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Country report

Gender equality



FYR of Macedonia
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Country report

Gender equality

How are EU rules transposed into
national law?

FYR of Macedonia

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Reporting period 1 January 2014 – 1 July 2015

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1. Introduction

1.1 Basic structure of the national legal system

Macedonian national law as an heir of ex-Yugoslav law is a continental, civil-law system. The court system is based on strict hierarchy, with basic courts, appellate courts and one Supreme Court. In addition, there is the constitutional court which until 2006 dealt with discrimination as exclusive competence. Unfortunately, in practice, this mechanism did not function as expected. According to the records, in the period 1996 to 2010 there were 253 individual petitions asserting discrimination, and the Constitutional Court rejected all of them. In the last five years of that period, there even was a dramatic fall in the use of this constitutional mechanism (2006 – 6 cases, 2007 - 6 cases, 2008 – 5, 2009 - 10, and only 3 in 2010). In the decisions, the dominant reason for rejecting the claim was a legal technicality, followed by the determination of the Constitutional Court not to act as a supervisory third-level court, and finally, failure of the petitioner to present sufficient evidence. This also means that the Court does not implement the shift of the burden of proof, i.e. the burden of proof still lies with the claimant.

Hence, starting in 2006, antidiscrimination legislation was introduced in individual laws, enabling civil courts of law to deal with discrimination cases. Also the ombudsperson and the Commission for protection from discrimination were given powers in this area, while the main active factor was supposed to be the Ministry of Labour and Social Policy.

1.2 List of main legislation transposing and implementing Directives

The main national laws transposing the relevant EU directives are:

- Law on Equal Opportunities for Women and Men (Official Gazette No. 6/2012);
- Law on Prevention of and Protection from Discrimination (Official Gazette No. 50/2010);
- Law on Protection from Harassment at the Workplace (Official Gazette No. 79/2013);
- Law on Labour Relations (Official Gazette No. 62/2005).

2. General legal framework

2.1 Constitution

2.1.1 Does your national Constitution prohibit sex discrimination?

Yes. The only provision that addresses sex discrimination is Article 110 on the competencies of the Constitutional Court (Paragraph 1(3)) in protecting human rights and freedoms and 'the prohibition of discrimination based on sex' etc.

2.1.2 Does the Constitution contain other Articles pertaining to equality between men and women?

Yes. The Constitution addresses equality (Article 9) of all citizens regardless of: sex, race, colour of skin, national and social origin, political and religious beliefs, property and social status.

2.1.3 Can the Article(s) mentioned in the two previous questions be invoked in horizontal relations (between private parties)?

Yes Article 110 promotes protection from discrimination not only against laws and/or state institutions, but also between private parties.

2.2 Equal treatment legislation

2.2.1 Does your country have specific equal treatment legislation?

Yes. Chronologically, the first law dealing with equality between men and women is the Law on Equal Opportunities for Women and Men. This law is a specialised law dealing only with sex and gender discrimination; no other discrimination ground is covered. Prohibition of sex discrimination is an essential part of this law, as mentioned specifically in Articles 3, 4, 5, 7 and 9. The first version of this Law was adopted in 2006 and it was soon changed, in 2008. The Law was never actually implemented and has not produced any visible changes in the field of gender equality.

The Law on Prevention of and Protection from Discrimination was adopted and entered into force on 1 January 2011. The concept of direct and indirect discrimination (Article 6), instruction to discriminate (Article 9) and harassment and sexual harassment (Article 7) are present in this legislation. The concept of positive action is also introduced in this Law. Furthermore, according to its Article 13, affirmative action taken by the authorities, administration, bodies of local self-government, public institutions and persons, which is justifiable will not be considered as discrimination until factual equality is reached. This Law also covers practically all other grounds covered by EU law but sexual orientation (Article 3 '...sex, race, colour, gender, belonging to a marginalized group, ethnic origin, language, nationality, social background, religion or religious beliefs, other types of beliefs, education, political affiliation, personal or social status, mental and physical impediment, age, family or marital status, property status, health condition or any other basis anticipated by a law or ratified international agreement (hereinafter: discriminatory ground) shall be prohibited'.

Once the Law on Prevention of and Protection from Discrimination created favourable conditions, in 2012, the FYR of Macedonia adopted a new Law on Equal Opportunities for Women and Men in spite of numerous comments and concerns raised during the public debate (organised only after the Draft Law had entered the parliamentary procedure). The Law is specialized and only includes a prohibition of discrimination on the ground of sex and gender. Prohibition of sex discrimination is an essential part of the law, specifically mentioned in Articles 3, 4, 5 and 7, 9. According to the introducer of the Draft

Law, unlike the previous Law, the new law includes obligatory provisions. Furthermore, the Draft Law transposes three EU Directives: 2002/73/EC, 2000/78/EC and 2004/113/EC.

3. Implementation of central concepts

3.1 Sex/gender/transgender

3.1.1 Are the terms gender/sex defined in your national legislation?

No. The terms gender/sex are used in the national legislation (Law on Prevention of and Protection from Discrimination, Law on Equal Opportunities for Women and Men, Law on Labour Relations); however, they are not defined in any of the laws.

It should be noted that Article 5(2) of the Law on Labour Relations envisages that the terms 'worker' and 'employer' although used in the masculine form have a neutral meaning and are used for men and women equally.

3.1.2 Is discrimination due to gender reassignment explicitly prohibited in your national legislation?

No. Discrimination due to gender reassignment is not mentioned and is not explicitly prohibited in Macedonian national legislation. Furthermore, the wording in some laws could be understood as contrary to the Directive. For example, Article 5 of the Law on Prevention of and Protection from Discrimination has an explanatory definition of marriage as: a community exclusively of one man and one woman. The same exclusivity could be perceived in the Law on Pension and Disability Insurance. Bearing in mind that sexual orientation was rejected as a ground for discrimination it is very likely that court practice will not ensure that the prohibition of discrimination based on sex is also applied to discrimination based on gender reassignment.

3.2 Direct sex discrimination

3.2.1 Is direct sex discrimination explicitly prohibited in national legislation?

Yes. The concept of direct and indirect discrimination, instruction to discriminate, harassment and sexual harassment are present in the national legislation. The national law in the FYR of Macedonia distinguishes between direct and indirect discrimination.

Direct sex discrimination is explicitly prohibited in the Law on Prevention of and Protection from Discrimination – Article 3 and 5; the Law on Labour Relations – Article 7; the Law on Employment and Work of Foreigners – Article 4; the Law on Social Protection – Article 20; and the Law on Equal Opportunities for Women and Men – Article 4.

Direct discrimination is defined in several laws: in the Law on Equal Opportunities for Women and Men – Article 4: 'Direct gender-based discrimination is when a person has been treated, is treated or would be treated worse than another person in a similar situation, on grounds of the gender;' in the Law on Prevention and Protection against Discrimination – Article 6: '(1) Direct discrimination on discriminatory grounds shall be any unfavourable treatment, differentiation, exclusion or limitation which results or may result in deprivation, violation or limitation of the equal recognition or enjoyment of the human rights and fundamental freedoms, compared to the treatment another person gets or may get in the same or similar situation;' in the Law on Labour Relations – Article 7: 'Direct discrimination, in terms of paragraph (1) of this Article, shall be any action conditioned by any of the grounds referred to in Article 6 of this Law by which the person has been, is or could be put in a less favourable position than other persons in comparable circumstances;' Law on Social Protection – Article 21 – 'Direct discrimination, in terms of Article 20 of this Law, shall be any action by which the applicant or beneficiary of social protection was placed in a less favourable position than other users in comparable cases.'

All the definitions comply with the EU definitions.

3.2.2 Are pregnancy and maternity discrimination explicitly prohibited in legislation as forms of direct sex discrimination?

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

3.2.3 Are there specific difficulties in your country in applying the concept of direct sex discrimination? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant

In the current situation where the judiciary is not recognized as independent and there is negligible trust in the judiciary system, people do not feel that they can protect their rights in the cases of violation. In this situation, the difference between formal and factual protection has become enormous. In the view of the expert it does not matter what the law says, as it is not implemented in practice and there is no possibility whatsoever for protection.¹ The lack of case law confirms this opinion.

3.3 Indirect sex discrimination

3.3.1 Is indirect sex discrimination explicitly prohibited in national legislation?

Yes. Indirect sex discrimination is prohibited in national legislation in the Law on Prevention of and Protection from Discrimination – Article 3 and 5; the Law on Labour Relations – Article 7; the Law on Employment and Work Of Foreigners – Article 4; the Law on Social Protection – Article 20; and the Law on Equal Opportunities for Women and Men – Article 4.

Indirect discrimination is defined in the Law on Equal Opportunities for Women and Men – Article 4: 'Indirect gender-based discrimination is when an apparently neutral provision, criterion or customary law places people of one gender into a particularly unfavourable position compared with persons of the opposite gender, unless that provision, criterion or customary law is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary;' in the Law on Prevention and Protection against Discrimination – Article 6: '(2) Indirect discrimination on discriminatory grounds shall be the placement of a person or a group of persons in an unfavourable position compared to other persons by adopting apparently neutral provisions, criteria, or by accepting certain practices, unless such provisions, criteria or practices result from a justified aim, while the means for the achievement of the referred to aim are appropriate and necessary;' in the Law on Labour Relations – Article 7: '(3) Indirect discrimination, in terms of this Law, shall exist when a certain apparently neutral provision, criterion or practice, places or would place the job candidate or the employee in a less favourable position in relation to other persons due to a certain feature, status, orientation or belief referred to in Article 6 of this Law;' Law on Social Protection – Article 21.

The definitions comply with the EU definitions.

¹ http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_urgent_reform_priorities.pdf; http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf.

- 3.3.2 Is statistical evidence used in your country in order to establish a presumption of indirect sex discrimination? Please provide some examples of cases, if available.

Statistical evidence is not used in the FYR of Macedonia in order to establish a presumption of indirect sex discrimination and there is no case law.

- 3.3.3 Is in your view the objective justification test applied correctly by national courts? Please provide some examples of cases, if available.

There is no relevant case law.

- 3.3.4 Are there specific difficulties in your country in applying the concept of indirect sex discrimination? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

There is no relevant case law.

3.4 Multiple discrimination and intersectional discrimination

- 3.4.1 Is multiple discrimination – i.e. discrimination based on two or more grounds simultaneously – and/or intersectional discrimination – i.e. discrimination resulting from the interaction of grounds of discrimination which interact to produce a new and different type of discrimination – explicitly addressed in national legislation?

Multiple discrimination is addressed in Article 12 of the Law on Prevention of and Protection from Discrimination. It is recognized as a 'severe form of discrimination'. 'Severe form of discrimination, in terms of this Law, shall be considered the discrimination inflicted on a certain person on multiple discriminatory grounds (multiple discrimination), discrimination inflicted several times (repeated discrimination), discrimination being inflicted for a longer period (extended discrimination) or discrimination the consequences of which severely affect the discriminated person.'

- 3.4.2 Is there any case law that addresses multiple discrimination and/or intersectional discrimination (where gender is one of the grounds at stake)?

No. There is no case law that addresses multiple discrimination.

3.5 Positive action

- 3.5.1 Is positive action explicitly allowed in national legislation?

Yes. Positive action is explicitly allowed in national legislation. According to Article 13 of the Law on Prevention and Protection against Discrimination, 'The affirmative measures undertaken by state administration bodies, bodies of the local self-government units, other bodies and organizations exercising public authorizations, public institutions, or by natural persons or legal entities shall not be deemed discrimination if they are established as justified in the past, in the present, or in the future and may be taken until complete factual equality is achieved'. Also, in Article 15 of the same law 'Protective mechanisms for particular categories of persons shall not be deemed discrimination'.

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

Article 7 of the Law on Equal Opportunities for Women and Men (Special measures) states: '(1) Special measures shall be temporary measures taken for the purpose of

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

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

In the view of the author these definitions comply with the EU definitions.

3.5.2 Are there specific difficulties in your country in relation to positive action? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

It is very difficult to track the implementation of positive action measures for women and gender quotas in practice. In general, there are very few clear examples of positive measures for women and gender quotas in practice and mainly they are related to political parties (especially during the elections). The situation with the state administrative bodies (the ministries, Cabinet, etc.) is somewhat different because the overall concept is currently under reconstruction.²

Concerning positive measures, so far in practice, Macedonian legislation practically only deals with gender equality in politics. Even there, two problems are quite apparent. First, still there are no solutions for more complex situations like women Mayors. Secondly, the binding quotas are not understood as a minimum standard but more as an ultimate goal. Outside politics, especially employment legislation and goods and services legislation practically only include a legal declaration of the principle itself.

The issue of comparison between the minority representation and gender equality may be more important. The first one lacks binding quotas, but combines two important aspects - adequate and equitable representation. In the interpretations of the term

² <http://www.dw.com/mk/%D0%B2%D0%BB%D0%B0%D1%81%D1%82%D0%B0-%D0%B1%D0%B5%D0%B3%D0%B0-%D0%BE%D0%B4-%D0%B4%D0%B5%D1%82%D0%B0%D0%BB%D0%B5%D0%BD-%D0%BE%D1%82%D1%87%D0%B5%D1%82-%D0%B7%D0%B0-%D1%82%D1%80%D0%BE%D1%88%D0%B5%D1%9A%D0%B5%D1%82%D0%BE-%D0%BD%D0%B0-%D0%BD%D0%B0%D1%80%D0%BE%D0%B4%D0%BD%D0%B8%D1%82%D0%B5-%D0%BF%D0%B0%D1%80%D0%B8/a-18705014.>
[http://www.utinski.mk/?ItemID=20C9D9922EDB194090C5F444DBDF5391.](http://www.utinski.mk/?ItemID=20C9D9922EDB194090C5F444DBDF5391)

adequate, it is widely accepted that it means quality, expertise and competence, usually connected with adequate work experience. In contrast, the gender equality principle has certain binding quotas, is phrased by apparently neutral wording, but at the same time means employing openly preferential treatment of the underrepresented sex. Therefore, although for the time being the minority representation in practice emphasizes achieving numerical targets, there is a legal condition for implementing the merit system in future. The gender equality principle lacks the legal condition of combining quantity and quality.

Numerous action plans and strategies as developed in the last few years mention positive action. However, it is not defined, it is usually just placed in the context of implementation of EU regulation, there are no concrete mechanisms and activities which will enable such actions³ and there is no system of evaluation of the results (statistical or other data).

There is an obligation for annual reporting by the coordinators in the ministries (according to the Law on Equal Opportunities for Women and Men); however, it is still neither systematic nor transparent. Instead, the most comprehensive monitoring reports on the implementation of the Law on Equal Opportunities for Women and Men and of (among other things) positive measures are produced by NGOs (for example: 'Akcija Zdruzenska' reports on an annual basis).⁴

3.5.3 Has your country adopted measures that aim to improve the gender balance in company boards?

No, there are no measures that aim to improve the gender balance in company boards nor provisions on quotas for women on company boards in any Macedonian law in force. The Law on Commercial Companies regulates the work of private companies, and the Law on Public Enterprises regulates the work of state-owned companies. The Law on Institutions regulates the work of public institutions, and includes no provisions on quotas for women on company boards either.

The only law that has a provision related to the issue of quotas for women on company boards is the Law on Equal Opportunities for Women and Men. In Article 6, under Special Measures, it stipulates '...priority when there is no equal participation of women and men in the bodies of power...' in all spheres of public life including public institutions. However, this provision cannot be applied in situations related to women on company boards either in private or in state-owned companies.

However, based on the National Plan 2007-2012, in 2013 the Association of Macedonian female business leaders was established with the aim to support the position of women in the business hierarchy.⁵ There have been no visible results.

Furthermore, there are no legislative proposals on quotas for women on company boards, available data on codes of conduct or corporate governance codes, or research on the issue on the national level. However, there are some studies on a local level.⁶ The

³ The institutions covered by the Law on Equal Opportunities for Women and Men are obliged to adopt positive measures in the periodical plans for gender equality. However, no criteria or more detailed directions are set in this regard.

⁴ Monitoring report on the policies for gender equality in the Republic of Macedonia, Skopje, December 2010, AkcijaZdruzenska, <http://zdruzenska.org.mk/p%D0%B5riodich%D0%B5n-izv%D0%B5shtaj-od-monitoringot-na-politikit%D0%B5-za-rodova-%D0%B5dnakvost-vo-r-mak%D0%B5donija/>

⁵ Promotion of the Association of Women Leaders: [http://www.mchamber.org.mk/\(S\(legxyv55yfcev1qwwq1zjo45\)\)/default.aspx?Id=1&Id=55&evId=17226](http://www.mchamber.org.mk/(S(legxyv55yfcev1qwwq1zjo45))/default.aspx?Id=1&Id=55&evId=17226), accessed 15 September 2015.

⁶ Information on the conclusions of the Government about the analysis of quantitative participation of women in public and political life, Skopje, 2011, Gender equality in company boards (case of Strumica, Debar and Tearce - [http://ednakvimoznosti.mk/img_upload/Brosura-Ednakov%20Pristap-Komplet-%D0%905-Finalno\(1\).pdf](http://ednakvimoznosti.mk/img_upload/Brosura-Ednakov%20Pristap-Komplet-%D0%905-Finalno(1).pdf)), accessed 15 September 2015.

representative of the International Finance Corporation, Mr. Kiril Nejkov, in the framework of the project 'Corporative Management' presented their study 'Women in the Boards of Directors', including concrete proposals on adopting law and activities that should be carried out in this respect.

3.5.4 Has your country adopted other positive action measures to improve the gender balance in some fields, e.g. in political candidate lists or political bodies? If so, please describe these measures.

Article 4 of the Law on Political Parties⁷ stipulates that the political parties will take care of the implementation of the principle of gender equality but only in the area of accessibility of the functions in their own political party. That actually includes positive measures.

The Law on Elections⁸ has two imperative and plausible clauses on quotas. Article 4/3 stipulates that each sex will be represented by at least 30 % in the electoral bodies. The same quota is envisaged in the list of candidates for Members of Parliament and for municipal councils, although worded differently: Article 64/5 states that '*...every three positions have to have at least one position for the less present sex.*' The legal obligation for one third of candidate to be women was respected in most of the proposed candidate lists. However, there were candidate lists where women were placed lower in the lists, thus minimising the chance for them to be elected as Member of Parliament. Women were represented in election lists,⁹ but they did not have factual visibility during the elections, as gender-related discrimination was not treated as a significant issue in the political parties' campaign activities¹⁰ despite the fact that most of the political parties included gender-related activities in their programmes (except DPA – one of the main ethnic Albanian parties).¹¹

This quota does not apply to the Mayors' lists. There are only 4 women Mayors in 83 municipalities.

The last elections (2013) resulted in 34 % women being elected in the new Parliament (not including the opposition that boycotts the parliamentary results – the opposition does not participate in Parliament). Yet, the newly elected Government Cabinet is composed of 25 Ministers, of whom only two (or 8 %) are women.

3.6 Harassment and sexual harassment

3.6.1 Is harassment explicitly prohibited in national legislation?

Yes, harassment is explicitly prohibited in national legislation. In the Law on Prevention of and Protection from Discrimination, the definitions of both harassment (Article 7(1)) and sexual harassment (Article 7(2)) are transposed fully in line with the EU directives (Article 7(1) 'Harassment and humiliating treatment shall be a violation of the dignity of a person or a group of persons that results from a discriminatory ground and is aimed at or results in violation of the dignity of a particular person or creation of intimidating, hostile, humiliating or offensive environment, approach or practice.')

⁷ Law on Political Parties, Official Gazette 76/2004.

⁸ Law on Elections (Изборен законик), Official Gazette 40/2006.

⁹ Candidate lists: VMRO-DPMNE candidate lists <http://vmro-dpmne.org.mk/?p=22804>.

SDSM candidate lists <http://sdsm.org.mk/default.aspx?mId=55&aqId=5&articleId=10243>.

DUI candidate lists <http://novatv.mk/index.php?navig=8&cat=2&vest=12620>, accessed 15 September 2015.

¹⁰ Findings of the INTERNATIONAL ELECTION OBSERVATION MISSION (IEOM) -

<http://www.osce.org/odihr/elections/fyrom/118078?download=true>, accessed 15 September 2015.

¹¹ Electoral programme of political party VMRO-DPMNE - <http://vmro-dpmne.org.mk/wp-content/uploads/documents/VMRO%20programa%202014-2018%20v2a.pdf>,

accessed 15 September 2015.

In the Law on Equal Opportunities for Women and Men, the wording concerning harassment and sexual harassment was actually based on the definitions in the directives (Article 3(3)) 'Discrimination, harassment and sexual harassment on the grounds of gender shall be prohibited in the public and private sector in the spheres of employment and labour, education, science and sports, social security, including social protection, pension and disability insurance, health insurance and health protection, judiciary and administration, housing, public information and media, information and communication technologies, defence and security, membership and active participation in union organizations, political parties, associations and foundations, other membership-based organizations, culture and other spheres defined by this or another law.'

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

The same goes for the definitions in Article 9 of the Law on Labour Relations, which deals with harassment and sexual harassment. The last and specific formulation of these two definitions was introduced in 2008, thus aligning them with the EU directives ('Harassment and sexual harassment shall constitute discrimination in terms of Article 6 of this Law. Harassment, in terms of this Law, shall be considered any unwanted behaviour caused by any of the events referred to in Article 6 of this Law that aims at or constitutes violation of the dignity of the job candidate or the employee, and which causes fear or creates hostile, humiliating or offensive behaviour. Sexual harassment, in terms of this Law, shall be considered any verbal, non-verbal or physical behaviour of a sexual nature that aims at or constitutes violation of the dignity of the job candidate or employee, and which causes fear or creates hostile, humiliating or offensive behaviour.').

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

However, further on, there is a stipulation (Article 9-a (2)) on so-called 'mobbing' or psychological harassment, apparently inspired by the Swedish experience (not only legislation but also practice). 'Psychological harassment' is every negative and repetitive (lasting at least six months) conduct with the purpose or effect of violating the dignity of the applicant for employment or the worker and of creating an intimidating, hostile, humiliating or offensive environment, and whose final objective is ending the working relationship or causing the worker to leave that working position.' The Anti-Mobbing Law lays down a ban on any kind of harassment, as well as a concept of 'abuse of the rights on [non]harassment' (Article 4), defining sexual harassment as 'every verbal, non-verbal or physical behaviour of a sexual character aimed at or constituting a violation of dignity ... and which causes a feeling of fear or creates inconvenience or humiliation'. The very concept of this Anti-Mobbing Law is apparently contrary to the previously adopted Law on Labour Relations and/or the Law on Prevention of and Protection from Discrimination, which are basically in line with the Recast Directive (2006/54/EC), establishing a general framework for equal treatment in employment and occupation. They both define harassment as a form of discrimination. The Anti-Mobbing Law not only fails to do so, but also rejects any relation to discrimination. And yet, it uses parts of the definitions given in the Law on Labour Relations concerning harassment and sexual harassment, and the definition of mobbing as psychological harassment at the workplace. It thus creates a combination of psychological and sexual harassment – only without (general) harassment. Since the EU directives do not include such differentiation, harassment as

opposed to mobbing, in this context suffice it to say that it does not constitute transposition of the solutions of the EU directives into national law.

The Macedonian Criminal Code does not follow these changes in the Law on Equal Opportunities for Women and Men. The only detectable possibility to address harassment in criminal procedure is Article 143 'In-service Maltreatment', which is a sort of residual article in the chapter concerning protection of human rights and freedoms, in addition to the general article on discrimination: Article 137 'Violation of Citizens' Equality'.

The Law on Consumer Protection develops a rather different approach. Harassment is understood in only one direction - leading the consumer to act in a way that in other circumstances he or she would not.

3.6.2 Does the definition of harassment cover a broader scope than employment in your country? If so, please specify the scope.

The definition of harassment covers a broader scope than employment and it is related to all fields of discrimination mentioned in the Law on Prevention of and Protection from Discrimination (Article 4 '1) labour and labour relations; 2) education, science and sport; 3) social security, including the area of social protection, pension and disability insurance, health insurance and health protection; 4) judiciary and administration; 5) housing; 6) public information and media; 7) access to goods and services; 8) membership and activity in unions, political parties, citizens' associations and foundations or other membership-based organizations; 9) culture, and 10) other areas determined by law'. The scope of harassment being broader than employment is envisaged by the Law on Prevention of and Protection from Discrimination.

3.6.3 Is sexual harassment explicitly prohibited in national legislation?

Yes, sexual harassment is explicitly prohibited in national legislation. The distinction between 'harassment' and 'sexual harassment' is included in the Law on Prevention of and Protection from Discrimination and in the Law on Equal Opportunities for Women and Men. However, in the special Law on Protection from Harassment at the Workplace from 2013, both types of harassment are mixed up (combined).

Article 9 of the Law on Prevention of and Protection from Discrimination states: 'Sexual harassment shall be unwanted behaviour of sexual nature, manifested physically, verbally or in any other manner, aimed at or resulting in violation of the dignity of a person, especially when creating a hostile, intimidating, degrading or humiliating environment.'

The Law on Equal Opportunities for Women and Men states: 'Gender-based sexual harassment is any type of unwanted verbal, non-verbal or physical behaviour of sexual nature, aimed at or resulting in violation of the dignity of a person, especially when an intimidating, hostile, degrading, humiliating or offensive atmosphere is created.' Both definitions comply with the EU definition in Article 2(1)(d) of Directive 2006/54.

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

3.6.4 Does the definition of sexual harassment cover a broader scope than employment in your country? If so, please specify the scope.

In the same way as the definition of harassment, the definition of sexual harassment covers a scope that is broader than employment and it is related to all fields of discrimination mentioned in the Law on Prevention of and Protection from Discrimination (Article 4 '1) labour and labour relations; 2) education, science and sport; 3) social

security, including the area of social protection, pension and disability insurance, health insurance and health protection; 4) judiciary and administration; 5) housing; 6) public information and media; 7) access to goods and services; 8) membership and activity in unions, political parties, citizens' associations and foundations or other membership-based organizations; 9) culture, and 10) other areas determined by law').

3.6.5 Does national legislation specify that harassment and sexual harassment as well as any less favourable treatment based on the person's rejection of or submission to such conduct amounts to discrimination (see Article 2(2)(a) of Directive 2006/54)?

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

3.7 Instruction to discriminate

3.7.1 Is an instruction to discriminate explicitly prohibited in national legislation?

Yes, the instruction to discriminate is explicitly prohibited in national legislation.

Article 9 (Call for and incitement to discrimination) of the Law on Prevention of and Protection from Discrimination states: 'Discrimination shall also be any activity on the basis of which a person directly or indirectly calls for, encourages, gives directions or incites another person to discriminate'. Along the same lines is Article 5(4) of the Law on Protection from Harassment at the Workplace.

3.7.2 Are there specific difficulties in your country in relation to the concept of instruction to discriminate? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

It is very difficult to prove instruction to discriminate in practice. The courts rejected several cases where the claimant claimed that the hate speech involved actually constituted instruction to discriminate.

There are some reports on the issue,¹² yet, there are no cases dealing with it.

3.7.3 Is incitement to discrimination explicitly prohibited in your country?

Article 9 (Call for and incitement to discrimination) of the Law on Prevention of and Protection from Discrimination states: 'Discrimination shall also be any activity on the basis of which a person directly or indirectly calls for, encourages, gives directions or incites another person to discriminate'. Along the same lines is Article 5(4) of the Law on Protection from Harassment at the Workplace.

3.8 Other forms of discrimination

Are any other forms of discrimination prohibited in national law, such as discrimination by association or assumed discrimination?

Yes, discrimination by association.

¹² http://www.mhc.org.mk/system/uploads/redactor_assets/documents/681/Helsinki_Godisen_2013.pdf, p. 79, accessed 15 September 2015.

4. Equal pay and equal treatment at work (Article 157 TFEU and Recast Directive 2006/54)

4.1 Equal pay

4.1.1 Is the principle of equal pay for equal work or work of equal value implemented in national legislation?

The principle of equal pay for equal work or work of equal value is implemented in national legislation.

The Law on Labour Relations,¹³ both in the context of antidiscrimination stipulations (Article 6) and in the part on salaries (Article 108), clearly states that for equal work male and female workers should be equally paid.¹⁴ Article 7 states that 'Discrimination, in terms of Article 6 of this Law, shall be banned at the employer in respect to: ... including pay equity...'.

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

The Law on Civil Servants has a whole range of provisions introducing so-called salary scales. Salaries are elaborated in detail, but no specific category of employees is mentioned by name.¹⁵

The Law on Agencies for Temporary Employment, recently amended,¹⁶ has a provision (Article 14) declaring that the temporary employee (employees hired via the agency; subcontractor) cannot be paid less than non-agency employees for the same or similar work.

This is different for seasonal and part-time workers and for home workers.¹⁷ There are no clauses on their protection except for part-time workers, where the word 'proportionally' is used concerning pay. For all these categories, the issue of remuneration should be regulated exclusively by the employment contract between the employer and the employee.

However, there is a large gap between the formal recognition of the principle of equal pay and its implementation in practice and so far no claims have been brought before the courts. In practice, for example, with the amendments to the Law on Minimum Wage, adopted in February 2014, the difference has still remained between the minimum wage in the textile industry and all other sectors.¹⁸ Employees in the textile industry (mainly women) will continue to receive 10 % less than all other workers.¹⁹

¹³ Law on Labour Relations, Official Gazette, No. 62/2005 (last amendment: No. 39/2014).

¹⁴ In the FYR of Macedonia, generally, the policies of employment are gender neutral.

¹⁵ Law on Civil Servants (revised), Official Gazette, No. 108/2005 (last amendment: No. 24/2014).

¹⁶ Law on Agencies for Temporary Employment, Official Gazette, No. 49/206 (last amendment: No. 136/2014).

¹⁷ Law on Labour Relations, Official Gazette, No. 62/2005 (last amendment: No. 39/2014).

¹⁸ For further information see: European Network of Legal Experts in the Field of Gender Equality, M. Najcevska 'FYR of Macedonia' in: *Law Review 1/2013* pp. 89-91, European Commission 2013, available at: http://ec.europa.eu/justice/gender-equality/files/law_reviews/eqelr_2013-1_final_web_en.pdf, accessed 15 September 2015.

¹⁹ <http://www.mtsp.gov.mk/content/pdf/zakoni/Zakon%20za%20minimalna%20plata%20precisten.pdf>, accessed 1 February 2016.

4.1.2 Is the concept of pay defined in national legislation?

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

4.1.3 Does the definition of 'pay' comply with the definition of Article 157(2) TFEU.

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

4.1.4 Is a comparator required in national law as regards equal pay?

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

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

4.1.5 Does national law lay down parameters for establishing the equal value of the work performed, such as the nature of the work, training and working conditions?

Not entirely; however, there is a general phrase in Article 108 of the Law on Labour Relations stating that equal pay is based on equal work and: 'equal requirements for the job'. The term 'requirements' usually means educational level and work experience, sometimes training of the worker in order to respond to the working conditions.

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

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

4.1.6 Does national (case) law address wage transparency in any way?

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

4.1.7 Is the European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency applied in your country?

No, the European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency is not applied in Macedonia.

4.1.8 Which justifications for pay differences are allowed in legislation and/or case law?

In the public sphere, pay differences are not allowed by legislation (Article 6) of the Law on Labour Relations. Legally, the only general possibility for pay differences is the component of 'work results' envisaged in Article 106(2) of the Law on Labour Relations (see 4.1.2).

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

4.1.9 Are there specific difficulties related to the application of the principle of equal pay for equal work and work of equal value in practice? For example in case of outsourcing?

There is statistical and budgetary invisibility of differences in pay between men and women in practice.²⁰

In general, collective bargaining and the respective agreements currently do not play any significant role in promoting the principle of equal pay in the FYR of Macedonia.

With regard to the fact that the gender segregation of the workforce in the different sectors and branches of the economy is one of the reasons for the gender pay gap, the legal dimension of tackling the gender pay gap should be further developed and a cross-sector comparison of collective agreements should be made.

The only case close to the issue is the claim of the women's division of the association of trade unions before the Constitutional Court. The case was about the limitation of payment during the pregnancy and maternity leave which means that women in higher positions and with higher salaries will not receive the payment according to their salaries, but a maximum of two average salaries.²¹ The decision of Constitutional Court was negative (with a separate opinion of one judge), meaning that the Court believed that there is no discrimination in this provision.

In addition to the legal provisions regulating gender equality, coordinators on gender equality are nominated in various ministries, and commissions for equal opportunities are developed on the local level. These structures should be used in future to tackle the pay gap.

4.2 Access to work and working conditions

4.2.1 Is the personal scope in relation to access to employment, vocational training, working conditions etc. defined in national law (see Article 14 of Directive 2006/54)?

Yes. Article 1 of the Law on Equal Opportunities for Women and Men states that the Law on Equal Opportunities for Women and Men will be applied in the field of health protection and health insurance, social protection, access to goods and services, economy, labour relations and employment, education and professional development,

²⁰ Kazandziska, M. (2012) *Gender Pay Gap in the countries of Western Balkans: Preliminary evidence from Macedonia*, ILO.

²¹ Negative decision of the Constitutional Court (<http://www.ustavensud.mk/domino/WEBSUD.nsf/ffc0feee91d7bd9ac1256d280038c474/480054ac09d078c8c1257193003fdd04?OpenDocument>), accessed 3 November 2015.

economic and proprietary relations, use of public products and services (consumer rights), culture and sport, information and communication technologies, defence and security, judiciary and administration, housing, public information and media, state and public administration and other spheres of social life.

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

The Law on Labour Relations covers all aspects of work, including selection criteria, recruitment conditions, treatment at work, promotion, professional training and other benefits, as well as ending employment. The Law stipulates that women and men have to have equal opportunities and equal treatment related to access to employment including promotion and vocational training, and working conditions.²²

The Law on Prevention of and Protection from Discrimination includes access to goods and services and a final clause referring to any other area stipulated by law.

The Law on Agencies for Temporary Employment,²³ in Articles 3-b, 3-c and 3-d, stipulates non-discrimination and equality between regular and temporary employees in all of the above-mentioned aspects, except promotion, which is not mentioned at all.

Article 5 of the Law on Labour Relations includes a definition of 'employee' as 'any natural person employed on the basis of a concluded employment contract'.

Yes, according to the view of the author, this definition complies with the CJEU definition.

4.2.2 Is the material scope in relation to (access to) employment defined in national law (see Article 14(1) of the Recast Directive 2006/54)?

Article 6(2) of the Law on Labour Relations enumerates the areas of the material scope: 'Women and men must be provided equal opportunities and equal treatment in connection with: access to employment, including promotion and work-related vocational and professional training; working conditions; equal payment for equal work; occupational social security schemes; absence from work; working hours, and termination of employment contract.' The scope is along the lines of the EU scope.

4.2.3 Has the exception on occupational activities been implemented into national law (see Article 14(2) of Recast Directive 2006/54)?

Yes, the exception on occupational activities has been implemented into national law.

Under the title 'Exceptions to the ban on discrimination', Article 8 of the Law on Labour Relations (Paragraph 1) states that 'Any distinction, exclusion or preference in respect to certain work shall not be considered discrimination when the nature of the work or the conditions in which it is performed are such that the characteristics related to some of the cases referred to in Article 6 of this Law represent real and determining occupational requirement, provided that the goal that is aimed to be accomplished is legitimate and the requirement is proportionate.'

This exception is also included in the Law on Prevention and Protection against Discrimination. According to Article 14 the different treatment of persons on the basis of characteristics referring to any of the discriminatory grounds, in cases when those

²² Article 6, Law on Labour Relations, Official Gazette, No. 62/2005 (last amendment: No. 39/2012).

²³ Law on Agencies for Temporary Employment, Official Gazette, No. 49/206 (last amendment: No. 136/2011).

characteristics, due to the nature of the occupation or the activity, or due to the conditions under which that occupation is carried out, represent an essential and decisive requirement, the aim is legitimate, and the requirement does not exceed the necessary level for its accomplishment will not be deemed discrimination. The same exception is connected to the different treatment of persons on the basis of religion, belief, sex or other characteristics related to an occupation carried out in religious institutions or organizations when, according to the nature of the relevant occupation or activity, or due to the requirements under which the religion is exercised, the belief, sex or other characteristics represent an essential and decisive requirement from the point of view of the institution or the organization, when the aim is legitimate, and the requirement does not exceed the necessary level for its accomplishment. Also, the establishment of a requirement for minimum age, professional experience or length of service in the processes of selection or granting certain privileges as well as the establishment of a requirement for maximum age in the process of employment related to the need for training or due to the needs of rational time limitations related to retirement anticipated by law could be a basis for different treatment, i.e. discrimination.

Among the exceptions is the regulations covering marriage, unmarried partnership and family which are treated exclusively as a union of different sexes, i.e. a man and a woman. According to Article 6 of the Family Law 'Marriage is legally regulated community of life between a man and a woman in which are realized the interests of spouses, family and society'. For the legislator it was very important to prevent any possibility of the establishment of not only same sex marriage, but also families where both parents are from the same sex.

Article 15 envisages that any measures anticipated by law for employment encouragement, different treatment of persons with an impediment in the participation in training and receiving education in order to meet the special educational needs for the purpose of equal opportunities, measures aimed at securing a balance in the participation of the men and women, until those measures are no longer necessary, and special measures beneficial for the persons or groups which are placed in an unfavourable position as a result of any of the discriminatory grounds, for the purpose of equal opportunities, as long as those measures are necessary, shall not be deemed discrimination.

So far no assessment has been made of the occupational activities referred to in Article 14(2), in order to decide, in the light of social developments, whether maintaining the exclusions concerned is still justified.

4.2.4 Has the exception on protection for women, in particular as regards pregnancy and maternity, been implemented in national law (see Article 28(1) of Recast Directive 2006/54)?

Yes, Article 15 of the Law on Prevention of and Protection from Discrimination stipulates special protection of the pregnant woman and mother, anticipated by law, except when the pregnant woman or mother does not want to benefit from this protection and notifies the employer thereof in writing, shall not be deemed discrimination.

4.2.5 Are there particular difficulties related to the personal and/or material scope of national law in relation to access to work, vocational training, employment, working conditions etc.?

No, there are no particular difficulties.

5. Pregnancy and maternity protection; maternity, paternity, parental leave and adoption leave (Directive 92/85, relevant provisions of the Directives 2006/54 and 2010/18)

5.1 Pregnancy and maternity protection

5.1.1 Does national law define a pregnant worker?

There is no definition *in strictu sensu*. However, Article 42 of the Law on Labour Relations envisages certain duties of the employer upon receiving information that a female worker is pregnant, which is consistent with the definition in Article 2 of Directive 92/85.

5.1.2 Are the protective measures mentioned in Articles 4-7 of Directive 92/85 implemented in national law?

The Law on Labour Relations envisages that the employer is supposed to evaluate and adjust the working environment in order to create safe working conditions and may not place her in a risky position (Articles 42 & 162-164), may not require work longer than full-time work unless she voluntarily agrees to work overtime (Articles 120 & 164); and may not require working overtime due to occasional work (Article 124). Night work is generally prohibited for female workers in industry and construction for the period of 22 p.m. - 5 a.m. (Article 131). As a special protection this is envisaged (Article 164) for pregnant workers and mothers until the child is one year old. The prohibition could be lifted for one of the parents of a child aged up to seven years of age, or child with medical problems, only upon written consent of that worker.

5.1.3 Is dismissal prohibited in national law from the beginning of the pregnancy until the end of the maternity leave (see Article 10(1) of Directive 92/85)?

In Article 101 of the Law on Labour Relations, there is a general and complete ban on dismissal from work on the basis of pregnancy, maternity, paternity, parental, adoption, childcare and care leaves. Exceptions are permitted only in relation to very serious violations of work duties and/or work discipline (Article 101(4)). Although Article 95 on collective dismissal due to redundancy does not specifically mention pregnancy, maternity etc., the enumeration of the exceptions in Article 101(4) gives reason to conclude that the dismissal of a pregnant worker based on redundancy is not allowed.

5.1.4 In cases of dismissal from the beginning of pregnancy until the end of maternity leave, is the employer obliged to indicate substantiated grounds for the dismissal in writing (see Article 10(2) of Directive 92/85)?

First and foremost the employer is obliged to give substantiated grounds for the dismissal in writing in order to acquire consent either of the Trade Union (Article 101(5-7)) or of the Labour Inspectorate (Article 101(9 & 10)). If there is no such consent – the employer has to proceed with a court-of-law procedure (Article 101(8)). That, by nature, requires that the employer must cite duly substantiated grounds for dismissal in writing. As a general requirement – for all dismissals – this is envisaged in Articles 72, 74 & 75.

5.2 Maternity leave

5.2.1 How long (in days or weeks) is maternity leave? Please specify the relevant legislation and Article(s).

According to Article 165 of the Law on Labour Relations, female workers are entitled to a maternity leave of 9 months. The maternity leave is longer in case of multiple childbirth (15 months). In cases when the child is retained in medical care and the mother or

father is back at work, leave due to childbirth and parenting is temporarily suspended and they have the right to use the unused part.

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

Hence, the overall maternity (non-medical) leave is 52 weeks (in case of multiple childbirth 78 weeks).

5.2.2 Is there an obligatory period of maternity leave before and/or after birth?

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

Hence, compulsory maternity leave is 73 days or 45 days in case of premature birth.

5.2.3 Is there a legal provision insuring that the employment rights relating to the employment contract are ensured in the cases referred to in Articles 5, 6 and 7 of Directive 92/85?

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

5.2.4 Is there a legal provision that ensures the employment rights relating to the employment contract (including pay or an adequate allowance) are ensured during the pregnancy and maternity leave?

Since the allowance is paid by state organs, it cannot be altered by the employer.

5.2.5 Is pay or an allowance during the pregnancy and maternity leave at the same level as sick leave or is it higher?

During maternity leave women receive salary compensation (allowance) paid from the State Budget. According to Article 16 of the Law on Health Insurance²⁴ this compensation is the average amount of pay of that worker in the last 12 months for which the contributions for compulsory health insurance were paid.

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

5.2.6 Are statutory maternity benefits supplemented by some employers up to the normal remuneration?

No.

²⁴ Law on Health Insurance, Official Gazette No. 25/2000 (last amendment No. 26/2012).

5.2.7 Are there conditions for eligibility for benefits applicable in national legislation (see Article 11(4) of Directive 92/85)?

The condition for receiving the compensation for maternity leave is continuous health insurance cover for at least 6 months before the start of the maternity leave and regularly paid contributions to this end.²⁵

5.2.8 In national law, is there a provision that guarantees the right of a woman to return after maternity leave to her job or to an equivalent job, on terms and conditions that are no less favourable to her, and to benefit from any improvement in working conditions to which she would have been entitled during her absence (see Article 15 of Directive 2006/54)?

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

5.3 Adoption leave

5.3.1 Does national legislation provide for adoption leave?

Adoption leave is treated as and regulated by the same legal provisions as maternity and parental leave. Since it can be taken after an adoption, the only difference regards the age of the child when adopted. If the adopted child is older than 9 months, there is a period of 'accommodation' that should not be less than 2 months and more than 3 months. If the child is younger than 9 months, the same conditions apply to adoption as those that apply to maternity, commencing on the date of the child's adoption, including transferability of the leave to the father. However, adoption leave is until the child is 9 months old; if more children (two or more) are adopted, until the children are 15 months old.

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

The same goes for the pay and the conditions for the adoption leave.

5.3.2 Did the Government take measures to address the specific needs of adoptive parents (see Clause 4 of Directive 2010/18)?

No.

5.3.3 Does national legislation provide for protection against dismissal of workers who take adoption leave and/or specify their rights after the end of adoption leave (see Article 16 of Directive 2006/54)?

Adoptive parents are legally in the same position as biological ones.

²⁵ Article 15, Law on Health Insurance.

5.4 Parental leave

5.4.1 Has Directive 2010/18 been explicitly implemented in your country?

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

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

5.4.2 Is the national legislation applicable to both the public and the private sector (see Clause 1 of Directive 2010/18)?

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

5.4.3 Does the scope of the national transposing legislation include contracts of employment or employment relationships related to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency?

The scope envisaged by national legislation includes contracts of employment or employment relationships related to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency. This can be derived from Article 9(b) of the Law on Labour Relations: 'all forms of discrimination against workers because of pregnancy, childbirth and parenting, irrespective of the duration and type of employment are prohibited if the work relationship is established according to the law'.

5.4.4 What is the total duration of parental leave? If the provisions regarding duration differ between the public and the private sector, please address the two sectors separately.

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

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

5.4.5 Is the right of parental leave individual for each of the parents?

The right to parental leave is individual only for the mother. The paid leave can be exercised by either of the parents; yet, fathers can use the leave only if the mother does not use it (cannot or does not want to).

For unpaid leave this is unclear, as the wording of the relevant article of law only refers to the mother; yet, the title is 'Unpaid Parental Leave'.²⁶ Hence, it could be concluded that the fathers are entitled to right by substitution.

5.4.6 What form can parental leave take (full-time or part-time, piecemeal, or in the form of a time-credit system)? Do the various available options allow taking into account the needs of both employers and workers and if so, how is that done (see Clause 3 of Directive 2010/18)?

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

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

5.4.7 Is there a notice period and if so, how long is it? Does the national legislation take sufficient account of the interests of workers and of employers in specifying the length of such notice periods and how is that done? (see Clause 3 of Directive 2010/18)?

The parent is obliged to announce the beginning and finishing of parental leave to the employer 30 days before beginning/finishing the leave (both for paid and for unpaid leave).²⁷

5.4.8 Is there a work and/or length of service requirement in order to benefit from parental leave?

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

5.4.9 Are there situations where the granting of parental leave may be postponed for justifiable reasons related to the operation of the organisation?

No.

5.4.10 Are there special arrangements for small firms?

No.

5.4.11 Are there any special rules/exceptional conditions for access and modalities of application of parental leave to the needs of parents of children with a disability or a long-term illness?

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

²⁶ Article 170-a of the Law on Labour Relations.

²⁷ Article 170-a of the Law on Labour Relations.

- 5.4.12 Are there provisions to protect workers against less favourable treatment or dismissal on the grounds of an application for, or the taking of, parental leave (see Clause 5 of Directive 2010/18)?

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

- 5.4.13 Do workers benefitting from parental leave have the right to return to the same job or, if this is not possible, to an equivalent or similar job consistent with their employment contract or relationship?

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

- 5.4.14 Are rights acquired or in the process of being acquired by the worker on the date on which parental leave starts maintained as they stand until the end of the parental leave?

They are maintained, as they are for maternity leave (see 5.2.8).

- 5.4.15 What is the status of the employment contract or employment relationship for the period of the parental leave?

They are maintained, as they are for maternity leave (see 5.2.8). Article 166 of the Law on Labour Relations contains the provision guaranteeing the right of a woman after maternity leave to return to her job or to an equivalent job, on terms and conditions that are no less favourable to her. There is no provision concerning benefiting from any improvement in working conditions to which she would have been entitled during her absence. However, the rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are at least maintained as they stand ('мирување'; Law on Labour Relations, Article 147) until the end of the parental leave. This formulation theoretically allows the worker to be given improvements. It also goes for the status of the employment contract or employment relationship for the period of the parental leave.

- 5.4.16 Is there continuity of the entitlements to social security cover under the different schemes, in particular healthcare, during the period of parental leave?

There is continuity, as is true for maternity leave.

- 5.4.17 Is parental leave remunerated by the employer? If so, how much and in which sectors?

No, parental leave is remunerated by the State. The voluntary parental leave is unpaid leave.

- 5.4.18 Does the social security system in your country provide for an allowance during parental leave? If so, how much and in which sectors?

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

5.4.19 In your view, regarding which issues does the national legislation apply or introduce more favourable provisions (see Clause 8 of Directive 2010/18)?

The Macedonian maternity leave is much longer than the one provided by the Directive, as it can last 9 months for one child (as paid leave) and an additional 3 months (as unpaid leave). After the birth of the child the father may substitute the mother. Moreover, this is an unrestricted right and the social security system provides for an allowance for the parents to be able to take this parental leave. The job is secured during the parental leave. Also, if the parent decides to stop the leave earlier, she/he will receive plus 50% of the payment for parental leave in addition to the regular salary.

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

Also, some of the detrimental effects of the parental leave scheme have been demonstrated. An extended leave, especially for unskilled women, could have a negative impact on women's careers and earnings profiles (it could especially reflect on the future pension amount).

Another problem is the confusion in terminology (the general title of parental leave covers articles that are clearly related only to maternity leave, or the female grammar form is used when the article explains the rights of both parents). For this reason there is a growing debate in the FYR of Macedonia about ensuring the use of clear concepts and precise terminology along the lines of the EU Directive.

The more favourable provisions are related to care infrastructure, care facilities and accessibility of childcare for all working parents as extremely important issues in the reconciliation of family and working life. The Law on the Protection of the Child²⁸ regulates the system and organisation for the protection of children. According to this Law, 'State and local governments care about providing adequate financial assistance to parents for support, awareness, care and protection of children and organizing and ensuring the development of facilities and services for the protection of children' (Article 2). Institutions for the care and nurture of children in kindergartens and centres for early childhood development can be public (state, municipal and municipality in Skopje) and private. The Macedonian system incorporates state subsidies for kindergartens which allow parents to divide the tasks related to their children, thus enabling mothers to balance their professional and family duties. In spite of the very large subsidies, keeping the price quite low (starting from about EUR 25 per child per month), the current economic condition in the country has resulted in only 11 % of the children of the relevant age to use kindergartens. There is only a small number of private kindergartens (which are not subsidised); they work on a commercial basis, but there are no data on the number of children they take care of. An additional form of childcare is day care in schools for children from the first to the fourth grade of elementary education.

5.5 Paternity leave

5.5.1 Does national legislation provide for paternity leave?

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

²⁸ Official Gazette of the Republic of Macedonia No. 23/2013.

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

5.5.2 Does national legislation provide for protection against dismissal of workers who take paternity leave and/or specify their rights after the end of paternity leave (see Article 16 of Directive 2006/54)?

Since the paternal rights are activated as substitution in cases when the mother does not or cannot use the maternal rights, the formulations in the positive legislation lead to the conclusion that all the protection granted to the mother in such cases also applies to the fathers.

5.6 Time off/care leave

5.6.1 Does national legislation entitle workers to time off from work on grounds of force majeure for urgent family reasons in case of sickness or accident (see Clause 7 of Directive 2010/18)?

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

5.7 Leave in relation to surrogacy

5.7.1 Is parental leave available in case of surrogacy?

No. Surrogacy is not mentioned in Macedonian legislation.

5.8 Leave sharing arrangements

5.8.1 Does national law provide a legal right to share (part of) maternity leave?

Since the right of the father is only to substitute if the mother cannot or does not want to use the maternity rights (as explained in 5.5.1), there is no other form or possibility of sharing the rights and responsibilities.

5.8.2 Is there a possibility for one parent to transfer part of the parental leave to the other parent?

Only the mother can transfer her rights to the father (Article 167 of the Law on Labour Relations).

5.9 Flexible working time arrangements

5.9.1 Does national law provide workers with a legal right (temporarily or otherwise) to reduce working time on request?

The only possibility is related to children with disabilities, as explained in 5.4.11.

5.9.2 Does national law provide workers with a legal right to adjust working time patterns (temporarily or otherwise) on request?

Workers returning from parental leave can request changes to their working hours and/or patterns until the child is three years old and only if there are some medical problems or situations. The employers are obliged to accept the medical findings.

5.9.3 Does national law provide workers with a legal right to work from home or remotely (temporarily or otherwise) on request?

Yes, according to Article 50 of the Law on Labour Relations. '...By virtue of the employment contract for work at home, the employer and the employee may agree that the employee carry out the work, which falls within the employer's activity or which is necessary for carrying out the employer's activity, at home'. This right is not limited to certain groups only and there are no eligibility criteria. This means that the provision does not mention parenthood in any way.

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

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

5.9.4 Are there any other legal rights to flexible working arrangements, such as arrangements by which workers can 'bank' hours to take time off in the future?

No.

6. Occupational pension schemes (Chapter 2 of Directive 2006/54)

6.1 Is direct and indirect discrimination on grounds of sex in occupational social security schemes prohibited in national law?

The pension system in the FYR of Macedonia is composed of three pillars established by three laws: the Law on Pension and Disability Insurance, the Law on Mandatory Fully-Funded Pension Insurance, and the Law on Voluntary Fully-Funded Pension Insurance. The composition of this three-pillar system was introduced in 2000. The model is based on the World Bank's advice, and it is different from the pillars in the EU countries.²⁹

There are no articles on discrimination or equality in the framework Law on Pensions and Disability Insurance.³⁰ The Law on Mandatory Fully-Funded Pension Insurance (last amended in 2009), states in Article 59: 'The form of contract for membership under paragraph (1) of this Article is the same for all members of the pension fund that manages the company'. This is interpreted as guaranteeing equal treatment. The author could not find any case law. Only the Law on Voluntary Fully-Funded Pension Insurance explicitly mentions the prohibition of discrimination (in Article 3).

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

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

6.2 Is the personal scope of national law relating to occupational social security schemes more restricted or broader than specified in Article 6 of Directive 2006/54? Please explain and refer to relevant case law, if any.

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

There is no precise definition related to an obligation for implementation of anti-discriminatory activities related to self-employed persons.

Investigative journalism has raised the issue of discrimination in this area; but there is no relevant case law.

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

6.3 Is the material scope of national law relating to occupational social security schemes more restricted or broader than specified in Article 7 of Directive 2006/54? Please explain and refer to relevant case law, if any.

²⁹ Law on Pension and Disability Insurance, Official Gazette, No. 80/93, Law on Voluntary Fully Funded Pension Insurance, Official Gazette, No. 7/2008, Law on Mandatory Fully Funded Pension Insurance, Official Gazette, No. 29/2002.

³⁰ Law on Pension and Disability Insurance, Official Gazette, No. 80/93 (in the period 1993-2009, 19 amendments were made to this law).

The material scope of national law relating to occupational social security schemes is more restricted than what is specified in Article 7 of Directive 2006/54. The implementing legislation covers pension schemes as well as occupational pension schemes for all categories of workers (among them public servants). There are two requirements for retirement - age (62 for women and 64 for men) and at least 15 years of work. Sex is a determining factor combined with age. There are no other differences.

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

6.4 Have the exclusions from the material scope as specified in Article 8 of Directive 2006/54 been implemented in national law?

The specific three-pillar pension system is based on some exclusions (e.g. individual contracts for self-employed persons or single-member schemes for self-employed persons). However, in the Law on Pension and Disability Insurance and the Law on social protection there are no explicit excluding articles as specified in Article 8 of Directive 2006/54.

6.5 Are there laws or case law which would fall under the examples of sex discrimination as mentioned in Article 9 of Directive 2006/54?

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

In the Law on Pension and Disability Insurance, contrary to Article 9 of the Recast Directive, according to the main pension legislation (Article 18), there are different retirement ages for men and women (62 versus 64). Also, the calculation of pension on the basis of disability is different for men and women (Article 52).

6.6 Is sex used as an actuarial factor in occupational social security schemes?

No. Sex is not used as an actuarial factor in occupational social security schemes, meaning that the contributions are the same for men and women.

6.7 Are there specific difficulties in your country in relation to occupational social security schemes, for example due to the fact that security schemes in your country are not comparable to either statutory social security schemes or occupational social security schemes? If so, please explain with reference to relevant case law, if any.

There are no specific difficulties.

7. Statutory schemes of social security (Directive 79/7)

The FYR of Macedonia is declared to be a social State and social security is defined in the Constitution. According to Article 34 of the Constitution, 'the citizens have the right to social security and social insurance'. Article 35 of the Constitution stipulates: 'The Republic takes care of the social protection and social security of citizens under the principle of social justice'.

Equality between insured persons, therefore also gender equality, is among the guiding principles of the FYR of Macedonia's social security system. Various laws regulate social benefits, such as the Law on Health Insurance, the Law on Social Protection,³¹ the Law on Pension and Disability Insurance,³² and the Law on Employment and Social Protection during Unemployment,³³ the Law on Contributions for Mandatory Social Insurance.³⁴

However, the main reasons for excluding people from receiving benefits are unpaid social security contributions and participation in non-remunerated jobs. Since women prevail in such jobs, they are more often deprived of social security.

Regarding family benefits, there is no difference based on sex. As regards survivors' benefits, there are also equal conditions for claiming a widow's and a widower's pension. The only difference is the age which must be reached in order to be able to claim a survivor's pension for an unlimited period.

Women with 4 children receive special financial benefits. With the last changes of the Law on Social Protection, victims of domestic violence receive a lump-sum benefit.

7.1 Is the principle of equal treatment for men and women in matters of social security implemented in national legislation?

The principle of equal treatment for men and women in matters of social security has been implemented under the general anti-discrimination provisions in the Law on Social Protection, Article 20.

7.2 Is the personal scope of national law relating to statutory social security schemes more restricted or broader than specified in Article 2 of Directive 79/7? Please explain and refer to relevant case law, if any.

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

7.3 Is the material scope of national law relating to statutory social security schemes more restricted or broader than specified in Article 3 par. 1 and 2 of Directive 79/7? Please explain and refer to relevant case law, if any.

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

The material scope is defined in Article 2 of the Law on Social Protection.

³¹ Article 20, Law on Social Protection, Official Gazette, No. 79/09.

³² Law on Pension and Disability Insurance, Official Gazette, No. 80/93 (in the period 1993-2009, 19 changes were made to this Law).

³³ Official Gazette, No. 37/97.

³⁴ Official Gazette, No. 142/2008.

7.4 Have the exclusions from the material scope as specified in Article 7 of Directive 79/7 been implemented in national law? Please explain (specifying to what extent the exclusions apply) and refer to relevant case law, if any.

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

7.5 Is sex used as an actuarial factor in statutory social security schemes?

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

7.6 Are there specific difficulties in your country in relation to implementing Directive 79/7? For example due to the fact that security schemes in your country are not comparable to either statutory social security schemes or occupational social security schemes? If so, please explain with reference to relevant case law, if any.

No.

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

8.1 Has Directive 2010/41/EU been explicitly implemented in national law?

Directive 2010/41/EU has not been explicitly implemented in national law. However, there are several laws where the definition of self-employed person is in line with the Directive: the Law on Safety and Health, the Law on Employment and Insurance against Unemployment, the Law on Health Insurance, the Law on Pension and Disability Insurance, and the Law on Contributions for Mandatory Social Insurance.

8.2 What is the personal scope related to self-employment in national legislation? Has your national law defined self-employed or self-employment? Please discuss relevant legislation and national case law (see Article 2 Directive 2010/41/EU)

Macedonian law defines self-employed persons, but not self-employment itself. According to the law: 'Self-employed person means any natural person who performs an independent economic activity, or professional or other intellectual service generating income, in accordance with law'³⁵, or a 'self-employed person is a natural person that performs an independent economic activity or renders expert or other intellectual services which generate income for his/her own benefit, under the conditions determined by law'³⁶.

The same term, self-employed person, is used in the publications of the State Statistical Office. However, some official statistical publications³⁷ use the term 'own-account worker'.

8.3 Related to the personal scope, please specify whether all self-employed workers are considered part of the same category and whether national legislation recognises life partners.

There is a difference in what the term means/includes when it is mentioned in laws and in statistical data. On the one hand, the laws treat the self-employed as persons who could be employers at the same time, but not farmers.³⁸

On the other hand, according to the State Statistical Office: 'Self-employed [are] persons who work in their own business, professional practice or farm for the purpose of earning a profit and who do not employ any other person', while 'Employers [are] persons who run their own business entity or owners who work in their shops or owners of an agriculture estate, who employ other people.'

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

³⁵ Law on Contributions for Mandatory Social Insurance, Official Gazette No. 142/2008.

³⁶ Law on Employment and Insurance against Unemployment, Official Gazette No. 37/1997.

³⁷ Women and Men in the Republic of Macedonia, 2014, Republic of Macedonia State Statistical Office, <http://www.stat.gov.mk/Publikacii/8.4.9.02.pdf>, http://www.stat.gov.mk/obraci/Obrazovanie/SV_70.pdf, accessed 15 September 2015.

³⁸ Law on Health Insurance, Official Gazette No. 25/2000 (last amendment No. 26/2012) and Law on pension and disability insurance, Official Gazette No. 98/2012.

8.4 How has national law implemented Article 4 Directive 2010/41/EU? Is the material scope of national law relating to equal treatment in self-employment more restricted or broader than specified in Article 4 Directive 2010/41/EU?

Self-employment is mentioned neither in the Law on Labour Relations nor in antidiscrimination legislation (the Law on Equal Opportunities for Women and Men and the Law on Prevention of and Protection against Discrimination). Yet, the principle of equal treatment *per se* is included in these three laws; hence, theoretically speaking, any sex discrimination could be challenged.

8.5 Has your State taken advantage of the power to take positive action (see Article 5 Directive 2010/41/EU)? If so, what positive action has your country taken? In your view, how effective has this been?

There is a number of projects and programmes aimed at promoting entrepreneurial initiatives among women. For example: trainings,³⁹ government support for enterprises owned and operated by women,⁴⁰ mentorship,⁴¹ and gender-sensitive development of human resources.⁴² The positive measures related to self-employment of specifically women are set out in the 'National strategy for reducing poverty and social exclusion in the Republic of Macedonia'.⁴³ In the strategy for gender equality adopted by Parliament on 20 February 2013, self-employment and support for women when starting enterprises is described as a significant element of reaching gender equality.

On the other hand, there are no sufficient analyses to assess the effectiveness of these measures. Although according to the statistical data the percentage of self-employed women has increased (which is presented as a positive result), in 2013 only 3.3 % of all active women are employers.⁴⁴

8.6 Does your country have a system for social protection of self-employed workers (see Article 7 (Directive 2010/41/EU)?

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

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

Official marriage is a requirement to ensure that spouses can benefit from social protection in accordance with national law. Life partners cannot benefit from life pension as spouses can.

³⁹ <http://www.slvesnik.com.mk/Issues/9d01686c914343d28b15b2605b82272b.pdf>,
<http://www.bscbitola.org/images/stories/Obuki/brosura-bpz-ohrid.pdf>, accessed 15 September 2015.

⁴⁰ http://www.economy.gov.mk/javni_konkursi/oqlasi/3705.html.

⁴¹ <http://www.deso.mk/Item.aspx?i=14&r=1&l=54&c=2>, accessed 15 September 2015.

⁴² http://www.mtsp.gov.mk/content/pdf/ipa_tek.pdf, accessed 18 July 2014.

⁴³ http://www.siromastija.mk/wp-content/uploads/2014/05/revidirana_str_siromastija-NEW.pdf, accessed 15 September 2015.

⁴⁴ Women and Men in the Republic of Macedonia, 2014, Republic of Macedonia State Statistical Office, <http://www.telegraf.mk/aktuelno/ekonomija/116229-biznis-zenite-osnovaci-na-32-procenti-od-firmite-vo-makedonija>, <http://www.vicepremier.gov.mk/?q=node/40>, <http://pretpriemac.mk/index.php/faq-menu/133-2009-08-20-10-56-20.html>, <http://www.recs.org.mk/Sub.asp?ID=7&SM=10>, http://kanal5.com.mk/vesti_detail.asp?ID=2859, accessed 15 September 2015.

There are no schemes in the FYR of Macedonia which are mandatory for the self-employed worker's spouse or life partner, but voluntary ones are at their disposal.

8.7 Has Article 8 Directive 2010/41/EU regarding maternity benefits for self-employed been implemented in national law?

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

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

There are no existing services supplying temporary replacements or similar institute.

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

8.8 Has national law implemented the provisions regarding occupational social security for self-employed persons (see Article 10 of Recast Directive 2006/54)?

No.

8.9 Has national law made use of the exceptions for self-employed persons regarding matters of occupational social security as mentioned in Article 11 of Recast Directive 2006/54? Please describe relevant law and case law.

No.

8.10 Is Article 14(1)(a) of Recast Directive 2006/54 implemented in national law as regards self-employment?

No.

9. Goods and services (Directive 2004/113)

9.1 Does national law prohibit direct and indirect discrimination on grounds of sex in access to goods and services?

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

Equality in the access to and supply of goods and services is also guaranteed by the Law on Prevention and Protection against Discrimination. This Law applies to all persons who supply goods and services to the public, both in the public and the private sector, offering goods and services outside the private and family sphere. This Law does not specify the duty holder or the party whose obligation it is to implement this Article.

9.2 Is the material scope of national law relating to access to goods and services more restricted or broader than specified in Article 3 of Directive 2004/113?

The material scope of national law related to access to goods and services is broader than specified in Article 3 of Directive 2004/113.

Article 2 of the Law on Equal Opportunities for Women and Men states that: 'Entities that establish equal opportunities and equal treatment of women and men shall be the bodies of the legislative, executive and judiciary authority, the local self-government units and other bodies and organizations of the public and private sector, public enterprises, political parties, mass media and the civil sector, and all entities providing goods and services available to the public and offered outside the area of private and family life and the transactions carried out in that context, regardless of whether the referred entity is part of the public or private sector.'

9.3 Have the exceptions from the material scope as specified in Article 3(3) of Directive 2004/113, regarding the content of media, advertising and education, been implemented in national law?

No.

9.4 Have differences in treatment in the provision of the goods and services been justified in national law (see Article 4(5) of Directive 2004/113)? Please provide references to relevant law and case law.

There is no specific justification.

9.5 Does national law ensure that the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services shall not result in differences in individuals' premiums and benefits (see Article 5(1) of Directive 2004/113)?

No, there is no such guarantee in national law, but neither are there any indications or reports of such differences in practice.

9.6 How has the exception of Article 5(2) of Directive 2004/113 been interpreted in your country? Please report on the implementation of the C-236/09 *Test-Achats* ruling in national legislation.

There is no interpretation of this exception.

9.7 Has your country adopted positive action measures in relation to access to and the supply of goods and services (see Article 6 of Directive 2004/113)?

Yes. Article 5 of the Law on Equal Opportunities of Women and Men states that 'General measures for implementation of the principle of Law on Equal Opportunities for Women and Men shall be normative measures in the field of health protection and health insurance, social protection, access to goods and services'. Also, in Article 7 it is underlined that 'encouraging measures are measures that ensure special incentives or introduce special advantages with the purpose of eliminating the circumstances that cause unequal participation of women and men, or unequal status of one gender against the other or unequal distribution of social goods and resources'.

9.8 Are there specific problems of discrimination on the grounds of pregnancy, maternity or parenthood in your country in relation to access to and the supply of goods and services? Please briefly describe relevant case law.

No.

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

10.1 Has your country ratified the Istanbul Convention?

No. Although the FYR of Macedonia has not ratified the Istanbul Convention, there has been debate on the topic in Parliament, as well as development of legislation, action plans and case law.⁴⁵

In February 2013, amendments to the Law on Social Protection were adopted by Parliament. These changes are related to domestic violence. The victim of domestic violence is entitled to one-off financial assistance 'for urgent protection and care' and/or 'healthcare and medical treatment'.⁴⁶

Two strategies were developed on prevention from domestic violence (2008-2011 and 2012-2015).

In 2014 the Law on Prevention, Obstruction and Protection from Family Violence was adopted.⁴⁷

There are no clear reasons why the FYR of Macedonia has not ratified the Convention, not even the financial impact. Most probably it is not considered a priority at present.

⁴⁵ <http://www.akademik.mk/kon-potrebata-za-ratifikatsija-na-istanbulskata-konventsija>, <http://www.akademik.mk/ratifikatsijata-na-istanbulskata-konventsija-pat-kon-zasilena-i-poefektivna-borba-protiv-semejno-nasilstvo>, <http://www.potpisujem.org/doc/7cfa3a7a6d28a34b69c7655aa56ebaf0.pdf>, <http://www.glasprotivnasilstvo.org.mk/13-08-2015-soopshtenie-za-mediumi-na-natsionalnata-mrezha-protiv-nasilstvo-vrz-zheni-i-semejno-nasilstvo/>, http://sobranie.mk/2014-002cea30-a5b8-435e-ad55-147ff64cbfa2-ns_article-javna-rasprava-na-tema-kako-do-rodova-ramnopravnost.nspix, accessed 15 September 2015.

⁴⁶ Official Gazette No. 38/2014.

⁴⁷ Official Gazette No. 138/2014.

11. Enforcement and compliance aspects (horizontal provisions of all directives)

11.1 Victimisation

11.1.1 Are the provisions on victimisation implemented in national legislation and interpreted in case law?

Victimisation is covered only by the Law on the Prevention of and Protection against Discrimination (Article 10), declared to constitute discrimination; and by the Law on Labour Relations (Article 11(3)), yet not for all antidiscrimination but only for anti-mobbing procedures. It is defined as unfavourable treatment and exposing a person to endure damages because of having initiated a procedure or even testifying in such a procedure. This means that the protection against victimisation does not entirely comply with the EU Directives.

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

11.2 Burden of proof

11.2.1 Does national legislation and/or case law provide for a shift of the burden of proof in sex discrimination cases?

The shifting of the burden of proof was introduced by the following laws: the Law on Equal Opportunities for Women and Men (Article 36), the Law on Labour Relations (Article 11), the Law on Prevention and Protection against Discrimination (Article 38), the Law on Protection from Harassment at the Workplace (Article 33), the Law on Social Protection (Article 23), and the Child Protection Law (Article 9-I). The rules on the burden of proof comply with EU law since they, in general, stipulate that the burden of proof shifts to the defendant in a claim filed by a person claiming to have suffered discrimination if the alleged victim has presented credible facts and circumstances, whereas the defendant has to provide evidence that the disputed decision is based on a reason other than the sex of the person. However, the provision in the Child Protection Law (Article 9-I), first stipulates the shifting of the burden of proof, but in the second paragraph its application is excluded in misdemeanour and criminal proceedings. This leads to the conclusion that the shifting of the burden of proof is only applicable in administrative procedures and litigation.

11.3 Remedies and Sanctions

11.3.1 What types of remedies and sanctions (e.g. compensation, reinstatement, criminal sanctions, administrative fines etc.) exist in your country for breaches of EU gender Law on Equal Opportunities for Women and Men? Please specify the applicable legislation.

There are no specific remedies and sanctions for breaches of EU gender Law on Equal Opportunities for Women and Men. However, a gender discrimination claim can be submitted as a discrimination claim in accordance with the laws regulating the relevant area/field (for example: health insurance, social insurance, labour relations, pensions).

Protection through litigation may be initiated before a court of law based on all laws that include antidiscrimination provisions. The litigation might lead to compensation and reinstatement.

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

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

A specific administrative procedure may be initiated based on the Law on Equal Opportunities for Women and Men by lodging a complaint to the Labour Inspectorate. This procedure may lead to administrative fines for the perpetrator.

11.3.2 In your opinion, do the remedies and sanctions meet the standards of being effective, proportionate and dissuasive? Please explain, if possible referring to relevant legislation or case law.

Neither the Law on Equal Opportunities for Women and Men nor the Law on Prevention and Protection against Discrimination is used as a basis for legal proceedings, either by the claimants or by the courts themselves (the court system in the FYR of Macedonia is in a serious crisis). Furthermore, both the Gender Equality Body and the Antidiscrimination Commission have experienced serious weaknesses and ineffectiveness. The Gender Equality Body is a department of the Ministry of Labour and Social Policy where one person - one of the employees at the Ministry of Labour and Social Policy, is appointed as legal defender. The Antidiscrimination Commission was established as an 'autonomous and independent body'; yet it was burdened with electing political appointees as members of the Commission from the very first moment of its existence. These two bodies have not appeared either as subject or as reference in any legal case.

Furthermore, protection against victimization is envisaged only in the Law on Prevention of and Protection from Discrimination and partially in the Law on Labour Relations (only for 'mobbing'), while there is no assistance to the alleged victim at all. The wording of the shifting of the burden of proof could be improved by introducing the phrase '...may be presumed...' (ECJ, C 410/10 *Meister*) in order to allow the national bodies and courts (including the Constitutional Court, considering some of its decisions on discrimination cases) to improve their interpretation of the problems.

Therefore, it cannot be concluded that the remedies and sanctions meet the standards of being effective, proportionate and dissuasive.

11.4 Access to courts

11.4.1 In your opinion, is the access to courts safeguarded for alleged victims of sex discrimination? Please explain and discuss particular difficulties and barriers victims of sex discrimination have encountered. Refer to relevant legislation and case law.

There are no relevant cases in order to make such an evaluation. Two possible difficulties could be that litigation is costly, since the individual, if he or she loses the case, even has to pay for the involvement of the representatives of state bodies; and that the fear of victimisation is still very strong. However, generally, it might be presumed that the legal culture is not at such a level as to push for such cases. On the other hand, there is mistrust in the courts of law, which are in a serious crisis.

11.4.2 In your opinion, is the access to courts safeguarded for anti-discrimination/gender equality interest groups or other legal entities? Please explain and refer to relevant legislation and case law.

There are no relevant cases since representative organizations do not take part in court proceedings, but only support (by council or financially) the claimant. Yet, in one case the involvement of a trade union was rejected by the Appellate Court declaring that the issues were not part of the 'trade union's rights', without pointing out which rights the trade union did have.

11.4.3 What kind of legal aid is available for alleged victims of gender discrimination?

Only the general mechanism for free legal aid in criminal cases is available, which is inadequate and faces problems of its own.

11.5 Equality body

11.5.1 Does your country have an equality body that seeks to implement the requirements of EU gender Law on Equal Opportunities for Women and Men?

The relevant body and procedure are defined in the Law on Equal Opportunities for Women and Men (Chapter 6, Articles 20-31); the procedure for detection of unequal treatment of women and men is conducted at the Ministry of Labour and Social Politics, by a special state agent, which (or who) should act as Gender Equality Body. The wording of the law gives the impression that this agent is an individual person (one of the employees at the Ministry), without any independence and without power for independent investigation, monitoring and reporting. However, there is no information on the functioning of this body, and it has no website. On the website of the Ministry of Labour and Social Policy the only information that could be found is that within the Ministry there is a working unit called 'Sector for equal opportunities' and that there are state counsellors in charge of creating and development of policies on equal opportunities and on non-discrimination and human rights.

Persons who feel discriminated against on the ground of their sex may also seek protection from the Ombudsperson, or before the Commission for protection against discrimination which has been established according to the Law on the Prevention of and Protection from Discrimination.⁴⁸

11.6 Social partners

11.6.1 What kind of role do the social partners in your country play in ensuring compliance with and enforcement of gender Law on Equal Opportunities for Women and Men? Are there any legislative provisions in this respect?

The Law on Equal Opportunities for Women and Men, in Articles 9 and 10, envisages cooperation between Parliament and the Cabinet of Ministers with the social partners in the monitoring of the progress of harmonization of national legislation with the legislation of the EU. There is a formal dialogue in accordance with these mechanisms, yet there are no visible results.

11.7 Collective agreements

11.7.1 To what extent does your country have collective agreements that are used as means to implement EU gender Law on Equal Opportunities for Women and

⁴⁸ <http://www.kzd.mk/en/>, <http://ombudsman.mk/>, accessed 3 November 2015.

Men? Please indicate the legal status of collective agreements in your country (binding/non-binding, usually declared to be generally applicable or not).

Collective agreements, though legally binding, are not used as means to implement EU gender Law on Equal Opportunities for Women and Men. Yet, there are examples where prohibition of discrimination in its general or declarative form has found place. Such an example is the Collective Agreement for the Ministry of the Interior, which includes, in Articles 76 – 78, the prohibition of discrimination, harassment and mobbing.

An example of the opposite is the General Collective Agreement for the economy of the FYR of Macedonia, where under the general title 'Prohibition of discrimination' it actually stipulates that the worker has the right to request compensation of five net salaries in case of discrimination.

12. Overall assessment

The general situation could be described as a process of continuous adoption of and changes to many laws, with the explanation that they are to transpose EU directives, and of continuous adoption of many strategies and action plans related to gender equality. However, there are no funds envisaged for the implementation of strategic priorities, or established procedures for accountability and responsibility regarding the implementation of action plans or/and annual operational plans.

In addition, the main concern is the increased trend of promoting regressive traditional models for the division of roles and family values through interventions in laws and policies, as well as through a large number of media campaigns supported with significant funding from the national budget. For instance, the Law on termination of pregnancy was amended severely restricting women's right of free choice concerning termination of the pregnancy. A policy has been introduced to stimulate the birth rate (including some financial benefits), without joint responsibility for both the mother and the father.⁴⁹

The joint activities of the representatives of the FYR of Macedonia's Orthodox Church and the Government have continued. Parallel to the campaigns, the Macedonian Orthodox Church, has stepped forward by launching accusations that the erosion of traditional family values, the low birth rate and the low level of care for children are women's fault.⁵⁰

In the view of the author, the national law provisions do not exceed the requirements of EU law, while the implementation is far from satisfactory. In some cases the problem is a complete lack of implementation primarily due to a built-in mechanism to prevent the implementation of the legal framework. Hence, there is no relevant case law, while the opinions of equality bodies are utterly incompetent and irrelevant.

The main problem in the Former Yugoslav Republic of Macedonia remains the enormous gap between legislation and its implementation. Some practical steps are even contradictory to the general legislative intention. For example, among the basic measures in the Law on Equal Opportunities for Women and Men is education on equal opportunities. Yet, from the new (2014-2015) academic year, instead of Gender Studies (which have been temporarily closed), a new programme has been introduced at the University: 'St Cyril and Methodius' – Family studies. The new studies are promoting traditional family values and traditional gender roles. Several NGOs have protested against the closing of gender studies and the opening of family studies.⁵¹

None of these numerous amendments, in some cases directly affecting women, has been subject of debate in the Parliamentary Commission on Equal Opportunities between Women and Men. Neither have they been discussed in the Club of Women Parliamentarians, or been subject of any wider public debate.

⁴⁹ <https://www.youtube.com/watch?v=s7XEMD8f6Ok>, <https://www.youtube.com/watch?v=REvviBY8HyE>, accessed 3 November 2015.

⁵⁰ Bishop Petar: Women are responsible for the high rate of divorce in Macedonia, <http://republika.mk/?p=63217>, accessed 3 November 2015.

⁵¹ Reaction of NGOs related to opening of Family Studies at the state university, <http://www.time.mk/c/18f247150a/na-semejnite-studii-ke-se-uci-deka-razvodot-vodi-kon-devijantno-odnesuvanje.html>, accessed 15 September 2015.

Annexes

Legislation

- Law on prevention and protection against discrimination, Official Gazette No. 50/2010
- Law on Equal Opportunities for Women and Men, Official Gazette No. 6/2012
- Electoral Law, Official Gazette No. 40/2006, last amendments 2014
- Law on Labour Relations, Official Gazette No. 62/2005, last amendments 2013
- Law on Social Protection, Official Gazette No. 79/2009, last amendments 2014

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