



Executive Summary

Country Report Macedonia (FYR) 2011 on measures to combat discrimination

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1. Introduction

Macedonia (FYR)¹ is a SEE land-locked multi-ethnic country. It became an independent republic in 1991 with the dissolution of Yugoslavia. It is a candidate for European Union membership since 2005, and holds a conditional invitation to join the North-Atlantic Treaty Organization since 2008. Membership in these two organizations, a foreign affairs priority for the country, guides the domestic political discourse and actions, including tailoring of reform undertakings. Domestic priorities, of relevance here, are implementation² of the Ohrid Framework Agreement,³ lowering unemployment⁴ and fight against poverty.⁵

The country's population is a little over two million people. Ethnic affiliation is important, as set of rights and positive action measures are tied to the numerical representation of an ethnic community in the total population (i.e. over 20 per cent of the population). The ethnic composition⁶ is approximately 64 per cent ethnic Macedonians, 25 per cent ethnic Albanians, 4 per cent ethnic Turks, 3 per cent ethnic Roma, 2 per cent ethnic Serbs, 1 per cent ethnic Bosniacs, 0.5 per cent ethnic Vlachs and 1 per cent which fall under others.⁷

¹ The constitutional name of the country is 'Republic of Macedonia'. However, pending settlement with Greece on the (on-going) name dispute, under a UN Resolution A/RES/47/225, the country was admitted as UN member under the temporary reference "the former Yugoslav Republic of Macedonia", which is the term used by the European Commission, thus also used for the purposes of this report.

² Although it is not OFA itself that is being implemented, but Constitutional, legal provisions and strategic documents that resulted from its signing, the expression "implementation of OFA" is used here to avoid long explication pretexts.

³ Signed in view of ending the 2001 armed conflict, OFA aims to advance the position of ethnic communities not in majority, and to preserve and reflect the multi-ethnic character of the country in public life, including through actions re non-discrimination and equitable representation.

⁴ Current unemployment rate is 31.8 per cent of the active population.

⁵ 30.9 per cent of the population lives in poverty.

⁶ All numbers presented here are rounded percentages from the 2002 Census. New census was scheduled for 2011, but do to un-clarities in the implementation of the methodology it was annulled. All statistics by the State Statistical Office can be found at: <http://www.stat.gov.mk>

⁷ Other numbers of importance for understanding the context in the country are as follows:

- Mother tongue: approximately 67 per cent speak Macedonian, 25 per cent Albanian, 4 per cent Turkish, 2 per cent Roma, 1.5 per cent Serbian, 0.5 per cent Bosnian, 0.5 per cent Vlach and 1 per cent speak other language as a mother tongue;
- Sex: 50.2 per cent male and 49.7 per cent female;
- Age: approximately 20 per cent are among zero and fourteen years of age, 70 per cent are among fifteen and sixty four years of age and 10 per cent are above sixty five years of age;
- Religion: approximately 65 per cent Orthodox Christian, 33 per cent Muslim, 0.5 per cent Catholic, 0.1 per cent Protestant and 1.5 per cent other; and Sexual orientation: there are no official



As a post-socialist country, its legal system underwent series of reforms. Changes in the political system were not accompanied by thorough changes in the legislative framework and reforms in the judicial and institutional framework. This resulted in a terminology that is not unified between various laws causing terminology confusion, and in substantial differences in the interpretation and the implementation of laws. Many of the reforms once commenced were abruptly stopped and new reform course was taken, while some are not yet completed. Such dispersed reforms targeting seems to have a negative long-term effect on the legal system. Resistance to reforms by the representatives of the judiciary is product of this reform patchwork operation.

Although the country is presented by the government as a country open to differences, through the actions on advancement of minority rights,⁸ it can hardly be said that this is really the case. Hate speech is widely tolerated, and seems to be omnipresent, especially in the past few years. Homophobic statements and hate speech directed towards homosexuals are still very present in the public speech in 2011. Similar is the situation with Roma people. Political participation of Roma⁹ does not have an equivalent in other spheres, and certainly not when it comes to economic and social rights. A rise of traditional and religious values¹⁰ which lead to negative effects on gender equality and freedom of thought and conscience is noted in the past three years. Government funded anti-abortion campaign and a campaign calling for increase in the number of children, are just the most staggering examples.¹¹

Instances of segregation in the educational system are still reported. Employment measures through equitable representation are not yet reached. Many obstacles remain for integration and improvement of the rights of Roma. Special programmes and strategies have been developed and/or supported by the government within the frame of the Decade for Roma Inclusion - regional government initiative for improving the situation of Roma in health, housing, education and employment.

Official government policy for cooperation with NGOs in general and NGOs actual role in policy making processes is another important point. Most relevant example

numbers, only NGO estimations which calculate homosexuals to be approximately 5 per cent of the total population.

⁸ There were inter-ethnic violence cases in 2011 and in 2012 (at time of writing of this report).

⁹ There is a Roma minister in the government, Roma municipality (Shuto Orizari).

¹⁰ See MCIC: "Односот кон традиционалните/секуларните вредности" [Attitudes towards traditional/secular values]. MCIC Website. <http://www.mcms.org.mk/images/docs/2009/onosot-kon-tradicionalnite-sekularnite-vrednosti.pdf>. Last accessed: 12 March 2012.

¹¹ Using a slogan "You have a choice", the government pushed for a pro-life position, presenting a twisted picture of abortion and its health, socio-economic consequences, by showing only negative consequences from abortion, thus indirectly advocating anti-abortion. This went in parallel with another campaign 'Preservation of family values', portraying 'traditional families' as the only picture of how a 'normal' family should look like, contrasted to horrifying pictures of unhappy life if other family forms are sought, including a life of career and without children. Some of the videos can be seen at: <http://www.youtube.com/watch?v=CAF5Niv1Z3U>; <http://www.youtube.com/watch?v=TsrGVuGAguo&NR=1>.

here is the 2010 adoption of the Anti-discrimination Law.¹² Similarly to this, the draft-National Strategy on Equality and Non-discrimination on grounds of ethnic affiliation, age, disability and sex, drafted in 2011, was done in a closed consultative process. It was publicly announced in mid-November 2011, and said to be pending adoption by end of 2011,¹³ leaving less than two months for a consultative process (activities foreseen for the consultation process at that time were four public presentations of the draft in four municipalities). CSOs reacted to such closed consultations. The Coalition for sexual and health right of marginalized communities raised the issue of transparency of the process of drafting of the strategy, and of keeping it as a closed negotiation among the government and certain CSOs. Furthermore, they also contested the grounds for discrimination covered by the strategy. According to them, this is one more step towards further marginalization of the LGBTIQ community in the country.¹⁴

2. Main legislation

The “Constitution of the Republic of Macedonia”¹⁵ is a written constitution and the country’s highest act. It accepts international law as part of domestic law, making international law higher than domestic laws and bylaws. The Constitution enables three lines of protection against discrimination. It firstly upholds equality of citizens before the Constitution and before law, stating that citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of gender, race, colour, national and social origin, political and religious conviction, property and social status. It foresees a protection mechanism for all who find their Human Rights and freedoms breached, in front of the Constitutional court. As the country has signed and ratified all relevant international law on non-discrimination, these documents are also at disposal.

Until 2010 provision on anti-discrimination were scattered in various laws. In April 2010, the Anti-discrimination Law (first comprehensive legislation on anti-discrimination) was adopted in the process of approximation of the domestic legislation with the *acquis*. This law does not comply with the Directives regarding minimum protected grounds, definitions and forms of discrimination, victimisation, effective, proportionate and dissuasive sanctions, use of statistical data, dialogue with the NGO sector. The equality body established with the law cannot be seen as meeting the requirements of Directive 2000/43.

¹² See 2010 report, page 83: http://www.non-discrimination.net/content/media/2010%20-MK-%20Country%20Report%20LN_FINAL.pdf. Last accessed: 12 March 2012.

¹³ Until the time of writing of this report, the strategy was not yet adopted.

¹⁴ “Владата не признава сексуална дискриминација?”. *Radio Free Europe*. <http://www.makdenes.org/content/article/24393126.html>. Last accessed: 12 March 2012.

¹⁵ The text of the Constitution of the Republic of Macedonia is accessible in English language at: <http://www.slvesnik.com.mk/WBStorage/Files/USTAV-eng.pdf>.



The Anti-discrimination law protects the following grounds: colour, 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, any other ground foreseen by law or a ratified international treaty. It does not protect the minimum list of grounds prescribed with the Directives, as it includes a limited scope of belief, and excludes sexual orientation; however it is an open-ended clause, and several other grounds not covered by the directives.

In practice, until now, there have been very few cases where people filed a case to court when they find themselves wronged by failure to apply to them the principle of equal treatment; this is also the case with the Ombudsperson and the Constitutional court, as two other instances. The reasons for this would be general lack of understanding and knowledge on discrimination and equality (be it on non-discrimination and equality in general and their importance, shift of burden of proof, victimisation), lack of legal clarity (provisions on discrimination related to personal and material scope, forms of discrimination, body to address discrimination cases, burden of proof, as well as protected grounds), lack of skills and established mechanisms to encourage, receive and process discrimination cases (recognizing discrimination, and encouragement to file discrimination cases to competent institutions; general principles that could be applied uniformly in the context of wider national legislation).

Policies on equality and non-discrimination have not been developed. A draft-strategy on equality was presented publicly in November 2011. It was not adopted by the end of 2011.

3. Main principles and definitions

The Anti-discrimination Law contains definitions of direct and indirect discrimination; harassment, instructions to discriminate and victimisation. Compared to the Directives, the definition of discrimination is unnecessarily more complicated, whereas the one on indirect discrimination is fully replicated. It contains an article on harassment and on sexual harassment, as well as a separate article on discrimination of people with disability. Multiple discrimination is foreseen as a grave form, as are also repeated and extended discrimination. The law also has a provision on inciting and encouraging discrimination. There is no provision on discrimination by association.

The law defines a list of exceptions and exemptions. 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. However, the list of exceptions is not very precise in the personal and material scope. This opens room for readings of the law which could narrow protection against discrimination.



Before the adoption of the Anti-discrimination Law, various laws incorporated definitions of discrimination. As the Anti-discrimination Law does not foresee a unification of provisions amongst various laws in its transitory and final provisions, one can expect that the institutions that are supposed to implement the law could face doubts on which legislation and/or provision to apply to a certain case, and which provisions should have the last word. *Lex specialis derogat legi generali* and *lex posterior derogat legi priori* are by tradition part of the judicial work, but judges tends to rely on existing provisions rather than general legal principles even in cases where seemingly contradictory provisions exist, as general legal principles are used primarily in case of existence of a legal loop (as in fact the Law on Courts prescribes).

Neither strategy nor plans of action have been adopted to assist the process of implementation of the legislation as a whole. Equality strategy was publically presented in November 2011, but was not yet adopted by end of 2011.

4. Material scope

Anti-discrimination Law is applicable to both the private and public sector and applies to all fields. The law notes that specific attention should be paid to the fields of 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. Thus, this law goes beyond the Directives. Other laws also include discrimination provisions, defining the material scope. All of them relate it to both the public and private sector, save the Law on Ombudsperson which provides protection against discrimination only in the public sphere.

In the field of employment, aside from the Anti-discrimination law, there is also a Law on Labour Relations which prohibits discrimination in all aspects listed in the Directives. These apply both to the public and private 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. However, in practice, although invocations of the procedures have been made, the Constitutional court has been very reluctant in acting upon cases in relation to discrimination i.e. to citizens' rights and freedoms cases in general.

Laws currently in force are not clear when it comes to addressing of complaints of discrimination. Various laws foresee for various types of proceedings in similar cases. Proceedings vary from inspectorial control, misdemeanour procedure, litigation procedure, administrative procedure, to criminal procedure. In some laws the phrase "to the competent authority" is used, without further explanations. Anti-discrimination



Law envisages several options for procedural protection. These are: administrative, litigation and misdemeanour procedures.

Administrative procedure in front of the Commission for Protection against Discrimination, established in 2011, is free of charge. The Commission may give its opinion and recommendation. Duration of the procedure stretches to 90 days. If the recommendation is not acted upon, the Commission can initiate a procedure with a competent body (the law does not specify this further).

Litigation procedure can also be raised in front of regular courts, based on the provisions of this law. The law does not resolve the priority of the procedures, in a case of simultaneous procedures. It does state that if a procedure is raised in front of a court, no procedure can be raised in front of the Commission. However, it does not say what one does if there is a procedure raised in front of the Commission, and after that (but before the procedure ends in front of the Commission) another procedure is started in front of a court. Also, the relations between the procedures in front of the Ombudsperson and the Commission are not regulated by law. This was done with a memorandum for understanding between the two institutions.

In the Anti-discrimination Law the outcome of the procedure depends on the procedure which one chooses to pursue. 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 to 1000 euro in national currency. There are financial sanctions and other sanctions envisaged under the Criminal Code for discrimination. These provisions have not been applied thus far.

Another procedure for protection of rights, including right to equality and protection against discrimination is a procedure that can be initiated in front of the Ombudsperson. This is limited to the public sphere only. The Ombudsperson is vested with the competence to provide protection of the principle of non-discrimination and equitable representation. Although the overall representation of discrimination cases in the total number of cases filed to this institution is still low (0.99 per cent of the total number of cases), the number of cases is rising; 42 cases were filed in 2011, compared to 16 in 2010.

Neither under the Anti-discrimination Law, nor under previous laws have situation testing and statistical evidence been prescribed as admissible evidence and tools in procedures on discrimination cases. They have not been used in practice (with the exception of efforts by NGOs). Statistical evidence is not mentioned in domestic legislation. In fact, statistics are only mentioned in a context of competences of the equality body (i.e. collecting statistics).

The Anti-discrimination Law provides for a shift of the burden of proof. It is also mentioned in several other laws. However its definition is not in line with the standard prescribed with the Directives, as the law asks that the potential victim of



discrimination provides for facts and proofs to justify their claim. This places unreasonable large portion of the burden on the potential victim of discrimination. Shift of burden of proof does not apply for criminal offences related to breach of equal treatment. One can note from the proceedings in front of the Commission in 2011 that it has been applying the shift of burden of proof.

NGOs support complaints of victims and bring cases of discrimination to public attention. However media and public do not show a constructive approach to cases or to covering discrimination, but tend towards a sensationalist one.

6. Equality bodies

Anti-Discrimination Law provided for the establishment of the first equality body in the country, a Commission on Protection against Discrimination. Its members were elected in December 2010, and it started functioning in 2011. The Commission works on cases of discrimination covered by the Anti-discrimination law. These grounds are: 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. It processed approximately 60 cases in 2011.

The Commission has the following mandate: 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; collecting statistical data, establishment of databases and research.

Before the Anti-discrimination law no equality body existed at the national level. Some functions concerning discrimination fall within the mandate of the Ombudsperson's office. The relations between the Ombudsperson and the Commission were not regulated in the Anti-discrimination law, but with a Memorandum for understanding between the two institutions. According to the general mandate of the Ombudsperson, it can accept individual claims, investigate, give recommendations and opinions, initiate procedures, monitor and research specific issues, focusing the protection on the grounds mentioned in the Constitution and covering violations made by public bodies.