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MONITORING OF THE IMPLEMENTATION OF THE LAW ON EQUAL OPPORTUNITIES OF WOMEN AND MEN WITHIN THE LOCAL SELF-GOVERNMENT OF THE REPUBLIC OF MACEDONIA

- SUMMARY REPORT -

1. INTRODUCTION

The monitoring of the implementation of the Law on Equal Opportunities of Women and Men within the local self-government of the Republic of Macedonia constitutes the first more serious attempt to analyse the implementation of the Law on Equal Opportunities of Women and Men by the local authorities.

The research was conducted in 2008 with the view to provide relevant information on the extent and manner of implementation of the Law by the responsible actors in the local self-government units and develop guidance for its further more effective implementation.

One of the key motives of Akcija Združenska for conducting this research lies in the fact that the adoption of the Law in 2006 was not followed up by a comprehensive monitoring framework with clear indicators of its implementation that would not come down to a simple marking of the number of established committees and appointed coordinators for equal opportunities. The activities undertaken by the Ministry of Labour and Social Policy through the Department for Equal Opportunities for the purpose of introducing the necessary preconditions for its principal implementation, particularly on the local level, were insufficient and inappropriate.

The research results confirm once again the absence of a clearly defined gender equality policy that will reflect the specific Macedonian requirements and priorities and establish the institutional assumptions for realizing the international and European commitments on gender equality.

The recommendations constitute general priority guidance for a more effective implementation of the Law on the local level, as well as for further promotion of the policies and actions not only on the part of the institutions on the central and local level, which have the mandate to promote gender equality, but also by various international subjects active in this area in the Republic of Macedonia.

2. WHAT DOES THE LAW SAY?

The Law on Equal Opportunities of Women and Men constitutes an important ring in the chain of legal acts that regulate the area of gender equality from several aspects: this Law expands the scope of the legislation on gender issues and enhances the process of harmonizing and meeting the requirements compliant with the EU standards.

The Republic of Macedonia did not have a separate law on the equal opportunities of

women and men until May 2006, although many other laws stipulate norms of various types regarding the prevention of certain types of gender discrimination.

Considering the importance of this Law, the need for monitoring its implementation has imposed itself as a necessary segment for activating the Law in practice.

The Law underlines the need for promoting the principle of introducing equal opportunities of women and men – in the political, economic, social and educational spheres, as well as in the other areas of social life.

Furthermore, the Law underlines that it is the obligation of the entire society to establish equal opportunities, as well as to eliminate the impediments to establishing this principle of equal opportunities of women and men through prevention and elimination of the unequal treatment of women and men and through provision of preconditions for introduction of equal participation of women and men in all spheres of social life.

The subjects responsible for adoption and implementation of the measures for introducing equal opportunities and the obligations whereof also include the local self-government units. Although the local self-government units have a certain role and activities in promoting gender equality, the Law on Equal Opportunities transforms them into subjects with certain jurisdictions.

In accordance with the Law on Equal Opportunities of Women and Men, the local self-government units have the legal obligation to set forward the issue of gender equality as a legitimate area under their responsibility and to formulate and enforce the basic and special measures for introducing equal opportunities of women and men.

In line with Article 16 of the Law, “The units of the local self-government in the scope of their responsibilities are obligated to identify and promote the equal opportunities. They are to comply with the principle of equal opportunities in the adoption of the measures and activities required for introducing equal opportunities”.

The local self-government units are obligated to establish a Commission of Equal Opportunities, as a permanent body, by decision of the Council within the local self-government unit and its composition, responsibilities, tasks and obligations are stipulated by the Statute of the respective local self-government unit. Hence, the existing commissions that deal with gender equality issues and function under different names will be transformed into a Commission on Equal Opportunities.

The municipalities should also appoint a competent and expert person to act upon meeting the obligations as a coordinator for equal opportunities of women and men. The task of the coordinator is to propose measures and activities for introduction of equal opportunities, to have a consultative role in proposing solutions for implementation of the Law and to take part in the development of the national Action Plan for equal opportunities of women and men in the segment related to the local self-government units.

In the enforcement of its responsibilities, the Commission and the Coordinator of equal opportunities should cooperate with the Ministry of Labour and Social Policy. At the same time, in adopting the development plans and other acts and decisions, the bodies and organs of the local self-government are obligated to review and take into consideration the measures and activities proposed by the Commission and the Coordinator for equal opportunities. The bodies of the local self-government units are obligated to cooperate with the associations of employers, the union, the non-governmental organizations and associations of citizens active in the field of equal opportunities with the purpose of providing proposals and measures for attaining the objective of the Law.

The Commission of Equal Opportunities has the obligation to submit a report on its work to the Ministry of Labour and Social Policy at least once a year.

One of the major preconditions for achieving the goals of the Law is the collection, registration and processing of statistical data. Article 20 of the Law stipulates the bodies of the local self-government units, in addition to other entities, as subjects “responsible to present the data on human resources based on their gender”.

3. SUBJECT AND RESEARCH POSITIONS

The adoption of laws does not necessarily imply their implementation by the actors addressed by the Law. Therefore, the objective of this research is to assess the law implementation processes without interfering in the contents of the Law and its analysis.

The focus of our research is placed on the implementation of the Law on the level of the local self-government given the fact that the local self-government and its bodies and organs are also actors in the implementation of the Law.

The objective of this research is not to highlight the discrepancy between the municipal capacities and the requirements of the Law, a discrepancy that is *a priori* evident, but rather establish whether, even in case of such a discrepancy, the actors responsible for implementing the Law meet the obligations arising from the Law and whether there are realistic material conditions in place for fulfilling those obligations.

In such a context, this research tackled explicitly or implicitly, to a higher or lesser extent, several aspects:

1. The capacities of the municipalities for implementation of the Law (knowledge, skills, political will, commitment, etc.);
2. The operational procedures, that is, the mechanisms for enforcing the legal obligations (standardized practices of internal communication among the actors within the local self-

government);

3. The external support provided to the municipalities within the implementation of the Law (institutional and material support by the state administration, international and domestic institutions and non-governmental organizations).

Considering the above, this research started from the assumption that a law is implemented not by simply adopting it, or meeting certain institutional requirements – such as, for instance, establishing municipal commissions; on the contrary, a law is implemented when the responsible actors – functions or bodies start producing activities, situations or values that meet the legal requirements. This assumption implies that a major portion of what has seemingly been accomplished by the municipalities in the context of the law is in fact a mere re-identification of the activities and situations inspired or undertaken in the context of other legal solutions or policies that address the issue of gender equality, such as the National Action Plan for Gender Equality 2007-2012 (National Action Plan for Gender Equality 2007-2012, May 2007)¹, or the local action plans – where applicable.

The institutional reversal in the rhetoric of the dominating policy on gender equality is also an aspect of great importance in this research. The discourse confusion seems to have mixed up the scopes and areas of work in the context of gender equality. The renaming of the committees and the emphasizing of the equal opportunities as a central category created conditions for inappropriate understanding of and acting upon issues such as the woman's status and position or gender equality. In this research, the concept of equal opportunities is not correlated with the woman's status and position and gender equality and hence some of the findings, assessments and conclusions may seem too stern or unjustified. In fact, the analysis indicates that many of the activities undertaken by the municipalities, even though related by their nature with the gender equality problems, are actually neither derived from the Law nor are they its logical consequences.

The contexts of the subject of the research determine the position of the subject of the research, as well as the research positions and approaches. The Law, with a special overview on the segment of the local self-government as the source of the research, has its own context that determines its role in the context of the commitment for gender equality in the Republic of Macedonia.

The Law on Equal Opportunities of Women and Men and its implementation can be analyzed in line with several contexts:

1. As a segment in the development of the national legislation, as an event with a background, that is, a result or a part of a process.

¹ National Action Plan for gender equality 2007-2012, Skopje, May 2007, <http://www.mtsp.gov.mk/WBStorage/Files/NPARR-finalen%20dokument.pdf>

2. The Law may be analyzed in the context of its technical implementation, that is, the institutional preconditions (establishment of commissions or appointments) prescribed by the Law may be monitored in order to enable its operationalization.
3. Finally, the Law should be placed in the context of its effectiveness, that is, the successfulness and effectiveness of the institutional structure implied by the Law, as well as the efficiency of the policies and measures adopted and enforced in conformity with the provisions and the spirit of the Law.

Although the first and the second context do not have a priority research value for our research, in the sense of not being an explicit subject of our research, they nevertheless define its extent. In the analysis of the technical implementation of the Law, it is impossible to ignore the fact that even prior to the adoption of the Law there were certain legislation, institutional structure and practices pertaining to gender equality. Moreover, the research cannot ignore the evaluation segment, that is, the evaluation and value of the activities undertaken with the pretext of implementing the Law. The evaluation criteria cannot be founded solely on indicators taken from the content of the Law, as the rationale of the law itself is founded on the commitments for gender equality, and the principle of gender equality is only one aspect of that commitment. All these remarks imply the conclusion that the Law and its surrounding contexts have essential implications on the research. Moreover, they indicate something more: the inability to dwell on the Law only and its inert structures implies that neither the legal nor the political implementation of the Law can ignore the above contexts.

4. THE CONCEPT OF EQUAL OPPORTUNITIES OF WOMEN AND MEN

In order to analyze the existing contextual tensions between the Law, its historical context and the commitments of the Republic of Macedonia for gender equality, we must take into consideration the concept of equal opportunities as applied in the European Union. This is due to the fact that the equal opportunities policy that the Republic of Macedonia is applying within the process of Euro-integrations consequently creates an unjustifiable equation between the concept of equal opportunities of women and men and the concept of gender equality.

The concept of equal opportunities of women and men in the framework of the European Union, from a chronological perspective, has changed compliant with the status of the EU, starting from an economic community and coming to what it represents today. However, we can single out

several aspects that have remained constant. Embedded in the idea for egalitarianism, the equal opportunities concept for women and men is simply founded on the idea that all people are equal as individuals, regardless of their social identities, such as sex, race, class etc.; in our case, that all are equal regardless of their sex or gender identity.

Although in the language of the EU policies and legislation, gender equality and equal opportunities distinctly differ between themselves, as different political and social goals, yet what denotes the EU platform for gender equality is its underlying conceptualization as an approach of equal opportunities of women and men. However, even in the case of the equal opportunities being an approach to gender equality, several sub-categories can be discerned that match the chronological development of the EU.

The first category is the category of equal treatment that corresponds with the beginnings of the EU legislation. The underlying basis of this model is the liberal idea that people should be treated as individuals, not recognizing thus their group identity as a factor that is sure to influence their position and status in society, as well as in the allocation and redistribution of the access and the control of and benefit from the social goods. The equal treatment leaves aside the gender relations of power and domination reflected in the structures of the social system, since it is directed toward the treatment and the equation of the opportunities for an access by an individual to these structures.

The positive action or the positive discrimination is the next category that gives expression to the social dimension of equal opportunities. This model recognizes social identities as factors that contribute to the differences between the outcome and the benefits in terms of the social standing, status and engagement of the individual or a certain group. This model recognizes that the equal treatment ignores, and in that context, enhances the existing gender inequalities within the institutions of the system. The flaw of this model is the fact that the gender hierarchies, that is, the already established relations of power and control remain untouched, considering that the issue of quantity does not constitute an essential characteristic of the hierarchical gender structures, but rather has deeper roots in culture and the cultural – social strategies that are difficult to respond to.

The third category that conceptualizes the equal opportunities of women and men is the approach to Gender Mainstreaming that corresponds with the development of the last EU policies related to gender equality. The Gender Mainstreaming concept includes systematic integration of gender topics in all policies and institutions of the system, particularly in the governmental institutions. According to the European Union, Gender Mainstreaming constitutes a systematic integration of the priorities and needs of women and men in all policies, promoting thus gender equality, mobilizing the policies that contain measures for attaining equality and integrating the gender perspective in all levels of policy creation². Furthermore, Gender Mainstreaming means an

² **Manual for gender mainstreaming social inclusion and social protection policies**, EUROPEAN COMMISSION, Employment,

active monitoring of the implementation of the gender perspective and its effects by means of the monitoring and evaluation mechanisms. Gender Mainstreaming is an official EU doctrine and methodology for gender equality issues. To what extent the Republic of Macedonia is implementing this doctrine and what its investment constitute a question that we can only partly answer given the current perspective. Gender Mainstreaming should also be part of the functioning of the local self-government, present in the policy creation, especially given the fact that it is a responsible subject, according to the Law on equal opportunities, in the implementation of the legal objectives.

5. PROBLEMS RELATED TO THE POLICIES ON EQUAL OPPORTUNITIES

The adoption of the European laws and regulations and the decisions of the European Court of Justice is only one of the preconditions for EU membership of the Republic of Macedonia. The EU membership candidate countries are required not only to adopt the legal framework, but also to ensure its proper functioning and capacities and political will for implementing the laws. The proper implementation of the regulations require a substantial effort for raising the awareness of its real application having in mind the practice hitherto in the sphere of gender equality.

In regards to the formulation of the legal regulation, it is no secret that in most candidate countries the laws regulating gender equality and the EU legislation implemented in those countries look alike despite certain differences. An instance of that are the latest analyses on the new EU member countries, such as Bulgaria, Lithuania, Poland, etc. The rhetoric or the discourse of equal opportunities is present in all new laws on gender equality: equal treatment, non-discrimination, equal access, etc. It is not seldom that the syntagma gender equality is replaced by the syntagma equal opportunities as if they are conceptually equivalent. This is certainly normal in the EU integration processes, but does it mean that the other approaches to gender equality, such as the ones used by the UN, should be simply discarded?

The adoption of the EU legislation is an ambiguous process. The focusing on the EU directives that predominantly address issues related to the labour market and the social welfare causes political and legal neglecting of the other areas of importance to gender equality. Moreover, the action plans created in the spirit of equal opportunities formulate the goals and activities in terms that do not entirely reflect the UN conventions. The overall focus seems to be placed in function of fulfilling the EU rhetoric rather than being really committed to gender equality.

The practice of equal opportunities as an official doctrine in the approach to gender equality entails the need for more substantial financial allocations. Macedonia, as an EU membership country, although being in transition with low economic growth, should allocate sufficient funds for

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DG,http://ec.europa.eu/employment_social/spsi/docs/social_inclusion/2008/manual_mainstreaming_gender_guidance_en.pdf

full implementation of the EU standards of equal opportunities. Unfortunately, the strategic planning documents of the pre-accession funds of the European Commission reflect insufficiently the gender equality commitments of the EU and Macedonia.

6. SUMMARY FINDINGS OF THE MONITORING ON THE IMPLEMENTATION OF THE LAW BY THE LOCAL AUTHORITIES

1. The general conclusion is that the law is not taken into consideration with due respect. The majority of mayors and council chairmen (60%) stated that the Law has been implemented only partially. The insufficient promotion of the law has been identified as the reason for the low implementation level.
2. A high percentage of mayors (80%) and council chairmen (58%) consider themselves to be fully informed about the content of the Law. Nevertheless, the impression remains that the key actors have insufficient level of awareness and understanding of the nature, goal and responsibilities ensuing from the Law. Some of them have clearly articulated the need for additional programs and by-laws that would clarify their role, responsibilities and tasks so as to be able to ensure proper implementation of the Law.
3. The most frequently mentioned criterion that the mayors and council chairmen use to evaluate the success/failure of the implementation of the Law is the percentage of women representation in the administration and the municipal bodies and organs.
4. Only half of the mayors and council chairmen have undertaken measures and activities for achieving the Law objective and its underlying idea. In any case, they view their role in a very formal way only in regards with the establishment of the Committees on Equal Opportunities (COE) and the appointment of coordinators, without taking a pro-active role or showing initiatives that would correspond to their role and mandate in the local self-government.
5. One of the obstacles that hinder the implementation of the Law is the low level of cooperation among the mayors, the municipal councils and the local gender machinery (CEO and the coordinators). The analysis indicates a tendency of mutual blaming for the insufficient application of the Law.
6. The largest share of the undertaken activities has been initiated by the civil society,

and some of them are entirely outside the sphere of gender equality. The source of the financial structure of these measures and activities is the civil society or donors. Two things pose concern: the insufficient readiness of the local self-governments to allocate budget funds for gender equality and filling the gap created by their own inactivity and the insufficient responsibility.

7. The gender structure (the representation of women and men) in the Committees of Equal Opportunities indicates a “feminization” of these bodies as the largest portion of their members consists of women. The current perception of the Law on Equal Opportunities of women and men as less important and the marginalized position of the women in the decision-making structures create a basis for double marginalization of the CEO.
8. In terms of the functioning of the CEO, the collected data indicate that they do not actually perform their function. A third of them have never held a meeting, about 70% have not developed annual working programs, and only a half have undertaken some measures and activities. The role of the CEO to evaluate various development plans and decisions and other acts of the local self-government regarding the gender perspective is closely correlated with their key mandate: developing and submitting recommendations to the relevant actors within the local self-government. Only a third of the CEO have undertaken this activity. More than half of the municipalities have not implemented the CEO recommendations. A concerning fact is the extremely low percentage of CEO that have made and submitted annual reports on their work.
9. The situation with the coordinators is of a great concern (where they have been appointed at all). All coordinators have been appointed from the administration that was already in place and thus this obligation brings additional workload for them. There is a prominently high number of coordinators for equal opportunities who have not been given clear instructions for their specific work obligations and tasks, which is one of the key assumptions for their activity and accountability. According to the Ministry of Labour and Social Policy, all coordinators meet the required expertise and competency criteria. However, the information for their education and trainings is scarce and insufficient to conclude that their concrete knowledge of genders and women rights is enough to enable them to perform their role of sustainable source of expertise.

10. The expertise and the level of information of the responsible persons, the members of the committees and the other counselors and the administration on the issues related to equal opportunities are low and there is a necessity for education and training.

11. The communication and the coordination between the Department for Equal Opportunities in the Ministry of Labour and Social Policy and the local self-government units are on a fairly low level.

7. RECOMMENDATIONS

1. Raising the awareness and the understanding of the various structures of the self-government units regarding the importance of gender equality as an issue of human rights, democratization of the decentralization processes and good governance.
2. Increasing the knowledge of various structures of the self-government units on the key relevant international documents and the legislation in the Republic of Macedonia that regulates gender equality.
3. Detailed familiarization with the Law on Equal Opportunities of Women and Men, accompanied by clarification of the specific obligations of different structures in the self-government units.
4. Developing and formalizing a framework for operational implementation of the Law by different actors in the self-government units that will also include standardized practices of internal communication and cooperation.
5. Increasing the initiative of the responsible bodies and organs of the local self-government in creating, implementing and monitoring the effects of the measures and activities related to gender equality which are their responsibility.
6. Establishing practices of continuous development and promotion of the gender equality mechanisms within the local self-government units that will include enhancing of the capacities of the machinery related to gender equality, as well as creating and implementing specific local programs that are authentic and compliant with the local priorities.

7. Intensifying the cooperation between the self-government units and the local civil sector on issues related to gender equality that would primarily include development of standard practices of information and consultations and cooperating based on the principles of equal partnership.
8. Increasing the support of the central government for the local self-government units in the implementation of their obligations ensuing from the Law.
9. Establishing a framework for more efficient communication and coordination between the Department for Equal Opportunities within the Ministry for Labor and Social Policy and the local self-government units.
10. Taking initiatives in the area of gender equality as an issue of inter-municipal and regional cooperation.