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DOMESTIC VIOLENCE LEGISLATION REFORMS IN THE REPUBLIC OF NORTH MACEDONIA

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ABSTRACT

The phenomenon of domestic violence is as old as humanity itself, but legal protection against violence both internationally and nationally begins to be provided very late. In the Republic of North Macedonia, until 2004, there was no legal protection of victims of domestic violence, nor was adequate sanctioning of perpetrators. Only since 2004, with the amendments and additions to the Criminal Code in the criminal sphere, and the Law on the Family in the civil sphere, the phenomenon of domestic violence began to receive due legal attention, with the application of provisions for the sanctioning of perpetrators and temporary measures protection for victims.

The adoption of the Istanbul Convention (The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence) and its ratification in 2018 undoubtedly contributed to the Republic of North Macedonia undertaking a series of reforms in the field of domestic violence. So initially, in 2021, the new Law on domestic violence was adopted in harmony with the principles of the Istanbul Convention, whereas in 2023 the Law on the amendment of the Criminal Code was adopted. This law focused on changes in criminal offenses related to domestic violence and gender-based violation, as well as the incorporation of new criminal offenses in this regard.

These legislative reforms, especially the amendments approved in February 2023 which are of particular importance in the prevention and fight against domestic violence and

violence against women in the Republic of North Macedonia are the focus of this research. Here we have analyzed and commented the approved changes to the Criminal Code of RNM.

Key words: domestic violence, violence against women, legislative reforms, Criminal Code

INTRODUCTION

In the legislation of Republic of North Macedonia until the legislative changes in the Law on the Family in 2004, there were no legal provisions that explicitly regulated domestic violence. Perpetrators of domestic violence were prosecuted under general criminal provisions against violence (Ratkoceri, 2016). Criminal assaults were divided into two broad categories: assaults causing “bodily injury” and those causing “grievous bodily harm” (Ratkoceri, 2016). According to the Criminal Code, for minor bodily injuries, criminal prosecution was initiated by a private lawsuit by the victim, while serious bodily injuries were prosecuted ex officio by the public prosecutor. From this legal situation in our country, one can understand the difficulty or even the impossibility of victims to seek help and legal protection for domestic violence (for all its forms), except in cases when it is about “serious bodily injuries”. In fact, it can be noted that for a while, there were also such findings that domestic violence “does not exist in our country” (Ratkoceri, 2016) (Minnesota Advocates for Human Rights, 1998). Such a statement was given in 1998 by the Deputy Minister of Internal Affairs and the Chief of Police of Skopje in an interview for human rights lawyers from Minnesota where he emphasizes that domestic violence does not exist in the Republic of Macedonia! Also, Chief Public Prosecutor stated that between the years 1980 and 1995 his office has not responded with criminal charges to any request for assault, and he even adds that some cases of assault by a man against a woman are most often resolved through mediation, through civil procedure of divorce and not through criminal prosecution (Minnesota Advocates for Human Rights, 1998).

The fact that domestic violence occurs in private homes does not absolve the responsibility of the state to combat and prevent it. The state has a legal obligation to ensure that the existing laws governing marital relations are non-discriminatory and criminalize the violation of physical integrity, regardless of whether the perpetrator is an intimate partner or another person (Ratkoceri, 2016). States have a legal obligation to guarantee that victims of domestic violence have access to legal remedies that protects them from domestic violence and that the perpetrators will be adequately punished (Ratkoceri, 2016). For this reason, the

state has the obligation to repeal laws that discriminate, to introduce adequate laws and to ensure the efficient action of state officials in the fight against domestic violence (Netkova, 2007). Major changes in our legislation for the legal regulation of the phenomenon of domestic violence and the protection of victims of domestic violence began in 2004 with the amendment and changes of the Criminal Code and the Law on the Family, where relevant articles were adopted that explicitly deal with domestic violence. This is where the fundamental changes of the state and social policy began, initially for the recognition of domestic violence, the punishment of the perpetrators, the awareness of the victims for reporting domestic violence, the implementation of various media campaigns and so on. Even more important changes in our legislation in this field took place during 2006 and 2008, and especially in 2014, when a special law for the regulation of domestic violence (“Law on Prevention and Protection from Domestic Violence” was adopted, which entered into force on January 1st, 2015. It should be noted that with the adoption of the special Law, the relevant articles of the Law on the Family dealing with domestic violence were repealed (Ratkoceri, 2016). The Law on Prevention and Protection from Domestic Violence was in force until 2021, when it was repealed upon the entry into force of the new law on domestic violence – ***Law on Prevention and Protection from Violence against Women and Domestic Violence***.

In addition to the legal changes and the adoption of the new law in 2021, a major reform regarding criminal offenses was carried out in February 2023 when the amendments to the Criminal Code were approved in terms of domestic violence, gender-based violence as well as sexual violence.

REFORMS IN THE DOMESTIC VIOLENCE LAW

Domestic violence is for the first time envisaged and legally regulated in the Law on the Family of the RNM. The amendments to the Law on the Family in 2004 and the amendments and additions from 2006 and 2008 were a step forward towards more efficient legal protection of victims of domestic violence and represented advancement in the legal treatment of this issue. It is about an added chapter in the Law which was mainly about the definition, treatment of domestic violence and protection of victims of this form of violence (Ratkoceri, 2016). With this law, in addition to marriage and the family, the issue of domestic violence was regulated as well as the procedure for issuing a temporary measure for protection from domestic violence (Family Law of RM).

Despite the fact that the legal regulation of domestic violence in The Family Law was a very important step towards combating and preventing domestic violence, it was not sufficient. North Macedonia had to follow the trends of other contemporary countries, to regulate the issue of domestic violence with a special law. Therefore, with the aim of ensuring the most efficient protection of victims of domestic violence, ensuring the responsible and necessary action of institutions and associations as well as their mutual coordination and cooperation, the Assembly of the Republic of North Macedonia (then Republic of Macedonia) in 2014 adopted the Law on Prevention and Protection from Domestic Violence (Official Gazette of RNM nr.138, 2014) which entered into force on January 1st, 2015 (Ratkoceri, 2016). With the entry into force of this law, the articles of chapter “VI-a Domestic violence” and the corresponding articles related to domestic violence in The Family Law were repealed (Ratkoceri, 2016). This law had a total of 9 parts (chapters) and 67 articles. The purpose of this law was to take measures aimed at prevention and protection of victims of domestic violence, respect for freedoms and basic human rights, life, personal integrity, non-discrimination and gender equality, with full attention to the interests and needs of the victim (Article 2 of the Law on Prevention and Protection from Domestic Violence).

This law is very important because it was the first special law in the field of domestic violence. The provisions of this Law were in force until May 2021, when they were repealed due to the entry into force of the new law: **Law on Prevention and Protection from Violence against Women and Domestic Violence** (Official Gazette of RNM nr. 24/2021, 2021).

Republic of North Macedonia (then Republic of Macedonia) signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (known as the Istanbul Convention) in 2011, but it took seven years for the Republic of North Macedonia to ratify it, influenced by lobbying and various campaigns of civic organizations. Ratification took place in July 2018 when the Convention officially entered into force. In the spirit of the Istanbul Convention, with the aim of harmonizing the legislation with this important international document, in January 2021 the new law was approved - **Law on Prevention and Protection from Violence against Women and Domestic Violence** (Official Gazette of RNM nr. 24/2021, 2021). This law has started to be implemented from May 2021. This law has a total of 13 parts (chapters) and 112 articles.

The purpose of this law is to prevent gender-based violence against women and domestic violence, the effective protection of victims from any form of gender-based violence against women and victims of domestic violence while respecting the guaranteed basic human rights and freedoms with the Constitution of the Republic of North Macedonia and international agreements ratified in accordance with the Constitution of the Republic of North Macedonia. The purpose of the law is based on the principle of equality and the elimination of stereotypes about gender roles (Article 2 of the Law on Prevention and Protection from Violence against Women and Domestic Violence) (Official Gazette of RNM nr. 24/2021, 2021). This law regulates the action of institutions which should be with special attention when taking measures to prevent gender-based violence against women and domestic violence, the action of state authorities in these cases, mutual coordination between institutions and organizations, services for the protection of victims etc (Merdovic, Bjelajac, & Poduca, 2022). In addition, this law defines expressions such as gender, gender-based violence, woman, victim, gender identity, sexual orientation, etc., and prohibits discrimination on all these bases. In addition, this law defines “sexual abuse and rape” and is the first law that defines this type of violence against women through the concept of consent. The law also defines for the first time the reintegration of victims of violence into the system of protection and prevention through a special program for the reintegration of victims of domestic violence where a series of services are provided for victims, such as temporary shelter, psychological counseling, financial assistance, employment assistance etc.

CRIMINAL CODE REFORMS

With the changes approved in 2004, our criminal legislation has taken an important step towards the criminalization of domestic violence. This change was necessary both in the preventive and the repressive aspects; therefore, it was necessary and important to intensify the criminal-legal repression in order to fight domestic violence in our country as successfully as possible. Before these changes were made, the issue of domestic violence was dealt within the framework of other general criminal offenses in the Criminal Code of RNM (Ratkoceri, 2016).

As emphasized above, in February 2023, the Assembly of the Republic of North Macedonia approved The Law on Amendments and Supplements to the Criminal Code (Official Gazette of RNM nr 36/2023, 2023) where major changes were foreseen in the field of domestic violence, thereby harmonizing the criminal legislation with the Istanbul

Convention. The first and important change is foreseen in the Article 5 of the Law regarding Article 122 point 21 where domestic violence is defined. For the first time in this definition economic violence against women is also accepted and recognized as a form of manifestation of domestic violence. Under the Law *"Domestic violence means mistreatment, insult, danger to safety, physical injury, gender violence or other psychological, physical or economic violence that causes a feeling of insecurity, fear or danger, including threats of such actions against the spouse, to parents or children or other persons who live in a marital or extramarital partnership or joint household, as well as to the current or previous marital partner, extramarital partner or persons who have children in common or are in close personal relations, regardless of whether or not the perpetrator shares or has shared the same residence with the victim"*(Article 5 of The Law on Amendments and Supplements to the Criminal Code) (Official Gazette of RNM nr 36/2023, 2023).

In the Criminal Code of RNM, domestic violence is not criminalized as a special criminal offense but is criminalized within the existing criminal offenses, with the determination of the most severe penalties and ex officio criminal prosecution when the criminal offense is committed in the context of domestic violence (Ratkoceri, 2016). So, domestic violence is provided as a qualifying form of existing criminal offenses in the Criminal Code. The criminal offenses provided in the Criminal Code, specifically sanctioned for cases when they are committed as a result of domestic violence are: Murder (Article 123), Instant murder (Article 125), Bodily injury (Article 130), Serious bodily injury (Article 131), Coercion (Article 139), Illegal deprivation of liberty (Article 140), Jeopardizing security (Article 144), Violent sexual act with abuse of position (Article 189) and Intermediation in prostitution (Article 191) (Criminal Code - Official Gazette of RNM nr 7/08). The Criminal Code determines that whenever any of the aforementioned criminal offenses are committed during domestic violence, it is considered as a more serious form of the criminal offense, while the sanction is more severe than for the basic form of the same criminal offense (Ratkoceri, 2016).

Until the last changes of 2023, only physical violence and psychological violence were criminalized in the Criminal Code of the RNM. Physical violence was criminalized in criminal offenses such as murder, instant murder, damage or violation of bodily integrity, bodily injury, serious bodily injury, etc. Forms of psychological violence are criminalized in criminal offenses such as coercion, illegal deprivation of liberty, jeopardizing security, whereas sexual violence was sanctioned through the criminal offense of violent sexual act

with abuse of position and mediation in prostitution, but not in the criminal offense of Rape (Article 186). Until these changes were made, femicide was not recognized as a separate criminal offense, namely the killing of women was processed like any other murder, although the existence of domestic violence and intimate violence by the partner in cases where it preceded the murder was considered an aggravating circumstance. With Article 6 of The Law on Amendments and Supplements to the Criminal Code, in Article 123 (criminal offense of Murder) after point 2 of the second paragraph, point 2a is added which incriminates gender based murder, respectively - *"With at least ten years of Imprisonment or life imprisonment will be punished the one who takes the life of a woman or girl up to the age of 18 while committing gender-based violence"* (Official Gazette of RNM nr 36/2023, 2023).

Domestic violence appears as a privileged form in two criminal offenses: "Instant murder" (Article 125) and "Murder of the child during childbirth" (Article 127). These two criminal offenses represent a special approach of the legislator, especially in relation to instant murder, where the law identifies the seriousness of domestic violence, so that violence committed in response to domestic violence, even when it results in death, is considered as a mitigating circumstance, precisely because of the physical and psychological torture that the person suffered in order to be provoked to commit a criminal offense ("All for Fair Trials" Coalition of Citizen Associations, 2021). Here we are talking about the cases where the victim of domestic violence because of the experienced violence, instantly, kills the abuser. According to Article 7 of the Law on Amendments and Supplements to the Criminal Code, Article 125 (Instant murder) is amended as follows: *"He who will take another's life instantly, brought through no fault of his own into a state of severe irritation by assault or serious insult or as a result of domestic violence, gender-based violence against women by the murdered, will be sentenced from one to eight years in prison"* (Article 7).

For the first time, our Criminal Code criminalizes an action that is considered to have serious consequences on the health of girls and women, which is female genital mutilation. Article 129-a *"Mutilation of female genital organs"* is added to the Criminal Code: *"(1) Whoever, in whole or in part, performs mutilation, infibulation or any other type of mutilation of the female external genital organ, will be sentenced to imprisonment from six months to five years. (2) With the punishment prescribed in the paragraph (1) of this article will be punished the one who will force the woman to undergo the actions included in paragraph (1) of this article. (3) Whoever incites or helps a woman to undergo actions prescribed in paragraph (1) of this article, will be punished with a fine, or with imprisonment*

from six months to three years.(4) If the offense according to paragraphs (1), (2) and (3) of this article is committed out of hatred, or against a girl, or a serious bodily injury is caused to the woman, the perpetrator will be sentenced from one to eight years in prison.(5) If due to the criminal offense from paragraphs (1), (2), (3) and (4) of this article, the death of a woman or girl has occurred, the perpetrator will be sentenced to prison from one to ten years” (Article 8).

A change is also foreseen in the criminal offense “**Security threat**”, namely Article 144 is amended as follows: “(1) Whoever seriously threatens another to attack his life or body or the life and body of his relative with the purpose of fear or distress shall be punished with a fine or imprisonment of up to six months. (2) If the offense according to paragraph (1) of this article has caused a feeling of insecurity, endangerment or intimidation of the victim, the perpetrator will be punished with a fine or imprisonment for up to one year. (3) The one who will commit the offense according to paragraph (1) of this article while committing gender-based violence, violence against women or domestic violence or hate violence or violence against a person who is particularly vulnerable because of his age, his severe physical or mental disability or pregnancy, shall be punished by imprisonment of three months to three years.” (Article 15).

With the amendments approved in 2023, for the first-time criminal offenses such as “**Stalking**”, “**Sexual Harassment**” as well as “**Sexual Assault and Rape**” were foreseen, including when these actions are committed by a partner or former intimate partner. With the new changes, it is foreseen that it will be punished with a fine or a sentence of up to three years of imprisonment for whoever the court will prove that followed, harassed, mentally disturbed, mistreated or intimidated, in person or through written communication, as well as if he misused personal data. The penalty is greater if this offense is committed by a close person, or a current or previous intimate partner, as well as if the offense is committed against a child, the penalty may be up to 5 years in prison. Thus, the criminal offense “**Stalking**” Article 144-a is added to the Criminal Code: “(1)He who will repeatedly in an unauthorized manner follows, persecutes or otherwise interferes with the private life of another person or will create or insist on creating unwanted contact moving to the premises where that person is, with misuse of personal data, using the means for public information or other means of communication, or otherwise psychologically abuses, disturbs or intimidates him and thereby causes a feeling of insecurity, concern or fear for his safety or the safety of close people, will be punished with a fine or a prison sentence of up to three years; (2) If the offense according

to paragraph (1) of this article is committed against a person with whom the perpetrator is or has been in an intimate relationship or against a child, he will be punished with imprisonment from six months to five years; (3) The prosecution for the offense according to paragraph (1) of this article is initiated by proposal” (Article 16).

Up to one year of imprisonment is also provided for those who commit sexual harassment, regardless of whether they do so verbally or through physical coercion. A new criminal offense is added to the Criminal Code, Article 190-a, “Sexual Harassment”: *(1) The one who by verbal, non-verbal or physical action, as well as through the use of electronic means of communication, that have the direct or indirect, real or symbolic meaning of coercion, improper offer, seduction, expression of sexual passion or other action that clearly alludes to sexual intercourse or other sexual acts equivalent to it, and in this way will harm his dignity, causing the feeling of discomfort, annoyance, humiliation or fear, will be punished with a fine or imprisonment up to a year. (2) The one who will commit the offense according to paragraph (1) of this article against the person to whom he has a subordinate position or is in a relationship of dependence, the other person at work or in a public place or the person who is vulnerable due to age, illness, disability, drug addiction, pregnancy or severe physical or mental disability will be punished with imprisonment from six months to three years” (Article 23).*

In addition to the criminalization of sexual violence by a partner or former intimate partner, imprisonment sentences for sexual offenders have also been increased, and thus according to the approved changes, a prison sentence of 3-5 years is foreseen for sexual violence committed by the current or former intimate partner. Accordingly, Article 186 (until now named Rape) is changed to “**Sexual assault and rape**”: *“(1) The one who, contrary to the clearly expressed will of the other, evaluated in the context of the circumstances of the case, on him performs sexual intercourse or something else equivalent to sexual intercourse, which consists of vaginal, anal or oral penetration with any part of the body or object, or will force another person without his consent to have sexual intercourse or other sexual act with the third person, or to perform a sexual act on himself, will be punished with imprisonment from one to eight years.(2) If the offense according to paragraph (1) of this article is committed against a child who has reached the age of 15, the perpetrator will be sentenced to imprisonment for at least three years.(3) If the offense according to paragraph (1) of this article is committed with the use of force or threat to use the force or attack the other on his life or body or on the life or body of his relative, the perpetrator will be punished with*

imprisonment of three up to ten years.(4) With the punishment prescribed in paragraph (3) of this article will be also punished the one who commits the offense according to paragraph (1) on the other with a serious threat that he will reveal for him or the person close to him something that would damage the honor and his reputation or that would cause other serious harm.(5)If the offense according to paragraphs (3) and (4) of this article is committed against a child who has reached the age of 15, the perpetrator will be sentenced to imprisonment for at least eight years.(6) If due to the offense according to paragraphs (1) to (5) of this article a serious bodily injury, death or other serious consequences has occurred or the offense was committed by several persons or in a particularly rude or degrading manner or of hatred, the perpetrator shall be sentenced to imprisonment for at least ten years or life imprisonment.(7) Whoever, in the cases of paragraphs (1) to (5) of this article, commits only another sexual act that does not consist of vaginal, anal or oral penetration, will be punished for the offense according to paragraph (1) of this article by imprisonment from six months to three years, for the offense according to paragraph (2) of this article with a prison sentence of one to three years, for the offense according to paragraphs (3) and (4) of this article with a prison sentence of one to five years, and for the offense according to paragraph (5) of this article with a prison sentence of one to ten years.(8) If the offense according to paragraph (1) of this article was committed by the current spouse or ex-spouse or intimate partner, it will be punished with imprisonment of at least three years.(9) If the offense according to paragraph (3) of this article was committed by the current spouse or ex-spouse or intimate partner, it will be punished with imprisonment of at least five years” (Article 20).

Furthermore, changes have been foreseen in various paragraphs of other criminal offenses, where mainly in all cases where the criminal offense was committed within the framework of domestic violence, the notions of gender-based violence are also included.

CONCLUSION

There is no doubt that the reforms undertaken over the years in the Republic of North Macedonia legislation to prevent and combat domestic violence are adequate and necessary. However, the intensity with which these reforms were undertaken leaves a lot to be desired. North Macedonia is among the last countries in the region to adopt a special law on domestic violence in 2014. Furthermore, it took an absurd period of seven years to ratify the Istanbul Convention, as a basic and very important reform document. Likewise, changes to the Criminal Code have been announced since January 2021, but they have been stuck in the parliamentary procedure for two years. Nevertheless, we consider that with these changes in the Criminal Code, the Republic of North Macedonia has undoubtedly taken a very important step in the direction of toughening the repressive policy against domestic violence, gender-based violence and criminal offenses of sexual abuse.

The inclusion of economic violence, especially the criminalization and recognition of sexual violence, which can also be committed by intimate partners, is one of the main changes in the Criminal Code that we consider will contribute on improving the victim's position and providing the most adequate protection of her sexual integrity.

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