

# MAPPING OF POLICIES AND LEGISLATION ON VIOLENCE AGAINST WOMEN AND THE ISTANBUL CONVENTION IN THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

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# MAPPING OF POLICIES AND LEGISLATION ON VIOLENCE AGAINST WOMEN AND THE ISTANBUL CONVENTION IN THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

## INTRODUCTION

The Former Yugoslav Republic of Macedonia (FYR Macedonia) was among the first ten Council of Europe (CoE) member states to sign the Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention, IC) in 2011. However, the ratification happened six years later in December 2017<sup>1</sup> and the Convention entered into force on 1 July 2018. The country made several reservations on the text of this treaty: Art 30 paragraph 2, Art 44, Art 55 paragraph 1 in connection with Art 35 and Art 59.<sup>2</sup>

The implementation and reporting on the progress of IC will be followed by the national commission as foreseen in the **National Action Plan for implementation**

**of the IC (NAP)**. A special **multi-sectoral group have been formed to develop the NAP**. This plan foresees a special budget for implementation of the IC. Donor funding will support some activities, but the basic obligation for the implementation of the IC will be covered by the state. The Ministry of Labour and Social Policy (MLSP) started the process of preparation of the NAP which defines the obligation of the country to align the national legislation with the definition of violence against women and girls (VAWG) as stipulated in Art 3 of the IC. The NAP is divided into three main parts: 1) alignment of the national legislation 2) establishment of services for victims of violence against women (VAW) and domestic violence (DV) and 3) prevention of VAW and DV.

<sup>1</sup> Official Gazette no 198/2017.

<sup>2</sup> Art 30, Paragraph 2 will be implemented in line with the law for juvenile justice only for a child that with enacted order is considered a victim or a damaged party in connection with the act that is according to the law considered a criminal offence or misdemeanor with elements of violence. Art 44 will be implemented with the conditions listed in the criminal code in the section 12: application of the criminal legislature according to the place of perpetration of the crime. Art 55, Paragraph 1 in connection with Art 35 (physical violence) from the convention. Art 59 referring to the temporary residence permit.

The national legislation defines **some forms of VAW** that reflect the standards of the IC in civil and criminal justice, and social and healthcare systems. However, those definitions are not fully in line with Art 3 of the IC since they do not cover specific forms of VAW and the relationship between the victim and the perpetrator, especially in cases of intimate partner violence (IPV). The NAP foresees development of a new law on prevention of VAW or amendments to the existing ones and regulation of the forms of VAW as per Art 33 – Art 40 of the IC.

In 2015, the new Law on Prevention, Combating and Protection from DV (LPCPDV) established a national coordination body (NCB) for prevention of DV as a

monitoring body. This body is chaired by the MLSP and is composed of representatives of different institutions including women's CSOs, but with representation of only 12%. However, this monitoring mechanism refers only to DV and does not address other forms of VAW. So far, the practice has shown that the appointed members to the NCB were not gender sensitive and did not recognize DV as a form of gender based violence (GBV)<sup>3</sup>. The work of this body was rather weak and the voice of the women's CSOs was not heard due to its inefficiency. For instance, women's NGO ESE confirmed that the "*NCB for prevention of DV is nonfunctional*". The new NAP foresees development of a new law on VAW that will ensure the functioning of NCB for preventing and combating VAW and DV.

## INTIMATE PARTNER VIOLENCE

### PREVALENCE AND OFFICIAL STATISTICS ●

IPV is not specifically defined in the national legislation as per the requirements of the IC (Art 3b). However, the provisions regulating DV in both civil and criminal legislation include some adequate wording. For instance, intimate relation in the definition of the DV regulated in the LPCPDV is defined as "**any person that is in a close personal relationship**"<sup>4</sup> and the Criminal code<sup>5</sup> uses the wording "**persons that have close personal relations**"<sup>6</sup>.

One of the first gender-sensitive analyses of DV in the country was conducted by CSO ESE in 2000. It confirmed that "*The physical violence was reported as a personal experience by every fourth female examinee. It has manifested through several different forms, lighter and more serious. However, if one takes into consideration the fact that every third woman sought medical intervention and assistance, the problem of DV gains in its seriousness, not only according to its quantitative but also in terms of its qualitative*

3 Analysis of the alignment of the provisions of the Law prevention, combating and protection of domestic violence with the standards of the COE convention on prevention and combating violence against women and domestic violence. Ms. Elena Grozadnova – State councilor Ministry of labor and social policy, [http://civicamobilitas.mk/wp-content/uploads/2018/03/cela\\_brosura.pdf](http://civicamobilitas.mk/wp-content/uploads/2018/03/cela_brosura.pdf)

4 "Domestic violence shall mean abuse, harassment, safety threat, physical injury, sexual or other psychological, physical or economic violence that induces a feeling of insecurity, endangerment or fear, including threats of such acts, towards any spouse, parent, child or another person living in marriage or cohabitation or a shared household, as well as towards both current or former spouse, cohabitant partner or any persons who have a shared child or **are in a close personal relationship**, regardless of whether the perpetrator shares or shared the same residence with the victim or not" – Law on prevention on prevention, combating and protection of DV 2015.

5 Criminal Code, Official Gazette no 37/96, 80/99, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/11, 135/11, 185/11, 142/12, 166/12, 55/13, 82/13, 14/14, 27/14, 28/14, 115/14, 132/14, 160/14, 199/14, 196/15 и 226/15.

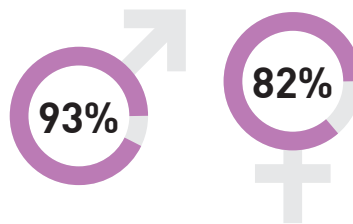
6 "Family violence shall refer to abuse, rude insults, safety threats, inflicting physical injuries, sexual or other mental and physical violence which causes a feeling of insecurity, threat or fear towards a spouse, parents or children or other persons who live in a marital or extra-marital union or other joint household, as well as towards a former spouse or persons who have a child together or have close personal relations" Criminal Code (CC) - Art122, p. 21.

*dimension*<sup>7</sup>. In 2014, a group of feminist professors conducted a detailed assessment of court proceedings in DV cases, with specific focus on assessing the case management from a gender perspective of 5 appellate court areas in the country. They found that 93% of the reported and convicted perpetrators of DV crimes during the research period were men, and 82% of survivors were women. The most frequent relation (65%) between the victim and the perpetrator was spouse, former spouse or extramarital partner, while 95% of survivors in a role of spouse were women<sup>8</sup>. The first-ever national survey on femicide conducted by the National Network to end VAW and DV concluded that more than 60% of the analysed cases of killings of women in FYR Macedonia were committed by current/former marital/extramarital partner. In more than 80% of cases, the killing took place in the mutual home, while if the divorce proceeding were initiated, in the home of the parents of the woman<sup>9</sup>. In 2017, the State statistical office (SSO) registered nine homicides of women and information from CSOs<sup>10</sup> specified that seven could be classified as femicide, out of which one is a triple murder<sup>11</sup>. So far, the state has not prepared a nation-wide survey on prevalence of VAW and DV. Currently, the OSCE Mission in Skopje is conducting such a survey in line with the standards of the FRA survey on VAW from 2014<sup>12</sup>.

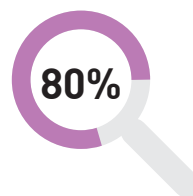
The Ministry of Interior (MOI) collects and publishes disaggregated data on DV and MLSP collects data on DV regularly. Judicial data is collected, but there is

a lack of data on perpetrators of criminal offences committed in aggravated circumstances of domestic violence. In official statistics of reported, accused and convicted persons, data on victims is also lacking. Femicides are invisible within the national statistics, and currently collected only by CSOs through media reports. The availability and transparency of the data collection is a continuing problem.

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<sup>7</sup> <http://www.esem.org.mk/en/pdf/Publikacii/Ostanati/2000/Report%20on%20the%20the%20implemented%20field%20research%20-%20%20Domestic%20Violence.pdf>  
<sup>8</sup> Voice for justice RESEARCH REPORT, Assessment of court proceedings in Domestic Violence cases, with specific focus on assessing the case management from gender perspective – Authors Cacheva, Mirceva, Kening 2014.  
<sup>9</sup> Analysis of cases of femicides – killings of women – in the Republic of Macedonia, Authors: Elena Dimushevska and Natasha Dimitrovska, 2017, National Network to End Violence against Women and Domestic Violence – Voice against Violence.  
<sup>10</sup> Ms. Elena Dimushevska president of the national women’s network on prevention of VAW and DV.  
<sup>11</sup> <http://www.stat.gov.mk/pdf/2018/2.1.18.23.pdf>  
<sup>12</sup> <http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>

**LEGISLATIVE FRAMEWORK** ● Since 2015, IPV is primarily regulated through the LPCPDV - a civil law ensuring protection of victims of domestic violence.

|  |  |
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| <b>TYPES OF VIOLENCE</b>                               | Physical, sexual, psychological and economic acts of violence against another person with whom the person is in a domestic relation (in line with Art. 29a and 33, IC).  |
| <b>ACTS OF VIOLENCE COVERED</b>                        | <i>“Domestic violence shall mean abuse, harassment, safety threat, physical injury, sexual or other psychological, physical or economic violence that induces a feeling of insecurity, endangerment or fear, including threats of such acts, towards any spouse, parent, child or another person living in marriage or cohabitation or a shared household, as well as towards both current or former spouse, cohabitant partner or any persons who have a shared child or are in a close personal relationship, regardless of whether the perpetrator shares or shared the same residence with the victim or not”.</i> <sup>13</sup>   |
| <b>PROTECTION ORDERS</b>                               | Temporary protection measures (TPM) are defined in Art 34 (emergency reaction by the police) and Art 35 (TPM aimed at elimination of the consequences of violence and at taking effective measures towards the perpetrator).   |
| <b>VIOLATION OF PROTECTION ORDERS</b>                  | <p>The TPM (Art 34) - submitted and supervised by the MOI. In case of a disregard of the imposed TPM (Art 34), MOI notifies the Basic Court and submits a proposal to the public prosecutor for the determination of the precautionary measures in accordance with the Law on criminal procedure<sup>14</sup>.</p> <p>TPM under (Art 35), Paragraph 2 are monitored by the MOI. Ministry of Health is responsible for the monitoring and implementation of the TPMs listed (Art 35) Paragraph 2, Lines 8 and 9. Centre for Social Welfare (CSW) follows the implementation of the TPM listed (Art 35) and informs the responsible Basic Court. The victim notifies the CSW regarding any disregard of the imposed TPM. The CSW immediately notifies the Court of any disregard of the TRP imposed under the Art 35. The CSW has an obligation to file a criminal charge against the perpetrator for violating the court order. The Public Prosecutor informs the CSW in writing about any criminal proceedings initiated following criminal charges in both situations. The Law on prevention, combating and protection of DV, (Art 62), stipulates that if a person violates the TPMs listed in Art 34 and 35, they shall be fined with 2,500 to 5,000 Euros in Denar equivalent.</p> |
| <b>PROTECTION ORDER AND EMERGENCY PROTECTION ORDER</b> | Emergency protection orders (Art 34) LPCPDV.   |
| <b>TEMPORARY EMERGENCY PROTECTION ORDER</b>            | Temporary protection orders (Art 5) LPCPDV (TPM aiming at elimination of the consequences of violence and at taking effective measures towards the perpetrator).   |

<sup>13</sup> Law on prevention, combating and protection of domestic violence, Official Gazette no 128/2014

<sup>14</sup> Law on Criminal Procedure, Official Gazette no 150/10 and OJ no 100/2012



A proposal to impose a TPM may be filed regardless of whether criminal proceedings are initiated or not. In high risk cases, the police have the right to submit to the civil court a proposal for granting the emergency protection order (Art 34) against the perpetrator, ordering him to leave the victim's residence for a period of 10 to 30 days without the possibility of renewal. To protect the victim, a copy of the order for the TPM is submitted to the public prosecutor and the CSW. The police don't have the discretion to immediately impose the TPM, it is only by including the jurisdiction of the civil court that this can proceed. This situation imposes delay on issuance of the TPM and for a period of 56 hours the survivor is not legally covered with protective action. The law should be amended to give the police the discretionary right to impose this measure, but specialized GBV and DV training on immediate protection measures is necessary. According to the report of the National Network to end VAW and DV, the TPM, as per (Art 34), is not proposed to the courts in high-risk cases.

TPM listed in (Art 35) are proposed by the CSW or by the survivor (*ex parte*). The timeframe for each of those measures is between three months and one year,

*"I cannot understand why the police is not reacting and removing him from my house, they have the proof that he is a perpetrator of domestic violence."*

## CASE 1

### LATE REACTION BY THE POLICE AND CIVIL COURT

"It is almost a month and I am not able to return to my own apartment, because my husband doesn't want to leave the place even though the property is legally mine. The police even escorted me to take basic items from my own place. Meanwhile, I hired a lawyer who started an official divorce procedure. I asked my lawyer to initiate a private law suit against my husband, so he can be removed from the house. But this procedure is long, and I don't know how long I will stay away from my own place. I cannot understand why the police is not reacting and removing him from my house, they have the proof that he is a perpetrator of domestic violence."

with the possibility for renewal in cases of need. Upon a motion of a CSW or a DV survivor (*ex parte*), the court will decide on the TRP no later than seven days from the receipt of the motion. However, this is not always the case and in practice this process lasts longer.

The report of the National Network to end VAW and DV points out that violations of TPMs are not monitored carefully by the police and are often disobeyed by the perpetrator. The survivors are still withdrawing the requests for the TPM, which is a result of many factors, including lengthy proceedings in dealing with the perpetrator, lack of a gender sensitive approach to the victim by the judge and fear of retaliation by the perpetrator. For instance, in one of the cases the women stated *"I asked my lawyer to initiate a private law suit against my husband so he can be removed from the house, because of the violence he perpetrated. But this procedure is long, and I don't know how long I will stay away from my own place."*

**The Criminal Code (CC)**<sup>15</sup> does not offer a definition of IPV per se, though a number of criminal offences committed within a domestic relationship can be considered for prosecution of DV. Psychological vi-

olence as defined in the IC (Art 33) is not covered with these provisions. In order to align those provisions, the **NAP** for implementation of the IC envisages amendments to the Criminal Code.

### CRIMINAL OFFENCES COMMITTED IN A DOMESTIC RELATIONSHIP

*"Family violence shall refer to abuse, rude insults, safety threats, inflicting physical injuries, sexual or other mental and physical violence which causes a feeling of insecurity, threat or fear towards a spouse, parents or children or other persons who live in a marital or extra-marital union or other joint household, as well as towards a former spouse or persons who have a child together or have close personal relations."*<sup>16</sup>

### OTHER CRIMINAL OFFENCES COVERED

The CC defines family violence (including psychological violence), as an aggravated form of several criminal offences. The Chapter XV contains three crimes that are referring to psychological violence in the context of DV – coercion (Art 139), unlawful arrest (Art 140), and endangering security (Art 144), envisaging maximum punishment up to three years of imprisonment which, according to the Art 8 of the Criminal Code, is an act of minor significance.<sup>17</sup>

Other criminal acts related to VAW: Murder (Article 123, paragraph 2,p.2); Manslaughter (Article 125); Bodily injury (Article 130, paragraph 2); Severe bodily injury (Article 131, paragraphs 2 and 6); Statutory rape upon a juvenile who has not turned 14 years of age (Article 188, paragraph 2) and Mediation in prostitution,(Article 191, paragraph 4).

### SENTENCES

The sanctions are higher if the abovementioned crimes are performed in the context of DV. The maximum punishment is up to three years of imprisonment.

In 2015 LPCPDV introduced several **standard operating procedures/protocols** (one multi-sectoral) for working with DV survivors for CSW, police and health professionals. Those protocols do reflect the survivor's needs, but they lack full protection. For instance, the law still lacks definition on GBV and professionals need more gender-sensitive trainings. Rulebooks developed for the MOI and MLSP under the LPCPDV contain both

risk assessment forms and safety plans on a case-management basis. In line with Art 29 of the Law, the police are required to immediately seize the legally owned weapon of a person that is under the suspicion of having committed a DV crime. Unfortunately, MOI have not conducted a detailed training for the police officers working with survivors of VAW after the enactment of the Law and its protocols.

<sup>15</sup> Criminal Code, Official Gazette no 37/96, 80/99, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/11, 135/11, 185/11, 142/12, 166/12, 55/13, 82/13, 14/14, 27/14, 28/14, 115/14, 132/14, 160/14, 199/14, 196/15 и 226/15.

<sup>16</sup> Criminal Code, Official Gazette no 37/96, 80/99, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/11, 135/11, 185/11, 142/12, 166/12, 55/13, 82/13, 14/14, 27/14, 28/14, 115/14, 132/14, 160/14, 199/14, 196/15 и 226/15.

<sup>17</sup> "An act is not a crime even though it contains characteristics of a crime, when it is an act of minor significance, because of the lack or insignificance of the damaging consequences and the low level of criminal responsibility of the offender. [2] The provision from paragraph 1 may be applied to a crime for which the law prescribes a fine or an imprisonment sentence of up to three years". An act of minor significance - Art 8 Criminal Code of RM.



It is very rare that the prosecution proposes a TPM in order to ensure the victims' and children's safety. For instance, the monitoring or supervision of convicted persons is very weak and the withdrawal of parental rights (if the best interests of the child, which may include the safety of the victim, cannot be guaranteed in any other way) is done very rarely by the CSWs.

**DIVORCE CASES** ● Family Law (Art 237) envisages that upon receipt of the lawsuit for divorce or marriage divorce proposal, before the submission of the defendant's complaint, a procedure for **reconciliation** of the spouses is conducted. There are some exceptions<sup>18</sup> from this procedure but they do not include DV cases. If the spouses have joint minor children, the reconciliation procedure is conducted by the CSW. The report of the National network to end VAW and DV states that it is unclear whether marriage/family counselling services are in line with the requirements of the IC, which explicitly prohibits alternative dispute resolution procedures and mediation/reconciliation, regarding all forms of VAW. Accordingly, we cannot refer to these counselling centres as specialized support services for women survivors of GBV<sup>19</sup>. The LPCPDV contains a provision referring to prohibition of personal relations and direct contact between the child and the parent (Art 31 IC) if it is in the interest of the child survivor of DV<sup>20</sup>. But the CSO reports<sup>21</sup> identified that such limitations have not been imposed in any of the examined cases. In some cases, there is a free model of visitation between the children and the abusive father, which puts both the mother and children in a dangerous situation.

## CASE 2

### VISITATION RIGHTS

*"The CSW assigned the child to me, but they did not tell him when and how he may visit the child. I gave a statement asking a restraining order, an order not to phone the child very often, but I didn't get any response from the Centre. Instead they are telling me „what do you want; we assigned the child to you, what else do you want from us?“<sup>22</sup>*

**SERVICES** ● MLSP reported that there are four state-owned **shelters** in the country (Skopje, Sveti Nikole, Bitola and Kočani) that offer accommodation for women and children for up to six months. Additionally, there are two more CSO-operated crises centres in Skopje area. The maximum number of beds offered by all listed shelters is 30, which is below the standards of the IC<sup>23</sup>. To meet the minimum standard for provision of safe accommodation to women victims/survivor according to the number of female population in the country, services in FYR Macedonia must provide at least 103 family places. Only two shelters are partially accessible for those living with disabilities, and only the shelter for women survivors of human trafficking accommodates women with mental disorders and PTSD<sup>24</sup>.

In some cases, there is a free model of visitation between the children and the abusive father, which puts both the mother and children in a dangerous situation.

<sup>18</sup> Family Law Art 236 paragraph 2 "The procedure for reconciliation of the spouses will not be implemented if one of the spouses is mentally disabled, one of the spouses is living abroad, one of the spouses has unknown residence for a period longer than 6 months and after a counterclaim for divorce, regardless of when it was filed, and the attempt to reconcile the spouses after the complaint ended unsuccessfully".

<sup>19</sup> [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)

<sup>20</sup> Art 20 of the Law on prevention, combating and protection of DV.

<sup>21</sup> National Network to end VAW and DV.

<sup>22</sup> Voice for justice RESEARCH REPORT, Assessment of court proceedings in Domestic Violence cases, with specific focus on assessing the case management from gender perspective – Authors Cacheva, Mirceva, Kening 2014.

<sup>23</sup> [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)

<sup>24</sup> Mapping violence against women and girls support services in the Republic of Macedonia, National report, Stojanka Mirceva and Nikolina Kening, International consultants: Liz Kelly and Joanna Lovett 2015.

According to the National women's network on prevention of VAW and DV, there are three women CSOs that provide free SOS support for women survivors of DV, but only in the Macedonian language. There is one SOS line for reporting trafficking in human beings provided by CSO La Strada, which offers services in Macedonian and English (there are two SOS lines, one for within the country and the other international).

The Free Legal Aid Law from 2009 envisages protection for DV victims in Art 8<sup>25</sup>. However, the conditions for granting free legal aid are very difficult and it covers a very limited number of survivors of DV. According to the CSO EHO Stip "*The Law on free legal aid is restrictive*".<sup>26</sup> Currently FYR Macedonia is in the process of drafting a new law on free legal aid and the latest draft addressed specifically DV survivors. The conditions for granting free legal aid will not be related to the income and property of the victim, which should improve their access to free legal aid.

The biggest challenge for minority women regarding access to services is geographical distribution (travelling and expenses), limited working hours, stigma and language barriers. Data on DV against women with disabilities is also not collected. Women in prostitution and transgender persons are supported by two CSO's and only one CSO provides services to lesbians<sup>27</sup>.

The multi-agency protocol for protection and combating of DV obligates the institutions to develop a **safety plan** for survivors and their children, take measures to address existing or new needs for

assistance and protection, provide information and cooperate with the members of the multi-sectoral professional team. However, there is no record on if this provision is implemented in practice, especially when the perpetrator was released or has escaped. The National network to end VAW and DV reported that there is no official information on how many local multi-sectoral teams have been formed so far, or what the results of their work are.

Survivors can testify and provide evidence without the perpetrator's presence in criminal proceedings. The Law on criminal procedure<sup>28</sup> foresees special rights for victims of vulnerable categories (Art 54) and special rights of victims of crimes against gender freedom and gender morality, humanity and international law (Art 55). It allows survivors to be interviewed through a video call in cases where they are not able to confront the perpetrator. However, those safeguards are rarely used in DV proceedings.

The biggest challenge for minority women regarding access to services is geographical distribution, limited working hours, stigma and language barriers.

<sup>25</sup> "(1) The application for legal aid pursuant to provisions of this Law shall be approved in all courts and administrative procedures if it resolves matter of interest of the person applying for legal aid. Unofficial translation Courtesy of the OSCE Mission to Skopje (2)The issues with reference to paragraph (1) of this Article are the following: the rights covering social, health, pension and disability insurance, labour relations, children and juvenile protection, victims of domestic violence, protection to victims of criminal acts, protection of victims of human trafficking and property issues."

<sup>26</sup> For the purpose of this report, six women's CSOs were interviewed on a wide range of questions.

<sup>27</sup> Mapping violence against women and girls support services in the Republic of Macedonia, National report, Stojanka Mirceva and Nikolina Kening, International consultants: Liz Kelly and Joanna Lovett 2015.

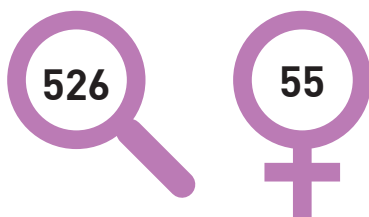
<sup>28</sup> Law on criminal Procedure, Official Gazette no 150/10 and OJ no 100/2012.

# SEXUAL VIOLENCE

**DATA AND RESEARCH** ● Sexual violence against women has become a focus of interest of women's CSOs in the last several years. MOI collects data on sexual violence only for the criminal offences and the number of perpetrators that committed the crimes, yet have very limited data on survivors. The national women's CSO network gathered data on sexual violence for the period from 2012 until 2017 collected by the MOI and MLSP.

Registered criminal offences by the MOI of various acts of sexual violence show a total of 526 cases during the past 6 years. On the other hand, MLSP for the same period registered only 55 women survivors of sexual violence. The data shows an increase in the reporting of sexual violence, but the reported numbers are still at odds with the estimated number of actual cases and they don't show the real situation of sexual violence in the country. The inconsistency in reporting also exists within the reported cases from different agencies that have mandate to react, protect and prevent sexual violence, due to lack of joint data collection systems on sexual violence. The problem of data inconsistency prevents the country from developing an evidence-based policy on protection and respond to VAW.

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**LEGAL FRAMEWORK** ● The study of the National Network to end VAW and DV confirmed that sexual violence is not fully covered by the national legislation and it is left to the professionals to freely interpret what constitutes sexual violence, which leaves a legal vacuum in the system and allows prejudice to dominate during criminal prosecution procedures. In one of the interviews the survivor stated *"I really don't know why he was not charged with rape and why the police officers didn't take this case serious enough, in the end he was responsible for heavily body injury I felt that it was my fault that he raped me"*. Women who are asking for help through the national SOS lines are not reporting sexual violence to the institutions because they don't believe that the system will protect them. The CC partially criminalises sexual violence as per the IC (Art 36) and some of the forms of sexual violence are located in part XIX of the CC.

The CC covers a series of non-consensual acts that fall under sexual assault with higher penalties foreseen in cases where the perpetrator is in a close relationship with the victim who is a juvenile, but not in a situation when the victim is an adult woman. **Rape**, as stipulated in the national legislation, includes force/threat as a constitutive element of this crime while the consent of the victim is not considered at all, which is not in line with the IC (Art 36). **Marital rape** is not regulated in the national legislation. **Sexual harassment** is not covered with the criminal legislation, but is regulated in the Law on prevention and protection against discrimination<sup>29</sup> in art 7 paragraph 2; Law on labour relations<sup>30</sup> in Art 9 paragraph 4 and Law on protection from harassment in the workplace<sup>31</sup>.

<sup>29</sup> Law on Prevention of and Protection Against Discrimination ["Official Gazette of the Republic of Macedonia" no. 50/2010, 44/2014, 150/2015, 31/2016 and 21/2018].

<sup>30</sup> Law on labor relations Official Gazette of the Republic of Macedonia" no 74 from 08/05/2015.

<sup>31</sup> Law on protection from harassment in the workplace Official Gazette no 79 from 31/05/2013.

According to the general provision for the statute of limitation, for the basic crime – **rape (Art) 186** for which a sentence of one to ten years is envisaged, the crime becomes obsolete within ten years from the day of occurrence, which is not in line with the IC.<sup>32</sup>

The multi-sectoral protocol offers relevant protection mechanisms for dealing with survivors of sexual violence. This protocol ensures that all women survivors will be interviewed only once and avoid the possible exposure to the perpetrator. However, it is not fully harmonised with the IC and the police should be subject to joint trainings to fully implement it.

The Criminal procedure law<sup>33</sup> prohibits questions to be posed to the injured party and to the witness that pertain to their sexual life, sexual predispositions, political and ideological affiliation, racial, national and ethnic origin,

moral criteria and other extremely personal and family circumstances, which is in line with the IC (Art 54). However, this law makes an exception in cases where the answers to such questions are directly and obviously related to the required clarification of the significant criterion of the criminal offence, which is the subject matter of procedure.

This case indicates the importance of police officers taking care during interviews and while qualifying the offense. This stage is crucial in initiating the criminal proceedings against a perpetrator; any errors here will have great affect on the entire case.

**SERVICES** ● In 2018, the state established three sexual violence referral centres and one rape crisis centre, out of which 3 are accessible to women with disabilities. The rape crises centre in Skopje is run by a CSO in cooperation with MLSP, financed by state and other donors. All other accommodation facilities are not able to support survivors of sexual violence and the country is lacking specialised helpline.

The current legal system and its implementation does not offer systemic support to survivors of sexual violence, which is a result of the cultural and personal beliefs of the professionals themselves, but also of the lack of a holistic and integrated approach to sexual violence against women.

### CASE 3

#### GENDER BLIND TREATMENT OF SURVIVORS OF SEXUAL VIOLENCE BY THE POLICE

*“After reporting the sexual abuse, I was directly exposed to close presence of my abuser. The abuser is a police officer himself and he was present in the next room while I was giving my statement. I was judged by his fellow police officers who were handling the case. I was forced to give the statement several times due to computer system failure. They never took the case seriously and my suffering was qualified as heavily body injury crime, not as a sexual assault. I had similar experience with the criminal judge, she was very judgmental of my relations with a married police officer in such a small place and she stated: “I was sick of the photos that you were sending to him (evidence), how could you do that”. I wonder why she was not sick of the violence he committed against me ...why she never mentioned that”.*



<sup>32</sup> The Criminal Code, Art 107, par.6: “The obsolescence of the criminal prosecution comes into effect in any case when a time period elapses which is twice as long as required by law for the obsolescence of the criminal prosecution.”

<sup>33</sup> Criminal Procedural Law [Art 217] Questions that are not allowed to be asked of the injured party or witness.

## VIOLENCE AGAINST MIGRANT AND REFUGEE WOMEN

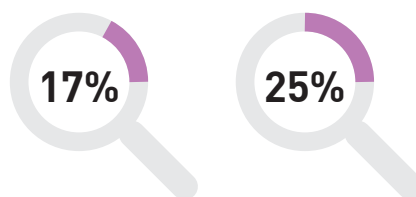


walking across the remote green border area between FYR Macedonia and Serbia at night<sup>34</sup>, so the risk of violence against those categories of women was present.

During 2015 the country faced a severe migration flow, with the number of refugees and migrants growing to nearly 10,000 new arrivals daily. According to UNHCR statistics<sup>35</sup>, since January 2015, up to 42% of these refugees and migrants were women (17%) and children (25%). With support of international organisations, the country offered some assistance to girls and women such as: fast-tracking at registration centres, mobile gynaecological clinics which offered on-spot services and some sexual and reproductive health services, distribution of dignity kits, collection and reporting on sex- and age-disaggregated data, and shelter for women and babies. But, beside those ad-hoc support services the UN Women assessment<sup>36</sup> found that response-planning, services, protection capacity and information are not yet sufficient to meet women's and girls' needs and to address their vulnerabilities.

The protection of migrant and refugee women is covered by several laws: Law on foreigners, Law on asylum and temporary protection (LATP) and Citizenship law. All legal acts are gender neutral and do not offer comprehensive protection to migrant and refugee women survivors of VAW. Once they arrive on the territory of the country, they are accepted and accommodated in the transit centres on the borders with Greece and Serbia. The country has one asylum centre and one migrant centre. Currently the number of migrants and asylum seekers in the country is very low because the Balkan migration route has not been frequented in the past two years. According to the UN Women report "In-mid November 2015, aid workers reported an unverified incident of a sexual assault against an unaccompanied minor girl who was

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<sup>34</sup> <http://eca.unwomen.org/en/digital-library/publications/2016/01/gender-assessment-of-the-refugee-and-migration-crisis-in-serbia-and-fyr-macedonia>

<sup>35</sup> <http://data2.unhcr.org/en/situations/mediterranean>

<sup>36</sup> <http://eca.unwomen.org/en/digital-library/publications/2016/01/gender-assessment-of-the-refugee-and-migration-crisis-in-serbia-and-fyr-macedonia>

## CASE 4

### SUPPORT TO REFUGEE WOMEN

CSO Legis in 2016 reported a DV case of one refugee woman by her spouse. He had abused her during the entire journey. The CSO notified the social workers from the MLSP who were in charge of the management of the reception centre on the southern border of the country. The social worker only offered a separate accommodation for the woman and her children in the same area with the abuser. The woman did not receive any additional support such as access to psychological assistance, sexual and reproductive health services, child care support and trauma support for the children.

The national legislation should regulate the principle of non-refoulement in relation to survivors of VAW who may fear prosecution if returned.

FYR Macedonia has made a full reservation on Art 59 of the IC. According to the new Law on foreigners<sup>37</sup> the foreign nationals have the right to family reunification (Art 71 and Art 72) while residing on the territory of the country, but those provisions are not referring to extra-marital couples or close intimate partners. According to Art 112, **autonomous residence permit** can be issued in some particularly difficult situations only if the family reunification lasted at least three years of uninterrupted residence in the country. Those provisions are restrictive and in conflict with the IC (Art 59) because the law is requesting spouses to remain married for a period of years or in case of existence of “particularly difficult situations”. The circumstances of particularly difficult situations are not clearly defined and can be freely interpreted by the practitioners without necessarily referring to VAW forms of discrimination. Finally, The Law on foreigners does not provide protection to survivors of VAW when the holder of the residence permit is facing expulsion. Women and girls survivors of forced marriages who were taken to another state and lost their legal residence status in the country are not protected under this law and are not allowed to regain their residence status as victims of VAW.

The relevant provisions in the Law on foreigners (Art 120-124) are fully in line with the provisions of CoE Convention on action against THB.

In 2016, with international support, the Ministry of Health enacted a multi sectoral standard operative procedure for prevention and response to GBV in emergencies, crises situations and disasters. Those SOPs are among the first legal instruments that offer gender sensitive screening for VAW in situation of migrant flows, which is a significant achievement. However, more training is needed for border police and migration inspectors on the use of those SOPs.

The LATP contains provisions for persecution as a ground for gaining asylum. Those provisions are referring to the physical and psychological violence including offences of sexual violence and crimes connected to sex and children. However, in practice VAW is not recognized as a form of a persecution and is not considered a base for granting refugee status or subsidiary protection in FYR Macedonia. Currently, there are only 15 persons requesting asylum out of which 6 are women<sup>38</sup>. The asylum seekers in FYR Macedonia have the right to free

<sup>37</sup> Law on foreigners, Official Gazette no. 97 from 28.5.2018(will enter into power as of 2019).

<sup>38</sup> NGO Legis.

legal aid. The LAMP Law on foreigners and the Rulebook for the migrant reception centres have a special procedure for the protection of vulnerable groups, defining the categories of vulnerabilities that are under special protection. They include victims of trafficking and persons who have been subjected to torture, rape or other severe forms of psychological, physical or sexual violence; but all those forms of discrimination are not considered in a gender sensitive manner as the IC is requesting. The national legislation should regulate the **principle of non-refoulement** in relation to survivors of VAW who may fear prosecution if returned. The law should address the issue when the asylum claim is rejected, and the woman is fearing real risk on the grounds of VAW. In such cases the expulsion/deportation should not be executed.

**SERVICES FOR MIGRANT AND REFUGEE WOMEN** ● The Reception Centre for Foreigners in Gazi Baba (MOI) accommodates irregular migrants that are detected and detained on the territory of the country. In most of the cases they are migrants, victims of THB and potential asylum seekers. The centre is of closed type and the access to humanitarian NGOs is limited<sup>39</sup>. The irregular migrants who are accommodated in this centre are granted the right to seek asylum and temporary protection. Once the application is submitted, the asylum seekers are transferred to the Reception Centre for Asylum Seekers in Vizbegovo, which has a capacity of 150 people and has separate male, female and family sections. Finally, migrant and refugee women can be provided first aid services in one of the three newly established sexual violence referral centres.

## ROLE OF WOMEN CSOS

For the purpose of this report, six women's CSOs were interviewed on a wide range of questions. The survey showed that women's CSOs in FYR Macedonia are facing difficulties due to the lack of financial and human resources<sup>40</sup>. For instance, NGO Women's Form Tetovo stated that *"women's CSOs are financed only by international donors. This way of ensuring sustainability is very difficult. The administrative conditions for such financing are not simple for a CSO like ours. Support at the local and central level for women's CSOs is necessary"*. The smaller CSOs like Klea from Bitola stated that on local level smaller CSOs are barely existing so they need to receive finance by using re-granting mechanism with bigger women's CSOs which have larger budgets and capacities. So far, the only record of state financing for women's CSOs was in 2015 when, in accordance with the Law

on games of chance and entertainment games, two organisations providing services to women survivors of DV have received financial support - National DV SOS Help-Line and the Crisis Centre for emergency accommodation. Such data cannot be identified for 2016 and 2017<sup>41</sup>. Also, the City of Skopje in cooperation with Komercijalna Bank is providing some support for the functioning of the First family centre for victims of DV (HERA).

*"Women's CSOs are financed only by international donors. This way of ensuring sustainability is very difficult. The administrative conditions for such financing are not simple for a CSO like ours. Support at the local and central level for women's CSOs is necessary."*

<sup>39</sup> <http://myla.org.mk/wp-content/uploads/2016/09/2015-Emerging-Challenges-in-Response-to-the-Refugee-Crisis-2015-1.pdf>

<sup>40</sup> Mapping VAW and girls support services in the Republic of Macedonia, National Report, Stojanka Mirceva and Nikolina Kenig, Skopje 2015.

<sup>41</sup> Monitoring Report on the implementation of the Law on prevention, combating and protection from Domestic Violence, National Network to End Violence against Women and Domestic Violence, 2016.

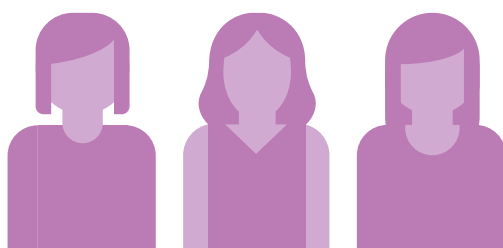
*“In the country in general there is a lack of sufficient consultative process with women’s CSOs on development of the prevention policies on VAWG, especially on central level.”*

The state is not ensuring sufficient and sustainable financial resources for women’s CSOs and there is no defined percentage of funding allocated for those organisations in the national budget. The women’s CSOs so far only received funds from international donors. In the future this should change as per the planned activities of the NAP for implementation of the IC. Program officer from NGO Hera stated *“Until now, women’s CSOs have been mainly funded by foreign donors (international funds), and much less by state or local funds. Accordingly, their financial stability is very low, as it depends on projects which have a limited timeframe”*. CSO “Women’s Forum” – Tetovo pointed out the importance of regular allocations of the financial support from the state and the local self-government units to women’s CSOs, especially those that provide direct services to women survivors of violence.

Larger women’s CSOs and networks are part of the working groups and bodies responsible for development and monitoring of VAW prevention and protection policies at central level. Smaller CSOs are active in local bodies for gender equality, but they are not part of the consultative process as larger women’s CSOs. For instance, the president of the CSO Klea Bitola confirmed that *“In the country in general there is a lack of sufficient consultative process with women’s CSOs on development of the prevention policies*

*on VAWG, especially on central level. We as a local women’s CSO are operating on municipal and regional level and the central government is really inviting us to any consultations regarding development of central gender equality policies. We are not involved in any monitoring mechanism on VAW in our country”*. According to the interviews, in the period from 2015-2017 the extent of CSO’s activities was limited and women’s CSOs were not free to express their opinion. Some issues such as abortion, gender-based violence, sexual orientation and gender identity, sexual and reproductive rights were not part of the right wing ruling party at that time. During this period, women’s rights in the country were at risk, for instance: the law on abortion has been restricted, limiting the access to sexual and reproductive health services; the LPCPDV omitted to regulate all forms VAWG; and issues like sexual orientation and gender identity were not part of the public discourse at all. However, after the change of the political establishment in 2017 the situation is improving. The president of the CSO EHO stated that *“In the last two years the public space is liberated so we can fearlessly speak of the problems, challenges and needs for changes”*.

Women’s CSOs are not trained in giving support to migrant and refugee women and this situation should be addressed in the near future. The president of the NGO Legis informed that *“in Macedonia we don’t have specialized women’s CSOs that are focused on protection of human rights of refugee and migrant women”*. This should be part of the NAP for implementation of the IC.



*“In the last two years the public space is liberated so we can fearlessly speak of the problems, challenges and needs for changes”*.



## RECOMMENDATIONS



### TO THE GOVERNMENT OF FYR MACEDONIA

- Amend the Law on Prevention, Combating and Protection from Domestic Violence to give the police a discretionary right to enforce TPM - removal of the perpetrator from the home.
  - Amend/enact legislation to include a clear prohibition of alternative dispute resolution procedures and mediation/reconciliation in cases of all forms of VAW.
  - Provide free legal aid to all categories of survivors of VAW.
  - Amend Law on foreigners to give the right to family reunification to extra-marital couples; to define "particularly difficult situations" so they refer to VAW situations and grant the anonymous permit irrespectively of the duration of marriage in cases of VAW; to include the right to TRP in cases when the expulsion proceeding is initiated against the abusive spouse/partner; to prevent the loss of residence status of victims of VAW in case they were unwillingly removed from the country of residence.
  - The Law on Asylum and Temporary Protection should recognize VAW as a form of persecution, include a gender sensitive interpretation of the refugee definition and non-refoulement principle and regulate the protection in cases of persecution on the grounds of membership of a social group such as: FGM, early marriages, political opinion related to non-traditional gender roles and sexual orientation.
  - Initiate concrete cooperation and ensure long term strategic financing of the women's CSOs by the state central budged, local governance units and private sector.
- Apply and promote a change in policy making and implementation when dealing with VAW and DV, making clear that this phenomenon is understood as a human rights infringement and it is based on historically unequal power between women and men.
  - Collect and publish annually disaggregated data on all forms of VAW, including the relationship between perpetrator and victim including children victims, the specific vulnerability of the victims (disability, residence status, etc.).
  - Amend CC in order to require lack of consent to constitute rape (without the requirement of use of force), criminalize marital rape, sexual harassment, FGM, and amend the statute of limitation with regards to all forms of VAW.

- Set up easy accessible shelters<sup>42</sup> that provide accommodation to survivors of VAW, rape crisis support and sexual violence support services, including counselling centres for trauma support addressing the needs of marginalized women and co-managed by women's CSOs with supported funding. All the general services should be adapted to the needs of the sexual violence survivors and their children.
- Support the opening and running of at least one free national 24/7 SOS helpline covering all forms of violence against women including sexual violence and offering crisis support in all relevant languages.
- Encourage active involvement of the women's CSOs on GBV policies at a central, regional and local level.
- Provide state finances to CSOs that offer specialized support services to victims of VAW.
- Support of the small and rural women's CSOs at a local level in providing specialized services to women victims of VAW and DV.
- Introduce training for the criminal judges, public prosecutors and the police on processing of sexual crimes in criminal proceedings.
- Introduce specialized training for civil judges and police on processing VAW cases in civil proceedings.
- Implement training for the judges, public prosecutors and lawyers on special protection measures as per (Art 217) of the CCP on avoiding re-victimisation of women during trials.
- Active participation in joint training should be mandatory for all professionals regarding processing survivors of VAW including sexual violence in the sexual violence referral centres (SOPs).
- Ensure that specialized CSOs accompany the survivors in all stages of the procedure.

#### • TO THE MINISTRY OF JUSTICE/ JUDICIARY

- Develop a data collection management system to ensure that VAW cases are registered, including sexual violence, in a sex desegregated manner, including relationship of the perpetrator with the victim.
- Introduce training for the judges and public prosecutors on the legal provisions regarding special protection to vulnerable categories (Art 54 Code on Criminal Procedures(CCP)).
- Introduce and implement specialized training for social workers on better assessment and limitation of the visitation rights between the children and abusive parent.
- Divorce proceedings should relate to other legal processes such as granting custody rights and issuing a TPM for DV.
- Ensure that multi-sectoral teams on dealing with DV cases on local level are fully operational.
- Ensure provision of psycho-social, crisis and medical support to migrant and refugee women survivors of different forms of VAW, including sexual violence.

#### TO THE MINISTRY OF LABOUR AND SOCIAL POLICY

<sup>42</sup> National parameters as per the IC standards regarding specialized services: (1) at least 25 shelters for women survivors of VAW (one family place 1 per 10 000 of the population), (2) 5 rape crisis centers (one per 200 000 women) and (3) at 3 sexual violence referral centers (one per 400 000 women) and (4) 20 counseling centers - [https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-CONF\[2007\]Study%20rev.en.pdf](https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-CONF[2007]Study%20rev.en.pdf)

- Active participation in joint training should be mandatory for all professionals regarding processing survivors of VAW including sexual violence in the sexual violence referral centres (SOPs).

## TO THE MINISTRY OF INTERNAL AFFAIRS

- Implement specialized training on gender sensitive statement taking and provide female officers as main interviewers.
- Organize joint gender-sensitive training on protocols for dealing with DV survivors (CSW, police, health CSO's, etc.).
- Organise joint training of the police, forensics professionals and prosecution on gender sensitive assessment of the evidence on case-by-case basis for all forms of VAW including sexual violence.
- Ensure gender sensitive reception procedures at the borders and in the migrant and asylum centres/shelters.
- Develop training manual and implement gender sensitive training for the migration and asylum police inspectors and social workers (addressing also multi-sectoral SOPs for prevention and response to VAW in emergency and crises situations and disasters).<sup>43</sup>
- Women CSOs should participate in all joint trainings for all professionals regarding processing victims of VAW including sexual violence in the sexual violence referral centres.

<sup>43</sup> <http://iph.mk/wp-content/uploads/2014/09/Мултисекторски-стандардни-оперативни-процедури-за-превенција-и-одговор-на-РБН.pdf>



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