

LEGAL PERSPECTIVES ON GENDER EQUALITY IN NORTH MACEDONIA'S LABOUR MARKET

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Abstract

The prevailing international legal framework in North Macedonia has a certain key role in the process of shaping an up-to-date, democratic society in which gender equality is perceived as one of the foundational principles. Consequently, a continuous ratification and harmonization of international legal standards in relation of the overall state of gender equality in North Macedonia's labour market needs to be maintained and improved on a regular basis, remarking that the development of legal framework in relation to international norms is a key element in order to give equal opportunities to each individual on the labour market, entirely respecting their gender identity. With the intention of comprehending today's position of women in North Macedonia's labour market, it is crucial to generate a brief analysis of relevant ratified international legal framework that principally supports and improves the general enhancement in several fields, such as anti-discrimination, transparency, inclusion and gender equality.

Keywords: gender equality, labour market, equal opportunities, equal pay, domestic legislation, international legal framework

1. INTRODUCTION

Despite the continuous improvement of North Macedonia's legal framework that is relevant in terms of gender equality and the general representation of women in the labour market, it is inevitable to notice the long-standing ubiquity of traditional labour dichotomy, which is based on the predominant, outdated patriarchal views of gender identity. The historical context of the country needs to be taken into account, as well as the stimulus that international bodies have had in the entire region, more precisely in North Macedonia. The underdeveloped collective consciousness on important aspects of inequality, such as pay gap, unequal treatment and the long-standing tradition of unequal representation of women in decision-making positions are incessantly creating a vast space in which gender identity has not been applied as one of the key elements that has to be included and protected domestic legislation. Even though there is an incessant process of signing and ratifying a vast amount of international legal framework based on anti-

discrimination in terms of gender identity, the process of altering the unceasing discourse and creating a labour market free of discrimination is deliberate and not fully efficient. Additionally, all of the constitutions of the Western Balkans countries have explicitly prohibited discrimination on several relevant grounds – sexual orientation, gender identity, disabilities, ethnicity. Still, even though most of the legal definitions to these types of discrimination are mostly compliant with the international legal framework, there is a certain lack of clarity in the phrasing that later causes difficulties in the applicability. The legal division in the Western Balkans is causing the overall misperception regarding certain protection standards, sanctions and criminal and civil procedures. Moreover, a calculation and an analysis of the requirements needed to make a concise and correct implementation of legal framework in the Western Balkans remains one of the most apparent challenges. (Farnsworth, Ryan, Tërshani, Guri, 2019:3). With the purpose of understanding the current state of the labour market and its efforts to maintain a steady, non-discriminatory space based on the principles of human rights, a review of the most relevant international legislation based on the principle of non-discrimination and equality is crucial, given the fact that it can give directions for future advancement of gender equality legislation in North Macedonia.

According to the findings in the publication “Gender-based discrimination and labour in the Western Balkans” (2019), in all of the Western Balkan states, the legal framework based on the labour market and equal opportunities has an equivalent structure, noting that there is a general Labour Law, Law on Equal Opportunities for Women and Men and Law on protection from discrimination. The division is fully clear in North Macedonia and Montenegro, considering that each law covers a specific legal area. On the other hand, the rest of the legal framework based on anti-discrimination and equal treatment in the other Western Balkan countries is not clearly divided and has certain inconsistency to it (Farnsworth, Ryan, Tërshani, Guri, 2019:17).

In view of USAID’s gender analysis report, the collected information on North Macedonia’s status and involvement in gender equality has shown that the government is not fully recognizing gender equality as a challenge (USAID, 2019:4). As an explicit result to the institutional lack of interest in promoting equality, women are victims of internal and external discrimination in the labour market on a regular basis. The traditional social values and internalized hierarchies in which patriarchal values are deeply rooted create certain stereotypes about the jobs that women should involve themselves in, the jobs that perpetuate notions of care and which are usually paid less and are not fully regulated with law. A vast amount of women and men still have a certain opinion on who should be the head of the household, and around 31% think that men naturally have that role, showing the presence of systematic discrimination that undermines the ongoing social progress. (USAID, 2019:5).

Even though since 2014, North Macedonia has a fully functioning Law on equal opportunities for women and men whose basic purpose is to establish equal opportunities for women and men in political, economic, social, educational, cultural, health, civic and any other area of social life, changes in the discourse on gender equality are slow and almost invisible.

2. INTERNATIONAL LEGAL FRAMEWORK ON GENDER EQUALITY

Primarily, after signing and ratifying international legal framework, all of the Western Balkan countries, including North Macedonia, have given a full commitment to the process of implementation of international legislation in their domestic legal acts, given that this is one of the principle ways to establish better conditions for women and men and it is in accordance with the Constitution of the state as a contracting party of international instruments. The up-and-coming advancement of domestic legislation with the inclusion of international legal norms and standards can also create a more stable path towards a future membership in the European Union. Regrettably, recent findings have shown that there is lack of completion of the implementation, as well as a significantly slow improvement in the field of gender equality (Farnsworth, Ryan, Tërshani, Guri, 2019:4).

Following the recent stabilisation and association agreements between the countries in the Western Balkans and European Union, each contracting party is obliged to harmonize their domestic legislation with the EU *acquis*. This particular procedure has shown that there is a significant similarity in Western Balkans' legislations, or more specifically, gender equality *acquis* and the extent to which North Macedonia and other Western Balkan countries have approximated their domestic legislation consequently. (Farnsworth, Ryan, Tërshani, Guri, 2019:7).

The UN Convention on the Elimination of All Forms of Discrimination against women and the Optional Protocol (1979) and its development is essential in the process of achieving equality in all spheres of life, considering that it is fully affirming the issue of gender equality, but also taking action in eliminating discrimination against women. An essential document that in the most comprehensive way regulates women's rights and gender equality is the Convention on elimination of all forms of discrimination against women (CEDAF). The Convention elaborates on equality, i.e. the existing inequality of women in political and public life, education, employment and employment rights, access to health care, financial and social security, legal and civil rights and obligations, the acquisition of citizenship, family relations, and dedicates special attention to the fight against violence against women, as well as the continuous problems that happen in rural areas. (Cvetkovska, 2016:9-11) In addition to the abovementioned legislation, part of the leading legal framework that helps in achieving gender equality is The International Agreement on Economic, Social and Cultural Rights (1966). In terms of the labour market, as it is pointed out in Article 3, The States undertake to ensure the equal right of men and women to the enjoyment of all rights in this treaty. Additionally, everyone has the right to just conditions of work; fair wages ensuring a decent living for himself and his family; equal pay for equal work; safe and healthy working conditions; equal opportunity for everyone to be promoted; rest and leisure (Art. 7, The International Covenant on Economic, Social and Cultural Rights, 1966).

The ratification of the European Convention on Human Rights (ECHR) and Protocol no. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. has also been a significant historical key-point in the overall advancement of legislation in terms of gender equality. This Convention stipulates in its basic provisions that the exercise of the rights and freedoms set forth in the Convention shall be exercised without discrimination gender, race, skin colour, national and social origin, political and religious beliefs, property and social status. The

protocol No. 12 provides for a general ban on discrimination and strengthens and expands it 14 the existing provision on non-discrimination, contained in Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Cvetkovska, 2016: 13-14). In addition, North Macedonia has also signed the European Social Charter in 1998, where the overall condition of women's activity and involvement in the labour market has been noted, also focusing on women from different ethnic communities. Additionally, the Charter of Fundamental Rights of the European Union promotes full equality between man and women:

“Equality between men and women must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.” (Art. 23, Charter of Fundamental Rights of the European Union, 2000)

Additionally, EU's Directive on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (2006) is also fully compliant with North Macedonian law. This particular EU directive is crucial for advancement of domestic law, considering that it defines harassment in general, sexual harassment, direct and indirect discrimination, basic minimum wage, occupational social security schemes and progressive implementation of the principle of equal treatment for men and women in matters of social security. The goal of this directive is to fully ensure the realization of the principle of equal treatment in terms of employment and labour, taking into consideration several different spheres in their entirety: Wages, social security, equal working conditions, equal access to development in all professional fields etc. In addition, it regulates and prohibits all types of discrimination that occasionally happens in an implicit manner, explicit discrimination in the workplace and sexual harassment. The directive also indicates and recalls the principle introduced by Article 141 paragraph 4 of the Treaty established by The European Community, in order to ensure full equality between men and women in the workplace, and the principle of equal treatment will not represent an obstacle for member states to take measures of positive discrimination, i.e. measures with which the gender that is less represented is placed in a privileged position in order to provide members of the same sex with easier access to vocational training or in order to compensate for the less favourable position in the development of their professional career. This section also contains provisions of Directive 2002/73/EC on the reinforcement of the protection of mothers, fathers, and parents who adopted children during their maternity leave. In addition, the connection with the Directive 92/85/EEC is explained (introducing measures to encourage improvements in protection at the workplace and protection of the health of pregnant workers, as well as mothers and lactating women).

“The Directive requires Member States to introduce measures necessary for providing effective compensation to victims of discrimination based on gender, not providing for the maximum amount of damages that can be paid, in accordance with the Marshall Case No. 2 of the SPEU. The Directive also lays down provisions concerning: the obligation of each Member State to determine a body, i.e. a body, which will be responsible for its promotion and promoting the principle of equal treatment, as well as preparing the necessary analyses and supervises the application and observance of the principle of equality treatment, as well as for providing legal aid to victims of gender discrimination. The Directive also emphasizes the need to strengthen the role

of the social partners and civil society organizations in promoting the principle of equality treatment. The directive calls for the repeal or amendment of part of the national legislation which is contrary to the principle of equal pay and the principle of equal treatment of men and women.” (Cvetkovska, 2016: 15-16)

As it is noted in Chapter 2, Art. 5 where prohibition of discrimination is regulated:

“Without prejudice to Article 4, there shall be no direct or indirect discrimination on grounds of sex in occupational social security schemes, in particular as regards:

- (a) the scope of such schemes and the conditions of access to them;
- (b) the obligation to contribute and the calculation of contributions;
- (c) the calculation of benefits, including supplementary benefits due in respect of a spouse or dependants, and the conditions governing the duration and retention of entitlement to benefits.” (Ch. 2, Art. 5, Directive 2006/54/EC)

3. GAPS IN IMPLEMENTATION

Even though there is a significant improvement of legal framework based on gender equality in terms of the labour market, partial implementation of international charters and conventions, and the normalization of a specific derogatory discourse and neglect towards cases in which gender is a key element is still persistent in North Macedonia. Additionally, the problematic gaps of implementation are concisely pointed out in OECD’s analysis, where it is stated that legal acts based on labour still contain discriminatory provisions on a global level. Nonetheless, it has to be taken into consideration that these types of provisions and the lack of proper implementation can have a negative impact on women and their will to equally participate in the labour market. The lack of analysis of legal framework based on provisions that have a direct impact on women in the labour market (day-care, nursing, retirement etc.), have serious impact on women’s involvement in labour, more specifically in the private sector (OECD, 2018:8). It has been concluded that there is no legal act in North Macedonia that fully provides procedures for the unification of international provisions. The existence and proper functioning of these procedures is essential, since it can help and nullify or amend already existing provisions in domestic legislation that can be in conflict with newly implemented international provisions. (Farnsworth, Ryan, Tërshani, Guri, 2019:18). In addition, a vast amount of overlapping or multiplication of concrete provisions has also been noticed in North Macedonia, as well as the other Western Balkan countries. When an overlap, dispersion or multiplication occurs, different type of sanctions and legal procedures, as well as different types of sanctions can become applicable, which only shows absence of proper harmonization of certain legal provision. In addition, it can be concluded that even though theoretically the requirements of transposition are properly met, there is lack of knowledge of the transposition procedure of substantive issues in domestic legislation (Farnsworth, Ryan, Tërshani, Guri, 2019:18).

Additionally, there are more than a few national legal acts that regulate gender equality, starting from the Constitution of the Republic of North Macedonia fully guarantees the principle of non-discrimination, the right to free choice of employment and the right to protection at work:

“Citizens of the Republic of North Macedonia are equal in their freedoms and rights, regardless of sex, race, colour of skin, national and social origin, political and religious beliefs, property and social status. All citizens are equal before the Constitution and law.” (Art. 9, Constitution of the Republic of North Macedonia, 1991.)

“Everyone has the right to work, to free choice of employment, protection at work and material assistance during temporary unemployment. Every job is open to all under equal conditions. Every employee has a right to appropriate remuneration. Every employee has the right to paid daily, weekly and annual leave. Employees cannot waive this right. The exercise of the rights of employees and their position are regulated by law and collective agreements.” (Art. 32, Constitution of the Republic of North Macedonia, 1991.)

The first enactment of the Law on Equal Opportunities for Women and Men was adopted in 2006. Considering the rapid modifications and incessant social development that urged the country to keep on doing proper harmonization of the domestic legislation with all of the standards of the European Union, a new Law on Equal Opportunities for Women and Men was adopted in 2012 where all of the measures for the instituting of equal opportunities for women and men were included. Accordingly, in addition to the inclusion of equal opportunities for women and men, this law included all of the rights and responsibilities for providing equal opportunities for women and men, as well as the procedure for establishing unequal treatment of women and men, i.e. protection of their rights in the case of recognised unequal treatment of women and men. The law contains a general definition of discrimination based on sex, as well definitions of certain types of discrimination based on sex such as: direct and indirect discrimination, harassment and sexual harassment based on gender. The law prohibits discrimination, harassment and sexual harassment based on gender in the public and the private sector, among other areas cited in the law and in the field of employment and labor.

“The Law on Equal Opportunities for Women and Men gives every citizen the right of access to employment without any restrictions, in accordance with the principle of equal treatment, according to which in access to employment, discrimination is prohibited and based on marital status, family status, skin color, language, politics or other belief, trade union activity, nationality or social status, disability, age, property, social or other status.²⁰ The law contains a special chapter that regulates legal protection in case of unequal treatment of women and men and regulates the procedure conducted by the legal representative in case of unequal treatment of women and men.” (National strategy for gender equality, 2013-2020:9)

The Law on Prevention and Protection against Discrimination that was adopted in 2010 was the principal national legal act that was supposed to provide prevention and protection against discrimination in the exercise of rights guaranteed by the Constitution, national legal acts and ratified international agreements, including and defining several forms of discrimination that in some cases happen repeatedly: direct discrimination, indirect discrimination, harassment and sexual harassment, discrimination against persons with mental and physical disabilities, victimization, discrimination in the provision of goods and services. With the intention of including the international standards adopted by the EU and reinforcing the rule of law, a new Law on Prevention and Protection against Discrimination was adopted in 2018 in which sexual

orientation and gender identity were introduced as grounds for discrimination for the first time in North Macedonia. This law was later abolished by the Constitutional Court of the Republic of Northern Macedonia in May for technical reasons, and this particular action left the country in a precarious state of not having any significant national legal act that would protect its citizens from all forms of discrimination. The glossary of the new law was also significantly changed, considering that new terms such as “appropriate adjustment”, “person with a disability” and “accessibility to infrastructure, goods and services” were added in this version of the law. This law also recognized a specific type of lawsuit for protection against discrimination of public interest. With this alteration in the law, civil society organizations, foundations and other types of associations as well as informal groups that have a legitimate interest in protecting a certain group, or within their activity are engaged in protection against discrimination, can file a lawsuit, if the defendant acted in a discriminatory manner against a large number of persons. Bearing in mind the current state of events, the country does not have any functioning law against discrimination, leaving a vast space where discriminatory practices are subtly becoming a standardized matter. The urgency of the situation is becoming more visible, considering the numerous attempts of the national and international civil society sector to change this current precarious state. On September 4th, 2020, four Intergroups of the European Parliament (Intergroup on LGBTI Rights, Intergroup on Anti-Racism and Diversity, Intergroup on Disability and the Intergroup on Children’s Rights) submitted a joint request to the Government of North Macedonia, pointing out the urgency to adopt the Law on Prevention of and Protection against Discrimination:

“The repealing of this legislation has meant that North Macedonia currently does not provide sufficient protection from discrimination for all its citizens. As members of the European Parliament’s Intergrups on LGBTI rights, Anti-Racism and Diversity (ARDI), Disability and Children’s Rights, we are particularly concerned that the current lack of legislation negatively impacts the most marginalized people in society, such as Roma people, LGBTI persons, women, people living in poverty, people with disabilities and religious minorities.

This law, which was approved by national experts and activists after years of tireless work, and was praised by the Venice Commission, the United Nations, the European Union and the OSCE-ODIHR, was exemplary in its protection of all citizens against discrimination. In addition, it contained protection based on a number of grounds, which fulfilled commitments that are necessary for the continuation of accession talks between the EU and North Macedonia. This law is also the subject of a declaration for priority adoption signed by several parties and civil society organizations in North Macedonia.” (Four Intergrups issue joint call”, 2020.)

4. NATIONAL STRATEGY FOR GENDER EQUALITY (2013 – 2020)

One of the most pertinent national strategies that is supposed to maintain a steady and incessant improvement of women's equal position in the labour market is the National strategy for gender equality (2013-2020). Even though the specific aim of this strategy is an overall improvement of the conditions for women in North Macedonia, as well as having an influence on the expected significant reduction of stereotypes and prejudices against women, its practical use is disputable, given that the overall social discourse is implicating that the pace of change is fairly slow and it is continuously normalizing stereotypes based on gender identity. The National Strategy for Gender Equality is adopted for a period of eight years, from 2013 to 2020. According to the Law on equal opportunities, the Strategy also contains a National Action Plan for Gender Equality for a period of four years, which envisages undertaking short-term and medium-term activities, which will be realized through annual operational programs (National strategy for gender equality, 2013-2020:4). Additionally, it comprises of several important aspects of gender equality in North Macedonia, primarily focusing on solid analysis, as well as data based on gender segregation that effectively has set all of the priorities in the period of 2013 to 2020. As it is pointed out, the workforce and labour market continue to embody significant amount of challenges that must be tackled and fully addressed, given that the analysis by ARS in 2011 has shown a severe the low activity rate of women 44.7% and employment of 30.9% (National strategy for gender equality, 2013-2020:10).

There are numerous horizontal questions and approved priorities regarding gender equality and the confident outcome that can only occur if the strategy's guidelines are entirely recognised, accredited and implemented. As it is stated in the Analysis of the participation of women in the labour market, the applicable questions are introduction of the gender perspective in the main social flows, collection of gender-divided statistics through established mechanisms of cooperation and exchange, their analysis and publication, overview of indicators for monitoring the success of the implementation of gender equality policies and gender perspectives, establishment of an efficient and effective system for achieving gender equality, improvement of the legal provisions on gender equality and their implementation, strengthening the gender institutional machinery at central and local level and increased collaboration within, as well as with other key public actors in the private sector (Cvetkovska, 2016:29). As it has been expected, there are several underlying challenges that have to be undertaken considering their urgency, but also seeing that they could have a positive impact on the unremitting gender inequality on the labour market. As it is stated in the strategy, all of the strategic priorities regarding gender inequality in North Macedonia will be implemented with the help of certain specific and general strategic goals, resulting with the establishment of functional mechanisms for gender-based discrimination. Additionally, several key-points of the three general strategic goals are the formation of an effective and efficient system of achievement gender equality through functional mechanisms to support national and local level, harmonized indicators for measuring the progress of gender equality and provided gender segregated statistics; the improvement of the level of gender equality in prioritized thematic areas and the nurture and building of culture based on equal opportunities and promotion of equal treatment and non-discrimination on the basis of gender (National strategy for gender equality, 2013-2020:35-36).

Considering the 2020 Policy Brief no. 40 by Finance Think, employed women often face certain types of unequal treatments, such as lower wages and underemployment. Women are more often unpaid family workers and habitually receive significantly lower wages than men. According to the Survey on labour force, 10.9% of women are unpaid family workers in comparison to a suggestively lower percentage of men - 3.8%. In terms of wages, women are more prevalent in lower paid jobs - only 8.1% of women employees get a monthly pay check that is higher than 25,000 denars, in contrast of 13.1% men. Moreover, according to a survey based on the overall quality of life, conducted by Finance Think in 2017, there is a notable gender gap in salaries by 12%, meaning that women receive 12% lower salary compared to men for the same job position. According to Finance Think's Policy Brief, there is a so called phenomenon that suggests serious gender inequality on the labour market, known as the "envelope wages". According to their report, 19% of women workers received envelope wages in addition to their formal wage, in comparison to 16% of male workers. Additionally, there is another term that suggests gender inequality in the labour market, known as "underemployment". This specific term shows that in general, younger women are more often exposed to underemployment which means that most of the employed women (ages 15-29 years) either work less than 35 hours per week, although they would like to work more, feel insecure on their job positions, or have already accepted lower salaries than their male peers.

5. CONCLUSION

The enduring day-to-day discourse in North Macedonia's working environment demonstrates that the slow development of full harmonization of international with domestic legislation has managed to cause severe consequences on the position of women and their well-being in the labour market, noting stereotypes based on gender identity are prevailing and there is not a noteworthy decrease of prejudice based on gender identity. During a time when North Macedonia's labour market and its initial force is slowly decreasing, it has been also distinguished that there are certain structural problems that are continuously diminishing the overall economic potential and therefore, decreasing efficiency. There is an explicit gender gap between women and men, considering that 78% of the men living in North Macedonia are unremittingly participating in the labour market, in comparison with 52% of the women, even though the rate of employment had a slow but steady increase (European Commission, 2019:50).

Accordingly, the historical context and the traditional values have an unyielding impact on today's lack of comprehension of the importance of proper legal harmonization, as well as the fast development of issues that women face on a regular basis, observing the inconsistency in harmonization of international legal standards is diminishing the functionality and capability of the state institutions. Improving the overall state for women in the work environment, but also successfully tackling and diminishing the wage gap in North Macedonia both have to become prioritized and addressed regularly (Sahiti, 2019). Consequently, even when the ongoing discrimination is not explicit, the existence of internalized misogyny in the labour market points out the ineffectiveness of the practical application of the possibility to set a precedent that would later create a positive pattern in cases of gender discrimination, and therefore it is unceasingly undermining the foundations of democracy and the principle of human rights. More than often, relevant state institutions do not show unambiguous support or react when gender inequality in the

working environment occurs, and this simply facilitates the acceptance of inequality, letting the already unstable social foundation keep on differing from the principle of human rights and the rule of law, failing to see the negative impact it incessantly leaves on the society.

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