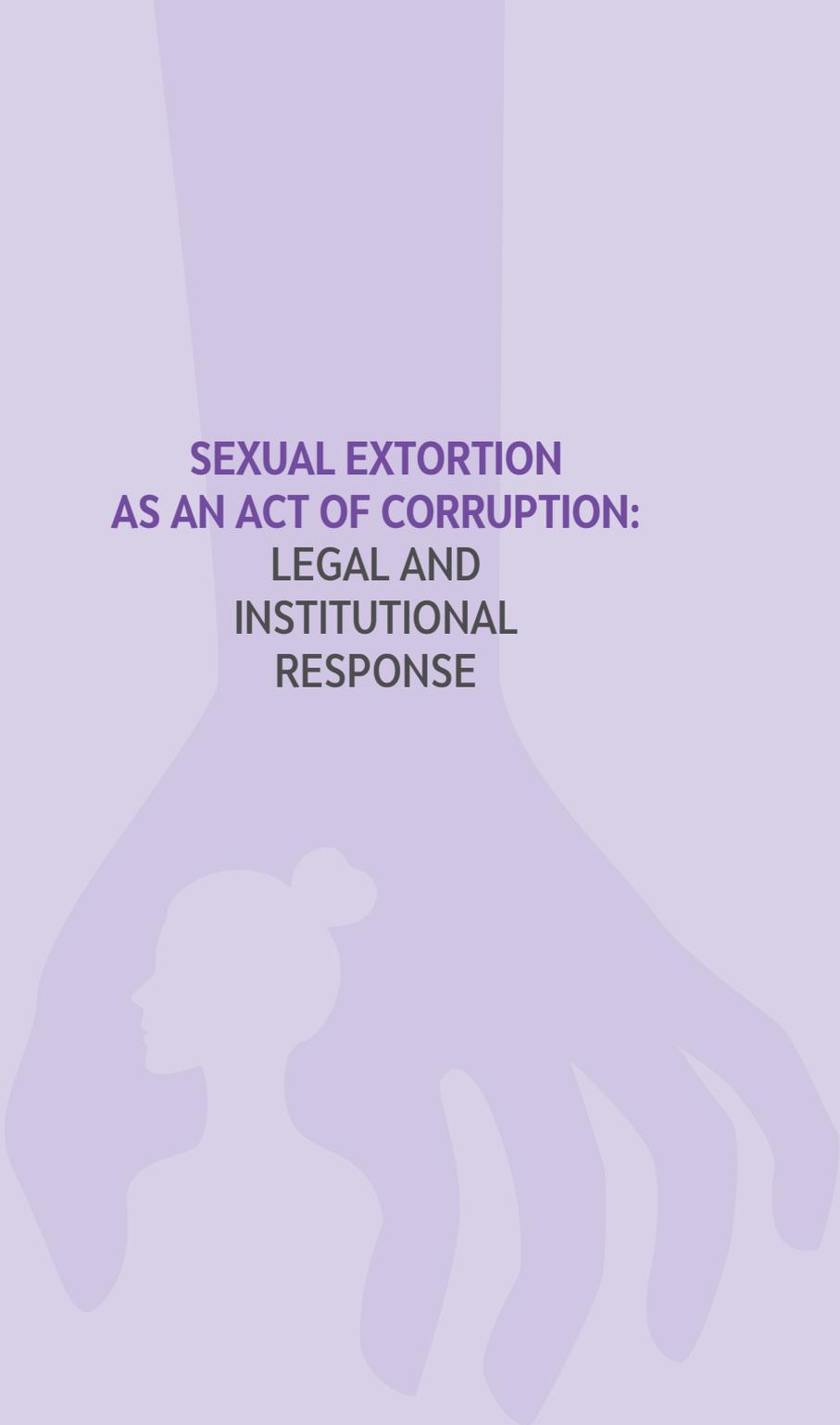


SEXUAL EXTORTION AS AN ACT OF CORRUPTION:

LEGAL AND INSTITUTIONAL RESPONSE



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**SEXUAL EXTORTION
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Authors: Marija Risteska PhD.
Ljupka Trajanovska MA

Translation and proofreading: BESTEL DOOEL Skopje

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Contents:

INTRODUCTION	5
What is sexual extortion or sextortion as an act of corruption?.....	5
What conditions should be met for sexual extortion to be an act of corruption?.....	7
Sexual extortion and the impact on gender equality.....	8
Methodological approach in the research.....	11
LEGAL ANALYSIS	13
Cross-referencing corruption and gender-based violence.....	13
Terminology and the perpetrator-victim of sexual extortion relationship.....	19
Misdemeanour or criminal liability?.....	21
Procedure for reporting and acting.....	23
INTERNATIONAL CONTEXT	26
Analysis of international conventions and initiatives.....	26
United Nations (UN) Convention against Corruption.....	26
Criminal Law Convention on Corruption of the Council of Europe.....	27
Civil Law Convention on Corruption of the Council of Europe.....	28
Group of States against Corruption – Council of Europe.....	28
Council of Europe Convention on preventing and combating violence against women and domestic violence – Istanbul Convention.....	29
COMPARATIVE LEGAL ANALYSIS	31
Western Balkan countries	31
Montenegro.....	31
Bosnia and Herzegovina.....	32
• Federation of Bosnia and Herzegovina.....	32
• Republika Srpska.....	33
Member States of the European Union	34
Slovenia.....	34
Finland.....	35
OSCE Participating States	35
Switzerland.....	35
Kyrgyzstan.....	36
States of the United States of America	37
California.....	37
Arkansas.....	38



MAIN FINDINGS FROM THE INTERVIEWS AND FOCUS GROUPS	40
The main findings obtained from the interviews	40
Recognition of gender forms of corruption.....	40
Prevalence of sexual extortion in the Republic of North Macedonia.....	40
Reporting and sanctioning sexual extortion.....	41
Legislation.....	41
Institutional response.....	42
The main findings obtained from the focus group with representatives of the local self-government	42
Recognition of gender forms of corruption.....	42
Prevalence of sexual extortion in the Republic of North Macedonia.....	42
Reporting and sanctioning sexual extortion.....	43
Legislation.....	43
Institutional response.....	43
The main findings obtained from the focus groups with representatives of the civil sector	44
Recognition of gender forms of corruption.....	44
Prevalence of sexual extortion in the Republic of North Macedonia.....	44
Reporting and sanctioning sexual extortion.....	45
Legislation.....	45
Institutional response.....	45
Main conclusions	46
CULTURE AND AWARENESS	47
RECOMMENDATIONS	50
Recommendations for legal regulation of sexual extortion as a form of corruption.....	50
Recommendations for efficient institutional response in cases of sexual extortion.....	50
Legislative recommendation for regulation of sexual extortion in the Criminal Code.....	51
Proposal 1.....	52
Proposal 2.....	53
Draft provisions for regulating sexual extortion in the Law on Prevention of Corruption and Conflict of Interests.....	53
Draft provisions for regulating sexual extortion in the Law on Prevention and Protection of Women from Violence and Domestic Violence.....	54
ANNEX I	55
List of relevant stakeholders interviewed.....	55
List of representatives of the local self-government units with whom focus groups were held.....	56
List of representatives of the civil sector with whom focus groups were held.....	56

Introduction

What is sexual extortion or sextortion as an act of corruption?

Sexual extortion or sextortion occurs when people are extorted sexual favours in exchange for performing a function entrusted to someone. Due to the fact that the perpetrators abuse their office for personal gain, the act qualifies as corruption. There are studies, such as that of Bullock and Jenkins (2020) showing that corruption in general has a greater negative effect on marginalized groups, which is due to the asymmetry that exists in relation to positions of power in decision-making or at work¹. The number of women victims of sexual extortion is proportionately higher than that of men.

There are two types of corruption:

- (i) contractual corruption where the parties involved in corruption have a prior agreement and thus the act of corruption is committed with the mutual will of the parties; and
- (ii) extorted corruption where one of the parties is involved in direct, open or indirect, covert extortion of the other party, the victim².

Extortion can mean money, gifts, or even sex in exchange for access to the services, goods or procedures that the first person who makes the extortion manages, leads or makes decisions in relation thereto. The first type, or contractual corruption involves “insiders” and their clients who jointly agree to derive a benefit or advantage over other competitors on the market. This type of corruption involves powerful figures in the political and economic life, while the second type, or extorted corruption includes more marginalized groups that do not have access to power, and in many cases, involve women. Some women are forced to perform sexual services in order to be provided with basic public services, including health care or education. Gender stereotypes and the expectations of male and female behaviour based thereon, put women in a more vulnerable position and force them to use sex as a “currency” for bribery/obtaining a service, access to a public good or a job position; which they are entitled to if the system was not corrupt. Studies also show that women and other marginalized groups are at a greater risk of extorted corruption because they have less access to justice and protection against exploitation³.

¹ Bullock, Jessie and Matthew Jenkins (2020). Corruption and marginalization, Transparency international, available online: <https://knowledgehub.transparency.org/assets/uploads/helpdesk/Corruption-and-marginalisation.pdf>

² Gabriela Camacho (2020) Corruption and gender equality: A summary of existing research, Transparency international, available online <https://www.u4.no/publications/corruption-and-gender-equality-hd.pdf>

³ Bullock, Jessie and Matthew Jenkins (2020). Corruption and marginalization, Transparency international, available online: <https://knowledgehub.transparency.org/assets/uploads/helpdesk/Corruption-and-marginalisation.pdf>



Sextortion is a form of sexual exploitation and extorted corruption where a person in a decision-making position or with authority abuses the position and power he/she has in order to extort an unwanted sexual activity from another person in exchange for the service, good, access to a resource which the former manages, leads or makes decisions in relation thereto⁴.

The term sextortion as a form of corruption was first used in 2008 by the International Association of Women Judges (IAWJ), when the members noticed and the judges from different regions reported recognizing a specific type of corruption that was rarely discussed⁵. Since then, the term “sextortion” has been adopted by some organizations and can be found in literature. However, the phenomenon is still most often mentioned in the literature under other terms, such as “transactional sex”, “sexual harassment” or “sexual services”.⁶ In this study, instead of sextortion, the term “sexual extortion” will be used as it covers the essence of the act and it is a coinage made of terms used in the Macedonian language instead of the foreign word, sextortion.

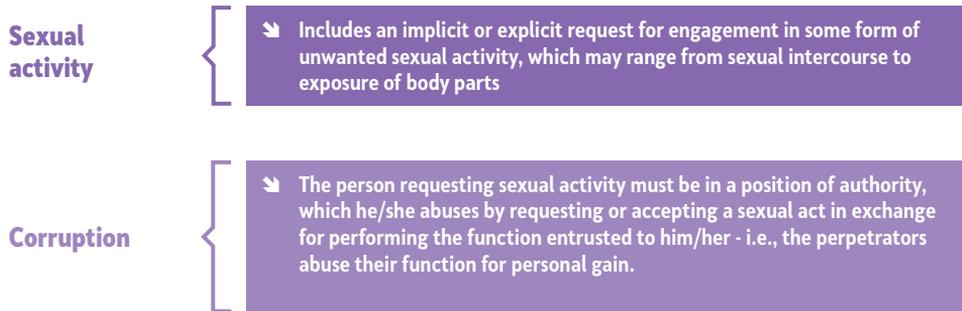
⁴ The International Bar Association defines sextortion as the exchange of sex rather than money in order to obtain access to a certain advantage/benefit that the victim of sextortion could have obtained legally, i.e., a benefit to which the victim was entitled (see International Bar Association - IBA. 2019. Sextortion: A crime of corruption and sexual exploitation).

⁵ Maja Lazarova (2020), Gender Aspects of Corruption with an Overview of the Republic of North Macedonia, OSCE Mission to Skopje, available online: <https://www.osce.org/files/f/documents/c/4/480937.pdf>

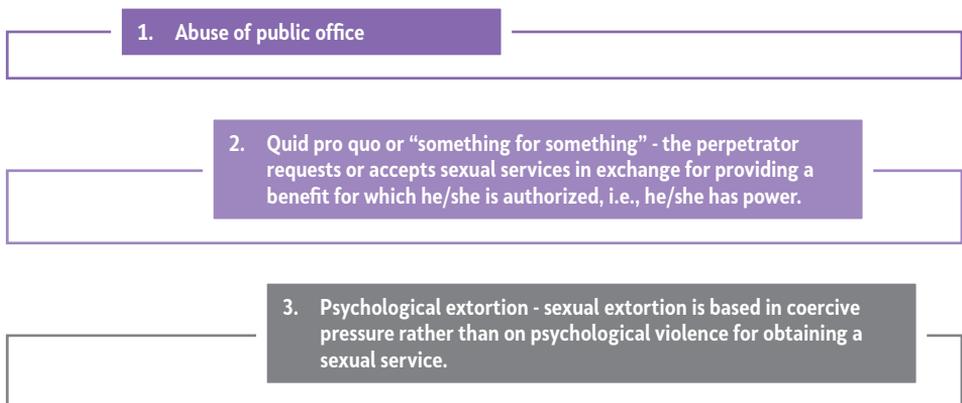
⁶ Hazel Feigenblatt (2020), Breaking the silence around sextortion: The links between power, sex and corruption, Transparency International, available online: <https://www.transparency.org/en/publications/breaking-the-silence-around-sextortion>

What conditions should be met for sexual extortion to be an act of corruption?

In order for sexual extortion to be considered an act of corruption, it should have two elements:



And in order for the act to be considered an act of corruption, the following three conditions must be met:



The imbalance in the power between the perpetrator and the victim allows the perpetrator to exert coercive pressure.



Sexual extortion and the impact on gender equality

The gender perspective in corruption has been scarcely researched and therefore it is not yet known to what extent sexual extortion is used as an act of corruption, nor what is the impact of this phenomenon on gender equality. However, there are studies that identify four areas where women are more susceptible and can fall victim to this type of corruption:

- 1) when accessing public services, markets and loans;
- 2) political participation;
- 3) gender-based crimes (such as sexual exploitation, human trafficking, etc.); and
- 4) negligence or mismanagement⁷.

Because of the gender system in which women have equal rights; however, due to the traditions, customs, prevailing gender roles and stereotypes, they do not fully exercise their rights and are *de facto* economically, politically and socially unequal to men. Women are more vulnerable due to their historical discrimination, i.e., because they were less educated, did not have their own bank accounts, property in their own name and this prevented them from accessing public services, markets and loans. Goetz 2007⁸; IAWJ 2012⁹; Transparency International 2019¹⁰; UNDP-Huairou Commission 2012¹¹ note that women are more likely to be exposed to corruption in the sectors of education, health care, access to water and sanitation, housing, and obtaining personal documents (including visas). According to the Director of the Academy for Judges and Public Prosecutors in the Republic of North Macedonia, this phenomenon “mostly occurs when a woman demands certain rights which she is entitled to, and they depend on a certain holder of power, authority, position, where it is at his discretion whether to grant those rights or

⁷ SIDA. 2015. Gender and Corruption Brief

⁸ Goetz, Anne Marie (2007). “Political Cleaners: women as the New AntiCorruption Force?” Development and Change 38(1):

⁹ International Association of Women Judges (IAWJ) (2012) Stopping the Abuse of Power through Sexual Exploitation. Naming, shaming and ending sextortion. A Tool Kit. Washington. <http://www.iawj.org/wpcontent/uploads/2017/04/Corruption-and-Sextortion-Resource-1.pdf>

¹⁰ Transparency International (2019) Global Corruption Barometer for Latin America and the Caribbean, URL: https://www.transparency.org/files/content/pages/2019_GCB_LatinAmerica_Caribbean_Full_Report.pdf

¹¹ UNDP-Huairou Commission (2012) Seeing beyond the state: Grassroots women's perspectives on corruption and anti-corruption, <https://www.undp.org/content/dam/undp/library/Democratic%20Governance/Anti-corruption/Grassroots%20women%20and%20anticorruption.pdf>

not.”¹² Goetz (2007) argues, for example, that “women face various forms of abuse and corrupt behaviour on the part of public officials because the exchange currency demanded of them compared to that demanded of men, is invisible”¹³.

“If men are in key positions, they choose people similar to themselves. The identification is usually with the one holding the power. If you do not have a woman president, a woman speaker of parliament, a woman prime minister, if there are only 4 women ministers from among 22-23 ministries, if you have only two women deputy ministers, if you do not have a woman dean of the Faculty of Law, the identification with the law and the justice is more difficult. That is why I say that corruption in the Republic of North Macedonia is male, especially in politics, state and public administration because if the majority of the key officials are men – they are corrupt.”¹⁴

In countries where there are no quotas for guaranteed participation of women in politics, studies show that sexual extortion is used to obtain a position on party electoral lists¹⁵. As in all gender issues, the initial premise is that corruption, and especially sexual extortion as an act of corruption, has a different impact on men and women, and thus on their status and gender relationship. Women are impacted by gossip, rumours (even if untrue) about a sexual activity in a different manner than men, precisely because of the patriarchal family system and the unacceptability of the free sexual behaviour of women, which is not the case with men. Rumours are stigmatized and contribute to making sexual extortion invisible as a form of corruption¹⁶.

In countries where there is no rule of law, the rules are not respected, where “expertise and competence are not key criteria, the professional path of women is more difficult than that of men”. In societies with high levels of corruption, with men in top positions, “in order to achieve certain positions or if you get them, in order to advance or survive, you are sometimes doomed to be a victim of sexual extortion.”¹⁷

¹² Natasha Gaber-Damjanovska, Director of the Academy for Judges and Public Prosecutors (Interview 13.09.2021)

¹³ Goetz, Anne Marie (2007). “Political Cleaners: women as the New Anti-Corruption Force?” *Development and Change* 38(1):

¹⁴ Gordana Siljanovska, President of the EOC in the Assembly of the Republic of North Macedonia (Interview 07.10.2021)

¹⁵ See Bjarnegård 2013; Sundström & Wängnerud 2016

¹⁶ Åsa Eldén, Dolores Calvo, Elin Bjarnegård, Silje Lundgren and Sofia Jonsson (2020) *SEXTORTION: CORRUPTION AND GENDER-BASED VIOLENCE*, available online:

¹⁷ Gordana Siljanovska, President of the EOC in the Assembly of the Republic of North Macedonia (Interview 07.10.2021)



Sexual extortion has two types of impact:

- (i) indirectly on the quality and quantity of the services provided in the country and
- (ii) directly on the victim of sexual extortion, which may result in the exclusion of girls from education, unwanted pregnancies, impoverishment, and even psychological consequences that are similar to those of victims of sexual violence.

When sex is used as a currency for bribery in exchange for a favour, “the woman may experience the same kind of shame that is caused by rape or experiencing another type of sexual violence”¹⁸. “Much like the brutal forms of sexual violence, the statistics show that young girls are more vulnerable to sexual extortion.”¹⁹

That is why it is very important to understand sexual extortion as a gender phenomenon. Despite the existing limited sources for this phenomenon, the vast majority thereof indicate that women are in most cases the victims who are abused by men. This does not mean that the perpetrators of this act of corruption are always men, nor that all victims are women. There are cases where both men and boys are victims of sexual extortion. However, in order to understand the phenomenon, it is necessary to have a structural understanding of the gender norms and relations, as well as the relations between gender and power.

¹⁸ International Association of Women Judges (IAWJ) (2012) Stopping the Abuse of Power through Sexual Exploitation. Naming, shaming and ending sextortion. A Tool Kit. Washington. <http://www.iawj.org/wpcontent/uploads/2017/04/Corruption-and-Sextortion-Resource-1.pdf>

¹⁹ Nikolina Kenig, Full-time professor, Faculty of Philosophy (Interview 19.08.2021)

Methodological approach in the research

The analysis was made using triangulation of primary data obtained from interviews and focus group discussions, secondary data obtained through cabinet research of reports and analyses of other institutions, organizations and analysis of the international and domestic legal framework.

The analysis has several sub-chapters that deal with the main issues of regulating sexual extortion. It is the basis for defining the solutions presented as recommendations in the next chapter.

The research methodology consists of three stages:

- (I) analysis of the existing legislation,
- (II) comparative analysis of the international legal framework and
- (III) semi-structured interviews and focus groups.

The research was conducted in the period from June to October 2021, and the overall approach was in line with the recommendations for physical distancing during the pandemic caused by the Covid-19 virus.

Stage I – Analysis of the existing legislation

An analysis of the existing national legislation and the international conventions ratified in the country was conducted in order to determine whether and how gender-based forms of corruption, with a focus on sexual extortion, are regulated. The following national laws were analyzed:

- ✎ Criminal Code of the Republic of North Macedonia
- ✎ Law on Prevention of Corruption and Conflict of Interests
- ✎ Law on Prevention and Protection of Women from Violence and Domestic Violence
- ✎ Law on Equal Opportunities of Women and Men
- ✎ Law on Labour Relations
- ✎ Law on Protection from Harassment at the Workplace



- Law on Higher Education
- Law on Whistleblower Protection

The following international conventions and initiatives were also analyzed for the needs of the research:

- United Nations Convention against Corruption (UNCAC)
- Criminal Law Convention on Corruption – Council of Europe (CoE)
- Civil Law Convention on Corruption – Council of Europe (CoE)
- Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence – Istanbul Convention
- GRECO – Group of States against Corruption

Stage II – Semi-structured interviews and focus groups

For the needs of the research, 16 interviews and three focus groups were conducted with relevant stakeholders and experts in the field of corruption, including judges, public prosecutors, lawyers, women MPs, representatives of the State Commission for Prevention of Corruption, representatives from the Government of the Republic of North Macedonia, academics and representatives of the civil society, prominent actors in the following areas: fight against corruption, protection of human rights, gender equality, prevention of violence against women.

The interviews and focus groups were conducted using the ZOOM platform, in accordance with the Government measures for protection against the spread of the Covid-19 virus. The list of interviewed stakeholders is given in Annex I to the report.

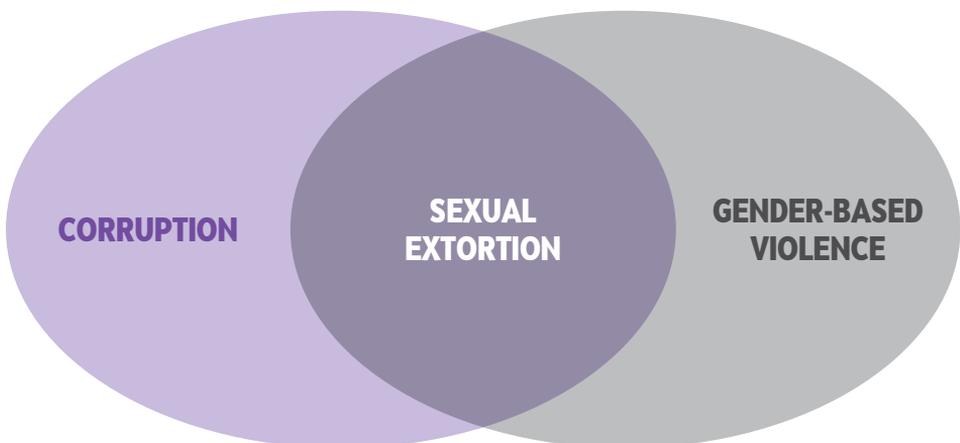
Legal analysis

The purpose of this study is to make a legal analysis of the existing national legal framework, the institutional set-up and the level of awareness about the regulation, prevention and protection from sexual extortion as a form of corruption. However, in order to make the analysis, it is necessary to set the basic postulates of the act, as well as to distinguish between sexual extortion and other similar types of gender-based violence where the perpetrator uses coercive methods, such as threats or physical violence, to obtain sexual intercourse.

Cross-referencing corruption and gender-based violence

“Sexual extortion is undoubtedly one of the most gruesome gender-specific forms of corruption. Our legal framework recognizes sexual harassment and mobbing as forms of abuse of office, through other legislation, but not through the Law on Prevention of Corruption and Conflict of Interests.”²⁰

It should first be clarified that sexual extortion cross-references corruption and forms of gender-based violence, such as sexual harassment, sexual exploitation and sexual abuse. If we take a look at the laws that specifically regulate corruption and gender-based violence, we will notice that none of them recognizes sexual extortion as a form of corruption.



²⁰ Ljupcho Nikolovski, Deputy Prime Minister responsible for the fight against corruption and crime, sustainable development and human resources (Interview 08.10.2021)



Namely, for the act of sexual extortion to be considered corruption, it is necessary for there to be a transaction, i.e., for the person to request or accept a sexual favour, and in return to offer something that is within his/her authorizations/official duty. Without the transaction, the act is considered sexual harassment or sexual abuse. The Law on Prevention and Protection of Women from Violence and Domestic Violence,²¹ in the Glossary in Article 3, paragraph 1 regulates “*violence against women*” as a violation of human rights, discrimination against women and involves all acts of gender-based violence that result or are likely to result in physical, sexual, psychological or economic harm or suffering of women, including direct and indirect threats and intimidation with such acts, extortion, arbitrary restriction and/or deprivation of liberty, regardless of whether they occur in the public or private life. However, this law fails to regulate the transactional nature of sexual extortion, which makes it possible to define the act of sexual extortion as an act of corruption. Still, Article 3, paragraph 18 distinguishes sexual extortion from sexual violence, which exists even when another person is induced or forced to engage in acts of sexual nature with a third party without his/her consent.

In the essence of the act of sexual extortion as an act of corruption, consent is the basis for the act even though it is extorted by receiving a service in return. This is important because it has the effect to make the victim an accomplice. We assume that the transactional aspect to some extent justifies the sexual services received in the eyes of the perpetrator, and possibly in the eyes of the victim as well. The transaction can also be understood as a risk reduction strategy of the perpetrator. Taking into consideration the fact that the provider of sexual services will become an accomplice and that a *quid pro quo* argument is used instead of physical coercion, the risk of reporting is minimized. It is therefore important that the Law on Prevention and Protection of Women from Violence and Domestic Violence stipulates that “*consent must be expressed voluntarily as a result of the free will of the person, assessed in the context of the circumstances*”. The assessment from that aspect depends on the will, awareness and readiness of the judges to determine that the act occurred with the abuse of power, official duty or public office, i.e., that the sexual favour is extorted in return for something that the public official was obliged to provide, enable, for exercising a right, etc. “The problem is not only in the legislation. It is primarily in the perception, normalization of this type of act. This means that it is not accepted by many people as inappropriate behaviour, but as something that might have to be tolerated because it is some kind of a tradition, folklore, norm.”²²

²¹ Law on Prevention and Protection of Women from Violence and Domestic Violence, available at <https://www.mtsp.gov.mk/content/pdf/2021/1a28a922f364401e94935d4d694b9d75.pdf>

²² Nikolina Kenig, Full-time professor, Faculty of Philosophy (Interview 19.08.2021)

Interestingly, the Law on Prevention and Protection of Women from Violence and Domestic Violence in Article 3, paragraph 25 attempts to define “*coercive control over women as **abuse of power**, use of threats, force or other forms of coercion, fraud or misrepresentation in order to control the behaviour and life of women*”, but does not define the transaction as an element that makes it impossible to recognize the act of sexual extortion as an act of corruption in this *lex specialis*. This is confirmed by Article 4, paragraph 1, which regulates the due diligence of state authorities, legal entities exercising public powers determined by law, public servants, officials and other authorized persons performing activities on behalf of the state that they have an obligation to refrain from participating in acts of violence and to take all measures and activities to prevent any acts of gender-based violence against women and domestic violence, but does not prohibit sexual extortion in return for performing their duty, public office.

The Law on Prevention and Protection of Women from Violence and Domestic Violence regulates sexual or psychological harm or suffering of women, including direct and indirect threats and intimidation with such acts, extortion; but fails to regulate the transactional nature of sexual extortion, making it impossible to define the act as an act of corruption.

However, regulating *consent as a result of the free will of the person, assessed in the context of the circumstances, provides proof that the sexual service was extorted in return for something that the public official was obliged to provide, enable, for exercising a right, etc.*

Nevertheless, without a specific prohibition of sexual extortion, this *lex specialis* does not regulate it as a misdemeanour, does not provide for measures for prevention or protection from this type of abuse of women.

The Law on Prevention of Corruption and Conflict of Interests²³ lacks elements in the definition of corruption and conflict of interests in order to recognize sexual extortion as an act of corruption. Article 2, paragraph 1 stipulates that “*corruption, in terms of this Law, shall mean abuse of office, public authorization, official duty or position for the purpose of gaining benefit, directly or by means of an intermediary, for oneself or others*”. Benefit is later in Article 8 paragraph 5 defined as “*realization of any kind of tangible or intangible benefit, convenience or advantage for oneself or for another*”. Hence, although not specifically regulated, sex can be considered an intangible benefit. However, if we take a look at the articles of Chapter Five of the Law on Prevention of Corruption and Conflict of Interests, which refer to the prevention of corruption in the exercise of public authority, we will not be able to find a prohibition of receiving or extorting sexual services for the purpose of exerting influence or having the ability to influence the objective and impartial performance of functions, public authorizations or official duties. As a result, there are no misdemeanour provisions that would punish sexual extortion as an act of corruption. In fact, the Law on Prevention of Corruption and Conflict of Interests with

²³ Law on Prevention of Corruption and Conflict of Interests, available at https://www.dksk.mk/fileadmin/user_upload/Zakon_za_sprecvanje_na_korupcija_i_sudirotnost_na_interesi.pdf



Article 3, which regulates the principle of legality, prevents the initiation of a procedure for prevention of corruption by sexual extortion because paragraph 3 stipulates that “no one can be held liable for corruption except in the cases and under the conditions stipulated by this Law, the Criminal Code and other law, and in a procedure set forth by law”, given the fact that sexual extortion is not prohibited by this law.

Article 27 of the Law on Higher Education regulates the right of the student to protect his/her rights and duties before the bodies of the higher education institutions and protect the personality of the student from abuse, as well as protect his/her dignity. The reporting is done with an authorized person for receiving reports of corruption, which are not determined as forms in Article 107 of the Law on Higher Education.

The Law on Prevention of Corruption and Conflict of Interests is written with broad enough terms that cover bribery in intangible form to obtain a convenience, benefit or advantage for oneself or another. However, the lack of a specific prohibition of sexual extortion as an act of corruption leaves too much room for interpretation in the procedure of reporting and proving corruption, sometimes depending on the understanding and the will of the members of the Commission for Protection and Prevention of Corruption and the courts.

When this happens in the workplace, the dilemma is often whether if sexual extortion by a supervisor is reported, the complainant would be fired. This is further complicated by the insufficient discretion when reporting. The review of the national legislation that currently partially regulates sexual extortion as a form of corruption shows that the Law on Labour Relations²⁴ regulates the Prohibition of Discrimination in Article 6 on the basis of gender and age, stating that *The employer must not treat the job seeker (hereinafter: job applicant) or the employee unequally (paragraph 1); i.e., women and men must be provided equal opportunities and treatment relating to: access to employment, including promotion and vocational and professional training; working conditions; equal pay for equal work; professional social insurance schemes; leave from work, hours of work, and termination of the employment contract (paragraph 2).*

In the context of employment, *quid pro quo* sexual harassment occurs when the benefit or harm of employment is conditioned by the response of the employee to a sexual request. Sexual extortion/sextortion involves the same type of exchange, but is not limited to the workplace. Sexual service in exchange for some benefit that the person in a position of power does not grant or grants – that is the main factor for the existence of a corruption component of sextortion. Harassment and sexual harassment are regulated and prohibited in Article 9 of the Law on Labour Relations and are categorized as discrimination in

²⁴ Law on Labour Relations (“Official Gazette of the Republic of North Macedonia” no. 62/2005; 106/2008; 161/2008; 114/2009; 130/2009; 149/2009; 50/2010; 52/2010; 124/2010; 47/2011; 11/2012; 39/2012; 13/2013; 25/2013; 170/2013; 187/2013; 113/2014; 20/2015; 33/2015; 72/2015; 129/2015 and 27/2016, available online https://mtp.gov.mk/content/pdf/trud_2017/pravilnici/16,11-%D0%B0%D0%BA%D0%B%D0%BD%D0%A0%D0%B0%D0%B1%D0%9E%D0%B4%D0%BD%D0%BE%D1%81%D0%B8.pdf

the sense of Article 6 of the Law. However, defining harassment solely as an “*unwelcome behaviour that aims at or amounts to a violation of the dignity of the job applicant or the employee, and which causes fear and creates a hostile, degrading or offensive conduct*”; is not enough to cover the elements of sexual extortion.

The Convention 190²⁵ of the International Labour Organization concerning gender-based violence in the workplace and at work obliges signatory countries to *identify, in consultation with the employees’ and workers’ organizations concerned and through other means, the sectors or occupations and work arrangements in which workers and other persons concerned are more exposed to violence and harassment; and to take measures to effectively protect such persons.*

In the Republic of North Macedonia, there are laws that can be used to prosecute and prevent the abuse of power to extort sexual intercourse or favour. The Law on Labour Relations (LLR) is not one of them. The LLR needs to be harmonized with the Convention 190 of the International Labour Organization.

The Law on Protection from Harassment at the Workplace²⁶ in Article 5, paragraph 2 regulates sexual harassment as *any verbal, non-verbal or physical behaviour of a sexual nature, which aims at or constitutes a violation of the dignity of the job applicant or the employee, and which causes a feeling of fear or creates discomfort, humiliation.* Such behaviour is considered as psychological, i.e., sexual harassment at the workplace that has not stopped after the written warning by the harassed person that he/she is disturbed by the behaviour of perpetrator of the harassment and that he/she will consider it harassment at the workplace. In this sense, the Law is not a sufficient basis for sexual extortion as a means of committing corruption that is enough to happen once. Usually, the extorter gives such a condition once, so the victim accepts, does not accept or reports; while according to the Law on Protection from Harassment at the Workplace, in order for the act to qualify as sexual harassment, the act must be repeated and it should be accompanied by a written request for the act not to be repeated. It does not involve an attempt for sexual extortion, the offer can be repeated, but not necessarily.

²⁵ C190 – Violence and Harassment Convention, available online: https://www.ilo.org/dyn/normlex/en/f?p=NORMLXPUB:12100:0:NO::P12100_ILO_CODE:C190

²⁶ Law on Protection from Harassment at the Workplace (“Official Gazette of the Republic of North Macedonia” no. 79/2013 and 147/2015), available online: https://www.mtsp.gov.mk/content/pdf/trud_2017/pravilnici/16,,11-%D0%B7%D0%B0%D0%BA%D0%BE%D0%BD%D0%97%D0%B0%D1%88%D1%82%D0%B8%D1%82%D0%B0%D0%92%D0%BE%D0%B7%D0%A0%D0%B0%D0%B1%D0%9C%D0%B5%D1%81%D1%82%D0%BE.pdf



Furthermore, Article 7, paragraph 3 of the Law regulates that the time of performing psychological and sexual harassment at the workplace is considered the time within the working hours and the time of travel to and from the workplace, when the type and manner of behaviour considered as harassment at the workplace occurs. However, sexual extortion can also take place outside the workplace and outside of working hours, especially when it comes to employment. Hence, the Law on Protection from Harassment at the Workplace is not a good enough framework for recognition, prevention and protection against sexual extortion as an act of corruption. According to practitioners, this law only enumerates the cases in which harassment can be recognized, which makes the protection process completely dependent on the awareness of the judges and their capacity to recognize mobbing and discrimination. Lawyer Marta Gusar believes that *“either the judges are not trained enough to see this or the law is not good. There needs to be something that can be realistically applied in practice. Sexual extortion needs to be explained in more detail and with a broader view in order for it to be tackled.”*

Terminology and the perpetrator-victim of sexual extortion relationship

In order for the act to be effectively regulated, it is very important to use the terms **perpetrator of sexual extortion** and **victim of corruption** in connection with this act, and not to replace them with other terms, such as recipient and giver of bribe, or patron and client; which will prevent confusing the act with other acts. Other not recommended terms are also abuser and victim of violence in order to make a distinction between the act and other similar acts of gender-based violence. The use of these terms – perpetrator of sexual extortion and victim of corruption – is also recommended in the reports of the International Association of Women Judges²⁷ and the International Bar Association²⁸.

Thus, it should be taken into consideration that the terms perpetrator of sexual extortion and victim are used in a gender-neutral form and can be applied to both men and women in the role of perpetrators and victims. The victim should not be explicitly limited to being a woman. This is done in some legal systems, such as India, but it is a limitation. Research shows that most of the victims are women, but there are cases where the victim is a man. We must also not forget that the perpetrator of sexual extortion can be a woman from a position of power. The perpetrator of the act of sexual extortion exploits a relationship of power, often in relation to gender asymmetry, and always in relation to the entrusted authority of the position to which he/she is appointed i.e., which he/she performs as a civil servant. Due to the imbalance of power between the parties involved in the act of sexual extortion, the responsibility for the act must be placed on the person abusing his/her position and authority entrusted by the state²⁹. This analogy for explicitly regulating the gender of the victim should also apply to the perpetrator.

The reason for this is to avoid criminalizing the victim as a sexual service provider, i.e., to avoid the victim being an accomplice in the act. Hence, a significant difference should be made between the acts of giving and receiving bribe and the act of sexual extortion, especially because in the Macedonian legislation, with the act of bribery, the role of the giver of the bribe is criminalized. Article 358, paragraph 1 of the Criminal Code³⁰ stipulates that “*whosoever, directly or indirectly, gives, promises, or offers a gift or another*

²⁷ International Association of Women Judges (IAWJ) (2012) Stopping the Abuse of Power through Sexual Exploitation. Naming, shaming and ending sextortion. A Tool Kit. Washington. <http://www.iawj.org/wp-content/uploads/2017/04/Corruption-and-Sextortion-Resource-1.pdf>

²⁸ International Bar Association - IBA. 2019. Sextortion: A crime of corruption and sexual exploitation

²⁹ Åsa Eldén, Dolores Calvo, Elin Bjarnegård, Silje Lundgren and Sofia Jonsson (2020) SEXTORTION: CORRUPTION AND GENDER-BASED VIOLENCE, available online: https://eba.se/wp-content/uploads/2020/11/Sextortion_webb.pdf

³⁰ Criminal Code, available at <https://www.slvesnik.com.mk/Issues/6ed04b3db86643b297d84aa94513d055.pdf>



personal benefit to an official person, or benefit for another, in order for the official person to perform an official activity, which otherwise should not be performed, or not to perform an official activity which must be performed, or whosoever mediates in such relation, shall be sentenced to imprisonment of one to five years.” Due to the fact that in theory, the laws analyzed above: the Law on Prevention and Protection of Women from Violence and Domestic Violence and the Law on Prevention of Corruption and Conflict of Interests provide a sufficiently broad basis for prosecution of this act, but also involve a risk for the victim of sexual extortion to be prosecuted, it is necessary to define a separate crime of sexual extortion and as a term to be defined in the Law on Prevention of Corruption and Conflict of Interests. If the victim is also prosecuted, there is a risk that sexual extortion will not be reported.

Of course, several aspects need to be considered. First, due to the existing legislation governing the existence of consent for the act to be performed by the perpetrator and the nature of the act, it will be difficult to prove the lack of consent in the *quid pro quo* exchange that characterizes the act. Second, since sexual extortion is based on psychological coercion and the position of power that the perpetrator uses in relation to the victim, and not on physical force, coercion, physical threats and the like, it will be difficult to prove that the victim feared for his/her life or that he/she might have been hurt. It is therefore important that legislation regulates the power relationship between the perpetrator of sexual extortion and the victim.

“Sexual extortion or sextortion as such is not present in the Criminal Code, but it may be necessary to consider how to determine it in relation to coercion from a position of power.”³¹ Given that sexual extortion is recommended to be regulated as a crime, it should follow the standard of proof like other sexual offenses, where the burden of proof is on the defendant, and includes, in addition to the statement of the victim, other corroborative evidence.

In this context, the following is recommended: (i) to define sexual extortion as a crime; (ii) to regulate the power relationship between the parties in the act of sexual extortion; (iii) to regulate two parties, perpetrator of sexual extortion and victim of sexual extortion; and (iv) to regulate that the burden of proof is on the party accused of sexual extortion.

³¹ Natasha Gaber-Damjanovska, Director of the Academy for Judges and Public Prosecutors (Interview 13.09.2021)

Misdemeanour or criminal liability?

The study conducted by the International Association of Women Judges presents four directions through which sexual extortion is regulated and the prevention and protection from this phenomenon is legally provided. One direction is through anti-corruption regulation, the second direction is through regulation that prevents and protects from gender-based violence; the third direction is through the regulation on anti-discrimination and sexual harassment in labour relations. All these directions provide for misdemeanour liability of the perpetrator. In a few cases, the act is unequivocally regulated as a crime. Such is the Taiwan Criminal Code, which within the framework of the acts against morale explicitly criminalizes “the abuse of a position of authority to extort sexual intercourse in a variety of contexts, including public office, employment, education or guardianship”³². In Romania as well, the abuse of power for sexual gain is explicitly criminalized in the Criminal Code, while the person who offers sexual service to a public official who abuses the situation of power or the position of authority conferred to him/her is considered to be committing a misdemeanour³³.

The Macedonian **Criminal Code**³⁴ in Chapter nineteen: crimes against gender freedom and morality regulates *Sexual assault by position abuse* in Article 189 as “*whosoever by abusing his position induces another, who is subordinated or dependent, to sexual intercourse or some other sexual act, or with the same intention abuses, intimidates or acts in a way that humiliates the human dignity and the human personality against another, shall be sentenced to imprisonment of minimum five years*”. Thus defined, the act regulates the relationship of power and more precisely the subordination or dependence of the victim, the sexual intercourse as a result of extortion, as well as the position of the person (although it is not specifically stated that it is a public official or civil servant, which is important for the nature of the act of sexual extortion). However, the act defined in this way has a limitation because the definition lacks the “something for something” transaction, which is crucial for the nature of the act of sexual extortion.

Chapter thirty, which regulates crimes against official duty, also regulates the *Abuse of official position and authorization* in Article 353 “*An official person who, by using his official position or authorization, by exceeding the limits of his official authorization, or by not performing his official duty, acquires for himself or for another some kind of benefit or causes damage to another, shall be sentenced to imprisonment of six months to three years*”. Thus defined, the act has the elements of abuse of official position and authorization, but lacks the extortion of a sexual service as a benefit, advantage and gain that the official realizes, which is a basic element of the essence of the act of sexual extortion.

³² Taiwan legislation available at <https://www.lexadin.nl/wlg/legis/nofr/oeur/lxwetai.htm>

³³ Criminal Code of Romania, available at https://www.legislationline.org/download/id/8291/file/Romania_Penal%20Code_am2017_en.pdf

³⁴ Criminal Code, available at <https://www.slvesnik.com.mk/Issues/6ed04b3db86643b297d84aa94513d055.pdf>



The act of taking bribe regulated in Article 357 is closest to the essence of the act of sexual extortion because it stipulates that *“an official person who directly or indirectly requests or receives a gift or another benefit or is promised to receive a gift or another personal benefit or benefit for another, in order to perform an official activity which should not be performed, or does not perform an official activity which should be performed, shall be sentenced to imprisonment of four to ten years”*. The problem is in defining the benefit in the Criminal Code, which is regulated as follows: (i) a smaller property benefit, value or damage shall refer to a benefit, value or damage that corresponds to the amount of the officially announced average one-half monthly salary in the economy of the Republic, at the time when the crime was committed; (ii) a greater property benefit, value or damage shall refer to a benefit, value or damage that corresponds to the amount of five average monthly salaries in the Republic, at the time when the crime was committed; (iii) a significant property benefit, value or damage shall refer to a benefit, value or damage that corresponds to the amount of 50 average monthly salaries in the Republic, at the time when the crime was committed; and (iv) a benefit, value or damage of a large scale shall refer to a benefit, value or damage that corresponds to the amount of 250 average monthly salaries in the Republic, at the time when the crime was committed. However, all of these definitions allocate a financial and property value to the benefit and none of them include sexual intercourse as a gain, benefit or advantage that can be realized. This is considered to be a result of the overall orientation towards corruption to be treated as an economic phenomenon, which makes the efforts to tackle sexual extortion even more difficult.

The International Association of Women Judges, however, believes that the act of sexual extortion should be regulated as an act of corruption, suggesting that *“The coercive power of authority that characterizes cases of sexual extortion is precisely the type of coercion found in cases of corruption”* (IAWJ 2012: 16). Treating sexual extortion as corruption, the IAWJ suggests, helps to address the challenges of prosecution under the laws relating to gender-based violence, particularly issues of coercion and consent (ibid.).

Procedure for reporting and acting

Reporting sexual extortion is a special issue to consider due to the specific and sensitive situation that the victim of sexual extortion is faced with. Acting, on the other hand, which can cause greater damage, stigmatization and marginalization of the victims who are already vulnerable and marginalized, should be further carefully regulated. The reporting procedure must be gender-responsive and should not violate the human rights of the victims. In Macedonian legislation, Article 1 of the **Law on Whistleblower Protection** regulates protected reporting, the rights of whistleblowers, as well as the actions and duties of the institutions, i.e., the legal entities regarding protected reporting and the provision of whistleblower protection. However, this law does not have a gender perspective, but could be amended to provide **gender-sensitive mechanisms for reporting** sexual extortion.

The action of the State Commission for Prevention of Corruption (SCPS) is regulated by Article 23, paragraph 1 as a procedure that begins either on the own initiative of the SCPC or on the basis of a received report. The SCPC acts by collecting data and information from competent institutions, legal entities and natural persons using the network of persons in charge of anti-corruption in the institution that takes all measures and activities to submit the required information, which it submits no later than 15 days from the day of receipt of the request by State Commission (paragraph 3). In case of failure to act upon the request, the State Commission may initiate misdemeanour proceedings (paragraph 4).

However, the report in both cases and on the basis of the Law on Whistleblower Protection and the Law on Prevention of Corruption should be with a guarantee that the disclosed information shall be stored and shall not be shared. The privacy of the report is a key issue as it affects whether the act will be reported. Namely, research shows that victims are afraid to report so as not to be blamed and shamed for the abuse they were victims of. In some cases, those allegations come from their own family, friends or the institutions that process the case. *“When it comes to a crime, the procedure is longer, it takes a lot of time, it goes through many stages, first we go to the police, then to the public prosecutor’s office, therefore revictimization happens all the time”*³⁵. Self-blame can also be a factor in effectively protecting victims of sexual extortion, according to Feigenblatt³⁶. This is also a result of the widespread stigma attached to all sexual/gender offenses that makes them more difficult to report and prove. The existence of mechanisms that are gender sensitive, such as the person to which the report is made to be a woman, who has undergone gender equality training and who knows how to deal with victims of sexual offenses. *“The absence of women*

³⁵ Marta Gusar, Lawyer (Interview 25.08.2021)

³⁶ Feigenblatt, Hazel (2020) Breaking the silence around sextortion. The links between power, sex and corruption, Transparency International, Berlin, Germany. Report published 5 March 2020. https://www.transparency.org/whatwedo/publication/breaking_the_silence_around_sextortion



in key positions discourages them to report something we all know is a reality, but we are still silent about.”³⁷

The focus in the procedure should be placed on the person who is in a “position of power, regardless of whether it is a counter worker or a director of a company, a person working in state administration or a manager. At that moment, he/she is the one who has to do the job, so he/she presents himself/herself in such a way in order to receive a sexual service.”³⁸ “The position of power defines who the victim is. When it comes to the meaning of power, it can be defined in many different ways, it is not always recognizable, and sometimes even the gender itself is a source of power.”³⁹

The procedure must be handled with care because when it comes to proving, due to the patriarchal system of gender relations, “victims are on the one hand blamed as asking for it, have a large part of responsibility, if not full responsibility due to the situation in which they are; and on the other hand, the type of pressure/extortion itself is treated as less important than when asking for money, loans or professional advancement.”⁴⁰ This is a result of the very conceptualization of corruption as an economic phenomenon manifested in economic or financial gain, so sexual service as an advantage, benefit, gain is denominated as insufficiently important, valuable, obtained from the *quid pro quo* relationship between the victim and the corrupt public official/civil servant. Even in systems where sexual extortion is regulated, the consciousness of judges and public prosecutors is still on a low level because of the economic logic in regulating corruption.

The length of the procedure should also be adjusted in sexual offenses in order to reduce the time of action and referral of the victim from one institution to another and to reduce the risk of revictimization by the institutions, especially if they do not have sufficient sensitivity to the needs and rights of women. The procedure should also include the provision of psychological support to the victim, as well as offering other types of support, including free legal assistance.

“If the victims of this type of corruption are encouraged to report the things that are happening to them, perhaps in practice we will work on more such cases because I honestly and realistically think that this is happening in reality, but it is still entered as a dark figure within undetected crime.”⁴¹ The Public Prosecutor Raichevikj who worked on the case in which the professors from the Faculty of Economics from

³⁷ Gordana Siljanovska, President of the EOC in the Assembly (Interview 07.10.2021)

³⁸ Marta Gusar, Lawyer (Interview 25.08.2021)

³⁹ Nikolina Kenig, Full-time professor, Faculty of Philosophy (Interview 19.08.2021)

⁴⁰ Nikolina Kenig, Full-time professor, Faculty of Philosophy (Interview 19.08.2021)

⁴¹ Gabriela Gajdova, Judge, Basic Court Veles (Interview 23.09.2021)

Skopje were accused of corruption, pointed out that the professors are only charged for taking bribe and exercising illegal influence. Although the acts of both professors contain elements of sexual extortion, the sexual component has not been taken into account and they will not be held accountable therefore. This will not help overcome the fear of reporting sexual extortion and can only increase the fear of stigmatization of the already vulnerable victims of this act of corruption.

In this context, it is recommended: (i) to carefully define the reporting of sexual extortion as a crime by the victim; (ii) to regulate the procedure in order for it to be shorter and thus reduce the risk of revictimization; (iii) to regulate the victim support services.



International context

Analysis of international conventions and initiatives

Sextortion/sexual extortion as a term cannot be found in international anti-corruption conventions, primarily due to the lack of a gender perspective and the use of a gender-neutral approach in preventing and combating corruption. However, due to the broad scope of tangible and intangible corrupt practices, there is room for classifying the act under the corrupt practices regulated by these conventions.

United Nations (UN) Convention against Corruption

The UN Convention against Corruption⁴² (UNCAC) was adopted in 2003 by the UN General Assembly, entered into force in 2005, when the Republic of North Macedonia acceded thereto, ratifying it in 2007. This Convention is the only binding global anti-corruption international instrument. The three main purposes of the Convention are:

- To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- To promote, facilitate and support international cooperation and technical assistance in the prevention of the fight against corruption, including in asset recovery;
- To promote integrity, accountability and proper management of public affairs and public property.

The Convention stipulates that each State Party shall adopt such legislative and other measures as may be necessary to establish corrupt acts as criminal offenses, when committed intentionally, and thus this obligation is acquired by the Republic of North Macedonia as well.

⁴² UN Convention against Corruption, available at <https://customs.gov.mk/images/documents/borbaKorupcija/oonProtivKorupcija.pdf>

Although no gender-perspective is used in this Convention, i.e., in the guidelines for criminalizing the shapes and forms of corruption, in Chapter III-Criminalization and law enforcement, in Article 15 that regulates the forms of bribery of national public officials, sexual extortion or sextortion committed by public officials could be classified under paragraph B of the Convention, which reads:

“(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her duties.”⁴³

This definition omits the sexual component of the act of sexual extortion and bases the sanctioning on the component of corruption. Abuse of power is also a criminal offense under this Convention, but the definition is again broad and does not explicitly list all forms of abuse of power, but leaves it to the State Parties to assess what could be classified under “undue advantage”.

Criminal Law Convention on Corruption of the Council of Europe⁴⁴

The Criminal Law Convention on Corruption of the Council of Europe (CoE) was created because of the priority need to implement a common criminal policy aimed at protecting society from corruption, including the adoption of appropriate legislation and preventive measures. The Convention is wide-ranging and covers a number of corrupt activities specific to the public and private sector, but does not recognize the gender dimension of corruption. The focus of the Convention is on criminalizing bribery and the financial or material dimension of corruption in the first place. The Republic of North Macedonia signed the Criminal Law Convention on Corruption of the CoE in 1999, which entered into force in 2002.

⁴³ UN Convention against Corruption, available at <https://customs.gov.mk/images/documents/borbaKorupcija/oonProtivKorupcija.pdf>

⁴⁴ Criminal Law Convention on Corruption, Strasbourg, 27.I.1999, available at <https://rm.coe.int/168007f3f5>



Civil Law Convention on Corruption of the Council of Europe⁴⁵

The Civil Law Convention on Corruption of the Council of Europe emphasizes that corruption represents a major threat to the rule of law, democracy and human rights, fairness and social justice. The main purpose of this Convention is for each Party to provide in its internal law for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damages. The compensation for damages provided for in this Convention may also cover non-pecuniary loss. Although the definition of corruption under this Convention is broad enough and it could include sexual extortion, and thus persons who have suffered harm or have been victims of sexual extortions could have the opportunity to defend their rights, the gender dimension is still not explicitly recognized. The Republic of North Macedonia signed this Convention in 2000, which entered into force in 2003.

Group of States against Corruption – Council of Europe

The Group of States against Corruption (GRECO) was established in 1999 by the Council of Europe. The purpose of GRECO is to improve the capacity of its members to fight corruption by monitoring their compliance with the anti-corruption standards of the Council of Europe, through a dynamic process of peer review and peer pressure. In this way, the shortcomings in the national anti-corruption policies are identified, encouraging the necessary legal, institutional and practical reforms. GRECO also provides a platform for sharing best practices in preventing and detecting corruption. The Republic of North Macedonia has been a member of GRECO since 2000.

GRECO has been organizing a number of discussions since 2012 on the need to include a gender perspective in the fight against corruption.

⁴⁵ Civil Law Convention on Corruption, Strasbourg, 4.XI.1999, available at <https://rm.coe.int/168007f3f6>

Compliance Report – GRECO's Fifth Evaluation Round⁴⁶

23 recommendations were given in GRECO's Fifth Evaluation Round regarding “Preventing corruption and promoting integrity in central governments (persons entrusted with top executive functions – PTEF) and law enforcement agencies (LEA).” In this Report, our country does not receive gender-specific recommendations, although in 2012 GRECO started reviewing the gender dimension of corruption. The most significant innovations made as a result of the recommendations are: the appointment of a Deputy Prime Minister responsible for the fight against corruption and crime, sustainable development and human resources and the enforcement of a “Code of Ethics for members of Government and holders of the public office appointed by Government”.

The Code of Ethics for members of Government and holders of the public office appointed by Government has no gender perspective and primarily focuses on regulating the manner of conduct and work of the Prime Minister of the Republic of North Macedonia, the ministers, deputy ministers and other holders of executive positions appointed by the Government of the Republic of North Macedonia. However, the Deputy Prime Minister responsible for the fight against corruption and crime, sustainable development and human resources, recognizing the importance of the gender dimension of corruption, stressed in this research that *“it is necessary to develop a legal definition and framework for sexual extortion in the domestic anti-corruption legislation in order to enable proper monitoring and prosecution of the cases. Intervention is primarily needed here in the Criminal Code.”*⁴⁷

Council of Europe Convention on preventing and combating violence against women and domestic violence – Istanbul Convention

The Council of Europe Convention on preventing and combating violence against women and domestic violence recognizes and emphasizes that violence against women is a manifestation of historically unequal power relations between women and men, and also recognizes the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared to men. The main purpose of the Istanbul Convention is *“to protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence.”*⁴⁸

⁴⁶ Compliance Report – GRECO's Fifth Evaluation Round, available at <https://www.pravda.gov.mk/Upload/Documents/izvestaj%20GREKO%205%20krug.pdf>

⁴⁷ Ljupcho Nikolovski, Deputy Prime Minister responsible for the fight against corruption and crime, sustainable development and human resources (Interview 08.10.2021)

⁴⁸ Article 1 – Purposes of the Convention, Council of Europe Convention on preventing and combating violence against women and domestic violence – Istanbul Convention, available at <https://rm.coe.int/168046253a>



All countries that have ratified the Istanbul Convention, including the Republic of North Macedonia (entered into force on July 1, 2018) are committed to ensuring that State authorities, officials, agents, institutions and other actors acting on behalf of the State refrain from engaging in any act of violence against women. Although not explicitly defined, if we look at sexual extortion as a form of sexual violence against women, based on unequal power relations between men and women, the obligation to regulate it in the national legislation arises.

In defining sexual violence, the Istanbul Convention states that “*consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.*”⁴⁹ When it comes to sexual extortion as a form of sexual violence, consent is the result of psychological coercion. Most often, the people who are sexually extorted are vulnerable, and the perpetrators are always in a position of power. Hence, the recommendation of the Istanbul Convention concerning aggravating circumstances when committing crimes against women requires the following to be taken into consideration as aggravating circumstances in national legislation:

- the offense was committed by a person having abused her or his authority;
- the offense was committed against a person made vulnerable by particular circumstances.

By analysing the provisions of the Istanbul Convention, we can conclude that the Republic of North Macedonia has an obligation to criminalize sexual extortion as one of the forms of sexual violence against women, but not as an act of corruption that is contrary to the recommendations of the International Association of Women Judges.

It is important to consider the different uses of the term sexual extortion or sextortion within GREVIO's Working Group held on October 23, 2020. The purpose of this working group was to explore the importance and scope of the implementation of the Istanbul Convention in relation to violence against women through the internet and technology and to monitor the development of the general recommendation. Within the framework of the general recommendation made by GREVIO's Working Group, the term sextortion is used to describe an act different from the one that is the subject of this analysis, namely:

⁴⁹ Ibid.

“Sexual extortion, also called “sextortion”, is the act of using the threat of publishing sexual content (images, videos, deepfakes, sexual rumours) to menace, coerce or blackmail someone, either for more sexual content or for money, sometimes both.”⁵⁰

Comparative legal analysis

For the comparative analysis of the international legal framework, the Criminal Codes and Laws on Prevention of Corruption of two Western Balkan countries: Montenegro and Bosnia and Herzegovina, two member states of the European Union – Slovenia and Finland, two OSCE participating states – Switzerland and Kyrgyzstan and two states of the United States of America – California and Arkansas were analyzed. The purpose of this analysis was to find good legislative practices that could be applied in criminalizing sextortion or sexual extortion as a form of corruption in the Republic of North Macedonia.

Western Balkan countries

In the region of the Western Balkans, including the Republic of North Macedonia, the element of corruption is most often omitted in the criminalization of the act of sexual extortion in criminal codes and it is partially regulated within the crimes against sexual freedom and morality, i.e., against sexual integrity. This is also the case in the Criminal Codes of the Republic of Montenegro, the Federation of Bosnia and Herzegovina and Republika Srpska.

Montenegro

Montenegro in Article 207 of the Criminal Code partially regulates sexual extortion as follows: *“Forced Sexual Intercourse by Abusing a Position of Authority”*

“(1) Whoever abuses his position to incite another person to engage in a forced sexual intercourse or other act of equivalent nature, where that party is in a subordinate or dependent position in relation to the perpetrator shall be punished by a prison sentence for a term from three months to three years.”⁵¹

⁵⁰ Gender Equality Commission (GEC) Draft Comments of the Gender Equality Commission on GREVIO’s draft General Recommendation on the digital dimension of violence against women, available at <https://rm.coe.int/gec-2021-4-rev-gec-comments-on-grevio-gen-rec-digital-dimension-vaw-29/1680a20817>

⁵¹ Article 207, Criminal Code of the Republic of Montenegro, available at <https://www.paragraf.me/propisi-crnegore/krivici-zakonik-crne-gore.html>



Montenegro takes the consequence of “pregnancy” as an aggravating circumstance in criminalizing forced sexual intercourse by abusing a position of authority and provides for a prison sentence for a term from 6 months to 5 years.

Although the definition of the act as “forced sexual intercourse by abusing a position of authority” includes the sexual and corruption component, the manner of committing the crime and proving it, is still what would be an obstacle to achieving justice. When it comes to forced sexual intercourse, by definition we mean violent sexual intercourse, i.e., the use of physical force/coercion is required. Sexual intercourse as an act in most cases does not involve the use of force, but psychological coercion.

The Law on Prevention of Corruption in Montenegro defines corruption as “any abuse of official, business or social position or influence that is aimed at acquiring personal gain or for the benefit of another”⁵². Consequently, although this law does not explicitly define sexual extortion as an act of corruption, the very act of “forced sexual intercourse by abusing a position of authority”, although part of the crimes against sexual freedom, leaves room for it to also be interpreted as an act of corruption because it contains the action of “abusing a position of authority”.

Bosnia and Herzegovina

Federation of Bosnia and Herzegovina

The Federation of Bosnia and Herzegovina in its Criminal Code in Chapter Nineteen – Criminal offenses against sexual freedom and morality with Article 205 regulates:

“Sexual Intercourse by Abuse of Position”

“(1) Whosoever induces into sexual intercourse, or sex acts tantamount to sexual intercourse, a person who is in a dependent position in relation to him, due to that person’s financial, family, social, health or other circumstances, shall be punished for imprisonment for a term of between three months and three years.”⁵³

The Federation of Bosnia and Herzegovina in its Criminal Code has the most specific and approximate definition of the act with the term “sexual intercourse by abuse of position” in terms of what constitutes sexual extortion as a form of corruption. The use of the term “sexual intercourse” instead of “forced sexual intercourse” provides guidance for

⁵² Law on Prevention of Corruption of the Republic of Montenegro, available in Montenegrin at: https://www.antikorupcija.me/media/documents/Zakon_o_sprje%C4%8Davanju_korupcije.pdf

⁵³ Article 205, Criminal code of the Federation of Bosnia and Herzegovina, available at https://www.legislationline.org/download/id/8500/file/CC_FBiH_am2017_eng.pdf

interpreting the act regardless of whether physical force was used for the incitement/extortion, which is characteristic of sexual extortion as a form of corruption. The property, family, social, health and other position or difficult situation are exactly the factors that need to be taken into account when assessing the condition of the extorted person versus the person in a position of power.

According to the Law on the Agency for the Prevention of Corruption and the Coordination of the Fight Against Corruption in Bosnia and Herzegovina, corruption means “any abuse of power entrusted to a civil servant or person in a political position at the level of state, entity, district, at the level of Brcko District of Bosnia and Herzegovina, at the city or municipal level, which may lead to private gain.”⁵⁴ The legislation of Bosnia and Herzegovina uses two different terms “abuse of position” and “abuse of power”, which essentially mean the same or similar action because in defining corruption, power arises from the position of the person, so abuse of power means abuse of position and vice versa.

Republika Srpska

Republika Srpska in its Criminal Code in Chapter Fourteen, which defines criminal offenses against sexual freedom with Article 168, in a similar way as Montenegro, partially defines sexual extortion with the following act:

“Sexual Intercourse by Abuse of Position”

“Whoever by abuse of his/her position induces into a sexual intercourse or any other equivalent sexual act a person who is his/her subordinate or who is in a situation of dependence with respect to him/her, shall be punished by imprisonment for a term not exceeding term of between two and five years.”⁵⁵

Although Republika Srpska criminalizes the act in a similar way as Montenegro, it differs from the Federation of Bosnia and Herzegovina and Montenegro in terms of the extent of the punishment for the act, i.e., unlike the other two countries where the minimum sentence is 3 months and the maximum is 3 years, in Republika Srpska the minimum sentence is 2 years, and the maximum 5 years. The Law on Combating Corruption, Organized and Most Serious Forms of Economic Crime does not regulate sexual extortion and does not contain a definition of the act of corruption.⁵⁶

⁵⁴ Law on the Agency for the Prevention of Corruption and the Coordination of the Fight Against Corruption (it is implemented at the level of the Federation of Bosnia and Herzegovina and Brcko District), available in Bosnian at: http://msb.gov.ba/PDF/35_Zakon%20o%20%20agenciji%20za%20prevenciju%20korupciju%20%20103-09.pdf

⁵⁵ Article 168, Criminal Code of The Republika Srpska of Bosnia and Herzegovina, available at <https://www.legislationline.org/documents/action/popup/id/23380/preview>

⁵⁶ Law on Combating Corruption, Organized and Most Serious Forms of Economic Crime, available in Serbian at: <https://www.narodnaskupstinars.net/?q=la/akti/usvojeni-zakoni>



Member States of the European Union

Member States of the European Union whose Criminal Codes were analyzed for the needs of this research are Slovenia and Finland.

Slovenia

In its Criminal Code, in Chapter Nineteen that regulates Crimes against Sexual Integrity, the Republic of Slovenia criminalizes the act:

“Violation of sexual integrity through abuse of authority”

“Whoever, by abusing his or her authority, induces his or her subordinate of the same or different sex who depends on him or her to have sexual intercourse with him or her to perform or submit to any other sexual act, shall be sentenced to imprisonment for up to five years.”⁵⁷

The Republic of Slovenia regulates sexual extortion as a crime against sexual integrity where the component of corruption is significantly incorporated, additionally specifying and criminalizing forced sexual intercourse between persons of the same sex. The crime contains the three main conditions for the existence of sexual extortion as an act of corruption: abuse of authority, sexual intercourse or other sexual act and coercion. Additionally, in Chapter Twenty-Six, which regulates Crimes against Official Duties, Public Authority and Public Funds, the Republic of Slovenia criminalizes the following acts: abuse of office or official powers, acceptance of bribes – including non-material or other benefits and accepting a benefit for unlawful intermediation.

With this we can conclude that the Republic of Slovenia has developed a comprehensive legal regulation of the act of sexual extortion as an act of corruption.

⁵⁷ Article 174, Criminal code of Republic of Slovenia, available at https://www.legislationline.org/download/id/9232/file/SLOV_CC.pdf

Finland

Sexual extortion in Finland, although not explicitly regulated, can be classified as one of the forms of sexual abuse (563/1998) criminalized in Section 5 of the Criminal Code:

Sexual abuse means “a person who abuses his or her position and entices one of the following into sexual intercourse, into another sexual act essentially violating his or her right of sexual self-determination, or into submission to such an act.”⁵⁸

In paragraph four, a victim of this act can be “a person who is especially dependent on the offender, where the offender blatantly takes advantage of this dependence, shall be sentenced for sexual abuse to a fine or to imprisonment for at most four years.”

This offense covers the elements of abuse of position by the offender and dependence on the perpetrator, sexual intercourse or other sexual act, as well as incitement. The element of corruption and the psychological coercion are not clearly enough expressed, so we cannot assess sexual extortion as a completely criminalized act of corruption. Finland additionally regulates the acceptance of bribe, including non-material or other benefits, accepting bribes with aggravating circumstances in exchange for performing or not performing a service, as well as abuse of public office, by criminalizing offenses committed during service performance.

OSCE Participating States

Participating States of the Organization of Security and Cooperation of Europe whose Criminal Codes were subject of analysis in this research are Switzerland and Kyrgyzstan.

Switzerland

In the Swiss Criminal Code, in Title Five, which regulates offenses against sexual integrity, the various components of sexual extortion are criminalized by two articles in the section on offenses against sexual liberty and honour:

⁵⁸ 563/1998 Criminal Code of Finland, available at https://www.legislationline.org/download/id/6375/file/Finland_CC_1889_am2015_en.pdf



“Indecent assault”

“Any person who uses threats, force or psychological pressure on another person or makes that other person incapable of resistance in order to compel him or her to tolerate a sexual act similar to intercourse or any other sexual act, is liable to a custodial sentence not exceeding ten years or to a monetary penalty.”⁵⁹

“Exploitation of a person in a position of need or dependency”

“Any person who induces another to commit or submit to a sexual act by exploiting a position of need or a dependent relationship based on employment or another dependent relationship is liable to a custodial sentence not exceeding three years or to a monetary penalty.”⁶⁰

The Swiss Criminal Code is one of the few legal instruments that recognizes, regulates and criminalizes the psychological pressure of forcing a sexual act or intercourse with the act of indecent assault. Sexual extortion is based precisely on the psychological pressure that comes from a person in a position of power. Switzerland additionally criminalizes the person who, by exploiting a position of need or a dependent relationship based on employment, i.e., a superior, extorts a sexual act from an employee. With this regulation, the law covers all employees, i.e., those in the public and those in the private sector. Additionally, the abuse of public office is also criminalized in offenses against official or professional duty.

These two crimes criminalize the three conditions for the existence of sexual extortion as an act of corruption: abuse of position, sexual activity and psychological coercion, thus Switzerland offers a comprehensive legal response and protection against sexual extortion.

Kyrgyzstan

The Criminal Code of Kyrgyzstan partially regulates sexual extortion in Article 163 in crimes against sexual integrity and sexual freedom.

“Concussion to Sexual Actions”

“Concussing a person to have a sexual connection, sodomy, lesbianism or other sexual actions by blackmailing or using material or other dependence of the victim...”⁶¹

⁵⁹ Article 189, Swiss Criminal Code, available at https://www.legislationline.org/download/id/8991/file/SWITZ_Criminal%20Code_as%20of%202020-07-01.pdf

⁶⁰ Article 193, Swiss Criminal Code

⁶¹ Article 163, Criminal Code of Kyrgyzstan, available in Russian at <http://cbd.minjust.gov.kg/act/view/ru-ru/111527>

What is characteristic of the Criminal Code of Kyrgyzstan is that in addition to fines and imprisonment, this act is also sanctioned by deprivation of the right to hold certain positions as a result of the abuse of power. Despite the lack of explicit emphasis on the element of corruption, it is still sanctioned. We can conclude that sexual extortion as an act of corruption is partially regulated in Kyrgyzstan.

States of the United States of America

The states of the USA whose penal codes were analyzed for the needs of the research are California and Arkansas. The term sextortion in the states of the USA is used for a different crime, i.e., it describes a crime that occurs online when an adult persuades a person under the age of 18 to share sexually explicit images or perform sexual acts on a webcam.⁶² Sexual extortion as an act of corruption is not explicitly defined in the USA.

California

In the California Penal Code, sexual extortion is regulated in crimes against the person involving sexual assault and crimes against public decency and good morals. Sexual extortion is regulated by the act of rape⁶³ which is defined as an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, and under different circumstances.

Paragraph 7 of the article regulating the act of rape stipulates *“where the act is accomplished against the victim’s will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, “public official” means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.”*⁶⁴

⁶² FBI Launches Sextortion Awareness Campaign in Schools, 2019, available at: <https://www.fbi.gov/news/stories/stop-sex-tortion-youth-face-risk-online-090319>

⁶³ Her lawyer, Sexual Coercion in California: What You Need to Know, available at <https://herlawyer.com/sexual-coercion-california/>

⁶⁴ Article 261, California Penal Code, available at https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN&division=&title=9.&part=1.&chapter=1.&article



This paragraph regulates sexual extortion only when it comes to particularly vulnerable persons, such as prisoners, immigrants, sex workers and the like. However, paragraph (b) clarifies the use of the term duress within the Law and what is taken into account when appraising the crime:

“duress means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.”⁶⁵

Specific to this criminalization is that sexual extortion is appraised as a form of rape. In this way, sexual extortion is regulated in the state of California, not as an act of corruption, but as a form of sexual violence. Although psychological coercion is taken into account when appraising the act, the legal framework is still not comprehensive.

Arkansas

What is very specific about the states of the USA is the intertwining of the crimes covered by the term sextortion or sexual extortion. Thus, the Arkansas Penal Code in Article 5-14-113 sexual offenses stipulates that a person commits the offense of sexual extortion if:

“(1) With the purpose to coerce another person to engage in sexual contact or sexually explicit conduct, the person communicates a threat to:

(A) Damage the property or harm the reputation of the other person; or

(B) Produce or distribute a recording of the other person engaged in sexually explicit conduct or depicted in a state of nudity;”⁶⁶

This way of criminalizing sexual extortion completely omits the component of corruption or the abuse of power, and the coercion is based on the use of physical force and a real threat to harm the reputation of the other person. When preparing a legal framework for regulating sextortion in a country, it is very important to choose an appropriate term that the local population, but also the relevant legal actors will recognize and with which they will associate the relevant crime.

⁶⁵ Article 261 (b), California Penal Code *ibid*.

⁶⁶ 5-14-113, Arkansas Penal Code, available at <https://law.justia.com/codes/arkansas/2017/title-5/subtitle-2/chapter-14/subchapter-1/section-5-14-113/>

Republic of North Macedonia currently has the most similar approach in the partial criminalization of the act to Montenegro and Republika Srpska. From the above-analyzed Criminal Codes, as the most appropriate legal frameworks for comprehensive regulation of sexual extortion as an act of corruption, we could single out the laws of Switzerland and Slovenia. It is important to also emphasize the approach of the Federation of Bosnia and Herzegovina, which is the only one that explicitly states the factors that are of great importance in appraising the position of dependence of the victim in relation to the perpetrator.



Main findings from the interviews and focus groups

For the purposes of the research, 16 interviews and three focus groups were conducted with relevant stakeholders and experts in the field of corruption, including judges, public prosecutors, lawyers, women MPs, representatives of the State Commission for Prevention of Corruption, representatives of the Government of the Republic of North Macedonia, academics and representatives of the civil sector.

The main findings obtained from the interviews are as follows:

Recognition of gender forms of corruption

- The term sextortion is known to a smaller part of the respondents, while the term sexual extortion is considered more appropriate in our society;
- Sexual extortion is recognized as a form of gender-based violence, but among a smaller proportion of those interviewed, and as a gender-based act of corruption;
- Corruption has a different impact on men and women because most of the positions of power in the country are held by men;

Prevalence of sexual extortion in the Republic of North Macedonia

- Although there is not enough research, the respondents believe that sexual extortion is largely present in the everyday life in the Republic of North Macedonia;
- The areas in which sexual extortion is most prevalent as an act of corruption according to the respondents are: state administration (central and local level), higher education and the private/business sector;
- It is considered that sexual extortion as an act of corruption is prevalent wherever there is a career system and where one has the discretion to make decisions;
- The respondents believe that sexual extortion is most often used for employment as the most pressing problem in the country. Additionally, it is used for job retention, promotion, grading in higher education and exercising certain rights to which the person is already entitled according to law;

- ✎ Young women, based on the beauty standards in society, are singled out as the most susceptible to sexual extortion, especially the most vulnerable ones: unemployed, single mothers, poor, etc.
- ✎ Most of the respondents have heard about a specific case of sexual extortion from their relatives, associates, friends and/or through the media;
- ✎ Most of the cases of sexual extortion about which they have heard are in higher education or the private/business sector;

Reporting and sanctioning sexual extortion

- ✎ Sexual extortion is considered to be rarely reported due to shame of being judged or fear of losing the job;
- ✎ The sanctions for committing sexual extortion should be borne only by the extorter who is in a position of power and abuses it, if the victim is also sanctioned, the act will not be reported;
- ✎ Offering sexual services in exchange for benefits is also considered a form of corruption, however accountability should be sought from the power holder.

Legislation

- ✎ According to the interviewed experts and relevant stakeholders, the Law on Prevention of Corruption and Conflict of Interests contains a sufficiently broad definition that covers most of the acts of corruption, including active and passive corruption, and is in line with the Anti-Corruption Conventions ratified by the Republic of North Macedonia;
- ✎ The need to evaluate the implementation of the Law on Prevention of Corruption and Conflict of Interests was pointed out;
- ✎ Most of the respondents believe that the Criminal Code insufficiently and/or inadequately regulates the various forms of corruption;
- ✎ Sexual extortion is not considered to be adequately regulated by national law; however, it can be acted upon in accordance with various acts defined in the existing laws;
- ✎ All respondents believe that sexual extortion should be regulated by the Criminal Code;



Institutional response

- The inadequate implementation of the existing laws and the lack of adequate systemic response was highlighted as a major problem;
- After criminalizing the act, there is a need to train the judges, public prosecutors, lawyers and other stakeholders on its proper implementation;

The main findings obtained from the focus group with representatives of the local self-government are as follows:

Recognition of gender forms of corruption

- The gender forms of corruption are not sufficiently known to them, but they believe that corruption affects men and women differently due to the imbalance in the distribution of power in society;
- The term sextortion is completely unknown to the representatives of the local self-government, while they recognize sexual extortion as a social phenomenon;

Prevalence of sexual extortion in the Republic of North Macedonia

- Areas in which sexual extortion is considered to be the most prevalent are: the private business sector, higher education and state administration at the central level;
- Respondents believe that sexual extortion as an act of corruption is mostly used for employment, job retention, promotion, grading in higher education;
- Each of the respondents has heard about a specific case of sexual extortion from relatives, friends, associates, and the most characteristic cases were related to the use of sexual extortion to form Councillor lists for the upcoming elections, as well as for passing the driving test;
- The respondents believe that young girls/women are most often victims of sexual extortion;

Reporting and sanctioning sexual extortion

- ✎ The respondents think that sexual extortion is very prevalent in our society, but it is not reported enough. The main reasons for non-reporting are: fear of being judged, shame and accusation of the victim that in fact he/she has offered the sexual service in exchange for a counter-service, but also the great distrust in the institutions;
- ✎ Most of the representatives of the local self-government believe that both the extorter and the extorted, if he/she accepts the extortion, are responsible for the sexual extortion;

Legislation

- ✎ The representatives of the local self-government units are familiar with the Law on Prevention of Corruption and Conflict of Interests only in their field of work;
- ✎ They are not sufficiently aware of whether sexual extortion as an act of corruption is regulated by the national legislation;
- ✎ All respondents believe that sexual extortion should be regulated by the Criminal Code;

Institutional response

- ✎ In each of the municipalities there should be a person appointed for internal reporting of acts of corruption, but they rarely receive reports and the employees in the municipality are not familiar with his/her function;
- ✎ The need for trainings at the local level was emphasized in order to recognize and report sexual extortion.



The main findings obtained from the focus groups with representatives of the civil sector are as follows:

Recognition of gender forms of corruption

- Sexual extortion is a familiar term to them and they recognize it as a form of gender corruption;
- Another form of gender corruption that was mentioned in addition to sexual extortion is the exchange of *in vitro* fertilization for votes in the elections about 10 years ago in Veles;
- The representatives of the non-governmental sector believe that corruption affects men and women in our society very differently. The factors listed are: poverty of women and higher unemployment rate, gender roles and norms, greater prevalence of men in positions of power or unequal distribution of power, greater involvement of women in the fulfilment of the administrative responsibilities, etc.;
- Sexual extortion is recognized as a form of gender-based violence, related to sexual harassment;

Prevalence of sexual extortion in the Republic of North Macedonia

- Due to the lack of research on the topic, the representatives of the civil society organizations were not sure how prevalent sexual extortion is in Republic of North Macedonia, but based on personal examples, cases from college days and cases read in the campaign #SegaKazuvam ("I am speaking now"), they believe it is widespread in the everyday life;
- Areas in which sexual extortion is considered to be most prevalent are: police, state administration at the local and central level, but also higher education and health care;
- Respondents believe that sexual extortion is primarily used for promotion and employment in our society;
- Most often, the service that is offered to women who are victims of corruption in exchange for sexual intercourse is something that they are entitled to according to law;
- Police officers and persons falsely posing as police officers were identified as extorters of sexual services in the last 5-10 years, especially from sex workers working outdoors;

Reporting and sanctioning sexual extortion

- ✎ Women have turned to NGOs for legal advice in cases of sexual extortion. One of the women who refused to provide sexual services when she was extorted was a health worker who was fired for “negligent performance of duties”, after which she initiated a procedure, but did not continue it;
- ✎ The sanctioning should be directed only at the extorter who is in a position of power;

Legislation

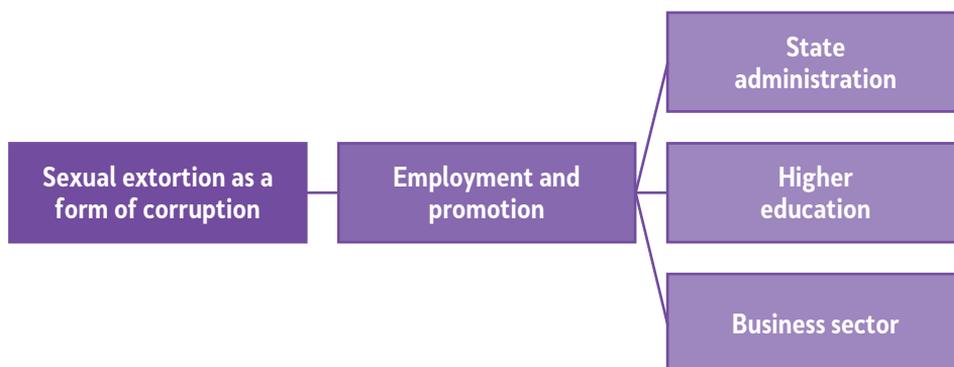
- ✎ Most of the respondents from the civil sector are not sufficiently familiar with the Law on Prevention of Corruption and Conflict of Interests and whether all forms of corruption are properly regulated by the Criminal Code;
- ✎ The respondents believe that elements of sexual extortion should be added to the existing crimes, emphasizing the following acts: extortion, forced sexual intercourse by abuse of position and rape;
- ✎ It is proposed to also define sexual extortion with the Law on Prevention of Corruption and Conflict of Interests.

Institutional response

- ✎ The reports that the Republic of North Macedonia submits to GRECO do not contain a connection between corruption and the gender perspective;



Main conclusions



Recognizing sexual extortion as a form of corruption and gender-based violence is characteristic of legal experts, academics, women MPs and representatives of the civil sector. The representatives of the local self-government see sexual extortion as a social phenomenon that they recognize and are able to point out examples from everyday life, but they do not perceive it as a form of corruption. All respondents believe that sexual extortion is most prevalent in the state administration, higher education and business sector and that it is most often used for employment and promotion in the Republic of North Macedonia.

According to the views of the respondents, **victims of sexual extortion are most often young women**, and the sanctions should be directed at the one who is in a position of power, i.e., the one who commits extortion. Although all respondents believe that sexual extortion is very prevalent in our society, they say that it is underreported mainly due to shame, fear of being judged and losing the job.

Most of the respondents believe that the Criminal Code insufficiently and/or inadequately regulates sexual extortion and agree that sexual extortion should be criminalized as a separate crime in the Criminal Code of the Republic of North Macedonia. Additionally, respondents believe that sexual extortion should also be defined in the Law on Prevention of Corruption and Conflict of Interests and the Law on Prevention and Protection of Women from Violence and Domestic Violence. The inadequate implementation of the existing laws and the lack of adequate systemic response were highlighted as major problems, as well as the need for appropriate trainings on recognizing sexual extortion intended for the relevant stakeholders.

Culture and awareness

In order for effective protection to be provided against sexual extortion as an act of corruption, we need to build a culture of recognizing the act, promoting empathy for the victim of sexual extortion and generally condemning the abuse of public office or authority in order to obtain sexual services. Building such a culture and awareness can only be possible if we have data on how widespread this act of corruption is.

“If a woman goes to ask for help because she has faced sexual extortion, she initially turns to the police to find a solution to the problem, but she will be laughed at there. We still do not have a culture that encompasses the fact that someone really has a problem, which the police should solve, act upon, and not be laughed at because someone extorted us because we are beautiful women.” -Marta Gusar, Lawyer (Interview 25.08.2021)

In order to examine the situation with the gender forms of corruption in the Republic of North Macedonia in more detail, in June 2021, the agency “Team Institute” conducted a public opinion survey. The survey covered 1013 women, of whom 55.8% with secondary education, 24% with higher education and 20.2% with primary education, and 58.8% living in urban areas, and 41.2% living in rural areas. The survey took into account the representativeness of the ethnic communities, so 24.6% of the respondents were Albanian, 68.4% Macedonian and 7% belong to other smaller ethnic communities.

The focus of the survey was the extortion of sexual services by public sector employees in exchange for the provision of a public service, as a gender-specific form of corruption. **78% of the respondents recognize** the extortion of sexual services by public sector employees in exchange for the provision of a public service as a form of corruption. More than half of the respondents stated that **it happens that holders of public office and authority in a position of power request sexual services instead of money/bribes in exchange for providing the public service for which they are responsible**, and 21.5% of them stated that this happens very often.

Two thirds of the respondents believe that the extortion of sexual services in exchange for receiving a public service happens **in both the public and private sector**. The institution in which the respondents believe that sexual extortion is most prevalent as a form of corruption is the **state administration (at the central and local level)**. Other institutions where more than half of the respondents think that sexual extortion is present as a form of corruption are **education and health care**. The most common situations in which people in power request sexual services in exchange for the provision of the public service for which they are responsible are **employment and promotion**.



Over 63% of the respondents stated that they **do not report any personal or other people's experiences** related to this form of corruption, but the fact that reporting sexual extortion leaves room for social labelling and discomfort that reflects on the further life of the woman should certainly be taken into account. A quarter of the respondents stated that they had no personal experience, but they knew someone who has been a victim of this form of corruption and **5.4% of the respondents stated that they had personally experienced and faced with the consequences of extortion of sexual services**. Of these 54 respondents (5.4%), only **20 expressed readiness to report this pressure** and face the challenge of disclosing the experience (37%).

Out of a total of 142 respondents, 40% or 57 of them expressed distrust in the system with the answer that reporting would have no effect. **36% or 51 respondents would not report because they would be faced with shame and judgment by the environment**, while 20% or 28 respondents would not report for fear of being judged that it is their own fault or that they caused the extortion of sexual services. Most of the respondents (around 70%) **believe that the extortion of sexual services as a specific form of corruption is not sufficiently known and recognized in the public** – in discussions, policies and legal regulations in our country.

The comparative analysis showed that the culture of recognizing this act of corruption is built through trainings, public campaigns and the introduction of codes of conduct that discipline attempts, i.e., prohibit acts of abuse of public office or authority in exchange for sexual intercourse. Such codes can in the short-term help and bridge the shortcomings of the Macedonian legal framework that currently does not specifically regulate the act of sexual extortion as an act of corruption. For example, the Code of Conduct and Ethics for Uganda Public Service prohibits the following “A Public Officer shall not subject others or be subjected to conduct of a sexual nature affecting his or her dignity, which is unwelcome, unreasonable and offensive to the recipient”⁶⁷. This Code also provides for sanctions, such as suspension of service and compensation of the victim, as well as removal from service. However, apart from disciplinary proceedings and job loss, the codes cannot regulate other penalties, which limits their effectiveness to some extent.

It is not only important to write it, but we also need to be trained to apply it⁶⁸. The implementation of training programs will enable all participants in the procedure, especially the prosecutors, judges, lawyers, police, but also persons appointed as anti-corruption contact persons, to get acquainted with the act, its essence, as well as the procedure for acting and protecting the victim in such acts, so that they can recognize it and distinguish it from other acts of corruption and other acts of gender-based violence. Currently, there are several countries regulating the act, but there are very few cases of acting on this case, including due to the low level of awareness, knowledge and culture of the main actors involved in the procedure. This makes the organization of specialist trainings and

⁶⁷ Cited in the IAWJ, Marval O'Farrell Mairal, Thomson Reuters Foundation, 2018:8

⁶⁸ Marta Gusar, Lawyer (Interview 25.08.2021)

activities for raising the awareness of the representatives of the justice a priority for effective regulation and protection against sexual extortion as an act of corruption.

Finally, campaigns for raising the awareness of the overall population are needed in order to break the stereotypes that have normalized the practice of sexual extortion and made it acceptable, having even smaller value than a bribe for example. It is necessary to raise the awareness that the act exists, that it is an act of corruption and that it is widespread in the country, that it should be regulated and punishable by law with the adoption of the amendments to the legal framework and the specific regulation of the act. In doing so, special attention should be paid to the media themselves which should be specifically targeted with trainings on how to report in cases of sexual extortion so as not to do harm and bring the victims into an even more vulnerable situation than the one they were in.



Recommendations

Recommendations for legal regulation of sexual extortion as a form of corruption

- Appropriate defining, criminalization and sanctioning of sexual extortion in the Criminal Code of the Republic of North Macedonia;
- Defining psychological coercion, i.e., psychological pressure in the Criminal Code;
- Defining sexual extortion in the Law on Prevention and Protection of Women from Violence and Domestic Violence and establishment of urgent measures for prevention and protection;
- Defining sexual extortion as an act of corruption in the Law on Prevention of Corruption and Conflict of Interests;
- Harmonization of the Law on Labour Relations and the Law on Protection from Harassment at the Workplace with Convention 190 of the International Labour Organization;
- Defining sexual extortion in the Law on Higher Education;
- Coverage by law of all forms of sexual extortion, as well as all potential perpetrators;
- Monitoring and evaluation of the implementation of the laws every 2 years.

Recommendations for efficient institutional response in cases of sexual extortion

- Incorporating the gender perspective in the Annual Plan for Prevention of Corruption of the Ministry of Labour and Social Policy;
- Incorporating the gender perspective in the work of the State Commission for Prevention of Corruption;

- ✎ Introduction of rulebooks and internal protocols for preventing and combating corruption, including gender forms of corruption in public and private institutions;
- ✎ Establishment of a functional system for reporting sexual extortion;
- ✎ Raising the awareness among the population about the existence of the problem and encouraging reporting;
- ✎ Increase of the number of women in leadership positions in both the public and private sector;
- ✎ Increase of the number of women in politics, especially at the local level;
- ✎ Reduction of the unemployment rate;
- ✎ Limitation of the number of mandates of leadership positions in the public sector;
- ✎ Gender sensitization and regular education of police officers.

Legislative recommendation for regulation of sexual extortion in the Criminal Code

Current legislation:

Sexual assault by position abuse

Article 189

(1) Whosoever by abusing his position induces another, who is subordinated or dependent, to sexual intercourse or some other sexual act, or with the same intention abuses, intimidates or acts in a way that humiliates the human dignity and the human personality against another, shall be sentenced to imprisonment of minimum five years.

(2) If the crime referred to in paragraph (1) of this Article is committed by a blood relative in direct line or a brother, i.e., sister, teacher, tutor, adoptive parent, guardian, stepfather, stepmother, doctor or another person by abusing their position or by committing family violence commits a statutory rape or other sexual act with a child who has turned 14 years of age and who is entrusted to him/her for education, tutoring, care, shall be sentenced to imprisonment of at least ten years.



(3) The court shall impose the offender of the crime referred to in paragraph (2) prohibition to perform profession, activity or duty under the conditions of Article 38-b of this Code.

As the Criminal Code does not use the term “seksualen/na” (sexual – referring to sex), and uses the term “polov/a” (sexual – referring to gender)⁶⁹, the following amendment is proposed:

Proposal 1

Amendment of the name of the crime from “sexual assault” into “sexual intercourse by position abuse”

Option 1

Amendment of paragraph 1

Whosoever induces another, who is subordinated or dependent, to *sexual intercourse* or some other sexual act “*by abusing a position, need or a dependent relationship based on employment, a subordinate position or another dependent relationship when it is apparent that the offender is using this dependence*” or with the same intention abuses, intimidates or acts in a way that humiliates the human dignity and the human personality against another, shall be sentenced to imprisonment of minimum five years.

Option 2

Amendment of the existing article with paragraph (3), which shall read:

(3) If the crime referred to in paragraph (1) of this Article is committed by abusing a position, need or a dependent relationship based on employment, a subordinate position or another dependent relationship when it is apparent that the offender is using this dependence, it shall be punished by imprisonment of minimum five years.

The existing paragraph 3 shall become paragraph 4 and shall read:

(3) The court shall impose the offender of the crime referred to in paragraph (2) and paragraph (3) prohibition to perform profession, activity or duty under the conditions of Article 38-b of this Code.

⁶⁹ Translator’s note: the translation of both terms from Macedonian (“seksualen/na” – referring to sex and “polov/a”- referring to gender) into English is “sexual”, therefore the term in English shall remain unamended.

Proposal 2

It is proposed to introduce a new article and crime, which shall read:

Article 189a

“Sexual intercourse by position abuse”

(1) “Whosoever uses threats, force or psychological coercion to induce another who is dependent due to property, family, social, health and other position or difficult situation, to commit or engage in sexual intercourse by abusing a position, need or a dependent relationship based on employment, a subordinate position or another dependent relationship when it is apparent that the offender is using this dependence, shall be sentenced to imprisonment of minimum five years.”

(2) The court shall impose the offender of the crime referred to in paragraph (2) prohibition to perform profession, activity or duty under the conditions of Article 38-b of this Code.

In addition to criminalizing the act of sexual extortion, we also propose its defining and regulation in the following civil laws:

Draft provisions for regulating sexual extortion in the Law on Prevention of Corruption and Conflict of Interests

It is proposed for section “Meaning of the terms used in this Law”, i.e., Article 8, paragraph 5 to be amended to read:

(5) The term “benefit” means realization of any kind of material, non-material or social benefit, convenience, *sexual service* or advantage for himself/herself or for another.

It is proposed to introduce a new paragraph 12 in the same Article 8, which shall read:

(12) The term “gender form of corruption” means abuse of position aimed at causing material or non-material harm to women and/or that disproportionately affects women. Gender forms of corruption against women cover the causes and consequences of the unequal power relations between women and men as a result of a social rather than an individual problem.



Draft provisions for regulating sexual extortion in the Law on Prevention and Protection of Women from Violence and Domestic Violence

It is proposed for the Glossary in the Law on Prevention and Protection of Women from Violence and Domestic Violence, i.e., Article 3 to be amended by adding paragraph 26, which shall read:

(26) Sexual extortion means inducing to sexual intercourse or some other sexual act by using or abusing a position, need or a dependent relationship based on employment, a subordinate position or another dependent relationship in exchange for a service, good, access to a resource with which the person in a position of power manages, leads or makes decisions in relation thereto.

Annex I

List of relevant stakeholders interviewed:

- Biljana Ivanovska – President of the State Commission for Prevention of Corruption
- Vladimir Georgiev – Member of the State Commission for Prevention of Corruption
- Gabriela Gajdova – Judge in the Basic Court Veles
- Lidija Raichevikj – Public Prosecutor in the Basic Public Prosecutor’s Office – Skopje
- Aleksandar Markoski – Public Prosecutor in the Basic Public Prosecutor’s Office – Skopje
- Marta Gusar – Lawyer in the Law Office Marta Gusar
- Natasha Gaber Damjanovska – Director of the Academy for Judges and Public Prosecutors
- Aneta Arnaudovska – Regional expert in the field of corruption
- Nikolina Kenig – Full-time professor at the “Ss. Cyril and Methodius” University, Faculty of Philosophy
- Ljupcho Nikolovski – Deputy Prime Minister responsible for the fight against corruption and crime, sustainable development and human resources
- Elena Grozdanovska – State Advisor for Gender Equality and Non-Discrimination, Ministry of Labour and Social Policy
- Svetlana Cvetkovska – Head of the Sector for Equal Opportunities, Ministry of Labour and Social Policy
- Elena Dimovska – Advisor for monitoring the anti-corruption legal framework, Ministry of Justice
- Gordana Siljanovska – President of the Equal Opportunities Commission in the Assembly of the Republic of North Macedonia
- Zhaklina Peshevska – MP and President of the Union of Women of VMRO-DPMNE
- Snezhana Kaleska Vancheva – MP and Coordinator of the Women’s Forum of SDSM



List of representatives of the local self-government units with whom focus groups were held:

- Suzana Petrovska – Equal Opportunities Coordinator – Municipality of Delchevo
- Emilija Gjurchinovska Matevska – Equal Opportunities Coordinator – Municipality of Gazi Baba
- Kire Gjorgievski – Head of Human Resource Management Department/ Person responsible for internal reporting of corruption – Municipality of Bitola
- Ubavka Stojanova – Deputy Coordinator for Equal Opportunities of the Municipality of Centar
- Marija Goceva – Person responsible for internal reporting of corruption in the Municipality of Centar
- Slavica Dimova – Equal Opportunities Coordinator of the Municipality of Sveti Nikole
- Azra Sadiku – Equal Opportunities Coordinator of the Municipality of Gostivar

List of representatives of the civil sector with whom focus groups were held:

- Misha Popovikj – Institute for Democracy “Societas Civilis” – IDSCS
- Maja Atanasova – Macedonian Young Lawyers Association
- Marija Todorovska – Open Gate – La Strada
- Ana Avramoska – National Network to end Violence against Women and Domestic Violence
- Natasha Boshkova – Coalition Margins
- Lila Milikj – STAR-STAR – first Sex Workers collective in the Balkans
- Ina Dzugumanova – Helsinki Committee for Human Rights

