

ANALYSIS

OF THE LEGAL FRAMEWORK AND INSTITUTIONAL RESPONSE TO VIOLENCE AGAINST WOMEN



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OF THE LEGAL
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AGAINST WOMEN**



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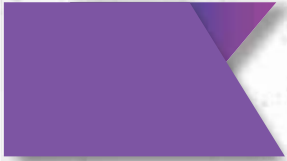


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GLOSSARY

ESE	Association for Emancipation, Solidarity and Equality of Women
PP	Public Prosecutor
CEDAW	Convention on Elimination of All Forms of Violence against Women
MLSP	Ministry of Labor and Social Policy
MI	Ministry of Interior
MJ	Ministry of Justice
MH	Ministry of Health
ICSW	Inter-municipal Center for Social Work
NAP	National Action Plan
UN	United Nations
PPO	Public Prosecution Office
TPM	Temporary protection measures against domestic violence
SIA	Sector of Internal Affairs
SOPs	Standard Operating Procedures
USAID	United States Agency for International Development
HIV	Human Immunodeficiency Virus
CSW	Center for Social Work



INTRODUCTION

Violence against women ¹ is defined as any act of gender-based violence resulting or being likely to result in physical, sexual or psychological harm or suffering of women, including threats for such acts, coercion or arbitrary deprivation of liberty in either public or private life of the woman. As such, it represents a form of discrimination against women, which seriously limits their rights and freedoms, i.e. their enjoyment on an equal basis with others. Seen historically over time and observing the situation regarding violence globally, women are still the ones who are most subjected to some kind of gender-based violence.

Given the seriousness and consequences of gender-based violence, public international law recognizes violence against women as a serious violation of human rights and requires an active approach by States to the promotion, protection and realization of the rights of women who have suffered violence. The so-called “principle of due diligence” sets the standards for action of relevant state institutions and holds the State accountable for the violence against women perpetrated by the State, state actors, and third parties ². More specifically, the principle of due diligence means meeting the obligations of the State in a number of fields, including: prevention of violence against women; protection of women who have survived violence; prosecution of violence perpetrators; punishment of abusers; and provision of compensation and other types of improvement of the situation of women who have suffered violence.

Thus, in terms of prevention of violence against women, it is particularly important for the State to address the root causes of the gender-based violence phenomenon, as well as the perception of society towards violence, including the elimination of existing traditional practices which require a subordinate position of women in society. Regarding the protection of women who have suffered violence, it is crucial for the State to ensure adequate legal, psychological, social, medical and other assistance and support for women, including the provision of free legal aid in civil litigation for imposing temporary protection measures or increasing the opportunities for the initiation and successful completion of these procedures by women who have suffered violence ³. An integral part of such protection is to ensure continuous and systematic education of those providing the protection and the basis for successful care provision, i.e. a multi-sectoral and coordinated approach in the provision of services specified. An effective investigation of the violence committed is crucial to eliminating violence against women in society. Therefore, the State shall ensure the implementation of a detailed and timely investigation and shall not delay the criminal procedure. In addition, the State shall take steps to strengthen the confidence of women suffering violence in the work of state institutions. In order to adequately address

¹ Definition of “**Violence Against Women**”, **United Nations Declaration on the Elimination of Violence against Women (1993)**. Violence against women shall include physical, psychological, sexual and economic violence against women, including: rape, sexual violence, domestic violence, trafficking, forced prostitution, forced marriage, sexual harassment etc.

² Due Diligence Framework: State Accountability Framework for Eliminating Violence against Women 2016, Due Diligence Project, <http://www.duediligenceproject.org/ewExternalFiles/Due%20Diligence%20Framework%20Report%20final.pdf>

³ Supporting survivors, The Economic Benefits of Providing Civil Legal Assistance to Survivors of Domestic Violence, Institute for Policy Integrity, New York University School of Law, 2015

violence against women, it is necessary to hold perpetrators liable and punish them. The imposition of legally prescribed penalties for perpetrators in accordance with the severity of their offence that will achieve the purpose of punishment, i.e. prevent repetition and perpetration of violence, is an obligation of the State in respect of this segment in the proceedings. Of no less importance is the provision of indemnification for women who have suffered violence according to the severity of their injuries and harm suffered. Thus, it is expected from the State to take the responsibility for compensation of damages caused as a result of violence perpetrated by abusers.

Driven by our commitment to monitor and alert on the situation regarding violence against women, together with our partners within the Women's Legal Protection Project (2014-2017) financially supported by the United States Agency for International Development (USAID), we have conducted an "Analysis of the legal framework and institutional response to violence against women" whose findings we are presenting in this publication. "The principle of due diligence" or the actions of state institutions in respect of all their segments in our country was the subject of our analysis. As you will notice from the analysis content, particular weight is given to the issue of access to justice for women suffering violence. This is because access to justice from the moment of violence commission until its court resolution is our present and future strategic orientation. Therefore, in this publication, you will encounter information providing a historical perspective of the development of legislation in respect of all types of gender-based violence and key findings regarding the protection such legislation prescribes, and what is even more important, which legal stipulations are implemented and how.

On this occasion, we would like to thank everyone who has helped us in the implementation and preparation of this analysis, especially women who have suffered various forms of violence and participated in the focus groups and unselfishly shared their experiences with us. We also express our gratitude to the representatives of state institutions, which for the purposes of this analysis, answered the questions put forth by us and thus contributed to the assessment of the situation.

Finally, we would once again like to point out that we will use the findings of this analysis to affirm the necessity of establishing a gender-sensitive legal system based on international treaties to which our country is also a party. We would just like to remind of the fact that the Committee responsible for monitoring the implementation of the Convention on Elimination of All Forms of Discrimination against Women requires from the States to ensure legal systems that shall respond and adapt to local needs and conditions; systems that are dynamic, participatory, open to innovative practical measures, gender-sensitive and which primarily take into account the growing demand for justice on the part of women.

METHODOLOGICAL SET-UP

The contents and findings of this analysis are based on data and information collected through a number of methodological procedures, including:

- Legal framework analysis;
- Analysis of findings from interviews with experts whose mandate is to act in cases of violence against women; and
- Analysis of findings from focus groups conducted with women who have suffered various types of gender-based violence (domestic violence, human trafficking, sex workers).

With the legal framework analysis we aimed to identify the gaps and possibilities for improvement of the legal framework for protection of women against different types of violence. As you will notice from the analysis content, 21 relevant pieces of legislation, including strategies and regulations governing or being used with regard to some kind of violence were analyzed.

In order to provide in-depth information about the actions of institutions taken in regard of different forms of violence against women (domestic violence, human trafficking, violence against sex workers), we have developed three types of questionnaires and conducted interviews with representatives of responsible government institutions (responsible managerial persons, persons working directly with women survivors of violence - professionals and persons responsible for providing free legal aid). Namely, we conducted interviews with seven senior officials responsible for dealing with violence against women from the line ministries, including four representatives of the Ministry of Labor and Social Policy; one representative of the Ministry of Interior and two representatives of the Ministry of Justice. The Ministry of Health did not respond to our invitation for an interview and for this reason, they are not part of this research. Besides senior officials, we also conducted 16 interviews with professionals, focusing on their actual handling of violence-against-women cases. For this purpose, special questionnaires were prepared for professionals responsible to act in cases of domestic violence and human trafficking. Because there are no professionals who have exclusive authority to handle cases of violence against sex workers, the questions for this group of women survivors of violence were included in the questionnaire intended for the police representatives, so these people were asked the questions accordingly. Out of 18 professionals interviewed in institutions, three inspectors for domestic violence and juvenile delinquency were interviewed at the Sectors of Internal Affairs in Kumanovo, Shtip and Bitola; three representatives working on domestic violence at the Centers for Social Work in Skopje, Bitola and Shtip; one representative dealing with human trafficking at the Center for Social Work - Skopje; one representative of the Unit for Combating Trafficking at the Ministry of Interior; five prosecutors working on domestic violence from the Basic Public Prosecution Offices in Skopje, Shtip, Bitola, Tetovo and Kumanovo; two judges dealing with criminal matters related to domestic violence from Basic Courts in Bitola and Shtip and three judges working on civil matters related to domestic violence from Basic Courts in Tetovo, Skopje and Bitola. In terms of how the right to free legal assistance is enabled to women survivors of violence, questionnaires were prepared for the representatives of the Department of Free Legal Aid and Regional Offices of the Ministry of Justice. Four representatives from Regional Offices in Tetovo, Shtip, Bitola and Kumanovo were interviewed for the purposes of this analysis.

In order to obtain qualitative data based on the experience of women who have suffered violence and who have referred to various institutions for help and protection, a number of focus groups were organized. For these focus groups, scenarios were prepared regarding the focus group discussions. These scenarios included a series of aspects in terms of access, assistance and sensitivity of professionals responsible to provide assistance and support to women survivors of violence. For this analysis, two focus groups were conducted with survivors of domestic violence, of which the first in Skopje (eight women attended this focus group) and the second in Tetovo (five women attended this focus group). One focus group was conducted with women who have suffered human trafficking and it was attended by five women survivors of this type of violence, while two focus groups were conducted with sex workers, and they were attended by a total of 15 sex workers.

The methodological tools (questionnaires for experts and scenarios for focus groups) for the purposes of this analysis were prepared by ESE and partner organizations Open Gate - La Strada and the Coalition "Sexual and Health Rights of Marginalized Communities". As regards the time-frame, the analysis of legislation on violence against women was prepared and the five focus groups were realized in 2016, as well as the 29 interviews with representatives of state institutions, while the analysis was drafted in 2017.



CONCLUDING FINDINGS AND RECOMMENDATIONS REGARDING THE IMPROVEMENT OF LEGAL FRAMEWORK AND INSTITUTIONAL ACTION RELATED TO VIOLENCE AGAINST WOMEN

GENERAL RECOMMENDATIONS REGARDING VIOLENCE AGAINST WOMEN (Data Collection System)

The State shall improve the system for collecting data on violence against women, i.e. provide data disaggregated by type of violence, such as domestic violence, human trafficking, violence against sex workers, harassment in the workplace and other forms of violence against women, as well as by the relationship between the perpetrator and the victim.

(Continuous and Systemic Education and Professional Training of Professionals)

There is a need for continuous capacity building of judges regarding their application of domestic and international law relating to the protection of women who have suffered violence, focusing on the United Nations Convention on the Elimination of All Forms of Discrimination against Women.

It is necessary to organize thematic forums and conferences for judges to discuss case-law regarding cases of violence against women, and define recommendations for improvement of such case-law.

Training of judges is required to sensitize them to the problems and needs of sex workers in order to improve their actions in cases where the rights of sex workers are infringed.

There is a need to organize conferences and education events to increase the sensitivity of authorized police officers, with a special emphasis on the specific problems and needs of sex workers who are much more exposed to different forms of violence.

It is necessary to establish a mechanism for regular consultation of professionals in the preparation and adoption of legal provisions relating to the protection of women who have suffered violence.

There is a need for specialization of prosecutors working on issues of violence against women and provision of education accordingly, thus enabling them to make better decisions in their action.

(Access to Justice and Legal Aid)

It is necessary to provide assistance and support to women who have suffered violence in parallel with court proceedings for protection by improving the existing and establishing new services.

The State shall ensure effective access to legal aid for women who have suffered violence, including legal assistance for the provision of the right to indemnification by engaging legal representation for women, and especially equal treatment and access to justice for sex workers in cases where they are victims of violations of their rights and are accused of committing a crime or misdemeanor.

The State shall set up a special Fund earmarked for women victims of violence in order to cover their cost for legal fees and for the provision of evidence in court proceedings.

It is necessary to allocate funds to support the work of civil society organizations providing free legal assistance and representation for women who have suffered violence.

LEGAL FRAMEWORK ON VIOLENCE AGAINST WOMEN

(Domestic Violence)

It is necessary to establish a separate registry for cases related to domestic violence in trial courts. For this purpose, it is necessary to supplement the Court Rules of the Ministry of Justice and introduce a special register in the existing ACCMIS system.

It is necessary to amend the Criminal Code regarding the manner of prosecuting the criminal offense of “bodily injury”, Article 130 paragraph 4, such that instead of prosecuting this offence by a proposal, i.e. written consent of the victim, it shall be prosecuted ex officio.

It is required to extend the deadline provided by the Law on Prevention and Protection from Domestic Violence for the preparation of documentation (police report) related to the imposition of the temporary protection measure “Removing the perpetrator from the home and restraining order to approach the home” from the current period of 12 hours to a period of 24 hours.

The provisions for misdemeanor liability stipulated in the Law on Prevention and Protection from Domestic Violence regarding the disregard of TPMs imposed by the court should be repealed, because their disregard is a separate criminal act, i.e. contempt of court decision.

Action of institutions participating in the implementation and monitoring of temporary protection measures imposed should be enhanced, i.e. it is necessary to adopt rules for action of judges in procedures for imposing temporary protection measures.

A Protocol on Implementation and Monitoring of Temporary Protection Measures for Women Who Have Suffered Violence should be developed and adopted by all institutions.

(Trafficking in Human Beings)

There is a pressing need to adopt a Law on a State Fund for Indemnification of Human Trafficking Victims and to establish such fund, thus enabling the realization of the right to indemnification in cases where such indemnification can not be collected from the perpetrator (this particularly refers to adult victims of trafficking).

(Sex Work)

There is a need to repeal the provisions of the Law on Misdemeanors against Public Order and Peace and Criminal Code that punish women who are voluntarily engaged in sex work.

(Free Legal Aid)

It is necessary to revise the legal requirements for exercising the right to free legal assistance, especially regarding the use of social cash benefits and possession of personal property or income, due to which legal aid requests are usually rejected and also the request for providing a certificate from competent institutions such as the CSW or the police, for women who have suffered domestic violence.

It is required to increase the scope of legal services provided to free legal aid users stipulated by the Law on Free Legal Aid, that is, in situations where victims lack financial means to pay for the cost of court fees and evidence collection (expert testimonies), they shall be exempted from payment.

It is necessary to introduce new shorter deadlines in the Law on Free Legal Aid regarding the decision in urgent proceedings, such as civil procedures for imposition of temporary measures of protection against domestic violence. The principle of urgency shall be ensured by introducing changes in the eponymous law, thus shifting the first-instance decision-making to the competence of Regional Offices of the Ministry of Justice, while the appeal proceedings shall take place at the ministerial level in order to ensure more effective protection of women who have suffered violence.

ACTION OF INSTITUTIONS WITH REGARD TO VIOLENCE AGAINST WOMEN

(Domestic Violence, Criminal and Civil Justice System of Protection)

In order to improve the action of criminal justice actors and provide adequate and timely protection for women who have suffered domestic violence, it is required to:

Establish appropriate mechanisms for systematic monitoring and analysis of the situation and trends in domestic violence incidence by the Ministry of Interior, including records on repeated domestic violence reports and on withdrawn and re-submitted proposals for criminal prosecution by victims regarding the criminal act of bodily injury under Article 130 para. 2 against the same perpetrator.

Provide specialized education to police officers in relation to the recognition of domestic violence manifestation forms, especially with a focus on psychological and sexual violence; making a distinction between cases of domestic violence and cases related to violation of public order and peace, and education in terms of assessing the security risk of women who have suffered domestic violence.

Strengthen the capacity of the police in terms of their role in the immediate implementation of the temporary protection measure “removal from the home and restraining order to approach the place of residence”.

Ensure adherence to legal provisions and protocols for calling an ambulance and providing health care to women who have suffered domestic violence.

Increase human capacity in some Sectors of Internal Affairs.

Immediate and effective actions by the police and an appropriate and humane treatment of women who have suffered violence.

Multi-sectoral action and coordination of relevant institutions in domestic violence cases, especially in urgent cases, i.e. within 24 hours of the reporting, after regular business hours, on weekends and holidays.

Organize expert discussions between the criminal justice protection system actors regarding criminal aspects of protection against domestic violence, particularly in relation to criminal prosecution ex officio and penal policy.

Quality management of pre-trial investigative procedure by the public prosecutor, and preparation of quality charges of criminal offense as a result of domestic violence.

Explore options for avoiding secondary victimization of victims in court proceedings.

In order to improve the action of civil law actors, i.e. provide protection and prevention of domestic violence, it is required to:

Make changes in the organizational structure of all Social Work Centers, i.e. establish separate Domestic Violence Departments within them.

Introduce a social worker on duty, who will be available 24 hours for support in domestic violence cases.

It is necessary to urgently implement the legal responsibility of the Ministry of Health to provide free health services and issue medical documents to women who have suffered domestic violence. This Ministry should take the necessary measures to effectively implement the temporary protection measure of “mandatory treatment of domestic violence perpetrators”.

Introduce a judge on duty after regular business hours, on weekends and holidays, who will act on urgent domestic violence cases, i.e. in civil proceedings for imposition of temporary measures of protection.

Hold offenders who do not comply with the imposed temporary protection measures criminally liable.

Assign all civil actions relating to one domestic violence case to the same judge, for example, the divorce procedure, adjudging the children and the procedure for imposing temporary measures of protection against domestic violence.

(Trafficking in Human Beings)

Ensure consistent compliance with legal provisions relating to protection measures for victims and witnesses of human trafficking.

There is a need to organize joint training for all professionals acting in cases of human trafficking (judges, prosecutors, defense attorneys, counsels of injured parties) in terms of proper and consistent application of legal provisions relating to the protection of trafficking victims' rights during court proceedings, proper identification of victims of trafficking, and proper respect for their rights during proceedings.

Make sure that all assistance and protection measures stipulated in the relevant policies, programs and legislation are implemented in practice.

Appoint police officers who will deal with human trafficking victims at the local level, as well as adequately build their capacities for timely and effective identification, protection and treatment of human trafficking victims.

Ensure a higher level of integration of human trafficking victims and their inclusion in the labor market by intensifying the efforts of the local community, municipalities, schools and businesses to participate in the assistance, protection and reintegration of these victims through their own resources.

(Sex Work)

Institutions shall refrain from actions that violate the rights of sex workers.

Police officers shall record the reports of violence by sex workers and take urgent and effective action to protect their rights without harassment and condemnation.

Ensure consistent application of laws in court proceedings regardless of whether sex workers are in the role of defendants or victims.

(Free Legal Aid)

It is necessary to increase both human and technical capacities of the Ministry of Justice Regional Offices, in particular, to hire professional jurists who have passed the bar exam, which is a legal criterion.

Increase the budget for free legal assistance provision in order to meet the legal needs of persons requiring this type of assistance.

LEGAL FRAMEWORK FOR INSTITUTIONAL ACTION IN TERMS OF DIFFERENT TYPES OF VIOLENCE AGAINST WOMEN AND PROVISION OF FREE LEGAL AID

DOMESTIC VIOLENCE

National Strategy and Protocols

There is no valid strategic document on domestic violence in place, adopted by the Government of the Republic Macedonia, which would represent continuity in the commitment of the State and thus, the line ministries, to a functional and effective response to domestic violence. The first domestic violence strategy was adopted by the Government of the RM in 2008, thus making the State to create the first time ever strategic framework for combating and preventing domestic violence in our country. The preparation of this document was initiated and led by ESE Association, including an inter-sectoral group of a number of government officials and civil society organizations. This strategy included seven specific strategic objectives leading to the realization of a general goal, i.e. reducing the incidence and improving the quality of protection through systemic measures in the areas of prevention, intervention, education, monitoring and inter-sectoral coordination for effective and efficient action in tackling domestic violence. Following the adoption of the strategy, in 2008, ESE, in partnership with line ministries, prepared individual protocols for coordinated actions by competent institutions⁴, such as the Ministry of Labor and Social Policy, Ministry of Interior and the Ministry of Health. The second and final strategy was the 2012-2015 National Strategy for Prevention and Protection against Domestic Violence. The main strategic goal of this strategy was: Improvement of prevention measures, extensive recognition and enhanced protection for victims of domestic violence through a coordinated multi-sectoral approach at both national and local levels. The main strategic goal was implemented through five strategic areas and related activities, including: prevention, protection, assistance and support to victims; prosecution of perpetrators; multi-sectoral cooperation; improving institutional capacities and specialized services; and implementation, monitoring and evaluation. In August 2015, the Government of the RM adopted a Common Protocol for Action in Domestic Violence Cases.

Domestic Violence Legal Regulation

This part of the analysis gives a chronological overview of domestic violence legal regulation from 2004 to today. Legal regulation and the definition of domestic violence is not of a recent date. Namely, in 2004, domestic violence was defined in the Criminal Code and Family Law for the first time.

Domestic violence in the Criminal Code⁵ is defined as *harassment, rude insulting, endangering one's security, bodily harm, sexual or other psychological or physical violence that causes a feeling of insecurity,*

⁴ Available on http://www.semejnonasilstvo.org.mk/Root/mak/default_mak.asp

⁵ Criminal Code, Article 122, Official Gazette of the RM no. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014, 199/2014, 196/2015, 226/2015 and 97/2017.

threat or fear in one's spouse, parents or children or other persons living in wedlock or out of wedlock or in a shared household, as well as against a former spouse or persons who have a child together or are in close personal relationships.

The Criminal Code does not regulate domestic violence as a separate crime, but the actions of domestic violence (physical, sexual and psychological violence) are subject to incrimination by incorporating them into the existing crimes: Murder, Art. 123 para. 1 item 2; Momentary murder, Art. 125; Bodily injury, Art. 130 para. 2; Grievous bodily harm, Art. 131, para. 2 and para. 6; Coercion, Art. 139 para. 2; Unlawful deprivation of liberty, Art. 140 para. 2; Endangering safety, Art. 144 para. 2; Rape, Art. 186; Sexual intercourse with a helpless person, Art. 187; Sexual assault against a child under 14 years of age, Art. 188; Sexual intercourse by using abuse of office, Art. 189 para. 2 and Solicitation in prostitution, Art. 191 para. 3. The main feature of the criminal justice system is the stricter penal policy reflected in stiffer penalties prescribed for offenses committed during domestic violence and prosecution of these crimes *ex officio*. This way, in accordance with its incidence, nature and effects, domestic violence is separated from other types of crime.

The amendments to the Family Law in 2004 ⁶ established the basis for the operation of the system for protection of domestic violence victims by stipulating the **protection measures** (accommodation in a shelter for persons who are victims of domestic violence; adequate health care; appropriate psycho-social intervention and treatment; psycho-social counseling treatment; family assistance for regular schooling of a child; legal assistance and representation) and the mandate of the Social Work Centers for adequate and timely service provision. The protection measures envisaged shall be taken to prevent further violence and help victims to overcome the consequences of the violence they experienced, as well as create conditions for victims' integration in society after the completion of their treatment. In addition, by regulating the procedure for proposing, imposition and implementation of **temporary protection measures** ⁷ in terms of domestic violence, there was a possibility created for the court, in an urgent procedure, to impose temporary measures aimed at stopping the existing violence and preventing any future violence. In order to operationalize some of the legal possibilities in the Family Law, in 2007, a Rulebook was adopted on the implementation and monitoring of measures imposed to protect domestic violence victims and implemented by the Center for Social Work, and the manner of monitoring the measures imposed by the court.

After the initial regulation of domestic violence in the Family Law, in 2008 ⁸, the definition of this phenomenon was harmonized as in the criminal legislation. In addition, there was a regulation of the manner of providing protection measures for domestic violence victims by civil society organizations, as well as the possibility for the victim to file a proposal to the court to impose a temporary protection measure.

⁶ Law Amending the Family Law, Official Gazette no. 38/2014

⁷ 1. Prohibition to threaten committing domestic violence; 2. Prohibition of harassing, disturbing, telephoning, contacting or otherwise communicating with a family member, either directly or indirectly; 3. Restraint Order of less than 100 meters to the home, school, workplace, or certain places regularly visited by another family member; 4. Removal from the home regardless of ownership; 5. Prohibiting the possession of a firearm or other weapon or being deprived thereof; 6. Mandatory return of items required to meet the daily needs of the family; 7. Mandatory legal alimony; 8. Mandatory attendance of adequate counseling; 9. Mandatory treatment of the perpetrator, if they abuse alcohol, drugs and other psychotropic substances or suffer from a mental disorder; 10. Mandatory reimbursement of any medical and other expenses caused by domestic violence; 11. The imposition of any other measure that the court considers necessary to ensure the safety and well-being of other family members.

⁸ Law Amending the Family Law, Official Gazette no. 84/2008.

In 2014, a separate Law on Prevention, Combating and Protection against Domestic Violence was adopted⁹. For the first time, this Law specifically lists the obligation to include a number of institutions in the system of protection against domestic violence¹⁰, but unfortunately, without taking any account of their basic assumptions that they should implement in practice. The Law also provides for the establishment of a multi-sectoral team composed of the CSW, the police and health institutions for the purpose of coordinated action in domestic violence cases. The Law also requires keeping separate compulsory records of domestic violence cases by competent institutions. The new legislation introduces urgent action by the police, Centers for Social Work (CSWs) and civil courts in situations of serious threat to the life and health of the victim and family members.

The civil protection system, i.e. the proposal, imposition and enforcement of temporary protection measures against domestic violence in the new Law are crucial in providing immediate protection to domestic violence victims. Therefore, the section below justifies the actions of the Center for Social Work, Civil Court and the police in domestic violence cases, focusing on the protection provided through temporary protection measures.

Action of Centers for Social Work in the Provision of Assistance and Support to Domestic Violence Victims

Social Work Centers have explicit jurisdiction in providing **protection measures to domestic violence victims**, and in initiating proceedings for the imposition of temporary protection measures and monitoring their implementation. After domestic violence is reported, CSW shall immediately or within 24 hours, assess the needs of the woman who has suffered domestic violence, i.e. draft an Individual Work Plan while taking into account the nature of the violence, its intensity, duration, health and family status and all other circumstances relevant to the respective case.

After domestic violence is reported, measures shall be taken to protect the woman who has suffered domestic violence and help her deal with the effects thereof. Protection measures shall be provided according to the needs in each individual domestic violence case, and they shall be used to provide immediate assistance and support to the woman and to empower her. In this regard, it is primary to provide **psycho-social assistance and support** for all women immediately after reporting the violence. Also, it is necessary to **inform and advise** women survivors of domestic violence on the legal mechanisms available to them and competent institutions providing protection, as well as to provide **free legal aid and representation** before competent courts. In order to recover from the injuries and other health problems resulting from domestic violence, it is required to provide **free health care**, i.e. free provision of health services and issuance of medical documents. In situations of serious threats to the life and health of women and their children, CSWs shall arrange for **accommodation, i.e. placement in a shelter**. In cases including a child, contact with relevant educational institutions shall be established to enable **the child to engage or continue attending regular education**. To overcome the financial dependence and ensure employment of women survivors of domestic violence, CSW shall, through the Employment Service Agency, ensure their **economic empowerment**, i.e. involvement in active employment programs and measures.

⁹ Law on Prevention, Combating and Protection against Domestic Violence, Official Gazette of the RM no. 138/14, 33/2015 and 150/2015.

¹⁰ Local Government Units, Centers for Social Work, the police, health facilities, educational institutions, civil society organizations.

To ensure the protection measures, a Professional Team composed of lawyers, pedagogues, psychologists and social workers shall be engaged. In situations of serious threats to the life and health of women survivors of domestic violence and their family members, as well as in situations when the victim of domestic violence is a child, CSWs shall contact the police and health facilities, followed by a multi-sectoral team that shall draft a Security Plan for the domestic violence victim.

The Center for Social Work shall submit a **proposal for imposition of temporary protection measures** to the court, whenever this is required to provide immediate protection for domestic violence victims and prevent violence recurrence. The preparation of the proposal for imposition of TPMs shall be based on an assessment of the type and level of violence, the circumstances in which such violence occurred and the possibilities of its continuation or recurrence. To initiate a civil lawsuit of this type, CSW shall require a written consent from the woman survivor of domestic violence. Usually, CSW shall propose a cumulative imposition of a number of TPMs in order to provide comprehensive and effective protection of domestic violence victims. The following section elaborates the special temporary protection measures that may be proposed by the CSW:

In a situation where the abuser is threatening to commit domestic violence and if there is a danger of repeated violence, the CSW shall propose to the court to issue a **prohibition on such domestic violence threatening**. If however, the CSW is aware that the abuser harasses the woman, i.e. stalks her, phones her or otherwise communicates with her, it shall submit a proposal to impose a **ban on abusing, harassing, telephoning, contacting or otherwise communicating with the woman**. If the woman leaves the abuser because of the violence suffered and there is a danger that he will commit violence against her again, the CSW shall submit a proposal to the court to impose a **ban on the perpetrator to approach the residence, school, workplace, or another place regularly visited by any other family member**. In order to protect the woman and her children in their home, CSW shall submit a proposal **to remove the abuser from the home regardless of ownership**. If however, the CSW is aware that the abuser possesses firearms or other weapons, it shall immediately submit a proposal for imposing a **ban on carrying firearms or confiscation thereof**.

In a situation where the woman who suffered domestic violence has left the violent community, but failed to take her personal belongings, documents, clothing, money and other necessary items from her home, CSW shall propose **that the perpetrator shall return the items required to meet the daily needs of the family**. The Center for Social Work may also propose the imposition of the measure for **mandatory household support** in a situation where the woman suffering domestic violence and her family members do not have the income to support themselves and fulfill their everyday needs. Also, in order to prevent or remedy the abusive behavior, the Center may propose a measure where **the domestic violence perpetrator shall attend adequate counseling, i.e. a program dealing with abusers**. If domestic violence was committed under the influence of alcohol, psychotropic substances or if the perpetrator has some mental disorder, CSW shall propose **compulsory treatment for the perpetrator**. **Reimbursement of medical and other expenses caused by domestic violence** shall be proposed by the CSW when such violence resulted in victim's medical and other costs incurred because of the injury or damage suffered. In addition, the court may propose the imposition of any other measure it deems necessary to ensure the safety and well-being of other family members and depending on the domestic violence survivor's needs, including: return of other non-personal items; ban on the sale of items and property; disabled access to business premises; blocking of bank accounts, savings accounts etc.

After the imposition of temporary protection measures by the court, the Center for Social Work shall monitor their implementation by the relevant institutions. For this purpose, contact shall be established with the woman surviving the domestic violence and her close relatives, with competent institutions and civil society organizations, as well as take all other necessary actions in this regard. Monitoring of measures shall be regularly recorded, and a report shall be drafted thereon, including findings and opinion to be submitted to the competent court. In this regard, the CSW may ask the court to repeal or modify or extend the temporary protection measures.

Actions of Civil Judges in Proceedings for the Imposition, Implementation and Monitoring of Temporary Measures of Protection against Domestic Violence

Court proceedings for imposition of temporary protection measures start by initiating **a proposal to impose TPMs by the competent Center for Social Work, a police officer or by the woman who has survived domestic violence**. The woman survivor of domestic violence who has personally submitted the proposal for TPM imposition is exposed to greater financial costs since she has to pay the court fees herself, and collect the evidence required. Given the sensitivity of issues addressed within this process, the public shall not attend the court hearings for TPM imposition ¹¹.

It is an urgent court procedure with short legal deadlines, which should ensure quick protection of women, i.e. immediate action in terms of TPMs and their imposition within 7 days of receipt of the application by the trial court. In a situation where there is a serious threat to the life and health of the woman survivor of domestic violence or a family member, the court shall, upon a motion by the police, within 24 hours and without holding a hearing, and without the presence of the domestic violence perpetrator, issue the measure “removal of the perpetrator from the home and a restraining order to approach the home”. In the same situation, CSW can also submit a proposal to impose TPMs (findings and opinion), where the court shall, without holding a hearing and without the presence of the perpetrator, within 24 hours, impose the measures sought by the CSW. Although the law does not regulate deliberation of judges during holidays and weekends, when the court does not work, it will be required to introduce a duty judge in practice in order to observe the short deadlines for imposing TPMs without a hearing and within 24 hours.

The court hearing for TPM imposition shall be attended by the woman surviving the domestic violence, the domestic violence perpetrator and a CSW representative, in cases where this institution has submitted the proposal for imposing TPMs. It is important to note that the court must impose temporary protection measures whenever there is a risk of domestic violence repetition by the abuser.

After the TPM imposition by the judge, such measures shall be implemented immediately, regardless of whether the domestic violence perpetrator has appealed the judge’s decision. After the imposition of measures, the judge shall notify the institutions responsible for implementation and monitoring of TPMs thereon. In terms of the measure imposed on a proposal by the police, relating to the “removal of the perpetrator from the home and a restraining order to approach the home”, the judge shall submit his/her decision to the competent police station within 6 hours, and then, the police shall submit it to the

¹¹ As an exception and with the permission of the judge, court hearings may be attended by scientific workers and professionals proposed by the parties in the procedure.

domestic violence perpetrator within 12 hours of its receipt. A copy of this decision shall be submitted by the judge to the competent Public Prosecutor's Office and CSW. When imposing temporary measures for protection against domestic violence, the judge shall submit a copy of his/her decision to the woman surviving the domestic violence, the domestic violence perpetrator, CSW and the institution responsible for the enforcement of TPMs issued.

If the perpetrator is unavailable, i.e. if the decision can not be served on him, the judge shall publish the decision on the bulletin board of the trial court. If the domestic violence perpetrator does not want to leave the place of residence voluntarily, the police shall, within 2 hours after the submission of the decision or its publication on the bulletin board in the court, remove the perpetrator from the home.

After the imposition of TPMs, the judge may, on a proposal by the CSW or the woman who has suffered domestic violence, continue, cancel or modify the temporary protection measure imposed.

Police Actions in Initiating and Implementing the Measure "Removal of the Perpetrator from the Home and Restraining Order to Approach the Home"

In cases of serious and immediate jeopardy to the lives and health of victims and family members, after reporting the violence, the police officer shall immediately visit the home and assess the risk and threat of violence repetition. The police shall prepare a report on their actions and proposal taken to impose the "removal of the perpetrator from the home and a restraining order to approach the home", which shall be submitted to the competent court within 12 hours of such intervention.

When visiting the home, the police shall ensure the provision of health care to the victim and confiscate the weapons owned by the perpetrator of domestic violence. Within 12 hours of such intervention, the police must notify the CSW on the respective case.

Criminal justice protection of women surviving domestic violence, i.e. the effective detection, initiation and conduct of criminal proceedings and rendering decisions regarding the sanctioning of domestic violence are regulated by the Criminal Code, the Criminal Procedure Law and the Law on Determining the Type and Level of Sanctions. Each of the institutions in the criminal justice system responsible for protection (Ministry of Interior, Basic Prosecution Offices and Basic Courts) has a specific mandate at certain stages of criminal prosecution and its role is greatly emphasized. The specific action of the police is further regulated by the Law on Police, the Law on Misdemeanors against Peace and Public Order in Macedonia¹², as well as a number of bylaws¹³. The following section explains the actions of the police, public prosecutors and criminal judges in cases of domestic violence.

Actions by the Police

The primary role of Sectors of Internal Affairs, as organizational units within the Ministry of Interior, is to act upon charges for domestic violence committed, protect women surviving domestic violence,

¹² Law on Misdemeanors against Peace and Public Order, Official Gazette of the Republic of Macedonia no. 66/2007 152/2015.

¹³ Rulebook on performing police duties, Official Gazette, no. 149/2007; Rulebook on assessment of the risk to life and physical integrity of a domestic violence victim and the risk of violence repetition, adequate risk management, the police report form and the proposal to impose a temporary protection measure - removal of the perpetrator from the home and a restraining order to approach the home, Official Gazette of the RM no. 28/2015; Rulebook on execution of temporary measures imposed to protect victims of domestic violence and members of their family, Official Gazette of the RM no. 28/2015; Police Code of Ethics, Official Gazette of the RM no. 72 of 11 June 2007.

suppress and prevent violence, and detect perpetrators, as well as initiate proceedings against them. In fact, actions of police officers in cases of domestic violence begin by obtaining or collecting information on domestic violence from citizens, state bodies or legal entities. The duty police officer to whom the case was reported shall personally assess the seriousness of the case and provide information and data on: the perpetrator, the woman suffering domestic violence and other family members present; possible threat to the health and life of the woman and another family member; injured persons and the need for medical assistance; use of firearms or other object or threat to use them; whether violence is still ongoing at the time of reporting; whether the perpetrator is present in the home of the woman at the time of reporting or has left the home. If from the assessment made, the duty police officer establishes that it is an emergency, he/she shall inform the party to come to the local police station and report the event that has occurred ¹⁴.

In case of emergency, at least two police officers shall go the ground, and they shall take measures to prevent the perpetrator from further violence commission and also to assess the risk to the life and physical integrity of the woman going through domestic violence and the risk of violence recurrence. After going to the scene and after assessing the risk, the police officers shall prepare a police report of their intervention on the domestic violence reported, within 12 hours of the intervention on the scene. After receiving or collecting the information required on the domestic violence committed, the police officer shall prepare a report or an official note regarding the charges filed.

By this predetermined way of action (assessing the risk of violence and preparing the police report), police officers are crucial filters in the qualification of domestic violence acts, which will further direct the processing of the case, i.e. whether the application will result in criminal charges filed to the competent public prosecutor, or it will be recorded as either a complaint or misdemeanor.

According to the domestic violence statistics maintained by the Ministry of Interior regarding criminal charges filed, complaints and misdemeanors related to domestic violence, one can note a growing trend in the number of criminal charges and complaints made in connection with domestic violence, within the period from 2004 to 2014 ¹⁵. So, in 2014, the Ministry registered 901 criminal charges, which is about six times more than in 2004, when 149 criminal charges for domestic violence were recorded. An increasing trend is also observed regarding the domestic violence complaints, so in 2014, 4482 complaints were recorded, which is almost twice the number of complaints registered in 2004, when 2434 complaints were recorded. In addition, there is a high proportion of complaints compared to the number of criminal charges, so in the first seven-year period, the number of complaints was approximately ten times higher than the number of criminal charges for criminal offenses related to domestic violence, while in the last three years, this number is approximately five times higher.

Actions by the Public Prosecutor

The public prosecutor has a leading role during preliminary proceedings, i.e. after receiving the criminal charges or a notice from the police. His/her main powers are related to detection of crimes and their perpetrators and collection of evidence for their prosecution. After receiving the criminal charges

¹⁴ Joint protocol for action in domestic violence cases, Ministry of Interior, p. 61. Available on: http://www.mtsp.gov.mk/content/pdf/Protocol_MKD.pdf

¹⁵ Ministry of Interior, available on: <http://www.mvr.gov.mk/analizistatistiki/site>

or learning about the grounds for suspicion of a committed criminal offense prosecuted ex officio, the police shall promptly inform the public prosecutor ¹⁶.

Upon receipt of criminal charges, the public prosecutor shall immediately take procedural action to the allegations in the application, i.e. secure evidence for a successful criminal procedure. The public prosecutor may request these actions from the police employees or other authorities competent for disclosure of crimes that shall, within 30 days, inform the prosecutor on the actions taken.

Criminal charges are most often based on the statement by the woman who has suffered domestic violence, so the PPO shall notify the applicant, i.e. the woman, and take her statement. At the same time, the prosecutor can summon the suspect and other persons and witnesses whose knowledge may contribute to the assessment of the credibility of the allegations in the application.

One of the legal possibilities to complete the preliminary investigation is to render **a decision to dismiss the criminal charges** ¹⁷. So, if the public prosecutor issues a decision to dismiss the domestic violence criminal charges filed by the police, such criminal charges shall not be further processed. In this regard, it is important to note that based on the data provided by basic courts ¹⁸, it was found that during the prosecution procedure, 21% to 32% of criminal charges for domestic violence are rejected ¹⁹. Of the rejected criminal charges though, an average of 44% result from withdrawal of the criminal prosecution motion by the victim for the crime of bodily injury in domestic violence ²⁰. It is clear that regarding the crime of bodily injury in domestic violence, either directly or indirectly, whether by the perpetrator or by some close relative, the woman surviving the domestic violence is forced to withdraw her motion, thus leaving the domestic violence perpetrator free of trial and punishment.

This situation in which the woman who has survived domestic violence withdraws the proposal to prosecute the perpetrator of a bodily injury committed in domestic violence stems from the way prosecution of this crime is regulated. Namely, the penal policy of our country in terms of “ex officio” (prosecution) of all crimes related to domestic violence has remained inconsistent with the exclusion of the principle of formality ²¹ in respect of the offense of bodily injury in domestic violence. Hence, if there is no motion for prosecution, or it is withdrawn by the woman who has suffered domestic violence, the public prosecutor’s office will have no legal assumptions to prosecute and act on such criminal charges. Apart from withdrawal of the proposal, a very common reason for rejecting the criminal complaint is the lack of suspicion that the person reported has indeed committed the crime due to a lack of sufficient evidence (such as lack of appropriate medical documentation that would corroborate the type and nature of the domestic violence injury, lack of photo documentation regarding any visible harm or other evidence).

¹⁶ Criminal Procedure Law, Official Gazette of the RM no. 150/2010, 100/2012 and 142/2016, Article 282

¹⁷ Public Prosecutor shall dismiss the application if from the application itself can be derived that the case reported is not a criminal offense prosecuted ex officio, if it received a statute of limitation or it is included in an amnesty or pardoning, if there are other circumstances that preclude prosecution thereof or if there is no reasonable suspicion that the person reported has committed the crime.

¹⁸ Base line data were provided under the USAID Women’s Legal Protection Project, by the following trial courts: Basic Courts of Skopje, Kumanovo, Kichevo, Kriva Palanka, Ohrid, Prilep, Struga, Bitola, Shtip, Gevgelija, Delchevo and Veles.

¹⁹ Base line data were provided under the USAID Women’s Legal Protection Project (in 2012, the percentage of rejected criminal charges was 21.2%, in 2013, it was 29%, while in 2014, it was 31.7%).

²⁰ Base line data were provided under the USAID Women’s Legal Protection Project.

²¹ The principle of formality means that the commencement and conduct of proceedings is an official duty of state bodies, performed in the interest of society, independent of the will of the person harmed by the crime. This principle establishes the right of the competent public prosecutor to prosecute regardless of the position of the injured party thereon, even if the party expressly opposes the prosecution.

The decision to reject the charges shall be submitted to the woman who has suffered domestic violence, who may, within eight days of receipt, appeal to the next instance higher public prosecutor, who shall decide the appeal within thirty days of receipt thereof. The higher public prosecutor can make a decision to confirm the decision dismissing the charges or may grant the appeal and oblige the lower public prosecutor to proceed. In this way, the control of decisions made to dismiss the criminal charges is performed by the superior public prosecutor, thus providing a possibility to protect the victim from arbitrary dismissal of criminal charges. The dismissal decision contains the grounds on which criminal charges were dismissed, i.e. the reasons for not taking action. The reasons for criminal charges rejection shall be notified to the applicant, which most often is the Ministry of Interior.

At the same time, the public prosecutor may, with the consent of the aggrieved party, **decide to delay**²² **the prosecution** of crimes entailing imprisonment of up to three years if the suspect is willing to act on the instructions of the public prosecutor and fulfill certain obligations that reduce or remove the harmful consequences of the crime, such as removal or compensation of damages, return of seized items, making a monetary contribution to the budget, undergoing a psycho-social therapy to eliminate the violent behavior, a ban on visitation and contact with the woman who has suffered violence or with third parties designated by the public prosecutor, community service etc.

The public prosecutor may decide not to prosecute crimes for which a prison sentence of up to 3 years or a fine is envisaged²³, if the suspect sincerely repented and prevented the damaging consequences or compensated the entire damage. Such a decision may be rendered by the prosecutor in cases where the Criminal Code envisages the possibility for the perpetrator to be acquitted by the court and the prosecutor finds that such verdict without a penal sanction is not necessary, as in the case when the suspect as a member of an organized group, gang or other criminal association voluntarily cooperates, and such cooperation and statement of this person is crucial for the criminal proceedings.

Thus provided broad powers of the PPO to assess if some criminal prosecution is appropriate to perform from the standpoint of public interest arise from the principle of opportunity²⁴. This principle and assessment of prosecution appropriateness applies to all criminal offenses, including the offenses related to domestic violence for which a prison sentence of up to 3 years or a fine is envisaged. Namely, in assessing the public interest, the public prosecutor shall be guided by certain individual circumstances and social interests, such as: low importance of the offence and absence of harmful effects, compensated damages caused by the crime committed, disproportion between the cost of the procedure and expected trial effects, individual and family circumstances of the accused etc.

When based on all previous actions taken, there is reasonable doubt that a person has committed a criminal offense prosecuted ex officio or at a motion, the competent public prosecutor **shall issue an order to conduct an investigative procedure** where evidence shall be gathered based on which the public prosecutor will be able to decide **whether to press charges or waive prosecution**. For

²² Criminal Procedure Law, Official Gazette of the RM no. 150/2010, 100/2012 and 142/2016, Art. 43

²³ Criminal Procedure Law, Official Gazette of the RM no. 150/2010, 100/2012 and 142/2016, Art. 44

²⁴ Although the domestic procedural law has not adopted the principle of opportunity of criminal prosecution, there are certain exceptions to this principle which allow the PP to assess the prosecution opportunity. The principle of opportunity is an exception to the established principle of criminal prosecution legality, according to which the prosecutor is obliged to undertake criminal prosecution for criminal acts prosecuted ex officio whenever legal conditions are met, regardless of whether there is appropriateness and usefulness of criminal prosecution in individual cases. Criminal Procedure and the Public, OSCE, January 2014.

offenses committed during domestic violence that have disrupted the health of the woman surviving the domestic violence, the public prosecutor shall issue an order for psychiatric expertise that shall determine such status. If the offense caused bodily or serious bodily injury to the woman, the public prosecutor shall order a forensic medical expert examination which will determine the type and nature of victim's injuries and the manner of their occurrence. In criminal cases of domestic violence, the prosecutor shall obtain an extract from the penal ²⁵ and criminal record ²⁶ of the suspect, reports from the civil court, competent Center for Social Work, and the relevant police station regarding any temporary measures imposed on the suspect and their implementation. After completing the investigative procedure, once the public prosecutor determines that there is enough evidence expected to give rise to a conviction, he/she shall prepare and submit the indictment to the competent court.

Having regard to the above managerial role of the public prosecutor in conducting the pre-trial and investigative procedure, it is important to note that the quality of these two procedures will affect the decision of the public prosecutor to either file or not file an indictment. In this regard, the data obtained ²⁷ on the ratio of criminal charges and indictments filed should be presented. In fact, in 2012, of a total of 640 criminal charges prepared, prosecutors filed 429 indictments (67%); in 2013, of 685 applications, 436 indictments were filed (63.6%); and in 2014, of a total of 843 criminal charges, 315 indictments (37.3%) were submitted.

In addition, not only the quality of pre-trial and investigative procedure, but also the quality of the indictment prepared and evidence collected will directly affect the decision of the court in terms of rendering an acquittal or conviction. The evidence submitted by the prosecutor must provide proof "beyond a reasonable doubt" ²⁸ that the defendant has committed the crime he is charged with. This standard implies that the court shall be completely satisfied and fully confident that the evidence presented proves the guilt of the accused.

A woman who has suffered domestic violence may **withdraw the motion for prosecution of the crime "bodily injury in domestic violence" even in the phase at which an indictment** against the perpetrator is already filed. In this case, the Public Prosecution Office shall abandon further prosecution, while the Basic Court handling the case shall render a Rejection Judgment.

If the woman withdraws the prosecution motion, and then re-submits a new proposal for criminal prosecution in respect of the same offense and the same offender, there is no mechanism for this new proposal submitted to be re-examined by the same public prosecutor, although such withdrawal and re-filing of the proposal indicate the existence of possible influences on the victim by the defendant or

²⁵ Criminal record is kept in the court of the place of residence/stay of the offender. It covers records of effectively closed lawsuits, including sentences and alternative measures.

²⁶ Criminal records are kept in the court where the criminal proceedings are carried out and they involve recording the criminal proceedings that are ongoing and pending against the accused

²⁷ Base line data were provided under the USAID Women's Legal Protection Project.

²⁸ The standard "beyond reasonable doubt" was first incorporated into the new Criminal Procedure Law and is compatible with the principle of presumption of innocence, provision of a fair criminal procedure and application of the highest standards of proving the guilt of criminal offenders. This standard means that facts shall be proven to such an extent as to leave no reasonable doubt in the human common sense, i.e. the accused person can not be convicted unless the court is sure beyond any reasonable doubt, Experiences and Issues in Applying the CPL, Training materials for public prosecutors, Todor Vitlarov, PhD, Pavlina Jankulovska, PhD, p.48.

his family to withdraw the prosecution proposal. The situation of the woman who has suffered domestic violence is further exacerbated by the legal obligation for her to pay for the costs of criminal proceedings if she withdraws the prosecution proposal ²⁹.

Actions by Criminal Proceeding Judges

The court's proceedings in criminal offences committed as acts of domestic violence and the imposition of penalties against the perpetrators thereof is regulated by the Criminal Code of the Republic of Macedonia and the Criminal Procedure Law, while determining the type and level of sanction against the same offenders is specifically regulated by the Law on Determining the Type and Level of Sanctions ³⁰. Against the perpetrators of criminal offences committed as acts of domestic violence, a harsher sentence is commanded under the Criminal Code, as opposed to perpetrators of crimes not committed as domestic violence acts. This clearly shows that by envisaging tougher penalties for offenses committed as acts of domestic violence, the legislator is sending a clear message to the perpetrators that they will not be treated as common criminals but rather much stricter penalties will be imposed on them to prevent them from committing such crimes and to rehabilitate them, as well as educate others not to make such crimes in the future. These legal provisions indirectly provide adequate legal protection to domestic violence victims.

Under the provisions of the Criminal Procedure Law, in the adjudication of criminal offenses committed as acts of domestic violence, the same legal principles shall apply as in the adjudication of crimes not committed as domestic violence acts. Namely, there is no legal possibility given for the court to act in a particular way when adjudicating offenses committed as domestic violence acts. According to the Criminal Procedure Law, the basic principle on which the criminal procedure rests is the principle of procedural truth, meaning that the court shall in no way present evidence *ex officio*, but on the contrary, all evidence presented in the main hearing shall be at a proposal of the parties and they shall freely decide which evidence shall be assessed by the court during the main hearing. Thus, the burden of proof falls on the complainant, who shall, beyond reasonable doubt, prove that the perpetrator is guilty as charged and should be punished adequately. If the complainant fails to prove beyond reasonable doubt that the offender is guilty, the offender shall be released from all charges.

For the purpose of expedient action, i.e. timely prosecution of the offender before the court and his punishment, the Criminal Procedure Law envisages special types of proceedings for offenses for which the Criminal Code commands a fine or imprisonment of up to five years. These proceedings include: procedure for issuing a penal order ³¹ and procedure for making a judgment based on plea bargaining between the public prosecutor and the suspect ³².

Legal provisions envisaged in these two procedures and their implementation is left to the free assessment of the Public Prosecutor's Office. In particular, the proposed provisions of the procedure for issuing a penal order give the opportunity to the Public Prosecutor's Office to apply them in practice and

²⁹ Article 106 paragraph 4 of the Criminal Procedure Law, 150/2010; 100/2012; 142/2016.

³⁰ Official Gazette of the RM, no. 199/2014, of 30 December 2014.

³¹ Criminal Procedure Law, Articles 497-500.

³² Criminal Procedure Law, Articles 483-490.

in cases of domestic violence. So, the public prosecutor may submit to the competent court a proposal for pronouncing a judgment including a penal order, and also propose against the perpetrators of crimes committed as acts of domestic violence to render one or more of the following criminal sanctions: a financial fine; probation in case of a prison sentence of up to three months, whose execution could be delayed for a period of 1 year if the offender does not commit a new crime; imposition of security measures; and seizure of proceeds acquired by the crime committed.

Despite the reasonableness and appropriateness of such legal provisions that contribute to expedient and efficient criminal procedure, it is important to note that there is a certain collision of the penalties envisaged in this procedure and the other penal policy goals established by our country in terms of domestic violence. For these reasons, this procedure requires a more detailed analysis, but also the role played by the prosecution in these procedures should be analyzed, as well as the possible effects that they have in terms of general prevention. It would certainly be more appropriate that in such cases the public prosecutor shall require the perpetrator to be tried in summary proceedings and imposed a harsher sentence.

In accordance with the legal possibilities given to the public prosecutor, there is a possibility for this proposal by the public prosecutor to pronounce a judgment including a penal order to be accepted a priori by the competent court, and thus accept the lower sentence proposed for the perpetrator even in cases of domestic violence. Again, an issue arises regarding the purpose and justification of these legal provisions in domestic violence cases, where in fact, the court should disagree with this proposal and schedule a main hearing to impose an effective imprisonment which would secure the effective protection of domestic violence victims and also act preemptively in terms of future commission of such offenses.

The Criminal Procedure Law also provides a possibility for both the public prosecutor and the accused, in the presence of a counsel that provides defense for all crimes and crimes committed as acts of domestic violence, to agree on plea bargaining regarding the criminal responsibility of the perpetrator for the relevant offense and the type and level of sanction, and submit such plea bargaining proposal to the judge in the preliminary procedure, so that the judge shall, based on such agreement, make a ruling without requiring the consent of the injured party. This plea bargaining procedure is one of the most significant novelties in the Criminal Procedure Law towards following the latest experiences and current trends in the area of criminal procedure law. In fact, it means abandoning the principle of legality and introducing consensual elements in criminal proceedings³³, where the plea bargaining enables expedient and efficient criminal proceedings that result in reaching a verdict in cases of minor criminal offenses³⁴.

Thus provided legal provisions for making a judgment based on the agreement between the prosecutor and the suspect are not contrary to the adequate legal protection for domestic violence victims, because the public prosecutor may, in cases of crimes committed as acts of domestic violence, require a stricter punishment for the accused through the plea bargaining under the Criminal Code or require that the accused should be tried in a regular procedure in which the offender will be sentenced to a more severe punishment.

³³ Strategy for Reform in Criminal Law, Ministry of Justice, 2007, p.62

³⁴ Strategy for Reform in Criminal Law, Ministry of Justice, 2007, p.62

The Criminal Procedure Law, guided by the principle of procedural truth (all evidence shall be presented at proposals of the parties and the same shall be presented in an adversarial procedure performed at the main hearing) does not provide any opportunity to avoid the re-victimization of the domestic violence victim, because it is about the basic principle of criminal procedure which applies to all. Behind this concept stands the idea that the only place for the presentation of evidence is the public trial where the evidence collected during the investigation shall be proposed and tested in a public hearing. This means that the statement once given by the woman witness in the investigation procedure will again be presented at the main hearing, which will contribute to further re-victimization of the victim. There are exceptions to this principle envisaged for the provision of a statement by an underage woman survivor of domestic violence, whereby her interview shall be conducted in a special way according to the Criminal Procedure Law and Law on Justice for Children. Another exception is also provided ³⁵, i.e. if after the start of the main hearing, indications appear that the witness was exposed to violence, was threatened to not testify or give a false testimony, then the court may decide that the statements made during the preliminary proceedings shall be brought as evidence. It is important to point out that such motion of not giving the statement by the victim again at the main hearing because of a threat and exposure to violence shall be submitted by the public prosecutor.

The action by the court or the actual determination of the type and level of penalty for the crime is regulated in detail by the Law on Determining the Type and Level of Sanctions. The said Law does not give a legal possibility to the judge to determine the type and severity of the sentence according to their own beliefs, but rather through both horizontal and vertical categorization and using clear criteria, the court shall determine what type and what level of punishment it will impose on the perpetrator of crime committed as an act of domestic violence. Although the Law does not provide specific criteria for determining the penalties for offenses committed as domestic violence acts, still the judges may, while assessing the aggravating circumstances such as repetition of the violence, presence of children at the event, use of weapons etc., impose a stricter punishment on perpetrators of such crimes and thus, enable the provision of effective protection for domestic violence victims.

HUMAN TRAFFICKING

National Strategy, Action Plans, Programs and Procedures

The **2013-2016 National Strategy and Action Plan to Combat Human Trafficking and Illegal Migration (NAP)** ³⁶ includes a number of activity implementers, both governmental and non-governmental ones, which also covers the aspects of coordination, international cooperation, prevention, protection and prosecution. The 2013-2016 National Strategy states that although previously the fight against human trafficking was mainly directed to trafficking for sexual exploitation, the need for a broader scope of fight against human trafficking is now confirmed, especially against trafficking for labor exploitation, forced begging and forced marriage. The main new elements in the Strategy and Action Plan relating to the improvement of identification and protection of victims refer to the establishment of local committees; establishment of local mobile teams for identification, assistance and support to potential victims and risk groups; preparation

³⁵ Article 54, Law on Criminal Procedure, Official Gazette of the Republic of Macedonia no. 150/2010, 100/2012 and 142/2016

³⁶ Adopted by the Macedonian Government in December 2012

of indicators for identification of victims, including children, prepared by type of exploitation; provision of free health care and **free legal assistance to victims of trafficking; establishment of a State Fund for indemnification of victims**; identification of potential victims among illegal immigrants. **Standard Operating Procedures for treatment of human trafficking victims (SOPs)**³⁷ aim to provide support and protection to all victims of trafficking through a comprehensive step-by-step approach based on human rights. Also, these procedures provide for an institutional framework of cooperation which will focus on the victims of trafficking in human beings (THB). SOPs envisage five specific procedures in the following areas: Identification and referral; Initial care and mid-term assistance; Return; Reintegration; and Criminal Procedure. Each procedure provides guidance on measures to be taken, responsible institutions, time and manner of their implementation. In February 2014, the Ministry of Labor and Social Policy adopted the **Program for Assistance and Support in the Reintegration of Human Trafficking Victims**. The Program is reference material for practical use by the professional teams of Social Work Centers and other partner institutions/organizations involved in the process of reintegration. The basic components of this Program include the main services in the reintegration process such as: transport and safe accommodation/housing, health care, legal assistance, social protection, education and economic empowerment/employment. According to this document, all services and reintegration assistance shall be available to the victim and provided to her, based on information and voluntary decisions.

Legal Regulation of Trafficking in Human Beings

In February 2002, the Criminal Code introduced a new article concerning trafficking in human beings “Article 418-a, Human Trafficking.” Further amendments to the Criminal Code introduced criminal liability of legal entities for human trafficking, a specific article on child trafficking and the maximum penalty for human trafficking was increased. Chapter XXXIV of the Criminal Code, entitled “Crimes against Humanity and International Law” contains a number of articles that are relevant to human trafficking, such as: “Establishment of Slavery Relationship and Transportation of Persons in Slavery” (Article 418), “Human Trafficking” (Article 418-a), “Smuggling of Migrants” (Article 418-b), “Organizing a Group and Inciting the Perpetration of Acts of Human Trafficking and Smuggling of Migrants” (Article 418-c), and “Child Trafficking” (Article 418-d). In February 2014, further modifications were made through the Law on Amendments to the Criminal Code, that is in Article 418-a paragraph 1, the word “fertilization” was replaced with the word “pregnancy”, while “begging and exploitation for the purpose of legally prohibited activity” were added in the section on forms of exploitation, and the wording of Article 418-d paragraph 1 of the CC was replaced by a new text in which the word “minor” was replaced with “child”.

The definition of the crime of human trafficking in the Macedonian legislation includes the three constituent elements³⁸. The actions covered by this article, in addition to those listed in the Convention, also include the “sale” and “purchase”, while regarding the means, instead of the broader term “abuse of a position of weakness”, the provision in Macedonian legislation contains “abuse of a condition of pregnancy, disability and physical or mental incapacity”. Further, this article offers an expanded list of forms of exploitation compared to the stipulated ones, including “forced marriage” and “forced

³⁷ In 2008, the Government adopted the Standard Operating Procedures for Treatment of Victims of Human Trafficking (SOPs), which were further revised in 2010.

³⁸ In accordance with the Convention on Action against Trafficking in Human Beings of the Council of Europe

pregnancy". The consent of the human trafficking victim for the purpose of exploitation is of no importance for the existence of the crime of human trafficking³⁹.

The Criminal Code envisages a prison sentence of at least four years for the basic offense of trafficking in adults, and Article 418-d of the Criminal Code prescribes a prison sentence of at least eight years for trafficking in minors. The highest sentence for trafficking in people (both adults and children) is 15 years. Aggravating circumstances listed in Articles 418-a and 418-d of the Criminal Code include committing the criminal act by an official while performing their duty, which is punishable by at least eight years' imprisonment in the case of human trafficking including adults and at least 10 years in prison if related to minors. Furthermore, Article 418-c provides for imprisonment of at least eight years for the organizer of a group, gang or other association with the intention of committing crimes referred to in Articles 418-a (trafficking in adults) and 418-d (child trafficking). However, one of the aggravating circumstances "when the offense either deliberately or by gross negligence endangers the victim's life" is left out of the provisions in the Criminal Code. The Law does not explain all the mitigating and aggravating circumstances and would let the court decide which of them will be taken into account. The Criminal Code also includes Article 418 entitled "Establishment of Slavery Relationship and Transportation of Persons in Slavery" but there is no record of criminal offenses prosecuted under this provision. Further, Macedonian legislation contains no specific legal provision concerning the impunity of trafficking victims, i.e. non-imposing penalties on victims for their involvement in unlawful activities, to the extent that they are forced to do the same. Nor are there any guidelines in place for prosecutors, advising them on the steps to be taken in the prosecution of persons who may have been trafficked. During the investigation for identification of potential trafficking victims, they should not be punished for offenses related to illegal migration.

The 2010 Criminal Procedure Law regulates the rights of the victim in Chapter V entitled "Victim, Injured Party and Private Plaintiff" (Articles 53 to 56). Under these provisions, the victim of a crime shall be entitled to the following rights:

- 1) Participation in criminal proceedings as an injured party, joining the criminal prosecution or for the realization of claim for damages;
- 2) Due diligence and attention by authorities and entities participating in criminal proceedings and
- 3) Effective psychological and other professional assistance and support by authorities, institutions and organizations assisting victims of crime."

These provisions include an obligation for the police, the prosecutor and the court to treat victims of such crime with special attention, advising them of their rights; to take account of their interests when making decisions about criminal prosecution, i.e. while carrying out actions of criminal proceedings requiring the presence of the victim. Furthermore, the victim of a crime entailing a prison sentence of at least four years (such as human trafficking) is entitled to legal representation at the state's expense when giving a statement, if there is a serious mental and physical damage or serious consequences resulting from the crime, and compensation for material and non-material damages from a State Fund under the conditions and in the manner specified by a special law, if the compensation of damages

³⁹ Article 418-a paragraph 5 and Article 418-e paragraph 6 of the Criminal Code. Official Gazette of the Republic of Macedonia no. 7 of 15 January 2008

can not be provided by the defendant. Although there have been cases in which victims of trafficking received compensation by a court decision, it could not be implemented because the perpetrators did not own any property or monetary assets. Currently, this type of compensation (by a State Fund) is available only to juvenile trafficking victims. Despite this, the functionality of this legally provided opportunity is questionable. For adult victims of trafficking, indemnification by the State will be delayed until the adoption of the Law on State Fund⁴⁰.

Furthermore, under the provisions of the new Criminal Procedure Law (Article 112 paragraph 3), concerning property and legal redress to victims of human trafficking, the authorized person (victim, legal representative or authorized representative) shall submit a neuro-psychiatric expert testimony at their own expense, which was not the case with the old Criminal Procedure Law.

In accordance with the Law on Criminal Procedure, victims are entitled to special measures of procedural protection when giving testimony and being interviewed during all stages of the procedure⁴¹. These special procedural protection measures shall be determined by the court upon a motion by the public prosecutor or the victim, or at court's own discretion, when it is necessary to protect endangered and especially vulnerable victims⁴². Victims of trafficking are also entitled to demand for the interview to be conducted using video and audio devices in accordance with the manner specified by the court, and require for the public to be excluded from the main hearing. Vulnerable witnesses may have hidden identity and appearance and can be interviewed under a pseudonym.

The Law on Justice for Children⁴³ establishes special rights of procedural protection for children who are part of criminal proceedings. A child may be interviewed more than twice only in exceptional cases. The Law on Justice for Children and the Criminal Procedure Law introduce special protection for child victims of trafficking, violence or sexual abuse in the form of interrogation via video conferencing or other video links. Further, the Law on Witness Protection of 2005⁴⁴ enables the participation of victims in a witness protection program. There is a special witness protection unit in place.

Despite the fact that under the Law on Free Legal Aid,⁴⁵ victims of human trafficking are entitled to apply for free legal aid, the conditions for obtaining free legal aid are too difficult to fulfill and consequently, trafficking victims receive legal advice and assistance from a lawyer (including compensation applications) by the NGO Open Gate/La Strada.

In accordance with Articles 81 and 82 of the Law on Foreigners⁴⁶, a victim of trafficking who is a foreign citizen shall be entitled to a period of reflection for up to 2 months, and after the period for

⁴⁰ Indemnification of Victims of Human Trafficking in the Republic of Macedonia - ESE, Open Gate, 2014.

⁴¹ 1) At the time of giving the statement, the victim is under the age of 18, 2) By giving the statement or answering a particular question, the victim would expose herself or a close person to a serious danger to their life, health or physical integrity (endangered victim) and 3) Due to the age, nature and consequences of the crime, physical or psychological disability or another significant health, social and cultural background, family circumstances, religious beliefs and ethnic background of the victim, the conduct of the defendant, family members or friends of the accused towards the victim would have harmful consequences for her mental or physical health or adversely affect the quality of the statement given (especially vulnerable victim).

⁴² Criminal Code of the RM, Article 54 (Special rights of vulnerable groups of victims), paragraph 2.

⁴³ Official Gazette of the Republic of Macedonia no. 148 of 29 October 2013, PART FIVE - Protection of child victims of crime and witnesses in criminal proceedings, Chapter Sixteen - Protection of the child as an injured party or witness in criminal proceedings (Article 145 -153).

⁴⁴ Official Gazette of the Republic of Macedonia no. 38/05 of 26 May 2005.

⁴⁵ Official Gazette of the Republic of Macedonia no. 161/2009, 185/2011 and 27/2014.

⁴⁶ Law on Foreigners "Official Gazette of the RM" no. 35/2006, 60/2007, 117/2008, 92/2009, 156/2010, 158/2011, Article 81.

making a decision, she may obtain a temporary residence permit for up to 6 months. However, the approval of the period for recovery and reflection and the temporary residence permit are conditioned by the cooperation of the victim with law enforcement and are not applied due to victims' low awareness of these rights. The reflection period for domestic victims is covered by Standard Operating Procedures. In accordance with Standard Operating Procedures, during the period for taking a decision, victims shall be offered safe and adequate accommodation, medical and psychological assistance, information, legal advice and access to education.

In Macedonia, the Law on Social Protection from 2009 (Article 31) provides for the right of a victim of trafficking to receive assistance and protection at a center (shelter) for victims of trafficking. Articles 132 and 145 of this Law envisage the establishment of a center for victims of human trafficking in which victims can stay up to six months and be provided with accommodation, food, protection and daily activities. The Ministry of Labor and Social Policy covers the running costs of the shelter (rental of space and utilities). Civil society organizations provide psycho-social and reintegration program for victims⁴⁷ accommodated in the shelter through a grant from the RM Government (5,000 Euros per year), which is not sufficient to cover all needs. In terms of medical care, the latest amendments to Article 84 of the Law on Social Protection ensured the inclusion of victims in the categories of persons entitled to health care, if they do not get health insurance on other grounds. However, this has not been adequately applied due to the lack of clear procedures and responsibilities.

SEX WORK

National Strategy, Action Plans, Programs and Procedures

The 2012-2016 National HIV Strategy identifies sex workers as a group of people with risky behaviors that require a focus on specific interventions⁴⁸. The Strategy recognizes the associated stigma and discrimination against sex workers as an important factor to keep in mind when designing and implementing activities. Therefore, one of the strategic interventions is to strengthen and support the initiatives of sex workers' community and to involve sex workers in the planning, implementation and evaluation of policies and services designed for them, as well as sensitize both social and health workers, the media and the police, in order to create a supportive environment for effective prevention of HIV/AIDS/sexually transmitted infections (STIs) among sex workers.

Legal Regulation of Sex Work

Sex work in the Republic of Macedonia is regulated as an offense against public peace and order. According to the 2007 Law on Misdemeanors against Public Order and Peace, "a person indulging in prostitution, renting or making premises available for prostitution shall be fined with an amount from 600 to 800 Euros in Denar equivalent."⁴⁹ In the previous Law on Misdemeanors against Public Order and Peace, besides "indulging in prostitution", "solicitation in prostitution" was also

⁴⁷ The NGO Open Gate is responsible for daily management of the shelter and provision of necessary services: (providing emotional support, social program, medical assistance to victims and preparing them for reintegration) and the NGO "For a Happy Childhood" is responsible for providing psychological assistance to victims.

⁴⁸ Government of the Republic of Macedonia. National HIV Strategy 2012-2016.

⁴⁹ Official Gazette of the RM no. 66/2007, Law on Misdemeanors against Public Order and Peace, Article 19.

considered to be an offense.⁵⁰ With the adoption of the Criminal Code in 1996,⁵¹ solicitation in the performance of “prostitution” was raised to the level of a crime, while simultaneously applying the provision from the previous Law on Misdemeanors against Public Order and Peace. This amendment introduced stricter policies regarding sex work regulation and criminal sanctions for people who are intermediaries in the provision of sex services. The adoption of the Law on Misdemeanors against Public Order and Peace in 2007 introduced a prohibition of independent sex work, and the amount of the sanction prescribed for this offense was also increased.

According to current legislation, the offense refers primarily to individual sex work, or independent work, while solicitation or organization of sex work is sanctioned under Article 191 of the Criminal Code of the Republic of Macedonia “Solicitation in prostitution”. Under this provision, subject of sanctioning shall be recruitment, incitement or allurement of persons to “prostitution”, or any person that in any way participates in handing over another person to someone else for the purpose of prostitution. The legislator has envisaged sanctioning anyone who “by force or serious threat and abuse of force, forces or by deceit induces another person to give sexual favors for profit.” The offense shall be criminally qualified if it is committed with a minor or during domestic violence. Since the adoption of the Criminal Code in 1996, so far this provision has been changed only to increase the level of penalty, while the description of the crime has remained the same, although in the meantime, other provisions in the Criminal Code have been adopted and amended with the same objective, i.e. criminalize and sanction forced provision of sex services for money and other goods.

In 2004, specific provisions on trafficking in human beings and sex work exploitation were adopted, while the existing provision for prostitution solicitation remained in force, including a modified sanction. Thus, there is room for this provision to be applied in practice mostly to persecution and prosecution of sex workers, who mostly for security reasons, work together (two or more women), and especially those who work indoors (in apartments). Experience shows that when a few sex workers voluntarily and independently operate in a shared space, one sex worker is usually accused of procuring in prostitution, while other sex workers are summoned as witnesses. Such legislation contributes to the criminalization of sex work, marginalization and disregard for the rights of sex workers, and thus, to legal uncertainty for them.

Such national legislation related to sex work, and its application in practice with repressive policies by law enforcement agencies contribute even more to the existence and continuation of systemic discrimination, exploitation and violence against sex workers. Criminalization of voluntary sex work suppresses sex workers underground, resulting in their limited access to health, social and legal assistance and significantly reducing the chances of identifying the individuals who are victims of human trafficking.

⁵⁰ Official Gazette of SRM no. 25/72, 30/72, 29/83, 34/83, 51/88 and 19/90 and Official Gazette of the Republic of Macedonia no. 26/93, Law on Misdemeanors against Public Order and Peace, Article 22. “A person indulging in prostitution, alluring another person to prostitution or soliciting in prostitution, as well as renting or giving premises for prostitution.”

⁵¹ Official Gazette of the Republic of Macedonia no. 37/96, 80/99, 4/2002, 43/03, 19/04, 40/04, 81/05, 50/06, 60/06, 73/06, 7/08, 139/08, 114/09, 51/11, 135/11, 185/11, 142/12, 166/12, 55/13, 83/13, 14/14, 27/14, 28/14, 41/14, 132/14, 115/14, 160/14 and 199/14, Criminal Code.

PROVISION OF FREE LEGAL AID THROUGH THE MINISTRY OF JUSTICE AND ITS REGIONAL OFFICES

The role of the Ministry of Justice in the provision of free legal aid is regulated by the Law on Free Legal Aid⁵², where in the system of legal aid provision, in addition to the Ministry's Regional Offices, citizens' associations and lawyers are also involved and authorized. The Law's purpose is to facilitate access to legal assistance for vulnerable and marginalized groups of citizens in the following areas: rights in the area of social, health, pension and disability insurance, labor relations, protection of children and minors, victims of domestic violence, protection of victims of criminal offenses, protection of victims of human trafficking, recognizing the right to asylum and legal property issues. As regards violence against women, free legal aid shall include domestic violence victims and human trafficking victims as special groups of citizens who are beneficiaries of this Law. Sex workers are not listed as a separate category, but they may apply for approval of free legal aid if they meet the criteria for the exercise of this right. Free legal aid excludes citizens who have previously exercised their right to a mandatory defense under the Criminal Procedure Law and Juvenile Justice Law, and the right to exemption from payment of the costs of the proceedings under the Civil Procedure Law and Administrative Procedure Law.

Regarding the criteria, women who have suffered violence should meet the general requirements for the exercise of this right, envisaged by law. Free legal aid shall be granted to persons who can not exercise their legally guaranteed rights without endangering their own sustenance. The right to free legal aid shall be granted to Macedonian citizens, asylum seekers and foreign nationals and stateless persons lawfully residing in the country. In order for a citizen of the Republic of Macedonia to be able to exercise the right to free legal aid, he/she shall already be a social welfare beneficiary⁵³ and his/her total monthly household income shall be less than 50% of the average monthly salary in the country⁵⁴. Such defined criteria can seem limiting for women who have suffered violence and for other vulnerable groups that are not registered in the social security system, thus excluding them from the system of free legal aid in the country, as well. Possession of movable and immovable assets also limits access to free legal aid for vulnerable groups, including women survivors of violence.

Legally prescribed free legal aid envisages preliminary legal aid provided by the Regional Offices of the Ministry of Justice and authorized citizens' associations, and legal assistance in all judicial and administrative proceedings, as provided by authorized lawyers. Preliminary legal aid involves initial legal advice on the possibility to exercise the right, general information and assistance in completing the application for free legal aid. It is characteristic that citizens' associations on the one hand, have the obligation to hire an expert lawyer who has passed the bar exam, while on the other hand, preliminary legal aid is very narrowly defined and limited to assistance in completing the application for free legal aid. Legal assistance includes representation in administrative and judicial procedures, as well as preparation of certain writs in judicial and administrative proceedings.

⁵² Official Gazette of the RM 161/09, 185/2011, 27/2014 и 104/2015.

⁵³ Welfare recipients, people on disability allowance, beneficiaries of lowest pension and families or single parents with one or more minor children entitled to child benefits

⁵⁴ Funds obtained on the following grounds shall not be considered income: child allowance, disability allowance, allowance for assistance and care by a third party, scholarships and other income for education and training; funds received to eliminate the effects of natural disasters, damage compensation for reduced life activity, compensation for wrongful conviction and unjustified or unlawful detention, and funds approved by a competent institution for treatment abroad. Items exempted from enforcement according to the Law on Enforcement and motor vehicles whose value does not exceed five average gross monthly salaries in the Republic of Macedonia in the previous month shall not be considered property.

Informing the public about the possibility of using free legal aid is made exclusively by the Ministry of Justice, while citizens' associations shall not promote the services they provide. This legal provision limits the possibilities of using this kind of assistance by vulnerable groups, or in our case, by women who have suffered violence.

The procedure for providing free legal assistance shall be initiated by submitting a request to some of the Ministry of Justice Regional Offices. The application can be prepared by the woman survivor of violence herself or by using the assistance of authorized citizens' associations. Ministry's Regional Offices shall complete the applications with the documents required and supporting information from competent institutions (Centers for Social Work, Public Revenue Office, Central Registry, etc.) and send them to the Ministry of Justice for deliberation. The Law stipulates an obligation for the applicant, together with the application for free legal aid, to file a written statement of the total movable and immovable assets they own, signed by family members. An exception to this rule exists only for victims of domestic violence, who shall submit such statement personally and have no obligation to secure signatures from other family members.

A Decision on whether free legal aid will be granted in a particular case shall be rendered by the Department for Free Legal Assistance at the Ministry of Justice within eight days of receipt of the request submitted by Regional Offices. Persons who have been granted free legal aid may themselves, in cooperation with the Ministry, choose a lawyer from the list of authorized lawyers. The Decision granting free legal aid may be revoked in two situations, that is, if it is found that the application for free legal aid contains inaccurate information⁵⁵, and if a change in assets is established after the approval of free legal aid.

The Ministry of Justice shall carry out regular supervision over the work of lawyers and associations involved in the free legal aid system.

⁵⁵ In this case, in addition to the reversal of the Decision, the person who has been granted free legal aid should return the funds received.



ACTUAL ACTION OF INSTITUTIONS IN RESPECT OF VIOLENCE AGAINST WOMEN

CIVIL LAW SYSTEM OF PROTECTION IN CASES OF DOMESTIC VIOLENCE

Personal Experiences of Women Who Have Survived Domestic Violence

The general conclusion is that women who have suffered domestic violence are not satisfied with the protection provided by Centers for Social Work, both in terms of protection measures and initiation of proposals for imposition of temporary protection measures. They have a more positive experience with the court's proceedings regarding the imposition of temporary protection measures.

Some of those who express satisfaction, relate it exclusively to the actions of certain representatives of this institution, who have shown understanding about their problem and tried to help in some way. One of the women survivors of domestic violence who had some experience with this institution said: *"CSW has shown no understanding, either. One person understood me, informed me, she was nice, while the other told me: 'You either put yourself together, or we will take away your children'.* Another problem faced by women in addressing this institution is its failure to inform them about their rights and legal options for protection, as well as procrastination in providing the adequate protection required. Thus, according to a statement of a woman who had a need for shelter, she had not been informed about the government shelters, nor had she been assisted with the continuation of her children's education once she had left the home with her children. *"CSW allowed him again to see the kids on weekends. This went on for five months. They did not help with the continuation of my children's regular education, either; they could not attend school close to our new place of residence, so I had to take them 28 km away to go to school. Their father did not give a consent to move them from the old school"*.

There is also dissatisfaction with the protection through temporary protection measures. CSW professionals do not inform women surviving domestic violence of the protection offered through the temporary protection measures, even in cases where there was a possibility of violence recurrence or continuation. One woman who was in need of pronouncement of temporary protection measures stated *"CSW convinced me that I could not seek temporary protection measures, and then, your association prepared such measures for me"*. Concerning is the fact that even criminal proceedings taken against perpetrators are not a sufficient indicator for CSW to submit a proposal for imposition of temporary protection measures. *"I am not satisfied with the Center for Social Work. I don't understand - there was a criminal case against him, and these from the CSW were not yet submitting a proposal for temporary measures of protection. Instead of him leaving the house, I, with my three children, had to leave and go to my parents'. He changed the locks, but CSW did nothing. I waited for five months for CSW to give an opinion and provide explanation for me and my child, the divorce, alimony, and all this took forever"*, stated one of the women who suffered domestic violence. The low number of proposals for imposing temporary protection measures by the Centers for Social Work at the national level supports this claim, i.e. that CSWs, even when there is a need, do not initiate proposals for imposition of this type of protection, which is key to prevention of possible future violence.

Compared with the treatment by CSWs, the satisfaction of domestic violence women survivors with courts in cases of imposition of temporary protection measures is positive. Postponement of court hearings for the purpose of presentation of additional evidence is one of the problems faced by women, which essentially means a delay in their protection by the court. But this is not the only key problem they face. Women who have initiated legal proceedings of this kind do not feel safe during court hearings, especially after leaving the premises of the court following the hearing. Namely, hearings of this kind are attended by both women who have submitted a proposal for their protection and the abuser against whom such proposal was submitted. So, after leaving the hearing and the court, women are left alone and they might be attacked by the perpetrator. In such a situation, when one abuser threatened the woman that he would hurt her and waited for her outside the court, the court staff instructed the woman to get out through another door in order to protect her. Therefore, it is necessary to seriously approach this matter and take appropriate measures towards improving the safety of women.

Action by Social Work Centers in the Provision of Protection to Women Survivors of Domestic Violence

The procedure for protection of women survivors of domestic violence before the Centers for Social Work (CSWs) shall be initiated upon the report of the violence by the woman, any family member, responsible institution, health and educational institutions etc. In a situation where the violence was not reported in person, CSWs shall make efforts to establish contact with the woman suffering domestic violence. After the reporting, CSW shall inform the woman surviving domestic violence of the legal possibilities for her protection, provide psycho-social assistance and support, and assess the danger and risk to the woman. According to victims' needs, other protective measures shall also be taken, such as accommodation in a shelter center, provision of health care, psycho-social treatment at a counseling office, assistance with regard to the continuation of children's education, information about the Law on Free Legal Aid, etc. In terms of economic empowerment of women, their involvement in programs and active employment measures shall be performed by the Employment Service Agency of the Republic of Macedonia, upon a prior notice by the CSW.

In terms of organizational set-up, currently, only the Inter-Municipal Center for Social Work of Skopje has a special unit for domestic violence, while in other centers in the country, this function is carried out by professionals who are also engaged in a number of areas in which the center has a legal mandate to act. The provision of assistance and support in CSWs, as well as the coordination with other institutions, could be more easily organized if these institutions had special units solely dealing with domestic violence.

One of the main constraints to providing effective protection for women suffering domestic violence is the lack of human and technical capacities of CSWs. There is a lack of professionals to work with women, such as lawyers, psychologists and pedagogues. This lack affects the provision of protection for women after normal working hours and on holidays and weekends. In practice, in urgent cases, some of the professionals were called after the working hours or early in the morning. In this respect, CSW representatives pointed out that hiring a social worker on duty shall be required.

There is no mutual information between competent authorities on domestic violence cases reported, nor on actions taken in the implementation of temporary protection measures, according to CSW representatives. This situation greatly hinders the effective protection of women suffering

domestic violence. In fact, in certain cases CSWs are waiting for information from the police for more than 30 days, despite the legal obligation of police officers to notify this institution within 12 hours of the domestic violence reported, for the purpose of taking further measures of protection. The general conclusion of CSW representatives is that the police should be more actively involved in ensuring the protection of women, including their escort to health facilities and preparation of a proposal to impose a temporary protection measure “removal from the home and a restraining order to approach the home”. Also, CSWs have difficult communication and coordination with basic public prosecution offices and trial courts, especially in cases where women who have survived domestic violence withdraw from the proceedings before the Public Prosecutor or when the judicial procedure is suspended for the case. The establishment of a multi-sectoral team for domestic violence cases was positively assessed, but the effective operationalization of this legal possibility is lacking in practice. An established regular meeting schedule of the multi-sectoral team is lacking, as well as the involvement of certain institutions, such as health care facilities, educational institutions and civil society organizations.

Regarding the provision of different types of protection, CSW representatives said they were facing difficulties in terms of providing such protection in cases where they are responsible for its provision, and especially if some type of assistance should be provided by other state institutions responsible for this under the law.

According to statements by CSW representatives, women who have suffered domestic violence have a need for legal aid and representation by a lawyer in proceedings conducted before competent courts. In terms of legal grounds, women most often request assistance in the process of divorce, alimony and custody of children. Some of them require the initiation of proceedings for imposition of temporary measures for their immediate protection, where the measures prohibiting certain abuser’s behaviors (prohibition of contacts, harassment, approaching) are the most frequently requested ones.

Despite the legal obligation to provide legal aid, access to it is limited, that is, there is no uniform provision of legal assistance by CSWs, nor is it offered throughout the country. So, in a few of the CSWs, this assistance is provided⁵⁶ by an expert jurist from the CSW itself, while in other CSWs, women are referred for legal assistance to the Ministry of Justice Regional Offices and/or civil society organizations working with women who have suffered domestic violence. According to the representatives of the Centers for Social Work, they inform women about the measures of their protection and possibilities of free legal assistance offered by the Law on Free Legal Aid, and they deem that women are not sufficiently informed about the free legal aid. Also, they consider that the criteria of the Law on Free Legal Aid and the long decision-making periods act restrictively in terms of effective protection that shall be provided to women who have suffered domestic violence. Therefore, in emergency cases, due to the restrictive criteria of the Law on Free Legal Aid and long decision-making periods, women who have suffered domestic violence are referred directly to civil society organizations providing free legal aid. “Due to the fact that the Law on Free Legal Aid includes a small number of persons as potential beneficiaries and because the criteria therein are restrictive, we refer some victims, whom we find are lacking funds and because of the urgency of the procedure, to ESE. Cooperation with ESE is excellent and I can point out that they provide quality legal assistance to victims. I can underline that NGOs do not have any restricting requirements for provision of free legal aid to victims, as is the case with the

38 ⁵⁶ Only in one of the five CSWs surveyed, legal aid is provided by an expert jurist in the CSW itself.

Free Legal Aid Law” - a statement by a professional worker employed in CSW. In terms of this situation, the most disadvantaged are the women survivors of domestic violence living in cities where CSWs do not provide legal assistance and there are no civil organizations providing free legal aid. Additionally, the lack of funds for court fees and necessary expert testimonies in court proceedings is another problem faced by women who have suffered domestic violence. It is a cost that women have to personally bear. This is true even in the case of free legal assistance approved to the women (such approval does not exempt them from paying the cost of court fees and evidence collection).

According to the Law on Prevention and Protection from Domestic Violence, women who have suffered domestic violence shall be provided with free health care. According to the statements of CSW representatives, this is lacking in practice. Namely, medical institutions refuse to provide services to women who have suffered domestic violence or to issue medical documentation without charging for this service. Examples were cited where CSW representatives accompanying women in health care facilities paid for the service, and their costs were reimbursed later. In one case, health professionals did not want to provide a service to a child unless 40 Denars were paid. This is a worrying situation, especially if the woman who has suffered domestic violence has no funds. This means that she will not be provided with a health service. But this also means that if she wants to initiate a procedure for imposing temporary protection measures and therefore needs medical documents to serve as evidence in court, she can not do it.

In terms of their responsibilities related to temporary protection measures, CSW representatives said that they were facing many difficulties both in their proposal and in their implementation and monitoring.

Social Work Centers face difficulties in implementing their urgent nature obligations, i.e. the preparation of findings and opinions to impose temporary measures by the court within 24 hours (without a hearing). In this regard, CSW representatives indicated that the Interior Ministry and the police should provide immediate protection to victims or remove the abuser from the home and submit a proposal to the court for imposing the interim measure “removal from the home and restraining order”.

CSW representatives highlighted the problems they face in the implementation of temporary protection measures. In this respect, the measure “abuser’s removal from the home”, which is under the jurisdiction of the Ministry of Interior, or the measure “compulsory treatment” implemented by the Ministry of Health, were identified as measures whose implementation is particularly difficult. In terms of the measure for removing the perpetrator from the home, it was indicated that the police were lacking an adequate mechanism to check if the abuser had left the home. Cases were indicated where the abuser would return home after two days of the pronouncement of the measure and if the woman did not react to the breach of the measure, there was no reaction by the police and CSW. Because of this, it is necessary to introduce mandatory periodic checks of victim’s residence and communication address by the police within the duration of this measure. In terms of the measure of compulsory treatment, it was stated that the Ministry of Health did not meet its obligations under the Protocol for Action in Cases of Domestic Violence. Health facilities do not provide transport for the abuser to treatment institutions, i.e. the abuser shall bear these costs himself. There is also a need to further explain and define the measure of compulsory treatment when it comes to mentally ill persons or persons suffering from schizophrenia. In fact, the law provides for open type compulsory treatment, while this group of abusers should be treated in an institution of a closed type.

There are no mechanisms in place to monitor the temporary protection measures imposed and as a result, adequate response is lacking in cases of their disregard and violation by the perpetrator. CSW representatives indicated that there are written forms in place to monitor the measures, but due to their preoccupation with work tasks, they are not able to maintain them on an ongoing basis. In one of the CSWs in such a situation, information on how to implement the measures is obtained on the basis of telephone communication with representatives of relevant institutions, such as the police or health facilities. In addition, CSW representatives are faced with a lack of technical, financial and human resources to monitor the implementation of the temporary protection measures. In some cases, women who have suffered domestic violence are called to make a statement on whether the measure is respected by the perpetrator. Such ad-hoc communication is not an appropriate mechanism for monitoring the implementation of temporary protection measures. In practice, not one of the Social Work Centers had initiated criminal proceedings for disregard of temporary protection measures imposed, or for contempt of court decision.

Police Action in Proposing and Implementing the Interim Measure “Removal of the Perpetrator from the Home and Restraining Order to Approach the Home”

According to the Law on Prevention and Protection from Domestic Violence, a police officer shall come to the scene and prepare a police report immediately, or within 12 hours based on an adequate assessment of the violence risk and then file a proposal to the competent court for imposing a temporary protection measure. According to Sectors of Internal Affairs’ representatives, this legal period is unrealistic and it should be increased to 24 hours.

Actions by Civil Court Judges in Ensuring the Legal Protection of Women Who Have Suffered Domestic Violence

The nature of violence against women requires urgent action and provision of protection, including legal protection. This urgency is particularly pronounced in the procedures for issuing temporary protection measures where the effectiveness of the protection provided depends on the expediency of judges’ action. In this regard, it is important to note that judges are aware of their role in this procedure, but also of the role that other institutions have when submitting the proposal, as well as during the implementation and monitoring of the temporary protection measures imposed.

Based on their experience, judges working on domestic violence cases indicated that the judicial procedure for imposing temporary protection measures usually starts by initiating a proposal for the imposition of these measures by the competent Center for Social Work, and by a police officer or the woman who has suffered domestic violence.

According to judges acting in proceedings of this kind, women survivors of domestic violence initiating legal proceedings themselves are in the most vulnerable position, given that they have to pay court fees themselves to initiate the procedure. Another problem faced by these women is the collection of evidence required, especially in situations where domestic violence has not been previously reported to competent institutions (Centers for Social Work and the police). Although legal provisions for protection against domestic violence envisage the provision of free health care for victims, which means free-

of-charge issuance of medical certificates, judges emphasized that in practice, health facilities do not meet this legal requirement. In such situations, proceedings are delayed because of the need to bring additional evidence, such as statements of witnesses. According to judges, the Law on Free Legal Aid is not applicable in these situations at all, given that the deadline for deciding on the application is quite long, where even the free legal aid users are not exempt from court fees and they themselves should provide means for evidence gathering.

As regards proposals for imposing TPMs, judges highlighted the inadequacy of the proposals prepared by the MoI, resulting in delays of court proceedings. This refers to the proposals for measures such as prohibition of contacting and removing the perpetrator from the home, for which situations, judicial procedure shall be urgent.

The efficiency of the procedure for imposing temporary protection measures, i.e. the expediency of judges' action depends on the different case-law. Namely, there is a different practice among judges as to what evidence is sufficient and how long it takes them to make a decision to impose the temporary protection measures proposed. Urgency of action in civil proceedings for imposition of temporary protection measures requires engagement of judges and their action after office hours or on weekends and holidays. According to judges' statements, a problem arises in passing the measure "removal from the home and restraining order", when the proposal by the Interior Ministry is to be submitted at a time when the court is not working. In such situations, it has happened that judges have been called by the Interior Ministry during the night, but without having physical access to the court, judges are not able to prepare a decision for the measure.

After the imposition of TPMs by the court, their effective implementation by the responsible institutions is missing. According to judges' testimonies, in the implementation of temporary protection measures imposed, major difficulties are faced by the institutions involved in implementing the measures of mandatory treatment and removal of the abuser from the home.

The absence of a mechanism to sanction offenders who do not comply with the TPMs imposed is particularly worrying for the judges.

A key shortcoming in the provision of judicial protection noted by the judges is the absence of court records of domestic violence cases. Maintenance of a special database of court cases related to domestic violence is crucial to monitoring the manner of judges' action and for taking action towards promoting judicial protection. Cases related to domestic violence are not recorded separately in the electronic database of trial courts. Judges propose that all actions related to one case of domestic violence should be conducted by a single judge, e.g. divorce proceedings, adjudging the children and the procedure for imposing TPMs. A prerequisite for this organization of court work is the maintenance of separate records of domestic violence cases. On the other hand, this is required in order to provide effective legal protection of women who have suffered domestic violence and to hold perpetrators liable. Namely, it may often happen in practice that a judge may make a decision while not being aware of other litigation cases against the domestic violence perpetrator, which leads to inadequate understanding and handling the issue. This happens in a situation where the victim or the PPO have not specified such information. If there is a special domestic violence database, data of this kind will be available to judges while deciding and determining the penalty.

The general conclusion is that so far, trial court judges have not been involved nor consulted in the process of adoption or amendment of the legal framework for protection against domestic violence. Very few judges in general have been involved and consulted as practitioners on how to improve certain aspects of law enforcement.

CRIMINAL LAW SYSTEM OF PROTECTION IN CASES OF DOMESTIC VIOLENCE

Personal Experiences of Women Who Have Suffered Domestic Violence

According to the majority of women survivors of domestic violence, the reporting of violence begins at a police station, i.e. by the police who are actually responsible for providing initial assistance and protection. Unfortunately, statements suggest that women who have suffered domestic violence are not satisfied with the actions of police officers. According to them, the police show no understanding of their problem and hence, their response is belated and overdue. The statement of one of the victims speaks in favor of this claim: *“The police have a late reaction - from the day I reported him, the police waited for two weeks to summon him”*. The following statement also confirms belated action: *“The last time he hit me, I was helped by some people to get up. I dialed the police, but no, the police are gone, they don’t go on site. Maybe he went to them, a long time had passed, and I don’t know what it is. I’m totally disappointed with the police. They are passing the ball from one to another”*.

Some women report that the police do not believe their testimony and have no understanding of the situation in which they find themselves: *“When I went to the police station, I showed them my arm and they said it was nothing, only bruises. While at the doctor’s, they x-rayed and bandaged my entire arm. When I returned home from the doctor’s, he had already been released, they had held him for just a few hours”*; *“I don’t believe the police, they didn’t believe the statement I gave”*, *“Out of a hundred times of reporting and going there, they would record only three times”*. The dissatisfaction with the attitude of the police in terms of underestimating the severity of the problems is shared by one of the victims when she complained to the police that her drug addicted son had just started taking things out of the house, to what the police replied: *“Then, why did you leave if you cared for the things so much?”*

Particular concern is raised by the statements on inadequate action and failing to take appropriate preventive measures for women who have suffered serious physical violence. This is testified in some statements of the women: *“I told the police that he had a gun, but they did nothing”* or *“He would take our daughter from school as a hostage, so that I give him money... he is a drug addict. If I don’t bring him money, he doesn’t let her to go to school. I alarmed the CSW, they alarmed the police, but the police didn’t react at all. CSW is advising me not to let my daughter go to school for some time.”*

In terms of whether they felt safe and protected after having reported to the police station, some of the women survivors of domestic violence said that they had a feeling of security only while being at the police station or while the police were at their home, but then after that, they felt even more insecure and unprotected. *“Yes, they keep him for only 24 hours and then, after that, he’s free, he can do whatever he wants”* or *“I knew he had a gun and it frightened me. Continuous threats to my life and the children, night telephone harassment, at work, harassment of my colleagues, the lady lawyer, and*

the children, which is the most terrifying. I don't know how I'm alive, he has cocked his gun on me from a car", said some of the women.

A few of the women said they were satisfied with the information and explanations they received from the police in terms of what the police were undertaking in their case, as witnessed by some women: *"They tried to explain to me that violence is punishable. You could report him after each act of violence committed."* *"For the first time in my life I was at the police and normally, I panicked and was afraid because I didn't know what was happening. They filed criminal charges, but I didn't know what it meant, I asked them what criminal complaint was, what it means. They told me that it was about the fact that he was beating me"* *"The information the police gave me was not clear to me, nor how I could protect myself."*

Unlike the precise feeling of dissatisfaction with the police action, women who have suffered domestic violence do not have a clearly expressed position regarding the actions of prosecutors. This is due to the fact that the main task of prosecutors is to prosecute crime perpetrators, hence the belief that prosecutors indeed do that.

Women survivors of violence have their own views regarding the satisfaction over the outcome of court proceedings. Most women are dissatisfied with the sentences, such as: *"They only give him probation, why don't they give him a three, four months' sentence, so he can see what it means"; "The penalties issued were too lenient, and he is a recidivist, he repeated the offense several times"*. One of the women also expressed disappointment with the Court of Appeal, which overturned the first instance court decision from a prison sentence to probation, although it was about a person who had committed a number of domestic violence acts. The statement of one woman survivor of domestic violence is worth noting, according to which after several attempts, justice has finally reached the abuser *"He has four convictions for the crime of endangering safety and causing general danger. One of the judges was virtuous enough to impose an effective prison sentence of 6 months for the crime of bodily harm and coercion"*. Most women who have suffered domestic violence believe that the judiciary is slow and cumbersome and according to them, one thing is said, and another is happening in reality. In terms of feeling safe during the proceedings, one of the women said that she was not safe at the court in spite of the police presence. Namely, when she was having a break after the hearing, the abuser managed to hit her with his head. None of the women surviving domestic violence said she was informed of the procedures and possibilities to be indemnified for non-pecuniary damage caused as a result of domestic violence.

Actions by the Police

There is understanding and awareness of the mandate and role defined for the representatives of Internal Affairs Sectors (the police) regarding the provision of protection for women survivors of domestic violence. All police representatives (Chief of Domestic Violence Department, senior inspector at the Domestic Violence Department, inspectors for domestic violence and juvenile delinquency) have indicated that their primary role is to help women be protected and to prevent such behavior by the perpetrator of domestic violence.

In terms of what kind of assistance and protection women survivors of domestic violence usually seek from police officers, Sectors of Internal Affairs said that victims primarily want the police to

prevent the offender from continuing the violence, as well as take care of them because they fear the repetition of domestic violence acts. One of the Internal Affairs Sectors said that victims also request that the abuser be removed from the home, as well as his criminal liability. Representatives pointed out that when the woman who has suffered domestic violence addresses them, they inform her about her legal protection options. Two Sectors deem that women are sufficiently aware of their legal rights, i.e. regarding the provision of protection against domestic violence. According to these officials, the alarming upward trend in registered domestic violence-related crimes is solely due to the increased awareness and education about this phenomenon.

With the exception of one of the Internal Affairs Sectors where the assessment is made by a multi-sectoral team, other Sectors said that the police officer on duty who receives the report on domestic violence personally assesses the crime severity. Police officers do not face difficulties in determining the security risk to the victim. Namely, such lack of difficulty according to one of the Internal Affairs Sectors is primarily due to the fact that the assessment is made jointly by the multi-sectoral team, and because of the fact that increased risk in domestic violence cases where they acted was rare. These are the statements of some representatives of Sectors of Internal Affairs: *“Experience shows that no firearms or knives are used, that is, most of the cases involve verbal threats, physical assaults and threats with some household items (which were found at hand)”* and *“Our experience shows that the assessment we make about the security risk after talking to all parties results in the perpetrator agreeing to be returned to the family with a pledge not to repeat the offense”*. Such statements indicate worrisome facts related to the assessment of violence risk, which is that according to some police officers, verbal threats, physical attacks and threats with household items are not considered a security risk, so if there is a promise that the offender will not repeat the act, he will not be removed from the home, but returned to the family.

These statements largely correlate with the views of additional two Sectors of Internal Affairs. Namely, according to the information obtained from one representative of these Internal Affairs Sectors, in many cases women report family problems and disputes where there is no threat to safety and on which criminal charges can not be filed, so therefore, these acts are addressed as complaints. The second official said that in case of a verbal argument and when the police officer assesses that the offender will not repeat the offense, it is noted that it is a complaint and the offender may be verbally warned. If it is assessed that the nature of the complaint is of a “more serious” type, then the person may be summoned to the police station, while the police officer in charge of prevention in that security area may give the offender a written warning and make an official note thereof. Representatives of Internal Affairs Sectors did not point to the fundamental problem, which is the fact that the reports on domestic violence containing elements of the criminal act - bodily injury, and which due to the lack of will/proposal by the woman suffering the domestic violence for further action on the matter, are also recorded as complaints. Further, a question is raised of how the police officer assesses whether it is a complaint of a “more serious type”, and if according to the assessment, it is indeed such a complaint, then whether it should result only in a written warning like in the case of other crimes. This is even truer if the nature and dynamics of domestic violence are taken into account, i.e. it presents a pattern of behavior which is cyclically repeated, intensified and escalating to increased violence.

From this we can conclude that “the lack of difficulty among police officers in assessing the risk

to the victim's life and physical integrity" actually means that police officers are not able to recognize the security risks as such. Thus, the inadequate personal assessment of the gravity of the domestic violence committed may very often imply failure of police officers to act even when such violence is large in scale. The established practice of (non)intervention in the so-called "non-emergency cases" leads to discouragement of women to report the domestic violence again, while creating a perception that the violence which happens to them is not "serious" enough and does not require an immediate emergency intervention. Part of the reasons for this failure of police officers to act may be due to a number of facts, such as non-recognizing the physical and sexual domestic violence and ignorance about their legal regulation.

Regarding the repetition of domestic violence acts, Internal Affairs Sectors' representatives said that in practice they witness cases where the woman who has withdrawn her proposal for prosecution again reports domestic violence against the same offender, but records of applications filed per offender are not kept. There is no possibility to follow the withdrawal of the proposal for criminal prosecution if it is withdrawn at a stage in which an indictment is already submitted. In that case, the Public Prosecution Office shall abandon further prosecution and the decision shall be rendered by the competent trial court. The police do not receive notification from the court regarding such dismissal decision, thus being disabled to follow the prosecution proposals withdrawn. The court is only obliged to inform the Public Prosecutor's Office which is a party in the proceedings, and then, the prosecution shall inform the police. The police shall get feedback only if criminal proceedings have ended with a final judgment, which they shall document.

From the foregoing, the need for a more detailed analysis of two aspects of police officers' action emerges, i.e. whether certain reports of domestic violence are properly qualified as to whether there is a serious danger to the life and physical integrity of the victim or not, which on the other hand, defines whether the case will be recorded as a criminal charge or complaint, and second, whether there is a way to monitor the repetition of domestic violence offenses committed by the same perpetrator through the complaints reported, especially if it is about complaints of "a more serious type" or complaints containing elements of crime. In addition, there is a need to analyze the criminal charges withdrawn during court proceedings, if the woman who has suffered domestic violence again reports domestic violence against the same person at the police station.

In urgent cases, if during the inspection of the scene, police officers observe a major injury (physical or mental) on the victim, they shall call an ambulance⁵⁸. The practice of some of Internal Affairs Sectors shows that police officers consider that only bodily injuries/physical injuries are indeed injuries. In this case, they refer the woman who has suffered domestic violence to a health institution instead of calling an ambulance. Such behavior suggests a practice where only physical injuries resulting from domestic violence are recognized and acted upon.

⁵⁸ Point 2.7 of the Joint Protocol for Action in Cases of Domestic Violence gives clear and precise instructions to police officers who act in cases of domestic violence "In cases of serious injuries (physical or mental) of the victim/offender, police officers shall call an ambulance".

Action of Basic Public Prosecutor's Offices

Representatives of Basic Public Prosecutions fully understand the legal authority established for the public prosecutor in relation to action in cases of domestic violence. Namely, the prosecution office, but also the police and judges, shall act with special care towards victims of crimes, then vulnerable groups and victims of crimes against sexual freedom and morality, humanity and international law, while advising them on their rights and taking care of their interests when making decisions about prosecution. In this regard, they mentioned and welcomed the amendments to the Criminal Procedure Law in 2010, with regard to victims of crimes, vulnerable victims and victims of crimes against sexual freedom and morality. At the same time, they emphasized their legal mandate and duties provided for in the Criminal Procedure Law, after assessing and identifying the need for special protection of victims, to propose to the judge to make a decision on adequate procedural protection measures.

In terms of actions taken by prosecutor's offices after receiving criminal charges for domestic violence, the representatives of one of them pointed out that it is extremely important for the public prosecutor to have information on the domestic violence in question and not to wait for the filing of criminal charges by competent authorities or individuals, but to act voluntarily in accordance with his/her legal mandate. Suffice that the public prosecutor establish the event and then inform the Center for Social Work and the police for the purpose of their involvement in providing adequate protection to women who have suffered domestic violence.

Basic PPOs lack a specific department or special prosecutors who act in cases of domestic violence. The exception is the Public Prosecutor's Office in Skopje, where there is a specialized department for violent crime, which includes crimes of violence against women, so prosecutors working in this department also deal with domestic violence cases. All representatives of Public Prosecutions indicated that prosecutors possess the expertise to work on this type of offences because they have received previous training regarding work with child victims of crime, victims of sexual and domestic violence, so they are able to distinguish them. Prosecutors treat such types of sensitive cases, where victims are children or women, with special priority, where the first steps and actions are taken over the phone because of their urgency. Their view is that there is a need for specialization of prosecutors in relation to offenses associated with violence against women, with a special focus on domestic violence.

The legal period of 30 days provided regarding the preliminary investigation, within which state authorities, local government units, legal and natural persons shall submit data, notifications, documents, cases and papers to the public prosecutor, is sufficient and prosecutors see no need to extend it.

The most common crimes for which domestic violence criminal charges have been submitted to basic public prosecutor's offices include bodily injury in domestic violence (Article 130 paragraph 2) and endangering safety in domestic violence (Article 144 para. 2).

One of the legal possibilities of the public prosecutor to complete the preliminary investigation is the decision to dismiss the criminal charges. According to some public prosecutors, there are often two reasons for dismissing the criminal charges, the first being the withdrawal of the prosecution proposal by the woman who has suffered domestic violence, and the second is the absence of a reasonable suspicion that the person has committed the crime, or the lack of sufficient evidence that the offense has indeed been committed. Because of the first reason, one of the prosecution offices deems that the offense of

bodily injury in the commission of domestic violence should not be prosecuted on a proposal by the victim, but also ex officio by the State, i.e. the public prosecutor. But apart from this position, one of the prosecutions thinks that the possibility to prosecute upon a proposal of the injured party is positive. For the most part, this is due to the opinion that *“Family disputes should not be prosecuted by the State, and if this were regulated differently it would mean producing an unnecessary burden for the court to conduct litigation for family quarrels”*.

According to public prosecution representatives, probation sentences for domestic violence crimes for which the prison sentence ranges from 3 months to 3 years⁵⁹ are effective. Namely, if the court rules that the perpetrator must not repeat the crime within a certain period, he really abides by this ruling because he is aware that he could be sentenced to 3 years in prison.

The position is identical when it comes to the crime - Endangering safety in domestic violence, which is prosecuted ex officio and where it is about persons who appear as perpetrators for the first time and therefore, public prosecutors propose probation sanctions *“We believe that in this way, i.e. by threatening that if he repeats the domestic violence, he will get a prison sentence, the offender corrects his behavior. Apart from punishment, other alternative methods such as counseling, etc. should be used to prevent and reduce domestic violence.”* When it comes to this crime, often the victim does not come to give a statement, which is usually the only verbal evidence that domestic violence has indeed occurred, and in such cases the public prosecutor dismisses the criminal charges. According to them, such actions are in part due to the fact that *“partners have reconciled, the situation has improved”* or *“one can not expect the victim to testify against the abuser, and then continue to live with him in the same house”*.

Unfortunately, we can conclude that as long as there is no system in place for continuous monitoring of the situation in terms of repeated acts of domestic violence by the same perpetrator, we can not state with certainty whether the relations between partners have improved or the woman survivor of domestic violence can not give a statement in support of his criminal prosecution due to her coexistence with the abuser and the existence of violence, pressure or influence.

Basic Public Prosecutions indicated the existence of positive cooperation with the police, solid quality of domestic violence criminal charges on their part, and active engagement of the police until the submission of the indictment. There are cases though, where even though the crime was qualified as a bodily injury according to the criminal complaint by the police and there was a proposal for criminal prosecution made by the injured party, the prosecutor will, at the stage of evidence gathering, re-qualify the act to another domestic violence crime, for which the procedure is conducted ex officio. This means that the legal qualification specified in the criminal complaint does not oblige the prosecutor to prosecute that particular crime. Prosecutors believe that such reclassification does not mean inadequate preparation of criminal charges, but rather re-qualification resulting from additional evidence collected, such as for example, witness statements or material evidence.

⁵⁹ Coercion (Art. 139 para. 2); Unlawful deprivation of liberty (Art. 140 para. 2), Endangering safety (Art. 144 para. 2) and Bodily injury (Art. 130 para. 2) of the Criminal Code

Action of Judges in Criminal Proceedings for Protection against Domestic Violence

The interviewed criminal judges stressed out the fundamental role of courts, that is, through expedient and efficient processing of cases to provide adequate protection to women victims of violence, and also ensure non-discrimination in their decisions in the area of domestic violence, women trafficking, sexual violence, violence against sex workers. According to them, through the adoption of a number of pieces of legislation, the legal system in Macedonia provides procedural and substantive protection of women who have suffered domestic violence.

Judges noted that there is adequate regulation of all forms of domestic violence (psychological, physical and sexual), stricter penalties for domestic violence perpetrators stipulated by law, as well as prosecution of such crimes *ex officio*. For them, the provision stipulating the obligation to prosecute the crime of bodily injury is inadequate, i.e. instead of prosecuting it upon a proposal, it must be addressed *ex officio* by the public prosecutor. Judges emphasized the need for continuous improvement of the legal framework in relation to violence against women, through its harmonization and adherence to international experiences of successful protection provided to women who have suffered domestic violence. The need to improve certain aspects of judges' action was highlighted, particularly in terms of continuing education and establishment of special court divisions dealing solely with this issue. As regards continuing education of judges, it was pointed out that such education is implemented by the Academy for Training of Judges and Public Prosecutors in order to sensitize and train them on how to deal with women who have suffered violence. They reckon that such education events boil down to simple lectures which do not enable judges and prosecutors to gain adequate knowledge and sensitivity while dealing with cases of violence against women.

Regarding the State's penal policy in terms of domestic violence perpetrators, it was pointed out that the Law on Determining the Type and Level of Penalty is an established framework within which the court shall move while determining the type and level of punishment. Courts usually observe these legal provisions and implement them clearly when it comes to more severe criminal acts committed in the area of violence against women. There is some deviation while determining the type and level of penalty in relation to offenses containing violent elements, and for which a summary procedure is envisaged because most often the perpetrators of such crimes appear as perpetrators for the first time, so in such cases, the court aims towards achieving the objectives of punishment, that is, not to repeat the violence, and if the court gets such assessment, it usually imposes an alternative measure on the offender because otherwise the purpose of punishment would be revenge rather than prevention and stoppage of future violence. There are exceptions in which offenders who have committed the crime for the first time can be sentenced with imprisonment.

Regarding the protection of women who have survived domestic violence, some judges said that in their case-law, i.e. in domestic violence criminal proceedings, women often give up on their protection. They do this by refusing to give statements or by withdrawing their prosecution proposal. Judges' perception is that at the beginning of the procedure, the woman feels very hurt, which causes her reaction of reporting the case to the police and public prosecution. This is done in order for the offender to be punished, but because court proceedings are not very expedient, often, it may happen that the woman who has suffered domestic violence and the perpetrator improve their relations "*Victims become*

unwilling to testify or they withdraw their proposal, thus losing the effect of actions undertaken by the State, and parties return to the same environment. This means that the conditions have not changed so as not to repeat the offense”.

Under the new Criminal Procedure Law, judges’ mandate has been fundamentally changed. In fact, by changing the principle of establishing the truth from substantive to procedural, this Law has completely changed the position of the woman surviving domestic violence. Thus, the previous principle of substantive truth, which implied a mandate of the court to present evidence, has now changed, so the new principle of procedural truth involves proposing and presenting the evidence that parties (the public prosecutor and the woman surviving domestic violence) shall prove during the main hearing. All this is indirectly reflected on the course and outcome of the procedure, where one of the judges pointed out that if a woman does not state that she has reported the perpetrator to the authorities on several occasions, then the court will not know the history of the problem faced by the victim *“Under the new Criminal Procedure Law, a victim can submit evidence that she has reported the case. I want to clarify that the court does not require anything, i.e. it will not take into account certain evidence if the victim does not specify or present it. If the PPO is not interested in providing a wider picture of the offender before the court, I, as a judge, have no right to ask for data in that context. In other words, the victim and the public prosecutor should present valid evidence before the court”.*

Judges share the position that the system for recording criminal and civil proceedings should be improved. It was also pointed out that criminal records do not contain sufficient information about domestic violence perpetrators.

HUMAN TRAFFICKING

Information obtained from human trafficking victims and interviews with professionals acting in these cases point to a general conclusion, which is that in practice, victims are still facing non-implementation of assistance and protection measures, lack of knowledge about their rights, repeated exposure to victimization during court proceedings and inability to exercise their right to indemnification.

Regarding the question of where they referred and what the attitude of responsible institutions was like in terms of assistance and support to victims, most human trafficking victims had their initial contact with the police and social workers, who are also representing the institutions responsible for victims’ identification. Victims who joined the criminal prosecution and got involved in court proceedings were in direct contact with judges and prosecutors, while during the support process, they also had contacts with other institutions such as education and health institutions⁶⁰. Victims said that they were the least satisfied with the attitude of the police, whose conduct was rough, exposing them to ridicule, snide comments and inappropriate words and behavior: *“They are not helping us, they harass us, I got a slap, he treated me like a prostitute, he took me by the hair and yelled at me, and I said that everything I was telling him was true, while he laughed at me and told me I was lying.” “How did you go with your clients? Did you have an intercourse with or without protection? Did you like it?”*

⁶⁰ The eight persons involved in the focus group requested help from institutions; all of them originally contacted the police station, then, seven of them requested assistance from competent CSWs. Court proceedings were initiated regarding five persons and they had contact with public prosecutors and judges, while the other three persons did not want to file criminal charges against the perpetrators. In two cases, they were referred for medical examinations (Forensic Medicine) in neurology, cardiology and hematology. In three cases, these persons had contact with educational institutions.

On the other hand, the representative of the Ministry of Interior said that one of the key issues is that at the local level, Sectors of Internal Affairs have no police officers appointed to act exclusively in human trafficking cases, i.e. there are no trained staff that would act according to the Standard Operating Procedures for Dealing with Victims of Human Trafficking.

Regarding the conduct of public prosecutors and judges, one of the trafficked women stated: *“My judges were unsuitable, they were uninterested. The court process had to be ended by now, it’s been dragging for seven years. I was confronted with the perpetrators even though I was underage and the judge sided with the defendants. I don’t think a judge should take sides”* (court proceedings were conducted before amending the Criminal Procedure Law in 2010). Moreover, victims said that during court proceedings, they were asked to respond unpleasant questions, and it was insisted on their answers. They had the feeling that judges treated them with condemnation and ridicule.

In terms of the level of information provided by competent authorities on their rights, victims said they had received information about the possibility to join the criminal prosecution and available services offered to be used on a voluntary basis, such as: accommodation at the Center for Victims, psycho-social assistance, health care, inclusion in the educational process, attendance of workers’ courses and the like. Also, they were informed why they were summoned to the institution, and the requirement that during the procedure, a parent or guardian shall attend regarding persons who are children or were children during the procedure. The course of procedure (interview) was not explained to them.

Also, one of the victims placed in the Center for Human Trafficking Victims indicated that she was not informed that there was a period for reflection and a final decision to initiate criminal proceedings against the perpetrators. In fact, after the extensive interrogation at the police station where she was detained for more than nine hours, the victim said she made the decision hastily *“I did not know what exactly it was, but in order to salvage myself and escape from the police station I agreed and signed everything they told me”*.

None of the institutions has provided a legal representative for the victims that would protect their rights and interests, nor has informed them of the possibility to get free legal aid provided by the State. A counsel was provided by Open Gate or was privately hired by the victims. In these cases, victims were prepared before the trial and acquainted with their right to demand compensation for the non-pecuniary damage they suffered. But in the other cases, victims had the first meeting with their counsel on the very day of the trial, when the process and course of the trial were explained to them. They pointed out that the stages of the procedure were quite unknown to them, i.e. they did not receive any notification regarding the procedure, the decision rendered on the criminal offense and the decision on their claim for non-pecuniary damages.

Victims reported that their experience as witnesses in the proceedings was very uncomfortable. One victim said *“I didn’t like it, I didn’t feel nice because I was under a lot of stress then, while the questions they asked me were unpleasant, because there were also men, and not only women in the courtroom”*.

Characteristic is the case of one of the human trafficking victims, who indicated that due to the presence of the defendants at the hearing, she felt re-victimized and unsafe *“The court process was supposed to be over by now, it’s been dragging for 7 years. At the trial I felt terrible because the judge took the side of the perpetrators, considered me guilty and even allowed one of the perpetrators to*

approach me in the courtroom. I felt very unsafe. The duration of the process is very long, it's been 7 years now without any closure. Several judges changed over the years. The last judge insisted to meet me, he did not take a statement; I think he only wanted to check up my physical appearance. I felt like my trial was re-starting". In the said case, the judge insisted on hearing the victim for the third time besides the prosecutor's reminding of the legal provisions regarding human trafficking victims' testimonies (the person was a minor at the time of the crime) and the possibility of re-victimization of the victim (after seven years to make her recall the crime and be traumatized again).

Also, the victim underlined the length and uncertainty of court proceedings *"I'm not satisfied with the procedure, there is no justice in my case. The decision is constantly being dragged, I don't know what will happen next. I expect to be summoned to court every moment. This creates a continuous pressure on me and I feel fearful. One of the perpetrators is at large, and if they catch him, they will summon me to court again to testify. I want this process to end once and for all."*

In relation to issues of access to services for assistance, support and protection of human trafficking victims, the interviewed professionals pointed out that although there is a legal framework in place for the provision of this type of services, it is not implemented in practice. In fact, the Center for Social Work's representative pointed out the need to provide funds for the operation of the Center for Human Trafficking Victims run by the civic association Open Gate-La Strada, which is the only service offering accommodation, psycho-social support and legal assistance. Also, this representative underlined that services for reintegration of victims are actually unavailable locally due to the lack of capacity of state institutions' regional offices and local government units. Currently, they can be provided only to the victims accommodated at the Center for Victims located in Skopje.

SEX WORK

Information obtained from sex workers points to the fact that all sex workers have suffered some form of violence by different perpetrators. Apart from clients and partners, institutions also appear as perpetrators of violations of sex workers' rights.

According to their accounts, not all violence should be reported. Some of them believe that the violence which inflicts no visible injuries should not be reported, while others think that any violence should be reported and sanctioned. In practice, most of the violence remains unpunished due to the inaction of the police in the cases reported. Sex workers indicated a range of concrete examples of personal experiences and testimonies of police misconduct, which discourages them to report the violence. One of the sex workers working on Skopje streets faced three assailants who inflicted visible injuries on her face and body in an attempt to forcibly take her by a vehicle. Shortly after the event, a police van was conducting a routine control of the area where the event happened. She told them about the event, asked for help and gave them the license plate of attackers' vehicle. The answer of police officers was: "They should've taken you and hung you." Experiences of sex workers who reported the cases of violence at other police stations in Skopje are similar. There, they faced humiliation and ridicule by police officers, instead of taking action to collect evidence and track down the offenders. The problem of inaction of the police in cases of violence against sex workers is systemic. Similar experiences have also been reported by sex workers from Gostivar.

Some sex workers reminded of the police raid conducted in November 2008 as one of the extreme cases of violation of their rights by authorized police officers. During this raid, the police arrested 23 sex workers without informing them of the reasons for such detention and their minimal rights while detained, and they were held for more than 22 hours in inhumane conditions without food, water and access to toilets and medical assistance for those in need ⁶¹. In addition, they were all tested for HIV, hepatitis C and other blood-borne infections without their informed consent, and seven of them were convicted for the crime of transmitting an infectious disease. The conviction is based solely on the evidence that they are sex workers who are carriers of the hepatitis C virus, without identifying any injured party or proving a demonstrable intention of transmitting the infection.

Regarding the question about the sensitivity of police officers in dealing with sex workers, the interviewed representative, Chief of the Domestic Violence Department at the Ministry of Interior, said that during the implementation of education events for police officers in relation to their sensitization to the vulnerable position of domestic violence victims, the Ministry is not responsible to sensitize these police officers to the specific needs of sex workers.

Sex workers in domestic violence cases often refer to the police. Few of them turn to the Centers for Social Work. Two of them shared their experiences regarding the action of institutions in the cases of domestic violence where they were victims. In one case, it is a Roma woman who reported domestic violence by a partner with whom she was in a close personal relationship while still being married to another person. With visible injuries on her face and head, she reported the case to the police, where she received the comment: "Oh, you Roma, you're always quarreling and beating each other, and then making up after two days" and refused to record the event. The very same day, she also reported the case to the Center for Social Work in the Domestic Violence Department, but she received an answer that her case was not domestic violence because she was married to another person. The other case relates to a situation of long-term domestic violence which escalated at the moment when she filed for divorce. The violence was reported to both the police and the Center for Social Work, and criminal proceedings were instituted against the perpetrator, in which he was sentenced to an effective prison sentence. According to this sex worker, all parties involved in the proceedings behaved professionally and offered her the necessary assistance and protection.

According to sex workers' statements, some of them manage to get court protection. For example, three of them, who were victims of the police action in the police raid in November 2008, appear as plaintiffs against the Ministry of Interior and the Basic Court Skopje 1 - Skopje for the violation of their right to be free from torture, inhuman treatment and punishment, exercise of the right to safety and security and the right to privacy. This procedure was initiated by the NGO HOPS, in which sex workers received free legal aid and psycho-social support, which sustains their motivation in the lengthy process. According to them, the judge behaved professionally during the proceedings, with full respect for their dignity, particularly because in their statements, they spoke of their painful experiences on the critical night, when they were unreasonably detained and held in inhumane conditions for over 20 hours, and then unlawfully tested for blood-borne infections. Also, one of the sex workers from Gostivar initiated

⁶¹ Трајаноски Жарко и др. Борба за правата на сексуалните работници во Македонија: одговор на сексуалните работници и на граѓанските организации на полициската акција "Сузбивање на улична проституција", ХОПС - Опции за здрав живот Скопје, 2015. (Trajanoski Zarko et al. Fight for the Rights of Sex Workers in Macedonia: Response of Sex Workers and Civil Society Organizations to the Police Raid "Suppression of Street Prostitution" HOPS - Healthy Options Project Skopje, 2015)

divorce proceedings and criminal proceedings in which she was a domestic violence victim, and her husband was the perpetrator. In both cases, she had a positive experience with the behavior of judges, especially in the case where she was a victim of domestic violence.

PROVISION OF FREE LEGAL AID THROUGH THE MINISTRY OF JUSTICE AND ITS REGIONAL OFFICES

There is a general impression that representatives of the Ministry of Justice and its Regional Offices are well aware of the Law on Free Legal Aid⁶², the procedure for exercising the right to free legal assistance by women victims of violence, as well as the shortcomings that hinder the provision of effective legal protection for these vulnerable groups. The general conclusion is that the obstacles identified in exercising the right to free legal aid are indeed limiting for all vulnerable groups, including women who have suffered domestic violence.

Women survivors of domestic violence and human trafficking victims are identified as a special group of free legal aid beneficiaries. The Ministry of Justice's Annual Reports state that the protection of domestic violence victims is one of the legal areas where legal aid by the State was most often provided. Data from the Ministry of Justice Regional Offices indicate that these victims often seek free legal aid in divorce proceedings, procedures for child sustenance, property disputes etc⁶³.

The following section explains the obstacles faced by representatives of the Ministry of Justice and its Regional Offices during law enforcement. It is important to note that although the data in this section are mainly related to domestic violence, the obstacles identified in access to justice apply to other groups, as well, such as women victims of trafficking and sex workers.

There is a ban on advertising the free legal aid. According to representatives of the Ministry of Justice, one of the drawbacks regarding the possibility of promoting the services which under this Law can be provided to vulnerable groups, including women victims of violence, is the ban on advertising free legal aid. The problem is even greater because there is a real need to promote access to free legal assistance to the public, which is not sufficiently informed about the benefits of this Law. In such conditions, only women victims of violence addressing competent institutions and civic organizations can obtain information about the possibility of using free legal aid. There is a need for greater promotion of free legal assistance among the general public and for specifically listing the legal and court procedures where legal assistance is provided. For these reasons, amendments to the Law and lifting the ban on promoting the services provided under the Law on Free Legal Aid are required.

There is a lack of technical and human resources for the provision of free legal aid. Although the Law provides for engagement of jurists who have passed the bar exam to work in Regional Offices, very few of these Offices meet this legal requirement. Representatives of Regional Offices indicated that they do not have Internet access in their offices and this hinders their communication with other institutions.

⁶² Official Gazette of the RM 161/09

⁶³ 2016 Annual Report on the Implementation of the Law on Free Legal Aid, available at <http://www.pravda.gov.mk/documents/tekst%20na%20izvestajot%20za%202016.pdf>

The scope of issues covered by legal aid is defined too narrowly. This applies particularly to previous legal aid which is quite narrowly defined, as well as to legal assistance that should include more areas. In this regard, representatives of Regional Justice Offices believe that the scope of previous legal aid should be expanded, that is, it should cover the provision of basic advice and preparation of writs in certain administrative procedures. In the context of violence against women, it is necessary to expand the scope of previous legal aid provided to victims by citizens' associations, i.e. it shall include the provision of basic advice and preparation of writs in certain administrative procedures. In terms of domestic violence, it is necessary to expand the scope of legal aid provided in procedures for the imposition of temporary measures of protection against domestic violence.

The criteria laid down in the Law are restrictive. There is a great disproportion between the number of persons in need of free legal assistance and the number of persons who have been granted free legal aid. According to the findings of the Ministry of Justice representatives who make decisions of approving free legal aid, up to 80% of applicants for exercising the right to free legal aid do not meet the criteria. According to our knowledge, the percentage of those in need of free legal aid is higher, however, due to non-fulfillment of criteria, they do not apply for this right at all. This seriously calls into question the main purpose for which this Law was enacted, and that is providing access to justice for vulnerable and marginalized groups of citizens.

The Ministry of Justice Regional Offices indicated that the existing legal criteria for the exercise of free legal aid also preclude the implementation of this right by women who have suffered domestic violence. The use of social welfare, the possession of own property, and the issuance of a certificate regarding the status of a domestic violence victim by CSWs are the criteria on which requests submitted are most often refused and effective legal assistance is not enabled to many victims of domestic violence.

Of particular concern is the fact that the most disadvantaged are the domestic violence victims who are not beneficiaries of social cash assistance, are unemployed and find themselves in a poor socio-economic situation. Their exclusion from the social protection system, i.e. their inability to get social welfare is further exacerbated by the lack of access to free legal aid. In this way, this group of most disadvantaged domestic violence victims is further marginalized. According to Regional Justice Offices, these strict criteria impede access to justice for the socially excluded and economically unsecured persons who are not social welfare beneficiaries. Practice shows that criteria should be more flexible, so that a higher number of citizens requesting legal assistance can exercise this right. For example, if a person is found to be unemployed and has no income on any basis, then I think that such person should receive a positive response. In this example, the individual has no status of a social assistance beneficiary, but there is still a basis, due to their financial situation, to use free legal aid. This should be subject to amendments in the Law." Statement by an employee in the Ministry of Justice Regional Office.

Property or income possession by the victim is another criterion that adversely affects the possibility of using free legal aid in cases of domestic violence. In some cases, the amount of the family pension is the criterion on which some requests for free legal aid provision are rejected. It is necessary to revise the criteria and ensure access to justice for socially excluded groups of citizens who are in a most vulnerable position.

It is important to emphasize that in addition to the general criteria set out by law, while applying for their right to free legal assistance, women survivors of domestic violence shall also submit a certificate by the CSW or MOI which establishes their status of a domestic violence victim. This particular criterion is an obstacle to exercising the right to free legal assistance by domestic violence victims who have not previously reported the violence to some institution. In practice, the Ministry of Justice Regional Offices indicated that there are cases of women survivors of domestic violence who apply for free legal aid, but they are forced to reject their requests because they have not previously reported the violence to the relevant institutions. In this regard, examples were presented, in which women would first go to CSWs to report the violence and then be able to apply for free legal aid. This criterion particularly adversely affects the possibility for the woman suffering domestic violence to initiate legal proceedings for her protection through the use of free legal aid on her own (without having reported the violence to another institution).

Representatives of the Ministry of Justice Regional Offices indicated that it was necessary to change or repeal some of the criteria for exercising the right to free legal aid, as well to expand the authority for certificate issuance to other institutions legally mandated to act in domestic violence cases.

Exceeding the decision-making deadlines. One of the limiting factors that affect the possibility of free legal assistance in civil litigation for protection against domestic violence include long deadlines for deciding upon free legal aid requests. The Ministry of Justice Regional Offices' representatives indicated that urgent legal needs of women survivors of domestic violence can not be met in a timely manner due to exceeding the legally established deadlines for deciding upon such requests. There is no specific legal deadline or mechanism provided by the Law on Free Legal Aid that shall take into account the urgent needs of women who have suffered domestic violence and the short legal deadlines envisaged in court proceedings for their protection. After receiving the application for free legal aid, Regional Offices shall, within a period which may be longer than seven days, collect the necessary documents from other relevant institutions, following which, completed applications shall be submitted for further decision. On average, the decision by the Ministry of Justice on a request for exercise of free legal aid is awaited for more than 30 days. This means that women suffering domestic violence are not able to obtain free legal aid to initiate urgent proceedings, such as civil litigation for imposing temporary protection measures whose legal period is 7 days to complete the procedure.

This shortcoming is even greater if one considers that women survivors of domestic violence can not count on having their costs covered by the State in those situations where because of their urgent protection, they were forced to initiate legal proceedings themselves even before having their request for free legal aid approved. In these situations there is no possibility for reimbursement of costs after the approval of free legal aid by the State.

One of the proposals to improve this situation is to introduce changes and improvements to the Law such that the decision on free legal aid provision shall be adopted at the local level and introduce shorter statutory deadlines for deciding on free legal aid requests.

A system of evaluating free legal aid approved is lacking. The Ministry of Justice representatives pointed out that after the approval of free legal aid, they have no knowledge of the quality of service provided by the lawyer. Especially worrying is the fact that legal protection is ineffective even in cases where domestic violence victims have implemented their right to free legal aid under the law. Namely,

after the approval of free legal aid, women who have suffered domestic violence are entitled to representation by an authorized lawyer, while the costs of initiating proceedings before the competent court, as well as the cost of evidence presentation, must be borne by the victim herself. In a situation where victims have no financial resources to cover these costs, they are forced to withdraw from the procedures initiated for their protection. Proof of this is the information by the Ministry of Justice representatives, who have noted cases where even within three months of approval of such right, court proceedings were not initiated and costs of evidence presentation had to be borne by the victim herself.

Also, according to the Ministry representatives' information, many persons who were granted free legal aid were not satisfied with their lawyer's performance. Therefore, in such situations, the Ministry of Justice appointed another lawyer to their case. Reports and data regarding the quality of free legal assistance, i.e. authorized lawyers' services are also lacking.

Despite the lip-service promises to provide free legal assistance to this vulnerable group of citizens, the shortcomings outlined above adversely affect the outcomes of legal assistance provided to women victims of violence. In this regard, comprehensive amendments to the Law are required, as well as increasing the budget funds allocated for free legal aid provision.

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