



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Former Yugoslav Republic of Macedonia
Title:	Equality Body and Civil Society Organizations join to make sure that sexual orientation and gender identity is regarded as a protected ground in Macedonia
Date:	20.11.2015
Expert:	Biljana, Kotevska
Update of flash report nr:	
<u>Context</u>	
Issue at stake:	Joint efforts of the equality body and CSOs result in a protocol for processing discrimination cases on grounds of sexual orientation and gender identity
Ground of discrimination:	Sexual orientation, gender identity
Source:	Publication; HERA
Field:	All fields
Applicable law:	Anti-discrimination Law

Content

Policy development:

Ever since the adoption of the Law on Prevention and Protection against Discrimination (Anti-discrimination Law; ADL), one of the biggest remarks on the law, regardless of its open-ended grounds clause, was excluding sexual orientation from the explicitly protected grounds (Article 3, ADL). This was a deliberate policy move based on a populist decision and based on faulty legal reasoning (the Minister of Labour and Social Policy at the time claimed that the national law does not contain the term "homosexuals" and "sexual orientation" which could not have been further from the truth¹). However, this was also a move which left the protection of persons on grounds of sexual orientation uncertain, to say the least.

Nevertheless, the national equality body - Commission for Protection against Discrimination (CPAD), referred to international law and since the very start of its functioning (01.01.2011) acknowledged that sexual orientation is a protected ground. During their mandate the commissioners (which is due to expire this December), this has been a well established practice. However, since this is has not been regulated under law, and since in Macedonia and in the legal practice in principle there is no strict legal

¹ Several laws in force at that time included sexual orientation as a protected ground in their non-discrimination provisions, such as: Law on Protection of Patients' Rights, Law on Volunteering, Law on Labor Relations, Law on Public Health.

obligation for obedience on grounds of *stare decisis*, it was a question of how this ground will be treated in case law or when the current membership of the CPAD changes.

In this sense, the adopted Protocol, although a rather symbolic act, is an important one. With joint efforts, the CPAD and H.E.R.A. – a civil society organisation which works on protecting and promoting the rights of marginalized groups, with a focus on health rights- prepared a Protocol for the CPAD on how to act in cases when a person claims discrimination in any of the prescribed forms on grounds of sexual orientation and gender identity. The biggest achievement of this action is most probably not the protocol itself, as it largely reiterates rules of procedure already established under other (legal and internal) acts. But it is most probably the fact that annexed to this protocol is an amended form for filling a complaint to the CPAD. The form which CPAD had thus far included a section where all protected grounds from Article 3 of the ADL were numbered in a special section and the plaintiff had to circle one of them. This section did not contain sexual orientation and gender identity, while in the amended form, an additional option is added where the person can circle "sexual orientation and gender identity". Although rather a symbolic action, it is reasonable to expect it will act very encouragingly for persons which want to claim such discrimination. Moreover, it shows an effort for leaving some legacy by the current equality body members for its successors.

In addition, aside from strengthening the internal procedure guarantees for processing these cases, there is a list of CSOs added at the end of the protocol that may serve as a guideline for potential victims to know to which organizations they can turn to for help and assistance. Furthermore, it can also serve as a guide for the future CPAD members which do not necessarily need to have a good overview of the CSOs as to who they can turn for expert assistance and/or advice, since the Protocol procedure suggests they can and should undertake.

Key points of analysis:

The biggest value of this development is in the fact that it represents a joint move of the CSOs together with the equality body, showing that if the Government is not ready to change the ADL in order to explicitly provide protection for sexual orientation and gender identity, then the CPAD and CSOs can circumvent this issue, at least for cases coming to the equality body. A rather symbolic step but one which deserves much appreciation.

Internet link source:

[MK] Press release on the occasion of the start of the campaign "For a Nation Without Discrimination" [Соопштение по повод започнување на кампањата „За нација без дискриминација] [17.11.2015]
<http://hera.org.mk/?p=3821> Last accessed 17/11/2015.