



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

### NEWS REPORT

<b>Country:</b>	Macedonia
<b>Title:</b>	Allegations of abuse of competences by the equality body President
<b>Date:</b>	23 January 2017
<b>Expert:</b>	Biljana Kotevska and Mirjana Najchevska
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Allegations of unlawful actions by the President of the equality body arise, including abuse of competences, in reactions by CSOs non-discrimination network and an equality body Commissioner; Discrimination based on sexual orientation
<b>Ground of discrimination:</b>	All
<b>Source:</b>	National equality body; Civil society organisation; Media
<b>Field:</b>	Other (Equality body)
<b>Applicable law:</b>	n/a

### Content

**Policy development:** Over a period of two months (January and February 2016), Milenko Nedelkovski - host at the Channel 5 national TV stations, continuously used pejorative and vulgar vocabulary while speaking of a person for his alleged "homosexuality". In that context, he also mentioned a female journalist for her, according to him, "lesbianism". The Agency for Audio-Visual Media (the Agency) - state body with competences, inter alia, to monitor media and react against discriminatory speech, hate crime and hate speech, published a report and submitted a claim to the Commission for Protection against Discrimination (CPAD), for discriminatory speech on grounds of sexual orientation against the TV host. In its claim to the CPAD, the Agency correctly invoked national legislation, and further based its claim on three judgments of the European Court of Human Rights and on the Recommendation CM/Rec (2010)5 of the Council of Europe's Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity.<sup>1</sup>

However, it received as a response – what appears to be a letter<sup>2</sup> signed by the President of the CPAD, Aleksandar Dashtevski, implying that the CPAD considered the claim and rebutted it. Thus, it seems that the letter was intended to serve as an "opinion" – what the equality body issues upon a submitted claim,<sup>3</sup> should it decide that it will deliberate upon the case. However, it did not contain an introduction (the legal ground on which the CPAD acted and the concerned parties), a dispositive, and a legal advice. One could possibly

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<sup>1</sup> <http://www.coe.int/en/web/sogi/rec-2010-5>.

<sup>2</sup> The letter can be accessed here:

[http://www.avmu.mk/images/Izvestuvanje\\_od\\_Komisija\\_za\\_zastita\\_od\\_diskriminacija.pdf](http://www.avmu.mk/images/Izvestuvanje_od_Komisija_za_zastita_od_diskriminacija.pdf).

<sup>3</sup> The opinions of the CPAD can be found here: <http://www.kzd.mk/?q=node/116>.

argue that the letter did contain an elaboration, however as the letter had no clearly marked sections this is difficult to say (which is why herein it is referred to as a "letter").

The Agency published this letter on their website, following which the Network for protection against discrimination (the Network), a network of CSOs working on equality and non-discrimination issues, issued a public reaction to it because of the above-mentioned formal deficiencies of what seems to have been sent as an opinion. They added that this letter raises concern regarding the understanding and reading of basic legal rules which exist in the legal system in Macedonia by the CPAD, including how basic law and institutions operate in the country and how the European Convention of Human Rights (ECHR) system operates and what its position at the national level is. To illustrate some of the claims:

- The letter cites that the European Court of Human Rights (ECtHR) is a judicial institution, whereas the CPAD is a quasi-judicial one, and on grounds of this, the letter claims, the ECtHR decisions are not relevant for CPAD. This is completely contrary to what the Constitution, the laws in Macedonia and the practice of the CPAD itself say.
- It states that the discriminator needs to be in a superior position to the discrimination victim which was not the case in the considered claim. As noted by the Network, such criteria are not part of the Law for Prevention and Protection against Discrimination (ADL), nor in any of the anti-discrimination provisions which are part of other laws.
- The letter further states that discrimination by the media can be conducted only by the media as legal persons, and that Article 4 of the ADL says this. Whereas, in fact, Article 4 simply prescribes the fields of implementation of the law, and does not limit the application to natural or legal persons. In fact, before numbering the fields of application, Article 4 explicitly states that it applies to both natural and legal persons, as does Article 2. This is why the act of a journalist is an act by her/himself as a natural person, and cannot be attributed to the media as that falls under, as the letter says, "free speech".

Following the reaction by the Network, Prof. Bekim Kadriu – one of the seven Commissioners in the CPAD, also issued "a dissenting opinion". In it, Prof. Kadriu writes that what was issued is a letter, with which the President replies to the discrimination claim 03-1307 from 2016, and that:

- "(1) This letter is not a position of the Commission. The letter is not in the form of a decision, nor an opinion nor a conclusion. The letter was not adopted at an equality body meeting, but represents an expression of the personal will of the President.
- (2) Closing the proceedings upon a submitted discrimination claim in such a manner, without a joint decision of the collective body, represents a clear abuse of the position of the President and of the competences of the Commission.
- (3) As to the content, as a Commissioner, I do not agree with many of the parts of this letter for which, should the letter remain as it is, I will officially file a dissenting opinion."<sup>4</sup>

No further reactions have been issued thus far.

**Key points of analysis:** This seems to be a case of Mr. Dashtevski acting formally as the President of the CPAD but actually using this position in an individual capacity in order to "defend" the journalist. In that attempt, he not only rejected the findings of the Agency, but also rejected the indisputable relevance of the case law of the European Court of

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<sup>4</sup> Distancing of Prof. Dr. Bekim Kadriu, Commissioner in the Commission for Protection against Discrimination on the opinion on Milenko Nedelkovski (*Дистанцирање на проф. д-р Беким Кадриу, член на Комисијата за заштита од дискриминација од мислењето за Миленко Неделковски*). Helsinki Committee in the Republic of Macedonia: <http://mhc.org.mk/announcements/499#>.

Human Rights in the national legal system and its importance and position as a legal source.

The formal and material errors in the letter and the reactions by CSOs and Commissioner Prof Kadriu show that worries for "partisation" and threats to the independence of the body<sup>5</sup> are already materialising in the work of the body itself. CSOs have called upon the new MPs (following the elections which took place on 11 December 2016) to dismiss Dashtevski. There has been no reaction by Dashtevski after the issuing of the letter by Commissioner Prof Dr Kadriu.

It is also important to note that the Agency showed a diligent and argumentative attempt to react against the discriminatory and hate speech by the TV host on grounds of sexual orientation and its targeting of the LGBT population. Furthermore, it is quite a commendable and rare attempt to base their actions on the international standards and to use these standards as legal grounds for fighting discrimination based on sexual orientation.

#### **Internet link sources:**

The Commission for Protection Against Discrimination does not recognise the discriminatory speech of Milenko Nedelkovski (*Комисијата заштита од дискриминација не го препознава дискриминирачкиот говор на Миленко Неделковски*). LGBT Center Website.

<http://www.lgbti.mk/Home/Post/a3a20e84-08d1-495a-a704-c209d371e4bb#.WE7aTneZPow>. All hyperlinks last accessed: 12.12.2016.

Distancing of Prof. Dr. Bekim Kadriu, Commissioner in the Commission for Protection against Discrimination on the opinion on Milenko Nedelkovski (*Дистанцирање на проф. д-р Беким Кадриу, член на Комисијата за заштита од дискриминација од мислењето за Миленко Неделковски*). Helsinki Committee in the Republic of Macedonia. <http://mhc.org.mk/announcements/499#>.

Reply from the Commission against Discrimination upon the Request of the Agency against Channel 5 for several editions of "Milenko Nedelkovski Show" (*Одговор на Комисијата за заштита од дискриминација на барањето за постапување од Агенцијата против Канал 5 за неколку изданија на емисијата „Миленко Неделковски Шоу“*)

[http://www.avmu.mk/index.php?option=com\\_content&view=article&id=2949%3A-5-&catid=103%3Astari-info-srd-srd&lang=mk](http://www.avmu.mk/index.php?option=com_content&view=article&id=2949%3A-5-&catid=103%3Astari-info-srd-srd&lang=mk).

Communication from the CPAD to the Agency for Audio-visual Media, [http://www.avmu.mk/images/Izvestuvanje\\_od\\_Komisija\\_za\\_zastita\\_od\\_diskriminacija.pdf](http://www.avmu.mk/images/Izvestuvanje_od_Komisija_za_zastita_od_diskriminacija.pdf).

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<sup>5</sup> On this, see flash report No. 35-MK-ND-2016: <http://www.equalitylaw.eu/downloads/3752-macedonia-appointment-of-new-members-of-the-equality-body-pdf-123-kb>.