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THE RIGHT TO A HEALTHY ENVIRONMENT FOR MARGINALIZED GROUPS OF CITIZENS IN NORTH MACEDONIA

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ABSTRACT

A healthy environment is a right of every person which is universal, generally accepted and constitutionally guaranteed. This right is a basic human right, which means that it is not necessary for a person to have any social status in order to be able to acquire and nurture this right. According to the Constitution of the Republic of North Macedonia, the obligation of the state is to provide conditions for the realization and guarantee of the protection of the right to a healthy environment for everyone equally.

Considering the challenges and current conditions caused by climate changes and environmental pollution, it is of particular importance to protect the right to a healthy environment for marginalized groups of citizens, especially of the Roma community and the citizens from rural areas who are the most affected by them.

KEYWORDS: *right, healthy environment, marginalized, Roma community, rural*

INTRODUCTION

The right to a healthy environment as a basic human right is recognized in more than 150 national legislations around the world, which is the basis for its international recognition and effective integration and implementation both in the international and national legislative-legal systems (IUCN, 2021). The International Covenant on Economic, Social and Cultural Rights (Covenant 1966) in article 12 provides the right to the highest possible standard of physical and mental health, and states should take measures and steps to improve all aspects of environmental and industrial hygiene. The Aarhus Convention stands out in Europe through its focus on procedural rights (rights of access to information, public participation and access to environmental justice) which positively reflects on the protection and guarantees of the right to a healthy environment by ensuring transparency of institutions and accountability to citizens (Convention 1998).

According to the latest Report of the Intergovernmental Panel on Climate Change (AR6, Synthesis Report Climate Change 2023, 29), without effective mitigation and adaptation to climate change, environmental losses and damages will continue to grow disproportionately, and will have the greatest impact on the poorest and marginalized groups of citizens. Weaknesses in many developing countries regarding the protection of the right to a healthy environment stem from the vast number of laws that guarantee the right, but in essence there are many other inadequacies between the laws. This happens for various reasons such as the lack of political will to solve the core problems, poor coordination between authorities, inadequate control and protection and poor inspection bodies, as well as weak judicial procedures and the impact of corruption on all pores of society, including of ecology, environmental protection and citizens' health (Aguila 2019, 130-131).

The right to a healthy environment, in the Republic of North Macedonia is a basic and guaranteed right by the Constitution from 1991 and is covered by many other legal and by-laws that regulate thå right. Despite the comprehensive domestic and international legal framework, we still witness daily violations of the protection of the right to a healthy environment for all citizens, but local environmental problems have a special effect on marginalized groups of citizens (especially Roma and people living in rural areas) who feel the consequences most strongly considering the specific characteristics they possess as groups and the environment in which they live.

In this paper, will be elaborated in detail the right to a healthy environment for marginalized groups of citizens in North Macedonia, with reference to the Roma community and citizens from rural areas and its connection with the right to water and sanitation, right to food and health and access to them.

THE CONCEPT OF CLIMATE JUSTICE AND RESPECTING THE RIGHT TO A HEALTHY ENVIRONMENT

Closely related to justice and equality, but also the right to a healthy environment is the concept of climate justice, which refers to fair treatment for all people and overcoming discrimination through the creation of policies and projects related to climate change and the systems that create climate change and deepen discrimination (DESA 2017, OHCHR 2022). According to the latest Report of the Intergovernmental Panel on Climate Change (AR6, Synthesis Report Climate Change 2023, 29), the poorest citizens living in developing countries suffer the most, due to their low economic power, geographical location in which they live, relatively low incomes they achieve, as well as the inability of some sectors that are sensitive to climate change to use biodegradable resources.

It is especially important to note that the advanced climate changes that we face every day can be one of the biggest threats to long-term peace and security at the world level, so it means that we need to act most urgently to influence their prevention and mitigation of their effects. Some climate challenges receive little or no attention at all, such as extreme pollution in developing countries, overfishing and the destruction of aquatic life, or accelerated industrial development without respecting basic environmental standards. Also, it should be noted that these problems mostly come from poor countries or developing countries, where people cannot provide basic prerequisites for life, so they have to use alternative sources of income, which basically contribute to increasing the effect of climate change.

One of the main causes of climate change can be stated the world population growth, which has grown for a record period (World population, 2023), from 6 billion in 1999, 7,000,000,000 in 2011, in 2023 it will reach a record number of 8 billion despite to the policies of individual countries such as China to reduce the birth rate through a one-child policy. Population growth has a huge impact on the effects of climate change and the reduction of climate justice, especially due to the extremely high pressure on the environment and the "struggle" for providing basic means of living (housing, food, water), and the people lifestyle.

On October 8, 2021, the United Nations Human Rights Council adopted a resolution recognizing the human right to a clean, healthy, sustainable environment as a fundamental human right (A/HRC/RES/48/13 2021). This resolution, despite being non-binding, is expected to encourage change, so the Council of Europe already took the first steps. This resolution arose from the need to regulate and recognize this right at a higher international level, considering the current climate changes and focusing international attention on the right to a healthy environment. UN human

rights treaty bodies in recent years have encouraged the insertion of the concept of sustainability and environmental justice into all human rights, arguing that many basic rights (the right to life, privacy, health, water, property) are closely related and dependent on the right of a healthy environment. Whereas new threats to human life, health and general well-being depend not only on the failure of national Governments to uphold and promote civil rights, but also on their contribution to take action to prevent cumulative harm to all people due to degradation of the environment caused by the overexploitation of nature. The Assembly believes that the explicit recognition of the right to a healthy and clean environment would be an incentive for the adoption of stronger domestic environmental laws and an approach of the Court focused on protection. It would make it easier for citizens whose rights have been threatened or violated to file requests for legal remedies and would also act as a preventive mechanism to complement the Court's currently rather reactive jurisprudence. The Assembly recommends to the member states of the Council of Europe building and consolidating a legal framework at the domestic and European level for strengthening and promoting the right to a safe, clean, healthy and sustainable environment, supporting multilateral efforts in terms of explicit recognition and protection of the right to a healthy environment through domestic and European law (A/HRC/RES/48/13 2021).

It is especially important to note that climate change mostly affects marginalized groups of citizens such as women, youth, people living in rural areas, indigenous communities, smaller ethnic groups and nationalities in countries that have limited access to the exercise of various rights, including access to climate justice. Marginalized citizens face the most severe consequences of climate change due to the fact that they have the least opportunities to deal with and prevent them, they have a lack of funds for housing and to satisfy the basic prerequisites for life, they have limited access to health, sanitary, communal and other services and are particularly vulnerable to climate change, which reflects various structural injustices in society, especially the exclusion of marginalized groups of citizens from decision-making, whether at the local or central level.

THE RIGHT TO A HEALTHY ENVIRONMENT IN THE MACEDONIAN LEGISLATIVE-LEGAL SYSTEM

The right to a healthy environment is basically guaranteed by the Constitution of the Republic of North Macedonia from 1991, which in Article 43 regulates the right to a healthy environment as fundamental, but also clearly declares that everyone has a duty to take care of the promotion and protection of the environment and nature

as a whole. On the other hand, it states that the state should provide conditions for the smooth exercise of this right, so that citizens can feel the benefits of the healthy environment (Constitution 1991).

As a basic law in the area of the environment with the Law on Environmental Protection from 2005, in article 1 are regulated the rights and duties of the state, the municipalities and the City of Skopje, as well as the rights and duties of legal and natural persons in providing conditions for the protection and improvement of the environment. According to the Law, in article 5, paragraph 1 gives a definition of the term environment where it represents "a space with all living organisms and natural resources, i.e. natural and created values and their mutual relations..." In paragraph 5 environmental pollution is defined as an "emission into the air, water or soil, which may be harmful to the quality of the environment, life and health of people..." It is also significant to state that the Law on Local Self-Government of 2002, in article 22, clearly states the responsibilities of the municipalities according to which in paragraph 1, point 2, the municipality is responsible for "the protection of the environment and nature, to adopt measures for the protection and prevention of pollution of water, air, land, protection of nature, protection from noise and non-ionizing radiation". Considering that the right to a healthy environment is closely related to the health of citizens, from this arises the need to take measures to promote health and health supervision over the environment, as well as the supply of healthy and clean drinking water, which is also provided by the Law on Public Health in Article 2 and 42. The provisions of the Law on waters in Article 2 as one of the goals foresees the protection and improvement of the environment and nature, of the water eco systems and biological diversity and protection of human health.

The right to a healthy environment is a universally guaranteed right of every person, and the Republic of North Macedonia in the horizontal legislation has ratified several different international documents that guarantee the protection and promotion of the right and create a comprehensive legal framework for its regulation. Given that the country has adopted a large number of legal and by-laws that regulate the environment, pollution and protection monitoring, for all important aspects, problems and issues it has also adopted national strategies through which guidelines and directives are given to solve the existing problems by planning specific activities. The most important documents in this area are the National Strategy for Nature Protection 2017-2027, The Strategy for Risk Management 2023-2025, The National Strategy for Sustainable Development in the Republic of North Macedonia 2009-2030, as well as the Local Environmental Action Plans for municipalities.

CHALLENGES IN PROTECTING THE RIGHT TO A HEALTHY ENVIRONMENT FOR MARGINALIZED GROUPS OF CITIZENS IN NORTH MACEDONIA

The Republic of North Macedonia, with its natural characteristics and sustainable resources can provide opportunities and resources for a quality life of its citizens in a clean and healthy environment. However, the desires for quick enrichment, high profits, disregard for legal procedures and rules for environmental protection, institutional unpreparedness, high level of corruption in every field both locally and nationally, but also the negligence of some citizens and the "fragility" of the legislative system led to an enormous increase in pollution, and violations of the right to a healthy environment and a decrease in the quality of health of the population in the country (The Government, 2023). We are witnessing inevitable climate changes that are happening globally, as a result of the irreparable disturbances and damages that have been done to the environment. But as with many other disturbances in the balance, the consequences of climate change will not affect all citizens equally.

One of the most marginalized groups of citizens living in our country are the Roma and people from rural areas. Numerous factors over the years have contributed to these citizens being the most exposed to the risks of climate change, and on the other hand, being the least able to fight for climate justice. In the Republic of North Macedonia, according to the 2021 census (State Statistics Office 2021, 32-47), Roma people number 46,433 inhabitants and are in fourth place in terms of ethnicity in the country. They mainly live in the city of Skopje (Shuto Orizari Municipality), Prilep, Bitola, Gostivar, Kichevo, Kochani, Kumanovo and Tetovo. Most often, the settlements where they live are characterized by numerous deficiencies in terms of infrastructure, such as unpaved roads, lack of access to water and communal services, etc. Roma also face problems in exercising their health rights, they often do not have access to basic health services (primary doctor, gynecologist, dentist), there is rarely a pharmacy or a health center in the settlements where they live, and almost nowhere in the country in their neighborhoods do not have direct access to an ambulance. This problem reflects on the right to a healthy environment through reduced or almost no education about their health, which then affects the environment as well. Another problem is the "gray economy ", that is, the fact that many Roma are engaged in work that is not registered (for example, illegal logging, which first destroys the environment and forests, and thus the health of the entire population). One of the biggest problems is the lack of communal arrangements, lack of public containers for waste disposal and unregulated collection of it, especially in non-urbanized parts, and where there are waste, it is collected only once a week, and it is in very large quantities, because there are living families with many children, so they are forced to dispose the rest of the waste in illegal landfills, which has an inestimable harmful effect on their

health, but also on the health of all citizens as a whole. As a consequence, more "wild" landfills are created in the community, where waste is dumped and burned, in extremely inappropriate and uncontrolled conditions, which continuously pollutes the air and soil there and directly threatens the health of the citizens. Roma often live in dwellings that are illegal constructions in neighborhoods that are not part of the urban plan of the city, thus lacking road infrastructure and they have limited or poor access to public services. These illegal buildings, given the materials they are built from, are often a danger to both the environment and the health of the people who live in them in substandard conditions without water, electricity and basic sanitary facilities. The Covid-19 pandemic further worsened the living conditions of the Roma population, which until then barely functioned and met the basic existential needs. During the pandemic, other problems such as the lack of basic means of living, the inability to provide basic health services, to acquire hygiene and disinfection products as required by the health protocols for protection, which also affected the increase in mortality and number of people infected with Covid-19. Discrimination in the provision of various health, social, educational and other services remains an additional problem.

In the Republic of North Macedonia, according to the last census of 2021 (State Statistics Office 2021, 31) 38.4% of the population live in villages. Most of them provide their livelihood from agriculture, that is, from the production of various agricultural products, grain crops, fruit growing, animal husbandry, viticulture, etc. Rural areas are guardians of the natural environment and play a key role in the economies of the Western Balkan countries, thus being an important economic sector and a basic sign of the region's identity that provides food, housing, employment and basic environmental protection services. At the same time, rural agricultural environments face numerous challenges in relation to the environment, especially in the regulation of the right to a healthy environment, respect and promotion of the same.

In recent years, rural areas have been facing economic decline and depopulation due to various conditions related to geographical distance, giving priority to only one sector in which to invest, which is agriculture, insufficient infrastructure and limited access to public services, but also demographic decline (decrease in birth rate and emigration), but also unemployment. In rural areas, the problems and consequences of pollution are very similar, and what is missing is the empowerment of citizens for greater actualization of the problem and lobbying for its solution. Also, citizens who live in rural areas often face problems in relation to the removal of waste and storm water, which is not legally and factually regulated and threatens the health of the population, as well as animals. The advantages of living in rural areas are huge and they are related to the natural environment, quick and easy access to natural resources and renewable energy sources, there are a large number of unused bio-energy reserves, there is a high

agro-ecological potential, low use of artificial fertilizers and pesticides in agriculture, etc. At the same time, rural areas also have weaknesses related to inadequate water and soil protection standards, poor management practices of the communal and water supply system, insufficient use and protection of natural resources, irrational use of irrigation water, lack of a monitoring system of water quality in agriculture, weak and inadequate management of municipal waste in farms, lack of interest in afforestation, poorly developed awareness of conservation of natural resources and environmental protection, low or insignificant use of renewable energy sources, insufficient level of knowledge of sustainable management of land and forests, lack of financial resources for the implementation of environmental protection projects, etc. Considering these weaknesses and deficiencies in environmental protection, rural areas are threatened with a high impact of climate change due to the improper and irrational use of agricultural and forest areas, so fire, floods and droughts are possible, there is a high risk of damage of agricultural products and forests from pests and diseases, the knowledge of traditional, organic production methods is increasingly disappearing because it is not transmitted from the elders to the younger generations who adapt to the new trends and methods that take less time and money, and bring more income, which has a negative impact on the environment as a whole, but also on the quality of the population's health. There is also increased pollution due to intensive agriculture, industrial activities and the development of tourism, thereby permanently losing natural resources (YEF 2019, 14).

CONCLUSIONS AND RECOMMENDATIONS FOR THE PROMOTION AND PROTECTION OF THE RIGHT TO A HEALTHY ENVIRONMENT FOR MARGINALIZED GROUPS OF CITIZENS

The right to a healthy environment should be equally and generally accepted for all people and special attention should be paid to marginalized groups of citizens, such as the Roma and citizens living in rural areas as required by domestic and international rules and standards for reducing the effects of climate change on the environment, and thus on the health of all people.

When it comes to the citizens of the Roma community in North Macedonia, who often live in substandard conditions, a lot of work still needs to be done in the field of their protection and dealing with basic life difficulties, but of particular importance is the protection of their health and reducing the effects of the problems with which they face in order to advance and protect their rights. Thus, it is necessary to increase the overall participation of the Roma in political and public life and decision-making at the local and national level related to the development, promotion and protection of the right to a healthy environment through a variety of activities (involvement in

local activities for sharing experiences and giving suggestions for solving problems). It is also necessary to help them in a faster procedure for implementing the legalization of homes, to harmonize the legislation with the real needs of the Roma population, to solve the problem of urbanization of Roma settlements, how to get legal access to water and utilities so that they could more easily enjoy the right to the health environment. At the same time, this implies the fight against current discrimination by promoting the visibility of Roma communities, providing social housing for Roma families from the socially vulnerable categories, but also improving the living conditions of Roma families through the development and implementation of programs for urban development and prevention of harmful living conditions. Particular attention should be paid to providing permanent and decent housing for the Roma who currently live in informal settlements in improvised dwellings that can't be legalized for justified legal reasons, to remove broken-down vehicles from public areas, to maintain and to take care of the use of riverbeds in the urbanized parts, to provide basic communal infrastructure in order to prevent the creation of wild dumps, thereby reducing the exposure to pollution and contamination in Roma settlements, and at the same time protecting their health, so they will be able to exercise their right to a healthy living environment. The most important thing is to work on raising awareness of the citizens for the protection of the environment and their health, so that with the use of the rights, the obligations arising from them should be respected.

People living in rural areas are daily faced with inadequate protection and realization of the right to a healthy environment. All this has a negative impact on the population, increases the effect of emigration, destroys the environment and reduces the quality of health of people living in the countryside. In order to achieve promotion and protection of the right to a healthy environment for residents living in rural areas, it is necessary to pay attention to air quality, to improve the standard of farmers, market competitiveness and efficiency, to increase employment, to improve veterinary standards, to work on the promotion and protection of the environment, and at the same time to raise awareness of the protection of the environment and natural resources among the population. It is also necessary for the state to encourage the possibility of investing in the use of energy-saving technologies and renewable energy sources, which would increase the existing potential and interest in natural agriculture and the production of organic agricultural products, to invest and create programs for learning and advisory services for farmers in terms of agro-ecological practices and organic production, to form active environmental associations that will work to protect the environment, and thus also to protect the health of citizens from rural areas. The support of the state, of domestic and international funds for investing in green entrepreneurship and for increasing the awareness of citizens from rural areas for the protection of nature and the quality of health is also of great importance.

Ultimately, it is necessary to prepare a Climate Change Protection Strategy to protect the right to a healthy environment for citizens living in rural areas, as well as for all citizens in general, which will contain specific measures and activities to address the problems related to the effects of climate change, which will actively protect the health of all citizens in the country and contribute to its improvement.

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"DOMESTIC VIOLENCE IN MARGINALIZED COMMUNITIES IN THE REPUBLIC OF NORTH MACEDONIA"

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ABSTRACT

Domestic violence is a violation of basic human rights. This type of violent crime is a serious social problem and is one of the most widespread forms of violence. It appears in various forms, types, and leaves serious and long-lasting consequences on the victim. The purpose of this paper is an analysis of domestic norms related to victims of domestic violence and their protection, and an analysis of the Istanbul Convention which is an international legal instrument that represents a comprehensive protection of the rights of women and victims of domestic violence. Special attention will be paid to the victim of domestic violence who is a member of a marginalized group. The paper will show the position and conditions of the victim as well as the impact of the community on the dark number of cases of domestic violence. The aim is to prove whether members of marginalized communities and people from rural areas are statistically less likely to report domestic violence than victims in urban areas and what the reasons are.

KEY WORDS: *victim, domestic violence, protection, marginalized community*

INTRODUCTION

Domestic violence is a universal phenomenon. It has always existed, it is everywhere and cannot be associated with just one nation, ethnic group, culture or territory. This type of violent crime represents a serious social problem and is one of the most widespread forms of violence. It appears in various forms, types, and leaves serious and long-lasting consequences on the victim. Domestic violence is the most widespread form of violence worldwide, and the Republic of North Macedonia is no exception to this devastating criminal phenomenon.

The family is a natural and basic unit in society, and domestic violence is a violation of this unit. Abuse can happen to anyone regardless of gender, religion, race, age. Each family member can be both a victim and a bully. Domestic violence comes in several shapes and forms and there are many types of victims. Being a member of a marginalized community contains certain characteristics that put them at a disadvantage compared to others. The most common consequences are poverty, discrimination, stigmatization and rejection from society, lack of access to adequate health care, but also protection from institutions. Additionally, being a victim of domestic violence represents a state of low social position and helplessness. In addition, I believe that belonging to a marginalized community is a negative indicator of an increase in the dark number of cases of domestic violence. Considering the low standard of living, poor knowledge of the rights and economic conditions of the population, the victims of this type of violence are put in a helpless situation.

DOMESTIC VIOLENCE

Violence is the use of force, or the threat of force, to compel other people to behave, to prevent certain acts, or to do harm to others for sheer pleasure. Violence is an integral part of human history, from its beginnings to the present. Violence can be divided into violence that a person can inflict on himself, violence between people and collective violence, and violent action can be physical, psychological, sexual and emotional. Domestic violence is a violent crime that has existed since ancient times, whose representation has not decreased even in the present, with a high probability that it will exist in the future.

What stands out are the consequences of violence on physical and mental health and impact on the mortality of victims of this type of violence. The fact that although the consequences are catastrophic for the victim and the fact that the dark figure of this type of violence is significantly higher than the number of reported cases is worrying, it is prevention that fails to reduce this phenomenon.

The family is the primary institution where people learn the roles of husband and wife, parent and child. But the home is also the place where people experience violence for the first time, experience several types of punishments for their behavior and learn how to justify violence. He who owns the resources has the power. Since the man is usually the "head" of the family, he often appears as the perpetrator of acts of domestic violence.[1] The woman who has few social resources and who depends on the man mostly for her economic situation, makes her dependent on the man and thus her hesitation to leave the violent community. The biggest contribution to that is the existence of children to take care of. Addiction means they have fewer options and resources to help them confront or change their man's behavior. Cross-cultural research suggests that societies with stronger ideologies of male dominance have higher rates of domestic violence.[2]

LEGAL NORMS OF RNM

Domestic violence was criminalized for the first time in the Criminal Code in 2004, where it is defined that "Domestic violence means harassment, gross insult, threat to safety, bodily harm, sexual or other psychological or physical violence that causes a feeling of insecurity, threat or fear, towards a spouse, parents or children or other persons living in a marital or extramarital union or joint household, as well as towards a former spouse or persons who have a common child or are in a close personal relationship" (Criminal Code Article 122 item 19).

Today, the legal regulation of domestic violence in the Republic of North Macedonia has made exceptional progress and this phenomenon is criminalized in several laws and legal provisions, namely:

- Criminal Code;
- Family law;
- Law on prevention and protection from violence against women and family violence;
- Law on protection of children;
- Law on Prevention and Protection from Discrimination;
- Law on Free Legal Aid.

1 Theories of Violence, available at http://www1.umn.edu/humanrts/svaw/domestic/link/theories.htm,

2 Intimate partner violence: causes and prevention, Rachel Jewkes, available at https://www.thelancet.com/action/showPdf?pii=S0140-6736%2802%2908357-5,

CENTERS FOR SOCIAL WORK

The role of the Centers for Social Work in the protection and prevention of victims of domestic violence as a professional institution with public powers that performs social protection work is expressed by taking protection measures. Social work centers through their municipal centers whenever they receive information from citizens, officials or legal entities, are obliged to take measures to protect victims of domestic violence.

The Center for Social Work has a crucial role in protecting the victims who reported domestic violence. The protection of the person who dared to report to the competent authorities that he is a victim of domestic violence is extremely important, because the reason the dark number of these cases is much higher than the number of reported cases is the fear of revenge, the increase in the intensity of violence and mistrust. in the institutions, that is, the fact that the victim believes that "no one can help me" or "no one can stop him from hurting me". What after I report it? Am I going to make him angry even more? Where will I go? - are just some of the questions that run through the victim's head every day. The center for social affairs is obliged, upon request and with the consent of the victim, to submit a proposal for the imposition of a temporary measure of protection to the competent court and without the consent of the parent, guardian or legal representative for the imposition of a temporary measure of protection against domestic violence to the court for minors and business incapacitated persons. The center can also propose a measure that it believes will achieve the expected goal for which it is expected to be pronounced.

From the above, it is noted that the court has at its disposal a wide range of protection measures with which it can help the victim and protect her physical and mental health. Upon the proposal, the court is obliged to act immediately and within seven days from the day of receipt of the request to decide, except in cases where there is a well-founded suspicion that there is a serious danger to the life and health of a family member, the court will decide within of three days. The duration of the imposed temporary measure for protection against domestic violence is at least three months, and at most one year, with the possibility of extension at the request of the Center for Social Work if the domestic violence continues after the expiry of the imposed measure.

LAW ON PREVENTION AND PROTECTION FROM VIOLENCE AGAINST WOMEN AND FAMILY VIOLENCE

The subject of this law is the protection of women from all forms of gender-based violence and victims of domestic violence, protection services, mutual cooperation between competent institutions, prevention measures and data collection. In addition to protection, the purpose of the Law is also prevention and the measures and activities undertaken to protect victims in accordance with basic human rights. This law contains 19 chapters and 114 articles and is a leading instrument in the protection of women, domestic violence and gender-based violence, giving an obligation to other legal solutions that contain provisions relating to the prevention and protection from gender-based violence and domestic violence to comply with the same.

In the article with definitions, the law provides clear and precisely defined terms for what constitutes gender-based violence, family violence, victim, discrimination and numerous other terms that are subject to regulation according to this law. Thus, the term "Domestic violence" means harassment, insult, threat to safety, physical injury, sexual or other psychological, physical or economic violence that causes a feeling of insecurity, threat or fear, including threats of such actions, towards a spouse a friend, parents or children or other persons living in a marital or extramarital union or joint household, as well as against a current or former spouse, extramarital partner or persons who have a common child or are in a close personal relationship, regardless of whether the offender shares either shared the same residence with the victim or not (Law on prevention and protection from violence against women and domestic violence Article 5 item 3).

The authorities of the state government, and all the actors involved, have the obligation to take preventive measures and activities to prevent any act of gender-based violence against women, including domestic violence, as well as taking all appropriate legislative, administrative, judicial and other measures for the protection of victims, investigation and punishment of perpetrators. In addition, the urgent action of the institutions with special attention to the interests of the victim is highlighted.

In the second chapter entitled "Types of gender-based violence against women and domestic violence" from Article 9 to Article 18, the types are listed, namely: physical violence, psychological violence, stalking, economic violence, sexual violence, sexual harassment, forced marriage, female genital mutilation, forced abortion and forced sterilization and human trafficking. However, I dwell on the types of domestic violence in more detail below in the paper.

In order to adopt effective, comprehensive and coordinated policies that place the rights of the victim at the center, the Assembly of the Republic of North Macedonia,

at the proposal of the Government of the Republic of North Macedonia, adopts a *National Strategy for the prevention and protection of violence against women and domestic violence.*

The government is establishing a *National Coordinating Body* for the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence. The duties of this body are aimed at coordinating the work of institutions in the area of prevention and protection from gender-based violence against women and domestic violence and monitoring the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence . The scope of this body includes monitoring of national policies in the field of gender-based violence against women and family violence, as well as the situation with gender-based violence against women and family violence in the country.[3]

According to the Macedonian legislation, physical violence is sanctioned with crimes against life and body, then, psychological violence is sanctioned with crimes against human freedoms and rights, while sexual violence is sanctioned with crimes against gender freedom and gender morality (Dimkovska I., Scientific paper, Domestic violence and its types, 2019).

There is only one clear and loud answer to the question "Who is responsible for the violence?" and that is: "The bully". There is no excuse for domestic violence. The abuser chooses to use violence for which he must be held accountable. He does not have to use violence. Instead, he can choose to act nonviolently and cultivate a relationship built on respect, trust, and fairness.

The victim is never responsible for the abuser's behavior. Abusers will often blame the victim by making excuses for their behavior. Sometimes they manage to convince their victims that they are to blame, because with their behavior they encouraged the behavior of the abuser. Blaming others, the relationship, their childhood, their ill health, or their addiction to alcohol or drugs is the abuser's way of avoiding personal responsibility for their behavior. Leaving a violent environment does not guarantee that the violence will stop. Many are scared of the abuser, as it is common for perpetrators to threaten to harm or even kill their partners or children if they leave. In order to make safe changes for themselves and their children, the victims need to be supported. Support should include financial assistance, housing, permanent protection, legal and emotional support. If the victim is unsure that these services are available to them, it can prevent them from leaving.

3 The last National Strategy for Prevention and Protection from Domestic Violence by the Ministry of Labor and Social Policy was adopted for the period from 2012-2015. see more: https://mtsp.gov.mk/WBStorage/Files/nasisltvo_strategija_mkd.pdf

The main reason for the persistence of domestic violence is traditional patriarchal concepts and the subordinate position of women in relation to men in all spheres of social life. Certain roles and stereotypes reproduce unwanted and harmful practices that make violence against women acceptable. The equality of women manifested through her position in society, marriage and family, springs from the patriarchal structure in society defining the dominant position of the man and the inferior position of the woman. Man's defined active role in society provides him with a concentration of power and authority within the framework of marriage and family. As a negative result of this phenomenon, the possessive attitude towards women arises, in which violence is not excluded as a means of obedience. The perpetrators of domestic violence against women are usually their husbands, followed by their boyfriends, with whom the girls are in an emotional relationship.

What is particularly worrying is the dark number of cases of this type of violence. The violence perpetrated by their partners is in many cases unreported, which means that the number of women victims of domestic violence is much higher than what the statistics show.

Domestic Abuse/Domestic Violence can be actual or threatened physical, emotional, psychological or sexual abuse, which takes place within the context of any close relationship, usually partners or ex-partners.4 Violence can appear in several types, which can often be combined. The most significant types are physical violence, psychological violence, sexual violence and economic violence. Domestic violence is a struggle for control over the actions, thoughts and feelings of their partners.

The most devastating form of domestic violence that belongs to this form is femicide. Femicide is the intentional killing of a woman just because she is a woman. Femicide is a direct consequence of domestic violence, in most cases committed by current or former partners. In the Republic of North Macedonia, femicide is not recognized as a separate crime, that is, domestic violence is an aggravating circumstance when committing the crime of "Murder".

DOMESTIC VIOLENCE IN MARGINALIZED COMMUNITIES – CONCEPT AND CHARACTERISTICS OF MARGINALIZED COMMUNITIES

Anyone can be a victim of violence regardless of sex, gender, age, ethnic, national, religious affiliation, sexual orientation and other things with which the individual identifies. A marginalized group is a group of individuals who are united by a specific position in society, who are the object of prejudice, who have special characteristics that make them susceptible to discrimination and/or violence and less opportunity

4 For more information, please visit: https://www.womensaidnel.org/domestic-abuse/

to exercise and protect rights and freedoms (Law on Prevention and Protection from Discrimination, 2020).

There are individual people who simply do not fit into the social culture and suffer the same consequences. Such people are all around us, but practically invisible, unless they cause problems or disrupt the way of life of regular people. There are significant differences among marginalized people in every aspect of their lives such as health care, employment, access to services, etc.

They are often victims of discrimination, violence, social stigma, abused, exploited or mistreated by family, neighbors, friends, acquaintances, etc. Marginalized persons are very adept at keeping a low profile. They are constantly hurt and aware of the stereotypes applied to them. Marginalized people exist in all places and areas. They cross all socio-economic, racial, religious, lifestyle and cultural groups. Culture, mentality, upbringing, traditions, gender roles and social beliefs are factors that make marginalized communities susceptible to violence.

RESEARCH METHODS AND TECHNIQUES

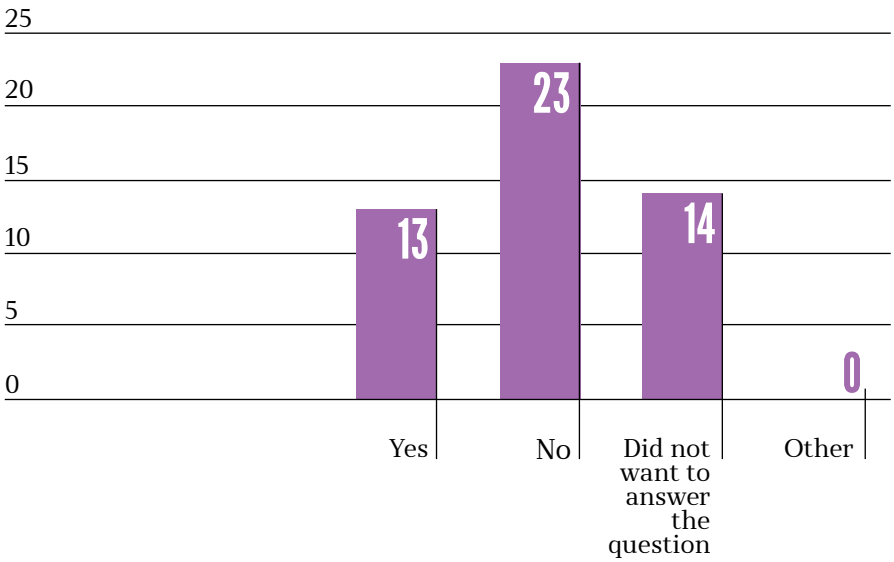
The methodological framework of the research is based on surveys. The research was conducted on pre-selected respondents through a pre-prepared questionnaire, and it was anonymous. The survey was conducted in person (face to face) to whom participation and the purpose of the research were explained, and full anonymity and discretion were guaranteed when filling them out. This method was used since it is very difficult to gain the trust of a person who is a victim of domestic violence, and to talk about their experience in a group of people, The survey was conducted on a previously prepared instrument - a survey questionnaire with a purposive sample of selected members of marginalized communities and residents from urban and rural areas. The questionnaire that was used for the research consisted of 26 questions. The purpose of research is collecting data and analyzing it, to present “If members of marginalized communities, with a focus on Roma and people from rural areas, report domestic violence statistically less than citizens in urban communities and what are the reasons for this? Do the position and conditions of a victim of domestic violence who is a member of a marginalized group as well as the influence of the community play a role in her decision to report the violence?“ In addition, the research will show whether belonging to a marginalized community is a negative indicator for increasing the dark number of cases of domestic violence, considering the low standard of living, poor knowledge of rights and economic conditions of the population. The research was conducted in June 2021, and included 50 respondents from three different environments, namely: Urban, Rural and Roma communities, in the municipalities of Prilep, Krivogastani and Dolneni.

RESEARCH RESULTS

Firstly, the respondents were asked if they know what domestic violence is, to which question the following answers were received: 64% said they know what domestic violence is, 32% said they do not know enough and only 4% said they do not know what domestic violence is at all. From what has been shown, we can conclude that the majority of respondents have knowledge about domestic violence.

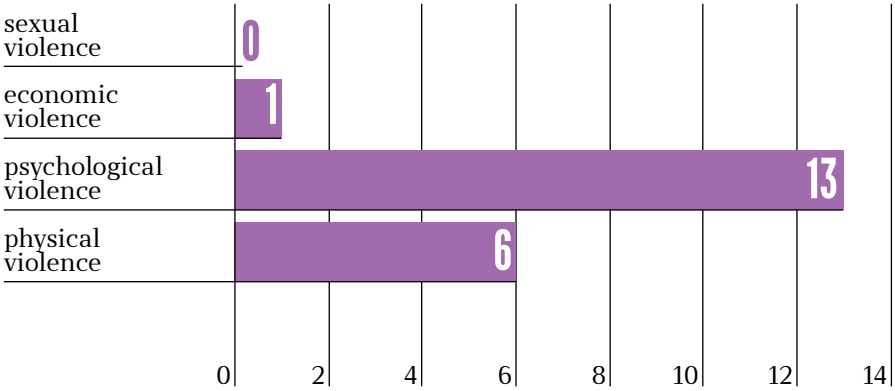
TABLE 1: VICTIMS OF DOMESTIC VIOLENCE

Do you think you are or have been a victim of domestic violence?



Regarding the question "Do you think you are or have been a victim of domestic violence?" 23 of the respondents or 46% stated that they were not victims of domestic violence, 13 respondents or 26% said "yes" and 14 or 28% did not want to answer the question. From the results from Table 1 we can conclude that the percentage of people who declared that they were victims of domestic violence is high. What is also extremely important is the fact that the percentage of people who did not want to answer this question is large, which gives room for the assumption of a high number of victims of domestic violence.

TABLE 2: TYPE OF VIOLENCE



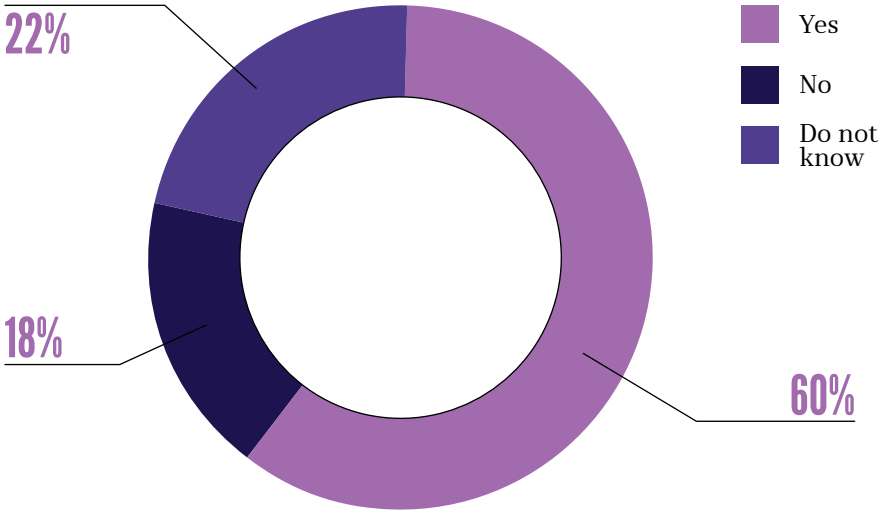
On the next question, the people who gave the answer "Yes" to the previous question, had to answer what type of violence they were victims of with the possibility of choosing several answers. The results presented in table 2 show: 6 out of 13 people, i.e., 42.9% answered that all of them were victims of physical violence, 13 people, i.e., all the people who answered "yes" to the previous question stated that they were all victims of psychological violence and only 1 respondent stated that he was a victim of economic violence. It is noteworthy that psychological violence is the most common type of domestic violence, while sexual violence is not represented in any of the cases of domestic violence. In all six cases of physical violence, the respondents said that they were victims of psychological violence at the same time. From this we can conclude that violence in the family never appears in just one type, but is usually a combination of two or more types, which was also proven in this research.

To the next question, "If you were a victim of domestic violence, would you seek help?" 22% of respondents declared that they would seek help, 28% would not seek help, 42% answered with "I don't know", 2% with "maybe", and under the answer other 1 respondent or 2% stated that he would undertake something to oppose, 1 respondent or 2% stated that he would "solve the situation-problem himself" and 1 respondent did not want to answer. The high percentage of people who answered that they would not report and that they do not know if they would seek help in the event of domestic violence, tells us that citizens still do not dare to report this phenomenon, which is directly related to the dark number of cases of domestic violence.

In order to find out the reasons why victims often do not report domestic violence, having the possibility of multiple answers, the respondents in the largest number 31 answered fear of the abuser, 26 respondents listed financial reasons such as unemployment and lack of finances, 22 of the respondents chose lack of the victim where to go. Next is the lack of support from loved ones, then "they believe that the abuser will change", 13 respondents said that they have no confidence in the institutions, 5 of the respondents chose to believe that it was their fault, and finally, 1 of the respondents stated that they were "ashamed of neighbors, ashamed of gossip and accept the situation as it is. This confirms that fear of the abuser is the biggest reason victims do not dare to report domestic violence. In addition to this, the fear of increasing the violence that the victim is already experiencing is also affected. The second reason chosen by the respondents for not reporting the violence is related to the fact that we live in a patriarchal society, where the woman has a subordinate position, because her function in the family is not to contribute financially, but the man is the one who supports the family and makes her financially dependent. The third, but no less important reason is "having nowhere to go after leaving the family home", which is directly related to the second finding.

TABLE 3: COMMUNITY IMPACT

Do you think that the community in which you live Affects/ would affects your decision to report domestic violence?



To the question "Do you think that the community in which you live affects/would affects your decision to report domestic violence?", 60% of the respondents answered "yes", 18% indicated that it would not influence, while 22% stated that they did not. they know. Additionally, 86% of respondents belonging to a marginalized community indicated that the community they live in influences/would influence their decision to report domestic violence. This confirms that the community has a profound impact on the behavior of the victim of domestic violence and her decision to report to competent institutions.

On the next question, 52% of the respondents pointed out that they are afraid of condemnation from the community, 22% said "no" and 26% said "I don't know". This means that the fear of condemnation from the community is present in a significant percentage, and it affects the decision of the victim to report domestic violence.

To the question "For what reasons is domestic violence most often committed?", an opportunity was given to choose several possible answers. According to the respondents, the most common reason for domestic violence is jealousy with 80%, followed by alcoholism with 60% and financial problems with 50%. The next reason is the lack of trust in the partner with 46%, then the use of illegal substances with 26% and in the other field the respondents additionally mentioned infidelity and disagreements with 2% each.

The responses of the respondents regarding the question "If they had knowledge of domestic violence in their immediate environment, would they report it to the competent institutions?" are as follows: 12 or 24% answered that they would report, 4 or 8% said "no", 15 or 30% answered "maybe", while the largest number of respondents 19 or 38% said that they do not interfere in the private affairs of others. This percentage confirms the fact that citizens' awareness of domestic violence and

the harmful consequences it has on victims and children has not yet been raised. In our society, cases of reporting domestic violence by a third party, who is not a member of the family in which the violence is perpetrated, are rare.

CONCLUSIONS

Domestic violence is a violation of basic human rights. There is no excuse for domestic violence. The family is the primary institution where people learn the roles of husband and wife, parent and child, but also the place where people experience violence for the first time.

Being a member of a marginalized community where stereotypes and prejudices are more strongly expressed, which remain as a mark throughout life, is the reason why victims suffer violence for years and are afraid to report to competent institutions. 86% of respondents belonging to a marginalized community indicated that the community in which they live influences/would influence their decision to report domestic violence. This confirms that the community has a great influence on the behavior of the victim of domestic violence and her decision to report to the competent institutions.

The results of the examination show that the respondents are not sufficiently familiar with the procedure for the protection of the victim, as well as the help offered to her. This is related to the lack of knowledge of the procedures and legal protection of victims of domestic violence, which is evidenced by the small number of respondents who answered affirmatively to this question. The high percentage of people who answered that they would not report and that they do not know if they would seek help in case of domestic violence, tells us that citizens still do not dare to report this phenomenon, which is directly related to the dark number of cases of domestic violence .

Economic dependence and low level of education are reasons for fear of reporting domestic violence, confirmed by the results, where the second reason chosen by the respondents for not reporting the violence is financial reasons such as unemployment and lack of finances. This reason is directly related to the fact that we live in a patriarchal society, where the woman has a subordinate position, and her function in the family is not to contribute financially, but the man is the one who supports the family. It is this condition that makes her financially dependent on the abuser.

Domestic violence leaves lasting consequences for the victim. The most devastating form of domestic violence that belongs to this form is femicide, which is a direct consequence of domestic violence. In the Republic of North Macedonia, femicide is not recognized as a separate crime, that is, domestic violence is an aggravating

circumstance when committing the crime of "Murder". The analyzes show that from the investigations made in the murder cases of 34 women, the crime can be classified as femicide in 28 cases. In more than 60 percent of the analyzed cases of murders of women in RNM, the crime was committed by the current or former marital or extramarital partner with whom they lived in a community. In more than 80 percent of the cases, the murder took place in the common home or, if divorce proceedings were initiated, in the home of the victim's parents. This fact leads us to the conclusion that women in North Macedonia are the least safe in their homes.

The state authorities and all involved parties have the obligation to take preventive measures and activities to prevent any act of domestic violence, as well as all appropriate legislative, administrative, judicial and other measures to protect the victims, research and punish the perpetrators. Institutions must act urgently with special attention to the interests of the victim. The protection of the person who dared to report to the competent authorities that he is a victim of domestic violence is extremely important, because the reason why the dark number of these cases is much higher than the number of reported cases is the fear of revenge, the increase in the intensity of violence and mistrust. in the institutions, that is, the fact that the victim believes that no one can help her.

RECOMMENDATIONS

- Prevention undoubtedly has a key role in reducing the number of cases of domestic violence. It is necessary to speak publicly about this problem and for society at the national level to take responsible prevention measures in order to prevent violence in the family.
- The support that the victim of violence needs to receive should include financial assistance, housing, permanent protection, legal and emotional support. If the victim is unsure that these services are available to them, it can prevent them from leaving.
- In addition, the cooperation and coordination of the work of the Police, judicial authorities, social services and all other involved parties needs to be raised to the highest level.
- The adoption of preventive measures, activities and campaigns for recognizing the consequences and advice for the prevention of violence is of exceptional importance.
- It is necessary for all competent institutions to act conscientiously and efficiently in order to provide the victims of domestic violence with adequate and timely protection.

→ However, it is not the responsibility of the state alone, it is the responsibility of individuals, who through their daily actions should recognize and respect the rights that people have.

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ACCESS TO HEALTH JUSTICE FOR CHILDREN AS MOST MARGINALIZED SECTION OF SOCIETY: INTERNATIONAL AND NATIONAL LEGAL REGIME

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ABSTRACT

Health justice for children is essential to ensure that every child has access to quality healthcare services regardless of their socio-economic background, geographic location, or any other factor that may impede their access to healthcare. Health justice aims to address health disparities faced by marginalized children by promoting equitable access to healthcare services. Legal provisions for health justice for children are crucial to ensure that every child has access to quality healthcare services. These provisions vary by country, but some common provisions include the recognition of children's right to healthcare. This right is enshrined in international human rights instruments such as the Convention on the Rights of the Child, which states that every child has the right to the highest attainable standard of health. Governments are obligated to ensure that every child has access to quality healthcare services, including preventive healthcare services such as immunizations, health screenings, and health education.

KEYWORDS: *Health, Justice, Marginalized Children, Equitable Access, Legal Provisions*

ACCESS TO HEALTH JUSTICE: OVERVIEW OF THE CONCEPT

Access to health justice is essential for marginalized societies because they often face barriers that prevent them from receiving quality healthcare services. These barriers include financial constraints, lack of transportation, discrimination, and language barriers. To ensure that marginalized societies have access to health justice, several strategies can be implemented by increasing healthcare services and resources in marginalized areas. This can be done by building more healthcare facilities, hiring more healthcare providers, and increasing the availability of medications and medical supplies. Health education is another critical strategy and it helps to increase awareness about health issues, preventive measures, and available healthcare services. It is essential to use language and messaging that is culturally and linguistically appropriate for the target population. The policy and legal frameworks also important to establish policies and legal frameworks that support health justice for marginalized societies. This includes providing access to health insurance, protecting against discrimination, and enforcing healthcare providers' accountability to provide quality care.[5]

The community engagement is another essential strategy that can play a vital role in providing information and advocacy services for marginalized societies. They can help individuals navigate the healthcare system, provide support, and promote healthy behaviors. With the help of Partnerships and collaboration among healthcare providers, community-based organizations, and government agencies can also facilitate access to health justice for marginalized societies. These partnerships can help identify and address health disparities and promote equity in healthcare access and delivery. So, the access to health justice for marginalized societies requires a multi-faceted approach that includes increasing healthcare services, health education, policy and legal frameworks, community engagement, and partnerships and collaboration. By addressing these barriers and promoting equity in healthcare, marginalized societies can receive the care they need to live healthy and fulfilling lives.[6]

5 Braveman, Paula, Elaine Arkin, Tracy Orleans, Dwayne Proctor, Julia Acker, and Alonzo Plough. "What is health equity?." *Behavioral science & policy* 4, no. 1 (2018): 1-14.

6 Braveman, Paula. "Health disparities and health equity: concepts and measurement." *Annu. Rev. Public Health* 27 (2006): 167-194.

ACCESS TO HEALTH JUSTICE FOR CHILDREN: MOST MARGINALIZED SECTION OF SOCIETY- THE CHILDREN

Access to health justice for children involves ensuring that children have access to healthcare services that meet their unique physical, emotional, and mental health needs, as well as access to legal protection in cases of medical malpractice or other health-related legal issues. Here are some key points to consider when addressing access to health justice for children. All children should have access to quality healthcare services, including routine check-ups, preventative care, and treatment for illness or injury. This includes access to pediatricians and other healthcare professionals who are trained to work with children and understand their specific health needs.[7]

The need to address barriers to healthcare access can prevent children from receiving the care they need. These barriers may include financial barriers, such as lack of insurance or high out-of-pocket costs, geographic barriers, such as living in a rural area with limited healthcare resources, or cultural or linguistic barriers, such as not having access to healthcare professionals who speak the child's language. The children have the right to access healthcare services, and this right should be protected by laws and policies that prioritize children's health and well-being.[8] Additionally, laws and policies should be in place to protect children from medical malpractice or other health-related legal issues. The advocacy efforts can play a crucial role in ensuring that policies and laws are in place to prioritize children's health and well-being. This can involve working with policymakers to develop and implement policies that promote access to healthcare services for children, as well as advocating for increased funding for children's healthcare programs and services. Therefore, ensuring access to health justice for children involves addressing barriers to healthcare access, protecting children's rights to healthcare, and advocating for policies that prioritize children's health and well-being.

REVERENCE OF HEALTHCARE FOR MARGINALIZED CHILDREN

Healthcare is essential for maintaining and improving the physical, mental, and social well-being of individuals. There are key reasons as healthcare is important:

1. *Prevention and treatment of diseases*- Healthcare provides individuals with access to preventive services such as vaccinations, regular check-ups, and screening

7 Brennan Ramirez, Laura K., Elizabeth Anne Baker, and Marilyn Metzler. "Promoting health equity; a resource to help communities address social determinants of health." (2008).

8 Braveman, Paula. "Social conditions, health equity, and human rights." *Health & Hum. Rts.* 12 (2010): 31.

tests that can help identify potential health problems early on. It also offers treatment for illnesses, injuries, and chronic conditions, which can help manage symptoms and improve quality of life.

2. *Improving overall health and well-being*- Healthcare services can help individuals manage chronic conditions, such as diabetes, hypertension, or asthma, which can improve their overall health and well-being. Additionally, healthcare can provide individuals with mental health services, including counseling and therapy, which can help them manage stress, anxiety, and depression.

3. *Reducing healthcare costs*- Early detection and treatment of diseases can prevent more serious and costly health problems down the road. Regular check-ups and preventive care can also help individuals avoid emergency room visits or hospitalizations, which can be costly.

4. *Boosting productivity and economic growth*- When individuals are healthy, they are more productive and able to contribute to the workforce and the economy. This can lead to increased economic growth and stability.

5. *Promoting equity and social justice*- Access to healthcare is a fundamental human right, and healthcare services should be available to all individuals regardless of their income, race, ethnicity, or other demographic factors. Promoting equity in healthcare can help reduce health disparities and improve health outcomes for all individuals.[9]

Healthcare is essential for maintaining and improving individual and population health, promoting equity and social justice, and supporting economic growth and productivity.[10]

SHORTFALL OF HEALTH JUSTICE

Despite efforts to promote health justice, there are still many shortfalls that prevent equitable access to healthcare for all individuals.[11] Some of these include:

Health disparities- There are significant disparities in health outcomes and access to healthcare services based on race, ethnicity, socioeconomic status, and other factors.

9 Coyne, Imelda. "Children's participation in consultations and decision-making at health service level: a review of the literature." *International journal of nursing studies* 45, no. 11 (2008): 1682-1689.

10 Bailin, Abby, Samantha Burton, Simon Rego, Jonathan Alpert, and Sandra Pimentel. "Integrating advocacy for marginalized children and families into evidence-based care during COVID-19: Clinical vignettes." *Cognitive and Behavioral Practice* 28, no. 4 (2021): 701-715.

11 Ruger, Jennifer Prah. "Global health justice." *Public Health Ethics* 2, no. 3 (2009): 261-275.

This results in some groups having poorer health outcomes and limited access to care.

Inadequate funding- Many healthcare systems, especially in low- and middle-income countries, are underfunded and struggle to provide essential services to their populations. This leads to a shortage of healthcare workers, medical supplies, and facilities, which can limit access to care.[12]

Geographical barriers- Many people in rural or remote areas may face geographical barriers to accessing healthcare services. This can include a lack of transportation, limited availability of healthcare facilities, and long distances to travel to reach care.[13]

Stigmatization and discrimination- Stigmatization and discrimination towards certain populations, such as those living with HIV/AIDS or mental health conditions, can prevent individuals from seeking healthcare services due to fear of discrimination and stigma.

Lack of health literacy- Many individuals, especially those with limited education or language barriers, may not fully understand how to access healthcare services or how to navigate the healthcare system. This can result in individuals not seeking care until their condition has become more severe.

There are many shortfalls in achieving health justice and these challenges need to be addressed to ensure equitable access to healthcare services for all individuals. Efforts to promote health literacy, reduce health disparities, increase funding for healthcare systems, and address geographical barriers can help to improve access to healthcare and promote health justice.[14]

MEASURE TO IMPROVE HEALTHCARE SYSTEM

There are several measures that can be taken to improve healthcare systems, both at the national and global level. With the help of increase funding as one of the most important measures to improve healthcare systems is to increase funding. Governments and other stakeholders can increase funding for healthcare through various mechanisms, such as increasing taxes or allocating a larger portion of the budget to healthcare. The strength of primary healthcare is the foundation of a strong healthcare system. By strengthening primary healthcare services, such as providing

12 Pratt, Bridget, and Bebe Loff. "A framework to link international clinical research to the promotion of justice in global health." *Bioethics* 28, no. 8 (2014): 387-396.

13 Ruger, Jennifer Prah. "Global health justice and governance." *The American Journal of Bioethics* 12, no. 12 (2012): 35-54.

14 Ruger, Jennifer Prah. "Good medical ethics, justice and provincial globalism." *Journal of medical ethics* 41, no. 1 (2015): 103-106.

access to essential medicines, increasing the number of healthcare workers, and improving health infrastructure, countries can improve health outcomes and reduce the burden on secondary and tertiary care facilities. A well-trained and sufficient health workforce is essential for providing quality healthcare services.[15] Countries can improve their health workforce by investing in training programs, incentivizing healthcare workers to work in underserved areas, and addressing issues such as brain drain and migration of healthcare workers. Technology can be a powerful tool for improving healthcare delivery. For example, telemedicine can improve access to healthcare in remote areas, electronic health records can improve care coordination, and mobile health applications can help individuals monitor and manage their health. Address social determinants of health as the social determinants of health, such as poverty, education, and housing, have a significant impact on health outcomes. Addressing these determinants through policies and programs, such as providing access to education and affordable housing, can help to improve health outcomes and reduce healthcare costs.[16]

Healthcare systems are complex and require the collaboration of multiple stakeholders, including governments, healthcare providers, and communities. Foster partnerships and collaboration among stakeholders can help to improve healthcare delivery and address issues such as health disparities and inequities. With the aid of improving healthcare systems requires a multi-faceted approach that involves addressing the various challenges facing healthcare systems. By implementing measures such as increasing funding, strengthening primary healthcare, improving the health workforce, implementing technology, addressing social determinants of health, and fostering partnerships and collaboration, countries can improve healthcare outcomes and promote health equity.[17]

EFFORTS BY THE GOVERNMENT FOR MARGINALIZED SECTION OF CHILDREN FOR HEALTHCARE

Governments around the world have implemented various efforts to improve healthcare access for marginalized children. The Governments have implemented public health insurance programs that provide free or subsidized healthcare services to low-income families. For example, India's Ayushman Bharat program provides

15 Jha, Ashish, and Peter Pronovost. "Toward a safer health care system: the critical need to improve measurement." *Jama* 315, no. 17 (2016): 1831-1832.

16 Kilbourne, Amy M., Kathryn Beck, Brigitta Spaeth-Rublee, Parashar Ramanuj, Robert W. O'Brien, Naomi Tomoyasu, and Harold Alan Pincus. "Measuring and improving the quality of mental health care: a global perspective." *World psychiatry* 17, no. 1 (2018): 30-38.

17 Ballard, David J. "Indicators to improve clinical quality across an integrated health care system." *International Journal for Quality in Health Care* 15, no. suppl_1 (2003): i13-i23.

health insurance coverage to families living below the poverty line. The governments have implemented mobile healthcare services that provide healthcare services to marginalized communities in remote or underserved areas. These services include mobile clinics, telemedicine, and mobile health vans.[18]

The school-based healthcare services have implemented school-based healthcare services that provide healthcare services to children in schools. These services include school health check-ups, health education, and preventive healthcare services. The Community health workers have trained and deployed community health workers to provide healthcare services to marginalized communities. These workers provide basic healthcare services, health education, and referrals to specialized healthcare services. The child health and nutrition programs as governments have implemented child health and nutrition programs that aim to improve the health outcomes of marginalized children.[19] These programs include immunization programs, nutritional support programs, and programs that provide access to essential medicines. The implemention health education programs that aim to improve health literacy among marginalized communities. These programs provide information on preventive healthcare, healthy lifestyles, and disease management. The governments around the world have implemented various efforts to improve healthcare access for marginalized children. These efforts aim to address the health disparities faced by marginalized communities and promote health equity. By prioritizing the health of marginalized children and investing in healthcare infrastructure and services, governments can ensure that all children have access to quality healthcare services.[20]

HEALTHCARE AT THE INTERNATIONAL LEVEL

Healthcare at the international level is an important issue, as it affects people across the world. There are several global health initiatives aimed at improving healthcare services in low- and middle-income countries. Examples include the Global Fund to Fight AIDS, Tuberculosis and Malaria, the Gavi Alliance for immunization, and the World Health Organization's Global Health Emergency Workforce.[21] These initiatives

18 Stratford, Brandon, Elizabeth Cook, Rosie Hanneke, Emily Katz, Deborah Seok, Heather Steed, Emily Fulks, Alexis Lessans, and Deborah Temkin. "A scoping review of school-based efforts to support students who have experienced trauma." *School Mental Health* 12 (2020): 442-477.

19 Sholas, Maurice G. "The actual and potential impact of the novel 2019 coronavirus on pediatric rehabilitation: A commentary and review of its effects and potential disparate influence on Black, Latinx and Native American marginalized populations in the United States." *Journal of pediatric rehabilitation medicine* 13, no. 3 (2020): 339-344.

20 Moharana, S. (2013). Corporate social responsibility: A study of selected public sector banks in India. *IOSR Journal of Business and Management*, *15*(4), 1-9.

21 Carrera, Percivil M., and John FP Bridges. "Globalization and healthcare: understanding health and medical tourism." *Expert review of pharmacoeconomics & outcomes research* 6, no. 4 (2006): 447-454.

provide funding, technical assistance, and other resources to improve healthcare services in underserved areas. The International Health Regulations (IHR) are a set of legally binding regulations adopted by the World Health Assembly in 2005. The IHR aim to prevent the international spread of infectious diseases and to ensure a coordinated response to public health emergencies. The IHR require countries to report certain disease outbreaks and public health events to the World Health Organization, and to implement measures to control the spread of disease.

The access to medicines is a global health issue, as many people in low- and middle-income countries do not have access to essential medicines. International organizations such as the World Health Organization and UNAIDS work to improve access to medicines by promoting the development of affordable and accessible medicines, negotiating lower prices for medicines, and supporting the use of generic medicines. The global health security is a key concern in the 21st century, as infectious diseases can spread rapidly across borders. International organizations such as the World Health Organization and the Global Health Security Agenda work to improve global health security by strengthening health systems, improving surveillance and detection of disease outbreaks, and supporting the development of vaccines and other medical counter-measures. Universal health coverage is a global goal that aims to ensure that all people have access to essential healthcare services without experiencing financial hardship. The World Health Organization has set a target of achieving universal health coverage by 2030, and many countries are working towards this goal by implementing health financing reforms, expanding access to healthcare services, and improving the quality of care. Healthcare at the international level is a complex and multifaceted issue, and there are many organizations and initiatives working to improve healthcare services across the world. The COVID-19 pandemic has highlighted the importance of global health cooperation and the need to strengthen health systems to ensure a coordinated response to public health emergencies.[22]

Child health care provisions at the international level are aimed at improving the health and well-being of children across the world. The United Nations Convention on the Rights of the Child: The United Nations Convention on the Rights of the Child is an international treaty that outlines the rights of children. It was adopted in 1989 and has been ratified by almost every country in the world. The convention recognizes the right of every child to the highest attainable standard of health and the right to access healthcare services without discrimination.[23] Health is a framework for improving the health and well-being of women, children, and adolescents across the world. It

22 Caniato, Marco, T. Tudor, and Mentore Vaccari. "International governance structures for health-care waste management: A systematic review of scientific literature." *Journal of environmental management* 153 (2015): 93-107.

23 Kuhlmann, Ellen, and Mike Saks, eds. *Rethinking professional governance: International directions in healthcare*. Policy Press, 2008.

was launched in 2015 and aims to ensure that every woman, child, and adolescent has access to affordable and quality healthcare services. The Sustainable Development Goals (SDGs) are a set of global goals adopted by the United Nations in 2015. SDG 3 is focused on ensuring healthy lives and promoting well-being for all, including children. The SDGs include targets related to reducing child mortality, improving maternal and child health, and increasing access to healthcare services.[24] The Global Vaccine Action Plan: The Global Vaccine Action Plan is a framework for improving vaccination coverage and preventing vaccine-preventable diseases. It was launched in 2012 and aims to ensure that every child has access to life-saving vaccines. The plan includes targets related to increasing vaccination coverage, improving vaccine supply chains, and developing new vaccines. The United Nations Children's Fund: The United Nations Children's Fund (UNICEF) is an international organization that works to improve the lives of children across the world. UNICEF provides support for child health programs, including immunization campaigns, nutrition programs, and maternal and child health services. UNICEF also works to improve access to safe drinking water and sanitation, which are important for child health. The child health care provisions at the international level are aimed at improving the health and well-being of children across the world. These provisions include international treaties, frameworks, and organizations that work to ensure that every child has access to affordable and quality healthcare services, vaccines, and other essential health interventions.[25]

Health justice for children at the global level is essential for ensuring that all children have access to quality healthcare services, regardless of their socio-economic status, ethnicity, or geographical location. The United Nations Convention on the Rights of the Child recognizes the right of every child to the highest attainable standard of health and requires governments to ensure access to healthcare services, including preventive and primary healthcare, for all children. The Convention also emphasizes the importance of addressing social determinants of health that impact children's health outcomes, such as poverty, inadequate housing, and environmental pollution. Despite these commitments, children around the world continue to face significant challenges in accessing quality healthcare services. Children in low-income countries, marginalized communities, and conflict-affected areas are particularly vulnerable and have limited access to essential healthcare services. To address these challenges, international organizations, governments, and non-governmental organizations (NGOs) are working to improve access to healthcare services for children. This

24 Mackey, Tim K., and Bryan A. Liang. "Combating healthcare corruption and fraud with improved global health governance." *BMC international health and human rights* 12 (2012): 1-7.

25 Ham, Chris. "Priority setting in health care: learning from international experience." *Health policy* 42, no. 1 (1997): 49-66.

includes initiatives to strengthen primary healthcare services, improve access to essential medicines, and provide vaccinations to prevent communicable diseases.[26]

Efforts are also being made to address the social determinants of health that impact children's health outcomes, such as poverty, food insecurity, and inadequate housing. For example, programs that provide access to education and safe housing can have a significant impact on children's health outcomes. Furthermore, international organizations such as UNICEF and the World Health Organization are working to promote health equity and ensure that all children have access to quality healthcare services. This includes advocating for policies that prioritize children's health and supporting countries in developing and implementing effective healthcare systems. Therefore, health justice for children at the global level requires a commitment to promoting health equity and ensuring that all children have access to quality healthcare services. Addressing social determinants of health and strengthening healthcare systems are essential for promoting children's health and well-being and building a more just and equitable world.

ACCESS TO HEALTH JUSTICE: A FUNDAMENTAL HUMAN RIGHT

Access to healthcare is a fundamental human right. Unfortunately, millions of people around the world lack access to basic healthcare services, resulting in preventable deaths and illnesses. In developing countries, lack of access to healthcare is a major public health issue, but even in developed countries, access to healthcare can be limited by factors such as income, geography, and cultural barriers. The access to healthcare is important for several reasons. First and foremost, healthcare services are essential for maintaining and improving individual health.[27] Regular check-ups, preventive care, and treatment for illnesses and injuries can help individuals manage chronic conditions, detect and treat diseases early, and improve overall quality of life. Without access to these services, individuals may suffer needlessly and experience preventable health problems. Healthcare is important for promoting social justice and equity. Healthcare services should be available to all individuals, regardless of their income, race, ethnicity, or other demographic factors. Inequities in healthcare access can result in health disparities, where certain groups of individuals are at higher risk for illness and death than others. This can lead to a vicious cycle of poverty and poor health outcomes that perpetuates inequality. Along with promoting individual health and social justice, access to healthcare is also important for economic growth and stability.

26 Seys, Deborah, Susan Scott, Albert Wu, Eva Van Gerven, Arthur Vleugels, Martin Euwema, Massimiliano Panella, James Conway, Walter Sermeus, and Kris Vanhaecht. "Supporting involved health care professionals (second victims) following an adverse health event: a literature review." *International journal of nursing studies* 50, no. 5 (2013): 678-687.

27 McHale, Jean. *Fundamental rights and health care*. na, 2010.

Healthy individuals are more productive and able to contribute to the workforce, which can lead to increased economic growth and stability. Conversely, poor health can lead to decreased productivity and increased healthcare costs, which can be a burden on individuals, families, and the economy as a whole. The importance of access to healthcare, many individuals around the world still lack access to basic healthcare services. In developing countries, lack of infrastructure, resources, and funding can limit access to healthcare services. In developed countries, factors such as income, geographic barriers, and cultural barriers can limit access to healthcare services. To address these issues, policymakers and healthcare providers need to work together to ensure that healthcare services are available to all individuals, regardless of their income or location.[28] This may involve expanding access to healthcare services in underserved areas, increasing funding for healthcare programs and services, and implementing policies that promote equity in healthcare access. Access to healthcare is a fundamental human right that is essential for promoting individual health, social justice, and economic growth. Policymakers and healthcare providers need to work together to ensure that healthcare services are available to all individuals, regardless of their income or location. By doing so, we can promote better health outcomes, reduce health disparities, and create a more equitable and prosperous society for all.[29]

LEGAL ASPECTS OF HEALTH JUSTICE IN INDIA

Health justice is a fundamental right in India, and the legal framework in the country reflects this. The Indian Constitution includes several provisions related to health justice, including the right to life and the right to health. The right to life, as enshrined in Article 21 of the Constitution, has been interpreted to include the right to access to healthcare. The Supreme Court of India has held that the right to life includes the right to healthcare, and that the government has a duty to ensure that all individuals have access to basic healthcare services. The right to life, the Constitution also includes provisions related to health justice. Article 47, for example, directs the State to improve public health and to raise the level of nutrition and the standard of living of its citizens. Article 48A mandates the State to protect and improve the environment, which is closely linked to public health.[30]

28 Hogerzeil, Hans V., Melanie Samson, Jaume Vidal Casanovas, and Ladan Rahmani-Ocora. "Is access to essential medicines as part of the fulfilment of the right to health enforceable through the courts?." *The Lancet* 368, no. 9532 (2006): 305-311.

29 Hendriks, Aart. "The right to health in national and international jurisprudence." *European Journal of Health Law* 5, no. 4 (1998): 389-408.

30 Benfer, Emily A. "Health Justice: A Framework (and Call to Action) for the Elimination of Helath Inequity and Social Justice." *Am. UL Rev.* 65 (2015): 275.

The legal framework in India also includes several laws related to health justice. The most notable of these is the National Health Policy, which outlines the government's strategy for improving access to healthcare services. Other laws related to health justice include the Clinical Establishments Act, which regulates the registration and operation of clinical establishments, and the Drugs and Cosmetics Act, which regulates the manufacture, distribution, and sale of drugs and cosmetics. One of the key challenges in India is ensuring that all individuals have access to healthcare services. The country has a large rural population, and many people living in rural areas do not have access to basic healthcare services. In response to this challenge, the government has launched several initiatives to improve access to healthcare services, including the National Rural Health Mission and the Ayushman Bharat scheme. Health justice is a fundamental right in India, and the legal framework in the country reflects this. The Indian Constitution includes several provisions related to health justice, and the government has implemented several laws and initiatives to improve access to healthcare services. However, challenges remain in ensuring that all individuals have access to basic healthcare services, particularly in rural areas.[31]

CONCLUDING REMARKS AND WAY FORWARD

Health justice is a fundamental human right that ensures equitable access to healthcare services and promotes health equity. However, many countries face significant challenges in providing access to quality healthcare services for all, and inequities in health outcomes persist.[32] Addressing these challenges requires a multi-faceted approach that involves increasing funding for healthcare, strengthening primary healthcare services, improving the health workforce, implementing technology, addressing social determinants of health, and fostering partnerships and collaboration among stakeholders. Addressing health justice requires a commitment to promoting health equity and ensuring that marginalized communities have equal access to healthcare services. By prioritizing health justice and investing in policies and programs that promote health equity, we can improve health outcomes for all and promote a more just and equitable society.[33]

31 Pinto, Edward Premdas, and Edward Premdas Pinto. "Citizenship, Health Care Jurisprudence and Pursuit of Health Justice." *Health Justice in India: Citizenship, Power and Health Care Jurisprudence* (2021): 39-82.

32 Acharya, Sanghmitra S. "Health equity in India: An examination through the lens of social exclusion." *Journal of Social Inclusion Studies* 4, no. 1 (2018): 104-130.

33 Wallerstein, Nina, Bonnie Duran, John G. Oetzel, and Meredith Minkler, eds. *Community-based participatory research for health: Advancing social and health equity*. John Wiley & Sons, 2017.

The impacts of health justice are far-reaching and have significant implications for individuals, communities, and societies as a whole. Here are some of the impacts of health justice:

1. *Improved health outcomes*- Health justice promotes equitable access to healthcare services, preventive healthcare, and health education, leading to improved health outcomes for individuals and communities.
2. *Reduced healthcare costs*- Health justice can help reduce healthcare costs by promoting preventive healthcare, reducing the burden of chronic diseases, and avoiding costly treatments and hospitalizations.
3. *Improved economic outcomes*- Improved health outcomes resulting from health justice initiatives can lead to increased productivity and economic growth, as healthy individuals are more likely to participate in the workforce and contribute to their communities.
4. *Reduced health disparities*- Health justice aims to address health disparities by ensuring that marginalized communities have access to quality healthcare services, thereby reducing the gap in health outcomes between different populations.
5. *Improved social justice and Global Health*- Health justice is linked to social justice, as access to healthcare services is a basic human right that promotes equality and fairness in society. Health justice initiatives at the global level can help address global health challenges, such as infectious diseases and pandemics, by strengthening healthcare systems and promoting health equity. Health justice has far-reaching impacts on individuals, communities, and societies as a whole. By promoting equitable access to healthcare services and addressing social determinants of health, we can improve health outcomes, reduce healthcare costs, and promote a more just and equitable world.

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THE OBLIGATION TO ACT EX-OFFICIO IN THE REPUBLIC OF NORTH MACEDONIA INCLUDING DOMESTIC CASE STUDIES

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ABSTRACT

This paper concerns the use of the ex-offico instrument and acting with due diligence by the public institutions when such obligation is legally stipulated to them with a view to support citizens to get informed of their legal rights as well as to improve the access to justice, focusing on people existing at societal margins. The paper covers the national legal framework which is seen as weak in implementing the use of the ex-offico instrument which in turn sets negative precedents. This document also offers analysis of case studies based on the practical work in HOPS – Healthy Options Project Skopje. Finally, it offers conclusion on the need to accurately use ex-offico and acting with due diligence.

KEY WORDS: *Ex-officio, due diligence, people who use drugs, sex workers, marginalized communities, discrimination.*

INTRODUCTION

The concept of access to justice understands the provision of equal opportunity to individuals and communities to get just and effective solutions to their legal issues and disputes. This means equal access to legal information, provision of legal advice and participation in the legal system no matter of their socio-economic status, geographical location, or other personal traits.

Access to justice for marginalized communities is a specific topic which requires dedicated attention and concrete activities because these communities are very often disproportionately affected by legal issues and barriers for getting justice compared to the general public. The major issues for these people to access justice are, not limited to, poverty, discrimination, language barriers, and limited access to legal representation. Following Reactor's research of the legal needs of the general population, in 2017 HOPS- Healthy Options Project Skopje carried out research on the legal needs and access to justice for people who use drugs (PWUD) and sex workers (SW). This research has confirmed the stated issues above and has shown that people who use drugs and sex workers are facing fiveteen times more legal issues that the general population (Cekovski, Dimitrievski 2018).

Societal equality can be only achieved through enabling equal access to justice for all citizens, particularly for the marginalized communities.[34] In the Law on prevention and protection from discrimination (LPPD) equality is defined as a principle according to which all people are equal in achieving and exercising their rights and freedoms (Official Gazette 258/20). Equality is a constitutional principle as well, it assumes the existence of the rule of law and democracy, and it is a significant mechanism in the system of enabling and advancing human rights and freedoms of all citizens of the Republic of North Macedonia.

The institutional response to act ex-officio in cases when the law foresees such actions should be performed to help or ease certain civic procedures. This is significant when dealing with the most marginalized communities due to their insufficient knowledge and weak economic power.

Ex officio is a Latin term meaning "by the power of the office/position", which assumes "duty towards something/somebody" i.e., duty towards the service as part of the public posting. Ex officio understands exact and neat fulfillment of the public

34 Sandra Fredman, professor of legal science at the University of Law in Oxford is promoting a four-dimensional approach for achieving real equality. 1) Overcoming the disadvatanged position of the marginalized communities 2) Addressing stigma, stereotypes, prejudice and violence through affirmatin of the marginalized identity 3) Social inclusion and political participation 4) Adjusting differences as opposed to normalization and achieving structural transformation.

service authorization which is paramount for a normal functioning of a legal state (Kambovski 2011).

Through my experience in HOPS while accompanying clients in different institutions, it has been established that certain institutions have bad implementation in cases when they should act ex officio. Instead of taking action to ease the burden of the citizens, they charge citizens to take the action for themselves.

The goal of this paper is to show how important it is for public institutions to act ex officio, especially when the action is an institutional obligation to support citizens in exercising their rights and to contribute towards lowering, and by that improving, the lack of implementation of the law.

NATIONAL LEGAL FRAMEWORK

In this part you will find certain legal obligations that are being poorly or not implemented by public instituions and which have been detected through the work with people who use drugs and sex workers. These are obligations that assume the use of ex officio instrument; however, the lack of its implementation brings about difficulties to exercices the rights of citizens and their access to justice.

CONSITUTION

The Constitution of the Republic of North Macedonia is the foundation for basic human rights and freedoms and for the principle of equality. According to Article 9: “All citizents are equal before the Constitution and the Law”. The Constituion stipulates that everyone can recall the protection of their rights and freedoms in front of the courts, including the Constitutional Court, as well as it stipulates explicit prohibition of discrimination against the citizens.

FAMILY LAW

The Familiy law regulates the procedure for divorce. Article 43 of the law forsees final judgement for divorce of marriage annulment which the relevant Court submits to the State adiministration for keeping registers of married people, latest by 30 days of the judgement in order to register the tranfomation of the marital status. The Court should also submit the decision to the Center of social protection if the parties have underage children or children with extended parental rights.

LAW ON EXECUTION OF SANCTIONS

The Law on Exucition of Sanctions guarantiees the right of health protection and the right to issuing identification document to people who serve prision time. The right to health care protection is regulated with article 182 while the right ot renewing indentification document is regulated by article 215. What is important to note is that this law forsees preparing people who serve prision time to adjust to life more easily outside the prision. According to article 244, the training for release starts with the beginning of serving the prision sentence.

LAW FOR HEALTH INSURANCE

Article 5 of this law forsees all people who have the right to compulsory health insurance. Paragraph 13 of the same article stipulates that people who serve prision time, people who are in detention (unless they are already insured) and underage persons who are serving correctional measure i.e., are refered to a correctional institution, are to be compulsory and free of charge insured.

LAW ON TRAVEL DOCUMENTS

The Law on Travel Documents regulates the procedure of the types of travel documents, issuing travel documents as well as prohibiton for issuing travel documents. What is of importance for this paper is that when there is a criminal procedure in which someone is involved or there is a prision sentence imposed, the relevant court submits a request to ban the issuing of a travel document. Article 38 of the Law stipulated the introduction of ex officio of the relevant court or authority, i.e., to report to the Ministry of Internal Affairs on all the facts that result in the termination of the reasons for refusing a request for the issuance of a travel document.

LAW ON PREVENTION AND PROTECTION AGAINST VIOLENCE TOWARDS WOMEN AND DOMESTIC VIOLENCE

The concent “due diligence” was defined and introduced for the first time in our country with the Law on Prevention and Protection against Violence towards Women and Domestic Violence. Article 5 of this law stipulates the state authorities, legal entities which carry out public work, people in government, public servants and other authorized persons to execute work on behalf of the state, ***have the obligation***

to withhold from participating in an act of violence and to undertake all measures and activities to prevent, protect, investigate and punish any action of gender-based violence and domestic violence, as well as to enable just compensation to victims or restitution of their state. The law also forsees that the officials in the institutions that work in the field of social protection, internal affairs, health, child protection and education, as well as competent courts and prosecutor's offices are obliged to act urgently, with due diligence to the interests and needs of the victim (Official Gazette 24/21).

ANALYSIS OF CASE STUDIES BASED ON THE HOPS'S WORK

The analysis of HOPS's reports about the work of the social workers and legal advisors shows examples of bad practice by the state authorities, as well as absence of cooperation between different institutions even when that goes to the advantage of the citizens.

The following part of the paper presents practical examples of cases when insitutions have not acted ex officio or with due diligence despite the existence of legal obligation for their aplication. This lack of action has led to discouragement of the citizens while they were in the middle of legal procedures, resulting in them quitting the procedures altogether. Additionally, this leads to lack of interest and motivation to even begin a legal procedure for the protection of certain human rights.

In the field of family law there has been established poor implementation of the ex officio instrument during the enforcement of the divorce judgment. According to the Family law, the first-degree court decision for divorce or marriage annulment is supposed to be deliverd by the court to the state authority of the administration responsible for keeping registers of married couples, within 30 days at the latest in order to register the marital status changes (Official Gazette 157/08, clean version).

HOPS's target communities, particularly women from both communities, are not able to use the right of free health insurance and other rights in the realm of social protection because legally they are married to spouses whom they are long time estranged from and do not even live together. Due to the high cost of lawyers' fee both for them but also for the spouse who must be assigned a temporary legal representative (lawyer) when they cannot be located, many of these women do not start the divroce procedure. Even if the women fulfill the conditions for secondary legal aid for themselves, the aid does not cover the legal costs for the court assigned lawyer of the spouse. In such cases, not only these women are left without health insurance but also their minor children. To address this issue, HOPS has been offering

legal support in the past couple of years with a lawyer and material support for paying the administrative taxes as well as other costs arising from such procedure for these women to be able to fomalize the separation and to be able to exercise their rights. It was during these procedures that the institutional neglicenge to act ex officio has been noticed.

Namely, no matter that the court has delivered the divorse decision to the State Administration for keeping registers of married persons (Administration), in reality parties must deliver the court decision to the Adiministration themselves and only after it has been notarized by an official, which means additional costs for the party. This is especially damaging for the marginalized women who have weak economic power and are also not informed of such established practice. Only after they deliver the court decision themselves, the divorce is registered in their Birth Certificate, but this process can take more than a month. It is also important to note in this context that while exercising certain other rights, the delivered court decision regarding the divorce is not recognized by other instituions if there is no birth certificate which states the divorce. For example, this practice has been noted within the Health Insurance Fund.

In other instances, not using the ex officio instrument starts even by the relevant court that does not deliver its final decision at all to the institutions to which it is obliged by law to deliver it. This is particularly important in cases when the party is not informed that there is a divorce procedure started and finalized against her/him. This is a common case among the people I work with as they often change their delivery addresses and residences.

One of the cases which was represented by HOPS's lawyer, was a woman that has not been living with her spouse for more than 20 years and had no contacts with them whatsoever. It was only known that the spouse lives and works in Germany for many years now. During that whole time, the woman was left without public health insurance and could not use state social protection because the official system claimed she is still married. However, by submitting a plea it was determined that the woman is divorced since 1993 but the court decision has been delivered to the marriage registry Administration only after 2021. In this case it has been a very long period in which our client has been without health insurance even though she was in very poor health, and she could not make a request for financial support as part of the social protection system. This is a problem that is mainly faced by the sex workers.

Another poorly established practice that has been noticed is the procedure for issuing a travel document with a previously pronounced ban on its issuance. This is an administrative procedure that is closely related to a criminal procedure. In this case, in accordance with the Law on Travel Documents (Official Gazette 67/92), the court is

obliged to notify the Ministry of Internal Affairs immediately by ex officio duty when the reasons for the imposed ban cease. However, that's not the practice we see. On the contrary, citizens should submit requests to the Criminal Court themselves for each crime they committed separately to get records whether there is a ban for issuing travel document for that specific crime. Each request costs 135 denars and must be submitted together with the realease letter from the prison and a copy of their ID. After submitting the request, they wait for a response for each submitted request separately and in cases when people have more criminal convictions, it can last more than a year to get a response on all requests. Moreover, in a few cases I had, the court could not even find the criminal convictions in question and was not able to respond to the request. Due to the lengthy process, the obstacles that arise during the process as well as the financial factor, some clients do not even start the procedure for lifting the ban on travel documents, and many quit mid-processes. This established practice restricts the right of movement of people who have served a prison sentence, as one of the basic human rights. This problem is mostly faced by people who use drugs.

Throughout my task to accompany clients of HOPS I have registered several cases when persosns who are in treatment for opoid addiction and who have served prison time, they are let out of prison once their sentence is served withough any indentification documents (IDs). Some of them are even entering the prison to serve the sentence without any ID. They are all then left without health insurance despite that according to article 244 of the Law on Execution of Sanctions (Official Gazette 99/19) the preparation for release from prison begins with the beginning of serving the prison sentence and the activities are intensified near the end of the sentence. Moreover, according to article 215 of the same law, citizens have the right to update/ renew their identification document data after its expiry at the expense of the state budget.

The right to health care and health insurance is guaranteed by article 182 of the Law on Execution of Sanctions (Official Gazette 99/19) and by article 5, paragraph 13 of the Law on Health Insurance (Official Gazette 65/12). The health condition in general, and particularly before prison release, is regulated in more articles of the law, but article 245 forsees that every person before release should be checked by a doctor who will make note the the health condition of the prisioner to be released.

Considering that people who use drugs have a long term need to be in treatment while the serve the prison sentence, they usually undergo metadone supstitution therapy for drug addiction. Due to the nature of the disease, there is a necessity for continuous treatment even after they are released from prison. This means these people need to continue their treatment in one of the daily Centers for prevention and treatment from drug abuse and addiction. In about 67 cases of clients noted throughout the work in HOPS since 2012 to this day, people whose prison sentence has ended are

not able to continue with their drug addiction treatment due to lack of identification documents and health insurance. To get the treatment, they need to submit requests for issuing ID papers and health insurance and get their documents, which can last from several days to several weeks. Namely, these people stay without therapy until they fulfill the criteria to get enrolled in the treatment program. Considering that the diseases related to drug addiction are complex situations, even the lower stress on the body can significantly worsen their condition and increase the risk of relapse which can sometimes lead to overdose and fatality.

The right to effective health treatment is one of the fundamental human rights guaranted for all people equally by the Constitution of the Republic of North Macedonia and regulated by the Health Insurance Law. However, despite the clear legal obligation and foreseen procedures for treating people who have served prison sentence, as well as the right to issuing new ID card while the prison sentence is still served, these legal duties are not implemented. In such cases it is important to note that besides not acting in ex officio capacity, there is lack of cooperation between the prisions in Skopje and the Center for treatment of drug addiction. Such cooperation could ease the problem of the people who are in opoid addiction treatment and could set a positive example with a view to lower cases of people who are left with no treatment altogether.

Besides not cooperating with the prisions, it has been noted that the Center for treatment of drug addiction in Skopje does not cooperate with centers for drug addiction treatment in other cities in the county. There has been a documented case of a person who is in treatment with metadone supstitution therapy in the Ohrid Center. After moving to Skopje, the person tried to continue their treatment in the Center in Skopje (Kisela Voda) submitting a confirming paper of his condition and data on the dosage and type of therapy issued by the Center in Ohrid. The Center in Skopje did not want to enrol them in the treatment program because they told the patient they must change their ID address first. The procedure for changing or updating the residence address in the ID in reality can last for more thant a month. In this particular case the person moved to a house with no property paper, basically making the procedure for changing the address impossible.

Being released from prison without identification documents is a serious problem too. The problem is amplified because people who served long prison sentences often do not have residency's adresses after they leave the prison which is the basic criterium for issuing identification document. This happens mainly because they have no close family where they can stay, or their family and relatives live in illegally built buildings. Precisely because of this, many people are not opting for the procedure to request ID and they are able to exercise not a single human right, such as the aforementioned health insurance, or access other institutions.

It is important to emphasize here that there are cases where people have not had IDs their whole life. If they were to be found suspects or accused in a criminal proceeding, they cannot receive a subpoena and very ofter are convicted in their absence which means longer and bigger sentences without having the right to fair trial. At the same time, for those who enter prison to serve time without any ID we can ask the question how is their identity confirmed upon the beginning of the prision sentence?

Due diligence is a legal tearm that involves a comprehensive examination of all relevant facts and information related to a particular matter in order to assess all potential risks and benefits and make sound and correct decisions. In North Macedonia, due diligence was first introduced in the Law on Prevention and Protection against Violence towards Women and Domestic Violence (Official Gazette 24/21). This law obliges public servants that carry out activities in the field of social protection, internal affairs, health, child protection and education, as well as the competent courts and prosecutor's office in proceedings for gender-based violence against women and family violence to act with due diligence to the interests and needs of the victim with a view to ease the procedure for protection against violence. However, in practice this is not always implemented.

It is also important to note that this law, besides introducing the concept of due diligence for the first time, it also forsees responsibility on account of the institutions if they do not act with due diligence. This means that the victim can sue in front of the civil court to determine liability for failure to act with due diligence.

Article 51 of the Law on Prevention and Protection Against Violence Towards Women and Domestic Violence stipulates that the health authorities are obliged to undertake immediate action for victim's protection including a medical documentation that clearly states of the noted injury. Paragraph two of the same article then, forsees that victims are releifed from paying anything for the medical action undertaken and for the medical documentation. Accordind to paragraph three, the health minister is also obliged to adopt a yearly program which provides the basis for the measures of health protection of women victims of violence.

In practice, victims of gender-based violence and domestic violence are charged for health services by the public institutiions if they were provided with medical assistance or medical intervention. The health institutions are asking for a confirmation paper by the Social Work Centers that proves the victim is released from paying any health care services. However, the Social Work Centers do not provide such confirmation papers, instead they issue victims with confirmation papers referring them to the adiministrative municipality where the victim lives in oder to submit request for a one-time financial aid. The idea is that women victims use this money to pay their

hospital or other medical institution bill in oder to take the necessary medical documentation. This money is paid off only **the following month**. This additionally burdens and prolongs the procedure for protection against violence. In a concrete case, this left a client victim of serious bodily injury without any in the procedure.

The right to one-time financial aid is different from the right to be reliefed from paying the cost of health treatment for victims of gender-based and domestic violence. The referral to use the first right as a means to pay off the medical "debt" to the hospital is contrary both to the Law on Social Protection as well as the Law on Prevention and Protection against Violence towards Women and Domestic Violence.

The medical documentation in this case was of utmost importance to the victim because she underwent serious bodily injury during domestic violence which is a crime prosecuted ex officio. The case was reported by the health institution where the victim was first taken care of to the Center for Social Work and the Police. The police asked the victim for her medical documentation so that they could start the criminal procedure against the perpetrator. Such an act by the police is another case of negligence to act with due diligence as the police should secure the provision of the medical documentation instead of making victims go though the systemic labyrints to provide the documentation themselves.

Moreover, the Law on Prevention and Protection from Violence against Women and Domestic Violence forsees institutional and multisectoral cooperation with a goal to implement the law in the best possible way. According to article 12, the law obliges all relevant authorities to cooperate and prepare protocols for joint action to undertake measures for prevention and protection from gender-based violence and domestic violence. The multisectoral cooperation is foreseen with the goal to ease the procedure for protection from violence and for victims to receive timely and effective services in the most suitable way for the victim. Unlike this, in the case mentioned above, the relevant institutions have referred her from one to another institution to exercise a right which is clearly stipulated by the law. In order to implement the legal obligations, it is also important to note that the Law obliges the state authorities to dedicate a separate budget from their institutional resources.

Another practice, contrary to law, is noted by the police who should act ex officio with victims of gender-based violence. Namely, the cases of gender-based violence are not registered as cases of gender-based violence because the police system does not technically allow it. Instead, they classify and register such cases as physical attacks against a known person and the perpetrators are prosecuted ex officio in an infringement proceeding. The infringement proceeding is a completely different proceeding which is sentenced under different circumstances and is not in accordance with the Law on Prevention and Protection from Violence against Women and

Domestic Violence which predicts much bigger responsibility on the side of the perpetrators of such violence.

According to article 18 of the Law on Prevention and Protection from Violence against Women and Domestic Violence, the Ministry of Internal Affairs should undertake numerous measures for protection of the vicitms of gender-based violence ex officio. Some of these are urgent action to prosecute perpetrators of GBV and protect victims and follow and analyse the situation/context of gender-based violence and report to the National Coordinative Body for the implementation of the Istanbul Convention at least once per year by collecting data of the reported cases of gender-based violence. In practice, in the case with the client of HOPS, not only the police did not undertake any urgent measures to protect the victim of gender-based violence, they have not even registered the case as a gender-based violence case but as offence to the public order and peace despite the existence of medical documentation stating of the nature of the victim's serious bodily injures.

Additionally, the Law on Prevention and Protection from Violence against Women and Domestic Violence contains a whole chapter, chapter IV, which regulates the data protection and data collection on the condition of gender-based violence and domestic violence in the country. In this part, state authorities are obliged to collect statistical, adiministrative, data on gender-based violence. By not having an accurate system to evident cases of gender-basesd violence, the Ministry of Internal Affairs is obstructing the access to the real state of affairs when it comes fo violence and women's position in the Republic of North Macedonia. This failure also prevents the creation of effective and suitable policy, practice, and protection mechanisms.

To reiterate, in all the cases analysed in this paper, what is visible to lack the most is cooperation and coomuncation amongst the instituitions. Particlary when it comes to the proceedings to protect a victim of any type of violence.

CONCULSION

The analysis in this paper has shown that the institutional ex officio and acting with due diligence are of utmost important for the legal safety, security and informing of all citizens, especially of those who are the most vulnerable and are found on the societal margins. Institutional negligence to act, the referral of responsibility to the other institution, brings about bad implementation and practice on account of the citizens who are faced with more difficult access to justice. One of the most important conclusions here is that the lack of cooperation amongst institutions even when the contrary is stipulated by law, additionally worsens the issue with access to justice and practicing the principle of equality. Hence, institutions must establish and

build sound cooperation amongst themselves. This cooperation is crutial to be able to implement the legislative framework and obligations to act ex officio and with due diligence.

A question to be further analysed based on this paper is whether the concept of equal access to justice necessarily demands new policymaking i.e., new laws, or rather finding a way of changing the poor implementation of laws and illegal practices is the needed direction to achieving equal access to justice. While this issue needs a separately dedicated analysis, the recommendation arising from this issue is that the state and the relevant iinstitutions must take a firmer standpoint and more serious steps towards a more suitable implementation of the law.

Finally, this paper presented the lack of institutional networking and matching, and sharing, of their administrative data. This challenge can be overcome by updating the institutional databases with strongly connected joint information, shareable and accessible for all relevant institutions, while abiding by the personal data protection protocols. This can mean better digitalization and data recording, which are weak spots of most of the administrative data collection in the country anyway. Nonetheless, the country must take tangible and significant measures for quality collection, recording and sharing of administrative data.

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LEGAL FRAMEWORK FOR THE PROTECTION OF VICTIMS OF HUMAN TRAFFICKING

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ABSTRACT

Victimization is a frightening and disturbing experience, unpredictable and often unexpected. Unlike normal life experiences, victimization is not wanted and never welcomed. It is debilitating and demoralizing. Its effects can often be long-term and difficult to overcome. The identification of victims of human trafficking is extremely important in order to enable assistance and support to the victim by identifying the specific needs of the victim and preparing an individual assistance plan. Not only human trafficking victims suffer physically, psychologically and financially from the criminal act, but they are also often burdened by the complexities of the criminal justice system. Human trafficking is criminalized in numerous international and national documents and laws. National legislation provides comprehensive authority to law enforcement authorities to initiate criminal proceedings to prosecute the perpetrators of human trafficking crimes and also to treat the victims with care and attention and to receive effective psychological and other professional help and support.

KEY WORDS: *victims, perpetrators, human trafficking, legislation, protection measures.*

INTRODUCTION

Although human trafficking is a phenomenon as old as the history of prostitution, at the same time it is a current problem showing the ability to adapt to new and specific conditions and needs. It represents a terrible experience that forever leaves a mark on the personality of the victim who has little chance of survival anyway. Her existence is questioned daily, the victimization is repeated countless times and continues, with the victim herself being forced to assume and even sympathize with the role of victim. A very important victimological problem of victims of human trafficking is the highly expressed secondary victimization. The relationship of the environment and the suffered traumas leave marks on their personality, but it becomes even more difficult due to the inappropriate attitude of the environment towards them, leads to their stigmatization, misunderstanding of their position, which can lead to their return to their previous life and to the so-called tertiary victimization that is devastating to their personality.

Crime occurs when someone breaks the law, and what behavior is illegal is regulated by law. Victims of crime are those people who are most directly affected by crime. Its effects can often be long-term and difficult to overcome. There is no state or community that is not in constant contact with violence, and it is present in the streets, in our homes, in educational and other institutions. The consequences of violence exist for all victims. However, violence, neglect and abuse of children especially in the earliest years can leave lasting consequences on their development. The failure of multisectoral cooperation and the lack of coordination between different institutions, as well as the prolongation of procedures and secondary victimization can further worsen the position of the victim in which she finds herself after the committed violence.

LEGAL FRAMEWORK

The most significant document to fight human trafficking at the international level is the Palermo Protocol of 2002, a document that is an addition to the Convention against Transnational Organized Crime of 2000 of the UN. According to the UN Protocol, human trafficking is defined as: the recruitment, transportation, transfer, harboring or acceptance of persons, by means of threat, or by the use of force, or other forms of coercion, kidnapping, fraud or deception, with the abuse of power or a state of powerlessness or by giving or receiving money or a benefit, for the purpose of obtaining the consent of a person who has control over another person, for exploitation (UN General Assembly 2000). Human trafficking contains three basic elements:

1. what was done (recruitment, transport, transfer, shelter or reception of persons;
2. the means through which the action was conducted (using the threat or use of force, kidnapping, fraud, abuse of a state of powerlessness and vulnerability, etc.)
3. the purpose because the action was taken (for exploitation).

According to the UN Protocol, exploitation means, at a minimum, exploitation for the prostitution of others or other forms of sexual exploitation, forced labor or forced servitude, slavery or treatment similar to slavery, servitude or removal of organs. Until the adoption of the UN Protocol, a distinction is made between voluntary sex work and trafficking in persons for the purpose of exploitation in prostitution, and by recognizing other forms of exploitation, the Protocol provides a single, common and generally accepted definition of trafficking in persons, including women, men and children who are exploited in various sectors.

Similar to the UN Protocol,[35] the Council of Europe Convention defines human trade through three key elements:

- → ***action***: recruiting, transporting, transferring, harboring or receiving persons;
- → ***by using*** force, threats or other forms of coercion, extortion, fraud, misrepresentation, abuse of the position or vulnerability of another, or giving or receiving money or other benefit to obtain the consent of the person who has control over another person;
- → ***for the purpose of exploitation***: exploitation on prostitution on other persons or others forms of sexual exploitation, forced work or services, slavery or others practices similar on slavery, servitude or removal on organs.

The Council of Europe Convention established an independent GRETA monitoring mechanism[36] that will control the execution of the obligations of the Convention. GRETA's reports are a relevant source for lawyers to monitor the degree of implementation of the Convention and the impact of the measures on the human rights of victims of human trafficking.

The International Covenant on Civil and Political Rights prohibits practices that meet

35 Trafficking in persons is defined as the recruitment, transportation, transfer, harboring or acceptance of persons, by means of the threat or use of force or other forms of coercion, or kidnapping, or fraud, or deception, or by abuse of power or position of impotence or by giving or receiving money or benefit, for the purpose of obtaining the consent of a person who has control over another person, for the purpose of exploitation

36 A group of independent experts on action against human trafficking, which will monitor the implementation of the Convention. GRETA regularly prepares reports in which the measures taken by the member states are assessed as to whether they are in accordance with the Convention .

the hallmarks of human trafficking such as slavery, slave trade and forced labor, while guaranteeing the right to self-determination and free determination of one's own political status and free economic, social and cultural development.

The Convention on the Elimination of All Forms of Discrimination against Women requires member states to take appropriate measures to prohibit all forms of trafficking in women and exploitation of women in prostitution. According to the views of the Committee for the Elimination of All Forms of Discrimination Against Women (CEDAV), the appropriate measure to deal with trafficking in women in the sex industry is to reduce the demand for sex work, which would reduce trafficking. The second component of the provision refers to the prohibition of exploitation of women in prostitution which states that the state should not prohibit prostitution per se.

Some of the international instruments have specific provisions that refer to child trafficking. The Convention on the Rights of the Child (1989) and the Optional Protocol to the Convention on the Rights of the Child on the child trafficking, child prostitution and child pornography (2000) prohibit the trafficking of children for any purpose, including exploitative and forced labor. The Convention on the Rights of the Child imposes an obligation on member states, among other things, to take all necessary measures for the physical and mental recovery and social reintegration of children victims of any form of neglect, exploitation or abuse, while the Optional Protocol stipulates an obligation to ensure specific protection and assistance to child victims. The ILO's Worst Forms of Child Labor Convention (Convention No. 182 1999) prohibits the use of children for slavery or practices similar to slavery, child trafficking, bonded labor, forced labor or prostitution.

At the regional level, the European Convention on Human Freedoms and Rights and the jurisprudence of the European Court of Human Rights prescribe the legal and procedural aspects of the protection of victims of human trafficking and the positive obligations of member states in the prevention, prosecution and punishment of perpetrators of trafficking with people.

LEGAL REGULATION IN RNM

The Criminal Code of the Republic of North Macedonia in 2002 criminalized human trafficking for the first time, i.e. anyone who by force, serious threat or other form of coercion, kidnapping by fraud, by abusing his position and powerlessness to another, or by giving or receiving money or other benefits for obtaining the consent of a person who has control over another person recruits, transports, transfers, buys, sells, harbors or accepts persons for exploitation by means of prostitution or other forms

of sexual exploitation, forced labor or servitude, slavery or a similar relationship or illegal transplant of parts of the human body shall be punished with at least four years of imprisonment (Law amending and supplementing the Criminal Code, Article 5 introducing a new Article 418-a).

In 2008, the Criminal Code was amended with the crime of trafficking in minors (Article 418-d) which provides for a minimum eight-year prison sentence for anyone who recruits, transports, transfers, buys, sells, shelters or accepts a minor due to exploitation by means of prostitution or other forms of sexual exploitation, pornography, forced labor or servitude, slavery, forced marriage, forced fertilization, illegal adoption or a similar relationship or illegal transplantation of parts of the human body. If the actions are carried out with the use of force, serious threat or by misleading or other form of coercion, kidnapping, fraud, abuse of a position of powerlessness or physical or mental incapacity of the victim or by receiving money or other benefits in order to obtain consent of a person who has control over the victim, a stricter punishment of at least ten years is foreseen. Namely, the (dis)consent of the victim is irrelevant to the existence of elements of the criminal acts of human trafficking. The last crime specifically criminalizes the use of sexual services by minors who the perpetrator knew or was obliged to know was a victim of human trafficking. In 2014, the crime of trafficking in human beings from Article 418-a was supplemented with new forms of human trafficking that the legislator recognizes as a problem for which institutions should take specific measures to identify and deal with "bribery or exploitation due to an activity prohibited by law ." Also, this amendment to the Criminal Code was aimed at harmonizing the terminology used in the text of the law with the Convention on the Rights of the Child, so wherever the words "minor" appear, they were replaced by the word "child", so Article 418 was renamed with child trafficking.

IDENTIFICATION OF VICTIMS OF HUMAN TRAFFICKING

Directive 2012/29/EU establishes minimum standards for the rights, support and protection of victims of crime. Under the term "victim" means a natural person who has suffered harm, including physical, mental or emotional damage or economic loss that was directly caused by the criminal crime and family members of a person whose death was directly caused by a crime and who suffered damage as a result of that person's death (Directive 2012/12/29/EU Article 2).

In 2008, the Criminal Code was amended with a definition of a victim of a crime i.e., a victim of a crime means any person who has suffered damage, including physical or mental injury, emotional suffering, material loss or other injury or threat to his

basic freedoms and rights as a consequence of a committed crime, and persons under the age of 18 are considered child victims (Law to amend and supplement the Criminal Code, Article 1 amendment to Article 122). The term "victim" in criminal proceedings includes any person who has suffered damage as a result of the crime, such as a parent of a child whose child is exploited for begging; the owner of a vehicle that was damaged during the commission of the crime of human trafficking or child trafficking.

In addition to the legal framework, in 2018 the Government of the Republic of North Macedonia adopted the Standard Operating Procedures for dealing with victims of human trafficking. SOPs aim to enable coordinated action and partnership of all concerned institutions and organizations in the fight against human trafficking at the local, national and international level. SOPs provide guidance on the procedures and measures to be taken in order to identify and refer victims of human trafficking; coordinated assistance and support to victims of human trafficking; resocialization and reintegration; restitution of the victim and the criminal procedure.

Potential victims of human trafficking need to receive comprehensive information about their rights, the procedures that may result from the criminal-legal event, available services, etc., in order to be able to make an informed decision, i.e., to be able to independently decide on the actions taken. The information should be given in a language and manner understandable to the victim, clearly and patiently in order to establish mutual trust with the professionals providing protection (police officers, social workers, prosecutors, lawyers). During the initial conversation, the victim has the right to be heard by a person of the same sex, and if there are elements of the crime of human trafficking, a record is prepared for receiving a criminal complaint, which is signed by the victim. In the further course of the procedure, the victim has the right to counsel with a lawyer in the key stages of the criminal procedure, including the hearing before a competent court and in the procedure for compensation for damage.

After the identification, the competent institutions and organizations are obliged to focus on helping and supporting the victim by identifying the specific needs of the victim and preparing an individual plan for assistance, the implementation of which the victim will agree to, and which plan may be subject to modification and addition. The SOP, in addition to the laws relating to the participation of the victim in the criminal procedure, describes in detail the interventions that should be undertaken to help and support the victim for the duration of the criminal procedure.

ASSISTANCE AND SUPPORT TO VICTIMS OF HUMAN TRAFFICKING DURING THE CRIMINAL PROCEDURE

National legislation provides comprehensive authority to law enforcement authorities to take action to find the perpetrators and initiate criminal proceedings to prosecute the perpetrators of crimes related to human trafficking. Prosecution can be taken against any perpetrator, regardless of whether he is a citizen of the Republic of North Macedonia or has a residence permit.

In the criminal procedure law, there is a whole chapter dedicated to the rights of victims and victims in the proceedings, and special procedural protection is provided for the vulnerable categories of victims. Complementary to these provisions for the protection of child victims of human trafficking is the special chapter on guardianship of child victims of human trafficking from the Family Law, which ensures the protection of children. Namely, whenever the center for social work receives notification from the Ministry of Internal Affairs that a minor has been identified as a victim of human trafficking, it is immediately obliged to take measures to protect the person, rights and interests of the child and places him under guardianship.

The victims have the right to participate in the criminal proceedings as a victim by joining the criminal prosecution or for the realization of a property-legal claim for damage. The police, the public prosecutor and the court have an obligation to treat the victims with care and attention and to receive effective psychological and other professional help and support from authorities, institutions and organizations during the criminal procedure. Victims of human trafficking have the right to obtain a lawyer at the expense of the Budget before giving a statement and submitting a property legal claim and compensation for material and non-material damage from a state fund if the convicted person cannot provide the damage compensation. In practice, victims are prevented from exercising their right to compensation from state funds due to the fact that no law has yet been passed to compensate victims of crimes.[37] There is only a legal basis for compensation from state funds for minor victims of human trafficking, but more about the challenges in exercising this right in practice in the section on compensation for victims of human trafficking.

37 The draft law on the payment of monetary compensation to victims of has been published electronic register of regulations of the Republic of North Macedonia

SPECIAL PROTECTION MEASURES

The court has the obligation to determine specific measures of procedural protection in cases where the victim is a child who needs special care and protection or if the child is a victim of human trafficking, violence and sexual abuse. When it comes to a child victim of human trafficking, the court must yes determine individually or together with another special measure on protection , video and audio entry on the testimony and the examination on the child for yes everything uses how proof in the procedure . Among other things, the protection measures prevent the victimization of the victim by repeating his statement, revisiting the trauma, the feeling of fear and shame from the events in which he was a victim in several stages of the procedure. In exceptional cases, due to new circumstances of the case, the court may order re-examination of the child victim at most once more through the use of technical means of communication.

The specific measures of procedural protection are determined by the court at the proposal of the public prosecutor or the victim or at its own discretion when it is necessary to protect endangered and particularly sensitive victims. Most often, victims of human trafficking do not come into contact with a judge in a preliminary procedure and give their first statement in the premises of the basic public prosecutor's office for the prosecution of organized crime and corruption, so they do not have the opportunity to request procedural protection themselves, that is, the court at its own discretion to adopt a solution for procedural protection of the child victim. Some of the victims of human trafficking, especially children, are placed in a shelter during the period of giving their testimony to the prosecutor, so the date for the hearing is agreed upon with the Ministry of Internal Affairs and the Prosecutor's Office. At this stage of the procedure, the prosecutor has control over the procedure and the dynamics of taking actions before hearing the victim. Therefore, most of the time, the prosecutor submits a request to the court, and the court decides for the procedural protection of child victims to take a statement by the prosecutor through audio and video recording in the presence of a proxy, guardian, psychologist and other experts, if necessary.

CONCLUSIONS:

Crime affects everyone differently. Victimization often causes trauma that depends on the level of what a person has experienced in their lifetime. In general, victimization often affects people on an emotional, physical, financial, psychological and social basis. It is important to remember that victims do not choose to be victims.

Being a victim of crime is an unpleasant and unwanted life experience. The impact of criminal victimization is to seriously throw victims into a state of shock, fear, anxiety and anger. The emotional, physical, psychological and financial consequences of crime can be devastating for victims. Coping with and recovering from victimization is a complex process. Unfortunately, some victims may never be able to do so.

The UN Protocol and the Council of Europe Convention require domestic laws to prescribe effective, proportionate and dissuasive penalties for the perpetrators of the crime of trafficking in human beings.

In order to be able to consistently apply the international provisions for determining the minimum standards for the rights, support and protection of victims of crime, it is necessary for promising institutions to have sufficient knowledge, experience and capacity in order to protect the victims quickly and efficiently, find the perpetrators, bringing them before the justice system and their just punishment in accordance with legal regulations.

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THE SYSTEM OF FREE LEGAL AID IN THE REPUBLIC OF NORTH MACEDONIA: INSTITUTIONAL CAPACITIES AND APPROPRIATE REGIONAL DISTRIBUTION

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ABSTRACT

Access to justice provided for all citizens under equal conditions is both a right of citizens as well as an obligation for state institutions. In Republic of North Macedonia, state provided access to justice is guaranteed under the Law on free legal aid that provides opportunity for every citizen, particularly those who live on low income and belong to marginalized categories to realize their rights with a state provided support. However, the mare adoption of a law does not mean a job well done on its own. This paper provides analysis on the instuitional capacities and their appropriate regional distribution throughout the country and how it affects the provision of effective and efficient services to citizens.

KEY WORDS: *justice, free legal aid, institution, administrative capacity.*

INTRODUCTION

The rule of law is a top priority that every modern state aims for. However, as there is nothing ideal, that priority has never been fully realized anywhere, but is a constant inspiration and aspiration for reforms and improvements. Accordingly, there are countries in the world in which a high degree of the rule of law has been achieved, there are countries in which there is a sustainable level of the rule of law, but there are also countries where the rule of law has been replaced by the rule of law of their authoritative elites.

Access to justice under equal conditions and without discrimination on any basis is one of the key foundations of the rule of law. An estimated four billion people around the world live outside the protection of the law, mostly because they are poor or marginalized within their societies (OECD, OSF, 2016). Access to justice is not only a basic human right. It is at the same time an essential prerequisite for the protection and promotion of all other civil, cultural, economic, political and social rights. Hence, it has already been said that the opposite of poverty is justice, because limited access to justice challenges both individuals and communities in seeking their rights and defending against injustice.

Poor people globally say that the ability to access justice is one of their top priorities. It is a priority of both the 2030 Agenda and one of the 17 Sustainable Development Goals which represent a global call to action to end extreme poverty, ensure a sustainable future and development for our planet and enable all people to enjoy peace, justice and prosperity equally. Goal 16.3 commits the international community to promote the rule of law at national and international levels and ensure equal access to justice for all by 2030.

In order to ensure realization of the right of access to justice, countries around the world have established systems of free legal aid that protects the rights of the most vulnerable and socially endangered categories of the population in cases where the interests of justice require it. Such a system implies the provision of mechanisms that, under certain conditions, will enable persons whose material circumstances threaten the possibility of protecting their rights, to exercise those rights. Regarding the situation in North Macedonia, considering that according to the latest data from 2020, the rate of poor people in the country was 21.8 percent (State Statistical Office of RNM, 2022) that is, every fifth person lives in conditions below the poverty line, ensuring access to justice for the poor remains a major challenge for our society.

THE LEGAL FRAMEWORK FOR FREE LEGAL AID IN REPUBLIC OF NORTH MACEDONIA

Equal access to justice for all citizens is a basic human right, the realization of which must be guaranteed by the legal system of the state. The Constitution of the Republic of North Macedonia, as the highest legal act, does not directly guarantee the right to free legal aid, but it does so indirectly through the provision that guarantees equality to all citizens. Hence, the existence of the Law on free legal aid is only one step towards realizing this right.

The Law on Free Legal Aid in our country was first adopted in 2009 and came into effect in July 2010. It was a complex legal solution whose main goal was to enable equal access to justice through free legal aid for vulnerable categories of citizens who, due to a lack of financial resources, cannot solve the legal problems they face themselves (Law on free legal aid, 2009). During 2011, 2014 and 2015, this law underwent legal amendments, but despite that, during its very implementation, a series of problems came to the surface that seriously limited the access to justice of citizens, and it was brought into question the purpose for which it was enacted. The shortcomings were seen in the vagueness of the legal text, the weak institutional setting, as well as its non-functionality and non-compliance with the legal needs of the population.[38]

Hence, since this law failed to meet those most in need of legal aid in terms of fulfilling the principle of equality of all before the law and before the institutions, it was replaced by the new Law on Free Legal Aid from May 2019 year, which prescribed novelties that are expected to have a positive impact on the promotion of the right of natural persons to access to justice and fair judicial protection, in fact envisaged as its main goal (Law on free legal aid 2019, article 2).

The Law on free legal aid now provides for two forms, “primary” and “secondary”, and at the same time provides for different criteria that applicants must meet. Primary legal aid can be requested by any person, and secondary legal aid can only be used by persons who meet certain conditions (Law on free legal aid 2019, articles 17,18,19 and 21).

Primary legal aid is provided to any interested person with residence or stay in the territory of the state. The initial meeting with the authorized providers is aimed at explaining to the interested person the nature of the problem or directing whether the problem is a legal issue, whether it is within the scope of the legal services they provide, as well as the types of legal assistance that are most suitable for the face

38 For more information, visit: https://www.fosm.mk/CMS/Files/Documents/javna-politika-062014.pdf

(Law on free legal aid 2019, article 7). With this law, providers are empowered, in addition to general legal advice and information, to provide assistance in filling out forms and forms, to mediate requests for secondary legal assistance, as well as to prepare petitions to the Commission for Protection against Discrimination and the National ombudsman and requests for the protection of freedoms and rights to the Constitutional Court. At the same time, the providers do all this without any compensation and do not have the right to act in the name and at the expense of the applicant, during the procedure for the primary legal aid (Ibid.). Primary legal assistance can be provided by an authorized official of the Ministry of Justice, authorized associations and legal clinics.

Regarding the second form, secondary legal aid, the law clearly defines it as aid granted to a person whose request is justified, who needs expert legal aid from a lawyer for a specific legal matter and who is unable to pay the costs of the procedure because of his financial situation. Secondary legal aid includes representation in proceedings before a court, a state authority, the Pension and Disability Insurance Fund of the Republic of North Macedonia, the Health Insurance Fund of the Republic of North Macedonia and persons exercising public powers (Law on free legal aid 2019, article 13). This includes representation before all levels in civil, administrative proceedings and administrative disputes, representation before a notary in probate proceedings, compilation of debtor's submissions before a competent executor, when enforcement is carried out by selling real estate, as well as exemption from costs in accordance with the provisions provided for in the Law on Free Legal Aid or in any other law (Ibid.).

The applicant for secondary legal aid, independently or with the assistance and support ofthe providers of primary legal aid, fills out a request for secondary legal aid to which he/she encloses a statement on his / her financial situation and the financial situation of his / her family members, as well as all the documents they own and can provide, thatrefersto the legal issue for the solution of which legal assistance is required. The authorized official from the Ministry of Justice, within 15 days from the receipt of the request, obtains all the data and determines whether the applicant meets the conditions for approval of secondary legal aid. It prepares a notification denyingthe request for secondary legal aid or a confirmation of approving it. If the request is approved, the officialorganizes the first meeting between the lawyer and the beneficiary of the secondary legal aid, stating the date of the meeting in the confirmation (Law on free legal aid 2019, Article 23).

THE REGIONAL DEPARTMENTS OF THE MINISTRY OF JUSTICE AS PROVIDERS OF FREE LEGAL AID

As it was mentioned earlier, the Ministry of Justice, through the employees of the ministry itself and its regional departments[39], is one of the most significant actors in providing free legal aid in the area of RSM.

Authorized officials of the Ministry, in accordance with the law, appear first as primary legal aid providers, providing: initial legal advice on the right to use free legal aid, general legal information or advice, as well as assistance in completing the request for secondary legal aid help. Also, according to the existing law, the employees in the regional departments of the Ministry of Justice, at least those who have been authorized to do so, also decide on the admissibility of the submitted requests for secondary legal assistance by passing actual acts. The Ministry of Justice, as a secondary authority, decides only after submitted objections to the refusal of secondary legal aid by administrative act, and in this way decentralization in the decision-making process was achieved.

Hence, it is obvious that a large part of the burden of providing free legal aid falls precisely on the regional departments, and for those reasons, they are considered in more detail in order to determine the level of their staffing, effectiveness and efficiency in handling. In that sense, effectiveness implies the requirement to select the right goals, and then, using the existing resources, to realize the chosen goals. Efficiency represents a request to realize the selected goals, with minimal use of existing resources, or rather with their rational use (Sudit ,2012).

39 Within the Ministry of Justice, the scope of work related to free legal aid is organized and implemented by the Sector of Free Legal Aid and Political System. The work of the Sector is carried out through: The Department for free legal aid and the Regional Departments. (Rules for the internal organization of the Ministry of Justice no. 01-2161/1 from 19.06.2015 and 01-5602/1 from 21.12.2019)

TABLE 1: *Number of employees per regional departments and offices and number of persons authorized for signing acts for approval of secondary legal aid (Information received upon Decision on approval of the Request for free access to public information UP1 No. 19-2393/2022 of 21.10.2022)*

	REGIONAL DEPARTMENTS WITH OFFICES	NUMBER OF EMPLOYEES	PERSONS WITH AUTHORIZATION
1.	RD Bitola	9	1
2.	RD Valandovo	2	1
3.	RD Vinica and Kochani	5+1 (6)	1
4.	RD Gevgelija	2	1
5.	RD Gostivar and Debar	8+2 (10)	2+1 (3)
6.	RD Delchevo	1	1
7.	RD Kichevo	9	1
8.	RD Kriva Palanka and Probishtip	1+1 (2)	1+1 (2)
9.	RD Kumanovo and Kratovo	6 +1 (7)	1
10.	RD Makedonski Brod	1	1
11.	RD Negotino and Kavadarci	4+3 (7)	1+1 (2)
12.	RD Prilep, Demir Hisar and Krushevo	1+1+0 (2)	1
13.	RD Ohrid	2	1
14.	RD Radovish and Berovo	1+1 (2)	1+1 (2)
15.	RD Resen	3	1
16.	RD Sveti Nikole and Veles	2+0 (2)	1
17.	RD Struga	2	1
18.	RD Strumica	2	1
19.	RD Skopje – Gazi Baba, Karposh, Kisela Voda, Centar, Chair	1+2+2+1+2 (8)	1+1+1+1+0 (4)
20.	RD Tetovo	21	2
21.	RD Shtip	2	1
	TOTAL	102	30

It is obvious from the data attached in Figure 1 that the Ministry of Justice has decentralized to a total of 21 regional departments. From the total number of employees, 102 in all regional departments, as of November 2022, 30 employees have been authorized by the Minister of Justice to decide upon the submitted requests for secondary legal aid and to sign acts and those persons are accordingly distributed in 28 offices. This situation is identified as positive, compared to the data from the Annual Report on the application of the Law on Free Legal Aid for 2021, when there was a total number of 99 employees, out of which only 20 people were authorized to sign the acts - confirmation and notifications.

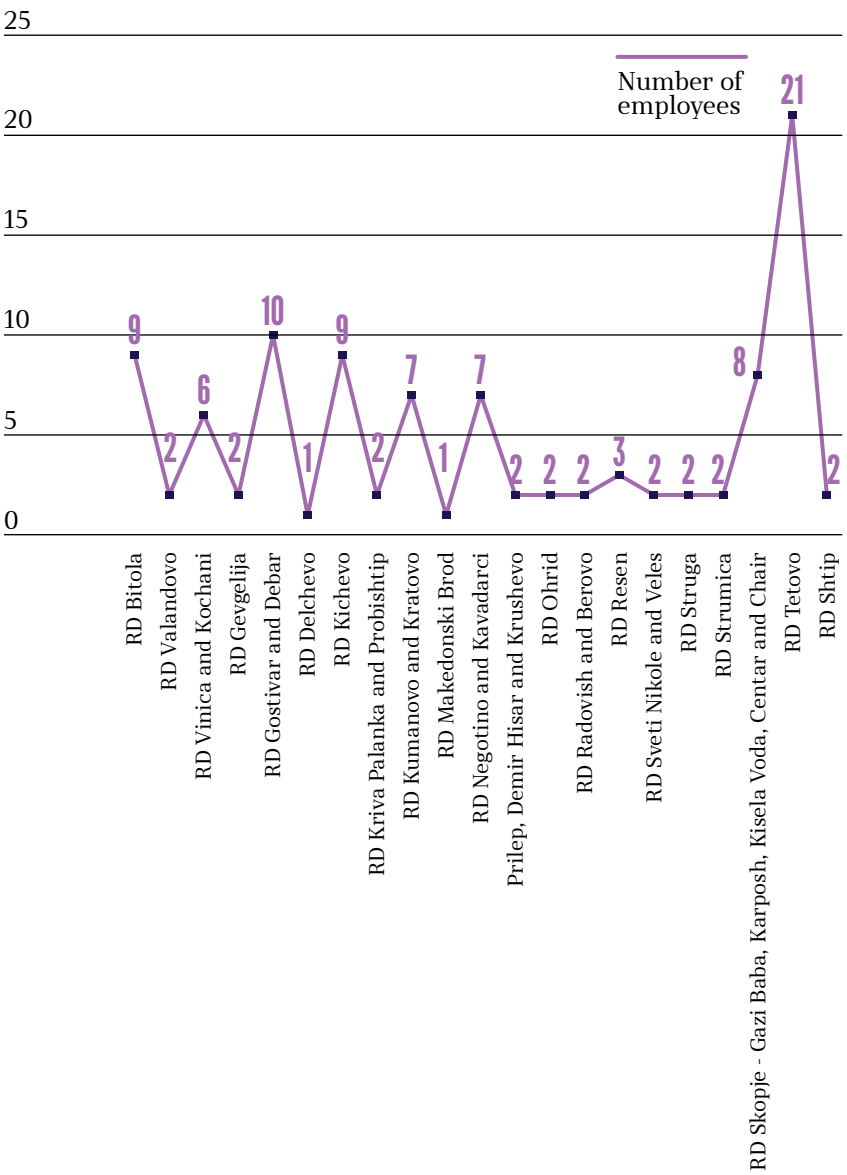
TABLE 2: *Number of submitted, approved and rejected requests by year (Information received upon Decision on approval of the Request for free access to public information UP1 No. 19-2393/2022 of 21.10.2022 and The annual report on the application of the Law on Free Legal Aid for 2021 of the Ministry of Justice from 12.31.2021)*

	2020	2021	AS OF 06.2022
Number of submitted requests	207	295	93
Number of requests approved	132	203	75
Number of rejected requests	49	65	14

The tendency to increase the number of employed persons with authorization can be said to be directly proportional to the increase in the number of submitted requests for secondary legal aid and the effective handling of them. As shown in Figure 2, in 2021 the number of submitted requests for secondary legal aid increased by 42% in relation to 2020. The number of approved requests for secondary legal aid in 2021 increased by 53%. The number of rejected requests for secondary legal aid decreased in 2021 compared to 2020 by 7.2%. The situation is also optimistic for the first half of 2022, especially considering that 85% of the processed requests received a positive epilogue for the stakeholders. On the other hand, the number of submitted requests does not seem to follow the growth, and assuming that the trend remained at that level until the end of the year, this means that by the end of 2022, the number is probably less than 200 requests, which is a decrease of 1/3 of the previous year.

However, the analysis of the data also raises some other questions.

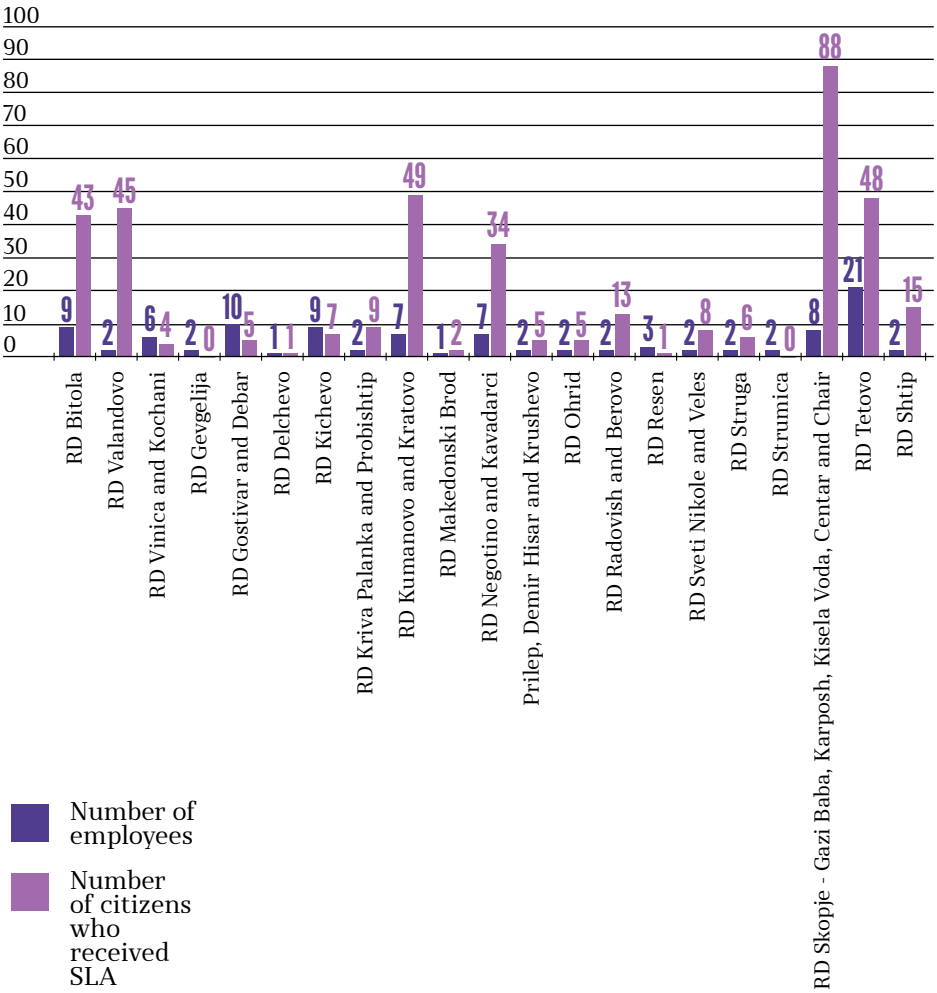
FIGURE 1: NUMBER OF EMPLOYEES PER REGIONAL DIRECTION OF THE MINISTRY OF JUSTICE (OWN DEPICTION – INFORMATION RECEIVED UPON DECISION ON APPROVAL OF THE REQUEST FOR FREE ACCESS TO PUBLIC INFORMATION UP1 NO. 19-2393/2022 OF 21.10.2022)



It is evident from Figure 1 that there is an uneven distribution of the number of employees by regional departments. Departments with one or two employees dominate, more than half of the regional departments, and yet drastically higher numbers of nine, ten, and even twenty-one employees are visible in the regional department in Tetovo. Hence, it is more than expected to ask the question: "According to what criteria is the number of employees in the respective regional department determined?"

A logical answer to the above question would be that the number of employees in the regional departments is determined according to the volume of work or, in the specific case, the number of submitted requests for secondary legal assistance that should be considered and according to which the authorized person in that regional department should make a decision. However, from the data presented in Figure 2, it is obvious that this is not the criterion.

FIGURE 2: CORRELATION OF THE NUMBER OF EMPLOYEES AND SUBMITTED REQUESTS FOR SLA (OWN DEPICTION - INFORMATION RECEIVED UPON DECISION ON APPROVAL OF THE REQUEST FOR FREE ACCESS TO PUBLIC INFORMATION UP1 NO. 19-2393/2022 OF 21.10.2022)



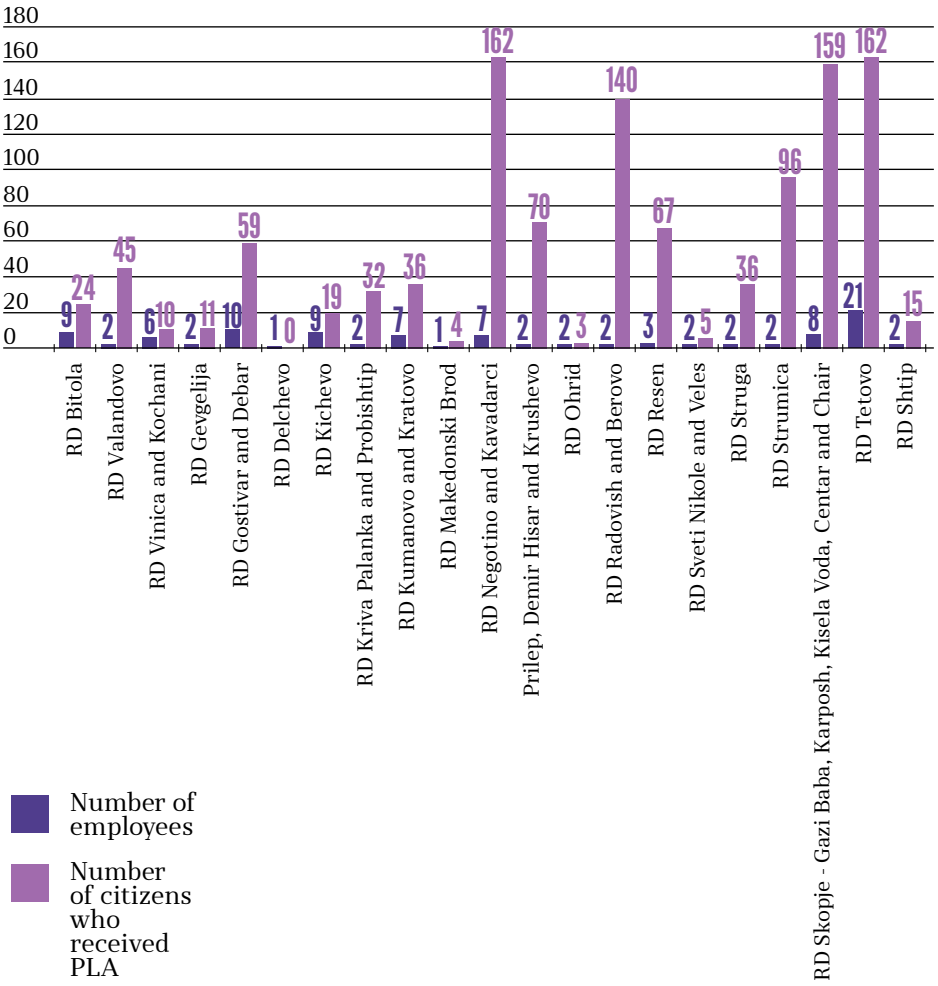
Namely, approximately the same number of requests, about 40, are processed by the RD Valandovo with only two employees, the RD Bitola with 9 employees, but also the RD Tetovo with as many as 21 employees. On the other hand, RD Gostivar and Debar with 10 employees handle as many as 5 requests, and 88 requests in the area of RD Skopje are realized by a total of 8 employees distributed in the five regional offices.

Bearing in mind the assumption that the decisions to approve or disapprove the request for secondary legal aid are ultimately made by the authorized persons, who even in the regional departments with the most employees are two in number, we also took into account the primary legal aid which is provided by the regional departments of the Ministry of Justice, in order to justify the distribution of employees, but here too we did not establish any regularity.

According to the data shown in Figure 3, it is evident that about 160 people received primary legal assistance in regional departments with seven and eight employees each, RD Negotino and Kavadarci and RD Skopje, approximately the same numbers that were served in RD Tetovo with a total of 21 employed persons. Even the situation in RD Radovish and Berovo is indicative, where 140 people received primary legal

assistance from as many as two employees. For these reasons, we can note that even according to this criterion, no logical conclusion could be drawn about the concept of distribution.

FIGURE 3: CORRELATION OF THE NUMBER OF EMPLOYED PERSONS AND THE TOTAL NUMBER OF PERSONS WHO RECEIVED PPP, ACCORDING TO DATA FOR 2021 (OWN DEPICTION - INFORMATION RECEIVED UPON DECISION ON APPROVAL OF THE REQUEST FOR FREE ACCESS TO PUBLIC INFORMATION UP1 NO. 19-2393/2022 OF 21.10.2022)

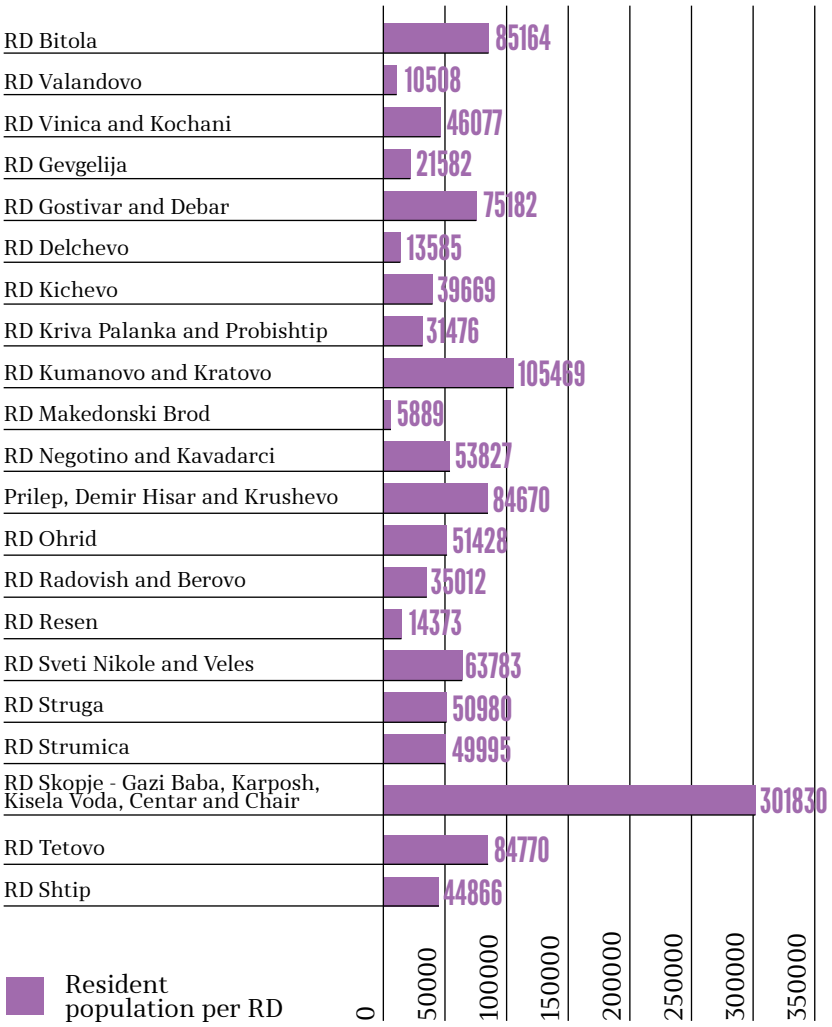


In addition, we considered another criterion according to which we tried to give an answer to the question "According to which criterion is the number of employed persons in the respective regional department determined?", and that is the total resident population by municipality, according to the data from the last census conducted in 2021 year.

Figure 4 is a graphic representation of the regional departments, according to the number of population that falls under their authority. It is obvious that the RD Skopje (Municipalities of Gazi Baba, Karposh, Kisela Voda, Centar and Chair) dominates statistically with over 300,000 people, followed by the RD Kumanovo and Kratovo with over 100,000 people, however in this case we are talking about regional departments which, as we mentioned earlier, have eight or seven employees each . According to the number of inhabitants, RD Tetovo is a regional department that would serve

approximately the same number of citizens as RD Bitola and RD Prilep, Demir Hisar and Krushevo, more than 80,000 citizens, but unfortunately the last one has only two employees.

FIGURE 4: TOTAL RESIDENT POPULATION PER REGIONAL DIRECTION OF THE MINISTRY OF JUSTICE (OWN DEPICTION, SOURCE: STATE STATISTICAL OFFICE, CENSUS OF 2020, HTTPS://WWW.STAT.GOV.MK/PRIKAZISOOPSTENIE.ASPX?RBRTXT=146)



Hence, it is more than obvious that the system of employment in these regional departments is unplanned, spontaneous and without vision, not taking into account all the parameters that are needed for a professional and civic-oriented service that will be a valuable service center for citizens and help them to exercise their rights.

In addition, when we talk about effective and efficient justice, great emphasis should be placed on the timeliness of the action. The efficient exercise of rights is usually equally important for the parties as their full exercise. This is due to the fact that the decision-making on the requests of the parties in most cases does not suffer delay. Delayed justice is close to injustice, and in cases where it becomes redundant due to its delay, it also represents injustice. The same applies to provision of free legal aid that is untimely, and at some point it is crucial and necessary.

The law on free legal aid provides several procedures for deciding upon a submitted request, namely:

- Regular - as soon as possible, and at the latest within 15 days from the day of submission of the request, the regional department will collect data from all institutions on the property, material and financial situation and will make a decision whether to approve the request or not;
- Urgent - when there are short deadlines by law (8, 15 days) or when they have been determined by an institution or authority. In this case, the regional department decides within 2 days of submitting the request and will approve the secondary legal aid, but will check the property, material and financial situation of the applicant and the members of his family with whom he lives in a joint household in the next 15 days – which is a prerequisite for accurate and truthful information, otherwise negative consequences may occur;
- *Without checking the applicant's financial and material situation* - which is applied only and exclusively if there are special circumstances (Law on free legal aid, 2019, art. 23, 25).

In this context, the principle position of the ministry is that, in principle, the procedure conducted by the authorized official following the request for the approval of secondary legal aid does not exceed the period of 15 days, determined in the Law on free legal aid, and all provisions are respected legal deadlines.[40]

However, the situation on the ground is not always so positive. The uneven distribution of employees, as well as of persons authorized to act on submitted requests, contributes to the fact that access to justice is not always so simple, but all the more timely, efficient and effective for everyone.

CONCLUSION

The right of access to justice is a basic human right and a key condition for the realization of the legal order and the principle of the rule of law. When it comes to equal access to justice, this concept is much broader than what we mean by justice, because equal access to justice, on the one hand, also implies the existence of regulations that take into account the needs and specific circumstances of those citizens who most often are called vulnerable or marginalized, but, more importantly, it also implies their application that does not depend on the social power of those who seek protection of their rights.

40 Information according to the Decision on the Approval of the Request for Free Access to Public Information UP1 No. 19-2393/2022 of 21.10.2022

Access to effective and efficient justice and free legal aid is determined by the legal framework and the practices of (non)implementation of the same by providers and other participants in the system of free legal aid. The system of free legal aid in North Macedonia, regulated by the Law on free legal aid, is largely starting to function on the ground, with the Ministry of Justice, through employees in the ministry as a central institution and its regional departments, being one of the most significant actors in providing free legal aid in the area of RNM.

In order to carry out their work in a timely and quality manner, regional departments should be staffed with a sufficient number of quality employees, with the intention of expanding the network of regional departments in all cities, because only in this way will access to justice be timely, efficient and effective. However, effectiveness tells us to work towards the right goals, while efficiency tells us to do things the right way. For those reasons, the number of employees per regional department, according to the current situation, should be optimized and the maximum number of executors in one regional department should be limited according to predetermined criteria that will be transparent and verifiable.

In this way, a step forward will be made to creating a professional and efficient, accountable and transparent service that will provide quality services for citizens and protect their rights.

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INTER-PRISONER VIOLENCE AND MARGINALIZED INCARCERATED POPULATION IN THE ECHR PRACTICE

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ABSTRACT

Protecting prisoners from violence and respecting their basic human rights, and dignity is the primary role of authorities in penitentiary institutions. Another role is connected to their treatment and resocialization. But, during incarceration, violence, unfortunately, is inevitable part of daily life, especially in cases when prisoners come from marginalized groups. The ECtHR practice has many cases where prisoners' rights have been breached, many examples of state authorities' steps and measure which have not been appropriate to someone's situation.

The paper gives a general overview of the phenomenon of violence in penitentiary institutions, and its different types. Also, through a case from the ECtHR practice, we explain how state authorities should not protect marginalized prisoners, but what else could be done in such cases.

KEY WORDS: *European Court of Human Rights, human rights, incarcerated population, inter-prisoner violence, penitentiary institutions*

INTRODUCTION

In the context of penitentiary institutions, prison administration has a general obligation to protect prisoners from any type of violence, and excessive use of force.

Today, violence in penitentiary institutions is a phenomenon which is really hard to be addressed, mostly because of its rarely reported. Why is it rarely reported? In many cases, violence in penitentiary institutions is connected to revenge or snitches get stiches. Also, prisoners are incarcerated, and if they report a violent event, they will have to continue to live in the same place as the violent prisoner.

Interpersonal violence in prisons is directly in correlation to the characteristics of incarcerated population, then with prisoner surroundings, dynamic interaction with other prisoners, prison's employees, and the physical and social context of subjects. Very often physical restrictions result in decreasing cases of violent behavior, but they also sometimes increase the possibility for it. Why? Because of deprivations and frustrations, prisoners lose their legitimacy and there is an escalation of violence.

Main theoretical explanations of violence in prisons are "the rational choice" and "the social approach" (Indermaur, 1996). Maybe the best explanation is the one that incorporated both of them, the rational choice in the context past and present social and cultural conditioning in correlation with surroundings. Additionally, it is the fact that prisoners are detained with other people who may have similar rational choice and conditioning (Genders & Morrison, 1996).

For violence, the analysis of interconnection between past experience, personal values, motivation, drug and alcohol abuse, and situational possibilities. Irwin (1980) has concluded that prison's environment "imports" different individual personalities, life expectations, and those in correlation with the prison result in violent behavior.

Acceptance of violence in prisons is a result of institutionalization, that asks for accepting norms and values of segregated life, where all the aspects of life happen at one place and under the control of the same authority (Aungles, 1994). Compared to society where violence is in negative correlation with social status and where people with lower social status and power are violent, in prisons the correlation is positive and there, prisoners with highest social status behave violently (Indermaur, 1996; Jones, 2000).

The paper explains the most common types of violence in penitentiary institutions, and uses cases from the practice of the European Court of Human Rights to explain how authorities have acted when prisoners were from any of the marginalized groups.

TYPES OF VIOLENCE IN PENITENTIARY INSTITUTIONS

Brasweel et al. (1994) talk about interpersonal and collective violence in prisons. What differs them? The relation between violence in the prison and the social order in it.

When collective violence happens, there are changes and decomposition in the normal functioning of the institution. For an example, the prison riots. On the other hand, interpersonal violence is about events and acts that are happening on a daily basis in the prison. But, being present daily, it could generate fear among prisoners and prison's staff, and endanger the normal functioning of the institution (Bottoms, 1999).

Interpersonal violence is individual (or in small groups) and when it happens, we must analyze life trajectories of those who are violent, other individual characteristics, and the emotional situation they were in at the moment of the violent act.

Starting from prisons as special type of social organization, interpersonal violence is a result of the daily organization of life, detention, the presence of behavioral pattern which chronologically and spatially is the same, the complexity of relations between prisoners and staff, many limitations of movement and behavior, the existence of a system which has two sides – one is the ones who are guarding and the other side which is guarded (Bottoms, 1999).

Depending to whom the violence is directed towards to, in prisons we differ several types: suicide, attempt for suicide, and self-harm; inter-prisoner violence (physical, psychological, sexual violence); violence from prisoners towards prison staff; and violence from prison staff towards prisoners.

- → **suicide, attempt for suicide, and self-harm;**

Violent subculture in prisons together with the effects of institutionalization results in despair and self-hatred. When a prisoner is in a stressful situation without any means to cope with the strain, he/she directs their negative emotions towards themselves. "Self-destructive breakdown" is a special condition identified as unique and only present in prisons (Johnson & Toch, 1982).

- → **inter-prisoner violence;**

Inter-prisoner violence is the most common type of violent behavior happening in prisons. Why? Namely, in prisons there are different categories of prisoners who at a given moment of their life didn't behave in accordance to legal norms, so for them using violence will not be problem as a solution of conflicts. Prisons ask faster adjustment to daily routine, and to the way the prison functions. Every problem, every deprivation, even violence, have bigger importance in prisons.

Goulding (2007) concluded that in prisons most common types of interpersonal violence are: payback violence, predatory violence, and everyday or so called random (impulsive) violence.

Predatory violence prisoners use to strengthen their position in to the prison environment or to recruit members for their groups or gangs. Their target are younger incarcerated people, who are weaker, have some type of addiction, and who because of fear are in a need of protection from other prisoners. "Prisons are as a jungle, here only the fittest survives" (Goulding, 2007: 409). This type of violence, is used by prisoners as an instrument (which is why it is sometimes called instrumental) to gain something, for an example, drugs or sexual services.

Impulsive violence includes acts of violence between prisoners in connection to situational circumstances, hate or impatience between prisoners. These acts are planned.

→ **violence from prisoners towards prison staff;**

Maybe the rarely researched type of violence in prisons is the one from prisoners towards prison staff, who also have high risk of violent victimization. The combination between the theories of life style and routine activities, have shown that the risk to victimization is connected to visibility and availability of the staff, then their physical proximity to prisoners, the possibility for them to become a target of violent attack, and the use of security measures for prevention of violent behavior and victimization (Cohen & Felson, 1979; Hindenlang et al., 1978). We, also, need to add the use of means of force from prison staff (when they are necessary) and the conflict situations are result of their use.

Also, the risk of victimization decreases with age (younger have higher risk), employees with less years of experience or have less training (still do not have passed the necessary number of trainings) (Steiner & Wooldredge, 2017; Lombardo, 1989; Sparks et al., 1996). In regards to gender, there are different conclusions around the risk of victimization, so for some authors the risk is higher ((Liebling et al., 2011), and for others lower (Sorensen et al., 2011).

The macro level factors are in correlation to crowding prisons, the level of security, the staff' changing rate (when staff is changed more often, there is a higher risk), and the rate of prisoners' cooperation and participation in treatment programs (Gaes & McGuire, 1985).

Lahm (2009) has concluded that beside the cruelty of prisons, the attacks of prison staff have personal and psychological context. This is confirmed by the conclusion that violent behavior at the outside world means violent behavior inside the prison

(theory of importation), the length of the sentence, the low level of participation in the treatment programs (theory of deprivation).

→ **violence from prison staff towards prisoners.**

The primary classification of this type of violence is to official violence (where all the legal and disciplinary sanctions are included), and hidden violence (all the acts which are connected to sanctions and are forbidden). Hidden violence is rare, and when it is used is in a form of revenge.

All the mentioned and explained types of violence in prisons, with exclusion to the first, can happen vertically and horizontally, in dependence to the place in hierarchy offenders and victims have. In most cases, vertical is the violence from prisoners towards prison staff and vice versa, and horizontal is the inter-prisoner violence.

INCARCERATED POPULATION IN THE PRACTICE OF ECHR

The ECtHR has frequently had ruled on complaints related to violations of different rights in the Convention (European Convention on Human Rights) related to treatment of prisoners, and also, restrictions or interferences with their rights. Same as other people, prisoners enjoy the fundamental rights and freedoms guaranteed with the Convention. Any restrictions need to be justified, with justifications found in security, prevention of crime and disorder.

The key principle in the case law of the Court is the necessity all persons deprived of their liberty to be treated with respect for their dignity and human rights.

The most common rights which could be violated by states in cases of imprisonment are connected to conditions of imprisonment (article 3, article 5, article 8); transport of prisoners; contact with the outside world (article 8, article 10, article 12); health care in prison (article 2, article 3, article 8); good order in prison (article 3, article 6, article 8); special high security and safety measures (article 3, article 8); special categories of detainees (article 3, article 8); prisoners' rights in judicial proceedings (article 6, article 34); freedom of thought, conscience and religion (article 9); freedom of expression (article 10); prison work (article 4); prisoners' property (article 1 of Protocol 1 to the Convention); education (article 2 of Protocol 1 to the Convention); right to vote (article 3 of Protocol 1 to the Convention); prohibition of discrimination (article 14); right to an effective remedy (article 13); prisoners' rights in extra-territorial context (article 3).

Authorities in prison have the obligation to take measures of good order in the prisons, and in order to protect prisoners by violent acts committed by other prisoners. Another

obligation is to adequately respond to any arguable claim of such ill-treatment by conducting an effective investigation (and if necessary, criminal proceedings).

In cases of inter-prisoner violence, the Court analyses whether the authorities have known that a prisoner was suffering or has been at risk of being a subject of an ill-treatment at the hands of another cellmates, and if so, whether the administration of the penitentiary institution has taken reasonable steps to eliminate the risks and to protect the applicant prisoner (Premininy v. Russia, 2011; Gjini v. Serbia, 2019; D.F. v. Latvia, 2013).

THE CASE OF X. V. TURKEY (24626/09, 09/10/2012)

The applicant is a homosexual man who was born in 1989, and who was detained in Eskişehir prison. On 24th of October 2008, the applicant turned himself to the police, admitting he had committed several crimes, after which he was placed in a pre-trial detention with heterosexual detainees. On 5th of February 2009, as a result to intimidation, threats, and harassment, he asked to be transferred into an individual cell, which request was granted. The cell lacked washing facilities, was dirty and poorly lit (such places were actually used as solitary confinement). He was deprived of any social contact to other prisoners, any social activity, had no access to outdoor activities.

In April 2009, the applicant complained about his treatment and asked to be treated equally as the other prisoners. He stated that he was treated differently only because of his sexual orientation. On the 25th of May, his complained was declined by the court on the basis that law on the conditions of detention do not apply to people in pre-trial detention. He appealed this decision, but the appeal has been rejected.

In July 2009, the applicant has been transferred to a psychiatric hospital. The diagnose was that he is suffering from depression. After a month in the hospital, he was transferred back to the prison, where he was placed in a cell with another homosexual detainee, but later on he was returned to solitary confinement from November 2009 until February 2010, when he was transferred to another prison and was placed in a shared-cell where he had normal living conditions.

On the 12th of May 2009, the prisoner brought his case in front of the ECtHR.

He argued that because of his sexual orientation he was placed in an individual cell for 13 months, where he had lack of social interaction, and poor conditions. The consequences of those conditions have made irreversible and irreparable effects on his mental and physical state, which constitutes breach of Article 3 of the Convention,

and because all these acts were undertaken because of his sexual orientation, he argued that there is also a breach of article 3 in conjunction with article 14.

The state argued that there is no breach, explaining the minimum gravity under article 3 has not been reached. Then they explained that the applicant requested to be placed in an individual cell, following the threats and harassment by his fellow cellmates, because of his sexual orientation. The cell had all the means necessary, and he has been alone in it, only until another homosexual prisoner arrives in the prison.

The Court has concluded that the applicant had spent 8 months and 18 days in an isolated detention, having taken into account his stay at the hospital and the period of time he was sharing his cell with another inmate. The applicant has been accused of non-violent crimes, and he surrendered himself. Also, the Court took into account the conditions he was living in.

When the Court evaluates whether a solitary confinement is in breach of Article 3, analyses the particular conditions of the case, the severity of the measure, the length of detention, the intended objective and its effects on the detainee (*Rohde v Denmark* App No. 69332/01). In the case of the applicant, although his safety has been taken into account, the measures taken were disproportionate. His total exclusion from the life in the prison, the denial for outdoor activities, were not justified. In accordance to the Convention, the Court has held that the conditions in the cell caused him mental and physical suffering, and a strong feeling of being stripped by his dignity. Not having an effective remedy aggravated those conditions, which constituted "inhuman or degrading treatment", in breach of Article 3.

In regards to the article 14, the Court reiterated that this article protects people from discrimination on the grounds of sexual orientation. In a case where a difference in treatment relates to a prisoner and aspects of his private life, it will be justified only if powerful arguments exist. The state did not assess the situation in a proper way, and all the measures taken have been taken only because the applicant had a different sexual orientation. Because of this, the Court held a violation of Article 14 in conjunction with Article 3.

CONCLUSION

Violence is one of the most common problems in penitentiary institutions. It has many types, can happen between different actors, has many consequences to everyone. State authorities have the obligation to protect prisoners inside institutions, and should in its margin of appreciation guarantee their rights.

One of the biggest challenges in prisons is the protection of incarcerated population from marginalized communities. The practice of the Court has shown that there are cases where authorities have taken all the measures that could be reasonably be expected of them to protect the applicant from physical hard, such in Stasi v. France, 2011, but cases such as X. v. Turkey where they have taken inappropriate measures.

The challenge of violence in penitentiary institutions is even higher, because of the pattern of life, daily planned life, limitations to movement, deprivations, and frustration. This is why treatment programs are crucial in changing values among incarcerated population, their perception towards marginalized communities, but also a well-trained and professional prison staff.

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RESPECTING HUMAN RIGHTS DURING THE COVID PANDEMIC

Dr. Ljube Nikleski

ABSTRACT

The COVID-19 virus pandemic has caused global effects of unprecedented proportions, surpassing any other event in human history. The rapidly spreading health crisis, which has affected nearly all countries worldwide, has resulted in unforeseen economic and social consequences that humanity is still grappling with. Considering the seriousness and uncertain course of events, numerous governments, including our own, deemed it necessary to declare a state of emergency in order to effectively deal with the dangers and damages caused by the new coronavirus.

However, as a state of emergency grants the government the authority to take actions beyond what would be allowed under normal circumstances, it raised concerns among human rights advocates. After the President of the Republic of North Macedonia signed the decree declaring a state of emergency on March 18, 2020, the Helsinki Committee publicly emphasized that a state of emergency must never serve as an excuse for competent authorities to violate human rights. Protection of Vulnerable Citizens and Respect for Human Rights The Committee stressed that the measures to be taken must not deviate from the obligation to protect the most vulnerable categories of citizens, and human rights and freedoms must be taken into account. During the state of emergency, the state must not arbitrarily prevent the enjoyment of human rights or arbitrarily restrict individual freedoms for which it is responsible to ensure and protect.

The Helsinki Committee also warned that, according to domestic and international standards, the limitation of rights and freedoms must not be discriminatory based on gender, race, skin color, language, religion, national or social origin, property, or social status. Arbitrary intervention would be contrary to the public interest and the common good, and any regulations enforced by the government would be contrary to international law.

KEY WORDS: *protection, human rights, pandemic, rule of law, lockdown*

INTRODUCTION

The pandemic of the COVID-19 virus has caused global effects on a scale incomparable to any other event in human history. The fast -paced crisis, which has made their way in the covenant, are in the process, and forcing the crucial in. In view of the seriousness and the inevitable flow of the people, a large number of governments, including ours, consider that it is inevitable to declare a state of emergency for the purpose of ongoing management of the damage and damage from the new coronavirus. And since during the state of emergency, the Government can take over activities outside the scope of what would be allowed under normal circumstances, that means an alarm for the word The constant vigilance of human rights defenders. After the President of the Republic of North Macedonia signed the decree declaring a state of emergency on March 18, 2020, the Helsinki Committee publicly indicated that In no case should disorderly conduct be used as an excuse for the competent authorities to violate human rights.

The committee emphasized that the measures they will take must not deviate from the obligation to protect the most vulnerable categories of citizens, and human rights and freedoms. and to be taken into consideration.

During the state of emergency, the state must not arbitrarily prevent the enjoyment of human rights or arbitrarily limit human rights. body, for whose provision and protection it is responsible. The Helsinki Committee also warned that, in accordance with domestic and international standards, the restriction of rights and freedoms must not in any case constitute discrimination against the Father's sex, hand, skin color, language, religion, national or social origin, property or social position . Arbitrary intervention would be against the public interest and the common good, and the regulations with a legal purpose that the Government would be against would be against international law.

Even before the declaration of the state of emergency, the Helsinki Committee reorganized its work in accordance with the prevention recommendations of the Ministry of Health. We enabled the smooth development of the free legal aid service for citizens via telephone and e-mail, allowing for direct meetings in emergency cases. [41]Considering that the restriction of freedom of movement and the economic crisis mean an inevitable blow to human rights, this report will be based on the data that the Committee it records them during the daily communication with citizens who will apply for legal assistance, the analysis of the effects of the adopted government regulations in this crisis period, as well as the regular monitoring of costs in individual districts.

41 1 European Commission. (2019). Report on North Macedonia for 2019 (CVD(2019) 218). www.sep.gov.mk/data/file/Dokumenti/Izveshtaj%202019-F.pdf

The committee will focus on monitoring workers' rights, the rights of vulnerable and marginalized groups of citizens, as well as persons deprived of their freedom during the pandemic. In addition, the organization was continuously active through the networks of which it is a member, and in the past period it also supported joint initiatives for the protection of workers.

The health crisis is far from over, and the economic-social crisis will intensify with each passing day due to uncertainty and imposed restrictions.

1. THE RULE OF LAW AND DEMOCRATIC PRINCIPLES DURING THE STATE OF EMERGENCY

The COVID-19 coronavirus pandemic has caused a global health, economic and social crisis, which has affected the Republic of North Macedonia (RCM) in specific ways. after the pre-elections, the Council was dissolved and the technical government created by the then ruling coalition and the opposition.

The emergency situation caused by the threats posed by the coronavirus to public health and the economy, as well as the need to take urgent measures, were reasons for the technical government to proclaim a state of emergency in our country. In case of non-execution of a separate legal act that regulates the extraordinary charge and in the conditions of the released Collection, in accordance with Article 125 of the Law, the predecessor of the RCM, on March 18, 2020, for the first time, he declared a state of emergency lasting 30 days, and after on the 30th day, a decision will be made to declare a new state of emergency for a duration of 30 days.

The declaration of the state of emergency will activate Article 126 of the Constitution15 and Article 10 of the Law on Government16, which provides that in the event of war or emergency of course, unless there is an opportunity to summon the Prosecutor, the Government, in accordance with the Constitution and the law, makes decrees with legal force on issues under the jurisdiction of the Prosecutor's Office.

This authority of the Government to enact regulations with legal force lasts until the end of the war or emergency. In your country's toolkit, articles on respect for democracy, the rule of law and human rights in the context of the COVID-19 health crisis , the Council of Europe emphasizes that it is acceptable, during the emergency, for governments to receive general authorization to bring regulations with legal force under the condition that these general powers are of limited duration. As the time limit is necessary, the measures provided for by these regulations shall be legally binding.

In this extraordinary situation, the system of clutches and brakes, i.e., the division of power into legislative, executive and judicial branches, will temporarily be replaced by the concentration of the law. the ancient and the executive power in one body - the government. Considering that in this period the RCM has a technical government, the powers of the legislature and the executive branch passed into the hands of the provisional government, which was created in an appeal to guard against the challenges in trying to protect the population from the causes and consequences of the pandemic

In the absence of a separate law that would regulate the extraordinary duty, the legal actions, the powers and the acts that may be enacted, the Article according to the above Ashanja is incomplete.

Namely, it will raise the question of the scope as well as the limits of the extension of the regulations with the legal purpose of the government, which should be connected with the declaration of the order and the urgent measures that should be taken in that direction. The world of Europe, therefore, recognizes that the main social, political and legal challenge that the countries will face is to effectively respond to this crisis, and but ensuring that the measures they take do not undermine the genuine long-term interest in preserving European fundamental values of democracy, rule of law and human rights. [42] In several published researches, relevant reports and instructions, it is mentioned that it is mandatory to ensure respect for the rule of law and democracy. the principles that must prevail in times of extraordinary costs.

Thus, when taking any measures, it is essential to respect the principle of legality, the principle of proportionality, the principle of necessity and the principle of non-discrimination. The principle of the legislator provides that every new regulation with legal force in the emergency situation should be in accordance with the Constitution and the law and, be subject to on review by a relevant body, in our case the Constitutional Court.

It is important that judges can examine the most serious restrictions on human rights introduced by the Regulations with legal force. The Council of Europe provides for the possibility of postponement, acceleration or group action with certain categories of cases, and preliminary judicial authorization, in some cases, may will replace the ex-post judicial control.

The principle of proportionality presupposes taking measures that would adequately achieve your legitimate goal. Acting in times of crisis presupposes making quick decisions that, although made with good intentions, do not exclude the possibility of having unintended negative consequences. Therefore, before resorting to any

42 2 Law on social protection, Official Gazette of the Republic of Moldova no. 104/2019, 146/2019 and 275/2019.

measures, the government is expected to assess compliance with the relevant legal provisions and assess whether the measures leading to the restriction Human rights and freedoms are the most necessary, as opposed to some less strict alternatives.

Additionally, although increased restrictions on certain rights may be fully justified in times of crisis, the three criminal sanctions cause concern and must be zat on the third control. Excluding situations should not lead to the overexpression of criminal assets. A fair balance between motive and prevention is also the appropriate way to meet the requirements for proportionality.

The principle of necessity requires that emergency measures must be able to achieve their goal with minimal changes to the normal rules and procedures of democratic decision-making. e. Given the rapid and unpredictable development of the crisis, relatively broad legislative delegations may be necessary, but in the circumstances they should be as wordy as possible. liquid, in order to reduce the potential of abuse.

The principle of non-discrimination is very relevant in the current context. When examining compliance with this principle, it will be examined whether the company unfairly discriminates between different categories of persons. Another very important aspect of the Regulations with legal force is their application of an intersectional approach that presupposes the provision of solutions, i.e. measures that will take into account c and aspects of citizens' needs. [3]

From the above one can draw a conclusion that it is necessary for the Regulations with legal force and the measures that the Government takes to be legal, proportionate, necessary and not criminally, for a limited time and they should take the least intrusive approach that can protect health to the people. In the past period, the Government brought numerous regulations with legal force that will affect the protection of people's health, a series of economic measures, as well as regulations that will affect, for example Due date of certain documents and other dates.

In the framework of the research on whether COVID-19 represents a risk for democracy, our country is positioned among the countries that brought excessively restrictive measures as a response to the pandemic, which include: disproportionate measures for police hours, excessive restrictions on movement and large fines.

Additionally, in the publication dedicated to the Western Balkans in times of global pandemic, the measures of the technical government of our country are evaluated as before very restrictive, often without an imagined positive effect in the fight against the pandemic, mainly in giving an authoritarian signal to the leadership.

The low capacities of the health care system and the loss of trust in the relationship between citizens and the state, as well as the mentality of the citizens, will be part of the justifications for the restrictiveness of the measures from the side of the relevant

institutions. Although the regulations with legal force will be night in dealing with the causes and consequences of the pandemic, in the absence of any supervision by the police, the need will intensify and for the supervision of respect for the rule of law and democratic values by other relevant bodies.[43]

Here it should be emphasized the importance of the Constitutional Court as the only domestic controller whose statutory competence is the protection of the constitutionality and legality of the decrees adopted. What is the force of the law? In that way, in addition to several initiatives, the Constitutional Court of the Republic of Moldova acted for the first time in its official capacity, assessing the constitutionality and legality of five of the decrees nča force, where it decided to initiate a procedure for the evaluation of the constitutionality and legality of three of the contested regulations .

Likewise, the Constitutional Court informed that initiatives for the evaluation of the constitutionality and legality of all decrees with legal force will be submitted to the Court, and the results will be subject to consideration by the Court, at future meetings.

It is important to note that any intervention and attempt to influence the decisions of the Constitutional Court means undermining the sole power that is the controller of the executive power in this a situation. We must not neglect the importance of the Ombudsman in the disproportionate and discriminatory organization of human rights, but also of civil organizations that are vigilantly watching the situation with the respect of human rights in terms of the emergency situation and the justification of the decrees passed by the Government.

2. PROTECTION OF HUMAN RIGHTS IN TIMES OF EMERGENCY

All the signatory countries of the European Convention on Human Rights (ECHR) have the possibility on the basis of the Convention to derogate from certain obligations arising from the convention at a certain time and under certain conditions, even if there is an “extraordinary situation”, war or other public emergency that threatens it the life of citizens.

Article 15 provides material and procedural conditions for the purpose of the derogation to be considered admissible. But the derogation shall not include articles 2 (right to life), 3 (prohibition of torture), 4(1) (prohibition of slavery and forced labor), 7 (no punishment without law), 4 from Protocol 7 (court and punishment twice for the first offense), as well as Protocol 13 (Criminal Article 2) and Protocol 6 (Criminal Article 3).

43 European Convention on Human Rights, November 4, 1950, Council of Europe.

The measures that will be taken by the state should be proportional to the goal that should be achieved. In accordance with the Constitution of the Republic of Moldova "The freedoms and rights of man and citizen may be restricted during wartime or emergency situations in addition to the provisions of the Constitution." The restriction of freedoms and rights cannot be discriminatory on the basis of gender, hand, skin color, language, religion, national or social origin, property or general educational position.

The restriction of freedoms and rights cannot be related to the right to life, the prohibition of torture, inhuman and degrading treatment and punishment, for example the determination of criminal acts and punishments, as well as the freedom of belief, speech, opinion, public expression of thoughts and beliefs."

The principle of non-discrimination is very important in the current context and according to the European Convention on Human Rights. When assessing whether the measures for deportation were "strictly necessary" in accordance with Article 15 of the Convention, the court would also examine whether the measures unjustifiably discriminated between different categories of persons.

Also, certain forms of discrimination can be included under "degrading treatment" which is prescribed by Article 3, and which Article cannot be derogated from in any case . In addition, the fact that the specific needs of certain persons who belong to a disadvantaged group of citizens will not be taken into account may result in discrimination. The prohibition of discrimination in that way can entail obligations to take positive measures to achieve essential equality. [44]

And besides the fact that the scope of the measures taken, as a response to the current threat of COVID-19 and the way they will be applied, will differ significantly from state to state However, the exclusionary measures taken in the framework of the fight against the spread of the virus will most likely raise questions in relation with their potential discriminatory consequences. Due to the low standard of living, poverty and inadequate housing, part of the population will face greater vulnerability, challenges and risks in dealing with the new population. situation.

For example, the right to education, as provided for in the Convention (Article 2 of Protocol No. 1) and the European Social Charter (Article 17), should in principle be provided di, although the way of securing it requires some adaptation. However, parental attention must be paid to ensure that members of vulnerable groups are guaranteed the right to education and have equal access to education, since nightly to the means and materials for following such an adapted lesson.

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44 Institute for Human Rights, (2020, May 18). The rule of law and democratic principles during the state of emergency. Taken from: https://www.ihr.org.mk/mk/novosti/vladeenjeto-na-pravoto-idemokratskite-nachela-vo-vreme-na-vonredna-sostojba

In addition to the provision of resources and materials, it is necessary to provide adequate conditions for learning online lessons, both for students and for teachers. Teachers should receive specific instructions for online teaching from relevant sources with specific recommendations, as well as brief training on the proper use of online tools. te, which means it would unify the way of teaching with the aim of giving teachers the opportunity to effectively perform their duties. People with disabilities must not be excluded from the educational process that will be carried out through the use of online instruction, and such an educational approach must be inclusive and accessible to all of you.

Efforts will be made to unify preschool and school curriculum, but there are still contradictions that require a detailed analysis in terms of potential crimes. Turkish consequences that would arise from the measures taken. Certain forms of discrimination, which can also be referred to as "degrading treatment", are also visible within the framework of ensuring an adequate level of health care for persons deprived of freedom.

This relates to the right to life (Article 2 of the Convention) and the prohibition of torture and inhuman or degrading treatment or punishment (Article 3 of the Convention), as well as right to health care (Article 11 of the revised European Social Charter).[45]

The convention constantly requires the signatory countries to ensure an adequate level of health care for persons deprived of their liberty. They will be held in a variety of locations, including police detention facilities, penitentiaries, migrant detention centers, psychiatric hospitals and social care facilities. protection, as well as on various newly formed walls or zones where persons will be quarantined in the context of the pandemic of COVID-19.

Unhygienic and substandard conditions, insufficient medical care, inefficiency of legal aid, are only a part of the problems that point to inhumanity and inhumanity. n treatment of convicted persons and persons deprived of their liberty.

Hence, the question arises as to what measures will be taken within the framework of ensuring the right to life and the prohibition of torture and human or degrading treatment. In order to derogate from the convention, complete transparency of the process and detailed explanation regarding the need, purpose, goals, the scope and duration of the extraordinary charge and the limitations of certain rights. At the same time, it should be provided that proportionality and necessity are the elements that should be observed for the entire duration of the derogation.

45 Institute for Human Rights. (2020, May 5). Protection of human rights in extraordinary circumstances. Taken from: https://www.ihr.org.mk/mk/novosti/zashtita-na-chovekovite-prava-vo-vonredni-uslovi

3. THE LOCKDOWN MEASURES AND THE INTERFERENCE WITH THE RIGHTS FROM THE ECHR

Both lockdown and quarantine measures adopted by most European countries, including those in the Western Balkans, represent interferences in many of the rights protected by the European Convention nation on human rights (ECHR).

The government's public health measures mean that most European citizens are effectively confined to their public homes. This is an interference with their right to freedom of movement according to the ECHR, which includes the right to leave the country of the Council of Europe, to enter the territory and that he will move freely through the territory of the country once the laws are in place. These rights can be restricted only when such restrictions are procedurally legal, serve a specific legitimate purpose and are proportionate.[5]

The measures taken must be harmonized with all the elements of the restrictions to be allowed according to Articles 2 and 3 of Protocol No. 4 of the ECHR.

Travel bans could have the effect of denying people the right to seek and receive asylum or in violation of the absolute ban on refoulement. This is quite different from saying that proportional controls cannot be imposed in the interest of public health on travel and movements across borders.

However, the situation of several Albanian nationals who were not allowed to enter their own country and found their children stuck with the international community the border between Albania and Greece in conditions which they have stated to be inhumane represents a source of concern as to how apply these restrictions and what practical effects they may have. When they will be practically applied for more than a few days, these measures will interfere not only with the freedom of movement or the right to freedom, but also with the whole spectrum of others. This is guaranteed by the ECHR, including the right to respect for private and family life.

Isolation (lockdown) denies individuals the opportunity to respect their communities and develop personal relationships and aspects of their identity through the spectrum of activities they enjoy. but we would enjoy them. These interferences will cause great difficulty for children separated from one or both parents, whose attempts to respect them and spend time together may be seriously impaired also for older people, whose access to care and important family and other contacts could be limited. Similarly, for individuals and families living in different countries, personal contact and care could be significantly interrupted for significant periods of time.

The right to freedom of religion and belief will also be obviously limited. Individuals are not permitted to visit places of worship or to gather in groups to perform their

religious rites or to be visited in their homes by those who provide prayer. care. The freedom of expression and the right to receive and share information will also be limited, as these restrictions must take into account the special importance of the right. the purpose of information in a pandemic situation where health protection is brought into question.

States are taking a number of measures to curb the spread of “false” or “harmful” information, or information that could cause panic or social unrest during the pandemic. . In some cases, the violation of these measures is punishable by a prison sentence of up to 5 years. While it is important to limit the spread of disinformation during the pandemic, any measures taken must still be proportionate.

Otherwise, states run the risk of losing sight of the essential functions that journalism serves during a public health emergency, including ensuring accountability. that of the government and that the exchange of user information will be facilitated. While the Internet may currently be the only way for individuals to exercise, although not fully, their fundamental rights for democratic societies, crucial freedoms such as the acts of association and protection cannot yet be fully realized via the Internet. At the moment, our children cannot go to school and follow their education normally.

While he could say that the introduction of distance learning via the Internet with a short announcement about it represents an extraordinary achievement and a substitute for praise , given the situation, it is clear that even when it is assumed that anyone can have access to the online Therefore, children may still not be able to meet their teachers and their friends even virtually and be included in the education in a way that they will work together, which is an important element in any educational system.

Children from schools in an unenviable position and other vulnerable children will suffer as a result of these measures. The elections will have to be postponed in order to prevent illegal gatherings of people and that would logically limit the right to vote and be elected, fundamental aspects of our democracy. COVID-19 poses a disproportionately greater risk to those living in close proximity. The current state of scientific knowledge further indicates that the virus disproportionately affects older people and those with pre-existing health problems.

The risk is therefore particularly acute in places of deprivation of liberty, in housing institutions for persons with disabilities and in care facilities or homes for the elderly. The task of the states in view of these specific situations is obviously difficult, in terms of the vulnerability of the trapped persons and especially in the objects under the control of the people. Governments could also oblige people to undergo medical tests and examinations. The question of the presence or absence of informed consent in such cases will be relevant to whether this is in compliance with the ECHR and

whether it has already been considered. from the court in several cases. In some cases, individuals will then be isolated under many strict regimes with the intention of protecting others.

Additionally, for those who are subject to medical testing or treatment, the storage and publication of medical data and measures of mandatory treatment and isolation with and persons showing signs of viral infection raise further questions under Article 8 of the ECHR.

The lockdown measure can be a catalyst for numerous cases of domestic violence for obvious reasons that include increased traffic, current and difficult living conditions and breakdowns in support mechanisms. to the community. The current crisis may also further limit women's ability to escape abuse, due to fear of the disease or its spread to others. which can leave victims in the middle without adequate access to services, such as safe shelters far away from the persons who commit abuses who do not receive adequate facilities and can prevent the responsibility for the perpetrators of the abuse.

Strict movement restrictions and school closures could also have a disproportionate impact on women in other ways. Globally, women perform approximately 2.5 times more unpaid care and housework than men and are more likely to face caregiving responsibilities. schools and kindergartens will be closed, which will make it difficult for women to keep paid employment.

It is likely that disproportionately more women will work in the informal sector and service industries and thus be economically harmed by the travel ban and quarantine. and measures, from social distancing and from the economic fall. When women have the opportunity to work from home, online work and education require Internet access. Even when women have access to the Internet, gender inequalities may make them less able to use the Internet for reasons that include cost, socialization and arrivals from the church.

In the Western Balkans, certain marginalized populations, such as the LGBT community, may face discrimination in accessing health care. Discrimination could also affect access to COVID-19 testing and treatment, which may, in practice, put marginalized populations at greater risk of developing the disease. serious illness or death as a result of COVID-19.

Moreover, in countries where healthcare is not free at the time of provision, people could avoid medical care or purchase prescriptions. cards because of the cost, which would result in their situation getting worse. In an epidemic, avoiding medical care not only affects those who are sick but can also lead to increased spread of COVID-19, as people who have not been adequately treated could spread the disease.

According to the ICRC, the right to health implies that states should create articles that "will ensure to citizens, medical services and medical attention in case of illness." The European social charter provides a specific right to health protection and the right to social and medical assistance20. All the countries from the Western Balkans will be parties to each of these agreements. In Italy, one of the European countries that has experienced the largest and most serious outbreak of COVID-19 at any given moment, the curfew measures have the effect of Stopping operations will help migrants and asylum seekers. Migrants and asylum seekers will also be vulnerable as their health is already compromised by tuberculosis, the most common disease found in migrants and refugees. the bodies of the asylum from the Italian doctors at the entry points. [46]

Repatriation flights were thus put on hold during Italy's curfew, leaving repatriation centers badly overcrowded and vulnerable to outbreaks of the disease. This raises the question of the effectiveness of these measures in the fight against the pandemic and the limitation, or even the complete denial, of the right to migration and asylum, which was o cporuano in the recent past. Even before the outbreak of COVID-19, the conditions of detention and the transfer of migrants to their countries of origin raised issues under the ECHR under numerous articles of the Convention.

As for procedural rights, the right of access to a court and the right to a public trial could be violated in the current situation in which most judicial institutions those in the Western Balkans region will appear to have operational difficulties and may be obliged to limit access to the public in due course. Incarceration of monsters intensifies the risk of excessively prolonged periods of detention, or restrictions on rights such as the right to a fair and public trial, the right to they are examining witnesses and will get a judicial decision within a reasonable time. Creative use of one-of-a-kind accessible technology could be of great help to alleviate this. In fact, in the current legal environment, the effectiveness of all remedies for human rights injuries has been largely resisted.

4. IMPLICATIONS FOR FREEDOM OF MOVEMENT DURING THE COVID-19 PANDEMIC

The concept of respect and prevention of human rights from possible abuses emphasizes the moral character of these rights more than their legal nature. accuracy in legal norms. Human rights, as natural and inviolable, proclaim widely respected

46 The Committee for the Prevention of Torture and Human Treatment of the Council of Europe. (2020, March 20). COVID-19: Council of Europe anti-torture Committee issues "Statement of principles relating to the treatment of persons deprived of their liberty". Taken from: https://www.coe.int/en/web/cpt/-/covid-19-councilof-europe-anti-torture-committee-issues-statement-of-principles-relating-to-the-treatment-of-personsdeprived-of-their-liberty-

standards, with the aim, among other things, to limit the power of the state and to establish a balance between the respect of the fundamental rights and freedoms and the reflection of the power of the state through the disclosure of its powers over the citizens .

This balance was deeply disturbed with the beginning of the pandemic caused by the coronavirus (COVID-19), which forever changed the perception of future life without o restrictions, putting the protection of collective health at the primary level, at the expense of introduced restrictions on human rights.

The Republic of North Macedonia was not an exception in taking measures that limit certain human rights, primarily starting from the freedom of movement, the right of expression calls, the right to private and private life, the protection of personal data, etc.

The freedom of movement is the opposite of the restrictions imposed for the protection of people's health. The freedom of movement represents one of the basic human expectations. but in many international conventions, and also one of the postulates on which the European Union is based.

Freedom of movement means the fluctuation of people at the local, regional and international level, as well as the possibility of economic, educational, social and social progress.

The European Convention on Human Rights (ECHR), in Protocol No. 4, Article 2, defines the freedom of movement as the right of every person who is legally present in the territory so that a country can freely move within it, freely choose its destination of transshipment, but also to leave freely any country, including your own. [47]

Because it will work for relative law, which may limit when the word for the protection of people's health is declared when a state of emergency is declared (as in the specific case of and all European countries, with the exception of Sweden), so the ECHR foresees the possibility of introducing restrictions and when they are provided by law and represent necessary measures in the interest of national security, the maintenance of public order, the prevention of criminal acts, the protection and the health or the protection of the rights and freedoms of others in a democratic society.

The coronavirus tested the (un)preparedness of countries at the global level to deal with the health crisis, and then with the severe economic crisis caused by the Freedom of movement.

47 The world of Europe. (2020). Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5); Notifications under Article 15 of the Convention in the context of the COVID-19 pandemic. Taken from: https://www.coe.int/en/web/conventions/full-list/-/conventions/webContent/62111354

The declaration of the state of emergency was the first step towards limiting human rights, followed by the introduction of more restrictive measures that limit freedom. and the movement in the form of isolation and quarantine measures, with the aim of protecting public health.

CONCLUSION

Human rights must be the central point of focus for states, both in times of prosperity and in times of crisis. From the Report we can conclude that fundamental rights and their legal framework will be harmonized with European standards and will be strengthened in the implementation and protection of people. rights, however, systematic and thorough implementation of all recommendations is still needed.

Also, it may be noted that international, European and domestic reports identify similar problems in the field of human rights in RCM. All the reports commented on the importance of the implementation of the Law on Protection and Protection from Discrimination, as well as its harmonization with other laws and the formation of The Commission for Preservation and Protection from Discrimination, with the aim of systematically solving and tracking all new and unresolved cases of discrimination.

In this meeting, the need for additional strengthening of the activities of the People's Advocate was emphasized, with the aim of effectively fulfilling the new obligations and duties not a large number of submissions.

The Law on Protection and Protection from Discrimination went a long way until its final enactment, in October 2020. The process he went through to finally be brought to justice, including his termination during a time of emergency and his failure to comply with the Commission on Conservation and Protection from Discrimination action, created a gap during the state of emergency, whereby the responsibility for the protection of citizens from discrimination passed to the court and the People's Advocate.

The new law is theoretically well respected and the application of this law, which is one of the key requirements of the European Union, should ensure the principle of equality, he said. protection from discrimination in the realization of human rights and freedoms and citizens finally get better, more professional and effective protection of their fundamental rights and freedoms.

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GOOD PRACTICES OF THE CENTER OF LEGAL PRACTICES (NPJ) OF THE ALTO VALE DO RIO DO PEIXE UNIVERSITY LAW SCHOOL: ACCESS TO JUSTICE FOR THE LOCAL COMMUNITY

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ABSTRACT

Access to justice is a fundamental human right, yet many countries face challenges in providing equal access to the legal system. Brazil has made efforts to improve access to justice through legal aid programs and the implementation of a Public Defender system. However, disparities between social and economic backgrounds still exist. To improve access to justice, reforms, and initiatives such as improving access to legal aid services and legal education are necessary. Civil society and volunteerism can play a crucial role in improving access to justice by providing legal services, raising awareness about legal rights, advocating for policy reforms, and promoting alternative dispute-resolution mechanisms. An example of such practice for achieving access in the local community is the Center for Legal Practices.

KEYWORDS: *Access to Justice; Legal Aid; Pro Bono Clinic; Núcleo de Práticas Jurídicas.*

INTRODUCTION

Access to justice is a fundamental human right that ensures equal access to the legal system and the ability to exercise legal rights. While Brazil has made efforts to improve access to justice, there are still challenges, particularly for marginalized and vulnerable populations.

Civil society organizations and volunteerism can play a crucial role in improving access to justice by providing legal services and support, raising awareness about legal rights and remedies, and advocating for policy and legal reforms.

One such example is the Center of Legal Practices Dr. João Antonio Nogueira Ramos (NPJ) at UNIARP Law School, which offers pro bono clinics to low-income individuals and provides law students with practical experience in various legal fields. The NPJ plays a vital local role in increasing access to justice and promoting the development of future legal professionals.

METHODOLOGY

This article's approach involves a thorough investigation into the contributions of Legal Practice Centers to improving access to justice, with a spotlight on the Dr. João Antonio Nogueira Ramos Legal Practice Center (NPJ) at the Alto Vale do Rio do Peixe University Law School in Brazil. A blend of both qualitative and quantitative data is harnessed to form a well-rounded perspective.

First off, we delve into the notion of 'access to justice' and the challenges Brazil grapples with in ensuring this right is accessible to all of its citizens. Our exploration is anchored by a literature review, utilizing a variety of scholarly resources such as articles, reports, and other academic publications to grasp the current state of affairs and discern the existing lacunas.

Next, we shift our attention to the contributions made by civil society and voluntary initiatives in amplifying access to justice, especially within the Brazilian context. We leverage secondary sources and prior studies to trace out the key roles these sectors play and the value they add in facilitating legal access.

At the heart of our approach is an in-depth case study of the NPJ at UNIARP Law School. By undertaking bibliographical research and analyzing publications by the legal professionals and law students affiliated with the NPJ, we are able to comprehend its operational structure, pedagogical benefits, and influence on local communities. Additionally, we utilize quantitative data, such as the count of individuals aided and lawsuits filed by the NPJ, as a gauge of its effectiveness.

Towards the end of the study, we venture into a global comparison of Legal Practice Centers. We take a closer look at case studies from an array of countries that include the United States, Sweden, South Africa, Nigeria, and India, dissecting the unique models and strategies put to use in these different scenarios.

To summarize, our study employs a blend of theoretical exploration, case study scrutiny, and bibliographical research to offer a holistic understanding of the function of legal practice centers in expanding access to justice.

ACCESS TO JUSTICE

Access to justice is a fundamental human right, as it ensures that all individuals have the same level of access to the legal system and are able to exercise their legal rights. Brazil has made efforts to improve access to justice through legal aid programs, the implementation of a Public Defender system, and other initiatives (Selita, 2019).

However, Brazil still faces many challenges in providing equal access to justice, including disparities between the poor and wealthy, the urban and rural populations, and men and women. To improve access to justice, Brazil needs to implement reforms and initiatives such as improving access to legal aid services, developing better legal education and public awareness campaigns, and increasing the efficiency of the judicial system (Fingermann, 2013).

Access to justice is mentioned in the Brazilian Constitution as a fundamental right, but it should not be seen solely as a formal right to jurisdiction. Due process of law is also an important category for understanding the principle of access to justice, as it protects the right to life, liberty, and property in all its aspects (Stott & Murphy, 2020).

Access to justice is necessary for those who are vulnerable and marginalized to ensure their rights are protected and their voices are heard. By strengthening access to justice, Brazil can achieve Sustainable Development Goal 16, which promotes peaceful and inclusive societies, and Goal 10, which calls for reducing inequality. The Inter-American Commission on Human Rights has recommended that Brazil invest in the fight against impunity and expand access to justice for needy populations, highlighting the importance of strengthening the Public Defender's Offices to achieve this goal. Other alternatives, such as local promotion for conflict resolution and mediation, and the existence of Legal Practice Centers, are equally effective for this purpose (Stott & Murphy, 2020; United Nations, 2015).

In order for access to justice to remain effective in Brazil, a number of reforms and initiatives need to be implemented. The government must ensure that all citizens, regardless of their economic or social background, have equal access to the judicial

system. While these changes are yet to come, civil society and voluntarism can play an important role. Access to justice is an important part of a fair and just society, as it ensures that all individuals are treated equally and have their rights protected (Selita, 2019).

THE ROLE OF CIVIL SOCIETY AND VOLUNTEERISM

Civil society and volunteerism can play a crucial role in improving access to justice, particularly in countries like Brazil where there are significant challenges in providing equal access to the legal system. Civil society organizations can provide legal aid services and support, particularly to marginalized and vulnerable populations who may not have the resources to access legal representation on their own. This can include providing free legal advice, representation, and assistance in navigating the legal system. Civil society organizations can also work to raise awareness about legal rights and remedies and educate individuals about how to access the legal system (Zen, 2021).

Volunteerism can also play an important role in improving access to justice. Volunteer lawyers, law students, and other legal professionals can provide pro bono legal services to individuals and communities in need, particularly those who may not be able to afford legal representation. This can help to bridge the gap between those who have access to legal representation and those who do not and can help to ensure that all individuals have equal access to the legal system (McCaffrey, 1994).

In addition to providing direct legal services, civil society organizations and volunteers can also advocate for policy and legal reforms that improve access to justice. This can include advocating for increased funding for legal aid programs, improving the efficiency of the judicial system, and reducing the complexity and cost of court proceedings. Civil society organizations can also work to promote alternative dispute resolution mechanisms, such as mediation and arbitration, which can provide faster and more cost-effective ways of resolving disputes outside of the formal legal system (McCaffrey, 1994).

Overall, civil society and volunteerism can play an important role in improving access to justice in Brazil and other countries. By providing legal services and support, raising awareness about legal rights and remedies, advocating for policy and legal reforms, and promoting alternative dispute resolution mechanisms, civil society organizations and volunteers can help to ensure that all individuals have equal access to the legal system and can exercise their legal rights (Hulse & Pasold, 2018).

CENTER OF LEGAL PRACTICES DR. JOÃO ANTONIO NOGUEIRA RAMOS (NPJ) AT UNIARP LAW SCHOOL

One such example is the Center of Legal Practices Dr. João Antonio Nogueira Ramos (NPJ) at UNIARP Law School, which plays a crucial role in helping to increase access to justice in the city of Caçador, Santa Catarina, Brazil. Since its inception in 2001, the NPJ has fulfilled its role in preparing students for the job market by offering practical experiences in various legal fields, as well as contributing to promoting access to justice and forming professionals committed to society (Ceccatto, Hahn, & Martins, 2021).

By providing a pro bono clinic, the NPJ enables low-income individuals to obtain legal representation that they may not have otherwise been able to afford. In addition to providing legal services to the community, the NPJ also offers law students the opportunity to gain practical experience in a variety of legal fields. Through simulated practice in civil, criminal, and labor law, students are able to develop the skills and knowledge necessary to become successful legal professionals (Ceccatto, Hahn, & Martins, 2021).

Furthermore, the NPJ's simulated hearings allow students to gain hands-on experience in all aspects of legal proceedings, from the initial filing of a case to the final judgment. By allowing students to experience the various roles of legal operators, the NPJ prepares them for a wide range of professional opportunities (Machiavelli, Hülse & Santos, 2021).

As a Mandatory Supervised Curricular Internship, student participation is an essential component of the academic formation of Law students. The internship allows for the practical application of knowledge acquired in the classroom and must be conducted in accordance with relevant and current legislation. It is essential to select and supervise the internship fields to ensure the quality of the learning process (Machiavelli, Hülse & Santos, 2021).

The Center of Legal Practices Dr. João Antonio Nogueira Ramos (NPJ) at UNIARP Law School is an exemplary model for integrating legal practice into education in an efficient manner. By combining practical experience with a commitment to public service, the NPJ helps to foster a sense of social responsibility among law students, encouraging them to use their legal knowledge and skills to benefit their communities. Overall, the NPJ is an essential resource for increasing access to justice and promoting the development of future legal professionals (Ceccatto, Hahn, & Martins, 2021).

In 2022, the NPJ of UNIARP assisted 3,492 individuals, both clients, and non-clients, and filed 115 new lawsuits with the State and Federal Judiciary, representing an

increase of almost 50% compared to the previous year. The cases handled by the UNIARP NPJ relate to Family Law, including actions for child support, paternity investigations, custody disputes, dissolution of common-law marriage, divorce, and guardianship proceedings, among others. These figures highlight the importance of the work carried out by the NPJ, which significantly contributes to promoting access to justice for low-income individuals (Machiavelli, Hülse & Santos, 2021).

The practices of the Center of Legal Practices Dr. João Antonio Nogueira Ramos (NPJ) at UNIARP Law School can be used as a model for other law school programs to follow worldwide. Providing legal representation to underprivileged communities is a necessary step in promoting access to justice and ensuring that everyone has the same opportunities to receive legal aid, and it is likely to find a need in most of the globe (Machiavelli, Hülse & Santos, 2021).

Furthermore, the NPJ's commitment to fostering a sense of social responsibility among law students is another good practice that can be replicated by other law school programs. Encouraging students to use their legal knowledge and skills to benefit their communities is a powerful way to create a generation of lawyers who are dedicated to public service (Cantatore, 2020).

The NPJ's good practices can be replicated by law school programs all over the world, contributing to promoting access to justice and developing future legal professionals. By providing pro bono legal services, simulated practice in various legal fields, and fostering a sense of social responsibility among students, law school programs can play a vital role in making legal aid more accessible and promoting justice for all (Machiavelli, Hülse & Santos, 2021).

CENTERS OF LEGAL PRACTICE AROUND THE WORLD

As the global community continuously grapples with the challenge of ensuring access to justice for all, the role of Centers of Legal Practice has emerged as a cornerstone in this endeavor. These institutions, which weave together academic training and practical experience in the form of legal clinics, embody the dual goals of crafting proficient legal professionals and simultaneously ensuring accessible legal assistance to those in need. This article intends to elucidate the distinct strategies and methodologies employed by various countries in integrating these Centers of Legal Practice within their legal frameworks, and the implications thereof on access to justice.

In the United States, a notable shift in legal education was instigated by the influential MacCrate Report in 1989. It espoused a more integrated approach to legal education, compelling a marriage between clinical legal education pedagogy and traditional

legal methodologies. This paradigm shift subsequently initiated the formation and progression of numerous legal clinics throughout the country. Today, these Centers of Legal Practice stand as integral parts of the U.S. justice system. They function as crucial epicenters of knowledge, not only cultivating the next generation of legal practitioners but also ensuring that legal aid remains within the grasp of those who require it (Odigie-Emmanuel & Dahiya, 2023).

Meanwhile, Sweden, a nation nestled across the Atlantic, has curated its distinct method of dispensing legal aid. The Swedish Legal Aid Authority forms the backbone of the Swedish legal aid system. It orchestrates the delivery of legal aid via a blend of in-house lawyers and contracted private legal professionals. This unique model safeguards the affordability of legal services, with clients paying a minimal fee while the lawyers' compensation is taken care of by the Authority itself (Saeidzadeh, Cuckovic, & Vujadinovic, 2023).

South Africa provides a compelling blueprint, particularly for countries battling socio-economic issues akin to its own. The nation's legal aid clinics have emerged as robust platforms, adept at extending legal aid services to communities and prison inmates. These clinics also double as preparatory arenas, honing the skills of law students for their imminent legal careers. They instill an understanding of the crucial concepts of accessibility and equality in the dispensation of justice (Mikinyango & Nguru, 2021).

Nigeria has demonstrated a staunch commitment to the enhancement of its legal education. In 2008, the country introduced its pioneering clinical law curriculum. This curriculum's design promotes an outcome-based learning approach, focusing on the triad of knowledge, skills, and values. It thereby serves a dual function: equipping law students with necessary legal expertise and fostering a sense of social responsibility (Mikinyango & Nguru, 2021).

The journey of India's legal aid clinics since their inception in the early 1970s offers insightful lessons. Despite a considerable evolution, the trajectory has been marked by disconnects between aspirations and actual practices. The absence of a clear roadmap for key elements and dimensions of legal aid in law schools' curriculum exacerbates these challenges (Rajashree & Bhardwaj, 2021). However, the current scenario, characterized by the COVID-19 pandemic, has underscored the imperativeness of adaptability and evolution. To this end, India has proposed a working model for legal clinics that harnesses technology, ensuring resilience amid crises (Gigimon & Nandwana, 2020).

In a global purview, Centers of Legal Practice are instrumental. They confer extensive benefits to clients, law students, and the legal profession by delivering free, professional, and personalized services to clients, promoting experiential learning for students, and imparting pragmatic, problem-solving skills to aspiring lawyers.

Although each nation has crafted its unique model considering its socio-economic milieu, the common objective remains to offer effective and accessible legal aid services.

Nonetheless, the journey towards global access to justice is still fraught with gaps and challenges that need addressing. There is an essential need for clarity regarding the key elements of legal aid to be integrated into law schools' curriculum, and a robust integration of technology in legal education, human rights, and justice education activities. Despite these challenges, the evolution of Centers of Legal Practice worldwide is testament to an unwavering commitment towards making justice not a privilege for a few, but a right for all.

CONCLUSION

In conclusion, access to justice is a fundamental human right that ensures equal access to the legal system and the ability to exercise legal rights. Brazil has made efforts to improve access to justice, but challenges remain, particularly for marginalized and vulnerable populations.

Civil society organizations and volunteerism can play a crucial role in improving access to justice by providing legal services and support, raising awareness about legal rights and remedies, advocating for policy and legal reforms, and promoting alternative dispute-resolution mechanisms.

The Center of Legal Practices (NPJ) at UNIARP Law School is an excellent example of such practice for achieving access to justice in the local community. The NPJ offers pro bono clinics to low-income individuals and provides law students with practical experience in various legal fields, thus increasing access to justice and promoting the development of future legal professionals.

By implementing reforms and initiatives such as improving access to legal aid services, developing better legal education, and increasing the efficiency of the judicial system, Brazil can achieve Sustainable Development Goals 10 and 16, which call for reducing inequality and promoting peaceful and inclusive societies. Access to justice is an important part of a fair and just society, as it ensures that all individuals are treated equally and have their rights protected.

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MISOGYNIST ATTITUDE TOWARDS VICTIMS OF GENDER-BASED VIOLENCE – HINDRANCE TO JUSTICE

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ABSTRACT

This study highlights the paternalistic and misogynist attitude adopted by the Indian Criminal Justice System towards the women victims of gender-based violence in India. The study addresses a broader spectrum of what seems to be ingrained misogyny and paternalistic attitude that unfortunately occasionally surface in the judicial orders and judgement and hinders the access to justice for women. A few case studies of judicial orders and judgments of the different Courts from every State in India depict the wider picture which is prevalent in the system across the country which makes justice inaccessible to women.

KEYWORDS: *Justice, misogynist, women, judicial, inaccessible.*

INTRODUCTION

"*Removing the doctrinal debris of a legally instituted gendered hierarchical order does not necessarily get rid of deeply ingrained social and cultural attitudes which law has long endorsed, and which continue to infuse the criminal justice process, albeit in more covert, less accessible forms*[48]." - Joanne Conaghan

India stood 135th out of the 146 countries in the "*Global Gender Gap Report of 2022*"[49]. This shows the broader picture of the status of gender parity in India. In India, women have been oppressed and exploited since centuries as Patriarchy has continued to govern the social norms. An unfortunate picture has been depicted in the last decade as the crimes against women in India has year-on-year increased manifold with 4,28,278 out of the 6 million crimes recorded being crimes against women in the latest NCRB report of 2022.[50] The rampant crime had made India the "most dangerous country" for women as per "*Thomas Reuters Foundation's survey*" in 2018[51]. The world's largest democracy has miserably failed to protect the women and that is not all; the most unfortunate part of the picture is the stigmatisation and further victimisation by the society and the Criminal Justice system including the police and the judiciary which makes justice inaccessible to women[52].

Rape, kidnapping and abduction, domestic violence, acid attacks, sexual harassment, dowry deaths, cruelty by husband and his relatives, sexual assaults, trafficking, voyeurism, cybercrimes against women, forced prostitution, slavery, honour killings, female infanticide, witchcraft related murders, abatement to suicide, gang rapes, marital rapes, domestic abuse, forced marriages and pregnancies etc are the crimes which have been on a blatant rise in India. These acts committed against women are a result of the Patriarchal mindset and the long deprivation of the basic rights to the women. The horrific picture can be seen from the Statistics provided by the "*National Crime Records Bureau's report"* under Chapter 3[53]. Majority of the cases go unreported[54] worldwide and not just in India. In India the underlying reasons are the social setting and the fear of ostracization, stigmatisation and further victimisation

48 Joanne Conaghan, Law and Gender (Oxford: Oxford University Press, 2013) at 113

49 https://www3.weforum.org/docs/WEF_GGGR_2022.pdf

50 Crime In India, NCRB report 0f 2022, available at https://ncrb.gov.in/sites/default/files/CII-2021/CII_2021Volume%201.pdf

51 https://www.reuters.com/article/us-women-dangerous-poll-exclusive-idUSKBN1JM01X

52 Dube, Dipa, Secondary Victimization of Rape Victims in India (Jan 13 3, 2017). Secondary Victimization of Rape Victims in India, Gerd Kirchhoff, Palit & Sahani (ed.), Global Victimology- New Voices Theory Facts Legislation, Lexis Nexis (2017), pp. 37-52.

53 Crime In India, NCRB report 0f 2022, available at https://ncrb.gov.in/sites/default/files/CII-2021/CII_2021Volume%201.pdf

54 https://www.unodc.org/unodc/en/justice-and-prison-reform/new-gender-in-the-justice-system-vaw.html

of the victim and her family which shows a grimmer picture. Most of the women do not even seek justice from the system due to the misogynist attitude which further victimizes them rather than imparting justice.

CRIMINAL JUSTICE SYSTEM'S BIASNESS

The criminal justice system in India broadly comprises of the police (law enforcement), the judiciary (justice dispensation), and the legislators (criminal law makers). Whenever an offence is committed, the criminal justice is set into motion by the police or the judiciary. The victim must approach either of the two beforementioned to seek justice. Gender biased policing is not novel and there are numerous instances of the same. It has been found that one out of four policemen are biased against women as per the "*Status of Policing in India Report*" of 2019[55].

Women also cannot seek justice because of the judicial system. The process is unreasonably drawn out and expensive and the suffering a woman experiences when defending her legal rights is quite discouraging[56]. There have been abundant cases where the biasness and the ingrained paternalistic attitude has been brought to light. During the hearing of the cases and while pronouncing the verdict the judges of different courts have made remarks which reflect the misogyny as rooted in the Indian Society. Some notable instances have been studied in this work and the remarks of the judges are quoted from the judgments and orders which gives a reality check. It is appalling to see that the judicial officers of the most reputed Courts of the country can make such remarks who are expected to deliver justice to the society, in whom the people repose their utmost trust.

CASE STUDY 1 – VIKRAM V. STATE OF MADHYA PRADESH[57] 2020

(Sexual Assaulter made brother by the Court)

The factual picture in this case was that on April 20, 2020, at around 2.30 a.m., the complainant's neighbour, the accused-applicant, trespassed in her home, grabbed her hand, and allegedly tried to harass her sexually. An FIR for the offences punishable under Sections 452, 354A3, 323 and 506 of the Indian Penal Code[58], Crime No. 133/2020

55 https://www.csds.in/uploads/custom_files/1566973059_Status_of_Policing_in_India_Report_2019_by_Common_Cause_and_CSDS.pdf

56 Versha Sharma, Women & Law in India, 87 WOMEN LAW. J. 19 (2002)

57 https://www.livelaw.in/pdf_upload/pdf_upload-379375.pdf

58 https://www.indiacode.nic.in/handle/123456789/2263?view_type=browse&sam_handle=123456789/1362

was subsequently registered at Police Station, Bhatpachlana, District-Ujjain (IPC). A charge sheet was submitted after an investigation into the case.

The accused submitted a request for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973[59] before the High Court of Madhya Pradesh. While pronouncing the order, the following condition was imposed by the High Court while granting the applicant bail along with some other conditions pertaining to Covid 19 protocols,

"*The applicant along with his wife shall visit the house of the complainant with Rakhi thread/ band on 3rd August, 2020 at 11:00 a.m. with a box of sweets and request the complainant -Sarda Bai to tie the Rakhi band to him with the promise to protect her to the best of his ability for all times to come. He shall also tender Rs. 11,000/- to the complainant as a customary ritual usually offered by the brothers to sisters on such occasion and shall also seek her blessings. The applicant shall also tender Rs. 5,000/- to the son of the complainant – Vishal for purchase of clothes and sweets. The applicant shall obtain photographs and receipts of payment made to the complainant and her son, and the same shall be filed through the counsel for placing the same on record of this case before this Registry. The aforesaid deposit of amount shall not influence the pending trial but is only for enlargement of the applicant on bail[60].*"

In India, Rakshabandhan (the bond of protection) is a rite when the sister ties a Rakhi (a strand of thread) on the wrist of her brother and the brother vows to protect her. It is a pious relation of protection between a brother and sister. In this case, the complainant was sexually assaulted by her neighbour who is the appellant-accused in the matter. On hearing of his bail application, the High Court granted him bail upon the abovementioned condition along with other conditions which sought to make the accused (sexual assaulter) her brother.

Any form of compromise between the victim and the accused is particularly abominable in a case that involves sexual offence and should never be accepted as a legal remedy since it would be beneath the honour and dignity of the victim. The High Court was inconsiderate to put the condition which promoted a compromise that downgrades and denigrates an otherwise severe crime by suggesting that such offences can be resolved through a compromise.

59 https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_000010_197402_1517807320555&orderno=487

60 https://www.livelaw.in/pdf_upload/pdf_upload-379375.pdf

CASE STUDY 2 – RAKESH B. V. STATE OF KARNATAKA[61]

(Falling asleep after being ravished constitutes unideal victim)

The facts of the case were that the complainant and the accused had known each other and were friends for some time. The complainant was raped by the accused (alleged) on the fake promise of marriage. The Petitioner(accused) who presented the petition for grant of anticipatory bail before the High Court was charged for offences punishable under Section 376, 420 & 506 of IPC[62], 1860 and Sec.66-B of Information Technology Act[63], 2000. The High Court of Karnataka in this matter granted anticipatory bail to the petitioner on imposing certain conditions it deemed fit. The High Court made certain remarks while deciding the bail application which reflected the paternalistic attitude of the society,

"*nothing is mentioned by the complainant as to why she went to her office at night i.e., 11.00 p.m.; she has also not objected to consuming drinks with the petitioner and allowing him to stay with her till morning; the explanation offered by the complainant that after the perpetration of the act she was tired and fell asleep, is unbecoming of an Indian woman; that is not the way our women react when they are ravished; the version of the complainant that she had been to Indraprastha Hotel for dinner and that the petitioner having consumed drinks came and sat in the car, even if is assumed to be true, there is no explanation offered for not alerting the police or the public about the conduct of the petitioner; thus there are sufficient grounds to admit the petitioner to Advance Bail*"

The above remark of the Court reflected the stereotype which exists in the Society as to how an Indian woman is supposed to behave after being ravished. A woman cannot fall asleep after being ravished and if she does so, the Court finds it unlikely that such act has been committed against her.

CASE STUDY 3 – STATE OF J & K VS BELI RAM 2022[64]

(Victim was not a minor girl and thus could have acted against the accused persons)

The victim was a student and the facts of this case were that the victim alleged that the accused persons were running brothels and she was trapped, blackmailed, and forced into sexual intercourse with some men by the accused persons. She was also

61 https://www.livelaw.in/pdf_upload/pdf_upload-376983.pdf

62 https://www.indiacode.nic.in/handle/123456789/2263?view_type=browse&sam_handle=123456789/1362

63 https://www.indiacode.nic.in/bitstream/123456789/13116/1/it_act_2000_updated.pdf

64 State of J&K vs. Beli Ram and Ors. (07.10.2022 - JKHC): MANU/JK/1051/2022

forced into flesh trade by them. For all these offences the accused persons were charged for offences under Section 161, 173 of the Criminal Procedure Code[65], 1973, Section 3, 4, and 5 of the Immoral Traffic Prevention Act[66], 1956 and Section 7 and 109 of the Ranbir Penal Code[67], 1989. The victim narrated the entire incidents and got an FIR registered against the accused persons. Upon investigation by the investigating agency, raids were carried on in the premises as mentioned in the complaint in the presence of the Executive Magistrate and objectional materials were found along with the accused persons. The statements of witnesses were recorded under Section 161 of the Criminal Procedure Code[68] and the investigation agency was satisfied that the accused persons were engaged in running brothels, flesh-trade, and rape.

The Trial Court acquitted the accused persons stating that the case of the prosecution could not be proved beyond reasonable doubt. In an appeal against the order of acquittal, the victim approached the Hon'ble High Court. However, the High Court's observation was,

"*That the entire prosecution case is perched on the sole testimony of the prosecutrix and it is manifest from a sheer glance of the statement of the prosecutrix that the tenor of her testimony neither inspires confidence nor is worthy of credence, to say the least. The prosecutrix is not a minor girl. She was a student at the relevant time, living in the house of her aunt. Though she claimed to have been trapped by accused Pinky Devi, there is nothing in her statement to suggest as to what prevented the prosecutrix from revealing the first incident to her aunt. According to the prosecutrix she was taken by accused Pinky to a room at Jail Road, Udhampur where she was ravished by accused Beli Ram. However, 15 days after she accompanied the same accused Pinky Dei and on her insistence only she went to the room of accused Beli Ram. Later she would accompany the same accused Pinky to Srinagar and subsequently to different locations and to different hotels. It is hard to believe that the prosecutrix is alleged to have been raped by different person on different occasions and at different locations, but she never reported the matter to anybody or to the police. It is evident from her statement that she was not under the control of accused persons all the time. She is stated to have visited different places; those were frequented by people. She is stated to have travelled with accused Pinky Devi and Beli Ram to several places and even to Srinagar and she never reported the matter to anybody. In these circumstances, the testimony of the prosecutrix is highly un-believable and cannot be made basis to convict the respondents. The quality and character of the evidence of the prosecutrix is such that it shall be highly unsafe to make it a base to sustain conviction of the respondents."*

65 https://legislative.gov.in/sites/default/files/A1974-02.pdf

66 https://www.indiacode.nic.in/bitstream/123456789/15378/1/the_immoral_traffic_%28prevention%29_act%2C_1956.pdf

67 https://www.indiacode.nic.in/bitstream/123456789/5857/1/ranbir_penal_code.pdf

68 https://legislative.gov.in/sites/default/files/A1974-02.pdf

The High Court failed to take into consideration the mental state and fear which could have prevented the victim from reporting against the accused persons, the factors which dissuade a woman to speak aloud against such sexual offences. Moreover, the victim was just a student and the raids carried on substantiated and corroborated the testimony of the victim. In Indian society where women already fear approaching the criminal justice system, such remarks of the High Court further deter the victims to raise their voice. The remarks clearly show the biased opinion of the Court against the victim as it disregarded all the circumstances which could have prevented her from acting against the accused persons.

CASE STUDY 4 – VIKAS GARG VS STATE OF HARYANA[69]

(Sexual Offences labelled as "*Casual relationship, adventurism, and experimentation in Sexual encounters*" by the Court)

The facts of this case were that the victim and the accused persons were students in the same university. The victim and one of the accused became friends and the accused forced her into having physical relations, send nude pictures and then blackmailed her subsequently on the pretext of leaking the nude pictures. The victim was also forced to have sexual relations with the accused's two friends. the three accused were charged for offences under Section 376(D), 376(2)(n), 376, 292, 120-B, 506 of the Indian Penal Code[70], 1860 and Section 67 of the Information Technology Act[71], 2000. The accused persons faced a criminal trial and during the pendency of the trial filed application for grant of bail under Section 389 of the Criminal Procedure Code, 1973.

The High Court's observation while hearing the application in the instant matter was,

"*The testimony of the victim does offer an alternate story of casual relationship with her friends, acquaintances, adventurism and experimentation in sexual encounters and these factors would, therefore, offer a compelling reason to consider the prayer for suspension of sentence favourably particularly when the accused themselves are young and the narrative does not throw up gut wrenching violence, that normally precede or accompany such incidents.*

We are conscious of the fact that allegations of the victim regarding her being threatened into submission and blackmail lends sufficient diabolism to the offence, but a careful examination of her statement again offers an alternate conclusion of misadventure

69 Cr.M.No. 26910-11 of 2017 (https://www.casemine.com/judgement/in/5d919975714d587fe94d653a)

70 https://legislative.gov.in/sites/default/files/A1860-45.pdf

71 https://www.indiacode.nic.in/bitstream/123456789/13116/1/it_act_2000_updated.pdf

stemming from a promiscuous attitude and a voyeuristic mind. She states that he (Hardik) then sent his own nude pictures and coaxed me into sending my own nude pictures. The perverse streak in both is also revealed from her admission that a sex toy was suggested by Hardik and her acceptance of the same."

The High Court accepted the application for suspension of sentence of the three accused persons and released them on bail. The High Court did not hesitate in making a remark on the character of the victim by suggesting that the incidents offer an alternate conclusion of "*voyeuristic and promiscuous mind, casual relationships, adventurism and experimentation in sexual encounters*". Even if the High Court deemed it right to grant bail to the accused persons, such remarks against the victim are not acceptable and it is appalling to see the highest court of the State to make such remarks.

In the matter of V.K. v. Bulgaria[72], the CEDAW[73] Committee observed that: "*stereotyping affects women's right to a fair trial and that the judiciary must be careful not to create inflexible standards based on preconceived notions of what constitutes domestic or gender-based violence*".

The High Court classified the offence as casual relationship based on the premise that it did not accompany any violence which according to the Court usually accompanies or precedes such offences. Such standards which are based on preconceived notion of what would constitute a gender-based offence impairs the women's right to get justice as happened in the instant matter. The High Court's observation showed biasness and antipathy against women.

CASE STUDY 5 – SURAJ VS STATE OF MAHARASHTRA 2021[74]

("*Impossible for a man to gag, remove clothes and rape a minor girl*")

In the instant matter, the accused/appellant was charged and convicted under Section 376 and 451 of the Indian Penal Code[75], 1860. The victim aged 15 had lodged a complaint against the appellant for trespassing into her house and committing rape on her. The victim's testimony was that at around 9:30 pm when she was with her younger brother at home and sleeping, her mother had gone out of the house for natural call. The appellant had entered the house in an inebriated state, the victim tried to shout

72 V.K. v. Bulgaria, Communication No. 20/2008, UN Doc. CEDAW/C/49/D/20/2008 (2011) (CEDAW)

73 https://www.un.org/womenwatch/daw/cedaw/

74 MANU/MH/0078/2021, Suraj vs. The State of Maharashtra (15.01.2021 - BOMHC) : MANU/MH/0078/2021

75 https://legislative.gov.in/sites/default/files/A1860-45.pdf

but he gagged her mouth. Then he striped off his clothes and the victim's clothes and raped her. He fled after committing the act.

The High Court's observation on the above testimony in the instant matter was,

"*16. A perusal of this portion of the testimony of the prosecutrix, as rightly pointed out by the learned defence counsel, does not inspire the confidence of the Court as the incident, as narrated, does not appeal to the reason as it is against the natural human conduct. Undisputedly, the appellant is the neighbour of the prosecutrix. It seems highly impossible for a single man to gag the mouth of the prosecutrix and remove her clothes and his clothes and to perform the forcible sexual act, without any scuffle. The Medical evidence also does not support the case of the prosecutrix.*

17. Had it been a case of forcible intercourse, there would have been scuffle between the parties. In medical report, no injuries of scuffle could be seen. The defence of consensual physical relations does appear probable."

The High Court thereby acquitted the appellant. The victim's age was only 15 years, and it would have been easy for a grown-up man to overpower her and force himself upon her. The Court's remark showed high insensitivity towards the victim and her family by further labelling the rape as consensual sexual relation. The absence of a scuffle according to the High Court lead to discrediting of the victim's testimony of a forced sexual act. The High Court considered it impossible for a man to commit such an act upon a little girl of 15 years of age.

CASE STUDY 6 – MAHMOOD FAROOQUI VS STATE (GOVT. OF NCT OF DELHI)[76]

("A feeble 'no' may mean 'yes'")

The facts of this case were that the victim had known the accused and she was invited for dinner at his flat. The accused was drunk and crying, his friends were trying to comfort him, and they left the room for some time during which the victim and the accused were alone. That is when, the accused started kissing the victim when she tried to comfort him despite her denial and went further by forcing oral sex on her. The victim was physically pinned down by the accused and forced. In the fear of any grave physical harm, she stopped resisting and faked an orgasm to end the ordeal. Later, the doorbell rang, and the friends returned, and she left the house.

76 MANU/DE/2901/2017, Mahmood Farooqui vs. State (Govt. of NCT of Delhi) (25.09.2017 - DELHC) : MANU/DE/2901/2017

The High Court's observation on the question of consent of the victim was,

"Instances of woman behaviour are not unknown that a feeble 'no' may mean a 'yes'. If the parties are strangers, the same theory may not be applied. If the parties are in prohibited relationship, then also it would be difficult to lay down a general principle that an emphatic 'no' would only communicate the intention of the other party. If one of the parties to the act is a conservative person and is not exposed to the various ways and systems of the world, mere reluctance would also amount to negation of any consent. But same would not be the situation when parties are known to each other, are persons of letters and are intellectually/academically proficient, and if, in the past, there have been physical contacts. In such cases, it would be difficult to decipher whether little or no resistance and a feeble 'no', was a denial of consent....

The High Court has set another standard for determining the consent of a woman based on her acquaintance with the accused person and the academic/intellectual status and even the history of any physical contacts between the two. Such an absurd reasoning was adopted by the Court to justify the act as consensual.

...There is a recent trend of suggesting various models of sexual consent. The traditional and the most accepted model would be an "affirmative model" meaning thereby that "yes" is "yes" and "no" is "no". There would be some difficulty in a universal acceptance of the aforesaid model of consent, as in certain cases, there can be an affirmative consent, or a positive denial, but it may remain underlying/dormant which could lead to confusion in the mind of the other.

85. In an act of passion, actuated by libido, there could be myriad circumstances which can surround a consent and it may not necessarily always mean yes in case of yes or no in case of No. ..."

The court assumed in favour of the accused taking into consideration the feigning orgasm of the victim without contemplating over the fear of physical harm in the victim's mind which made her act that way.

"...The prosecutrix makes a mental move of feigning orgasm to end the ordeal. What the appellant has been communicated is, even though wrongly and mistakenly, that the prosecutrix is okay with it and has participated in the act..."

The High Court acquitted the accused giving him the benefit of doubt. Disbelieving a woman who says there was no consent and making such remarks about what constitutes a consent and assuming consent despite refusal of the same demeans the woman. The Court implied that the woman must physically resist the accused all the time to the extent of suffering grave physical injuries and only then can it be said that it was a 'no'. Mere words expressly denying the act and physical resistance to the act does not constitute a 'no' as per this ruling. Moreover, a feeble 'no' is a 'yes'.

CASE STUDY 7 – RAJA AND ORS VS STATE OF KARNATAKA 2016[77]

(Conduct unlike a victim of forcible rape)

The facts of the case were that the victim was a resident of Bangalore, who worked as a maid in the city, and she had separated from her husband a few months before the alleged incident. As per the report by the victim, when she was returning from work in the evening at around 7:30 pm an auto rickshaw stopped by with two men inside and they pulled her inside the rickshaw. Two more men got in the rickshaw when it stopped after having travelled for some distance. She was blindfolded thereafter and taken into a garage where they raped her turn by turn. She was assaulted and raped repeatedly and then taken and left at some place in the same rickshaw. The accused persons were charged under Section 34, 366, 376(g), 392 of the Indian Penal Code[78], 1860.

The trial Court had acquitted the accused persons. The High Court on the other hand reversed the trial Court's verdict and convicted them under Section 376(g) and 392 read with Section 34 of the Indian Penal Code[79], 1860. Challenging the conviction of the High Court an appeal before the Apex Court of India was filed and the Court allowed the appeal and observed that,

"The conduct of Prosecutrix during the alleged ordeal was unlike a victim of forcible rape and betrays somewhat submissive and consensual disposition. From the nature of the exchanges between her and the Accused persons as narrated by her, the same were not at all consistent with those of an unwilling, terrified and anguished victim of forcible intercourse, if judged by the normal human conduct. Her post incident conduct and movements are also noticeably unusual. The medical opinion that she was accustomed to sexual inter course when admittedly she was living separately from her husband for 1 and ½ years before the incident also had its own implication. The medical evidence as such in the attendant facts and circumstances in a way belied the allegation of gang rape.

The prosecution case, when judged on the touchstone of totality of the facts and circumstances, did not generate the unqualified and unreserved satisfaction indispensably required to enter a finding of guilt against the Appellants."

Such was the observation of the Hon'ble Apex Court of the Nation. The conduct of the victim was proclaimed to be not in adherence to the one who might have been ravished. A woman is supposed to behave in a particular manner only on being ravished and if

77 MANU/SC/1287/2016, Raja and Ors. vs. State of Karnataka (04.10.2016 - SC): MANU/SC/1287/2016

78 https://legislative.gov.in/sites/default/files/A1860-45.pdf

79 https://legislative.gov.in/sites/default/files/A1860-45.pdf

the behaviour is not found to be in consonance of the same then it becomes highly unbelievable that such a heinous offence has been committed against her. Despite finding evidence based upon which the High Court convicted the accused persons, the Supreme Court disregarded the same and went further to say that the case "*does not generate the unqualified and unreserved satisfaction indispensably required to enter a finding of guilt against the Appellants".*

CASE STUDY 8 – RE: SUO MOTU COGNIZANCE 2013[80]

("*Girls are morally and socially bound not to indulge in sexual intercourse before a proper marriage*")

The facts of the present matter are that the accused had applied vermilion on the victim's forehead and proclaimed that they were married from that moment. The victim believing the accused's intention and promise to marry and upon the act of applying vermilion consented to establishing physical relationship with the accused. The accused was charged for offences punishable under Section 376, 493, 506 of the Indian Penal Code[81], 1860. The matter was heard by the learned judge, Special fast track Court in Delhi. The Court held that the act was consensual and not based on a fake promise to marry. There were certain observations made by the learned judge of the Fast track Court which made the High Court of Delhi to take Suo motu cognizance. The observations made by the Fast track Court were,

"(i) The girls in such cases are mostly in the age group of 19-24 years, thus mature enough to understand the consequences of their acts and not so snub to get carried away with any representations of the boy. They voluntarily elope with their lovers to explore the greener pastures of bodily pleasure and on return to their homes, they conveniently fabricate the story of kidnap and rape to escape scolds and harsh treatment from the parents.

(ii) The girls are morally and socially bound not to indulge in sexual intercourse before a proper marriage and if they do so, it would be to their peril, and they cannot be heard to cry later that it was rape."

The judge while making the above observations made a generic remark on all the girls of the age group of 19-24 years alleging that they voluntarily engage in sexual acts with their lovers and then falsely claim that they have been raped and kidnapped. These remarks plainly depict the biasness against women and the misogynist attitude of the judge. Moreover, a remark over intercourse before marriage has been called out as morally and socially wrong, what is pertinent to note here is that the moral and social

80 MANU/DE/4772/2013, In Re: Suo Motu Cognizance (19.12.2013 - DELHC): MANU/DE/4772/2013

81 https://legislative.gov.in/sites/default/files/A1860-45.pdf

obligation is only prescribed for girls and not for both the genders. In Indian society, all the moral and social obligations are for women only and not men.

"It is these false cases which tend to trivialize the offences of rape and undermine its gravity. A girl of this age group, even if belonging to a rural area, cannot be believed to be not knowing how the marriage is performed or what are the essential ceremonies of a marriage. I am unable to countenance the argument that a mature girl would believe and consider herself a wife of the person who has merely applied vermilion on her forehead and no other rite or ceremony has been performed."

The manner of commenting on the victim's gullibility shows the obvious dislike and biasness against her. She acted on the promise of marriage by the accused person, and it is not unbelievable a fact that girls do tend to believe the person they love and wish to get married to. Here, the abovementioned remarks result in victim shaming.

The judge of the Delhi Court also called the act of pre-marital sex as immoral and against the tenets of all the religions.

"When a grown up, educated and office-going woman subjects herself to sexual intercourse with a friend or colleague on the latter's promise that he would marry her, she does so at her own peril. She must be taken to understand the consequences of her act and must know that there is no guarantee that the boy would fulfil his promise. He may or may not do so. She must understand that she is engaging in an act which not only is immoral but also against the tenets of every religion. No religion in the world allows pre-marital sex."

Such observations of a judge who is bestowed with the duty of dispensing justice is indubitably a matter of serious concern.

CONCLUSION

The plight of the women survivors of gender-based offences has continued to be pitiful as the criminal justice system further victimizes them owing to the deeply rooted biasness and misogyny. The conduct of the judges as seen in the above cases depict brash insensitivity and biasness against them. This hinders the delivery of justice and moreover adds to the injustice meted out to women victims of crime. Women have been one of the marginalized classes in the society and access to justice has been hindered by a number of factors for them one of which has been discussed in the present work. This constitutes one of the social barriers which needs to be addressed in order to ensure that women do not find justice inaccessible.

Solution- Gender sensitization of the judiciary and the machinery of the criminal justice system is one of the solutions for the present issue. The judges must be made

to undergo gender sensitization training as a part of their judicial training so that from the very beginning they become sensitive towards female victims. This would bring their about unbiased delivery of justice and would not impede the delivery of justice for women.

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"THE COST OF FREE LEGAL AID: EXAMINING THE LIMITATIONS OF ACCESS TO JUSTICE IN NORTH MACEDONIA"

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ABSTRACT

Access to justice is a fundamental human right, yet it remains out of reach for many people in North Macedonia, particularly those who live in poverty. Despite the provision of free legal aid by the state, there are limitations to this service that prevent many individuals from accessing the legal system. This paper examines the limitations of free legal aid in North Macedonia, including the insufficient budget allocated to the program and in particular article 13, line 10 from the Law. Through a review of literature and analysis of statistical data, this paper argues that the state must address these limitations in order to fulfill its obligation to provide access to justice for all citizens. The paper concludes with recommendations for improving the effectiveness of free legal aid in North Macedonia.

KEY WORDS: *Access to justice, free legal aid, costs, limitation.*

INTRODUCTION

Access to justice is considered as one of the fundamental human rights that must be guaranteed for all individuals, regardless of their social and economic status. The ability to access legal services is essential in enabling citizens to exercise this right. The efficiency of the free legal aid (FLA) system plays a significant role in ensuring access to justice. In light of the EU accession process, the Republic of North Macedonia is required to align its national legislation with the EU acquis. To achieve this, the country adopted the Law on Free Legal Aid (LFLA) in 2009, which underwent significant changes in 2019. However, concerns have been raised regarding the effectiveness of this law, particularly in providing adequate legal aid to vulnerable groups.

During the implementation of the LFLA from 2009, in practice, a series of problems arose and limited the access to justice and free legal aid for vulnerable groups of citizens and people who needed legal aid the most. These questions the expediency of the provided solutions in the law itself. Namely, the civil sector pointed out a serious of inconsistencies in the institutional setup of the system for providing free legal aid and the centralization of the procedure for approval of free legal aid; strict criteria to be met by the applicants; as well as the need to re-evaluate the closed list of legal issues eligible for FLA, which do not entirely correspond with the needs of the citizens (Vasilevska, FOSM, 2017).

The new and improved LFLA provided advancements in many aspects: eligible legal matters, increased scope of primary legal aid, more acceptable conditions for assessing the property status of the applicants for secondary legal aid, decentralization in the decision-making process on requests for secondary legal aid; court exemption, administrative and expert costs; and financial support for authorized associations and legal clinics. (Shojikj, FOSM, 2021).

However, for many people, accessing legal assistance is prohibitively expensive, leaving them vulnerable to exploitation and discrimination. The provision of FLA is a critical tool in ensuring access to justice, but its effectiveness is dependent on adequate funding. The research question of this paper is to explore whether the budget allocated for FLA is sufficient to meet the legal needs of vulnerable groups in the country and more important how article 13, line 10 influence potential beneficiaries in requesting secondary FLA? To answer these questions, a mixed-methods approach was employed, which included both quantitative analysis of budgetary and statistical data and qualitative interviews with FLA providers. The aim of this paper is to provide an evidence-based assessment of the adequacy of FLA funding and to identify areas for improvement in ensuring access to justice for all citizens.

STATE-COVERED COSTS FOR SECONDARY LEGAL AID

Free legal aid in North Macedonia is divided in primary and secondary. Primary legal aid is available for everyone, every citizen regardless their social and financial status will receive primary legal aid. (Law on free legal aid 2019, Article 5)

Secondary legal aid is granted for representation at all levels in:

- civil court proceedings,
- administrative procedures and
- administrative disputes. (LFLA 2019, Article 14)

Secondary legal aid (SLA) can be provided by the lawyers listed in the Register of lawyers for free legal aid at the Ministry of Justice.

Individuals seeking secondary legal aid must submit a request for each legal issue requiring the initiation of a protection procedure. It is important to note that requests for secondary legal aid can be submitted at any stage of the proceedings for which such assistance is needed. Upon approval of the application by the Regional Office of the Ministry of Justice, the applicant has the right to receive secondary legal aid. As per Article 13, line 5, beneficiaries of secondary legal aid are exempt from paying:

- court fees and other expenses related to the legal procedure
- costs related to expertise and
- administrative fees. (LFLA 2019, Article 13)

This exemption aims to alleviate the financial burden on individuals who are unable to afford the costs associated with legal proceedings, ensuring that they have access to justice and the protection of their rights.

Secondary legal aid, which is financed by the state in certain circumstances, has limitations when it comes to covering expenses related to legal proceedings. While the state guarantees free legal aid for those who meet specific criteria, including low-income individuals, persons with disabilities, victims of domestic and gender-based violence and other members of vulnerable groups, there are still some expenses that may not be covered. According to Article 13 line 10 of the law, free legal aid does not cover all expenses related to a legal issue. Specifically, the provision of free legal aid does not cover costs that the beneficiary of free legal aid is obliged to compensate if they fail in the litigation procedure, such as court fees or the opposing party's legal costs.

This means that individuals who receive SLA may still be responsible for these expenses if they are unsuccessful in their case. It is important for individuals seeking legal assistance to understand these limitations and to prepare for the possibility of incurring such expenses. Additionally, legal aid providers should be transparent with their clients about these limitations and advise them accordingly, to avoid any misunderstandings or unexpected expenses.

Although the exception in Article 13 line 10 is necessary to limit the number of requests for legal aid, it is important to recognize that secondary legal aid is meant to assist those who are unable to afford the high costs of litigation. To receive this aid, individuals must meet specific conditions and criteria. However, in case they lose the case, these individuals may still be required to pay for the opposing party's legal costs, which can be a significant financial burden. Given that the state has granted them with secondary legal aid, it is reasonable to expect that these costs should also be covered, as the individual may not have the means to pay them otherwise. It is important to ensure that the provision of secondary legal aid is accompanied by adequate support to ensure that those who receive it are not burdened with unexpected costs that could prevent them from accessing justice.

According the information from registered CSOs, this often leads to a discouragement, and the person is giving up to seek secondary FLA, even in cases where it is necessary. The fear of being held responsible for the opposing party's legal costs may deter individuals from exercising their right to seek legal aid and pursuing legal action in order to solve their legal problems. Thus, this limitation can have negative consequences on the effective implementation of the LFLA and ensuring equal access to justice for all citizens.

BUDGET AND STATISTICS FOR SECONDARY LEGAL AID

During the process of drafting the Law on Free Legal Aid, there was a concern among policymakers that the number of requests for secondary legal aid and the costs associated with approved requests would increase dramatically after the law was adopted. To address this concern, the law included specific limitations, such as Article 13, line 10, which sets out the conditions for the reimbursement of expenses related to secondary legal aid. These limitations ensure that the state provides secondary legal aid only to individuals who meet the criteria for eligibility and who are unable to bear the costs of legal proceedings on their own.

To ensure the effectiveness and sustainability of the Law on Free Legal Aid, it is crucial to monitor its implementation and the associated costs. Therefore, comparative analysis was conducted of the budgetary and statistical data related to the provision

of free legal aid in North Macedonia for the years 2018, 2019, 2020, and 2021. This analysis will provide valuable insights into the trends and patterns of the provision of free legal aid over time. This information can then be used to identify areas where improvements or adjustments may be needed, and to inform future policy and budgetary decisions related to the provision of free legal aid in North Macedonia.

TABLE 1: *Budget on FLA (Ministry of Justice, 2022)*

	2018	2019	2020	2021
Approved budget in denars	N/A	5.000.000	5.000.000	5.000.000
Spent budget in denars	1.378.904	1.176.072	1.601.176,00	1.736.258,00
Primary Legal Aid	13.200	16.500	43.500	39.155,00
Secondary Legal Aid	1.365.704	1.159.572	1.557.676,00	1.697.103,00

As indicated in the table, the approved budget for the implementation of the LFLA remained unchanged at 5 million denars for each year from 2019 to 2020, and in 2021. Interestingly, the spent budget shows a different trend, with a slight decrease in 2019 compared to the previous year, followed by a slight increase in 2020 and 2021. Despite the increased spending in the last two years, the approved budget was not fully utilized, indicating that there is still room for improvement in the allocation and distribution of funds for free legal aid.

It is worth noting that the state has announced a call for financing registered Civil Society Organizations and Legal Clinics in 2022 for the first time. This move is expected to increase the spent budget for primary legal aid, which will likely be reflected in the report for 2022. It is anticipated that the report, which is expected to be published in May 2023, will provide a more comprehensive picture of the budget and statistical data of provided legal aid, including any notable changes in the allocation of resources and the impact of the new funding initiative on primary legal aid costs.

In regards to the statistical data of provided secondary legal aid the data are as follows:

TABLE 2: *Statistical data for Secondary Legal Aid (MoJ,2022)*

	2018	2019	2020	2021
Submitted requests	156	175	207	295
Approved requests	80	90	132	203
Rejected requests	76	73	49	65
Cancelled requests	N/A	12	14	13

The data from Table 2 shows the trends for secondary legal aid requests over the past four years. The number of submitted requests has increased each year, with 295 requests submitted in 2021, compared to 156 requests in 2018. The number of approved requests has also increased each year, with a significant jump from 132 in 2020 to 203 in 2021. The number of rejected requests has fluctuated over the years, with a decrease from 73 in 2019 to 49 in 2020, followed by a slight increase to 65 in 2021. It is important to note that there were no cancelled requests in 2018, but there have been a small number of cancelled requests in the past three years. These trends in secondary legal aid requests suggest an increasing need for legal aid services among the population, as well as a growing awareness and understanding of the availability of secondary legal aid.

However, the number of approved requests has increased substantially from 80 in 2018 to 203 in 2021. This indicates that the Regional Offices of the Ministry of Justice are actively approving secondary legal aid requests and that there is a higher awareness among citizens about their rights to receive this type of legal aid. Nevertheless, there is still room for improvement as the number of submitted requests remains low, considering that in North Macedonia, in 2020, 21.8% of people lived in poverty, while a staggering 66% of the population has faced legal problems in the past three years (Council of Europe, 2022).

Therefore, it is important to continue promoting the availability of secondary legal aid to those who need it and to ensure that the criteria for approval are transparent and fair. There are still citizens who could benefit from this service, and it is crucial to ensure that they are not excluded from accessing justice due to financial limitations.

Beside, the limitation, article 13 at line 8 provides ground for sustainability of the FLA system because it states that in case when the beneficiary of SLA prevails in the dispute and the court orders the opposing party to pay for the expenses of the proceedings either in full or in part, as per the regulations governing court procedures, the court's decision will require the opposing party to pay the amount of the proceedings costs to the Budget of the North Republic of Macedonia. (Law on free legal aid 2019, Article 13)

Following this, while the state may recover the funds paid to beneficiaries of secondary legal aid, there is a significant obstacle in implementing such a system due to the lack of a monitoring mechanism. The FLA department, being part of the Ministry of Justice, does not have an independent budget account, making it difficult to track the flow of finances. Because of this, there is no information available about the amount of funds which were returned to the Ministry of Justice and how these funds are spent.

CONCLUSION

The research revealed that although improvements were made in the new LFLA, many people still cannot afford legal assistance, leaving them vulnerable to exploitation and discrimination. The provision of free legal aid is critical in ensuring access to justice, but its effectiveness is dependent on adequate funding. The study also showed that the exception in Article 13 line 10 of the LFLA limiting the expenses covered by free legal aid is necessary to limit the number of requests for legal aid but may have unintended consequences.

The current situation is due to inadequate planning of budget funds for FLA, based on the legal needs of vulnerable groups of citizens, as well as the non-realization of the approved funds on an annual basis. To address this issue, it is crucial to increase the budget for FLA and to be used not only for FLA, but for legal empowerment as well. Increasing the budget for FLA would lead to an increase in the number of citizens who are able to access legal aid and, consequently, justice. Therefore, it is imperative that the government take proactive measures to address this issue and allocate adequate financial resources for free legal aid to ensure access to justice and promote the realization of human rights and freedoms.

In addition, even though the LFLA in the Republic of North Macedonia has undergone significant changes in recent years, with the aim of improving access to justice for all citizens. However, there are still limitations and challenges that need to be addressed. One such limitation is the provision in Article 13, line 10 of the LFLA. This provision has been identified as a potential deterrent for citizens seeking secondary legal aid, as they may not be able to afford such costs in case of a negative outcome. Therefore, it is recommended that the government considers deleting this provision in order to encourage more citizens to seek secondary legal aid when needed. In this way, access to justice can be further improved, and the human rights of all citizens can be better protected. Additionally, it is crucial for the government to allocate adequate financial resources for free legal aid, in order to ensure that those in need are not denied access to justice due to their financial situation. Poverty and legal problems are significant issues faced by a large portion of the population in Macedonia. To address these challenges, the government must allocate sufficient funds to support the poorest citizens and provide free legal aid to those in need.

By taking these steps, the Republic of North Macedonia can make significant progress towards ensuring that all citizens have equal access to justice and the protection of their legal rights.

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RURAL WOMEN DISCRIMINATED BY THE STATE SYSTEM – OMITTED FROM THE RIGHT TO PAID MATERNITY LEAVE

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ABSTRACT

Policy makers around the world are increasingly turning to introducing policies and laws aimed at reconciling work and family life. Since maternity leave is the challenge for which women need the most support, the governments are continuously working on reforms to improve provisions for maternity and parental leave, which contributes to socio-economic development. North Macedonia aligns its national policies with international standards, so employed women have the right to paid leave during pregnancy, childbirth and parenthood for duration of nine continuous months. However, self-employed persons, including women registered as individual farmers, do not have access to the right of paid parental leave. To what extent North Macedonia follows the global social trends of respect for human rights, including the right to paid parental leave and why certain categories of citizens do not have the right to such leave in the system is the main theme of this paper.

KEY WORDS: *human rights, rural women, social protection, социјална заштита, maternity leave*

INTRODUCTION

Macedonia is a candidate country for EU membership with established mechanisms for equal opportunities aimed at achieving gender equality. Encouraged by the common agricultural policy of the EU, Macedonia establishes its policy for rural development. This is especially important because 45% of the country's population lives in rural areas. When defining the development priorities in the policy for rural development, as well as in other policy areas (such as: education, health, social protection and the economy), the introduction of the gender perspective is necessary because 49,7% of the rural population are women (State Statistics Office, Census 2021).

Despite the fact that rural women have much in common with women from urban areas, the differences between the inhabitants of rural and urban areas in Macedonia are determined by the large distances of rural areas from the center, low population density and limited offers of public services, supplemented by the patriarchal and conservative mentality that still prevails in rural areas. There is an increasing need for focused research on rural women because rural life and the disadvantages that result from it affect rural women in a different way than they do on rural men, and it is related to the peculiarities such as: the limited access to public transport, the fact that most women belong to the older age groups, the specific health issues, the less favorable economic position, difficulties in accessing the labor market, much greater responsibilities around the family and caring for family members, the lack of effective use of property rights, patriarchal family relations, relative invisibility in most of the agricultural and rural development programs and their insufficient representation in the decision-making process. Also, as a result of this state of women in rural areas, appear various forms of discrimination of this category of citizens which forms of discrimination very often remain unnoticed by the institutions of the system. One of such forms of discrimination is the right to paid maternity leave for women farmers, which is actually a form of discrimination and is the main research question that this paper focuses on.

Women registered as farmers do not have the right to paid maternity leave. They have been facing the problem for years and say that they feel discriminated against other Macedonian citizens. It also affects their economic activity as well as social inclusion in society. The principles of gender equality as a basic human right that must be respected by every individual and in every area of social life have gained momentum especially in the last few years with the reopening of a large number of issues that at first glance seem to be decided long ago.

Rural women face a number of challenges, such as social exclusion, unemployment, gender discrimination, unequal distribution of income and resources, dominance

of traditional norms, deprivation of ownership of agricultural land and property, deprivation of the right to paid parental leave, limited access and supply of education, information, health care, public and social services.

Such conditions force rural women to live in greater poverty and encourage migration, and the crisis caused by Covid 19 also affected this. About 62% of rural women are not active in the labor market due to engagement in the household and childcare, and 47% of unemployed rural women do unpaid work in family farms. (State Statistical Office report 2021, 45-48) Also, the participation of women in employment and economic growth is of crucial importance for achieving the goals of the European Union integration processes, and in our country, despite the fact that they are employed, i.e. self-employed and actually pay contributions for pension and health insurance, they do not have the right to paid maternity leave.

International organizations constantly monitor the effects of policies and access to maternity and childcare leave rights, and actively work to improve maternity, paternity and parental leave legislation in countries around the world. The Parental Directive for Maternity Leave of EU[82] sets minimum requirements for parental leave for male and female workers and is directly related to employment protection.

The main elements of this Directive are:

- employees have the right to parental leave upon birth or adoption of a child;
- men and women must receive equal treatment, regardless of their type of work or employment contract;
- parental leave must be granted for at least four months as an individual right to both parents;
- provisions for taking leave;
- provisions on the right of workers to return to work after taking parental leave and on their right to non-discrimination.

Directive 2010/41/EU[83] on the application of the principle of equal access to men and women who perform activities as self-employed persons is also of particular importance. The directive refers to the regulation of benefits and the length of maternity leave under equal conditions, as is regulated for other employees of third parties.

But despite numerous important conventions and directives, there are still today gaps in the provisions for paid overtime during pregnancy, childbirth and child care, as well as inadequate health and safety protection as key challenges for formally

82 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0041&rid=6
83 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0041&rid=6

employed workers, self-employed women such as women farmers and workers in the informal economy.

Currently, there are only a few studies that deal with the issues and challenges that rural women face, and this particular paper is one of the first that accurately points to the real situation that rural women are facing when it comes to their right to paid maternity leave. Working on this theme and issue of rural women with given specific data, upgraded with a comparative analysis that is made with the region and with countries that are similar to ours and that have already solved this issue, this paper also provides the guidelines for further research on the topic, but at the same time points to a solution to the problem that is the subject of the research.

The Assembly of North Macedonia has voted positively for the need for amendments to the Law on Health Insurance, which should enable the use of the right to maternity leave for women farmers, so this paper as well as further research on the topic should lead to the best legal solution which will enable women farmers to have this right and eliminate a form of discrimination against this category of citizens. Apart from the possibility of further research on this topic, which should give the best answer to this form of discrimination, a new potential area for research is also opened, and that is how women farmers can get paid sick leave in the case of an injury at the workplace, i.e. in the field, which is also not possible in the current legal system.

1. MATERNITY LEAVE IN EU MEMBER COUNTRIES

When we consider the legal framework for the regulation of the right to paid maternity and parental leave in EU countries and beyond, it is important to note that each country has its own specific regulation for the inclusion of farmers and rural population in the formal economy including the right to paid compensation for maternity leave. Most of the countries create their policies in accordance with the standards of the International Labor Organization and other international agreements.

How the right to maternity leave is decided in the countries of the region that are members of the European Union can be seen from the following displays.

1.1. Croatia

In the Republic of Croatia, the system of maternity and parental benefits is regulated by the Law on Maternity and Parental Assistance (Official Gazette" number: 85/08, 110/08, 34/11, 54/13, 152/14, 59/17, 37/20 and 85/22). Article 3 of this Law puts the implementation of the rights under the competence of the Croatian Health Insurance

Authority, while the supervision over the implementation is the responsibility of the Ministry responsible for the family, i.e. the Ministry of Demography, Family, Youth and Social Policy. The list of persons with mandatory health insurance also includes persons who in the Republic of Croatia perform agricultural activity or forestry activity as the only and main insurance, if they are liable for income tax or profit tax and are not insured on the basis of work. The right to maternity and parental leave (rodiljni i roditeljski dopust) and monetary compensation (novčane naknade) is regulated by the system for maternity leave and parental support.

The time and money benefits that are available to the beneficiaries are: - maternity and parental leave; - the right to work half time in order to provide their child with more care; • leave to take care of a child with disabilities; • leave for adoptive parents; • cash assistance (replacement benefit, lower cash allowance, cash assistance).

Employed and self-employed parents, farmers and parents who earn other incomes have the right to maternal and parental support. People who are out of the labor system, pensioners or students are also entitled (if they meet special conditions). (Pajtak, Sola 2023, 43-47)

A parent with another income or a farmer outside the value added tax or income tax system, in order to be able to benefit from the right to maternity and parental leave, it is necessary to have a permanent residence in Croatia for at least 3 years or to have a permanent residence permit at least 3 years, if he/she is a foreign citizen.

In accordance with the legal regulation on the right to maternity and parental leave and the monetary benefits regulated by the maternity and parenting support system in the Republic of Croatia, it is evident that women farmers have the right to maternity and parental support. The right to an allowance during leave due to the birth of a child is guaranteed if the person - a potential beneficiary of this right - has long-term health insurance and if the parent is a farmer with a permanent residence in Croatia for a period of at least 3 years, or if has a permanent residence permit of at least 3 years if he is a foreign citizen..

1.2. Bulgaria

The legal framework in the Republic of Bulgaria enable women who are the owners of agricultural holdings and tobacco producers to exercise the right to monetary benefits for maternity leave and parenthood. The Social Security Code[84] regulates public relations related to state social security during maternity, as well as the type of benefits provided in these circumstances.

84 https://ec.europa.eu/social/main.jsp?catId=1103&langId=en

There are several types of maternity benefits provided by the state social insurance. Under "maternity", the state social insurance provides the following benefits (Zheleva 2021, 32-43):

- cash compensation for pregnancy and childbirth, which are paid for a period of up to 410 days;
- cash compensation in the amount of 50 percent of the compensation for pregnancy and childbirth for a period of up to 410 days, when the leave for pregnancy and childbirth is not used; monetary allowance upon birth of a child and upon adoption of a child up to 5 years of age for a period of up to 15 days;
- cash allowance upon the birth of a child after the child turns 6 months old for the remaining days up to 410 days;
- monetary compensation for raising a child until the child is 2 years old;
- monetary compensation in the amount of 50 percent of the compensation for raising the child up to the age of 2, when the leave for raising the child is not used.

Among the persons who have the right to compensation during pregnancy and childbirth, for raising a child up to 2 years old and for adopting a child up to 5 years old, are **registered farmers and tobacco producers; the spouses of persons who perform a free profession and/or craft activity, or of registered farmers and tobacco producers, when with their consent they participate in the labor activity they perform, who are insured at their own request, as well as members of cooperatives.** The Republic of Bulgaria is at the top among countries in Europe with the most voluntary benefits for maternity leave. Female workers have the right to paid maternity leave of up to 410 days, provided in a phased approach. This leave is financed with almost full salary, covering 90% of the employee's salary through social insurance. In Bulgaria, there is also financial support for child care and for people who are not employed.

1.3. Greece

The maternity leave policy for the female workforce in Greece is fully in line with international standards, clearly stating that the duration of maternity leave should be at least 14 weeks. Maternity benefits in Greece also include paid benefits of at least 67% of the worker's monthly salary, which are provided in accordance with the time period of leave. The basic leave is regulated at 17 weeks, of which eight weeks must be taken before the birth and nine weeks after the birth. It is mandatory to take these 17 weeks of maternity leave. Then follows the so-called special leave for a duration of six

months, which is realized after the basic maternity leave and before the beginning of the use of flexible working (reduced hours of daily work).

The following categories of insured persons have access to the rights to leave due to pregnancy, childbirth and child care (Theofilopoulos, 2020, 23-33)

- Basic leave for which a full cash payment is provided for insured persons who have at least 200 insured working days during the previous two years, **regardless whether they are on a fixed or indefinite contract**. Mothers who have children through surrogacy also have the right to receive monetary compensation for the postnatal part of the leave;
- A special leave is provided for insured persons in IKA-ETAM (the largest social insurance fund) with fixed or indefinite contracts;
- Self-employed women (**including women farmers!**) who are directly insured in the Self-Employed Social Insurance Fund (OAEE) and the United Self-Employed Fund (ETAA) are entitled to fully covered costs of medical and pharmaceutical care at the time of birth of the child and have the right to receive monthly financial support for a period of four months.

2. WHAT IS THE LEGAL REGULATION IN NORTH MACEDONIA RELATED TO THE RIGHT TO MATERNITY LEAVE?

In the North Macedonia, the mother has the right to maternity (parental) leave in accordance with Article 165 of the Law on Labor Relations. It is foreseen that an employed woman during pregnancy, childbirth and maternity has the right to paid leave from work for a period of 9 months without interruption, and if she have born more than one child twins, triplets and more), she is entitled to paid leave for a period of 15 months. Based on the opinion of the competent health authority, the employee can start maternity leave 45 days before birth and mandatory 28 days before the birth. Such benefits derive from their insured status under the Health Insurance Law. With the mandatory health insurance, the insured persons are provided with the right to basic health services under the conditions established by this Law, as well as the right to monetary benefits, namely: 1) the right to compensation for wages during temporary incapacity for work due to illness and injury and during absence from work due to pregnancy, childbirth and maternity and 2) the right to reimbursement of travel expenses when using health services.

Conditions for fulfilling the right to maternity leave as a right from the health insurance are the following:

- The health insurance must have lasted for at least 6 months without interruption before the occurrence of the case;
- The health insurance contribution is paid regularly or with a delay of at most 60 days.

In accordance with the Law on Health Insurance, insured persons in employment have the right to compensation for absence from work due to pregnancy, childbirth and maternity.

As of 2012, this is the responsibility of the Ministry of Labor and Social Policy, but its administration and compensation is carried out by the Health Insurance Fund. The amount of compensation during absence due to pregnancy, childbirth and maternity is 100% of the salary. Article 5 of the Law on Health Insurance shows that the Republic of North Macedonia has introduced provisions and a system for maternity leave, but if we consider the further articles of the Law, especially Article 14, which covers the right to compensation of wages during absence from work due to pregnancy, birth and maternity, it is evident that the category of individual farmer is absent from the wide list of insured persons who have this right. According to the data of the Health Insurance Fund, in 2021, 17,233 active farmers were registered and covered by the mandatory health insurance.[85] According to the latest data of the Ministry of Agriculture, Forestry and Water Management, according to the Law on Pension Insurance in 2022, 1,075 women with the status of individual farmers were registered. In accordance with the legal regulation, these women, although they have the status of health insurers and have an obligation to pay health and social insurance, they still cannot access the right to paid maternity leave during absence from work due to pregnancy, childbirth and maternity.

3. WOMEN FROM RURAL AREAS AND THEIR ACCESS TO THE RIGHT TO PAID LEAVE DUE TO PREGNANCY, CHILDBIRTH AND MATERNITY

Women belong to a population group that "over time suffers social discrimination that is also expressed in the labor market" (INE/GSEE 2019, 113). Rural women, unlike women employees in other sectors, face many challenges, especially the following:

- **Low incomes from agricultural production and activity**. The data shows that, according to the economic size, half of the total number of agricultural holdings are classified in the smallest, first class of economic size, which realizes up to 2,000 euros in value from the sale of agricultural products per year and which has very low contribution to the total market value of the

85 https://fzo.org.mk/sites/default/files/fzo/izvestai/godisen-izvestaj-2021.pdf

realized agricultural production (only 10 %) (IPARD Monitoring Committee 2021, 24-26)

- **Access to health and social protection rights**. As far as the national legislation in the field of health and social protection is analyzed, it is evident the impossibility for rural women as agricultural producers to access the right to paid sick leave, paid maternity leave, and they are also faced with difficult access to social protection rights - use of guaranteed minimum aid, educational allowance, etc.
- **Rural women spend significantly more time on housework and/or caring for family members** (minor children, persons with disabilities, elderly, etc.) compared to the time devoted by their spouses/partners.
- **Safety at work**. Most of them do not have information and most of the time they work completely unprotected in the field or during the performance of other agricultural activites.
- **Mitigation and adaptation to the climate change**. Climate change has been found to have a greater impact on those sections of the population that are most vulnerable, whether in developed or developing countries, and exacerbate existing inequalities. Women often face higher risks and greater burdens from the impact of climate change, in situations of poverty and due to existing roles, responsibilities and cultural norms (UN Nations 2020).

Due to economic pressures and the lack of income security, most women engaged in agriculture are not able to afford to significantly reduce the amount of work before and after childbirth, so as a consequence, they continue with work activities even in late pregnancy. or they start work too soon after giving birth, thus exposing themselves and their children to significant health risks, such as premature birth, unwanted abortion, etc. (Tosheska 2022, 24-26)

The Commission for Prevention and Protection from Discrimination of North Macedonia also responded to this discrimination this year. Namely, the Commission for Prevention and Protection from Discrimination this year, on the celebration of International Women's Day, 8th March, informs the public about an adopted opinion which establishes indirect, prolonged, intersectional discrimination against individual women farmers that are insured in the system, based on sex, gender, personal status and belonging to a marginalized group **in exercising the right in the field of health insurance – the right for compensation of wages during absence from work due to pregnancy, childbirth and maternity**.

In order to solve this systemic problem, the Commission recommends to the Ministry of Health to prepare amendments and additions to the Law on Health Insurance, so

that it will provide **the right of compensation during temporary inability to perform agricultural activity due to pregnancy, birth and maternity for individual farmers, as health insurance.**

Paid maternity leave is a key social right of women, provided by the Constitution and international agreements; therefore, the state has the obligation to provide this right for all insured women, without exception.

In 2022, the Commission for the Prevention and Protection against Discrimination acted on a total of 65 petitions in which the reported grounds for discrimination were sex and/or gender, and on 22 of these petitions the commission found discrimination based on sex and/or gender.[86] These data only emphasize the continued need for the Commission for Prevention and Protection from Discrimination to play an important role in promoting sex and gender equality and combating discrimination against women, especially women from marginalized groups.

CONCLUSIONS

Maternity protection is a fundamental labor right incorporated in key universal human rights agreements. It is crucial to promote maternal and child health and prevent discrimination against women in the workplace. The right to paid maternity leave, together with paternity and parental leave, makes a huge contribution to promoting gender equality as universal human right. Maternity leave should be an indispensable element of comprehensive policies aimed at ensuring a positive relationship between work and family. The principle of equal treatment and equal access to rights should apply to all persons in the public and private sectors, regardless of sector, occupation and employment, regardless of race, skin color, national or ethnic origin, religion or other beliefs. With the exclusion of rural women from the right to maternity leave, systemic discrimination is carried out, contrary to the Law on Prevention and Protection from Discrimination. In this way, rural women are placed in a much less favorable position than other female workers, which has serious consequences on their reproductive, psychological and physical health, as well as the health of their newborns.

Women in rural areas in North Macedonia, although less, still pay contributions for health insurance, and they do not have the right to maternity leave. However, it should be taken into account that there are examples of countries in the EU where

86 https://kszd.mk/wp-content/uploads/2023/03/08-119-%D0%BE%D0%B4-03.03.23-%D1%83%D1%82%D0%B2%D1%80%D0%B4%D0%B5%D0%BD%D0%B0-%D0%B4%D0%B8%D1%81%D0%BA%D1%80%D0%B8%D0%BC%D0%B8%D0%BD%D0%B0%D1%86%D0%B8%D1%98%D0%B0-08-574.pdf

even farmers or other workers who do not pay contributions at all have the right to paid maternity leave. Such policies are necessary in our country, as a country in which agriculture represents important economic activity and as a country where equality is key constitutional principle.

Empowering individual farmers and ensuring access to rights should be a priority in national policies and programs. The triple burden in the reproductive, productive and social spheres for farmers is deepened by the burden of unpaid leave due to pregnancy, childbirth and maternity for women – registered as individual farmers. From unpaid domestic workers to subsistence farmers, who have directed part of their subsistence means to transition from the informal to the formal economy, and have begun to register in the health insurance system and the pension insurance system, working in unsafe conditions, earning lower incomes, without any protection from employment laws and social benefits, they face the challenge of NOT being entitled to paid leave for pregnancy, birth and maternity leave.

Additionally, if the serious consequences for the life and health of rural women as agricultural producers and their newborns are taken into account, policies that do not allow maternity leave for these women can be qualified as inhumane and exploitative.

Taking into account that maternity protection is a basic human right, the access to paid maternity leave is of key importance for the effective application of legislation and equal access to labor rights, our country MUST to establish and implement inclusive legal frameworks that will provide basic rights, such as maternity leave, for all citizens who are paying their obligations to the state including as well as rural women. In this way, we will provide coherent social programs that will reduce the unequal access to rights for women from different work activities, and will ensure equality and social justice.

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DO PEOPLE WHO USE DRUGS AND ARE ABLE TO WORK HAVE THE SAME OPPORTUNITIES FOR EMPLOYMENT AS THE GENERAL POPULATION?

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ABSTRACT

This paper provides and outline of the state of affairs and employment problems faced by people who use drugs (PWUD). The paper delves into the main challenges, such as the stigma and discrimination attached to these people, often compounded with disability and/or a limited work ability. The analysis and the research findings included in the paper serve to show the core need to create a special Incentive Programme for Employment of People Who Use Drugs at the national level, tailored to the specific needs of this group of people. In addition, the paper also offers an example of an already existing programme that could be used as the basis for creating this type of programs at an institutional level thus offering a systemic response to the problems faced by the people who use drugs.

KEY WORDS: *People who use drugs, PWUD, unemployment, Incentive Programme for Employment, marginalized groups, discrimination, stigma.*

INTRODUCTION

The crisis caused by the Covid-19 pandemic led to implications in the form of dismissal of large numbers of the workforce, as well as non-extension of the fixed term employment contracts of employees. The economic crisis, on the other hand, caused serious consequences in the shape of price increases, especially a surge in the prices of basic products. All of this contributed to an additional disruption in the socio-economic standing of the general population, particularly among the people who use drugs.

Even prior to these circumstances, the Republic of North Macedonia was not in a position to boast of a high rate of employment and a favourable economic climate that would curb the unemployment and the migration, especially among the young population. According to the State Statistical Office, the unemployment rate in the Republic of Macedonia in 2021 was 15.2%. In comparison, according to data from the European Commission, the adjusted unemployment rate of the EU in 2021 was 6.5% (SSO 2021, EC 2021). To draw a parallel with the neighbouring Republic of Serbia, it can be noted that their unemployment rate in 2021 was 12.8%. This raises the question of whether, despite the inadequate mechanisms for dealing with unemployment, both countries are willing and able to improve or sensitize their employment programs, especially when it comes to the people who use drugs.

In this paper, I highlight the problem that the Republic of North Macedonia does not have tailored employment programs for people who use drugs or are being treated for opioid addiction with substitution therapy with methadone or buprenorphine and are able to work. Hence, there is a need to create a customized programme to "Incentivize the Employment of People Who Use Drugs". Due to the specific problems, needs and opportunities, the programme is/needs to be flexible, with the aim of easier adaptation and inclusion of these people in the labour market. The programme includes help, support and incentives for people who use drugs to actively include them in the labour market. It is important to emphasize that these individuals require a multidisciplinary approach. This means that it is necessary to simultaneously work on improving their psycho-social circumstances and on motivating and helping them while they are looking for a job. Such a multidisciplinary approach would lead to strengthening the capacities of these persons and improving their position in society.

WHAT IS UNEMPLOYMENT?

Unemployment is a term that explains the occurrence of individuals who belong to the population group which is fit to work (able to work), who are looking for employment, but are unable to find it. The unemployment rate is a clear indicator of the level of economic stability of a society. The percentage (the calculation of the number) of unemployed people is obtained when the total number of unemployed workers is divided by the number of members of the population who are fit to work, aged from 16 to 65 years.

The negative effects of long-term unemployment, as well as loss of employment, apart from disrupting the economic status of unemployed persons, also affect their well-being, which can lead to depression and other psychosomatic disorders and, in the worst-case scenario, to suicide. The unemployment status as a social identity is undervalued and in many societies it is relativized and placed at the same level with other stigmatized social groups, while the psychological processes related to social identity and the stigma contribute to further discrimination (Norlander et al., 2020).

From the point of view of the unemployed persons themselves, especially if they have been active jobseekers for a long period of time, or if they belong to a marginalized group, they often face stigma and are labelled as lacking motivation, depressed and without sufficient professional abilities or personal resources which may lead to feelings of failure, shame, and poor motivation. This can build up to the point of disruption of the social status of these individuals and may discourage them from further looking for a suitable job. By adopting this standpoint, they may proceed to categorize themselves as unemployable or subscribe to some other type of categorization. Unemployed persons accept this role and consequently position themselves in society based on it (McFadyen 1995). This practice, apart from leading to the disruption of the socio-economic status of individuals, negatively affects society at large.

COMPARATIVE ANALYSIS OF THE UNEMPLOYMENT SITUATION IN THE REPUBLIC OF NORTH MACEDONIA AND THE REPUBLIC OF SERBIA

According to the last census of RSM in 2021, the total population was 1,836,713, of which 50.4% were women and 49.6% were men (SSO MakStat 2023). Unemployment in the fourth quarter of 2021 was at the lowest ever level in our independent economic history and, according to the data from the State Statistical Office, amounted to 15.2%. On the other hand, according to the European Commission, the adjusted unemployment rate in the EU was 6.5% in February 2023, in contrast to March 2022, when the percentage was 6.8% (Eustostat 2023). This information led to the conclusion

that despite the fact that in 2021 the unemployment in RNM was at the lowest level by then, the unemployment rate in our country was still significantly high compared to the EU member countries.

In order to decrease the unemployment, i.e., increase the employment rate in the Republic of North Macedonia, the Government developed an Operational Plan for Active Programmes and Measures for Employment and Services on the labour market for 2022. During the implementation of the Operational Plan for Active Programmes and Measures for Employment and Services on the labour market for the 2022, several principles that must be complied with were listed. Among others, the principle of diversity and inclusiveness for all social categories in the private sector was stated, in accordance with the principles of fair and adequate representation of ethnic, gender, racial, religious or any other vulnerable categories of citizens, in accordance with the practices of the United Nations (UN) and the International Labour Organization (ILO) (ESARNM – Employment Service Agency of the Republic of North Macedonia 2022). ESARNM implemented a "Job-seeking Assistance" service, which was implemented through various activities, such as disseminating information, assistance in preparing a short biography (CV), preparation of individual employment plans, career counselling, etc. According to the results of the Employment Operational Plan implemented by the Employment Service Agency in 2021, this service included a total of 45,640 unemployed people, 23,647 of which were women, and 14,199 were young people up to 29 years of age (ESARNM 2021). ESARNM also implemented the "Motivational Trainings" service, the purpose of which was to increase the motivation and self-confidence among people who are active jobseekers. These trainings included 328 unemployed persons, 147 of which were women and 106 unemployed persons under the age of 29. The remaining target group of unemployed persons were the beneficiaries of minimum financial assistance through the project Labour Market Activation of Vulnerable Groups (there is no official data on the number of people involved).

According to the data from the State Statistical Office coming from the labour force survey, the active population in the Republic of North Macedonia in the first quarter of 2021 was 822,349 people, of which 129,651, i.e., 15.8%, were unemployed people. Of the total number of unemployed persons, 64.7% were men and 35.2% were women. However, although men made up the majority of the unemployed population, this percentage only refers to those persons who are active jobseekers, meaning that they figure on the labour market, although they are not employed. If we take another look at the situation with the inactive population, i.e. those persons who are neither employed nor actively seeking a job on the labour market, we can observe that the percentage of women significantly increases. In fact, in 2021, the inactive population consisted of 739,796 people, 63% of whom were women (463,798) and 37% men (275,998). It is here that we can notice the huge gender gap when it comes to the unemployment

in the country (SSO, 2023). Compared to the first quarter of 2022, there has been a decrease in the number of active jobseekers, i.e. in the first quarter of 2022, the active population in RNM consisted of 811,251people, 119 409 of whom were unemployed persons. Of the total number of unemployed persons, 75,600 were men, and 43,809 were women, constituting an unemployment rate of 14.7%.

In the Republic of Serbia, according to the most recent census in 2022, the population was 6,647,003, 51.4% of whom were women, and 48.6% were men (Statgov 2022). In the first quarter of 2021, the population that was fit to work was 3,121,600, and the number of unemployed persons was 399,400, i.e., 12.8%. In comparison to the first quarter of 2022, there was a decrease in unemployment, i.e., the number of unemployed persons was 341,400, i.e., 10.6% (ibid.). According to the Employment Programme for 2022, the plan was to inform 63,000 people about various career development opportunities, 6,000 of whom in the Centres for Information and Professional Counselling (CIPS), including 13 branch offices (Belgrade, Niš, Novi Sad, Kikinda, Zrenjanin, Pančevo, Jagodina, Šabac, Požarevac, Kragujevac, Zaječar, Sremska Mitrovica and Čačak), as well as 57,000 through the website of the National Service. The information about the career development opportunities was to be continuously disseminated in the 13 Centres for Information and Professional Counselling (CIPS 2022). In 2022, 6,338 people used the services for immediate information and career counselling in these Centres, which denotes 105.63% of plan implementation. Since some people used several services, a total of 7,038 users were provided with services. The report on the guide that was drafted states that a total of 73,027 users visited it in 2022. Consequently, the rate of plan implementation was 128.12%. With the implementation of some of the measures for employment, a slight decrease in the unemployment was noted. ((Ibid)

The astounding rate of migration of the young population in both countries is of exceptional significance, since over 150 thousand young people have emigrated from Macedonia in the past two decades, as shown by the analysis prepared after comparing the census results from the last two censuses.

The data from Eurostat shows that only in the Republic of Serbia in 2018, 52,049 people received a residence permit for some of the European countries for the first time, which was 12,000 people more compared to 2017. This leads to a conclusion that on average, 49,000 new people move away. This information was obtained through formal statistical data, which does not include the people who immigrated to the European countries illegally, the seasonal workers, and people who have European passports and used them to leave the countries. Consequently, it can be assumed that the number of people who emigrated is much higher.

The comparison between these two countries, despite the fact that the Republic of Serbia has a much larger number of inhabitants compared to the Republic of North

Macedonia, comes as a result of the close connection and the similarity of the nations, the traditional values, as well as the fact that both countries aspire to become members of the European Union, the similar political structure and the mechanisms for dealing with and treating the vulnerable category of citizens, particularly the people who use drugs.

The reasons for emigration are closely related: lack of opportunities for career advancement, poor economic situation, low standard of living, low wages, corruption, inability to find a job in the field of expertise they are trained in, or to find any job at all.

LABOUR MARKET INCLUSION OF PEOPLE WHO USE DRUGS

Generally speaking, the Operational Plans for Employment of the Republic of North Macedonia and the Republic of Serbia do not include the people who use drugs as a separate category that should be seriously addressed in terms of its active involvement in the labour market. The use of drugs is most often regarded in the context of prevention, and not by addressing the socio-economic situation of the people who are being treated for opiate addiction with methadone or buprenorphine therapy or people who use drugs but are able to work.

Portugal is one of the positive examples on how to deal with this issues. The research paper "Decriminalization of drugs as the basis for a humane and effective drug policy" shows that most of the employments took place within the regular labour market, accounting for 52% of the cases, i.e. 762 PWUD (Dekov 2020). This option includes full-time employment with all the ensuing rights and obligations, and it is an example of successful integration. The remaining employments have been conducted through the Lifetime Employment Programme (25%), which is a special employment programme for PWUD and which has existed since 1998, followed by the programme of the Institute for Employment and Professional Training (15%), and then through special professionalization measures (8%). The Lifetime Employment Programme was introduced in 1998 for the first time, but its genuine outreach was achieved after the publication of the report of the Dissuasion Commission in Portugal in 1999 and 2000, when the programme increased its scope of activities by 180%. The goal of the programme is professional reintegration and employment of PWUD who have completed their treatment or served their custodial sentence (ibid).

As in other countries, the situation we have come to acknowledge through the operation of the HOPS Association Skopje, over the course of their work, field experience and direct interaction with these people, has led us to the finding that most of the people who use drugs and use the services provided by HOPS, in addition

to their impaired health, are also continuously faced with substandard economic circumstances. Some of the people who use drugs exercise their rights to social protection (welfare), but there are also people who do not exercise any of their rights. There are several reasons why the people who use drugs are not actively involved in the labour market. The primary reason is the stigma and discrimination faced by this target group due to their use of psychotropic substances. In addition, society itself imposes the attitude that these people cannot be expected to be dedicated and responsible professionals performing certain work in certain occupations. The reason for the non-inclusion of people who use drugs in the labour market is the impaired state of their health, which may have occurred as a result of the continuous injection of drugs. The fact that they are often insufficiently informed about the existence of active jobs also has an impact on the unemployment among these people. I would also like to mention here that there are several reasons which account for this lack of awareness: a large proportion of the people who use drugs do not have access to online tools to search for vacancies; there are also people who do not know how to find the information about the vacancies; a large number of people who use drugs do not have the skills to adequately prepare and adapt their professional resume (short biography), draft a motivational letter or a letter of interest and submit it to appointed persons. It is important to keep in mind that with the continued use/abuse of drugs, the people who use drugs have their entire way of life changed, which leads to a disruption in their social, domestic and intimate relationships, pushing them to the margins of society. Therefore, psycho-social help and support is necessary in order for them to overcome these challenges. In light of all the issues that the PWUD people face, there is an outstanding need for development of a specific and tailored "Incentive programme for the employment of people who use drugs". Due to their specific problems, needs and opportunities, the programme needs to be flexible in order to facilitate the adaptation and inclusion of these persons in the labour market. The programme includes assistance, support and motivation for the speople who use drugs to actively include them in the labour market. It is important to emphasize that a multidisciplinary approach is necessary when working with these individuals. This means that it is necessary to simultaneously work on improving their psycho-social circumstances and on motivating and helping them to look for and find a job. As we have already mentioned, for a large part of people who use drugs, the continuous use of drugs leads to a serious disruption in their health, and they are unable to perform all types of work assignments. For example, for a large number of people, the ongoing use of drugs causes deep vein thrombosis, which in turn causes difficulties in movement and standing, and in the worst-case scenario, may lead to amputation of a limb. In addition to the disease of addiction, these people may develop another condition, such as disability, which may prevent them from accessing employment.

The Law on Employment of Disabled Persons regulates the special conditions for employment and work of persons with disabilities and is largely focused on employment in private companies (Official Gazette, 2016). However, despite the fact that there is a law that regulates the employment of persons with disabilities, the employment of these persons is still at a very low level. On average, only 1,671 persons with disabilities have been registered as employed persons over the past 10 years (in the period from 2010 to 2020). Here we can also mention the inaccessible infrastructure for employment of these persons, which discourages them from looking for a job, or attending certain trainings.

However, despite the fact that there is a certain number of people who use drugs that are faced serious health problems and disability, there are also those who are in good physical health and can actively participate in the labour market, yet unfortunately, they are still unemployed and do not earn income on any grounds.

RESEARCH FINDINGS AND INCENTIVE PROGRAMME FOR EMPLOYMENT OF PEOPLE WHO USE DRUGS

Prompted by the information received from the clients that I work with about their economic situation, several questionnaires were prepared (a total of 50 people, 12 of which women and 38 men) in which they provided data about their employment, their age, whether they are recipients of the guaranteed minimum income based on their state unemployment and disease, and whether they have been offered a job by the Employment Agency. Out of 50 people, 7 responded that they had been offered a job, but then further said that they were not offered a suitable job that corresponds to their qualifications and level of education. All the persons who were interviewed were registered with the Employment Agency. The interviews were conducted in December 2022 and January/February 2023.

AVERAGE AGE OF THE CLIENTS	PERCENTAGE OF EMPLOYED CLIENTS	PERCENTAGE OF JOB OFFERS FROM ESA	AVERAGE DURATION OF THE UNEMPLOYMENT	PERCENTAGE OF GMI RECIPIENTS ON GROUNDS OF UNEMPLOYMENT	PERCENTAGE OF GMI RECIPIENTS ON GROUNDS OF DISEASE	AVERAGE DURATION OF RECEIVING GMI
38.9	7%	12%	7.5 years	26%	15%	average 3.5 years

Results of the conducted questionnaires

This led us to the idea and the need to draw up an Incentive Programme for Employment of People Who Use Drugs. The programme is designed for the social

workers who work with these people. After the preliminary assessment and detection of the essential needs and difficulties faced by the people who use drugs in the labour market, this programme was structured in several stages for easier implementation. The way these people function can often lead to difficulties in carrying out the tasks, and therefore the professionals should be sensitized to work with them. The incentive programme for employment of people who use drugs is designed to be implemented in several stages, namely:

→ **Stage 1:** Mapping the persons who are seeking and need employment

The purpose of this phase is to detect the people who are willing and able to engage in employment. Those people who have certain difficulties as a result of their health (persons who have difficulty walking, persons who have had a limb amputation, persons who have another type of health issue), which does not prevent them from doing work, but who do require an appropriate position that would be in accordance with their health condition, would not be exempted from the program, on the contrary, various steps would be taken for their active inclusion in the labour market, through adequate mechanisms for their implementation. In the first part of the individual plan, the person would fill in the basic data, name/code, age, place of residence, level of education, work experience and field of professional interest. The second part of the individual work plan would be completed by the social worker. It would outline the general impression about the person's engagement in the process, their involvement in the relevant trainings, as well as the results achieved (whether the workshops were useful, how applicable they were, etc.). After the mapping, individuals would fill out an individual work plan. At this stage it is recommended for the social worker to prepare the anamnesis (background) for each client individually. This would help the social worker establish a proper diagnosis of the social position of the client covering all aspects, i.e. it would enable adequate detection of the root cause of the problem, which would open the most needed areas in which to work with the client, and if necessary, the client would be referred to professionals (psychologist, psychiatrist, a lawyer from HOPs), who would work with him/her in parallel.

→ **Stage 2:** Workshop to improve the communication skills

This workshop would help people improve their communication skills learn about the types of communication (verbal and non-verbal), through practical exercises and would allow them to practice their communication skills. It would also work on strengthening people's resilience. By raising their awareness with the help of this workshop, we would guide them to identify their strengths, thereby reinforcing their value system and supporting the process of building their self-confidence. By improving their communication skills, these people would be able to be more successful at the specific job interviews.

→ **Stage 3:** Workshops to improve IT skills (word, e-mail, advanced use of the Internet)

Through this workshop, these people would be able to learn about the basic Microsoft office programs (word, excel). The attendees would be able to use these tools when writing their professional biography, cover letter, etc. Through the Excel program, they would acquire skills in using tables/spreadsheets to organize numbers and data with formulas and functions. In addition to the theoretical part, through appropriate exercises, they would also be able to practically use these programs in order to thoroughly acquire the appropriate skills and knowledge. The correct use of the Internet, that is, advanced search, would make it easier for them to find suitable job advertisements in their specific fields of professional interest.

→ **Stage 4:** Workshops to familiarize people with their labour rights

The purpose of these workshops is to familiarize and educate people on their labour rights, the most important aspect of it being that by acquiring this knowledge, they would be able to recognize the labour rights violations that they may encounter once they enter employment. These workshops would be conducted by the HOPS legal advisor and would be conducted in a language understandable to the target group.

→ **Stage 5:** Help in writing a professional biography (resume) and motivation letter

A good professional biography (resume) is a must when looking for a job, especially when there are many candidates applying for the same position. A well-written professional resume increases the chance of employment. It offers an overview of the completed education and qualifications of the person. Through the implementation of this workshop, people will acquire the skills to prepare a CV (professional biography/ resume), with mainly focusing on the necessary data that it needs to contain, the technical structuring it needs to have, as well as recognition of the other skills that should be singled out and included in the professional bio (resume). At this stage, through mentoring, the individuals will practically prepare their professional biography (resume) and motivation letter.

→ **Stage 6:** Searching for active vacancies

At this stage, the level of education of the persons and their previous experiences, professional qualifications/advanced qualifications would be taken into account, which would help them find a suitable job.

→ **Stage 7:** Getting ready for an interview

Through the implementation of this stage, people would be given instructions on how to properly go through the first interview in a process organized in several phases, namely - **the first phase**: pre-interview preparation. Prior to the interview, they

would do research on the company. They would read the job description and their professional resume, as well as their relevant skills and qualifications, to determine whether they are a good fit for the job. It is vital for the person to be able to explain why they want the job, to understand their role and, most importantly, to convey to the employer why they should choose them over the other candidates. Questions – the individuals need to think about how they would answer the most common interview questions, as well as what questions they would like to ask the interviewer. **The second phase** tackles the body language. **The third phase**: the interview. After all these cycles of preparation are completed, the client is prepared for the interview.

CONCLUSIONS

This paper attempted to explain the general situation and employment problems faced by the people who use drugs (PWUD). Through the analysis and findings obtained from the research, it can be concluded that in circumstances where the unemployment rate is still enormous at a state level, there are still differences and inequalities among those who are unemployed and potentially unemployable. Hence, the people who use drugs, and especially the women from these marginalized communities, are faced with even more pronounced obstacles when looking for a job and employment opportunities. Some of these problems are due to their deteriorating health, but a significantly larger part come as a result of the stigma and discrimination these people suffer at the hands of their employers, but also from the public institutions which are supposed to offer them support and measures aimed at improving their situation.

In this paper, we concluded that in the RNM there is still no special programme with active measures for employment of PWUD, even though they represent a particularly vulnerable category of citizens. Because of this, individuals and associations working in this area and on these issues advocate for the implementation of tailored programmes, often by voluntary offering to develop those programmes and implement them in their work. The programme described in this paper was created as an example and a response to the lack of an Employment Programmes for PWUD by the competent state institutions.

The state and the corresponding state institutions should work more seriously on the rehabilitation and resocialization of the people who use drugs or are on substitution therapy, with the aim of improving their socio-economic and psychological circumstances, which would contribute to their active inclusion in the labour market. Despite the fact that the people who use drugs in most of the cases already belong to some of the marginalized groups that require special tailor-made programmes,

special, sensitive programs specifically designed for people who use drugs should be developed, especially for the purpose of further training or education. This paper aims to contribute by offering some solutions and could serve as basis for creating sensitive policies and practices towards the people who use drugs.

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UNDERSTANDING AND ADDRESSING DISORDERS OF PERPETRATORS OF CRIMES AGAINST GENDER FREEDOM AND GENDER MORALITY: CHALLENGES AND STRATEGIES

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ABSTRACT

The concept and characteristics of perpetrators of crimes against gender freedom and gender morality, the numerous forms in which it occurs, finding answers to the dilemma of whether it is an endocrine or a psychological problem are the first questions that will be dealt with in the analysis of this paper. Due to the widespread presence of the problem and the protection of children's rights from any type of abuse, violence, harassment or exploitation, the subject of interest of this paper are the international guarantees for the protection of children's rights in the most significant international documents.The research is transversal in terms of perspective, in terms of time dimension, exploratory with predominance of the descriptive method, analysis and synthesis, induction and deduction. The historical method is also used when defining the criminal acts of perpetrators of crimes against gender freedom and gender morality.

KEYWORDS: *victim, violence, perpetrators of crimes against gender freedom and gender morality, protection and prevention, children*

INTRODUTION

The subject of the paper is the issue of the perpetrators of crimes against gender freedom and gender morality as one of the most serious issues in criminal law.

The term perpetrators of crimes against gender freedom and gender morality today is interpreted as the occurrence of deviant behavior in an individual, that is, inversion of sexuality. Deviance causes violence committed against a child through a sexual act. At the same time, it is abuse of the child, making him a victim of the act itself.

Pedophilia is a danger that not only threatens the child, but consequently, it becomes a danger to the family and to society itself. When a child as an asexual subject becomes a victim of a of perpetrators of crimes against gender freedom and gender morality, phobias and various psycho-physical disorders may occur in his psychophysical development: withdrawal into himself, depression, suicidal thoughts.

The question arises as to how the occurrence of perpetrators of crimes against gender freedom and gender morality should be analyzed in a socio-legal environment and how it should be treated appropriately, fairly and legally through legislation.

The theoretical goal of the research is to detect the actual situation of the problem of pedophilia, to answer the question of what it represents, whether it is a disease, deviation or sexual inversion, to define the types of perpetrators of crimes against gender freedom and gender morality, to answer whether curability, prevention and protection are possible. The most significant part of this paper is the comparative penal legal response of the international community and the mentioned national legislations.

CHAPTER I – PERPETRATORS OF CRIMES AGAINST GENDER FREEDOM AND GENDER MORALITY – TERM AND BASIC CHARACTERISTICS

1.1. Definition of perpetrators of crimes against gender freedom and gender morality

There is no doubt that no political-legal system can fully prevent the occurrences of violations of legal norms and rules. That is why every system faces the emergence of crime, murder, theft, perpetrators of crimes against gender freedom and gender morality and other deviations. But it is very important to emphasize that every system, in every state, should strive to protect all subjects from these phenomena through the

successful rule of law and justice. In that context, children deserve legal protection aimed at guaranteeing the inviolability of life in all possible aspects of their existence, especially during the period of their psycho-physical growth and development. That is why a complex criminal policy is needed for the crimes of perpetrators of crimes against gender freedom and gender morality. Although it was not always incriminated, but was morally condemned, the first records of its prohibition date back to the Babylonian law, extending to the Middle Ages and of course to the present day, everywhere in the world with a tendency to tighten the prescribed punishments.

Due to the widespread presence of the problem and the protection of children's rights from any type of abuse, violence, harassment or exploitation, the subject of interest of this paper are the international guarantees for the protection of children's rights from any type of sexual abuse expressed in the most significant international documents. Hence the need for this paper to obtain comparative legal answers related to the incrimination of perpetrators of crimes against gender freedom and gender morality in several European countries and countries from the immediate environment in order to obtain a comparative analysis. The analysis of court practice from specific cases and court proceedings in the area of criminal law for perpetrators of crimes against gender freedom and gender morality should answer whether the penal policy of increasing the prescribed penalties affects the reduction or increase in the number of committed crimes.

The World Health Organization designates pedophilia as a special disease, it even has a special designation - F65.4 (Pedophilia – violencia...). The term comes from the Greek language, paidos - child and fileo - love.

There is no standard definition of pedophilia in the world. According to the World Health Organization, a brief description of what pedophilia is: "sexual orientation directed at children of pre-pubescent or pubescent age" (World Health Organization, 1993, 171). While according to the American Psychiatric Association, pedophilia is a psychiatric disorder in an adult or an older adolescent who experiences sexual attraction to prepubescent children, generally under the age of eleven (American Psychiatric Association, Diagnostic and statistical manual of mental disorders – fifth edition, 2013, 42). The definition in the medical lexicon reads: "Pedophilia is the display of sexual urges towards immature children."

Perpetrators of crimes against gender freedom and gender morality are usually deviant people, emotionally and socially immature, irresponsible and unable to control their sexual urge towards children under 14 years of age. If sexual activities and urges are exaggerated in men, it is a question of pedophilic satiriasis, and pedophilic nymphomania in women, which is a rarer occurrence. These people also manifest a pronounced asociality.

Although numerous preventive measures are being introduced to prevent perpetrators of crimes against gender freedom and gender morality, the number of perpetrators and victims is growing daily. The victim goes through serious problems that can be not only physical, but also mental, psychological, long-lasting, often until the end of life. Pedophiles are not aggressive people by nature, no matter how strange or ironic this may sound, they love children and if perverse feelings would not prevail, they would be completely normal people and excellent parents (Włodarczyk, 2016, 1-13).

For the average public, shocking ideas come from Germany, the country with the most precise legal regulation on children's rights and human rights, because there is a tendency to reduce perpetrators of crimes against gender freedom and gender morality to a biological phenomenon. Professor Miriam Hejna believes that there are more than 57 million pedophiles in the world. According to her, perpetrators of crimes against gender freedom and gender morality is a normal sexual orientation, just like heterosexual and homosexual, and pedophiles were victims of society.

Doctor Klaus Bier believes that perpetrators of crimes against gender freedom and gender morality cannot be cured, but it can be controlled. 13 years ago, he launched programs to curb the sexual drive of perpetrators of crimes against gender freedom and gender morality. These programs are used all over Germany, and in 2016 alone, 7 thousand perpetrators of crimes against gender freedom and gender morality signed up for his course. (Germany's secret pedophilia experiment, 2016)

1.2. Disorders of sexuality as a cause of perpetrators of crimes against gender freedom and gender morality

Sexuality disorders represent a qualitative and quantitative disturbance of a person's sexual drive, which manifests itself in a loss of control of the sexual drive that is associated with a series of unwanted sexual behaviors. Such disorders of sexuality cause negative consequences from anxiety with depression, to withdrawal or aggressiveness and problems with the law, if the sexual disorder has caused a crime. (Cantor, 2009, 589-614). When the sexual disorder is directed at a child-victim, then it is a direct cause of perpetrators of crimes against gender freedom and gender morality. The medical aspect of perpetrators of crimes against gender freedom and gender morality seeks and determines the causes in a range of sexual disorders. Several disorders arise from sexual addiction, which can appear in the following forms:

1. people with bipolar disorder tend to engage in high-risk sexual activities during manic episodes;
2. the occurrence of unsafe activities and self-harm is detected in people with borderline disorder;

3. compulsive sexual behavior appears in people with severe identity confusion regarding their own sexuality and sexual orientation;
4. people with sexual disorders, exhibitionism, pedophilia and fetishism need to wean themselves from the victimization of others. Some sex addicts are antisocial;
5. in people who were victims of sexual abuse in childhood and have trauma that repeats in the subconscious, it is ascertained that they suffer from post-traumatic stress;
6. among people who abuse a child, sexual addiction develops quickly;
7. girls who have been abused often develop sexual addiction towards certain persons.

Among perpetrators of crimes against gender freedom and gender morality, the existence of some kind of mental illness is usually detected, mostly paranoia or schizophrenia, but they are mainly sexual sadists. A special kind of pedophile-sadists are people with a religious bias, a dark religious background that carries religious and racial intolerance. Usually they are members of extremist sects (Cahill 2017, 33-55).

Psychoanalysts, followers of Freud, called that emphasized libidinousness that Freud talks about as a psychoanalyst "pansexualism". According to this theory, the subconscious sex drive, at a given moment, suddenly emerges into consciousness in the form of complexes and thus creates a clash between the ideal "I" and the sexually deviant, morally unworthy, or other "I"(Jevtik, 1966, 233). Forensic psychology cannot use psychoanalysis in assessing criminality.

1.3. Perpetrators of crimes against gender freedom and gender morality - endocrine or psychological problem?

Although problems with sexual urges, perpetrators of crimes against gender freedom and gender morality, bisexuality and homosexuality in ancient times were considered part of the natural sexual nature of man, pedophilia today has a different treatment. The international community and national medical institutions have not yet found an adequate response to the emergence of perpetrators of crimes against gender freedom and gender morality, and even after many medical and psychiatric experiments, no additional activities have been observed.

Several scientific branches have the complex task of making a distinction between the knowledge of whether perpetrators of crimes against gender freedom and gender morality is an endocrine or a psychological problem. Neurology in cooperation with legal science made the biggest step towards establishing the fact that pedophilia is a

biological condition of the brain of pedophiles (Tenbergen, 2015, 344). There is a lot of scientific evidence for such conclusions, and one of the first books that contains the beginnings of this teaching is "Psychopathic Sexuality" by Richard Freiherr von Krafft Ebbing from 1886. The repressiveness of the international legal order against perpetrators of crimes against gender freedom and gender morality has not decreased and it is not affected by the scientific evidence of the Christian Albrechts University in Riel, where experiments and recordings explained what happens in the brain of perpetrators of crimes against gender freedom and gender morality when he sees a child. Scientists have discovered that a chain reaction occurs that produces the secretion of a pheromone, which causes a strong sex drive, and the adrenal glands do not secrete neuroblockers to reduce it. There are also visible physical signs: floppy ears, changes in toes, furrowed tongue, smaller head and eyes, mostly directed upwards, which are not completely proven when compared to a benchmark group of other rapists.

Mental disorders are not the same as mental illnesses. From a psychiatric perspective, it is not possible to identify all of the biological, medical, and social symptoms that create a personality disorder. Only in some cases is there a visible physical change in the body. In pedophiles, the brain and endocrine glands can be the basis for a mental disorder (mental illness) that is related to brain function (Kecmanovik, 1980, 13). There are two groups of factors: exogenous (external influences on the body), industrial poisons, alcohol, bacteria, radioactive radiation, viruses, trauma-injuries, cerebral and vascular. Endogenous are the immanent causes as manifestations of brain disorder expressed as chromosomal diseases or gene diseases. Hereditary factors are associated with a mutated or damaged gene (Chaloner 2007, 457–471). Biological (endocrine), psychological, environmental, sociopathic and of course political factors are involved in the development of mental illnesses. The mental syndrome can be transmitted genetically by men and women, which conditions the similarity between characters and specific habits in the family. Psychological factors combine the effects of hereditary diseases and environmental factors. In order to make a psychiatric diagnosis, one must first reach the boundary line with the laws of the state, especially in the case of perpetrators of crimes against gender freedom and gender morality. The mental structure of the pedophile according to psychiatry and psychology has a completely different logic than that of the legal regulation. This concept of perverse behavior turns into destructiveness, and most of the time it's not just about mental disorders that are caused by social, medical, that is, polyetiological reasons.

Cerebral dysfunctions lead to disruption of one or more parts of the cortex. Pedophilia is a defect and a mental disorder in sexuality, as a consequence of a smaller volume of white matter in the left brain hemisphere. Medicine does not yet have a cure for gender perversion and inversion, so pedophilia creates victims. It is a disorder in

relation to the object of sexual desire – a child under 14 years of age. When it comes to child victims, Stockholm syndrome can occur. The victim may begin to understand the situation of the perpetrators of crimes against gender freedom and gender morality offender and create a defensive subconscious traumatic bond out of fear and triggers the instinct of self-preservation. This is not a psychological paradox, nor a mental disorder, but a normal reaction of a tortured psyche (Missau, 2017, 1490–1499).

Psychiatrist James Cantor through research pointed out the brain changes in pedophiles in relation to men who are attracted to adult women. (Cantor, 2008). When perpetrators of crimes against gender freedom and gender morality met a child they were attracted to, they raised their voices in confusion at the sexual response. Men who were sexually attracted to a woman deepened their voices. Based on numerous researches, he determined that perpetrators of crimes against gender freedom and gender morality is a biologically innate condition, developed before birth. His research also found that perpetrators of crimes against gender freedom and gender morality have less white matter in the brain, which is the connective tissue that connects parts of the brain, than people with normal sexual orientation.

CHAPTER II – INTERNATIONAL DOCUMENTS FOR THE PREVENTION OF SEXUAL VIOLENCE AGAINST CHILDREN – UN CONVENTION ON THE RIGHTS OF THE CHILD

At the international level, significant attention has been paid to this issue. Attempts have been made to create instruments that will mean establishing a standard framework for a general fight against such phenomena. In the following, the most significant international documents for the prevention of sexual violence against children will be analyzed.

The UN Convention on the Rights of the Child is based on the Universal Declaration of Human Rights adopted by the United Nations in 1948, according to which those rights are inalienable and universal, as well as the Declaration on the Rights of the Child. It was adopted by the UN General Assembly, with resolution 44/25 of November 20, 1989, and entered into force on October 2, 1990. It contains the profound idea that children are not just objects belonging to their parents and for whom decisions are made, or adults in training. On the contrary, they are human beings and individuals with their own rights.

It is the oldest Convention that protects the rights of children from any form of abuse, violence, maltreatment, neglect or exploitation, and includes the protection of children's political, economic, cultural, social and civil rights. Article 1 of the

Convention describes the term “child”, which implies that children are persons under the age of 18.

The Republic of North Macedonia ratified the Convention on 10.11.1993, and ten years later it ratified both optional protocols, with which it undertook to protect children from all forms of sexual exploitation and sexual abuse as much as possible.

For our topic, among other provisions, article 19 of the UN Convention on the Rights of the Child is of special importance. This article stipulates the obligation for member states to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or intentional treatment, maltreatment or exploitation, including sexual abuse, while under the care of parents, legal guardians or any other person entrusted with the care of the child.

The rights from Article 54 of the Convention on the Rights of the Child are divided into four groups: survival rights; development rights; protection rights; rights to participate in their community and society.

According to the Convention, all children under the age of 18 regardless of their race, color, sex, language, religion, abilities and characteristics, way of thinking and expression, national, ethnic or social origin, property or family, have protection.

Pursuant to Article 34, each State Party undertakes to protect the child from participation in unwanted sexual acts and abuses, coercion of illegal sexual activities, exploitative use of children in prostitution or other illegal acts, exploitative use of children in pornographic representation in pornographic magazines, child trafficking for any purpose. States Parties shall protect the child from all harmful exploitation. With Article 39, the Convention mandates the member states to take measures for better physical and psychological recovery and social reintegration of the child who is a victim of some form of neglect, exploitation, abuse, torture or other form of inhumane or degrading treatment.

CHAPTER III – PERPETRATORS OF CRIMES AGAINST GENDER FREEDOM AND GENDER MORALITY – CHARACTERISTICS, PROFILE, RELATIONSHIP WITH THE VICTIM

3.1. Types of perpetrators of crimes against gender freedom and gender morality

Perpetrators of crimes against gender freedom and gender morality can be heterosexual, homosexual and bisexual. If the inclination is only towards children of the opposite sex, then it is a matter of heterosexual pedophilia. The inclination towards children of the same sex is homosexual pedophilia, and bisexual pedophilia is when the inclination is towards both sexes (Žak 2012, 200-224). In this context, when pedophilia is diagnosed, it should be evaluated whether the interest is only in children, or in both children and adults. Pedophiles can be exhibitionists, indulge in fetishism, can be creators and distributors of child pornography.

3.1.1. A classic perpetrators of crimes against gender freedom and gender morality

Basically there are perpetrators of crimes against gender freedom and gender morality who are not active and do not commit crimes. There are also active pedophiles who are perpetrators of crimes. Very often they are respectable persons, even famous. Michael Jackson was a pedophile, abused children and kept secret videos even of babies, and these days in Australia, after the testimony of two adults who were sexually abused, some radio stations banned his music. Pedophile predators can be doctors, teachers, judges, artists, educators. Also, perpetrators of crimes against gender freedom and gender morality can be priests and missionaries, ordinary people - bullies, predators with weapons, with an ax in their hands. The character of a classic perpetrator of perpetrators of crimes against gender freedom and gender morality is: a quiet man, neat in appearance, intelligent, kind, treats children with appeasement and bribery. They are usually house friends, relatives, or people who work with children. According to Kenneth V. Lanning, pedophilia is a psycho-sexual disorder where individuals seek an inadequate object to satisfy their sexual desires. A pedophile cannot be recognized by behavior. Their disorder is difficult to treat. They have no desire to harm children, they even have a good attitude towards them. He believes that they prefer to touch children rather than have sex with them (Lanning, 2007, 37).

The development of technology and the Internet are their means of communication, not only for sexual gratification, but also for spreading expensively paid pornography from minors, which opens a new space for criminal acts. The most current network at the moment is facebook, but ask.fm is becoming more and more current (Hosseinmardi,

2014, 1-8). This second one is used by younger children. It is good to have generations that are information literate, but the bad news is that young children are not ready to face the dangers of the virtual world. The "Ask" network is extremely suitable for intimate discussions that can be done without making friends, and pedophiles use it for live seduction.

Perpetrators of crimes against gender freedom and gender morality are mostly very intelligent people. The pedophile makes the so-called "grooming" - that is, prepares the ground for a child to become a victim. Children are in an unequal fight with perpetrators of crimes against gender freedom and gender morality, and the youngest girls become their victims. Thus, even the parents do not realize that the child is also put in danger at home by child pornography, prostitution and child trafficking. (World Health Organization, 2003, 76)

3.1.2. Perpetrators of crimes against gender freedom and gender morality abusers

Perpetrators of crimes against gender freedom and gender morality are obsessed with the desire to sexually assault children and are progressive in intent. There are also regressive ones, they maintain relationships with adults as well. They can be married and have children. Psychologists and psychiatrists think that abusers themselves may have been abused as children, but not everyone who is abused becomes an abuser.

Predatory abusers are perpetrators of crimes against gender freedom and gender morality whose ultimate goal is to have sexual relations with children and are usually recidivists, who often repeat the crime even after serving their sentences. Homosexual perpetrators of crimes against gender freedom and gender morality are subject to the greatest recidivism. Chronic abusers commit the worst abuse of children and inflict severe physical and psychological trauma on them (Finkelhor, 1994, 31-53). Perpetrators of crimes against gender freedom and gender morality are mostly drug addicts, alcoholics, religious fanatics, neurotics, schizophrenics and sadists, who have no control over violence against children. In the most severe cases, bleeding occurs, injuries to the internal organs, and the death of the child is not excluded. Children also die from communicable diseases.

Abusers also cause damage to the functional development of the children's brain, chemical asymmetry, epilepsy, reduced left hypothalamus, increased memory impairment. They sometimes commit sexual assault by touch, body contact; sexual abusers with rape; exposing a child to pornography; having sex with others; sexual exploiters-pedophiles; cases of pedophiles who victimize a large number of children for profit from prostitution or trafficking in pornography; sexual rapprochement in order to persuade a child to a sexual act. There are sadistic rapists, who threaten the death of a close relative, mother, father, brother or sister.

3.1.3. Perpetrators of crimes against gender freedom and gender morality of sexual desecration

Incest, or consanguineous love, is the most universal theme of sexuality. It usually happens in closed families (Celbis, 2006, 37-40). Incest can be a basis for moral discussion, much more than a biological - psychological and legal taboo topic in the entire history of mankind. It has been observed in ancient Egypt since the time of Tutankhamun and Cleopatra. A critical period for incest is pre-puberty, from the age of eight to fourteen. Then the hormones wake up. But at the same time indifference develops among those who raise the children. A parent who enters into sexual relations with his child has abused his position, and the same applies to close relatives. They are the ones the child trusts unconditionally. The child is not responsible, but the parent is responsible for both himself and the child. Incest pedophilia is the most heinous of all types of pedophilia.

The theme of incest illustrates the interdependence of nature and culture. It's something scientifically called GSA, genetic sexual attraction (Lieberman, 2011, 37). This attraction is often experienced by children and separated siblings when they meet. Science does not know whether these reactions are biological or psychological, perhaps a fear of abandonment, regardless of who initiated it. Trauma is more perceived by female children, although male children also suffer. Prejudices that girls are raped and boys enjoy sex with their mother or sister are very present. There are cases when the mother justifies that she wanted to save her son from perceived homosexuality (Rosenfeld, 1977, 327-339). The incestuous relationships among the royal families in Europe not only brought genetic mutations, but also quarrels and rivalries, and among them there was a myth of even incestuous loves, according to their "divine right", even though the marriages were concluded only out of interest. for dominance in politics and social control.

Incest touches more on the psychology of morality, the evaluation of value judgments in life, the fear of pregnancy and the possible growth of degenerate offspring, regardless of the fact that this phenomenon also touches emotions, it still seems immoral and unnatural. Incest is a genetic risk for the offspring, including a high risk of early mortality.

3.3. Criminal responsibility, guilt capacity of the perpetrators of crimes against gender freedom and gender morality

"Nulum crimen, nulla poena sine culpa", is the principle according to which there is no crime without guilt. The punishment is measured according to the personality of the perpetrator, but also according to the gravity of the crime he committed. According to Art. 11 of the Criminal Code, the perpetrator is criminally responsible

who is calculated and committed the crime with intent or negligence, and was aware or was obliged and could have been aware of the prohibition of the crime.

There are perpetrators of crimes against gender freedom and gender morality who are computable and a finding of complete computability has more significance than any other medical measure. Curability of such cases has not been achieved.

The most serious offense exists when a calculating person sexually abuses a child with a mental or physical defect, especially an oligophrenic, mentally ill person. The incalculability, or significantly reduced incalculability in some qualitative disorders of the sexual drive exists, when there are symptoms of mental retardation, mania, schizophrenia. Society must defend itself and isolate such persons, because there is still no cure for such perversity or disease.

CONCLUSIONS AND RECOMMENDATIONS

Perpetrators of crimes against gender freedom and gender morality may experience intense and persistent sexual fantasies, urges, or behaviors involving children, and may also engage in grooming, manipulation, or coercion to obtain access to potential victims.

Pedophilia is a complex and controversial issue that requires a sensitive and thoughtful approach. While there is ongoing debate among researchers and professionals about the causes and treatment of pedophilia, it is widely recognized as a serious public health concern due to the potential harm it can cause to children and families.

Effective prevention and intervention strategies for perpetrators of crimes against gender freedom and gender morality may include promoting awareness and education about child safety and well-being, providing support and resources to families in need, and offering mental health services and treatment to individuals who may be struggling with pedophilic thoughts or urges.

The causes of perpetrators of crimes against gender freedom and gender morality are not well-understood. It is believed to result from a combination of genetic, biological, and environmental factors. Studies have shown that individuals with pedophilic disorder have differences in brain structure and function compared to individuals without the disorder. Traumatic experiences during childhood, such as sexual abuse or neglect, may also increase the risk of developing pedophilic disorder.

In conclusion, pedophilia is a complex and multifaceted disorder that presents several challenges in understanding, diagnosing, and treating. While there is still much to be learned about the causes and treatment of pedophilic disorder, it is essential to

recognize the importance of addressing the condition to prevent harm to children and support individuals who may be struggling with this disorder. A compassionate and multidisciplinary approach is necessary to promote healthy sexual behavior and reduce the risk of harm to children. The prevention and protection of pedophilia involve several strategies, including:

1. Education and awareness: Educating the public about the dangers of perpetrators of crimes against gender freedom and gender morality, how to recognize it, and how to report it can be an effective way to prevent it. Raising awareness about the issue can also help reduce stigma, which may encourage more people to come forward and seek help.

2. Early intervention: Identifying and addressing risk factors for pedophilia early on can help prevent it from developing. This includes providing support and counseling for individuals who have experienced abuse or trauma and addressing any mental health issues that may contribute to the development of pedophilic tendencies.

3. Treatment and rehabilitation: For individuals who have already engaged in pedophilic behavior, treatment and rehabilitation can be effective in preventing future offenses. This may involve therapy, medication, or other forms of treatment designed to address underlying psychological or behavioral issues.

4. Legal measures: Strong laws and law enforcement efforts are essential for protecting children from perpetrators of crimes against gender freedom and gender morality. This includes harsh punishments for those who engage in such behavior, as well as measures to restrict their access to children.

Child safety measures: Measures such as background checks for those who work with children, increased supervision, and safety education for children can help protect them from pedophilic behavior.

It is important to remember that preventing and protecting against perpetrators of crimes against gender freedom and gender morality is a multifaceted issue that requires a collaborative effort from individuals, families, communities, and society as a whole.

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UNDERSTANDING INACTION IN NORTH MACEDONIA: WHY THE PEOPLE ARE NOT ADRESSSING THEIR LEGAL PROBLEMS?

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ABSTRACT

This paper analyses the problem of not taking action for addressing legal problems in North Macedonia. It analyses the data produced within the auspices of the 2022 legal needs survey in order to quantify the prevalence of inaction as well as to identify the factors that contribute to inaction. The paper finds that with an inaction rate of 17.7% North Macedonia falls under the average inaction rates calculated via legal needs surveys. Apathy and lack of trust in the system are common self-reported causes for inaction. The inaction rate is disproportionally higher among legal problems where there is asymmetry of power (ex, employment, discrimination etc.). The ethnic group and the place of residence play a role in determining if the person will take action or not. The paper found also that value of the problem and the income are strong predictors of inaction.

KEY WORDS: *inaction, empowerment, legal capability, legal needs, problem resolving behaviour.*

I. INTRODUCTION

Not everybody who experiences a legal problem takes steps to resolve it. Wrongfully terminated employee might not be willing to initiate legal proceedings against its former employer. Beneficiary of social welfare whose cash benefit right has been revoked is not able to appeal the decision due to the lack of legal counsel. Victim of domestic violence will not reporting unless has trust in the institutions that its safety can be protected. As it can be seen from these examples, causes for such behaviour can be quite diverse. Some originate from the broader legal and societal context, while the others are subjective in nature, caused by the individual competencies, attitudes and experiences. The availability of effective legal remedies and the accessibility of adequate legal aid are examples of external causes. On the other hand, the individual legal capability, the subjective perception on the necessity of acting, the risks of entering into a conflict, especially in a relation where there is asymmetry of power (example in the areas of employment) and whether investing time, efforts and money is justified in the specific case are causes that lie within the affected individual.

Since it is of utmost importance for any legal system in any jurisdiction founded upon the principles of human rights and rule of law that people are seeking redress whenever their rights are violated, it is necessary to understand both the scope and the causes of such behaviour in the specific national setting in North Macedonia. This is necessary to ensure that any policy-planning processes in the areas of access to justice will foresee measures that will empower people to act whenever their rights and interests have been adversely affected by other individual, company, employer or the public authorities.

This paper dives into the problem of inaction in addressing legal problems in North Macedonia. It attempts to quantify the extent to which the inaction is prevalent as a behaviour compared with the different patterns of problem-solving behaviour. The paper further identifies and describes the factors that contribute to the inaction. It tests whether specific circumstances, such as the types of problems, the assessed value of the problem and the socio-demographic characteristics of the affected person can cause inaction or not. The author looks at the data set produced by Brima DOO for the purpose of conducting the 2nd nationwide survey on the legal needs and paths to justice of the people living in North Macedonia in 2022, commissioned by the Council of Europe.

II. METHODS

The data set analysed in this paper was gathered through a survey performed on a multistage stratified random sample, representative of the general adult population in North Macedonia using Computer Assisted Telephone Interviewing (CATI). The data collection was done from August to October 2022 in two phases, screening survey and detailed interview. The screening survey was done on a representative random sample of 2.800 respondents while the second phase was conducted with respondents who reported that they had experienced legal problems in the past three years and who agreed to take the interview. Detailed interview was done with a sample of 1.627 respondents. The response rate of the screening phase was 90.5% while of the interview was 89.5% (Kocevski and Gramatikov 2022).

For the purpose of this paper the data set was analysed using a combination of descriptive and inferential statistical tools. The prevalence of inactivity, the self-reported causes for inactivity and the impact of the different factors were analysed using frequency analysis and cross-tabulation of data. For the purpose of identifying to what extent the socio-demographic characteristics may serve as a predictor if action will be taken or not, the author used a binomial logistic regression model using a software for the analysis of statistical data (SPSS). For contextualization of the research findings, the author consulted literature on this subject as well as the reports from legal needs surveys from other jurisdictions published on the World Justice Project web page (World Justice Project 2017).

III. THE INACTION IN LITERATURE AND IN EMPIRICAL STUDIES

Many authors conclude that inaction in the face of justiciable problems is not always a cause for concern. Many problems are deemed not serious enough to warrant action, while others resolve quickly without the need for action. However, Pleasence by analysing the reasons for inactions founds that they convey "a rather negative and powerless quality" (Pleasence 2016, 12). Over 40 years ago, Felstiner, Abel and Sarat in 1981 developed their influential aetiology on how "injurious experiences" may become lawsuits – involving the recognition of circumstances as injurious (naming), the identification of them as a grievance for which another is responsible (blaming), and the confrontation of the wrongdoer with a complaint (claiming) (Felstiner, Abel and Sarat 1981). In their work the authors are stating that a healthy social order must remove all barriers inhibiting the emergence of grievances and disputes and preventing their translation into claims for redress. (Felstiner, Abel and Sarat 1981, 652-654) In reality, it has been widely recognised that people may 'lump' legal problems

for many reasons. People may not recognise their circumstances as problematic. And even if circumstances are recognised as problematic, people may not act to address them if, for example, problems are expected to resolve themselves, action is seen as unlikely to succeed (Sandefur 2007, 16-17).

The issue of inaction is implicitly tackled as a problem also by the UN. Key element of the legal empowerment is ensuring that the poor are enabled to use the law to advance their rights and their interests (Secretary-General of the UN 2009, 3). The access to justice is crucial for advancing the well-being of the people and for sustainable development. The problem resolution behaviour is linked to legal capability, with action more likely among those with higher subjective legal empowerment scores, who understand their rights and/or see problems as having a legal character (Pleasence and Balmer 2014, 3). Pleasance in another work defines the concept of legal capability as "range of capabilities necessary to make and carry through informed decisions to resolve justiciable problems" (Pleasence 2014, 136). Though among the different authors there is no consensus on the elements of the legal capability the most common one includes: the ability to recognize legal issues; awareness of law, services and processes; the ability to research law, services and processes; and the ability to deal with law related problems. For Pleasence most inaction in response to a problem is rational but at the same time is associated with poorer prospects of effective problem resolution (Pleasence and Balmer 2014, 5).

However, as noted in Paths to Justice, people who take no action to resolve a problem because they think nothing can be done make this judgment without the benefit of advice and, therefore, without the benefit of an opportunity to identify solutions they are not personally aware of (Genn 1999). Pleasence (2006) even suggested that "if people believe that something can be done to resolve a problem, action may still not be taken because of concerns about the physical, psychological, economic or social consequences of doing so". Thus, diminished capability, in lessening people's initial ability to resolve problems may also contribute to 'frustrated resignation' and an increasing likelihood of 'lumping' problems. And this is of great significance as inaction is, in turn, associated with far poorer prospects of effective problem resolution. Lesser legal capability prevents people taking action to resolve problems where others would do so (with inaction more common for more severe problems) and, when action is taken, is influential in determining choices of strategy and sources of help. In addition to this, cost (or, at least, perceived cost) is evidently an important factor in decisions concerning sources of help (Sandefur 2007).

An empirical insight into the inaction is provided through the legal needs surveys. Central focus of these surveys is the problem resolving behaviour. This includes a wide variety of activities. In general, such activities can be deduced to three main groups, help seeking (including seeking legal advice), use of processes and other

auxiliary activities that support problem resolution (OECD/Open Society Foundations 2019, 72). In other legal needs surveys estimates for inaction from stand-alone legal needs surveys range up to 44% in Ukraine (Hague Institute for Innovation of Law 2016, 148). Generally, the rate of inaction in the face of legal problems at between 10% and 20% (Pleasence and Balmer 2014, 14). Other surveys in Europe have also uncovered high levels of inaction; for example, 36% in Macedonia in 2012 (Korunovska Srbijanko, Korunovska and Maleska 2012), 29% in Georgia in 2012 (Institute of Social Studies and Analysis 2012) and 21% in Moldova in 2011 (Gramatikov, Met and Unmet Legal Needs in Moldova 2012). In contrast, estimates as low as 4% have come from England and Wales in 2014, and 5% in Canada in 2014 (OECD/Open Society Foundations 2019) though a more recent survey in UK finds that around 11% of those who experienced a legal issue did not take any action (The Legal Services Board 2019, 78).

The causes for inaction have been also researched using both qualitative and quantitive methods. Sandefur by using qualitative methods finds five rationales for inaction in the US, shame, a sense of insufficient power, fear, gratitude and frustrated resignation. The last three of them reflecting lessons from people's past experience with justiciable problems (Sandefur 2007, 123-126). On the other hand, multivariate statistical analysis of factors associated with inaction, as reported for nine national surveys, suggests reasonably consistent associations between inaction and problem type. The findings suggest an association between elements of social disadvantage and basic problem resolution strategy that sits on top of the association between social disadvantage and vulnerability to problems" (OECD/Open Society Foundations 2019, 35). Reasons for inaction varies also significantly by problem type. Respondents most often said they did not act because they thought nothing could be done to resolve employment, discrimination, money/debt and mental health problems (Buck, Pleasence and Balmer 2008, 671).

Additional contributing factor are the perceived institutional failures. They affect negatively subjective legal empowerment. Any dispute resolution infrastructure should provide shadow of a law which leverages the bargaining position of the individuals with less powers. When the infrastructure is perceived as inaccessible or not properly functioning individuals will be less likely to use it as part of their problem-solving strategies. As direct result the less powerful party will see its positions deteriorating and the more powerful party will gain even more which can also cause the inaction (Gramatikov and Porter 2010, 27). The demonstrated overlap between reasons for inaction is also indicative of the complex challenge of expanding access to justice. For example, lack of knowledge about the range of available options for obtaining legal assistance and resolving legal problems is likely to exacerbate concerns over stress and cost. Increasing awareness of free and low-cost options for obtaining legal assistance may help overcome inaction resulting from a belief that it

'would cost too much' (McDonald 2014, 7). Some authors also analysed the effects of the inaction especially those who might lead to adverse consequences (Balmer, et al. 2010).

IV. THE INACTIVITY IN NORTH MACEDONIA – SCOPE AND CAUSES

i. Prevalence of the inaction

According to the data from the 2022 survey, from the total number of 1.627 respondents who participated in the detailed interview, when asked if they have taken any activities for resolution of the legal problem, 287 or 17.7% reported that they did not take any action. Compared with the 2012 survey there is significant drop of the level of inaction though any comparison should be taken with caution due to the slight differences in formulating the questionnaire. With this result North Macedonia falls under the average inaction rates which are between 10% and 20% (Pleasence and Balmer 2014, 14). Though at first glance the result might look diminished but as we can see in Table 1, it is a third most frequent problem-solving behaviour, right after contacting the other party (62.7%) and seeking advice from friend or a family member (18.3%). Inaction is more common than seeking advice from a lawyer (11%) as well as filing a complaint/appeal to authorities (8.3%).

TABLE 1: *Frequencies of problem-solving behaviour in North Macedonia*

TYPE OF PROBLEM-SOLVING ACTIVITY	FREQUENCY	PERCENTAGE
Contact the other party	1020	62.7 %
Went to court	73	4.5 %
Took the problem to the ombudsman	22	1.3 %
Sought legal advice from a lawyer	179	11.0 %
Sought advice or help from another organization	37	2.3 %
Lodged a complaint with the authorities (ie the municipal office)	136	8.3 %
File a complaint with the police	70	4.3 %
You searched for information on the Internet (websites, social media, etc.)	76	4.6 %
Sought advice from friend or family member	298	18.3 %
Other action	84	5.1 %
Did nothing	287	17.7 %
Do not know/ Refuses/ No answer	10	0.6 %
Total	1627	140.7

ii. Self-reported causes for inaction

The respondents were asked to give their reasons for not acting to resolve their legal problem. For most of the individuals the main reason was that the resolution of the problem would take too much time (20.02%). For the purpose of the paper the subsequent two factors are very important. The perception that nobody can help is present with 18.62% followed by overall lack of confidence in the national judicial system with 15.47%. Interestingly, the lack of money is not among the top three reasons for remaining passive, only 9.36% said that they did nothing because they did not have enough money.

TABLE 2: *Frequency of self-reported causes for inactivity*

CAUSE FOR INACTIVITY	PERCENTAGE
It would take too much time	20.02%
I do not think anyone can help	18.62%
Our judicial system is not efficient	15.47%
Other causes	15.24%
I did not have enough money	9.36%
Do not know	6.05%
The problem was insignificant	5.15%
Refused to answer	4.23%
It was difficult to orient myself in the mechanism of obtaining legal advice	3.26%
The other party agreed to solve the problem amicably	1.69%
The work schedule was not suitable/convenient	0.96%

When asked if they intend to do something about the problem in future, if the self-perceived cause of inactivity vanishes, the overwhelming majority of respondents, as it can be seen in Table 3, reported that they do not plan to take any action for resolution of the problem. Still, almost 15% reported that at this stage they do not know.

TABLE 3: *Probability for taking action in future (N=287)*

CAUSE FOR INACTIVITY	PERCENTAGE
Yes – definitely	0.6 %
Yes – probably	2.5 %
Probably not	2.5 %
Definitely not	80.1 %
I cannot say/ Do not know/ No answer	14.3 %

iii. The different legal problems and inactivity

Next, the author wanted to see if the different types of legal problems may cause different rates of inaction. More specifically, to identify if certain types of legal problems are more likely not to be addressed than others. In order to do that, the author cross-tabulated the data for the types of problems with the data on inaction. It was founded that among the specific categories of legal problems, the inaction rate is disproportionally higher compared with other categories. The percentage of respondents who did not take any action when facing a problem related with discrimination or employment is over 30%. This means that each third person who is facing these types of problem will not take any action to address them. They are followed with problems related to children (25%), injuries and health (24.7%), administrative procedures (23.4%) as well as tenancy (22.2%). Contrary, issues related to property, marital and other family problems are most commonly addressed.

TABLE 4: *Inaction and type of legal problem*

CATEGORY	ACTION	NO ACTION	TOTAL	PERCENTAGE
Consumer rights	315	26	341	7.6%
Employment	81	41	122	33.6%
Property	133	7	140	5.0%
Tenancy	7	2	9	22.2%
Landlord	15	0	15	0.0%
Discrimination	68	40	108	37.0%
Debts	193	15	208	7.2%
Social welfare	229	32	261	12.3%
Administrative procedure	111	34	145	23.4%
Marital problems	29	0	29	0.0%
Other family problems	38	4	42	9.5%
Children	9	3	12	25.0%
Injury and health	238	78	316	24.7%
Law and order	66	8	74	10.8%

A common denominator of all these problem categories (with exemption of problem related to children) is the asymmetry in power. This was proven once we looked at whether who is on the opposite side of the problem plays a role if the person will address the problem. As it can be seen in table 5 the percentage of inactivity if on the opposite side is the employer is 30.4% followed by the state with 19.9%.

TABLE 5: *Inaction and the other side*

OPPOSITE SIDE OF THE PROBLEM	ACTION	NO ACTION	PERCENTAGE OF INACTIVITY
Family member/partner	79	1	1.3%
Employer	71	31	30.4%
State institution	598	149	19.9%
Private organization	362	33	8.4%
Neighbour	57	11	16.2%
Person not-related	122	21	14.7%
Other	52	42	44.7%

The next factor that was assessed was the value of the problem, i.e. the perceived monetary value of goods, services and rights that were at stake as a consequence of the legal problem. The author wanted to assess whether the value plays a role in predicting if the person will act or not. By cross-tabulating the data on the value and the inaction it is possible to calculate the rate of inaction per category of value. As we can see at Table 6, though there is clear trend of declining of the inactivity rate, there is still a significant respondent who did not take any action and the problem was not about money.

TABLE 6: *Inaction and the value of the problem*

VALUE OF THE PROBLEM	ACTION	NO ACTION	PERCENTAGE OF INACTIVITY
Under 100 euro	261	31	10.6%
100-500 euro	240	33	12.1%
501-1.000 euro	201	5	2.4%
1.001-5.000 euro	145	2	1.4%
5.000-10.000 euro	50	2	3.8%
10.001-50.000 euro	20	1	4.8%
Over 50.000 euro	23	0	0.0%
Do not know/ Refuse	169	62	26.8%
It was not about money	421	151	26.4%
	1530	287	

iv. The socio-demographics behind the inactivity

Cross-tabulating the socio-demographics and the inaction rate provides us with some interesting findings (Table 6). Firstly, the sex does not seem to be factor that might predict whether action will be taken or not in a specific case. The small difference (0.4%) between the two groups is insignificant though a more detailed look with regards to the specific problems that are affecting differently man and woman (ex. sexual harassment) is necessary to reach a more comprehensive conclusion.

Contrasting is the ethnicity. There is a very significant difference between the level of inaction between the respondents from the Macedonian and other communities from one side (5.8% and 4.5%) and respondents from the Albanian communities (24.6%). The causes for such big gap should be adequately researched and analysed. There is also a relatively big difference between urban and rural populations. Respondents living in rural areas reported higher rights of inactivity (18.54%) compared with their urban counterparts (13.21%). This finding is consistent with the other findings that are pointing out to the existence of a justice gap among the rural population. With regards to age, education and income the data shows some trend of decreasing the inactivity level with the increase of age, education level and income though their impact should be analysed using a more advanced statistical tools.

TABLE 6: *Socio-demographics and inactivity (N=2.800)*

CATEGORIES	ACTION	NO ACTION	PERCENTAGE OF INACTIVE PER CATEGORY
Sex			
Male	1232	144	10.5%
Female	1281	144	10.1%
Ethnicity			
Macedonian	1829	112	5.8%
Albanian	513	167	24.6%
Other	171	8	4.5%
Education			
Elementary	884	85	8.8%
Secondary	1104	155	12.3%
Higher	236	27	10.3%
Undergraduate	250	16	6.0%
Postgraduate	38	4	9.5%

Monthly income			
Under 10.000 MKD	114	6	5.0%
10.001-20.000 MKD	488	61	11.1%
20.001-30.000 MKD	487	49	9.1%
30.001-40.000 MKD	411	37	8.3%
40.001-50.000 MKD	336	27	7.4%
50.001-60.000 MKD	200	17	7.8%
Over 60.000 MKD	148	14	8.6%
Refuse	150	34	18.5%
Do not know	178	43	19.5%
Residence			
Urban	1594	152	8.7%
Rural	918	135	12.8%
Age group			
18-24	244	42	14.7%
25-34	408	50	10.9%
35-44	428	60	12.3%
45-54	418	64	13.3%
55-64	444	39	8.1%
65+	571	32	5.3%

v. Can the inactivity be predicted?

In order to identify the factors that might predict the inactivity, the author conducted a binary logistic regression. The following hypothesis have been formulated for the study:

H1: There is statistically significant difference in the "Whether the respondent will take action to address legal problem" of people with different demographic characteristics (*Gender*, *Income*, *Residence*, and *Ethnicity*)

H2: There is statistically significant difference in the " Whether the respondent will take action to address legal problem" of people with different education characteristics (*Education*)

H3: There is statistically significant difference in the " Whether the respondent will take action to address legal problem" of problems with different values of goods and services involved in the problem? (*Problem value*)

Based on these hypotheses the following logistic model has been formulated:

$$Log\left[\frac{p}{(1-p)}\right] = \beta_0 + \beta_1(Gender) + \beta_0(Ethnicity) + \beta_0(Residence) + \beta_0(Income) + \beta_0(Education) + \beta_0(ProblemValue) + e_i$$

Firstly, the author conducted omnibus test of the model and model summary in order to assess the fitness of the model. The results suggest that the model fits well for the developing relationship between the dependent and independent variables. These relationships are statistically important at a 1% level of significance. Moreover, the log likelihood value and the Nagelkerke R Square, both suggesting good fitness of the data. Next, the author estimated aa logistic regression model with specification provided in equation (1). The columns in the table represent the independent variables, coefficient estimates, corresponding standard errors, p-values and the odds ratio between the groups.

The model has produced interesting findings. The results suggest that the demographic variables – gender and residence do not have statistically significant impact on the inactivity at a 1% level of significance. The income variable, however, is statistically significant. The odds of not taking activity within the Income group below 10.000 MKD is 0.454 times that of being in the income group 10.001 – 20.000 MKD, when controlling for all other variables. The odds are 0.71 times that of being in the third income group (between 30.001 and 40.000 MKD); 0.159 times that being in the fourth income group (between 40.001 and 50.000 MKD) and 0.206 of that being in the fifth income group (between 50.001 and 60.000 MKD), controlling for all other variables.

Problem value variable is, also statistically significant, a 15 level of significance for the categories of problems with value from 100-500 euros, 501 to 1000 euros, 1001 to 5000 euros, 5001 to 10.000 euros, and 10.0001 to 50.000 euros. Thus, the odds of not taking action of the group with problem values from 100 to 500 Euros are 0.331 times that of not taking an action within the group with problem value less than 100 euros, when controlling the other variables. The odds for not taking action of the group with problem value between 501 and 1000 euros is 0.454 times that of not taking action in the below 100 euros group. The odds for not taking action for the 1001-5000 euros, 5001-10000 euros and 10.001-50.000 euros groups are 0.095, 0.071 and 0.159, respectively, times the odds not taking and action of the group with problem value below 100 euros, assuming all other variables are held constant.

V. CONCLUSIONS

Though the level of people who are not taking any action when facing legal problem in North Macedonia, according to the data from the 2022 survey, falls within the average inaction rates, the significant discrepancies between different legal problems and especially between different socio-demographic groups should be cause for concern. For a country and a society with high levels of poverty, social exclusion and overall distrust into the judiciary and the public authorities, it is very important that necessary actions are taken in order to close the existing gaps. The findings from this paper are providing some guidance on the policy measures that might help in this effort.

Since the inaction is more probable in legal problems where there is an asymmetry of power (ex. employment, discrimination, different administrative producers) the Government should develop policies that will include both, legislative and institutional reforms that will be aimed in reducing the impact of the asymmetry. This can be done by targeting institutions and changing enforcement so that people might bear less risk, for example through more frequent labour inspections among employers, proactive role of the Commission for Protection of Discrimination and the Ombudsman, the Administrative inspectorate as well as the Centres for Social Protection.

The differences between the socio-demographic groups indicates that certain groups of people are more susceptible to inaction. These vulnerabilities can manifest in various ways, such as ethnicity, ethnicity, income, education and residence. To address this issue, it is important to have a better understanding of the relationship between legal problems and vulnerability factors. This knowledge should be considered when designing prevention and resolution measures.

With regards to the legal aid, a more effective policy should meet people where they are, either by changing the way problems' solutions are set in the legislative and institutional framework, or by assertively identifying people and groups with problems that are prone to inaction (vulnerable groups), and actively "marketing" them with solutions.

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A CRITICAL ANALYSIS OF BARRIERS TO ACCESS TO JUSTICE IN INDIA

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ABSTRACT

'Access to Justice' is a fundamental human right derived from the laws of every land. There have been several occasions where this fundamental right has been overlooked. This essay seeks to examine the different reasons and circumstances under which the State and its citizens compromise access to justice. Cases pending in the courts, expensive fees, rigid procedures of court, lack of information are some of the major barriers to access to justice. This study examines the reasons for the lack of access and offers measures that should be implemented to improve access to justice for the marginalised populations.

KEYWORDS: *Legal Aid, Barriers, Access, Justice, Social, Economic*

RESEARCH METHODOLOGY:

This research is a doctrinal research as the library work is employed while conducting this research. The researcher has followed the analytical method in this research.

SOURCES OF DATA COLLECTION:

As this research is doctrinal research the sources of data involved in this research are secondary sources of data which are as enumerated below:

- → Text books
- → Reference books
- → Research Articles
- → Supreme Court Judgments
- → News papers
- → Internet
- → Case Laws

OBJECTIVES OF THE RESEARCH:

1) To study the concept of 'Access to justice'.
2) To critically analyse the different barriers to 'Access to justice'.
3) To giver recommendations for removing various barriers to 'Access to justice'

RESEARCH QUESTIONS:

1) What is meant by the term 'Access to justice'?
2) Which are the barriers to 'Access to justice'?
3) What are the solutions to remove the barriers to 'Access to justice'?

INTRODUCTION:

An entire generation of lawyers, social activists, judges, policymakers, and executives have proposed their remedies to make justice more accessible to the public, but the difficulties with access to justice have baffled them all. However, despite the fact that the end result is still a long way off, this constant pursuit has helped to achieve a few significant milestones. Access to justice is a problem which is getting worse by the second due to major factors including the population growth, illiteracy rate, and poverty rate. All of these factors contribute to the failure of key policy decisions made for a certain year to solve the issue since it is escalating so quickly that the policy itself becomes infructuous.

CONCEPT OF 'ACCESS TO JUSTICE':

In layman's words, access to justice involves entering the courts and other judicial forums with the fewest barriers possible and using all available avenues to request redress for any violations of a person's human rights. The right to access justice is seen as a pre-requisite in democracies. The meanings of the words "Access" and "Justice" are broad and varied. Therefore, establishing social justice through the involvement of all its stakeholders, including litigants, the administration, the executive, the bar, and the bench, cannot be considered as an aim in and of itself but rather as a means to that end. The Preamble of the Indian Constitution states that "We the people of India" have been given sole authority and have pledged to uphold "Justice: Social, Economic, and Political." The "Welfare State" was made possible by this social justice.[87]

This notion of a welfare state was the inspiration behind the creation of the fundamental rights that this nation's citizens now enjoy. Justice, then, encompasses a wide range of rights under its purview, the denial of which constitutes a violation of the Constitution's core principles, which are to guarantee the rights of the citizen. Therefore, a narrow definition of access to justice is provided to enable people to seek redress through both informal and official systems of governance and to protect their right to do so. Access to Justice is thus a dedication to ensuring that individuals have the right to have their grievances addressed and the right to pursue their legal remedies, whether in court or via informal ways, to ensure that their rights are safeguarded. It refers to the right of the people to have effective access to their rights, as well as the means to enforce them and approach a forum for adjudication if these rights are endangered or infringed.

87 M.P. Jain, Constitutional Law of India, 8th Ed., 2018.

CRITICAL ANALYSIS OF BARRIERS TO 'ACCESS TO JUSTICE':

1) Lack of Education:

Furthermore, due to a lack of access to education, the people are not even aware of their constitutionally guaranteed rights. People are never informed of their property rights, the worth of proprietary interest, or the rights of a coparcener in a family estate. Because of a lack of awareness caused by a lack of primary education, the majority of people are forced to live lives of labour and servitude. Most employees and their families are frequently disturbed by the concept of education, despite the fact that it is a fundamental right protected by the Constitution in Article 21-A.[88]

2) Lack of Awareness:

One of the key causes for barriers has been a lack of information of Informal Access to Justice Mechanisms as well as the continued work of the Legal Services Committees of the District, State High Courts, and the Supreme Court of India. Furthermore, lack of information denies indigents the right to exploit the advantageous conditions of arguing party in person in civil actions. In criminal proceedings, the complainant or the aggrieved is usually unrepresented, and his role is reduced to that of a spectator once his testimony has been recorded. Indigents rarely submit protest petitions[89], if the police decide to withdraw all charges against the accused due to a lack of awareness. The task takes on dangerous proportions in this set of cases. This combination of a lack of knowledge and awareness, a lack of experience with court processes, and a general mistrust of the court system creates a chasm between the poor and state enforcement agents.

3) Economic Barriers:

Access to justice has never been an issue for someone who has access to all resources and is financially secure. The consequence of economic disparities is particularly seen in the Criminal Courts. Every man is presumed innocent unless proven guilty, according to a fundamental concept of criminal law. The safeguards for protecting people's interests were dually integrated into the Code of Criminal Procedure, 1973. Provisions such as completion of investigation within sixty and ninety days[90] were made to ensure that a person was not subjected to the rigours of jail beyond the statutory duration of confinement. However, the current population, demographic

88 Inserted by the 86th Amendment Act of the Constitution, 2002.

89 Section 173, Code of Criminal Procedure, 1973.

90 Section 167, Code of Criminal Procedure, 1973.

research, and under trial prison figures show that about 75% of people under trial are from the poorer sections of society, and hence have little or no access to justice.[91]

The system of corruption that has penetrated society is a more basic force to be reckoned with. Various official offices operate on corruption and bribery, making access to justice difficult and impossible. Corruption has permeated all levels of government, from obtaining a copy of the judgement to filing an application or requesting an adjournment. As a result, corruption has been and continues to be one of the most serious flaws in the justice delivery system.

4) Legal Procedural Barriers:

The most significant procedural causes of delay in the criminal justice system are a lack of resources, a growing backlog, and mismanagement. Internal management systems continue to be antiquated, with little or no dependence on computers or new ways of communication. In the framework of Courts, plaintiffs had to deal with a number of delays, beginning with the filing of their plaints/complaints and continuing until the case was resolved.

5) Lack of Structured and Informed Preparations by the Advocates:

The advocates demonstrate a lack of legal expertise, both substantive and procedural. Some lawyers do not prepare case facts adequately, and it shows in their pleadings, as they frequently stay bewildered when judges challenge them. Due to the fact that their cases are running concurrently, advocates are frequently observed rushing between courtrooms and requesting adjournments in one or both trials.

Other factors that slowed the proceedings were a lack of advocates and, of course, several adjournments for a number of reasons. The strategies of litigants and their lawyers, as well as frequent and needless adjournments, are key causes of delay. The situation at Legal Aid is deplorable. Lawyers are not compensated and are urged to represent clients who cannot afford to pay the fees. Because of the large number of such cases and the scarcity of lawyers to represent them, the problem has grown significantly in providing access to justice as directed by Article 39 (a) of the Indian Constitution, which has also been voiced time and again in a slew of historic pronouncements, most notably *Hussainara Khatoon v. State of Bihar*.[92]

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91 Barriers to access to justice, Access to Justice, Law, e-PG Pathshala Management System, India, https://epgp.inflibnet.ac.in/Home/ViewSubject?catid=ZzUApmBk4i7kYctp+aiP1w==

92 Hussainara Khatoon v. State of Bihar, 1979 AIR 1369, 1979 SCR (3) 532, (1980) 1 SCC 93.

SUGGESTIONS FOR PRACTICALLY EXPANDING THE SCOPE OF ACCESS TO JUSTICE:

1. Expanding the number of Courts:

There is an urgent need to enhance the overall number of courts and judicial forums in India in order to overcome the most major barrier to access to justice, which is the high rate of litigation pendency. In addition to establishing more courts, the government should construct courts in various geographical areas located in remote parts of India so that citizens from rural and remote areas can also access the courts and receive their remedies with minimal travel time, lower expenses, and commuting difficulties.

2. Financial assistance and infrastructure improvements:

Increasing vacancies and the number of courts in India in isolation will not be efficacious. Therefore, there needs to be an increase in the budget of the Judiciary for improvement of the infrastructure of the courts to build more courtrooms and hire more judicial officers.

3. Effectively promoting Public Interest Litigation by Courts:

Through the origination of Public Interest Litigation (PIL), the courts in India have been successfully able to address problems and prejudices of the masses in accessing the court and seeking common reliefs and remedies. PIL is one of those attainable routes through which people of socio-economic backward and disadvantaged sections of society can protect their basic human rights through a third person in a less expensive manner and acts as a legal aid movement to redress their grievances. Though PIL over the years has been encouraged by the courts, however, in the last few years it has become a tool for frivolous litigation. Hence, PIL needs to be managed effectively in such a manner that access to justice with minimum resources and maximum expertise is available to the disadvantaged groups, but it does not become a burden on the limited resources of the courts.

4. Availability of Courts in hybrid mode:

In 2023, with technological advancements, availability of courts in hybrid mode like online and offline is the need of the hour. After lockdown, Supreme Court and High Courts have started working in hybrid mode. Now, litigants who are living in remote area or at distant place from court are appearing in court through online mode. This idea of virtual courts is saving time and expenses for journey and expedites the judicial process. E-courts should be supported not only during pandemics, but also as

a normal practise, since they will make justice more accessible to all Indian territory residents.

5. Establish Legal information centres:

To increase the legal awareness among public, legal information centres must be constituted which can offer free or low cost legal advice through both online and offline modes.

CONCLUSION

Law is the means to an end of justice, and in order to attain that objective, the law must have a legal system that is accessible to all. Access to justice grants life and significance to statutes. Even though there is a distinction between access to courts and access to justice, both are critical. Thus, by putting these procedures in place, it is feasible to successfully subjugate the various hurdles to access to justice and the court. Finally, by putting the following proposals into action, the accessibility of justice for all people in Indian territory can be increased.

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