

Legal framework concerning gender equality in Republic of Macedonia

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The patriarchal matrix that was established centuries ago was a fertile ground for the formation of the disparity between the two sexes in terms of their involvement in the spheres of the social life, so the stronger sex was determined to operate in most areas, at the expense of the marginalization of women within society.

The constant evolution of the social relations has resulted slowly but surely in getting rid of the stereotypes that fed the patriarchal doctrine and in increasing the participation of women in the social spheres, which seemed so unreachable in past.

I will say that it is a gradual process in almost all societies, where at the very beginning comes to a progress in the awareness of the community, aimed at creating the social areas where both sexes will participate equally, and later these circumstances will be legally regulated with norms that forbid any unequal treatment based on sex.

Fact is that with the century-long profiling of men as the only capable to carry the most social functions, there is a disproportion with regard to the participation of men and women in social life. That's why no matter that the legal order was establishing norms for recognizing the freedom and the rights of both sexes equally, in the most countries there isn't until today equal participation of both sexes in the society.

From right here derive the most modern tendencies that impose the need for legal regulation of the equal participation of men and women, primarily in the realization of the already guaranteed freedom and rights. We say already guaranteed because the most countries prohibit in their constitutions making any

differences based on gender in establishing and exercising of the freedom and the rights.

The regulation process of this area for gender equality is an inevitable stage of democratization of the social relations, on a level which will equally enable every individual, through their individual potential to contribute to the social development and have equal benefits from that development regardless of the gender.

It is a fairly new legislation, which even the developed countries have recently begun to edit more thorough. However, the Republic of Macedonia as a democratic society acts actively in this area of establishing equality between men and women in all fields of social life.

The Workplace Relations Law ("Official Gazette of RM", no. 60/2005) is in accordance with the Directive 76/207/EEC regarding the application of the principle of The Equal Treatment of men and women in employment, vocational training and promotion, as well as the working conditions, the Directive 2002/3 EC, which represents an amendment to the Directive 76/207/EEC, and which includes a new definition of the indirect discrimination, the harassment as a form of discrimination, the Directive 97/80/EC regarding the burden of proof in the cases of gender based discrimination, the Directive 75/117/EEC regarding the principle of equal pay for women and men, the Directive 92/85/EEC for Protection of pregnant workers and workers who have recently given birth or are breastfeeding, the Directive 96/34/EC, for parental leave.

According to the Law on Higher Education, ("Official Gazette of RM", no.64/2000 and 49/2003), all the citizens of the Republic of Macedonia are entitled to equal conditions and rights to obtain education at the institutions of higher education of RM.

The Law on Political Parties ("Official Gazette of RM", no.76/2004) obliges the political parties in the course of their activities to ensure the realization of the principle of equality of the genders in terms of the availability of the functions in the political parties.

The Law on Election of Members of Parliament (“Official Gazette of RM”, no.42/2002 and 46/2004) determines that in the candidates list both genders are to be represented with at least 30 per cent.

With the Law on Local Elections, (“Official Gazette of RM”, no.46/96, 12/2003, 35/2004, 52/2004 and 60/2004) it has been regulated that in the proposed candidate list for the Assembly members and the City of Skopje, each gender is to be represented with at least 30 % in both the first and the second part of the list.

With the Election Book of regulations, that came into effect in 2006, (“Official Gazette of RM”, no.40/06) in Article 64, act 5 it is regulated that in the submitted list of candidates for members of parliament from act (2) of this Article for the members of assembly of the City of Skopje and act (3) of this Article, to each third place on the list at least one place is to be occupied by the less represented gender.

With the amendments of the Family Law effectuated in June 2004, it was established that the state provides protection of the marriage and the family from damaged relationships and violence in the marriage and the family. Any kind of violence in the marriage or the family is prohibited.

According to *Inheritance Law*, men and women have equal rights in the inheritance.

The amendments of the Law on Health Protection (“Official Gazette of RM”, no.5 from 16.01.2007) treat issues regarding the measures and activities for early discovery of certain diseases with women, and a program for early discovery, diagnosing and treatment of these diseases.

The Law on Equal Opportunities of women and men brought in year 2006 ("Official Gazette of RM", no.66/06)

The Law on Equal Opportunities of women and men is probably the most significant act by which this matter is regulated. With it, in a very concise manner the legal frame concerning this particular matter is being set, as to which are the subjects that this law refers to, as well as their competence, the types of measures needed for achieving the goal of the law, the procedure for discovering unequal treatment of women and men, etc.

Here we are going to particularly consider the types of measures that the organs in charge are due to undertake, the end purpose of which would be to achieve equal participation of women in men in all the levels of the society, as well as the procedure for discovering unequal treatment of women and men and the representative – as a person responsible for its implementation.

The legislator in several articles of the Law regulates the types of measures for establishment of equal opportunities and they can be considered as *basic and special measures*.

The basic measures are normative measures of various areas which forbid gender based discrimination, and which assign sanctions for disrespect and breach of the proscriptions.

These measures are also correlated with the creation and realization of the politics and functions of the organs of legislative, executive and judiciary authority, the organs of the units of the local self-management, the legal subjects which are legally appointed to perform activities of public interest, the Citizens Associations and Foundations, the educational institutions, the welfare institutions, the political parties and the media. Hence, a quite large circle of subjects is encompassed, obliged to endorse as well as implement these basic measures.

Unlike them, *the special measures*, as their very name suggests, are measures aiming at achievement of equal opportunities of women and men, but in particular areas of the social life. Measures that are of special interest to us are the so called *positive actions* which give priority, in case of unequal participation of women and men in all the levels of Government bodies, including the judiciary,

legislative and executive, the local Government, as well as all other public institutions and services, political functions, commissions and boards, including the participation of bodies that represent the state internationally until the equal participation is established.

The unequal participation is present in all the areas of the society, if the participation of one of the genders is less than 40%.

The essence of these positive actions is clear, and that is by giving priority to the less represented gender to establish equal participation. The question arises as to the way this priority will be enabled; all the kinds of mechanisms, quotas, and policies that need to be undertaken for it to be achieved, as well as determination of the dynamics of the actions implementation that will enable favoring of the less represented gender, for its equal integration in the legally determined social areas. Therefore, it is a fact that the determination and implementation of these actions is to be carefully planned, and foremost, a plan needs to be made regarding the dynamics by which the planned aims will be accomplished.

In order to point to the negative consequences that can be produced from an unplanned application of positive actions (priority measures), we should point to the labor sphere, concretely: the employment procedure.

At the moment, the unemployment rate in the Republic of Macedonia is high. The unemployed work force consists of men and women which actively seek employment, some more zealously than others. It is an unquestionable fact that there is unequal gender distribution in all spheres in the Republic of Macedonia where the adoption and application of basic and special measures is forecasted; in all of these spheres, women represent less than the legally set forty percent, which means that the legal preconditions for the adoption of basic and special measures to achieve gender equality are fulfilled.

We already mentioned that the inequality is a consequence of patriarchic social directives, centuries back. Starting from these facts, if there is an irrational adoption and application of positive actions in order to achieve the desired equality in all areas where there is an unequal representation, there will be a temporary limitation of the possibilities for the other gender. This hypothetical

situation is, of course, undesirable, because even in the course of achieving legitimate goals, one of the genders should not be absolutely marginalized in favor of the other in the course of employment and all the other social spheres.

Let us mention once again, that the process of adoption and application of positive actions that will bring special mechanisms, quotas, and policies for the sex that is employed less in certain spheres, should be approached very carefully, and should forecast adoption of special rule books from authorities, about the process and the dynamic for the adoption of these sensitive measures.

In it's National Strategy for employment for the period of 2006-2010, the Government of the Republic of Macedonia predicted an increase of the female employment rate from 30.1 percent to 38 percent. On a first glance, these eight percent may seem impossible; their "painless" finalization requires a better definition of the concrete positive actions which are to be implemented, along with the dynamic implementation.

**Amendment of the Law on equal opportunities for men and women
("Official Gazette of RM", no.117/2008)**

The main aim of these changes was to adapt the definitions for discrimination in the Law with the Directive 2002/73/ES of the European Parliament and the Council of Europe. These corrections were completely amended because the initial definition of some of the basic terms was totally confusing. The changes were in the direction of simplification about the things that should be considered to be direct or indirect discrimination, stating that:

- Direct discrimination means that a person is treated or was treated worse than another person in a specific situation because of gender.

- Indirect discrimination happens when a seemingly neutral act, criteria or a common law places people from a given gender in an especially unfavorable position, in contrast to people from the opposite sex, except when the act, criteria or custom law is objectively justified with a legitimate aim, and the means to achieve this aim are appropriate and necessary.

Procedure for determination of unequal treatment of men and women

The procedure to determine unequal treatment is started and lead within the Ministry of labor and social policy. It starts with a paper-written initiative by individuals, civic organizations, unions or other legal entities.

A Representative for Equal Opportunities was appointed in 2010 within the Ministry of labor and social policy. One Representative is appointed among the employees within the ministry. The Representative is authorized to start a procedure on his or her own initiative, based on information obtained that there is a concrete case of an action against the Law on equal opportunities.

The leading of a procedure is not charged money and it guarantees the secrecy of personal data. It should be mentioned that not a single initiative had been filed until the current day to lead a procedure for the determination of an unequal treatment based on gender, which tells us that this is still an area that, even though legally designed, does not function in practice.

If it is obvious from the submitted initiative that there is no basis for a case of unequal treatment in the spirit of the Law, the Representative will not start a procedure, and will submit a written justification to the petitioner.

The initiative to start a procedure should be submitted in the shortest time possible, but not longer than one year after the infringement of Law was committed.

The procedure is written on paper. In order to determine the facts, the Representative can summon involved subjects on an interview. Within the course of the procedure, the Representative can demand from specific subjects to supply documents and to give the needed explanations.

In order to achieve efficacy during the procedure, the legislator had determined a deadline for it's finish. The Representative has to finish the procedure to determine the existence of inequality in the course of sixty days from the day when the written initiative was submitted.

The deadline can be extended for a period of thirty days, but only if the complexity of the case requires it.

The procedure ends with a written opinion of the Representative. This written opinion has to have the findings of the factual situation, and the Representative's opinion about the circumstances within the case, for the purpose of making a statement whether unequal treatment based on gender exists in accord with the Law. The opinion can incorporate irregularities committed in the concrete case, along with suggestions to correct them.

If the Representative determines the existence of irregularities in a concrete case, besides stating the opinion of the case, he or she has the legal authority to demand correction of irregularities from the accused subject and to give recommendations about the way to correct them within a given deadline.

The Representative submits an annual report about his or her work to the Ministry of labor and social policy.

With the completion of the Representative's opinion, the first-stage procedure that is not legally binding by itself, is finished.

The Representative sends his or her formed written opinion to the inspecting organ, who is authorized by law to monitor the application of laws and by-laws, collective agreements and the general acts in the cases when acts have been taken that represent a discrimination in accordance with the Law on equality of men and women. Besides to the inspecting organ, the Representative can submit his or her opinion to the public prosecutor, too.

The Representative submits his written opinion to the mentioned organs only in the case when the subject accused for unequal treatment did not act in accord with the given recommendations to correct the irregularities, or the subject did not inform the Representative that corrections were made within the given deadline.

After taking the Representative's written opinion, the authorized inspecting organ will determine if the acts of the Law on equal opportunities or another Law are applied in the particular case, and based upon his or her findings, the Representative makes a decision for the particular case.

If the Representative determines that acts were not made in accord with the Law, the inspecting organ will demand from the subject who should act in accord with the Representative's suggestions, to do so within a thirty day deadline from the day the decision was made.

A complaint can be made against the decision of the inspecting organ to the authorized Government commission within eight days of receiving it.

If the authorized inspecting organ determines that by breaching the Law on equal opportunities or another Law, an act of misdemeanor or crime was committed, the organ is obligated to submit a request for starting a misdemeanor or a penalty procedure.

Any subject with an opinion that his or her right based on his or her gender was violated can ask for the protection of the right by a court or administrative procedure in accord with the Law on equal opportunities, based on the Representative's opinion, and to start a procedure for compensation of damage, in accord with the law on obligations.