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MONITORING REPORT FOR THE PROJECT „WOMEN WORKERS UNITE!“ WITHIN THE ACTION “PROMOTION OF WOMEN’S LABOR RIGHTS”



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HELSINKI
COMMITTEE
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MONITORING REPORT FOR THE
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WITHIN THE ACTION
“PROMOTION OF WOMEN’S LABOR RIGHTS”

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SUMMARY

The monitoring report for the project Women Workers Unite!, within the action “Promotion of women workers’ labor rights”, collectively presents the situation with women’s labor rights in Republic of North Macedonia in terms of gender discrimination at the workplace, given that in the conditions of the pandemic caused by COVID-19, the threat of violation of the labor rights of women workers, discrimination, and the position of women in the field of labor relations in general, was emphasized.

The threat to health and life in general, caused by the crisis with COVID-19 and the measures for prevention and protection from it, at the same time paradoxically emphasized the role of women in many spheres in social life, as well as in labor, work, and labor relations, given that in most of the so-called essential professions (such as in the food, textile, and health industries), it is women workers who invest their labor. On the other hand, the exploitation of women’s labor within the established labor relations, often extends to the general exploitation of the female position. The specific differences that make a woman worker vulnerable to conditions in which her personal status, which is most often related to her personal well-being, becomes a place of violation of both workers’ rights and discrimination; namely, a violation of the basic principle of equality. The cases that were monitored and processed support the aforementioned theses. In addition, the reviews of the European and national legislation support the need for effective protection through both the normative framework and safety mechanisms, as there are already standards and good practices that can pave the way for safer employment and protected labor rights.

METHODOLOGY

The methodological framework of the Monitoring Report includes data collection from acting upon requests for free legal aid in accordance with the Law on Free Legal Aid to the Helsinki Committee for Human Rights, monitoring of administrative and judicial practice by initiating proceedings through the protection mechanisms in cases of gender-based discrimination on women workers. The processing of these data will be supported by the so-called desk research or review of available sources related to employment discrimination against women workers, the state of institutional action, and the use of protection mechanisms in the local context of the Republic of North Macedonia (RNM).

The methodological framework will cover three types of analysis: initial legal framework analysis, case analysis, and case law analysis. In the direction of harmonization of the national with the European legislation, the comparative analysis includes analysis of key EU documents related to labor relations and protection of labor rights, the Constitution of RNM, as well as the following laws: Law on Labor Relations, Law on Inspection Supervision, Protection from Harassment at the Workplace, Law on Equal Opportunities, Law on Prevention and Protection Against Discrimination. Within this analysis, in addition to the monitoring of the harmonization of legislation, a critical approach to the existing legal solutions, their implementation and certain institutional actions that enable or block the protection mechanisms will be offered.

In addition, the analysis of case law will cover domestic courts as primary sources to which requests for public information on gender-based discrimination proceedings against workers in the workplace have been sent. The European case law will be presented as a positive benchmark for the usage and implementation of protection mechanisms.

OVERVIEW OF EUROPEAN AND NATIONAL LEGISLATION

EUROPEAN LEGISLATION

Given the focus of cases of labor rights violations in women workers, who are also victims of direct or indirect gender-based discrimination, the standards extracted by European legislation and institutional practice refer primarily to the European Union (EU) Charter of Human Rights, the Treaty on the Functioning of the EU entitled Social Policy, as well as the thirteen adopted directives governing all aspects of employment, including Directive 2006/54/E3 adopted in 2006 by the European Parliament and the Council of Europe on the implementation of the principle of equal opportunities and equal treatment of men and women in the fields of employment and professions. Although the Law on Labor Relations is largely aligned with EU directives in the field of labor market and protection of workers' rights, protection mechanisms such as the State Labor Inspectorate and the awareness of workers and employers of working conditions are at a low level. Additionally, the Law on Labor Relations should be harmonized with the Law on Prevention and Protection Against Discrimination and with the definition of discrimination in the Directive. The Directive does not create direct rights and obligations between natural persons, except for the prohibition of discrimination on the grounds of gender in several areas of employment, including payment. It is important to note that RNM as a member of the Council of Europe has accepted and partially transposed in its legislation the Revised European Social Charter of the Council of Europe No. 163 of 1988.

Citizens exercise their rights under the Directive through judicial protection and legal remedies, so that the domestic judiciary should be the first line of resistance to the gender salary gap and always ready to provide protection. The Directive imposes an obligation to establish effective remedies that will ensure equal salary for equal work and equal salary for work of equal value on a national level. Extremely important for the access to justice is the burden of proving before a court or other competent authority. The Directive recognizes the importance of establishing

administrative and other out-of-court mechanisms, which as a rule are far faster and more accessible than court proceedings. Before any of these mechanisms, the damaged parties are obliged to present the facts that indicate direct or indirect discrimination (*prima facie* case), and the defendant is the one who will have to prove that there was no violation of the principle of equal treatment.¹ In the production of standards for the protection of workers, the European Legislative Framework is also supported by case law, such as that of the Court of Justice of the EU (CJEU) and some of the cases set by comparators to determine key terms, including the necessary conditions for establishing a *prima facie* case of discrimination, transfer of the burden of proof in the proof procedures. In this sense, one of the inevitable court cases that paved the way for standards and good practices in the broad scope of gender discrimination and equal payment for equal work is *Defrenne v. Sabbena* (*Defrenne v. Sabbena*)², where the case concerns the worker Gabriel Defrenne who worked as a flight attendant at the Belgian airline Sabena. Under the Belgian national law, female flight attendants are required to retire at the age of 40, unlike male flight attendants, for whom this retirement border is higher. Defrenne was forced to retire in 1968. She complained to the CJEU that the lower pension rights of women prescribed for men constitute a violation of the right to equal treatment on the basis of gender, provided in the Treaty on European Union, i.e. the existing Treaty on the Functioning of the EU. The CJEU ruled in favor of Defrenne, finding that the Treaty on European Union has a direct horizontal effect and is therefore applicable not only between individuals and the government but also between private parties. In the verdict, the Court refers to the Treaty on the Functioning of the European Union, which stipulates that each Member State guarantees that the principle of equal salary for men and women workers for equal work or work of equal value applies.³

¹ *More work for less money: how to reduce the gender salary gap in Republic of North Macedonia?* Coalition Margins, 2020, p. 22-3

² CJEU 8 April 1976, C-43/75, (*Defrenne II*), ECLI:EU:C:1976:56.

³ *More work for less money: how to reduce the gender payment gap in the Republic of North Macedonia?*, Coalition Margins, 2020, p. 37-38

NATIONAL LEGISLATION

The national legal framework regarding the position of the female and the male worker in the RNM is divided into several legal acts, the highest of which is the Constitution, as well as some “lex generalis” and “lex specialis” laws. The state to which legal reality the Constitution of the Republic of North Macedonia in Article 9 refers to, guided centrally by the principle of equality, implies that: “The citizens of the Republic of North Macedonia are equal in the freedoms and rights regardless of gender, race, skin color, national and social origin, political and religious beliefs, property, and social status. Everyone has the right to work, the right of free choice of employment, work protection, and material security during temporary unemployment. Everyone has access to every job under equal conditions.”

LAW ON LABOR RELATIONS

The legal protection of workers' rights is regulated in more detail by the Law on Labor Relations⁴ which precisely regulates the relations between workers and employers, namely, where an unequal position in those relations is prohibited or of particular importance for this report, an unequal position based on gender and sex is strictly forbidden. With a special focus on ensuring gender equality in labor relations, it is stipulated that women and men must be provided with equal opportunities and equal treatment in relation to access to employment, promotion and, vocational and professional development at work; working conditions; equal payment for equal work; occupational social security schemes; absence from work; working hours and termination of employment contract. The legal text indicates sensitization regarding the position of women in the workplace, which is often exploited in the establishment

⁴ Law on Labor Relations (“Official Gazette of the Republic of Macedonia” No. 62/05, 106/08, 161/08, 114/09, 130/09, 50/10, 52/10, 124/10, 47/11, 11/12, 39/12, 13/13, 25/13, 170/13, 187/13, 113/14, 20/15, 33/15, 72/15, 129/15, 27/16, 120 / 18 and “Official Gazette of the Republic of North Macedonia” No. 110/19).

of unequal treatment, as shown in the monitoring and processing of cases from the reporting period. It is shown in the articles on Protection against discrimination of a female worker on the grounds of pregnancy, childbirth, and parenthood (Article 9); Rights and obligations of the employer (Article 25); Obligation to provide safe working conditions (Article 42); Prohibition of dismissal due to pregnancy, childbirth, and parenthood (Article 101); Prohibition to work longer than full time (Article 120); Protection of workers due to pregnancy and parenthood (Article 161-2); Special protection during pregnancy (Articles 163-4); Absence from work due to pregnancy, childbirth, and parenthood (Articles 165-6); Salary compensation (Article 170); Unpaid parental leave (170-a); Right of the breastfeeding mother (Article 171).

The attitude towards the position of the working woman and her family and personal status, which the Law on Labor Relations shifts in the legal effort to equalize the possibility for women in employment, shows that the violation of these and other legal provisions, in many cases, coincides by committing direct or indirect gender-based discrimination. The latter, very often, disables protection against discrimination. Given the case law and the use of the courts as a mechanism for protection of workers' rights, women workers victims of discriminatory treatment should receive the aforementioned protection in civil proceedings for proving discrimination and not in litigation from labor disputes. Even in cases of proving discrimination based on personal status, gender, and sex, workers cannot be returned to work, but receive a verdict establishing the violation and monetary compensation.⁵

⁵ See more in: *More work for less money: how to reduce the gender payment gap in the Republic of North Macedonia?*, Coalition Margins, 2020

LAW ON PREVENTION AND PROTECTION AGAINST DISCRIMINATION AND LAW ON EQUAL OPPORTUNITIES FOR WOMEN AND MEN

In the exercise of human rights and freedoms, including the civil and socio-economic rights of women workers, the Law on Prevention and Protection Against Discrimination guarantees the principle of equality and the prevention and protection against discrimination, including discrimination on the grounds of sex and gender in private and public sector labor relations. In this regard, the Law on Equal Opportunities for Women and Men advocates for the equal position of women workers and establishes a scheme of equal opportunities in all spheres of social life, and prohibits discrimination based on sex in the public and private sectors in many areas, including and labor (work and employment). Given the vulnerability of women, and the tradition of bodily injury in the exposure of the female body in both the public and private spheres and as was evident in some cases during the reporting period, in the series of legal rules that prescribe protection are those included in the Law on Protection from Harassment at Work and in particular Article 5 on Mental and Sexual Harassment at Work and Article 7 Place and Time of Harassment at Work.

PROTECTIVE MECHANISMS

In addition to the legislative protection of workers' rights, the national legal system also contains safeguards that should guarantee the implementation of legal regulations. Effective protection of workers' rights, namely, can be implemented through several such mechanisms, such as the State Labor Inspectorate, the Commission for Prevention and Protection Against Discrimination, the Ombudsman and the courts. The mentioned state bodies and institutions should guarantee the observance of the positive rules for protection of the labor rights in the labor

⁶ Law on Prevention and Protection Against Discrimination ("Official Gazette of the Republic of North Macedonia" No. 101/2019 of 22.05.2019).

relations. It is a defeating fact that despite the provision of these protection mechanisms, a large percentage of workers do not trust the institutions, so the satisfaction with the work of some institutions ranges from 0.1% to 1%, while the dissatisfaction with the work of institutions ranges from 58% to 86%. The syndicates enjoy the greatest distrust, followed by employers' associations, then the city labor inspectorates, then the State Labor Inspectorate and so on. Workers are least dissatisfied with the work of NGOs.⁷

In any case, as it turned out during the reporting period, one of the protection mechanisms that is most often approached is the extraordinary inspection that can be carried out by the State Labor Inspectorate. The Law on Inspection stipulates that anyone can submit an initiative for initiating a procedure for inspection when a citizen's right is violated, or he/she is prevented from exercising a right from or in relation to employment. The legal framework of this protection mechanism contradicts its task given the long deadlines for action, administrative measures and actions, and the categorization of violations.

Regarding the field of labor and social policy, another protection mechanism important for gender equality in labor relations can be mentioned and that is the possibility to file a complaint to the Ministry of Labor and Social Policy based on the Law on Equal Opportunities for Women and Men when the person has been violated the right to equal treatment on the grounds of gender.

Violation of the principle of equality and, at the same time, gender-based discrimination, find it difficult to fit into the positive framework for protection and through the procedures of protection mechanisms. Thus, for example, despite the fact that Article 6 of the Law on Labor Relations stipulates that the employer must not place workers in an unequal position on the basis of race and color, ethnic origin, gender, age, health status, religious, political or other beliefs, syndicate membership, national or social origin, family status, property status, gender orientation, and other personal circumstances; however, despite the established grounds

⁷ See more in: *Analysis of the level of satisfaction with the mechanisms for protection of workers' rights in the Republic of North Macedonia*, Helsinki Committee for Human Rights, 2019

on which discrimination is prohibited, there are no misdemeanor provisions for that in the positive normalization of labor relations with this law. Hence, in cases of violation of labor rights with elements of direct or indirect discrimination, the labor inspectorate acts only as in cases of violation of employment rights. For many cases during the reporting period, where women workers, in addition to the violation of labor rights, were discriminated against on the basis of sex and gender, this was not noted by the institutions responsible for protection. The responsibility of the employer, in these cases, remains unsanctioned or is reduced to the elimination of irregularities through a misdemeanor payment order for violation of a labor right. The misdemeanor provisions, in that sense, provided by the Law on Prevention and Protection Against Discrimination, are more appropriate for initiating misdemeanor proceedings.

As an additional protection mechanism, the Commission for Prevention and Protection Against Discrimination can act in cases of discrimination in the field of work and labor relations. The weakness of this mechanism is that the Commission has only the authority to give opinions and recommendations.

The Commission may initiate proceedings before a competent authority, or authorize a person deemed to have been discriminated against to file a lawsuit before a competent court, but sometimes this may be within the prescribed time frame. The current situation with the Commission and during the reporting period, indicates that citizens are deprived of the use of this protection mechanism, given that the Law on Prevention and Protection Against Discrimination was adopted recently, and the new composition of the Commission has not yet started working.

Another protection mechanism in the cases of violation of workers' rights and committing direct or indirect discrimination and given its task to protect and promote the rights of citizens and persons when they are violated by acts, actions, and omissions of actions by the authorities of the state administration, the local self-government and other organizations that have public authorizations, is also the Ombudsman. The Ombudsman has a similar function as the Commission for Prevention and Protection Against Discrimination, given its role to prevent and any kind of discrimination, including intersectional and gender-based discrimination.

The violation of the rights in the field of labor and labor relations can be

protected by filing a lawsuit for initiating a labor dispute before the courts, ie a lawsuit for establishing discrimination in the field of labor disputes if the right to equality is violated on any discriminatory grounds including sex and gender. Namely, this possibility refers to the judicial protection as a mechanism of protection in cases of violation of labor rights, when direct or indirect gender-based discrimination is committed at the same time. Apart from the nature of the lawsuit, another important element for the courts as safeguards mechanisms is the shorter procedural deadline for resolving labor disputes. Thus, in labor disputes, the court will always pay sufficient attention to the need for an urgent decision. In any case, the trust in the courts by the workers is not big. Namely, from the work of the primary courts on the entire territory of RNM, 49.9% of the respondents in a survey stated that they are not satisfied at all and 17.2% answered that they are partially dissatisfied with the work of the primary courts, while partially satisfied expressed 3.3%, and only 1% of the workers expressed complete satisfaction with the work of the mentioned courts.⁸

During the reporting period and for the purposes of this report, requests for public information regarding the number of initiated procedures for gender discrimination in employment in 2020 were sent to the primary courts on the territory of RNM, in which the plaintiffs are women; number of verdicts establishing discrimination based on gender and sex and employment in 2020, in which the plaintiffs are women; number of verdicts in which gender and sex discrimination hasn't been ruled in 2020, in which the plaintiffs are women. Out of a total of 22 responses by the primary courts, 19 negative responses were received. The Primary Court in Bitola answered that during 2020 one case was registered – based on prohibition of discrimination in which the plaintiff is a woman. The court decision in this case by which the lawsuit is considered withdrawn is not yet final because the plaintiff has filed an appeal with the second instance court. The Primary Court in Skopje answered that 12 lawsuits were filed on the grounds of discrimination, after which 12 cases were filed, out of which in 3 cases women appeared as plaintiffs for discrimination based on sex and gender and no decisions were made upon them.

From this brief overview of the answers of the primary courts on the territory of RNM, one can notice the complete absence of tradition of

⁸ See more in: *Analysis of the level of satisfaction with the mechanisms for protection of labor rights in the Republic of North Macedonia*, Helsinki Committee for Human Rights, 2019

workers protection, in terms of protection of their rights in the field of work and labor relations and at the same time their protection from discrimination of any of their protected features. In addition, the inaccuracy in the answers of the courts indicates that the case law and the courts as protective mechanisms do not perform their innate task, thus leaving room for high distrust. Only in comparison, in terms of trends in the region, it is worth noting that a court in Athens recently ruled an indirect discrimination based on gender in the private sector of labor relations.⁹

⁹ This verdict is due to the decision of a private bank that decided to close the hygiene department in order for these activities to be assigned to external companies. The women workers in this department were fired without the possibility of being reassigned to other positions. The reason for this was that the bank mainly employed male workers who performed manual labor, so women hygienists could not be reassigned to some of those positions, while men were allowed the right to be reassigned to other positions.

See more in: First Instance Civil Court in Athens – Verdict No. 2323 / 12.12.2018.

CASE MONITORING AND PROCESSING

During the reporting period from January 2020 to February 2021, a total of 26 requests for free legal aid in cases of gender-based discrimination in the workplace by workers were sent to the Helsinki Committee for Human Rights. Including the grounds of discrimination in the workplace such as gender, sex, personal and family status in the context of empowerment of the national economy against the current COVID-19 pandemic, a number of violations of socio-economic and civil rights of workers in North Macedonia are to be noted.

The rights protected and guaranteed by the Constitution of RNM and special laws such as the Law on Labor Relations, the Law on Inspection, the Law on Protection from Harassment at Work, and the Law on Prevention and Protection Against Discrimination, as the cases show, are often violated by the employers.

Given that in most cases of the reporting period, the violations relate to the personal and family status of the workers, it is important to note once again that the Macedonian labor legislation protects pregnant women and mothers of children with explicit legal obligations to the employers. Such protection is guaranteed by Articles 9-b, 25, 100, 108, 120, 161, 162, 163, 164, 165, 166, 171 of the Law on Labor Relations where women workers are explicitly protected from all forms of discrimination, the use of personal data related to the state of pregnancy and motherhood in employment is prohibited, occupational safety is taken into account, dismissal due to pregnancy, childbirth and parenthood is prohibited, the payment of equal salary for equal work is prohibited, overtime and night work, the right to special protection in employment, the right to paid leave, the right to compensation of wages during leave due to pregnancy, birth, parenthood. The context in which violations of the guaranteed rights of workers are committed, in addition to the violation of legal provisions by employers also points to an implicit violation of the principle of equality and equal access to health care in a way that increases through the workplace and working conditions the risk of transmitting COVID-19. The physical integrity of employees is subordinated to profit logic and contrary to current interim measures to prevent or reduce health risk. These and other cases of violation of women's labor rights and gen-

der discrimination in the workplace can be dealt with using a number of formal mechanisms and initiating proceedings before the State Labor Inspectorate, the Ombudsman and the courts.

During the reporting period, and in relation to some of the aforementioned cases, requests were sent to the State Labor Inspectorate for extraordinary inspections, in order to determine the violations of workers' rights and general irregularities in the work by employers and with considering the legal possibility for this request prescribed in the Law on Inspection and especially its Articles 71, 72 and 83. Additionally, given the competencies prescribed by the Law on the Ombudsman (such as Article 24), a complaint was sent to the Ombudsman in relation to a case of gender discrimination at the workplace where there is an unequal position of men and women in terms of job placement and higher salary. During the reporting period, a court procedure was initiated before the Primary Civil Court in Skopje in case of violation of several legal grounds prescribed by the Law on Labor Relations, the Law on Equal Opportunities for Men and Women, the Law on Prevention and Protection Against Discrimination, which refer to the equal position of the working woman, her family and personal status.

Furthermore, in order to break down the trend of violations of civil and socio-economic rights of women workers on the one hand and on the other (in) action of the institutions in these cases, given the difficult circumstances of the reporting period due to the COVID-19 pandemic and interim protection measures this report will summarize the cases for which requests for free legal aid were submitted to the Helsinki Committee.

Namely, in the first half of the reporting period (January-June, 2020), 18 cases of gender-based discrimination against workers were registered and from these cases the violations of the personal and family status of workers, gender discrimination as well as gender and sexual harassment in the workplace as a form of discrimination can be most often noticed. The cases for which legal advice was granted referred to: extension of the contract for temporary employment of pregnant workers, the manner and conditions of exercising the right to maternity leave, working overtime and night work of workers who have a child up to three years old, using unpaid parental leave, sexual harassment when employed or at work, ban on pregnant workers working overtime and

night jobs, violation of government measures concerning the dismissal of pregnant workers and mothers of children up to 10 years of age due to the COVID-19 pandemic.

A total of 6 procedures for conducting extraordinary inspections were initiated before the State Labor Inspectorate. One referred to the dismissal of a pregnant worker, two to sexual harassment at employment, and the other to the illegal reduction and non-payment of wages to workers who are mothers of children up to the age of 10 and are exempt from work obligations. In these proceedings, the State Labor Inspectorate found violations in cases of unlawful reduction and non-payment of wages to working mothers of children up to the age of 10 who are exempt from work obligations, in accordance with government measures to combat COVID-19. In cases of sexual harassment during employment, despite the extraordinary inspection, the situation could not be determined due to a change in the address of the employer.

Regarding the special vulnerability and exposure of pregnant workers in the field of labor relations, during this reporting period, illegal termination of employment was noticed while the worker was on sick leave. It is about a female worker, whose employment contract was terminated immediately after she informed her employer that she was pregnant. The employer handed over the dismissal to the worker while she was on sick leave, with the explanation that she was unjustifiably absent from work in the previous period, which is a violation of the provisions of the Law on Labor Relations. It is symptomatic that the employer cites the alleged absence of the employee as a reason for dismissal, for which she has never received any warnings before. After conducting an extraordinary inspection, after the case was reported to the State Labor Inspectorate, a violation of the Law on Labor Relations was found, and a decision was made revoking the decision to terminate the employment of the employee and ordering the employer to put the worker back to work. The employer acted upon the order of the State Labor Inspectorate and returned the worker to her job.¹⁰

¹⁰ See more in Announcement of the Helsinki Committee for Human Rights: Pregnant women workers are specially protected by law, from 28 February, available at: <https://mhc.org.mk/news/bremenite-rabotnichki-se-posebno-zash-titeni-so-zakon/>

In this part of the reporting period, a court procedure was initiated before the Primary Civil Court in Skopje, in the case of a female worker who during pregnancy received a notification for non-extension of employment, against which the plaintiff filed a complaint for termination of employment where it is stated that due to pregnancy, childbirth and motherhood she is discriminated by the employer. The court procedure is ongoing and from the two hearings held so far, it can be concluded that there is the defendant's resistance to accept the situation in which the plaintiff is discriminated on the basis of gender, sex and personal status, ie he insists that it is an employment dispute. The fact that this is not just an employment dispute stems from the fact that the plaintiff during the employment, which was extended with several annexes to the Employment Contract was promoted from one to a higher employment position and during her work she has not been reprimanded or sanctioned for failing to perform her duties. On the other hand, after announcing to the employer that she was pregnant, she encountered a change in the working atmosphere, as well as an announcement that the employment would not be extended. Meanwhile, the defendant is actively looking for new people for work, by publishing advertisements for the job position of the plaintiff, which indicates the fact that the need to perform exactly those job tasks has not stopped.

In the second reporting period (July 2020-February 2021), 8 cases of gender-based discrimination against workers were registered and from these cases the violations of the personal and family status of workers can be most often noticed, as well as violation of the principle of equal position between men and women in the workplace. The cases for which legal advice was granted referred to: extension of the right to maternity leave of those workers whose fixed-term employment contracts for regular maternity leave have expired, unequal access to promotion and re-training in the workplace compared to male colleagues, night and overtime work of working mothers of children up to 1 year of age and mothers of children from 1 year to 3 years of age, non-extension of a fixed-term employment contract of a pregnant worker.

The procedure was initiated before the State Labor Inspectorate due to unfounded dismissal of a textile worker who had previously turned reduction of her salary by 50% while she was released from work as a mother of a child up to 10 years old and ended with a negative outcome,

so the inspectorate found the employment of the employee was terminated on the grounds of expiration of the term for which her employment contract was concluded.

Due to the pandemic caused by the Coronavirus, on April 2, 2020, the Government of the Republic of North Macedonia adopted a Decree with legal force on the application of the Law on Labor Relations during the state of emergency, which extends maternity leave until the expiration of temporary measures to prevent spread and prevention of the virus COVID-19 and the leave allowance continues to be paid. The Law on Labor Relations in Article 170 paragraph 2 stipulates that an employee whose employment contract has been terminated due to the expiration of the contract and uses wage compensation during leave due to pregnancy, childbirth, and parenthood, continues to use the right until the expiration of the absence of a burden on the body responsible for implementing the compulsory health insurance. Hence, without exception, all workers whose employment contract was terminated while using maternity leave had the right to extend maternity leave and payment of compensation until the expiration of the temporary measures. The women workers whose employment contracts were terminated for the duration of the maternity leave and before the adoption of the Government Decree, their right to maternity leave was not extended. Therefore, the Helsinki Committee for Human Rights submitted a request to the Ministry of Labor and Social Policy for correction of this way of interpreting this Decree, but the procedure ended with a negative outcome. Namely, the Ministry explained in its opinion that the workers who were on regular maternity leave at the time of the adoption of the Decree, and whose employment contracts expired, were not obliged to return to their jobs. They had the opportunity to stay at home and take care of their own health and the health and safety of the child at a time when kindergartens were closed as a measure to prevent the spread of the virus COVID-19 while the workers who were still employed did not have that opportunity.¹¹

¹¹ See more in the Statement of the Helsinki Committee for Human Rights: *Discriminatory interpretation of the Decree on Maternity Leave, from September 1, available at: [https://mhc.org.mk/news/diskriminatorsko-tolkuvanje-na-uredba-za-porodilno-otsustvo /](https://mhc.org.mk/news/diskriminatorsko-tolkuvanje-na-uredba-za-porodilno-otsustvo/)*

A complaint was also filed to the Ombudsman against the Ministry of Internal Affairs¹², in a case of violation of the principle of equality between men and women in the workplace and direct gender and sex discrimination of an employee of the Ministry of Internal Affairs, as well as violation of a rule from the Law on Legal Relations in Article 6 paragraph 2 line 1 which explicitly and decisively prohibits discrimination and provides that: "Women and men must be provided with equal opportunities and equal treatment in relation to access to employment, including promotion and vocational training and professional on-the-job training." After the submission of the complaint and after the conduct of a procedure by the Ombudsman, it was determined that the employee in the Ministry was discriminated against on the basis of her gender and sex. The Ombudsman perceives discrimination in violation of the legal provisions of the Law on Labor Relations and the Law on Prevention and Protection Against Discrimination, locating that the systemic solution according to which women police officers who cannot be promoted during maternity leave and motherhood because they did not attend training and mandatory training for police officers is put at a disadvantage. This action of the Ministry of Internal Affairs creates practices contrary to the legal solutions for combating inequality, as well as the highest legal act, the Constitution, which in Article 54, paragraph 3 stipulates that: "Restriction of freedoms and rights cannot be discriminatory on the basis of sex, race, skin color, language, religion, national or social origin, property or social status."

¹² See Announcement of the Helsinki Committee for Human Rights: *Discrimination based on Sex and Gender in the Ministry of Internal Affairs*, from September 30, available at: <https://mhc.org.mk/news/polova-diskriminacija-vo-ministerstvoto-za -vnatreshni-raboti />

RECOMMENDATIONS

Bearing in mind the cases of violation of labor rights and the perpetration of direct or indirect gender-based discrimination, as well as their processing in the context of the examination of national legislation and institutional practice and in relation to European standards for protection in the field of labor and labor relations, the following recommendations could be made:

- Respect for the principle of equality and non-discrimination in labor relations and the field of work and labor;
- Protection mechanisms should be contained in available institutions, clear and simple procedures, and available tools;
- It is necessary to specify and harmonize the legal provisions of the Law on Labor Relations with the Law on Prevention and Protection Against Discrimination in relation to gender discrimination in the workplace;
- Regarding the State Labor Inspectorate, as one of the protection mechanisms that is approached in most cases during the reporting period, it is necessary to bring the reporting system closer to the needs of workers, and at the same time for inspectors to use the legally prescribed possibilities in practice, as well as to reduce the deadline for action;
- The duration of labor disputes should follow the principle of urgency of the procedure;
- In relation to court proceedings where violations of workers' rights as well as gender-based discrimination are present, the legal provisions should not be interpreted differently, and thus the intention of the legislator should be circumvented or distorted;
- Ensure dissemination of information on legal tools and protection mechanisms in the field of work and labor relations, both in the public and private sectors;
- Raising awareness and introducing workers to their labor rights;
- There should be a political commitment to improve the system of protection of workers' rights in order to increase the trust in institutions;
- Development of guides and manuals by relevant institutions on legal tools and safeguards, which can be used by workers in order to be well informed, sensitized and ready to seek protection.

