



Implementation of the UN Convention against Torture

THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Shadow Report UN Committee Against Torture

40th session
May 2008

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Violence against women: implementation of the Convention against Torture towards women

1. The Association for Emancipation, Solidarity and Equality of women- ESE

Since 1994, the Association for Emancipation, Solidarity and Equality of women- ESE - has been continuously active in the field of promotion of women's rights and gender equality. The ESE Association has been proved to be a high profile organization, which expertise has been consulted in developing and preparing important strategic policy documents, plan of action, studies and laws on national level. The ESE Association has dedicated its professional expertise in improvement of the position of women in the society, particularly women who face discrimination on one or several grounds. Working with women coming from different ethnical, religious, economic or social background and assessing the obstacles in fulfilling their human rights gives ESE ground base for further exploring the root causes of discrimination, gender based violence, risks factor and constrains in accessing women human rights in different fields of the society (access to the legal, social, health and educational system, labor market, decision making process and etc.). In order to improve the status of women, ESE privileges the active involvement and participation of both women and men to lead to a factual and depart from declarative gender equality. ESE's motto is: For equal opportunities, For equitable distribution of power, For factual, not declarative equality. In addition to this comprehensive scope of research activities, ESE provides women with professional high quality services – free of charge –including: advice, counseling, support and information on domestic violence and health issues; ESE also works for developing and strengthening the capacities of NGOs related to women and health issues. Every efforts aim at strengthening the capacity of women in political parties to recognize and facilitate the elaboration of gender-related concepts and policies at the national and local levels and of legal and factual analysis of issues related to women, followed by the engendering of relevant legislation.

2. Overview of the women human rights situation

The persistence of traditional roles of men and women

If there have been some changes in urban areas to that respect, rural areas and some ethnic communities (Albanian, Roma) conserve patriarchal patterns of relationship, especially within the family context. For example, even if both parents are equally entitled to parental rights and responsibilities according to the legislation in the country, in practice women are those responsible for upbringing the children.

The lack of women participation in the political life

Women are not sufficiently involved in the political life and do not reach high decision-making positions. This is also true for women within political parties; they are involved to a lesser degree than men in the development of political party platforms, since they are less represented than men at the decision level.

Women participation in the political life is still looked negatively by some communities, which has not been addressed by the State. Women engaged in politics suffer from negative attitude; they are for example disadvantaged regarding the media presentation during the elections process.

With the introduction of the new Electoral Code from 29 April 2006¹, both the Law on Local Elections and the Law on Election of Parliaments are no longer in force. The new code

¹ Electoral code (Official Gazette no. 20/06).

explicitly prescribes in its article 64§5 that each 3rd place must be guaranteed for the less represented gender. Failure to fulfil this clause could prevent the political party to run for elections; in practice, the State Election Committee would return the lists to the political parties to revision, until they fulfil this criterion. On the last Parliamentary elections, the women's representation, thanks to the introduction of this amendment has reached 30,7 %.

The difficulties in accessing to education

The legislation provides equitable access to education for both the male and female population. However, it is not always the case in practice and girls tend to complete only fourth or eighth grade and are kept at home once they finish school, to work in the agriculture or to take care of the household. The phenomenon of drop out of the educational process is also a particular problem.

Girls from certain ethnic groups are especially at risk to have a limited access to school. The traditions and stereotypes make that boys are prioritized regarding to education. It is a burning question in the Roma and Serb communities.

The following are obstacles preventing girls from attending or completing schooling:

- Inaccessibility of schools in certain regions where children walk for a few hours to arrive to school; parents fear to let the girls alone over mountains
- Economic barriers, in cases when the parents may only afford the education of one child, they chose the boy

In the past, female children were deprived of access to certain educational institutions - such as the military and police academies; but this has changed over the years. The only exceptions are the religious schools, which are male or female only. In any case, women who have obtained a degree at these faculties are not allowed to give religious services, in accordance with the canonical rules. In some traditional families, the girls are still encouraged to choose certain "female" professions or a school that is located in the immediate vicinity.

Employment

From a formal aspect, men and women have the right to equal employment opportunities including the use of equal criteria. However, there are deviations in practice, especially in the private sector. Indeed, there is a difference in practice between the state and the private sector. In the private sector, legislation is not observed with regard to the issue of entering employment and the enjoyment of the rights arising from employment in general.

The State lacks an incentive mechanism that would provide equal treatment of men and women at work. The only tool is the Labour Inspection that oversees the application of the Labour Relations Act and of the Law on Employment.

It must be noted that in certain ethnic communities, such as the Albanian, there are cases where women are not allowed to have a job.

The persistence of stereotypes makes that women are best represented in some specific sectors such as the health and social welfare sectors followed by the financial brokerage and education sector, while they are still excluded from others.

Finally, women remain more at risk of falling in precarity (in term of wages, temporary contract, and right to benefits). Unpaid family workers are in a particular situation of vulnerability and are mostly women.

3. Legal framework for the protection of women's rights

Legal Protection against Discrimination

The existing legislation provisions are in a great extent harmonized regarding the promotion the principle of gender equality and the international documents for the protection of women human rights.

Republic of Macedonia ratified the CEDAW Convention on 18 January, 1994; it ratified the Optional Protocol towards the same Convention on 17 January, 1994; it made no reservation to these treaties.

The country also signed the Protocol for Prevention and Suppression and Sanctioning Trafficking in Human Beings, in Particular in Women and Children, which complements the Convention against Transnational Organized Crime, on December 14, 2000. It was ratified on September 28, 2004.

The **Constitution** of the Republic of Macedonia does proclaim equality of all citizens in their freedoms and rights, regardless of their gender, race, complexion, national and social origins, political and religious beliefs, property and social status². This principle applies to the Constitution – as the highest legal act – and the other legislation³. As it was mentioned by the Committee on the Elimination of Racial Discrimination in its Concluding Observations⁴, the principle of non discrimination as it is stated in the Constitution applied only to citizens and not to all persons under the State's jurisdiction. This formulation also weakens the women's protection from discrimination. However, there are two articles in the Constitution dedicated to the persons under the State's jurisdiction, which include the term "foreigners". The first article is articulating the civil and political freedoms and rights of foreigners⁵ and the second one is dedicated to their economic, social and cultural rights⁶.

However, there is no specific and comprehensive anti-discrimination law and this lack is even more problematic since the majority of the laws have no provision prohibiting discrimination.

Only some laws in the Republic of Macedonia prohibit gender-based discrimination, regardless of the tradition, customs and religion. Indeed, provisions prohibiting gender discrimination are contained in the areas of labor relations, education, social protection and within the law on equal opportunities regarding to the above cited areas⁷.

² Article 9 of the Constitution of the Republic of Macedonia states that: "Citizens of the Republic of Macedonia shall be equal in their freedoms and rights, regardless of their gender, race, complexion, national and social origins, political and religious beliefs, property and social status. Citizens shall be equal in the eyes of the Constitution and the laws".

³ Law on Labour Relations, Law on Obligation, Family law, Law on inheritance, Law on Associations of Citizens and Foundations, Law on Health Protection, Law on Ownership and other Material Rights.

⁴ UN Doc. CERD/C/MKD/CO/7, 13 June, 2007.

⁵ Constitution of the R.of Macedonia, Part 1 Civil and political freedoms and rights, article 29: "(1) Foreigners enjoy freedoms and rights guaranteed by the Constitution in the Republic of Macedonia, under conditions regulated by law and international agreements. (2) The Republic guarantees the right of asylum to foreigners and stateless persons expelled because of democratic political convictions and activities. (3) Extradition of a foreigner can be carried out only on a basis of a ratified international agreement and on the principle of reciprocity. A foreign subject cannot be extradited for political criminal offences. Acts of terrorism are not regarded as political criminal offences".

⁶ Constitution of the R.of Macedonia, Part 2 Economic, Social, and Cultural Rights, article 31: "Foreigners in the Republic of Macedonia may acquire the right of ownership of property under conditions determined by law.

⁷ Law on labor relations⁷ (articles 6 and 7); Law on Higher Education⁷ (article 7); Law on Secondary education⁷ (article 3); Law for amendments and addendum on the Law for social protection⁷ (article 7-v); Law on Equal Opportunities⁷ (article 3).

As there is no stand alone law prohibiting discrimination, there is neither a general definition of discrimination that would be disconnected from a particular context, neither from a general point of view nor from a specific perspective that is gender discrimination. This lack was already highlighted by the CEDAW in 2006, in its Concluding Comments.

In case of violation of the provisions prohibiting gender discrimination the substantive legislation in the Republic of Macedonia envisages two types of liability: offense and criminal liability.

The former is postulated in individual laws (stated above)⁸, while the latter is defined in Article 137 of the Criminal Code, which refers to violation of equality between citizens. Article 137 of the Criminal Code is of particular importance since it prescribes imprisonment for those who will deprive of or restrict the rights of people and citizens defined in the Constitution, in laws or in a ratified international convention on the basis of their gender, race, complexion, etc., as well as for those who, on the basis of such differences, will entitle citizens to privileges contrary to the Constitution, laws or a ratified international convention⁹.

In cases of discrimination, the laws foresee court and other type of legal protection that women may turn to in the same manner and under the same terms as men. In reality, there is **no practical experience** to this respect. Judges stated that their court practice (both civil and criminal) includes no cases of gender discrimination, neither on the basis of article 137 of the Criminal Code, nor on the basis of the dispositions on gender discrimination included in some civil laws. This is partly due to the difficulties to prove discrimination but also to the fact that the various forms of discrimination are not clearly identified in the legislation. As such, victims lack information on how to proceed in this case.

When it comes to protection of freedoms and rights of citizens defined in the Constitution and laws, there are special powers assigned to the **Public Attorney**, who may initiate a procedure upon the request of the damaged person or **under its own initiatives**.

According to article 24 from the Law on equal opportunities between men and women, an initiation of procedure can be undertaken by submission of a written initiative to the litigator. The established Litigator's mandate on the way as it is determined does not provide effective protection in cases of gender based discrimination, as regard to the fact that the procedure results only in written opinion. This opinion may contain violations of the equal treatment principle if it is determined, as well as recommendations for application of the principle. Afterwards the clients are referred for further protection to the responsible inspection body, public attorney or other responsible body. The way as procedure is foreseen in the Law on equal opportunities **does not provide efficiency, in contrary it postpones and duplicates the procedure itself**.

The case law of the Constitutional Court that includes initiatives for assessment of legality of laws and provisions related to discrimination shows that there has been so far no initiative submitted by women on the basis of gender discrimination¹⁰. In cases of discrimination, the laws foresee court and other type of legal protection that women may turn to in the same manner and under the same terms as men. Also, there are no mechanisms for protection in

⁸ The Law on Labor Relations, Law on Social protection, Law on Secondary Education.

⁹ From 3 months to 5 years; in case such an act is committed by officials in the course of their service, they shall be punished by imprisonment from 6 months to 5 years. Following the amendments to the Criminal Code in 2004, legal entities are also subject to fines for such acts.

¹⁰ Only one case was submitted to the Constitutional Court in relation to gender based discrimination. It was dealing with pension issue and was submitted by a man, arguing that the law is in women favour because of the different retirement age (62 year for women/ 64 year for men) in applying for pension. See also: Concluding Comments of the Committee on the elimination of discrimination against women: the Former Yugoslav Republic of Macedonia, 3 February 2006, UN Doc. CEDAW/C/MKD/CO/3, §11.

cases of non-compliance, procedures or practices of discrimination against women other than court proceedings.

Despite some **legal provisions** that may hinder the enjoyment of women human rights remain, the national legislation is generally speaking quiet in compliance with the international obligations on equality¹¹.

In practice, discriminatory customs and traditions as well as stereotypes remain very present. Even if there have been changes to that respect, the majority of citizens accepts the traditional roles (men are responsible for ensuring material safety in the family, while women are responsible to take care of the children and home). Here are some examples of areas where **discrimination remains in practice**:

Nationality:

- From a formal point of view, both parents enjoy equal rights regarding the choice of citizenship of their children. In practice, nevertheless, the role of the father is emphasized, i.e. the citizenship of the father is the one chosen.
- In the practice - especially among Roma's and Albanians - women ask for permission of their husbands, mother-in-law or another person to obtain a passport. This permission has no formal value.

Marriage and Family:

- Under the Family Law, the woman is entitled to make a voluntary decision about her surname. In practice women most often choose the husband's surname, or add their surname to the husband's.
- After the divorce, the position of women is usually more difficult compared to the position of men. Most often the custody is granted to women if the children are small, a fact which additionally worsens their position. Furthermore, they must leave the family house because the husband is the registered owner of the real estate. It is harder for divorced women to enter into another marital union.

Institutional framework:

The only state institution for improvement of the status of women is the **Sector for equal opportunities** that was established in March 2007. One of the sub units works on gender equality and the other for the prevention and protection against all forms of discrimination. This sector needs further strengthening of its capacity and having its mandate defined. There is no separate body to ensure a monitoring, i.e. a mechanism which would follow the operation of this Unit and would ensure independence in its operation. There is also no separate body to enable coordination of the activities of the sector with the NGOs. A National Action Plan for 2007-2012 has been established, but no assessment has been made on the degree of realization of the planned activities in the above Action Plan.

After the adoption of the Law on equal opportunities, the **National Commission on Equal Opportunities for Women and Men** was established in 2006 as a regular parliamentary commission. The commission does not have prepared program/ agenda for the upcoming Commission's sessions. Thus, as a result of not having such program, neither relevant civil society organizations are requesting their presence on these sessions, nor they are invited by the Commission itself. As an illustration, since the Commission establishment, the Association ESE was invited to participate in its sessions only once, but it was not related with particular gender issue elaboration. Contrary to this, the Parliamentary Commission for the protection of human rights and freedom asked for our participation in two occasions (analyzing legal necessity for new law on domestic violence and initiating and lobbying

¹¹ In the existing family legislation, there is no provision to ban the entering into false marriages or marriages entered into for the purpose of achieving economic security, and there is no measure imposed by law, such as one that will aim at the eradication of agreed marriages among the Roma and Albanian population.

amendments on the Law on amendments and addendum to the Family Code as regard to domestic violence).

It is also worth mentioning that several Gender Equality Committees have been established at the local level. They work independently and are not a part of the Sector's structure. What should be stressed is the development of local action plans for gender equality.

4. Practice of torture and other CIDTP

As a general comment, it must be highlighted that there is a real lack of official data on the issue of violence against women. Besides the Survey "Live in Shadow", which focused on domestic violence prevalence and institutional response to it¹², there is no other comprehensive surveys or analysis (governmental or nongovernmental) on prevalence, complaint and conviction rates of the different forms of gender based violence. There was no data on violence against women within the latest four official reports of the Ombudsperson office. The same can be outlined for the report of the Litigator for equal opportunities. There are neither available data on gender based discrimination in the official report.

Domestic violence

According to the ESE's survey "Life in Shadow", there is a high level of acceptance of the patriarchal values that increase the risk of domestic violence. The acceptability of this value is affected by the age, education, nationality, religious belonging, membership to political parties and non-governmental organizations. The traditional marriage and family relations, which give to men a dominant position, including a total control over the woman and violence as a means to regulate the mutual relations, is still part of the Macedonian culture which has been passed on through the process of socialization, and unfortunately, accepted by women.

The number of complaints gives an indication on the occurrence of domestic violence. In 2005 the police registered 3750 complaints and 2650 in 2006.

In practice, all types of domestic violence (sexual, physical, psychological and economic) are used against women. Yet, it should be noted that each type of violence does not occur with the same frequency and in the same proportion.

Repartition of the reported violence in 2000 and 2006¹³

Types of violence	2000	2006
Psychological	61.5%	56.4%
Physical	23.8%	17.7%
Sexual	5%	10.6%

The comparison of the results in both surveys indicates the same prevalence rate of the various forms of domestic violence. The information from both surveys lead to the conclusion that in 2006 the number of reported cases of sexual violence increased. It probably lies on the increased public sensibility on this type of violence. Six years ago, during the first survey, sexual violence was the most tabooed segment of domestic violence, it was neither spoken of, nor recognized easily. Therefore, we believe that in the last survey, what increased is the reporting rate of this type of violence rather than its actual occurrence.

¹² "Live in Shadow", 2007, Association for emancipation, solidarity and equality of women in the RM- ESE.
¹³ The comparison of the basic findings with those of the research conducted in 2000 is not appropriate, since there are differences in the sample used for the last survey. However, the comparison of the results can be used as an indicator and not as precise information of the movement or other characteristics of the occurrence of domestic violence.

The most common form of **psychological** violence in Macedonia is the control of the movement and contacts the women have. It was the complaint of every third woman (36.5%). The second form of psychological violence which indicates the dominant position of the man and the inferior position of the woman in the family was expressed by the words "He must have the last word" (28%). It was followed by the situation when the woman is insulted by her husband or treated in a way to make her feel bad; every fourth woman (25.6%) complained about such behaviour, the same percentage of women (23.3%) complained about the jealousy of their partners expressed by the words "He gets angry when I talk with another man"¹⁴.

Most common forms of manifestation of **physical violence** are the slaps (87.5%), the threats for use of force (70.1%), grabbing and shoving (63.9%). The most severe forms of physical violence are most rarely used – burning or scalding (2.5%) and a use of a knife or a gun (9.9%). In addition to the rather high frequency of the occurrence of physical violence, the research information indicates the fact that women are victims of several different forms of violence. According to the reported forms of violence, each of the women victims was exposed to several different forms of violence, 4.3% on average.

The dominant form of **sexual violence** is the unwanted sexual intercourse, accounting for 85.5% of the reported sexual violence. All other forms of rape, humiliating sexual intercourse, forced watching of pornographic films and pimping are represented to a far lesser extent. The humiliating sexual intercourse was reported in 6.6% cases, while rape in 3.9%. The least represented forms are pimping and forced watching pornographic films (13.8%).

Case 1

One of the cases involves E.T., a woman 60 years-old that had been continually physically tortured by her husband. Beside the continuous psychological violence this woman was victim of combined physical and sexual violence. This case was reported by the victim's daughter on 20 December 2005. The husband and the wife lived in a village in the vicinity of one of the larger cities in the country, Gostivar and they had several sons and daughters of legal age and possessed several houses, shops and other property. The perpetrator had already been convicted of domestic violence and the sons to whom the wife turned for shelter continually covered up the violent behaviour of their father. In one of the last incidents when the wife was attacked, she was accommodated in a shelter with the help of her daughter and one citizens' organization by approval of the Centre for Social Aid. During her three-week stay in the shelter, she was continually persuaded that her place was not in the shelter and that the best thing for her was to return to her home. The interventions made by her sons through the local Centre for Social Aid resulted in a failure to adopt a decision, which is the legal basis for a stay in the shelter. In the absence of such a decision, the first meeting the victim had with her sons was used to persuade her to sign a consent statement for returning home. On our request to inquire what happened with the victim, the local Centre ensured us that they were monitoring her situation. According to the last information, she returned to her home in the village and continues to live with her husband. Neither she nor her daughter has called us again.

Case 2

B.P is 34 years-old woman who had been psychologically and physically tortured by her husband. For the first time this victim reported her case in our Legal aid centre in April, 2007. In the last incident, the woman was attacked by her husband with a hammer, which caused her grave body injuries. After the incident, police has arrest the perpetrator, and released him after an informative conversation. Police has initiated criminal charges against the perpetrator to the prosecutor office. But the violent husband was not put in detention, despite

¹⁴ "Life in a Shadow", 2007, Association for emancipation, solidarity and equality of women in the RM-ESE.

the high risks of repeating the crime. Upon the request of the Centre for social care, civil court issued Civil Restraining Orders (CRO) in order the victims be provided with immediate protection. These measures were not respected by the perpetrator. Even more, the threats to B.P and her family (her daughter and B.P's sister) became more serious. In this period, the victims constantly reported threats and violations of the Civil Restraining Orders to the police, but there was no action to this regard. In September, 2007, the husbands went to her apartment and shoot with a gun her sister and her daughter, which were immediately transferred to the hospital. The police immediately arrested the perpetrator and put him in detention. Criminal charges against the husband for "attempt of murder" were submitted to the Public prosecutor office. The procedure is still going.

Trafficking in human beings

In 2003, 132 foreign women were identified as victims of trafficking in human beings at the Transit Center, which is in decrease in comparison with the 240 victims of the previous year. 19% of those were girls younger than 18, while 3-4% were even younger than 15. The international community is aware of the several cases in the regions of Gostivar, Bitola and Kicevo in 2003 and 2004, which included Roma children as victims of internal trafficking, and believes that the Roma children are especially vulnerable to this type of crime¹⁵. The target groups also include individuals from dysfunctional families, homeless, and children from the centres for orphans.

Prostitution

Prostitution is an existing phenomenon in the country. It is mainly treated as an individual problem instead as a socially preconditioned phenomenon, and is not treated as a social priority. Street prostitutes¹⁶ are predominantly local women and girls between the ages of 14 and 60. With the exception of the oldest women, all women work for pimps who are usually their husbands or boyfriends. Women working on streets come from the poorer regions of the country and from the poorest districts of Skopje¹⁷. Hidden prostitution is a special problem, both from the aspect of its treatment by society and from the aspect of its elimination. This type of prostitution is on the increase, due to the economic conditions in the country. The phenomenon has not been statistically researched in recent years.

Sexual violence

The numbers of criminal acts against sexual freedom and morality registered from the period of 2005-2007 show that women are more concerned by sexual violence. In 2005, 160 criminal acts were registered in total, out of which 102 acts were done against women. Out of the total number of criminal acts, 28 cases of rape were registered. In 2006, there were 163 criminal deeds registered from this kind, out of which 130 were applied to women. Out of the total number, 44 cases of rape were registered. In 2007, in the first half of the year, 86 acts were registered in total, out of which 82 against women. Out of the total number, 23 cases of rape were registered¹⁸.

Sexual harassment

The issue of sexual harassment has been an upsetting one for the public in Macedonia for quite some time; the government has not commissioned any research on the subject. Only a

¹⁵ Shadow report on the implementation of the Convention CEDAW, 2005, Association for emancipation, solidarity and equality of women in the RM- ESE.

¹⁶ While there is a tendency to replace the term prostitutes by the term commercial sexual workers, the former terms is still exclusively used in the country. The term "prostitutes" was used during the research due to its common usage.

¹⁷ Shadow report on the implementation of the Convention CEDAW, 2005, Association for emancipation, solidarity and equality of women in the RM- ESE.

¹⁸ Ministry of Interior, Information No. 152-54038/1 dated 24 August 2007.

few nongovernmental organizations and academics have seriously addressed the issue¹⁹. The following are the findings on this issue in Macedonia:

“Sexual harassment at work is a taboo and an unpleasant issue that people are not too keen to talk about. The reasons for this are numerous, but most often it is because they fear condemnation and shame. Women in the Republic of Macedonia do not have a clear understanding of what sexual harassment at work is really about. According to the data, 91.4 percent of the respondents believe that sexual harassment at work is present in the Republic of Macedonia; 1.2 percent believes that this problem does not exist; and 7.4 percent do not know whether this is a problem at all. According to the survey, 59.3 percent of the respondents had experienced some form of sexual harassment at work, 11.3 percent believed that although they were exposed to some form of sexual harassment, still – as they put it – it was nothing serious – just a normal thing that can happen at a workplace; and 40.7 percent stated that had not been exposed to any form of sexual harassment at work. Half of the respondents know at least one (21.4 percent) or more women (29.5 percent) who had been exposed to some form of sexual harassment at work, while 49.1 percent did not know such persons. Concerning sexual jokes that discriminate women, in most of the cases (60.3 percent) were not considered a form of sexual harassment by the women themselves, and in most of the cases they were not offended by such behaviour. The form of quid pro quo (97.4 percent) and violent attempt for sexual contact (97.8 percent) were the forms of conduct that were considered as sexual harassment at work.

This raises the issue of men’s awareness regarding sexual harassment at work, and the types of behaviour at work considered as sexual harassment. The research shows that in most cases women were exposed to verbal sexual harassment at work, while non-verbal conduct of sexual nature was least represented (showing erotic or pornographic contents (6.8 percent), messages and letters with sexual provocative content (9 percent), and quid pro quo sexual harassment (15 percent)). The most severe form of sexual harassment at work identified was violent attempt for unwanted sexual intercourse or unwanted sexual intercourse (rape). 7.4 percent of the respondents stated that they had been exposed to this type of physical conduct of sexual nature, whereas 34.3 percent had experienced physical forms of sexual harassment at work (hugging, forced kissing, “accidental” bodily touch). The percentage for other forms of verbal conduct such as telephone calls with sexual intentions is also quite significant (19.2 percent), whereas open expression of sexual offer (24 percent) and unwanted insisting or invitations to go out, to have dinner and date outside work (26.1 percent). Women in subordinate positions proved to be the most frequent group of victims of more serious forms of sexual harassment, such as quid pro quo sexual harassment or physical forms of sexual harassment. Women working in non-governmental organizations or foreign organizations are mostly exposed to sexual harassment at work (71.4 percent), followed by women working in the private sector (62 percent). Most protected from sexual harassment at work are women working in the social sector (56.9 percent). The research proves that job security is a factor for protection from sexual harassment – women employed by means of oral contract are most frequent victims of sexual harassment (85 percent), followed by women employed by means of short-term contracts (75,8 percent), then women employed for a definite period (70.9 percent), and finally, as the most “resistant” group are women employed on indefinite basis (55 percent).”

¹⁹ For the purpose of this report, the authors have drawn on a recent master's degree thesis by Viktorija Gavritova entitled “Sexual Harassment at Work”, University of Cyril and Methodius and the Institute for Sociology in Skopje, 2005.

5. Definition and criminalisation of torture (articles 1 & 4)

5.1. Definition of torture (article 1)

Torture:

Torture is prohibited both by **Article 11 of the Constitution** of the Republic of Macedonia and by **article 142 of the Criminal Code**. The definition of torture as it is stated in the Criminal Code takes into account cases when such violence is inflicted because of discriminatory reasons. The definition of torture against women is not interpreted on another way than for men.

Within the criminal acts that regulates the sexual freedom and sexual morality the only criminal acts that could regulate a situation when an official person is violating these rights is the Statutory rape with misuse of position (article 189): “(1) A person who by misusing his position induces another, who is subordinated or dependent or with the same objective abuses, intimidates or acts in a way that humiliated the human dignity and the human person in relation to him, to intercourse or to some other sexual, act shall be punished with imprisonment of three months to three years”. Even if State agents are not explicitly mentioned in the article, this disposition could take into account the relation between the guard and the prisoner, the investigative judges and the accused person, the teacher and the pupil, etc., in fact all relationship implying someone who is subordinated or dependent in relation (article 189, Criminal Code, Official Gazette No. 19/04)²⁰. That is the opinion of the doctrine. It remains that the fact that State agents are mentioned in the disposition is a real obstacle in charging them with this criminal offence. It appears from the case law that only teachers and other school employees have already been charged under this article whereas there is no case related to law enforcement agents.

Misuse of official position and authorization (article 353) as well as Malpractice in performing the duty (article 353 v) are envisioning possible violation by the official persons in performing their duty. With the criminal act Failure to execute a court decision (article 377) and official or responsible person who does not act upon a court decision that has come into effect shall be punished. Official persons could be sanctioned if they do not execute some of the issued civil restraining orders for domestic violence.

Legal provisions regulating other forms of violence against women:

Domestic violence

Domestic violence over women, i.e. violence within the family, is regulated by the latest amendments of the Criminal Code of the Republic of Macedonia from 2004. The latter defines and sanctions the phenomenon of violence within the family. Article 122 of the Criminal Code of the Republic of Macedonia states:

“(19) Family violence shall mean abuse, rude insults, threatening of the safety, inflicting physical injuries, sexual or other physical and psychological violence which causes a feeling of insecurity, being threatened, or fear towards a spouse, parents or children or other persons which live in a marital or other community or joint household, as well as towards a former spouse or persons which have a common child or are have close personal relations”²¹.

In addition, a specific paragraph is added to certain dispositions to deal with the context of domestic violence. Therefore, certain criminal acts are also understood in the context of

²⁰ 3 months to 3 years.

²¹ Criminal Code of the Republic of Macedonia, Article 122, paragraph 19, Official Gazette No. 19/04: Official translation available at <http://www.legislationline.org/legislation.php?tid=1&lid=6272>.

domestic violence and as such are included in the notion of family violence, such as: murder, body injury, coercion, unlawful arrest, endangering security. However, other dispositions do not include the context of domestic violence such as sexual violence.

Within the Family Law, **domestic violence** is considered to be the conduct of a family member who inflicts physical injuries by force, intimidation and threats, emotionally or sexually abuses, and materially, sexually or labour-wise takes advantage of another member of the family. Therefore, domestic violence involves actions committed:

- by one of the spouses against the other, who have lived or used to live in marriage or extra-marital union or in any kind of union as a family or if they have a common child;
- between siblings, and step-siblings;
- against children;
- against elderly family members;
- against individuals – family members having partial or full working incapacity²².

We can conclude that the national legislation provided for an extended definition and takes into account a wide range of situations of domestic violence. However, we could regret that marital rape is not explicitly included in the definition of domestic violence neither in the definition of domestic violence nor in other dispositions.

Mediation in conducting prostitution

It includes the recruitment, instigation, encouragement or enticement to prostitution or the participation in any other way in handing over another to someone for performing prostitution. However, no definition of prostitution is provided.

Trafficking in human beings

According to the Criminal Code of 2002, all forms of trafficking in human beings are incriminated as a separate criminal act (article 418-a) and are punishable. The term trafficking in human beings means the use of force or serious threat to mislead or the use of other forms of coercion, kidnapping, deceit, abuse of position or a condition of pregnancy, inability or physical or mental disability of others, or giving or receiving money or other benefits to obtain the consent of a person with control over another person, to recruit, transport, purchase, sell, shelter or accept a person for the purpose of exploitation through prostitution or other forms of sexual exploitation, pornography, forced labour or servitude, slavery, forced marriages, forced fertilization, illegal adoption or any other similar relations or illegal transplantation of parts of the human body. This definition seems to correspond to the definition of trafficking in international law, as it is stated in article 3 of the Protocol to prevent, suppress and punish trafficking in persons especially women and children.

Sexual harassment

Macedonia's legal order has incorporated the prohibition of harassment and sexual harassment, and all related behaviours as acts of discrimination in its *Labor Relations Act (article 7)*²³, and has set forth the following definitions: "Harassment, for the purpose of this Act, shall mean any unwanted conduct initiated by some of those enumerated in Article 6 thereof, with the purpose or effect of violating the dignity of a person seeking employment, or of an employee, and which creates an intimidating, hostile, humiliating or offensive environment"²⁴. "Sexual harassment, for the purpose of this law, shall mean, any verbal, non-verbal, or physical conduct of a sexual nature, occurring with the purpose or effect of

²² Family Law, Article 99, Official Gazette No. 38/04

²³ Official Gazette No.62, July 28, 2005

²⁴ Ibid.

violating the dignity of a person seeking employment, or of an employee, and which creates an intimidating, hostile, humiliating, or offensive environment”.

Sexual violence : rape

Rape is committed by use of force or a threat to the life and body of the victim or a person close to her, forcing her thus to **a sexual intercourse** or **other sexual acts, which are not precisely defined**. The term sexual intercourse is quite narrow because it means the joining of the external reproductive organs of two persons from opposite sex that is only the penetration. The expression other sexual acts is also problematic in that it is difficult to define and quite uncertain that it would include all the realities of rape. As such, there is a need for clarification of this definition.

What is most striking is the fact that all of these present forms of violence against women in the Republic of Macedonia **are not considered as acts of torture**. Namely, this lack of consideration of these forms of violence against women as acts of torture due to the failure of the government to prevent and properly prosecute or punish perpetrators of the violence is result of generally low level of attention given to the women’s human rights both by the academia, professionals and human rights activists dealing with these issues.

5.2. Criminal legislation (article 4)

In case of violation of the legal provisions related to torture, the Criminal code envisages criminal liability at article 142.

Domestic violence

Domestic violence is not punished in the criminal code as a separate criminal act, but is criminalized through a number of criminal acts where the domestic violence is mentioned as a context where it can happen. Since the amendment of 2004, acts of violence committed in the context of domestic violence are prosecuted ex-officio.

Therefore, some crimes are more severely punished if they are committed “while performing family violence”:

- Murder (article 123 (2) 2))
- Body injury (article 130 (2)) and grave body injury (article 131 (2))
- Coercion (article 139 (2))
- Unlawful arrest (article 140 (2))
- Endangering security (article 144 (2))
- Mediation in conducting prostitution (article 191 (6))

In these cases, the fact that it happens in the context of family violence is an aggravated circumstance. Penalties envisioned for some of the above stated criminal offences are higher if the victim and perpetrator are relatives.

However, the criminal acts on sexual violence do not refer to the context of domestic violence. Indeed, **marital rape is not explicitly criminalized** but is treated as any other act of rape regardless of the relation between the victim and perpetrator. If the rape is **committed as an act of domestic violence**, the procedure is instigated ex-officio. It is a positive result of the 2004 incrimination of domestic violence, whereas in the past, prosecution could be undertaken only upon filing a private suit by the victim. The punishment for the offender is one to ten years imprisonment. Sexual assault on a weak person (article 187) in the context of domestic violence is also prosecuted ex-officio, on the basis of the 2004 amendment.

Mitigation of sentences and criminal responsibility

Article 40 of the Criminal Code enables exoneration of the offender or mitigation of the criminal responsibility, mostly illustrated by the application of a more lenient punishment (replacement of the prescribed prison sentence by a fine or reduction of the prison sentence). This can be applied if the law prescribes it or if “extenuating circumstances exist which point out that the aim of the punishment shall be achieved also through a more lenient punishment”, in the limits of Article 41 which stipulates minimum sentences to be applied. **In case of domestic violence, this possibility of mitigation of the punishment is really often used.** For example, in cases of bodily injury, despite the envisioned punishment of six months to three years, the courts have rendered an imprisonment sentence only in 15% of the registered cases that is 11 cases. As for the remaining 74 sentences, probation sentences prevail (36.5%), followed by fines (19%), probational fines (12%) and acquittals. The proceedings that dismiss the charges, terminate them or declare non-jurisdiction account for 12% of the cases. An other example show that endangering security, which is punishable by an imprisonment of three months to three years, was sentenced by the court in only two cases (10%) out of the total of 20 registered cases. Probational imprisonment sentences or fines were rendered in 50% of the cases; 25% were fines and 15% were acquittals or dismissed cases. The mitigation of the punishment is a result of the non-sensitivity and non-familiarization of some of the judges with the nature of domestic violence, as well as of the entrenched traditional values, attitudes, prejudices and stereotypes these professionals hold. The education of the judges on this issue may significantly contribute to changing this negative practice. This has direct impact on the general prevention. The situation is additionally worsened by the fact that domestic violence has a fairly low reporting level in our country. Victims may get discouraged to report violence facing this practice of mitigation of the responsibility²⁵.

The national legislation also foresees the cases when the victim of domestic violence murders or injures the perpetrator of the violence:

-Momentary Murder (article 125): it implies a re-qualification of the criminal offense *murder* into the criminal offense *momentary murder*²⁶. It does not require an immediate connection with the previous violence and the murder committed by the victim, namely, the qualification of a momentary murder does not require perpetration in a short period of time after the suffered violence, considering the fact that the violence was being inflicted in continuity and having in mind the ensuing consequences on the victim’s psychological and physical integrity. What bears relevance is the fact that such murder is preceded by domestic violence inflicted by the murdered person upon the person perpetrating the murder. However, the authorities do not fully understand the essence of the criminal offence “momentary murder” committed as a result of domestic violence and most of the time, victims of domestic violence are charged for murder and not momentary murder.

-It is important to note that the 2004 adopted amendments regulate those situations when the person – victim of domestic violence- becomes the perpetrator of the criminal offense “**grave bodily injury**”. The legislation prescribes more lenient sanctions for such situations unlike for the basic offense grave bodily injury²⁷ (articles 130-131).

Prostitution

Prostitution is not legal. Women engaged in prostitution are believed to be disturbing the public order (article 19, Law on misdemeanours, Official gazette nb. 66/07) and are liable for

²⁵“Life in a Shadow”, 2007, Association for emancipation, solidarity and equality of women in the RM- ESE

²⁶ “A person who takes the life of another without premeditation, brought into a state of strong irritation without his own fault, by an attack or with heavy insult or as a result of domestic violence committed by the murdered person, shall be punished with imprisonment of one to five years” (Article 125).

²⁷ The basic offense grave bodily injury is sanctioned by six months to five years imprisonment, while if the person who commits this offense as a consequence of domestic violence the offense is sanctioned by a fine or an imprisonment of up to three years.

committing offence and punished²⁸. Mediation in and organizing prostitution are punishable²⁹, more severely than prostitution itself.

Trafficking in human beings

The Government of Macedonia's anti-trafficking law enforcement efforts showed positive results in the last year. The Government of Macedonia prohibits sex and labor trafficking through its 2004 criminal code article 418 on trafficking in persons, article 418c on organizing a group for trafficking, and article 191 covering forced prostitution. Article 418b is included in the anti-trafficking legislation and includes criminal sanctions for smuggling. Penalties prescribed for trafficking for commercial sexual exploitation are commensurate with those for rape. The laws prescribe penalties that are sufficiently stringent. Occasionally, however, relatively light sentences are imposed on convicted offenders. The government in 2006 prosecuted 48 cases related to trafficking, a significant increase from the 35 cases prosecuted in the previous reporting period³⁰.

Sexual violence

Rape, including implicitly marital rape is punishable and prosecuted ex officio (article 186 Criminal Code, Official Gazette No. 19/04). Rape is treated as a complex criminal act which assumes the use of force or threat and coercion to intercourse.

6. Measures to prevent acts of torture (Article 2 §1)

There are no specific programs that will prevent women from torture. Usually, this issue is addressed through the projects implemented by the civil society organisations that are addressing torture.

The **National Action Plan for equal opportunities of women and men** envision certain measures in the area of violence against women. Namely, in one of its strategic objectives this plan refers to preparation and implementation of programs /strategies for fighting against violence, without specifying on which forms of violence this action refers to. One of the strategic objectives on this area refers to specific actions on the field of **trafficking** in human beings which includes: preparation of SOP (standard operative procedures), implementation of campaigns, establishment of a data base of victims of trafficking, conduct of trainings and ratification of the European convention against trafficking in human beings. Within the plan there are certain actions foreseen for eradication of **domestic violence**.

Unfortunately, other forms of violence are not addressed neither within the National Action Plan for equal opportunities of women and men nor within a special program.

Domestic violence:

The intensity of acceptance of the patriarchal values

The research information on the existence of domestic violence is sufficiently indicative of the need to approach the prevention of domestic violence and the consequences it causes in a complex and systematic manner. The results of the researches conducted to date have showed that the **patriarchal values** influence the marriage and family relations, even when they are characterized by violent elements. The acceptance of the patriarchal values, as the research data indicate, has a surprisingly high intensity. The surprising element is actually the high degree of acceptance of norms with certain contents. One of the values "the good wife accepts her husband's opinion even when she disagrees", which is accepted by 57.2% may be considered as a group norm of behaviour. However, the biggest and the most

²⁸ Monetary fine ranging in amount of 600 to 800 EUR.

²⁹ 6 months to 5 years.

³⁰ Extracted from U.S. State Department, Trafficking in Persons Report, June 2007.

disappointing surprise is the fact that every third woman (28.3%) accepts, that is, justifies violence on women – in certain circumstances. Therefore, measures to prevent domestic violence must systemically focus on the elimination, or at least on the decrease of the reasons which entail acceptance of these values, and change the value system that regulates the marriage and family relations.

Preventive activities have been traditionally organized in this country for over a decade in the framework of the 16 international days of UN activism for fighting against violence against women. The campaigns are usually organized by citizens' organizations, which actually deserve the greatest merit in the awareness raising and in informing the public on domestic violence issues. In 2004, they were joined by the Ministry of Labor and Social Policy, the Ministry of Interior and the Ministry of Health. The outcomes of their joint efforts were the National campaigns for inter-agency cooperation in addressing domestic violence conducted in 2005 and 2006³¹. In 2006, Macedonia joined the marking of the CoE Pan-European campaign. In addition to the media campaigns, educational and information activities for the general public are also part of the preventive activities. The Declaration to fight against violence on women, including domestic violence was adopted by the Parliament of the Republic of Macedonia at the beginning of the Pan-European Campaign of the Council of Europe in November 2006. Furthermore, it is worth noting the creation of the first documentary on domestic violence victims entitled "Living in the Shadow" that was promoted at the International Day of the Woman this year. To date, none of these preventive activities in the area of domestic violence have addressed the issues of violence as acts of torture.

The **National Strategy to fight against domestic violence**³² has been put in place for the period 2008–2011. An inter-agency group composed of government officials, experts, science representatives and NGO representatives have been taking part in the development of the strategy.

Although there were efforts undertaken by the Agency for Development of Education within the Ministry of Education, together with experts also involved in the work of the Council of Europe - Committee for Education on the introduction of the concept of gender equality in the **curricula** of the educational institutions in the country, textbooks still contain content with traditional attitudes. There were no such an efforts to include gender-based violence as part of the school curricula.

Trafficking in human beings

A **National program for combating trafficking in human beings** (was adopted in 2000). There is not a full and extensive estimation of the effectiveness of the actions taken within the Program.

A Government body for combating trafficking in human beings was established in 2001 under the name of **National Commission for Combating Trafficking in Human Beings**. Its executive body is the Secretariat, which embodies all relevant ministries, international organizations and NGOs engaged in the suppression of this type of crime.

According to the U.S. State Department Report:

³¹ The Citizens' Association Akcija Zdruzenska, the Association for emancipation, solidarity and equality of women – ESE, The National SOS Line of the Skopje Organization of Women, the Crisis Center – Hope, the Shelter Center, the Ministry of Interior, the Ministry of Health and the Ministry of Labor and Social Policy are the holders of this national campaigns.

³² Holders of this process in the country are the Ministry of Labor and Social Policy and the Association for emancipation, solidarity and equality of women – ESE, supported by the Institute for Sustainable Communities through USAID funds.

“The government **should increase efforts to educate law enforcement** on the difference between trafficking and smuggling, take steps to ensure that traffickers receive sentences consistent with the heinous nature of the offense, and make greater efforts to prosecute and convict public officials who profit from, or are involved in, trafficking”³³.

“The Government of Macedonia made significant trafficking prevention efforts over the last year. Posters with the **hotline**³⁴ telephone number were prominently displayed at the Skopje airport and other locations associated with travel. The border police worked in association with a local NGO to distribute trafficking awareness materials at all border crossings. The Ministry of Interior launched a joint information campaign with IOM that targeted the public in rural and urban areas and distributed over 4,500 scratch cards with anti-trafficking messages. The anti-trafficking song and video “Open Your Eyes,” performed by seven of Macedonia’s top pop stars and translated into Macedonian and Albanian, was the highlight of the project. The Ministry of Foreign Affairs requires its consular officers to receive training on recognizing potential victims of trafficking”³⁵.

The NGO sector undertakes a series of educational and preventive activities, especially among the risk groups – in secondary education and university dorms, in secondary and primary schools, at universities, and in rural areas. In addition, local strategies for combating trafficking in human beings are being developed through establishing local coalitions, initiated by local female organizations.

7. Non-refoulement (Article 3)

Article 81 of the **Law on Aliens** provides for “**Temporary residence for victims of trafficking in human beings**”:

Article 81: Period of decision-making

(1) An alien, for whom there are grounds of suspicion to be a victim of the criminal act “trafficking in human beings” as stipulated in the Criminal Code, shall be enabled to bring a decision within a period of maximum 2 (two) months with a view to providing him/her protection and assistance in the process of recovery as well as avoiding influences from the perpetrators of such a crime. Within this period, the victim is to decide on either to cooperate with the competent authorities in detection of crimes and perpetrators or to return to the country that s/he is national or permanent resident of.

However, the **Law on Asylum and Temporary Protection** has no specific provision on human trafficking. The Ministry of Interior has so far not received or registered any application for **asylum** submitted by a trafficked human being, despite strong fears of returning to their countries of origin.

Real impediment is that the **gender based approach in granting asylum is not transposed in the national legislation**. Indeed, gender based violence (domestic violence, sexual violence, trafficking) is not considered and perceived as a specific ground to grant asylum. As such, general provisions of the law on asylum are applicable in cases of human trafficking, on the basis of the fear of persecution.

In addition, despite the Law on Asylum foresees personal interview of the **asylum seekers**, women are regularly not interviewed separately from men. Officials at the Asylum Unit within the Ministry of Interior fail to demonstrate gender sensitive interviewing techniques while interviewing women asylum seekers. We remind that in a conclusion adopted in 1993, the Executive Committee of UNHCR noted that asylum seekers who have suffered sexual

³³ Extracted from U.S. State Dept Trafficking in Persons Report, June 2007

³⁴ This information and prevention SOS line operates 12 hours a day and employs trained operators, social workers, pedagogues, psychologists and lawyers who can speak several languages.

³⁵ Extracted from U.S. State Dept Trafficking in Persons Report, June 2007

violence are to be treated with special care. Also, it calls upon asylum countries to introduce special programs for gender sensitivisation of individuals included in the asylum granting procedure. This is not the case in asylum procedures in Macedonia.

8. Education and information (article 10): Gender sensitive training

Domestic violence and trafficking in person are incorporated as separate educative subjects. Gender concepts and gender issues are not part of the basic educative programme of the **police academy**.

The programme for basic education in the Academy for training of the **judges and public prosecutors** has been adopted on 04.06.2007. The programme itself is structured in three sections: Judicial, General and Specific subjects. Within the section “specific subjects”, there is one module (in total 11 hours) dedicated to **non-discrimination**. This module incorporates issues, such as: international human rights documents, system of the European Union, national system for combating discrimination, discrimination in the court procedures and discrimination in the employment³⁶. This programme as it is foreseen remains insufficient to provide a comprehensive understanding of violence against women and cannot allow in-depth elaboration on this issue. However, since this program started in June 2007, it is quite early to evaluate its effects.

In the programme for **continuing professional education** of the judges and public prosecutors (2007-2009), only one module II is dedicated to “**Discrimination**”. All the educative subjects within the programme are lectured mostly by the professors of the Law faculty, judges, Ministry of interior and Policy academy representatives, as well as the relevant civil society organizations. For illustration Association ESE is the first CSO that provided three two-days trainings on domestic violence for these groups of professionals. Modules dedicated to torture and gender issues are foreseen in the timetable of 2008, but the conduction of trainings depends on the financial means.

Association ESE and Akcija Zdruzenska within the two year project (2005-2007), titled as: “Establishing unified and positive practices in combating domestic violence in Macedonia”, conducted two three-day seminars on gender issues, discrimination, women human rights and gender based violence for both **professional groups, civil justice actors in domestic violence protection system** (social workers, medical professional, civil court judges) and **criminal justice actors** (criminal court judges, investigative judges, police officers). 50 participants in total (25 per group) participated in the seminars. The rationale for this training was that most of the members of the working group already went through training on violence, but they had not attended any training on gender. The training itself enabled professionals to better recognize the problem of violence as rooted in the patriarchal context with traditionally constructed gender roles, discrimination in the context of the human rights and women’s right protection through detailed elaboration on the CEDAW convention. Unfortunately, we can not speak about a high level impact, having in mind the fact that these trainings were part of the project activities.

To conclude, the State failed to provide systematic training on these issues for professionals dealing with different forms of gender based violence. No other training, like the one cited above, has been organized for these groups of professionals so far. The notions of gender based discrimination and violence are not considered as relevant issues that professionals should be trained for. **There are no educative subjects related to sexual violence.**

³⁶ Additionally, in the section on legislative subject, part 3: “International - legal protection of the human rights within the system of the Council of Europe”- subject : Rights and freedom guaranteed with the European convention of human rights, is foreseen to be elaborate with 7 hours in total, including article 3 – Torture.

9. Arrest, detention or imprisonment (Article 11)

Statistics

The situation concerning the detainees on 23rd November 2005 was 2.256. Out of this number, 227 prisoners are pre-trial detainees, 1843 sentenced prisoners, 161 persons imprisoned for misdemeanours (e.g. fine default) and 25 juveniles in the educational-correctional institution. Of the total numbers of prisoners, 55 are females, one of them a juvenile³⁷. In average, women prisoners are, in number between 35 and 50 per month, including the penalties which are longer than 5 years.

Ill-treatments

According to ESE, there are allegations of ill-treatment against women within the prisons but they have never been documented. In general, official persons are conditioning on women inmates in order to realize certain needs of the women. They are asking them to do things for them, even a sexual favour. It is a sort of blackmail. There are cases but there is no formal procedure that has been initiated. The source of this information is one of ESE's collaborators i.e. the former head of the women ward in Idrizovo.

Separation between men and women detainees

There is no special institution or prison for female detainees, but there is a female ward in the prison of Idrizovo. All sentenced female prisoners are placed in this ward. The internal unit of the women ward is secured by women, and the outside unit is secured by men.

Women charged with misdemeanour offences can be placed in any of the seven prisons for adult³⁸.

The women pre-trial detainees are placed in special parts in the five prisons of semi-opened type – Skopje, Bitola, Gevgelija, Stip and Tetovo. In some prisons of semi-opened type, there was no woman employed in the security department. Ensuring employment of women in the security department is highly essential in order to control of the venues for daily stay of the women prisoners. Also, the employment of women in this section is relevant in order to warrant the women-visitors³⁹.

In these three contexts, we cannot be sure that the separation between men and women detainees is fully respected. We have especially huge concerns about this requirement in the context of the pre-trial detention where even a simple ward reserved to women is not established.

Medical care

“There is a serious shortage of medical staff in the Macedonian prison system. Idrizovo, with a full complement of 6 doctors and 10 nurses, has just one doctor on a short-term contract, another working half-time and two nurses⁴⁰”. The health protection of women prisoners is provided with one or two doctors. Within the women unit in the Idrizovo Prison, there is an infirmary that serves the needs of the women inmates with regard to the medicine needed, when available. As for the hygiene and especially sanitary products, those who have financial means can obtain them through the guards (they are making a list of needed products and buying them) in the local shop placed within the prison of Idrizovo.

³⁷ Report of the Council of Europe assessment visit to prisons in the Former Yugoslav Republic of Macedonia, January 2006, Križnik/Walmsley, p. 9.

³⁸ Ibid, p.41.

³⁹ Ibid, p.41.

⁴⁰ Ibid, p.17.

The law on the execution of sanctions, at its article 134⁴¹, prescribes that the pregnant women have to be provided with professional medical help care and support. Women could have gynaecological checks only if the in-house doctors recommend that. If it is recommended, women are brought to the special department of arrest that is operating within the Clinical centre. While this medical cares are lacking, "once a week, the prison of Idrizovo is visited by ophthalmologist, neurologist and a radiologist"⁴², situation that seems quiet disproportionate regarding the lacks with other health professionals.

Activities for women detainees

There is neither informal education/ activity for the women inmates, organized by the State nor family therapy (with inmates and their families) that will ensure better re-socialization and reintegration after the penal detention. In the penitentiary correctional facilities *at Idrizovo-Skopje*, no attention has been paid to the informal education of the women inmates. For quite a period a time, within the women's department there was no possibility to exercise some kind of informal education.

The main part of ESE's activities has been devoted to working with women inmates within the women's department in PCF - Idrizovo. Through conducting informal educational and working activities inside the women's department, ESE has aimed to broaden the scope of the correctional program which leads to promote and implement the social and economic rights of the inmates in the prison of Idrizovo. A large number of clusters of psycho-social workshops and sewing courses, put in place by ESE, has helped women inmates in their active involvement in the correctional process, as well as in the process of re-socialization during the penal detention. Additionally, family therapies with women inmates and their families were organized in 2004, aiming at achieving acceptance of the inmate by the family members during and after serving the sentence and to ease the process of integration and re-integration of the inmates within their families.

10. Investigation (Article 12):

Lacks in term of victims and state agents' awareness and knowledge:

Violence against women, especially domestic violence, is quiet under-reported. According to ESE estimation and researches, the level of reporting of domestic violence cases to the police is only 20.7%, which means that only one case of domestic violence over five is reported.

In the context of domestic violence, the fact that these acts are **under-reported** and **under-investigated** is due to the non-consent of the victim to press charges against the offender. In the context of domestic violence, this is due to the nature and closeness of the involved parties and the victim only wishes the violence to stop and the offender to be warned against the inadmissibility of his behaviour. The fact that women initiate essentially complaints and not criminal procedure is yet another indicator of the victims' reluctance to truly face the offender and change her attitude to the violence she is suffering.

In addition, there are still women who do not actually consider the violence committed on them as a crime. The research data indicate that every fifth woman explicitly stated that violence within the family does not constitute a criminal act. The most dominant reason for not reporting domestic violence is the victim's shame and feeling of guilty, which are revealing the taboo related with this issue.

⁴¹ Official Gazette no. 2/06.

⁴² Report of the Council of Europe assessment visit to prisons in the Former Yugoslav Republic of Macedonia, January 2006, Križnik/Walmsley, p 20.

It also must be noted the victims' insufficient information on the existing legal possibilities and the actual non-use of the available solutions by the police. In a situation when we are facing an absence of awareness of the legal regulation and low level of reporting of violence, it is necessary to intensify the promotion of the existing legal possibilities. One of the ways for such police action is to apply all possible solutions in a concrete case, which includes informing the victim of what the system offers for her adequate protection.

These observations illustrate the need for education and awareness-raising campaigns towards the population as a whole on the questions of violence against women and the available remedies.

This need for education is also relevant regarding the **policemen and investigators**. A precondition for an adequate police action is their permanent education, focused on the legal mandate and including a more detailed description of the existing criminal offenses that regulate violence against women, including domestic violence, or the set up of special expert police teams that would be specialized for working on such violence cases.

Reporting rates are especially low in cases of marital rape and sexual violence because of the failure to recognize this type of violence and due to the omissions in terms of proceeding: collecting of evidence, prescription of mandatory forensic medicine examinations, lack of medicine protocols or lack of referral system for rape victims. Indeed, there is no specific system of protection for victims of rape. Professionals dealing with these cases (police, prosecutors and judicial officials) are very reluctant to prosecute marital rapes. The same can be concluded in case of psychological violence especially in the domestic context.

The lacks on a procedural aspect:

-The need for an **ex-officio initiation** of the procedure and the question of the **victim consent**

The criminal charges for the sexual violence and domestic violence are initiated ex officio by the police, except for the criminal act bodily injury for which the procedure is initiated upon the private suite, which require the victim's consent⁴³.

In situations when the victim does not consent, a written notice is sent to the offender to warn him highlighting the inadmissibility of his behaviour and the existing legal mechanisms to be used in future. If the offender does not respond to the written notice, there is no legal mechanism in place for the police to ensure his presence. The case is registered as a complaint but no effective action is undertaken to resolve it. This is even more concerning since the existing mechanisms for dealing with cases of complaints do not offer any guarantee of prevention of violence, contrary to the sanctioning of a committed offense.

Unfortunately, despite this legal requirement, our information obtained in the course of the years-long working with this professional structure indicate that the police require the victim's consent even in cases of grave bodily injuries. They are themselves aware of this situation but do ask for the victims' consent as a "preventive" measure since at the beginning, they are not certain about the criminal qualification - that is whether it is bodily injury or heavy bodily injury.

Moreover, the victim may withdraw her consent in the course of the preparation of the criminal charges by the police before it is submitted to the Basic public prosecution offices. When this happens, the police inform the prosecution on all undertaken actions in a special

⁴³ The criminal acts incorporated in the Criminal Code of Macedonia are initiated ex officio. In the cases where there is an exception from this rule, an additional paragraph is added under the given article which stipulates if the criminal procedure for that criminal act is initiated under proposal or private suite.

report and the prosecution decides on the further proceeding. Unfortunately, there is no information on the number of submitted special reports to the prosecution, although it can help determine and overcome these negative tendencies.

The withdrawal of the consent in this type of crime is possible even in the course of the criminal proceeding. This information is again not explored sufficiently in our country.

The analysis of the missing parameters listed above may significantly contribute to identifying the ways for elimination of the possibility for the victim's withdrawal of her consent in any stage of the proceeding. One of the possible ways is simplification of the procedure, in the sense that the statement of the victim given in the pre-court procedure is valid in court so that it would not be re-investigated⁴⁴. In order to avoid the secondary victimization and the risk of the victim to change her original statement and withdraw the stated given previously, law amendments to the Law on Criminal Procedure will be prepared, thus providing the victims of domestic violence with special status during the criminal procedure.

- The problems regarding the **registration** of the facts

There is an evident trend of registering the acts of domestic violence which have constitutive elements of criminal offenses as **misdemeanours** and not as **criminal offences**⁴⁵. This conclusion may be supported by the large number of misdemeanours related to psychological and physical violence. 965 requests for misdemeanour charges were submitted to the Mol in 2006, out of which 280 were for maltreatment and coercion, 111 for physical assault and 53 for endangering security.

This situation is mostly due to the fact that when a case is reported to the police, the police officials, who have neither sufficient knowledge for this issue nor training for working with domestic violence victims, decide whether this reported case will be registered as a criminal offense, a misdemeanour or a mere complaint. This approach implies an inappropriate protection of the victims as the protection measures guaranteed in this case, are not the same under both system.

But we can notice positive steps. In 2006, more criminal procedures of domestic violence were initiated, than in 2005. Indeed, 2,565 complaints were registered. It also appears that an increased number of criminal charges were pressed by the police for the criminal offense bodily injury that is 19.5% of the cases of domestic violence. On the other hand, the number of mere complaints decreased in comparison with 2005.

11. Right to remedy (Article 13)

Right to complaint:

Domestic violence is treated under the Department for juvenile delinquency within the police (Ministry of Interior). There is **no special mechanisms regarding the reporting of the violence by the victims**. The National SOS line for victims of domestic violence is operating within civil society organization with the support from the Ministry of labor and social affairs.

Several elements have influence on the registration of the complaints. Indeed, even if women do not face formal obstacles, they are facing the **lack of capacities** of the professionals and the **stereotypes** that can undermine the further proceeding of the case and as such the type

⁴⁴ "Life in a Shadow", 2007, Association for emancipation, solidarity and equality of women in the RM- ESE.

⁴⁵ The complaint is the mere fact of reporting certain acts to the police. The misdemeanours are treated in the Law on misdemeanors, prescribing sanctions as fines. The criminal offences are regulated in the Criminal Code and the prison sentences are characteristic for them.

of protection that will be provided. These behaviors can clearly lead to a secondary victimization of the victims during the criminal proceedings.

There are cases of domestic violence when the professionals from the CSWs are directing their efforts toward **conciliation** of the spouses, evading the main principles for work with victims of domestic violence.⁴⁶ Namely, they are applying the methods characteristic for the work of the Department for marriage and family, instead of the working methods characteristic for the Departments for domestic violence⁴⁷. Here, there is a clear need for **education** of those professionals working with women victims of violence and for **regulation of the procedures within the criminal legal system**.

Right to protection:

Domestic violence:

Regarding the civil legal system, some weaknesses are identified. They are mostly due to the **absence of an established procedure for the evaluation**, the recommendation, the rendering, the enforcement and the monitoring of the rendered temporary protection measures. There is no standard or parameter to choose between the different types of protection and determine the effects of the provided protection. In addition, there is no reference list of institutions and organizations that will implement and monitor the protection measures on the basis of set rules.

The weakest point of the civil legal system is the **complete or partial non-functionality of certain temporary protection measures** (for example, the counselling for the offender and mandatory medical treatment of the offender if he is an alcoholic or uses some psychotropic substances or is ill).

The civil system of protection is based on two types of protection measures: protection measures and temporary protection measures.

The reforms in the legislation addressing family in 2004 entailed introduction of a number of **individual protection measures**. In this sense, the Centre for Social Work and the non-governmental organizations that work on eradicating and preventing domestic violence were given a legal opportunity to build the necessary coordinative protection system. The range of individual measures to be undertaken by the responsible institutions (the formal protection system) and the NGO sector (the informal system) include the following a quiet comprehensive range of measures from shelter, medical, psycho-social care, counselling and legal aid, etc.

Up to date, there are **no legal or supplemental legal provisions that specify in more detail the contents and manner of implementation of each measure**. The need for their development is very pressing, especially considering the fact that the state and NGO sectors form and build together the system for implementation of these protection measures. This illustrates the **need for a coordinated approach**.

In this sense, **standardization** of the protection measures envisioned within the family legislation has been undertaken by non-governmental organizations⁴⁸ and the Ministry of

⁴⁶ "Unification of civil justice system" , 2006-2008, Report of the Association ESE and Akcija Združenska on the operation of the Centers for social welfare

⁴⁷ For the purposes of the project Unification of criminal and civil justice system, questionnaires were sending to the Centers for social welfare regarding their proceeding and methods of work when dealing with domestic violence cases. It was stated by the professionals that they are using this methods when dealing with cases of domestic violence. However we don't have concrete example to illustrate it.

⁴⁸ Akcija Združenska and the Association for Emancipation, Solidarity and Equality of Women of the Republic of Macedonia – ESE.

Labor and Social Policy⁴⁹. This **initiative** will result in modifications of the Law on Social Welfare, in the elaboration of standards in the form of supplemental legal provisions and in the definition of clear conditions and criteria to be met and complied with by the actors in the formal and informal protection systems, in order to avoid double standards.

In absence of such standards, the functioning of the protection systems today is based and greatly **dependant of the professionalism and the capacities available** in the institutions/organizations and as such is quiet unequal between the institutions. The capacities and the resources of the Centres significantly influence the degree of application of some measures.

Regarding **temporary protection measures**, some of them have a prohibitive character (they prohibit certain kind of behaviour) and others have imperative character (order certain kind of behaviour)⁵⁰. It appears that the Centres of Social Work recommend more easily those TPMs that have a prohibitive nature and that will be ordered by the court more easily than those TPMs that impose certain kind of behaviour on the offender.”⁵¹

There are quiet a lot of uncertainties regarding the procedure of ordering the TPMs. An important question is who can initiate a procedure for ordering temporary protection measures. In absence of an authentic interpretation, the practice shows different views. Some views interpret this provision restrictively, stating that only the Centres for Social Work are authorized institutions that can submit such requests to the court. The extensive interpretations, on the hand, insist on expanding the circle of authorized subjects that can request ordering of TPMs. The latter interpretation facilitates the access and maintains the spirit and meaning of this protection (direct and prompt), without diminishing the importance of the Centres as bodies that can give an opinion in accordance with the measures and protection it provides for concrete violence cases. This difference will be overcome with the adoption of the amendments to the Family law that is in assembly procedure waiting for adoption. Same, it remains unclear in which cases and how the Centres decide on a shorter time period for the duration of the measures than the allowed maximum (one year). Practice indicates cases for which there have been requests for a shorter duration of the measures and the court grants such requests. There is neither a mechanism for monitoring the enforcement of the TPMs nor one for the evaluation of their level of efficiency.

There is negative practice by some of the civil court judges within the procedure for issuing Temporary Protection Measures in the domestic violence cases. In some cases, judges have shown some **reluctance to issue TPMs** while the Centers requested such measures, arguing that domestic violence was not extremely serious and that the victim’s life might not be at danger. This practice is contrary to the preventive nature of these measures, which should be used to prevent further or grave violence. Indeed, there is quiet **a low level of initiation of temporary protection measures**. In the period June 2005 – June 2006, out of the established cases (183) that needed enforcement of TPMs, the Centre submitted 58 requests to the court, which means that every third victim was provided with this type of protection. There are two reasons for this discrepancy in the number of the established cases requiring recommendation of TPMs and the submitted requests by the Centres to the courts. The first is the necessary consent by the victim without which the Centres cannot

⁴⁹ Section for the Socially Excluded Persons, Department for Social Welfare.

⁵⁰ The request to the court for ordering TPMs is submitted by the Centre upon prior proposal or by its own initiative. Such proposal may be submitted to the Centre by the spouse, parents, children or other persons that live in a marital or extra-marital union or a common household, a former spouse or persons that are in close personal relations and against whom domestic violence has been inflicted. The TPMs may be ordered for a period of up to a year.

⁵¹“Life in a Shadow”, 2007, Association for emancipation, solidarity and equality of women in the RM- ESE

submit a request to the court, and the second, difficulties in the formulation and documentation of the requests submitted to the court for ordering of measures, which cause this discrepancy to a considerable degree.

Some of the measures, despite being legally prescribed, **cannot be partially or completely implemented**. An instance of a complete impossibility to enforce a measure is the case of *TPM Mandatory attendance of appropriate counselling* due to the inexistence of such counselling.

Trafficking in human beings⁵²

AS we told it before, there is a **Transit Centre for victims of human trafficking**. The Transit Centre while accepting women victims of trafficking attempts to provide social and psychological assistance. Rehabilitation and re-socialization, however, require much longer periods than the time spent by the women at the Centre.

Concrete obstacles undermine the role of protection of this Centre. The findings of the OSCE (Organization for Security and Cooperation in Europe) field missions suggest that not all women are brought to the shelter (Transit Center). Victims of trafficking often refuse the assistance available at the Transit Center or do not seek help at all, fearing repatriation, deportation and public condemnation in their countries of origin. The shelter takes only those victims who want to take part in the IOM program that is, are willing to return in their country of origin. Internally trafficked women and children are not covered at all⁵³.

12. Redress and compensation (Article 14)

There is no measure of recovering and reintegration that are explicitly adjusted to women victims of torture or other ill-treatment. This issue is treated in the context of the right for compensation, both for women and men. Unfortunately, women victims of sexual violence do neither benefit from special measures of compensation, rehabilitation which are explicitly prescribed for them.

In practice, women do initiate procedures for compensation under the general articles of the Law on obligations and do not face particular obstacles.

Concerning the access of women to medical and psychological rehabilitation, offered by specialised professionals, we can say that in Republic of Macedonia, it exists a Transit centre for women-victims of trafficking. Rehabilitation and re-socialization, however, require much longer periods than the time spent by the women at the Centre. The main problem is the lack of coordination with the victims' countries of origin and the fact that victims are not monitored once they return to their country. As such, there is no information about whether they have been re-trafficked or whether, once they go through the process of rehabilitation, they have been successfully reintegrated and found a suitable job.

There are five shelters for victims of violence in Macedonia, partly organized by the state and one organized by an NGO. The oldest SOS line for women victims of family violence at the Organization of Women of the City of Skopje - 15 700 (established in 2004) – grew into a national SOS line, supported by the Ministry of Labour and Social Policy. The duration of the

⁵² Shadow report on the implementation of the Convention CEDAW, 2005, Association for emancipation, solidarity and equality of women in the RM- ESE.

⁵³ UNICEF, UNHCR, and OSCE/ODIHR (with the administrative support of UNDP for Bosnia and Herzegovina), Report: Trafficking in Human Beings in Southeastern Europe, 2003.

stay of the women-victims of domestic violence is six months and maximum up until one year. The shelters provide psycho-social intervention and emotional support to the victims, give appropriate information for the health protection, they form groups for self-help and they link the victims with other institutions. Still, in the Republic of Macedonia, the violence over women, i.e. family violence is not treated as a health care problem. The country has no program for women who have to cope with health consequences of violence or any programs for counselling women traumatized by armed conflicts.

There is no special type of programs for protection of victims of family violence among **women coming from rural areas**, despite the fact that they know a particular reality. The women living in rural areas face double discrimination-as women, and women coming from rural areas, especially in the access to health care system, access to education, participation in the political, economic and social life. Regarding domestic violence, the traditional and patriarchal values which are the main reason for occurrence and existence of the phenomenon, are much more expressed in the rural areas. In addition, they are less exposed to the influence of campaigns, education courses and other forms of making them aware of this phenomenon, which makes the access to the direct services for victims of domestic violence limited for them.

On the other hand, separate programmes for social and health protection for **women prostitutes** do not exist⁵⁴. They are only recorded by the Centres for Social Work for the purpose of acquiring certain material benefits granted to individuals with a status of social deprivation. A significant portion of the prostitutes is classified in this category and receive social benefits on those grounds.

⁵⁴ Shadow report on the implementation of the Convention CEDAW, 2005, Association for emancipation, solidarity and equality of women in the RM- ESE.

Violence against children: implementation of the Convention against Torture towards children

1. Overview and evolution of the child rights' situation, including the right to be protected from torture and other CIDTP

According to different non-governmental sources of information, the main matters of concern related to the implementation of the CAT to children are 1) the treatment of children in conflict with the penal law (articles 2, 11, 16 CAT), 2) child trafficking and exploitation (article 2, 16) and 3) violence of children in various situations (family, community, schools, care institutions) (article 1, 2, 4, 16). The implementation of articles 12, 13 and 14 in cases where victims are children also remains largely incomplete.

In her 2006 report, the Ombudsperson for the Rights of the Child denounces violence against children within the family, at school, and labour exploitation. She also indicates that in 2006 "the number of complaints regarding the children's rights increased, which is a sign that these rights are increasingly violated, but also that the public consciousness about them is increased too. The Ombudsman still cannot express satisfaction about the treatment of the children as subjects with special rights, interests, and obligations. The non-acceptance of this status is mostly noticeable at the parents and teachers, but also in the public institutions responsible for the children's rights."⁵⁵

In addition, without giving a global view of the situation of violations of children's rights, the results of the work of the SOS line for children of the Macedonian NGO First Children Embassy in the World – Megjashi in 2007 are at least good indicators of the type of problems and sufferings of children. Indeed, in 2007, the highest rate of the phone calls was related to family relationships (which includes domestic violence), followed by abuse and violence of children and then commercial exploitation (including prostitution, paedophilia and beggary)⁵⁶. It results from the numerous phone calls that violence usually occurs in schools, in the family and on the streets.

2. Legislation protecting children from violence, including torture or other CIDTP, and structure of implementation

2.1 Legal framework - General legislation on child rights' protection from violence

A- Definition of the child

In Macedonia, a child is an individual who has not reach the age of 18 years old. However, like many other national systems, in accordance with international standards, Macedonian legal framework provides for several specific ages of the child from which s/he is allowed to act or responsible for acting according to the type of setting.

In this regard, a child below **15** years old is not allowed to **work** (article 42(1) of the Macedonian Constitution); boys and girls below **18** cannot **marry** (as an exception, they can

⁵⁵ Information on the work of the Department for Protection of the Rights of Children within the National Office of the Ombudsman, 2006. Available at www.crin.org/docs/god.izvest.%20ENOK.pdf

⁵⁶ Report of the work of the SOS line for children and youth at FCEW-Megjashi from 01.01.2007 to 31.12.2007.

from 16 providing that some conditions are matched - decision by a court according to particular criteria) (Family Act); from 14 year-old a child (girl or boy) may legally have **sexual intercourse**; and from 14 years old a child can be held somehow **responsible under criminal grounds** (this is a limited criminal responsibility, whereas from 18 it is full).

B- Existing national legislation on violence against children: protecting provisions and gaps

Article 11 of the 1993 Constitution protects all individuals, including children, against “any form of torture, or inhuman or humiliating conduct or punishment” (article 54(4) states that there is no exception to this principle).

As far as children are particularly concerned, article 42 of the Constitution provides a general protection of children by the Republic. The Constitution gives further protection on particular issues: protection (care and education) by the parents and by the State in case the child is parentless (article 40) and protection at work (article 42(2) and (3)). In addition, the Law on the Protection of Children (2000) and some provisions of the Family Law (2004)⁵⁷ also protect children from different forms of violence, including torture and other cruel, inhuman or degrading treatment or punishment.

The Criminal Code of the Republic of Macedonia (hereafter CC) and the Criminal Procedure Code on Execution of Criminal Sanctions also contain particular provisions towards children in conflict with the law. In this regard, a new Law on Juvenile Justice is going to enter into force on September 1st 2008 which is supposed to create a genuine juvenile justice system. The CC also protects children through criminalization of violent behaviours against them.

2.2 Institutional structure implementing child rights related legislation

A- Centre for Social Work⁵⁸

The main body that acts on behalf of children in protective proceedings is the Social Work Centre. The Social Work Centre has the authority and discretion to petition and advise the Chamber for minors of the relevant court in all matters related to child protective proceedings, among others. The law also stipulates that the Social Work Centre may intervene in situations of alleged domestic violence either on its own or by a request from a member of the family. The law is unclear whether a child victim may directly complain to the Centre.

Despite its important mission, the Centre for Social Work suffers from several shortcomings. The centres face financial difficulties that limit their fieldwork. There is no common national approach in working with children. Obligatory training for staff is not organized on a regular and structured basis. The Centre remains too general while addressing particular delicate situations and does not adapt its work to the type of sufferings and to the specific situation.

B- The Ombudsperson for children's rights

The Ombudsperson for children's rights belongs to the Department for the protection of the rights of children of the National Office of the Ombudsman. The Ombudsperson investigates violations of children's rights and reports to the Parliament annually. The Ombudsperson deals with cases either reported by stakeholders (parents, teachers, witnesses, etc.) or

⁵⁷ Family Law of the Republic of Macedonia (2004), http://www.law.yale.edu/rcw/rcw/jurisdictions/euros/macedonia/frontpage1.htm#_edn1

⁵⁸ See Family Law of the Republic of Macedonia (2004)

initiated *ex officio*. S/he can take measures against public authorities and sensitise the population. This is a useful mechanism but it comes up against the deficiencies of law enforcement agencies.

3. Occurrence of torture or other CIDTP against children

A- Violence at school

Despite the existing legislation aims at protecting children from violence at school, pupils are victims of physical, mentally and sexually mistreatment⁵⁹. Unfortunately, such violations are often not registered. Indeed, the victims and the other pupils and students witnesses are reticent to report the acts of violence and the teachers frequently refuse to report violations by their colleagues. Furthermore, there is no measure taken for the full protection of children and for adequately sanctioning the offenders. Indeed, the competent bodies do not react quickly and appropriately and are not taking all the measures to protect the children, especially in cases where a teacher should be sanctioned for physical or mental mistreating of a child.⁶⁰ As for OMCT, the Republic of Macedonia is responsible under the CAT for lack of due diligence, i.e. failure to adequately respond to ill-treatment against children at schools. The following case illustrates this situation.

In early 2006, the child A.T. suffered from physical violence by his sport's teacher K.S. in the Elementary school "Toli Zurdumis" in Kumanovo. The case was reported by a journalist to a national NGO (First Children's Embassy in the World – Megjashi) which informed relevant authorities. Some recommendations had been addressed to the executive of the school as well as to the Ministry for education and science and they were asked to take the necessary measures in the shortest deadline possible, for the responsibility of the teacher (i.e. raising an action against the teacher and a punishment fitting the crime) and for protection of the other pupils. As a result, the executive of the school fined the teacher with a 10% fee of his 6 months' income for his non pedagogical behaviour. However, the behaviour was far from being only non pedagogical, since real physical violence was committed against the child. The punishment of the teacher was inadequate with the seriousness of the violation.

B- Violence in the family

Violence suffered by children within the family is a very serious problem in Macedonia for years. It is often underreported and inadequately addressed by law enforcement bodies. There are also reports according to which children are engaged in exploiting activities such as begging, street trade and even prostitution.

C- Discriminatory violence against Roma children

Ÿ Violence against Roma children engaged in child labour

There are reports according to which Roma children are particularly vulnerable to commercial exploitation. The low socio-economic situation of Roma community in Macedonia presses on many parents to "use" their children to get money. Therefore, many⁶¹ Roma children are requested by their parents either to beg or to sell products on the street. Some other are finally left to live on their own. In some cases, daily centres with educators and psychologists take care of those children providing health, education, food, etc.

⁵⁹ Information on the work of the Department for Protection of the Rights of Children within the National Office of the Ombudsman, 2006. Available at www.crin.org/docs/god.izvest.%20ENOK.pdf

⁶⁰ Information on the work of the Department for Protection of the Rights of Children in 2006, Ibid., § 3

⁶¹ There is no exact measurement of this phenomenon.

Ÿ *Violence against Roma children at school*

Recently, the UN Human Rights Committee has expressed its concern about the harassment against Roma children in schools.⁶²

Ÿ *Early and arranged marriage*

Even though children who have not attained 18 years old cannot enter into marriage, there are reports that hundreds of Roma children are married every year, especially in Skopje and the eastern part of the country.⁶³ In an article in 2007, the Executive Director of Journalists for Children and Women's Rights and Protection of the Environment in Macedonia explained that as a result of early and forced marriages, many girls are exposed to sexual abuse and exploitation sometimes amounting to prostitution, by their husband.⁶⁴ Since marriage under 18 is illegal under Macedonian law, the authorities consider child marriage of Roma has inexistent. This attitude contributes to ignore the problem of early and arranged marriage and brakes the implementation of solutions.

D- Violence against children by law enforcement officials

There are allegations of excessive use of force during the arrest and during police custody. In particular, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) revealed in 2006 that children also suffer from ill-treatment by law enforcement officials and reported allegations concerning juveniles being denied the right of access to a lawyer (or to a guardian) while being interrogated by the police; this puts a further risk that children be ill-treated when interrogated by the police.

E- Violence against children deprived of liberty

The visit of the CPT in 2006 revealed the following problems:

- allegations of ill-treatment in Skopje prison, in particular the lack of adequate care provided to juveniles and children (this includes cruel, inhuman or degrading punishment and disciplinary measure –chaining for instance- to punish juveniles in Skopje Prison who had attempted to commit suicide and acts of self-harm);
- ill-treatment and harsh discipline, lack of adequate care and appropriate measures, conditions of detention of children in the educational-correctional institution - Skopje prison;
- children and young adults (until 23 years old) are held together.

F- Child trafficking and exploitation

The hopeless economic situation also exposes children to trafficking and exploitation. Many street children (particularly in Skopje) are in a risky situation for trafficking and exploitation. Despite some efforts to struggle trafficking, the Macedonian authorities fail to provide with adequate reparation to child victims.⁶⁵

⁶² Human Rights Committee, Concluding Observations: FYR of Macedonia, CCPR/C/MKD/CO/2, § 19.

⁶³ Natasha Dokovska *June 26, 2007 Child Marriage Persists in Macedonia Among the Roma: Esma Is Sold for 1000 Euros*, in http://www.thewip.net/contributors/2007/06/child_marriage_persists_in_mac_1.html

⁶⁴ Please see: http://www.thewip.net/contributors/2007/06/child_marriage_persists_in_mac_1.html

⁶⁵ Human Rights Committee, Concluding Observations: FYR of Macedonia, CCPR/C/MKD/CO/2, § 13.

4. Definition and criminalisation of torture (articles 1 and 4)

4.1. Definition of torture: interpretation of the torture definition when the victim is a child (article 1)

Article 142 of the CC does not provide for a particular child-oriented definition of torture when the victim is a child, taking into account his/her specific vulnerability. Similarly, it does not provide for more severe penalties when the victim is a child.

4.2. Criminal legislation (article 4)

The Macedonian legislation provides for the criminalisation of certain acts and treatments that may amount to torture or other cruel, inhuman or degrading treatment or punishment, thus complementing the prohibition of torture by article 142 of the CC. Some of those treatments particularly target the child as a victim.

A- Sexual violence

The risk to be particularly exposed to sexual violence justifies the provisions providing for a special protection for children.

Article 188 of the CC provides for the sexual attack (covering statutory rape or some other sexual acts) upon a child and penalties from 6 months to 5 years of imprisonment. The inability of the child victim to resist the attack, the misuse of his/her position by the perpetrator and the cruelty of the manner and the grave consequences on the victim are aggravating circumstances (article 188(2) (3) (4) CC) justifying more severe penalties.

Despite an interpretation by the doctrine that includes in article 188 all persons having a certain authority or position and abusing it to commit sexual violence against a child, consequently including law enforcement agents, OMCT is concerned that the misuse of position does not clearly and certainly include the possible abusing behaviour of law enforcement agents like police officers and prison guards. The Criminal Code remains lacking on this question. In practice, only teachers and other school employees have been charged under article 188 CC.

B- Family violence

Article 93 of the 2004 Family Law states that abuse and negligence by a parent against his/her own child is punishable by a court. In this framework, the Family Law describes abuse and negligence as any physical or emotional mistreatment, sexual abuse, forcing into inadequate labour, allowing the use of alcohol and drugs, abandon for more than 3 months.

In addition, article 122(19) of the CC defines family violence as follows: "Family violence shall mean abuse, rude insults, threatening of the safety, inflicting physical injuries, sexual or other physical and psychological violence which causes a feeling of insecurity, being threatened, or fear towards a spouse, parents or children or other persons which live in a marital or other community or joint household, as well as towards a former spouse or persons which have a common child or are have close personal relations".

According to article 130(2) of the CC, a person who injures bodily another, or damages his health, while performing family violence (aggravating circumstance), shall be sentenced to imprisonment from six months to three years, instead of up to one year without family violence.

Chapter 20 of the CC is dedicated to “Crimes against marriage, family and youth”. In this framework, article 201 of the CC forbids child neglect and mistreatment by a care giver as follows: “(1) A parent, adoptive parent, guardian or some other person who by crudely neglecting his duty of caring and upbringing neglects a juvenile or mistreats him, shall be punished with imprisonment of three months to three years. (2) The punishment from item 1 shall apply also to a parent, adoptive parent, guardian or some other person who forces a juvenile to work which does not correspond to his age and physical force, or from self-interest induces him to begging or to performing other activities which are damaging to his development. (3) If because of the crimes from items 1 and 2 a serious body injury or a severe damage to the health of the juvenile was caused, or the juvenile started with begging, prostitution, or other forms of asocial behaviour, the offender shall be punished with imprisonment of three months to five years.”

C- Corporal punishment⁶⁶

Corporal punishment is prohibited in schools. The Law on Elementary Education (1995, amended 2006) and the Law on Secondary Education (1995, amended 2007) forbid corporal punishment and harassment of pupils, and hold the school, rather than the individual teacher, responsible for violation of the law. As stated in the previous paragraph, the prosecution of individual teachers for ill-treatment of pupils is possible under article 201 of the Criminal Code.

Corporal punishment as a sanction and as a disciplinary measure in penal institutions is prohibited under the Law on Execution of the Sanctions. As underlined in the State party report (§52), articles 184(1) and 185 of this Law make possible the opening of a procedure against an official person who used or ordered unlawful means of coercion.

The article 9 of the Law on Protection of Children (2000) prohibits corporal maltreatment, punishment and other inhuman treatment and abuse. However these terms have not been defined and the law has not been interpreted as clearly prohibiting parental corporal punishment. Article 130(2) and 201 CC could be used by the courts to punish corporal punishment of a child at home. However, case-law on this issue lacks. Therefore, as an answer to § 38 of the List of Issues, OMCT is very much concerned about the fact that there is not a legal provision neither case-law that clearly prohibit corporal punishment in all settings, in particular as measure of education in the home.

5. Preventing torture and other CIDTP against children (Article 2 §1)

Preventing torture and other CIDTP by respecting particular judicial safeguards of children in the framework of a juvenile justice system

5.1. Minimum age of criminal responsibility

As previously mentioned in section 3.1 of the present report, a child who has committed an offence when s/he was below 14 is not criminally punishable (article 70 CC). According to article 438 of the Criminal procedure Code (CPC), when a child under 14 commits an offence, the criminal system is not able to act but the institution for guardianship will be the referring body.

From 14 to 16, the child who has committed an offence is named a *junior juvenile* and is only subject to educational measures (article 72(1) CC) which are disciplinary measures, measures of intensified supervision and institutional measures (article 74(1) CC)⁶⁷. Between 16 and 18, s/he called a *senior juvenile* and can be subjected to behavioural measures under

⁶⁶ Information mainly taken from www.endcorporalpunishment.org/pages/frame.html

⁶⁷ On educational measures, see also articles 74 to 85 of the Criminal Code.

the conditions determined by the Criminal Code, and as an exception can be sentenced to juvenile prison.

5.2. Criminal procedure towards juveniles

Chapter 27 of the Criminal Procedure Code on Procedure against minors and chapter 6 of the Criminal Code on Educational measures and punishment of juveniles provide for some rules particularly applicable to person below 18 at the time the crime was committed.⁶⁸ There is not a piece of legislation dedicated to juvenile justice as a special criminal system. Although some provisions protect juveniles, shortcomings still exist.

Within the ordinary criminal court system, there are Chambers for minors that have jurisdiction over criminal cases involving children more than 14. Chambers for minors may act as a first degree court and as a second degree court. When acting as a first degree court, they are composed of one or more judges for minors and when acting as a second degree court, they are composed of one judge for minors (chair) and two lay judges (elected among persons who have an experience in the education of minors). The second degree Chamber has jurisdiction over appeals against decisions by the first degree court, by the public prosecutor and by the judge for minors and over cases where a crime was committed.

Following are some legal safeguards aimed at protecting children in conflict with the law:

- legal assistance from the beginning of the investigation (article 440 CPC);
- a juvenile cannot be judged in his/her absence (article 439(1) CPC);
- summoning by the legal representative unless it is not possible due to urgency (article 445 CPC);
- at some moments during the procedure (to decide the initiation of the procedure, to help clarify the facts and the circumstances of the facts), the public prosecutor and the judge for minors may request reports or investigation by relevant stakeholders in order to know the circumstances of the case, including the context, the personality of the minor (articles 453 and 456 CPC);
- the different phases of the procedure are timely bound;
- right to challenge decisions;
- sanctions alternative to detention (article 91-a CC, 2004 amendment).

Despite those positive rules, the criminal procedure towards juveniles still lack care for the status, the problems and the perspectives of young people. Certain educational measures are not applied because there are no conditions to their execution. It is hoped that the New Juvenile Justice Law will resolve those and other shortcomings.⁶⁹

5.3. Punishing juvenile offenders: educating first

In compliance with the spirit of relevant international standards⁷⁰, article 73 of the Criminal Code states that “(1) The aim of the educational measures and of the punishment and the alternative measures is to provide for the education, correction and proper development of the juvenile offenders, by giving protection and help to them, by performing supervision over them, by their professional training and by developing their personal responsibility. (2) The aim of juvenile imprisonment is to perform an intensified influence upon juvenile offenders so that they would not commit crimes in the future, as well as upon other juveniles not to commit crimes.” Moreover, chapter 6.4 of the Criminal Code provides for the Application of the Alternatives Measures.

⁶⁸ Even under 21 at the time of the trial is held.

⁶⁹ Prof. Dr. Vlado Kambovski, Comparative Analysis of Juvenile Justice Legislation, 2002. Available on www.ojji.org.

⁷⁰ UN Convention on the Rights of the Child (particularly articles 37 and 40), Beijing Rules and Riyadh Guidelines.

However, the assessment of the effective implementation of those provisions by the law enforcement professionals (in particular assessment with regard to the principle according to which the detention of a child should be used as a measure of last resort) is difficult because of a lack of data on juveniles in conflict with the law and particularly those deprived of liberty.

6. Education and information on child rights' safeguards (article 10)

As rightly said in the State party report, police officers are trained with respect to human rights (see § 153), but it is not specified whether any special training focused on child's rights is provided. At least, some NGOs provide for child rights training of law enforcement agents on children's rights.

It is necessary to establish specialised departments for juvenile criminality in all police departments, with police officials assigned specifically with the juvenile delinquency.

7. Review of arrest and detention rules and facilities (Article 11)

A part of the mission of the Ombudsman Office is to monitor the respect and protection of the constitutional and legal rights of the persons arrested, detained, imprisoned, and those who are serving a prison sentence, or a corrective and educational measure, in the prisons and educational-correctional facilities.⁷¹

7.1 Arrest, investigation and trial phases, including pre- and pending-trial detention

There is no special rule for the arrest of a child. Contrary to international standards on juvenile justice, the same rules as for adults apply.

During the interrogation of a juvenile suspected of having infringed the penal law at the Police Station as well as in front of the Juvenile Judge, the presence of a parent, guardian or an adult family member is obligatory, and if the juvenile has a physical impairment, the presence of suitable experts, such as a special teacher, sign language interpreter (for the deaf-and-dumb), social worker and psychologist.

However, the legal procedure is not always respected by law enforcement officials. As an example, on 18th March 2008 in Skopje, police officers arrested a group of 11 years old children from the Primary School "Vlado Tasevski", and brought them to the Police Station Karposh-Skopje for informational conversations. The police officers neither informed the parents of these children or the Director of the school or any of the teachers or the psychologist in the school.

A judge for minors may decide the temporary placement or supervision of the juvenile before and during the trial.⁷² The judge for minors may also decide the detention of a juvenile in the cases determined by law⁷³, for no longer than 30 days and Chamber for Minors may, "for justified reasons", extend the detention to 60 days, but in no case may the detention exceed 90 days, i.e. three months all in all.⁷⁴

71 Article 31 Law on Ombudsman. See also § 54 of the State party report.

72 No clear time limit. Articles 458 and 468 of the Criminal Procedure Code.

73 Article 184(1) of the Criminal Procedure Code: If there is a grounded suspicion that a person has committed crime, a pre-trial detention for the person may be determined: 1) if he hides, if his identity cannot be detected or if there are other circumstances emphasising danger of escape; 2) if there is justified fear that he will destroy the traces of the crime or if certain circumstances point out that he will inflict the investigation influencing the witnesses collaborators or conceivers; 3) if certain circumstances justify the fear that he will commit crime again, or he will complete the attempted crime or will commit crime with which he threatens.

74 Article 459 of the Criminal Procedure Code, in conformity with article 12 of the Constitution.

When a juvenile is sentenced to prison, the preliminary detention is counted as time served. For other types of sanctions, detention is not calculated in the corrective or educational measures.

In practice there are cases where juveniles may be kept more than three months in pre-trial detention.

7.2 Detention of children

Legal grounds for detaining a child and time limits

As previously mentioned children may be deprived of their liberty on criminal grounds. Those who were between 16 and 18 –older juvenile- at the time they committed the offence may be sentenced to imprisonment as an exception (article 72(2) CC) from one to ten years (article 87 CC). Article 86 of the CC justifies this possibility to imprison a juvenile by the “serious consequences from the crime and the high degree of criminal responsibility”. In addition younger children (between 14 and 16 at the time the offence was committed) may also be subject to measures depriving them somehow of their liberty: educational measures indeed cover sending children to an educational institution (from 6 months to 3 years) or to a house of education and correction (from 1 year to 5 years)⁷⁵ which can be semi-open or closed institutions.

Life imprisonment against juveniles is prohibited under article 35(4) CC.

Places of detention and separation from adult detainees

A juvenile may be deprived of his/her liberty in an educational institution or in a house of education and correction. The law is unclear whether a juvenile may be detained in a prison as such when serving juvenile imprisonment as provided for in articles 86 and 87 of the CC. For example, the correctional institution Tetovo is an institution that enforces educational measures towards male juvenile offenders aged from 14 to 23 year-old. The prisons of Ohrid and Idrizovo receive juveniles sentenced to juvenile imprisonment.

Separation in detention with adults is not set up as a key principle in the Macedonian legislation. This is a real gap for a full protection of children in conflict with the law. Only article 460(1) of the Criminal Code provides for the separation from adults in pre-trial detention. However, article 460(2) establishes an exception: “if the detention of the minor is determined for a longer period, and there is a possibility the minor to be in a cell with an adult who would not inflict any harm on the minor”. As for OMCT, this exception is too large and does not conform to the international agreed rule according to which a child should not be detained with adults “unless it is considered in the child’s best interest not to do so”.⁷⁶

In practice, there are reports that the Central Prison in Skopje confines young adults of 22-23 years old together with juveniles under 18. In 2006, the CPT expressed its concern about children (under 18) and young adults (until 23 years old) being detained together.

For practical reasons, because very few girls are detained, there is no specific detention facility for them.⁷⁷ In practice, all female juveniles serve educational custodial measures in “Idrizovo” penitentiary. There are detained in the same ward as adult women detainees but kept in different cells.

⁷⁵ Articles 72(1), 7, 82 and 83 of the CC.

⁷⁶ Article 37(c) of the Convention on the Rights of the Child.

⁷⁷ See UNICEF, “Survey On The Status Of Children And Youth In The System Of Juvenile Justice”, p.24-25

8. Right to remedy (Article 13)

According to the Family Law, the Social Work Centre has a primer role in ensuring the right of the child to report any act of “abuse and negligence” occurred in the family (and only in the family).

Even though under article 101 of the Family Law, the Social Work Centre has the right to intervene “when [it] has information that there is violence against children in a family” to provide “legal support”, “notify the authorities” and “aid in prosecution”, the Law does not set up a general obligation for professionals to report cases of violations against children. This article also stipulates that Social Work Centre may intervene in situations of alleged domestic violence either “on its own or by a request from a member of the family”. It is not clear whether this also includes child victims’ request to intervene.

The legislation does not provide for comparable institution acting on behalf of child victims when the violence occurs at school. This is more regrettable because such violations are often difficult to be registered since teachers often refuse to report violations caused by colleagues.⁷⁸ In this context, according to reports, the government remains inactive when faced with such a violence happened in school, demonstrating a grave lack of due diligence. Specific measures should be taken to allow children to report their experience of abuse and facilitate the right to seek legal protection through procedures for complaints accessible for child victims. In this regard, in the 2006 report the Ombudsman suggested legal possibilities for children to may lodge a complaint autonomously, as any other person who has information about violated rights of the child.

Except the requirement to interrogate the child in a careful manner without re-traumatising him/her, legally speaking, the child victim of violence undergoes the same interrogation procedure as the juvenile offender in terms of the persons that should be present, the judge responsible (the testimony is given before the judge for minors), etc.⁷⁹

⁷⁸ See Information on the work of the Department for Protection of the Rights of Children in 2006, §3.

⁷⁹ Vasilka Bozinovska, Legal Interventions in cases of criminal over children and child abuse, 2008, Skopje.

RECOMMENDATIONS:

Violence against women: implementation of the Convention against Torture towards women:

General situation of women:

- **A specific and comprehensive anti-discrimination law** must be adopted in order to define and prohibit discrimination, especially gender discrimination, in all contexts; Precise and adequate procedures and mechanisms must be included to ensure an effective protection in gender based discrimination cases;
- The State should undertake activities via the introduction of **educational and pedagogical measures**, as well as through the adjustment of the teaching methods to help in the overcoming of the dominant traditional divisions of roles in the family, as well as the overcoming of the bias and stereotypes that have strong influence on the factual situation of men and women;
- The **national machinery for advancement of women** doesn't have enough visibility and power to bring decisions nor enough financial and human resources; it should include in its work relevant actors such as NGOs;

Violence against women:

- The state should undertake activities to determine parameters that will enable collecting the relevant **data** on all forms of violence against women; these data must be collected in order to put in place statistics and initiate problem analyses;

Articles 1 and 4:

- Forms of violence against women that amount to torture or cruel, inhuman and degrading treatment or punishment should explicitly be considered as such in the **criminal legislation**;
- The state should clarify the **definition of rape** set forth in the law in order to explicitly state what kind of sexual violence are prohibited;
- **Marital rape** must also be explicitly criminalized and not simply deduced from the notion of rape;

Article 3:

- The national legislation should include a gender based approach in **asylum** legislation and procedure in order to take into account situation of violence specific to women, including trafficking, while granting the asylum protection;

Article 10:

- It must include the issues related to violence against women in the **training** of the professionals dealing with women victims, training that remains for the moment quiet insufficient and launch **raising-awareness campaigns** towards the population and firstly towards women over their rights; Again, the State must make effort to cover not only domestic violence and trafficking but all forms of violence;

Article 11:

- The State must investigate and address the allegations of ill-treatment within the **prisons** which consists in asking favor including sexual favor to women detainees in order they reach certain needs; It must ensure the separation between men and women in any case, especially in the context of pre-trial and short term detention; it must ensure an access to medical care and medicines in accordance with the basic needs of women including pregnant women;

Articles 12 and 13:

- The State must take measures to address the high prevalence of all forms of violence against women, including domestic violence and the fact that violence against women remains highly **under-reported and under-investigated**;
- The State should put in place special procedures regarding the reporting of violence suffered by women in order to take into account their fears and shame, especially in case of sexual violence; This will contribute to better rates of reporting of cases of all forms of violence against women;
- The State must use in practice the possibility of **ex-officio initiation** in cases of all forms of violence against women;
- The State must take measures to stop with the trend of **registering acts of domestic violence** as misdemeanors and not as criminal offences and of directing efforts towards conciliation;

Article 13:

- **Protection measures** for women victims of domestic violence must be standardized and their implementation be operationalized; The state should undertake activities to adjust the existing institutions for an efficient implementation of the temporary protection measures, as well as for an evaluation of the capacities/resources for their implementation in cases of domestic violence; They must be more issued in practice and extended to violence other than domestic violence;
- The State should undertake activities in order to enhance the existing legal/supplemental legal regulation aiming at providing an appropriate criminal justice protection for the victim of domestic violence, punishment and rehabilitation of the perpetrator;

Article 14:

- The State needs to enhance **specific measures of compensation and reintegration** for women victims of violence; these measures are cruelly lacking or based on too short terms;

Violence against children: implementation of the Convention against Torture towards children:

- As a priority, Macedonia should address violence amounting to cruel, inhuman and degrading treatment against children within the family and the community, ill-treatments of children in detention and child trafficking and exploitation. (Article 16)
- The Ombudsperson for children should be able to regularly and freely **visit places where children are deprived of liberty** and report cases of torture and other cruel, inhuman or degrading treatment or punishment perpetrated against them by adult inmates, peers and guards and to lodge complaints with the concord of the victims. (Article 11)
- When addressing **violence against children within the family**, the government should privilege prevention of such violence. In this regard, awareness raising campaigns towards parents, relatives and potential victims are mostly important. In addition the government should not leave unpunished those responsible of ill-treatment and corporal punishment of children. Finally, social workers should provide child victims with comprehensive protection and care, particularly counsel, shelters, etc. (Article 2 and 16)
- The government should address the issue of **early and arranged marriage of Roma girls**. In this regard, preventing such practices through awareness raising campaigns and supplying protection to girl victims are essential. (Article 2 and 16)

- The government should prevent all **ill-treatment of and excessive use of force against children by law enforcement agents**. Prosecuting and punishing those responsible is also necessary to stop such treatments and practices. (Article 11, 12 and 16)
- The government and the parliament should amend the existing law so that **corporal punishment against children**, including as a means of educating at home, is prohibited in all settings. (Article 16)
- The relevant authorities of the **justice system** should ensure that no child is detained before trial more than three months as the maximum provided for in the law. (Article 11 and 16)
- Macedonia should ensure that children are not **detained** with adults, even young adults. As far as possible, solutions given to juvenile delinquency should be personalized according to the age, the sex, the ground of the detention, etc. (Article 11 and 16)
- The authorities should create the legal conditions and ensure the effective system so that child victims of violence are able to **complain** freely, to get full and particular **protection** as victims or witnesses.