



PERMANENT MISSION OF THE REPUBLIC OF NORTH MACEDONIA
TO THE UN, WTO AND OTHER INTERNATIONAL ORGANIZATIONS IN GENEVA

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The Permanent Mission of the Republic of North Macedonia to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honor to enclose the replies for the report of the Special Rapporteur on the sale and sexual exploitation of children pursuant to Resolutions 34/16 and 7/13 of the Human Rights Council.

The Permanent Mission of the Republic of North Macedonia to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest considerations.

19 September, 2019



OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS
GENEVA

SUBJECT: Delivery of replies for the preparation of a thematic report on the implementation of the Resolution on Rights of the child: protection of the rights of the child in the implementation of the 2030 Agenda for Sustainable Development and Resolution 7/13 on Mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography 7/13;

-The Republic of North Macedonia continuously harmonises the national legislation with international conventions and standards for the purposes of preventing and fighting sexual exploitation and abuse of children. To that end, in October 2010, the Assembly of the Republic of Macedonia adopted the Law Ratifying the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. Before and after the ratification, amendments were adopted to the Criminal Code that further aligned it with the Convention. These amendments also aggravated the punishments for these crimes.

-The crimes of sexual abuse of children are governed by the Criminal Code in Chapter 19: Crimes against Sexual Freedom and Sexual Morality and the chapter concerning crimes against humanity and international law.

-The acts of sexual abuse under Article 18 of the Convention are contained in the crimes of **Article 188: Sexual assault on a child under 14 years of age and Article 189: Statutory rape by abuse of position.**

Furthermore, Article 188 criminalises the following activities:

(1) A person who has committed a statutory rape or another sexual act upon a minor under 14 years of age shall be sentenced to imprisonment of at least 12 years.

(2) If the crime stipulated in paragraph 1 has resulted in a grievous bodily harm, death or other severe consequences or has been committed by multiple persons or in a particularly cruel or degrading manner, the perpetrator shall be sentenced to imprisonment of at least 15 years.

(3) The court shall ban the perpetrator of the crime stipulated in paragraph (2) of this Article from performing a profession, activity or duty under the conditions of Article 38-b of this Code.

Article 189 criminalises the following activities:

(1) A person who has abused his/her position to induce a person who is subordinated to or dependent on him/her to a sexual intercourse or another sexual act or has mistreated, intimidated or treated the person in a manner that degrades human dignity or human personality with the same intention shall be sentenced to imprisonment of at least five years.

(2) If the crime stipulated in paragraph (1) of this Article has been committed by a blood relative in a direct line or a brother, sister, teacher, educator, adoptive parent, guardian, stepfather, stepmother, doctor or another person by abuse of his/her position or if, when committing domestic violence, he/she has committed a statutory rape or another sexual act on a child under 14 years of age who has been entrusted to him/her for teaching, education, upbringing or care shall be sentenced to imprisonment of at least ten years.“

(3) The court shall ban the perpetrator of the crime stipulated in paragraph (2) from performing a profession, activity or duty under the conditions of Article 38-b of this Code.

-Article 20 of the Convention, which concerns child pornography, has been incorporated in Article 193-a: Production and distribution of child pornography.

It criminalises the following activities:

(1) A person who has produced child pornography for the purpose of distributing it or has transferred, offered or made child pornography available in any other manner shall be sentenced to imprisonment of at least five years.

(2) A person who has procured child pornography for himself/herself or for another person or possesses child pornography shall be sentenced to five to eight years' imprisonment.

(3) If the crime stipulated in paragraphs (1) and (2) of this article has been committed via a computer system or another mass communication means, the perpetrator shall be sentenced to imprisonment of at least eight years.

(4) If the crimes stipulated in this Article have been committed by a legal entity, it shall be punished by a fine.

-Article 21 of the Convention, which criminalises acts concerning the participation of a child in pornographic performances, has been incorporated in Article 193: Displaying pornographic material to a child:

(1) A person who has sold, shown or made available by public display in any other manner images, audiovisual or other items with pornographic content to a child under 14 years of age or has shown him/her a pornographic performance and the person who has participated in the performance shall be sentenced to six months' to three years' imprisonment.

(2) If the crime has been committed through mass media, the perpetrator shall be sentenced to three to five years' imprisonment.

(3) The punishment stipulated in paragraph 2 shall be imposed on any person who has abused a child over 14 years of age for the purpose of producing audiovisual images or other items with pornographic content or for a pornographic performance.

(4) If the crime stipulated in paragraph (3) of this Article has been committed against a child under 14 years of age, the perpetrator shall be sentenced to imprisonment of at least four years.

(3) A person who has coerced a child over 14 years of age to produce or record images or other items with pornographic content or to a pornographic performance shall be sentenced to imprisonment of at least eight years.

(6) If the crime stipulated in paragraph (4) of this Article has been committed against a child under 14 years of age, the perpetrator shall be sentenced to imprisonment of at least ten years.

(7) If the crimes stipulated in this Article have been committed by a legal entity, it shall be punished by a fine.

(8) The items referred to in paragraphs (1), (2), (3), (4), (5), (6) and (7) of this article shall be seized.

-The crime stipulated in Article 190: Satisfying sexual urges in front of another corresponds to Article 22 of the Convention, which criminalises activities concerning the corruption of children:

(1) A person who has performed a sexual act in front of another in a public place shall be fined or sentenced to imprisonment of up to one year.

(2) Whosoever performs a sexual act in front of a child who has turned 14 years of age or who induces a child to perform such an act in front of him or in front of another, shall be sentenced to imprisonment of 3 to 8 years.

(3) Whosoever performs a sexual act in front of a child who has not turned 14 years of age or who induces a child to perform such an act in front of him or in front of another, shall be sentenced to imprisonment of at least 4 years.”

- Article 23 of the Convention that pertains to soliciting children for sexual purposes (“pimping”) has been integrated into Article 193-b: Misleading a child under the age of 14 to commit sexual intercourse, or other sexual activities. The criminal act is committed by: “Whosoever engages in the intentional proposal, through information, communication technologies or other means, to arrange a meeting for the purposes of sexual intercourse with a child younger than the age of 14, or otherwise mislead a child under the age of 14 to engage in sexual intercourse or other sexual activities with an adult, or with the goal of producing child pornography, and if a direct meeting with the minor was caused by such intent, will be sentenced to imprisonment of 5 years.”

- The sexual exploitation of children is criminalized by the criminal act outlined in Article 418-d: Trafficking a child. This criminal act is committed by anyone who:

(1) Whosoever induces a child to sexual activities or enables sexual activities with a child or persuades, transports, transfers, buys, sells or offers for sale, obtains, supplies, harbours or accepts a child for the purpose of exploiting him in sexual activities for money or other forms of compensation or other forms of sexual exploitation, pornography, forced work or servicing, begging or exploitation for an activity prohibited by law, slavery, forced marriages, forced fertilization, illegal adoption, or forces consent as a mediator for child adoption, illegally transplants human organs, shall be sentenced to imprisonment of at least 8 years.

(2) Whosoever commits the crime of paragraph 1 by use of force, serious threat, delusion or other form of forcing, kidnapping, defraud, abuse of the position or pregnancy, powerlessness or physical or mental disability of another, or by giving and receiving money or other benefit for the purpose of obtaining consent of a person controlling another person, shall be sentenced to imprisonment of minimum 10 years.

(3) Whosoever uses or enables another to use sexual services or other type of exploitation of a child knowing, or being obliged to know that he is a victim of human trafficking, shall be sentenced to minimum imprisonment of 8 years.

(4) The user of sexual services given by a child younger than 14 years shall be sentenced to imprisonment of at least 12 years.

(5) Whosoever seizes or destroys an ID, passport or another's personal identification document, for the purpose of committing the crime referred to in paragraphs 1 and 2, shall be sentenced to imprisonment of minimum 4 years.

(6) If the crime referred to in paragraphs (1), (2), (3) and (4) of this Article is committed by an official person while performing his service, he shall be sentenced to at least 10 years of imprisonment.

(7) The consent of the child for the actions anticipated in paragraph 1 is not significant to the existence of the crime of paragraph 1.

(8) A child - victim of human trafficking shall not be punished in the cases where the law foresees punishment of a child, when the offender forced him to commit a crime, if such action is a direct consequence of his position of a victim.

(9) If the crime referred to in this Article is committed by a legal entity, it shall be fined.

(10) Immovables, objects and means of transport used for the commission of the crime, shall be seized.

- Article 122 is amended with line (41), which states that: "Violence to a child, in addition to the violence referred to in paragraph (21) of this Article, shall also refer to psychological violence, Internet violence, peer violence, as well as child's stalking and following."

- In accordance with the Criminal Code of the Republic of North Macedonia, the criminal acts of sexual child abuse can be punished by: a prison sentence and a prohibition on practicing profession, performing an activity or duty. The prison sentence may only be rendered as the main sentence. The prohibition on practicing profession, performing an activity or duty may be rendered only as a secondary punishment along with imprisonment, or as probation that carries imprisonment

- Imprisonment shall last no fewer than 30 days and no longer than 20 years. For criminal acts that stipulate imprisonment for life, a long-lasting prison sentence of 40 years may be rendered. In the case of severe, premeditated criminal acts that stipulate a prison sentence of 20 years, the prison sentence may be extended to lifelong imprisonment.

- The perpetrators of these crimes may be imposed the following security measures:

- 1) mandatory psychiatric treatment and internment into a healthcare institution,
- 2) mandatory psychiatric treatment without internment,
- 3) mandatory treatment of alcoholics and drug addicts,
- 4) medical and pharmacological treatment of perpetrators of sexual assault of children younger than 14 years of age.

Article 65-a stipulates the conditions under which the measures of medical and pharmacological treatment are rendered:

(1) The court may impose a measure medical and pharmacological treatment on an offender of sexual assault upon a child of up to 14 years of age if there is a threat he to continue committing such acts.

(2) If life sentence is prescribed for the act, the court may sentence the offenders to imprisonment of 40 years, provided that he agrees to medical and pharmacological treatment which lasts until the end of his life or until the time the court considers necessary for the treatment.

(3) If long-lasting sentence of 40 years is prescribed for the act, the court may sentence the offender to imprisonment of 20 years, provided that he agrees to medical and pharmacological treatment which lasts until the end of his life or until the time the court considers necessary for the treatment.

(4) If imprisonment of 20 years is prescribed for the act, the court may sentence the offender to minimum imprisonment for the act, provided that he agrees to medical and pharmacological treatment which lasts until the end of his life or until the time the court considers necessary for the treatment.

(5) The measure referred to in paragraph (1) of this Article shall be served in freedom in specialized medical institutions upon serving the sentence of imprisonment and the supervision over the enforcement of the measure shall be conducted by the Directorate for Execution of Sanctions. The Directorate for Execution of Sanctions shall at least once in six months notify the court about the execution of the measure referred to in paragraph (1) of this Article and about the need of its extension or termination.

(6) If the offender in the cases referred to in paragraphs (2), (3) and (4) of this Article does not subject to the measure medical and pharmacological treatment or voluntarily stops the treatment, the court may determine to coercively implement the measure in a health or another specialized institution.

(7) As an exception to paragraphs (2), (3) and (4) of this Article, the court shall mandatorily impose the measure referred to in paragraph (1) of this Article even without the consent of the offender if the offender recommit the act. The measure medical and pharmacological treatment shall last until the end of the life of the offender or until the time the court assesses is necessary for the treatment.

(8) The manner of carrying out the measure of medical and pharmacological treatment shall be regulated in further depth by the Law on Execution of Sanctions.

- The criminal offences of sexual abuse and exploitation of children are offences which are prosecuted *ex officio*. In keeping with Article 18 of the Law on Criminal Procedure, the public prosecutor is obligated to initiate criminal prosecution if evidence is provided of a criminal offence prosecuted *ex officio* being committed. This implies that investigations and criminal prosecution over this type of offences do not require the victims of such offences filing charges themselves.

- Furthermore, Article 106-a of the Criminal Code outlines provisions providing for a Special Register, further stipulating the following: "For the purposes of registration in health records, the court shall submit to the government body responsible for healthcare information of a final court judgment being rendered pronouncing a security measure and, correspondingly, for purposes of registration in a separate register, to the government body in charge of labour and social policy matters."

- Paragraph 2 states that: "The court shall also submit to the government body responsible for labour and social policy matters data on persons convicted

under a final court decision of offences against sexual liberty and sexual moral, as well as of the criminal offence provided for in Article 418-d of this Code and committed against minors, for all of whom a separate register is being maintained."

Paragraph three lays down the following: "The data as referred to in paragraphs (1) and (2) of this Article may be used solely for the protection of the health of persons subject to safety measures or for the protection of the rights of minors, under conditions and procedures as established by law."

- Bearing in mind these provisions, the Law on Special Registry for Persons Convicted of Criminal Offences of Sexual Abuse of Minors and Paedophilia has been adopted. This law regulates the category of personal data entered in the Register of Persons Convicted of Crimes of Sexual Abuse of Minors and Paedophilia, the Manner of Revealing Personal Data for further Usage, the Degree of Confidentiality, and the Timeframe for Data Retention. The Register is maintained by the Ministry of Labour and Social Policy via the Institute for Social Activities. Data on convicted persons entered into the Register is made publicly available.

- Criminal liability of juridical persons was introduced in the Criminal Code of the Republic of North Macedonia in 2004 and is provided for in Articles 28-a, 28-b and 28-c. It draws on the principle of assumed liability of a juridical person, the grounds for which is the activity of due supervision or the lack thereof on the part of the managing authorities, the responsible person or another person authorized to act on behalf of the juridical person. Liability of juridical persons does not exclude criminal liability of natural persons as perpetrators of a crime (Article 28-b, paragraph 1). The juridical person shall be liable for the offence committed under the following conditions: First, should liability for committing the offence in question be stipulated under the special part. Second, should the offence be committed by a responsible person in the juridical person, and third - should the offence in question be committed on behalf of, to the name of, or for the benefit of the juridical person.

- Juridical persons shall also be responsible for criminal offences committed by their employees or representatives that have yielded significant property gains or have caused significant damage to others under the conditions as laid down by Article 28-a.

- Pursuant to Article 96-a and 96-b of the Criminal Code of the Republic of North Macedonia, criminal offences committed by juridical persons are for the large part punishable only by a fine.

- Under the conditions as prescribed by the Code, when they find that juridical persons have indeed abused their businesses, as well as that a hazard exists of the offence in question being repeated in the future, courts may levy such juridical persons one or more of the following minor penalties:

1) ban on obtaining a permit, license, concession, authorization or other right stipulated by a special law;

2) ban on participating in public procurement procedures, awarding public procurement contracts and public-private partnership contracts;

- 3) ban on establishing new juridical persons;
- 4) ban on using subsidies and other favourable loans;
- 5) ban on using funds for financing political parties as allocated by the Budget of the Republic of North Macedonia;
- 6) revocation of a permit, license, concession, authorization or other right as stipulated by a special law;
- 7) temporary ban on performing certain activities;
- 8) permanent ban on performing certain activities; and
- 9) termination of juridical persons.

- The term "juridical person" has been defined under Article 122, item 6 of the Criminal Code, which reads: "Juridical person shall mean: the Republic of North Macedonia, units of local self-government, political parties, public enterprises, companies, institutions and other associations, funds, financial organizations and others organizations as stipulated by law that have been registered as juridical persons, as well as other associations and organizations that have been recognized under law as being juridical persons."

Protection of Child Victims:

- The Law on Juvenile Justice which was adopted in 2009 helped establish a system of justice for children based on international standards. The Law on Justice of Children that was adopted in 2013 as a follow-up to the previous law further advanced the rights of the child.

- The law is based on the provisions of the Convention on the Rights of the Child. The application of the measures and sanctions as provided for by this Law, as well as the treatment of a child, shall be in the interest of protection, upbringing, re-education and proper development.

The Law on Juvenile Justice stipulates the following:

- A child victim of a crime shall mean a minor under 18 years of age;
- Children who have been victims of acts stipulated as criminal offences under law, in keeping with the fundamental principles of the Law, shall have the same rights as adult victims prior to, during, and after criminal proceedings, as well as the special rights as recognized by the Convention on the Rights of the Child and other nationally ratified international treaties;

Children victims of acts prescribed by law as criminal offences and child witnesses shall enjoy enhanced protection and support from all institutions, bodies and individuals within the child justice system, in order to reduce the negative consequences to them resulting from the crimes they have been victims of, as well as to prevent the negative impact of institutional actions on the proper development of children and encourage them to seek protection before a competent court.

- Articles 145-153 of the Child Justice Law contain provisions for the protection of child victims of criminal offences and child witnesses in the criminal procedure.

Namely, these provisions provide:

- In proceedings that are conducted for acts that are prescribed by law as criminal offence where the child appears as a victim, the competent courts, public prosecutors and Ministry of the Interior officials may act only if they have

adequate education, and special knowledge and experience in the field of rights of the child and the criminal-law protection of children;

- For all acts prescribed by law as criminal offences in the Criminal Code in which according to the legal characteristics of the crime the child is a victim of the crime, the court and other institutions participating in the procedure are obliged to take measures for assistance and protection and to act in a manner that avoids the potential harmful effects on his/her personality and development;
- The child victim is examined as a witness in a way that does not harm his/her psychophysical development, by applying special measures of process-related protection. When taking testimony and questioning a child as a witness or victim, the police, the prosecutor's office, and the court are obliged to take into account the personal traits and characteristics of the child, for the protection of his/her interests and for his/her proper development; and
- Confrontation between a child and a suspect, i.e., the accused, is not permitted if the child is a victim and witness of trafficking in human beings, violence or sexual abuse, as well as acts prescribed by law as crimes against humanity and international law, as well as for other acts that by law are defined as crimes, which because of their nature, consequences or other circumstances make the child particularly sensitive, that is, he/she is in a particularly difficult mental state.

- Pursuant to Article 145 of this Law, the child victim of a crime has the following rights:

- to be treated with respect for his/her dignity,
 - to be protected from any discrimination,
 - to be informed of his/her rights in a language understandable and appropriate to his/her age and to be shown respect for the right to his/her privacy,
 - to inform the parents / or / the parent, that is, the guardians / or / the guardian of all matters relating to the crime and the suspect, the accused, and the convicted,
 - the child, that is, the parents / or / the parent, that is, the guardians / or / the guardian to participate in the criminal proceedings as damaged party by joining the criminal prosecution or in pursuing a lawful claim for damages,
 - to special protection of his/her own safety and that of the family, as well as care and attention of the authorities and entities involved in the criminal proceedings,
 - the right to special protection against secondary victimization or revictimization, and
 - the right to psychological and other professional assistance and support by authorities, institutions, and organizations to assist children who are victims of crime.
- In police and criminal proceedings, the child victim of a crime has the right to:
- legal assistance from a lawyer before giving testimony, or statement or filing a lawful compensation claim,
 - compensation of pecuniary and non-pecuniary damage in accordance with the program referred to in Article 151 of this Law under the conditions and in the

manner prescribed by Article 152 of this Law, if the compensation of damage cannot be provided by the convicted person, and

- attorney-at-law when giving the first testimony, as well as throughout the entire proceedings.

The legal assistance to a child victim is provided as a rule by a lawyer who attended a specialized training on children's rights. Such training lasts at least five days a year conducted at home or abroad.

- Article 146 governs special rights of procedural protection: In this regard, the law states that the child victim has the right to special measures of procedural protection when giving testimony and statement at all stages of the procedure.

- The court must determine a special measure of procedural protection in cases such as:

- when the child victim needs special care and protection or
- when the child is a victim of trafficking in human beings, violence or sexual abuse, as well as crimes against humanity and international law or other serious offences committed against children for which the law prescribes imprisonment of more than four years. In these cases, the court decides, individually or accompanied by another special measure of protection, to register the testimony given by the child by video and audio recordings, which would be used as evidence in further proceedings. In exceptional cases, if new circumstances arise, the court may re-examine the child victim once again at most, by using technical means of communication.

- The court may determine the following as special measures of procedural protection in making statements:

- using screens to protect the victim and witness from staring by the accused,
- concealing identity or appearance,
- giving a statement by video conference,
- removal of court gowns and caps,
- excluding the public,
- video and audio recording of the statement to be used as evidence,
- video and audio recording of the interrogation to be used as evidence,
- taking testimony through the mediation of an expert,
- use of special technical means of communication, and
- protection of the privacy of the child and his/her family.

- According to paragraph 1 of Article 151, for the sake of **compensation to a child** who is victim or is damaged by an act that is defined by law as a crime of violence and other acts of individual or group violence, compensation funds are allocated within the budget of the Ministry of Justice. Upon a previously obtained opinion from the State Council for the Prevention of Child Abuse, the Minister of Justice adopts an annual program by which the Minister plans the sources and the manner of spending the funds referred to in paragraph (1) of Article 151.

Article 152 governs the conditions and procedure for exercising the right to compensation. Paragraph 1 stipulates that a child found to have been a victim, or damaged, by an effective court decision, of an act prescribed by law as a criminal

offence or misdemeanour with elements of violence and having a lawful claim recognized, may submit a lawful claim for compensation of the funds referred to in Article 151 paragraph (1) of this Law to the competent court, when due to factual or legal obstacles the lawful claim cannot be paid from the very property and assets of the perpetrator of the crime or due to other act of violence and when more than six months have elapsed since the validity of the final decision on the lawful compensation claim.

The claim referred to in this Article, besides the child, may be filed by the parents /or/ the parent, that is, the guardians / or / the guardian. The court will render a judgment for damages in the amount of the awarded lawful claim, without any increase on grounds of interest rate or any additional costs related to the enforcement of the claim. If the court rejects the request, the child victim has the right to appeal to the Court of Appeals within eight days of the receipt of the refusal decision. The decision of the Court of Appeal is final. The court submits the final decision on the payment of the compensation to the Ministry of Justice, which makes the payment.

The Ministry of Justice, in accordance with the provisions of this Law, adopts a Program for indemnification of a child who is victim or damaged by an act defined by law as act of violence and other acts of individual or group violence. A million MKD has been allocated for this program in this Ministry's 2019 Budget.