 113/2005, 29/2007, 88/2008, 48/2009, 50/2010, 171/2011, 36/2011, 98/2012, 13/2013, 164/2013, 44/2014, 192/2015, 30/2016, 21/2018, 245/2018; Constitutional Court Decision: U.no. 163/2002, U.no. 165/2008.

<sup>113</sup> Law on Pension and Disability Insurance, 2012.



The Law on Agencies for Temporary Employment has no provisions specifically on professional insurance schemes concerning temporary (seconded) employees (temporary employees transferred from one organisation to another). However, Article 6 Paragraph 4 gives priority to 'payment of the unsettled contributions for pension and disability insurance, when activating the bank guarantee'.

### 6.3 Personal scope

The personal scope of national law relating to occupational social security schemes is more restricted than what is specified in Article 6 of Directive 2006/54.

There is no precise definition related to an obligation for implementation of anti-discriminatory activities related to self-employed people. However, the self-employment programmes of the Ministry of Labour and Social Policy, as well as the self-employment programmes of the municipalities, envisage measures with a gender dimension.<sup>114</sup>

In the articles of the Law on Employment and Insurance in case of Unemployment, which defines the mandate of the employment agency, there are no activities to ensure or promote equality between women and men or to enable equal treatment of women and men.

### 6.4 Material scope

The material scope of national law relating to occupational social security schemes is more restricted than what is specified in Article 7 of Directive 2006/54. The implementing legislation covers pension schemes including occupational pension schemes for all categories of workers (including public servants). There are two requirements for retirement: age, depending on sex (62 for women and 64 for men) and at least 15 years of accrued pension contributions. Should a person wish to continue working past this age, they can do so until the mandatory retirement age of 67, provided that the employer consents. This is the same for men and women. There are no other differences.

The difference in the retirement age based on sex affects all calculations, including the disability pension.

The Constitutional Court has found, in Decision No. 81/2016-0-0 of 9 November 2016,<sup>115</sup> that this difference in the retirement age does not constitute discrimination. However, the Court concluded that it does constitute positive discrimination grounded in the special societal care for mothers and motherhood, as well as women's biological and psychological characteristics. The Court also treated this case as *res judicata* since it had already adopted the same view in five decisions between 2004 and 2009.

However, it elaborated upon this concept of positive discrimination in a recent case regarding the mandatory retirement age which used to be set at 65 for women and 67 for men. The Court found that positive discrimination should not prevent equality between the sexes, which setting different mandatory retirement ages does. It therefore declared Article 104 of the Law on Labour Relations null and void, thus creating a legal condition for implementing the general labour law provision whereby both sexes can postpone retirement until the age of 67.<sup>116</sup> Later, an almost identical case was filed and was

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<sup>114</sup> Business Confederation of Macedonia, *Програма за (само) вработување за самохрани мајки (Programme on (Self-)Employment of Single Mothers)*, available at: <https://bcm.mk/%D0%BF%D1%80%D0%BE%D0%B3%D1%80%D0%B0%D0%BC%D0%B0-%D0%B7%D0%B0-%D1%81%D0%B0%D0%BC%D0%BE%D0%B2%D1%80%D0%B0%D0%B1%D0%BE%D1%82%D1%83%D0%B2%D0%B0%D1%9A%D0%B5-%D0%B7%D0%B0-%D1%81%D0%B0%D0%BC%D0%BE%D1%85/>.

<sup>115</sup> Constitutional Court, Decision No. 81/2016-0-0, 9 November 2016.

<sup>116</sup> Constitutional Court Decision No. 114/2014-0-1, 29 June 2016.

successful in challenging Article 98(5-6) of the Law on Administrative Servants, which was a provision mirroring the annulled provision from the Law on Labour Relations.<sup>117</sup>

## **6.5 Exclusions**

The three-pillar pension system is based on some exclusions (e.g. individual contracts for self-employed people or single-member schemes for self-employed people). However, they are not part of the *lex generalis* Law on Pension and Disability Insurance. Thus, there are exclusions mirroring those in Article 8 of Directive 2006/54.

## **6.6 Laws and case law falling under the examples of sex discrimination mentioned in Article 9 of Directive 2006/54**

There are laws which could fall under the examples of sex discrimination as mentioned in Article 9 of Directive 2006/54.

In the Law on Pension and Disability Insurance, contrary to Article 9 of the Recast Directive, according to the main pension legislation (Article 18), there are different retirement ages for men and women (62 versus 64). Furthermore, the calculation of pension on the basis of disability is different for men and women (Article 52). Under the Law on Labour Relations (Article 104), the maximum age for retirement used to differ for women and men (women could work until the age of 65 and men to the age of 67). This no longer applies. On 29 June 2016 the Constitutional Court of the Republic of Macedonia adopted a decision (No. 114/2014-0-1)<sup>118</sup> annulling the part concerning the personal scope, while leaving the part concerning the material scope in force. This means that the final outcome is the possibility of prolongation of the employment contract until the age of 67, only if the worker so wishes, and regardless of their sex.

## **6.7 Actuarial factors**

Sex is not used as an actuarial factor in occupational social security schemes, meaning that the contributions are the same for men and women.

## **6.8 Difficulties**

There are no specific difficulties.

## **6.9 Evaluation of implementation**

Overall, the protection against discrimination in relation to this area can be strengthened. However, a note should be added here that, although the ADL undoubtedly includes in its material scope the occupational social security schemes, introducing the principles of equality and non-discrimination in the laws in this area will enhance the protection level.

## **6.10 Remaining issues**

There are no issues regarding occupational social security that have not already been discussed above.

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<sup>117</sup> Constitutional Court Decision No. 121/2015-0-1, 1 February 2017.

<sup>118</sup> Constitutional Court Decision No. 114/2014-0-1, 29 June 2016.

## **7 Statutory schemes of social security (Directive 79/7)**

### **7.1 General (legal) context**

#### **7.1.1 Surveys and reports on the practical difficulties linked to statutory schemes of social security (Directive 79/7)**

There are no surveys in the last five years on the difficulties that workers face in practice in relation to statutory social security schemes linked with Directive 79/7.

#### **7.1.2 Other relevant issues**

Although the Law on the Family prescribes that, for the purposes of, inter alia, social security matters, married and unmarried (different sex) partners are considered equal as long as the unmarried partners have been living in a relationship akin to marriage for at least two years, other laws, including the ones on occupational social security schemes, show that this is not the case. Namely, unmarried partners, for the purposes of occupational social security schemes, do not enjoy any rights akin to married partners.

#### **7.1.3 Overview of national acts**

The main laws in this area are the Law on Social Protection (adopted in 2019) and the Law on Contributions for Mandatory Social Insurance. The first regulates social protection issues, from social insurance to monetary social assistance matters, whereas the second focuses only on regulating the mandatory social insurance matters. The relevant provisions of both laws are cited in the relevant sections herein.

#### **7.1.4 Political and societal debate and pending legislative proposals**

Debate in 2019 pertained to the newly adopted Law on Social Protection and to other laws from the so-called 'social reforms package'. No other political and social debate has taken place.

### **7.2 Implementation of the principle of equal treatment for men and women in matters of social security**

The principle of equal treatment for men and women in matters of social security falls within the scope of the principle of equal treatment and non-discrimination in the Law on Social Protection, Article 16. Unlike the previous Law on Social Protection, this law does not include specific provisions regarding important legal concepts relating to equality and non-discrimination. It only contains a referral to the Law on Prevention and Protection against Discrimination (Article 16 (3)). This law (the ADL) extends to this field and provides protection against discrimination on grounds of sex, gender and gender identity.

### **7.3 Personal scope**

The personal scope relating to statutory social security schemes is broader than what is specified in Article 2 of Directive 79/7. Articles 7, 8, 9 and 10 of the Law on Contributions for Mandatory Social Insurance cover all categories of people who are obliged to pay contributions for mandatory pension and disability insurance.

### **7.4 Material scope**

The material scope of national law relating to statutory social security schemes is very similar to what is specified in Article 3 Paragraphs 1 and 2 of Directive 79/7.

The material scope is defined in Articles 2 and 3 of the Law on Social Protection and in Article 3 of the ADL.

### **7.5 Exclusions**

The exclusions from the material scope as specified in Article 7 of Directive 79/7 have been implemented in the Law on Contributions for Mandatory Social Insurance. Article 10-a defines the situations where people are not obliged to pay contributions.

### **7.6 Actuarial factors**

Sex is not used as an actuarial factor in statutory social security schemes.

### **7.7 Difficulties**

There are no specific difficulties in relation to implementing the Directive 79/7.

### **7.8 Evaluation of implementation**

Implementation in this area is satisfactory.

### **7.9 Remaining issues**

No relevant issues on statutory social security remain undiscussed.

## **8 Self-employed workers (Directive 2010/41/EU and some relevant provisions of the Recast Directive)**

### **8.1 General (legal) context**

#### 8.1.1 Surveys and reports on the specific difficulties of self-employed workers

No surveys or reports have been published that provide insights into the specific difficulties that self-employed workers face.

#### 8.1.2 Other issues

The number of persons that are registered as per the law as self-employed is quite low. There are more persons, however, who work as self-employed but stay unregistered and thus outside of the system, including outside of the social security benefits system. Many of these persons work in the IT sector, and/or provide various consultancy, translation and similar services and work with partners from outside of the country.

#### 8.1.3 Overview of national acts

No single act regulates self-employed workers. Provisions can be found scattered in various laws, such as the Law on Health and Safety; the Law on Employment and Insurance in case of Unemployment; the Law on Health Insurance; the Law on Pension and Disability Insurance; and the Law on Contributions for Mandatory Social Insurance.

#### 8.1.4 Political and societal debate and pending legislative proposals

While no surveys or reports have been published on the matter of gender equality in self-employment, it must be emphasised that the issue has drawn attention and triggered public debate, but for a different reason. Namely, a rise in personal income tax – which aims for a more just distribution of income and fair taxes – was introduced. With this, people who earn above EUR 1 500 per month will pay income tax of 18 % on every euro above EUR 1 500, instead of the usual 10 % tax, which is applicable to income below or equal to EUR 1 500 per month.

Commentators have argued that this will disproportionately affect self-employed people. As mentioned above, while the number of registered self-employed people may be low, many unregistered people work in the IT sector and/or provide various consultancy, translation and similar services and work with partners from outside the country. Considering that the national average salary is close to EUR 400, these people are considered to be disproportionately better off than the average citizens of the country, therefore they should be taxed accordingly. However, issues of precariousness, instability of income, income at the family level, wealth and property status, and so on, were not taken into consideration when devising these legislative amendments, potentially discriminating against self-employed people compared to people who work in a secure, public sector job and who live in a family where two or more people earn an average income.

An additional debate was stirred up due to the suspension of these provisions and the removal of this tax a few months later. This change happened with the change of the Minister of Finances. The new minister announced that the tax was being postponed indefinitely because the new tax had failed to produce the expected results and affected businesses disproportionately. The analysis on which the ministry claims to have based its decision has not yet been published.

## 8.2 Implementation of Directive 2010/41/EU

Directive 2010/41/EU has not been explicitly implemented in national law, but some work has been done. There are several laws where the definition of a self-employed person is in line with the Directive: the Law on Health and Safety; the Law on Employment and Insurance in case of Unemployment; the Law on Health Insurance; the Law on Pension and Disability Insurance; and the Law on Contributions for Mandatory Social Insurance. Leave related to birth remains unregulated and paternity leave fully absent from the legislative framework.

## 8.3 Personal scope

### 8.3.1 Scope

Under the national law, self-employed persons are natural persons, who need to be independently performing a variety of activities which can be considered economic (generating income) or expert or intellectual (not further defined).

### 8.3.2 Definitions

The law defines self-employed people, but not self-employment itself. According to the law: 'Self-employed person means any natural person who performs an independent economic activity, or professional or other intellectual service generating income, in accordance with law',<sup>119</sup> or a 'self-employed person is a natural person who performs an independent economic activity or renders expert or other intellectual services which generate income for his/her own benefit, under the conditions determined by law'.<sup>120</sup>

The same term, 'self-employed person', is used in the publications of the State Statistical Office. However, some official statistical publications<sup>121</sup> use the term 'own-account worker'.

### 8.3.3 Categorisation and coverage

There is a difference in what the term means/includes when it is mentioned in laws and in statistical data. On the one hand, the law treats the self-employed as people who could be employers at the same time, but excludes farmers.<sup>122</sup> On the other hand, according to the State Statistical Office: 'Self-employed [are] persons who work in their own business, professional practice or farm for the purpose of earning a profit and who do not employ any other person', while '[e]mployers [are] persons who run their own business entity or owners who work in their shops or owners of an agriculture estate, who employ other people.'

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<sup>119</sup> Law on Contributions for Mandatory Social Insurance, 2008.

<sup>120</sup> Law on Employment and Insurance in case of Unemployment, 1997.

<sup>121</sup> State Statistical Office (2019), *Women and men in North Macedonia*, available at: <http://www.stat.gov.mk/Publikacii/Gender2019.pdf>.

<sup>122</sup> Law on Health Insurance (*Закон за здравственото осигурување*), 2000. Full title: Law on Health Insurance (*Закон за здравственото осигурување*), *Official Gazette of the Republic of Macedonia*, Nos. 25/2000, 34/2000, 96/2000, 50/2001, 11/2002, 31/2003, 84/2005, 37/2006, 18/2007, 36/2007, 82/2008, 98/2008, 6/2009, 67/2009, 50/2010, 156/2010, 53/2011, 26/2012, 16/2013, 91/2013, 187/2013, 43/2014, 44/2014, 97/2014, 112/2014, 113/2014, 188/2014, 20/2015, 61/2015, 98/2015, 129/2015, 150/2015, 154/2015, 192/2015, 217/2015, 27/2016, 37/2016, 120/2016, 142/2016 и 171/2017; Constitutional Court Decision: U.no. 85/2000, U.no. 173/2000, U.no. 37/2001, U.no. 60/2006, U.no. 40/2007, U.no. 167/2006, U.no. 45/2006, U.no. 199/2008, U.no. 109/2009, U.no. 185/2009, U.no. 112/2011; Law on Pension and Disability Insurance (2012), Full title: Law on Pension and Disability Insurance (*Закон за пензиско и инвалидско осигурување*), *Official Gazette of the Republic of Macedonia*, Nos. 98/2012, 166/2012, 15/2013, 170/2013, 43/2014, 44/2014, 97/2014, 113/2014, 160/2014, 188/2014, 20/2015, 61/2015, 97/2015, 129/2015, 147/2015, 154/2015, 173/2015, 217/2015, 27/2016, 120/2016, 132/2016, 35/2018, 220/2018, 245/2018;

#### 8.3.4 Recognition of life partners

The national legislation does not recognise life partners in relation to self-employed people. However, Article 16(2) of the Directive is partially implemented: the spouses referred to in Article 2(b) can benefit, as any other spouse of an insured worker, from the social protection in accordance with national law, but life partners cannot. Life partners are excluded from any benefits related to the self-employment of their partner. Even though in the Family Law formal and non-formal marriages are equalised, this only relates to the care of children, not to social security and pension benefits.

### 8.4 Material scope

#### 8.4.1 Implementation of Article 4 of Directive 2010/41/EU

Self-employment is not mentioned in the Law on Labour Relations nor in anti-discrimination legislation (the Law on Equal Opportunities for Women and Men and the Law on Prevention of and Protection against Discrimination). However, the principle of equal treatment *per se* is included in these three laws; hence, theoretically speaking, any sex discrimination could be challenged. In addition, the ADL provides protection for the discrimination ground 'personal and other social status' (Article 5) which can be interpreted to include an individual's employment status and would cover 'self-employment'.

#### 8.4.2 Material scope

The situation is the same as above (8.4.1): self-employment is not mentioned in the Law on Labour Relations nor in anti-discrimination legislation (the Law on Equal Opportunities for Women and Men and the Law on Prevention of and Protection against Discrimination). However, the principle of equal treatment *per se* is included in these three laws; hence, theoretically speaking, any sex discrimination could be challenged.

### 8.5 Positive action

The positive measures relating specifically to the self-employment of women are set out in the 'National strategy for reducing poverty and social exclusion in the Republic of Macedonia'.<sup>123</sup> In the strategy for gender equality adopted by Parliament on 20 February 2013, self-employment and support for women when starting enterprises is described as a significant element for reaching gender equality.

In the 'Operative Plan for active programmes and measures for employment and services on the labour market for 2017'<sup>124</sup> concrete measures targeting women were not envisaged. Unlike this plan, the operative plan for 2018<sup>125</sup> does contain some concrete measures relating to women (particularly women from non-majority ethnic communities, single mothers etc.), such as mentoring support and activation measures in relation to unemployed people, including subsidising salaries (from 3 up to 12 months). So, the gender dimension is quite visible and present.

In March 2017 the operative plan for the implementation of the 'Strategy for gender-responsible budgeting 2012-2017' was adopted. According to this plan, every ministry has

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<sup>123</sup> Ministry of Labour and Social Policy, Национална стратегија за намалување на сиромаштијата и социјалната исклученост во Република Македонија (ревидирана 2010-2020) (National Strategy on Reducing Poverty and Social Exclusion in the Republic of Macedonia (revised 2010-2020)), available at: [http://mtsp.gov.mk/WBStorage/Files/revidirana\\_str\\_siromastija.pdf](http://mtsp.gov.mk/WBStorage/Files/revidirana_str_siromastija.pdf).

<sup>124</sup> Agency for Employment of the Republic of Macedonia (2017), *Оперативен план за активни програми и мерки за вработување и услуги на пазарот на трудот за 2017 година* (Operational plan on active programmes and employment measures and labour market services in 2017), available at: <http://www.avrm.gov.mk/content/%D0%94%D0%BE%D0%BA%D1%83%D0%BC%D0%B5%D0%BD%D1%82%D0%B8/%D0%9E%D0%9F%202017.pdf>.

<sup>125</sup> Ministry of Labour and Social Policy: <http://www.mtsp.gov.mk/dokumenti.nspix>.

to make a 'Gender budgetary declaration' in which it will present areas where gender budgeting might be implemented, and the ways in which this could be done.<sup>126</sup> This was meant to be a plan concerning the last year of the five-year cycle (2012-2017). However, the real effects should be expected in 2018 and thereafter.

There is a number of projects and programmes aimed at promoting entrepreneurial initiatives among women, e.g. training courses; government support for enterprises owned and operated by women; mentorship, and gender-sensitive development of human resources. On the other hand, there are no adequate analyses to assess the effectiveness of these measures. According to the statistical data the percentage of self-employed women has increased (which is presented as a positive result), as confirmed by the female director of the Agency for Employment of Skopje:<sup>127</sup> 'The participation of women in self-employment is 35.8 %, and in self-employment supported by financial credit 33.3 %, which indicates that female entrepreneurship is at a very high level'. When compared with the overall number of self-employed people, women represent 18.4 %.<sup>128</sup> In relation to entrepreneurship, it is important to mention that, in 2018, the Government adopted the Strategy on Women's Entrepreneurship in 2019-2023. The strategy aims to create a favourable business climate for developing women's entrepreneurship, to provide systemic support and to create infrastructure for women's entrepreneurship and to undertake promotion, networking and advocacy activities.<sup>129</sup>

The projects to support self-employment of women, entitled 'Active measures for support of women in the private sector', and 'Inclusion of women from ethnic communities in the labour market' continue.<sup>130</sup> According to these projects, the main reason for insufficient usage of the possibilities for self-employment among women is a lack of awareness and active choice by women.

While the gender dimension was not mentioned in the previous years,<sup>131</sup> the Operative Plan for 2018 clearly includes this dimension. It states that, as a principle, the aim will be to reach equality between men and women in line with the GEL (it also adds the aim of participation of young persons up to the age of 29).<sup>132</sup>

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<sup>126</sup> Ministry of Defence (2018), *Gender responsive budget declaration*, available at: [http://morm.gov.mk/wp-content/uploads/2018/03/Rodovo-budzetska-izjava\\_koregirana.pdf](http://morm.gov.mk/wp-content/uploads/2018/03/Rodovo-budzetska-izjava_koregirana.pdf).

<sup>127</sup> Marili (2017), *Интервју со М-р. Слободанка Алексовска, раководител на Центар за вработување на Град Скопје* (Interview with Slobodanka Aleksovska, MA, Manager of the Employment Centre of the City of Skopje), available at: <http://www.marili.com.mk/dropion/?page=1373>.

<sup>128</sup> State Statistical Office (2019), *Women and men in North Macedonia*, available at: <http://www.stat.gov.mk/Publikacii/Gender2019.pdf>.

<sup>129</sup> Ministry of Economy (2018), *Стратегија за развој на женско претприемништво 2019-2023* (Strategy for development of women's entrepreneurship 2019-2023), available at: <http://www.economy.gov.mk/Upload/Documents/Стратегија%20за%20развој%20на%20женско%20претприемништво%20во%20Република%20Македонија%202019-2023.pdf>.

<sup>130</sup> According to unofficial statements, to date, with the support of incentives from the Government in the period 2007-2016, over 3 109 women have become entrepreneurs. Their participation in the overall newly open business sector is over 37 % Source: Marili (2017), *Центарот за вработување на Град Скопје заедно со граѓанскиот сектор се вклучи во реализација на оперативниот план на владата за спроведување на мерки и програми на пазарот на труд за 2017 година* (The Employment Centre of the City of Skopje together with CSOs work towards the implementation of the Operational Plan of the Government on Measures and Programmes on the Labour Market for 2017), available at: <http://www.marili.com.mk/dropion/?page=1302>.

<sup>131</sup> Agency for Employment of the Republic of Macedonia (2017), *Оперативен план за активни програми и мерки за вработување и услуги на пазарот на трудот за 2017 година* (Operational Plan on Active Programmes and Employment Measures and Labour Market Services in 2017), available at: <http://www.avrm.gov.mk/content/%D0%94%D0%BE%D0%BA%D1%83%D0%BC%D0%B5%D0%BD%D1%82%D0%B8/%D0%9E%D0%9F%202017.pdf>.

<sup>132</sup> Ministry of Labour and Social Policy (2018), *Оперативен план за активни програми и мерки за вработување и услуги на пазарот на трудот за 2018 година* (Operational Plan on Active Programmes and Employment Measures and Labour Market Services in 2018), available at: <http://www.mtsp.gov.mk/content/word/dokumenti/dokumenti%202018/Оперативен%20план%20за%202018%20година%20за%20МТСП.doc>.



Self-employment was not mentioned at all in the Ministry of Labour and Social Policy's Strategic Plan for 2018-2020.<sup>133</sup> However, it is elaborated upon in the Programme for Reforms of Employment and Social Policy 2020.<sup>134</sup>

## **8.6 Social protection**

Self-employed workers are covered by the same legislation on social protection as other employees. Social protection covers health, pensions, disability and (periods of) unemployment. They are specifically mentioned as people obliged to pay contributions and as beneficiaries by the Law on Contributions for Mandatory Social Insurance (Articles 7, 10 & 12) and also by the Law on Personal Income Tax.

Self-employed people may be covered by the Law on Voluntary Fully-Funded Pension Insurance.

Official marriage is a requirement to ensure that spouses can benefit from social protection in accordance with national law. Unlike spouses, life partners cannot benefit from life pensions.

There are no schemes in the Republic of North Macedonia which are mandatory for the self-employed worker's spouse or life partner, but voluntary ones are available.

## **8.7 Maternity benefits**

The legislators have chosen not to mention the self-employed in the main legislation on this topic, the Law on Labour Relations, but in other laws that deal with these matters. This means that voluntary maternity benefits are actually covered by the Law on Health Insurance, and specifically Articles 12 and 14, but only for self-employed women. They are entitled to compensation of the average loss of income or profit at the level at which the health contribution was paid, in relation to a comparable preceding period (twelve months), and subject to a ceiling of not more than four times the national average monthly salary at state level. The compensation is provided from the national State Budget.

The female spouse or life partner is not covered, i.e. cannot enjoy maternity leave.

There are no existing services supplying temporary replacements or similar instruments. However, the Amendments of the Law on Employment and Insurance in case of Unemployment of 27 August 2015 foresees the possibility to waive the tax duty for private employers where they employ a replacement for a worker on maternity leave. Although the self-employed are not mentioned, theoretically speaking there are no visible impediments to using this instrument in such cases.

Since self-employed people are not mentioned in the Law on Labour Relations, this means, for instance, that they are not entitled to reduced working hours because of breastfeeding, a temporary exemption from night work or prolonged working hours etc. However, in theory one could argue that all these rights should be extended to a pregnant self-employed person who was engaged by a company based on a so-called Special Contract according to Article 252 of the Law on Labour Relations (concerning services not covered by the mandate of that company).

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<sup>133</sup> Ministry of Labour and Social Policy: <http://www.mtsp.gov.mk/dokumenti.nsp.x>.

<sup>134</sup> Ministry of Labour and Social Policy (2017), Employment and Social Reform Programme 2020, available at: [www.mtsp.gov.mk/content/word/esrp\\_dokumenti/ESRP%20Macedonia%20-%20final%20\(ENG\).pdf](http://www.mtsp.gov.mk/content/word/esrp_dokumenti/ESRP%20Macedonia%20-%20final%20(ENG).pdf).

## **8.8 Occupational social security**

### 8.8.1 Implementation of provisions regarding occupational social security

National law has not implemented the provisions regarding occupational social security for self-employed persons.

### 8.8.2 Application of exceptions for self-employed persons regarding matters of occupational social security (Article 11 of Recast Directive 2006/54)

National law has not made use of the exceptions for self-employed persons regarding matters of occupational social security as mentioned in Article 11 of Recast Directive 2006/54.

## **8.9 Prohibition of discrimination**

Article 14(1)(a) of the 2006/54 Directive is not implemented in national law. The consequences of this may be limited if the ADL is applied, since it has a wider personal and material scope.

## **8.10 Evaluation of implementation**

Overall, the legal framework in this area remains underdeveloped. The Directive 2010/41/EU has not been explicitly implemented in national law. Thus, implementation in this area remains less than satisfactory.

## **8.11 Remaining issues**

No further issues remain to be discussed.

## **9 Goods and services (Directive 2004/113)<sup>135</sup>**

### **9.1 General (legal) context**

#### **9.1.1 Surveys and reports about the difficulties linked to equal access to and supply of goods and services**

There are no particular issues around access to goods and services which relate specifically to gender. There, is however, an issue with gender and race<sup>136</sup> in relation to Roma women's access to health services. Namely, the Women of the Šuto Orizari Initiative alerted the public to the fact that the only gynaecologist operating in the largest Roma community – the municipality Šuto Orizari – announced it was closing.<sup>137</sup> This effectively means that Roma women living in this municipality will once again not have equal access to health services and will be exposed to additional expenses in order to access such services.

#### **9.1.2 Specific problems of discrimination in the online environment/digital market/collaborative economy**

There are no specific problems of discrimination in access to and supply of goods and services in the online environment/digital market/collaborative economy. The online market in the country is too small and underdeveloped, as is the collaborative economy, for any specific issues in relation to it and for discrimination in access to and supply of goods and services to arise.

#### **9.1.3 Political and societal debate**

There is no active debate.

### **9.2 Prohibition of direct and indirect discrimination**

The Law on Equal Opportunities for Men and Women as regards access to and supply of goods and services transposes all articles of Directive 2004/113/EC. Article 3 (Implementation of the law) Paragraph 2 of this law specifies that public and private entities providing goods and services are responsible for the implementation of equal treatment of men and women in the access to and supply of goods and services. Paragraph 4 of the same Article 'prohibits discrimination based on sex in access to goods and services in the public and private sector, including discrimination in premiums from insurance schemes'. The personal scope related to the access to and supply of goods and services can be found in Chapter 4 of this Law (Entities responsible for adoption and implementation of measures in establishing equal opportunities for women and men, and their duties).

Equality in the access to and supply of goods and services on grounds of sex, gender and gender identity is also provided for under the Law on the Prevention of and Protection against Discrimination (Article 3). This law contains a provision covering the particular issue of accessibility of goods and services for people with disabilities, which is of relevance for women with disabilities.

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<sup>135</sup> See e.g. Caracciolo di Torella, E. and McLellan, B. (2018), *Gender equality and the collaborative economy, European network of legal experts in gender equality and non-discrimination*, available at <https://www.equalitylaw.eu/downloads/4573-gender-equality-and-the-collaborative-economy-pdf-721-kb>.

<sup>136</sup> In the national context ethnicity is used for Roma, rather than race.

<sup>137</sup> Women of Šuto Orizari Initiative, 'Дали жените од Шуто Оризари повторно ќе останат без матичен гинеколог?' ('Will the women from Šuto Orizari be without access to a gynaecologist again?'), *Emagazin.mk*, available at: <https://emagazin.mk/dali-zhenite-od-shuto-orizari-povtorno-e-ostanat-bez-matichen-ginekolog/>.

### 9.3 Material scope

The material scope of national law relating to access to goods and services is broader than specified in Article 3 of Directive 2004/113. Article 3 of the Law on Equal Opportunities for Women and Men states the following:

'Entities that establish equal opportunities and equal treatment of women and men shall be the bodies of the legislative, executive and judiciary authority, the local self-government units and other bodies and organisations of the public and private sector, public enterprises, political parties, mass media and the civil sector, and all the entities providing goods and services available to the public and offered outside the area of private and family life and the transactions carried out in that context, regardless whether the referred entity is part of the public or private sector.'

### 9.4 Exceptions

National law has not applied the exceptions from the material scope as specified in Article 3(3) of Directive 2004/113, regarding the content of media, advertising and education.

The CSO MHC initiated a procedure before the Commission for Protection against Discrimination against three radio broadcasters due to their joint campaign to spread 'misogyny and sexism' (October 2017) which, it believed, was in flagrant violation of the Macedonian Law on Audio and Audio-visual Media Services. In brief, the campaign purported that there is such a thing as an 'overly emancipated woman' stating examples of what this would be (for example, women who decide to focus their lives on their careers). Before a decision was issued, the three radio broadcasters terminated the campaign and apologised, declaring that they thought that their campaign would encourage the emancipation of women. The Commission delivered its Opinion three months after the broadcasts<sup>138</sup> finding the campaign to be discriminatory and it issued a Recommendation for all media to abstain from such campaigns.

The same CSO initiated a procedure before the Ombudsperson against the Ministry of Education and Science concerning the textbook *Civic Education* for eighth grade pupils as it claimed that it contained illustrations and comments which promoted gender discrimination and prejudice. One of the disputed lessons states that 'only respected women and healthy mothers can secure healthy families – the foundation for the overall development of the society'. Another lesson shows two images, side by side; one is of a woman wearing an apron who is simultaneously cooking and looking at a computer and the other one is of a woman who is sitting relaxed in a chair and reading a magazine while a man is vacuum cleaning. In response to the recommendation of the Ombudsperson, the Ministry then withdrew the disputed textbook.<sup>139</sup>

### 9.5 Justification of differences in treatment

There is no specific justification of differences in treatment in the provision of the goods and services in national law.

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<sup>138</sup> Commission for Protection against Discrimination (2018), Opinion in Application No. 08-229/3, Agency on Audio and Audio-visual Services v City Radio, adopted on 8 February 2018.

<sup>139</sup> Macedonian Helsinki Committee (2017), *Народниот правобранител утврди дискриминација во учебникот „Граѓанско образование“* (The Ombudsperson found discrimination in the civic education textbook), available at: [www.mhc.org.mk/announcements/631?locale=mk#.W\\_NL5C\\_My8q](http://www.mhc.org.mk/announcements/631?locale=mk#.W_NL5C_My8q).

## **9.6 Actuarial factors**

There is no guarantee in national law with regards to sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services. However, there are no indications of such differences in practice, either.<sup>140</sup>

## **9.7 Interpretation of exception contained in Article 5(2) of Directive 2004/113**

There is no exception pursuant to Article 5(2) of the Directive 2004/113, thus there is no interpretation of this exception either.

## **9.8 Positive action measures (Article 6 of Directive 2004/113)**

North Macedonia has adopted positive action measures in relation to access to and the supply of goods and services. Article 5 of the Law on Equal Opportunities for Women and Men states:

'General measures for the implementation of the principle of Law on Equal Opportunities for Women and Men shall be normative measures in the field of health protection and health insurance, social protection, access to goods and services'.

Also, in Article 7 it is underlined that

'encouraging measures are measures that ensure special incentives or introduce special advantages with the purpose of eliminating the circumstances that cause unequal participation of women and men, or unequal status of one gender against the other or unequal distribution of social goods and resources'.

Thus, positive measures in relation to access to and the supply of goods and services are allowed under the law.

## **9.9 Specific problems related to pregnancy, maternity or parenthood**

The Court of Second Instance – Skopje upheld the verdict of the Court of First Instance Skopje 2 concerning disciplinary measures against a female gynaecologist who performed a caesarean section on one of her patients with a difficult pregnancy without the formal approval of the physician on duty for that evening shift. It was undisputed that the patient insisted that the procedure be performed by the gynaecologist who had been looking after her during her pregnancy. The employer, the Public Health Institution, fined the female gynaecologist for not acquiring the formal approval, in spite of the urgent circumstances and obvious successful treatment; both of the courts supported the claimant and annulled the fine. While commending the verdicts of both of the courts, it should be noted that they based their verdict on a legal technicality instead of considering whether the bylaws inhibit the performance of proper services for pregnant women both in general and in this case, bearing in mind the sensitivity of the relationship between the pregnant woman and her gynaecologist.<sup>141</sup>

## **9.10 Evaluation of implementation**

The implementation with regards to EU law standards is improving. Some areas, such as health services, remain problematic.

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<sup>140</sup> Leshoska V., et al (forthcoming), *Gender-based discrimination and labour in North Macedonia*, Reactor – Research in Action.

<sup>141</sup> Court of Second Instance Skopje (2016), *Case No. POЖ-158/16* (7 December 2016).

### **9.11 Remaining issues**

Access to health services for Roma women remains an issue (see Section 9.1 above).

## 10 Violence against women and domestic violence in relation to the Istanbul Convention

### 10.1 General (legal) context

#### 10.1.1 Surveys and reports on issues of violence against women and domestic violence

Several surveys and reports looking at violence against women and domestic violence have been conducted.<sup>142</sup> From among these, two studies are presented here in greater detail. The first one is selected because of its scope and the findings which bring unique insight into the manifestation of domestic violence in North Macedonia. The second one is selected because it is the most recent one and because it focuses on sexual violence, which is where the first study presented focuses the least.

To begin with, although slightly older, the 2012 national survey of domestic violence is still an important survey to mention, since it is the largest and most detailed such survey conducted to date in the country, and since it shed important light on the country-specific dynamics of domestic violence. There are several main findings of the survey. The survey found that women are much more affected by domestic violence than men, and the perpetrators are, by a large majority, men. The survey found an overall 37.7 % prevalence rate in the total population, wherein for women the prevalence is higher, at 39.4 %, and for men lower, at 35.5 %. The authors note that variables determining likelihood of violence among women are 'their age, educational level, number of children present in the household, location (rural or urban) and ethnicity. Educational level is closely tied to both labour market status and other economic variables' – whereas with men, this is only age and location. There are several findings which are very telling in terms of understanding how domestic violence manifests itself in the country.<sup>143</sup> For example, the survey found the following:

'Most of the psychological violence experienced in Macedonian households is associated with: anger, restriction, prohibition, suspicion, control, etc. Economic violence and violence that include insulting, degrading and threatening is experienced by a much lower proportion of households. [...] Physical violence and sexual violence were found to have a low prevalence, which can be explained both

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<sup>142</sup> Dimushevska, E. and Trajanovska, Lj. (2017), *Scoping study on sexual violence*, National Network to End Violence against Women and Domestic Violence, available at: [www.glasprotivnasilstvo.org.mk/wp-content/uploads/2013/11/Scoping-study-on-sexual-violence.pdf](http://www.glasprotivnasilstvo.org.mk/wp-content/uploads/2013/11/Scoping-study-on-sexual-violence.pdf); Chalovska-Dimovska, N. (2016), *Извештај од мониторингот на спроведувањето на Законот за превенција, спречување и заштита од семејно насилство (Report from the monitoring of the implementation of the Law on Prevention and Protection against Domestic Violence)*, National Network to End Violence against Women and Domestic Violence, available at: [http://www.glasprotivnasilstvo.org.mk/wp-content/uploads/2016/12/Monitoring-na-zakon-za-SN\\_final.pdf](http://www.glasprotivnasilstvo.org.mk/wp-content/uploads/2016/12/Monitoring-na-zakon-za-SN_final.pdf); Gelevska, M. and Mishev, S. (2017), *Analysis of the legal framework and institutional response to violence against women*, Association for Emancipation, Solidarity and Equality of Women – ESE, available at: <http://esem.org.mk/en/pdf/Publikacii/2017/Analysis%20of%20the%20legal%20framework.pdf>; Gelevska, M. and Mishev, S. (2017), *Findings regarding the court monitoring conducted in terms of cases of violence against women*, Association for Emancipation, Solidarity and Equality of Women – ESE, available at: <https://esem.org.mk/en/pdf/Publikacii/2017/Findings%20Court%20Monitoring%20DV.pdf>; Reactor – Research in Action (2012), *Истражување на опсегот на родово-базираното насилство врз жените и девојките на јавните места во Скопје (Scoping study on gender-based violence and discrimination against women and girls in urban public spaces of the City of Skopje)*, available at: <http://www.reactor.org.mk/CMS/Files/Publications/Documents/scoping%20study%20VAW%20public%20spaces%20Skopje.pdf>; Popovska, Lj. et al (2012), *Report on the National Survey on Domestic Violence*, UNDP, available at: [https://www.researchgate.net/publication/297704253\\_Report\\_on\\_the\\_National\\_Survey\\_on\\_Domestic\\_Violence](https://www.researchgate.net/publication/297704253_Report_on_the_National_Survey_on_Domestic_Violence); Association for Emancipation, Solidarity and Equality of Women – ESE (2011), *Насилство врз жени на работното место (Violence against women in the workplace)*, available at: <https://www.pravdiko.mk/wp-content/uploads/2014/01/Nasilstvo-vrz-zheni-na-rabotno-mesto.pdf>.

<sup>143</sup> Popovska, Lj. et al (2012), *Report on the National Survey on Domestic Violence*, UNDP, available at: [https://www.researchgate.net/publication/297704253\\_Report\\_on\\_the\\_National\\_Survey\\_on\\_Domestic\\_Violence](https://www.researchgate.net/publication/297704253_Report_on_the_National_Survey_on_Domestic_Violence).

by the fact that most of the interviews were not carried out in strict privacy and the sample size.<sup>144</sup>

The survey found that a staggering three quarters of the cases had not been reported to any of the available services. When victims do reach out, a majority of them still reach out mostly to family and religious institutions or representatives. When they reach out to public services, they go to the police, social work centres and health centres, with the difference that ethnic Macedonians reported to all of these services, whereas the reporting rates among ethnic Albanians is, in general, lower and, if an Albanian person were to report a case, then they would do this to the health services.<sup>145</sup> The survey also asked respondents where a hypothetical victim should report a case of domestic violence, and the responses were as follows:

'[W]omen and men are slightly more likely to report to close family members than to public services. Among the most popular public services that violence would be reported to are the police (33 %) followed by social workers (11 %). However, a very high 24 % of all respondents answered that they would tell no one and 19 % would tell their parents. These four options would constitute a total of 87.3 % of all respondents' answers.<sup>146</sup>

Finally, a number of personal characteristics and household characteristics have been identified to increase and decrease the probability of experiencing violence. These are:

'age (probability decreases as age increases so that more attention to younger age groups is needed); number of children (most of the cases are in households with a few children, but the prevalence is higher among bigger households); education (higher levels reduce risk); important differences by region and gender that should be taken into account for campaigns and access to services; the risk of experiencing violence increases in the rural areas for both women and men; ethnic differences need to be researched further to better understand intersectionality issues and improve targeted approaches that are also culturally acceptable. In the case of sexual and physical violence, the level of family expenditure was found to be statistically significant and points to the need to continue with economic empowerment of women.<sup>147</sup>

In 2017, a study entitled 'Scoping study on different forms of sexual violence in the Republic of Macedonia' was published. It was conducted by the network of CSOs – the National Network to End Violence against Women and Domestic Violence – with financial support being provided by the Swedish foundation Kvinna till Kvinna. The study found that sexual violence is the least reported and least recognised form of gender-based or domestic violence. Sexual violence among marital partners is not recognised either, even though among the cases of sexual violence documented by medical professionals, husbands feature as the number one perpetrators. Sexual violence by a marital partner is also not recognised as such by the victims who approach the shelter centres for help.

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<sup>144</sup> Popovska, Lj. et al (2012), *Report on the National Survey on Domestic Violence*, UNDP, available at: [https://www.researchgate.net/publication/297704253\\_Report\\_on\\_the\\_National\\_Survey\\_on\\_Domestic\\_Violence](https://www.researchgate.net/publication/297704253_Report_on_the_National_Survey_on_Domestic_Violence).

<sup>145</sup> Popovska, Lj. et al (2012), *Report on the National Survey on Domestic Violence*, UNDP, available at: [https://www.researchgate.net/publication/297704253\\_Report\\_on\\_the\\_National\\_Survey\\_on\\_Domestic\\_Violence](https://www.researchgate.net/publication/297704253_Report_on_the_National_Survey_on_Domestic_Violence).

<sup>146</sup> Popovska, Lj. et al (2012), *Report on the National Survey on Domestic Violence*, UNDP, available at: [https://www.researchgate.net/publication/297704253\\_Report\\_on\\_the\\_National\\_Survey\\_on\\_Domestic\\_Violence](https://www.researchgate.net/publication/297704253_Report_on_the_National_Survey_on_Domestic_Violence).

<sup>147</sup> Popovska, Lj. et al (2012), *Report on the National Survey on Domestic Violence*, UNDP, available at: [https://www.researchgate.net/publication/297704253\\_Report\\_on\\_the\\_National\\_Survey\\_on\\_Domestic\\_Violence](https://www.researchgate.net/publication/297704253_Report_on_the_National_Survey_on_Domestic_Violence).



Sexual violence against sex workers is committed in the largest part by police officers who use their position of power in a national context where sex work is criminalised.<sup>148</sup>

In 2019, the OSCE published a research study on violence against women. This study found that 48 % of women consider domestic violence a private matter. Lack of trust, shame, finances and lack of information and knowledge stood out as primary factors impacting underreporting. Overall, 45 % of women have experienced intimate partner violence, 9 % physical violence and 44 % psychological abuse. A high proportion (28 %) consider that the violence is often provoked by the victim and a similar percentage believe that victims exaggerate claims of abuse or rape. This research was conducted via expert interviews with a representative sample of 1 910 women, focus groups and in-depth interviews with women who have experienced violence.<sup>149</sup>

Another research study published in 2019 focused on the right to a fair trial in domestic violence cases. It found that every third woman is a victim of domestic violence, but that these cases rarely reach the courts, mainly because of distrust in the judicial system.<sup>150</sup>

#### 10.1.2 Overview of national acts on violence against women, domestic violence and issues related to the Istanbul Convention

The legal protection from domestic violence falls in both criminal and civil litigation. The criminal procedure is embedded in the Criminal Code and in the Law on Criminal Procedure, while the civil procedure is regulated by the Law on the Prevention of and Protection from Domestic Violence, adopted in 2014, which entered into force on 1 January 2015. This Law regulates the activities of the institutions, but also activities of CSOs.

Particularly important laws closely related to the system of protection for victims of domestic violence are the Law on Social Protection and the Law on Free Legal Aid. The former provides support and services to women who are victims of gender-based violence, including accommodation (temporary and emergency accommodation) and counseling. The latter enables women to be receive free legal aid (counseling and representation) during all court and administrative procedures, provided these are related to questions of the victim's interests, including rights in the areas of social, health, pension and disability insurance, labour relations, protection of children, protection from crimes and property issues.

According to the latest available statistics, women remained the most frequent victims of domestic violence.<sup>151</sup>

The National Strategy on the Prevention of and Protection from Domestic Violence identifies the unequal power relations and deeply embedded patriarchy in Macedonian society as reasons for domestic violence, which places women in a position of oppression. Women, children and the elderly are distinguished as the most vulnerable groups. Gender and age inequality are treated as special categories, although gender is emphasised as the most significant.

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<sup>148</sup> Dimushevska, E. and Trajanovska, Lj. (2017), *Scoping study on sexual violence*, National Network to End Violence against Women and Domestic Violence, available at: [www.glasprotivnasilstvo.org.mk/wp-content/uploads/2013/11/Scoping-study-on-sexual-violence.pdf](http://www.glasprotivnasilstvo.org.mk/wp-content/uploads/2013/11/Scoping-study-on-sexual-violence.pdf).

<sup>149</sup> OSCE, (2019), *Survey on violence against women: Main report. Well-being and safety of women for North Macedonia*, available at: <https://www.osce.org/secretariat/419264?download=true>

<sup>150</sup> Coalition 'All for fair trials' (2019), *Анализа На Податоците Од Набљудуваните Судски Постапки Во Предмети Од Семејно и Родово Базирано Насилство Во 2019 Година (Analysis of the data from monitored court proceedings of domestic and gender-based violence in 2019)*.

<sup>151</sup> State Statistics Agency, *Statistical data on domestic violence*, available at: <http://zsd.gov.mk/семејното-насилство-во-македонија-во-20/>.

Violence against women (gender-motivated violence) outside the family is not the subject of wider research or specific legal protection. It falls under the chapter of the Criminal Code on 'Crimes against Gender Freedom and Gender Morals'.

The focus on sexual violence against women is increasing. However, the legal framework for combating violence against women still does not recognise all forms of gender-based violence. Domestic violence is the only form of gender-based violence that is regulated by a special Law on the Prevention of and Protection from Domestic Violence. The Law is not gender-sensitive – it does not define domestic violence as being gender-based violence and it does not recognise girls and women as a particularly vulnerable group.<sup>152</sup> Gender-based violence, as a wider phenomenon, is still not regulated in a special law.

### 10.1.3 National provisions on online violence and online harassment

The ADL has been interpreted thus far to apply to harassment in the online space, including on social media. The Criminal Code contains provisions which regulate online violence, as well as incitement of hatred and violence, including online.

### 10.1.4 Political and societal debate

There is an ongoing process of amending various laws pertaining to prevention of and protection against violence towards women, as part of the process of alignment with the ratified Istanbul Convention (see next section).

## 10.2 Ratification of the Istanbul Convention

North Macedonia was amongst the first countries to sign the Istanbul Convention (on 8 July 2011), just two months after its adoption. However, the ratification followed much later, in 2017.<sup>153</sup> The ratification was filed with a number of reservations which are to allow the country to work on bringing its legal system in line with the Convention. The ratification law contains a list of 31 laws which are currently in force and which need to be amended in order to be brought in line with the Istanbul Convention, including the Law on Gender-Based Violence; the Law on the Prevention of and Protection from Domestic Violence; the Law on Social Protection; the Law on the Prevention of and Protection against Discrimination; the Law on Equal Opportunities for Women and Men; the Law on the Family; the Law on the Protection of Children; the Law on the Police; the Law on Courts; the Law on Criminal Procedure, as well as laws on education, administration and health, and the Law on Personal Data.

Following the ratification, in 2018, the Cabinet adopted a decision on establishing a national coordinating body to combat domestic violence within the framework of the Ministry of Labour and Social Policy.<sup>154</sup> An implementation Action Plan was adopted in October 2018 for the period 2018-2023.<sup>155</sup> This action plan foresaw that a law on gender-based violence would be prepared.

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<sup>152</sup> Monitoring report on the implementation of the Law on the Prevention of and Protection from Domestic Violence, available at: [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MKD/INT\\_CEDAW\\_NGO\\_MKD\\_30018\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MKD/INT_CEDAW_NGO_MKD_30018_E.pdf).

<sup>153</sup> Proposal for ratification and voting results: [www.sobranie.mk/materialdetails.nsp?materialId=53d249d3-50bb-44ae-b643-a86295d10b1f](http://www.sobranie.mk/materialdetails.nsp?materialId=53d249d3-50bb-44ae-b643-a86295d10b1f).

<sup>154</sup> Ministry of Labour and Social Policy (2018), *Одржана конститутивна седница на националното координативно тело против семејно насилство (Constitutive meeting of the National Coordinating Body against Domestic Violence held)*, available at: [http://www.mtsp.gov.mk/januari-2018-ns\\_article-odrzana-konstitutivna-sednica-na-nacionalното-koordinativno-telo-protiv-semejno-nasilstvo.nsp](http://www.mtsp.gov.mk/januari-2018-ns_article-odrzana-konstitutivna-sednica-na-nacionalното-koordinativno-telo-protiv-semejno-nasilstvo.nsp).

<sup>155</sup> Ministry of Labor and Social Policy (2018), *Акциски план за спроведување на Конвенцијата за спречување и борба против насилството врз жените и семејно насилство на Република Македонија, 2018 – 2023 (Action Plan for implementation of the Convention on preventing and combating violence against women and domestic violence 2018 – 2023)*, available at: <http://www.mtsp.gov.mk/dokumenti.nsp>.

A law entitled 'Law on Prevention and Protection against Violence against Women and Domestic Violence' reached the Parliament just before the cut-off date for this report, in December 2019.<sup>156</sup> The law has been proposed in order to 'provide an integrated, multidisciplinary response to dealing with violence against women and domestic violence, while respecting human rights in line with international standards'.<sup>157</sup> According to the Ministry of Labour and Social Policy, who submitted this proposal to the Parliament, the main points that this law deals with are:

'the exercise of due diligence by the institutions regarding the protection of women from all forms of gender-based violence and the protection of victims of domestic violence; internal coordination between institutions and organisations; measures for prevention of gender-based violence against women and victims of domestic violence; collection of data regarding gender-based violence, including domestic violence.'<sup>158</sup>

Article 7 of this proposal defines 'vulnerable women'. It includes the following:

'pregnant women, women with children and with children with disabilities, women from non-majority ethnic communities, single mothers, women with disabilities, women from rural areas, women who use drugs, sex workers, migrants, refugees, asylum seekers, women without citizenship, lesbians, bisexuals and transgender people, women living with HIV, homeless women, women who are victims of trafficking, elderly women, socially insecure women, and others.'<sup>159</sup>

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<sup>156</sup> Parliament, Draft-Law on Prevention and Protection against Violence against Women and Domestic Violence (Предлог Закон за спречување и заштита од насилство врз жените и семејното насилство), available at: <https://www.sobranie.mk/downloaddocument.aspx?id=aeabd0e0-cccd-49bb-82b6-eb7b81e75b34&t=pdf>.

<sup>157</sup> Parliament, Draft-Law on Prevention and Protection against Violence against Women and Domestic Violence (Предлог Закон за спречување и заштита од насилство врз жените и семејното насилство), available at: <https://www.sobranie.mk/downloaddocument.aspx?id=aeabd0e0-cccd-49bb-82b6-eb7b81e75b34&t=pdf>.

<sup>158</sup> Parliament, Draft-Law on Prevention and Protection against Violence against Women and Domestic Violence (Предлог Закон за спречување и заштита од насилство врз жените и семејното насилство), available at: <https://www.sobranie.mk/downloaddocument.aspx?id=aeabd0e0-cccd-49bb-82b6-eb7b81e75b34&t=pdf>.

<sup>159</sup> Parliament, Draft-Law on Prevention and Protection against Violence against Women and Domestic Violence (Предлог Закон за спречување и заштита од насилство врз жените и семејното насилство), available at: <https://www.sobranie.mk/downloaddocument.aspx?id=aeabd0e0-cccd-49bb-82b6-eb7b81e75b34&t=pdf>.

## 11 Compliance and enforcement aspects (horizontal provisions of all directives)

### 11.1 General (legal) context

#### 11.1.1 Surveys and reports about the particular difficulties related to obtaining legal redress

Issues of accessibility of legal redress have been discussed in reports. These found issues with physical accessibility of courts,<sup>160</sup> financial accessibility of courts,<sup>161</sup> and issues with acquiring legal aid.<sup>162</sup> The findings are included in Section 11.3 on access to courts, below.

Because of the low transparency and documentation of discrimination cases before the courts, it is difficult to follow the degree of reporting. The counting of the cases can be done on the basis of requests for access to public information, thus the results are contingent on the response rate and on the diligence of the documentation of the cases.

Some attempts to document the number of cases have been made. A 2016 regional study of anti-discrimination law found that, by December 2015, 47 cases of discrimination had been filed to the courts with civil procedure competences, only one case on one of the articles on discrimination from the Criminal Code, and no misdemeanour cases.<sup>163</sup> A national study of labour relations discrimination and harassment in five primary court areas in the period 2014-2016 found that there had been labour law discrimination and harassment cases in only one of the courts – the one based in the capital city.<sup>164</sup> The number of filed cases was 53, out of which 18 are discrimination cases, 32 are harassment cases, and 3 are labour disputes related to discrimination of a female worker. Although the study is for the period 2014-2016, all of these cases were filed in 2016. The authors presume that the impetus for these cases might have been the May 2016 case in which a court found for the first time discrimination in the case of a pregnant woman.

Research on the right to fair trial in domestic violence cases published in 2019 found that every third woman is a victim of domestic violence. However, these cases rarely reach the courts, mainly because of distrust in the judicial system.<sup>165</sup> An earlier study presented an overview of the gender-related cases brought before the courts in the year 2015. It found that women were the potential victims in 445 criminal cases filed to the competent courts in the year 2015.<sup>166</sup> Out of these, 252 cases were on physical injury inflicted in domestic

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<sup>160</sup> Coalition 'All for Fair Trials' (2018), *Кратка информација за применети политики - Правен, финансиски и физички пристап до правда во основните судови во Република Македонија* ( Policy brief – Legal, financial and physical access to courts of first instance), available at: <http://all4fairtrials.org.mk/wp-content/uploads/2019/01/CEP-PG02-CAFT-Policy-Brief-on-courts-accessibility-1.pdf>.

<sup>161</sup> Association for Emancipation, Solidarity and Equality of Women (2018), *Cost benefit analysis of provision of the three existing free legal aid and services in Republic of Macedonia*, available at: <http://www.esem.org.mk/en/pdf/Publikacii/2018/Cost%20Benefit%20Analisis.pdf>.; Conevska, I. and Kamberi, I. (2018), *Regulatory impact assessment – Law on Courts*, European Policy Institute – Skopje, available at: <http://www.merc.org.mk/Files/Write/Documents/04812/mk/PVR-Zakon-za-sudovi-MK.pdf>.

<sup>162</sup> Association for Emancipation, Solidarity and Equality of Women (2018), *Cost benefit analysis of provision of the three existing free legal aid and services in Republic of Macedonia*, available at: <http://www.esem.org.mk/en/pdf/Publikacii/2018/Cost%20Benefit%20Analisis.pdf>.

<sup>163</sup> Kola-Tafaj, F. et al (2016), *Legal protection against discrimination in South East Europe Regional Study*, Centre for SEEL, available at: <http://www.seelawschool.org/pdf/Book-Legal-Protection-Against-Discrimination-SEE.pdf>

<sup>164</sup> Association for Emancipation, Solidarity and Equality of Women (2017), *Overview of court cases related to violations of labour rights, with a focus of discrimination and harassment in the workplace*, available at: <http://www.esem.org.mk/en/pdf/Publikacii/2017/Overview%20of%20court%20cases.pdf>.

<sup>165</sup> Coalition 'All for fair trials' (2019), *Анализа На Податоците Од Набљудуваните Судски Постапки Во Предмети Од Семејно и Родово Базирано Насилство Во 2019 Година* (Analysis of the data from monitored court proceedings of domestic and gender-based violence in 2019).

<sup>166</sup> Trenchevska, J. et al (2016), *Пристап на жените до правда - Анализа* (Access to justice for women – analysis), Association for Equal Opportunities 'Equal Access', available at: <http://civicamobilitas.mk/wp-content/uploads/2018/03/ANALIZA-PDF-MK.pdf>.

violence. The study does not provide the overall number of cases, so we cannot know the representation of these cases compared with other cases.

Since March 2016, the Helsinki Committee, with the support of the OSCE – Mission to Skopje, publishes the 'Info-sheet on Discrimination' (*Информатор за дискриминација*).<sup>167</sup> It provides up-to-date information on various issues in relation to discrimination, contains information on pending cases, new cases, grounds and fields of discrimination, as well as examples from court practice and new resources on equality and non-discrimination. Although the information is brief and not conclusive, it provides a basic overview of what is happening before the courts, which was previously missing.<sup>168</sup>

#### 11.1.2 Other issues related to the pursuit of a discrimination claim

Issues of relevance for the pursuit of discrimination claims are discussed in Sections 11.3, 11.5, 11.7, and 12.

#### 11.1.3 Political and societal debate and pending legislative proposals

The Ministry of Labour and Social Policy plans to prepare a draft for a new GEL in 2020. A working group is to be established at the beginning of the upcoming reporting year. Preparatory work for the drafting process took place in 2019 (see references to the completion of two analyses of the implementation of the GEL at the central and the local level in Section 3.1.4).

### 11.2 Victimisation

Victimisation is covered in national legislation by the Law on the Prevention of and Protection against Discrimination (Article 11), which considers it as a form of discrimination. It is also covered by the Law on Labour Relations (Article 11(3)), yet it does not apply to all anti-discrimination procedures but instead only to anti-mobbing procedures. It is defined as unfavourable treatment and as exposing a person to endure damages because they have initiated a procedure or are testifying in such a procedure. Victimisation is also proscribed under the Law on Psychological and Sexual Harassment (Article 30). Its narrower material scope means that the protection against victimisation does not entirely comply with the EU Directives.

There is no provision envisioning assistance for the 'victim'. However, according to Article 39 of the same Law, in proceedings before a court of law, the victims of discrimination may formally be supported by trade unions and civil society organisations, which can join the litigation on the side of the victim. When the rights of many individuals have been violated, the organisations mentioned can initiate discrimination litigation before a court of law (Article 41). No specific threshold as to how many people's rights should be at stake has been established.

### 11.3 Access to courts

#### 11.3.1 Difficulties and barriers related to access to courts

Access to the courts for sex discrimination victims might be impeded due to physical and financial barriers. Firstly, the physical barriers are both because of physical inaccessibility of the courts and the geographic location of the courts. The physical access to courts for applicants with physical disabilities may be impeded if they live in an area where the court

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<sup>167</sup> The info sheets can be found on the website of the Helsinki Committee of the Republic of Macedonia: [www.mhc.org.mk](http://www.mhc.org.mk).

<sup>168</sup> Kotevska, B. (2018), *Country report. Non-discrimination – FYR Macedonia*, European network of legal experts in gender equality and non-discrimination, available at: [www.equalitylaw.eu/downloads/4460-fyr-macedonia-country-report-non-discrimination-2017-pdf-1-79-mb](http://www.equalitylaw.eu/downloads/4460-fyr-macedonia-country-report-non-discrimination-2017-pdf-1-79-mb).

facilities are not accessible. A recent survey of accessibility of the first instance courts found that half of the surveyed sample of courts are not physically accessible for persons with disabilities.<sup>169</sup> To date, there has been no case law to challenge this. As for the geographic location of the courts, it creates access issues because the access is conditioned on having means to travel. The geographical distribution of the courts was raised as an issue in a recent analysis of the Law on Courts. This study illustrates well how much of a burden such travel can be; the study documents that one person, upon arrival at the court, gave a statement asking the court to adopt a decision because they had run out of money and could not afford to travel again.<sup>170</sup> Travel costs were also identified as an issue for persons who request free legal aid.<sup>171</sup>

Secondly, court procedures are costly (on the limitations of legal aid, see Section 11.3.2 below). Aside from incurring expenses, potentially for extended periods of time (due to the length of the procedures), if the applicant loses the case, they might have to pay all the expenses. An important improvement regarding financial accessibility is the fact that the new ADL provides that no court taxes will apply to discrimination cases. This welcomed change has eased, although not fully lifted, the financial burden for CSOs to bring cases to the courts; this burden is especially difficult as donors rarely support such activities. One research study identified two organisations as organisations that, apart from preliminary legal aid, also provide aid with representation in court. For example, the case mentioned in Section 11.3.2 above was led by lawyers<sup>172</sup> financed by an international NGO. However, this is only one of two projects with the necessary means for undertaking court procedures.

### 11.3.2 Availability of legal aid

The new Law on Free Legal Aid (FLAL) was adopted in May 2019,<sup>173</sup> transposing Council Directive 2002/8/EC on improving access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes. This law replaces the 2009 Law on Free Legal Aid (the old law), which was heavily criticised.<sup>174</sup> The FLAL entered into force on 22 May 2019 and has been implemented as of October 2019.

The FLAL applies to all legal areas. Any person, regardless of citizenship, can apply for free legal aid, as long as they satisfy the criteria that they are not in a material position to cover the expenses of the process. The income criteria are clearly set and are tied to the national minimum wage (less than the national minimum wage and, if another member of their family also has an income, their income must be lower than 20 % of the minimum wage (Articles 17-20, FLAL)).<sup>175</sup> While this may still leave some people who are struggling financially out of the remit of the law, the new FLAL has greatly increased the scope of those who will qualify for free legal aid, since some of the previously limiting criteria have been removed (such as owning a car).

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<sup>169</sup> Coalition 'All for Fair Trials' (2018), *Кратка информација за применети политики - Правен, финансиски и физички пристап до правда во основните судови во Република Македонија* (Policy brief – Legal, financial and physical access to courts of first instance), available at: <http://all4fairtrials.org.mk/wp-content/uploads/2019/01/CEP-PG02-CAFT-Policy-Brief-on-courts-accessibility-1.pdf>.

<sup>170</sup> Conevska, I. and Kamberi, I. (2018), *Regulatory impact assessment – Law on Courts*, European Policy Institute – Skopje, available at: <http://www.merc.org.mk/Files/Write/Documents/04812/mk/PVR-Zakon-za-sudovi-MK.pdf>.

<sup>171</sup> Association for Emancipation, Solidarity and Equality of Women (2018), *Cost benefit analysis of provision of the three existing free legal aid and services in Republic of Macedonia*, available at: <http://www.esem.org.mk/en/pdf/Publikacii/2018/Cost%20Benefit%20Analisis.pdf>.

<sup>172</sup> Macedonian Young Lawyers Association (2016), *Пристап до правда за жени* (Access to justice for women), available at: <http://myla.org.mk/wp-content/uploads/2016/09/Pristap-do-pravda-za-zeni-Analiza.pdf>.

<sup>173</sup> Law on Free Legal Aid, 2019. Full title: Law on Free Legal Aid (*Закон за бесплатна правна помош*), *Official Gazette of the Republic of North Macedonia*, No.101/2019.

<sup>174</sup> For an overview of the critique, see: 'New Law on Free Legal Aid provides clear ground for protection in discrimination cases' (2019), <https://www.equalitylaw.eu/downloads/4895-republic-of-north-macedonia-new-law-on-free-legal-aid-provides-clear-ground-for-protection-in-discrimination-cases-pdf-91-kb>.

<sup>175</sup> In April 2019, the minimum wage was EUR 203 (MKD 12 507).



## **11.4 Horizontal effect of the applicable law**

### 11.4.1 Horizontal effect of relevant gender equality law

North Macedonia is not an EU Member State, thus the issue of horizontal effect is not an issue at present.

### 11.4.2 Impact of horizontal direct effects of the charter after *Bauer*

As stated under 11.4.1, North Macedonia is not a Member State, thus the issue of a horizontal direct effect cannot be approached in such a manner at present.

## **11.5 Burden of proof**

The shifting of the burden of proof is prescribed in the following laws: the Law on Equal Opportunities for Women and Men (Article 36); the Law on Labour Relations (Article 11); the Law on the Prevention of and Protection against Discrimination (Articles 26 and 37); the Law on Protection from Harassment in the Workplace (Article 33); and the Child Protection Law (Article 9-I). With the legislative changes adopted in 2019 – the new ADL and the amendments to the Child Protection Law – these provisions now comply with EU law.

## **11.6 Remedies and sanctions**

### 11.6.1 Types of remedies and sanctions

North Macedonia is not a member of the EU. Thus, there are no specific remedies and sanctions for breaches of EU gender equality law. However, there are remedies for breaches of the gender equality law provisions adopted as part of the process for alignment with the EU *acquis* or otherwise. A gender discrimination claim can be submitted as a discrimination claim in accordance with the laws regulating the relevant area/field (for example: health insurance, social insurance, labour relations, pensions).

Protection through litigation may be initiated before a court of law based on all laws that include anti-discrimination provisions. The litigation might lead to compensation for pecuniary and non-pecuniary damage and to reinstatement.

Criminal proceedings may be initiated based on the Criminal Code. Relevant sanctions include imprisonment for at least three months.

Civil servants can initiate an administrative procedure and submit an administrative complaint. The administrative procedure and complaint are subject to strict time limits, but the procedure and complaint are not complex and also not very costly. This procedure may lead to reinstatement.

A specific administrative procedure may be initiated based on the Law on Equal Opportunities for Women and Men by lodging a complaint to the Labour Inspectorate. This procedure may lead to administrative fines for the perpetrator. Under Article 37 of the Equality Law, the Labour Inspectorate is authorised to issue administrative fines without a court-of-law procedure; furthermore, the inspectorate should assess the fault and actions that should be undertaken in order to address the fault.

However, the amounts of administrative fines have decreased significantly. This was a change that did not specifically target these laws, but it was the result of an overall reform of the administrative fines system. Consequently, for example, a fine that would previously

have been EUR 400 is now limited to EUR 70.<sup>176</sup> The administrative fines contained in the ADL also decreased. The 2018 draft-ADL prescribes higher fines – from EUR 400 to 5 000, to be paid in the national currency (Articles 41-47).

### 11.6.2 Effectiveness, proportionality and dissuasiveness

It cannot be concluded that the remedies and sanctions meet the standards of being effective, proportionate and dissuasive. First of all, unlike the ADL, the Law on Equal Opportunities for Women and Men has not been used as a basis for legal proceedings, either by claimants or by the courts themselves. Secondly, court processes in relation to gender equality are rare and slow. For example, the first court of law verdict stating discrimination against a pregnant worker based on the Law on the Prevention of and Protection against Discrimination was only taken on 3 March 2016, that is, six years after the adoption of the law. This verdict has still not been published. Since this verdict is in appellate procedure, the court decision is still not final.<sup>177</sup> Thirdly, both the Gender Equality Body and the CPAD exhibit serious weaknesses and ineffectiveness. The Gender Equality Body is a department of the Ministry of Labour and Social Policy where one person – one of the employees at the Ministry of Labour and Social Policy – is appointed as a legal defender. The CPAD was established as an 'autonomous and independent body', yet, ever since its first composition, its independence has been tainted by the election of political appointees to serve as members.

Fourthly, when compared to the available sanctions provided for other misdemeanours,<sup>178</sup> the anti-discrimination sanctions cannot be seen as being dissuasive, effective or proportionate. This is also the finding of an analysis of the harmonisation of equality and non-discrimination legislation.<sup>179</sup>

### 11.7 Equality body

The relevant body and procedure are defined in the Law on Equal Opportunities for Women and Men (Chapter 6, Articles 20-31); the procedure for the detection of unequal treatment of women and men is conducted by a legal representative at the Ministry of Labour and Social Policy, which is meant to act as a Gender Equality Body. The wording of the law suggests that this should be an individual, employed by the Ministry, thus the question of their independence is problematic, and they have no powers for independent investigation, monitoring and reporting. The Ministry has not provided adequate financial and human resources in order to fulfil this legislative obligation.<sup>180</sup> It should also be added that there is no information on the functioning of this body (nor does it have a website), as confirmed by a 2017 study of access of women to the labour market, carried out for the Ministry of Labour and Social Policy and the OSCE – Mission to Skopje. On the website of the Ministry of Labour and Social Policy, the only information that could be found is the fact that within

<sup>176</sup> The change to the Law was carried out in a short (or abridged) procedure, without any discussion (either in a plenary session or in the Commission on Equal Opportunities for Women and Men), [www.sobranie.mk/materialdetails.nspx?materialId=c88da9f4-f206-491a-aa81-714494a882bd](http://www.sobranie.mk/materialdetails.nspx?materialId=c88da9f4-f206-491a-aa81-714494a882bd).

<sup>177</sup> See an interview with the lawyer responsible on the commercial site for legal issues, Akademik (2016), 'Првата пресуда за дискриминација врз основа на бременост е многу важна за остварувањето на работничките права – Адвокат Софија Бојковска (The first judgment on discrimination on grounds of pregnancy is important for labour rights – Lawyer Sofija Bojkovska)', 1 May 2016, available at: [www.akademik.mk/prvata-presuda-za-diskriminatsija-vrz-osnova-na-bremenost-e-mnoqu-vazhna-za-ostvaruvaneto-na-rabotnichkite-prava-advokat-sofija-bojkovska/](http://www.akademik.mk/prvata-presuda-za-diskriminatsija-vrz-osnova-na-bremenost-e-mnoqu-vazhna-za-ostvaruvaneto-na-rabotnichkite-prava-advokat-sofija-bojkovska/).

<sup>178</sup> For example, the amount of the fine in some discrimination cases is equal to the level of a fine for dropping a cigarette end in the street.

<sup>179</sup> Kotevska, B. (2016), *Analysis of the harmonisation of national equality and non-discrimination legislation*, Skopje, OSCE and CPAD.

<sup>180</sup> Reactor – Research in Action (2018), *Information submitted for consideration to the Committee on the Elimination of Discrimination against Women in its adoption of a list of issues regarding the Sixth Periodical Report of the Republic of Macedonia under the Convention on Elimination of All Forms of Discrimination against Women, 71<sup>st</sup> Pre-Sessional Working Group, 12-16 March, 2018*, available at: [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MKD/INT\\_CEDAW\\_NGO\\_MKD\\_30045\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MKD/INT_CEDAW_NGO_MKD_30045_E.pdf).



the Ministry there is a unit called the 'Sector for Equal Opportunities' and that there are state counsellors in charge of creating and developing policies on equal opportunities and on non-discrimination and human rights.

A 2019 analysis of the implementation of the GEL found that a legal representative is not recognised as a mechanism for protection. It raises doubts with regard to the position and efficiency of the representative and proposes that the position is removed.<sup>181</sup>

People who feel they have been discriminated against on the ground of their sex may also seek protection from the Ombudsperson and from the Commission for Protection against Discrimination. Both have been receiving discrimination claims and both had a drop in the reporting rates in the past few years, which according to the 2018 reports by both institutions seems to have stopped, with both institutions reporting having received a higher number of cases for 2018 than in 2017. The CPAD has received the following number of cases on sex and gender (combined) in the years since 2011 up to 2018, respectively: 9 (out of 60 total cases); 7 (out of 75); 9 (out of 84); 14 (out of 106); 3 (out of 70); 8 (out of 60); 11 (out of 59) and 11 (out of 132). With the Ombudsperson, regardless of the noted drop in cases until 2017, the representation of the cases on discrimination in the overall case load is constantly on the rise. The percentage of discrimination in the overall case load in 2018 was 2.22 % (or 77 cases on non-discrimination, the highest number registered to date). In 2017 the numbers were 2.17 % (or 70 cases); in 2016, 1.83 % (or 69 cases); in 2015, 1.2 % (or 53 cases); in 2014, 1.55 % (or 66 cases), followed by 1.35 % (or 51 cases) in 2013; 0.74 % (or 32 cases) in 2012; and 0.99 % (or 42 cases) in 2011.<sup>182</sup>

## 11.8 Social partners

The Law on Equal Opportunities for Women and Men, in Articles 9 and 10, envisages cooperation between Parliament and the Cabinet of Ministers with the social partners in monitoring the progress of harmonisation of national legislation with the legislation of the EU. During 2017, the Cabinet and Parliament increased their cooperation with civil society organisations both in the preparation of certain documents and in the implementation of joint programmes. In August 2017, the inter-sectoral consultative group on equal opportunities for women and men was re-established and reactivated. It is composed of state officials, representatives of civil society organisations, associations of employers, experts, and representatives of local self-government, trade unions and other entities. This inter-sectoral group is responsible for promoting the concept of gender equality in the general policies of all public institutions, for following up on gender mainstreaming in the sectoral policies in cooperation with the social partners and institutions in specific areas, for monitoring the progress of the harmonisation of legislation with the European Union standards on gender issues, for becoming involved in and providing guidelines in the preparation of the Strategy on Gender Equality, and for monitoring the periodic reports of certain institutions.<sup>183</sup>

Collective agreements, although legally binding, are not used as a means to implement EU gender equality law. However, some of them do contain anti-discrimination provisions. For example, the Collective Agreement for the Ministry of the Interior includes, in Articles 76-78, the prohibition of discrimination, harassment and mobbing.

<sup>181</sup> Chalovska-Dimovska, N. (2019), *Извештај за проценката на имплементацијата на Законот за еднакви можности на жените и мажите на централно ниво ( Assessment report regarding the implementation of the Law on Equal opportunities for Women and Men at the central level)*, OSCE – Mission to Skopje and Ministry of Labour and Social Policy, available at: <http://www.mtsp.gov.mk/rodova-ramnopravnost.nsp.x>.

<sup>182</sup> All statistics are taken from the annual reports of both institutions which are available online, through their websites: <http://www.kzd.mk>, <http://ombudsman.mk/>. The CPAD website has not been functioning or functioning only partially for some time now, so the reports can be found on the website of the Parliament, [www.sobranie.mk](http://www.sobranie.mk). None of the institutions had yet published their 2019 reports by the time of writing of this report.

<sup>183</sup> [www.slvesnik.com.mk/Issues/3a8c562fb36d4501ab7343864cb0fd13.pdf](http://www.slvesnik.com.mk/Issues/3a8c562fb36d4501ab7343864cb0fd13.pdf).

On the other hand, for example, the General Collective Agreement for the Economy Sector, under the general title 'Prohibition of discrimination', actually stipulates that the worker has the right to request compensation of five net salaries in a case of discrimination. No good practice can be identified on addressing gender inequality by social partners.

### **11.9 Other relevant bodies**

There are no other relevant agencies or bodies (e.g. gender equality interest groups) in North Macedonia that are engaged in the enforcement of gender equality law, e.g. through strategic litigation.

### **11.10 Evaluation of implementation**

Considering the issues with the access to courts, discussed in Section 11.3, it cannot be said that the implementation of EU law in this area is satisfactory. In addition, issues with the equality body close that option, which could otherwise have served as an alternative institutional pathway which individuals claiming gender discrimination might be able to take. In these conditions, the best option for the potential victims remains in the two national human rights institutions – the Ombudsperson and the CPAD.

### **11.11 Remaining issues**

The general rule of law issue affects compliance and enforcement with regard to gender equality as well. The lack of an institution that would deal fully and visibility with gender equality further contributes to the weak institutional framework regarding gender equality. A 2019 analysis by Akcija Združenska analysed the national gender equality machinery, identified issues with its operation, including because of the way the central mechanism – the Gender Equality Department in the Ministry for Labour and Social Policy – is positioned in the institutional structure. This study proposed establishing an office on gender equality as an alternative.<sup>184</sup>

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<sup>184</sup> Akcija Združenska (2019), *Предлог за реформа на националната машинерија за родова еднаквост во Македонија (Assessment report regarding the implementation of the Law on Equal opportunities for Women and Men at the central level)*, available at: <http://zdruzenska.org.mk/wp-content/uploads/2019/11/Предлог-за-реформа-на-националната-машинерија-за-родова-еднаквост-во-Македонија.pdf>.

## 12 Overall assessment

The following transposition problems were mentioned in this report:

1. Lack of effective legal remedies;
2. Lack of clear recognition that gender equality legislation should also include transwomen;
3. Sanctions are not effective, dissuasive and proportionate;
4. While both the Ombudperson and the equality body have competences and work with gender equality cases, there is no independent body dealing with gender equality that provides visibility to the gender equality mandate.

Overall, the transposition and implementation of the EU gender equality acquis in North Macedonia, as a candidate country, is improving. Considering the relatively recent change in context, the developments are positive. Namely, unlike in the period of the previous government (with a ten-year rule), which supported anti-gender-equality sentiments and a wave of re-traditionalisation of society,<sup>185</sup> gender equality is now gaining visibility and is present in many drafted and adopted public policy documents, including documents harmonising national and EU law<sup>186</sup> and in the strategic documents of relevant ministries.<sup>187</sup> The overall climate is improving, too, with gender equality being more prominent in public speech. Some of the most serious and damaging legacies of the previous government are being removed and remedied (for example, in relation to women's reproductive rights, new legislation regarding the termination of pregnancy was adopted in 2019 which revised the damaging 2013 law and made steps towards returning the autonomy of women's freedom of choice).

The main problem still remains the gap between the enactment and enforcement of legislation. Overall, information on the results of the implementation of the strategic documents and plans is still lacking. By the cut-off date for this report (1 January 2020), the 2017 annual report of the Ministry of Labour and Social Policy on the activities undertaken and the progress achieved in establishing equal opportunities for women and men in the Republic of Macedonia<sup>188</sup> was still the most recent one. Another remaining burning issue is the funding of gender equality activities. Most of the funding is acquired via projects. This poses challenges for the sustainability of the activities. State funding remains low and the main pool of financial resources comes from donors from outside the country.

Multiple discrimination remains an issue for many women: Roma women; women living in rural areas, and women with disabilities most prominently. Whatever the statistics, Roma women fair much worse than the average for women in the country. A 2017 study of Roma women's participation in the labour force presented results from the opinions of Roma women; persons who work in the state bodies tasked to assist persons with employment and related issues, as well as the units of local self-government and the local coordinators

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<sup>185</sup> On this, see, for example: Miškovska Kajevska, A. (2018) 'Suspending democracy, harming gender equality'. In Verloo, M. (Ed.), *Varieties of opposition to gender equality in Europe* (pp. 195–212). New York: Routledge, Taylor & Francis Group.

<sup>186</sup> Government of the Republic of Macedonia (2017), Национална програма за усвојување на правото на Европската Унија (НПАА) Ревизија 2017 – 2019 (National Programme on Adoption of the Acquis of the European Union (NPAА) Revised 2017-2019), available at: [www.sobranie.mk/content/%D0%9D%D0%A1%D0%95%D0%98/00\\_NPAA2017\\_Vlada\\_31.07.2017.pdf](http://www.sobranie.mk/content/%D0%9D%D0%A1%D0%95%D0%98/00_NPAA2017_Vlada_31.07.2017.pdf).

<sup>187</sup> Ministry of Labour and Social Policy (2017), Стратешки план на Министерството за труд и социјална политика 2017-2019 година (Strategic plan of the Ministry of Labour and Social Policy for 2017-2019), available at: [www.mtsp.gov.mk/content/pdf/strategii/Strateski\\_plan\\_MTSP%20za%202017-2019%20kv.pdf](http://www.mtsp.gov.mk/content/pdf/strategii/Strateski_plan_MTSP%20za%202017-2019%20kv.pdf).

<sup>188</sup> Ministry of Labour and Social Policy, *Годишен Извештај за превземените активности и постигнатиот напредок за воспоставување еднакви можности на жените и мажите во Република Македонија за 2017 година со препораки за 2019 година (Annual report on the activities undertaken and progress achieved towards establishing equal opportunities for women and men in the Republic of Macedonia in 2017 with Recommendations for 2019)*, available at: <http://www.mtsp.gov.mk/rodova-ramnopravnost.nsp.x>.

on gender equality. They all agreed that the situation of Roma women is twice as hard as that of the average woman in the country.<sup>189</sup> Another study of intersectional inequalities in the area of social protection found that Roma women face particular difficulties and employ particular coping strategies in order to address their everyday needs.<sup>190</sup>

According to the CSO MHC, the emancipation of women is not occurring with the same intensity throughout the state, and needless to say, women from rural areas are often forgotten by the state. In order for rural women to achieve full equality in society, greater economic autonomy and independence are needed, as well as greater representation in political life.<sup>191</sup>

In addition, multiple discrimination against women with disabilities (specifically the pay gap of working women with disabilities) has been analysed and highlighted as a problem in several research projects,<sup>192</sup> and the same applies to intersectional discrimination and the need to introduce it explicitly as a form of discrimination under the law.<sup>193</sup>

There is still a lack of statistics on child marriages. The Ministry of Labour and Social Policy has no system for registering extramarital communities, including those where one or both partners are juveniles. The irregularity of extramarital communities prevents the relevant institutions from acting in the best interests of the child.<sup>194</sup> The Roma rights CSO, Roma S.O.S. (now re-named Stanica P.E.T.), has been particularly vocal on this issue, by bringing to light information on child marriages among Roma and in the Roma communities and by demanding a change in policy.<sup>195</sup>

The change in the Government's approach towards the question of gender equality is also visible with the media being more open about issues related to gender equality.<sup>196</sup>

However, despite all of the positive changes, civil society organisations are still not satisfied with the level of citizens' involvement in preparing key documents related to gender equality (for instance, the National Plan for Action). According to them, there is a lack of evidence-based policy making.<sup>197</sup> This is further complicated by the fact that there is no sufficient and adequate statistical data disaggregated by sex which could be used in

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<sup>189</sup> Luludi (2017), *Учеството на жената ромка на пазарот на труд во Република Македонија (Participation of Roma women in the labour market in the Republic of Macedonia)*, available at: <http://luludi.mk/wp-content/uploads/2016/04/Luludi-Istrazuvanje-Finalna-verzija-MK-30052017-Web-version.pdf>.

<sup>190</sup> Kotevska, B., ed, (2016), *The art of survival: Intersectionality in social protection in Macedonia and Bosnia and Herzegovina – Collection of working papers*, European Policy Institute – Skopje, available at: [http://epi.org.mk/docs/\[EN\]The\\_Art\\_of\\_Survival\[DTP\].pdf](http://epi.org.mk/docs/[EN]The_Art_of_Survival[DTP].pdf).

<sup>191</sup> Macedonian Helsinki Committee (2018), *Submission to United Nations Committee on the Elimination of Discrimination Against Women in its adoption of a list of issues regarding the Sixth Periodical Report of the Republic of Macedonia under the Convention on the Elimination of All Forms of Discrimination Against Women*, available at: [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MKD/INT\\_CEDAW\\_NGO\\_MKD\\_30018\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MKD/INT_CEDAW_NGO_MKD_30018_E.pdf).

<sup>192</sup> For example, Ananiev, J. (2015), *Разлика во плати врз основа на пол на национално ниво (Difference in pay on the ground of gender at the national level)*, CPAD and OSCE.

<sup>193</sup> Kotevska, B. (2016), *Analysis of the harmonisation of national equality and non-discrimination legislation*, Skopje, OSCE and CPAD.

<sup>194</sup> Macedonian Helsinki Committee (2018), *Submission to United Nations Committee on the Elimination of Discrimination Against Women in its adoption of a list of issues regarding the Sixth Periodical Report of the Republic of Macedonia under the Convention on the Elimination of All Forms of Discrimination Against Women*, available at: [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MKD/INT\\_CEDAW\\_NGO\\_MKD\\_30018\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MKD/INT_CEDAW_NGO_MKD_30018_E.pdf).

<sup>195</sup> Roma S.O.S. (2015), *Јавна дискусија – Детски бракови (Public discussion: Child marriages in the Roma community)*, available at: <http://romasosprilep.org/javna-diskusija-detski-brakovi/>.

<sup>196</sup> AVMU, *Родот и медиумите (Gender and the media)*, available at: <https://avmu.mk/rodot-i-mediumite-art/>

<sup>197</sup> Akcija Združenska (2018), *Предлог приоритети, предизвици, препораки и мерки за Националниот акциски план на РМ за родова еднаквост 2018-2020 (Proposed priorities, challenges, recommendations and measures for the National Gender Equality Action Plan 2018-2020)*, available at: <http://zdruzenska.org.mk/wp-content/uploads/2018/02/Предлог-приоритети-предизвици-препораки-и-мерки-за-Националниот-акциски-план-на-РМ-за-родова-еднаквост-2018-2020.pdf>.

formulating these policies. This was confirmed in the process of preparing the country's first Gender Equality Index.<sup>198</sup>

There is still no systematic approach to addressing gender equality. Positive action measures providing visible results are still lacking. The strategies and action plans adopted during the current reporting period<sup>199</sup> do not offer the necessary measures or means to improve the situation and to address the identified problems. This means that there is a lack of viable measures to implement equality laws. Proposed activities primarily target capacity-building aimed at identifying and introducing the gender dimension in the work of the administration and other state bodies.<sup>200</sup> Even so, these proposed activities are performed very seldom.

According to CSOs,<sup>201</sup> there is a mismatch between the overall aims and the specific aims set out in strategic documents. Namely, although some overall aims are underlined by strategic thinking and should lead to major institutional and organisational changes, they cannot be achieved through the specific aims envisaged. In addition, these set aims are not measurable and it will not be possible to evaluate their implementation in the future. CSOs have also underlined that the body responsible for the main activities related to gender equality – the Ministry of Labour and Social Policy – does not have the necessary capacity within the framework of the Cabinet to implement this complex task. They also believe that the financing problem (still heavily dependent on outside donations instead of state budgeting) still remains. They are specifically concerned about the lack of liability of those responsible for the implementation of the formulated objectives and aims.

This holds true for all ministers and the Government in its entirety. There are a vast number of strategies, strategic plans, action plans, plans for implementation and operational plans, but the implementation is lagging behind. Practice shows that there is no proper monitoring and evaluation process. This gives the overall impression that no one takes responsibility for the outcome of the adoption of these documents, as if their adoption becomes an objective per se. Therefore, there is a need for a clearer line of responsibility in relation to implementation and a more diligent monitoring and evaluation process. It could also help to establish one central unit which would be tasked with and held responsible for monitoring and evaluating the implementation of these documents. At present, implementation is divided among many ministries, state agencies and other actors, which waters down both the implementation efforts and the potential for durable change. These are all issues which will need to be tackled with the new law on gender equality (to replace the 2012 Law on Equal Opportunities for Women and Men). The working group for drafting the law is to be established in 2020.

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<sup>198</sup> Bashevskа, M. (2019), *Индекс на родова еднаквост (Gender Equality Index)*, Ministry of Labour and Social Policy, European Institute on Gender Equality, State Statistical Office and UN Women, available at: [http://www.mtsp.gov.mk/content/pdf/dokumenti/2019/Gender%20Index\\_MK\\_01.pdf](http://www.mtsp.gov.mk/content/pdf/dokumenti/2019/Gender%20Index_MK_01.pdf).

<sup>199</sup> Strategic documents and action plans adopted by the Ministry of Labour and Social Policy, available at: [www.mtsp.gov.mk/dokumenti.nsp.x](http://www.mtsp.gov.mk/dokumenti.nsp.x).

<sup>200</sup> For example, the National Action Plan for Gender Equality (2013-2016).

<sup>201</sup> Akcija Združenska (2018), *Предлог приоритети, предизвици, препораки и мерки за Националниот акциски план на РМ за родова еднаквост 2018-2020 (Proposed priorities, challenges, recommendations and measures for the National Gender Equality Action Plan 2018-2010)*, available at: <http://zdruzenska.org.mk/wp-content/uploads/2018/02/Предлог-приоритети-предизвици-препораки-и-мерки-за-Националниот-акциски-план-на-РМ-за-родова-еднаквост-2018-2020.pdf>.

## Annexes

### Cited legislation

- Law on Equal Opportunities for Women and Men (Official Gazette No. 6/2012) and its amendments (last amendment Official Gazette No. 150/2015);<sup>202</sup>
- Law on the Prevention of and Protection against Discrimination (Official Gazette No. 101/2019)<sup>203</sup> (which replaced the 2010 law of the same name, published in Official Gazette No.50/2010);<sup>204</sup>
- Law on Labour Relations (Official Gazette No. 62/2005) and its amendments (last amendment<sup>205</sup> Official Gazette No. 110/2019);<sup>206</sup>
- Law on Social Protection (Official Gazette No. 104/2019) and its amendments (last amendment Official Gazette No. 275/2019)<sup>207</sup> (which replaced the 2009 law of the same name, published in Official Gazette No.79/2009).<sup>208</sup>

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<sup>202</sup> Law on Equal Opportunities for Women and Men, 2013. Full title: Law on Equal Opportunities for Women and Men (*Закон за еднакви можности на жените и мажите*), *Official Gazette of the Republic of Macedonia*, Nos. 06/2012, 30/2013, 166/2014, 150/2015.

<sup>203</sup> Anti-Discrimination Law, 2019. Full title: Law on the Prevention of and Protection against Discrimination (*Закон за спречување и заштита од дискриминација*), *Official Gazette of the Republic of North Macedonia*, No. 101/2019.

<sup>204</sup> Anti-Discrimination Law, 2010. Full title: Law on the Prevention of and Protection against Discrimination (*Закон за спречување и заштита од дискриминација*), *Official Gazette of the Republic of Macedonia*, Nos. 50/10, 44/2014, 150/2015, 31/2016, 21, 2018; Constitutional Court Decision: U.no. 82/2010.

<sup>205</sup> In 2017 there was a citizens' initiative to amend the Law on Labour Relations, with the aim of extending pregnancy leave to 18 months ([www.pravdiko.mk/predlozheni-izmeni-vo-zakonot-za-rabotni-odnosi-2/](http://www.pravdiko.mk/predlozheni-izmeni-vo-zakonot-za-rabotni-odnosi-2/)). The proposal was refused based on technical grounds ([www.sobranie.mk/materialdetails.nsp?materialId=9cf2b8cf-94ba-41fc-8d5c-d3580ea7428d](http://www.sobranie.mk/materialdetails.nsp?materialId=9cf2b8cf-94ba-41fc-8d5c-d3580ea7428d)).

<sup>206</sup> Labour Law, 2005. Full title: Law on Labour Relations (*Закон за работните односи*), *Official Gazette of the Republic of Macedonia*, Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014, 20/2015, 33/2015, 72/2015, 129/2015, 27/2016, 120/2018, and *Official Gazette of the Republic of North Macedonia*, No. 110/2019; Constitutional Court Decisions: U.no. 139/2005, U.no. 161/2005, U.no. 134/2005, U.no. 187/2005, U.no. 111/2006, U.no. 188/2006, U.no. 170/2006, U.no. 200/2008, U.no. 20/2009, U.no. 176/2009, U.no. 263/2009, U.no. 62/2013, U.no. 114/2014.

<sup>207</sup> Law on Social Protection, 2019. Full title: Law on Social Protection (*Закон за социјалната заштита*), *Official Gazette of the Republic of North Macedonia*, Nos. 104/2019, 146/2019, 275/2019.

<sup>208</sup> Law on Social Protection, 2009. Full title: Law on Social Protection (*Закон за социјалната заштита*), *Official Gazette of the Republic of Macedonia*, Nos. 79/2009, 36/2011, 51/2011, 166/2012, 15/2013, 79/2013, 187/2013, 38/2014, 44/2014, 116/2014, 180/2014, 33/2015, 72/2015, 104/2015, 150/2015, 173/2015, 192/2015 33/2015, 72/2015, 104/2015, 150/2015, 173/2015, 192/2015, 30/2016, 163/2017, 51/2018; Constitutional Court Decision: U.no. 165/2009.



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