

Euro-integration of the Republic of North Macedonia: Aligning with the EU acquis in Family related Matters and Children's Rights

Ignovska Elena¹

Abstract

This paper explores the process of Euro-integration of the Republic of North Macedonia, focusing on the aligning of its legal framework with the European Union acquis (the accumulated body of EU legislation and regulations) in family-related matters and children's rights. The Republic of North Macedonia's accession to the EU is a complex process, requiring alignment with various EU policies and regulations. This paper explores the national legal consistency in a rather sensitive field to be harmonized, outlining the challenges and opportunities that arise during this transformative journey. By evaluating the progress made thus far and identifying areas that require further attention, this study aims to contribute to the broader discourse on the North' Macedonia's European integration.

Keywords: Euro-integration, Republic of North Macedonia, EU acquis, family law, children's rights

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¹ Associate Professor University Ss. Cyril and Methodius, Faculty of Law, Skopje, North Macedonia.

1. Introduction

1.1. Background and context of North Macedonia's Euro integration process

In March, 2020, the European Council acknowledged its decision to open accession negotiations with the Republic of North Macedonia.² Following the approval of the negotiation framework in accordance with the revised enlargement methodology, the EU started the initial phase of the accession negotiations with the Republic of North Macedonia. In October, 2021 and in October, 2022 the European Commission issued its Reports on the North Macedonian's activities in the framework of the EU enlargement.³ It acknowledged both improvements and weaknesses of the country in its accession path, including inconsistencies of the Family Act (Law on Family) with internationally ratified documents, especially those that protect the rights of the child. Additionally, it noted that there is a slow harmonization of the national case-law with the ECtHR's case-law in the field.

After the first political Intergovernmental Conference on accession negotiations with North Macedonia in July 2022, the Commission launched immediately the screening process and in July, 2023 issued its Screening Report.⁴ The text will analyze the Commission's last assessments regarding family related matters and children's rights as part of larger research that aims to locate national inconsistencies in the field of children's rights, as well as substantial and procedural mechanisms for protection of children's rights in civil relations (matrimonial, parental responsibilities and child abduction matters). The aim of the larger research is to facilitate the process of national legal harmonization with the EU acquis which would eventually lead to faster and more efficient closure of Chapters 23 and 24 in the field of children's rights in family related matters in the Republic of North Macedonia. In the framework of Chapter 23, the larger research will focus on substantial and procedural rights of the child, while in the framework of Chapter 24 the focus will be on mutual recognition and enforcement of decisions in civil law disputes

² <https://www.consilium.europa.eu/media/43076/26-vc-euco-statement-en.pdf>.

³ Report North Macedonia, European Commission, 19.10.2021 and Report North Macedonia, European Commission, 12.10.2022.

⁴ Screening Report North Macedonia, European Commission, 20.7.2023.

(especially family matters, maintenance and custody of children as well as international abduction of children). National laws⁵ will be analyzed through the prism of the European acquis.⁶

1.2.The complexity, the rationale and the significance of harmonizing family matters and children’s rights

Family law matters historically have been treated as out of subjective nature allowing national states based on their own systems of values to rule what family life encompasses. This notion made difficult to enable harmonization of family law in European context or to even discuss about European family law as such. Nevertheless, over the years, the European Court of Human Rights (ECtHR) has changed the level of flexibility of the Margin of Appreciation, interpreting the European Convention on Human Rights (ECHR) on grounds of rational and strict scrutiny in the European context, claiming that its decisions set a European hierarchy of values, which cannot vary drastically (when it comes to human/children rights) from State to State. Family life has developed in a manner to respond to all kinds of modern issues, looking at the Convention as a living and evolving instrument. Family matters are present in many fields of life and do not only concern article 8 of the Convention but also other articles depending on the context in each particular case. The individual rights in the field of family life are protected in article 8 – as a right

⁵ Закон за семејството, Закон за заштита на децата, Закон за парничната постапка, Закон за вонпарничната постапка, Закон за меѓународно приватно право.

⁶ Relevant documents regarding the rights of the child: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Strategy on the Rights of the Child, (COM/2021/142 final), Annex 2, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A Digital Decade for children and youth: the new European strategy for a better internet for kids (BIK+), (COM/2022/212 final), Council Recommendation of 14 June 2021 establishing a European Child Guarantee, ST/9106/2021/INIT, OJ L 223, 22.6.2021.

Relevant documents regarding judicial cooperation in civil law matters: Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence); Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents); Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction; Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Judgments Convention)- Upcoming evaluation and review of the BxI I a Regulation (Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters).

to respect for private and family life; article 12 – as a right to marry and establish a family; article 14 – as a general principle of non-discrimination; and article 6 (1), as a right to access civil law courts for solving family matters (among others) and fair trial in a reasonable time.⁷ When the ECtHR analyzes potential infringements of the ECHR it may call upon other human rights internationally binding documents. One of them, being especially important in the context of family life is the Convention on the Rights of the Child. Having these provisions in mind, family law and human rights intersect in the field of rights related to couples, relationships between children and their parents and other relatives and children's rights. Through the lenses of these articles will be analyzed the Screening Report of the European Commission on North Macedonia that assessed the current legal climate and set the path forward to further harmonization.

Harmonization with EU law in the field of family matters and children's right is important because it enhances rights in the country that harmonizes and it ultimately contributes to the welfare and well-being of children and families in the European Union. The rationale and the significance for harmonizing families could be found in several reasons:

1. **Protection of Fundamental Rights:** Harmonizing family life and children's rights with EU law helps protect fundamental rights across the EU, ensuring that individuals, especially vulnerable groups like children, receive equal protection regardless of their location within the EU. It also reassures that member states comply with international obligations.
2. **Consistency and Legal Certainty:** Harmonizing national family and children's rights laws with EU standards ensures a consistent legal framework across member states. This consistency promotes legal certainty, making it easier for individuals, families, and legal professionals to understand and navigate the legal system, and avoid forum-shopping.
3. **Cross-border mobility:** EU citizens have the right to move and live freely within the EU.⁸ Harmonizing family and children's rights laws facilitates this mobility, making it easier for

⁷ See more in Ignovska E., The Family Law of the Republic of North Macedonia through the Prism of the European Convention on Human Rights, *Iustinianus Primus Law Review*, Vol. 11, Special issue, 2020, pg. 1.

⁸ The right to free movement is a fundamental right established by art. 21 of the Treaty on the Functioning of the EU and art. 45 of the EU Charter on Fundamental Rights. The principle of free movement of workers is enshrined in art. 45 of the Treaty on the Functioning of the EU and is one of the core rights guaranteed in the European Economic Area. Directive 2004/38/EU/EC deals with the right of citizens of the Union and their family members to move and reside freely within the territory of the member states while Directive 2014/54/EU facilitates the exercise of rights conferred on workers in the context of freedom of movement for workers.

families to move across borders without jeopardizing their rights or the well-being of their children.

4. **Child welfare and child friendly justice:**⁹ Harmonizing laws related to children's rights can lead to better protection for children and their best interests in judicial, non-judicial and administrative proceedings and after them.¹⁰ This can include standards for protection from discrimination, abuse and neglect, information and advice, right to be heard and to express views, protection of private and family life in cases such as adoption, custody, maintenance, child support etc.

1.3. Comparative experiences of countries harmonizing laws in the field of family matters and children's rights with the EU acquis

Harmonizing laws in the field of family matters and children's rights with the EU acquis is a complex process that requires countries to align their legal systems with European standards and principles.¹¹ Although family law remains the competence of EU countries, the EU can legislate on family law if there are cross-border implications.¹² The main EU Regulations around this focus regard divorce and parental responsibilities.¹³ Various countries have undergone this process, and their experiences can offer valuable insights into the challenges they faced. For instance, many countries from the Central and Easter European region, including Poland, Hungary and the Czech

⁹ Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice, Building a Europe for and with Children, Council of Europe, 2011.

¹⁰ For more in this regard about North Macedonia see in: IDAGO, *Истражување за знаењата, ставовите и практиките на пошироката јавност во врска со темелните општествени ставови и верувања кои ги спречуваат децата да ги остварат своите права кога се во контакт со правосудниот систем*, 2022.

¹¹ Ridderhof R., The Harmonization of European Family Law. Work in Progress, *Peace Palace Library*, 16 Dec. 2016: <https://peacepalacelibrary.nl/blog/2016/harmonization-european-family-law-work-progress>.

¹² European Commission, Overview of Family Matters: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/civil-justice/family-law/overview-family-matters_en#eulevelfamilylawlegislation.

¹³ Regulation 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, Regulation No 1259/2010 on the law applicable to divorce and legal separation; Regulation No. 1103/2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes; Regulation 1104/2016 implementing enhanced cooperation the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of property consequences of registered partnerships; Regulation 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

Republic, underwent extensive legal reforms to align their family and children's rights laws with EU standards as part of their accession to the EU. This process involved not only legal changes but also institutional and administrative reforms to ensure compliance.¹⁴ Cyprus has experienced challenges in harmonizing family and children's laws, especially in cases involving child custody disputes where parents may reside in different parts of the island. EU law has influenced efforts to resolve such issues, emphasizing the best interests of the child and cross-border cooperation. Ireland, as an EU member state, has faced issues related to harmonizing its family law, particularly in areas like divorce and child custody. EU law has influenced changes in Irish family law, making it more aligned with EU standards. As a relatively recent EU member, Malta has made significant changes in its family law to harmonize with the EU acquis. This includes legislation on divorce, child custody, and parental rights. While Nordic countries like Sweden, Denmark, and Finland generally have strong family and children's rights protections, they have still made adjustments to align with EU law where necessary. These countries have shared experiences with cross-border family disputes, and EU legislation, such as the Brussels IIa Regulation, has played a role in this alignment. Romania and Bulgaria, as countries that joined the EU in 2007 also have been working to harmonize their legal systems with EU laws, including those related to family and children's rights.¹⁵ Croatia has also made efforts to harmonize its legal systems with the EU acquis, including family¹⁶ and children's rights. This process involved both legislative changes and improvements in the legal and judicial infrastructure.

¹⁴ Even though challenges continued in recent times: See for instance the case of Poland: European Parliament Newsletter, Poland: Challenges to the EU Legal Order and European Values: <https://www.europarl.europa.eu/news/en/agenda/briefing/2021-10-18/0/poland-challenges-to-the-eu-legal-order-and-european-values>.

¹⁵ For more information on each country's regulations in family matters see: Family matters & Inheritance, European Justice, European Judicial Network (in civil and commercial matters): https://e-justice.europa.eu/508/EN/family_matters_amp_inheritance.

¹⁶ For instance, in Croatia (as a country that shares same legal tradition from Yugoslavia as North Macedonia and went into similar path harmonizing laws in its own European integration process) the question whether the definition of marriage as an exclusive union between man and a woman should be guaranteed in the Constitution or revised was answered on a Referendum on which vast majority of citizens (over 65%) were in favor of keeping the traditional form. See more here: <https://dnevnik.hr/vijesti/hrvatska/rezultati-referenduma-o-braku---313423.html>. Nevertheless, several days after the Referendum's results, a new initiative regarding protection for family life of same-sex couples was launched, resulting in a new Law on Same-sex partnerships aiming to balance the inequality, as well as to implement Directive 2004/38 regarding free movement of people (and their families) within the European Union. That is how the same-sex partnerships won certain labor rights (family pension, health insurance), social and tax privileges, possibility for obtaining citizenship for a foreign partner, access to almost all institutions and services (without a possibility to adopt a child) as other partners from heterosexual relationships.

In general, the harmonization process involves changes in legislation, institutional capacity building, and a cultural shift toward European standards for family and children's rights. It is important to note that each country's experience is unique, influenced by its legal tradition, societal norms, and historical context. Additionally, the process can be influenced by the specific requirements of the accession process, as is the case for candidate and potential candidate countries seeking EU membership.

2. European Commission's last assessments in family related matters and children's rights in North Macedonia

The national - Macedonian Family Act dates from 1992, was amended and changed many times but never harmonized as a whole and therefore represents a clash between old and new principles. Such inconsistency reflects in daily lives of many families and children. National – Macedonian Courts have an obligation (set forward in articles 98 and 118 of the Constitution) to judge according to internationally ratified documents regarding human rights. Even more, in case of collision with the national laws, they have priority. The ECHR is alive because of its interpretation by the ECtHR. Therefore the ECtHR's case-law is a sort of legal source and could be applied directly (even when against the national law). Unfortunately, Macedonian Courts still struggle to refer to ECHR and its interpretation by the ECtHR in particular cases.¹⁷ On 20 March 2023 Parliament ratified Protocol No 16 to the ECHR allowing the highest courts to request the ECtHR to give advisory opinions on questions of principle relating to the interpretation or application of the rights and obligations established by the Convention.¹⁸

The general assessment of the Commission is that the national legal and institutional framework is partially aligned with EU *acquis* and European standards on fundamental rights.¹⁹ Even though ratified international conventions are part of the national legal order and cannot be changed by law there still is an existing gap that needs to be further aligned with the Charter of

¹⁷ Ристик Ј., Трневска З., Деловски В., *Анализа на степенот на користење и цитирање на судската пракса од страна на националните судови, Центар за правни истражувања и анализи, Скопје*, pg. 2, 2020.

¹⁸ Council of Europe, Directorate General Human Rights and Rule of Law, *North Macedonia ratified the Protocol No. 16 to the ECHR*, 25.9.2023 - <https://www.coe.int/en/web/human-rights-rule-of-law/-/north-macedonia-ratified-the-protocol-no.-16-to-the-european-convention-on-human-rights>.

¹⁹ Screening Report, 2023 pg. 67.

Fundamental Rights and the European Convention on Human Rights. However, the overall administrative and judicial capacity for effectively guaranteeing human rights in practice is assessed as rather weak and needs to be strengthened.²⁰

Family related matters and children's rights are part of the Cluster 1 – Fundamentals' - **Chapter 23 – Judiciary and fundamental rights** and **Chapter 24 Justice, Freedom and Security**.

2.1. Within Chapter 23 – substantive and procedural rights

The primary concern when it comes to the civil judiciary rights²¹ seems to be **the right to a fair trial within a reasonable time – Art. 6(1) ECHR** (as shown by the domestic practice of unsolved cases as well as nationally lost cases in front of the ECtHR).²² The procedural aspect of Article 8 is related to the rights and interests protected by Article 6 § 1 of the Convention (fair trial). Article 6 affords a procedural safeguard, namely the “right to a court” in the determination of one’s “civil rights and obligations” and is also ancillary to the wider purpose of ensuring proper respect for, inter alia, family life. In these sense, the country lost several cases.²³

The right to private and family life – Art. 8 ECHR is guaranteed in the Constitution,²⁴ while together with **the right to marry and to found a family – Art. 12 ECHR** further regulated in the Law on Family. Marriage can be concluded between a man and a woman who are 18 years or older.²⁵ This stipulation may be problematic from two standpoints. Firstly, the national legal framework does not offer official recognition of same-sex couples at home, neither in a form of marriage²⁶ nor in any other form in order to protect private and family life. Even more, a marital

²⁰ Screening Report, 2023 pg. 51.

²¹ In the EU Commission Staff Working Document, (North Macedonia Report 2023) Communication on EU Enlargement Policy, 8.11.2023 on pg. 18 it is explicitly stated: “...In the coming year, the country should in particular: complete the implementation of the judicial reform strategy and the updated action plan, with a specific focus on adopting a new Law on Civil Procedure, in line with EU standards and prepare the new strategy on judicial reform (2023-2027) without delay...” and on pg. 26 that most of the judgments that found breaches of the ECHR were related to the right to a fair trial.

²² Screening Report 2023 pg. 37 and pg. 43.

²³ *Mitovi v. FYRM and Oluri v. North Macedonia*. In these cases, the Court found that the national authorities had not acted in a timely or reasonable manner to enforce the custody orders and that the applicants had not received effective protection of their rights. See more in *op.cit.* *Ignovska E.*, 2020.

²⁴ Art. 25, but also to some extent art. 40 of the Constitution.

²⁵ Articles 6, 15 and 16(1) Law on Family.

²⁶ Not necessary according to the ECtHR in *Schalk and Koph v. Austria*, Application no. 30141/04, 2010 when it comes to marriages. Yet, other ECtHR case-law obliges member states to recognize private and family life for same-

or extra-marital relationships of same-sex couples contracted abroad is also doomed to failure when it comes to domestic recognition. Secondly, regarding age, in certain circumstances, the court may, in an out-of-court procedure, allow a person who has reached 16 years of age to conclude a marriage.²⁷ This could raise a concern about permissiveness of under-age marriages. In reality, underage marriages could be either legal (if the consent is granted and the marriage concluded between persons over 16 years) or illegal (a phenomenon that persists especially in the Roma community).²⁸ In this light, the Commission suggests that authorities should promote more effective policy measures towards awareness raising at community level, as well as at prevention and support for children affected by underage marriages.²⁹ Also, Directive 2003/86 EC (Art. 4.5) in the frame of family reunification stipulates that a spouse may join in the sponsor only if is older than 21 years of age (for purposes of preventing from forced marriages within the EU).

When it comes to **discrimination – Art. 14 ECHR**, North Macedonia has ratified protocol 12 to the ECHR providing a general prohibition of discrimination. It is affirmed that the Law on Prevention and Protection against Discrimination improves the protection due to an open-ended list of grounds for discrimination (unlike the Constitution with a closed list of protected grounds).³⁰ The new Law enables a person who believes that they have been discriminated to file a civil lawsuit before a competent court. However, the Commission also affirms that one general Law cannot make all the change and that harmonization still needs to take place with other specific laws.³¹ Article 12 of ECHR is never applied alone. Instead, it is always an auxiliary to another right one is being discriminated against. For instance, sexual orientation and gender identity are among the protected grounds in the Law. Yet, the right to private and family life of LGBTI+ people is often infringed systematically. While the right to private life is included in the draft amendments to the Law on civil registry to bring in the legal gender recognition procedure to implement the ECtHR's

sex couples in alternative forms (for instance, *Vallianatos and Others v. Greece*, No. 29381/09 and 32684/09, judgment of 7.11.2014 or *Orlandi and Others v. Italy*, No. 26431/12, 26742/12, 44057/12, 60088/12, judgment of 14.12.2014. *Oliary and Others v. Italy*, No. 18766/11, 36030/11, judgment of 21.7.2015.

²⁷ Art. 16(2) Law on Family.

²⁸ See for more in Салиоска Н., „Сивата зона“ помеѓу традицијата и правата на децата, Ромска организација за мултикултурна афирмација, 2016.

²⁹ Screening Report 2023, pg. 53. Also, the North Macedonia Report 2023 on pg. 35 also noted that underage marriages (and adoptions) fall short of international standards and should be addressed as a matter of urgency.

³⁰ Screening Report, 2023 pg. 57.

³¹ Screening Report 2023, pg. 58.

judgment³² (but yet to be adopted), the draft versions of the ongoing Civil Code (including family law provisions) still do not include any recognition of family life for same-sex couples.

Rights of the child are very high on the agenda of the European Union. North Macedonia is a party to international treaties protecting rights of the child including the UN Convention on the Rights of the Child^{33,34} or the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention). The Constitution provides for special protection of children (Articles 40 and 42). The legal framework includes the Law on the Protection of Children and the Law on Justice for Children. They comply with the procedural safeguards for children (Directive (EU) 2016/800), including key principles such as effective participation, but not also with the provision of information about procedural rights (Directive 2012/13/EU) in writing (Letter of Rights).³⁵

National institutions reported that strategic documents guiding the work in this field include the National Youth Strategy 2016-2025, the National Action Plan for Protection, Promotion and Fulfilment of the Human Rights of Roma Women and Girls 2022-2024, as well as the National Strategy for Prevention and Justice for Children for 2022- 2027 and Action Plan for 2022-2023. Particular importance is placed on efforts towards deinstitutionalisation through the specific National Strategy 2018-2027.³⁶ Among other elements, the Strategy foresees the transition from institutional care towards family and community based care with the support of social services, the development of services according to the needs of beneficiaries and changing the medical model of looking at disability.³⁷ North Macedonia emphasises inclusive education for children with disabilities and the new Law on Primary Education promotes full inclusion of pupils with disability by transforming special schools and classes into learning support centres. A new National Strategy for the Rights of Persons with Disabilities 2023 – 2030 is being finalised

³² *Case of X v. the FYRM*, ECtHR, Application no. 29683/16, judgment of 17.4.2019.

³³ Nevertheless has no national body responsible for coordinating all policies relating to its implementation. Additionally, the Third Protocol on Communications procedure is still not ratified. The last Report from 2023 (pg. 35) stated that awareness raising is needed on the possibility for children to file complaints themselves. It also stated that children need to be more involved in the policy making process related to or affecting them.

³⁴ On activities that country took in this regard, see more in КПД, Комитет за правата на детето, *Заклучни согледувања за комбинираните од трети до шести периодични извештаи за Северна Македонија*, усвоен од Комитетот на неговата деведесет и прва седница (29 август – 23 септември 2022 година).

³⁵ Screening Report 2023, pg. 64.

³⁶ Screening Report 2023, pg. 61.

³⁷ Screening Report 2023, pg. 61. In this regard, the country lost the case *L.R. v. North Macedonia*, ECtHR, No. 38067/15, judgment of 23.1.2020. The Court considered that a mentally disabled eight-year old child was placed in an inappropriate institution, often exposed to inhumane and degrading treatment.

following consultation with the National Coordinating Body for the Implementation of the UN Convention on the Rights of Persons with Disabilities and the Ministry of Labour and Social Policy.³⁸

Yet, the commission assessments in this field are rather severe:

“...Societal and inter-party consensus is insufficient on key legislative reforms to bridge legal gaps, following the needs and best interests of children. Discrepancies between the family law provisions on adoption and international standards remain.³⁹ Structural challenges are inadequately addressed, such as the lack of resources by state institutions dealing with child rights, the lack of strategic documents on child rights and functioning of the statutory body responsible for overseeing implementation of the Convention on the Rights of the Child. An action plan for children, including a sufficient budget and sectoral models to provide effective services for children, has yet to be prepared.⁴⁰ Cooperation among institutions to better understand and address the challenges faced by different groups of children such as children with disabilities, vulnerable children, children from minorities (including Roma children), is weak....”⁴¹

In addition to this, the later Report assessed that the statelessness has to end by implementation of the enacted amendments to the Law on Civil Registry, the Law on Registering the Place of Residence and the Law on ID that guarantee the right to registration for children born on the territory of the country within 45 days of birth (in line with art. 7 and 8 from the Convention on the Rights of the Child).⁴²

2.2. Within Chapter 24 – mutual recognition and enforcement in civil law disputes

³⁸ Screening Report 2023, pg. 61.

³⁹ This is also marked as urgent issue to be solved in the North Macedonia Report, 2023 on pg. 35. Republic of North Macedonia has signed the European Convention on the Adoption of Children (1967) in 2001 and ratified it in 2003, but the later - European Convention on the Adoption of Children revised (2008) even though signed in 2013 is not ratified yet. Following the ratification, the country will have to revise its adoption in many aspects, including the necessary father’s consent prior adoptions even when the child was born out of wedlock, better balance between adopted children’s right to know their identity and the rights of biological parents to remain anonymous, consent of the child if has sufficient understanding on the matter, access to adoptions for extramarital partners or even same-sex partners in a stable relationship etc.

⁴⁰ This also was delayed in the later North Macedonia Report 2023 on pg. 35.

⁴¹ Screening Report 2023, str. 61.

⁴² North Macedonia Report 2023, pg. 39.

In the framework of judicial cooperation in criminal, civil and commercial matters, the general assessments of the Commission are that the legislative framework is partially aligned with the EU acquis. North Macedonia should ratify on the remaining relevant international convention in the field of judicial cooperation. Nevertheless, what is out of outmost importance is the fact that North Macedonia needs to step up its administrative capacity to meet EU requirements on judicial cooperation.⁴³ Even more, when it comes to family law cases, the Commission affirms their sensitivity which is often a problem in defining the scope of protection internationally.⁴⁴ Therefore, it is essential to ensure adequate continuous training, including on the jurisprudence of the European Court of Justice, in order to adequately prepare the practitioners.⁴⁵

In the domain of the legislative framework in judicial cooperation in civil matters, the country is a party to the Hague Conference on Private International Law and in this context has ratified 12 conventions.⁴⁶ However, the country is not yet party to a series of other important conventions.⁴⁷ North Macedonia has signed but not yet ratified the Hague Convention on private international law on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children (1996), the Hague protocol on the law applicable to maintenance obligations (2007), Convention on Choice of Court Agreements from 30 June 2005 and the Convention on Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019). North Macedonia is also party to Council of

⁴³ Screening Report, 2023 pg. 84.

⁴⁴ Crowley L., Defining the Family and the Scope of Protection Available – Tensions between National Governance and International Expectations, *European Law*, July, 2015.

⁴⁵ Screening Report, 2023, pg. 83.

⁴⁶ Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents; European Convention of 15 October 1975 on the Legal Status of Children born out of Wedlock, Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption; Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters; Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters; Convention of 25 October 1980 on International Access to Justice; Convention of 1 March 1954 on Civil Procedure; Convention of 25 October 1980 on the Civil Aspects of International Child Abduction; Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions; Convention on the Law Applicable to Traffic Accidents from 4 May 1971; Convention on the Law Applicable to Products Liability from 2 October 1973; Convention on the International Recovery of Child Support and Other Forms of Family Maintenance from 23 November 2007.

⁴⁷ Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations and the Convention on the Law Applicable to Maintenance Obligations (1973), Convention on the Recognition of Divorces and Legal Separations (1970), Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993), Convention on Contact concerning Children (2003).

Europe instruments on the information on foreign law, on legal aid, on custody of children and on nationality.⁴⁸

When it comes to the family law and successions, the country indicated the same partial harmonization of the legal framework with the EU acquis.⁴⁹ Amendments are needed notably to further align measures as regards jurisdiction on parental matters (e.g., choice of court, jurisdiction based on presence of the child).⁵⁰

3. Progress, challenges and strategies for the future harmonization in the field of family matters and children's rights

North Macedonia has been making significant efforts to align its legal framework with European Union standards. This includes harmonizing family and children's rights legislation with EU regulations and directives. The country has been working on legislative reforms to improve family law and children's rights. These reforms aim to ensure that domestic laws are in line with international standards and best practices. Ratification of the remaining international treaties, as mentioned above has to be finalized, as well as harmonization within specific laws (for instance, the Law on Family). There are however many remaining challenges that refer to the implementation of laws, which is often due to limited resources, lack of capacity, and bureaucratic obstacles. There is often a gap between legal reforms and their practical application on the ground. Ensuring that these laws are enforced consistently and effectively is critical.

⁴⁸ European Agreement on the Transmission of Applications for Legal Aid from 1977; European Convention on Information on Foreign Law from 1968 with additional Protocol from 1978; European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children from 1980 (signed in 2001, ratified in 2002); European Convention on the Exercise of the Children's Rights from 1996 (signed in 2001, ratified in 20023), European Convention on Nationality from 1997.

⁴⁹ Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast); Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations; Council Regulation No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation; Regulation (EU) No 650/2012 of the European Parliament and the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.

⁵⁰ Screening Report 2023, pg. 84.

There are also disparities in access to legal services and justice for vulnerable groups, such as marginalized children or children from economically disadvantaged families.⁵¹ Ensuring equal access to legal services for all children is very important.

Delays in family court proceedings and a backlog of cases can hinder timely and effective resolution of family matters, which can have a significant impact on children's well-being.⁵² Furthermore, ensuring protection of children, especially in cases of abuse or neglect, remains a challenge.⁵³ Proper mechanisms for reporting, investigating, and addressing child protection issues need to be established and strengthened. Building the capacity of institutions responsible for children's rights and family matters is essential. This includes providing training to professionals working in these areas and ensuring they have the necessary resources to carry out their duties effectively. While the capacity of the Center of Social Welfare has to be strengthened, also its competences have to be reduced. Proceedings for allocation of custody over children after parents' relationship dissolution or separation, as well as those for limitation or termination of parental rights and responsibilities should be under Court's jurisdiction.⁵⁴

Addressing the remaining challenges and obstacles in the harmonization of family matters and children's rights in North Macedonia requires a multifaceted approach involving government, civil society, and international organizations.

Firstly, harmonization asks for ratification and entry into force of the international documents as stated above, as well as their consideration in different policy making. Regulations have to be carefully considered in the existing laws. Laws have to address all the issues from overtaken international documents. A clear mechanism for execution of laws has to be established.

Secondly, judicial reform should improve the efficiency and capacity of courts working in family matters to reduce case backlogs and delays. Alternative dispute resolution mechanisms, such as mediation should be encouraged, to expedite family dispute resolution. Judges should be trained on the practice of the ECtHR in family related matters and children's rights. Also, the other child protection services, such as the Center of Social Welfare should be equipped with human

⁵¹ For instance the case of Toni Sali. For more see Ignovska E., "Marital Presumption as a Legal Obstacle for Gaining Legal Status of Children Lost in Administrative and Judicial Labyrinths in North Macedonia in the European Court of Human Rights' Case-law", *Iustinianus Primus Law Review*, Vol. 12, Issue 2, 2021.

⁵² For instance, cases lost in front of the ECtHR, *Mitovi v. FYRM* and *Oluri v. North Macedonia*.

⁵³ This is evident on day-to day basis for there are children begging for money on most of the capital's cross-roads.

⁵⁴ For more see in *op. cit.* Ignovska E., 2020.

capacity that will be constantly trained in order to be able to adequately respond to child abuse, neglect, reconnection with parents etc.

Thirdly, the State should foster partnerships with international organizations, NGOs, and civil society groups to leverage their expertise, resources, and advocacy in advancing children's rights and family well-being since there is an increasing number of requests for primary and secondary legal aid. Individuals, vulnerable groups and families have an access to legal assistance that provides legal representation regardless of their financial situation. The Ministry of Justice develops and funds legal aid programs for these purposes and this is assessed rather positive.⁵⁵

Addressing these challenges requires a sustained commitment from the government, civil society, and international partners to create a legal and social environment that prioritizes the well-being and rights of children and families in North Macedonia.

Conclusion

North Macedonia has been working on transposing EU directives and regulations related to family matters and children's rights into its national legislation. This process involves carefully reviewing existing laws and regulations and making necessary changes to align with EU standards.

What seems to be notable is the fact that the country took all the necessary measures to promptly sign and ratify most important documents in the field of criminal law (including Convention on Cybercrime, Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Convention on Preventing and Combating Violence against Women and Domestic Violence etc.). However, the country did not make the same effort when it comes to signing documents related to children and family life, including the Convention on the Recognition of Divorces and Legal Separations, the Convention on Contact concerning Children, the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, the Convention on the Law Applicable to Maintenance Obligations, or the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. The country signed but not ratified yet the Hague Convention on Private International law on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental

⁵⁵ North Macedonia Report 2023, pg. 37.

Responsibility and Measures for the Protection of Children, the Hague Protocol on the Law applicable to Maintenance Obligations, the Convention on Choice of Court Agreements, the Convention on Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters and the European Convention on Adoption of Children (revised).

Accordingly the national institutions have changed the Criminal Code many times (and they still debate on further changes), while the Family Law has always been marginalized, left behind on the last bench in the waiting room for reforms to happen.⁵⁶ This is rather strange having in mind that children live in families on daily basis, accordingly need protection every day (without delay).

Harmonization often requires legal reforms and amendments to existing laws or the creation of new laws to ensure compliance with EU norms. In the Republic of North Macedonia in the field of family matters and children's rights, this should include at least:

- Better recognition of family unions contracted/terminated abroad, as well as recognition of their children born accordingly;
- Better protection regarding children's urgent inscription in the birth certificate;
- Prevention from underage marriages,
- Children's maintenance, custody and contacts with parents and other family members after parents' relationship dissolution,
- Significant changes of the regulation on adoption.

The country also needs to make changes to its institutions and administrative structures to effectively enforce and implement EU standards in the areas of family matters and children's rights. This can include strengthening child protection services, administrative organs, family councils/courts, and other relevant authorities. To this aim, the capacity of legal professionals, judges and social workers should be enhanced so that they are well-equipped to apply and enforce the harmonized laws effectively. It is essential to ensure adequate continuous training, including on the jurisprudence of the European Court of Justice, in order to adequately prepare the practitioners.

Engaging with civil society organizations, NGOs, and other stakeholders is important to ensure that the legal changes are in line with the needs and values of the society. Public awareness campaigns can help educate the population about their rights and the changes in laws.

⁵⁶ See more in *op. cit.* Ignovska, 2020.

The harmonization process with the EU acquis is a complex and ongoing one, and countries like North Macedonia typically work closely with EU institutions to ensure a smooth transition. The ultimate goal is to strengthen legal protections for families and children in line with European Union standards, promoting human rights, child welfare, and the rule of law.

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