

Access to justice for women victims of domestic violence in the Republic of Macedonia

Netkova Bistra*

ABSTRACT

In the recent decades as a result of feminist efforts, significant progress in addressing the issue of domestic violence on the international scene, as well as, on the national level have been made. However, there are still numerous examples of the legal systems routinely failing women victims of domestic violence. In the Republic of Macedonia the issue of domestic violence emerged on the national agenda in the 1994, and ever since, many projects and actions on government level, as well as, in the non-governmental sector have been initiated. Access to justice as a fundamental right to victims of domestic violence has started to develop in the country. Laws are now enacted and procedures have been changed to better suit victims of domestic violence. Action Plans have been developed, and orders of protection are now available. Police officers have been trained on appropriate responses to domestic violence calls; judges have been trained on the dynamics of domestic violence; and recently, prosecutors and lawyers are more likely to take up cases of domestic violence and to consider it relevant to their prosecution or defense. However, even though these efforts have been rather successful in terms of policy-making and legal framework, victims of domestic violence still face problems throughout the legal system. The problems that hinder the effective access to justice of the victims are concentrated in these areas: the police inaction in submitting a criminal charge to the prosecution office; the prosecution's office dropping the case for lack of evidence or under-qualification of the deed; untimely action of the court in security protection measures issuance demanded by victims; lack of implementation of already issued temporary protection orders, and under-sentencing the perpetrators. In this article, these problems will be explored through analyses: first of the legal system of R. Macedonia regarding domestic violence, based on its responsibility by being a party to binding international legal treaties treating violence against women *in generalis*, and domestic violence *in concreto*; and second, through identification of the situation regarding domestic violence and the problems of victims of domestic violence dealing with the justice system by examining specific cases.

Keywords: domestic violence, access to justice, legal aid, victims of domestic violence, implementation, laws

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'There are no words, sentences or text that can sufficiently describe the misery of domestic violence victims'¹.

1. BACKGROUND

Domestic violence as gender-based violence is present in every society, rich or poor, regardless of the level of education of its victims, or the social status they possess. It has established itself as one of the major threats to the rights and well-being of women on many levels, with repercussions to their health, economic status, social relations and legally guaranteed rights. In the past two decades, domestic violence has become an issue on the international agenda, through the 1993 Vienna Resolution recognizing women's rights as human rights, as well as recognizing violence against women as a human rights violation, covered by the Committee on the Elimination of Discrimination against Women (CEDAW), the Beijing Platform of Action, and the most recent Convention on Domestic Violence of the Council of Europe.

Therefore, it would be logical to assume that, due to the increased level of publicity on the issue of domestic violence over the past two decades, the efforts to address it both internationally and nationally, as well as actions by non-governmental organizations (NGOs) to influence national policy, things have dramatically changed in favour of female victims of domestic violence. Even though significant progress has been made in recent decades as a result of feminist efforts, there remain numerous examples of legal systems routinely failing women subjected to domestic violence.

In the Republic of Macedonia (hereafter R. Macedonia) the issue of domestic violence emerged on the national agenda in 1994, and since then many projects and actions at government level, as well as in the non-governmental sector, have been initiated. Access to justice as a fundamental right of victims of domestic violence has started to develop in the country. Laws have been enacted and procedures have been changed to better suit and protect victims of domestic violence. Action plans have been developed, and orders of protection are now available. Police officers have been trained on appropriate responses to domestic violence calls, judges have been trained on the dynamics of domestic violence, and now prosecutors and lawyers are more likely to take up cases of domestic violence and to consider it relevant to their prosecution or defense.

However, even though these efforts have been rather successful in terms of improving policies and the legal framework, victims of domestic violence still face problems throughout the legal system. Mainly, the problems that hinder the victim's effective access to justice of the victims are concentrated around these areas: Police inaction in submitting a criminal charge to the prosecution office; the prosecution office dropping the case for lack of evidence or not taking into consideration the aggravated circumstances that qualifies the deed as a serious crime, untimely action of the court in issuing security protection orders demanded by victims; lack of enforcement of existing temporary protection orders, and inadequate sentencing of perpetrators.

In this article, these problems will be explored through several analyses: first, by examining R. Macedonia's general legal responsibilities under binding international legal treaties to address violence against women *in generalis* and *in concreto*; and second, through identification of the problems that victims of domestic violence encounter in the justice system by examining specific cases.

In the discussion of these areas, two conclusions will emerge: the first, that the State has not provided a successful legal aid scheme for the victims of domestic violence to allow them to access the legal system adequately, and second, that the current laws fail to adequately address the needs of the victims of domestic violence within the justice system of the country due to untimely action, lack of protection and implementation of decisions, and lack of sensitivity for the issue.

2. THE SITUATION CONCERNING DOMESTIC VIOLENCE IN R. MACEDONIA AND IDENTIFICATION OF PROBLEMS VICTIMS FACE ACCESSING JUSTICE

Domestic violence in R. Macedonia affects mainly women. In 2006, data provided by the Ministry of Internal Affairs indicated that 70.1 percent of victims of domestic violence were women and 29.9 percent men, while in 2008, 80 percent of the victims were women, and in 2009 out of 751 victims of

¹Interview with Verica Timosieska, expert lawyer representing victims of domestic violence, (November 8, 2012).

domestic violence who were registered by the Centres for Social Work, 612 were female, 81.4 percent of the total number of victims.² In 2010, the number of female victims was reported again as being 80 percent.³

A 2006 study on domestic violence in the R. Macedonia showed that women experience a very high number of incidents of domestic violence.⁴ The study, which is the most recent empirical one, showed that 56 percent of women experience psychological forms of domestic violence, 18 percent physical forms of violence, and 11 percent sexual violence. The study also showed the crimes of domestic violence are under-investigated due to ingrained gender bias. Rates of domestic violence among particular ethnic groups, such as the Roma, are believed to be significantly higher.⁵

Under-reporting also remains a considerable problem in the country.⁶ The majority of women, as a result of their marginalization, are unaware of their legal rights and the remedies available to them when these rights are violated. Legal services also are often too costly and inadequate to respond to the needs of victims. While domestic violence cuts across social lines, occurs in all economic and cultural contexts, and is as common in the cities as in the countryside, its effects are more heavily felt in rural areas, where victims have even less awareness of their legal rights and/or access to legal assistance and justice.⁷ This is especially true with the Roma population of women.⁸

3. INTERNATIONAL AND NATIONAL DIMENSIONS OF THE LEGAL FRAMEWORK FOR DOMESTIC VIOLENCE

Domestic violence is a violation of human rights.⁹ It affects all women regardless of cultural, ethnic, educational, and economic backgrounds.¹⁰ As pointed out by Ellsberg and Heise it ‘saps women’s energy, compromises their physical and mental health, and erodes their self-esteem’.¹¹ It is a major obstacle to the realization of effective gender equality, and it is deeply rooted in the traditions influenced by gender stereotypes.¹² Like other forms of human rights violations, domestic violence mainly occurs in private settings, and is often ignored by the state. This translates into the failure of the state to enact adequate laws that protect victims, or failure to implement laws or, failure to punish perpetrators.¹³

On the international level, domestic violence has long received condemnation, especially by NGOs and women’s rights advocates. This has prompted the international community i.e., most governments to acknowledge the need for international legal regulation of the issue, which will create positive obligations on the part of governments to take effective steps to address domestic violence.¹⁴

²Institute for Social Work, Statistical overview for 2008 for registered social risks in R. Macedonia (In Macedonian); Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined fourth and fifth periodic reports of States parties The former Yugoslav Republic of Macedonia, CEDAW/C/MKD/4-5, at 14.

³*Id.*

⁴Violeta Chacheva, Stojan Mischeve, Jasminka Friscik, Marija Gelevska & Anica Dragovik. Life in a shadow. Association for Emancipation, Solidarity, and Equality of Women in the Republic of Macedonia (ESE) (2007). Found at: http://www.domesticviolence.org.mk/Root/_docs/Life%20in%20a%20Shadow.pdf (accessed January 20, 2014).

⁵Amnesty International, Macedonia “Little by little We Women have Learned our Rights:” The Macedonian government’s failure to uphold the rights of Romani women and girls’, AI Index: 65/004/2007, 64.

⁶Ruth Rosenberg, ‘Report Domestic Violence in Europe and Euro-Asia’ (2006), USAID, at 31.

⁷Interview with the President of the BAR Association of R. Macedonia Nenad Janicevic, (December 19, 2012).

⁸Jessica Mangskau, Publication: Partner violence amongst the Roma in R. Macedonia and the public sector response/ Jessica Mangskau. – Skopje: Association of citizen “Sumnal”, 2010, 28.

⁹Bistra Netkova et al., *Human Rights and Domestic Violence with emphasis on R. Macedonia* 23 (SEEU Press 2007).

¹⁰Ariella Hyman, Dean Schillinger & Bernard Lo, *Laws Mandating Reporting of Domestic Violence*, 273 *The J. of the Am. Med. Assn.* 22 (1995).

¹¹Cited in John Simister, *More Than a Billion Women Face ‘Gender Based Violence’; Where Are Most Victims?*, 27 *J. Fam. Violence* 607, 608 (2012).

¹²*Report of the Special Rapporteur on violence against women*, U.N. ESCOR, 52d Sess., UN Doc. E/CN.4/1996/53 (1996) at 33, 36. Stating that in addition to being a legal problem, ‘[d]omestic violence is a health,... economic, educational, developmental and human rights problem’, and the protections—including those provided by legislation—that commence after the incident do not ‘appear to have any important impact on the prevention of woman-battering’.

¹³*A Ms. A. T. v. Hungary*, A/60/38, Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women Communication No.: 2/2003, (Views adopted on 26 January 2005, thirty-second session).

¹⁴Sheila Dauer, *Indivisible or Invisible, Women’s Human Rights in Public and Private Sphere*, in *Women, Gender, and Human Rights A Global Perspective* 65, 67 (Marjorie Agosin ed., Rutgers University Press 2001).

The UN Convention on the Elimination of All Forms of Discrimination against Women¹⁵ (CEDAW) and its Optional Protocol¹⁶ have paved the way for female victims of domestic violence to secure international recognition of the violations of their rights by states.¹⁷

Article 3 of the European Convention of Human Rights (ECHR), which requires all public authorities to take relevant measures to ensure that individuals are not 'subjected [...] to inhuman or degrading treatment',¹⁸ Article 2 ECHR, securing the right to life and Article 4 of the ECHR prohibiting slavery, have all been interpreted by the European Court of Human Rights (ECtHR) as including domestic violence by private persons.¹⁹ The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence,²⁰ has most recently confirmed in its Article 5 that: 'Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors.'²¹

Against this background, as a party to all three of these international legal instruments, the R. Macedonian government has an obligation to take effective action to advance women's rights, generally and to protect them from violence, specifically.

The international community and local NGOs pressured the government of the R. Macedonia, to amend its legislation concerning domestic violence. This followed critiques by the CEDAW Committees on the periodic report of R. Macedonia on incomplete compliance with CEDAW in the domain of domestic violence,²² especially regarding its under-regulation and the absence of access to justice by the victims.²³ Consequently, the Family Law,²⁴ Criminal Code²⁵ and the Law on Social Protection²⁶ were amended in the period from 2004 to 2008. The legal reform resulted in a specific recognition and definition of physical, psychological and sexual forms of domestic violence and their criminalization.²⁷ The government of R. Macedonia adopted a National Action Plan for Gender Equality for the first time in December 1999, and again in 2007.²⁸ In 2008, the government adopted a National Strategy for Protection against Domestic Violence (2008–2011), which provides a set of overarching objectives and intervention strategies.²⁹ Also, modifications to the Family Law in 2004 and subsequent amendments in 2006 and 2008 directly addressed family violence. An especially important change was the recognition of the important role of the NGO sector in R. Macedonia for addressing the issue of domestic violence. Through this change, NGOs were allowed to be included as different service providers for the victims of domestic violence ranging from sheltering to legal aid. Another significant

¹⁵Convention on the Elimination of All Forms of Discrimination against Women GA Res 34/180 UN Doc. A/RES/34/180 (1979).

¹⁶Convention on the Elimination of All Forms of Discrimination Against Women, 34 UN GAOR, Supp. No. 21 (A/34/46), at 193, UN Doc. A/RES/34/180, 1249 U.N.T.S. 14 (1981), *reprinted in* 19 I.L.M. 33 (1979) (hereinafter CEDAW).

¹⁷Optional Protocol, 22 December 2000.

¹⁸*European Convention for the Protection of Human Rights and Fundamental Freedoms*, Rome, Article 3 (1950).

¹⁹*See Kontrova v. Slovakia* (App No 7510/04, ECHR) Judgment 2007; *Siliadin v. France* (Application no. 73316/01) (2005); and *MC v. Bulgaria* (2003).

²⁰See Council of Europe Convention on preventing and combating violence against women and domestic violence CETS No.: 210.

²¹Article 5, Council of Europe Convention on preventing and combating violence against women and domestic violence, CETS No.: 210.

²²Committee on the Elimination of Discrimination against Women Thirty-fourth session 16 January – 3 February 2006 Excerpted from: Supplement No. 38 (A/61/38), Concluding comments of the Committee on the Elimination of Discrimination against Women: The former Yugoslav Republic of Macedonia, 4 (2006).

²³UNIFEM, Report: *The Costs of Domestic Violence Against Women in Macedonia*, Content editor: Yordanka Gancheva English editor: David I. Davidson Team members and authors: Yordanka Gancheva, Pavlina Petrova, Hristina Sekulowska, Katerina Stojanovik – Aleksoska, 2006; US Department of State, 2010 Human Rights Report: Macedonia, at: <http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154437.htm> (accessed November 8, 2012); Also see Report Domestic Violence in Macedonia, by Minnesota Advocates for Human Rights, 10-19 (1998).

²⁴Family Law ('Official Gazette of the Republic of Macedonia', No. 80/2004).

²⁵Criminal Code, ('Official Gazette of the Republic of Macedonia', No. 7/08).

²⁶Law on Social Protection ('Official Gazette of the Republic of Macedonia', No. 79/09).

²⁷Amnesty International, Macedonia "*Little by Little We Women have Learned our Rights*": *The Macedonian Government's Failure to Uphold the Rights of Romani Women and Girls*, AI Index: 65/004/2007, pg. 64; Association of Citizen Sumnal 2010, *Partner Violence amongst the Roma in R. Macedonia and the Public Sector*, UNIFEM p.17, found on: http://www.unifem.sk/uploads/doc/Partner_violence_amongst_Roma_and_the_public_sector_response_ENG.pdf (accessed April 2, 2013).

²⁸National Action Plan For Gender Equality 2007-2012, 2007. Found on: <http://sgdatabse.unwomen.org/uploads/National%20Action%20Plan%2007-2012.pdf> (accessed November 1, 2012).

²⁹Law on Social Protection ('Official Gazette of the Republic of Macedonia', No. 79/09).

step forward is the availability of applying for temporary measures for protection from family violence. Finally, the 2004 amendments to the R. Macedonia Criminal Code added domestic violence as an aggravating factor in already existing crimes.³⁰

However, a separate law criminalizing domestic violence in R. Macedonia still does not exist, even though such a law would draw more attention to the problem. At the moment, the justice system in R. Macedonia offers legal options to the victims of domestic violence, such as civil actions and criminal action, through the family law and the Criminal Code.

3.1. Family law

The modifications to the Family Law in 2004 and the amendments of 2006 and 2008 have introduced positive changes in the regulation of issues related to family violence.³¹ Under the family law, any kind of violence is forbidden among family members, regardless of their gender and age. Article 94 defines domestic violence as harassment, insult, jeopardizing of safety, physical injury, or sexual or other psychological or physical violence that causes a feeling of uncertainty, peril or fear,³² thus accepting a broad definition of domestic violence.³³ The law introduced a new legal option that has been welcomed as significant, i.e., temporary protection measures,³⁴ which are meant to have a preventive character and can last up to one year with the possibility of extension. The temporary protection measures can be requested by the Centers for Social Work, and by the victims themselves. This novel addition to the law has greatly facilitated the process of securing such measures by victims, rather than relying on the judgment of social centers to initiate such requests. Furthermore, under these amendments, an NGO that is registered to pursue goals and tasks related to the field of social protection may, by itself or in cooperation with a social work centre, undertake protective measures that are stipulated under the Family Law.

The NGO is required to inform the relevant centre for social work within 24 hours after receiving the report. The centre for social work is obligated to arrive at an adequate solution to the matter within 24 hours from receiving the report. The NGO is obliged to submit the entire documentation to the centre within 72 hours from undertaking the measures, for the purpose of pursuing further action.³⁵ In the process of requesting such measures, the victim has to provide the court with the necessary evidence of domestic violence, either in the form of a medical report, financial evidence and additionally, any police report. The victim must provide all the necessary documentation for the application of a temporary protection measure to the court even in cases where the centre has requested temporary protection. The centre requests such measures by the agreement of the victim

These measures enable victims to request restrictions to be imposed, by the court, restraining the perpetrator from:

- threatening family violence;
- maltreating, upsetting, telephoning or communicating with a member of the family in any way, directly or indirectly;
- being physically present near the residence, the school, the workplace or some designated location that has been regularly visited by another member of the family;
- and determining the distance the alleged perpetrator must keep from the home (regardless of ownership,) until the court reaches a final verdict.³⁶

³⁰Criminal Code, (*Official Gazette of the Republic of Macedonia*, No. 7/08).

³¹See Family Law (*Official Gazette of the Republic of Macedonia*, No. 80/2004).

³²*Id.*

³³*Id.*, Article 94. According to the Family Law of Republic of Macedonia, domestic violence is:

'Maltreatment, insulting, endangering of security, bodily harm, sexual and other psychological or physical violence with which creates a feeling of insecurity or endangering or fear towards:

marital partner, parents or children or other persons living in marital or extra marital community
former marital partner or persons with which they have children together or have close relationships including relationship that occurs pursuant to adoption and guardianship

brothers and sisters, half brothers and half sisters, elderly members of the family or joint household; (...).'

See also Bonita C. Meyersfeld, Reconceptualizing Domestic Violence in International Law, 67 Alb. L. Rev. 371, 389 (2003).

³⁴John M. Johnson, Yvonne Luna & Judy Stein, *Victim Protection Orders and the Stake in Conformity Thesis*, 18 J. of Fam. Violence 317, 318 (2003).

³⁵Family law (*Official Gazette of the Republic of Macedonia* ~~Official~~).

³⁶See Family Law (*Official Gazette of the Republic of Macedonia* 80/2004).

Other temporary measures provided by law in cases of domestic violence include:

- prohibition on possessing a firearm or other weapon or its confiscation;
- obligation to return items that are necessary for satisfying the family daily needs;
- obligation to support the family;
- an order that the perpetrator receive an adequate counseling service;
- an order for compulsory medical treatment, if the person uses alcohol and other psychotropic substances or has some illness;
- an order to compensate the victim for her medical and other expenses resulting from family violence.³⁷

The second set of temporary protection measures allow the victim to secure the necessary financial support before and during divorce proceedings, and to obtain the necessary financial means for covering medical expenses resulting from treatment of abuse related injuries as stipulated by the law.

In addition, it is paramount to stress that the Family Law contains³⁸ an expanded role of the Centres for Social Work in the protection of the victims of domestic violence. The centres, according to the law, are responsible for finding necessary accommodation for the victims of domestic violence, providing healthcare, providing psycho-social intervention and treatment, sending victims to counseling, informing the institution that conducts the prosecution, giving legal aid, initiating procedures before a court, requesting a court to issue temporary measures for protection, and undertaking other measures necessary for protection of the victims of domestic violence. Also, Article 94-g embodies the duty of all public institutions, officials, and juridical persons to report cases of domestic violence to the centre once they find out or receive any information about it.³⁹ It should be noted that this particular change in the law has proven very useful and productive, since it has actually increased the number of incidents of domestic violence reported by institutions (mainly health institutions, and the municipality's local prevention councils), as well as by victims. Whereas in the past victims were largely neglected and ignored by the system because there was no legal obligation to report suspected incidents of domestic violence, these changes have forced institutions to react in such cases. Despite the fact there is still no explicit legal obligation on the part of the health institutions to report domestic violence cases embodied in the law, there are recently accepted protocols for inter-institutional cooperation that provide the basis for institutions to report suspected domestic violence cases to the police, and to offer support for victims to 'come out' and seek justice. The health institutions usually refer such cases to the Centers for Social Work, which then reports them to the police.

Moreover, the law includes a general provision that allows the court the discretion to fashion any other remedy that it deems necessary in a given case, even those not included in the list, in order to provide for the safety and well-being of the other members of the family.⁴⁰ This was intended to give the courts the momentum they needed in order to improve the dynamics of these trials and to enable courts to be better equipped to answer the needs of victims of domestic violence. The temporary protection measures are carried out by the institutions responsible for their implementation as stipulated by the law, which usually means either the police or the health institutions. In cases where perpetrators do not abide by the temporary measures imposed by a court, the institution responsible for implementation could notify the court, which then could find the perpetrator in violation of a court order. In practice, there have not been cases of the use of such procedures due to the fact that perpetrators generally abide by court decisions and where they do not, the police issue warnings which have proved effective in the past.

In cases of domestic violence, in addition to the temporary protection measures, the victims can file for divorce. The Family Law regulates divorce within Articles 39, 40, and 41.⁴¹ Macedonian law does not have a 'fault' requirement for filing for a divorce. Divorce proceedings commence with the filing of a legal action. In the case of divorce proceedings, the action can be withdrawn at any stage of the proceedings as stipulated in Articles 222 to 261.⁴² According to the law, in a case where the divorcing couple has underage children, the court incorporates into the judgment of divorce a decision on the

³⁷*Id.*

³⁸*Id.*

³⁹*Id.*

⁴⁰*Id.*

⁴¹*Id.*

⁴²*Id.*

custody of the children, and it imposes childcare obligations on the parents. These judgments are issued by the courts in consultation with the Centres for Social Work that are responsible for conducting an interview with the purpose of finding out about the living conditions of the children and submitting a recommendation to the court.

In cases of domestic violence, the centers consider that fact in their recommendations for the custody of children to the court. However, as will be shown later, divorce proceedings generally take a long time and are not expedited in cases of domestic violence.

Parallel to this procedure, the victim of domestic violence who has initiated criminal proceedings against the perpetrator—either by submitting a proposal to the Public Prosecutor in case of bodily harm, or the proceedings have been initiated by the Public Prosecutor *ex officio* in cases of grievous bodily harm—has a right to compensation in a civil procedure including material and non-material damages provided the criminal proceedings ended in conviction (explained in detail in section 3.2). An expert witness, usually a psychiatrist is called upon, during this procedure. Victims of domestic violence rarely use such procedures since they are long, costly and court-ordered damages are virtually impossible for the victim to collect from the perpetrator.

Finally, it is important to mention that, under the Criminal Code of R. Macedonia, intentional avoidance of making child support payments is now a criminal offence, and victims can seek justice in criminal courts through a criminal procedure against the perpetrator.⁴³

3.2. Criminal Code and criminal procedure

The 2004 amendments to the Criminal Code of R. Macedonia list domestic violence as an aggravating factor to specific already existing criminal offences.⁴⁴

In the legislation of the R. Macedonia, domestic violence is treated in broader terms as a form of violence that concerns all members of a household. According to the Macedonian Criminal Code, domestic violence is defined as:

Maltreatment, rude, insulting, endangering security, bodily injuring, sexual or other physical or psychological violence that induces a sense of insecurity, threat or fear toward a marital partner, parents or children or other persons that live in marital or in extramarital couple households, as well as toward ex-marital partner or persons that have children or are in very close personal relationships.⁴⁵

This means that whenever the criminal act is committed in the context of a family relationship, it is considered as a more severe form of that criminal act, and the punishment is more severe than that for the basic form of the same criminal act. For instance, in the case of murder, the law prescribes that the punishment for the basic form of the criminal act (without the presence of domestic violence) is at least five years imprisonment whereas in the case of domestic violence, the perpetrator will be punished with at least ten years to life in prison.⁴⁶

The most frequently initiated criminal prosecutions against perpetrators of domestic violence in the R. Macedonia are bodily harm and grievous bodily harm.⁴⁷ The paragraph below is an overview of proceedings initiated for criminal charges prepared by the police and submitted to the Public Prosecutor-*ex officio* initiation of criminal proceedings; criminal proceedings initiated at the suggestion of a victim to the Public Prosecutor; and criminal proceedings initiated by the victim with a private criminal suit.

A victim typically submits a proposal to the Public Prosecutor for initiation of proceedings against a domestic violence perpetrator, though the Public Prosecutor can take up the case *ex officio* in cases of bodily harm or grievous bodily harm. First, the victim has to report the crime to the police. The police officer who conducts an investigation writes the event in the daily events book, and can issue an official statement of the event upon request. When the police conclude that there are elements of a criminal offence involving domestic violence, this is written in the official report that it is given to the victim to sign. Subsequently, the victim is referred to a medical institution where a medical report is issued that

⁴³Criminal Code, (*Official Gazette of the Republic of Macedonia*, No. 37/1996; 80/1999; 4/2002; 43/2003; 19/2004; 81/2005; 60/2006; 73/2006; 7/2008; 139/2008; 114/2009).

⁴⁴*Id.*

⁴⁵*Id.*

⁴⁶*Id.*

⁴⁷Interview with Jovan Ilievski, Public Prosecutor Skopje (November 11, 2012).

can state whether the alleged offence falls within the category of bodily harm or grievous bodily harm. This determines whether the deed will be prosecuted *ex officio* or not.

If it is considered to be bodily harm, the victim has to submit a proposal to the Public Prosecutor for initiation of criminal proceedings within three months from the occurrence of the alleged offence, together with evidence. In this case, the Public Prosecutor has a subsidiary role, meaning that if the victim decides to withdraw from the proceedings before the end of the trial, the Public Prosecutor also withdraws, and if the victim decides to continue proceedings again, it can be done through a private suit with the assistance of a lawyer. In practice, it is frequently the case that a victim is advised by family members to withdraw from the proceedings due to the perceived 'shame to the family', or because it will be in the best interest of her children. In some cases, victims are intimidated by the perpetrator, or are manipulated in a way that they believe their perpetrators are sorry and will not repeat their actions of violence, which, sadly, are almost always repeated.

When grievous bodily harm is in question, the Public Prosecutor receives information about the alleged offence through the criminal charges submitted by the police. In criminal proceedings, the victim has the status of both a 'damaged person' – as the victim and as a witness and can join the Public Prosecutor in the proceedings. In criminal proceedings the victim/damaged person also submits a compensation request. This request, after the changes of the law on criminal procedure, can be decided together i.e., damages are awarded in the same proceeding, instead of referring the case to civil court once the criminal proceedings have ended.

However, even though this opportunity was introduced with the changes of the Criminal Procedure Law from 2010,⁴⁸ the criminal courts almost never award damages for victims of domestic violence in the criminal proceedings: instead, they send the victims to seek damages in separate civil proceedings in a civil court. This has prompted many victims of domestic violence to refrain from further action in the courts because the civil law proceedings are more costly (court fees, legal representation) and take more time than criminal law proceedings.⁴⁹

2. The second most common criminal proceeding in domestic violence cases is the criminal offence of failure to pay child support. In this case, the victim has to request initiation of legal proceedings against the perpetrator through the Public Prosecutor. The victim can do this only if the following legal requirements are met: 1) the civil proceedings of the divorce and the decision on child support have been given by the civil court; 2) the decision is final and enforceable; and, 3) the perpetrator has failed to respect this decision. The victim has to submit all the evidence to the Public Prosecutor who will decide whether or not to initiate the proceedings with an indictment against the perpetrator.

3. The third most common proceeding in cases of domestic violence is the unlawful taking of a minor. Often, the victim is in a very difficult situation and flees the home, leaving behind children with the perpetrator. After court proceedings are final and a mother receives the custody of her children by a court judgment, the former husband and perpetrator of domestic violence usually refuses to return the children to her custody. In that case, the mother can submit a request to initiate criminal proceeding to the Public Prosecutor together with the evidence for obtaining custody of the children for return of the children. Based on that evidence, the Public Prosecutor starts the criminal proceedings against the perpetrator.

Apart from the above mentioned examples, there are other criminal proceedings against perpetrators of domestic violence, such as: proceedings for the criminal offence of endangering security, insult, and slander, that are initiated only rarely and by private suits.

The recent (2010) amendments in the Criminal Procedure Law have brought changes to the ways that victims, *in generalis* and victims of domestic violence *in concreto* are treated during trials. Article 54 regulates the special rights of vulnerable categories (victims), and particularly sensitive victims (victims of domestic violence). For the first time, this law regulates the right to special measures of protection during a trial for victims, due to physical or psychological disability or, other major health conditions. Special measures may also be warranted due to the conduct of the defendant, or the conduct of defendant's family members or friends towards the victim where it would cause harmful consequences on their (victims') psychological or physical health, or would have a negative impact on the quality of the deposited testimony.⁵⁰ According to Article 54 of the law on Criminal Procedure:⁵¹

⁴⁸Law on Criminal Procedure, (Official Gazette No. 15/2005 and Amendments from 2008 and 2009).

⁴⁹Interview with Ermon Neziri, Public Prosecutor Skopje (March 11, 2013).

⁵⁰Law on Criminal Procedure,(Official Gazette No. 15/2005 and Amendments from 2008 and 2009).

⁵¹*Id.*

- (1) The victims are entitled to special measures for protection during the trial, when making testimony and being interrogated in all stages of the proceedings, if:
 - ...-by making the testimony or answer to a given question, the victims would expose themselves or a person close to them to severe danger to their own life, health, or physical integrity (endangered victims), . . .
- (2) The special measures for protection during trial are determined by the court, upon proposal by the Public Prosecutor or by the victim, or upon own assessment by the trial court, when need arises to protect the endangered victims and especially the sensitive victims.
- (3) When making a decision on special measures for protection during trial as mentioned in paragraph (2) of this Article, the court shall take into consideration the will of the victim.

These measures were intended: 1) to encourage and help victims of domestic violence *inter alia* to participate in the criminal procedures as witnesses; 2) to decrease the instances of withdrawal on the part of the victims from the trial; 3) to deter victims from changing their stories due to fear from their perpetrator, which has in the past seriously hampered cases against perpetrators.

Whether in reality this effort on the part of lawmakers has been effective is difficult to say because there is no comparative statistics on this matter. However, there are statistics available on the number of domestic violence cases per year which show an increase in the number of victims that have participated in trials against perpetrators in 2012, compared to the number of trials against perpetrators in 2011.⁵²

3.1. Legal aid and representation of women victims of domestic violence as a precondition for access to justice

Even if reported, domestic violence as a crime presents a problem since it demands an integrated and multi-sectorial response on behalf of state institutions.⁵³ Women victims of domestic violence confront numerous obstacles when trying to gain access to the legal system. Obtaining legal advice is probably the first and biggest challenge that women victims face. Victims of domestic violence often have neither resources nor support of the wider family, especially in the traditional rural areas and with the minority population. A survey conducted by the Ministry of Labor and Social Policy in 2012 found that '80% of female victims of physical violence are unemployed or economically inactive'⁵⁴, which means they cannot afford the legal representation that is key for successful resolution of the victim's ordeal. Without proper legal aid (or none at all), domestic violence survivors must navigate through the legal system alone. This ranges from securing a temporary protection measure against the abuser to dealing with complicated family law issues such as divorce, including child custody disputes as well as accessing safe housing, all of which are virtually impossible to be done by lay persons with few resources and little information about their rights.⁵⁵

The situation is even worse because, currently in R. Macedonia, legal aid for victims of domestic violence is available only in theory. Thus, victims of domestic violence (according to the legislation in R. Macedonia) can receive legal aid from three entities: members of the Bar through the Law on Advocacy,⁵⁶ the Centres for Social Work through the Family Law;⁵⁷ and from NGOs registered with the Ministry of Labour and Social Policy. The laws that regulate the legal aid for victims of domestic violence are the Family Law, and the law on Free Legal Aid.⁵⁸

According to Article 94-g paragraph 5 points 7, 8 and 9, the Centers for Social Work have the ability to provide all kinds of legal aid and representation for victims of domestic violence, to initiate procedures in front of the competent court in cases regarding relations between parents and children, and to submit requests to the court for temporary measures for protection.⁵⁹ Nevertheless, practice has shown that the Centres for Social Work seldom offer legal aid to victims of domestic violence, due to being understaffed and have no or very few personnel with proper qualifications needed for offering legal aid according to the law. In 2008, from a total of 162 cases of victims of domestic violence that came to all

⁵²Publication of the Institute for Social Affairs Skopje (2012) (In Macedonian).

⁵³Eve S. Buzawa and Carl G. Buzawa, *Domestic Violence: The Criminal Justice Response* 1 (Sage Publication Inc. 2003).

⁵⁴The survey was conducted throughout March and April 2012 by the polling house BRIMA Skopje, associate member of GALLUP International, and 2100 participants, over the age of 15, were effectively surveyed (In Macedonian).

⁵⁵Bistra Netkova, *Guide for Legal Aid for NGO's, Providing Legal Aid to Victims of Domestic Violence* 10 UNIFEM (2009).

⁵⁶Law on Advocacy, ('Official Gazette of the Republic of Macedonia', No. 142/08).

⁵⁷Law for amending and annexing the Family Law, ('Official Gazette of the Republic of Macedonia', No. 84-11).

⁵⁸*Id.*

⁵⁹*Id.*

centres in the country (thirty-two in total), legal representation was offered for only three divorce cases by one Centre for Social Work. In 2009, from a total of 88 cases, legal representation was offered by two centres for only eight cases relating to divorce matters. Temporary measures were secured by the Centres for Social Work in 42 cases in 2008; in 2009, 28 cases.⁶⁰ This route of securing legal aid is inadequate for victims.

The Bar Association of R. Macedonia has not, until recently, established any *pro-bono* offices and has not taken any initiative to help victims of domestic violence as part of its annual programmes.

In 2010, the country enacted a law on Legal Aid, which included the victims of domestic violence as the potential beneficiaries of the law.⁶¹ The law, which is poorly and inadequately worded regarding the victims of domestic violence,⁶² has not been implemented in full until now. No funds have been secured and no free legal aid is offered to victims of domestic violence.

However, some positive movement regarding legal aid for victims of domestic violence has been achieved in the NGO sector. While generally the victim is not well-supported through official means, victims still have the possibility of receiving free legal aid from registered and well-trained NGOs that provide standardized legal aid in the country.⁶³ According to Article 94-g paragraph 5 points 7, 8 and 9, an NGO registered for the purposes and goals in the area of social protection, can, alone or in cooperation with the Centre for Social Work, take over the protection measures from paragraph 5, and offer legal aid to victims of domestic violence.⁶⁴ This is the only real resource available to women in R. Macedonia regarding free legal aid at this time.

Due to efforts by women's right advocates in the country, as well as observations by the UN agencies in the country, the government of R. Macedonia has very recently, through the Ministry of Justice, requested the experts in the area of domestic violence and the NGOs working with victims of domestic violence (legal aid providers) to submit comments on the law on free legal aid. The ultimate aim is to amend the law in order to increase its applicability on the ground, which will meet the needs of the potential beneficiaries.⁶⁵

3.2. Obstacles to fulfilling the right of access to justice for victims of domestic violence

For victims of domestic violence, the problems regarding the justice system and the legal procedure only begin with access to free legal aid. In most cases, there are also issues related to: (a) inaction on the part of the police; (b) lack of interest on the part of Public Prosecutors; and (c) courts' ineffectual practices, which produce poor, sluggish, or short-lived results in cases of domestic violence.

3.2.1. Police reporting

Police under-reporting remains a huge problem concerning access to justice for the victims of domestic violence. Police officers usually treat instances of domestic violence as a complaint instead of a qualified criminal offence and are reluctant to secure evidence and prepare criminal charges to be sent to Public Prosecutors. This kind of police conduct prevents victims of domestic violence from pursuing justice because without a proper criminal report issued by the police, the victim cannot submit a private suit to a court against the alleged perpetrator, nor will the Public Prosecutor take up the case and issue an indictment against the perpetrator.

This is demonstrated by the handling of a recent case in Tetovo, where the victim, while driving her car, was allegedly forcibly pushed off of the motorway by the car of the perpetrator, which almost resulted in an accident. Curiously, the police treated this incident as a civil complaint, and only after the strong intervention of the woman's lawyers did the police reluctantly issue a criminal charge.⁶⁶

As pointed out by the 2010 US Department of State Human Rights Report: in Macedonia 'domestic violence is illegal, but authorities rarely enforce the law in practice'.⁶⁷

⁶⁰Data received from the Centers for Social Work based on questionnaires, disseminated Dec. 2010 (In Macedonian).

⁶¹Law on Legal Aid (*Official Gazette of the Republic of Macedonia*, No. 161/09).

⁶²SOROS, Report on implementation of the law on free legal aid, 114 (2011).

⁶³UN WOMEN, Project: Standardization of legal aid providers in R. Macedonia 2009-2012.

⁶⁴See Family Law (*Official Gazette of the Republic of Macedonia*, No. 80/2004).

⁶⁵SOROS and Young Lawyers Association, Report on Implementation of the Law Free legal Aid, Publisher: Foundation Open Society Institute – Macedonia (2011).

⁶⁶K 593/12 Basic Court Tetovo (In Macedonian).

⁶⁷US Department of State, 2010 Human Rights Report: Macedonia, <http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154437.htm>, (accessed November 8, 2012).

3.2.2. *Required time for recommendation of temporary measures and their implementation*

The unduly long period of time taken by the centres for social work, indicates their unpreparedness to respond in an appropriate way to victim's needs. The research conducted in the study 'Life in Shadow,' which found that in 2007 in 25 cases (43.10 percent of the time), the centres responded in a week; while in eight cases (13.79 percent), their procedure took two weeks. In six cases (10.34 percent), the time period necessary was over two weeks. Only in 19 cases (32.76 percent), their requests for ordering temporary protection measures within three days after completed evaluations were submitted, was sufficient need determined.⁶⁸ This indicates that approximately one third (26.25 percent) of victims who sought help by means of temporary protection measures did not receive it on time.

Once a temporary protection measure is issued, another issue, implementation, arises. Protection measures in R. Macedonia are seldom put into effect. For example, in the case of 'Tanja', the court issued a temporary protection measure for the perpetrator to be sent to a psychiatric institution for mandatory treatment. Since the psychiatric institution did not have a vehicle and was not interested in handling the situation after the police showed no interest, the extended family of 'Tanja' had to use force and provide their own vehicle to transport the perpetrator to the institution.⁶⁹

The police, the Centre for Social Work, and the health institutions lack a sufficient budget, and well-trained staff, which makes implementation of temporary protection measures difficult, if not impossible. The problems with implementation are evident in another case, that of a woman 'Sandra.' She had an extra-marital relationship, which under R. Macedonian law is recognized as marital unity if it lasts more than a year.⁷⁰ As a result of domestic violence, 'Sandra' left the home and petitioned the court in 2009 to issue a temporary protection measure requiring the perpetrator to financially support the family and to provide housing for the victim and her children.⁷¹ This was requested in 2009. The court issued the measure but has still not been implemented as of 2013.

Finally, even though the family law includes a number of temporary protection measures, it does not encompass measures such as counseling and mandatory medical treatment of the offender; there is confusion over the procedures for ordering such measures, and a lack of follow-up even when they are issued.

3.2.3. *Divorce proceedings*

The current law envisages that in order to receive a divorce, the partners have to spend three months in counseling before the Centres for Social Work. The victims of domestic violence may remain at risk of violence during that time. The NGO Luludi informed Amnesty International of a woman who had been married for 15 years, and had suffered domestic violence for the past seven years at the hands of her husband, an unemployed alcoholic. She had fled with her daughter to her brother's home, filed a complaint for divorce and also sought to retain possession of the family home, as provided under the Law on Family. During the three-month period of counseling mandated by law in all cases of divorce, which aims to either reconcile the couple or settle financial and custody arrangements, she remained without any protection from his continued violence.⁷²

Even in cases of domestic violence, divorce proceedings are treated exactly like any other case of divorce, with no urgency. This has been extremely detrimental to women victims of domestic violence because they have a constant fear for their own safety during legal procedures that can take up to six months.

3.2.4. *The criminal procedure*

Criminal proceedings conducted against perpetrators of domestic violence have been rare in the R. Macedonia. The cases that are resolved seldom end up in implemented judicial decision. For example, in the case of 'Martha'⁷³, the perpetrator was convicted of the criminal offence of use of force and coercion while domestic violence was taking place.⁷⁴ He received probation, and was later

⁶⁸Violeta Chacheva, Jasminka Friscik & Stojan Mishev, *Life in Shadow*, Association for emancipation, solidarity and equality of women of RM – ESE, 180 (2007). (In Macedonian).

⁶⁹Temporary measure R 812/11 Basic Court Tetovo (In Macedonian).

⁷⁰Temporary measure R 719/09, Basic Court Tetovo (In Macedonian).

⁷¹*Id.*

⁷²*Supra* at n. 43, 65.

⁷³K 654/09, Basic Court Tetovo (In Macedonian).

⁷⁴Article 139, Criminal Code, ('Official Gazette of the Republic of Macedonia', No. 7/08).

convicted of failure to pay child alimony and was ordered to pay a considerable sum of money. None of these sentences were enforced because he fled abroad. Even though his whereabouts are known in the community, the police have not undertaken any action to apprehend him, despite numerous requests filed by the victim.⁷⁵

The biggest paradox so far in the R. Macedonian legal system regarding domestic violence has been the under-sentencing of perpetrators of domestic violence. It seems that courts are reluctant to punish convicted perpetrators of domestic violence in the manner the law prescribes. They are actually under-sentenced i.e., are given lighter sentences than other criminals. This occurs even though, according to law, the sentence for domestic violence crimes is harsher than for the original crime.⁷⁶ An example of this is a recent case in which the court, despite an abundance of evidence against the perpetrator of domestic violence for the criminal offences of endangering security⁷⁷ and failure to pay alimony,⁷⁸ received only probation even though the law specifically prescribes a prison sentence for these offences and not probation.

As a matter of fact, in the majority of cases for bodily harm⁷⁹ during domestic violence, even though the punishment prescribed by the legal provision is imprisonment from six months to three years, in most cases, perpetrators receive only probation. Curiously, in a case where the victim was severely beaten by her husband and was in a coma for 24 hours and almost lost her life, the Public Prosecutor and the court accepted the qualification of grievous bodily harm instead of attempted murder, and the perpetrator received a punishment of only seven months in prison.⁸⁰

Unfortunately, this has become the rule rather than the exception; more and more cases arise where the qualification of the offence is simply disregarded by the Public Prosecutor, and the courts decrease the punishment.⁸¹

4. CONCLUSION: IS THERE ACCESS TO JUSTICE IN R. MACEDONIA?

Access by female victims of domestic violence to justice in the R. Macedonia is inadequate, slow, and gender-biased. It is also preconditioned, because it depends initially on whether a victim receives adequate legal aid with experienced and trained lawyers; second, it is contingent on whether a victim has contact with a sensitised police officer willing to enforce the law, and not simply register the case as a simple complaint; third, it hinges on whether the case is picked up by a prosecutor; and fourth, it is determined by whether the case ends up before a conscientious judge who treats the crime of domestic violence as stipulated by the law.

Given these barriers, access to justice is virtually impossible for domestic violence victims who are financially disadvantaged, less educated, belong to marginalized groups in society such as the Roma, or women from rural areas of the country. For others it might be merely partially achieved, more on paper than in reality, due to the lack of implementation of judicial decisions.

This situation has had a negative effect on victims of domestic violence. Because it puts them in the difficult position of being victimized again, by the very system designed to protect them. It discourages women from seeking justice for the crimes committed against them by their spouses.

Currently, laws in R. Macedonia regarding domestic violence are in place and are in accordance with international standards; however, the timely, integrated and victim-oriented approach is still missing in most areas. This situation could be improved if these discrete laws are codified in one specialized law of domestic violence. Addressing the issue of domestic violence in an integrated way will provide clearer legal guidance to officials, institutions, and lawyers. This should promote a victim-oriented

⁷⁵K 533/12, Basic Court Tetovo. (In Macedonian).

⁷⁶Criminal Code of R. Macedonia. (*Official Gazette of the Republic of Macedonia*, No. 7/08);

⁷⁷Article 144, Criminal Code, (*Official Gazette of the Republic of Macedonia*, No. 7/08); K 130/12, Basic Court Skopje.

⁷⁸K 593/12, Basic Court Skopje (In Macedonian).

⁷⁹Articles 130, Criminal Code, (*Official Gazette of the Republic of Macedonia*, No. 7/08).

⁸⁰Interview with Verica Timosieska, lawyer (Nov. 5, 2012).

⁸¹In a case of E.T, the police registered case of domestic violence, based on medical documentation. The Public Prosecutor's Office in 2009 initiated an investigation and submitted an indictment before the court of First Instance subject K 445/2009 against TK father in law of the victims for inflicting grievous bodily harm. The victim had a fractured nose and 20 percent permanently reduced vision. Until September 2011 the perpetrator was not called by the court for hearing, and after the case started in 2011, the expert medical witness influenced by the defendant ruled out grave bodily harm, and confirmed light bodily harm, which was accepted by the court. After this the Public Prosecutor dropped the case. Now in 2012, the victim has submitted a private suit against the perpetrator, which was accepted by the court (K.No. 321/11) and is waiting for resolution (In Macedonian).

approach to domestic violence, provided that it occurs in conjunction with extensive training of officials who work on domestic violence cases. This might just help the country to shed the unpleasant image of its ineffectual legal system in the area of domestic violence, since to many people: '... it feels as if the system is there to protect the perpetrators and not the victims...'⁸²

Finally, despite the obvious problems with implementation of laws regarding domestic violence in the country, there have been some new and favorable developments. In particular, the new amendments to provide timely and quality legal aid to victims of domestic violence have great potential to bring about beneficial change. A new revision of the Law on Criminal Procedure is designed to expedite the criminal process and to award more powers to Public Prosecutors *vis-à-vis* police. Through these combined efforts, victims of domestic violence may finally be closer to obtaining the justice from the legal system that they deserve.

⁸²Interview with Aleksandra Tasevska lawyer expert in domestic violence for the Women's Shelter Skopje (Dec. 14 2012).