

SHORT SUMMARY

Alignment of the Macedonian legislation with Directive 2010/41/EU on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC

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Introduction

In our country, gender inequality and gender discrimination are particularly present in the field of labor relations, and all areas covered by labor relations, such as access to employment, arrangement of labor relations, work promotion, and termination of employment. Moreover, in the report of the European Union (EU) on the progress of North Macedonia for 2021, it is noted that the Macedonian labor market is struggling with gender inequality. The European Commission (EC) states that structural deficiencies are still noticeable in the labor market, which prevents potential growth and development. The gender gap in the labor market for 2020 increased by 22.7 percentage points due to the fact that more women (compared to men) were excluded from the labor market this year. The employment rate for men (aged 20 to 64) in 2020 was 68.9% and for women 49%, resulting in a rather high employment gender gap of 19.9 percentage points.

Self-employment is proving to be an increasingly common employment model used by unemployed persons in conditions of high unemployment rates, persons who have not been able to find work for long time periods, especially in the last few years. Since this model is more frequently used by unemployed persons in the country, we needed to review the legal regulation of self-employment as a model in the national legislation; however, a detailed review of the regulation of self-employment in the context of the EU law that regulates this model and the standards set by the EU are also needed. Self-employment is a significantly present form of employment at the level of the European Union, and according to the data, there are currently 32.9 million people aged 15 to 74, that is, 14.2% of the total number of employed people in the European Union. According to the latest data at the level of the European Union for 2021, a total of 25,172 people are registered as self-employed persons, of which 8,254 are women, and the data for previous years is almost the same. A 2019 study conducted in the UK shows that while men dominate most occupational categories, women dominate middle-skilled occupations such as administrative and secretarial professions and care, leisure, and other service occupations, including hairdressing and housekeeping. However, what is noticeable is that in recent years in the field of freelancing there has been a big increase in women's activity. Self-employment as a model is increasingly used by women because it can enable them to tap into their entrepreneurial potential, which in turn can improve their well-being and economic status, and at the same time increase the value they add to the economy as a whole. Although previous research on what motivates women to choose to be self-employed reveals a mixed picture, arguing that even though self-employment is a positive way of working for a huge number of women, some have been forced into it by the increase in the pension age for women and the loss of job positions in the public sector; when a representative sample of women was asked about the main reasons for choosing self-employment, the answer was that most of them were motivated by greater control over the working hours (63%) the choice of the workplace (56%), as well as the improved work-life balance (55%). Only a fifth (21%) of the women said that they chose self-employment because of the deficit of other employment opportunities, and the smallest portion of them (13%) did so because they had lost their previous jobs. It is quite interesting that self-employed women, more often than men, chose reasons related to their well-being and personal circumstances as reasons for self-employment. Some of them are greater flexibility and hours control, work-life balance, and child-care flexibility. Men, on the other hand, mostly chose career-related reasons for self-employment, such as control over their own work, the possibility of miscellaneous work, and the possibility of earning more money.

Hence, the rise of self-employment as an employment model at a global scale imposes the need for its appropriate regulation, including a clear definition of self-employed individuals and their partners. This issue has also been a subject of discussions within the European Parliament, which has appealed to the member states to recognize self-employment “as a form of work that helps in generating jobs and reducing unemployment, and that the expansion of self-employment should go hand in hand with adequate social protection of the self-employed, as it is defined by the member states ... and to facilitate the opportunity for all workers, including the self-employed workers and their spouses or partners who participate in their activities, to combine work and care responsibilities by speeding up the application of Articles 7 and 8 of Directive 2010/41/EU of July 7, 2010, and to provide workers with working hours flexibility, telework, and part-time work for the purpose of caring for minors and dependents, at their request”.

In this regard, Directive 2010/41/EU of the European Parliament and the European Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC is becoming more and more relevant. This Directive clearly defines the self-employed persons and spouses or their life partners and also, for the first time, it defines the rights and obligations of self-employed persons and their spouses or life partners, as regulated for other persons employed by third parties and so on. At the same time, the Directive allows the member states to adopt measures for positive action toward ensuring full equality between men and women in working life.

Conclusions

Equality and non-discrimination, among others, are fundamental values of the European Union and are established and underlined in Article 2 of the Treaty on the European Union. This article is translated into a series of specific legal acts, including directives, with which the member states, but also the candidate countries for EU membership, are obliged to comply. The Directive 2010/41/EU of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC is also a part of this system. Namely, this Directive clearly defines self-employed persons and the spouses or life partners of self-employed persons and also defines their rights and obligations for the first time, as is regulated for other persons employed by third parties. Additionally, the Directive allows member states to adopt positive action measures aimed at ensuring full equality between men and women in working life.

This Directive brings forth a change characterized by a significant improvement in the protection of self-employed women and spouses or the life partners of self-employed workers, who help them in their business activities. Taking into account the vulnerability of pregnant self-employed women and pregnant wives or life partners of self-employed persons, the Directive points to the great need to enable these women to exercise the right to maternity benefits, including maternity leave. It is particularly important that the Directive refers to the regulation of these benefits and the length of maternity leave under equal conditions as is regulated for other persons employed by third parties. Additionally, the Directive regulates social benefits for self-employed persons and their spouses or

partners, which is of particular importance for women who rely on their spouses or life partners who are self-employed. Women who are fully dependent on their self-employed spouse or partner face a high risk of poverty if they are left without their spouse or partner for any particular reason. The specific goal of the Directive is to protect these “helping wives” by enabling them social insurance on an equal basis as with other workers.

Self-employment is mostly regulated at an exclusively national level. Each authority or individual body applies its own legal and regulatory provisions, while the self-employment provisions vary significantly between different countries. The variety of self-employment forms attracts different ways of regulation on a national level.

Given the fact that self-employment is proving to be an increasingly common employment model utilized by unemployed persons in conditions of high unemployment rates, who have not been able to find a job for long periods of time, especially in the last few years, while the structural deficiencies are still noticeable on the labor market, preventing the potential growth and development, the necessity for considering the legislation on self-employment as a model in the national legislation becomes an imperative.

According to the preview of the domestic law and the domestic policies in this field, we can assume that in our country gender equality was initially addressed through the national legislation with the Law on Equal Opportunities Between Men and Women of 2006. This law deals exclusively with equality between women and men and acknowledges an explicit prohibition of sex-based discrimination. However, data from the conducted analysis shows that one of the main problems is that the Sector for Equal Opportunities by the Ministry of Labor & Social Policy of the Republic of Macedonia has limited human and financial resources, while the Government has not succeeded in implementing basic and specialized administration capacity. There rarely are effective and efficient measures to support the implementation process, and the local self-government units do not get enough support to implement the Law on Equal Opportunities Between Men and Women on a national level.

On the other hand, with the adoption of the new Law on Prevention and Protection from Discrimination in 2020, the domestic anti-discrimination legislation was fully aligned with the equality directives of the European Union, providing a legal framework that covers more than just the minimum EU standards. With the help of this new Law, a new Commission was elected which acts as a central body for equality endowed with a range of working possibilities for the improvement of gender equality in the country.

The conducted analysis shows that the courts are not the primary instance where protection cases are initiated when the principle of gender equality is violated. Most often, such cases are brought before the bodies for equality - the Commission for Prevention and Protection from Discrimination and the Ombudsman. The prevalent practice shows that the opinion issued by the Commission for Prevention and Protection from Discrimination is rarely considered in the court’s decision-making even for cases that eventually end up in the courts (as the following instance).

In the Macedonian legislation, there are several laws where the definition of a self-employed person is in accordance with Directive 2010/41/EU: the Law on Health and Safety; The Law on Employment and Unemployment Insurance; The Law on Health Insurance; The Law on Pension and Disability Insurance; and the Law on Mandatory Social Insurance Contributions.

According to our legislation, self-employed persons are private individuals, who should independently perform various activities that can be considered economic, professional, or intellectual activities. The initial problem in the application of the principle of equal treatment in self-employment, in our context, is the very lack of definition and adequate regulation of self-employment within the national legislation.

A major drawback is the fact that the basic law in this area, the Labor Relations Act, does not define self-employment as one of the existing employment forms. Moreover, it does not define self-employed persons as a category of workers, which is contradictory to its goal for the inclusion of all workers in the work process as well as ensuring their protection and dignity.

The initial problem in the application of the principle of equal treatment in self-employment, in our context, is the very lack of definition and adequate regulation of self-employment within the national legislation. As for spouses and life partners of self-employed persons, our legislation does not recognize life partners as a category and makes a distinction only between marital and non-marital partners. Inadequate regulation and arrangement of self-employment contribute to the further lack of adequate provisions that will encompass the benefits of the self-employed persons and also the benefits of their partners and spouses. It can be easily noticed that there is a difference between what the term “self-employment” implies when it is mentioned in the laws and what it implies when it is mentioned in the statistical data, or to whom it refers. Under the Law on Health Insurance and the Law on Pension and Disability Insurance, self-employed individuals are treated like individuals who could be employers at the same time. However, the law excludes the farmers from this definition. On the other hand, the State Statistical Office makes a distinction between self-employed persons and employers, defining self-employed persons as individuals who work on their own businesses, professional practice, or a farm for the purpose of earning profits, while they do not employ other individuals. Furthermore, the State Statistical Office defines employers as persons who run their own business entity, owners who work in their shops, or owners of agricultural property, who employ other individuals.

The authors of this research took into account all of the above-mentioned information and prepared specific recommendations for improving the legal framework and harmonizing the domestic with the European legislation as well as general recommendations for the promotion of gender equality in the field of entrepreneurship and improving private and professional lives. Moreover, the authors have been especially focused on the rights and obligations provided by the Directive for self-employed individuals and their spouses or life partners when they usually participate in the implementation of economical activities.

RECOMMENDATIONS

SPECIFIC RECOMMENDATIONS FOR IMPROVING THE LEGISLATIVE-LEGAL FRAMEWORK

- Gender equality should be taken into consideration as an individual goal while drafting new or/and making amendments to existing laws, policies, and activities.

Law on Gender Equality

- **Immediate initiation of the parliamentary procedure for the adoption of the new Law on Gender Equality;**
- It should be taken into consideration that the goal of the law is **to establish an institutional framework of gender-responsive policies and mechanisms in order to strengthen the position and status of women, overcoming inequality in participation, access, and control over goods, services, resources, and decisions, and ensuring equal development benefits for women, men and people with diverse gender identities in the Republic of North Macedonia;**
- When defining discrimination against women, **"pregnancy and motherhood" should be added as discriminatory grounds;**
- Defining **gender integration** as an institutional transformation in order to include the gender perspective in each phase of the assessment process, development, adoption, implementation, monitoring, evaluation, and reporting on the policies in all areas, with the aim of achieving gender equality and preventing the deepening of gender inequalities;
- It should be taken into consideration that when implementing gender integration, **gender planning will be used, that is, the inclusion of gender equality as a key criterion in the planning and development of the policies in the field of self-employment;**
- It should be taken into consideration that for the implementation of gender integration, **gathering, analyzing, and usage of gender-disaggregated will be used i.e. data disaggregated by sex, gender, and gender identity in the field of self-employment;**
- It should be taken into consideration that **collection, analysis, and publication of gender statistics will be used** to implement gender integration i.e. **statistical data with the aim of showing gender differences and inequalities in the field of self-employment;**
- It should be taken into consideration that for the implementation of gender integration, **gender consultations will be used i.e. consultations in which the participation principle is considered in the planning and implementation of policies with the aim of taking into account the needs and experiences of women and persons with diverse gender identities in the field of self-employment;**
- The Law should guarantee the strengthening of the institutional mechanisms on central and local levels for the implementation, adoption, and application of the policies.

Law on Labor Relations

- **Immediate initiation of a parliamentary procedure for the adoption of the new Law on Labor Relations;**
- Introduction of a provision that will define self-employment as a **performance of independent economic activity, professional or intellectual service from which the individual earns income, for his/her own account, under the conditions established by the law;**
- Introduction of a comprehensive and broad definition of self-employed persons **that will include unpaid domestic workers, workers who work from home (outside the workplace), and workers engaged in a working process entirely for their own benefit or for the creation of their own capital, individually or collectively;**
- Introduction of a new paragraph in Article 184, which will allow self-employed persons to found and join a trade union: "Self-employed persons have the right, of their own free choice, to find a trade union and to join it, under the conditions prescribed by the statute or the rules of that particular trade union";
- The definition of an employee should be rewritten and read as: **"an employee is any private individual who, in a certain time period, performs certain work for another individual and receives adequate compensation"**. In this way, the legal protection will cover workers who do not possess a working contract, but - in reality - perform work for somebody else and receive compensation. Moreover, these workers are in a real employment relationship because of the duration of their work performance. The basis is seen in the actual working process and not in the existence of an employment contract as defined by the existing law;
- The introduction of paternity leave will stipulate that the **employee has the right to leave work after the birth of a child, within a period determined by the law. If agreed upon with the employer, this right can be used for a longer period of time, with working hours shorter than full-time;**
- Introduction of **paternal leave due to the care and nursing of a child used by the mother and the father, whereby it will be foreseen that one part of the paternal leave, in a minimum length of one month, will be used by both parents simultaneously;**
- Introduction of a provision that will regulate that **one part will be used by the father and another part by the mother during the use of the paternal leave and that this right cannot be transferred between the parents. The remaining part of the parental leave can be transferred between the father and the mother and used in their mutual agreement.**

Law on Prevention and Protection Against Mobbing at the Workplace

- **Immediate initiation of a parliamentary procedure for the adoption of the new Law on prevention and protection at work;**
- It should be provided that the **self-employed persons and their spouses and life partners** will be covered by the legal provisions and the protection within the provision for the application of the law;
- Introducing a definition of a self-employed person in the Interpretation of the Law, which will read that a **self-employed person is any person who performs an independent economic activity or professional and other intellectual services from which he earns income, for his own account, under the conditions established by law;**
- Harmonization of the definition for a worker with the proposed definition in LLR, which will read: **“a worker is every private individual who, for a certain period of time, performs certain work for another, for which he/her receives appropriate compensation”;**
- Introducing a provision that will explicitly stipulate that **harassment and sexual harassment are considered sex-based and gender-based discrimination, and are prohibited.**

Family Law

- Amendments and supplementing of the Family Law or adopting a special law on the civic partnership that will enable two people who live together and are not related to legally register their partnership before a competent institution and with that registration acquire the same rights arising from a marriage conclusion. In this way, **the life partners of the self-employed persons will be recognized and will enjoy the same rights as the marital and non-marital partners of the self-employed persons.**

Health Insurance Law

- Amendment of Article 4 **with which health insurance will be provided to the life partners of the self-employed persons**, not just their wives and family members.
- Amendment of Article 12, paragraph 1, point 1, whereby it will be provided that within the frameworks of the mandatory health insurance, **the right to salary compensation is ensured during temporary working incapacity due to illness and injury and during absence from work due to pregnancy, childbirth and maternity, paternity and parental leave.**
- Amendment in the direction of enabling the right to salary compensations during pregnancy leave, childbirth, and maternity **for the wives and life partners of self-employed persons, i.e. enabling the use of this right by both self-employed men and their wives and life partners.**
- Amendment of Article 15 paragraph 1 point 1, **which will stipulate that the right to compensation during absence due to pregnancy, childbirth, maternity, and paternity leave is not conditional on the existence of health insurance that lasted for at least six continuous**

months before the occurrence of the particular case, consistently respecting the EU Directive 2019/1158 on work-life balance.

- Amendment in the part of determining the amount of salary compensation in order to define the minimum compensation amount and to avoid making it lower than the minimum salary paid for the previous year, **with the goal of ensuring sufficient salary income**.

GENERAL RECOMMENDATIONS FOR ALL STAKEHOLDERS

- Immediate adoption of a new National Action Plan for the implementation of the National Strategy for Gender Equality 2022-2027;
- Conducting surveys and preparing reports that will reflect the specific difficulties faced by self-employed persons;
- Adoption of positive action measures aimed at ensuring full gender equality in the working life, for example, measures aimed at facilitating entrepreneurial initiatives among women;
- Introduction of measures for real and effective compensation or reparation, for the loss or damage suffered by a person as a result of discrimination based on sex and gender; measures that are dissuasive and proportionate to the loss or damage suffered;
- Involvement of gender mechanisms at the central and local level in the preparation, planning, and implementation of these measures;
- Conducting appropriate analyses for evaluation of the efficiency of the introduced measures;
- Introduction of measures to encourage, analyze, monitor, and support equal treatment without gender-based discrimination for all persons covered by this measure;
- Implementation of training, mentorship, and government support for women-owned businesses in the form of interest-free loans by the Development Bank of North Macedonia and co-financed grants;
- Implementation of training, activities for encouraging the entrepreneurial spirit among women, raising awareness about female entrepreneurship, improving the women's status in the national economy (on the labor market, on the capital market, special investment policies, participation of women in the GDP), activities for further education, professional training, requalification of unemployed women, employment and self-employment, regulation of the labor-legal status and the status of a farmer for women from rural areas (female farmers);
- Conducting independent research related to discrimination and publishing independent reports, and making recommendations on all issues related to such discrimination;
- Ensuring that judicial or administrative procedures are available to all persons who believe that they have suffered loss or damage as a result of the failure to apply the principle of equal treatment to them, even after the end of the relationship in which discrimination allegedly occurred;
- Exchange of available information on the appropriate level with the relevant European authorities, such as the European Institute for Gender Equality;
- Holding consultations with the general public, while keeping in mind the call of the European Parliament to recognize self-employment "as a form of work that helps to create jobs and

reduce unemployment and that the expansion of self-employment should go hand in hand with adequate social protection for the self-employed, as defined in member states and ... to make it easier for all workers, including self-employed workers and their spouses or partners who participate in their activities, to combine work and care responsibilities, by speeding up the implementation of Articles 7 and 8 of Directive 2010/41/EU of 7 July 2010, and by providing workers with flexibility regarding working hours, teleworking and part-time work for the purpose of caring for minors and dependent persons, at their request”;

- Consistent compliance with the obligation provided for all subjects that are legally bound to collect, record, and process data; to present this data according to the discriminatory, relevant in the field, and with the aim of promotion and improvement of equality and prevention of discrimination;
- Reopening the debate on tax reform that will take into account the issues of insecurity, income instability, income at the level of the whole family, property situation, and other similar issues related to self-employed persons, because the latest tax reforms on these issues were not taken into account and were potentially discriminating towards self-employed persons compared to persons who are working on secure jobs in the public sector and who live in a community where two or more people earn a regular income;

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