



“THE GRAY AREA”

between TRADITION and

CHILDREN'S RIGHTS!



ROMA
ORGANIZATION FOR
MULTICULTURAL
AFFIRMATION

“THE GRAY AREA”

**between tradition
and children's rights**

Prilep, February 2016

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PREFACE

The Roma community is continuously moving in circles of constant risk and is falling into poverty which continues from generation to generation. In order to overcome this situation a series of positive measures and policies have been undertaken, numerous projects have been implemented through which all interested parties are trying to minimize the negative factors and influences and to ensure complete integration into society.

However, the fact is that progress is slow, part of the problems remain insufficiently actualized or are treated only as consequences while the results are still not sufficiently visible.

For instance, many international organizations that monitor the situation in Macedonia, including committees mandated to monitor the implementation of the ratified conventions by the state, for years express their concern about the state of cohabitation between minors and with a minor. Their reports indicate serious recommendations to the state, as well as to representatives of Roma community who treat the question with less commitment and not considering it a priority.

Namely, it is considered that the problem could be overcome by improving the educational process although the figures show that in the most cases of leaving school the cause is marriage or living in a community unmarried. What is emphasized in the area of health care is the fact that Roma start giving birth from a very early age which is treated as a result of low awareness about the health and could be overcome through education about family planning and the use of contraception. Gender inequality is treated as a result of patriarchal upbringing and financial dependence of women on the family and husband, and could be overcome through undertaking measures to employ them.

Rarely can it be seen that the issue is related to children who are not mature enough to make decisions independently, so the state is the one that through legal regulations and acts of the institutions should protect them within the frames of established norms for the rights of the children and their best interests.

Because of this, we have prepared this **Case study** which through its elaborated approach based on human rights as universal and comprehensive, could change negative perceptions and attitudes toward this issue in Roma communities and the fear of public speaking or ethnic stigmatization would be overcome.



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APRIL 2015:

ALMIRA IS 19 AND DESTAN 23 YEARS OLD, HAVE GOT 2-YEAR-OLD DAUGHTER AND LIVE IN A COMMUNITY UNMARRIED

Almira was 16 when she left her home to live with Destan - they lived in a community according to the traditional customs of the Roma. Almira's parents were shocked, they did not accept the situation and went to Destan's home where they found out that his parents agree about the marriage and will not allow Almira to go back home.

Almira's mother tried to convince Destan's family that she is still very young to have her own family and she has to complete the already started high school, that she was not able physically and mentally to fulfill the obligations of a wife and mother in the home. Destan's mother declared that there was no problem since she would teach her everything she needed to know. Almira's parents, disappointed headed to the police station to ask for institutional support. After reporting the case, the police informed the parents that Almira's age (16) does not allow them to act due to legal restrictions; they received the same response from the Public Prosecutor as well.

Almira's parents returned home helpless and brokenhearted. She stopped attending school since she believed that it was no longer needed because she got married - all her needs in the future will be met by Destan, who as her husband is obliged to work, and she will only need to worry about household chores. Destan's parents supported this.

Almira's teacher called the parents and asked for information about her absence from school; they were given advice on the need Almira to continue her education and the responsibility they have. State education inspector called them as well and informed them about the legal obligations and penalties if their daughter does not attend school.

Today, neither Almira nor Destan have completed high school or have a secure income (job), they live with Destan's parents and are financially dependent; very often Almira goes back to her parents' house because of the pressure and arguments at home and then she goes back again to Destan's house to continue raising their child.

I.

INTRODUCTION

1.1. IS ALMIRA AND DESTAN'S CASE JUST AN EXCEPTION OR A COMMON CASE?

While great part of the public would say that such cases should not be discussed since they are exceptions, those who talk about these cases just reinforce the stereotypes about the Roma community and they are not a priority for the Roma and their integration, the data obtained by the Multi-indicator cluster survey in 2011 (MICS)¹ showed that this issue is a current problem in the Republic of Macedonia, and thus there are great differences among different ethnic communities in the category of girls aged 15 to 19 who are married or cohabitate:

- the rate among Roma is 22% versus the national rate which is 4%, 2% among Macedonians and 6% among Albanians,
- additionally, the rate of young women aged 15-19 years who gave birth or are currently pregnant is 3% at the national level, while this rate among Roma is 18%. In the category of the poorest, the national average is 5% while among Roma women it is 25%, and regarding only primary education, the national average is 12% while among Roma women it is 24%.²

Referring to the same issue the State Statistics Office for the period 2011-2014 illustrates tendency of reducing the number of (formal) marriages between persons under the age of 20 (per year: 236, 208, 185 and 158)³, that in the field very often reflects in an increase in the number of informal communities, which are not recorded by any state institution, so there is no official statistics on this issue.

However, the Minister of Labour and Social Policy on the International Day of the Girl Child in 2012 stated that out of 14 thousand marriages which are concluded in Macedonia per year, 13% are between persons under the age of 18 and for the most part they are concluded with underage girls from the Roma community.⁴

Considering these data, many will say that this is a problem that is of interest to the female population, but according to the Fund on population of the United Nations (UNFPA)⁵ such cases are a phenomenon that affects both girls and boys. By starting to live in such communities, both boys and girls are often forced to leave their education and enter the labor market and/or to undertake household chores.

¹ http://www.unicef.org/tfymacedonia/MICS_MKD_FINAL_websize.pdf

² [http://www.unicef.org/tfymacedonia/macedonian/MICS_Infographics_MKD22AprilFINAL\(3\).pdf](http://www.unicef.org/tfymacedonia/macedonian/MICS_Infographics_MKD22AprilFINAL(3).pdf)

³ <http://www.stat.gov.mk/PrethodniSooptstenijaOblast.aspx?id=11&rbrObl=2>

⁴ <http://a1on.mk/wordpress/archives/48872>

1.2. TERMINOLOGY

Besides that the institutions do not have accurate data on this phenomenon and illustrate various percentages and figures, scientific theory does not have correct and uniform terminology for the same, so some experts and interested organizations/institutions in their reports categorize such cases as early marriage, some as marriage between minors and some as child marriage. Some will state that those communities are formed with or without will of the individuals, and with or without consent of their parents and the environment, and thus they would be classified under coercion or arbitrary decisions about two people living together.

Basically when we look at all the terms of this phenomenon and what is common to them all, you will notice without exception that they refer to cases of two minors (or one of them) who have not yet turned 18 yet i.e. what they have in common, is the age limit. This is the age which according to the international, and in part of the national legislation is categorized as a period of the person's life during which he/she is a **child** and because of the limited mental and physical development he/she should be provided special conditions and measures of protection to his/her full realization in the society. Therefore, for the purposes of this Study, the term CHILD MARRIAGES will be used.

II.

AIM AND METHODOLOGY

2.1. WHAT HAVE WE DONE TO UNDERSTAND MORE?

Given that this is a multi-sectoral problem, it requires a multidisciplinary approach in its review, including all actors that have or could have a role in the context. Therefore, in the period July-December 2015, a research was conducted in the municipality of Prilep based on **human rights based approach** in order to generate a more detailed analysis of the situation, and to identify challenges i.e. opportunities for change in the existing policies relevant to the issue.

The research was conducted within the pilot - project **“View on child marriages in the Roma community”** with support of the Children’s Fund of the United Nations (UNICEF), and aimed for preparation of a tool for advocating the needs as well as identifying institutional solutions.

Application of the methodology and activities, enabled realization of broad cooperation with all relevant institutions and the Roma community at the local level, and changed the perception and attitudes that contribute to this phenomenon. Combined method of qualitative and quantitative analysis was applied, and primary and secondary data have been used.

- Data sources and their collection include: use of available legal mechanisms (Law on Free Access to Public Information) as a way to provide official data from the relevant institutions, review of public policies with a focus on legislation and their relationship, as well as documenting data from the interviews and discussions with relevant participants (people) regarding factors that contribute for the occurrence of such cases. 13 requests for access to public information have been sent to the following institutions: 5 high schools, State Education Inspectorate - Prilep, Department of Gynecology within the General Hospital - Prilep, Local self-government - Head of Department on Social Affairs, Basic Court - Prilep, Public

Prosecutor’s Office - Prilep, Center for social work - Prilep, Ministry of Internal Affairs - Regional office Prilep, health nursing services within the Health Centre - Prilep;

- 12 interviews have been conducted with the following institutions: Basic Court - Prilep, State Education Inspectorate - Prilep, Deputy Ombudsman - Bitola, Department of Gynecology within PHI General Hospital - Prilep, Public Prosecutor’s Office - Prilep, health nursing services within the Health Centre - Prilep, 5 high schools, Center for social work - Prilep;
- Two focus groups have been conducted, one with Roma parents which was attended by 9 parents whose children are aged 10 to 20, and the second with young Roma which was attended by 11 Roma of the same age. The age, as an optional criterion was considered critical regarding the matter.
- 5 stories told by Roma who had had this experience as personal or their children were/are married, have been documented. Storytellers were identified through the focus groups i.e. 3 of them from the group with parents and 2 from the group of younger participants.
- Desktop research has been conducted about other same or similar research and data on the issue, as well as consideration of the relevant domestic and international politics.

All data were collected and the situations were reviewed from 2011 to 2014, period after the issuance of the final report by MIKS (2011), in order to determine whether there are certain improvements or regressions in terms of the problem and approaches to its solution and thus to determine the reasons for the perceived trend of the question of interest.



LEGAL ANALYSIS

3.1. CAN THE STATE ACT DIFFERENTLY ACCORDING TO THE NATIONAL AND INTERNATIONAL LEGISLATION?

Republic of Macedonia is a member of the United Nations (UN) and has ratified the UN Convention on the rights of the child from 1993 and the two optional protocols from 2003. It is also a member state of the Council of Europe and has signed or ratified several legal documents, including the International convention on social, economic and cultural rights, the International convention on civil and political rights, the Convention on elimination of all forms of discrimination against women, and the European convention for the protection of human rights and many other conventions that protect human rights, by which all these international legal acts have become part of the domestic legislation.

Although the rights and protection of children are fundamental to all states and are regulated in all the above mentioned international legal acts, however, because of the study and in the context of the issue, the Convention on the rights of the child will be discussed with particular interest⁶, with additional explanations regarding the Convention for elimination of all forms of discrimination against women⁷.

According to the Convention on the rights of the child, a child is considered every human being below the age of 18, unless under the law applicable to the child, the maturity is attained earlier. By the Convention, member states undertake all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, harassment or exploitation, including sexual abuse while he/she was taken care by his/her parents, legal guardians or any other person. Also, member states recognize the child's right to education and on the basis of the principle of equal opportunities they undertake measures to encourage children to attend school

regularly and they also undertake preventive measures of leaving the school.

Committee for Protection of Children's Rights within the UN which is in charge of monitoring the implementation of the Convention, in its reports makes remarks to the state regarding the state of children's marriages and cohabitating in undertaking concrete measures to prevent this phenomenon and criminalizing the act. The Committee also suggests that the state should ensure that marriages under the age of 18 are permitted only in exceptional cases when they are approved by a court decision and when the marriage is in the best interest of the child, accompanied by an effort to know the exact number of such marriages and cohabitating communities.⁸

Convention on the elimination of all forms of discrimination against women provides the engagement and marriage of children to have no legal force and certain steps to be undertaken, including legislation in order to determine the minimum age for marriage, and official registration of marriages to be compulsory. Committee on the elimination of discrimination against women that is in charge of monitoring the implementation of the Convention, appeals to the state to strengthen the efforts in order to raise awareness of the Roma community about the prohibition of marriages of persons under 18, as well as its harmful effects on the girls' health and education and adults involved in these cases to be effectively investigated and prosecuted. The Committee also appeals to the state to adopt measures to register all marriages.⁹

⁶ <http://www.childrensembassy.org.mk/WBStorage/Files/konvencija%20celosna.pdf>

⁷ <http://www.un.org/womenwatch/daw/cedaw>

⁸ http://www.childrensembassy.org.mk/preporakite-na-komititet-za-pravata-na-deteto-pri-oon-dostaveni-do-vladata-na-republika-makedonija-po-osnov-na-vmoriot-periodicen-izveshtaj-i-inicijalnite-izveshtaj-ns_article-komitet-za-pravata-na-deteto.nsp

⁹ http://amos.org.mk/gradenje_lokalni_kapaciteti/megunarodni3.htm

It is of particular importance because of the concluding observations of the eighth to the tenth periodic report of the Committee on the elimination of racial discrimination in 2015 that in the part of "Gender-related dimensions of racial discrimination" the Committee expresses its concern about the "prevalence of early marriages among Roma and Albanian community, which is considered as usual and without any adequate response from the state to deal with this harmful practice in an effective way". Recommendations indicate the need of monitoring and assessment of the situation through involvement of the civil society in order to fight against early marriages, raise public awareness, especially within the affected communities about the negative impact of these practices on education, health and opportunities for employment prospects of these girls.¹⁰

Although the National commission on the rights of the child was established as an inter-ministerial body responsible for monitoring the implementation of the National action plan for children and the Convention on the rights of the child, since 2009 there is no information about their work and actions, pointing to the fact that the question of continuity is being ignored.

Law on child protection¹¹ stipulates that a child is considered any person up to the age of 18. Under this law, provision of child protection and the rights established by law is an obligation, not only to the parents and relatives, but also to all institutions of the system.

Under the Criminal Code,¹² child marriages are prohibited, and cohabitating with a minor and between minors is a crime i.e. a violation of children's rights. In the Code, Article 197, cohabitating with a minor is sanctioned. Accordingly, adult cohabitating with a child who has turned 14 but not yet 16, shall be punished with imprisonment. The same punishment is envisaged for the parent, adopter or the guardian who will allow the child to cohabit with another person or will lead him/her into that. The law does not sanction if an adult cohabitates with an older minor who turned 16 and not 18, without the consent of the parents or guardians. Due this omission in incrimination and legal gap, the institutions of the system can not react and act

¹⁰ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/MKD/8-106Lang=en

¹¹ Law on child protection, Official Gazette of the RM no. 170/2010

¹² Criminal Code, Official Gazette of the RM no. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014, 199/2014 и 196/2015,

in the best interests of the child, especially the police when the case is reported by the parents.

On the other hand, the Family Law¹³ regulates the right for concluding marriage between two persons who have turned 18 and are of different sex who have freely expressed will in front of the authorities. In certain cases, under certain circumstances, the law provides an opportunity for persons under 18 to get married with a parental consent. As far as conditions are concerned, a permit for a marriage of a person who turned 16 years may be given by the competent court in non-contentious procedure if it determines that the person has reached physical and mental maturity needed to perform duties and responsibilities of the marriage. The court makes a decision after considering the opinion given by a medical institution and expert assistance from the Centre for social work. However, the law in no Article had provided a provision for cohabitation between and with minors who turned 16, but not yet 18. There are no any records about cohabitating. Living in such a community in some cases is the will of the persons without parental consent.

Although the individual acquires legal capacity by turning 18, yet, the domestic legislation treats as an older juvenile the person who turned 16 and has acquired limited legal capacity and can live out of his/her home with another person, without parental consent, and legally competent bodies are limited in the treatment and prevention of formation of these communities.

Leaving the educational process as a result of child marriages is more and more common despite the fact that elementary and secondary education in the Republic of Macedonia is compulsory and regular education is completed at the age of 18 in average.¹⁴ If the child does not attend regular classes, his/her parents are responsible for that, regardless of whether or not the parent agrees with the established community.

¹³ Family Law, Official Gazette of the RM no. 80/1992, 9/1996, 38/2004, 33/2006, 84/2008, 67/2010, 156/2010, 39/2012, 44/2012, 38/2014, 115/2014, 104/2015 и 150/2015,

¹⁴ Law on primary education, Official Gazette of the RM no. 103/2008, 33/2010, 116/2010, 156/2010, 18/2011, 42/2011, 51/2011, 6/2012, 100/2012, 24/2013, 41/2014, 116/2014, 135/2014, 10/2015, 98/2015 и 145/2015
Law on secondary education, Official Gazette of the RM no. 44/1995, 24/1996, 34/1996, 35/1997, 82/1999, 29/2002, 40/2003, 42/2003, 67/2004, 55/2005, 113/2005, 35/2006, 30/2007, 49/2007, 81/2008, 92/2008, 33/2010, 116/2010, 156/2010, 18/2011, 42/2011, 51/2011, 6/2012, 100/2012, 24/2013, 41/2014, 116/2014, 135/2014, 10/2015, 98/2015 и 145/2015

Seeking for an answer to the question of who should provide conditions and measures for protection, Article 42 of the Constitution of the Republic of Macedonia defines the key role of the state. Starting from the constitutional provision of Article 42, certain number of researchers have begun to examine the issue from a human rights perspective and described it as “harmful practice” that violates national, European legal norms for protection of the fundamental human rights and freedoms.¹⁵

¹⁵ <http://www.sobranie.mk/ustav-na-rm.nspix>

TABLE 1. Parallel review of the legal inconsistencies and gaps in terms of application and understanding of the issue (grey area)

COMMONLY USED TERMS	CONVENTION ON THE RIGHTS OF THE CHILD	NATIONAL FRAMEWORK
Legal age	<p>Article 1</p> <p>A child is every human being below the age of 18, unless, based on the law applicable to the child, he/she cannot become mature otherwise.</p>	<p>Закон за семејство, Article 16</p> <p>Person under 18 is not allowed to get married. The competent court may, in a non-contentious procedure, allow marriage of a person who has reached 16 if it determines that the person has reached physical and mental maturity needed to perform duties and responsibilities of the marriage, but only after obtaining an opinion from a health institution and provided specialized assistance at the center for social work.</p>
Tradition/ Cultural heritage	<p>Article 12</p> <p>Member states provide the child who is capable of forming his/her own opinion, the right to express it freely in all matters that affect the child, and that opinion is respected in accordance with age and maturity of the child.</p>	<p>Law on obligation acts</p> <p>Article 45-6</p> <ul style="list-style-type: none"> - The individual acquires legal capacity by the age of maturity and in other cases provided by law. - A person with age of 14 years to maturity and mature person who has limited legal capacity is limited in its legal capacity, unless the law stipulates otherwise. <p>Article 48</p> <p>A minor with limited legal capacity, may without approval from his/her legal representative conclude only those agreements whose conclusion is allowed by the law.</p>
Illegal act	<p>Article 19</p> <p>Member states undertake all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injuries or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of the parents, legal guardians or any other person who takes care of him/her.</p>	<p>Criminal Code, Article 197</p> <ul style="list-style-type: none"> - An adult who is cohabitating with a child who has reached 14 but not yet 16 years, shall be punished with imprisonment of three months to three years. - The sentence of paragraph 1 shall also be applied to the parent, adopter or the guardian who will allow the child who turned 14 but not yet 16 years to cohabit with another person or he/she will lead him/her into it.
“Natural” consequence	<p>Article 28</p> <p>Member states recognize the right of child’s education and aiming to the progressive realization of this right on the basis of equal opportunities, in particular:</p> <ul style="list-style-type: none"> - undertake measures for facilitating regular school attendance and reduction of leaving school. 	<p>Law on secondary education, Article 109</p> <p>A fine of 600 to 800 euros in denars shall be imposed on the parent i.e. the guardian of the minor student if the student is not enrolled in high school or attends the school irregularly.</p>

3.2. ACTUAL POLICY IN THE CONTEXT OF THE ISSUE

Ministry of labour and social policy in cooperation with the National coordinator for the Decade and the Strategy for Roma Inclusion, in May 2015 prepared a National Action Plan on Roma women within the Roma Strategy of the Republic of Macedonia from 2014 to 2020¹⁶ in which, among other things, one of the priorities is “Reduced prevalence of marriages/cohabitating with a minor and between minors and their impact on the education, health and gender role”. This policy is provided with three outputs which additionally need to be followed in terms of its application and the seriousness of the approach to the issue.

The issue of child marriages was also among the priorities for discussion at the 5th International Conference on Roma women organized by the Council of Europe in Skopje,¹⁷ in October 2015. Motivation for setting the topic in the agenda of the Conference arose from the Roma women themselves, based on the recently stated attitude by a group of Roma activists in the report “Early marriages in Roma communities should be of global concern”:

“Child/early marriages among Roma are often addressed in a perverse way: either they are defined as a violation of human rights, in which case the state’s response would have been in accordance with a number of standards for human rights and national instruments - but that it almost not the case in any place, or are being portrayed as a specific Roma tradition, which should be solved within the Roma community - but in return is treated in a ridiculous way and criticized.”¹⁸

¹⁶ <http://www.mtsp.gov.mk/dokumenti-642e295b-69e3-4291-acb1-2ce6beb8cdd8.nspix>

¹⁷ <http://www.coe.int/en/web/portal/roma-women>

¹⁸ <https://cs.coe.int/team20/cahrom/7th%20CAHROM%20plenary%20meeting/Item%2004%20-%20ERTF%20and%20Phenjalipe%20joint%20paper%20Making%20Early%20Marriage%20in%20Roma%20Communities%20a%20global%20concern.pdf>

IV.

QUANTITATIVE ANALYSIS

4.1. CAN DATA CHANGE THE SITUATION?

In absence of official data on the situation of concluded marriages and cohabitating between minors from the Roma community, it is difficult to determine the scope of the problem, and the ability to use existing data in cases of advocacy. For these reasons, an attempt was made to generate a data base of relevant local institutions which have an obligation to keep records and procedures. After the submitted Request for public information on the question "Whether there are and how many marriages and cohabitating communities are registered and have they acted upon them in accordance to their

responsibilities in the period 2011-2014?", we have received different sample information from each institution which are systematized in a table for the purpose of interpretation.

Because of this noncompliance, and probably weak or non-existent cooperation among institutions on this issue, after receiving the data it cannot be concluded what the total number is, and whether all recorded cases have received all necessary information and support i.e. have exercised all their rights through these institutions of the system.

TABLE 2. Summary of the information received from relevant local institutions for the period 2011-2014
(*explanation for each category is given in a footnote to the text - all data are concerning the Roma nationality*)

INSTITUTION	2011	2012	2013	2014
SECONDARY MUNICIPAL SCHOOLS ¹⁹	2	3	7	14
CENTRE FOR SOCIAL WORK ²⁰	6	2	2	4
DEPARTMENT OF GYNECOLOGY AND OBSTETRICS - GENERAL HOSPITAL ²¹	5	12	12	7
MINISTRY OF INTERNAL AFFAIRS ²²	2	2	1	3
PUBLIC PROSECUTION OFFICE ²³	2	1	0	5
BASIC COURT				
Concluded marriage between two persons at the age between 16 and 18	4	1	1	1
Concluded marriage in which one of the persons is at the age between 16 and 18, and the other person is mature ²⁴	15	10	16	8
Procedures for the crime of foming extramarital community with a minor ²⁵	2	2	0	3

¹⁹ 19 females and 7 males left school; covered schools: SMS Gorce Petrov, SMS Orde Copela, SMS Mirce Acev, SMS Riste Risteski - Ricko and SMS Kuzman Josifoski -Pitu.

²⁰ Consent for marriage between minors

²¹ Minor mothers

²² Submitted criminal charges for a crime cohabitation with a minor

²³ Submitted criminal charges for a crime cohabitation with a minor

²⁴ 47 females and 2 males

²⁵ Judgment of conviction for all

V.

QUALITATIVE ANALYSIS

5.1. CAN INSTITUTIONS ACT DIFFERENTLY?

Educational institutions, including the State Education Inspectorate, although one of the most responsible for the problem, do not recognize what child marriages are and thus they cannot define them accurately. There is no special procedure for registration and records of the number of established child marriages, while leaving high school by the students for any reason is registered with written minutes at schools. The data that schools have from the minutes are insufficient and inaccurate about the reasons for leaving secondary education, although these data are essential for the treatment of the cases by the institutions of the system. Further action by the school is not provided, indicating that there is no clearly prescribed procedure for handling the cases, and the same applies for multidisciplinary ap-

proach by the authorities. State Education Inspectorate has not acted upon a submitted report for child marriage, nor has information about this condition. Pursuant to the jurisdiction of the Department in the area of education and child care within the Local self-government Pri-lep, we asked whether they keep records about the number of applications by secondary schools for students who have left high school due to concluding marriage/cohabitating for the period from 2011 to 2014, per year, gender and ethnicity. After their reply, we could determine that there were no reports, although from the responses we have got from the secondary schools we noticed that cases like these happen continuously.



"At the time I got married, I was not aware of the obligations that come with it."

"... Whenever child marriage is concluded, parents are often dissatisfied, do not agree with the establishment of marriage, some still accept it easier because of the tradition, culture, but still parents wish their child to continue the education. There are cases which are reported to the police, but the police is powerless if the girl states that is her will..... after getting married, males usually continue their education, but not females."

principal of a secondary municipal school – Prilep

"... There are no specific protocols for cooperation among institutions in terms of child marriages.When the child leaves school, the State Educational Inspectorate submits a Request to the Court which decides on the responsibility of the parents their child to abandon education, either with a fine or a warning. However, we do understand the position of the parents and do not submit Requests to the court. Past experiences state that a fine has not been paid so far"

an inspector of the State Education Inspectorate - Prilep

The institutions of the judicial system i.e. the Public Prosecutor's Office (PPO) and the court do not recognize the term because the issue of child marriage is not within the scope of their work. The only thing they do is acting upon the Criminal Code for prosecution of the perpetrators of 2 crimes: "Sexual assault of a minor under 14 years" and "Cohabiting with a minor" i.e. an adult who cohabitates with a minor who has turned 14 but not yet 16, which is the only thing that is incriminated according to the legislative. The only data that have are the data for submitted criminal charges against the stated crimes, but not data on established child marriages.

The situation is similar with the Ombudsman. The regional office in Bitola has not yet received an application for protection of children's rights due to establishment of a child marriage and therefore there are no records for the situation, although it is recognized as a problem, especially among the Roma community.

"... When a girl who is not 16 yet, runs away from home to cohabit with a boy, we issue order to the police to return the girl home, but when she turns 16, we are not able to react and even when we issue orders, the case is not in our power based only on her age established as a limit for having legal capacity by the law, she is allowed to decide on her own

Parents are often angry when we try to explain it, I do understand them and believe they are right, but my hands are tied up in such cases because of the way the law determined it, and if we imprison all adults, the prisons will be overcrowded. we do not have feedback especially from the Centre for social affairs although in certain cases we inform them and social workers should monitor this situation more"

Basic public prosecutor - Prilep

"... The law stipulates that formal marriage may be concluded between persons at the age of 16, in a non-contentious procedure, in front of the competent court with the consent of parents and opinion given by a health institution and the center for social work, and without it, cohabiting with a minor is a criminal act"

judge in the Basic Court – Prilep

"... Child marriage are a grave violation of human rights that endangers mental and physical development of the girls and often results in early pregnancy, social exclusion and domestic violence"

Deputy Ombudsman - Bitola



Now I have to start working to provide my wife what she needs!”

Neither health facilities, particularly hospitals, do not keep official records of women who give birth under 18 and have no particular procedure of their officials if they have a case of a woman in labor who is a minor, nor there is a way of reporting a child marriage. If there is a case of a woman giving birth under 18, they notify the social worker in the institution, but further proceeding and undertaking actions to protect the rights are not defined, nor there are any official directions or protocols that would define the cooperation between institutions.

The only institution that has established procedure and has specific data on child marriage is the Centre for Social Work (CSW). However, these data have a limit regarding the needs of this study, since the institution has information that refers only to cases when the minor wants to conclude official (legal) marriage. CSW pursuant official directions and protocols, acts only in such cases and invites the children and parents to counseling. When it comes to cohabitating with and between people under 18, no records are kept and there is no any procedure to be led on front of the CSW.

“... In our department, 36 Roma women aged 17 gave birth in the period 2011- 2014; number of young Roma mothers is steadily increasing compared to other nationalities”

head nurse at the department of gynecology and obstetrics – Prilep

“... In our daily fieldwork we notice cohabitating among young Roma; last year we documented cases and notified the competent authorities, but since there was no response of any kind, we stopped documenting such cases”

visiting nurse - Prilep

“... WE CALL THE PERSONS WHO WANT TO CONCLUDE MARRIAGE AND THEIR PARENTS; WE TALK TO THEM AND THEN WE ISSUE THEM A CERTIFICATE THAT THEY HAVE VISITED CSW, AND THEN CSW GIVES CONSENT FOR THE MARRIAGE IN FRONT OF THE COMPETENT COURT. WE ACT ONLY WHEN A REQUEST HAS BEEN APPLIED, WHICH IS DETERMINED BY THE LAW”

**A SOCIAL WORKER FROM
THE CENTER FOR SOCIAL WORK**

5.2. CAN PARENTS/CHILDREN ACT DIFFERENTLY?

The fact that child marriages are more and more common in the Roma community is not disputed neither by parents nor children and they confirm that when young people reach the age of 16, especially the girls leave their parents' home and cohabituate without parental consent. Young people use this opportunity on the basis of the legal benefits that allow them to make independent decisions at the age of 16, while for the parents it is a separate issue. Institutions do not provide protection in cases when their child who is 16 years old, voluntarily, without consent of a parent, leaves the house and co-habitates and at the same time leaves school as well. Living in such community involves a series of problems; young people do not take marital obligations seriously, especially financial instability and dependence of the young on their parents, leaving education especially the girls, even in cases when the parent disagrees with her decision.

"THIS WAS NOT THE LIFE WE WANTED FOR OUR DAUGHTER; I HOPE THIS PRACTICE WILL END SOMEHOW ONE DAY!"

ALMIRA'S MOTHER

"... We think that love is the only thing we need, we are not aware of the obligations of marriage, the development of technology sometimes has a big impact on our decisions and not our parents' advice"

statement given by 20-year-old Roma girl

"... We become aware after three or four months living in a community, and there are only a few cases who endured for a year, but 90% of the cases that I know, have resulted in disruption of the community"

statement given by 21-year-old Roma boy

"... The girls are playing "neighbours" and immediately after a quarrel with their husbands, they return home to their parents, and then again go back to their husband's houses while the boys act as "cowboys", go out with their friends and continue to act as if they were not married "

statement given by 35-year-old Roma woman

"... 20 years is the minimum age when young people should get married, but we accept situations when they get married even younger, because we do not want them to do anything bad to themselves, as for instance sexual activity before marriage"

statement given by 45 year-old mother

QUESTIONS FROM THE FOCUS GROUPS FOR WHICH PARENTS AND YOUNG PEOPLE HAD GIVEN SAME RESPONSES:

1. WHAT IS THE BEST AGE TO CONCLUDE A MARRIAGE?

18 years is acceptable age, maturity, but the best age is between 20-25.

2. ACCORDING TO YOU, WHAT IS THE REASON FOR CONCLUDING CHILD MARRIAGE?

- poor financial situation of the parents is the reason they want their daughters to get married abroad in order to provide them a better future,
- the will of the children themselves i.e. love, losing their virginity, faith,
- insufficient communication between parents and their children,
- use of technology (Facebook, mobile phones).

3. DO YOU THINK CHILD MARRIAGES ARE REASON AND CAUSE OF EARLY SEXUAL ACTIVITY AND PREGNANCY?

Yes, child marriages are reason for early sexual activity and pregnancy, and vice versa early sexual activity and pregnancy are cause of child marriages.

4. DID YOU KNOW THAT CHILD MARRIAGES ARE PROHIBITED, AND COHABITATING WITH A MINOR AND BETWEEN MINORS IS A CRIME?

We do not know, but in order to reduce them, it is essential "to repeal the law that allows marriage at the age of 16"; to have more workshops in order to educate young people; parents to discuss more with their children.

5.3. WHAT IS OUR CONCERN AND ATTITUDE?

The problem is still not enough actualised in R. Macedonia, although it exists and it is often seen as part of the Roma tradition motivated by poverty, social exclusion and cultural norms, that should be respected, maintained and go over it. Moreover, in absence of more specific institutional responsibilities for monitoring and acting upon such cases, the practice shows that it seriously affects many aspects:

NO TRADITION IS ABOVE THE LAW, AND THAT IT WHY IT IS NECESSARY TO "RAISE THE CURTAIN" OF THE TRADITION AND TO PROTECT THE CHILDREN'S RIGHTS!

- Sexual activity at a very early age hinders the development of the genital organs, and can cause sexually transmitted diseases and early pregnancy. In addition, there is a question about the readiness of the persons to raise and educate future generations, as well as their personal psychological development since by getting married at early age, they are subjects to unexpected and stressful situations..
- If a person concludes marriage before 18, the question arises about his/her ability to complete the education and at the same time to devote time to the newly established family and fulfilling marital and parental duties. This directly affects the ability to provide economic stability for the partners and children that will be raised in those families.
- Females are usually the minor partner in child marriages, which confirms and deepens gender inequality, poverty and low levels of education among women, and often results in domestic violence.

- While parents and young Roma fail to clearly articulate the question, they still acknowledge that this practice affects their development and advancement of society in a negative manner. On the other hand, institutions accept the situation as "normal" and do not feel obliged to undertake further actions to tackle the situation and mostly because of the absence of clearly defined protocols and intersectoral cooperation.

Considering that the right to health, education and equality between men and women are fundamental rights in any society, and in certain cases they are violated and thus the damaged parties are children, the problem should be considered as a violation of children's rights.

VI. CONCLUSIONS

- MARRIAGE BETWEEN AND WITH A PERSON UNDER THE AGE OF 18 IS A VIOLATION OF CHILDREN'S RIGHTS. IT DISRUPTS THE EDUCATIONAL PROCESS, LIMITS THE POSSIBILITIES AND CAN CAUSE HEALTH DISORDERS AND GENDER INEQUALITY.
- MUTUAL COMMITMENT AND COORDINATION AMONG STATE INSTITUTIONS IS STILL LACKING IN DEALING WITH THE ISSUE FROM DIFFERENT ASPECTS.
- LACK OF UNDERSTANDING IN CONTEXT OF HUMAN RIGHTS, LACK OF PROTOCOLS FOR ACTING AS WELL AS INTERNAL RELATION AMONG STATE INSTITUTIONS, AND FEAR OF STIGMATIZATION OF THE COMMUNITY ARE TWO KEY OBSTACLES TO SOLVING THE ISSUE MORE EFFECTIVELY.
- THE PRINCIPLE OF "WHAT IS NOT PENALIZED, IS ALLOWED", ALLOWING COHABITATION BETWEEN PERSONS WHO HAVE REACHED AGE OF 16 YEARS, SHOULD BE ELIMINATED AS A LEGAL JUSTIFICATION FOR THE VIOLATION OF CHILDREN'S RIGHTS.

VII.

RECOMMENDATIONS

1.1. Harmonization of existing legislation in order to explicitly ensure that the minimum legal age is 18 for a person to live in marital community, and ensuring legal mechanisms/procedures of the competent institutions in order to act as it is a crime.

→ **Family Law.** It has to be supplemented by a provision that would prohibit minors to cohabit. The provision will provide exceptions according to which under same conditions and procedures, the law will allow living in an extramarital community with a person who has reached 16, but not yet 18, following the example of exceptions for concluding marriage of a minor, provided in Article 16 of the Family Law, which will equalize marital community and cohabitating and will also establish a system of registering cohabitating between minors and with a minor.

→ **Criminal Code.** The law does not penalize the situation when an adult cohabitates with a person who has reached 16, but not yet 18, with or without a consent from the parent or the guardian. Because of this, it is essential to move the upper limit from 16 to 18 years and that will allow the competent authorities to act in compliance and to undertake measures in cases of cohabitating and to protect their rights.

1.2. Introducing institutional system for registering and monitoring of marriages between and with persons under 18 years in order to estimate the number and to undertake coordinated activities to eliminate this practice.

→ **Law on secondary education.** Secondary schools are obligated to keep three sets of data, and they are as follows: data about number of students who enrolled high school, data about parents or guardians of students who enrolled high school and data about the employees in high schools. Data about students who enrolled secondary school contain personal information about students, such as: name, father's name, personal identification number (PIN), date and place of birth, gender, ethnicity, mother tongue, address, place of residence, contact telephone number, email address, special educational needs, student status (regular/part-time). If any changes of the above-mentioned information occur, the parent is obliged to notify the school within seven days, and the school is obliged to make those changes in the following three days.

However, in accordance with existing legislation there is no way of registering data for antisocial behavior or state of risk of the children especially when they leave the educational process because of concluding marital community/cohabitating.

It is therefore recommended to make changes to the Law on secondary education, which will expand the set of data and will include register of the states of risk of the children, particularly regarding marital communities and cohabitation, which will create an obligation to the school to inform the Centre for social work that will afterwards undertake measures and actions in the best interests of the child pursuant to the Law on protection of children and will include the Ministry of Internal Affairs (MIA) i.e. the Public Prosecutor's Office (PPO) in further processing.

1.3. Developing a special program for protection and prevention of marriage of persons under the age of 18 in order to provide training and support to professionals who work with families and children, as well as conducting campaigns to sensitize the negative effects of marriage, and in particular for the rights and development of the girls.

→ **Coordinated action between central and local institutions and Roma associations.** Development of a model for cooperation which will create an opportunity for preparation of databases about cohabitating between minors and with minors, exchange of data and appropriate treatment of all involved parties based on their competencies. Conducting campaigns and trainings that will sensitize the public and will provide understanding about the problem in the context of human rights and actualizing it in Roma communities in non-discriminatory manner. Ministry of Labour and Social Welfare, Ministry of Education, Ministry of Health and Ministry of Justice including representatives of Roma associations, to form a Commission that will prepare and monitor the implementation of the program.

STORY 1

TOLD BY A PARENT ABOUT THE EXPERIENCE OF HIS 15 YEARS OLD DAUGHTER WHO RAN AWAY FROM HOME AND CONCLUDED MARRIAGE

When my daughter turned 15 years and 9 months she ran away from home to conclude marriage with a boy of 22. When we found out we went to the boy's house to talk to our daughter and his parents. We told them that we do not agree with the marriage, since our daughter was very young and could not fulfill obligations in the house, so we wanted to take her back home. At that moment one of the boy's parents said they did not agree with us unless we report it in the police station.

We did that, and the police called the boy's parents, our daughter and the boy to question them. We stated that we did not agree with the marriage, and the police told us to report the case to the public prosecutor. We headed to the Basic Court in order to discuss this with the public prosecutor; we waited and waited, but the prosecutor did not appear.

We also asked for help from our friend who talked to the police in order to help us with the case. After the conversation the police ordered our daughter to come back to our home, since she is young. After coming back home, we talked to our daughter and she told us that she no longer wants to go back to the boy's house.

However, we could not believe in that since during our conversation in the police station, they told us that when she turns 16 years, they will not be able to act and return her home if she escapes again. I, as a parent was concerned about the financial situation and the future of my daughter, her life, from what I could have seen and known about the situation in the community and I had decided that she will get married her abroad regardless of her age. If the Law in the Republic of Macedonia prohibits marriage until the age of 18 and the police were able to act to 18, then my daughter would not marry at the age of 16. Her husband is from France, and the marriage was arranged with the consent of the boy's parents. Now they live with her husband and his family, she is fulfilling household chores, she is attending a course to learn the language in order to continue her education and to find a job. Her husband is still not 18, but attends practice work about buses and when he turns 18 he will be able to earn for his family. My daughter did not regret about this, she was even grateful for taking her back from the previous family. Parents of my daughter's husband had a tradition their children to conclude marriage at young age and they take care about the financial situation of the girl and the boy.

STORY 2

NARRATED BY A PERSON WHO ATTENDED THE FOCUS GROUP WITH YOUNG ROMA

I am 26 years old.

At the age of 23 I was dating a girl who was 17 and after a month we decided to get married, so the girl ran away from home and came to my house.

We did that because we were in love and also I knew that the police cannot act in cases when a girl runs away from home after she is 16. Her parents came to our house and after the quarrel they managed to take their daughter back home.

After 3 days, my wife came back to me again. Then her parents called the police, but when they found that she was 17, they stated they had no right to return her to her parents' home and congratulated us for the marriage.

My wife was at the 2nd year of high school, and I supported her to continue to study, although she was ashamed, and also her father did not want her to continue studying because of the marriage. My parents and I took care of my wife and I was fulfilling financial obligations.

Two months later my wife decided to leave me and go back home, and I think she did that because of the pressure from older relatives in her family to the extent that she performed an abortion after she return to her parents' house.

I regretted that I had decided to conclude a marriage with a minor.

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ABOUT US

ROMA S.O.S. is a voluntary, non-governmental citizen's association established in 2005 whose activities, based on the primary principles of solidarity, justice, human dignity, equality of rights and diversity, focus on vulnerable and marginalized groups, in particular on Roma.

THE PURPOSE OF THE ASSOCIATION is to present a bridge for integration of the Roma community, mainly by promoting and advocating their needs in front of the relevant institutions and government bodies. The realization of the basic human rights of Roma people is essential to the efforts to overcome the problems.

MISSION: to inspire and promote active involvement of Roma in social processes through the promotion of health rights, the right to non-discrimination, women's rights, and the opportunity for non-formal education for young Roma.

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