

On the Road to the EU

Monitoring
Equal Opportunities
for Women and Men
in South Eastern Europe

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Monitoring Equal Opportunities for Women and Men in

Macedonia

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ALBANIA
BOSNIA AND
HERZEGOVINA
CROATIA
KOSOVO
MACEDONIA
MONTENEGRO
SERBIA

2006

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Preface

This monitoring report – “On the Road to the EU” – was prepared as part of the Open Society Institute’s Network Women’s Program (NWP) “Bringing the EU Home” Project. It is a three-year project (2004–2006) that aims to promote awareness, advocacy, and enforcement of equal opportunity legislation at the national level and to build the capacity of national actors in civil society to use EU-level gender equality mechanisms effectively. The project further aims to help increase the importance of equal opportunities on the European agenda.

The “Bringing the EU Home” Project stemmed from OSI’s EU Monitoring and Advocacy Program’s efforts to monitor the progress of candidate countries as they prepared themselves for integration into the European Union and to ensure that they met the Copenhagen political criteria, particularly in relation to the independence of the judiciary, minorities’ rights, and anticorruption. This independent project was developed to evaluate the status of accession countries from the perspective of the *acquis communautaire* in the field of equal opportunities for women and men, which accession countries are required to adopt and comply with.

In 2005, a new phase of the project – “On the Road to the EU” – was started. After concentrating on new member states of and acceding countries to the EU,¹ we started to focus on the candidate and potential candidate countries from South Eastern Europe. Albania, Bosnia and Herzegovina, Serbia and Montenegro, including Kosovo, are potential candidate countries to the EU, while Croatia and Macedonia are already candidates. To use their preparation period for EU membership effectively, NWP invited seven South Eastern European nongovernmental organizations to join the “Bringing the EU Home” Project. With this phase, the project aims to help raise the significance of equal opportunities within the process of new and future accession negotiations, creating a unique platform for candidate and potential candidate countries.

An assessment of the status of equal opportunities between women and men, *de jure* and *de facto*, was carried out in the above seven entities. The EU directives on equal opportunities provided the framework for monitoring and analyzing corresponding legislation, institutions, and practices. The project focused on the directives related to the principle of equal pay for work of equal value; equal treatment as regards employment;

¹ See the publications of the previous monitoring phases: *Monitoring the EU Accession Process: Equal Opportunities for Women and Men*, Budapest: OSI, 2002; and *Equal Opportunities for Women and Men: Monitoring law and practice in new member states and accession countries of the European Union*, Budapest: OSI, 2005.

protection of pregnant women, breastfeeding women, and women who have recently given birth; and the situation of self-employed workers.

As a result of the assessment, seven monitoring reports were prepared. In this publication you can find the summary of the results, while the full reports themselves are available online.² To provide effective tools for advocacy at national and EU levels, the reports outline specific areas of concern and issue clear recommendations to governments on legislation, institutional mechanisms, policies, programs, and research initiatives. The recommendations focus on how laws and their implementation in participating countries should be in line with EU standards, to ensure that gender equality becomes a reality in the countries monitored.

The Network Women's Program worked in cooperation with the relevant members of the International Gender Policy Network (IGPN) in this new phase of the project.

We would like to thank all individuals and partner organizations who were involved in this monitoring project and whose invaluable contributions and support made the publication of these reports possible.

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These national experts prepared full monitoring reports on equal opportunities for women and men on the basis of a detailed methodology prepared under the project “Bringing the EU Home.”

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INTRODUCTION

In 1999, the European Commission set forth its strategy *vis-à-vis* countries of the Western Balkans in the Stabilization and Association Process (SAP). This process is based on the fact that the main driving force of reforms focused on respect for the rule of law, democratic and stable institutions, and the development of a market economy is to foster relations with the EU with a view to possible membership once the appropriate conditions have been fulfilled; the need for the Western Balkan countries to develop bilateral and regional relations leading to greater economic and political stability in the region; and the need for a more flexible approach that will enable each country to move forward at its own pace.

At the Zagreb Summit (November 24, 2000) of leaders from the EU and the countries of the Western Balkans, the region confirmed its full commitment to the Stabilization and Association Process. At Zagreb, the Stabilization and Association Process acquired its two vehicles of implementation: a contractual framework (the Stabilization and Association Agreement offering the perspective of EU membership based on the Treaty of the European Union (TEU) and the Copenhagen criteria) and the financial arm (the CARDS program). Once signed, the Stabilization and Association Agreement (SAA) sets the course for countries as they embark upon a path of preparations for perspective EU accession. The Stabilization and Association Agreements contribute to achieving EU goals since, like the European Agreements, they provide formal mechanisms enabling the EU to work with each country on introducing applicable EU standards. The agreements are a means of focusing the attention of countries aspiring to EU accession on key democratic principles: human and minority rights, stable democratic institutions, standards of political behavior, and independent media. Last but not least, the agreements provide for pivotal elements of the single market on which the economies of the region will start integrating with the EU economy. Effective implementation of the Stabilization and Association Agreement is a prerequisite for further assessment of the prospect of the Western Balkan countries' EU accession.

The Republic of Macedonia was the first country in the region to sign a Stabilization and Association Agreement with the EU (April 9, 2001), which entered into force on April 1, 2004, following the ratification process of all EU member states.

Following Croatia's example, the Republic of Macedonia decided to submit an application for EU membership. The President of the European Commission at the time, Romano Prodi, personally delivered the questionnaire to the government of the Republic of Macedonia in October 2004. The whole of Macedonia's society was mobilized and within four months the answers and supplementary documentation – 14,000 pages altogether – were prepared and translated. A delegation from the

Republic of Macedonia submitted the responses to the questionnaire to the current President of the European Commission, Jose Manuel Barroso, in Brussels so that the European Commission could draft an *avis* (the French word for *opinion* in EU terminology) for the Council of Ministers. On that day, which happened to be Valentine's Day, EU Foreign Minister Javier Solana stated: "The 14,000 pages of answers to the questionnaire constitute the longest love letter in European history."

What will become of this love affair remains to be seen. The Republic of Macedonia is expecting a positive *avis* from the European Commission in November and granting to Macedonia of the status of *candidate country* by the Council of Ministers in December. What will follow after that are long negotiations – the prenuptial agreement – that will be the overture of the happy European family relationship. The *candidate country* status will significantly change the focus of the reforms; priorities will shift from political to economic – that is, from stabilization to preaccession – with EU membership as the key motivating factor.

An important part of European integration is harmonizing legislation of the Republic of Macedonia with that of the EU. To this end, Macedonia's government adopts a National Program for the Approximation of Legislation (in partnership with EU) every year, which, among other things, earmarks the EU directives to be incorporated into Macedonian legislation within a given timeframe. It must be noted, however, that such efforts are usually made without a clear understanding of underlying policies. EU directives are incorporated into acts of law, but these laws are perceived as policies *per se* and not as instruments for accomplishing a given goal. In consequence, laws do not produce the desired results. From the EU directives constituting the subject of this report, the government of the Republic of Macedonia has incorporated those addressing the issues of equal pay and equal treatment of women and men. The other EU directives in question are at different stages of the same process: some are in the translation phase and some have already been submitted to the appropriate ministries. Therefore, the findings of this report concerning EU directives already fully incorporated into Macedonian legislation are presented in more detail and greater depth than findings on EU directives not yet incorporated into Macedonia's legal order, and tilt toward offering recommendations and guidance, rather than solid facts, on how to lift them into Macedonian legislation.

Special mention must go to the Thessaloniki Summit (June 2003) the outcome of which has been extremely important for the integration of the entire region into the European Union. The future of the Western Balkans clearly became a *European* affair, and the Stabilization and Association Process countries acquired additional instruments to bolster their reform process: the Twinning Program (for institution building), TAIEX (assist harmonization of legislation), and Community Programs (to strengthen relations between the EU and the Western Balkan countries).

Community Programs are of special interest because they are the most people-oriented and serve to promote EU policies by anchoring and encouraging Western Balkan countries on their road to European integration. Almost all Community Programs, except those terminated in 2005, have been made available to the Republic of Macedonia. They include: Combating Discrimination (2001–2006); Combating Social Exclusion (2002–2006); Community Action Program to promote bodies active at European level and support specific activities in the field of education and training (2004–2006); Community Action in the field of public health (2003–2008); Daphne II program (2004–2008); and Gender Equality (2001–2006). Community Programs have a specifically European agenda, require cofinancing by national governments, and require partner organizations from different countries working together toward common goals. Macedonia has compiled a list of 11 Community Programs; the following are of interest for the purposes of this report: Combating Social Exclusion; Daphne II Program; and even Leonardo da Vinci (2000–2006), which focuses on vocational training.

Whether Macedonia will make full use of opportunities offered by the European Union remains to be seen. Whether the government will develop a strategy to increase the absorption capacity of the country and accelerate the reforms is also open to question. The responsibility, however, lies with both sides: with the Republic of Macedonia, to utilize all its resources to speed up the process, and with the European Union to provide adequate facilities for capacity building. Ultimately, this is *our* process – of all citizens of the Republic of Macedonia and all citizens of the EU. Recently, the European Commission approved the “Action Plan to Improve Communicating Europe,” while Macedonia’s government has adopted a Strategy for Communicating the European Integration Process to Citizens. The results from both remain to be seen.

EQUAL PAY

Council Directive 75/117/EEC of February 10, 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women.

SECTION 1 – National Legal Framework Concerning the Principle of Equal Pay for Work of Equal Value

1.1 General provisions

Macedonia's legal order has incorporated the principle of equal pay for work of equal value first into the Constitution of the Republic of Macedonia, and subsequently into individual acts of law.

1.2 The Constitution

The Constitution of the Republic of Macedonia¹ does not make concrete reference to *men* and *women* but, rather, to *everyone*, that is, it sets forth the right of all employees to appropriate compensation, without specific provision for men and women.

1.3 National legislation

In accord with Macedonia's Constitutional mandates, Chapter 8 of the Labor Relations Act,² on "Pay for Work Performed," sets forth provisions on the right to remuneration. Besides confirming the guaranteed right therefore, the act also specifies forms of payment, not all of them necessarily monetary, as well as statutory minimum pay. Accordingly, a worker's pay in a full-time job cannot be less than minimum pay set by statutory provision and collective bargaining agreement.

¹ Article 32 of the *Constitution of the Republic of Macedonia* stipulates that "Everyone shall have the right to work, choose employment freely, protection at work and subsistence during temporary unemployment. Every job position shall be accessible to everyone under equal conditions. Every employee shall have the right to appropriate pay. Every employee shall have the right to be paid daily or weekly, and to annual holiday. Employees shall not refrain from these rights. Exercising employees' rights and their position shall be subject to act of law and collective bargaining agreements."

² The *Official Gazette*, No.62, July 28, 2005.

Pay consists of a basic salary, performance-related payments, and additional payments. If the employer fails to pay the worker for work performed,³ the employer will be punishable under Article 264(1) Line 15 of the Labor Relations Act. Not paying the basic salary, i.e. statutory minimum pay,⁴ is also punishable. “The basic salary shall be paid based on educational qualifications and working experience, while additional payment shall be based on the scope, complexity, and level of responsibility in task performance, and workers’ professionalism. Said additional payments shall be subject to the Labor Relations Act.”⁵

Macedonia’s labor legislation stipulates equal pay for men and women; that is, it mandates that the employer guarantee equal pay for work of equal value to workers regardless of their sex.⁶

³ Article 264 of the *Labor Relations Act*:

(1) The employer, a legal person, shall be punishable with a fine from MKD 100,000 to MKD 200,000 (approximately from EUR 1,600 to EUR 3,200) for a violation in the event that:

1) the employment seeker or employee is put in an unequal position (Article 6);

15) the employee is not paid for performing work pursuant to Articles 105-114 of the *Labor Relations Act*;

(2) the employer, natural person, shall be punishable with a fine from MKD 5,000 to MKD 7,000 (approximately from EUR 80 to EUR 120) for violation of paragraph (1) of the Article;

(3) the manager, i.e. other responsible person representing the employer shall be punishable with a fine from MKD 7,000 to MKD 10,000 (approximately from EUR 120 to EUR 170) for the violation stipulated in paragraph (1) of the Article.

⁴ Article 265 of the *Labor Relations Act* stipulates:

(1) The employer, legal or natural person, shall be punishable with a fine of MKD 10.000 (approximately EUR 170) on the spot in the event that:

6) he/she has failed to issue payment, i.e. statutory minimum pay and payroll contributions (Articles 105-114), while funds therefore are available in the employer’s bank account.

(2) The person responsible for violating paragraph (1) of the Article shall be punishable with a fine of MKD 5,000 (approximately EUR 80) on the spot.

(3) The Labor Inspector shall impose a fine for the violation stipulated in paragraph (1) of the Article on the spot.

⁵ First CEDAW shadow report prepared by ESE, 2005.

⁶ Article 108 of the *Labor Relations Act* stipulates:

The employer shall be obliged to provide equal pay for work of equal value for employees regardless of their sex.

The provisions of the work contract, the collective bargaining agreement, that is, the general conduct of the employer in violation of paragraph (1) shall be declared void.

To ensure implementation thereof, work contracts and collective bargaining agreements are subject to statutory measures which render employer's violation of the equal pay principle null and void.⁷

The novelty here is that unequal pay for men and women is now legally regarded as a form of discrimination, and as such is punishable.⁸ Macedonian legislation provides a single statutory measure to address employer noncompliance with the equal pay principle or other forms of sex-based discrimination, namely, the Labor Relations Act, which makes such discrimination illegal and punishable for the first time.⁹

1.4 International treaties

The Republic of Macedonia has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹⁰ Macedonia must incorporate the convention into its national legal framework, to comply therewith, and to act in compliance with the provisions thereof.¹¹

Additionally, the Republic of Macedonia has ratified the International Pact on Economic, Social, and Cultural Rights¹² and 68 conventions of the International Labour Organisation.¹³

The equal pay principle is specifically defined in the EU directive and provides for the elimination of all sex-based discrimination in all aspects and conditions related to equal

⁷ Article 108(2) of the *Labor Relations Act*, the *Official Gazette*, No.62, July 28, 2005.

⁸ Ibid.

⁹ Articles 6 and 7 of the *Labor Relations Act*, the *Official Gazette*, No.62, July 28, 2005, provides the definition of discrimination. Indent 4, Article 7(4) stipulates that discrimination shall be prohibited in terms of working conditions, work, and all rights stemming from working relation and related to the working relation, including equal pay.

¹⁰ The Republic of Macedonia adopted by means of succession the February 17, 1994 Convention.

¹¹ First CEDAW shadow report prepared by ESE, 2005.

¹² Adopted by succession on January 18, 1994.

¹³ The Republic of Macedonia has been a member of ILO since 1993. The following ILO conventions are ratified by the Republic of Macedonia: 2, 3, 8, 9, 11, 12, 13, 14, 16, 17, 18, 19, 22, 23, 24, 25, 27, 29, 32, 45, 48, 53, 56, 69, 73, 74, 80, 81, 87, 88, 89, 90, 91, 92, 97, 98, 100, 102, 103, 105, 106, 111, 113, 114, 116, 119, 121, 122, 126, 129, 131, 132, 135, 136, 138, 139, 140, 142, 143, 148, 155, 156, 158, 159, 161, 162, and 182.

work for work of equal value, which does not currently exist in Macedonia. The directive has not yet been fully incorporated into Macedonian labor legislation. The equal pay principle and its implementation are related to the equal treatment of men and women through the prohibition of discrimination. Namely, the general provisions of Article 6¹⁴ of the Labor Relations Act provide for equal opportunities and equal treatment in employment, professional advancement, training, education, retraining, pay, additional payments, leave from work, working conditions, working hours, and termination of the work contract for both women and men.

SECTION 2 – Implementation of the Principle of Equal Pay for Work of Equal Value: Legal Foundations and Institutional Structures

2.1 General presentation

All provisions of the Labor Relations Act, including those governing equal pay for men and women, apply to workers employed in public administration bodies, local self-government bodies, institutions, public enterprises, institutes, funds, organizations, and other legal persons employing workers, unless otherwise stipulated by other statutory provision.

The act applies to employers headquartered in the Republic of Macedonia and to workers employed therein, provided work is permanently carried out in the territory of the Republic of Macedonia, as well as to temporary work abroad on the employer's behalf. The act also applies to foreign employers and their employees, as set forth in the work contract governing work performed in the territory of the Republic of Macedonia.

The Labor Inspectorate is the body in charge of enforcing this principle.

¹⁴ Article 6 – Prohibition of Discrimination, the *Official Gazette*, No.62, July 28, 2005.

(1) The employer shall not place the employment seeker (hereinafter: employment candidate) or employee into an unequal situation on grounds of race, skin color, sex, age, health condition i.e. disability, religious, political or other affiliation, trade union membership, national or social origin, family status, property, sexual preferences, or any other personal circumstances. (2) Women and men shall have equal opportunities and shall be treated equally in employment, professional advancement, training, education, retraining, pay, additional payments, leave from work, working conditions, working hours and termination of the contract.

2.2 Job classification system

The Labor Relations Act does not provide for a special job classification system to set workers' rate of pay.

Public administration employees are civil servants and are subject to a job classification system and additional payments specified by the Civil Servants Act. These provisions are not specific to the employee's sex.

Besides statutory provisions governing certain pay systems, collective bargaining agreements stipulate the so-called "labor complexity coefficient" for specific jobs set forth in organizations' job classification policies. Labor complexity coefficients serve the purpose of determining the lowest pay for specific jobs, but only *vis-à-vis* payment of health insurance contributions. Specifically, the employer is not legally obligated to pay workers the average pay, but the employee must pay the health insurance contribution set forth under statutory provision for average pay.

Employers set their own payment policies in the same manner as they create their own job classification system.

2.3 Available legal procedures in cases involving the violation of the principle of equal pay for work of equal value

The legal system in Macedonia does not provide special procedures for settling disputes over non-compliance with the principle of equal pay for work of equal value.

The Labor Relations Act does, however, offer the right to redress for wronged employees.¹⁵ If a worker believes that his or her employer has disregarded or violated his or her employment rights, he or she is entitled to call on the employer to fulfill its legal obligations. The law provides appropriate protection in the event that the employee believes that some of his or her rights were violated by means of written decision issued by the employer, whereby the worker has the right, within eight days from receipt of such a decision, to ask the employer to cease the violation.

In the event that the employer fails to redress the violation within eight days from receipt of the written request by the worker, and fails to fulfill its obligations under Macedonia's labor legislation, the wronged worker is entitled to institute legal proceedings in the court of law.

¹⁵ Article 181(1-3), *Labor Relations Act*, the *Official Gazette*, No.62, July 28, 2005.

In a discrimination dispute, the burden of proof¹⁶ lies with the employer: it is the employer's obligation to prove that discrimination did not occur. If the worker was discriminated against, he or she has the right to ask for compensation for damages inflicted¹⁷ up to five times the average monthly pay in Macedonia.

Since the Labor Relations Act was adopted recently, it is impossible to assess the level of compliance with its provisions, including the role of the state and other stakeholders with vested interest in protecting workers' rights against discrimination. Although no empirical evidence exists, it must be noted that Macedonia's legal framework does not provide any legal means to encourage workers to exercise their right to expect employers to comply with the equal pay principle, or to ensure smooth access to court protection in cases of violations.

A potential obstacle to full redress in discrimination cases is the absence of mechanisms for exercising one's rights, especially in the private sector. "The difference between the public and private sector in practice should be emphasized. In the private sector we are witnessing non-compliance in regard to establishing formal labor relations (work contracts) and exercising the rights deriving from labor relation in general. Quite frequently, the current newly established private sector does not enter into work contracts with all employees pursuant to prevailing statutory provisions and the collective bargaining agreement, or in the event that they do, then there is a difference in pay. Discrimination on the ground of sex is much more visible herein (hiring, layoffs, etc.)."¹⁸

2.4 Out-of-court alternatives

The legal framework does not provide any mechanisms for alternative, out-of-court resolutions, except for those already mentioned – that is, by means of the submission of a written request by the employee to the employer. The law does, however, provide for the possibility of amicable resolution of individual and collective labor disputes,¹⁹ whereby the employer and the employee can agree to entrust the resolution of the

¹⁶ Article 11 of the *Labor Relations Act*, the *Official Gazette*, No.62, July 28, 2005.

¹⁷ Article 10 of the *Labor Relations Act*, the *Official Gazette*, No.62, July 28, 2005.

¹⁸ First CEDAW shadow report prepared by ESE, 2005 (the report is based on findings from several sources, with the use of various methodological procedures. The sources used are the following: Constitution, experts in relevant fields, women of different ethnic communities and statistical records, studies, reports and other written material).

¹⁹ Article 182 of the *Labor Relations Act*, the *Official Gazette*, No.62, July 28, 2005.

dispute to a separate body called the Peace Council.²⁰ The Peace Council consists of three members, one designated by the employer, one by the employee, and a third by both. The member designated in mutual action is entitled to remuneration covered by the parties involved. It is not clear, however, whether this instrument is available to workers in cases of unequal pay for work of equal value.

It is worth mentioning that the “Strategy for Reforms of the Judiciary of the Republic of Macedonia, planned for the upcoming period, provides for the adoption of a legal act aiming to establish the legal framework for out-of-court protection for violated citizens’ rights in respective areas.”²¹

2.5 Means of informing employees of their right to equal pay for work of equal value

Macedonia’s legal order does not provide mechanisms to inform employees how to exercise their right to equal pay for work of equal value, nor does it include protective measures to redress violations of this right.

2.6 Role of trade unions

Macedonia’s national legislation does not provide for trade union involvement to help redress breach of the principle of equal pay for work of equal value. Accordingly, there is no specific legal provision for the right of trade unions to institute legal proceedings. “Should women be denied equal opportunities or deprived of equal treatment on the job, they have the opportunity, under act of law, to institute court proceedings, to turn to trade unions for support, and/or seek assistance from non-governmental organizations active in the field of gender equality.”²² Appropriate or pro bono legal aid

²⁰ The Peace Council comprises three members, one designated by the employer, one by the employee and the third member designated by both of them in mutual action. The member designated in mutual action is entitled to remuneration covered by the parties involved.

²¹ Government of the Republic of Macedonia, Answers to the Questionnaire for the preparation of the European Commission’s Opinion on the application of the Republic of Macedonia for membership of the European Union / Odgovori na Prasalnikot na Evropskata Komisija za podgotovka na mislenje za baranjeto na Republika Makedonija za clenstvo vo Evropskata Unija. Chapter 13 (Social Policy and Employment), 25.

²² First CEDAW shadow report prepared by ESE, 2005.

for women in cases of noncompliance with the equal pay principle are not mandated by act of law.

Because the Labor Relations Act was recently adopted²³ and enacted, the process of harmonizing regulations, including those governing current collective bargaining agreements and other statutory provisions, will take place over a period of six months from the day the act entered into force.

There is a three-tier system for collective bargaining agreements in Macedonia: they are concluded separately at state, industry, and individual employer level.²⁴ A general collective bargaining agreement for the economy as a whole, and the general collective bargaining agreement for the public sector, are hammered out at the national level. National and industry-level collective bargaining agreements apply to members of Macedonia's employers' association, other parties to such agreements, and those who subsequently become signatories. Subject to regulation are the rights and obligations, including the termination of the work contract, of the signatories of the agreement, as well as other labor related issues.

Collective bargaining agreements must follow the spirit of the law. In other words, provisions of a collective bargaining agreement that discriminate on the ground of sex are void.²⁵

SECTION 3 – Factual Background with Regard to the Principle of Equal Pay for Work of Equal Value: Related Research and Statistics

Research efforts have been made to investigate the depth of the gender pay gap. Both governmental and nongovernmental institutions and organizations have been involved in a number of research projects on the subject. Nevertheless, the data needs to be interpreted with caution since Macedonia is dealing with the underreporting of pay, especially in the private sector. (Employers tend to underreport pay to avoid having to contribute to social insurance funds.)²⁶ As a result, data from state institutions

²³ July 28, 2005.

²⁴ This area is governed by Chapter XIX of the *Collective Bargaining Agreements*, and Articles 203; 204; 205; 206 and 207 of the *Labor Relations Act*, the *Official Gazette*, No.62, July 28, 2005.

²⁵ Article 7(5) of the *Labor Relations Act*, the *Official Gazette*, No.62, July 28, 2005.

²⁶ To mitigate this problem the Public Revenue Office will treat the payroll taxes (Personal Income Tax and social funds contributions) as a priority for 2006.

(budgetary organizations) are reliable, to a certain extent, while the veracity of data from other sources is rather precarious.

Generally speaking, women are employed in work traditionally considered suitable for women rather than men. There is a clear-cut and obvious segregation in women's and men's employment.²⁷ Accordingly, women are predominantly employed in the health and social work sector, with the financial mediation and the education sector close runners up. By contrast, men's principal sources of employment are the fishery sector, civil engineering, and electricity supply. Women's net salaries by pay bracket differ from men's. Jobs in the MKD 12,001 (approximately EUR 200) and over pay bracket are ostensibly and increasingly reserved for men.²⁸ The long-term effects of women's lower pay, with lower retirement benefits being one of them, need to be considered.

Over 70 percent of women perform unpaid family work. By contrast, only 36.8 percent of men perform such work in the family. Besides their unpaid work within the family, Macedonian women's primary economic role is in active employment (40.7 percent), as an employer (20.9 percent), and in self-employment (18.4 percent). In contrast, men account for 81.6 percent of the self-employed, for 79.1 percent of employers, 59.3 percent of employees, and are a distinct minority as unpaid family workers.²⁹

In February 2004, the government of Macedonia adopted the National Action Plan on Employment for the period 2004–2005, based on the 2003 employment policy principles and recommendations of the European Council. This document sets out national goals for reducing unemployment and social exclusion in accordance with the following 10 recommendations:

1. active and preventive measures for unemployed and inactive;
2. job creation and entrepreneurship;
3. keeping pace with changes and promoting labor market adaptability and mobility;
4. promoting human capital development and life-long learning;
5. increasing labor force and promotion of active aging;

²⁷ State Statistical Office, *Anketa za rabotna sila* (Labor Force Survey) 2003. Skopje: State Statistical Office.

²⁸ Ibid.

²⁹ *National Report on Millennium Development Goals*. 2005.

6. promoting gender equality;
7. promoting inclusion and fight against discrimination of underprivileged on the labor market;
8. making jobs more attractive;
9. transformation of unregistered workforce into registered employment;
10. tackling regional disparities in employment.

However, implementation of the National Action Plan calls for more than the currently available resources (despite assistance from the European Agency for Reconstruction).

SECTION 4 – Conclusions. Areas of Concern. Recommendations

4.1 Conclusions

The fact that Macedonian labor legislation has declared violations of the principle of equal pay for work of equal value as a form of discrimination is a step in the right direction. However, additional efforts are required for this principle to become reality.

4.2 Areas of Concern

The findings of this report have identified the following problems regarding implementation of the equal pay principle:

- The principle of equal pay for work of equal value is not yet fully incorporated into labor legislation.
- The mechanisms required for implementing the equal pay principle in the public and private sector are lacking.
- Employees do not have legal means to exercise their right to the equal pay principle.
- There are no indicators to evaluate progress achieved in this area, which would shape additional improvements.
- There is a dearth of financial resources for continuous improvement of gender equality in current strategic documents.

4.3 Recommendations

- 1) Establishing additional mechanisms and instruments to implement the principle of equal pay for work of equal value in the public and private sector (for example, capacity building for the Labor Inspectorate, training for employers, trade unions, non-governmental organizations, and other parties directly affected by (non)compliance with the principle).
- 2) Awareness-raising and training for judges, legal experts and other stakeholders who will interpret and apply the law so as to overcome the equivocal legal definitions in acts of law.
- 3) Introducing instruments that will encourage employees to exercise their rights (for example, public information campaign to raise public awareness, pro bono legal aid, employer incentives for “best practices” so they inform their employees about their rights, developing training programs for the public through local Ombudsman branch offices, etc.).
- 4) Setting “gender-benchmarks” as part of regular public policy evaluations in Macedonia so as to measure progress achieved in this area.
- 5) Allocating more funds in the general budget to promote gender equality, as one of the priorities of the National Action Plan on Employment 2004–2005 and the one currently in preparation. Also, a fund could be established for supporting nongovernmental organizations to address issues of gender equality through which the government could play the role of co-financer of projects (for example, one priority of the European Human Rights and Democracy Initiative is gender equality, but practice so far has shown that nongovernmental organizations cannot apply because they cannot come up with co-funding).

EQUAL TREATMENT AT THE WORKPLACE: EMPLOYMENT, TRAINING, AND WORKING CONDITIONS

Council Directive 76/207/EEC of February 9, 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. Amended on September 23, 2002 through **Directive 2002/73/EEC** of the European Parliament and of the Council.

SECTION 1 – National Legal Framework Concerning the Principle of Equal Treatment for Women and Men

1.1 General provisions

The Constitution of the Republic of Macedonia proclaims the equality of all citizens *vis-à-vis* all freedoms and rights regardless of sex, race, skin color, national and social origin, political and religious conviction, property, and social position.³⁰

Article 54 of the constitution³¹ reiterates the guarantee of human rights and freedoms (as set forth in Article 9 of the constitution), enumerating specific circumstances under which citizens' rights and freedoms can be limited.

All citizens have the right to petition the Constitutional Court of the Republic of Macedonia if they believe that certain acts of law engender discrimination, including discrimination on the ground of sex, in which case their constitutionality and legality are reappraised.

³⁰ Article 9 of the *Constitution of the Republic of Macedonia* provides, "The citizens of the Republic of Macedonia shall have equal rights and freedoms regardless of sex, race, skin color, national and social origin, political and religious conviction, property, and social status. Citizens shall be equal before the Constitution and the law."

³¹ *Ibid.*, Article 54, provides, "The freedoms and rights of the individual and the citizen can be curtailed during state of war or emergency, pursuant to the provisions of the Constitution. The curtailment of freedoms and rights shall not discriminate on the grounds of sex, race, skin color, language, religion, national or social origin, property, or social status. The said curtailment shall not be applicable to the right to life, the prohibition of torture, inhuman and humiliating treatment and punishment, legal determination of punishable offences and sentences, or to the freedom of personal conviction, conscience, thought, public expression of thought, and religious confession."

Especially important is the provision of Article 137 of the Criminal Code of the Republic of Macedonia, which stipulates that a person who deprives another person or citizen of rights set forth by the constitution, act of law, or ratified international agreement on grounds of sex, race, skin color, and so forth, or based on such differences extends benefits to others in contravention of the constitution, act of law, or ratified international agreement will be punishable with imprisonment.³² However, discrimination is not defined here, and thus it is not functional. This Criminal Code provision enables people who are discriminated against to seek criminal and legal protection. Employees also have the right to demand this type of protection for violations of their labor rights.

The concept of direct and indirect discrimination – that is, of the principle of equal opportunities and equal treatment – became operational for the first time with the enactment of the Labor Relations Act.³³ Not only did the act give life to these concepts, but it also governs prohibition of discrimination, exceptions therefrom, and compensation for discrimination inflicted, placing the burden of proof in discrimination cases on the employer, provided the right mechanisms are put in place.

The law makes not only the employer legally liable for violating the prohibition of discrimination, but the manager, or any other responsible person working on the employer's behalf as well.³⁴

Special authority for protecting civic freedoms and rights as set forth by Macedonia's constitution and legal order rests with the ombudsman, who has the right to institute proceedings in accordance with his or her powers³⁵ in the event that such a violation was committed by public administration bodies or other bodies and organizations with public authority.

³² From three months to three years, and if the act is perpetrated by an official in the course of performing official duty he/she shall be punishable with imprisonment from 6 months to 5 years. Under amendments to the *Criminal Code* made in 2004, a legal entity is also punishable with a fine for perpetrating the same act.

³³ The *Official Gazette*, No.62, July 28, 2005.

³⁴ Cf., footnote 3.

³⁵ First CEDAW shadow report prepared by ESE, 2005.

The equal treatment principle, as set forth by the European Union's Equal Treatment Directive, is barely operational in Macedonia's national legislation, which introduces the equal opportunity principle via prohibition of discrimination.³⁶

Besides prohibition on grounds of sex, discrimination is also banned on grounds of family status. Macedonian legislation has not yet incorporated explicit prohibition of discrimination on grounds of marital status, but the legal provision "other personal circumstances" may lend itself to such interpretation.

1.2 The concept of discrimination on grounds of sex: definitions and legal sanctions

Only the Labor Relations Act incorporates the concept of direct and indirect discrimination, and the act's definition covers employment seekers who have been discriminated against and workers in individual cases specified by act of law.

"Direct discrimination shall be any act conditioned by any of the grounds listed in Article 6 of this act whereby a person is, has been, or would be treated less favorably than other people in comparable cases."³⁷ In its definition of direct discrimination, Macedonia's Labor Relations Act followed Council Directive 2002/73/EEC, and enumerated all other grounds for discrimination.

"Indirect discrimination, for the purpose of this law, shall occur in the event that an apparently neutral provision, criterion, or practice, would put a person seeking employment or a worker in less favorable position compared to other persons because of certain features, status, affiliation, or conviction as set forth in Article 6 of this act."³⁸

³⁶ Article 6 Prohibition of discrimination, the *Official Gazette*, No.62, July 28, 2005:

(1) The employer shall not put the employment seeker (hereinafter: employment candidate) or employee into an unequal position on the grounds of race, skin color, sex, age, health condition or disability, religious, political or other affiliation, trade union membership, national or social origin, family status, property, sexual preferences, or other personal circumstances.

(2) Women and men shall have access to equal opportunities and equal treatment in employment, occupational advancement, training, education, retraining, pay, additional payments, leave from work, working conditions, working hours, and termination of the employment contract.

³⁷ Article 7 of the *Labor Relations Act*, the *Official Gazette of the Republic of Macedonia*, No.62, July 28, 2005.

³⁸ *Ibid.*

In defining this form of discrimination, the act partially followed the council directive's definition. The following proviso – “unless that provision or criterion is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary” – is not, however, a constituent part of the legally stipulated norm that refers to this type of discrimination. As with direct discrimination, the discrimination covered is not only discrimination on the grounds of sex but all other types of discrimination.

Interestingly, the act does not regard the less favorable treatment of pregnant women and motherhood as discrimination. At the same time, “special protection and assistance”³⁹ is not considered, nor can it be regarded as constituting grounds for discrimination. The following are regarded as special protection and assistance: prohibition of performing underground work; protection for pregnant employees and employees taking care of their children; prohibition of performing work during pregnancy and after childbirth; special protection during pregnancy; protection during pregnancy and parenthood *vis-à-vis* night work and overtime; leave from work due to pregnancy, birth, and childcare, etc.

1.3 Legal status of harassment and sexual harassment

Macedonia's legal system has incorporated the prohibition of harassment, sexual harassment, and all related behavior as acts of discrimination, and has set forth the following definitions:

“Harassment, for the purpose of this act, shall mean any unwanted conduct initiated by some of those enumerated in Article 6 thereof,⁴⁰ with the purpose or effect of violating the dignity of a person seeking employment, or of an employee, and which creates an intimidating, hostile, humiliating, or offensive environment.”

“Sexual harassment, for the purpose of this law, shall mean, any verbal, nonverbal, or physical conduct of a sexual nature, occurring with the purpose or effect of violating

³⁹ Ibid., Article 8 “Exemptions from Prohibition of Discrimination”:

(2) All measures provided by this or another act of law, and by the provisions set forth under this or other acts of law, collective bargaining agreements, and work agreements in respect of special protection and assistance to a defined category of employees, especially those for the protection of the disabled, elderly workers, pregnant women and women availing themselves of their right to certain motherhood protections, as well as the provisions referring to special parents, foster-parents, and guardian rights shall not be considered as discrimination, nor shall they constitute grounds therefor.

⁴⁰ Ibid.

the dignity of a person seeking employment, or of an employee, and which creates an intimidating, hostile, humiliating, or offensive environment.”

Ostensibly, the act incorporated the definitions of these two concepts as set forth in Council Directive 2002/73/EEC with two “minor” exceptions. In regard to both concepts, the act opted to use the word *annoyance* instead of *harassment*, and when defining *sexual harassment (annoyance)*, the legislator used the word *gender-related* instead *sexual* (probably to be consistent with the terminology used in the criminal code’s chapter on criminal offences against *gender-related freedom and morality*).⁴¹ As a result, the Industrial Relations Act creates confusion about the meaning of these provisions, as well as about what conduct can be considered discrimination. Secondly, such definitions do not put enough weight on these forms of discrimination.

The Labor Relations Act covers all forms of discrimination, including discrimination on the grounds of sex, within a single provision. All further provisions *vis-à-vis* separate forms of discrimination do not explicitly state whether they are perpetrated on the grounds of sex, but on all grounds in general. Hence, definitions of *annoyance* (i.e. harassment), as well as *gender-related annoyance* (i.e. *sexual harassment*), do not refer to grounds such as *gender*. *Annoyance* is qualified as “in some cases as set forth in Article 6 of this Act,” while in regard to “*gender-related annoyance*,” the grounds for discrimination are not mentioned at all.

Otherwise, the act provides that: “the employer shall ensure that no employee is a victim of annoyance and gender-related annoyance.”⁴² It is not clear, however, whether any measures or means are available to provide for an annoyance and gender-related annoyance free environment, and whether violation of this provision is punishable at all.

SECTION 2 – Implementation of the Principle of Equal Treatment for Women and Men: Legal Foundations and Institutional Structures

2.1 General presentation

The Labor Relations Act prohibits discrimination regarding:

⁴¹ Residue from the past reflected in the terminology as well.

⁴² Article 43 of the *Labor Relations Act*.

1. employment conditions, including the criteria and conditions for selection of candidates for performing certain types of work, in any branch of the industry, and at all levels of professional hierarchy;
2. promotion at work;
3. access to all types and levels of vocational training, retraining, and in-service training;
4. working conditions and work, and all rights arising from established labor relations, including equal pay;
5. termination of the work contract;
6. rights of members in workers' and employers' associations, or in any other professional organization, including the benefits of membership thereof.

The Labor Relations Act prohibits discrimination in the enumerated cases, however when it subsequently addresses them further along in the text, the Act does not stress prohibition of discrimination *vis-à-vis* all of the specifically mentioned areas.

The provisions of the act addressing the rights and obligations of parties to a work contract stipulate gender equality in the announcement of job vacancies.⁴³ Specifically, the employer cannot advertise a vacant position for men or for women only, unless the worker's sex constitutes a necessary condition for performing that specific job. When advertising a vacancy, the employer may not offer advantage to one or the other sex, unless the worker's sex constitutes a necessary condition for performing the specific job in question. The act does not, however, define the circumstances under which preference for one sex or the other in a given position would be legally justified. Nor is there an official list of professional activities where the worker's sex would be a determining factor. Unlike Macedonia's Labor Relations Act, the directive explicitly stipulates in Article 2(2) that it "shall not interfere in the right of member states, in their field of application, to exclude those professional activities, where appropriate, training needed for them, due to their nature or the context in which they are carried out, where employee's sex is determining factor." Subsequently, Article 9(2) of the directive provides that "member states occasionally make an assessment of the professional activities listed in Article 2(2) in order to decide, in the context of social development, whether there is justification for further maintenance of the given exceptions and notify the commission on the assessment results." Under Macedonian

⁴³ Article 24 "Gender Equality in Job Announcements," *Labor Relations Act*, the *Official Gazette*, No.62, July 28, 2005.

law, noncompliance with this rule constitutes a violation punishable like the violation of the prohibition of discrimination. These provisions are equally applicable to the public and the private sector.

Macedonia's Labor Inspectorate, a public administration body, is responsible for enforcing labor legislation and all regulations governing employment and labor relations. Employees, trade unions, and employers have the right to demand review from the inspectorate. In the event of breach of act of law, other regulation, collective agreement, work contract, or any other act, the inspectorate can issue a ruling and instruct a noncomplying employer to remove the irregularities and shortcomings identified. If the employer, or responsible person, has committed an offense in violation of act of law or other regulation, collective agreement, or work contract that regulates labor relations, the inspectorate will set in motion the appropriate legal procedure.

Besides fining employers for perpetrating offenses or for failing to comply with the prohibition of discrimination, Macedonian legislation has made redress procedures available to people who believe they have been wronged due to an employer's failure to comply with the equal treatment principle. Specifically, if an employee believes that his/her employer has breached his/her rights thereunder, he/she has the right to submit a written request to the employer demanding cessation of the violation, that is, to ask the employer to fulfill his/her obligation under the law.

2.2 Available legal procedures in cases involving the violation of the principle of equal treatment for women and men

The *applicant for employment* (the expression used by act of law to designate a job seeker) has the right to demand compensation for damages for discrimination (except for "annoyance" and "gender-related annoyance" cases, where this is not explicitly stipulated) to the tune of five times the average pay in Macedonia. Unlike the directive, Macedonian legislation has capped liability, which consequently does not provide adequate compensation to wronged employees.

The burden of proof lies with the employer who must prove that he or she has not breached the prohibition of discrimination, as is the case with "annoyance" and "gender-related annoyance."

Bearing in mind that the Labor Relations Act was only recently adopted, it is too early to determine the effectiveness of mechanisms provided to enforce prohibition of discrimination or sex-based discrimination.

The act does not provide the legal option for associations, organizations, or other legal entities to have a legitimate interest, or for their direct involvement in implementing this principle on behalf of, or in support of a person filing appeal – with his or her approval – in the court of law or via administrative procedure.

2.3 Protective measure with regard to women’s participation in the labor market

The Industrial Relations Act does not provide for a woman’s right to return to her job, or to another position commensurate with their level of education, after maternity leave. The same holds true for all other benefits designed to improve working conditions.

2.4 Prohibition of dismissal

Dismissal from employment on any grounds of discrimination, including sex, that is detrimental to the employee will be declared void (and will not entail further legal action) from the moment of receipt of notice thereof. The grounds for dismissal must be stated specifically in the notice of termination of the work contract. The employee must be notified of dismissal both in writing⁴⁴ and in person at his or her home or place of residence wherefrom he or she goes to work everyday.

Dismissal of a worker is also prohibited in the event that he or she has instituted a redress procedure against an employer that has violated the equal treatment principle or other labor rights. In such situations, the law provides that “filing a lawsuit or participation in a procedure against the employer for the purpose of substantiating breach of contract or violation of other labor rights via arbitration, court of law, and administrative bodies,”⁴⁵ does not constitute justifiable grounds for dismissal.

2.5 Women’s and men’s jobs

There is no legal provision to prevent the division of women’s and men’s professions. “As a rule, women freely choose their profession and employment. Exception from such practice can be the economic conditions (women may choose professions which

⁴⁴ Article 74 “Dismissal Form and Content,” the *Official Gazette*, No.62, July 28, 2005.

⁴⁵ *Ibid.*, Article 77 “Reasons that do not Constitute Grounds for Dismissal.”

ensure employment), as well as traditional circumstance in certain ethnic communities. The pressures of making ends meet hit women hard, so sometimes they are compelled to take up work they are averse to solely because they cannot afford not to. Most often, due to household obligations, women choose professions that enable them to have more free time. In addition, there are professions and jobs ‘exclusively’ for women or men, such as kindergardens, where nearly 100 percent of the teachers are women, and mines – there are no female miners. Most of the top management positions, with rare exceptions, are secured by men.”⁴⁶

SECTION 3 – Gender Equality Bodies

In 1997, the Ministry of Labor and Social Policy of the Republic of Macedonia established the Gender Equality Unit. Its role is to promote the status of women in Macedonia. This unit was established by means of a government decision,⁴⁷ making the mandate of this body disputable. An Equal Opportunities Act is in the works and will probably provide the Gender Equality Unit with a clear legal mandate.

Besides the Gender Equality Unit, there is no other independent agency or institution required under act of law to monitor the implementation of the equal treatment principle, nor are there any mechanisms in place to guarantee the independence of such a body.

This unit does not have a separate subcommittee,⁴⁸ consisting of representatives of nongovernmental organizations and other stakeholders, that would enable the coordination of efforts to promote gender equality in the field. Not only does the unit lack legal mandate, it also lacks the backing of its constituency, the stakeholders in society active in the area of gender equality. To some extent this explains the absence of specific activities against discrimination. The unit’s projects are quite limited in scope due to its inadequate institutional capability – only two people on staff. Additionally, these projects are based on the National Action Plan adopted in 2000. This document needs to be reviewed and recrafted into a National Program to Promote Gender Equality, and then adopted by parliament.

⁴⁶ First CEDAW shadow report prepared by ESE, 2005.

⁴⁷ Ibid.

⁴⁸ Such an attempt was made in the past, and a Committee was established; however this Committee is not functional any longer.

The draft of the Equal Opportunities Act currently defines discrimination in the same manner as the Labor Relations Act, and it provides for the same legal mechanisms. However, an Antidiscrimination Act is being drafted that will specify distinct types of discrimination, including sex-based discrimination, and set forth additional mechanisms to protect against discrimination. How the Gender Equality Act and the Antidiscrimination Act might interface is not yet clear. It is impossible to know which of these acts will provide the most effective protection against gender-based discrimination.

Besides the constitutional court, the judiciary, administrative procedures, and the ombudsman, the Standing Inquiry Committee for the Protection of Citizen's Rights and Freedoms, established within the Parliament of the Republic of Macedonia,⁴⁹ constitutes an additional protective mechanism. The committee does not possess investigative or other judicial powers, but its findings constitute grounds for instituting due process to define the accountability of public officials. In 2004,⁵⁰ the committee received 74 complaints, 30 of which were from groups and 44 from individuals. In terms of gender, 31 of the complaints were submitted by men, nine by women, and four by married couples. In its 2004 report, the committee makes the following recommendation *vis-à-vis* future activities: "Acting upon complaints submitted by citizens and coordinating projects with other authorities, international institutions, and nongovernmental organizations is a complex activity that requires the establishment of new practices and precedents in this field, and theretofore the committee needs more expert support." Once antidiscrimination measures become applicable as set forth in Macedonia's labor legislation, the Standing Inquiry Committee will work with a

⁴⁹ This Committee comprises a president, eight members and their deputies (only two of which are women). The Committee is involved with the following:

- 1) provides opinion on matters of principle, and offers suggestions and opinions on the enforcement of Constitutional and legal provisions, and other acts of importance in exercising and protecting citizens' freedoms and rights;
- 2) points out the need enacting new legislation, other regulations and acts for full protection of citizen's freedoms and rights;
- 3) monitors, reviews and analyzes the enforcement of ratified international acts governing the protection of citizens' freedoms and rights;
- 4) reviews citizens' complaints and takes a stand;
- 5) cooperates with scientific and professional organizations in protecting citizen's freedoms and rights;
- 6) cooperates with competent international bodies to protect citizens' freedoms and rights; and
- 7) performs other activities related to the protection of citizens' freedoms and rights.

⁵⁰ *Postojana anketna komisija za zastita na pravata i slobodite na graganinot, Sobranie na Republika Makedonija, Izvestaj 2004.* (Standing Inquiry Committee for the Protection of Citizen's Rights and Freedoms, Parliament of the Republic of Macedonia, Report 2004) www.sobranie.mk/Izvestaj2004.

different perspective and mandate, which should be considered as a potential instrument to guarantee protection from gender-based discrimination.

SECTION 4 – Factual Background with Regard to the Principle of Equal Treatment for Women and Men: Related Research and Statistics

4.1 Research and statistics on women's access to and presence in the labor market

A wealth of research and statistics are available in the Republic of Macedonia on the issue of unemployment, understandably so due to the fact that this is one of the burning issues in the country. Public institutions, such as the Ministry on Labor and Social Policy, the State Statistical Office, the Employment Agency, and the Ministry of Economy, among others, have policy-analysis divisions that prepare reports on policy monitoring. There are also a large number of commissioned studies, prepared by universities and research institutions, both national and international, addressing the problem of unemployment. However, review of these studies demonstrated that data covering the gender aspect of unemployment is lacking. Although indirect inferences can be made about women's status in the labor market, specific research on this issue does not actually exist. For example, from January 1 to December 31, 2004, the Employment Agency organized training for the unemployed: 75.6 percent from the textile industry, 14.42 percent from the shoe-making industry, 2.41 percent from banking, 2.36 percent from the food industry, 1.23 percent from the timber industry, 1.03 percent from the fur industry, 0.98 percent from civil engineering, and 1.97 percent from other industries. It can only be inferred, however, that women accounted for the majority of the unemployed people trained. While the unemployment issue remains a very serious one for Macedonia's government, policies to remedy it will continue to ignore the gender variable.⁵¹

Macedonia's major labor market problems – high unemployment rate, large labor supply, limited demand for labor, paucity of human resources – affect both women and men.⁵² A significant ratio of employees works in the grey economy without formal work contracts distorting the statistics about the number of people working in

⁵¹ Ministry of Labor and Social Policy, *Nacionalen akcionen plan za vrabotuvanje 2004–2005* (National Action Plan for Employment of the Republic of Macedonia 2004–2005) www.mtsp.gov.mk.

⁵² Around 85 percent of the unemployed have been looking for a job for more than one year, and two thirds are unemployed for 3 years and longer.

nonpermanent or indefinite positions. The available data shows that out of 446,200 employed workers 177,000 are women, and women hold 40,800 of 98,900 nonpermanent jobs.⁵³

A major shift in the demographic and socioeconomic traits of the unemployed occurred during Macedonia's transition period. In terms of registered unemployment, the ratio of unemployed women is decreasing – from 51.1 percent in 1990 to 43 percent in 2003.⁵⁴ In absolute terms, however, there is a continuous increase⁵⁵ due to the significant growth in the number of unemployed men who have been laid off. The declining trend of unemployed women's labor market participation continued in 2004. The Employment Agency of the Republic of Macedonia has registered 392,909 unemployed persons for August 2004, of which 224,765 (57.2 percent) are men and 168,144 (42.8 percent) are women.

**Employment in the public and private sectors according to gender
(1998–2002) (percentage)**

Description	1998	1999	2000	2001	2002
Public, mixed, social, collective	62.7	58.4	56.1	49.1	46.7
Private	37.3	41.6	43.9	50.9	52.4
Total	100.0	100.0	100.0	100.0	100.0
Men					
Public, mixed, social, collective	62.2	58.4	56.6	51.2	48.4
Private	37.2	41.6	43.4	48.8	51.6
Total men	100.0	100.0	100.0	100.0	100.0
Women					
Public, mixed, social, collective	63.5	58.4	55.2	46.0	46.4
Private	36.5	41.6	44.8	54.0	53.6
Total women	100.0	100.0	100.0	100.0	100.0
Source: State Statistical Office					

⁵³ State Statistical Office, *Anketa za работna sila* (Labor Force Survey). 2003. Skopje: State Statistical Office.

⁵⁴ Employment Agency (Agencija za vrabotuvanje), *Sector for Analytical Data*. 2004.

⁵⁵ This tendency is also confirmed by the *Labor Force Survey* (LFS) data.

The increase of employment in the private sector, 15.1 percent from 1998 to 2002, is almost equally distributed among men and women. In reality, the participation of female employees in private sector employment is growing much faster than that of male employees, implying that women are more likely to find employment in the private sector, especially women in the younger age groups.

Reliable data is not available for private sector pay, with the same holding true to some extent for the public sector.⁵⁶

The government adopted a National Plan on Employment for 2004–2005 that is in line with the principles of EU Employment Policy and European Council guidelines.⁵⁷ The National Employment Plan is very ambitious regarding the gender issue. Specifically, it sets forth the following goals:

- reducing the gap in unemployment rates among women from different ethnic communities;
- supporting women's employment by strengthening positive proactive measures (grants, priorities, exemptions, awards, structural adaptations, specifics, especially in the area of training and retraining);
- incorporating the gender variable into vocational education and lifelong learning;
- introducing the idea of work/life balance as the right and responsibility of all workers – men and women – along with societal responsibility within social organizations and the corporate culture;
- Sustainable increase of support services for children and elderly to decrease regional disparities.

To date, outcomes have not been evaluated, and the National Plan is in the midst of being reviewed. Accordingly, the extent to which the gender variable has been successfully incorporated remains to be seen. The same holds true regarding the extent to which the gender aspect was really implemented.

⁵⁶ The Public Revenue Office is involved in numerous projects as part of efforts to increase the tax base and contributions thereto, including data exchange with the Central Register, as an element of the government's "one-stop-shop" project. This will provide insight to many things, including pay in both sectors, and in due course, the gender pay gap will be realistically assessed.

⁵⁷ *Technical Assistance for Institution Building to Support Employment Policy in Macedonia*, a project supported by the European Agency for Reconstruction through the CARDS Program. 2003. www.mtsp.gov.mk.

4.2 Women in the labor market after maternity leave

Studies on women's status in the labor market after the maternity leave are not available. A survey was conducted on women's views and opinions about the duration of maternity leave and their return to the labor market by nongovernmental organizations in response to a government initiative to shorten maternity leave.⁵⁸ Some of the survey's findings are the following:

“Even the current legal provision for maternity leave is not the best solution for exercising this right.”⁵⁹

The nine-month maternity leave that is currently available did not meet the needs of employed women. Most women responding to the survey felt that an eight-month old child (since the law provides for pregnant women to go on leave one month before delivery) is too young for kindergarden, and that the only solution was to have the baby in a home environment, preferably with the grandparents. Without the help of grandparents, the only other available solution, according to respondents, was to hire a woman to look after the child; such a service costs approximately MKD 6,000 to 7,000 (approximately EUR 120). In comparison, the pay of 80 percent of the women interviewed who employed a caregiver was under MKD 10,000 (EUR 160), or even less than MKD 8,000 (EUR 135). These women reported that they were working in order to pay the caregiver and, as a result, their baby was deprived of mothering. Women respondents felt that such a solution made no economic sense and, to a large extent, contributed to the exclusion of women from the labor market.

Additionally, most of the employed women interviewed attributed the problem of reduced productivity at work to the double burden of family and professional responsibilities that they carry. Even with the current option, working mothers find it challenging to concentrate on their tasks at work, and do not perform efficiently before the baby is one-year old. Consequently, most women actually take a full year off work by extending their maternity leave with annual paid vacation time and sick leave on various grounds. According to a focus group, the first year is pivotal in determining the mental and physical wellbeing of both mother and child.

⁵⁸ *Proposal for Amending the Legal Regulation of Paid Leave due to Pregnancy, Childbirth, and Motherhood* – drafted by ESE and Akcija Zdruzenska. 2005. This initiative involved 90 citizens (both men and women), who expressed their opinion in 6 focus groups: 1) Women in manufacturing; 2) Unemployed women; 3) Women-managers and business-women; 4) Single parents; 5) Men; and 6) Albanian women.

⁵⁹ Ibid.

“The state is not doing enough to establish life/work balance for men and women, nor does it guarantee equal access to the labor market.”⁶⁰

Over 80 percent of focus group participants surveyed believed that the state was not doing enough to establish a life/work balance for women, and that the current scope of rights and forms of care and protection of children does not create the necessary conditions for raising children:

- Inadequate number of childcare facilities. Not only must there be more childcare facilities, but the entire system of childcare and protection needs to be revamped.
- Inadequate operating hours at childcare facilities, which hinders parents from pursuing their professional careers.
- Lack of properly trained staff at childcare facilities for younger children; additional training is required for staff currently employed at these institutions.
- Lack of adequate food provision for children in kindergardens, especially for younger children.

The problem of decreasing birth rates and the ageing of Macedonia’s population is more than evident. One focus group discussed the example of a factory with an exclusively female workforce where, within a period of seven years, not a single woman availed herself of the right to maternity leave since childbearing was not on their agenda.

Interestingly enough, younger women and men in the focus groups expressed their readiness to share the burden of parenting. Obviously, this is indicative of a shift in the traditional relationships within the family, especially in terms of raising children. It is recommended that the state provide parental leave for fathers, but not before the child is six months old.

Single parents comprised a separate focus group. They pointed out the need for special protections for single parents such as subsidies covering part of the fee for kindergarden, free meals, etc.

⁶⁰ Ibid.

4.3 Discriminatory job advertisements

No credible research has to date been conducted regarding discriminatory job advertising in newspapers and magazines though such advertisements appear daily. Job advertisements discriminate not only on grounds of sex, but also on grounds of age. Most media outlets in Macedonia are still far from introducing the concept of selective advertisements or from relinquishing the profit that discriminatory advertisements generate. Though the Broadcasting Council exercises oversight of the broadcasting media, the council has limited capacity and all its available resources are currently directed towards drafting and adopting a new broadcasting law.

As a result, little can be done to monitor discriminatory job announcements and the Broadcasting Council is unlikely to step up its efforts to monitor discriminatory advertising.

4.4 Sexual harassment

The issue of sexual harassment has been an upsetting one for the public in Macedonia for quite some time, but the government has not commissioned any research on the subject. Only a few nongovernmental organizations and academics have seriously addressed the issue. For the purpose of this report, the authors have drawn on a recent master's degree thesis by Viktorija Gavritova entitled "Sexual Harassment at Work."⁶¹ The following are extracts from her study:

"Sexual harassment at work is a taboo and an unpleasant issue that people are not too keen to talk about. The reasons for this are numerous, but most often it is because they fear condemnation and shame. Women in the Republic of Macedonia do not have a clear understanding of what sexual harassment at work is really about. According to the data, 91.4 percent of the respondents believe that sexual harassment at work is present in the Republic of Macedonia; 1.2 percent believes that this problem does not exist; and 7.4 percent do not know whether this is a problem at all. According to the survey, 59.3 percent of the respondents had experienced some form of sexual harassment at work, 11.3 percent believed that although they were exposed to some form of sexual harassment, still – as they put it – it was nothing serious – just a normal thing that can happen at a workplace; and 40.7 percent stated that had not been exposed to any form of sexual harassment at work. Half of the respondents know at least one (21.4 percent) or more women (29.5 percent) who had been exposed to some form of sexual

⁶¹ Master's Degree thesis of Viktorija Gavritova, University of Cyril and Methodius and the Institute for Sociology in Skopje. 2005.

harassment at work, while 49.1 percent did not know such persons. Concerning sexual jokes that discriminate women, in most of the cases (60.3 percent) were not considered a form of sexual harassment by the women themselves, and in most of the cases they were not offended by such behavior. The form of quid pro quo (97.4 percent) and violent attempt for sexual contact (97.8 percent) were the forms of conduct that were considered as sexual harassment at work.

This raises the issue of men's awareness regarding sexual harassment at work, and the types of behavior at work considered as sexual harassment. The research shows that in most cases women were exposed to verbal sexual harassment at work, while non-verbal conduct of sexual nature was least represented (showing erotic or pornographic contents (6.8 percent), messages and letters with sexual provocative content (9 percent), and quid pro quo sexual harassment (15 percent)). The most severe form of sexual harassment at work identified was violent attempt for unwanted sexual intercourse or unwanted sexual intercourse (rape). 7.4 percent of the respondents stated that they had been exposed to this type of physical conduct of sexual nature, whereas 34.3 percent had experienced physical forms of sexual harassment at work (hugging, forced kissing, "accidental" bodily touch). The percentage for other forms of verbal conduct such as telephone calls with sexual intentions is also quite significant (19.2 percent), whereas open expression of sexual offer (24 percent) and unwanted insisting or invitations to go out, to have dinner and date outside work (26.1 percent). Women in subordinate positions proved to be the most frequent group of victims of more serious forms of sexual harassment, such as quid pro quo sexual harassment or physical forms of sexual harassment. Women working in non-governmental organizations or foreign organizations are mostly exposed to sexual harassment at work (71.4 percent), followed by women working in the private sector (62 percent). Most protected from sexual harassment at work are women working in the social sector (56.9 percent). The research proves that job security is a factor for protection from sexual harassment – women employed by means of oral contract are most frequent victims of sexual harassment (85 percent), followed by women employed by means of short-term contracts (75,8 percent), then women employed for a definite period (70.9 percent), and finally, as the most "resistant" group are women employed on indefinite basis (55 percent)."

SECTION 5 – Conclusions. Areas of Concern. Recommendations

5.1 Conclusions

Evidently, Macedonia has made progress in the area of equal treatment for women and men. For the very first time, Macedonian labor legislation has institutionalized the

concept of direct and indirect discrimination, as well as the prohibition and the exemptions from prohibition thereof.

5.2 Areas of concern

Nevertheless, considering the goals of the directive, several areas of concern remain and call for urgent intervention:

- Macedonian legislation does not adequately address gender discrimination specifically, bundling it, as it does, with all other forms of discrimination. The same holds true for harassment (“annoyance”) and sexual harassment (“gender-related annoyance”).
- In terms of rights and obligations of parties to the work contract, Macedonian legislation stipulates gender equality in regard to job vacancies,⁶² unless the worker’s sex is a necessary requirement for performing a given job. There is, however, no specific document or list identifying such professions and jobs.
- Macedonian law caps damages workers can claim on grounds of discrimination, which does not ensure adequate compensation for the harm suffered by the discriminated worker.
- Macedonian legislation does not incorporate working women’s right to return to the same (or similar) job after maternity leave, and to all benefits and improvements in working conditions granted other employees while a woman is away on maternity leave.
- Notwithstanding the good will of the government, the Unit for Improving Gender Equality within the Ministry of Labor and Social Policy does not have the capacity, appropriate budget, or mandate from nongovernmental organizations working on gender equality issues to fulfill its ambitious plans. Additionally, the extent to which this body fulfills the requirement of organizational independence in accordance with the directive, is also questionable.

⁶² Article 24 “Gender Equality for Job Announcements,” the *Official Gazette*, No.62, July 28, 2005.

5.2 Recommendations

- 1) Specifying in more explicit detail what *annoyance* and *gender-related annoyance* mean under the law, and at the same time raising public awareness about the seriousness of discrimination on any ground by means of campaigns, training, debates, task forces. etc.
- 2) Developing a list of vocations and professions considered exclusively *male* and exclusively *female* for the purpose of avoiding numerous future disputes and to fully incorporate the directive into Macedonia's legal order. Also, regular revision of this list should be stipulated.
- 3) Abolishing, or at least raising the cap on the amount payable for damages inflicted due to discrimination as set forth by the Labor Relations Act, thereby providing adequate compensation to the victims of discrimination.
- 4) Amending legislation to explicitly provide for women's right to return to the same (or an appropriate) job position and enjoy all benefits and improvements in working conditions after maternity leave.
- 5) Setting up an independent body to promote equal treatment of men and women. First, an external and independent evaluation should be carried out of the work performed to date by the Unit for Promotion of Gender Equality within the Ministry of Labor and Social Policy, to bolster its position and gain support and mandate from its constituency (nongovernmental organizations and other stakeholders active in this field). Another possibility worth considering is transferring this mandate from government to parliament, thereby providing full independence to such body. Standing Inquiry Committee could extend its mandate and in that case action would be focused on strengthening the committee by means of training, technical assistance, etc.

PREGNANCY AND MOTHERHOOD PROTECTION

1. **Council Directive 92/85/EEC** of October 19, 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.
2. **Council Directive 86/613/EEC** of December 11, 1986 on the application of the principle of equal treatment between women and men engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood.

In accordance with the National Program for Approximation of Legislation of the Republic of Macedonia with that of the European Union, these two directives have not yet been incorporated into Macedonia's legal order. Hence, the current analysis is more a comment on the state of affairs and identification of problem areas that need to be considered when incorporating directives as specified in recommendations below.

Protective Measures to Improve Working Conditions for Pregnant Workers, Workers Who have Recently Given Birth, or for Workers Who are Breastfeeding

SECTION 1 – Legal and Conceptual Framework

Macedonia's national labor legislation does not set forth definitions for a *pregnant worker*, a *worker who has recently given birth*, and a *worker who is breastfeeding*, as stipulated under the directive. The concept of a pregnant worker has, however, been indirectly defined in national legislation via a provision stipulating special protection during pregnancy,⁶³ specifying that an employer may not request from a pregnant worker any kind of information whatsoever about the pregnancy, except for that provided by the pregnant worker for the purpose of exercising her rights during pregnancy.

⁶³ Cf., Article 163 "Special Protection during Pregnancy," the *Official Gazette*, No.62 of 28 July, 2005.

SECTION 2 – Assessing the Risk to the Safety or Health of a Pregnant Worker and the Employer’s Obligations

2.1 Assessing the risk to the health of a pregnant worker

The Protection at the Workplace Act sets forth general and specific protections.⁶⁴ General protective measures apply to all activities, that is, in the technical and technological labor processes, whereas specific measures apply to protection at the workplace in specific work situations and processes, in specified activities and industries. The protective measures at the workplace are regulated in greater detail by the Minister of Labor and Social Policy. The Protection at the Workplace Act does not provide a specially designed checklist to protect pregnant workers, workers who have recently given birth, or workers who are breastfeeding at the workplace, as stipulated by the Council Directive in its Annex 1 (referenced by Article 4(1)). The Council Directive provides a list of harmful physical agents, biological agents, and chemical agents that cause foetal lesions or are likely to disrupt placental attachment, and, in Annex II, lists hazardous processes and working conditions.

“If the protective legislation were to be reviewed and updated in light of most recent scientific and technical achievements, women would, undoubtedly, enjoy even greater protection. The Protection at the Workplace Act was amended twice subsequently to 1998, in 2000 and in 2002, yet such provisions were not included in these amendments.”⁶⁵

2.2 Employer’s obligations

The Labor Relations Act does not mandate that the employer assess health risks at the workplace to pregnant workers, workers who have recently given birth, or workers who are breastfeeding. The Labor Relations Act stipulates that during pregnancy and within one year from childbirth the worker must not perform hazardous duties that increase risk to the worker’s and the baby’s health. Such duties are specified by the Minister of Labor in cooperation with the Minister of Health.⁶⁶

⁶⁴ Cf., Article 9, *Protection at the Workplace Act* of the Republic of Macedonia, No.13/98.

⁶⁵ Cf., the first CEDAW shadow report drafted by ECE. 2005.

⁶⁶ Cf., Article 162 – “Prohibition of Performing Work Tasks during Pregnancy and after Childbirth,” the *Labor Relations Act*, the *Official Gazette*, No.62 of 28 July, 2005.

The Protection at the Workplace Act⁶⁷ sets forth the employer's legal obligations regarding designing and organizing health protections at the workplace in general. The employer is obligated to design measures and means to provide for more advanced and improved workplace protections. The employer must bear the costs of such measures. Additionally, the employer is responsible for gearing workplace protections to technological processes, drawing on appropriate scientific methods, and staying in line with the most recent developments in the field. Workplace protections must be set in place by an employee with adequate educational and professional qualifications. The employer is obligated to directly involve his or her employees in the process of improving working conditions through a representative of the workers. However, all these measures apply to workers in general, without special regard for the specific situation of pregnant workers, workers who have recently given birth, or workers who are breastfeeding.

Macedonia's Labor Relations Act does not set forth legal retribution in the event that the employer does not perform a risk assessment *vis-à-vis* the health of pregnant workers, workers who have recently given birth, and workers who are breastfeeding, since the act does not legally obligate employers to do so. In the event that the employer fails to act, however, the Protection at the Workplace Act stipulates that he or she be subject to a fine.⁶⁸

The Labor Relations Act obligates the worker⁶⁹ to comply with and abide by health and safety regulations at the workplace. A worker has the right to refuse work in the event of an immediate threat to his or her life or health due to failure to act on the part of the employer pursuant to statutory provisions for workplace protection.

The only mechanism for informing workers and involving them in the process of health and safety protections at the workplace is provided by the Protection at the Workplace Act. The act provides that all employers with over 10 employees must have an elected employee representative in charge of health and safety protections at the workplace. This representative is selected from among the employees at a meeting of the majority trade union or employee association. The rights of this representative are set forth in Article 49 of the Protection at the Workplace Act, with the employer legally obligated to enable unhindered compliance with this duty. The extent to which this measure is actually enforced in the Republic of Macedonia is subject to debate,

⁶⁷ Cf., Article 23 of the *Protection at the Workplace Act*, the *Official Gazette*, No.13/98.

⁶⁸ Ibid.

⁶⁹ Cf., Article 32 of the *Labor Relations Act*, the *Official Gazette*, No.62 of 28 July, 2005.

especially in the private sector, where many employees do not have formal work contracts.

Monitoring the enforcement of workplace protections is the responsibility of the National Labor Inspectorate within the Ministry of Labor and Social Policy.⁷⁰

SECTION 3 – Cases in Which Exposure is Prohibited for Pregnant Workers and Workers Who Have Recently Given Birth

Macedonian legislation does not define the conditions under which pregnant workers must not work, neither does it legally obligate employers to conduct regular assessments regarding the risk of exposure to agents and working conditions, as specified in Annex II, Part A of the Council Directive. Such legal protection is likewise not accorded to workers who have recently given birth or who are breastfeeding since this Council Directive has not been incorporated into national legislation. Most affected women are not informed enough to protect themselves. The only advice they get on pregnancy-related health issues comes from medical doctors during regular prenatal examinations. The Association of Nurses and Midwives of the Republic of Macedonia has made several attempts, as part of its lobbying activities, to initiate legislative amendments. Their most recent attempt in this regard was made during the drafting of their contribution to the Report on the Millennium Goals, in conjunction with which the association developed a comparative study of workplace protections in the Republic of Macedonia and in the Republic of Slovenia.⁷¹

SECTION 4 – Night work

Macedonia's Labor Relations Act prohibits night work during pregnancy and parenthood as a special protective measure, bundled with the prohibition of overtime work.⁷²

During pregnancy or while taking care of a child of up to one year of age, a worker cannot be ordered to work overtime or to work at night. A worker with a child aged between one and three may be allowed to work overtime or at night, but only with the worker's prior written consent. Working women, men, and foster parents alike are

⁷⁰ Cf., Article 50 of the *Protection at the Workplace Act*, the *Official Gazette*, No.13/98.

⁷¹ Comparative analysis, Association of Nurses and Midwives of the Republic of Macedonia.

⁷² Cf., Article 164 of the *Labor Relations Act*, the *Official Gazette*, No.62 of 28 July, 2005.

entitled to these protections, as is a person taking care of a child whose mother has died, a child who has been abandoned, or has been declared unfit to live alone by a competent medical opinion.

The Labor Inspectorate must institute the appropriate redress procedure in the event that an employer or the responsible person working for the employer has committed an offense by violating the law or other statutory provisions, collective bargaining agreements, and the work contract, all of which regulate labor relations. The employer – legal entity, natural person, the manager or the responsible person working on the employer’s behalf – will be punishable with a fine in the event that he or she violates the right to special protection of a working mother or father, or of an adoptive parent taking care of a child.⁷³

Measures such as transfer to daytime work, being granted a leave of absence prior to childbirth, or extending maternity leave when such a transfer is technically not feasible have not been incorporated into legal protections in Macedonian legislation prohibiting night work of pregnant workers, workers who have recently given birth, or workers who are breastfeeding.

Nonetheless, under Macedonian law, the employer must, as special protection provided during pregnancy, assign a pregnant female worker to other appropriate duties for appropriate pay in the event that she performs tasks that could be detrimental to her health or to the health of her child, if such duties are more acceptable for her health.⁷⁴

SECTION 5 – Maternity Leave and Time Off for Prenatal Examinations

During pregnancy, childbirth, or taking care of a child, working women have the right to paid leave for a continuous period of nine months or for a year if the worker should give birth to more than one child at the same time (twins, triplets, or more). Working women have the right to start taking maternity leave, based on the report of a competent medical authority, within 45 days prior to childbirth, and must stop working within 28 days prior to delivery.⁷⁵

⁷³ Cf., Article 264, paragraph 1, Item 21, of the *Labor Relations Act*, the *Official Gazette*, Ibid.

⁷⁴ Cf., Article 163, paragraph 2 of the *Labor Relations Act*, the *Official Gazette*, Ibid.

⁷⁵ Cf., Article 165, paragraphs 1 and 2 of the *Labor Relations Act*, the *Official Gazette*, No.62 of July 28, 2005.

Macedonian law does not require employers to incorporate the right to a maternity leave into the work contract. Nevertheless, Macedonia's Labor Relations Act, other acts of laws, and collective bargaining agreements keep open the legal option to set forth additional rights and obligations,⁷⁶ including the right to maternity leave.

A worker taking leave from work due to pregnancy, childbirth, or taking care of a child has the right to receive continued pay. The Labor Relations Act does not, however, provide for payment of a special benefit on these grounds.

The act does not give pregnant workers the right to take time off for examinations without loss of pay, should such examinations occur during working hours. Admittedly, the Republic of Macedonia is a traditional and patriarchal society, yet women, generally speaking, have the understanding of employers and are allowed time-off for checkups during working hours. This is, however, dependent on the employer's goodwill. This situation is likely to change in the future, considering the dynamic changes taking place in Macedonian society.

SECTION 6 – Prohibition of Dismissal and Defense Rights

The employer may not terminate the work contract during pregnancy, childbirth, or during childcare leave.⁷⁷

In such cases, the worker is entitled to court protection, and if court of law finds that the work contract was terminated unlawfully, the worker may be reinstated into her job, if she wishes. Besides giving the worker back her job, the employer is obliged to compensate the wronged worker for damages of up to 70 percent of pay lost as well as make the obligatory social insurance contributions thereon. A worker contesting notice of dismissal has the right to petition the court to order her temporary reinstatement into the job until the dispute in question is resolved.⁷⁸

⁷⁶ Cf., Article 28 – “Contents of the Work Contract” of the *Labor Relations Act*, the *Official Gazette*, Ibid.

⁷⁷ Cf., Article 101 – “Prohibition of Dismissal due to Pregnancy, Childbirth, or Parenthood,” of the *Labor Relations Act*, the *Official Gazette*, Ibid.

⁷⁸ Cf., Article 102 of the *Labor Relations Act*, the *Official Gazette*, Ibid.

SECTION 7 – Conclusions. Areas of Concern. Recommendations

7.1 Conclusions

Macedonian labor legislation could improve on special protections for pregnant workers, workers who have recently given birth, or workers who are breastfeeding. Some progress has already been made, but statutory measures in secondary legislation required further development to be fully effective.

7.2 Areas of Concern

- Labor legislation does not provide definitions for *pregnant worker*, *worker who has recently given birth*, or *worker who is breastfeeding*.
- No statutory provisions are available to workers to adjust working conditions, working hours, or to use paid leave in the event that assessment of workplace conditions identifies hazards detrimental to pregnant workers, workers who have recently given birth, or workers breastfeeding.
- Absence of an exhaustive list of health and safety hazards and risk factors of particularly serious danger to pregnant workers, workers who have recently given birth, or workers who are breastfeeding.
- Macedonian legislation does not provide for protective measures such as transfer to another job, leave from work, or extension of maternity leave, where such transfer is not technically feasible as part of the protection against night work of pregnant workers, workers who have recently given birth, or workers who are breastfeeding.
- The right to maternity leave, although legally regulated, does not constitute an integral part of the work contract ensuring time-off for prenatal examinations of pregnant workers, workers who have recently given birth, or workers who are breastfeeding, nor does it provide for special maternity-related benefits.

7.3 Recommendations

- 1) Incorporating Council Directives 92/85 and 86/613 into Macedonian legislation (preferably into labor legislation) with precise definitions of *pregnant worker*, *worker who has recently given birth*, and *worker who is breastfeeding*.

- 2) Engaging nongovernmental organizations with a vested interest in such issues in the process of drafting legal amendments via sustainable forms of consultation established by the appropriate ministries.
- 3) Adopting a book of rules on minimum standards for consultation and participation in the process of incorporating European Community law into the field of gender equality, not only because of lack of expertise on such issues within the ministries themselves, but also with a view to applying the principles of good governance.
- 4) Establishing a working group of experts from nongovernmental organization to draft a policy paper that will include further incorporation of relevant legislation, but also monitoring most recent trends in the field of gender equality in the European Union, especially since this issue is becoming increasingly important.
- 5) Incorporating provisions to allow time off for prenatal examinations without loss of pay to pregnant workers, workers who have recently given birth, and workers who are breastfeeding, and adding special maternity-related supplementary benefits as an integral part of the work contract, all of which would be part of the effort to harmonize Macedonia's national legislation with that of the EU.

PROTECTION OF SELF-EMPLOYED WOMEN DURING PREGNANCY AND MOTHERHOOD

Council Directive 86/613/EEC of December 11, 1996, has not yet been incorporated into Macedonian legislation. However, Macedonia's National Program for Approximation of Legislation was created based on the obligations arising from the Stabilization and Association Agreement of the Republic of Macedonia with the European community and its member states, which has earmarked this directive for incorporation into Macedonia's legal order. Accordingly, this report addresses the current state of affairs *vis-à-vis* this issue.

SECTION 1 – National Legal Framework on Self-Employment: General Provisions

The equal treatment principle has been incorporated into Macedonian labor legislation and is applicable to all workers in the public and the private sectors.

Labor legislation in Macedonia does not set forth the concept of “self-employment”; that is, it does not differentiate between employed and self-employed persons. In responding to the questionnaire of the European Commission, Macedonia's government provides the following definition: “A self-employed person is a person who performs work in the liberal professions, pursuant to other statutory provisions governing the liberal professions, for example, private practice in healthcare, attorney of law, notary public, arts, and crafts. These professional activities are subject to statutory provisions regulating taxes and social insurance.”⁷⁹ In short, the concept of self-employed person, as set forth in the directive, does not exist in Macedonian labor legislation.

In consequence, labor protections to protect “self-employed women” – women working on their own behalf, including in agriculture and liberal professions, or working for or assisting a self-employed spouse – do not exist.

⁷⁹ Government of the Republic of Macedonia, *Answers to the Questionnaire for the preparation of the European Commission's Opinion on the application of the Republic of Macedonia for membership of the European Union / Odgovori na Prasalniki na Evropskata Komisija za podgotovka na misljenje za baranjeto na Republika Makedonija za clenstvo vo Evropskata Unija*. Chapter 13 (Social Policy and Employment), 2.

There are several individual acts of law in Macedonia's legal order that define certain categories of people in conjunction with rules for performing certain types of work. Accordingly, there are a number of occupations women engage in that proffer special legal protections in the spirit of the Council Directive. For instance, the Crafts Act sets forth special provisions for engaging in craftsmanship,⁸⁰ including that which governs handicrafts work at home, artistic craftsmanship, nonindustrial crafts manufacture, and craft services. The act provides for the following persons to undertake these activities: sole-proprietors, provided the activity is listed in the Trade Register; and craftsmen, natural persons whose work does not extend beyond the scope of smaller crafts and is listed in the Crafts Register. Pursuing this activity as "smaller crafts," – craftsmanship performed by the craftsman with up to a maximum of ten employees, including family members – is of special interest.

Agricultural activity is regulated in the same manner,⁸¹ and under the Agricultural Occupations Act it can be pursued by natural persons whose work does not exceed small-scale activity, and provided it is registered with Macedonia's Individual Farmer Register. An agricultural occupation may be performed by a natural person like traders and sole-proprietors, who are registered in the Trade Register. In regard to this type of activity, again reflective of the spirit of the Council Directive, small-scale agricultural work is defined in an interesting manner. For the purpose of the Agricultural Occupations Act such work is defined as being personally pursued by the farmer and up to a maximum of ten employees, including family members and a maximum number of five seasonal workers. Land ownership is the basic legal requirement for pursuing such activity. Specifically, a farmer must own land or possess leasehold, or freehold thereof, as well as the necessary capacity to perform agricultural work adequately. The legal definition of agricultural work embraces manufacturing, processing, and marketing farmers' own agricultural products, as well as cattle-breeding, or breeding other useful animals on a commercial basis, and selling the products thereof.

The liberal professions are mentioned by the Trading Companies Act.⁸² Some of the professions listed include attorney at law, notary public, medical doctor, patent engineer, architect, liberal artist, accountant, etc.

None of these laws regulate provisions affecting women, or women with families, pursuing the aforementioned activities. Additionally, there are no provisions that

⁸⁰ The *Crafts Act*, the *Official Gazette of the Republic of Macedonia*, No.37/98.

⁸¹ The *Agricultural Occupations Act*, the *Official Gazette of the Republic of Macedonia*, No.11/02.

⁸² The *Trading Companies Act*, the *Official Gazette of the Republic of Macedonia*, No.28, 2004.

provide for enforcement of the equal treatment principle, especially in regard to starting, equipping, expanding, or financing a business, or opening or expanding any other form of self-employment activity.

SECTION 2 – Social Rights of Spouses of Self-Employed Workers

2.1 Formation of companies by spouses

The acts of law mentioned above do not in any way curtail a spouse's opportunities to pursue whatever occupation (and not only those on a small scale) that he or she wishes to by the spouse, especially as regards starting a business. Therefore, both married and single people are treated equally in accordance with Macedonia's constitution and the principle of equal treatment.

2.2 Recognition of the work of spouses

There is currently no legal initiative to recognize the work of the spouses who are helping their self-employed partners in an informal capacity as family members.

2.3 The rights of self-employed workers whose operational activity is interrupted due to pregnancy and motherhood

There are no separate social protection schemes for self-employed persons that would enable them to join a voluntary contribution scheme. In consequence, self-employed working women and spouses of self-employed working men have no access to any national contributory social services or benefits during interruption of their professional work due to pregnancy or motherhood.

SECTION 3 – Legal Means of Redress

There are no special legal means of redress, except for those provided under Macedonia's labor legislation, which guarantee to all persons who believe they have been wronged due to noncompliance with the equal treatment principle in the domain of self-employment, the right of appeal to court of law, after having tried to obtain redress with other competent authorities.

SECTION 4 – Related Research and Statistics

Data show that women in Macedonia are in a far more unfavorable position in the labor market than men, especially in terms of their ratio of the economically active population 43.4 percent, versus men's 65.6 percent. Women's lower labor market participation can be a result of their withdrawal from the labor market or discouragement from continuous work search. To date, a separate detailed analysis of Macedonian women's labor market status has not been conducted, and in that sense there has been no analysis of their situation in self-employment, either.

4.1 Social perception of self-employed women and men

Employment statistics, according to the Labor Force Survey data, show that there are twice as many women than men in the category of unpaid family workers.

The second largest category of economically active women is found in employment (40.7 percent), followed by women in the role of employer (20.9 percent), with self-employed women ranking third (18.4 percent). By contrast, the largest category of economically active men are the self-employed (81.6 percent), followed by men in the role of employer (79.1 percent), men in the role of employee (59.3 percent), with men as unpaid family workers constituting the smallest category of economically active males.

4.2 Research on women and agriculture

According to available data for the period from 1990 to 1997 (Report on Women's Status in the Republic of Macedonia, 1999) the number of women involved in agricultural occupations is showing a marked downward trend. No specific research studies of their situation in this area have yet been conducted. In the 2001 to 2003 period, women's employment in the agriculture sector, hunting and forestry rose faster than men's, but there is an overall downward general trend.⁸³

⁸³ State Statistical Office, *Statisticki godisnik na Republika Makedonija* (Statistical Yearbook of the Republic of Macedonia). 2004. Skopje: State Statistical Office (Drzaven zavod za statistika).

4.3 Research on the status and rights of self-employed women

Absolutely no research exists regarding these issues, which is probably due to the fact that Macedonian law has not yet incorporated or defined the concept of self-employed worker at all. The obligation of incorporating this Council Directive into Macedonia's legal order will probably require undertaking further research activities.

SECTION 5 – Conclusions. Areas of Concern. Recommendations

As previously mentioned, this Council Directive has not been incorporated into Macedonian legislation. Areas of concern are as follows:

- 1) Labor legislation does not define the concept *self-employed*; it does not distinguish between employed and self-employed persons at all.
- 2) There are no provisions stipulating the enforcement of the equal treatment principle, especially in terms of starting, equipping, expanding, or financing a business, or starting, expanding, or financing any other forms of self-employment.
- 3) There are no separate contributory social insurance schemes for self-employed people to join. The law also lacks provisions specifying the conditions for self-employed female workers and spouses of self-employed male workers, during interruptions of their professional work due to pregnancy or motherhood, to get special types of social protection, services, and maternity-related benefits.

Subsequently, the following is recommended:

- 1) Incorporating the Council Directive into Macedonian legislation as soon as possible, and defining the concept of self-employed person in the spirit of the Council Directive.
- 2) Reaffirming the principle of equal treatment in other provisions regulating activities that can be pursued by self-employment persons.
- 3) Developing incentives and benefit-schemes to encourage self-employment among women as part of the effort to revise the National Plan for Employment 2005–2006.

ANNEX

List of Legislation Screened

Constitution of the Republic of Macedonia

The Labor Relations Act, the *Official Gazette of the Republic of Macedonia*, No.62, 2005.

The Protection of the Workplace Act, the *Official Gazette of the Republic of Macedonia*, No.13, 1998.

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The Trading Companies Act, the *Official Gazette of the Republic of Macedonia*, No.28, 2004.

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The Civil Servants Act, the *Official Gazette of the Republic of Macedonia*, No.103, 2001.

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European Commission, *Report on Non-Discrimination and Equal Opportunities for All – a Framework Strategy*. 2005.