

NECESSARY AMENDMENTS TO THE PROPOSED LAW ON AMENDING THE CRIMINAL CODE

January 2022

With the ratification of the Istanbul Convention in December 2017, the Republic of North Macedonia undertook to take legislative and other measures to provide legal, institutional and organizational framework for prevention of violence against women, protection of victims of violence and sanctioning of perpetrators of violence. With the ratification, the Convention became part of the legal order, imposing the need to harmonize the existing legal and institutional framework with the provisions stipulated in this document. To that end, in October 2018, the Government adopted the five-year National Action Plan for implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (2018-2023).

The National Action Plan has three main objectives:

1. Harmonization of the legal framework with the provisions of the Convention
2. Establishing general and specialized services for improving the protection of victims of gender-based and domestic violence
3. Implementing activities for prevention of gender-based and domestic violence.

Regarding the first objective – Harmonization of the legal framework with the provisions of the Convention, the Ministry of Justice was responsible for adopting annual operational plans to facilitate the successful implementation of the activities. They were also responsible for the preparation of the amendments to the Criminal Code and its harmonization with the provisions of the Istanbul Convention. This activity was planned to be implemented in the second half of 2019. The monitoring report¹¹ of the National Network to End Violence against Women and Domestic Violence on the progress of the State in the implementation of the activities stipulated in the NAP for the period October 2018-October 2020, states the following regarding this activity: *“A working group for amending the Law was formed within the Ministry of Justice in which civil society organizations were not invited to participate, although the such cooperation was stipulated in the NAP for the implementation of the Istanbul Convention. Thus, civil society organizations did not have an opportunity to monitor the process and be part of the formulation of the legal text. In the period preceding the formation of this group, the Criminal Code was reviewed and amended by a closed group formed by MANU and OSCE.”*

¹ Report on the progress of R. North Macedonia in the implementation of the National Action Plan for the implementation of the Istanbul Convention for the period October 2018-October 2022, available on the following [link](#).

At the end of July 2021, a proposal of the law on amending the Criminal Code² of the Republic of North Macedonia was submitted to the Assembly. The document itself states that *judges, public prosecutors, and professors were involved in the preparation of the amendments, and the working group supported by OSCE comprised numerous international experts in the field, as well as representatives of NGOs. The proposal of the law was submitted for an opinion to the Supreme Court of the Republic of North Macedonia, the Public Prosecutor's Office of the Republic of North Macedonia, the Bar Association, the Ministry of Finance, the Ministry of Labor and Social Policy, the Bureau for Representation of the Republic of North Macedonia before European Court of Human Rights in Strasbourg, the Association of Journalists, the Ministry of Information Society and Administration, the Ministry of Interior and the Secretariat for Legislation.*

Following publication of the text of the proposal law on amending the Criminal Code, the National Network to End Violence against Women and domestic violence organized two consultative meetings with civil society organizations working on this issues. The meetings were held on 16 September and 20 December on the ZOOM platform, and were attended by organizations members of the National Network, organizations members of the Platform for Gender Equality, HOPS – Healthy Options Project Skopje, the Coalition “All for Fair Trials” and the Young Lawyers Association.

After a detailed review of the proposed amendments which refer to the harmonization with the international standards and the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), the conclusion of the SCOs is that although satisfactory, the amendments are not complete, i.e. there is room for improvement in the direction of a more comprehensive and effective protection of women victims of gender-based and domestic violence.

The section that follows provides a detailed review of the existing criminal offences, the proposed amendments of the Ministry of Justice and the proposed amendments of the CSOs which emerged as conclusions from the working meetings and the public debate of the Commission for Equal Opportunities for Men and Women within the Assembly of the Republic of North Macedonia held on 15.12.2021.

I. PROPOSED AMENDMENTS TO THE CRIMINAL CODE THE CIVIL SOCIETY ORGANIZATIONS ARE IN AGREEMENT WITH

Article 122-Glossary paragraph 21 Domestic Violence

As it is currently regulated in the CC: Domestic violence means harassment, gross insult, threat to safety, physical injury, sexual or other psychological or physical violence that causes a feeling of insecurity, threat or fear, towards a spouse, parents or the children or other persons living in a marital or

² Proposed amendments to the Criminal Code are available on ENER on the following [link](#).

extramarital union or joint household, as well as against a former spouse or persons who have a common child or are in a close personal relationship.

Proposed amendments by the Ministry of Justice: Domestic violence means harassment, insult, threat to safety, physical injury, sexual or other psychological, physical or **economic violence** that causes a feeling of insecurity, threat or fear, **including threats of such actions against a spouse**, parents or children or other persons living in a marital or extramarital union or joint household, as well as against a or former spouse, common-law partner or persons who have a common child or are in a close personal relationship, **regardless of whether the perpetrator shares or has shared the same household with the victim or not.**

Conclusion 1: The proposed definition is comprehensive, recognizes all forms of violence and close relations and is in accordance with the Law on Prevention and Protection from Violence against Women and Domestic Violence. The CSOs are in agreement with the proposal of the Ministry of Justice.

Article 122-Glossary paragraph 22 – victim of gender-based violence – new paragraph in the proposal

Proposed amendments by the Ministry of Justice: A victim of gender-based violence is every woman and girl under the age of 18 years who has been subject to a criminal offence under the stated circumstance.

Conclusion 2: The CSOs are in agreement with the proposal of the Ministry of Justice.

Article 125-Manslaughter

As it is currently regulated in the CC: Whoever shall cause death to another person by committing manslaughter, brought against his will into a state of strong irritation by attack or by severe insults or as a consequence of domestic violence by the killed person, shall be sentenced to imprisonment of one to five years.

Proposed amendments by the Ministry of Justice: Whoever shall cause death to another person by committing manslaughter, brought against his will into a state of strong irritation by attack or by severe insults or as a consequence of domestic violence, **gender-based violence or violence against women by the killed person**, shall be sentenced to imprisonment of one to eight years.

Conclusion 3: The CSOs are in agreement with the proposal of the Ministry of Justice.

Article 131-Severe bodily injury -paragraph 2 is amended

As it is currently regulated in the CC: (1) 1) Whoever causes severe bodily injury or health deterioration to another shall be sentenced to imprisonment of six months to five years. (2) Whoever commits the crime referred to in paragraph 1 while committing domestic violence or out of hatred shall be sentenced to imprisonment of one to five years.

Proposed amendment by the Ministry of Justice: (2) Whoever commits the crime referred to in paragraph (1) while committing **gender-based violence, violence against women** and domestic violence or out of **hatred or against a person who is particularly vulnerable due to his/her age, serious physical or mental impairment or pregnancy**, shall be sentenced to imprisonment of one to five years.

Conclusion 4: The CSOs are in agreement with the proposal of the Ministry of Justice.

Article 144 – Endangering safety is changed in its entirety

As it is currently regulated: (1)) Whoever endangers the safety of another by seriously threatening to attack his life or body, or the life and body of a person close to him, shall be punished with a fine, or with imprisonment of up to six months. (2) Whoever commits the act from paragraph 1 while committing domestic violence, will be punished with imprisonment from three months to three years. (3) The sanction from paragraph 2 shall be imposed on the person who commits the offense from paragraph 1 against an official person in the performance of his duties or against several persons. (4) A person who threatens, by means of an information system, to commit a criminal offense punishable with five-year prison sentence or a more severe sanction against a person due to their sex, color, gender, membership to a marginalized group, ethnicity, language, nationality, social origin, religious or other beliefs, education, political affiliation, personal or social status, mental or bodily disability, age, family or marital status, property status, health condition or any other grounds stipulated by law or a ratified international agreement, shall be punished with imprisonment of one to five years. (5) Prosecution of the offence from paragraph 1 shall be undertaken by private action.

Proposed amendment by the Ministry of Justice: Whoever endangers the safety of another by seriously threatening to attack his life or body, or the life and body of a person close to him **with an intention to disturb and intimidate him, cause a feeling of insecurity or fear in the victim, shall be punished by a fine, or by imprisonment of up to one year.** (2) Whoever commits the act from paragraph 1 while committing **gender-based violence, violence against women** or domestic violence, **out of hatred or against a person who is particularly vulnerable due to his age, severe bodily or mental disability or pregnancy, will be punished with imprisonment of three months to three years.** (3) The punishment from paragraph 2 shall be imposed on the person who commits the offense from paragraph 1 against an official person in the performance of his duties, **an attorney, doctor or other healthcare worker, journalist or other media worker or another person performing tasks in the public interest in the course of his professional work or in relation to the performance of professional duties undertaken within his competence or against several persons.** (4) A person who threatens, by means of an information system, to commit a criminal offense punishable with five-year prison sentence or a more severe sanction against a person due to their sex, color, gender, membership to a marginalized group, ethnicity, language, nationality, social origin, religious or other beliefs, education, political affiliation, personal or social status, mental or bodily disability, age, family or marital status, property status, health condition or any other grounds stipulated by law or a ratified international agreement, shall be punished with imprisonment of one to five years. (5) Prosecution of the offence from paragraph 1 shall be

undertaken by private action.

Conclusion 5: The CSOs are in agreement with the proposal of the Ministry of Justice.

Article 188- Sexual assault of a child under 14 years of age – the title and the entire Article is changed

As it is currently regulated in the CC: (1) Whoever commits rape or other sexual acts against a child who has not reached the age of 14 will be punished with imprisonment of at least 12 years. (2) If, as a result of the offense referred to in paragraph (1), serious bodily injury, death or other serious consequences occurred, or the offense was committed by several parties or in a particularly cruel or humiliating manner, the perpetrator shall be punished with imprisonment of at least 15 years or life imprisonment. (3) The perpetrator of the offence from paragraph (2) of this article shall be prohibited, by court decision, to perform his profession, activity or duty under the conditions of article 38-b of this Code.

Proposed amendments by the Ministry of Justice: Statutory rape of a child under 15 years of age.

(1) Whoever who has sexual intercourse or an equal act, consisting of vaginal, anal or oral penetration, with any part of the body or object against the body of a child who has not reached the age of 15, shall be punished with imprisonment of at least eight years.

(2) Whoever commits the offence from paragraph (1) of this Article by use of force or threat of an immediate attack against the life or body of another or the life or body of a person close to him/her, or against a helpless child who has not reached the age of 15, shall be punished with imprisonment of at least ten years.

(3) If, as a result of the offense referred to in paragraphs (1) and (2) of this Article, serious bodily injury, death or other serious consequences occurred, or the offense was committed by several parties or in a particularly cruel or humiliating manner or out of hatred, the perpetrator shall be punished by imprisonment for at least ten years or life imprisonment.

(4) The perpetrator of the offence from paragraphs (1), (2) and (3) of this article shall be prohibited, by court decision, from performing his job, activity or duty under the conditions of article 5 of this Code.

(5) If the perpetrator commits another sexual act that does not entail vaginal, anal or oral penetration, with any part of the body or by inserting an object in the body, he shall be punished with imprisonment of at least three years.

Conclusion 6: The CSOs are in agreement with the proposal of the Ministry of Justice.

Article 191 Mediation in conducting prostitution – Article 3 is amended

As it is currently regulated in the CC: 1) Whoever recruits, instigates, incites or entices a person to engage in prostitution or who in any way participates in handing over a person to another in order to engage in prostitution for profit, shall be punished with imprisonment from five to ten years. (2) Whoever enables another to use sexual services for profit, shall be punished with imprisonment from three to five years in prison.

(3) Whoever organizes the offences referred to in paragraphs (1) and (2) or commits those offences while committing domestic violence, shall be punished with imprisonment of at least ten years.

Proposed amendments by the Ministry of Justice: “(3) Whoever organizes the offences referred to in paragraphs (1) and (2) or commits those offences while committing **domestic or gender-based violence against women**, shall be punished with imprisonment of at least ten years.”

Conclusion 7: The CSOs are in agreement with the proposal of the Ministry of Justice.

II. PROPOSED AMENDMENTS TO THE CRIMINAL CODE THAT CIVIL SOCIETY ORGANIZATIONS THINK CAN BE IMPROVED, CHANGED OR SUPPLEMENTED

Article 122-Glossary, paragraph 43 Violence against women and paragraph 44 – Gender-based violence against women- two new paragraphs in the proposal

Proposed amendments by the Ministry of Justice:

“**Paragraph 43 Violence against women** means all actions that lead or may lead to physical, sexual, psychological or economic harm or suffering to women, including direct and indirect threats and intimidation for such acts, extortion or arbitrary deprivation of freedom, regardless of whether they take occur in the public or private life.

Paragraph 44 Gender-based violence means violence directed against women because of their gender, which leads or may lead to physical, sexual, psychological or economic harm or suffering to women, including direct and indirect threats and intimidation for such acts , extortion or arbitrary deprivation of freedom, regardless of whether it happens in public or private life.”

Conclusion: CSOs think that only paragraph 44 needs to be added, i.e., that only the definition of the gender-based violence against women should remain because it is a broader and more encompassing term. Additionally. The CSOs propose that this paragraph be added after the definition of domestic violence in paragraph 22, followed by the definition of victims of GBV.

Article 122-Glossary – to add a new paragraph that would contain a definition of persons with disability, which would be worded as follows: persons with disability are persons who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Remark: the definition is taken from the Convention on the rights of persons with disability, Article 1 paragraph 2. Our country ratified the Convention in December 2011.

Article 123 – Murder – a part of paragraph 2 is changed

As it is currently regulated in the CC: 1) Whoever takes the life of another shall be punished with imprisonment of at least five years. (2) Whoever:

- 1) takes the life of another in a cruel or insidious manner,
 - 2) takes the life of another while committing domestic violence,
 - 3) takes the life of another and in doing so intentionally brings the life of another person in danger,
 - 4) takes the life of another for self-interest, for the purpose of committing or covering up some other crime, for wanton revenge or for other low motives,
 - 5) takes the life of another by order,
 - 6) takes the life of another for removing an organ, tissue or cells for transplantation,
 - 7) takes the life of a woman knowing that she is pregnant, and
 - 8) takes the life of a judge, public prosecutor or attorney in the course of performance of their function i.e. work or of an official or a military person, in the course of performance of their duties in the public or state security or maintaining the public order, pursuing a perpetrator of a crime, or keeping a detained person in custody,
- shall be punished with imprisonment of at least ten years to life.

Proposed amendments by the Ministry of Justice:

Point 2) is amended as follows:

“2) takes the life of another while committing domestic violence or gender-based violence against women.“

Point 7) is amended as follows:

“7) takes the life of a woman knowing that she is pregnant or of a child, and“

Point 8) is amended as follows:

„8) takes the life of a judge, public prosecutor in the course of performance of their function i.e. work, a lawyer, doctor or other healthcare worker, journalist or other media worker or another person performing tasks in the public interest in the course of his professional work or in relation to the performance of professional duties undertaken within his competence or of an official or a military person, in the course of performance of their duties in the public or state security or maintaining the public order, pursuing a perpetrator of a crime, or keeping a detained person in custody

Conclusion: Adding the term gender-based violence against women in the qualified form of the basic criminal offence Murder in paragraph 2, point 2 is not enough for proper qualification and recognition of the criminal offence of femicide i.e. murder of a woman, so the proposal of the CSOs is that new paragraph should be added in order to supplement i.e. specify the more serious form of murder.

In paragraph 2, point 2, we are proposing that the qualifying form of the offence remains:

“2) takes the life of another while committing domestic violence,

To add a new paragraph 3 worded as follows:

„3) takes the life of a woman/a female person while committing domestic and gender-based violence;

Hereinafter in the text of the Article to change the numbers in accordance with the added paragraph.

Amendment: Murder while committing domestic violence – this form of aggravated murder was introduced with the Amendment to the CC in 2004 in order to provide enhanced protection for victims of domestic violence. The circumstance that change the qualification of this criminal offence as aggravated form are:

first, when it is usually carried out after previous long-term, repeated (systematic) mistreatment, gross insults, threats to security, physical injury, sexual or other psychological or physical violence against the victim, which has caused a feeling of insecurity, threat or fear; and secondly, when the perpetrator and a passive subject are persons who are in family or other close personal relationships (spouse, parents or children or other persons living in a marital or extra-marital community or a joint household, as well as a former spouse or persons who have common child or are in a close personal relationship - Article 123 paragraph 19 of CC). The new paragraph will cover more specifically the offences of murder of a woman while committing domestic violence as well as murder committed in the course of gender-based violence (a new term defined in paragraph 44 of article 122 - glossary), contains the forms that can be used in the definition of femicide (**gender-based act of murder of a woman, murder of an intimate partner/wife, death of a woman as a result of intimate partner violence, female feticide, murder of a woman or girl in "name of honor"**) and an facility the process of obtaining statistical data.

(more information about femicides in the Republic of North Macedonia can be found at the following link <https://glasprotivnasilstvo.org.mk/istrazhuvan-a-i-publikatsii/>)

Article 129a – new criminal offence proposed: Mutilation of female genitalia

Proposed amendments by the Ministry of Justice: 1. Whoever performs partial or total removal, infibulation or other mutilation of an external female genitalia, shall be punished with imprisonment of six months to five years. 2. The punishment from paragraph (1) of this Article shall apply to whoever forces a woman to undergo the actions from paragraph (1) of this Article. 3. Whoever entices or assists a woman to undergo the actions from paragraph (1) of this Article, shall be punished with imprisonment of six months to three years. If the offence from paragraph (1), (2) and (3) is committed out of hatred, or against a girl, or a serious bodily harm is caused to a women, the perpetrator shall be punished with imprisonment of one to eight years. 5. If the offence from paragraphs (1), (2), (3) and (4) of this Article resulted in death of the woman or girl, the perpetrator shall be punished with imprisonment of one to ten years.”

Conclusion: The CSOs agree with the proposal to include a new criminal offence. However, they note that this Article is added immediately after Article 131 – Grievous bodily harm, because the acts itself represents grievous bodily harm.

In addition, since this criminal offense also poses a threat to health, we believe that the punishment for this offense are low (the initial assessment of the punishment for the basic offense of 6 months, and according to the other paragraphs of 1 year in prison) in light of the fact that the act itself has

lasting consequences for women's health, especially in the context of women's sexual and reproductive health.

Article 130 – Bodily harm is changed in Article 2

As it is currently regulated in the CC: (1) Whoever causes bodily harm to another or damages his health, shall be punished with a fine or imprisonment of up to three years. (2) Whoever commits the offence from paragraph 1 while committing domestic violence shall be punished with imprisonment of six months to three years. (3) The court may issue the perpetrator of the offence from paragraph 1 a court warning if he was provoked by a particularly offensive or rude behavior by the injured party. (4) The offence from paragraph 1 shall be prosecuted on a private lawsuit, and from paragraph 2 on motion.

Proposed amendment by the Ministry of Justice: (2) Whoever commits the offence from paragraph 1 while **committing gender-based violence against women or domestic violence, or out of hatred or against a particularly vulnerable person because of his age, serious bodily or mental impairment or pregnancy**, shall be punished with imprisonment of six months to five years.

Conclusion: CSOs propose another amendment to paragraph 4 in relation to paragraph 2, i.e. for the offence to be prosecuted ex officio, and not on the victims' motion.

Amendment: the victims covered in paragraph 2 need courage and self-confidence to report the violence. By reporting alone, they express their need to receive institutional support and further legal steps against the perpetrator. However, practice shows that these reports are usually withdrawn due to pressure from the perpetrator of violence. When reports are withdrawn, the perpetrator may be encouraged to continue with the violence knowing that he has control over the will and the behavior of the victim, which could further lead to grievous bodily harm, and in the worst case a femicide. **If the offence is prosecuted ex officio, the influence of the perpetrator will decrease after withdrawal of the report, and it will enable initiation of a proceeding for appropriate punishment of the committed violence.**

Article 139 – Coercion is changed in its entirety

As it is currently regulated in the CC: (1) Whoever coerces another, by use of force or a serious threat, to commit, not to commit or be subject to an act, shall be punished with imprisonment of one year. (2) If the offence from paragraph 1 is committed during domestic violence, the perpetrator shall be punished with imprisonment of six months to three years. (3) If the offence from paragraph 1 is committed by an official person in the course of performance of his duties, he will be punished with imprisonment of six months to five years. (4) The offence from paragraph 1 shall be subject to private prosecution.

Proposed amendments by the Ministry of Justice: 1) Whoever coerces another, by use of force or a serious threat, to commit, not to commit or be subject to an act, shall be punished with a fine or imprisonment of one year. 2) If the offence from paragraph (1) is committed during **gender-based violence, violence against women** or domestic violence, **or out of hatred or against a person who is particularly vulnerable due to his/her age, serious physical or mental impairment or pregnancy** the perpetrator shall be punished with imprisonment of six months to three years. (3) The punishment from paragraph 2 shall be imposed on the person who commits the offense from paragraph (1) against **an attorney, doctor or other healthcare worker, journalist or other media worker or another person performing tasks in the public interest in the course of his professional work or in relation to the performance of professional duties undertaken within his competence.** (4) If the offence from paragraph (1) is committed by an official person in the course of performance of his duties, he will be punished with imprisonment of six months to five years. (5) The offence from paragraph (1) shall be subject to private prosecution. (6) **An attempt to commit the acts from paragraphs (2) and (3) of this Article shall not be subject to punishment.”**

Remark: There is an agreement for the proposed amendments, with an additional proposal to stipulate more severe punishments for both the basic criminal offence and the qualifying forms of the basic offence.

Article 140 Wrongful arrest – Article 2 is amended

As it is currently regulated in CC: 1) Whoever wrongfully arrests, keeps detained or otherwise restricts or deprives another from his freedom, shall be punished with imprisonment of up to one year. (2) If the offence from paragraph (1) is committed during domestic violence, the perpetrator shall be punished with imprisonment of six months to three years.

Proposed amendments by the Ministry of Justice: “(2) If the offence from paragraph (1) is committed during **gender-based violence, violence against women** or domestic violence, **out of hatred or against a person who is particularly vulnerable due to his/her age, serious physical or mental impairment or pregnancy,** the perpetrator shall be punished with imprisonment of six months to three years.

Remark: There is an agreement for the proposed amendments, with an additional proposal to stipulate more severe punishments for both the basic criminal offence and the qualifying forms of the basic offence.

Article 144-a Proposal for a new criminal offence STALKING

Proposed amendment by the Ministry of Justice: 1) Whoever repeatedly and unlawfully follows, harasses or otherwise interferes into the personal life of another, or establishes or tries to establish unwanted contacts by staging physical encounters, misusing personal data or using **means of communication**, or in any other way psychologically abuses, harasses or intimidates another thereby causing a feeling of insecurity, agitation or fear for his/her safety or the safety of a person close to him/her, shall be punished with a fine or imprisonment of up to three years. (2) If the offence from paragraph (1) of this Article is committed against a person with whom the perpetrator is or has been in an intimate relation or against a child, the perpetrator shall be punished with imprisonment of six months to five years. (3) The offence from paragraph (1) of this Article is prosecuted on motion.”

Remark: CSOs agree with the proposal for introduction of a new criminal offence Stalking, with one amendment to the proposed definition, i.e., clear stipulation of the means of communication as a means of committing the criminal offence.

Introduction of a new criminal offence – Psychological violence

CSOs propose introduction of a new criminal offence – Psychological violence in line with the Istanbul Convention, Article 33 of which includes the definition of psychological violence – “Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing a person’s psychological integrity through coercion or threats is criminalized.”

Remark: New article is needed because MoI and the Courts keep no statistical data if the crime is not regulated in a separate article. Therefore, it is not possible to report to GREVIO/Council of Europe and EU, an obligation undertaken by the state. Additionally, the psychological violence is one of the most frequent forms of violence against women; it is an accompanying form of all other forms of gender-based violence (physical, sexual, stalking, etc.), and long-term exposure to this forms leaves serious consequences on the physical and mental health of the victim, consequences that require long-term treatment and are sometimes irreparable i.e. permanent. The definition of psychological violence has to be harmonized with the Law on Protection and Prevention from Violence against Women and Domestic Violence – “Psychological violence is any behavior that uses coercion, intimidation or threats, which causes a feeling of fear, endangerment, agitation or violation of the dignity and psychological integrity of the victim” and the same would read:

New Article 144-b Psychological Violence

(1) Whoever uses psychological violence and intentional, repetitive and threatening behavior directed at another person which violates the psychological integrity of the person shall be punished

with imprisonment of 6 months to 1 year.

(2) The offence from paragraph (1) of this Article shall be prosecuted ex officio.

Article 186 – Rape, title is changed and the article in its entirety

As it is currently regulated in the CC: (1) Whoever forces another, by use of force or threat of a direct attack against his/her life or body or the life or body of a person close to him/her, to sexual intercourse, shall be punished with imprisonment of three to ten years. (2) If the offence from paragraph (1) of this Article is committed against a child who has turned 14 years of age, the perpetrator shall be punished with imprisonment of at least ten years. (3) If the offence from paragraph (1) of this Article has resulted in grievous bodily harm, death or other grave consequences or the offence was committed by several perpetrators or in a particularly cruel or humiliating manner, the perpetrator shall be punished with imprisonment of at least four years. (4) Whoever forces another to sexual intercourse by use of a serious threat to disclose information that would harm the honor and reputation or cause other serious harm to the victim or a person close to him/her, shall be punished with imprisonment of six months to five years. (5) Whoever commits only another form of sexual act in the cases from paragraphs (1), (2) and (3), shall be punished with imprisonment of six months to five years for the offence from paragraph (1), from one to ten years for the offence from paragraph (2) and from three months to three years for the offence from paragraph (3).

Proposed amendments by the Ministry of Justice – Sexual assault and rape

(1) Whoever, without clearly expressed consent of another assessed in the context of the surrounding circumstances, has sexual intercourse or an equal act, consisting of vaginal, anal or oral penetration, with any part of the body or object, or induces another without his/her consent to have sexual intercourse or perform other sexual act with a third person, or to have a sexual act performed on himself, shall be punished with imprisonment of one to eight years.

(2) If the offence from paragraph (1) of this Article is committed against a child who has turned 15 years of age, the perpetrator shall be punished with imprisonment of at least three years.

(3) If the offence from paragraph (1) of this Article is committed by use of force or threat of an immediate attack against the life or body of another or the life or body of a person close to him/her, the perpetrator shall be punished with imprisonment of three to ten years.

(4) The punishment from paragraph (3) of this Article shall be imposed on whoever commits the offence from paragraph (1) against another by use of a serious threat to disclose information about him/her or a person close to him/her that would harm his/her honor and reputation or cause other serious harm.

(5) If the offence from paragraph (3) and (4) of this Article is committed against a child who has turned 15 years of age, the perpetrator shall be punished with imprisonment of at least eight years.

(6) If the offence from paragraphs (1) to (5) of this Article has resulted in grievous bodily harm, death or other grave consequences or the offence was committed by several perpetrators or in a particularly cruel or humiliating manner, the perpetrator shall be punished with imprisonment of at least ten years to life.

(7) Whoever commits only another form of sexual act that does not involve vaginal, anal or oral

penetration in the cases from paragraphs (1) to (5), shall be punished with imprisonment of six months to three years for the offence from paragraph (1), from one to three years for the offence from paragraphs (2), from one to five years for the offence from paragraphs (3) and (4) and from one to ten years for the offence from paragraph (5).

Remark: There is general agreement about the proposed definition with several amendments.

To add the word “voluntary” in paragraph 1 (one) – “Whoever, without voluntary and clearly expressed consent...”. This term is in line with the Istanbul Convention wherein “*Consent must be given voluntarily as the result of the person’s free will assessed in the context of the surrounding circumstances.*”

When prosecuting rape cases, detailed evaluation of the evidence on case-by-case basis will be needed, in order to determine whether the victim freely gave consent for the sexual act or not. **Consent should not be considered as given if the victim is under coercion or threat, when she is not capable of giving consent or if the victim was silent.** The decision of the CEDAW committee *Karen Tayag Vertido v The Philippines* of 2021 also stipulates some guidelines and directions for establishing whether consent has been given in a specific case. **The Committee recommends that the sued state seeks to establish whether there is unambiguity and voluntariness.**

Comparatively, the Swedish Criminal Code stipulated that voluntary consent by the victim is needed.

Chapter 1 of Section 6 of the Swedish Criminal Code stipulates:

“A person who performs vaginal, anal or oral intercourse, or some other sexual act that in view of the seriousness of the violation is comparable to sexual intercourse, with a person who is not participating voluntarily is guilty of rape and is sentenced to imprisonment for at least three and at most six years. When assessing whether participation is voluntary or not, particular consideration is given to whether voluntariness was expressed by word or deed or in some other way.”

Both elements are present – voluntariness and clearly expressed consent.

CSOs propose adding another paragraph in order to better recognize the offence when committed by an intimate current or former partner and/or marital and/or extramarital partner. The practice shows that women not only rarely report this type of violence when it is committed by a person with whom they have been or are in close intimate relations, but they don’t recognize it as a criminal offence that they might report and seek systemic protection from although the existing criminal offence of rape does not exclude persecution regardless of the close personal and intimate relations between the victim and the perpetrator. Due to the closeness and the trust that the partners have or had, we believe that the sanctions for this crime should be regulated as follows:

“if the offence from paragraphs (1) and (3) of this Article is committed by a current or former marital or extramarital partner or an intimate partner, the perpetrator shall be punished with imprisonment of at least three years for the offence from paragraph (1) and at least five years for the offence from paragraph (3).

Article 187- Statutory rape of a helpless person the title and the Article in its entirety is changed

As it is currently regulated in the CC: (1) Whosoever commits statutory rape of another, abusing the mental illness, mental disorder, helplessness, retarded mental development, or some other condition due to which this person is unable to resist, shall be sentenced to imprisonment of minimum eight years. (2) If the crime referred to in paragraph (1) of this Article is committed against a child who turned 14, the offender shall be sentenced to imprisonment of at least ten years. (3) If a severe bodily injury, death or any other severe consequence was caused because of the crime referred to in paragraph (1) and paragraph (2), or the crime was committed by several persons, in an especially cruel or degrading manner or out of hate, the offender shall be sentenced to imprisonment of minimum ten years or a life imprisonment. Whosoever in the cases referred to in paragraphs 1 and 2 commits only some other sexual act shall be sentenced for the crime referred to in paragraph 1 to imprisonment of three to five years, and for the crime referred to in paragraph 2 to imprisonment of three to ten years.

Proposed amendments by the Ministry of Justice: Sexual assault of a helpless person 1) Whosoever performs a sexual or an equal act, consisting of vaginal, anal or oral penetration, with any part of the body or an object against another or forces him to perform a sexual intercourse or other sexual act with a third person, or to have a sexual act performed on himself, abusing the mental illness, mental disorder, helplessness, mental handicap, or some other condition due to which this person is unable to resist shall be sentenced to imprisonment of at least four years. 2) If the crime referred to in paragraph (1) of this Article is committed against a child who turned 15, the offender shall be sentenced to imprisonment of at least eight years. 3) If the offence from paragraph (1) of this Article is committed by use of force or threat of an immediate attack against the life or body of another or the life or body of a person close to him, the offender shall be sentenced to imprisonment of at least five years for the offence from paragraph (1) and at least ten years for the offence from paragraph (2) of this Article. 4) If a severe bodily injury, death or any other severe consequence was caused because of the crime referred to in paragraph (1), (2) and (3) of this Article or the crime was committed by several persons, in an especially cruel or degrading manner or out of hate, the offender shall be sentenced to imprisonment of minimum ten years or a life imprisonment. 5) If the perpetrator of the offence from paragraphs (1), (2) and (3) of this Article commits only another sexual act that does not entail vaginal, anal or oral penetration, he shall be sentenced to imprisonment of one to five years.

Conclusion: CSOs generally agree with the proposed change, but think that some of the terminology is inadequate, especially having in mind the ratification of Convention for the Rights of People with Disabilities, so terms like retarded mental development, mental illness and mental disorder are contrary to the Convention, and using only physical disabilities excludes all other disabilities that must be covered. The amendment to this Article is especially important also due to the fact that that people with disabilities, especially women with disabilities, are recognized as a category that is subject to multiple discrimination and is in a higher risk of violence, which is underlined in Article 6 of the Convention.

"Article 6 is a binding provision for non-discrimination and equality that unequivocally prohibits discrimination against women with disabilities and promotes equality of opportunity and equality of outcome. Women and girls with disabilities are more likely to be discriminated against than men and boys with disabilities, as well as women and girls without disabilities."

We propose the following changes to Article 189:

1) Whoever performs a sexual or an equal act, consisting of vaginal, anal or oral penetration, with any part of the body or an object against another or forces him to perform a sexual intercourse or other sexual act with a third person, or to have a sexual act performed on himself, abusing the disability or the powerlessness of the person, shall be sentenced to imprisonment of at least four years. 2) If the offence from paragraph (1) of this Article is committed against a child with or without disability who turned 15, the offender shall be sentenced to imprisonment of at least eight years. 3) If the offence from paragraph (1) of this Article is committed by use of force or threat of an immediate attack against the life or body of another or the life or body of a person close to him, the offender shall be sentenced to imprisonment of at least five years for the offence from paragraph (1) and at least ten years for the offence from paragraph (2) of this Article. 4) If a severe bodily injury, disability, death or any other severe consequence was caused because of the crime referred to in paragraph (1), (2) and (3) of this Article or the crime was committed by several persons, in an especially cruel or degrading manner or out of hate, the offender shall be sentenced to imprisonment of minimum ten years or a life imprisonment. 5) If the perpetrator of the offence from paragraphs (1), (2) and (3) of this Article commits only another sexual act that does not entail vaginal, anal or oral penetrator, he shall be sentenced to imprisonment of one to five years.

Moreover, the definition of persons with disability should be in line with Article 1 paragraph 2 of the Convention and the same should be included in Article 122 – Glossary by adding a new paragraph.

Article 190-a- Sexual harassment -New offence is interfered

Proposed amendments by the Ministry of Justice: “(1)Whoever, by way of verbal or physical action which directly or indirectly, explicitly or implicitly signifies enticement, inappropriate offer, expression of sexual passion or other action which clearly implies sexual intercourse or other similar sexual acts, harasses another person who is subordinate or in a position of dependency to him at work or in a public place or a person who is vulnerable due to his age, illness, disability, drug addiction, pregnancy or other severe physical or mental impairment, thereby injuring his dignity, causing a feeling of discomfort, aggravation, humiliation or fear, shall be punished with a fine or sentenced to imprisonment of up to one year. (2) The offence from paragraph (1) of this Article shall be prosecuted on a on a motion.”

Comment: CSOs agree with the proposal by the Ministry of Justice for introduction of a new offence, but note that the terminology needs to be harmonized. Namely, the term used for sexual harassment in the Macedonian language needs to be changed (полово-сексуално, both translated as “sexual in the English language) in order to harmonize the law with the existing antidiscrimination legal framework – the Law on Prevention and Protection against Discrimination (Article 10 paragraph 2); the Law on Prevention and Protection from Violence against Women and Domestic Violence (Article 3 paragraph 1 point 19) and other existing laws. Our state has the obligation to harmonize the national legislation, including this Law, with the Istanbul Convention.

Accordingly, CSOs propose that the definition of sexual harassment be in line with the definition from the Istanbul Convention, namely:

“Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction”.

CSOs also propose introduction of a new Article 190-b relating to sexual harassment on the internet

To regulate sexual harassment on the internet, social media and other means of electronic communication and stipulate adequate sanctions for the same.

Comment: It is necessary to criminalize sexual harassment over the internet as a separate criminal offence in order to harmonize our legislation with the EU. Regarding this offences (stalking, sexual harassment on the internet, etc.), the EU points to a lack of timely response by the institutions and gaps in the legal framework of the state¹, i.e., absence of clear provisions in the Criminal Code for criminalization of gender-based violence, including online. (https://ec.europa.eu/neighbourhood-enlargement/north-macedonia-report-2021_en).

Additionally, criminalization as a separate criminal offence is also needed for collecting segregated statistical data for the victims of this type of crime, for the state to have an insight into the number of such cases and the action taken by institutions in order to know that measures to take for prevention and elimination of this type of violence to ensure protection of the victims. If only the basic criminal offence of sexual harassment remains, the victims of online sexual harassment will be put on the same level with the victims of this type of violence in public space, work, etc., which leaves room for inaction and/or improper action by the institutions. The last thematic report “Who is the Internet a Safe Place for”, gives the following key findings and recommendations:

International standards do not set explicit grounds for digital gender-based violence, although it exists and is defined in the latest regulations, such as the Istanbul Convention and the General Recommendation 5 of CEDAW.

At the EU level, a **new directive for digital services** is proposed which opens room for sanctioning violence in the online space through stricter regulation of the content on the online platforms.

(Positive Practices)

At the EU level, digital gender-based violence is a burning issue, and good practices mostly arise from the women and human rights (women) activists, scientific research and the civil sector.

In countries such as Great Britain and Portugal, initiatives and services for victim protection and education are established (for example SOS lines, applications, psychological support), as well as strategies for self-protection based on good knowledge and utilization of digital tools.

In countries from the region (Albania), this issue is opened in a public debate and key initiatives are emerging. The complete report is available on the following [link](#).