

## Legal and Institutional Functionality in the Protection of Women – Victims of Domestic Violence in the Republic of Macedonia – Present Situation and Future Perspectives

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### Abstract

Gender-based violence is a form of discrimination that prevents women from enjoying the rights and liberties on an equal level with men. Inevitably, domestic violence shows the same trend of victimizing women to such a degree that the term "domestic violence" is increasingly becoming synonymous with "violence against women". The Istanbul Convention defines domestic violence as "gender-based violence against women", or in other words "violence that is directed against a woman because she is a woman or that affects women disproportionately." The situation is similar in the Republic of Macedonia, where women are predominantly victims of domestic violence. However, the Macedonian legal framework does not define domestic violence as gender-based violence, and thus it does not define it as a specific form of discrimination against women. The national legislation stipulates that victims are to be protected in both a criminal and a civil procedure, and the Law on Prevention and Protection from Domestic Violence determines the actions of the institutions and civil organizations in the prevention of domestic violence and the protection of victims. The system for protection of victims of domestic violence closely supports the Law on Social Protection and the Law on Free Legal Aid, both of which include provisions on additional assistance for women victims of domestic violence. However, the existing legislation has multiple deficiencies and does not allow for a greater efficacy in implementing the prescribed measures for the protection of victims of domestic violence. For this reason, as well as due to the inconsistent implementation of legal solutions of this particular issue, the civil sector is constantly expressing their concern about the increasingly wider spread of domestic violence against women and about the protection capabilities at their disposal. The lack of recognition of all forms of gender-based violence, the trivial number of criminal sentences against persons who perform acts of domestic violence, the insufficient support offered to victims – including victim shelters, legal assistance, and counseling, and the lack of systematic databases on domestic violence cases on a national level, are a mere few of the many issues clearly pointing to the inevitable conclusion that the protection of women-victims of domestic violence is inadequate. Hence, the functionality and efficiency of both the existing legislation and the institutions in charge of protection and support of women – victims of domestic violence is being questioned, which is also the subject for analysis in this paper.

**Keywords:** Legal framework, Women, Domestic Violence, Institutions, Protection

### Introduction

Domestic violence is not an endemic occurrence, and violence against women exercised by their intimate partner is a criminal, criminological, and socio-pathological global phenomenon, present in all countries and cultures, regardless of type of governance, religion, values, and attitudes. Domestic violence is a result of abuse of power and control over members of the family who have less power (be it material, financial, physical, or any other type of power). In traditional and patriarchal

societies, men possess considerably more power than women, so domestic violence is exercised over women. Seen from a global perspective, 40-70% of all women who have been murdered, have suffered their death at the hand of their partner, and according to the UK Home Office, domestic violence is a leading cause for mortality in women aged 19 to 44. In the USA, 1,500,000 women are raped or physically assaulted every year by their intimate partner. In 2002, the Council of Europe declared violence against women to be a serious problem in public health, and a leading cause for mortality and invalidity in women aged 16 to 44. Therefore, violence against women is posed as a security issue and is integrated into the security policies.

The wide spread of domestic violence has resulted in the enactment of numerous international documents within the UN, EU and the Council of Europe, all of which demand the elimination of all types of discrimination against women and prevention of violence against them. The demand is strengthened by the request that countries adopt specific national legislative on domestic violence, protection of victims, and criminal sanctions against the offenders. In the Republic of Macedonia, the Law on prevention of and protection from domestic violence has been passed in January 2015. This law, as well as other existing legal instruments ought to have provided complete and efficient protection of victims of domestic violence. However, the number of registered victims constantly is on the rise, and the institutions have failed to make an analysis and a report on their operations so far, as well as on the efficiency of the remaining legal instruments. It is only the associations working in the part of prevention and protection from domestic violence have set forth efforts to analyze the situation and indicate the numerous deficiencies in the Law and the work of the institutions in this area. Therefore, the aim of this paper is to review the application of the Law on prevention of and protection from domestic violence in the Republic of Macedonia and analyze its efficiency and functionality, as well as that of the institutions that are in charge of implementing the measures and activities prescribed in the Law.

### **1. Legal and institutional framework for the rights and protection of women-victims of domestic violence in the Republic of Macedonia**

In the Republic of Macedonia, the legal framework on the rights and protection of women against gender-based violence (including domestic violence) is comprised of the ratified international documents, the Constitution, the laws, and law acts.

The international documents (coming from the UN, Council of Europe, and the EU) that treat this issue, guarantee human right and liberties without discrimination on any basis, equality in the eyes of the law, and equal protection by law, efficient legal remedies, equal civil, political, economic, social, and cultural rights, and equal and efficient protection from discrimination, including discrimination against women. Consequently, countries are under the obligation to provide equality for their citizens, and thus they need to ensure the equality between men and women in all aspects of the society. This certainly encompasses the protection from gender-based violence, including domestic violence, although unfortunately in many countries domestic violence is seen as a private issue, and is not paid a lot of attention. The 1979 UN Convention for the elimination of all forms of discrimination against women merged all provisions which call for the elimination of discrimination against women in a unique legally binding document, so countries that have ratified it are under the obligation to adopt adequate legal measures and sanctions that ban all types of discrimination against women, to institute legal protection of the rights of women – on an equal standing with men, and provide an efficient protection of women from discrimination. The 2011 Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) is the first legally binding document of the Council of Europe that has set the international standards in the fight against this security issue, and defined minimum conditions that need to be provided by countries to protect victims (right to inform victims of the support services that are at their disposal and the legal measures – in a way that victims understand, legal and psychosocial counseling, financial assistance, housing, education, training, and assistance in employment, as well as the right to legal advice and free legal assistance). In case a country does not undertake the necessary measures for prevention and protection to the full extent, victims are guaranteed the right to adequate legal remedies against the country, and the right to seek damages by the aggressors, as provisioned in the Convention. The EU also pays great attention to gender equality and protection from violence against women, including domestic violence. The

Directive 2012/29/EU is especially significant, since it determines minimum standards on the rights, support, and protection of victims of criminal acts, inclusive of women-victims of domestic violence. These standards could be the foundation for the creation of a national system for support of victims of criminal acts, including women-victims of domestic violence.

The Constitution of the Republic of Macedonia guarantees the principle of equality and non-discrimination at all bases (including gender), guarantees the respect for basic liberties and human rights, as well as the right to an equal access to courts.

Regarding legal protection from domestic violence, the legal framework foresees the protection of victims in criminal and civil court proceedings. Criminal prosecution of offenders is done according to the Criminal Code and the Law on Criminal Proceedings. The definition in the Criminal Code defines the types of domestic violence, its acts, the consequences, characteristics of the aggressor, and the object of protection. However, it does not define domestic violence as a gender-based violence and hence, as a specific form of discrimination against women. The definition is gender neutral, and does not list the types of economic violence, controlling the behavior of women, and economic and labor exploitation. Consequently, punitive laws in the Republic of Macedonia marginalize the position of women, not respecting their gender specificities, and thereby distancing themselves from gender issues. The situation is identical in the Law on Family, where a clear recognition of the fact that domestic violence is a violation of human rights and a form of discrimination against women and girls. Although female issues in the area of family law are being correctly treated, the provisions that express full equality of the two sexes do not correspond to the reality in the country. The Macedonian legal approach towards gender issues is visibly ostensible, in the sense that it combines high quality legislation with a superficial implementation and low legal awareness, and in certain issues there are even no adequate legal mechanisms and social-economic instruments for achieving gender equality (Мирчева, Горов, 2014: 15).

The legal framework for the protection of victims in a civil proceeding is provided by the Law in prevention of and protection from domestic violence of 2014. Two addendums have been added to this Law in 2015, to complete the provisions regarding the responsibilities of the social work centers and the punitive sanctions, and five acts were enacted by the institutions in charge to define the manner of implementation and monitoring of the protection measures against domestic violence, the risk assessment, and the bodily integrity of the victims, as well as the risk of recidivism.

The institutional framework for the protection of victims and prevention of domestic violence has been defined by Article 5 from the Law on prevention of and protection from domestic violence, and it encompasses the Center for social work, Ministry of internal affairs, health institutions, and the civil associations that are working in the area of social protection. The common protocol for collaboration between the institutions in charge and the associations on the prevention of and protection from domestic violence define the mechanisms for their actions, as well as the conditions for their work aimed at improving the protection and assistance to victims of domestic violence.

## **2. Content and vital deficiencies in the Law on prevention of and protection from domestic violence**

The Law comprises the prevention of and protection from domestic violence. It has been defined as abuse, insulting, infringement on safety, causing bodily injuries, sexual or other physical, psychological, or economic violence that causes feeling of insecurity, peril, or fear, including threats of such actions performed against a spouse, parent or a child, or other persons living in a marital or extramarital community, or shared household, as well as against a current or former spouse, unwed partner, or persons who have a child together or are in close personal relations, regardless of whether the aggressor shares a household with the victim or not (Law on prevention of and protection from domestic violence, Official Gazette of the Republic of Macedonia, number 138 from 17.09.2014). Consequently, even though the Law provides a broad definition as to what domestic violence comprises, it does not define it as gender-based violence and does not recognize girls and women as an especially vulnerable group. A positive novelty is that it does recognize stalking and economic violence as forms of domestic violence. Another step forward is the fact that close personal relations are not defined as merely relations

between a man and a wife, which also means that it condemns the discrimination on the basis of sexual discrimination in the protection from domestic violence underscored in Article 4 of the Istanbul Convention.

The Law determines the obligation of the institutions and the court in charge to pass interim sentences and to keep special records on domestic violence. However, data on domestic violence cases is only gathered by the Ministry of labor and social policies of the Republic of Macedonia and the Ministry of internal affairs. Furthermore, the existing system, entrusted with gathering detailed statistics on domestic violence and provide public access to that data, has not been improved, even in spite of the fact that UN agencies spent €120,000 for that purpose, and the LYRICUS IT-monitoring software system for social services has not been upgraded (mainly due to insufficient human resources).

Courts and institutions generally observe the legal right of the victims to be accompanied by a person of their choosing, to assist them in preserving their integrity in front of the authorities and provide support throughout the court proceedings. This contributes greatly in the sense of security of victims of domestic violence. What is distressing is the provision that sanctions the failure to report a case of domestic violence with fees up to €1,000. This opposes Article 273 of the Law on court proceedings, which does not impose such obligations, but instead merely provides for the opportunity that such cases are reported. Moreover, representatives of the institutions are reacting against the high sanctions (Чаловска, 2016: 20).

The Law anticipates that the Governments will need to enact a new National strategy on the prevention and protection from domestic violence in the period of 2015-2020, which will determine specific steps to improve the protection system and will create a budget plan for its implementation. The previous Strategy was planned for the period of 2012-2015 and was enacted prior to the Law, and even in spite of the fact that a two-year period passed since the Law was passed, a new Strategy has yet to be enacted. In a lack of this vital document that needed to determine the amount of funds to be used for the purpose of protection from domestic violence, in 2016 around €43,650 were intended for this purpose, €16,260 of which was given to the civil associations to implement their program activities to combat domestic violence. However, this amount is insufficient to provide for the real expenses of only one civil association, especially if this association provides support services for victims of domestic violence, such as an SOS-line, crisis center, counseling center, shelters, free legal aid, etc. The minimal annual expenses for such an association amount to around €128,412 (National network against violence against women and domestic violence, 2016).

The Law envisages the formation of a National coordinating center against domestic violence with a mandate of 5 years, which includes representatives from the Ministry of labor and social policies, Ministry of justice, Ministry of health, Ministry of internal affairs, and the Ministry of education and sciences, as well as members of the Parliament of the Republic of Macedonia, representatives from the judicial system, the ombudsman, and civil organizations. This center has been formed, but it is not functional, and there are no information as to whether the center has even passed a Rulebook, or has submitted a report to the Government regarding its work. Consequently, there is no institutional monitoring of the situation regarding domestic violence, no report has been submitted regarding the functionality of the Law, nor are there any directions that could be provided on improving the cooperation and coordination between the institutions and the civil associations (Чаловска, 2016: 23).

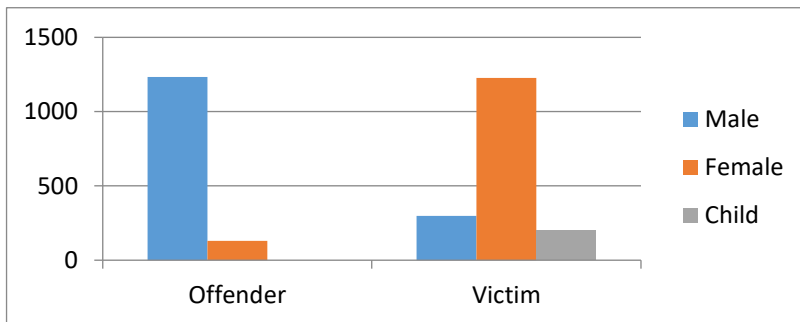
Regarding prevention from domestic violence the Law envisions: the implementation of prevention measures through programs for understanding gender equality and peaceful conflict resolution within the education process; campaigns and awareness raising programs on recognizing domestic violence; introducing continual training programs for staff in the institutions in charge of dealing with this particular issue; providing professional counseling in the marriage counseling centers; providing protection of victims by the local municipalities; foundation of counseling centers and shelters for victims and aggressors; counseling centers for children and parents, marriage and family; local SOS-lines, as well as other forms of housing and assistance for victims. The number of activities that are envisioned by the Law is great, but the capacities to implement them are meager and insufficient. According to the information by civil associations working in this area, in the Republic of Macedonia there are two functional centers for psychosocial support and counseling (run by non-

governmental organizations) and two counseling centers working with offenders (under the jurisdiction of the Ministry of labor and social policies) where the number of offenders who used the services of these centers in 2015 was 16. The marriage counseling centers are functional in 30 centers for social work in the country, but these do not offer specialized services for women-victims of domestic violence. The only specialized center offering psychosocial support and counseling of families with troubled relationships or families with registered domestic violence is the First family center in Skopje run by the civil association HERA (<http://hera.org.mk/>).

### 3. Institutional protection

The Law defines the measures for protection of victims of domestic violence that need to be implemented by the institutions in charge, the civil associations, as well as the local municipalities.

The Center for social work is in charge of placing victims of domestic violence in special centers, as well as providing adequate health protection, psychosocial intervention and treatment in a counseling center, offering assistance to the family, legal aid and representation, as well as economic support for victims through their active inclusion in the job market. It is obliged to commence the activities for protection immediately and not more than 24 hours following a report regarding domestic violence. The Law introduces multi-sector teams within the centers for social work in cases when there are reports of endangering the life and health of the victims or other family members. The protection measures are being undertaken by professionals from the Center, associations, counseling centers, and the Employment agency, in compliance with the Law on social protection. In the period of January 2015 to July 2016, 1363 offenders have been reported, and the gender structure of the offenders and victims can be seen on the following chart:



The data on registered victims of domestic violence in the possession of the centers for social work indicate that the number of registered victims keeps increasing. The number of women-victims has seen an increase from 598 in 2013 to 810 in 2015, and in 2016 in only 6 months there have been 416 reports. The number of men-victims has risen insignificantly from 104 in 2013, to 177 in 2015, and in the first 6 months of 2016 the number was 122. However, from the 84 municipalities in the Republic of Macedonia, only 30 have centers for social work, so the services of these centers are oftentimes unavailable for the citizens, especially for those living in rural areas. In addition, these centers do not dispose of sufficient human resources and capacities to be able to efficiently implement the measures stipulated by the Law, and to provide services of high quality. The centers do not provide enough information on the behavior of the police and the judicial organs in dealing with cases of domestic violence, and a large number of victims are dissatisfied with the way these two parties were dealing with their issues, as well as with the responsibility as demonstrated by the centers for social work in offering protection. The capacities at the shelter centers are very small (there are 4 shelters in total), and in 2015 they had only enough room available for 4.51% of the total number of women-victims of domestic violence. The rest did not have the chance to leave their homes and receive adequate protection. This means that the work of the shelters is far from achieving the standards and the real needs. The free SOS-line (national and the line of the Crisis center for emergency placement) is active 24/7, but service is not provided in all languages spoken in the country. There are also no data regarding the number of women

with disabilities who were victims of domestic violence, even though research on a global scale has shown that their number is significantly high (according to some research, up to 49% of women with disabilities have been sexually assaulted 10 or more times in their lives), and there is no system for their protection apart from those slightly specialized services that are inaccessible and unadjusted to the needs of this vulnerable group (National network against violence against women and domestic violence, 2016).

Regarding cooperation between the institutions, the work that multi-sector teams have done so far shows positive results, especially in smaller towns, but in the lack of an official report by the state on the functioning of the Law, there is no information as to how many teams have been formed and what are the specific results from their work.

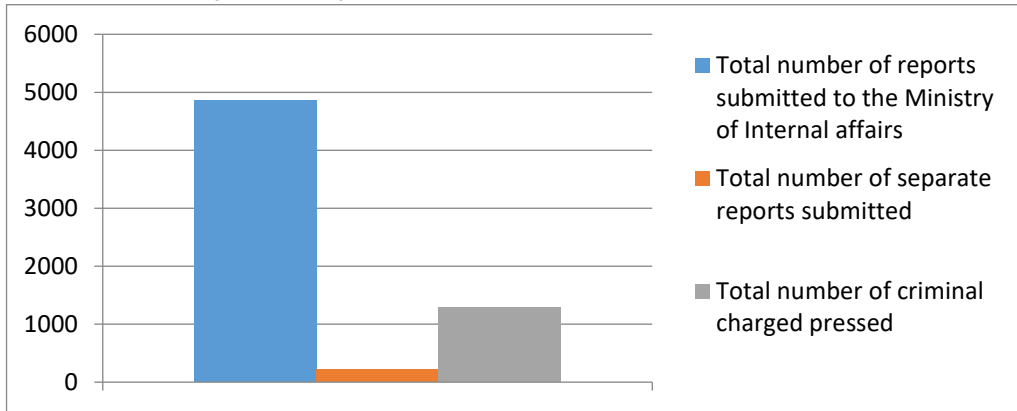
Employment measures for victims of domestic violence encompass only those citizens that are registered as active job-seekers, an 54% of all women in Republic of Macedonia are economically inactive (State Statistical office), so these measures are inaccessible for them, since they are restrictive.

The law on free legal aid of 2010 needs to provide access for vulnerable groups of citizens. The law encompasses victims of domestic violence, who are given the opportunity to be represented in front of the court. The procedure for receiving free legal aid needs to be concluded within 20 days from the day when the report has been submitted, which is a relatively long time for victims of domestic violence. In order for them to apply for legal aid, the victims need to report the act at the Center for social work and the Ministry of internal affairs, where they need to receive a document confirming that they are victims of domestic violence. This practice is distressing for the victims, so very often they avoid reporting the act of violence, and a large number of victims do not even submit a request for free legal aid to the Ministry of justice. Another reason why victims do not submit their documents is the long period that they need to wait for a decision, especially since this period is not adhered to, and is oftentimes prolonged up to 60 days. Therefore, during the period of 2010 to 2016, only 7 victims submitted their request, and because of the inefficient procedure of approving free legal aid, they often resort to civil organizations that offer pro bono services of lawyers to represent them in court. The majority of these organizations are not registered at the Ministry of justice, mainly due to the rigorous criteria they need to achieve to be registered. Moreover, there is a general lack of efficient and effective access to justice that is not equal for men and women, i.e. is not adjusted to the specific needs of women, since state institutions are not gender sensitive to women's issues (Здружение за еднакви можности "Еднаков пристап", Пристапот на жените до правда, анализа).

According to the law, police personnel are under the obligation to investigate the scene of the act every time there is a report on domestic violence at latest 12 hours after it has been reported, prepare a report, and protect the victim, as well as submit the proposal for an interim measure for protection – a restraining order and an order to remove the aggressor from the home. In the period of January 2015 to July 2015, 4,858 cases of domestic violence have been reported at the Ministry of internal affairs. The gender structure of both offenders and victims is as follows:



From the chart, we can conclude that domestic violence is indeed gender-based violence, while men are more likely to report it. Proposals for interim measures have been passed in only 86 cases, which indicates that there is a low level of awareness among police personnel about the danger to the lives and bodily integrity of the victim, and the possibility of recidivism. The percentage proportion of victims registered, number of reports submitted to the public prosecutor, and the number of criminal charges pressed against offenders is shown in the chart below.



This coincides with the impression that victims get when they report the acts of violence, that adequate actions are not being undertaken to protect them, that police personnel do not offer them the information available on possibilities of protection and are acting in a passive manner. Furthermore, there is a lack of coordination between the institutions in charge of dealing with domestic violence, and the inadequate training and experiences of the police personnel in dealing with domestic violence cases result in a less than serious approach and attitude towards the victims, especially when aggressors are also police officials (Чаловска, 2016: 41-42).

The law determines the duties of health officials and institutions in treating victims of domestic violence. They are under the obligation to perform a check-up immediately, provide the victims with medical protection, and issue medical documents to confirm any injuries, and these services are free of charge for victims. However, due to lack of information, victims most often are obliged to pay the costs, which impedes their access health protection and is reflected poorly on their resolution to launch a criminal lawsuit against the offender.

The civil associations that are registered and working in the area of social protection need to notify the Center for social work about any interventions performed to assist a domestic violence victim within 24 hours. The number of these associations is unknown, since a special register does not exist for them (and according to the Law should be run by the Ministry of labor and social policies), so the exact number of cases reported to these associations is unknown. The National network against violence against women and domestic violence has 27 member-organizations that provide victims with the largest portion of services for protection from domestic violence (SOS-lines, shelters, crisis centers, counseling centers, and 6 registered centers for free legal aid). Women-victims of domestic violence are mostly satisfied with the services of these associations.

Regarding judicial protection, the Law gives a deadline of 24 hours for the Court to pass an interim protection measure, based on the proposal of the police officials and the Ministry of internal affairs. However, within the period of January 2015 to July 2016, a total number of 401 proposals have been submitted, 87% of them were accepted, 3% were rejected, 2% were dismissed, and 8% were withdrawn. This statistics shows that there is a positive tendency in accepting proposals for interim protection measures. What is alarming is the data that from a total of 4,398 cases of domestic violence reported to the Ministry of internal affairs, a procedure for an interim protection measure was only initiated for only 401 of them.

Furthermore, another cause for alarm presents the fact that the court proceeding last a very long time (sometimes more than 30 days: in 7% of the cases up to three months, in 5% up to six months, and one case where the proceedings lasted one year). There is also a general dissatisfaction due to a lack of reactions in cases where interim measures are being violated (Чаловска, 2016: 53). The fact that the system for monitoring of the implementation of the interim measures is not efficient enough could result in a further disuse of this mechanism that is supposed to prevent further violence against the victim. Victims are losing their trust in the institutions that are supposed to protect them and give up on the intention to report any act of violence in the future.

#### **4. Recommendations from the National network against violence against women and domestic violence on improving the protection from domestic violence**

In the lack of an official report by the state and the institutions in charge on the efficiency of the Law on prevention of and protection from domestic violence, the National network has prepared recommendations to improve the Law and provide a greater efficiency of the measures for prevention and protection:

1. General recommendations: that the Republic of Macedonia ratifies the Convention of the Council of Europe for the prevention of and protection from all forms of violence against women and domestic violence; that campaigns are conducted to raise the public awareness regarding the issue; that there is zero tolerance of domestic violence; that centers for counseling are opened for people who commit domestic violence; that there is proper training of professionals working with victims or aggressors to prevent secondary victimization; adopting and implementing effective policies to deal with domestic violence; that the system for gathering victims' data is updated; that a national strategy on prevention is urgently enacted; that civil organizations working in this field are actively involved in the fight; that there is a specialized support of victims of domestic violence; that more specializes shelters for victims are opened, available in each region; that there is at least one crisis center for every 200,000 women and at least one center for victims of sexual violence for every 400,000 women; that the capacities of the Centers for social work are strengthened, and the employees are adequately trained; that the victims are free from paying the medical services they require.

2. As specific measures for the improvement of the legal framework, the National network recommends that: domestic violence should be defined as a gender-based violence; measures for protection of victims and punishing aggressors should be defined and implemented; civil organizations that provide assistance to victims of domestic violence should be registered in a separate register; reporting cases of domestic violence should not be imposed as an obligation (which implies that Article 12 of the Law needs to be invalidated); providing assistance to women-victims of domestic violence should be made mandatory; support to organizations that provide assistance to women-victims of domestic violence should be granted without imposing the condition of obligatory registration; a separate fund should be founded for financial support of women-victims of domestic violence to pay for court taxes and freeing them of court expenses when they initiate proceedings against the aggressors (Чаловска, 2016: 64).

#### **Conclusion**

The Law on prevention of and protection from domestic violence has established a legal basis for a more efficient prevention of domestic violence. The Law has brought positive, yet not crucial changes in the protection system. The inefficient protection of women-victims of domestic violence oftentimes results in recidivism with fatal outcome. In the period between 2001 and 2016, 32 cases of femicide have been registered, 15 of which took place between 2013 and 2016. The institutions in charge lack the capacity, solid cooperation and coordination in the implementation of measure of protection of victims, which is why women-victims still feel discriminated and judged by the employees of these institutions in times when what they need the most is support and assistance. The majority of domestic violence cases registered are labeled complaints, no charges are pressed against the people who committed them, and the victims rarely receive information regarding the rights and opportunities they are legally entitled to. The existing shelters for women-victims of domestic violence do not fulfill the minimal standards for efficient protection and support, and the right for a free legal assistance is inefficiently exercised. Generally, domestic violence is still a major issue in the Republic of Macedonia, and the road to an efficient prevention and protection system is still long and ahead of us. The fact that even five years after signing the Istanbul Convention, the country still has not ratified it, indicates that it is still unready to perform the changes needed to implement



the standards from the Convention. Lacking state support, the efficiency and functionality of the institutions in charge will not be advanced, and women – who are the majority of all victims of domestic violence, having lost all trust in those same institutions, will fail to report the violence that degrades and humiliates them.

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