



Executive Summary

Country Report Republic of Macedonia 2009 on measures to combat discrimination

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1. Introduction

The Republic of Macedonia was the last European nation-state formed in the twentieth century. Land-locked and covering 25,713 square kilometres, it is home to nearly two million people.

A history of permanent migrations and mixing of different ethnicities has left the country with a rich diversity of ethnic groups. Predominant are the Macedonians, who comprise 65 per cent of the population, followed by the Albanians who make up 25 per cent of the population. Around 4 per cent of the population are Turks, followed by Roma (2 per cent), Serbs, Vlachs and others (around 4 per cent in total). The majority of ethnic Macedonians are Orthodox Christians, whilst most ethnic Albanians and Turks are Muslims.

In August 1944, the statehood of the People's Republic of Macedonia was proclaimed and, in December 1945, it became one of the six constituent republics of what became the Socialist Federal Republic of Yugoslavia. The dissolution of the Federation led the Republic of Macedonia to proclaim its sovereignty in late 1991 and it became a member of the United Nations in April 1993. Due to differences in opinion over the name of the country, the UN decided that for its purposes other UN members would provisionally refer to the Republic of Macedonia as 'the former Yugoslav Republic of Macedonia.'

During 2001 an armed conflict (on ethnic and religious grounds) occurred, which ended with the so-called 'Ohrid Framework Agreement'.

The present government is a coalition, comprising of members of the main conservative party (VMRO-DPMNE), several smaller political parties and the main Albanian party (DUI).

The governing coalition has very restrictive policies toward social rights, the rights of workers and the living conditions of marginalised groups. Systematic changes are being implemented in the laws on labour, pensions, and social protection, as protective measures are cut back. The custom of adopting changes to laws in a very short period without public discussion and even without the involvement of experts in specific fields is producing legislation that creates social and legal insecurity.



The government is oriented toward protecting traditional religious values, leading to negative effects on gender equality and basic freedom of thought and conscience. Several campaigns have been promoted and supported by the government with a clear message against abortion.

Oppressive measures are used against beggars, the homeless and sexual workers and a negative atmosphere has been created against equal rights for sexual minorities, thanks largely to direct involvement of the government. Hate speech is tolerated, and indeed often features in some of the newspapers close to the government.

Special programmes and strategies have been developed and supported by the government concerning the Roma population, but these have had minimal or no results. No positive action is being undertaken to bring about crucial changes and an end to the cycle of poverty and unemployment of Roma people. In addition, no action is being taken to tackle stereotypes and prejudices against the Roma and ban segregation.

On the formal level the government communicates with NGOs and is even engaged in joint projects. However, the real influence of NGOs in decision making is marginal. In fact, an anti-NGO atmosphere has been instigated by the Government, while the current Cabinet in the last couple of years has even developed a practice of forming NGOs overnight to confront other NGOs that raise issues "against" the Government publicly.

One of these topical issues is the anti-discrimination campaign. There is a widespread misperception among activists from the ruling political party that "in Macedonia there is no discrimination". This is sometimes used as a way to justify first and foremost the travesty of an employment policy that has been in place throughout the transitional period, but much more visibly manifested since 1998. That year, the opposition won the elections for the first time and immediately introduced "working cleansing" (an extraordinarily high number of dismissals from the state administration) of SDSM (social democratic party) activists. Yet, when SDSM regained power in 2002, it carried out the same 'cleansing'. Then VRMO-DPMNE did the same thing again in 2006. This illustrates the fact that discrimination on the basis of political opinion is perceived by the population to be endemic in Macedonia. Meanwhile, all those changes take place under conditions of over 30 per cent unemployment of the overall population (almost 50 per cent of the work-capable population). Such 'cleansings' cannot lead to anything but widespread harsh discrimination and complete instability, and to end the principles of quality, competence and neutrality of the state and public administration. This phenomenon is reproduced and reflected in every corner of social life.

2. Main legislation

The constitutional basis for protection from discrimination is contained in the definition of the fundamental values of the Republic of Macedonia, immediately followed by the first article of the Chapter on human rights and freedoms (Article 9). In this article, that states the grounds for possible discrimination, the "Directive grounds" are covered only partially: the missing grounds are disability, age, sexual orientation and belief in general, while social origin, property and social status are in as additional grounds.

On the other hand, the Constitution enshrines special care by the State for certain vulnerable groups; and amendments IV-XVIII to the Constitution introduce equitable and equal treatment for ethnic minorities.

Until 2010, equality and prohibition of discrimination were partially present in several laws (labour, employment of people with disabilities, pension and social care), and discrimination is a criminal offence under the Criminal Code.

On 8 February 2010, special non-discrimination legislation was adopted (the new Anti-Discrimination Law). The Law entered into force on 21 April 2010; however it will be implemented from January 2011.¹ Drafting of the Law began at the end of 2004. However, its adoption was constantly postponed because of a lack of political will. The law adopted was contested by many NGOs, academics and representatives of the international community who argued that it does not comply with the Directives even at an elementary level (on the questions of victimisation, sexual orientation and belief, reasonable accommodation, effective protection of victims of discrimination, or use of statistical data) and does not establish a proper equality body that would be independent, capable of supporting victims of discrimination, relevant to promotion of equality, or able to perform certain crucial tasks independently). The new Law contains an extensive list of grounds of discrimination (sex, race, colour of skin, gender, belonging to a marginalised group, ethnic affiliation, language, citizenship, social origin, religion or religious belief, other sorts of belief, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property ownership, health condition, or any other ground stipulated by law or a ratified national treaty). However, sexual orientation was not mentioned as a ground of discrimination and the Commission on Protection from Discrimination cannot be perceived as a proper equality body meeting the requirements of Directive 2000-43.

In practice, until now, no real cases of discrimination that would directly address discriminatory behaviour have been heard in front of the courts, and the few individuals who would dare do so are strongly discouraged. Policies in favour of equality and non-discrimination have not been developed and no changes have been made in the overall approach toward discrimination.

¹ <http://www.pravo.org.mk/documentDetail.php?id=4846>

The reasons for this can be identified as follows:

- A lack of genuine understanding not only of the dichotomy concepts of non-discrimination and of equality, but also of their importance for and impact on the democratic cornerstones of society
- Until 2010 and adoption of the new Anti-Discrimination Law, there has been a lack of precise formulations of the different grounds of discrimination (included in an open-ended and broader list than that provided in the Constitution, in accordance with the latest developments in international human rights legislation);
- The lack of a precise and uniform definition of positive action measures and of situations in which the prohibition of differential treatment is not treated as discrimination;
- A lack of general principles that could be applied uniformly in the context of wider national legislation;
- A lack of specific criteria for determining responsibility in discrimination cases based on shifted burden of proof as *conditio sine qua non* for judicial procedures in cases of discrimination;
- A lack of judges able to tackle cases of discrimination. Judges still insist on solid evidence (eyewitness, documentary) in order to even start procedures; and
- A lack of mechanisms to protect the victim from further victimisation and protect the applicant against punishment because of the allegations included in the complaint (petition).

3. Main principles and definitions

Until 2010, three laws incorporated definitions of discrimination: the Labour Law, the Law on Amendments to the Law on Child Protection and the Law on Social Protection. The most comprehensive definition of direct and indirect discrimination was included in the Labour Law. In the definition of discrimination there is a description of the areas covered (such as recruitment conditions, vocational training, career progress and dismissal). The definition contains more grounds for discrimination than the Directives (health condition, political belief, trade union membership, national or social origin, family status, economic situation or other personal conditions).

Harassment and sexual harassment are prohibited, and from 2009 there is a separate article on 'mobbing' as mental harassment. In the Law, victimisation is associated primarily with mobbing and initiating procedures for legal protection because of mental harassment.

Instructing to discriminate is not prohibited by law.

Exceptions and exemptions are defined in the law. These are connected with the nature of particular occupational activities and/or special care for some groups of people (the elderly, youth, pregnant women, people with disabilities, and parents).

Reasonable accommodation is included primarily in the Law on Employment of People with Disabilities.

Until 2010, multiple discrimination was not mentioned in any of the laws dealing with discrimination. So far no cases have been heard on the basis of anti-discriminatory legislation and no procedures have been initiated by the inspectoral organs.

The new Anti-Discrimination Law contains:

- comprehensive definitions of direct and indirect discrimination;
- more grounds for discrimination than in the Directives (colour of skin, gender, belonging to a marginalised group, ethnic affiliation, language, citizenship, social origin, education, political affiliation, personal or social status, family or marital status, property ownership, and health condition);
- a special article on victimisation;
- defined exceptions and exemptions;
- reasonable accommodation (which is mentioned in the explanations in the Law);
- specific treatment of multiple discrimination; and
- special articles on harassment and instruction to discriminate.

There is no article on discrimination by association.

As of yet, the authors is unaware of any strategies, plans or any other documents developed by any company or institution to implement the Law. The government has not taken a lead on this. What is more, the laws and by-laws that regulate the work of the Cabinet and its secretariat speak nothing of non-discrimination or equality. The same applies to the Ministry of Labour and Social Policy, which takes the lead on these issues. Without a positive and personal example, it is more likely that all private enterprises and entities that incline to cooperation with the ruling political parties (including some media, NGOs, and religious communities) will develop an anti-equality approach and mentality.

In April 2010, a manual for protection from discrimination was developed by the Ministry of Labour and Social Politics that should help the administration to implement the anti-discrimination legislation.²

² http://www.mtsp.gov.mk/WBStorage/Files/priracnik_antidiskriminacija.pdf



4. Material scope

The general anti-discrimination provisions in the Constitution were spread out throughout all legislation at a broad level without allowing for concrete application and without any clear obligation for implementation. The main problem connected with this is the limited constitutional grounds for discrimination. This leads to varying interpretations of the obligation in law and an absolute absence of real protective mechanisms.

The situation was further complicated by the introduction of specific solutions on ethnic minorities (based on the Ohrid Framework Agreement).³ The terms equitable and proper were introduced into the Constitution and into more than 50 laws. Some of the changes could be perceived as exemptions, others as positive action and some as temporary measures in the fight with discrimination. Neither in the Constitution nor in these laws is there a definition of either equitable or proper. Thus they are understood and implemented very differently and quite often very arbitrarily. Such a situation leads *per se* to discrimination.

In the field of employment, implementation of non-discrimination articles applies to both the public and private sector. Prohibition of discrimination as enshrined in the Labour Law applies to all the fields listed in the Directives.

In the new Anti-Discrimination Law the areas of material scope are only enumerated without further elaboration. It covers employment and working relations; membership of and involvement in trade unions, political parties, NGOs, foundations, and other membership organisations; social security, including social protection, pensions and disability insurance; health insurance and healthcare; education; access to goods and services; and housing, in both the private and public sector.

5. Enforcing the law

According to the Constitution, citizens are entitled to bring a case for protection of fundamental rights and freedoms to regular courts in a prompt procedure. In practice, this is impossible because there is no relevant procedure under which such a case could be brought. Therefore, this is just a proclamation without any practical consequences.

According the Constitution, cases can be brought to the Constitutional Court on the grounds of sex, race, religion or national, social or political affiliation.

³ The interethnic conflict in Macedonia (between ethnic Albanians and ethnic Macedonians) began at the beginning of 2001 and ended the same year with the signing of the so-called "Ohrid Framework Agreement" as an initial act toward major constitutional and legislative changes. The Ohrid Framework Agreement was designed to accommodate future democratic development which will be based on the unitary character of the state and will introduce further recognition and acceptance of ethnic differences at the institutional and legislative level.



In addition to the fact that a smaller number of grounds are applicable for a case at the Constitutional Court than those mentioned in the Constitution, so far there is not real readiness at the Court to deal with such cases. As of yet, either claims have been decreed inadmissible by the court or negative verdicts were made.

In most of the laws which are currently in force, it is absolutely unclear to whom a victim should address complaints of discrimination. In some laws the phrase "to the competent authority" is used, without further explanation as to which this authority is. The confusion grows with different articles in different laws (on issues such as inspector control, provisions on the misdemeanour procedure, administrative penalties, and even criminal procedure). No cases have been brought to court, and victims are not benefiting from effective protection.

Some NGOs support the complaints of victims and bring cases of discrimination to public attention. However interest among the media and public is very low.

Situation testing and statistical evidence are not reported as tools in discrimination cases and they are not used in practice, except in some very isolated efforts by some NGOs.

The shift of the burden of proof is mentioned only in three laws and so far it is not used in practice. This will be the first challenge in implementation of the new Anti-Discrimination Law in 2011.

There are financial sanctions and sanctions envisaged under the Criminal Code for discrimination. So far these are not effective and in any case they are not applied.

The new Anti-Discrimination Law envisages three levels of legal remedy:

- a) administrative procedures in front of the Commission for Protection against Discrimination (to be established based on this Law);
- b) litigation at a regular court (Articles 34 & 35) based on the provisions of this Law including specific requests that should be contained in a legal suit (Article 36); and
- c) a misdemeanour procedure based on misdemeanours stipulated by this Law (Articles 42-45).

The administrative procedure is regulated by Articles 25-29 and is free of charge for the applicant. The procedure may end up with a Commission Opinion and Recommendation within 90 days. If this Opinion is not implemented, the Commission can initiate a procedure at the competent body (it is not specified which this body is).

In the new Anti-Discrimination Law the solution depends on the procedure. The administrative procedure envisages a recommendation for rectifying the violation (i.e. the discrimination) within 30 days; litigation would lead to an award of regular compensation; while the misdemeanour procedure envisages fines in the range of €400-1000.

In the new Anti-Discrimination Law a test must be satisfied to prove that indirect discrimination is the same as in Directive 2000/78/EC Article 2(2.b.i). In the new Anti-Discrimination Law, collection of statistical evidence is only mentioned as one of the terms of reference for the Commission on Protection against Discrimination.

6. Equality bodies

Before 2010 no equality body had been established at the national level. Some functions concerning discrimination fall within the mandate of the Ombudsman's office. With the 2009 changes, a special department for protection from discrimination was created.

According to the general mandate of the Ombudsman, protection is focused on the grounds mentioned in the Constitution and covers violations made by state bodies.

The Ombudsman is mandated to accept individual claims, investigate, give recommendations and opinions, initiate procedures, monitor and research specific issues.

In practice, virtually no claims for discrimination have been made to the Ombudsman (in 2008 only 0.069 per cent of complaints to the Ombudsman were related to discrimination) and the Ombudsman did not openly and strongly support any non-discriminatory action taken by NGOs.

The Constitutional Court also rejected all attempts to bring cases on discrimination, thus missing the opportunity and necessity to fill the gap created by having no body dealing with non-discrimination and / or equality.

In the new Law on Prevention and Protection from Discrimination (henceforward the new Anti-Discrimination Law), a special body is defined (the Commission on Protection from Discrimination).⁴ The Commission will be established in 2011.

According to the new anti-Discrimination Law, the Commission will have an extensive mandate which will include giving advice and recommendations on cases of discrimination; providing information and initiating procedures at relevant state bodies; reporting, education and training; initiating changes to legislation; cooperation with local government, NGOs, other equality bodies and international organisations; and collecting statistical data, establishment of databases and research.

⁴ Art. 16-33, Law on prevention and protection from discrimination



The Commission will work on all the grounds mentioned in the new Anti-Discrimination Law: sex, race, colour of skin, gender, belonging to a marginalised group, ethnicity, language, citizenship, social origin, religion or religious belief, other sorts of belief, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property ownership, health condition, or any other ground stipulated in law or a ratified national treaty.

The establishment of the Commission and questions regarding its structure and the exercise of its mandate will have to be resolved in 2011.