

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

# Country report

## Non-discrimination

FYR Macedonia  
2015

Including summaries in  
English, French and  
German



**EUROPEAN COMMISSION**

Directorate-General for Justice and Consumers  
Directorate D — Equality  
Unit JUST/D1

*European Commission  
B-1049 Brussels*

# **Country report**

# **Non-discrimination**

# **FYR Macedonia**

Biljana Kotevska

Reporting period 1 January 2014 – 31 December 2014

***Europe Direct is a service to help you find answers  
to your questions about the European Union.***

**Freephone number (\*):**

**00 800 6 7 8 9 10 11**

(\*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

#### **LEGAL NOTICE**

This document has been prepared for the European Commission however it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

More information on the European Union is available on the Internet (<http://www.europa.eu>).

Luxembourg: Publications Office of the European Union, 2015

ISBN 978-92-79-53393-8

doi: 10.2838/117591

DS-02-15-955-3A-N

© European Union, 2015

**CONTENTS**

<b>EXECUTIVE SUMMARY .....</b>	<b>5</b>
<b>RÉSUMÉ .....</b>	<b>12</b>
<b>ZUSAMMENFASSUNG .....</b>	<b>20</b>
<b>INTRODUCTION .....</b>	<b>27</b>
<b>1 GENERAL LEGAL FRAMEWORK .....</b>	<b>30</b>
<b>2 THE DEFINITION OF DISCRIMINATION .....</b>	<b>31</b>
2.1 Grounds of unlawful discrimination explicitly covered .....	31
2.1.1 Definition of the grounds of unlawful discrimination within the directives .....	32
2.1.2 Multiple discrimination .....	33
2.1.3 Assumed and associated discrimination .....	33
2.2 Direct discrimination (Article 2(2)(a)) .....	33
2.2.1 Situation testing .....	34
2.3 Indirect discrimination (Article 2(2)(b)) .....	34
2.3.1 Statistical evidence .....	35
2.4 Harassment (Article 2(3)) .....	36
2.5 Instructions to discriminate (Article 2(4)) .....	38
2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78) .....	39
<b>3 PERSONAL AND MATERIAL SCOPE .....</b>	<b>43</b>
3.1 Personal scope .....	43
3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78) .....	43
3.1.2 Protection against discrimination (Recital 16 Directive 2000/43) .....	43
3.2 Material scope .....	44
3.2.1 Employment, self-employment and occupation .....	44
3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a)) .....	44
3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c)) .....	46
3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b)) .....	47
3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d)) .....	48
3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43) .....	48
3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43) .....	49
3.2.8 Education (Article 3(1)(g) Directive 2000/43) .....	50
3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43) .....	54
3.2.10 Housing (Article 3(1)(h) Directive 2000/43) .....	55
<b>4 EXCEPTIONS .....</b>	<b>58</b>
4.1 Genuine and determining occupational requirements (Article 4) .....	58
4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78) .....	58
4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78) .....	60
4.4 Nationality discrimination (Article 3(2)) .....	61
4.5 Work-related family benefits (Recital 22 Directive 2000/78) .....	62
4.6 Health and safety (Article 7(2) Directive 2000/78) .....	63

4.7	Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78) .....	64
4.7.1	Direct discrimination .....	64
4.7.2	Special conditions for young people, older workers and persons with caring responsibilities .....	65
4.7.3	Minimum and maximum age requirements .....	65
4.7.4	Retirement .....	66
4.7.5	Redundancy .....	67
4.8	Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78) .....	67
4.9	Any other exceptions .....	68
<b>5</b>	<b>POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78) .....</b>	<b>69</b>
<b>6</b>	<b>REMEDIES AND ENFORCEMENT .....</b>	<b>72</b>
6.1	Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78) .....	72
6.2	Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78) .....	74
6.3	Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78) ..	75
6.4	Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78) .....	75
6.5	Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78) .....	76
<b>7</b>	<b>BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43) .....</b>	<b>77</b>
<b>8</b>	<b>IMPLEMENTATION ISSUES .....</b>	<b>81</b>
8.1	Dissemination of information, dialogue with NGOs and between social partners .....	81
8.2	Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78) .....	83
<b>9</b>	<b>COORDINATION AT NATIONAL LEVEL .....</b>	<b>84</b>
<b>10</b>	<b>CURRENT BEST PRACTICES .....</b>	<b>85</b>
<b>11</b>	<b>SENSITIVE OR CONTROVERSIAL ISSUES .....</b>	<b>86</b>
11.1	Potential breaches of the directives (if any) .....	86
11.2	Other issues of concern .....	88
<b>12</b>	<b>LATEST DEVELOPMENTS .....</b>	<b>90</b>
12.1	Legislative amendments .....	90
12.2	Case law .....	90
	<b>ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION .....</b>	<b>91</b>
	<b>ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS .....</b>	<b>93</b>

## EXECUTIVE SUMMARY

### 1. Introduction

Macedonia (FYR),<sup>1</sup> a South-East European land-locked multi-ethnic country, became an independent republic in 1991, following the dissolution of Yugoslavia. It has been a candidate for European Union membership since 2005, and has held a conditional invitation to join the North-Atlantic Treaty Organization since 2008. Membership of these two organisations is officially still a foreign affairs priority for the country, however both processes are stalled pending settlement of the name dispute. Until 2014, the name dispute stood as the main reason for not opening negotiations for membership with the EU. However, a European Commission country progress report<sup>2</sup> highlighted serious problems with the fulfilment of Copenhagen political criteria, including serious challenges to the rule of law (partisation of institutions and society, independence of judiciary and freedom of the media being but a few of the serious findings noted in this report). For several years in a row, including 2014, the relevant domestic priorities have included the implementation<sup>3</sup> of the Ohrid Framework Agreement,<sup>4</sup> lowering unemployment<sup>5</sup> and the fight against poverty.<sup>6</sup>

The country's population is a little over two million.<sup>7</sup> Ethnic affiliation is important, as sets of rights and positive action measures are tied to the numerical representation of an ethnic community in the total population. The ethnic composition<sup>8</sup> is 64 % ethnic Macedonians, 25 % ethnic Albanians, 4 % ethnic Turks, 3 % ethnic Roma, 2 % ethnic Serbs, 1 % ethnic Bosniaks, 0.5 % ethnic Vlachs and 1 % who fall under what is referred to in the Constitution as 'others'.

Patchwork legal and institutional reforms have resulted in a framework that poses challenges to the rule of law including in relation to legal certainty. Very frequent changes to laws, frequent disregard for the participation principle in public policy making, underfunding of the two national human rights institutions (both with competences in equality and non-discrimination), are just some of the most pressing issues. These have an impact on the country's legal and institutional framework, implementation and practices related to upholding the principle of equality and protection against discrimination.

Although the country's Government often presents the country as one open to differences, because of the actions it has undertaken to advance minority rights,<sup>9</sup> this is hardly the case. Hate speech seems to be omnipresent and is widely tolerated. Homophobic statements and hate speech directed towards homosexuals are still very present.

---

<sup>1</sup> The constitutional name of the country is 'Republic of Macedonia'. However, pending settlement with Greece on the name dispute, under a UN Resolution A/RES/47/225, the country was admitted as a member of the UN 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.

<sup>2</sup> European Commission (2014) 'The Former Yugoslav Republic of Macedonia – Progress Report' [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf). All hyperlinks accessed: 04.07.2015.

<sup>3</sup> 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.

<sup>4</sup> Signed in view of ending the 2001 armed conflict, OFA aims to advance the position of minority ethnic communities not in majority, and to preserve and reflect the multi-ethnic character of the country in public life, including through actions to promote non-discrimination and equitable representation.

<sup>5</sup> The current unemployment rate is 29 % of the active population.

<sup>6</sup> 30.9 % of the population lives in poverty.

<sup>7</sup> Although not supported by official numbers, estimates show that 250 000 to 500 000 people have left the country in the past few years, to work abroad.

<sup>8</sup> All numbers presented here are rounded percentages from the 2002 census. A new census was scheduled for 2011, but it was annulled due to lack of clarity in the implementation of the methodology. All statistics by the State Statistical Office can be found at: [www.stat.gov.mk/](http://www.stat.gov.mk/).

<sup>9</sup> There were inter-ethnic violence cases in 2011 and in 2012.

Moreover, there were several violent attacks on a LGBT support centre founded by a local civil society organisation (CSOs). The attacks have still not been thoroughly investigated, and almost no charges were raised. CSOs held several protests in 2014 in front of the Public Prosecutor's Office to call for the processing of this and other hate crime cases on grounds of sexual orientation.

Many obstacles remain for the 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 of Roma Inclusion – a regional Government initiative for improving the situation of Roma in health, housing, education and employment. The degree of inclusion in the sphere of political participation of Roma<sup>10</sup> does not have an equivalent in other spheres, and certainly not when it comes to economic and social rights. A 2013 study on the implementation of the Decade of Roma Inclusion shows devastating results in terms of the achievement of the goals, only two years away from the projected end of the decade.

Official Government policy for cooperation with non-governmental organisations (NGOs) in general and the actual role of NGOs in policy-making processes is another important point. Although in theory, all NGOs can participate, in practice, those NGOs that have meaningful participation in public policy process are the ones that present the least challenge to Government policies. Government organised NGOs (so-called GONGOs) still operate by both providing public support for Government actions when and as needed. The activities of GONGOs also include 'initiating' and holding counter-protests to the protests organised by NGOs.

## 2. Main legislation

The 'Constitution of the Republic of Macedonia'<sup>11</sup> 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 provides for protection against discrimination. It upholds the 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 provides a protection mechanism for all who find their human rights and freedoms breached, in front of the Constitutional Court. Upholding the monism principle on application of international law (the signed and ratified international documents), the Constitution provides for the domestic use of these documents, thus also for those providing for protection against discrimination and/or upholding the principle of equality.

Until 2010, anti-discrimination provisions were scattered in various laws. In April 2010, the Anti-discrimination Law<sup>12</sup> (the first comprehensive legislation on anti-discrimination) was adopted in the process of approximation of the domestic legislation with the EU *acquis*. This law does not comply with the directives regarding minimum protected grounds, definitions and forms of discrimination, effective, proportionate and dissuasive sanctions, use of statistical data, and dialogue with the NGO sector. The equality body established by the act – the Commission for Protection against Discrimination (CPAD) – cannot be said to meet the requirements of Directive 2000/43.

---

<sup>10</sup> There is a Roma minister in the government, Roma municipality (Shuto Orizari), Roma MPs, etc.

<sup>11</sup> The text of the Constitution of the Republic of Macedonia is accessible in English language at: Constitution of the Republic of Macedonia (*Устав на Република Македонија*) [www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.aspx](http://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.aspx).

<sup>12</sup> Law on Prevention and Protection against Discrimination (*Закон за спречување и заштита од дискриминација*) Official Gazette of the Republic of Macedonia No.50/10, 44/2014, Const.Ct. Decision: У.бр.82/2010 (15.09.2010).



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. It does not explicitly protect the minimum list of grounds prescribed by the directives, as it includes a limited scope of belief, and excludes sexual orientation; however there is an open-ended clause ('any other ground established by law or a ratified international treaty', Article 3, Anti-discrimination Law), and contains several other grounds not covered by the directives.

In 2013, the Ministry of Labour and Social Policy (MLSP) conducted an ex-post evaluation of the implementation of the Anti-discrimination Law, evaluating the process and the results of the implementation of the law, focusing on the prevention of discrimination and protection against discrimination. The results show that the aims of the law were only partly reached, which, according to the evaluation report, is justified given the amount of state-budget funds allocated for the implementation of the Law. Although noting numerous points where implementation could be improved, the report explicitly spelled out only three recommendations for legislative changes for improving the implementation: amending the Anti-discrimination Law to allow for the establishment of administrative support for the CPAD; explicit prescription of the 'shift of burden of proof' for the CPAD; and enhancing the CPAD accountability mechanisms.

### **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 direct discrimination is unnecessarily complex, whereas the definition of indirect discrimination is fully replicated. The law contains an article on harassment and on sexual harassment, as well as a separate article on discrimination against people with disability. Multiple discrimination is included as a grave form of discrimination, 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 leaves room for readings of the law that 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 establish 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 about which legislation and/or provision to apply to a certain case, and which provisions should have precedence. *Lex specialis derogat legi generali* and *lex posterior derogat legi priori* are by tradition part of judicial work, but judges tend 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 legal loopholes (as prescribed by the Law on Courts).

The first strategic document focusing fully on equality, the 'National Strategy on Equality and Non-discrimination on grounds of ethnicity, gender, age and disability', was adopted in 2012. Operational plans for its implementation are adopted annually.

#### **4. Material scope**

The 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, the 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, apart from the Law on Ombudsperson, which provides protection against discrimination only in the public sphere.

The Anti-discrimination Law's Chapter III, on Exceptions from Discrimination, has three articles relating to both exceptions and exemptions. These include affirmative measures, unequal treatment that will not be considered to be discrimination, and protective mechanisms that will not be considered to be discrimination.

Affirmative measures (Article 13) are actions undertaken by natural or legal persons that will not be considered as discrimination if they are established as justified in the past, in the present, or in the future and may be undertaken until complete factual equality is achieved and factual inequalities are eliminated or reduced. Unequal treatment that will not be considered as discrimination (Article 14) includes: different treatment of persons who are not citizens; genuine occupational requirement; different treatment of persons on the basis of religion, belief, sex or other characteristics in regard to education and training for the aims of the occupation related to the relevant religion; actions of members and bodies of churches and religious communities, citizens' organisations, political parties, unions and other organisations conducted in accordance with their doctrine, convictions or beliefs and/or the aims determined in their statutes, programmes and/or regulations; regulation of marriage; exercise of the constitutionally guaranteed principle of freedom of speech, public appearance, opinion and public information; and the establishment of a minimum and maximum age in relation to entering a profession/granting privileges/retirement provided that there is a legitimate aim.

Protective mechanisms for specific categories of persons (Article 15) include mechanism for the protection of pregnant women and mothers; children without parents, juveniles, single parents and people with disability; equal participation of women and men; employment encouragement; training and education for persons with disabilities; anticipation of minimum and maximum ages for access to certain levels of training and education, provided that it is objectively justified for the achievement of the legitimate aim, and the extent of this differentiation does not exceed the one necessary in relation to the nature of the training or education, or the conditions in which they are delivered and the extent of this differentiation does not exceed the level necessary for the achievement of the aim; special measures beneficial to persons or groups who are placed in an unfavourable position as a result of any of the discriminatory grounds, for the purpose of equalising their opportunities, as long as those measures are necessary; measures for the protection of the specifics and identity of persons belonging to ethnic, religious or linguistic minorities and their right to cherish and develop their own identity individually or in a community with other members of their group as well as stimulating conditions for promotion of that identity; and measures in the field of education and training to ensure the participation of ethnic minorities, as those measures are necessary.

In the field of employment, aside from the Anti-discrimination Law, there is also a Law on Labour Relations,<sup>13</sup> which prohibits discrimination in line with the standards of the directives. These laws apply both to the public and private sector.

## **5. Enforcing the law**

According to the Constitution, citizens are entitled to bring a case for the protection of fundamental rights and freedoms to the ordinary courts in a prompt procedure. However, in practice, although invocations of the procedures have been made, the Constitutional Court has been very reluctant to act upon cases in relation to discrimination i.e. cases on citizens' rights and freedoms in general.

The laws that are currently in force are not clear when it comes to addressing complaints of discrimination. Various laws provide various types of proceedings in similar cases. Proceedings vary from inspector control, misdemeanour procedure, litigation procedure, administrative procedure, to criminal procedure. The Anti-discrimination Law envisages several options for procedural protection. These are: administrative, litigation and misdemeanour procedures.

Administrative procedure before the CPAD is free of charge. This body may give its opinion and recommendation. The procedure can last up to 90 days. If the recommendation is not acted upon, the CPAD can initiate a procedure with a competent body (the law does not specify this further). The CPAD received 106 cases in 2014.

Litigation procedure can also be raised in ordinary courts, based on the provisions of the Anti-discrimination Law. The law does not resolve the priority of the procedures, in a case of simultaneous procedures, but it states that if a procedure is raised in a court, no procedure can be raised before the CPAD. However, it does not say what one does if a procedure is raised before the CPAD, and after that (but before the procedure ends in the CPAD) another procedure is started before a court. Furthermore, the relations between procedures in front of the Ombudsperson and the CPAD are not regulated by law, but are governed by a memorandum of understanding between the two institutions.

In the Anti-discrimination Law the outcome of the procedure depends on the procedure that one chooses to pursue. The administrative procedure provides a recommendation for rectifying the violation (i.e. the discrimination) within 30 days, litigation would lead to an award of regular compensation, and the misdemeanour procedure can lead to fines in the range of EUR 400 to 1 000 (in national currency). Financial and other sanctions for discrimination are provided in the Criminal Code. These provisions have not been applied thus far.

Another procedure for the protection of rights, including the 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 principles of non-discrimination and equitable representation. In 2014, the percentage of discrimination cases remained low: 66 cases were directed to the Ombudsperson (representing 1.55 % of the total number of cases received by the Ombudsperson). As in previous years, in 2014 the majority of discrimination cases are in the field of employment and on grounds of ethnicity.

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 in

---

<sup>13</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013.

discrimination cases. They have not been used in practice. Statistical evidence is not mentioned in domestic legislation. In fact, statistics are only mentioned in the context of the duties of the equality body (i.e. collecting statistics).

The Anti-discrimination Law provides for a shift of the burden of proof, which 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 provide the facts and proofs to justify their claim. This places an unreasonably large portion of the burden on the potential victim. Shift of the burden of proof does not apply for criminal offences related to breach of equal treatment. One can note from the proceedings before the CPAD in the cases that it has acted upon thus far that it has applied the shift of burden of proof in accordance with national legislation.

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

## **6. Equality bodies**

The Anti-Discrimination Law provided for the establishment of the first equality body in the country – the CPAD. Its members were elected in December 2010 and it started functioning in 2011. The CPAD works on cases of discrimination as covered by the Anti-discrimination law. The grounds covered 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 international treaty. The CPAD received 106 cases in 2014 (an increase compared to 2013, when it received 83 cases, as well as in comparison to the previous two years). The cases in 2014 were brought on the following discrimination grounds: 26 on ethnicity, 13 on health status, 4 on belonging to a marginalised group, 15 on personal or social status, 13 on mental or physical disability, 8 on education, 7 on social origin, 10 on sex, 7 on religion or religious belief, 7 on political affiliation, 8 on age, 5 on family or marital status, 4 on gender, 3 on other beliefs, 6 on property status, and 14 under 'any other ground'. In filed cases, the alleged discrimination was in the following fields: 42 in employment and labour relations, 22 in access to goods and services, 18 in social security, 11 in judiciary and administration, 7 in public information and media, 5 in education, science and sports, 5 in housing, 2 in culture, 2 in membership of trade unions or political associations, 6 in which no field was claimed by the applicant, and 4 in other fields as provided for under the law. The body does not produce statistics on how many of these cases were processed and/or were closed in 2014.<sup>14</sup>

The CPAD has the following mandate: giving advice and recommendations on cases of discrimination; providing information and initiating procedures at relevant state bodies; reporting, and providing education and training; initiating changes to legislation; cooperation with local government, NGOs, other equality bodies and international organisations; collecting statistical data, establishing databases and carrying out research.

Before the adoption of 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 CPAD were not regulated in the Anti-discrimination Law (thus the two bodies signed the Memorandum of Understanding, as mentioned above). According to the general mandate of the Ombudsperson, it can accept individual claims, investigate, give recommendations and

---

<sup>14</sup> Commission for Protection Against Discrimination (*Комисија за заштита од дискриминација*) 2014 Annual Report of the Commission for Protection Against Discrimination (2015)  
[www.sobranie.mk/materialdetails.nspx?materialId=d93111d8-975d-471e-be2c-e07a2df372f3](http://www.sobranie.mk/materialdetails.nspx?materialId=d93111d8-975d-471e-be2c-e07a2df372f3).

opinions, initiate procedures, and monitor and research specific issues, focusing protection on the grounds mentioned in the Constitution and covering violations made by public bodies.

## **7. Key issues**

The key issues of concern in the national context include:

- lack of inclusion of sexual orientation as an explicitly protected ground in the comprehensive anti-discrimination law;
- lack of internal harmonisation of national legislation with the Anti-discrimination Law and with international standards;
- weak allocation of resources to both national human rights institutions that have competences in equality and non-discrimination which prevents them from practising the full scope of competences;
- impunity of hate crime and hate speech in practice, especially with regards to sexual orientation;
- lack of independence of the judiciary and partisanship of the state institutions as noted in the EC Progress reports is a serious challenge for both the rule of law, and for the trust that people have in the institutions.

## RÉSUMÉ

### 1. Introduction

La Macédoine (ARYM),<sup>15</sup> pays multiethnique et enclavé du sud-est de l'Europe, est devenue une république indépendante en 1991 par suite de la dissolution de la Yougoslavie. Elle s'est portée candidate à l'adhésion à l'Union européenne en 2005 et a reçu en 2008 une invitation conditionnelle à rejoindre l'Organisation du traité de l'Atlantique Nord. L'adhésion à ces deux organisations reste officiellement une priorité nationale en matière d'affaires étrangères, mais le processus est bloqué dans les deux cas en attendant le règlement du litige sur le nom. Ceci dit, même si ce litige a constitué jusqu'en 2014 la raison principale de la non-ouverture de négociations en vue de l'adhésion à l'UE, un rapport d'avancement publié par la Commission<sup>16</sup> concernant les progrès réalisés par le pays sur la voie de cette adhésion met en évidence de sérieux problèmes en termes de respect des critères politiques de Copenhague, y compris par rapport à l'État de droit (la politisation des institutions et de la société, l'indépendance du judiciaire et la liberté des médias étant quelques-unes des constatations préoccupantes figurant dans le rapport). Depuis plusieurs années successives, y compris 2014, les grandes priorités nationales ont porté sur la mise en œuvre<sup>17</sup> de l'accord-cadre d'Ohrid,<sup>18</sup> sur la réduction du chômage<sup>19</sup> et sur la lutte contre la pauvreté.<sup>20</sup>

La population du pays dépasse légèrement la barre des deux millions.<sup>21</sup> L'appartenance ethnique est importante car une série de droits et d'actions positives sont liés à la proportion numérique qu'une communauté ethnique représente dans l'ensemble de la population. La composition ethnique<sup>22</sup> s'établit comme suit: 64 % de Macédoniens de souche, 25 % d'Albanais de souche, 4 % de Turcs de souche, 3 % de Roms de souche, 2 % de Serbes de souche, 1 % de Bosniaques de souche, 0,5 % de Valaques de souche et 1 % d'habitants désignés comme «autres» par la Constitution.

Des réformes légales et institutionnelles disparates ont abouti à la mise en place d'un cadre qui pose problème en termes d'État de droit, y compris en ce qui concerne la sécurité juridique. D'incessantes modifications législatives, un fréquent déni du principe de participation à l'élaboration des politiques publiques, le financement insuffisant des deux institutions nationales pour les droits de l'homme (compétentes l'une et l'autre en matière d'égalité et de non-discrimination) ne sont que quelques exemples des problématiques les plus urgentes, qui ont une incidence sur le cadre légal et institutionnel du pays et sa mise

---

<sup>15</sup> La dénomination constitutionnelle du pays est «République de Macédoine». Mais en attendant que soit réglé le litige en cours avec la Grèce concernant cette dénomination, la résolution A/RES/47/225 des Nations unies prévoit que l'État est admis comme membre des Nations unies en étant provisoirement désigné sous le nom d'«ancienne République yougoslave de Macédoine», qui est aussi la dénomination retenue par la Commission européenne et utilisée dès lors dans le présent rapport.

<sup>16</sup> Commission européenne (2014) «The Former Yugoslav Republic of Macedonia – Progress Report» [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf). Tous les hyperliens ont été consultés le 4 juillet 2015.

<sup>17</sup> Même si ce n'est pas l'accord-cadre d'Ohrid proprement dit qui est mis en œuvre, mais des dispositions constitutionnelles et légales ainsi que des documents stratégiques découlant de sa signature, l'expression «mise en œuvre de l'accord-cadre d'Ohrid» est utilisée ici pour éviter de longues périphrases explicatives.

<sup>18</sup> Signé en vue de mettre fin au conflit armé de 2001, cet accord vise à améliorer la situation des communautés ethniques minoritaires ainsi qu'à préserver et refléter le caractère multiethnique du pays dans la vie publique, y compris au moyen d'actions pour la promotion de la non-discrimination et en faveur d'une représentation équitable.

<sup>19</sup> Le taux de chômage atteint actuellement 29 % de la population active.

<sup>20</sup> 30,9 % de la population vit dans la pauvreté.

<sup>21</sup> Sans être confirmées par des chiffres officiels, les estimations font état de 250 000 à 500 000 personnes ayant quitté le pays ces quelques dernières années pour aller travailler à l'étranger.

<sup>22</sup> Tous les chiffres présentés ici sont des pourcentages arrondis tirés du recensement de 2002. Un nouveau recensement était prévu pour 2011, mais il a été annulé en raison d'un manque de clarté au niveau de l'application de la méthodologie. Toutes les statistiques publiées par l'Office national de statistique peuvent être consultées sur son site: [www.stat.gov.mk/](http://www.stat.gov.mk/).

en œuvre et ainsi que sur les pratiques visant à faire respecter le principe de l'égalité et de la protection contre la discrimination.

Bien que le gouvernement présente souvent le pays comme ouvert aux différences, appuyant cette affirmation sur les mesures qu'il a prises pour promouvoir les droits des minorités,<sup>23</sup> tel n'est pas vraiment le cas. Le discours haineux semble omniprésent et largement toléré. Les déclarations homophobes et les discours haineux à l'égard des homosexuels restent courants. Un centre de soutien aux personnes LGBT, fondé par une organisation de la société civile (OSC) locale, a fait en outre l'objet de plusieurs attaques violentes – lesquelles n'ont toujours donné lieu à aucune enquête approfondie et aucune accusation ou presque n'a été portée. En 2014, des OSC ont manifesté à plusieurs reprises devant le Bureau du procureur général pour réclamer l'instruction de cette affaire ainsi que d'autres crimes haineux motivés par l'orientation sexuelle.

L'intégration et le renforcement des droits des Roms continuent de se heurter à de nombreux obstacles. Des programmes et stratégies spéciales ont été développés et/ou soutenus par le gouvernement dans le cadre de la Décennie de l'inclusion des Roms, parmi lesquels une initiative régionale pour l'amélioration de la situation des Roms en matière de santé, de logement, d'éducation et d'emploi. Le degré d'inclusion des Roms dans le domaine de la participation politique<sup>24</sup> n'a d'équivalent dans aucun autre domaine, et certainement pas en ce qui concerne les droits économiques et sociaux. Une étude consacrée en 2013 à la mise en œuvre de la Décennie fait état d'un bilan catastrophique en termes de réalisation des objectifs à deux ans seulement de l'échéance fixée.

La politique officielle du gouvernement en matière de coopération avec des organisations non gouvernementales (ONG) en général et le rôle effectif des ONG dans le processus d'élaboration des politiques constituent un autre point important. Même si, en théorie, la participation est ouverte à toutes les ONG, en pratique, ce sont celles qui contestent le moins les politiques gouvernementales qui prennent une part active au processus. Des organisations non gouvernementales organisées par le gouvernement (dites «ONGOG») continuent de fonctionner à deux titres: elles apportent un soutien public aux mesures gouvernementales quand et où cela s'avère nécessaire, et elles «initient» et procèdent à des contre-manifestations en réponse aux protestations organisées par des ONG.

## **2. Législation principale**

La Constitution de la République de Macédoine<sup>25</sup> est une constitution écrite qui constitue la loi suprême du pays. Elle admet le droit international en tant que partie intégrante du droit interne, et consacre la prééminence du droit international sur les lois et réglementations nationales. La Constitution assure une protection contre la discrimination. Elle consacre l'égalité des citoyens devant la Constitution et devant la loi, affirmant que tous les citoyens de la République de Macédoine sont égaux dans leurs libertés et leurs droits indépendamment de leur genre, race, couleur de peau, origine nationale et sociale, affiliation politique et religieuse, situation sociale et fortune. Elle prévoit, devant la Cour constitutionnelle, un mécanisme de protection à l'intention de tous ceux qui estiment que leurs libertés et droits fondamentaux n'ont pas été respectés. Proclamant le principe du monisme pour l'application du droit international, à savoir les actes internationaux signés et ratifiés, la Constitution prévoit l'usage national de ces documents, y compris donc ceux qui assurent une protection contre la discrimination et/ou consacrent le principe de l'égalité.

---

<sup>23</sup> Des actes de violence interethnique ont eu lieu en 2011 et en 2012.

<sup>24</sup> Le pays compte un ministre rom au sein du gouvernement, une municipalité rom (Shuto Orizari), des députés roms, etc.

<sup>25</sup> Le texte de la Constitution de la République de Macédoine (*Устав на Република Македонија*) peut être consulté en français sur: <http://www.sobranie.mk/constitution-de-la-r-publique-de-mac-doine.nspix>

Jusqu'en 2010, les dispositions antidiscrimination étaient dispersées entre plusieurs lois. En avril 2010, la loi antidiscrimination<sup>26</sup> (première législation entièrement consacrée à la lutte contre la discrimination) a été adoptée dans le cadre de l'alignement de la législation nationale sur l'acquis de l'UE. Cette loi n'est pas conforme aux directives pour ce qui concerne la liste minimale des motifs protégés; les définitions et les formes de discrimination; les sanctions efficaces, proportionnées et dissuasives; l'utilisation de données statistiques; et le dialogue avec le secteur des ONG. L'organisme pour l'égalité institué par cette loi – à savoir la Commission pour la protection contre la discrimination – ne saurait par ailleurs être considéré comme répondant aux exigences de la directive 2000/43.

La loi antidiscrimination assure une protection par rapport aux motifs suivants: couleur de la peau, genre, appartenance à un groupe marginalisé, appartenance ethnique, langue, citoyenneté, origine sociale, éducation, affiliation politique, situation personnelle ou sociale, situation familiale ou état matrimonial, fortune et état de santé. Elle ne protège pas explicitement la liste minimale des motifs établie par les directives, étant donné qu'elle limite la portée des convictions et qu'elle exclut l'orientation sexuelle. Elle comporte toutefois une clause ouverte en son article 3 («tout autre motif prévu par la loi ou par un traité international ratifié») ainsi que plusieurs autres motifs non couverts par les directives.

En 2013, le ministère du Travail et des affaires sociales a procédé à une évaluation ex post de la mise en œuvre de la loi antidiscrimination portant à la fois sur le processus et sur les résultats en s'intéressant plus particulièrement à la prévention de la discrimination et à la protection contre la discrimination. Les conclusions révèlent que les objectifs de la loi n'ont été que partiellement atteints – ce qui, selon le rapport d'évaluation, s'explique au vu du montant que le budget national alloue à sa mise en œuvre. Tout en soulignant plusieurs points sur lesquels des améliorations pourraient être apportées, le rapport ne formule explicitement que trois recommandations en vue de changements législatifs destinés à améliorer la mise en œuvre de la loi antidiscrimination: une modification de cette loi de façon à permettre l'instauration d'un soutien administratif pour la Commission pour la protection contre la discrimination; l'obligation explicite du «renversement de la charge de la preuve» pour cette Commission; et le renforcement de ses mécanismes de responsabilisation.

### **3. Principes généraux et définitions**

La loi antidiscrimination contient des définitions de la discrimination directe et indirecte, du harcèlement, de l'injonction de discriminer et de la rétorsion. La définition de la discrimination directe est inutilement compliquée par rapport à celle figurant dans les directives, tandis que celle de la discrimination indirecte reproduit textuellement la définition des directives. La loi contient un article relatif au harcèlement et au harcèlement sexuel, de même qu'un article distinct concernant la discrimination envers les personnes handicapées. La discrimination multiple est considérée comme une forme grave de discrimination, au même titre que la discrimination répétée et étendue. La loi contient également une disposition visant l'incitation et l'encouragement à pratiquer une discrimination. Elle ne contient aucune disposition relative à la discrimination par association.

La loi définit une série d'exceptions et de dérogations en rapport avec la nature d'activités professionnelles spécifiques et/ou un traitement spécial à l'intention de certains groupes (personnes âgées, jeunes, femmes enceintes, personnes handicapées et parents). L'aménagement raisonnable est principalement inclus dans la loi sur l'emploi des personnes handicapées. Le champ d'application personnel et matériel de la liste des exceptions

---

<sup>26</sup> Loi sur la prévention et la protection contre la discrimination (*Закон за спречување и заштита од дискриминација*) Journal officiel de la République de Macédoine, n° 50/10, 44/2014, Arrêt de la Cour constitutionnelle: У.6п.82/2010 (15 septembre 2010).



manque toutefois de précision, ce qui ouvre la porte à des interprétations de la loi susceptibles de restreindre la protection contre la discrimination.

Avant l'adoption de la loi antidiscrimination, plusieurs lois contenaient des définitions de la discrimination. Étant donné que la loi antidiscrimination ne prévoit – ni dans ses dispositions transitoires ni dans ses dispositions finales – d'harmonisation entre les dispositions pertinentes figurant dans différentes lois, on peut s'attendre à ce que les institutions censées appliquer la loi ne sachent pas quelle législation et/ou disposition appliquer à un cas d'espèce ni quelles sont les dispositions prévalant sur les autres. Bien que, par tradition, les principes résumés dans les adages *lex specialis derogat legi generali* et *lex posterior derogat legi priori* fassent partie de la pratique judiciaire, les juges tendent à s'appuyer sur des dispositions existantes plutôt que sur des principes juridiques généraux, même lorsqu'ils confrontés à des dispositions apparemment contradictoires, les principes généraux du droit étant surtout utilisés en cas de lacune juridique (comme le prescrit la loi relative aux tribunaux).

Le premier document stratégique intégralement focalisé sur l'égalité, à savoir la Stratégie nationale pour l'égalité et l'interdiction de discrimination fondée sur l'origine ethnique, le genre, l'âge et le handicap, a été adopté en 2012. Des plans opérationnels sont adoptés chaque année pour sa mise en œuvre.

#### **4. Champ d'application matériel**

La loi antidiscrimination est applicable à fois au secteur public et au secteur privé, de même qu'à tous les domaines. Elle précise qu'une attention particulière doit être accordée aux domaines suivants: l'emploi et les relations de travail; l'affiliation et la participation à des syndicats, des partis politiques, des ONG, des fondations et d'autres organisations associatives; la sécurité sociale, y compris la protection sociale, les pensions et l'assurance-invalidité; l'assurance-santé et les soins de santé; l'éducation; l'accès aux biens et aux services; et le logement. Cette loi va donc au-delà des prescriptions des directives. D'autres lois contiennent également des dispositions en matière de discrimination, ainsi qu'une définition de leur champ d'application matériel. Toutes s'appliquent à la fois au secteur public et au secteur privé, à l'exception de la loi sur le Médiateur qui offre une protection contre la discrimination dans la sphère publique uniquement.

Le chapitre III de la loi antidiscrimination, consacré aux exceptions au principe de la non-discrimination, comprend trois articles portant à la fois sur les exceptions et les dérogations. Ils concernent les mesures positives, les inégalités de traitement non assimilées à une discrimination et les mécanismes de protection non considérés comme discriminatoires.

Les mesures positives (article 13) sont des mesures qui, prises par des personnes physiques ou morales, ne sont pas considérées comme discriminatoires lorsqu'elles sont instaurées sur la base d'une justification passée, actuelle ou future, et qui peuvent être adoptées jusqu'à ce qu'une égalité de fait soit intégralement réalisée et jusqu'à ce que les inégalités de fait soient éliminées ou réduites. L'article 14 précise que ne sera pas considéré comme discriminatoire: le traitement différencié des non-citoyens; l'exigence professionnelle essentielle; le traitement différencié fondé sur la religion, les convictions, le sexe ou autres caractéristiques personnelles pour ce qui concerne l'éducation et la formation en vue de l'exercice d'une profession liée à une religion déterminée; les activités menées par les membres et instances d'églises ou de communautés religieuses, d'organisations citoyennes, de partis politiques, de syndicats ou d'autres organisations conformément à leur doctrine ou leurs convictions et/ou aux objectifs définis par leurs statuts, leurs programmes et/ou leurs réglementations; la réglementation du mariage; l'exercice du principe constitutionnel de la liberté de parole, d'intervention publique, de pensée et d'information publique; et la fixation d'un âge minimum et maximum pour ce

qui concerne l'accès à une profession/l'octroi de privilèges/la retraite pour autant qu'il existe un but légitime.

Les mécanismes de protection destinés à des catégories particulières de personnes (article 15) comprennent un mécanisme pour la protection des femmes enceintes et des mères; pour les enfants orphelins, les mineurs, les parents célibataires et les personnes handicapées; pour la participation égale des femmes et des hommes; pour l'incitation à l'emploi; pour l'instruction et la formation des personnes handicapées; pour l'avancement de l'âge minimum et de l'âge maximum permettant d'accéder à certains niveaux d'éducation et de formation pour autant que ce traitement différencié soit objectivement justifié par un but légitime et qu'il n'aille pas au-delà de ce qui est nécessaire compte tenu de la nature de l'éducation et de la formation en cause ou des conditions dans lesquelles elles sont dispensées, et qu'il n'aille pas au-delà de ce qui est nécessaire pour atteindre le but recherché; des mesures spéciales en faveur de personnes ou de groupes se trouvant en situation défavorisée en raison d'un quelconque motif de discrimination, afin de leur accorder une égalité de chances, pour autant que les mesures en question soient nécessaires; des mesures destinées à protéger les spécificités et l'identité de personnes appartenant à des minorités ethniques, religieuses ou linguistiques ainsi que leur droit de tenir à leur propre identité et de la développer individuellement ou au sein d'une communauté avec d'autres membres de leur groupe, et à favoriser l'instauration de conditions propices à la promotion de cette identité; et, le cas échéant, des mesures dans le domaine de l'éducation et de la formation en vue de garantir la participation des minorités ethniques.

Il existe dans le domaine de l'emploi, outre la loi antidiscrimination, une loi sur les relations de travail<sup>27</sup> qui interdit toute discrimination conformément aux normes fixées par les directives. Les deux lois s'appliquent tant au secteur public qu'au secteur privé.

## **5. Mise en application de la loi**

La Constitution confère aux citoyens le droit d'intenter une action devant une juridiction ordinaire dans le cadre d'une procédure rapide pour faire valoir leurs libertés et droits fondamentaux. Dans la pratique toutefois, bien que la procédure ait déjà été invoquée à plusieurs reprises, la Cour constitutionnelle s'est montrée très réticente à se saisir d'affaires de discrimination, autrement dit d'affaires touchant aux droits et libertés des citoyens en général.

Les lois en vigueur manquent de clarté pour ce qui est du traitement des plaintes pour discrimination. Elles prévoient des procédures différentes dans des cas similaires – ces procédures pouvant aller de la simple inspection, procédure contraventionnelle, procédure contentieuse ou procédure administrative à une procédure pénale. La loi antidiscrimination envisage plusieurs possibilités de protection juridique, à savoir la procédure administrative, la procédure contentieuse et la procédure contraventionnelle.

Une procédure administrative engagée auprès de la Commission pour la protection contre la discrimination est gratuite. Cette instance peut formuler des avis et des recommandations. La procédure a une durée maximale de 90 jours. Si la recommandation n'est pas suivie d'effet, la Commission en question peut engager une procédure auprès de l'instance compétente (la loi ne fournissant aucune autre précision). La Commission pour la protection contre la discrimination a été saisie de 106 dossiers en 2014.

---

<sup>27</sup> Loi sur les relations de travail (*Закон за работните односи*), Journal officiel de la République de Macédoine n° 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; arrêts de la Cour constitutionnelle : U. n° 139/2005, U. n° 161/2005, U. n° 134/2005, U. n° 187/2005, U. n° 111/2006, U. n° 188/2006, U. n° 170/2006, U. n° 200/2008, U. n° 20/2009, U. n° 176/2009, U. n° 263/2009, U. n° 62/2013.

En vertu des dispositions de la loi antidiscrimination, une procédure contentieuse peut aussi être intentée devant des juridictions ordinaires. La loi n'établit pas l'ordre de priorité de procédures simultanées éventuelles, mais elle dispose qu'aucune procédure ne peut être engagée auprès de la Commission pour la protection contre la discrimination lorsqu'une action en justice est déjà en cours. Elle ne précise pas en revanche ce qu'il convient de faire lorsqu'une procédure a été engagée auprès de ladite Commission et qu'une autre procédure est engagée par la suite (mais avant la fin de la procédure devant la Commission) devant un tribunal. De même, aucune loi ne régit les relations entre les procédures respectivement engagées auprès du Médiateur et auprès de la Commission pour la protection contre la discrimination: ces relations sont régies par un protocole d'accord entre les deux institutions.

En vertu de la loi antidiscrimination, l'issue de la procédure dépend de la filière choisie. La procédure administrative prévoit une recommandation invitant à mettre fin à l'infraction (autrement dit à la discrimination) dans un délai de 30 jours; la procédure contentieuse peut donner lieu à l'octroi d'une indemnité régulière; et la procédure contraventionnelle prévoit des amendes allant de 400 à 1 000 euros (en monnaie nationale). Le code pénal prévoit des sanctions financières et autres en cas de discrimination, mais ces dispositions n'ont encore jamais été appliquées.

Une autre procédure visant à protéger les droits, y compris les droits à l'égalité et la protection contre la discrimination, peut être engagée auprès du Médiateur, mais elle est limitée à la sphère publique. Le Médiateur est habilité à défendre les principes de la non-discrimination et de la représentation équitable. En 2014, le pourcentage de plaintes adressées au Médiateur pour cause de discrimination est resté faible puisqu'il s'agit de 66 cas, soit 1,55 % du nombre total d'affaires dont il a été saisi. Comme les années précédentes, la majorité des dossiers introduits en 2014 concernaient le domaine de l'emploi et le motif de l'origine ethnique.

Ni la loi antidiscrimination ni les lois antérieures ne font du test de situation et des preuves statistiques des éléments probants recevables et des instruments utilisables dans le cadre d'affaires de discrimination. La pratique n'y recourt pas. Les preuves statistiques ne sont pas mentionnées dans la législation nationale. En réalité, les statistiques sont uniquement évoquées dans le cadre des obligations de l'organisme pour l'égalité (à savoir la collecte de statistiques).

La loi antidiscrimination prévoit un renversement de la charge de la preuve, lequel figure d'ailleurs également dans plusieurs autres lois. Sa définition ne respecte cependant pas la norme prescrite par les directives, étant donné que la loi fait reposer sur la victime potentielle d'une discrimination l'obligation de fournir des éléments factuels et des preuves à l'appui de sa plainte. Cette exigence fait peser sur la victime potentielle une part déraisonnablement disproportionnée de la charge de la preuve. Le renversement de cette charge ne s'applique pas aux délits pénaux relevant du non-respect de l'égalité de traitement. Il ressort des procédures engagées auprès de la Commission pour la protection contre la discrimination, dans les affaires auxquelles elle a donné suite à ce jour, qu'elle applique le renversement de la charge de la preuve conformément à la législation nationale.

Des ONG soutiennent les plaintes déposées par les victimes et portent certaines affaires de discrimination à l'attention du grand public. Les médias et ce dernier n'ont pas pour autant une approche constructive de ces affaires, notamment en termes de couverture, mais tendent davantage à rechercher un certain sensationnalisme.

## **6. Organismes de promotion de l'égalité de traitement**

La loi antidiscrimination a créé le premier organisme de promotion de l'égalité de traitement du pays, en l'occurrence la Commission pour la protection contre la

discrimination. Ses membres ont été élus en décembre 2010 et elle a commencé de fonctionner en 2011. La Commission traite de dossiers de discrimination au sens de la loi antidiscrimination, c'est-à-dire toute discrimination fondée sur les motifs suivants: sexe, race, couleur de peau, genre, appartenance à un groupe marginalisé, origine ethnique, langue, citoyenneté, origine sociale, religion ou conviction religieuse, autres types de convictions, éducation, affiliation politique, situation personnelle ou sociale, handicap mental ou physique, âge, situation familiale ou état matrimonial, fortune, état de santé ou tout autre motif stipulé dans la législation ou dans un traité international ratifié. La Commission pour la protection contre la discrimination a été saisie de 106 dossiers en 2014 (un chiffre en hausse par rapport aux 83 dossiers introduits en 2013 ainsi que par rapport aux deux années précédentes). Les dossiers introduits en 2014 portaient sur les motifs de discrimination suivants: l'origine ethnique (26), l'état de santé (13), l'appartenance à un groupe marginalisé (4), la situation personnelle ou sociale (15), un handicap mental ou physique (13), l'éducation (8), l'origine sociale (7), le sexe (10), la religion ou la conviction religieuse (7), l'affiliation politique (7), l'âge (8), la situation familiale ou l'état matrimonial (5), le genre (4), d'autres convictions (3) et la fortune (6); 14 dossiers invoquaient une discrimination en se référant à «tout autre motif». La discrimination présumée concernait, dans les plaintes déposées, les domaines suivants: l'emploi et les relations de travail (42), l'accès aux biens et aux services (22), la sécurité sociale (18), le système judiciaire et l'administration (11), l'information publique et les médias (7), l'éducation, les sciences et les sports (5), le logement (5), la culture (2), l'appartenance à un syndicat ou à une association politique (2); aucun domaine n'était invoqué par le plaignant dans 6 cas et 4 concernaient d'autres domaines prévus par la loi. La Commission n'a communiqué aucune statistique quant au nombre de dossiers traités et/ou clôturés en 2014.<sup>28</sup>

La Commission pour la protection contre la discrimination a pour mandat de formuler des conseils et des recommandations concernant des cas de discrimination; de fournir des informations et d'engager des procédures auprès des organismes officiels compétents; de réaliser des rapports et de prêter des services éducatifs et de formation; d'initier des changements législatifs; de coopérer avec les administrations locales, les ONG et d'autres organismes de promotion de l'égalité et organisations internationales pertinentes; de collecter des données statistiques, de créer des bases de données et de procéder à des recherches.

Il n'existait avant l'adoption de la loi antidiscrimination aucun organisme national de promotion de l'égalité. Certaines fonctions en matière de discrimination relèvent de la mission du bureau du Médiateur. Les relations entre le Médiateur et la Commission pour la protection contre la discrimination ne sont pas régies par la loi antidiscrimination – aussi, comme indiqué plus haut, les deux institutions ont-elles signé un protocole d'accord. En vertu de son mandat général, le Médiateur peut être saisi de plaintes individuelles, les instruire, formuler des recommandations et des avis, engager des procédures, et assurer un suivi et effectuer des recherches sur des questions spécifiques, en se focalisant sur la protection par rapport aux motifs cités dans la Constitution et sur les infractions commises par des instances publiques.

## 7. Points essentiels

Les aspects les plus préoccupants dans le contexte national sont:

- la non-inclusion de l'orientation sexuelle en tant que motif expressément protégé dans la loi générale antidiscrimination;
- l'harmonisation interne insuffisante de la législation nationale avec la loi antidiscrimination et les normes internationales;

<sup>28</sup> Commission pour la protection contre la discrimination (Комисија за заштита од дискриминација), Rapport annuel 2014 (2015) [www.sobranie.mk/materialdetails.nspx?materialId=d93111d8-975d-471e-be2c-e07a2df372f3](http://www.sobranie.mk/materialdetails.nspx?materialId=d93111d8-975d-471e-be2c-e07a2df372f3).

- le peu de ressources allouées aux deux institutions nationales en matière de droits de l'homme, dont les compétences couvrent l'égalité et la non-discrimination, ce qui les empêche d'exercer pleinement leur mandat;
- l'impunité, dans les faits, des crimes de haine et des discours haineux, à l'égard de l'orientation sexuelle plus particulièrement;
- le manque d'indépendance de l'appareil judiciaire et la politisation des institutions de l'État, d'ailleurs signalés par les rapports de la CE sur l'avancement du pays sur la voie de l'adhésion, font sérieusement obstacle à la fois à l'État de droit et à la confiance des citoyens dans les institutions.

## ZUSAMMENFASSUNG

### 1. Einleitung

Mazedonien (ehemalige jugoslawische Republik)<sup>29</sup> ist ein multiethnisches Binnenland im Südosten Europas und seit der Auflösung Jugoslawiens im Jahr 1991 eine unabhängige Republik. Seit 2005 ist das Land Bewerber um eine Mitgliedschaft in der Europäischen Union und im Jahr 2008 erhielt es eine bedingte Einladung zur Mitgliedschaft im Atlantischen Bündnis. Die Mitgliedschaft in diesen beiden Organisationen gehört offiziell immer noch zu den außenpolitischen Prioritäten des Landes, allerdings ruhen derzeit aufgrund des Namensstreits beide Aufnahmeverfahren. Bis 2014 wurde der Namensstreit auch als Hauptgrund dafür genannt, dass keine Verhandlungen über eine Mitgliedschaft in der EU aufgenommen wurden. Der jüngste Fortschrittsbericht der Europäischen Kommission<sup>30</sup> weist jedoch auf schwerwiegende Probleme bei der Erfüllung der politischen Kriterien von Kopenhagen hin, zu denen ernsthafte Schwächen des Rechtsstaats gehören (der Bericht benennt unter anderem Probleme durch eine Parteilichkeit von Institutionen und Gesellschaft, fehlende Unabhängigkeit der Justiz und Freiheit der Medien). Seit mehreren Jahren, und auch 2014, gehörten die Umsetzung<sup>31</sup> des Rahmenabkommens von Ohrid,<sup>32</sup> die Schaffung von Arbeitsplätzen<sup>33</sup> und die Bekämpfung der Armut<sup>34</sup> zu den wichtigsten innenpolitischen Prioritäten.

Das Land hat eine Bevölkerung von etwas über zwei Millionen Menschen.<sup>35</sup> Die ethnische Zugehörigkeit ist wichtig, weil zahlreiche Rechte und Fördermaßnahmen an den zahlenmäßigen Anteil einer ethnischen Gemeinschaft innerhalb der Gesamtbevölkerung geknüpft sind. In der Bevölkerung des Landes sind von der ethnischen Zugehörigkeit<sup>36</sup> 64 % Mazedonier, 25 % Albaner, 4 % Türken, 3 % Roma, 2 % Serben, 1 % Bosnier und 0,5 % Walachen aus, 1 % gehören Gruppen an, die in der Verfassung als „sonstige“ bezeichnet werden.

Zahlreiche Gesetzes- und institutionelle Reformen haben einen rechtlichen Flickenteppich geschaffen, der Rechtsstaatlichkeit und Rechtssicherheit ernsthaft gefährdet. Zu den dringendsten Problemen gehören die häufigen Gesetzesänderungen, die häufige Missachtung des Partizipationsprinzips in politischen Entscheidungsprozessen und eine Unterfinanzierung der beiden nationalen Menschenrechtsstellen (die beide für Gleichbehandlung und Antidiskriminierung zuständig sind). Diese Probleme beeinträchtigen den rechtlichen und institutionellen Rahmen des Landes und behindern die Umsetzung des Gleichbehandlungsgrundsatzes und den Schutz vor Diskriminierung.

---

<sup>29</sup> Der amtliche Name des Landes lautet „Republik Mazedonien“. Bis zur Beilegung des Namensstreits mit Griechenland wurde das Land jedoch nach der UN-Resolution A/RES/47/225 unter der provisorischen Bezeichnung „ehemalige jugoslawische Republik Mazedonien“ Mitglied der Vereinten Nationen. Dieser Begriff wird auch von der Europäischen Kommission und damit auch für diesen Bericht verwendet.

<sup>30</sup> Europäische Kommission (2014) „The Former Yugoslav Republic of Macedonia – Progress Report“ [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf). Letzte Überprüfung aller Hyperlinks: 04.07.2015.

<sup>31</sup> Obwohl nicht das Rahmenabkommen von Ohrid selbst umgesetzt wird, sondern verfassungsrechtliche und gesetzliche Bestimmungen und strategische Dokumente, die sich aus der Unterzeichnung des Abkommens ergeben, wird hier der Ausdruck „Umsetzung des Rahmenabkommens“ verwendet, um langwierige Umschreibungen zu vermeiden.

<sup>32</sup> Das Rahmenabkommen von Ohrid wurde Ende 2001 zur Beendigung des bewaffneten Konflikts unterzeichnet und hat das Ziel, die Lage ethnischer Minderheiten zu verbessern und den multiethnischen Charakter des Landes im öffentlichen Leben widerzuspiegeln, insbesondere durch Maßnahmen zur Förderung der Gleichbehandlung und gleichberechtigten Repräsentation von Minderheiten.

<sup>33</sup> Die Arbeitslosenquote in der arbeitsfähigen Bevölkerung liegt derzeit bei 29 %.

<sup>34</sup> 30,9 % der Bevölkerung leben in Armut.

<sup>35</sup> Obwohl keine offiziellen Zahlen vorliegen, gehen Schätzungen davon aus, dass in den letzten Jahren zwischen 250.000 und 500.000 Menschen das Land verlassen haben, um im Ausland zu arbeiten.

<sup>36</sup> Alle Zahlen sind gerundete Prozentangaben aus der Volkszählung von 2002. Für 2011 war eine neue Volkszählung geplant, die jedoch aufgrund ihrer unklaren Methodologie nicht durchgeführt wurde. Alle Zahlen des Statistischen Zentralamts sind unter der folgenden Adresse verfügbar: [www.stat.gov.mk/](http://www.stat.gov.mk/).

Obwohl die Regierung des Landes ihre Maßnahmen zum Schutz der Rechte von Minderheiten<sup>37</sup> als Beweis für die kulturelle Offenheit des Landes anführt, kann davon keine Rede sein. Hassreden sind omnipräsent und werden allgemein akzeptiert. Auch homophobe Äußerungen und Hassreden gegen Homosexuelle kommen sehr häufig vor. Ein von einer örtlichen zivilgesellschaftlichen Organisation (CSO) gegründetes Zentrum für LGTB-Personen wurde bereits mehrmals angegriffen. Diese Angriffe wurden immer noch nicht gründlich untersucht und es gab so gut wie keine Anklagen. Im Jahr 2014 demonstrierten mehrere CSO vor der Staatsanwaltschaft, um die Untersuchung dieses und anderer Hassverbrechen zu fordern, die sich gegen die sexuelle Orientierung der Opfer richten.

Bei der Integration der Roma und dem Schutz ihrer Rechte gibt es weiterhin große Herausforderungen. Die Regierung hat im Rahmen des Jahrzehnts der Integration der Roma einer regionalen Regierungsinitiative zur Verbesserung der Lage der Roma in den Bereichen Gesundheit, Wohnraum, Bildung und Beschäftigung, spezielle Sonderprogramme und Strategien entwickelt bzw. unterstützt. Inzwischen sind die Roma bei politischen Entscheidungsprozessen relativ gut integriert<sup>38</sup>, in anderen Bereichen dagegen kaum, insbesondere was ihre wirtschaftlichen und sozialen Rechte angeht. 2013 zeigte eine niederschmetternde Studie zur Umsetzung des Jahrzehnts der Integration der Roma, dass nur zwei Jahre vor Ende des Jahrzehnts noch keines seiner Ziele erreicht werden konnte.

Ein weiteres wichtiges Problem ist die offizielle Regierungslinie bei der Zusammenarbeit mit NRO im Allgemeinen und die Beteiligung von NRO an politischen Entscheidungsprozessen im Besonderen. Obwohl theoretisch alle NRO aktiv teilnehmen können, werden in der Praxis nur diejenigen NRO am öffentlichen politischen Prozess beteiligt, die die Politik der Regierung am wenigsten kritisieren. Regierungsgesteuerte NRO (sogenannte GONGO) unterstützen und loben bei Bedarf die Maßnahmen der Regierung in der Öffentlichkeit. Unter anderem „initiierten“ diese GONGO auch Gegenproteste gegen die Demonstrationen echter NRO.

## 2. Wichtigste Gesetze

Die „Verfassung der Republik Mazedonien“<sup>39</sup> ist eine geschriebene Verfassung und das oberste Gesetz des Landes. Sie macht internationales Recht zum Teil des nationalen Rechts und gibt internationalen Abkommen Vorrang vor mazedonischen Gesetzen und Verordnungen. Die Verfassung schützt vor Diskriminierung. Mit der Bestimmung, dass die Bürger der Republik Mazedonien die gleichen Freiheiten und Rechte besitzen, ungeachtet von Geschlecht, Rasse, Hautfarbe, nationaler oder sozialer Herkunft, politischer und religiöser Überzeugung, Eigentum und sozialem Status, betont sie die Gleichheit der Bürger vor der Verfassung und den Gesetzen. Jeder, der sich in seinen Menschenrechten und Grundfreiheiten verletzt fühlt, hat durch die Verfassung die Möglichkeit, vor dem Verfassungsgericht zu klagen. In Übereinstimmung mit einem monistischen Rechtsverständnis hat internationales Recht (die unterzeichneten und ratifizierten internationalen Abkommen) direkte Anwendung im nationalen Rechtssystem und bietet damit auch Schutz vor Diskriminierung bzw. Verstößen gegen den Gleichbehandlungsgrundsatz.

Bis 2010 war das Verbot von Diskriminierung in mehreren Gesetzen enthalten. Im Rahmen des Prozesses, in dem das mazedonische Recht an den *Besitzstand* der Union angenähert

---

<sup>37</sup> 2011 und 2012 kam es zu Gewaltausbrüchen zwischen verschiedenen Ethnien.

<sup>38</sup> Es gibt einen Roma-Minister in der Regierung, eine Roma-Kommune (Shuto Orizari), Roma im Parlament usw.

<sup>39</sup> Der Text der Verfassung der Republik Mazedonien ist unter folgender Adresse in englischer Sprache verfügbar: Verfassung der Republik Mazedonien (Устав на Република Македонија) [www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx](http://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx).

werden soll, wurde im April 2010 das Antidiskriminierungsgesetz<sup>40</sup> (das erste umfassende Gesetz zur Gleichbehandlung) verabschiedet. Das Gesetz erfüllt jedoch in folgenden Punkten nicht die Vorgaben der Richtlinien: Mindestmaß an geschützten Diskriminierungsgründen, Definitionen und Formen von Diskriminierung, wirksame, verhältnismäßige und abschreckende Sanktionen, Verwendung statistischer Daten und Dialog mit dem Bereich der NRO. Die durch das Gesetz eingerichtete Gleichbehandlungsstelle, die Kommission zum Schutz vor Diskriminierung (CPAD) erfüllt ebenfalls nicht die Anforderungen der Richtlinie 2000/43.

Das Antidiskriminierungsgesetz schützt die folgenden Diskriminierungsgründe: Hautfarbe, Geschlecht, Zugehörigkeit zu einer marginalisierten Gruppe, ethnische Zugehörigkeit, Sprache, Staatsbürgerschaft, soziale Herkunft, Bildung, politische Zugehörigkeit, persönlicher und sozialer Status, Familienstand, Eigentum und Gesundheitszustand. Da es Glaube nur eingeschränkt und sexuelle Ausrichtung überhaupt nicht erwähnt, schützt das Gesetz nicht ausdrücklich alle in den Richtlinien vorgegebenen Diskriminierungsgründe. Allerdings enthält es eine offene Formulierung („alle sonstigen durch ein Gesetz oder ein ratifiziertes internationales Abkommen geschützten Gründe“, Artikel 3 des Antidiskriminierungsgesetzes) und deckt mehrere Diskriminierungsgründe ab, die in den Richtlinien nicht genannt sind.

2013 führte das Ministerium für Arbeit und Soziales eine Auswertung der bisherigen Umsetzung des Antidiskriminierungsgesetzes durch, in deren Rahmen Stand und Ergebnisse der gesetzlichen Umsetzung und insbesondere der Erfolg bei der Prävention von und dem Schutz vor Diskriminierung analysiert wurde. Die Auswertung zeigt, dass die Ziele des Gesetzes nur zum Teil erreicht wurden, was laut dem Auswertungsbericht angesichts der von Regierungsseite für die Umsetzung zugewiesenen Mittel nicht überraschend ist. Obwohl der Bericht zahlreiche Punkte aufzählt, in denen die Umsetzung verbessert werden könnte, enthält er nur drei Empfehlungen für Änderungen am Gesetz selbst: Einrichtung einer behördlichen Struktur zur Unterstützung der CPAD, ausdrückliche Umkehrung der Beweislast bei Verfahren vor der CPAD und verbesserte Rechenschaftspflicht der CPAD.

### **3. Wichtigste Grundsätze und Begriffe**

Das Antidiskriminierungsgesetz enthält Definitionen von unmittelbarer und mittelbarer Diskriminierung, Belästigung, Anweisung zur Diskriminierung und Viktimisierung. Im Vergleich zu den Richtlinien ist die Definition von unmittelbarer Diskriminierung unnötig kompliziert, die Definition der mittelbaren Diskriminierung entspricht dagegen den Richtlinien. Das Gesetz enthält einen Artikel über Belästigung und sexuelle Belästigung und einen eigenen Artikel über die Diskriminierung von Menschen mit Behinderung. Mehrfachdiskriminierung wird als besonders schwere Form der Diskriminierung genannt, ebenso wiederholte und andauernde Diskriminierung. Das Gesetz enthält auch Bestimmungen über die Aufhetzung und Ermutigung zur Diskriminierung. Diskriminierung durch Assoziierung wird nicht erwähnt.

Das Gesetz enthält eine Reihe von Ausnahmeregeln. Diese beziehen sich auf die Art bestimmter beruflicher Tätigkeiten bzw. auf besondere Schutzmaßnahmen für bestimmte Gruppen (Senioren, junge Menschen, Schwangere, Menschen mit Behinderung und Eltern). Angemessene Vorkehrungen werden vorwiegend im Gesetz über die Beschäftigung von Menschen mit Behinderung behandelt. Allerdings ist der persönliche und sachliche Anwendungsbereich der Ausnahmeregelungen nicht besonders genau abgegrenzt. Dies ermöglicht Auslegungen, die den gesetzlichen Schutz vor Diskriminierung schwächen.

---

<sup>40</sup> Gesetz über Prävention und Schutz vor Diskriminierung (*Закон за спречување и заштита од дискриминација*) Amtsblatt der Republik Mazedonien Nr. 50/10, 44/2014, Verfassungsgericht Urteil: У.6р.82/2010 (15.09.2010).



Vor der Verabschiedung des Antidiskriminierungsgesetzes waren die Definitionen von Diskriminierung auf mehrere Gesetze verteilt. Da das Antidiskriminierungsgesetz keine Vereinheitlichung der Bestimmungen dieser unterschiedlichen Gesetze in ihren Übergangs- und Schlussvorschriften vorsieht, stehen die Institutionen, die das Gesetz umsetzen sollen, vor der Frage, welches Gesetz bzw. welche Bestimmung sie in einem bestimmten Fall anwenden sollen, d. h. welche Bestimmungen Vorrang haben. *Lex specialis derogat legi generali* und *lex posterior derogat legi priori* sind traditionelle juristische Grundsätze, aber Richter verlassen sich, selbst bei scheinbar widersprüchlichen Bestimmungen, in der Regel eher auf die bestehende Rechtsprechung als auf allgemeine rechtliche Grundsätze. Allgemeine Rechtsgrundsätze werden nur dann angewendet, wenn eine Partei versucht, eine Gesetzeslücke auszunutzen (gemäß dem Gerichtsverfassungsgesetz).

Das erste strategische Dokument, das sich ausschließlich mit Gleichstellungsfragen befasst, die „Nationale Strategie für Gleichstellung und Gleichbehandlung ungeachtet von ethnischer Zugehörigkeit, Geschlecht, Alter und Behinderung“, wurde 2012 verabschiedet. Konkrete Pläne zur Umsetzung der Strategie werden einmal jährlich erstellt.

#### **4. Sachlicher Anwendungsbereich**

Das Antidiskriminierungsgesetz gilt für den privaten und den öffentlichen Sektor und für alle Bereiche. Gemäß dem Gesetz ist das Diskriminierungsverbot insbesondere zu beachten in den Bereichen Beschäftigung und Arbeitsverhältnisse, Mitgliedschaft und Mitwirkung in Gewerkschaften, politischen Parteien, NRO, Stiftungen und anderen Mitgliederorganisationen, soziale Sicherheit, einschließlich von Sozialschutz, Renten- und Berufsunfähigkeitsversicherung, Krankenversicherung und Gesundheitsversorgung, Bildung, Zugang zu Gütern und Dienstleistungen und Wohnraum. Damit geht das Gesetz über die Richtlinien hinaus. Auch andere Gesetze enthalten ein Verbot von Diskriminierung und erweitern damit den sachlichen Anwendungsbereich. All diese Gesetze gelten für den öffentlichen und den privaten Sektor, mit Ausnahme des Gesetzes über die Ombudsstelle, die nur vor Diskriminierung durch die öffentliche Hand schützt.

Kapitel III des Antidiskriminierungsgesetzes enthält drei Artikel, die Ausnahmeregelungen und Befreiungsklauseln enthalten. Sie beziehen sich auf Fördermaßnahmen, Kriterien nach denen Ungleichbehandlung nicht als Diskriminierung gilt und auf Schutzmechanismen, die keine Diskriminierung darstellen.

Fördermaßnahmen (Artikel 13) sind Maßnahmen natürlicher oder juristischer Personen, die keine Diskriminierung darstellen, wenn ihre Rechtmäßigkeit früher, jetzt oder künftig nachgewiesen wurde. Diese Maßnahmen dürfen aufrecht erhalten werden, bis eine völlige sachliche Gleichstellung erreicht und sachliche Ungleichheiten beseitigt oder gemindert wurden. Als Ungleichbehandlung, die keine Diskriminierung darstellt (Artikel 14) gilt unter anderem: Ungleichbehandlung von Personen, die keine Staatsbürger sind, wesentliche berufliche Anforderungen, Ungleichbehandlung von Personen aufgrund von Religion, Weltanschauung, biologischem Geschlecht oder anderen Merkmalen bei der allgemeinen und beruflichen Bildung für eine Tätigkeit in Bezug auf die jeweilige Religion, Handlungen von Mitgliedern und Organen von Kirchen und religiösen Gemeinschaften, Vereinen, politischen Parteien, Gewerkschaften und anderen Organisationen gemäß einer Doktrin, Überzeugung oder eines Glaubens und/oder der in einer Satzung, einem Programm und/oder Vorschrift festgelegten Ziele, Ehevorschriften, Ausübung der durch die Verfassung garantierten Redefreiheit, Versammlungsfreiheit, Meinungs- und Informationsfreiheit, und Festlegung eines Mindest- und Höchstalters für den Eintritt in einen Beruf, die Gewährung von Vorrechten oder das Ausscheiden aus dem Beruf, sofern damit ein legitimes Ziel verfolgt wird.

Zu den Schutzmechanismen für spezielle Gruppen (Artikel 15) gehören Mechanismen zum Schutz von Schwangeren und Müttern, elternlosen Kindern, Jugendlichen, Alleinerziehenden und Menschen mit Behinderung, Chancengleichheit von Frauen und

Männern, Beschäftigungsförderung, allgemeine und berufliche Bildung für Menschen mit Behinderung, ein erwartetes Mindest- und Höchstalter für den Zugang zu bestimmten Stufen der allgemeinen und beruflichen Bildung, sofern dieses zur Erreichung eines rechtmäßigen Ziels objektiv gerechtfertigt ist, und das erforderliche Alter das Ausmaß dieser Ungleichbehandlung im Hinblick auf die Natur der Fort- oder Ausbildung oder die Umstände ihrer Ausübung und das Ausmaß dieser Ungleichbehandlung nicht den Rahmen übersteigt, der für die Erreichung des rechtmäßigen Ziels notwendig ist, Fördermaßnahmen für bestimmte Personen oder Gruppen, die wegen eines Diskriminierungsgrundes benachteiligt sind, zum Zweck der Verbesserung der Chancengleichheit, solange diese Maßnahmen notwendig sind, Maßnahmen zum Schutz der Merkmale und der Identität von Personen, die einer ethnischen, religiösen oder sprachlichen Minderheit angehören, und deren Rechte zur Pflege und Entwicklung der eigenen Identität, allein oder gemeinsam mit anderen Mitgliedern der Gruppe, und Maßnahmen zur Schaffung günstiger Bedingungen für die Förderung dieser Identität und Maßnahmen im Bereich der Aus- und Weiterbildung, mit denen die Teilhabe ethnischer Minderheiten gewährleistet wird, sofern diese Maßnahmen notwendig sind.

Im Bereich Beschäftigung wird ein Diskriminierungsverbot neben dem Antidiskriminierungsgesetz auch vom Gesetz über Arbeitsverhältnisse<sup>41</sup> gewährleistet, das Diskriminierung gemäß den in den Richtlinien genannten Vorgaben verbietet. Diese Gesetze gelten sowohl für den öffentlichen als auch den privaten Sektor.

## **5. Rechtsdurchsetzung**

Gemäß der Verfassung haben Bürger bei einer Verletzung ihrer Grundrechte und Freiheiten das Recht auf ein schnelles Verfahren vor einem ordentlichen Gericht. In der Praxis wurden zwar entsprechende Verfahren eingeleitet, das Verfassungsgericht hat jedoch auf Fälle von Diskriminierung, d. h. bei Verletzungen der Grundrechte und Freiheiten der Bürger nur sehr zögerlich reagiert.

Die derzeit geltenden Gesetze regeln nicht eindeutig, wer für Diskriminierungsklagen zuständig ist. Unterschiedliche Gesetze sehen für ähnliche Fälle verschiedene Verfahrensweisen vor. Möglich sind unter anderem behördliche Kontrollen, Ordnungsverfahren, zivilrechtliche Klagen, Verwaltungsverfahren oder Strafverfahren. Das Antidiskriminierungsgesetz sieht mehrere Schutzverfahren vor, nämlich Verwaltungsverfahren, Klagen und Ordnungsverfahren.

Verwaltungsverfahren vor der CPAD sind kostenlos. Die Kommission kann Gutachten und Empfehlungen erstellen. Das Verfahren kann bis zu 90 Tage dauern. Wenn die Empfehlungen nicht befolgt werden, kann die CPAD ein Verfahren bei einer zuständigen Stelle anstrengen (das Gesetz führt dies nicht näher aus). Im Jahr 2014 behandelte die CPAD 106 Fälle.

Außerdem kann vor den ordentlichen Gerichten auf Grundlage des Antidiskriminierungsgesetzes Klage eingereicht werden. Wenn beide Verfahren gleichzeitig eingeleitet werden, legt das Gesetz keine Rangfolge fest. Wenn die Klage vor Gericht bereits eingeleitet ist, kann jedoch kein Verfahren bei der CPAD mehr eröffnet werden. Für den Fall, dass zuerst Beschwerde bei der CPAD eingelegt und vor der Entscheidung der Kommission auch vor Gericht geklagt wird, enthält das Gesetz keine Bestimmungen. Auch die Rangfolge zwischen Verfahren vor der Ombudsstelle und der CPAD sind nicht gesetzlich geregelt, sondern durch eine Absichtserklärung zwischen den beiden Stellen.

---

<sup>41</sup> Gesetz über Arbeitsverhältnisse (*Закон за работните односи*) Amtsblatt der Republik Mazedonien Nr. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Urteile des Verfassungsgerichts: U. Nr. 139/2005, U. Nr. 161/2005, U. Nr. 134/2005, U. Nr. 187/2005, U. Nr. 111/2006, U. Nr. 188/2006, U. Nr. 170/2006, U. Nr. 200/2008, U. Nr. 20/2009, U. Nr. 176/2009, U. Nr. 263/2009, U. Nr. 62/2013.

Nach dem Antidiskriminierungsgesetz hängt das mögliche Ergebnis davon ab, für welches Verfahren das Opfer sich entscheidet. Im Verwaltungsverfahren wird innerhalb von 30 Tagen eine Empfehlung zur Berichtigung des Verstoßes (d. h. der Diskriminierung) ausgesprochen, bei einer Klage erhält das Opfer gegebenenfalls Schadensersatz und Ordnungsverfahren führen zu Geldbußen in Höhe von 400 bis 1000 Euro (in mazedonischen Denar). Das Strafgesetzbuch sieht für Diskriminierung Geldstrafen und andere Sanktionen vor. Diese Strafbestimmungen wurden bisher noch nie angewandt.

Zum Schutz der eigenen Rechte, einschließlich des Rechts auf Gleichbehandlung, können Diskriminierungsopfer auch Beschwerde bei der Ombudsstelle einreichen. Dies ist jedoch auf den öffentlichen Sektor beschränkt. Die Ombudsstelle ist für den Schutz des Gleichbehandlungsgrundsatzes und der gleichberechtigten Repräsentation zuständig. Im Jahr 2014 war der Anteil der Diskriminierungsbeschwerden recht niedrig: Bei der Ombudsstelle gingen 66 Beschwerden ein (was 1,55 % aller von der Ombudsstelle behandelten Fälle entspricht). Wie in den vergangenen Jahren bezogen sich auch 2014 die Mehrzahl der Diskriminierungsfälle auf Arbeitsverhältnisse und betrafen eine Diskriminierung aufgrund der ethnischen Zugehörigkeit.

Weder im Antidiskriminierungsgesetz noch in früheren Gesetzen werden Situationstests und statistische Daten als zulässige Beweise und Hilfsmittel in Diskriminierungsfällen eingeführt. Auch in der Praxis wurden diese Beweisformen noch nie genutzt. Statistische Daten werden im mazedonischen Recht nicht erwähnt. Allerdings gehört die Erhebung statistischer Daten zu den Pflichten der Gleichbehandlungsstelle.

Das Antidiskriminierungsgesetz enthält Bestimmungen zur Umkehrung der Beweislast, die auch in mehreren anderen Gesetzen erwähnt wird. Die genaue Formulierung entspricht jedoch nicht den Vorgaben der Richtlinien, weil die Opfer von Diskriminierung nach dem Gesetz Tatsachen und Beweis für ihre Behauptung vorlegen müssen. Dadurch liegt ein unverhältnismäßig großer Teil der Beweislast beim potenziellen Opfer. Bei Verstößen gegen das Diskriminierungsverbot, die strafrechtlich verfolgt werden, gilt die Umkehr der Beweislast nicht. In den Verfahren, die bisher wegen Diskriminierungsfällen vor der CPAD geführt wurden, hat die Kommission die gesetzlich vorgeschriebene Umkehrung der Beweislast berücksichtigt.

NRO unterstützen die Klage von Opfern und machen Fälle von Diskriminierung öffentlich. Die Medien und die Öffentlichkeit behandeln die Berichterstattung über Diskriminierung jedoch nicht konstruktiv, sondern setzen eher auf reinen Sensationsjournalismus.

## **6. Gleichbehandlungsstellen**

Durch das Antidiskriminierungsgesetz wurde die erste Gleichbehandlungsstelle des Landes eingeführt – die CPAD. Ihre Mitglieder wurden im Dezember 2010 gewählt und im Jahr 2011 nahm die Kommission ihre Arbeit auf. Die CPAD behandelt Diskriminierungsfälle, die unter das Antidiskriminierungsgesetz fallen. Sie ist für folgende Diskriminierungsgründe zuständig: biologisches Geschlecht, Rasse, Hautfarbe, soziales Geschlecht, Zugehörigkeit zu einer marginalisierten Gruppe, ethnische Zugehörigkeit, Sprache, Staatsbürgerschaft, soziale Herkunft, Religion oder religiöse oder sonstige Weltanschauung, Bildung, politische Zugehörigkeit, persönlicher und sozialer Status, geistige oder körperliche Behinderung, Alter, Familienstand, Eigentum und Gesundheitszustand und alle sonstigen durch ein Gesetz oder ein ratifiziertes internationales Abkommen geschützten Gründe. Im Jahr 2014 gingen 106 Beschwerden bei der CPAD ein (eine Zunahme im Vergleich zu 2013, als 83 Fälle gemeldet wurden, und zu den vorhergehenden Jahren). Die 2014 gemeldeten Fälle verteilen sich wie folgt auf die einzelnen Diskriminierungsgründe: 26 auf ethnische Zugehörigkeit, 13 auf Gesundheitszustand, 4 auf Zugehörigkeit zu einer marginalisierten Gruppe, 15 auf persönlichen oder sozialen Status, 13 auf geistige oder körperliche Behinderung, 8 auf Bildung, 7 auf soziale Herkunft, 10 auf biologisches Geschlecht, 7 auf Religion oder Weltanschauung, 7 auf politische Zugehörigkeit, 8 auf Alter, 5 auf

Familienstand, 4 auf soziales Geschlecht, 3 auf sonstige Weltanschauung, 6 auf Eigentum und 14 auf „sonstige Gründe“. Die eingereichten Beschwerden betrafen folgende Lebensbereiche: 42 bei Beschäftigung und Arbeitsbedingungen, 22 bei Zugang zu Gütern und Dienstleistungen, 18 bei sozialer Sicherheit, 11 bei Justiz und Verwaltung, 7 bei öffentlichen Informationen und Medien, 5 bei Bildung, Wissenschaft und Sport, 5 beim Wohnwesen, 2 bei Kultur, 2 bei der Mitgliedschaft in Gewerkschaften und politischen Vereinigungen, 4 in anderen im Gesetz geregelten Bereichen und in 6 Fällen nannte der Kläger keinen konkreten Bereich. Die Kommission gibt nicht an, wie viele Fälle im Jahr 2014 bearbeitet bzw. abgeschlossen wurden.<sup>42</sup>

Die CPAD hat folgende Aufgaben: Beratung und Empfehlungen in Diskriminierungsfällen, Information und Einleitung von Verfahren bei zuständigen staatlichen Stellen, Erstellung von Berichten und Aus- und Fortbildungsunterlagen, Empfehlung von Gesetzesänderungen, Zusammenarbeit mit örtlichen Behörden, NRO und andere Gleichbehandlungsstellen und internationale Organisationen, Erhebung statistischer Daten, Einrichtung von Datenbanken und Durchführung von Forschungsprojekten.

Vor der Verabschiedung des Antidiskriminierungsgesetzes gab es in Mazedonien keine landesweite Gleichbehandlungsstelle. Einige Funktionen im Bereich Diskriminierung fielen unter die Zuständigkeit der Ombudsstelle. Das Antidiskriminierungsgesetz grenzt die Zuständigkeiten von CPAD und Ombudsstelle nicht genau ab (daher haben die beiden Stellen, wie bereits erwähnt, eine gegenseitige Absichtserklärung unterzeichnet). Nach dem allgemeinen Mandat der Ombudsstelle kann sie Einzelbeschwerden entgegen nehmen und untersuchen, Empfehlungen und Gutachten erstellen, Gerichtsverfahren einleiten und spezielle Problembereiche überwachen und analysieren, insbesondere in Bezug auf die durch die Verfassung geschützten Diskriminierungsgründe und Rechtsverletzungen durch staatliche Stellen.

## **7. Wichtige Punkte**

Zu den wichtigsten Problemen in Mazedonien gehören:

- die sexuelle Ausrichtung wird im umfassenden Antidiskriminierungsgesetz nicht ausdrücklich als geschützter Diskriminierungsgrund genannt,
- das nationale Recht wurde nicht mit dem Antidiskriminierungsgesetz und internationalen Normen harmonisiert,
- beide nationalen Menschenrechtsstellen, die für Gleichbehandlung und Nichtdiskriminierung zuständig sind, leiden unter fehlenden Mitteln und können ihre Aufgaben daher nicht optimal wahrnehmen,
- Hassverbrechen und Hassreden bleiben in der Praxis straflos, insbesondere in Bezug auf die sexuelle Ausrichtung,
- die mangelnde Unabhängigkeit der Justiz und die Parteilichkeit staatlicher Stellen, die auch im Fortschrittsbericht der Europäischen Kommission festgestellt wurden, beeinträchtigen die Rechtsstaatlichkeit des Landes und das Vertrauen der Bürger in seine Institutionen.

---

<sup>42</sup> Kommission für den Schutz vor Diskriminierung (Комисија за заштита од дискриминација) Jahresbericht 2014 der Kommission für den Schutz vor Diskriminierung (2015)  
[www.sobranie.mk/materialdetails.nsp?materialId=d93111d8-975d-471e-be2c-e07a2df372f3](http://www.sobranie.mk/materialdetails.nsp?materialId=d93111d8-975d-471e-be2c-e07a2df372f3).

## INTRODUCTION

### The national legal system

The Former Yugoslav Republic of Macedonia<sup>43</sup> is a unitary, semi-parliamentarian, civil law country, which adopts the monism principle regarding the relationship between international and municipal law, the former being considered part of the latter, and superior to domestic laws and bylaws,<sup>44</sup> and where, if it is deemed fit and appropriate, courts can use the final judgments of the European Court for Human Rights (ECtHR), International Criminal Court (ICC), or any other international court with jurisdiction over the country.<sup>45</sup> Although in theory directly applicable, references to international law in the jurisprudence of the domestic courts are still very rare and, in practice, the courts do not seem to treat it as higher in the national legal hierarchy than the national laws.

The Constitution enforces the principle of the separation of powers. The three branches of power are: legislative, executive and judicial.

Legislative power is vested in the Assembly of the Republic (the Macedonian Parliament), whose members are elected on general, direct and free elections and by secret ballot. The Parliament has the power to adopt and amend the Constitution, ratify international treaties as well as to adopt and amend laws. There are special procedures in place that aim to ensure that no law touching upon issues of relevance for the non-majority ethnic communities in the country will be adopted without them. This voting mechanism is called the Badinter principle and it requires that a law gain two-thirds of the votes of the members with an affiliation to one of the non-majority ethnic communities. The Parliament has a Standing Inquiry Committee on Human Rights, which is tasked to follow and alert the Parliament on developments related to human rights. The Parliament also elects and appoints the members of the two national human rights institutions – the Commission for Protection against Discrimination (CPAD) and the Ombudsperson.

The executive branch is represented by the President (who holds a rather ceremonial role) and the Government, which has 15 ministries, four Deputy Prime Ministers and five ministers without portfolio. The President is directly elected, whereas the Government is appointed by the Parliament. Within the Government, several ministries share human rights competences. In order to improve the coordination and communication among the Government departments on key human rights issues, an inter-ministerial body on human rights was established, based in the Ministry of Foreign Affairs. Aside from this body – and of relevance to this report – it is important to note the role of the Ministry of Labour and Social Policy (MLSP), which is tasked with the coordination and development of non-discrimination activities. The Representative for Equal Opportunities of Women and Men is based in the MLSP and each state administrative body is obliged to appoint a coordinator for equal opportunities.<sup>46</sup>

---

<sup>43</sup> The constitutional name of the country is 'Republic of Macedonia'. However, pending settlement with Greece on the (on-going) name dispute, under the UN Resolution A/RES/47/225, the country was admitted as a 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.

<sup>44</sup> Article 118 of the Constitution states: 'International agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law'. Source: Constitution of the Republic of Macedonia (Устав на Република Македонија). Official Website of the Assembly of the Republic of Macedonia, [www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx](http://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx). All hyperlinks were accessed on 10 May 2015.

<sup>45</sup> Law on Courts (Закон за судовите) Official Gazette of the Republic of Macedonia No. 58/2006, 35/2008, 150/2010; Constitutional Court Decisions: У.6р.256/2007 (16.04.2008), У.6р.74/2008 (10.09.2008), У.6р.124/2008 (14.01.2009), У.6р.12/2011 (29.02.2012). Article 18(5).

<sup>46</sup> Law on Equal Opportunities of Women and Men (Закон за еднакви можности на жените и мажите) Official Gazette of the Republic of Macedonia No.06/2012, 30/2013, 166/2014.

The judiciary consists of the courts.<sup>47</sup> There are 27 courts of first instance (14 with basic competences, and 13 with expanded competences), four courts of appeal, and one Supreme Court. There is also an Administrative Court (court of first instance), and a Higher Administrative Court (court of second instance) with competence in processing administrative cases. Aside from the ordinary courts, there is the Constitutional Court, the primary duty of which is to decide on the constitutionality of laws and bylaws.

There are two institutions that can be considered as national human rights institutions, both acting as quasi-judicial bodies: the Commission for Protection against Discrimination (CPAD), which is the national equality body, and the Ombudsperson of the Republic of Macedonia, (the Ombudsperson), which has duties pertaining to human rights extending beyond equality and non-discrimination.

Local governance in the country is organised in local self-government units. These units are 80 municipalities<sup>48</sup> and the City of Skopje (which is a separate local self-government unit).

Protection in discrimination cases, depending on the personal and material scope of the case, can be sought under several procedures: criminal procedure,<sup>49</sup> civil procedure,<sup>50</sup> administrative procedure,<sup>51</sup> quasi-judicial procedure,<sup>52</sup> and a procedure before the Constitutional Court.<sup>53</sup>

### **List of main legislation transposing and implementing the directives**

The Law on Prevention and Protection against Discrimination<sup>54</sup> (the Anti-discrimination Law, ADL) was adopted on 8 April 2010, and entered into force on 21 April 2010 (implementation began on 1 January 2011). It was last amended on 5 March 2014. Under Article 3, an open-ended clause, the following discrimination grounds are explicitly protected: sex, race, colour, gender, belonging to a marginalised group, ethnic affiliation, language, citizenship, social origin, religion or religious conviction, other forms of belief, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property status, health condition. Article 4 on fields of implementation of the law lists several fields, but states that the law also applies to any other field specified under law. The Anti-discrimination Law applies to both public and private sector and to natural and legal persons.

---

<sup>47</sup> The Judicial Council is the body established to secure and guard the autonomy and independence of the courts. Under the Law on the Academy of Judges and Public Prosecutors a public institution was established for vocational training of candidates for judges and public prosecutors.

<sup>48</sup> In 2013, according to the Law on Territorial Organisation of Local Self-government, four of the municipalities established in 2004 ceased to exist as separate municipalities and became part of the Municipality of Kichevo. Source: Law on Territorial Organisation of the Local Self-government (*Закон за територијална организација на локалната самоуправа*) Official Gazette of the Republic of Macedonia, No.55/2004, 12/2005, 98/2008, 149-2014; Constitutional Court Decision: Y.6p.40/2005 (26.10.2005). Article 16.

<sup>49</sup> Criminal procedure is an option for discrimination cases that amount to a criminal offence.

<sup>50</sup> Under various laws, in civil proceedings (more details follow in the report below).

<sup>51</sup> Including for misdemeanors.

<sup>52</sup> Procedures before the Commission for Protection against Discrimination and also the Ombudsperson.

<sup>53</sup> Citizens have the right to lodge 'Requests for protection of human rights and freedoms' to this court when they believe that they have been discriminated against on the grounds stipulated in the Constitution. This is a procedure based on urgency, and is envisaged as a mechanism to safeguard the set of rights laid out in the Constitution from unconstitutional acts (laws and bylaws). However, the effectiveness of this mechanism is still under question (according to the ECtHR, a legal remedy needs to be effective not just in theory but also in practice), given that in over 20 years of existence of the mechanism, the Constitutional Court has only once decided in favour of applicants seeking protection under such a request, and has discarded almost all of the filed cases.

<sup>54</sup> Law on Prevention and Protection against Discrimination (*Закон за спречување и заштита од дискриминација*) Official Gazette of the Republic of Macedonia No.50/10, 44/2014, Const.Ct. Decision: Y.6p.82/2010 (15.09.2010).

The Law on Labour Relations (Labour Law, LLR)<sup>55</sup> was adopted on 28 July 2005, entered into force on 05 August 2005 and was last amended on 29 July 2014. Under Article 6(1), an open ended clause, the following grounds are covered by the law: racial or ethnic origin, colour, gender, age, health condition, that is, disability, religious, political or other belief, membership of trade unions, national or social origin, family status, property and financial situation, sexual orientation or other personal circumstances. The LLR applies to labour relations among employers and employees established by conclusion of employment contracts (Article 1), which is understood as any contractual relationship between the employee and the employer where the employee takes part in the employer's organised working process voluntarily, for salary and other remunerations, personally and continuously carries out the work according to the instructions and under the supervision of the employer (Article 5(1)1).

The Law on Employment of Persons with Disabilities<sup>56</sup> was adopted on 2 June 2000, entered into force on 10 June 2000, and was last amended on 3 October 2011. In October 2014, the Ministry of Labour and Social Policy presented a new draft-law and opened a public discussion process. At the time of writing of this report, the draft-law was not yet adopted. The law refers to the ground of disability in the area of employment, namely with regards to

'special conditions for employment and work of persons with disability [defined as] activity individually as a sole proprietor, with an employer or in the capacity of an employer in the state administration, the local self-government units, public enterprises, institutions, agencies and funds and other state institutions, as well as the conditions for establishment and advantages for working in a trade company for employment of disabled persons – protection company (hereinafter: protection company)' (Article 1).

The Law on Social Protection<sup>57</sup> was adopted on 24 June 2009, entered into force on 2 July 2009, and was last amended on 5 December 2014. It provides for protection against discrimination in relation to the rights established by this law and, in a closed list, encompasses the following grounds: sex, race, colour, national, ethnic, social, political, religious, cultural, language, property and social belonging, disability, and origin.

Please note that these are only the main pieces of legislation transposing the two directives, and ones that, when being enacted were referred to as being adopted to this end. As the Anti-discrimination Act was adopted only in 2010, there are provisions on equality and non-discrimination scattered through many laws, including those on primary, secondary and higher education, adult education, various aspects of social protection (including the pension system, health security, and mental health) and housing. There are also other laws with relevant provisions in the area of employment.

---

<sup>55</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013.

<sup>56</sup> Law on Employment of Persons with Disabilities (*Закон за вработување на инвалидни лица*), Official Gazette of Republic of Macedonia, No. 44/00, 16/2004, 62/2005, 113/2005, 29/2007, 88/2008, 161/2008, 99/2009, 136/2011.

<sup>57</sup> Law on Social Protection (*Закон за социјалната заштита*) Official Gazette of Republic of Macedonia No. 79/2009, 36/2011, 51/2011, 166/2012, 15/2013, 79/2013, 187/2013, 38/2014; 44/2014; 116/2014; 180/2014, Constitutional Court Decision: U.br.165/2009 (07.04. 2010).

## 1 GENERAL LEGAL FRAMEWORK

### **Constitutional provisions on protection against discrimination and the promotion of equality**

The Macedonian Constitution includes the following articles dealing with non-discrimination:

- Article 9, a general equality clause on equality before the law, covers the following grounds: sex, race, colour of skin, national or social origin, political and religious belief, property and social status (closed list of grounds). Its personal scope is limited to citizens and, according to the Constitutional Court's practice, natural persons.
- Article 54 prohibits discriminatory limitations of constitutionally prescribed rights and freedoms on grounds of sex, race, colour, language, religion, national or social origin, property or social status.

These provisions apply to all areas covered by the directives. Their material scope is broader than those of the directives.

In theory, the constitutional anti-discrimination provisions are directly applicable, however this can hardly be considered to be the case in practice.<sup>58</sup> The Constitution states that every citizen may invoke the protection of freedoms and rights determined by the Constitution before the ordinary courts, as well as before the Constitutional Court, through a procedure based upon the principles of priority and urgency. However, the ordinary courts have a practice of rejecting cases that claim a violation of human rights, on grounds of the Constitution. The Constitution also guarantees judicial protection of the legality of individual acts of the state administration, as well as those of other institutions carrying out public mandates (Article 50). One can conclude from this that the provisions are directly applicable. However, this does not seem to be so in practice; the mechanisms provided in the laws, which enable ordinary courts to directly apply the constitutional anti-discrimination provision, have had no practical use and no verdicts have been delivered under this mechanism. In practice, courts insist that a lawsuit is brought invoking provisions of specific laws (no matter which procedure is at stake), and tend not to implement the Constitution directly. On the other hand, the Constitutional Court's positioning and practice is such that it does not enter into revisions of ordinary courts' verdicts and decisions.<sup>59</sup> Another side effect of this is that ordinary courts never request interpretation of constitutional provisions by the Constitutional Court and rarely implement its interpretations.

There is no reason to consider that constitutional equality clauses cannot be enforced against private actors (as opposed to public actors).

---

<sup>58</sup> See section 1(b) of 2013 FYRoM Report: <http://www.equalitylaw.eu/component/edocman/2013-mk-country-report-ln-final/Download>.

<sup>59</sup> See, for example, cases: U.No.55/2015 (para.4) [24.06.2015]; U.No.152/2012-0-0 (para.4) [14.11.2012]; U.No.172/2002 (para.4) [25.12.2002]; U.No.37/1997 (para.3) [19.03.1997].



## **2 THE DEFINITION OF DISCRIMINATION**

### **2.1 Grounds of unlawful discrimination explicitly covered**

The following grounds of discrimination are explicitly prohibited in national law:

- Law on Prevention and Protection against Discrimination: sex, race, colour, gender, belonging to a marginalised group, ethnic affiliation, language, citizenship, social origin, religion or religious conviction, other forms of belief, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property status, health condition (open-ended clause) (Article 3).
- Law on Courts: article on aims and functions of courts states that courts aim to secure equality, equal rights and non-discrimination on any ground (Article 3 (1) to (3)); everybody has equal access to the courts (Article 6(1)); during the election of judges and lay judges, there should be no discrimination on the basis of sex, race, colour of skin, national and social background, political and religious beliefs, or property or social status (Article 43(1)).
- Criminal code: article on breach of equality among citizens covers sex, race, colour, national or social origin, political and religious belief, property and social position, language or any other personal quality or occurrence (Article 137(1)); article on incitement of national, racial or religious hatred, divisions and intolerance covers national belonging, race and religious belief (Article 319(1)); article on spread of racist and xenophobic materials through computer systems covers racial, colour, national or ethnic origin, or religious belief (Article 394-r); article on racial and other discrimination covers race, colour, national or ethnic origin (Article 417(1)).
- Law on Execution of Sanctions: race, colour, sex, language, religion, political or other beliefs, national or social origin, relation, property and social status or other status. Grounds refer to the person whose sanction is being executed. Special mention is made of the religious feelings, personal convictions and moral norms of the persons against whom the sanctions are enforced and which must be respected (Article 4(2) and (3)).
- Law on Labour Relations: race or ethnic origin, colour, sex, age, health condition i.e. disability, religious, political or other belief, membership of a trade union, national or social origin, family status, property status, sexual orientation, or other personal circumstances (Article 6(1)).
- Law on Child Protection: race, colour, sex, language, religious conviction, political and other belief, national, ethnic or social origin, cultural and other affiliation, property status, disability, birth, or other status (Article 12(1)).
- Law on Social Protection: sex, race, colour, national, ethnic social, political, religious, cultural, language, property and social belonging, disability and origin (Article 20(1)).
- Law on Patients' Rights: sex, race, colour, language, religion, political or any other belief, national or social origin, belonging to a national minority, material position, birth origin, sexual orientation or any other status (Article 5(2)).
- Law on Public Health: race, sex, national or social origin, property status, religious belief, sexual orientation, or status of a person with disability (Article 16(5)).
- Law on Volunteering: race, colour, sex, age, health status or disability, religious or other conviction, national or social origin, family status, property status, sexual orientation, and other personal circumstances (Article 9).
- Law on Higher Education: selection criteria for enrolment will guarantee equality of all candidates on grounds of race, colour, sex, language, religion, political or other belief, ethnic, national or social origin, property, birth, social position, disability, sexual orientation and age (Article 108(5)).
- Law on Voluntary Finances Pension Insurance: sex, race, colour, language, faith and religion, political or other position, national or social origin, belonging to a national or ethnic minority, or on grounds of property, family, health condition and age (Article 3).

- Law on Health Protection: race, sex, age, national belonging, social origin, religious conviction, political or other belief, property status, culture, language, type of illness, intellectual<sup>60</sup> and physical disability (Article 9).
- Law on Mental Health: sex, language, religion, political or other belief, national or social origin, relatedness, property and social position or other status (Article 20(4))
- Law on Equal Opportunities of Women and Men: race, colour, gender, belonging to a marginalised group, ethnic belonging, language, citizenship, social origin, religion or a religious belief, education, political belonging, personal or social status, intellectual<sup>61</sup> or physical disability, age, family or marital status, property status, health condition or any other ground (Article 4(3)).
- Law on Institutions: sex, race, colour, national or social origin, political and religious belief, property and social position or other status (Article 13(1)).

### **2.1.1 Definition of the grounds of unlawful discrimination within the directives**

Although the Anti-discrimination Law devotes an article to defining its terms (Article 5), it does not define terms for the directives' grounds. Grounds are only listed as grounds of discrimination (Article 3 and Article 5(3)). There are no equivalent terms of the directive grounds defined elsewhere in national law, although references can be found in bylaws. Also, it is worth noting that ratified international treaties are considered to be higher in the national legal hierarchy than the national laws, thus any definition found in these should also be considered as part of the national legal framework.

The only ground with a definition in the law is 'belonging to a marginalised group'. A marginalised group is defined as

'a group of individuals unified by a specific position in the society, subjected to prejudices, who have special characteristics that make them suitable for certain types of violence, who have less opportunity for exercising and protecting their own rights, or who are exposed to a greater chance of further victimisation'. (Article 5(1), line 11).

As highlighted in a research study conducted in 2013, the elements of the definition 'specific position in the society' and 'certain types of violence' stand out as being unclear. The former refers to an easily identifiable characteristic or group (for example, geographic position or smaller religious community) matched with unequal access to resources or to opportunities (for example infrastructure, education, employment), whereas the latter is to be interpreted in accordance with the criminal law.<sup>62</sup> Also, it can be argued that 'persons that are protected under this ground are persons who are likely to be discriminated against on various grounds'<sup>63</sup> and that

'For some of these persons, the claim for protection against unjustified unequal treatment on grounds of belonging to a marginalised group would best reflect the status that these persons have and which needs to be protected (for example sex workers), while for other groups this ground should be applied if in the circumstances of the specific case it can be concluded that the determining conditions will be the conditions of specific position in society and susceptibility to violence.'<sup>64</sup>

<sup>60</sup> Literal translation would be "psychological invalidity" (психички инвалидитет).

<sup>61</sup> Literal translation would be "mental disability" (ментална попреченост).

<sup>62</sup> Kotevska B., (2013) *Guide on Discrimination Grounds*, Skopje, OSCE and CPAD, available at: [www.osce.org/skopje/116789?download=true](http://www.osce.org/skopje/116789?download=true) pp. 51-52.

<sup>63</sup> Najcevska M. and Kadriu B. (2008), *Terminology glossary for discrimination*, Skopje, OSCE and MCIC. p. 61.

<sup>64</sup> Kotevska B., (2013) *Guide on Discrimination Grounds*, Skopje, OSCE and CPAD, available at: [www.osce.org/skopje/116789?download=true](http://www.osce.org/skopje/116789?download=true) pp. 51-52.

### **2.1.2 Multiple discrimination**

In Macedonia, prohibition of multiple discrimination is included in the law.

Multiple discrimination is specified in the Anti-discrimination Law as a severe form of discrimination, and it is defined as discrimination against a person on several discrimination grounds (Article 12). Given the scope of the Anti-discrimination Law, this means that multiple discrimination is prohibited in all fields covered by any national law. No further legal rules or case law exists that would provide more detailed guidance on how to deal with multiple discrimination cases, including on the consequent sanctions (no separate provisions on sanctions for this form of discrimination exist).

In Macedonia there is no case law dealing with multiple discrimination. In 2014 no such cases were reported by the courts. The Ombudsperson has not yet reported a case on multiple discrimination, although the national equality body has. According to its annual report, CPAD received 8 cases (6 %) where applicants claimed discrimination on several grounds. However, the body either did not accept the applications on procedural grounds, or did not find discrimination.<sup>65</sup> The situation was similar in previous years, so we still cannot tell how the equality body will process such cases in terms of consideration of all, several or one ground, the levels of sanctions, etc.

### **2.1.3 Assumed and associated discrimination**

#### **a) Discrimination by assumption**

In Macedonia the national law (including case law) does not prohibit discrimination based on perception or assumption of what a person is.

#### **b) Discrimination by association**

In Macedonia the national law (including case law) does not prohibit discrimination based on association with persons with particular characteristics.

## **2.2 Direct discrimination (Article 2(2)(a))**

#### **a) Prohibition and definition of direct discrimination**

In Macedonia, direct discrimination is prohibited in national law. It is defined in the Anti-discrimination Law, however the definition is unnecessarily more complicated than the one in the directives. Under the Anti-discrimination Law, direct discrimination is taken to occur when one person is treated less favourably, or when there is a differentiation, exclusion, or limitation that results or could result in deprivation, violation or restriction of the equal recognition or exercise of human rights and basic freedoms as compared to the treatment that another person has or could have in the same or similar conditions (Article 6(1)). As opposed to the simple comprehensive encompassing wording of the definition contained in the directives, this definition includes types of treatment (which are gradations of less favourable treatment), thus adding the risk of excluding gradations not mentioned in the definition if restrictive judicial interpretation is applied. It ties the definition to human rights and basic freedoms, which is the formulation contained in the Constitution. Given the weak practice of using international human rights law in domestic courts, this could also be interpreted restrictively by courts (meaning only to apply to discrimination by deprivation, violation or restriction of the equal recognition or exercise of rights mentioned in the Constitution).

---

<sup>65</sup> Commission for Protection Against Discrimination (*Комисија за заштита од дискриминација*) 2014 Annual Report of the Commission for Protection Against Discrimination (2015), [www.sobranie.mk/materialdetails.nsp?materialId=d93111d8-975d-471e-be2c-e07a2df372f3](http://www.sobranie.mk/materialdetails.nsp?materialId=d93111d8-975d-471e-be2c-e07a2df372f3).

Before the adoption of the Anti-discrimination Law, direct discrimination was defined in several other laws as well; the Law on Labour Relations (Article 7(2)) replicating fully the definition from the directives and the Law on Social Protection (Article 21(1)), which also provides a definition in line with the directives. The Law on Child Protection prohibits (Article 13(1)) and defines (Article 14(1)) direct discrimination. The definition in this law is not in line with the directives as it defines direct discrimination only as a situation where a person has been treated less favourably in a comparable situation, but not if the person would be treated in such a manner. Although the literal meaning of the provision might suggest that a person that is treated less favourably is also not covered under the provision (because of the use of past tense in the provision), such a reading does not seem very likely.

#### b) Justification of direct discrimination

Although the Anti-discrimination Law does not allow for direct discrimination (justification *strictu sensu*) (Article 6(1)), it does contain provisions where differences in treatment will not be considered as discriminatory. These are prescribed in more general terms and are not tied to single grounds (Article 14), although several grounds are much more frequent in the justifications that are listed, notably religion or belief, age, ethnic origin, gender (for more on exceptions, see section 4 below). There are tests that must be satisfied to justify such difference in treatment, which include: objective justification, proportionality, legitimate aim, appropriateness and necessity, genuine and determining occupational requirement. This also includes the possibility for the justification of ethnicity as a 'genuine and determining occupational requirement' (Article 14(1)). Although the wording of the provision states 'overstepping the level necessary for implementation' instead of 'proportional', it can be expected that its interpretation will largely be in line with the Racial Equality Directive.

Prior to the adoption of the Anti-discrimination Law, legislation only included exceptions from discrimination, without referring to justified direct discrimination as such (thus no related tests existed).

### **2.2.1 Situation testing**

#### a) Legal framework

In Macedonia, the law is silent on situation testing. There is no mention of situation testing in the Anti-discrimination Law. It is worth noting that Article 206 of the Law on Civil Procedure states that all facts that are important for reaching a decision can be used as evidence, but that it is up to the courts to decide which facts need to be proven and which do not. The Law on Civil Procedure goes on to mention examples of evidence, but situation testing is not one of those examples.

#### b) Practice

In Macedonia situation testing is used in practice by CSOs. In 2014, it was announced that findings from a situation testing case conducted by the Macedonian Helsinki Committee and the OSCE Mission to Skopje will be used for bringing cases to courts and/or the equality body, however no further information has been released.

### **2.3 Indirect discrimination (Article 2(2)(b))**

#### a) Prohibition and definition of indirect discrimination

In Macedonia, indirect discrimination is prohibited in national law. It is defined. The Anti-discrimination Law fully replicates the definition of indirect discrimination from the directives. Indirect discrimination on any protected ground is taken to occur when an

apparently neutral provision, criterion or practice would put a person or a group at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (Article 6(2)).

Definitions of indirect discrimination in accordance with the directives are also included in the Law on Labour Relations (Article 7(3)), the Law on Child Protection (Article 14(2)) and the Law on Social Protection (Article 21(2)).

b) Justification test for indirect discrimination

Under the Anti-discrimination Law, indirect discrimination is justified if

‘the provision, criterion, or practice can be considered to have a justified aim, and the means of achieving that aim are appropriate and necessary’ (Article 6(2)).

The lack of judicial practice prevents any further comprehension of the elements of those tests.

Also, the definitions of indirect discrimination included in the Law on Labour Relations (Article 7(3)), the Law on Child Protection (Article 14(2)) and the Law on Social Protection (Article 21(2)) provide that an exception is justified if the differentiation is based on criteria and practices objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

c) Comparison in relation to age discrimination

There are no specific references provided on how to develop a test and how to use comparable data in particular cases, including in age discrimination cases.

### 2.3.1 Statistical evidence

a) Legal framework

In Macedonia there are national rules permitting data collection. The main legislation in this area is the Law on State Statistics. Data are collected covering all five grounds except for sexual orientation. The data are anonymous and therefore the collection of such data does not conflict with the Law on Protection of Personal Data.<sup>66</sup>

In relation to data collection, it is also worth noting that Article 206 of the Law on Civil Procedure states that all facts that are important for reaching a decision can be used as evidence, but that it is up to the courts to decide which facts need to be proven and which do not. Furthermore, the text of the law’s subsequent articles focuses on specific forms of evidence, but statistical evidence is not mentioned.

The Ministry of Information Society and Administration<sup>67</sup> collects data on administrative servants in the form of a Register of Public Sector Employees. The data to be collected and the access to the register are specified in a bylaw. The data are not publically available, and only persons specified in the rulebook can have access to the register. The data are not anonymous and include the following grounds covered by the directives: ethnic origin, disability, sex and age.

---

<sup>66</sup> Law on Protection of Personal Data (*Закон за заштита на лични податоци*) Official Gazette of the Republic of Macedonia No. 7/2005, 103/2008, 124/2010, 135/2011, 43/2014.

<sup>67</sup> Law on Administrative Servants (*Закон за административни службеници*) Official Gazette of the Republic of Macedonia, No. 27/2014, 199/2014. Article 7(1)-(9).

The (state) Employment Agency also collects data on job seekers. The data are not anonymous and cover the grounds of racial or ethnic origin and age. The grounds of belief, disability and sexual orientation are not covered.

Statistics are not used in litigation. However, they are widely used for designing strategic policy documents, including the design and planning of national action plans (including those on positive action). The ministerial cabinet uses statistics extensively in national strategies and positive action measures. With regard to issues of ethnicity, use of data includes planning employment of under-represented non-majority communities (national minorities) and the priorities in relation to the Decade of the Roma.<sup>68</sup>

On disability, statistics were used for the 'National Strategy on Equalisation of the Rights of Persons with Disabilities' and on age, they were used for the 'National Strategy on the Elderly'. Statistics were also used during the preparation of the first equality strategy adopted in 2012, the 'National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability'.

In Macedonia the law is silent on using statistical evidence in order to establish indirect discrimination. It neither permits nor prohibits it, which means it would be possible to use statistical evidence in discrimination cases.

The Anti-discrimination Law does not regulate the use of statistical evidence to establish indirect discrimination. This was not even discussed in the course of the preparation of the draft-law. Statistical evidence is only mentioned in the law as part of the duties of the CPAD (Article 24(10)). Statistical evidence is not mentioned in provisions regulating the procedure before the CPAD or in other procedural laws.

Statistical evidence as such is not mentioned elsewhere in national law. The Law on State Statistics<sup>69</sup> does not discuss the use of statistical data as evidence in general, meaning it also does not mention such a possibility in the context of indirect discrimination. Thus, no procedures or conditions for admissibility of such statistical evidence exist, making a breakthrough and usage of such data a distant possibility.

#### b) Practice

In Macedonia, statistical evidence in order to establish indirect discrimination is not used in practice. This remains an issue of the neglect of statistics and the collection of statistics overall, rather than an issue of the courts' reluctance to use statistics. Thus, it cannot be said that the practice in other countries influences the national law or developments.

## 2.4 Harassment (Article 2(3))

#### a) Prohibition and definition of harassment

In Macedonia, harassment is prohibited in national law. It is defined under the Anti-discrimination Law. Harassment is taken to occur when there is an act that violates the dignity of a person or group of persons on any of the discrimination grounds, with an aim to or result in violation of the dignity of a specific person or creating an intimidating, hostile, degrading, humiliating or offensive environment (Article 7). The definition complies with the directives.

---

<sup>68</sup> The full title is "Decade of Roma Inclusion". For more info on the Decade and the MLSP activities, please see: Ministry of Labour and Social Policy (2005) Strategy on Roma (*Стратегија за Ромите*), [www.mtsp.gov.mk/WBStorage/Files/strategija\\_romi.pdf](http://www.mtsp.gov.mk/WBStorage/Files/strategija_romi.pdf).

<sup>69</sup> Law on State Statistics (*Закон за државната статистика*) Official Gazette of the Republic of Macedonia No. 54/1997; 21/2007; 51/2011; 104/2013; 42/2014.

Harassment does not constitute a criminal offence. It is part of the provisions of the Law on Labour Relations, which deal with harassment, sexual harassment and mobbing. The definition of harassment is in line with the directives (Article 9, 9-a). This definition states that harassment is an unwanted conduct related to the protected grounds with the purpose or effect of violating the dignity of the applicant for employment or the worker, and of creating an intimidating, hostile, humiliating or offensive environment (Article 9(3)). Sexual harassment is every verbal, non-verbal or physical conduct of a sexual character with the purpose or effect of violating the dignity of the job applicant or worker, or of creating an intimidating, hostile, humiliating or offensive environment (Article 9(4)). The law defines psychological harassment or so-called 'mobbing' as every negative and repetitive (for at least a six-month period) conduct with the purpose or effect of violating the dignity of the job applicant or worker, or of creating an intimidating, hostile, humiliating or offensive environment and which has the final objective of ending the working relationship or forcing victims to leave their working positions (Article 9-a(2)).

In Macedonia harassment does explicitly constitute a form of discrimination in the Anti-discrimination Act (Article 7) and in the Law on Labour Relations (Article 9).

It is important to note that in 2013 a special Law on Protection against Harassment in the Workplace<sup>70</sup> was adopted. In terms of the elements constituting harassment, the definitions of the different types of harassment — psychological and sexual — are in line with the ones in the directives. This legislation also outlaws instruction or incitement to harass. The law is silent as to the grounds it covers for psychological harassment. For sexual harassment, the ground – sex — is contained in the title of the type of harassment, although without any clear guidance as to whether multiple grounds could also be considered. An important note here is that the legislature obviously intended to create a distinction between harassment in the workplace and other activities that would not be considered as such, including 'any unjustified distinction during unequal treatment towards the employee on any ground of discrimination which is prohibited and for which protection is provided for under a law'.<sup>71</sup>

#### b) Scope of liability for harassment

Where harassment is perpetrated by an employee, in Macedonia the employer and/or the employee could be held liable. Who will be held liable will depend on the complaint – who the alleged victim of harassment is identifying as the discriminator, as well as the details of the case (most notably whether the person has decided to first seek protection from the employer or whether he/she has decided to go directly to court/quasi-judicial body). It is also worth noting that, under the provision on psychological harassment or mobbing in the Law on Labour Relations (Article 9-a), a group of persons/employees can be held liable for harassment as well. The Anti-discrimination Law does not specify in greater detail how liability is established beyond identification by the potential victim herself/himself.

The Law on Protection against Harassment in the Workplace is in the field of employment. The liability scope is the same as the one under the Law on Labour Relations. An important note here is that the legislator obviously intended to create a distinction between harassment at the workplace and other activities that would not be considered as such, including 'any unjustified distinction during unequal treatment towards the employee on any ground of discrimination which is prohibited and for which protection is provided for under a law'.<sup>72</sup>

---

<sup>70</sup> Law on Protection against Harassment in the Workplace (*Закон за заштита од вознемирување на работно место*) Official Gazette of the Republic of Macedonia No.79/2013.

<sup>71</sup> Law on Protection against Harassment in the Workplace (*Закон за заштита од вознемирување на работно место*) Official Gazette of the Republic of Macedonia No.79/2013. Article 8(3).

<sup>72</sup> Law on Protection against Harassment in the Workplace (*Закон за заштита од вознемирување на работно место*) Official Gazette of the Republic of Macedonia No.79/2013. Article 8(3).

The liability for actions of third parties (tenants, clients, customers, etc.), seems to be subject to judicial interpretation.

## **2.5 Instructions to discriminate (Article 2(4))**

### **a) Prohibition of instructions to discriminate**

In Macedonia, instructions to discriminate are prohibited in national law. Instructions are not defined. The Anti-discrimination Law contains an article on invoking and inciting discrimination, which also includes instructions to discriminate. Notably, this article states that it considers as discrimination every activity that directly or indirectly invokes, encourages, instructs or instigates another person to commit discrimination (Article 9).

The Criminal Code also contains a prohibition on instructions to discriminate. Although its articles do not include the specific term 'instruction', they do speak of instigating or stimulating discrimination, notably when fuelling national, racial or religious hatred, discord or intolerance, which will be considered a criminal offence (Article 319), or when spreading racist and xenophobic materials through computer systems (Article 394-d).

The law does not make specific reference to the liability of legal persons for such actions. However, given the general clause that under the law a person is deemed to be any natural or legal person, one could argue that this is a possibility.

It is important to note that a case whose facts point to possible elements of instruction to discriminate was put before the CPAD in 2013. The case involves discrimination against Roma persons hired for the provision of services through a sub-contracted company. In this case, the sub-contracted company, Land Service, was asked by the contracted company, MARCEM, to 'remove' all employees of Roma ethnic origin who worked in the food department at City Mall (one of the largest trade centres in Skopje). In this case, the CPAD found that there was direct discrimination on grounds of ethnic belonging by the contracted company, but it did not find instruction to discriminate. The case was filed by Sumnal, a CSO dealing with Roma rights.<sup>73</sup> Land Service itself later filed a case at the CPAD, however the CPAD did not initiate proceedings, as it has already decided on the matter. Land Service also filed a request to the Constitutional Court for protection of freedoms and rights (protection against discrimination). However, in line with the already established principle of the Constitutional Court, Land Service's case was rejected as it had been filed by a legal and not a natural person.<sup>74</sup> No follow up on this case has been reported yet.

In Macedonia instructions do explicitly constitute a form of discrimination.<sup>75</sup>

### **b) Scope of liability for instructions to discriminate**

In Macedonia the instructor and/or the discriminator are liable. This applies to both natural and legal persons. Who will be held liable depends on the complaint – who the potential victim of discrimination identifies as the potential discriminator.

It is worth noting here that in the 2013 City Mall case (mentioned above, under section 2.5 – a), the CPAD found direct discrimination on grounds of ethnic belonging by the contracted company, MARCEM, which requested the sub-contracted company Land Service to 'remove' all employees of Roma ethnic origin who worked in the food department at City

---

<sup>73</sup> Commission for Protection against Discrimination (Комисија за заштита од дискриминација) No.07-633/4 Association for Development of the Roma Community Sumnal vs Marcem DOO Skopje, 23.05.2013.

<sup>74</sup> Constitutional Court (Уставен Суд) Decision U.br.65/2013-0-0, 06.11.2013.

<sup>75</sup> Law on Prevention and Protection against Discrimination (Закон за спречување и заштита од дискриминација) Official Gazette of the Republic of Macedonia No.50/10, 44/2014, Const.Ct. Decision: У.бр.82/2010 (15.09.2010). Article 9.



Mall (one of the largest trade centres in Skopje). However, the CPAD found that the case failed to qualify as one of instruction to discriminate.

The Criminal Code contains provisions making it a criminal offence to fuel national, racial or religious hatred, discord or intolerance (Article 319; provides for one to ten years of imprisonment) and to spread racist and xenophobic materials through computer systems (Article 394-r; provides for one to ten years of imprisonment). It provides that the persons committing the crimes will be held liable for the actions (including where the crime is conducted via the media; Article 395-r(2)).

## **2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)**

- a) Implementation of the duty to provide reasonable accommodation in the field of employment

In Macedonia the duty to provide reasonable accommodation is included in the law. It is defined.

To begin with, it is worth mentioning that the Convention on the Rights of Persons with Disabilities was signed and ratified in 2012. Although no further steps were taken regarding the implementation of this document, according to the Constitution the ratification of the convention means that it has become part of domestic law. The convention defines a failure to make a reasonable accommodation as a form of discrimination.

The Anti-discrimination Law, which also applies in the field of employment, tackles the issue of reasonable accommodation in two ways, by first defining adjustment of infrastructure and services and second by defining discrimination against people with disability – both considered to be forms of discrimination. It defines adjustment of infrastructure and services as an act of undertaking appropriate measures, where needed in a particular case, to enable a person with a mental or physical disability to have access to, participate in, or advance in employment, unless such measures would impose a disproportionate burden on the employer (Article 5(12)). This definition is similar in wording to Article 5 of Directive 2000/78, although it is limited to infrastructure and service. It also does not define what would be a disproportionate burden for employers or whether the availability of financial assistance from the state is to be taken into account in assessing whether there is a disproportionate burden. The second point is the definition of discrimination against people with disability. Notably, the law deems the lack of measures undertaken for the removal of obstacles and limitations, or the absence of measures for the adjustment of infrastructure, space, usage of publicly available resources or participation in public and social life for people with intellectual disability and physical disability to amount to discrimination (Article 8(2)). However, the law does not go into this issue in any more detail.

The Law on Labour Relations does not specifically mention reasonable accommodation for people with disabilities. The Law on Employment of People with Disabilities<sup>76</sup> also does not contain a definition of reasonable accommodation, but it contains references to accommodation-related measures for improving employment conditions and the conditions for the execution of work duties of people with disabilities. The law establishes a duty on the employer to provide for working space, equipment, and other relevant conditions for work and for the adaptation of the working environment (Article 7(2)). Employers' measures undertaken to accommodate people with disability are subject to inspection and employers can be fined, however the law makes no special reference as to whether the worker themselves can request that such measures be undertaken.

---

<sup>76</sup> Law on Employment of Persons with Disabilities (*Закон за вработување на инвалидни лица*), Official Gazette of Republic of Macedonia, No. 44/00, 16/2004, 62/2005, 113/2005, 29/2007, 88/2008, 161/2008, 99/2009, 136/2011.

b) Practice

There are no legally established specific criteria to assess issues in relation to reasonable accommodation such as the extent of the duty, what is a disproportionate burden, etc. It is not possible to know whether state financial assistance will be taken into account when assessing whether there is a disproportionate burden.

c) Definition of disability and non-discrimination protection

In the Anti-discrimination Law, disability is understood as intellectual and physical disability, however this law does not go into more details than this in defining disability. Thus, in the context of reasonable accommodation, disability is to be understood in the same way.

d) Duties to provide reasonable accommodation outside the field of employment

In Macedonia, there is a duty to provide reasonable accommodation for people with disabilities outside the employment field. The Anti-discrimination Law deems lack of measures undertaken for the removal of obstacles and limitations, or for the adjustment of infrastructure, space, usage of publicly available resources or participation in public and social life, including in education and training (Article 15(3)), for people with intellectual disability or physical disability to amount to discrimination (Article 8(2)). The article uses the same formulation as is used in the field of employment.

e) Failure to meet the duty of reasonable accommodation

In Macedonia failure to meet the duty of reasonable accommodation does count as discrimination.

The Anti-discrimination Law classifies the lack of reasonable accommodation for people with intellectual or physical disabilities as discrimination (Article 8(2)). However, the Law on Employment of People with Disabilities and the Law on Construction do not include specific sanctions if proper adaptation is not carried out. This failure is not considered to be discrimination. The misdemeanour provisions in the Anti-discrimination Law do not contain a special provision on fines regarding Article 8(2), which provides for reasonable accommodation, thus the issue would be subject to judicial interpretation.

There is no exception for the shift of burden of proof rule for reasonable accommodation, as lack of it is considered a form of discrimination, thus the same rules for shifting the burden of proof should apply.

f) Duties to provide reasonable accommodation in respect of other grounds

In Macedonia there is a duty to provide reasonable accommodation in respect of other grounds in the public and in the private sector. These include ethnicity, religion and age.

Limited accommodation in respect of ethnicity can be found in the Law on Holidays of the Republic of Macedonia.<sup>77</sup> Under this law, vacation days are to be granted for the specific celebrations of some ethnic communities (Articles 1 and 2).

Limited accommodation in respect of religion is mentioned in the Law on Holidays of the Republic of Macedonia. Under this law, vacation days are to be granted for religious celebrations on the basis of the faith of the employee (Articles 1 and 2).

---

<sup>77</sup> Law on Holidays of the Republic of Macedonia (*Закон за празниците во Република Македонија*) Official Gazette of the Republic of Macedonia, No. 21/98, 18/2007.

With respect to age, there are special measures for the protection of older workers in the Law on Labour Relations, regarding the working hours of older (and younger) workers. It provides that these workers cannot be assigned to work overtime or on night shifts (Article 180). This measure is applicable to workers over the age of 57 for women and 59 for men (Article 179).

g) Accessibility of services, buildings and infrastructure

In Macedonia national law indirectly requires services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way. Namely, under the Anti-discrimination Law, discrimination against persons with disabilities, which is deemed a separate form of discrimination, includes inaccessibility of services, buildings and infrastructure (Article 8(2)). This would apply both in the employment field and beyond.

The Law on Construction creates the potential to reduce the standard requirements governing re-construction and adaptation of buildings if such reconstruction and adaptation is intended to provide for the free access, movement, stay and work of people with disability. It goes even further by posing an obligation for construction plans to ensure that the built object shall provide for open access and movement in and over it, aiming to create free access, movement, stay and work of people with disability (Article 10).

The Law on Construction requires public buildings to be designed and built in an accessible way. It states that the construction of

‘public buildings and structures for commercial use, those with the purpose of residential housing and buildings with housing and business purpose must be designed and constructed to allow unimpeded access, movement, residence and work to persons with disabilities’ (Article 11).

The Anti-discrimination Law states that failure to comply with such legislation (referring also to relevant provisions in any other laws, such as the aforementioned Law on Construction) would be treated as discrimination.

The Law on Construction also states that:

‘The manner of providing unimpeded access, movement, residence and work for people with disability to buildings ... should be prescribed by the minister who heads the state authority responsible for performing the work in the field of urban planning.’

The same law states that there is no need for approval to build structures that allow and facilitate the movement of people with disability in the building.<sup>78</sup> Furthermore, public and business facilities

‘must ensure unimpeded access to persons with a disability as prescribed by this Law within four years of the date of entry into force of this law, and adapt outside staircases for public use within two years of the date of the entry into force of this Law’ (the law entered into force on 5 November 2009).<sup>79</sup>

---

<sup>78</sup> Law on Construction (*Закон за градење*) Official Gazette, No. 130/2009, 124/2010, 18/2011, 36/2011, 54/2011, 13/2012, 144/2012, 25/13, 79/13, 137/13, 163/2013, 27/2014, 28/2014, 42/2014, 115/2014, 149/2014, 187/2014, Constitutional Court Decisions: U.br. 262/2009 (02.02.2011), U.br. 212/2010 (30.03.2011).

<sup>79</sup> Law on Construction (*Закон за градење*) Official Gazette, No. 130/2009, 124/2010, 18/2011, 36/2011, 54/2011, 13/2012, 144/2012, 25/13, 79/13, 137/13, 163/2013, 27/2014, 28/2014, 42/2014, 115/2014, 149/2014, 187/2014, Constitutional Court Decisions: U.br. 262/2009 (02.02.2011), U.br. 212/2010 (30.03.2011). Article 170.

A 2014 Government information report submitted to the Committee on the Rights of Persons with Disabilities states that the provisions

'are little or not applied at all, both in adapting existing buildings and in the construction of new buildings. This includes inadequate public areas with high kerbs, inconvenient pedestrian crossings, sidewalks, parking spots, access to bus stations, adapted toilets for persons in wheelchairs, etc.'<sup>80</sup>

In Macedonia national law does not contain a general duty to provide accessibility by anticipation for people with disabilities.

h) Accessibility of public documents

No such requirements currently exist. However, it is worth noting that a recent vacancies advertisement by the Government for employment of people with disabilities was published in Braille.<sup>81</sup> This was not a general recruitment advert - only people with disabilities could apply for the positions.

---

<sup>80</sup> Ministry of Labour and Social Policy (2014), initial report of the Republic of Macedonia pursuant to article 35, paragraph 1 of the Convention on the Rights of Persons with Disabilities, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fMKD%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fMKD%2f1&Lang=en).

<sup>81</sup> Press24 (2014) People with visual impairments hailed vacancy ad for employment of 300 persons with disability (Слепите лица го поздравиле огласот за вработување 300 лица со инвалидност), [www.press24.mk/slepите-lica-go-pozdravija-oglasot-za-vrabotuvanje-300-lica-so-invalidnost](http://www.press24.mk/slepите-lica-go-pozdravija-oglasot-za-vrabotuvanje-300-lica-so-invalidnost).

### **3 PERSONAL AND MATERIAL SCOPE**

#### **3.1 Personal scope**

##### **3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78)**

In Macedonia, there are no residence or citizenship/nationality requirements for protection under the relevant national laws transposing the directives. On provisions of relevance for non-discrimination, the Constitution sets a requirement of citizenship in order for a person to enjoy the protection of rights under the Constitution, including protection against discrimination. Stricter conditions also apply to residents without Macedonian citizenship with regards to employment and acquiring social protection.<sup>82</sup> In other areas, including self-employment, access to training and membership in workers' organisations, there is no legal inhibition and there are no reports of less favourable treatment. With regard to the Constitution, the approach implemented in practice gives foreign citizens the opportunity to participate in the social and economic life of the country. No such requirement exists under the Anti-discrimination Law.

It is worth noting that the country is a candidate for EU membership. So far, the course of harmonisation of the legislation has not reached the stage where provisions on distinctions between EU and non-EU nationals are incorporated in laws. As yet, no clear plans have been made on how this will be regulated. A sign of planned developments in this direction is that special provisions have been inserted in the Law on Internal Affairs, which regulate special rules for EU citizens, with much eased procedures for short-term and long-term stay and residence in the country.

##### **3.1.2 Protection against discrimination (Recital 16 Directive 2000/43)**

###### **a) Natural and legal persons**

In Macedonia the personal scope of anti-discrimination law covers natural and legal persons for the purpose of protection against discrimination and for the purpose of liability for discrimination. It does not distinguish between natural and legal persons, either for the purposes of protection against discrimination or for liability for discrimination. Article 2 of the Anti-discrimination Law provides that the law is applied to both natural and legal persons, while Article 5(9) defines a person as both a natural and legal person. Article 4 provides for the fields of discrimination covered by the law, adding that the law applies to all natural and legal persons.

As the law uses the term 'person' throughout for both protection against discrimination and liability for discrimination, it is clear that such a distinction is not made. However, there is a distinction when speaking of the sanctions, as fines for misdemeanours are divided between fines for natural and for legal persons and vary in amount (Articles 42 to 45). Furthermore, it should be noted that under the Constitution, only citizens are included in the general equality clause, and also that the Constitutional Court's practice is clear that human rights protection, which also includes protection against discrimination, can be sought by natural persons only.

###### **b) Private and public sector including public bodies**

In Macedonia the personal scope of national law covers private and public sector including public bodies for the purpose of protection against discrimination and for the purpose of liability for discrimination. The Anti-discrimination Law states that the law applies to all

---

<sup>82</sup> Law on Social Protection (*Закон за социјалната заштита*) Official Gazette of Republic of Macedonia No. 79/2009, 36/2011, 51/2011, 166/2012, 15/2013, 79/2013, 187/2013, 38/2014; 44/2014; 116/2014; 180/2014, Constitutional Court Decision: U.br.165/2009 (07.04. 2010). Article 15.

natural and legal persons (Article 2) and that it covers both the private and the public sector, including public bodies (Article 4).

## **3.2 Material scope**

### **3.2.1 Employment, self-employment and occupation**

In Macedonia, national legislation applies to all sectors of private and public employment, self-employment and occupation, including contract work, self-employment, military service, and holding statutory office, for the five grounds.

The Anti-discrimination Law applies to all sectors of public and private employment and occupation (Article 4). Articles 6-11 of the Law on Labour Relations<sup>83</sup> prohibit various aspects of discrimination in labour relations and, in general, do not distinguish between different types of actors (public or private, secular or religious). It states that it regulates the labour relations of workers employed by the state, local government, public institutions, public enterprises, institutes, foundations, organisations and other legal and individual employers, unless another law determines otherwise.<sup>84</sup>

Having agreed with the general approach, it should be noted that practically all major areas of public employment are covered also by the Law on Administrative Servants<sup>85</sup> (adopted in 2014, and replacing the previous Law on Public Servants and Law on State Servants, implementation of the new law will start in 2015), the Law on the Police,<sup>86</sup> the Law on Defence and the Law on Foreign Affairs for labour relations of the employees in the respective ministries.

### **3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))**

In Macedonia, national legislation includes conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy for the five grounds in both private and public sectors as described in the directives.

The Anti-discrimination Law includes labour and labour relations in public and private sectors (Article 4), thus should be read as including employment, self-employment or occupation. It does not seem to deal differently with the private sector on this matter.

---

<sup>83</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. Article 6-11.

<sup>84</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. Article 3.

<sup>85</sup> Law on Administrative Servants (*Закон за административни службеници*) Official Gazette of the Republic of Macedonia No. 27/2014, 199/2014.

<sup>86</sup> Law on the Police (*Закон за полицијата*) Official Gazette of the Republic of Macedonia No. 114/2006, 06/2009, 145/2012, 41/2014. Article 96 and Law on Internal Affairs (*Закон за внатрешни работи*) Official Gazette of the Republic of Macedonia No. 42/2014, 116/2014.

The general non-discrimination article in the Law on Labour Relations<sup>87</sup> encompasses selection criteria, recruitment conditions, treatment at work, promotion, professional training and other benefits, as well as ending employment. A specific ban on discrimination in vacancy announcements is prescribed in the Law on Labour Relations.<sup>88</sup> However, in relation to access, both in that provision and the law overall, the protection against discrimination for people with disabilities can be considered as being very weak because, although the applicant is not obliged to submit a health certificate when concluding an employment contract, the employer can send her or him for a medical examination.<sup>89</sup> The only legal limitation is that the examination should be strictly and necessarily linked to the specific post.

None of the provisions in the non-discrimination articles should be interpreted as restrictions on the employer's right to refuse to hire a person who does not meet the occupational requirements in that particular field, as long as the measures are objectively justified by a legitimate aim and the methods pursued are adequate and necessary.<sup>90</sup>

Conditions for access to employment and criteria for various professional activities in the public sector are mostly determined by specialised laws. However, no equivalent and consistent approach or scope of protection is contained in these laws. Health status is mentioned as a condition for employment in the Law on the Police and the Law on Army Service, and in the Law on Administrative Servants.<sup>91</sup> The Law on Administrative Servants sets out general conditions for employment as an administrative servant, which aside from general health capability, also include citizenship, active knowledge of the Macedonian language, being at least 18 years of age, and having no criminal conviction in relation to conducting a profession or duty (Article 31(1)).<sup>92</sup>

There is an established system of state inspection that conducts supervision of the implementation of the Law on Labour Relations, and of other laws and regulations for labour relations, collective agreements and job contracts that regulate the rights and obligations of the employee and the employer. Such inspections are carried out by the state body responsible for labour inspection.<sup>93</sup>

---

<sup>87</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. Article 6.

<sup>88</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. Article 24.

<sup>89</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. Article 25.

<sup>90</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. Article 8.

<sup>91</sup> Law on Administrative Servants (*Закон за административни службеници*) Official Gazette of the Republic of Macedonia No. 27/2014, 199/2014.

<sup>92</sup> Law on Administrative Servants (*Закон за административни службеници*) Official Gazette of the Republic of Macedonia No. 27/2014, 199/2014. Article 31(1).

<sup>93</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011,

### 3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

In Macedonia, national legislation includes working conditions, which include pay and dismissals, for all five grounds and for both private and public employment.

Article 4 of the Anti-discrimination Law covers the area of employment and labour relations, thus it is to be considered to include pay and dismissals (it applies to both public and private sector).

Aside from this law, the Law on Labour Relations contains a provision stating that for equal work, workers should be equally paid. The only category explicitly mentioned is women,<sup>94</sup> however in the general provisions section, in Article 7(4), it explicitly states that discrimination is prohibited on all grounds mentioned in Article 6 (which include all the directives grounds) in relation to, inter alia, 'working conditions, all rights from a labour relation and in relation to such a relation, including equality of pay'.

The Law on Administrative Servants devotes a chapter – Chapter XIV – to salaries, without mentioning equality of pay. It establishes the following as the main elements on which salary is based: education level, level of working position, and years of experience.<sup>95</sup> This is a new law and is about to be implemented, thus no related case law exists.

#### - Occupational pensions constituting part of pay

There are three laws dealing with pensions.<sup>96</sup> However, only one of these contains a prohibition of discrimination: the Law on Voluntary Fully Funded Pension Insurance (Article 3).<sup>97</sup> It states that voluntary, fully funded pension insurance schemes are prohibited from discriminating against members on the grounds of sex, race, colour, language, faith and religion, political or other orientation, national or social origin, belonging to a national or ethnic minority, or on the basis of property, family, health and age.

However, in the same law it states that a company cannot refuse membership of the Voluntary Pension Fund to any employee if the person is at least 15 years old and not more

---

11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. Article 256.

<sup>94</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. Article 108.

<sup>95</sup> Law on Administrative Servants (*Закон за административни службеници*) Official Gazette of the Republic of Macedonia No. 27/2014, 199/2014. Articles 85-97.

<sup>96</sup> Law on Pension and Disability Insurance (*Закон за пензиско и инвалидско осигурување*) Official Gazette of the Republic of Macedonia No.98/2012, 166/2012, 15/2013, 170/2013, 43/2014, 44/2014, 97/2014, 113/2014, 160/2014, 188/2014; Law on Voluntary Fully Funded Pension Insurance (*Закон за доброволно капитално финансирано пензиско осигурување*) Official Gazette of the Republic of Macedonia No.07/2008, 124/2010, 17/2011, 13/2013, Constitutional Court Decision: U.br.117/2008 (17.12.2008); Law on Mandatory Fully Funded Pension Insurance (*Закон за задолжително капитално пензиско осигурување*) Official Gazette of the Republic of Macedonia No.29/2002, 85/2003, 40/2004, 113/2005, 29/2007, 88/2008, 48/2009, 50/2010, 171/2011, 36/2011, 98/2012, 13/2013, 164/2013 and 44/2014, Constitutional Court Decision: U.br.163/2002 (02.04.2003), U.br.165/2008 (11.03.2009).

<sup>97</sup> Law on Voluntary Fully Funded Pension Insurance (*Закон за доброволно капитално финансирано пензиско осигурување*) Official Gazette of the Republic of Macedonia No.07/2008, 124/2010, 17/2011, 13/2013, Constitutional Court Decision: U.br.117/2008 (17.12.2008).



than 70 years of age.<sup>98</sup> This means that disability is not a ground for refusal, although if it is treated as a health condition it falls under anti-discrimination protection. The Law on Voluntary Fully Funded Pension Insurance does not include any sanction equivalent to the prohibition of discrimination for voluntary pension schemes. There are no articles on discrimination or equality in the framework Law on Pensions and Disability Insurance<sup>99</sup> and in the Law on Mandatory Fully Funded Pension Insurance.

### **3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))**

In Macedonia, national legislation applies to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult lifelong learning courses.

Article 4 of the Anti-discrimination Law covers the area of employment and labour relations, and includes education, thus it can also be interpreted to include access to guidance and training, as per the directives.

Though not expressly using the wording of Article 3(1)(b) of Directive 2000/43, the prohibitions against discrimination in access to vocational guidance, professional training, continuing professional training and practical work experience are stipulated in the general prohibition on discrimination in the Law on Labour Relations<sup>100</sup> and in laws on different stages of education. National legislation gives everyone equal rights to acquire higher education and to be educated throughout their lives, and equal rights to lifelong learning.<sup>101</sup>

According to the Law on Higher Education,<sup>102</sup> citizens of the country are equally entitled to education in higher educational institutions in the country. The approach to nationality is different, and foreign nationals can use the principle of reciprocity (meaning that if Macedonian students are given national treatment in a certain country, nationals of that country may study in Macedonia as if they were Macedonian citizens). The right to education of stateless persons has still to be determined in law and under ratified international agreements.

The selection of candidates by the university cannot be discriminatory on the grounds of race, colour of skin, sex, language, religion, political or other beliefs, ethnic, national or social origin, property, birth, social position, disability, sexual orientation or age.<sup>103</sup>

---

<sup>98</sup> Law on Voluntary Fully Funded Pension Insurance (*Закон за доброволно капитално финансирано пензиско осигурување*) Official Gazette of the Republic of Macedonia No.07/2008, 124/2010, 17/2011, 13/2013, Constitutional Court Decision: U.br.117/2008 (17.12.2008). Article 94.

<sup>99</sup> Law on Pension and Disability Insurance (*Закон за пензиско и инвалидско осигурување*) Official Gazette of the Republic of Macedonia No.98/2012, 166/2012, 15/2013, 170/2013, 43/2014, 44/2014, 97/2014, 113/2014, 160/2014, 188/2014.

<sup>100</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. Article 7.

<sup>101</sup> Law on Higher Education (*Закон за високото образование*) Official Gazette of the Republic of Macedonia No. 35/08, 103/2008, 26/2009, 83/2009, 99/2009, 115/10, 17/2011, 51/2011, 123/2012, 15/2013, 24/2013, 41/2014, 116/2014, 130/2014; Constitutional Court Decision: U.br. 98/2011 (03.04.2011). Article 3.

<sup>102</sup> Law on Higher Education (*Закон за високото образование*) Official Gazette of the Republic of Macedonia No. 35/08, 103/2008, 26/2009, 83/2009, 99/2009, 115/10, 17/2011, 51/2011, 123/2012, 15/2013, 24/2013, 41/2014, 116/2014, 130/2014; Constitutional Court Decision: U.br. 98/2011 (03.04.2011). Article 7.

<sup>103</sup> Law on Higher Education (*Закон за високото образование*) Official Gazette of the Republic of Macedonia No. 35/08, 103/2008, 26/2009, 83/2009, 99/2009, 115/10, 17/2011, 51/2011, 123/2012, 15/2013,

The Law on Adult Education states that the aim of adult education is to provide an opportunity for everyone in all adult groups to achieve their appropriate educational level and enable them to acquire knowledge, skills and attitudes that will comply with the requirements of society and the labour market (Article 4).<sup>104</sup>

### **3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))**

In Macedonia, national legislation includes membership of, and involvement in workers or employers' organisations as formulated in the directives for all five grounds and for both private and public employment. Article 4 of the Anti-discrimination Law covers membership and acting in unions, political parties, associations of citizens and foundations, and other organisations based on membership.

The Law on Labour Relations only provides for the freedom of workers and employers to establish and participate or not in the work of such an association.<sup>105</sup> There are no anti-discrimination provisions related to the grounds of the directives. Having said that, it should be also noted that *mutatis mutandi* the general anti-discrimination provision in the Law on Labour Relations should be applicable to these situations as well. Following the same line of reasoning, the provisions in the Anti-discrimination Law would also be applicable.

### **3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)**

In Macedonia, national legislation includes social protection, including social security and healthcare as formulated in the Racial Equality Directive.

According to the Constitution, the Republic provides for social protection and social security of citizens in accordance with the principle of social justice, and it guarantees the right of assistance to those who are infirm or unfit for work (Article 35).

The Anti-discrimination Law provides for prohibition of discrimination in social security (including social protection, pension insurance and health protection) (Article 4(3)). The provision on the protected grounds is open-ended, and explicitly lists racial and ethnic origin, disability, belief, and age. Sexual orientation is not explicitly mentioned in this provision.

The general and specific provisions on prohibition of discrimination in social services are also listed in the Law on Social Protection;<sup>106</sup> racial and ethnic origin and disability are protected as grounds, while belief, age and sexual orientation are not. According to the Law on Social Protection, the ban is related to both public institutions for social care and

---

24/2013, 41/2014, 116/2014, 130/2014; Constitutional Court Decision: U.br. 98/2011 (03.04.2011). Article 108.

<sup>104</sup> Law on Adult Education (*Закон за образование на возрасните*) Official Gazette of the Republic of Macedonia No.07/2008, 17/2011, 51/2011, 74/2012, 41/2014 and 144/2014; Constitutional Court Decision: U.br. 46/2008 (14.01.2009).

<sup>105</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. Arts. 183, 184, 185, 198.

<sup>106</sup> Law on Social Protection (*Закон за социјалната заштита*) Official Gazette of Republic of Macedonia No. 79/2009, 36/2011, 51/2011, 166/2012, 15/2013, 79/2013, 187/2013, 38/2014; 44/2014; 116/2014; 180/2014, Constitutional Court Decision: U.br.165/2009 (07.04. 2010). Article 21.

private institutions.<sup>107</sup> Protection in cases of discrimination in the field of social care is covered by the potential for the 'applicant or user of social protection to seek protection from the competent authority'.<sup>108</sup> In cases of discrimination, there is a shift of the burden of proof<sup>109</sup> and financial sanctions of EUR 3 000-5 000 (in national currency) are envisaged.<sup>110</sup>

The Law on Healthcare Protection defines, as one of the basic principles of the provision of healthcare, the principle of equity, which it defines through the prohibition of discrimination. Notably, in Article 9, the law states that the healthcare is realised through prohibition of discrimination in provision of healthcare protection on grounds of race, sex, age, nationality, social origin, religion, political or other belief, property status, culture, language, type of illness, mental or physical disability.<sup>111</sup> It does not include sexual orientation as one of the protected grounds. In the Law on Health Insurance, in Article 2 it is stated that health insurance is mandatory for all citizens on the principles of 'comprehensiveness, solidarity, equality and effective use of resources under conditions determined by Law'.<sup>112</sup>

The Child Protection Law has articles on discrimination.<sup>113</sup> In addition to definitions of direct and indirect discrimination, specific measures are included for the protection of children and their parents or guardians when applying for social care. However, the procedure is so complicated that it is very unlikely that these articles will be used in practice (especially because the whole procedure should be carried out by the potential victims without any institutional help).

- Article 3.3 exception

Macedonian legislation does not include any exemptions from payments of any kind made by state schemes or similar, including state social security or social protection schemes, relying on the exception allowed in Article 3(3), Directive 2000/78.

### **3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)**

In Macedonia, national legislation includes social advantages as formulated in the Racial Equality Directive.

---

<sup>107</sup> Law on Social Protection (*Закон за социјалната заштита*) Official Gazette of Republic of Macedonia No. 79/2009, 36/2011, 51/2011, 166/2012, 15/2013, 79/2013, 187/2013, 38/2014; 44/2014; 116/2014; 180/2014, Constitutional Court Decision: U.br.165/2009 (07.04. 2010). Article 20.

<sup>108</sup> Law on Social Protection (*Закон за социјалната заштита*) Official Gazette of Republic of Macedonia No. 79/2009, 36/2011, 51/2011, 166/2012, 15/2013, 79/2013, 187/2013, 38/2014; 44/2014; 116/2014; 180/2014, Constitutional Court Decision: U.br.165/2009 (07.04. 2010). Article 22.

<sup>109</sup> Law on Social Protection (*Закон за социјалната заштита*) Official Gazette of Republic of Macedonia No. 79/2009, 36/2011, 51/2011, 166/2012, 15/2013, 79/2013, 187/2013, 38/2014; 44/2014; 116/2014; 180/2014, Constitutional Court Decision: U.br.165/2009 (07.04. 2010). Article 23.

<sup>110</sup> Law on Social Protection (*Закон за социјалната заштита*) Official Gazette of Republic of Macedonia No. 79/2009, 36/2011, 51/2011, 166/2012, 15/2013, 79/2013, 187/2013, 38/2014; 44/2014; 116/2014; 180/2014, Constitutional Court Decision: U.br.165/2009 (07.04. 2010). Article 254.

<sup>111</sup> Law on Healthcare (*Закон за здравствената заштита*) Official Gazette of the Republic of Macedonia No. 43/2012, 145/2012, 87/2013, 164/2013, 39/2014, 43/2014, 132/2014, 188/2014, Constitutional Court Decision: U.br. 59/2012 (24.04.2013), U.br. 69/2012 (11.06.2014).

<sup>112</sup> Law on Health Insurance (*Закон за здравственото осигурување*) Official Gazette of the Republic of Macedonia No. 25/2000, 34/2000, 96/2000, 50/2001, 11/2002, 31/2003, 84/2005, 37/2006, 18/2007, 36/2007, 82/2008, 98/2008, 6/2009, 67/2009, 50/2010, 156/2010, 53/2011, 26/2012, 16/2013, 91/2013, 187/2013, 43/2014, 44/2014, 97/2014, 112/2014, 113/2014, 188/2014, Constitutional Court Decision: U.br.85/2000 (22.11.2000), U.br.173/2000 (04.04.2001), U.br.37/2001 (06.06.2001), U.br.60/2006 (03.10.2006), U.br.40/2007 (04.07.2007), U.br.167/2006 (27.06.2007), U.br.45/2006 (11.07.2007), U.br. 199/2008 (18.03.2009), U.br.109/2009 (27.01.2010), U.br.185/2009 (27.01.2010), U.br.112/2011 (16.11.2011).

<sup>113</sup> Law on Protection of Children (*Закон за заштита на децата*) Official Gazette of the Republic of Macedonia No. 23/2013, 12/2014, 44/2014, 144/2014. Articles 12, 13, 14, 15.

The Constitution states that the Republic provides for social protection and social security of citizens in accordance with the principle of social justice. It guarantees the right to assistance to those who are infirm or unfit for work. It also provides for particular protection for people with disability and ensures that their involvement in social life is possible.<sup>114</sup>

Social advantages are stipulated by law. For instance, the Law on Social Protection envisages that due to age and disability, beneficiaries of social financial assistance are relieved from the obligation to conduct public service duties in a duration of up to 90 days.<sup>115</sup> This law also contains a general anti-discrimination provision (Article 20) and an article defining direct and indirect discrimination (Article 21). Although not explicitly addressed, discrimination in the area of social advantages is likely to be unlawful also under the Anti-discrimination Law (Article 4(1), line 3). Albeit not containing a special anti-discrimination provision specifically concerning social advantages, it is safe to conclude that the legal framework implicitly upholds the concept of non-discrimination with regard to the social advantages.

In Macedonia, the lack of definition of social advantages does not raise problems.

### **3.2.8 Education (Article 3(1)(g) Directive 2000/43)**

In Macedonia, national legislation includes education as formulated in the Racial Equality Directive.

Under the Anti-discrimination Law, discrimination is prohibited in the educational process, at all levels and in all forms, both private and public. All directive grounds are explicitly listed in the provision on protected grounds, apart from sexual orientation. Aside from the Anti-discrimination Law (Article 4(2)), laws that regulate primary<sup>116</sup> and secondary<sup>117</sup> education also prohibit discrimination. Primary and secondary education is compulsory in the country. The legislation covers the directives' grounds of race or ethnic origin and belief (political and religious), while disability, age, sexual orientation and belief (other aspects) are missing.

- Pupils with disabilities

In Macedonia the general approach to education for pupils with disabilities does raise problems.

---

<sup>114</sup> Constitution of the Republic of Macedonia (*Устав на Република Македонија*). Official Website of the Assembly of the Republic of Macedonia, <http://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspix>. Article 35.

<sup>115</sup> Law on Social Protection (*Закон за социјалната заштита*) Official Gazette of Republic of Macedonia No. 79/2009, 36/2011, 51/2011, 166/2012, 15/2013, 79/2013, 187/2013, 38/2014; 44/2014; 116/2014; 180/2014, Constitutional Court Decision: U.br.165/2009 (07.04. 2010). Article 55.

<sup>116</sup> 'Every child has the right to primary education. (2) Discrimination on the grounds of sex, race, colour, national, social, political, religious, property and social background in realisation of the rights of education and primary education, as defined by this Law are prohibited.' Source: Law on Primary Education (*Закон за основното образование*) Official Gazette of the Republic of Macedonia No. 103/2008, 33/2010, 116/2010, 156/2010, 18/2011, 51/2011, 100/2012, 24/2013, 41/2014, 116/2014, 135/2014, Constitutional Court Decisions: U.br. 212/2008 (01.04.2009), U.br. 202/2008 (15.04.2009), U.br.234/2008 (24.06.2009), U.br.226/2008 (01.07.2009). Article 2.

<sup>117</sup> Law on Secondary Education (*Закон за средното образование*) Official Gazette of the Republic of Macedonia, No. 44/95, 24/96, 34/96, 35/97, 82/99, 29/2002, 40/2003, 42/2003, 67/2004, 55/2005, 113/2005, 35/2006, 30/2007, 49/2007, 81/2008, 92/2008, 33/10, 116/10, 156/10, 18/2011, 42/2011, 51/2011, 100/2012, 24/2013, 41/2014, 116/2014, 135/2014, Constitutional Court Decision: U.br. 355/1995 (20.03.1996), U.br. 210/2000 (16.05.2001), U.br. 83/2003 (19.11.2003), U.br. 31/2005 (15.06.2005), U.br. 102/2005 (21.12.2005), U.br. 226/2008 (01.07.2009). Article 3.

The laws that regulate primary<sup>118</sup> and secondary<sup>119</sup> education prohibit discrimination, and although they do not cover disability as a ground for discrimination, they include specific articles dealing with the education of children with disabilities. In this sense, a parent of a child with 'special educational needs' has the right to enrol the child at primary school, except in cases where the 'special educational needs' of the child are such that the child should be taught in a specialised primary school. Also, students with special educational needs are to be provided with appropriate conditions for acquiring basic education and life skills in regular and special primary schools and are entitled to individual assistance for the acquisition of primary education.<sup>120</sup>

The manner and conditions for the enrolment of students with special educational needs in primary schools is determined by the Minister, on a proposal of the Bureau for Development of Education (an independent body within the ministry).<sup>121</sup> According to Macedonian legislation there is specialised primary education for children with disabilities and specialised schools are considered equivalent to state schools.<sup>122</sup> In general, children are enrolled in these specialised schools instead of being enrolled in mainstream schools. The Law on Higher Education<sup>123</sup> does not explicitly prohibit discrimination on the ground of disability; however there are articles on the special benefits for students with disabilities (exemption from payment of tuition fees,<sup>124</sup> selection of students,<sup>125</sup> and special benefits

<sup>118</sup> 'Every child has the right to primary education. (2) Discrimination on the grounds of sex, race, colour, national, social, political, religious, property and social background in realisation of the rights of education and primary education, as defined by this Law are prohibited.' Source: Law on Primary Education (*Закон за основно образование*) Official Gazette of the Republic of Macedonia No. 103/2008, 33/2010, 116/2010, 156/2010, 18/2011, 51/2011, 100/2012, 24/2013, 41/2014, 116/2014, 135/2014, Constitutional Court Decisions: U.br. 212/2008 (01.04.2009), U.br. 202/2008 (15.04.2009), U.br.234/2008 (24.06.2009), U.br.226/2008 (01.07.2009). Article 2.

<sup>119</sup> Law on Secondary Education (*Закон за средното образование*) Official Gazette of the Republic of Macedonia, No. 44/95, 24/96, 34/96, 35/97, 82/99, 29/2002, 40/2003, 42/2003, 67/2004, 55/2005, 113/2005, 35/2006, 30/2007, 49/2007, 81/2008, 92/2008, 33/10, 116/10, 156/10, 18/2011, 42/2011, 51/2011, 100/2012, 24/2013, 41/2014, 116/2014, 135/2014, Constitutional Court Decision: U.br. 355/1995 (20.03.1996), U.br. 210/2000 (16.05.2001), U.br. 83/2003 (19.11.2003), U.br. 31/2005 (15.06.2005), U.br. 102/2005 (21.12.2005), U.br. 226/2008 (01.07.2009). Article 3.

<sup>120</sup> Law on Primary Education (*Закон за основното образование*) Official Gazette of the Republic of Macedonia No. 103/2008, 33/2010, 116/2010, 156/2010, 18/2011, 51/2011, 100/2012, 24/2013, 41/2014, 116/2014, 135/2014, Constitutional Court Decisions: U.br. 212/2008 (01.04.2009), U.br. 202/2008 (15.04.2009), U.br.234/2008 (24.06.2009), U.br.226/2008 (01.07.2009). Article 6.

<sup>121</sup> Law on Primary Education (*Закон за основното образование*) Official Gazette of the Republic of Macedonia No. 103/2008, 33/2010, 116/2010, 156/2010, 18/2011, 51/2011, 100/2012, 24/2013, 41/2014, 116/2014, 135/2014, Constitutional Court Decisions: U.br. 212/2008 (01.04.2009), U.br. 202/2008 (15.04.2009), U.br.234/2008 (24.06.2009), U.br.226/2008 (01.07.2009). Article 51.

<sup>122</sup> At the present, there are: four primary schools for students with moderate intellectual disabilities; one elementary school for children with more severe intellectual disabilities; a primary school for blind and visual impaired children; a primary school for deaf and hearing impaired children; a primary school for students with serious physical disabilities; two secondary schools for students with moderate intellectual disabilities; a school for blind and partially blind students; a school for deaf and hard of hearing students; 80 special classes for pupils in regular primary schools; and two day care centres for young people with moderate or severe combined disabilities. These schools enrol in total about 1 700 students. Please see: Law on Primary Education (*Закон за основното образование*) Official Gazette of the Republic of Macedonia No. 103/2008, 33/2010, 116/2010, 156/2010, 18/2011, 51/2011, 100/2012, 24/2013, 41/2014, 116/2014, 135/2014, Constitutional Court Decisions: U.br. 212/2008 (01.04.2009), U.br. 202/2008 (15.04.2009), U.br.234/2008 (24.06.2009), U.br.226/2008 (01.07.2009). Article 186.

<sup>123</sup> Law on Higher Education (*Закон за високото образование*) Official Gazette of the Republic of Macedonia No. 35/08, 103/2008, 26/2009, 83/2009, 99/2009, 115/10, 17/2011, 51/2011, 123/2012, 15/2013, 24/2013, 41/2014, 116/2014, 130/2014; Constitutional Court Decision: U.br. 98/2011 (03.04.2011).

<sup>124</sup> Law on Higher Education (*Закон за високото образование*) Official Gazette of the Republic of Macedonia No. 35/08, 103/2008, 26/2009, 83/2009, 99/2009, 115/10, 17/2011, 51/2011, 123/2012, 15/2013, 24/2013, 41/2014, 116/2014, 130/2014; Constitutional Court Decision: U.br. 98/2011 (03.04.2011). Article 87.

<sup>125</sup> Law on Higher Education (*Закон за високото образование*) Official Gazette of the Republic of Macedonia No. 35/08, 103/2008, 26/2009, 83/2009, 99/2009, 115/10, 17/2011, 51/2011, 123/2012, 15/2013, 24/2013, 41/2014, 116/2014, 130/2014; Constitutional Court Decision: U.br. 98/2011 (03.04.2011). Article 108.

provided by the university).<sup>126</sup> It also lists special conditions for enrolment of students with a citizenship other than Macedonian.

Special curricula for students with disabilities are developed by the Department for Development of Education.<sup>127</sup> At present there is much stronger support for the segregated education of children with disabilities than for their inclusion in mainstream schools.<sup>128</sup> According to the Law on Primary Education, children with disabilities are entitled to shorter class time, a lower number of children per class and the engagement of specialists. In practice, just a few of the standards in the law are implemented.

In 2006, the Ombudsperson of the Republic of Macedonia (the Ombudsperson) prepared a special report on the inclusion of children with special needs in education.<sup>129</sup> This report underlines that the practical application of legal provisions entails a lot of problems and obstacles that do not allow for the provision of adequate and equal access to education for children with disabilities, thus practising this right often results in discrimination.<sup>130</sup>

There are separate secondary schools for children with special needs.<sup>131</sup> Secondary school students with 'special educational needs' are educated under adjusted programmes for job training.<sup>132</sup> A programme called 'Open the Windows' has run for several years now and aims to promote assistance technology for children with disabilities from primary school.<sup>133</sup> There are no specific articles that regulate the education of children with disabilities in ordinary secondary schools; these are out of the reach of children with disabilities.

#### - Trends and patterns regarding Roma pupils

In Macedonia, there are specific patterns existing in education regarding Roma pupils such as segregation.

---

<sup>126</sup> Law on Higher Education (*Закон за високото образование*) Official Gazette of the Republic of Macedonia No. 35/08, 103/2008, 26/2009, 83/2009, 99/2009, 115/10, 17/2011, 51/2011, 123/2012, 15/2013, 24/2013, 41/2014, 116/2014, 130/2014; Constitutional Court Decision: U.br. 98/2011 (03.04.2011). Article 150.

<sup>127</sup> Law on Higher Education (*Закон за високото образование*) Official Gazette of the Republic of Macedonia No. 35/08, 103/2008, 26/2009, 83/2009, 99/2009, 115/10, 17/2011, 51/2011, 123/2012, 15/2013, 24/2013, 41/2014, 116/2014, 130/2014; Constitutional Court Decision: U.br. 98/2011 (03.04.2011). Article 30.

<sup>128</sup> Nova Makedonija Newspaper (11.09.2009) Roma Pupils are Ghettoised in Bitola (*Се гетоизираат ромските ученици во Битола*), [www.novamakedonija.com.mk/NewsDetal.asp?vest=9119922592&id=9&setIzdanie=21785](http://www.novamakedonija.com.mk/NewsDetal.asp?vest=9119922592&id=9&setIzdanie=21785).

<sup>129</sup> Ombudsperson of the Republic of Macedonia (*Народен правобранител на Република Македонија*) Special Report of the Ombudsperson on the Inclusion of Children with Disabilities in Education (*Посебен извештај на народниот правобранител за вклученоста на децата со посебни потреби во образованието*), <http://ombudsman.mk/upload/documents/Posebni%20potrebi%20na%20decata1%20-mak.pdf>.

<sup>130</sup> There are cases of non-admittance of children with disabilities into regular primary education, or in some other cases these children were admitted at first, but after a certain period they were expelled, thus leaving their parents to cope with the children on their own. Teachers themselves have problems dealing with these children because they are not trained adequately to work with them and to find the most appropriate methods for including children with special needs in school activities.

<sup>131</sup> Law on Secondary Education (*Закон за средното образование*) Official Gazette of the Republic of Macedonia, No. 44/95, 24/96, 34/96, 35/97, 82/99, 29/2002, 40/2003, 42/2003, 67/2004, 55/2005, 113/2005, 35/2006, 30/2007, 49/2007, 81/2008, 92/2008, 33/10, 116/10, 156/10, 18/2011, 42/2011, 51/2011, 100/2012, 24/2013, 41/2014, 116/2014, 135/2014, Constitutional Court Decision: U.br. 355/1995 (20.03.1996), U.br. 210/2000 (16.05.2001), U.br. 83/2003 (19.11.2003), U.br. 31/2005 (15.06.2005), U.br. 102/2005 (21.12.2005), U.br. 226/2008 (01.07.2009). Article 43.

<sup>132</sup> Law on Secondary Education (*Закон за средното образование*) Official Gazette of the Republic of Macedonia, No. 44/95, 24/96, 34/96, 35/97, 82/99, 29/2002, 40/2003, 42/2003, 67/2004, 55/2005, 113/2005, 35/2006, 30/2007, 49/2007, 81/2008, 92/2008, 33/10, 116/10, 156/10, 18/2011, 42/2011, 51/2011, 100/2012, 24/2013, 41/2014, 116/2014, 135/2014, Constitutional Court Decision: U.br. 355/1995 (20.03.1996), U.br. 210/2000 (16.05.2001), U.br. 83/2003 (19.11.2003), U.br. 31/2005 (15.06.2005), U.br. 102/2005 (21.12.2005), U.br. 226/2008 (01.07.2009). Article 50.

<sup>133</sup> 'Open the Windows' website: <http://openthewindows.org>.

According to the data from the State Statistical Office, one in ten Roma children completes primary education (please also note that 95 % of the children on the streets are Roma children),<sup>134</sup> in spite of the fact that primary (as well as secondary) education is compulsory in the country. According to 2008 data from the United Nations Children's Fund (UNICEF), Roma children have the lowest level of educational achievement: 39 % of Roma do not attend primary school and the lowest proportion of children attending primary school is observed in the poorest wealth quintile (86.3 %), and among the Roma (61.1 %).<sup>135</sup>

In 2005, the policy document, 'Strategy for the Roma in the Republic of Macedonia' was adopted.<sup>136</sup> In this strategy, education for Roma was proclaimed a government priority. The strategy highlighted the following concerns with regard to the situation of the Roma population (of relevance for education): the poor economic and social position of a significant number of Roma families; the high percentage of children not attending preschool education; the small number of children attending elementary education; lack of adequate conditions in the homes; economic exploitation of children; lack of sufficient knowledge of Macedonian language; high number of children dropping out of education; and a lack of awareness for the need of education.<sup>137</sup> Some parents of Roma origin intentionally enrol their non-disabled children in special schools for children with moderate intellectual disabilities where they can learn crafts. The reasons for this include the fact that it is much easier for the children to complete these schools and find employment.<sup>138</sup>

According to the strategy document, segregation often occurs in the process of education. However, in spite of numerous inspections and public statements, no sanctions have been imposed in relation to segregation in schools. Eight Roma information centres were established to support the implementation of the strategy and to monitor, inter alia, this situation on the ground.<sup>139</sup> Many Roma NGOs are working on countering the issue of segregation in education. However, segregation continues to take place and is becoming even more visible with the increase in the number of Roma pupils.

A case was filed with the CPAD by the Helsinki Committee of the Republic of Macedonia in 2011 regarding the segregation of Roma children in schools in Bitola. After breaching all possible procedural deadlines, the CPAD finally decided this case in September 2014, and the applicants received the decision in December 2014. CPAD did not find discrimination on grounds of ethnicity in the case, nor did it find segregation. The CPAD actually found the situation to be a result of the parents' choice to register their children in a specific primary school, however it failed to state on what it bases its argument, and bluntly added that it 'further supports this argument' with a report from a person from another state institution who claims that this process is one of 'natural segregation'.<sup>140</sup> Although having deliberated on this case for over three years, the CPAD adds a surprisingly short elaboration on its opinion, the largest portion of which consists of a bullet point list of 14

---

<sup>134</sup> Institute on Human Rights (2013) Breaking the Wall of Silence, [www.ihr.org.mk/images/pub/covekovi-prava-web.pdf](http://www.ihr.org.mk/images/pub/covekovi-prava-web.pdf).

<sup>135</sup> UNICEF (2008) Children in FYR Macedonia – A Situation Analysis, [www.unicef.org/tfymacedonia/MK\\_SITAN\\_ENG.pdf](http://www.unicef.org/tfymacedonia/MK_SITAN_ENG.pdf).

<sup>136</sup> There are also several policy documents targeting Roma women. For more, please see MLSP website at: <http://mtsp.gov.mk/?ItemID=6FC822BBA79A61429117F41943673AE4>.

<sup>137</sup> Ministry of Labour and Social Policy (Министерство за труд и социјална политика) Strategy on Roma in the Republic of Macedonia (Стратегија за Ромите во Република Македонија) 2005 [www.mtsp.gov.mk/WBStorage/Files/strategija\\_romi.pdf](http://www.mtsp.gov.mk/WBStorage/Files/strategija_romi.pdf).

<sup>138</sup> Ministry of Labour and Social Policy (Министерство за труд и социјална политика) Strategy on Roma in the Republic of Macedonia (Стратегија за Ромите во Република Македонија) 2005, [www.mtsp.gov.mk/WBStorage/Files/strategija\\_romi.pdf](http://www.mtsp.gov.mk/WBStorage/Files/strategija_romi.pdf).

<sup>139</sup> For more information on the Roma Information Centres, please see Ministry of Labour and Social Policy website, <http://mtsp.gov.mk/?ItemID=16963527D912DC41B48380E0B6034274>.

<sup>140</sup> Commission for Protection against Discrimination (Комисија за заштита од дискриминација), Opinion of the Commission for Protection against Discrimination, 05.09.2014, [www.kzd.mk/mk/prestavki/2014/category/56-Етничка%20Припадност?download=209:07-80-05-09-2014-5](http://www.kzd.mk/mk/prestavki/2014/category/56-Етничка%20Припадност?download=209:07-80-05-09-2014-5).



letters/requests that it has sent and received while processing this case, one of which is a rather vague explanation of proceedings which states, 'numerous phone calls on the case topic with relevant sides and numerous meetings on the case topic'. There is no further elaboration as to whom the CPAD talked to or with whom and when they met, and what was discussed and possibly decided. It also disregards reports on Roma children in education and on segregation in education, including a statement from the director of the primary school saying that the parents of children from other ethnicities, although living in the school's region, choose to register their children in other primary schools in order to avoid sending them to school with Roma children.<sup>141</sup>

Many reports have been published on the issue of Roma education in the country — including an Open Society Institute (OSI) report,<sup>142</sup> Roma Education Fund reports,<sup>143</sup> a UNICEF situation analysis<sup>144</sup> and a UNICEF analysis of segregation in education<sup>145</sup>— with very similar conclusions on segregation and enrolment barriers. They find that the most significant problems in Roma education are similar to those faced by Roma throughout the Western Balkans. Critical issues include low enrolment, poor performance, and a high drop-out rate for Roma children, combined with in-school segregation and discrimination, referral to special schools, restricted access to preschool, and a lack of support for further education.<sup>146</sup>

The most recent study published in 2013 by the Institute for Human Rights, supported by the Roma Education Fund, looks at Roma children in primary and secondary education, noting that the problems range from general living conditions, to discrimination, up to clear examples of segregation (including making Roma children sit in the last rows in classes, complaints by parents from other ethnicities that they do not want their children to study with Roma children, even reporting getting lower grades with explicit comments by the teacher that the grade is lower because the student is of Roma ethnic origin).<sup>147</sup>

### **3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43)**

In Macedonia, national legislation includes access to and supply of goods and services as formulated in the Racial Equality Directive. The Anti-discrimination Law includes access to goods and services in the fields of the law's implementation (Article 4), and applies to all the grounds of the directives and more (Articles 3 and 5(3)), except for sexual orientation which is not explicitly included in this article or the law, although, as Article 3 is an open-ended provision and includes ratified international treaties as well as other grounds established under law, there is space to seek protection on this ground as well. It is also important to note that Article 11, which is part of the chapter on forms of discrimination, establishes that 'disabling or limiting the use of goods and services to persons or groups of persons on any of the grounds established in Article 5, point 3 of this law is discrimination'.

---

<sup>141</sup> Commission for Protection against Discrimination (*Комисија за заштита од дискриминација*), Opinion of the Commission for Protection against Discrimination, 05.09.2014, [www.kzd.mk/mk/prestavki/2014/category/56-Етничка%20Припадност?download=209:07-80-05-09-2014-5](http://www.kzd.mk/mk/prestavki/2014/category/56-Етничка%20Припадност?download=209:07-80-05-09-2014-5).

<sup>142</sup> Open Society Institute (2007) Equal Access to Quality Education for Roma, Volume 2: Croatia, Macedonia, Montenegro and Slovakia, [www.opensocietyfoundations.org/sites/default/files/equal\\_20071218.pdf](http://www.opensocietyfoundations.org/sites/default/files/equal_20071218.pdf).

<sup>143</sup> Roma Education Fund (2007) Advancing Education of Roma in Macedonia, [www.romaeducationfund.hu/sites/default/files/publications/macedonia\\_report.pdf](http://www.romaeducationfund.hu/sites/default/files/publications/macedonia_report.pdf).

<sup>144</sup> UNICEF (2008) Children in FYR Macedonia – A Situation Analysis, [www.unicef.org/tfymacedonia/MK\\_SITAN\\_ENG.pdf](http://www.unicef.org/tfymacedonia/MK_SITAN_ENG.pdf).

<sup>145</sup> UNICEF (2009) Multiculturalism and interethnic relations in education (*Мултикултурализмот и меѓуетничките односи во образованието*), [www.unicef.org/tfymacedonia/New\\_MKVersionsm2\(3\).pdf](http://www.unicef.org/tfymacedonia/New_MKVersionsm2(3).pdf).

<sup>146</sup> Roma Education Fund (2007) Advancing Education of Roma in Macedonia, [www.romaeducationfund.hu/sites/default/files/publications/macedonia\\_report.pdf](http://www.romaeducationfund.hu/sites/default/files/publications/macedonia_report.pdf).

<sup>147</sup> Institute on Human Rights (2013) Breaking the Wall of Silence, [www.ihr.org.mk/images/pub/covekovi-prava-web.pdf](http://www.ihr.org.mk/images/pub/covekovi-prava-web.pdf).



- Distinction between goods and services available publicly or privately

There are no specific articles forbidding discrimination concerning goods and services available to the public that make a distinction between the goods and services available to the public and those available privately.

The Law on Consumer Protection<sup>148</sup> notes that a merchant providing public services through a distribution network must allow users to join and use the network and e-services under non-discriminatory, previously known and agreed conditions.<sup>149</sup> There are no specific grounds for discrimination mentioned.

There has been a rise in the number of cases reported to the equality body in this field; in 2013, there were nine cases in relation to access to goods and services, whereas in 2014 the number rose to 22.<sup>150</sup>

### 3.2.10 Housing (Article 3(1)(h) Directive 2000/43)

In Macedonia, national legislation includes housing as formulated in the Racial Equality Directive. The Anti-discrimination Law clearly states that housing is an area to which the act applies (Article 4(5)), and this law includes all the grounds of the directives except for sexual orientation, which is not explicitly included in the article or the law, although, as Article 3 is an open-ended provision that includes ratified international treaties as well as other grounds established under law, there is space to seek protection on this ground as well. However, there is no legislation that covers selling or renting a piece of land or a building for housing purposes, or illegal forced evictions with regard to any of the grounds protected.

Under Article 104 of the Law on Housing,<sup>151</sup> a regulatory commission was established with a mandate, *inter alia*, to prevent discrimination in the field of housing,<sup>152</sup> however the provision does not contain any further explanations as to protective mechanisms, nor does it mention grounds of discrimination. Disability is only mentioned insofar as the manager of the building should know the standards and norms for accessibility for persons with disabilities in a residential facility (Article 19(12)) (under the same article, this can also be taken as imposing an obligation on her/him to initiate court procedures against the constructors for improper and incomplete execution of the appropriate actions).

The Law on Housing neither requires nor promotes the availability of housing that is accessible to the elderly. The article on types of apartments contains a special provision defining housing units for elderly and incapacitated people as units where such tenants get 24-hour assistance from an institution under the condition that these are architecturally adjusted as apartments for elderly (Article 7(3)), however it does not go beyond providing

<sup>148</sup> Law on Consumer Protection (*Закон за заштита на потрошувачите*) Official Gazette of the Republic of Macedonia No. 38/2004, 77/2007, 103/2008, 24/2011 and 164/2013.

<sup>149</sup> Law on Consumer Protection (*Закон за заштита на потрошувачите*) Official Gazette of the Republic of Macedonia No. 38/2004, 77/2007, 103/2008, 24/2011 and 164/2013. Article 119.

<sup>150</sup> One of the cases initially processed by the equality body, and later (March 2015), taken to court, concerned accessibility of pavements for persons with disability in the town of Delcevo. Both the equality body and the Delcevo court of first instance found discrimination. Commission for Protection Against Discrimination (*Комисија за заштита од дискриминација*) 2014 Annual Report of the Commission for Protection Against Discrimination (2015), [www.sobranie.mk/materialdetails.nsp?materialId=d93111d8-975d-471e-be2c-e07a2df372f3](http://www.sobranie.mk/materialdetails.nsp?materialId=d93111d8-975d-471e-be2c-e07a2df372f3). pp.14; Primary Court Delcevo (*Основен суд Делчево*). Judgment P-4.br.14/2014 (20.03.2015).

<sup>151</sup> Law on Housing (*Закон за домување*) Official Gazette of the Republic of Macedonia No. 99/2009, 57/2010, 36/2011, 54/2011, 13/2012, 55/2013, 163/2013, 42/2014 and 199/2014, Constitutional Court Decisions: U.br. 246/2009 (14.07.2010), U.br.14/2010 (15.09.2010).

<sup>152</sup> Law on Housing (*Закон за домување*) Official Gazette of the Republic of Macedonia No. 99/2009, 57/2010, 36/2011, 54/2011, 13/2012, 55/2013, 163/2013, 42/2014 and 199/2014, Constitutional Court Decisions: U.br. 246/2009 (14.07.2010), U.br.14/2010 (15.09.2010). Article 104.

for the possibility of establishing such a unit and the issue has no further clarification. No assessment on the implementation of or compliance with this provision has been conducted yet.

- Trends and patterns regarding housing segregation for Roma

In Macedonia there are patterns of housing segregation and discrimination against the Roma. Roma are primarily concentrated in 10 municipalities, and the Roma population is usually concentrated in one part of the town,<sup>153</sup> with 95 % of Roma living in towns, while only 5 % live in villages.<sup>154</sup> About 70 % of Roma do not have any proof of ownership over their property.

There are no official statistics on racist incidents and discrimination in housing against Roma. However, the media and NGOs report cases of institutional violence and assault against Roma,<sup>155</sup> particularly police raids and evictions (after the Roma are accused of residing in unlawfully built buildings), that deprive the Roma of their housing, and do not provide them with alternative accommodation.<sup>156</sup>

An older report on the conditions of housing and health in the Roma community, which is to date the one with most robust and primary data, states that Roma families often live in badly built, sub-standard houses, without in-house water supply and sanitation. Data show that 7.25 % of the families live in improvised houses built from non-construction materials (cardboard, nylon, tin, plastic, etc.), 29.5 % in dilapidated and montage houses, and only 63 % in solid-construction houses.<sup>157</sup> More than 10 % of the families don't have access to any kind of water supply. The sewerage conditions are extremely bad, with an estimate of 50 % of families having no access to proper solution for the discharge of the sewage and communal water.<sup>158</sup>

The UNICEF study, 'Children in FYR Macedonia – a situation analysis'<sup>159</sup> claims, that Roma generally live in informal settlements on the outskirts of urban centres and that this further obstructs their access to basic social services. In general, while many Macedonians live in privately owned apartments (former state-owned public housing that was made available for sale), some 15 to 25 % of the population live in about 100 informal urban settlements. According to the same study,

'there has been no research to date on how housing conditions in Macedonia impact on children, but official government statistics suggest that 95 % (or 47,408) of Roma live in informal settlements located on the peripheries of Macedonia's cities. These settlements are typified by higher levels of unemployment, crime, illiteracy, juvenile

<sup>153</sup> CRPRC Studiorum and Mesecina (ЦРПС Студиорум и Месечина), Report on the condition of housing and health among the Roma Community in Macedonia, [www.studiorum.org.mk/?p=41](http://www.studiorum.org.mk/?p=41).

<sup>154</sup> Samet Skenderi (2014) Housing of Roma and Social Intergration in the Republic of Macedonia (Домување на ромите и социјална интеграција во Република Македонија). p. 7.

<sup>155</sup> National Roma Centrum (Национален ромски центар) Report to the Committee on Economic, Social and Cultural Rights of the United Nations (Извештај до комитетот за економски, социјални и културни права на Обединетите нации), [www.nationalromacentrum.org.mk/publikacii/istrazuvanja/izvestaj-do-komiteto-za-ekonomski/](http://www.nationalromacentrum.org.mk/publikacii/istrazuvanja/izvestaj-do-komiteto-za-ekonomski/); Kanal 5, Discoteque Kalipso Prohibits Entrance to Roma (Во дискотеката Калипсо во Берово е забранет влезот за Ромите) [Cache]; A1, Entrance Banned for Roma at the New Aqua Park (Забранет влез за Роми во новиот Аква парк) [31.07.2013].

<sup>156</sup> Helsinki Committee for Human Rights of the Republic of Macedonia (2014) Assessment of the Progress of the Roma Decade (Проценка на напредокот на декадата на ромите), [www.mhc.org.mk/?ItemID=3DE4E8C7F50F194281021DB76FAD9E1E](http://www.mhc.org.mk/?ItemID=3DE4E8C7F50F194281021DB76FAD9E1E).

<sup>157</sup> Roma houses are small, planned to serve only elementary needs, with housing space of less than 5 m<sup>2</sup> per member for more than 50 % of the families. About 40 % of the families live in shared houses. Only 16 % of the houses have a toilet and bathroom in the house; 77 % of the families use a toilet in the yard and 58 % use tap in the yard.

<sup>158</sup> CRPRC Studiorum and Mesecina (ЦРПС Студиорум и Месечина), Report on the condition of housing and health among the Roma Community in Macedonia, [www.studiorum.org.mk/?p=41](http://www.studiorum.org.mk/?p=41).

<sup>159</sup> UNICEF (2008) Children in FYR Macedonia – A Situation Analysis, [www.unicef.org/tfyrmacedonia/MK\\_SITAN\\_ENG.pdf](http://www.unicef.org/tfyrmacedonia/MK_SITAN_ENG.pdf).

delinquency, drug abuse and other social problems, all of which can negatively affect children's social development.'

## 4 EXCEPTIONS

### 4.1 Genuine and determining occupational requirements (Article 4)

In Macedonia national legislation provides for an exception for genuine and determining occupational requirements.

The Anti-discrimination Law contains a general clause stating that difference of treatment that is based on a characteristic related to any of the discriminatory grounds will not constitute discrimination if, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement does not overstep the level necessary for implementation (Article 14(2)).

Article 8 of the Law on Labour Relations<sup>160</sup> uses wording on exemptions from occupational requirements in the context of access to labour, which corresponds to the language of Article 4 of Directive 2000/43/EC. Notably, the law states that

'it will not be considered discrimination making a difference, exclusion or giving priority in terms of a certain thing, when the nature of the work is such or the work is performed in such conditions that the characteristics associated with some of the cases Article 6 of this law are essential and decisive conditions for performing the work, providing that the objective to be achieved is justified and the requirement has been carefully considered.'<sup>161</sup>

Although a careful consideration of the requirement (*одмерен*) is not the same as being proportionate (*пропорционален*), there is room to interpret it as such.

The grounds covered by the Law on Labour Relations are broader than the protected grounds of the two directives, and the differences in treatment in cases of determining occupational requirements need not only be based on the five grounds mentioned in the directives, but can cover all protected grounds.<sup>162</sup>

### 4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)

- Exception for employers with an ethos based on religion or belief

In Macedonia national law provides for an exception for employers with an ethos based on religion or belief. The Anti-discrimination Law includes such an exception fully in compliance with Article 4(2) of Directive 2000/78 (Article 14(3-4)). However, under this same law it does not constitute discrimination if members of duly registered churches and religious communities (this also applies to NGOs, political parties, trade unions and other

<sup>160</sup> Law on Labour Relations (Закон за работните односи) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013.

<sup>161</sup> Law on Labour Relations (Закон за работните односи) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. Article 8.

<sup>162</sup> The directives' grounds of race, belief, disability, age and sexual orientation are all covered, and the Law on Labour Relations goes beyond them in an open-ended list: sex, health condition, membership of a trade union, social origin, position of the family, property, or other personal circumstances.

organisations) act in accordance with their belief (Article 14(5)), which goes beyond religion and into the realm of any belief which they might have in their founding and internal acts, programmes or statutes.

The Law on the Legal Position of Churches, Religious Communities and Religious Groups<sup>163</sup> contains no specific articles on employment and labour relations. Other laws also do not include specific provisions on exemptions for employers with an ethos based on religion or belief. However, in the exemptions from prohibition of discrimination in the Law on Labour Relations there is sufficient space for churches, religious communities and groups to be exempt in accordance with Article 4(2) of Directive 2000/78 (Article 8).

- Conflicts between rights of organisations with an ethos based on religion or belief and other rights to non-discrimination

In Macedonia there are specific provisions or case law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination.

Laws that regulate the founding and eligible activities of associations (civil society organisations, foundations,<sup>164</sup> as well as religious communities and religious groups) regulate this issue, stating that an association will cease to exist if they engage in such actions contrary to the Constitution and laws, and violating other people's rights, which includes the right to non-discrimination.

In the Anti-discrimination Law there is no such anti-conflict provision. However, it should be noted that it would not constitute discrimination if members of duly registered religions (this also applies to NGOs, political parties, trade unions and other organisations) act in accordance with their belief (Article 14(5)). This would mean that it excuses these members even if, in doing so, they are discriminating on the grounds mentioned in Article 3, however there is no case law on this provision yet. It also declares that it will not constitute discrimination when a marriage, out-of-wedlock union and family are regulated exclusively as unions of opposite sexes i.e. of one man and one woman (Article 14(6) of the Anti-discrimination Law).

In the Law on the Legal Position of Churches, Religious Communities and Religious Groups, there are no specific articles related to such conflicts. So far there is no case law on the issue. However, the Macedonian Orthodox Church and the Islamic Religious Community have very clearly expressed their opinions that sexual orientation should not be mentioned in the anti-discrimination legislation.<sup>165</sup> Also, the end of 2010 saw an initiative on their behalf to open a cycle of constitutional changes that should, in their words, strengthen the traditional form of the family, but which are clearly intended to target homosexuals. Notably, these changes state that a marriage is a union of one woman and one man, as well as to insert provisions that will limit the possibility for homosexuals to adopt children. Draft amendments to the Constitution entered parliamentary procedure, with a definition of marriage as a union of one man and one woman, but also of unmarried couples ('out-of-wedlock communities') defined in the same manner. However, the part on unmarried couples was later deleted, and the amendment referring to marriage is still pending before the parliament.

---

<sup>163</sup> Law on the Legal Position of the Church, Communities of Faith and Religious Groups (*Закон за правна положба на црква, верска задница и религиозна група*) Official Gazette of the Republic of Macedonia No. 113/07.

<sup>164</sup> Law on Associations and Foundations (*Закон за здруженија и фондации*) Official Gazette of the Republic of Macedonia No.52/2010, 135/2011. Article 4.

<sup>165</sup> Dnevnik Newspaper, Oriented Towards Sexual Discrimination (*Ориентирани кон сексуална дискриминација*) [www.dnevnik.com.mk/default.asp?ItemID=2747A65351BB6544AC31869A1784FEDC](http://www.dnevnik.com.mk/default.asp?ItemID=2747A65351BB6544AC31869A1784FEDC).

- Religious institutions affecting employment in state funded entities

In Macedonia religious institutions are not permitted to select people (on the basis of their religion) to hire or to dismiss from a job when that job is in a state entity, or in an entity financed by the state. However, there was an attempt in that direction with the introduction of religious education into state elementary schools. Without any legal basis, the two main religious groups – the Macedonian Orthodox Church and Islamic Religious Community – selected the teachers. However the Constitutional Court, acting upon a petition by NGOs, declared the introduction of religious education null and void.<sup>166</sup>

#### **4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)**

In Macedonia national legislation provides for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78).

The Law on Army Service establishes different age limitations, and disability is a ground for losing military status. Professional soldiers must not be older than 26 years of age<sup>167</sup> at the day of the closing of the recruitment advert. The contract is renewable every three years up to a maximum age of 45.<sup>168</sup> Junior officers must not be older than 25 years of age (or 33 years of age, depending on experience, qualifications, as well as previous status in the armed forces, if any),<sup>169</sup> or senior officers older than 30 years of age when entering the Army (or 35 years of age if coming to the senior officer position from a junior officer position).<sup>170</sup> The upper limit for civilian personnel is 40 years of age. The retirement age for active military and civilian personnel is 25 years of pension insurance, out of which 15 have been spent in army service (if this has not been fulfilled, and army service has ended, the Ministry of Defence must provide for further employment or education to allow the person to accumulate the years necessary to reach retirement age).<sup>171</sup>

According to the 2014 amendments to this law, after 45 years of age, professional soldiers will be transferred to an appropriate position in the central state or municipal administration, under a contract with an unlimited duration. There is a retroactive application for this provision, according to which it also applies to professional soldiers whose army service ceased under the law previously due to reaching the maximum age limit of 35 or 38 years of age, if they have an unemployed person status up to 31 December 2013.<sup>172</sup>

<sup>166</sup> Constitutional Court Decision U.No. 202/2008 (15.04.2009).

<sup>167</sup> Law on Army Service (*Закон за служба во армијата*) Official Gazette of the Republic of Macedonia No. 36/2010, 23/2011, 47/2011, 148/2011, 55/2012, 29/2014, Constitutional Court Decision: U.br.60/2010 (22.09.2010). Article 36.

<sup>168</sup> Law on Army Service (*Закон за служба во армијата*) Official Gazette of the Republic of Macedonia No. 36/2010, 23/2011, 47/2011, 148/2011, 55/2012, 29/2014, Constitutional Court Decision: U.br.60/2010 (22.09.2010). Articles 40, 42, 43.

<sup>169</sup> Law on Army Service (*Закон за служба во армијата*) Official Gazette of the Republic of Macedonia No. 36/2010, 23/2011, 47/2011, 148/2011, 55/2012, 29/2014, Constitutional Court Decision: U.br.60/2010 (22.09.2010). Arts.34, 35.

<sup>170</sup> Law on Army Service (*Закон за служба во армијата*) Official Gazette of the Republic of Macedonia No. 36/2010, 23/2011, 47/2011, 148/2011, 55/2012, 29/2014, Constitutional Court Decision: U.br.60/2010 (22.09.2010). Article 32.

<sup>171</sup> Law on Army Service (*Закон за служба во армијата*) Official Gazette of the Republic of Macedonia No. 36/2010, 23/2011, 47/2011, 148/2011, 55/2012, 29/2014, Constitutional Court Decision: U.br.60/2010 (22.09.2010). Article 220 (para.2).

<sup>172</sup> Law on Army Service (*Закон за служба во армијата*) Official Gazette of the Republic of Macedonia No. 36/2010, 23/2011, 47/2011, 148/2011, 55/2012, 29/2014, Constitutional Court Decision: U.br.60/2010 (22.09.2010). Arts.40-a, 40-6.

People with disability are prevented from entering the Army since general and specific health and good physical condition are unavoidable prerequisites.<sup>173</sup>

Even if the disability is a result of army service it would still lead to loss of military status. The best scenario is that the person could remain as civilian personnel retaining the salary received and rank held prior to the health degradation (or would drop one rank down, if the same rank could not be awarded).<sup>174</sup> An extra three days of vacation are provided for personnel with a disability or a person taking care of a disabled child.<sup>175</sup>

Ethnicity is dealt with in law in several respects. Persons belonging to minorities should be adequately and fairly represented in the Army providing that they are duly trained and competent.<sup>176</sup> Public vacancy ads need to be published in, *inter alia*, at least one newspaper printed in a language used by at least 20 % of the population in the country.<sup>177</sup> With regard to the oath, the document to be signed is both in Macedonian and in the language of that person.<sup>178</sup>

#### **4.4 Nationality discrimination (Article 3(2))**

##### **a) Discrimination on the ground of nationality**

In Macedonia national law includes exceptions relating to difference of treatment based on nationality. The Constitution does not clearly distinguish between nationality (in the meaning of state citizenship) and ethnic affiliation. The Constitution states that

'citizens of the Republic of Macedonia have citizenship of the Republic of Macedonia [and it declares] the free expression of national identity [as] a fundamental value'.<sup>179</sup>

However, in later articles, nationality, rather than ethnicity, is mentioned as a ground of discrimination (Articles 9, 20, 54, 110). The words ethnic and ethnicity are not mentioned in the Constitution at all. The Constitution makes it clear that the rights and freedoms enshrined in it are reserved for citizens, and that a foreigner enjoys freedoms and rights guaranteed by the Constitution only under conditions regulated by law and international agreements. In this context, the term discrimination on grounds of nationality in Macedonian law actually refers to ethnic discrimination.

In Macedonia, nationality (as in citizenship) is explicitly mentioned as a protected ground in national anti-discrimination law. Nationality understood as origin from another country is not covered by the Anti-discrimination Law. However, citizenship, understood as the

<sup>173</sup> Law on Army Service (*Закон за служба во армијата*) Official Gazette of the Republic of Macedonia No. 36/2010, 23/2011, 47/2011, 148/2011, 55/2012, 29/2014, Constitutional Court Decision: U.br.60/2010 (22.09.2010). Arts.31, 202-210.

<sup>174</sup> Law on Army Service (*Закон за служба во армијата*) Official Gazette of the Republic of Macedonia No. 36/2010, 23/2011, 47/2011, 148/2011, 55/2012, 29/2014, Constitutional Court Decision: U.br.60/2010 (22.09.2010). Article 78.

<sup>175</sup> Law on Army Service (*Закон за служба во армијата*) Official Gazette of the Republic of Macedonia No. 36/2010, 23/2011, 47/2011, 148/2011, 55/2012, 29/2014, Constitutional Court Decision: U.br.60/2010 (22.09.2010). Article 98 (para.2).

<sup>176</sup> Law on Army Service (*Закон за служба во армијата*) Official Gazette of the Republic of Macedonia No. 36/2010, 23/2011, 47/2011, 148/2011, 55/2012, 29/2014, Constitutional Court Decision: U.br.60/2010 (22.09.2010). Article 30 (para.5).

<sup>177</sup> Law on Army Service (*Закон за служба во армијата*) Official Gazette of the Republic of Macedonia No. 36/2010, 23/2011, 47/2011, 148/2011, 55/2012, 29/2014, Constitutional Court Decision: U.br.60/2010 (22.09.2010). Article 39 (para.2).

<sup>178</sup> Law on Army Service (*Закон за служба во армијата*) Official Gazette of the Republic of Macedonia No. 36/2010, 23/2011, 47/2011, 148/2011, 55/2012, 29/2014, Constitutional Court Decision: U.br.60/2010 (22.09.2010). Article 7 (para.2).

<sup>179</sup> Constitution of the Republic of Macedonia (*Устав на Република Македонија*). Official Website of the Assembly of the Republic of Macedonia. [www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx](http://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx). Arts.4,6.

legal link of a person with a certain country, is part of the grounds covered by the Anti-discrimination Law (Article 3).<sup>180</sup> Although not explicitly referred to, the same would be true for stateless persons.

b) Relationship between nationality and 'race or ethnic origin'

Nationality understood as origin from another country is not covered by the Anti-discrimination Law. However, citizenship, understood as the legal link of a person with a certain country, is part of the grounds covered by the Anti-discrimination Law (Article 3).<sup>181</sup> Although not explicitly referred to, the same would be true for stateless persons.

The lack of clarity deepens in some laws that refer to nationality and ethnicity as different grounds for discrimination.<sup>182</sup> No definition is provided, which also adds to the confusion of the terms, since in some laws the term 'national belonging' is used.<sup>183</sup> The courts consistently use the terms 'foreigner' and 'foreign' when referring to nationals of another country.

#### **4.5 Work-related family benefits (Recital 22 Directive 2000/78)**

a) Benefits for married employees

In Macedonia it would not constitute unlawful discrimination in national law if an employer only provides benefits to those employees who are married.

Macedonian legislation does not mention the right of employers to provide benefits solely to a certain category of employees (such as those married or with children). However, the constitutional provision under which the Republic provides particular care and protection for the family<sup>184</sup> could be interpreted as opening space for, *inter alia*, such privileges.<sup>185</sup> An addition to this argumentation is the provision that is part of an article on unequal treatment that will not be considered as discrimination, in the Anti-discrimination Law, which includes the regulation of the family, marriage, and out of wedlock partnerships as limited to opposite sex partners (Article 15(6)).

b) Benefits for employees with opposite-sex partners

In Macedonia it would not constitute unlawful discrimination in national law if an employer only provides benefits to those employees with opposite-sex partners. Same-sex partnership is not recognised under Macedonian legislation, while the Law on Family and Marriage clearly states that marriage is a union between a man and a woman, and the same applies for unmarried couples recognised under this law. There has not been a case on these issues. Moreover, the Anti-discrimination Law provides as part of the article on unequal treatment that will not be considered as discrimination, the regulation of the family, marriage, and out of wedlock partnerships as limited to opposite sex partners (Article 15(6)).

---

<sup>180</sup> However, please see the exceptions in relation to nationality mentioned below.

<sup>181</sup> However, please see the exceptions in relation to nationality mentioned below.

<sup>182</sup> For example, Article 3 of the Law on Voluntary Fully Pension Insurance, Article 20 of the Law on Social Protection.

<sup>183</sup> Article 6 of the Law on Primary Education and Article 6 of the Law on Labour Relations.

<sup>184</sup> Constitution of the Republic of Macedonia (*Устав на Република Македонија*). Official Website of the Assembly of the Republic of Macedonia. [www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nsp](http://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nsp?lang=mk). Article 40.

<sup>185</sup> One needs to bear in mind here that family is not defined in the Constitution, but it is defined in the Law on Family as a community of parents and children and/or other relatives, provided that they live in the same household (Article 2(1); Law on Family).



#### 4.6 Health and safety (Article 7(2) Directive 2000/78)

##### a) Exceptions in relation to disability and health/safety

In Macedonia there are no exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78). The anti-discrimination legislation does not provide for specific exceptions in relation to disability in the context of health and safety regulations similar to the provisions of Article 7(2) of Directive 2000/78. However, the general exception of objective and justified limitation, allowed for by Article 8 of the Law on Labour Relations, could be applicable.

This article states that

‘it will not be considered discrimination making a difference, exclusion or giving priority in terms of a certain thing, when the nature of the work is such or work is performed in such conditions that the characteristics associated with some of the cases in Article 6 of this law are an essential and decisive condition for performing the work, providing that the objective to be achieved is justified and the requirement is carefully considered.’<sup>186</sup>

However, aside from this, issues of dress or personal appearance (turbans, hair, beards, jewellery, etc.) are not subject to special regulation in relation to health and safety, meaning that general provisions and principles in deciding a discrimination case will apply.

The Law on Labour Relations does not specify exceptions in relation to health and safety on any other ground, thus the legitimacy and proportionality test indicated in the Law on Labour Relations would be applicable for exceptions based on dress codes or religious tenets (Article 8). However, the law does provide for other health and safety related special protective measures in relation to employees under 18 years of age, as well as for older employees<sup>187</sup> (over 57 years of age for women and 59 years of age for men). The protection encompasses hours of work, night work, work in special conditions and supplementary vacation (for workers under 18) and prohibition of overtime work and night shifts (for older workers), as well as other special measures provided in this and other laws.<sup>188</sup> There are also exceptions for protective measures related to pregnancy and parenting.<sup>189</sup>

---

<sup>186</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. Article 8.

<sup>187</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. Chapter XV.

<sup>188</sup> Please see Charter XIII: Protection of Workers under 18 Years, and Chapter XV: Special protection of older workers of: Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013.

<sup>189</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. Article 161.

## **4.7 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)**

### **4.7.1 Direct discrimination**

In Macedonia national law provides an exception for direct discrimination on age. The Anti-discrimination Law contains a provision that is in line with the test required in Article 6 of Directive 2000/78 (Article 14(9)). The Law on Labour Relations does not mention specific exceptions concerning discrimination on the ground of age that relate to the wording of Article 6 of Directive 2000/78. However, the general exception laid out in Article 8 of the Law on Labour Relations could be used to justify such discrimination. The Law on Labour Relations could be interpreted more widely to give the employer the option of setting specific conditions connected with the age of the employee. It states that at the time of signing of the contract the applicant is obliged to submit evidence to the employer of capability to fulfil the terms of the contract (Article 26).

- Justification of direct discrimination on the ground of age

In Macedonia it is possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age (Article 14(8 and 9), Article 15(4)).

a) Permitted differences of treatment based on age

In Macedonia national law permits differences of treatment based on age for any activities within the material scope of Directive 2000/78. The Anti-discrimination Law contains a clause that is in line with the test required in Article 6 of Directive 2000/78 (Article 14(9)). The Law on Labour Relations provides for specific protective measures in relation to employees younger than 18, as well as for older employees (over 57 years of age for women and 59 years of age for men). The protection encompasses hours of work, night work, work in special conditions and supplementary vacation (for workers under 18) and prohibition of overtime work and night shifts (for older workers), as well as other special measures provided by this and other laws.<sup>190</sup>

b) Occupational pension schemes' fixed ages for admission or entitlements

In Macedonia national law allows occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by article 6(2). The Anti-discrimination Law contains a clause that allows for occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits (Article 14(9)).

The pension system is composed of three pillars established by three laws: the Law on Voluntary Fully Funded Pension Insurance, the Law on Pension and Disability Insurance, and the Law on Mandatory Fully Funded Pension Insurance. The Law on Pension and Disability Insurance<sup>191</sup> establishes the general age of retirement, which is 64 years of age for men and 62 years of age for women. At least 15 years of pension contributions (i.e. working years covered by pension insurance) is also required (Article 18).

---

<sup>190</sup> Charter XIII: Protection of Workers under 18 Years, and Chapter XV: Special protection of older workers. Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013.

<sup>191</sup> Law on Pension and Disability Insurance (*Закон за пензиско и инвалидско осигурување*) Official Gazette of the Republic of Macedonia No. 98/2012, 166/2012, 15/2013, 170/2013, 43/2014, 44/2014, 97/2014, 113/2014, 160/2014, 188/2014.

#### **4.7.2 Special conditions for young people, older workers and persons with caring responsibilities**

In Macedonia there are special conditions set by law for older and younger workers in order to promote their vocational integration, and for persons with caring responsibilities to ensure their protection.

In the Anti-discrimination Law there is a general clause making an exception in relation to special protection of parentless children and of single parents (Article 15(7)). Although the term 'parentless children' should mean persons up to 18 years of age, it is also used in the context of protective measures once those people have reached adulthood (such as priority housing and employment).

The Law on Labour Relations provides for specific protective measures in relation to employees younger than 18 years of age.<sup>192</sup> The protection encompasses hours of work, night work, work in special conditions and supplementary vacation. It allows for providing special protection for older workers (Article 179). The same law restricts overtime and night work for older workers (Article 180). The same restrictions apply to persons with caring responsibilities for children not older than seven years of age.<sup>193</sup>

#### **4.7.3 Minimum and maximum age requirements**

In Macedonia there are exceptions permitting minimum and maximum age requirements in relation to access to employment (notably in the public sector) and training.

The Anti-discrimination Law makes two provisions exempting discrimination with regard to minimum age in relation to professional requirements and career advancement as well maximum age for recruitment for, as stated in law, the need for rational time limitations connected to retirement and stipulated by law (Article 14 (8 and 9)).

Law on Labour Relations establishes 15 years of age as the minimum age for employment (Article 250). There is a general prohibition on the employment of children under 15 years of age, except for recording films, preparing and performing arts, stage and other similar works (cultural, artistic, sports and advertising activities). A special procedure and approval is required for this. There are also special provisions for the work of students (as practical work experience) and for apprentices.<sup>194</sup>

---

<sup>192</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. Charter XIII.

<sup>193</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. Article 164.

<sup>194</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. Article 251.

#### 4.7.4 Retirement

##### a) State pension age

In Macedonia there is state pension age, at which individuals must begin to collect their state pensions.

The Law on Pension and Disability Insurance<sup>195</sup> establishes the general pension age as 64 years of age (for men) or 62 years of age (for women) with at least 15 years of pension contributions accrued.<sup>196</sup> If someone chooses to continue working, they are not entitled to receive a pension; pension payments can only start after a person ceases working. The Law on Pension and Disability Insurance provides for different criteria for the calculation of pensions in special cases.<sup>197</sup> According to this law, pension and disability insurance rights depend on wages earned and the total length of contributions. The amount of the awarded age pension depends on the monthly average wage, which determines the pension base, while the percentage of the pension is determined according to the length of pension contributions.

##### b) Occupational pension schemes

In Macedonia there is a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. Individuals who reach the pensionable age but want to work longer can continue if their employers agree, but not after the age of 65 (women) and 67 (men).<sup>198</sup>

##### c) State imposed mandatory retirement ages

In Macedonia there is a state-imposed mandatory retirement age. The state-imposed retirement age is mandatory. Under the Law on Labour Relations, Article 104, when an employee reaches the age of 64, but wants to work longer, s/he can continue to do so, but only until the age of 65 and 67 for women and men respectively.<sup>199</sup> There are no sanctions in the Law on Labour Relations tied to a breach of this provision. Under the Law on Pension

---

<sup>195</sup> Law on Pension and Disability Insurance (*Закон за пензиско и инвалидско осигурување*) Official Gazette of the Republic of Macedonia No.98/2012, 166/2012, 15/2013, 170/2013, 43/2014, 44/2014, 97/2014, 113/2014, 160/2014, 188/2014.

<sup>196</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. Article 104.

<sup>197</sup> The standard calculation system is given in articles 18 and 18-a of the Law on Pension and Disability Insurance. Source: Law on Pension and Disability Insurance (*Закон за пензиско и инвалидско осигурување*) Official Gazette of the Republic of Macedonia No.98/2012, 166/2012, 15/2013, 170/2013, 43/2014, 44/2014, 97/2014, 113/2014, 160/2014, 188/2014.

<sup>198</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. Article 104.

<sup>199</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. Article 104.

and Disability Insurance, the age set for acquiring the right to a pension by age remains as 62 for women and 64 for men.<sup>200</sup>

d) Retirement ages imposed by employers

In Macedonia national law does not permit employers to set retirement ages by contract, collective bargaining or unilaterally. According to the Law on Labour Relations, individual employment contracts or collective agreements may determine rights for workers that are more favourable than those determined by law (Article 12).<sup>201</sup> The same article stipulates that employers cannot include clauses introducing fewer rights than those established in the Constitution and law. National collective agreements for the public sector and the economy do not mention reductions or expansions of the pensionable age in any sector.

e) Employment rights applicable to all workers irrespective of age

General anti-discrimination articles do not include any provisions on different treatment in relation to protection against dismissal on grounds of age. The Law on Labour Relations' protection against dismissal applies to all workers irrespective of age. If the employee has reached the standard pensionable age and has contributed the required number of years of contributions to state pension schemes, the employer can ask for termination of employment even if the employee has not filed a request for retirement or does not want to retire.

f) Compliance of national law with CJEU case law

In Macedonia national legislation is in line with the CJEU case law on age regarding compulsory retirement. However, the issue of mandatory retirement ages has not been a subject of wider discussions as yet (nor have EU Directives and CJEU case-law been discussed in this context).

#### 4.7.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Macedonia national law is silent on permitting age or seniority to be taken into account in selecting workers for redundancy.

b) Age taken into account for redundancy compensation

In Macedonia national law does provide compensation for redundancy, and it is not affected by the age of the worker.

#### 4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

In Macedonia national law includes exceptions that seek to rely on Article 2(5) of the Employment Equality Directive. In the Anti-discrimination Law there is one exception of this type, which concerns freedom of speech, public appearance, thought and public information. The provision states that 'the exercise of the constitutionally guaranteed

<sup>200</sup> Law on Pension and Disability Insurance (*Закон за пензиско и инвалидско осигурување*) Official Gazette of the Republic of Macedonia No.98/2012, 166/2012, 15/2013, 170/2013, 43/2014, 44/2014, 97/2014, 113/2014, 160/2014, 188/2014. Article 18.

<sup>201</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013.

principle of freedom of speech, public appearance, opinion and public information' will not be deemed to be discrimination (Article 14(7)). No related case law exists thus far.

#### **4.9 Any other exceptions**

In Macedonia, other exceptions to the prohibition of discrimination (on any ground) provided in national law include those that are considered as protective mechanisms of groups, and are established in Article 15 of the Anti-discrimination Law. Article 15 states that

'the following shall not be deemed to be discrimination: the measures provided for in the Law on Employment Promotion (Article 15(2)), the measures for protection of the specifics and identity of the persons belonging to ethnic, religious or linguistic minorities and their right to maintain and develop their own identity individually or in a community with other members of their group as well as to stimulate conditions for promotion of that identity (Article 15(8)); and the special measures to benefit the persons or groups placed in a less favourable position as a result of any of the discriminatory grounds, for the purpose of equalising their opportunities, as long as those measures are necessary (Article 15(6))'.<sup>202</sup>

---

<sup>202</sup> Law on Prevention and Protection against Discrimination (*Закон за спречување и заштита од дискриминација*) Official Gazette of the Republic of Macedonia No.50/10, 44/2014, Const.Ct. Decision: У.бр.82/2010 (15.09.2010).

## **5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)**

### **a) Scope for positive action measures**

In Macedonia positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation is provided for in national law.

National legal and policy frameworks provide for positive actions. The main emphasis is placed on positive action with respect to ethnic origin, disability and age. It does not provide for positive action with regard to religion or belief, or sexual orientation. Although beyond the scope of this report, it is also worth noting that there are public policies on positive actions pertaining to gender equality.

In the Anti-discrimination Law there is a special provision in Article 13 named 'affirmative measures' that corresponds to the directive term 'positive action'. This article encompasses measures to eliminate or reduce factual inequality in favour of: (1) a person, group of persons or community; and (2) marginalised groups. People with disabilities are not specifically mentioned in this article as in Directive 2000/78, however, there is no basis for preventing them from being covered by the provision.

Ethnic origin seems to be the dominant ground for undertaking positive action, and has its basis in the 2001 amendments to the Constitution, which were tailored according to the Ohrid Framework Agreement (a political agreement ending the 2001 conflict). Several institutions are tasked to ensure the proper implementation of these measures, the main ones being the Secretariat for Implementation of the Ohrid Framework Agreement, the Committee for Inter-Community Relations and the Agency for Realisation of the Rights of the Communities. The Committee for Inter-Community Relations considers issues of inter-community relations in the Republic and makes appraisals and proposals for their solution, and can propose positive action measures to Parliament, which decides in plenary on such issues. The Parliament is obliged to take into consideration the appraisals and proposals of the committee and to make decisions regarding them. In the event of a dispute among members of the Parliament regarding the application of the voting procedure specified in Article 69(2), the committee will decide by majority vote whether the procedure applies. The Committee for Inter-Community Relations consists of seven members from each of the ranks of the ethnic Macedonians and ethnic Albanians within the Parliament, and five members from among the ethnic Turks, Serbs, Vlachs, Roma and Bosniaks. The members of the Committee are elected by the Parliament.

Political participation of Roma has changed a lot in the past 10 years, partly as a result of the Ohrid Framework Agreement and partly because of the Decade of Roma Inclusion. There is a Roma minister in the Government, a Roma municipality (the direct result of the arrangements within the Ohrid agreement) and the Roma language is legally a language in official use in the Shuto Orizari municipality.

On disability, the main instrument for positive action measures related to persons with disabilities is the Law on Employment of People with Disabilities.<sup>203</sup> Its main goals are the integration of people with disability in the working environment and their safety in the workplace. In 2013 the Government published a recruitment announcement open solely to people with disabilities, which will result in the employment of 300 people in the public sector. There is also a new-draft law that was initiated by the Ministry of Labour and Social Policy, which has still not entered Parliamentary procedure.

On age, in relation to young people, actions are undertaken based on Cabinet decrees. In relation to older people, there is a 'National Strategy for Elderly People 2010-2020'.

---

<sup>203</sup> Law on Employment of Persons with Disabilities (*Закон за вработување на инвалидни лица*), Official Gazette of Republic of Macedonia, No. 44/00, 16/2004, 62/2005, 113/2005, 29/2007, 88/2008, 161/2008, 99/2009, 136/2011. Article 2.

However results from its implementation are not expected soon, as the coordinating body tasked to follow its implementation was only recently established.

In May 2012, the 'National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability, and Gender'<sup>204</sup> was adopted. Adoption of an action plan<sup>205</sup> for the implementation of this strategy followed later in the year. It is the first document of its kind, establishing general goals of the strategy, and specific goals per targeted discrimination ground. The general strategic goals are: advancing the legal framework for equality and non-discrimination; strengthening the capacities of the institutional mechanisms for the prevention and protection against discrimination and promotion of equal treatment; and awareness raising towards recognising forms of discrimination and promoting the concepts of non-discrimination and equal opportunities. This document does not provide for positive action measures.

b) Main positive action measures in place on national level

Quotas (ethnicity, including Roma)

There is a special secretariat within the Government charged with the implementation of the Ohrid Framework Agreement.<sup>206</sup> Although no quotas exist on paper, they do exist in practice due to the implementation of the principle of equitable representation, which is used when implementing positive actions. This principle aims to bring about representation of the communities in the institutions to reflect the representation and composition of the ethnic communities in society according to the latest census results (for example, a target percentage for the Albanian population would be a representation of 25 %, as this is the percentage of the Albanian community from the total population of the country, according to the 2002 census).

As equitable representation of members of ethnic communities in state institutions is an important role of the Secretariat for Implementation of the Ohrid Framework Agreement, one of its main tasks has been to ensure the employment of people belonging to these communities in the state and public administration. To that end, various training initiatives have been carried out with great support from the international community.

Additional social and other measures (Roma)

There is a Minister without Portfolio in charge of coordination of the Government activities in relation to the Decade of Roma Inclusion. He is tasked with the inter-ministerial coordination on all Roma issues. The 'Strategy for Roma in the Republic of Macedonia' (and accompanying national action plans) are regularly adopted and updated, however, systematic monitoring of any progress is mainly done by NGOs.

Preferential treatment (disability)

Preferential treatment of people with disabilities is provided for in the 'National Strategy for Equalisation of the Rights of People with Disabilities 2010-2018' (and its predecessor). The strategy acts as an operational framework for the UN Convention on the Rights of

---

<sup>204</sup> Ministry of Labour and Social Policy (2012) National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability, and Sex 2012-2015 (*Национална стратегија за еднаквост и недискриминација по основ на етничка припадност, возраст, ментална и телесна попреченост и пол 2012-2015*), [www.mtsp.gov.mk/WBStorage/Files/strategija\\_ednakvost.doc](http://www.mtsp.gov.mk/WBStorage/Files/strategija_ednakvost.doc).

<sup>205</sup> Ministry of Labour and Social Policy (2013) Action Plan - 2013 for implementation of the National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability, and Gender for 2012-2015, [www.mtsp.gov.mk/WBStorage/Files/akciski\\_1\\_eng.doc](http://www.mtsp.gov.mk/WBStorage/Files/akciski_1_eng.doc).

<sup>206</sup> Although it is not OFA itself that is being implemented, but Constitutional, legal and policy documents resulting from its signing, the expression 'implementation of OFA' is used here to avoid long explication pretexts for the wave of reforms after 2001 resulting from it being signed.



Persons with Disabilities.<sup>207</sup> This convention was ratified in November 2011, so the results from its implementation are yet to be seen.

#### Broad social policy (age)

Young people are covered in two policies. The Ministry of Labour and Social Policy supported a programme entitled 'Intermediation for Employment of Unemployed Young Graduates'. This programme provides free training for young graduates, as well as taxes from which employers can benefit in hiring a first-time employee. The Ministry of Transport and Communications had a programme called 'Flats for Young Married Couples'. The programme enables young couples in civil marriage to engage in buying a flat under more favourable conditions than in the regular market.

There is a 'National Strategy for Elderly People 2010-2020'.<sup>208</sup> However results from its implementation are not yet expected, as the coordinating body tasked to follow its implementation was only recently established. However, special programmes for recreation (free ski trips and use of thermal baths facilities) and transport (free use of public transport in the capital on selected week days, and use of train transportation in the whole territory of the country on selected week days) have been implemented. There are also housing facilities and newly built housing for elderly persons.

---

<sup>207</sup> Ministry of Labour and Social Policy (2010) National Strategy for Equalisation of the Rights of Persons with Disabilities, <http://mtsp.gov.mk/WBStorage/Files/FINALNA%20Revidirana%20Nacionalna%20Strategija.pdf>.

<sup>208</sup> Ministry of Labour and Social Policy (2010) National Strategy for Elderly People 2010-2020 (*Национална стратегија за стари лица 2010-2020*), <http://mtsp.gov.mk/WBStorage/Files/Strategija%20za%20stari%20lica%20juni.pdf>.

## **6 REMEDIES AND ENFORCEMENT**

### **6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)**

- a) Available procedures for enforcing the principle of equal treatment

In Macedonia the following procedures exist for enforcing the principle of equal treatment (judicial/ administrative/alternative dispute resolution such as mediation):

The Anti-discrimination Law provides several options for procedural protection. These are: administrative, litigation and misdemeanour procedures.

Administrative procedures can be raised before the Commission for Protection against Discrimination (Chapter V, Anti-discrimination Law), and the Labour and Education inspectorates. The procedure before the CPAD is free of charge. The entire duration of the procedure is set to last no more than 90 days (including 15 days for the CPAD to forward the complaint to the respondent, and 15 days for the respondent to reply). This may result in the CPAD giving an opinion and recommendation. If the recommendation is not acted upon, the CPAD can initiate a procedure with a competent body (without further specifications). The location of the CPAD is problematic, as it is situated in a building where there are offices of other ministries (including the Ministry of the Interior).

Litigation proceedings can also be initiated before ordinary courts, based on the provisions of the Anti-discrimination Law (Chapter VI, Articles 34-41). The law does not resolve the priority of the procedures, in case of simultaneous procedures. It states that if a procedure is raised before a court, no procedure can be raised before the CPAD. However, it does not say what one does if a procedure is raised before the CPAD, and after that another procedure is started in front of a court before the procedure before the CPAD has ended. Also, the law does not regulate the relations between the procedures in front of the Ombudsperson and the CPAD, in cases of overlap. This issue has been resolved by a memorandum of understanding between the two institutions.<sup>209</sup>

Under the Anti-discrimination Law, the outcome of a claim depends on the procedure that one chooses to pursue. The CPAD registered 106 cases in 2014. The administrative procedure envisages a recommendation for rectifying the violation (i.e. the discrimination) within 30 days; litigation could lead to an award of regular compensation; while the misdemeanour procedure envisages fines in the range of EUR 400 to 1 000 (in national currency).

Financial sanctions and other sanctions for discrimination are provided under the Criminal Code. These provisions have not been applied thus far.

The procedures for employment in the private and public sectors are different. In the public sector, the Law on State Administration elaborates a detailed procedure, which must be conducted in accordance with the law and under very strict criteria, while in the private sector, according to Law on Labour Relations, employers are free to choose their own methods to find adequate candidates for employment. A worker who believes that they have been discriminated against, can inform the employer within eight days, giving the employer a chance to resolve the issue (Article 181). If this is not done within the next eight days, the worker can lodge a lawsuit against the employer (within the next 15 days). This last deadline is directly applicable in cases of dismissal and rejection in the recruitment

---

<sup>209</sup> A memorandum for cooperation between these two institutions and the Commission for Equal Opportunities of Women and Men of the Assembly of Republic of Macedonia and the Macedonian Women Lobby was signed in December 2011.

process due to discrimination. This is rather costly procedure, as hiring a lawyer is an obligation and the claimant must pay the court costs in advance. Moreover, if a claimant loses a lawsuit against a state employer, he or she has to pay the costs of the State Defender.<sup>210</sup> As it is a judicial litigation, there are strict time limits for all procedural actions.

Mediation is an optional instrument at the disposal of the judge in any litigation. There is no record that it has been used in a discrimination case.

There are no statistical data on discrimination cases brought to the courts. Discrimination claims can be found in other cases (notably, mostly cases from the field of employment).

Although non-binding, if the CPAD finds discrimination, it issues an opinion accompanied by recommendations. The person to whom the recommendation is directed needs to act upon it, and notify the CPAD within a deadline of 30 days (Article 28(2) and (3)). If the person does not act upon the recommendation, the CPAD can open a procedure to a competent body (the law does not specify further which body would be considered as a competent body) to establish the person's responsibility (Article 29).

#### b) Barriers and other deterrents faced by litigants seeking redress

The procedure before the Commission for Protection against Discrimination is free of charge. No legal representative is needed for this procedure. However, it should be noted that there are some obstacles in filing a case at the commission. The offices of the commission are in the building where the Ministry of Interior has some of its offices. Taken alongside the politicised procedure of the appointment of the first members of the commission, one can say that there is a psychological barrier to accessing the commission. There is also a physical barrier as the offices are on the 20<sup>th</sup> floor and the elevator only goes up to the 19<sup>th</sup> floor.<sup>211</sup>

In relation to the courts, the obstacles can be even bigger. These proceedings are subject to administrative taxes and they can take much longer. The time limits are strict. Also, they raise the issue of the obligation to engage a lawyer.

#### c) Number of discrimination cases brought to justice

In Macedonia there are partially available statistics on the number of cases related to discrimination brought to justice. There are statistics on the work of the CPAD, the Ombudsperson and the Constitutional Court, however statistics from ordinary courts are lacking. The CPAD received 106 cases in 2014 (which is an increase compared to 2013 when it received 83 cases, as well as in comparison to the previous two years). The cases in 2014 were brought on the following discrimination grounds: 26 on ethnicity, 13 on health status, 4 on belonging to a marginalised group, 15 on personal or social status, 13 on mental or physical disability, 8 on education, 7 on social origin, 10 on sex, 7 on religion or religious belief, 7 on political affiliation, 8 on age, 5 on family or marital status, 4 on gender, 3 on other beliefs, 6 on property status, and 14 under 'any other ground'. In filed cases, the alleged discrimination was in the following fields: 42 in employment and labour relations, 22 in access to goods and services, 18 in social security, 11 in judiciary and administration, 7 in public information and media, 5 in education, science and sports, 5 in housing, 2 in culture, 2 in membership of trade unions or political associations, 6 in which no field was claimed by the applicant, and 4 in other fields as provided for under the law.

---

<sup>210</sup> The State Defender is a state budget financed institution. However, they have a practice of requesting litigation costs as private solicitors. When combined with court costs, this is a serious burden on the claimant.

<sup>211</sup> Watchdog CSOs have reported a substantial backlog in the work of the body. Some of the cases brought to the CPAD in 2011 have not yet been decided upon. One of these cases is a case of segregation of Roma in schools in Bitola, brought by the Helsinki Committee of the Republic of Macedonia.

The body does not provide statistics on how many of those cases were processed and/or were closed in 2014.<sup>212</sup>

In 2014, the percentage of discrimination cases filed with the Ombudsperson remained low, although again there was an increase in the number of cases compared to last year: 66 cases were filed (representing 1.55 % of the total number of cases received by the Ombudsperson). The Ombudsperson did not publish detailed statistics as to grounds and fields in relation to the cases, but did mention that the trend of cases relating to employment and on grounds of ethnicity forming the largest number of cases has continued.

In 2014, the Constitutional Court received 13 cases in relation to the protection of human rights and fundamental freedoms (protection against discrimination falls within this category and seven of the cases were cases for protection against discrimination). This is a substantial drop in the number of such cases filed to the Constitutional Court compared to previous years (there were 22 cases in 2013, 25 cases in 2012 and 23 cases in 2011). In 2014 the Constitutional Court did not report in how many of these cases it found a violation of human rights, but simply mentions that it did not consider two of the cases because there was no breach of rights.<sup>213</sup>

d) Registration of discrimination cases by national courts

In Macedonia discrimination cases are not registered as such by national courts.

## **6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)**

a) Standing to act on behalf of victims of discrimination (representing them)

In Macedonia associations/organisations/trade unions are entitled to act on behalf of victims of discrimination. Under the Anti-discrimination Law, associations of citizens (as well as institutions, foundations, and other civil organisations) with a legitimate interest as well as any other person working on the right to equal treatment are explicitly allowed to join a potential victim's case (Article 39), and in practice they are also allowed to act on behalf of victims of discrimination (legitimate interest is defined in Article 5(10)). In labour cases, the Law on Labour Relations provides the option only for trade unions to act on behalf of the victim, as long as they have the approval of the complainant (Article 93).

b) Standing to act in support of victims of discrimination

In Macedonia associations/organisations/trade unions' entitlement to act in support of victims of discrimination is subject to judicial interpretation. There does not seem to be a procedural obstacle for such support, and for joining in existing proceedings. However, given the restrictive practice and reading of the law by the courts, it would be most accurate to say that joining a victim of discrimination would be an issue that is subject to judicial interpretation.<sup>214</sup>

c) Actio popularis

---

<sup>212</sup> Commission for Protection Against Discrimination (*Комисија за заштита од дискриминација*) 2014 Annual Report of the Commission for Protection Against Discrimination (2015), [www.sobranie.mk/materialdetails.nsp?materialId=d93111d8-975d-471e-be2c-e07a2df372f3](http://www.sobranie.mk/materialdetails.nsp?materialId=d93111d8-975d-471e-be2c-e07a2df372f3).

<sup>213</sup> *Overview of the Work of the Constitutional Court in 2014* [Преглед на работата на Уставниот Суд за 2014 година] (February 2015).

<sup>214</sup> There is currently a case in procedure in which a CSO has requested to join an ongoing proceeding. Although *stare decisis* is not relevant in the country, it would be enlightening to see the interpretation of the court in this case.

In Macedonia national law allows associations / organisations / trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (**actio popularis**). Although this is not expressly provided for under the Anti-discrimination Law, this is the well-established practice of the equality body. It does exist expressly as an option under other laws, and in other procedures. The Constitutional Court has the ability to look into *actio popularis* cases in relation to human rights cases, including cases on discrimination.

d) Class action

In Macedonia national law allows associations, organisations and trade unions to act in the interest of more than one individual victim (class action) for claims arising from the same event. Class action ('joint lawsuit' under the Anti-discrimination Law) can be brought by associations of citizens, foundations, or other civil society institutions and organisations that have a justified interest in pursuing the case. The main condition for undertaking a class action is to have the authorisation of the person that finds him/herself discriminated against (Article 41(4)), i.e. the person concerned with the class action. Persons will be considered as co-litigants against the person that has violated the right to equal treatment (Article 41(1)).

### **6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)**

In Macedonia national law requires a shift of the burden of proof from the complainant to the respondent (save for criminal and misdemeanour proceedings).

The Anti-discrimination Law declaratively states that it is up to the respondent to prove that no violation of the right to equal treatment has occurred. However, in order for a procedure to be initiated, the law asks for facts and proof from the complainant (Article 38). As according to the directives, people who consider themselves wronged because the principle of equal treatment has not been applied to them establish only facts from which it may be presumed that there has been discrimination, the Anti-discrimination Law seems to place a huge part of the burden in proving discrimination on the complainant, asking for the submission of '*facts and proofs*' from which the act or action of discrimination can be *established*', unlike the directives, which set a requirement for *facts* from which the discrimination may be *presumed* (emphasis added).

This means that although the law claims that it is not the complainant who has to prove the facts but the respondent, we cannot say that it provides for a reversed burden of proof, as per the directives, as a step towards proving the facts is a burden placed on the complainant by asking for proofs aside from laying out of all known facts in relation to the case and leaving the respondent to show these facts to be non-existent (i.e. it makes a step from *onus proferendi* to *onus probandi*).

The Law on Labour Relations and the Law on Social Protection also include provisions on the shift of burden of proof (Articles 11(1) and (2) and Article 23 respectively). The newly adopted Law on Psychological and Sexual Harassment also provides for a shift of the burden of proof (Article 33). Since these provisions differ from the provision in the Anti-discrimination Law, it remains subject to judicial interpretation which provision will be applied to a labour case. The Law on Child Protection prescribes that the procedure for protection against discrimination shall be conducted as prescribed by the Anti-discrimination Law, thus one can conclude that the same rules for shifting the burden of proof will apply.

### **6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)**

In Macedonia there are legal measures of protection against victimisation. The Anti-discrimination Law declares victimisation to be a form of discrimination. Victimisation is

extended beyond the person who reports discrimination, to the person who files the complaint and to any witnesses (Article 10). The Constitution also provides for protection against victimisation, as it states that a citizen cannot be called to account or suffer adverse consequences for attitudes expressed in petitions, unless they entail the committing of a criminal offence (Article 24). The Law on Labour Relations provides for protection against victimisation<sup>215</sup> in a procedure related to psychological harassment (referred to in the law as mobbing). This protection also extends to cover witnesses. Protection against victimisation is also granted under the new Law on Psychological and Sexual Harassment (Article 30).

## **6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)**

### **a) Applicable sanctions in cases of discrimination – in law and in practice**

Under the Anti-discrimination Law, sanctions vary according to the procedure. The administrative procedure envisages a recommendation for rectifying the violation (i.e. the discrimination) within 30 days; litigation could lead to regular compensation awards; and the misdemeanour procedure envisages fines in the range of EUR 400 to 1 000, in national currency (Articles 42-45).

In labour cases as well as other civil court litigation, only compensation for pecuniary and non-pecuniary damages can be claimed. In cases of child and social protection, sanctions are fines imposed in a misdemeanour procedure. These can amount to EUR 500 to 1 000 (in national currency) in child protection cases and EUR 3 000 to 5 000 (in national currency) in cases concerning social protection.<sup>216</sup>

### **b) Ceiling and amount of compensation**

There are no limits stipulated by law, and the amount of compensation fully depends on the court verdict. In other areas of compensation (such as traffic accidents), court practice is to relate the sum of compensation to the living standard in the country.

### **c) Assessment of the sanctions**

At present no conclusions can be drawn as to whether the available sanctions are likely to be effective, proportionate and dissuasive, as required by the directives. When compared to the available sanctions provided for other misdemeanours<sup>217</sup> and so on, the anti-discrimination sanctions cannot be seen as dissuasive, effective or proportionate. Further consideration of the issue through legal practice is not possible yet, due to lack of case law.

---

<sup>215</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. Article 11(3).

<sup>216</sup> Please bear in mind that the average gross monthly salary in the country is approximately EUR 350.

<sup>217</sup> For example, the value of the fines in some discrimination cases is equal to the value of a fine for throwing a cigarette butt on the street.

## **7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)**

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive.

The Anti-discrimination Law, adopted in the course of harmonising the national legislation with the *acquis*, provided for the establishment of an equality body – the Commission for Protection against Discrimination (CPAD).<sup>218</sup> This commission is tasked to deal with both the public and the private sector. It is the first specialised body for equal treatment. According to the preparation materials of the Anti-discrimination Law, the CPAD is the body established and tasked with equality according to the transposition process.

Before this, the Ombudsperson was the only institution that had duties for the protection of the principles of non-discrimination and equality as part of its broader mandate for the protection of human rights in the public sector.<sup>219</sup> It has a special unit focused on non-discrimination and equitable and just representation.

- b) Status of the designated body/bodies – general independence

According to the Anti-discrimination Law,<sup>220</sup> the CPAD is established as an autonomous and independent body. The CPAD is composed of seven members appointed by the Parliament with five-year mandates. Macedonian citizens with regular residence in the country, university degrees and experience in human rights are eligible for membership. Applications are collected through a public call for applications.

The commission is financed through the state budget, but its activities can also be funded through other sources. The members of the commission receive honorarium of two average monthly salaries<sup>221</sup> (around EUR 700 gross per month). However, its annually allocated budget in the state budget remains very small, creating a barrier to the CPAD fully exercising its duties. It should also be noted that the CPAD has been a beneficiary of several projects conducted by CSOs, and has been one of the main institutions in the focus of the OSCE Mission in Skopje anti-discrimination project for the past four years.

The other body of relevance here, the Ombudsperson, is tasked to protect the constitutional and legal rights of citizens when violated by state bodies and other authorities and organisations with public powers. This quasi-judicial institution has a mandate to safeguard *inter alia* principles of non-discrimination, and adequate and equitable representation of communities in the organs of state power, bodies of local government and public institutions and services (Article 77).<sup>222</sup>

The Ombudsperson is elected by the Parliament under the Badinter principle (i.e. majority vote of the total number of parliamentarians, which must include a majority of the total number of MPs who belong to ethnic communities that are not the ethnic majority). The

<sup>218</sup> Law on Prevention and Protection against Discrimination (*Закон за спречување и заштита од дискриминација*) Official Gazette of the Republic of Macedonia No.50/10, 44/2014, Const.Ct. Decision: У.бр.82/2010 (15.09.2010). Articles 16-33.

<sup>219</sup> Law on the Ombudsperson (*Закон за народен правобранител*) Official Gazette of the Republic of Macedonia No. 60/2003, 114/2009. Articles 6, 11.

<sup>220</sup> Law on Prevention and Protection against Discrimination (*Закон за спречување и заштита од дискриминација*) Official Gazette of the Republic of Macedonia No.50/10, 44/2014, Const.Ct. Decision: У.бр.82/2010 (15.09.2010).

<sup>221</sup> Law on Prevention and Protection against Discrimination (*Закон за спречување и заштита од дискриминација*) Official Gazette of the Republic of Macedonia No.50/10, 44/2014, Const.Ct. Decision: У.бр.82/2010 (15.09.2010). Article 21.

<sup>222</sup> Constitution of the Republic of Macedonia (*Устав на Република Македонија*). Official Website of the Assembly of the Republic of Macedonia, [www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx](http://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx), Article 77.

Ombudsperson is elected for a term of eight years, with the possibility for one re-election. The Ombudsperson has deputies who are elected under the same procedure as the Ombudsperson, one of whom is tasked to focus on non-discrimination and equitable representation.

Any Macedonian citizen can be appointed Ombudsperson if they meet the general conditions specified in law for employment in a state body, and if they are a graduate lawyer with over nine years' experience in legal affairs, whose activity is proven in the field of protection of citizens' rights and who enjoys a suitable reputation for performing the function of Ombudsperson.<sup>223</sup> The Ombudsperson and the Deputy Ombudsperson cannot be held responsible for actions, measures and activities undertaken in exercising their function. The independence and autonomy of the office is guaranteed by the Constitution and by law.

In practice, the election of the Ombudsperson very much depends on the votes of the governing political parties. Also, given that its funding comes from the state budget, the Ombudsperson could also be seen as financially dependent (as no law prescribed percentages of its budget). The institution has a working unit for protection against discrimination.

A study on national human rights institutions in Macedonia (conducted in 2012) looked at both these institutions, aiming to assess them against the international framework of standards, including the EU *acquis*. For the CPAD, on the part of the legal framework, related to issues raised in this question of the report, it recommended that: a guarantee for pluralism of the CPAD beyond ethnicity should be entered in the law in order to enable the composition of CPAD to mirror the society as a whole; the law should include an obligation for the Parliament to debate the CPAD annual report, accompanied with an obligation for representatives from the Government to be present at the session where this report will be discussed; and that social sciences should not be included in the provision, so as to allow only people with specific equality and non-discrimination or human rights education and experience to be able to stand as candidates for members of the CPAD.<sup>224</sup> Also, it reiterated previous findings that 'the discussions at the parliamentary session devoted to the appointment on members, prove the whole process of the establishment of the first composition of the first equality body in the country as a highly politicised one.'<sup>225</sup> On the resources of the CPAD, it made the following recommendations: allow under law the creation of a secretariat, or any form of administrative support for the CPAD; give due consideration to the possibility for professionalisation of the members of the CPAD by making this their full-time job and position; for the CPAD to be in a position, similar to the Ombudsperson, to agree upon its annual budget with the Government for funds that should be sufficient for CPAD to be able to exercise its full mandate; consider establishing formal links with the regional offices of the Ombudsperson, in order to expand the reach of the CPAD.<sup>226</sup>

The study's recommendations on independence for the Ombudsperson, which has non-discrimination duties, suggested appointing the Ombudsperson for a single non-renewable term, as a way to reduce susceptibility to political pressure, while in relation to resources

---

<sup>223</sup> Law on the Ombudsperson (*Закон за народен правобранител*) Official Gazette of the Republic of Macedonia No. 60/03, 114/2009. Article 6.

<sup>224</sup> Biljana Kotevska (2012) National Human Rights Institutions in Macedonia: Normative Models and Challenges. CRPRC Studiorum, Skopje, [http://studiorum.org.mk/en/wp-content/uploads/2013/03/NHRI\\_Study\\_MKD-2012for\\_web.pdf](http://studiorum.org.mk/en/wp-content/uploads/2013/03/NHRI_Study_MKD-2012for_web.pdf), pp. 48,49.

<sup>225</sup> Biljana Kotevska (2012) National Human Rights Institutions in Macedonia: Normative Models and Challenges. CRPRC Studiorum, Skopje, [http://studiorum.org.mk/en/wp-content/uploads/2013/03/NHRI\\_Study\\_MKD-2012for\\_web.pdf](http://studiorum.org.mk/en/wp-content/uploads/2013/03/NHRI_Study_MKD-2012for_web.pdf), p. 45.

<sup>226</sup> Biljana Kotevska (2012) National Human Rights Institutions in Macedonia: Normative Models and Challenges. CRPRC Studiorum, Skopje, [http://studiorum.org.mk/en/wp-content/uploads/2013/03/NHRI\\_Study\\_MKD-2012for\\_web.pdf](http://studiorum.org.mk/en/wp-content/uploads/2013/03/NHRI_Study_MKD-2012for_web.pdf), p. 50.



it recommended the allocation of sufficient funds for the Ombudsperson to exercise its full mandate.<sup>227</sup>

c) Grounds covered by the designated body/bodies

The Commission on Protection Against Discrimination deals with the following grounds: sex, race, colour, gender, belonging to a marginalised group, ethnic affiliation, language, citizenship, social origin, religion or religious belief, other beliefs, education, political belonging, personal or social status, mental or physical impairment, age, family or marital status, property status, health condition, any other ground prescribed by law or ratified international treaty. The Ombudsperson can also deal with the following grounds: sex, race, colour, national, ethnic, social, political, religious, cultural, language, property and social background, disability, origin and any other ground.

d) Competences of the designated body/bodies – and their independent exercise

The Commission on Protection Against Discrimination can receive individual complaints, investigate, provide independent assistance to victims, make recommendations and initiate procedures to establish the responsibility of people who will not obey its recommendations. It has the competence to collect statistics and other data, and to conduct surveys and research on discrimination.

The Ombudsperson can receive individual complaints, investigate, provide independent assistance to victims, make recommendations and submit independent reports to the media and the Parliament. The Ombudsperson is empowered to conduct special research and investigations on specific issues.

e) Legal standing of the designated body/bodies

Under the Anti-discrimination Law, the CPAD does not have the legal authority to bring discrimination complaints or to intervene in legal cases concerning discrimination in court. It can only bring to 'competent authorities' cases of persons to whom a recommendation was directed but who have not acted upon it (Articles 39, 41). However, in 2013, the CPAD made a request to one of the courts and was allowed to intervene in a case of discrimination, which means that although such a competence is not explicitly granted in the Anti-discrimination Law, the CPAD can intervene in legal cases concerning discrimination.

The Ombudsperson can act on a request from an individual or *ex officio*, however it cannot intervene in court cases (Article 13). When the Ombudsperson concludes that violations are made, s/he may make recommendations, suggestions, opinions and indications on how to act upon detected violations; propose a retrial (reopening of the case); initiate disciplinary proceedings against officials or responsible persons; and apply to the competent public prosecutor for initiating criminal procedures.

f) Quasi-judicial competences

In Macedonia the bodies are quasi-judicial institutions.

The CPAD has elements of a quasi-judicial institution, however it does not impose sanctions, but only delivers opinions and recommendations. It can receive a case on any of the grounds in the public and private sphere in order to protect complainants. Complaints are filed free of charge, but need to contain facts and proof to support the claims.

---

<sup>227</sup> Biljana Kotevska (2012) National Human Rights Institutions in Macedonia: Normative Models and Challenges. CRPRC Studiorum, Skopje, [http://studiorum.org.mk/en/wp-content/uploads/2013/03/NHRI\\_Study\\_MKD-2012for\\_web.pdf](http://studiorum.org.mk/en/wp-content/uploads/2013/03/NHRI_Study_MKD-2012for_web.pdf), pp. 39,40.

Once the CPAD receives a complaint, it forwards it to the respondent within 15 days of receipt. The respondent has 15 days to reply to the complaint. Altogether, the CPAD must deliver an opinion in 90 days from the day of receipt of the complaint. The respondent to whom a recommendation has been directed needs to act in accordance with it within 30 days of the notification it has received from the CPAD. If a person does not act upon the recommendation, the CPAD can initiate a procedure in front of a 'competent authority'.

The Ombudsperson also has elements of a quasi-judicial institution. Under law, state organs should implement its recommendations (Article 32). If state bodies do not respond, the Ombudsperson has the right to inform the higher responsible body, the Parliament and the public through the media.

g) Registration by the bodies of complaints and decisions

In Macedonia the bodies register the number of complaints and decisions (by ground, field, type of discrimination, etc.). These data are not available to the public.

h) Roma and Travellers

Neither the Ombudsperson nor the CPAD has shown through their actions thus far that they consider the situation of Roma and Travellers as a priority issue. However, the Ombudsperson has been vocal on many occasions about the complexity and specificities of the problems Roma face, including problems related to discrimination.

## **8 IMPLEMENTATION ISSUES**

### **8.1 Dissemination of information, dialogue with NGOs and between social partners**

#### **Dissemination of information**

The Ministry of Labour and Social Policy (MLSP), the British Council, the Citizen's Initiative for Equal Opportunities ('Equal Access') and the Organisation of Social Workers of Bitola and Demir Hisar, implemented a project, 'Effective Implementation of the Law for Prevention and Protection Against Discrimination'. Part of this project was the preparation of a manual for better implementation of the law.<sup>228</sup> A section of the project also included creating a platform for cooperation between the local authorities related to the implementation of the law, and exploring the possibility for engaging the already existing coordinators for equal opportunities on the grounds in the implementation of the Anti-discrimination Law (i.e. expanding their activities beyond the ground of gender).<sup>229</sup> This was later followed by the adoption of a memorandum of understanding through which the duties of the local coordinators were extended to include equality and non-discrimination issues in general and not just on gender.

The British Council and the MLSP completed by the end of 2013 a series of training events on various topics regarding non-discrimination and equality for 600 representatives from the courts, attorneys, various profiles of employees from bodies working on social policy and other areas under the MLSP, as well as in education, health, local self-government, commerce chambers, trade unions, etc.

It is also important to note that in 2013, the MLSP, with support from the Organisation for Security and Cooperation in Europe, conducted an ex-post evaluation of the Anti-discrimination Act (with a limited scope, and not covering the full text of the law). The evaluation has been completed, but contained very few recommendations for alignment, and did not contain a recommendation for alignment in one of the issues raised in each progress report – explicitly mentioning sexual orientation as a protected ground. Consultations with NGOs were part of this process.

The Organisation for Security and Cooperation in Europe organised a series of capacity building events for the members of the CPAD and the unit for non-discrimination and equitable representation of the Ombudsperson. In 2013, they focused on supporting the CPAD to exercise other duties, apart the protective one. Thus, with OSCE support, this year the CPAD published two guides – on the role of the CPAD in court proceedings and on discrimination grounds. Aside from these, the CPAD conducted research on discrimination in employment, education and on discriminatory job announcements.

The academy for judges and prosecutors (a public institution, tasked to train future candidates for judges and public prosecutors) conducted an annual series of capacity building and awareness raising activities. In 2013 they compiled a 'Guide on Shifting the Burden of Proof' together with the OSCE, and organised several one-day events.

Under a PROGRESS project, two CSOs, the MLSP and the CPAD conducted a project for raising public awareness on equality and non-discrimination and advancing the legal framework for countering discrimination. They have conducted various activities (a series

---

<sup>228</sup> The manual in Macedonian language is accessible on this page:

[http://ednakvimoznosti.mk/img\\_upload/Priracnik%20za%20implementacija%20na%20Zakonot.doc](http://ednakvimoznosti.mk/img_upload/Priracnik%20za%20implementacija%20na%20Zakonot.doc).

<sup>229</sup> About the Project (*За проектот*) Ednakvi moznosti website, [http://ednakvimoznosti.mk/za\\_proektot.asp](http://ednakvimoznosti.mk/za_proektot.asp).

of conferences, workshops, a public campaign, photography competition, etc.) all of which aim to further promote the current framework and to discuss possible amendments.<sup>230</sup>

### **Dialogue with NGOs**

The trend of building of negative sentiments around NGOs continued in 2014.<sup>231</sup> The adoption of important laws pertaining to human rights issues happened without including NGOs in the processes. Public statements slandering NGOs that criticise Government policies and activities continued. In spite of this, the CPAD continued the practice of good cooperation with CSOs. It has partnered up with CSOs in conducting projects, including a PROGRESS project this past year (see above), and its members regularly participate in CSO events.

The protest organised on the international day of tolerance, which is largely about equality including on grounds of sexual orientation, and which has been organised by the Macedonian Helsinki Committee and other NGOs for several years now, went ahead without public support from any of the politicians, MPs, representatives from the Government, or the national human rights institutions. Subsequent reported attacks on a LGBT support centre established by a NGO have still not been properly investigated and pursued through the courts.<sup>232</sup>

### **Dialogue between social partners**

The mechanism for social dialogue between social partners is the Economic-social Council. It consists of representatives from the Government, the Unions and the Associations of Employers.<sup>233</sup> It has been reported that this council held over 20 meetings, discussing workers' rights, and other labour relations. However, it cannot be said that this would be in line with what the directives are demanding as promoting a dialogue with a view to giving effect to the principle of equal treatment. Similar councils have also been established on local level in seven municipalities. The Organisation of Employers of Macedonia undertook a project that aimed to foster dialogue between the social partners.<sup>234</sup> Part of the project's activities was the promotion of the implementation of *acquis communautaire* in the area of social dialogue.

### **Brief note on activities on Roma**

The Government continues with the implementation of the activities within the frame of the Decade of Roma Inclusion. The Minister without Portfolio<sup>235</sup> tasked to coordinate the activities of the Decade continues to operate, although without much visibility. The MLSP and the Roma Information Centres all implement various activities in relation to the Decade and beyond, and serve as contact points with the NGO sector. Sixteen NGOs partnered up to form a contact point for the implementation of the Decade, which monitors the

---

<sup>230</sup> PolioPlus. From Norm to Practice (*Од норма до пракса*) Polio Plus website, <http://www.polioplus.org.mk/vesti/proekt1.html>.

<sup>231</sup> Notably, whenever the Government and/or Opposition presented a new position or was preparing grounds for introducing/proposing a new policy, or simply just wanted to distract the general public from another emerging problem, an NGO comes out with a press conference (mostly NGOs registered a week/two weeks before) to support their claims or harshly refute the opposing side's positions. This was done by both the Government and the Opposition and happened on numerous occasions.

<sup>232</sup> 'Absence of Reaction to Series of Attacks on the LGBTI Support Centre'. Non-discrimination Network. <http://www.equalitylaw.eu/component/edocman/mk-29-lgbti-centre-attacks-no-reactions>.

<sup>233</sup> Ministry of Labour and Social Policy (Министерство за труд и социјална политика) Economic-social Council [www.mtsp.gov.mk/?ItemID=969CD34E1317714293CEA31204D3628B](http://www.mtsp.gov.mk/?ItemID=969CD34E1317714293CEA31204D3628B).

<sup>234</sup> Ministry of Labour and Social Policy (Министерство за труд и социјална политика) Social dialogue and possibilities for compromise and balance between the economic and social development (*Социјалниот дијалог-можност за компромис и баланс меѓу економскиот и социјалниот развој*) <http://mtsp.gov.mk/?ItemID=D975FD1E476EBD4A8DA613C0C75995CF>.

<sup>235</sup> Minister without portfolio website and profile can be accessed at this link: [www.mbr-ds.gov.mk/?q=node/2](http://www.mbr-ds.gov.mk/?q=node/2).

implementation, conducts advocacy activities, issues recommendations and implements joint activities.

## **8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)**

### **a) Mechanisms**

No mechanisms exist that ensure all contracts, collective agreements, international rules of undertakings and rules governing independent occupations are not in conflict with (solely) the principle of equal treatment. However, general mechanisms for compliance with the Constitution and national laws, and with legal principles such as *lex specialis derogat legi generali* and *lex posterior derogat legi priori* do exist.

Collective agreements, international rules of undertakings and rules governing independent occupations if challenged can be subject to a review of constitutionality and legality before the Constitutional Court. The Law on Obligations provides that a contract contrary to the Constitution, laws and good customs is null and void.<sup>236</sup> Compliance of contracts, collective agreements, internal rules of undertakings and rules governing independent occupations can be challenged if brought before court, where parts or full documents can be deemed null and void.

The Law on Courts provides that loopholes in laws are no justification for courts to refuse to act on upon a filed case — courts have an obligation to act based on the general principles of law, except when that is strictly forbidden by law.<sup>237</sup> Also, respecting general legal principles is in the tradition and teaching of the legal system, and applies to national laws. These laws almost always include in the final provision section a notion of the *lex specialis derogat legi generali* including changes made on the principle *lex posterior derogat legi priori*.

### **b) Rules contrary to the principle of equality**

Harmonisation of the legal framework with the Anti-discrimination Law has been identified as a general strategic goal in the 'National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability' adopted in May 2012. The action plan for the implementation of the strategy envisaged that this activity would be completed by the end of 2013,<sup>238</sup> however this activity has not been conducted.

In April 2014, with OSCE support, the CPAD conducted an in-depth assessment of the harmonisation of the Anti-discrimination Law with international equality and non-discrimination standards, and of other laws/provisions pertaining to equality and non-discrimination with the Anti-discrimination Law and with international standards. This evaluation has still not been published.

---

<sup>236</sup> Law on Obligations (*Закон за облигациони односи*) Official Gazette of the Republic of Macedonia No. 18/2001, 78/2001, 04/2002, 59/2002, 05/2003, 84/2008, 81/2009, 116/2009, 123/2013. Article 95 para.1.

<sup>237</sup> Law on Courts (*Закон за судовите*) Official Gazette of the Republic of Macedonia No. 58/2006, 35/2008, 150/2010; Constitutional Court Decisions: У.6п.256/2007 (16.04.2008), У.6п.74/2008 (10.09.2008), У.6п.124/2008 (14.01.2009), У.6п.12/2011 (29.02.2012).

<sup>238</sup> Ministry of Labour and Social Policy (2013) Action Plan - 2013 for implementation of the National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability, and Gender for 2012-2015 [www.mtsp.gov.mk/WBStorage/Files/akciski\\_1\\_eng.doc](http://www.mtsp.gov.mk/WBStorage/Files/akciski_1_eng.doc), p. 5.

## 9 COORDINATION AT NATIONAL LEVEL

The MLSP is tasked with coordinating issues on anti-discrimination on the grounds covered in this report, as well as on other grounds mentioned in national legislation.<sup>239</sup> There is a department for equal opportunities, as well as a deputy-minister tasked with non-discrimination issues.<sup>240</sup> Aside from this ministry, several other sections from the executive Government also have duties that touch upon anti-discrimination on the grounds covered in this report:

- Inter-ministerial body on human rights (seated in the Ministry of Foreign Affairs): tasked with, inter alia, strengthening coordination of all activities of the ministries and other bodies of the Government with competences in human rights;
- Minister without Portfolio: tasked with coordination of all Government activities pertaining to Roma (including implementation of the Decade of Roma Inclusion 2005-2015).

There are also coordinating bodies tasked with monitoring the implementation of strategic documents related in part to the discrimination grounds that are the subject of this report, notably the ones on disability and age.

In May 2012, the 'National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability and Sex'<sup>241</sup> was adopted. Adoption of an action plan<sup>242</sup> for the implementation of this strategy followed later in the year. It is the first document of its kind, establishing general goals and specific goals per targeted discrimination ground. Although the opening of the strategy notes that the selected grounds have been identified as priority grounds, it does not state how this conclusion was arrived at, nor does it state what other grounds (if any) were considered for inclusion. The general strategic goals are: advancing the legal framework for equality and non-discrimination; strengthening of the capacities of the institutional mechanisms for prevention and protection against discrimination and promotion of equal treatment; and awareness raising towards recognising forms of discrimination and promoting the concepts of non-discrimination and equal opportunities. No report as to the progress of the implementation of this strategy has been produced yet.

At the end of 2014, the Ministry of Labour and Social Policy, with the help of the OSCE Mission in Skopje, adopted an action plan for implementation of the Anti-discrimination Law 2015-2020. Harmonisation of the national equality and non-discrimination legal framework, increasing the capacities of the competent institutions and their coordination, as well as awareness raising activities are part of the planned activities. Its implementation is to start in 2015.

---

<sup>239</sup> Ministry of Labour and Social Policy: [www.mtsp.gov.mk/?ItemID=21E7AB9648BFC441AFD588BA0183B4A3](http://www.mtsp.gov.mk/?ItemID=21E7AB9648BFC441AFD588BA0183B4A3).

<sup>240</sup> Ministry of Labour and Social Policy: [www.mtsp.gov.mk/?ItemID=380B6B1D444D5047B575F402122ED94A](http://www.mtsp.gov.mk/?ItemID=380B6B1D444D5047B575F402122ED94A).

<sup>241</sup> Ministry of Labour and Social Policy (2012) National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability, and Sex 2012-2015 (*Национална стратегија за еднаквост и недискриминација по основ на етничка припадност, возраст, ментална и телесна попреченост и пол 2012-2015*) [www.mtsp.gov.mk/WBStorage/Files/strategija\\_ednakvost.doc](http://www.mtsp.gov.mk/WBStorage/Files/strategija_ednakvost.doc).

<sup>242</sup> Ministry of Labour and Social Policy (2013) Action Plan - 2013 for implementation of the National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability, and Gender for 2012-2015 [www.mtsp.gov.mk/WBStorage/Files/akciski\\_1\\_eng.doc](http://www.mtsp.gov.mk/WBStorage/Files/akciski_1_eng.doc).

## **10 CURRENT BEST PRACTICES**

In the current context in the country not many practices can be pointed out as good practices, especially as issues of equality and non-discrimination became the focus of state institutions less than five years ago, with the adoption of the first comprehensive legislation.

One of the best practices from Macedonia is the implementation of the principle of equitable and just representation of all ethnicities in the public administration (see section 5 above). Although no full and encompassing report has been published as to the results of the implementation, it is noticeable from the Ombudsperson's annual reports that the number of people from the minorities who are employed in the administration is constantly rising.

Another good practice is the exercise of the promotional mandate by the Ombudsperson for several years, including on issues of equality and non-discrimination, regardless of the lack of legal grounds for this, and in spite of the very low budget that the institution is annually awarded (see section 7 above).

## 11 SENSITIVE OR CONTROVERSIAL ISSUES

### 11.1 Potential breaches of the directives (if any)

The national anti-discrimination legislation is in breach of the directives in several areas outlined below. Breaches of the text and the spirit of the directives are as follows:

- In general:
  - o The Constitution and the laws are not consistent in the terminology that they use on discrimination and grounds of discrimination, thus generating legal uncertainty.
  - o The Constitution and the laws prescribe various different procedures (it could be said that this allows forum shopping to take place) and rather vague sanctions.
- The Constitution:
  - o The principle of equality is stated only for citizens of the country.
  - o It contains a closed list of grounds for protection against discrimination, and disability, age and sexual orientation are not part of this list. Belief is part of this provision, however only political and religious belief.<sup>243</sup>
  - o Terminology used in the Constitution for people with disabilities cannot be considered as in compliance with the spirit of the directives.
- Anti-discrimination Law:
  - Essential weaknesses:
    - o The object of the law is not precisely defined. This resulted in the adoption of an anti-discrimination law that does not aim to contribute to the upholding of the principle of equality, which lies at the heart of the directives.
    - o The area of implementation of the law is not precisely defined.
    - o Although the act contains a list of grounds in an open-ended provision, it does not explicitly include all standard EU grounds of discrimination. Namely, sexual orientation is not listed as a protected ground in this law.<sup>244</sup>
    - o According to the directives, persons who consider themselves wronged because the principle of equal treatment has not been applied to them need only establish facts from which it may be presumed that there has been discrimination. The Anti-discrimination Law places a huge part of the burden in proving discrimination on the complainant, asking for submission of '*facts and proofs*' from which the act or action of discrimination can be *established*',<sup>245</sup> unlike the directives, which set a requirement for *facts* from which the discrimination may be *presumed* (emphasis added). This means that although the law claims that it is not for the complainant to prove the facts but for the respondent, we cannot say that it provides for a reversed burden of proof, as per the directives, because, as a step towards proving the facts, a burden is placed on the complainant by asking for proof aside from laying out of all the known facts in relation to the case and leaving the respondent to show these facts to be non-existent (i.e. it makes a step from *onus proferendi* to *onus probandi*).
    - o Unlike the EU directives, which state that 'Member States shall encourage dialogue with non-governmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on grounds foreseen in the Directives, with a view to promoting the principle of equal treatment', the national legislation does not mention cooperation with NGOs.

<sup>243</sup> Out of the other grounds protected on EU level, gender is also not part of this provision, although sex is.

<sup>244</sup> The practice of the CPAD, though, shows that it does consider sexual orientation as a protected ground, as it has processed several cases pertaining to this ground, using the open-ended character of this provision.

<sup>245</sup> Law on Prevention and Protection against Discrimination (Закон за спречување и заштита од дискриминација) Official Gazette of the Republic of Macedonia No.50/10, 44/2014, Constitutional Court Decision: U.br.82/2010 (15.09.2010). Articles 25(2) and 38.



- The forms of discrimination as well as their definitions are not fully harmonised with European ones. The definition of direct discrimination is unnecessarily complicated.
- The law contains a wide, imprecise list of exceptions from discrimination. Such a list opens space for legal uncertainty. Moreover, some of these exceptions can be considered to be in breach of the EU directives. For example, it will not constitute discrimination if members of duly registered religions (this also applies to NGOs, political parties, trade unions and other organisations) act in accordance with their belief (Article 14(5)). This would mean that this excuses these members even if, in doing so, they are discriminating on the grounds mentioned in Article 3 of the Anti-discrimination Law.
- The mechanism for protection provided in the law is not precisely defined. Selection of members of the equality body is prone to political influence. Moreover, the competence of the members cannot be secured, as the law does not strictly require them to have education and practice related to 'human rights' but to social sciences in general. Such a provision can cause problems in practice.<sup>246</sup> Also, although the CPAD is financed under the state budget, the state allocated budget is not enough for this body to exercise its full mandate, thus bringing its effectiveness under question.
- The provisions on the sanctions provided in the law cannot be considered to be good grounds for making effective, dissuasive and proportionate sanctions.

Technical weaknesses:

- The law contains an article with definitions of terms used in the law that added to the terminological confusion that already existed before its adoption, instead of contributing to the resolution of such confusion. This list also contained terms not used in the law at all. Furthermore, legal terms and key concepts were unnecessarily redefined (for example the term 'family').
- The law did not provide for any transitional provisions, preparatory activities for commencement of the implementation of the law, or for any deadlines for initiation and completion of these activities.
- The law did not provide procedures for the unification of provisions, notably nulling or amending provisions in other laws that are not in line with this law as a *lex specialis*.

Ex-post evaluation of the implementation of the law:

- In 2013, the Ministry of Labour and Social Policy (MLSP) conducted an ex-post evaluation of the implementation of the Anti-discrimination Law, evaluating the process and the results from the implementation of this law, focusing on the prevention of discrimination and protection against discrimination. The results show that the aims of the law were only partly reached, which, according to the evaluation report, is justified given the amount of state-budget funds allocated for the law's implementation. Although noting numerous points where implementation can be improved, the report explicitly spelled out only three recommendations for legislative changes for improving the implementation: amending the Anti-discrimination Law to allow for the establishment of administrative support for the CPAD; explicit prescription of the 'shift of burden of proof' for the CPAD; and enhancing the CPAD accountability mechanisms.

- Other laws:

- Other laws are not fully in line with the Anti-discrimination Law, nor with the directives (in their terminology, listing protected grounds, definitions of direct discrimination, omitting victimisation, social dialogue, etc.). The harmonisation of the legal framework with the ADL has been identified as a general strategic

---

<sup>246</sup> This was already the case with the establishment of the Commission for Protection Against Discrimination. For more on this, please see: Flash Report, 'The Assembly of the Republic of Macedonia appointed the members of the Commission for Protection against Discrimination' (01.02.2011), [http://www.equalitylaw.eu/index.php?option=com\\_edocman&task=document.viewdoc&id=2186&Itemid=295](http://www.equalitylaw.eu/index.php?option=com_edocman&task=document.viewdoc&id=2186&Itemid=295).

- goal in the 'National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability' adopted in May 2012, and was part of the activities foreseen under the action plan for its implementation for 2013, including a continuous monitoring of the legislation from the perspective of international standards, in particular the EU directives and the CJEU practice.<sup>247</sup> However, this harmonisation has not yet taken place.
- An exception to this would be the Law on Labour Relations, which needs very few amendments to be in line with the directives. These necessary steps would be to amend the definition of harassment, which is not completely in accordance with the directives,<sup>248</sup> to add provisions on instruction to discriminate, as well as clarifying the potential for positive actions and reasonable accommodation for people with disability.<sup>249</sup>

## 11.2 Other issues of concern

As noted in the last European Commission's progress report, the country is backsliding in terms of fulfilment of political criteria for membership, especially with regards to independence of the judiciary. The same trend also applies to advancing the protection of human rights in general, and equality and non-discrimination more specifically. Retrogression of protection of rights in law and in practice continued. In times of general failure of the system to administer justice, vast politisation of society and partisanship of state institutions, the problems are very general and very serious. These also affect the practical implementation of the national legislation.<sup>250</sup>

Urgent revision of the Anti-discrimination Law is still a necessity, however it does not seem to be a priority. The CPAD continued to receive a lot of training and support from the OSCE mission and to be included in projects coordinated and led by CSOs. This might help with overcoming the deficiencies in the quality of the appointed members. However, the problem of not having administrative support for its work is on-going, in spite of news about a Government decision to resolve this issue being adopted last year.

<sup>247</sup> Ministry of Labour and Social Policy (2013) Action Plan - 2013 for implementation of the National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability, and Gender for 2012-2015, [www.mtsp.gov.mk/WBStorage/Files/akciski\\_1\\_eng.doc](http://www.mtsp.gov.mk/WBStorage/Files/akciski_1_eng.doc), p. 5.

<sup>248</sup> The Law on Labour Relations definition refers to establishing behaviour, instead of creating an offensive environment. Source: Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013.

<sup>249</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. Art.9.

<sup>250</sup> At the time of writing this report, the political crisis that started several years ago has heated further, with the Opposition publishing allegedly recorded conversations that they claim come from illegal wiretapping of over 20 000 people by the counter-intelligence service of the country. In one of the published conversations, one can hear a voice that is allegedly that of the President of the Equality Body, who is also a full-time employee at the Ministry of Labour and Social Policy, in a conversation with the Minister for Transport regarding coordination and planning of the election campaign of the ruling party for the municipal elections in 2013 and, more specifically, visits to persons that are under social protection. In the opinion of the author, should this conversation be proven to be authentic, it further confirms the political affiliation and active political engagement of the President of the Equality Body with the ruling party, which jeopardises the independence of the body.

What is also noticeable from the recordings, the authenticity of which has not been challenged yet by any of the participants in the conversations, is stereotyping, discrimination and borderline racist discourse from lead persons in the executive Government. Abuse of social and economic position of persons, including of Roma, coupled with ethnic and racial slanders, are very much present in the conversations. As a result of the conversations, the Minister of Interior published a letter to the Roma community that was intended to be an apology, however, in the opinion of the author of this report, it sounds more like a letter reiterating everything that the Government has done for Roma people.

The problem of misrepresentation and misunderstanding of the notion and scope of grounds remains, the main ones being:

- Disability is still a cause for stigma. Policies regarding accommodation and positive actions for people with disability are formally adopted, but are not implemented. However, a positive move in this direction was the ratification of the Convention on Rights of People with Disability and its accompanying Optional Protocol.
- Sexual orientation is continuously stigmatised, or, at best, ignored. The latest example was the national strategy for equality and non-discrimination on ethnic affiliation, age, disability and sex, which was adopted in 2012. Although said to be adopted as part of the alignment with the EU *acquis* process, it excludes sexual orientation as a ground.

Hate speech is still vastly tolerated. Debates around the Anti-discrimination Law were filled with hate speech directed towards homosexuals, and to people who publicly advocated for and supported inserting sexual orientation as a protected ground. The most staggering examples are examples of hate speech by journalists who are known to be close to the ruling party (including the only two journalists on whose shows the Prime Minister appears as a guest, one of whom accompanied the Prime Minister on a recent Government visit). Such hate speech features homophobic statements and spreads ethnic hatred, as well as degradation on grounds of sex.

## 12 LATEST DEVELOPMENTS

### 12.1 Legislative amendments

- Change in mandatory retirement age: mandatory retirement age was changed from 65 to 65 for women and 67 for men. No public discussions as to the change were organised;<sup>251</sup>
- Introduction of provision for employment of professional soldiers in other administrative service positions once they reach the previously mandatory dismissal age of 45.<sup>252</sup>

### 12.2 Case law

**Name of the court:** CPAD

**Date of decision:** 27.03.2014

**Name of the parties:** V.M. v Municipality of Delcevo

**Reference number:** No.07-922/1

**Address of the webpage:** <http://www.kzd.mk/mk/prestavki/2014/category/62-Ментална%20и%20телесна%20попеченост?download=179:07-922-27-03-2014>

**Brief summary:** The claimant is the grandfather of a child with psychosocial disability claiming that lack of adaptation of infrastructure (in his case – pavements) creates an obstacle to free movement for his grandson, as they live on one of the main streets in the town and the child cannot leave the house by himself as there is no pavement and no aids for movement. He had asked several times and was promised by the municipality that it would do the necessary adaptations, however it had not done them. The CPAD found discrimination on grounds of disability due to lack of reasonable accommodation - form of discrimination under the national law. After the date of this report, the case will be taken to court as well.

**Name of the court:** CPAD

**Date of decision:** not known

**Name of the parties:** Coalition for Sexual and Health Rights of Marginalised Communities and others v The Rector of the University "St Cyril and Methodius" and a group of authors

**Reference number:** not known

**Address of the webpage:** not available

**Brief summary:** This case is important as it is a continuation of the good practice of the CPAD to find discrimination on grounds of sexual orientation in textbooks. It does not add anything as to reasoning for the finding nor the issued opinion compared to previous cases (except for one).<sup>253</sup>

---

<sup>251</sup> Law on Labour Relations (*Закон за работните односи*) Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013. (Relevant amendments entered into force on 06.08.2014).

<sup>252</sup> Law on Army Service (*Закон за служба во армијата*) Official Gazette of the Republic of Macedonia No. 36/2010, 23/2011, 47/2011, 148/2011, 55/2012, 29/2014, Constitutional Court Decision: U.br.60/2010 (22.09.2010). (Relevant amendments entered into force on 14.02.2014).

<sup>253</sup> Previous cases: Commission for Protection against Discrimination (Комисија за заштита од дискриминација), Coalition for sexual and health rights of marginalised communities v Ministry of Education and Science and a group of authors No: 02/27/11.

## ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Please list below the **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

**Country: Former Yugoslav Republic of Macedonia**

**Date: 01.01.2015**

<b>Title of legislation (including amending legislation)</b>	<p>Title of the Law: Law on Prevention and Protection Against Discrimination Abbreviation: Anti-discrimination Law Date of adoption: 08.04.2010 Latest amendments: 05.03.2014 Entry into force: 21.04.2010 Webpage: <a href="http://www.slvesnik.com.mk/Issues/1654343CD9A0E24998781907DC19A99F.pdf">www.slvesnik.com.mk/Issues/1654343CD9A0E24998781907DC19A99F.pdf</a> Grounds covered: 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, health condition, or any other ground or stipulated by law or ratified national treaty.</p> <p>Civil law</p> <p>Material scope: All areas (draws specific attention to: public employment, private employment, access to goods and services, social protection, education).</p> <p>Principal content: Prohibition of direct and indirect discrimination, harassment, instruction to discriminate, reasonable accommodation, creation of a specialised body.</p>
<b>Title of legislation (including amending legislation)</b>	<p>Title of the Law: Law on Labour Relations Abbreviation: Law on Labour Relations, LLR Date of adoption: 28.07.2005 Entry into force: 05.08.2005 Latest amendments: 29.07.2014 Webpage: <a href="http://www.slvesnik.com.mk/Issues/ABCBBB808C582943B4A3287BD0629357.pdf">www.slvesnik.com.mk/Issues/ABCBBB808C582943B4A3287BD0629357.pdf</a> Grounds covered: Race, colour, sex, age, health condition, disability, religious, political or other belief, membership of trade union, national or social origin, position of the family, property, sexual orientation or other personal issue.</p> <p>Civil law</p> <p>Material scope: Public employment, private employment.</p> <p>Principal content: Regulation of labour relations. Of relevance here: prohibition of direct and indirect discrimination, harassment.</p>
<b>Title of legislation</b>	<p>Title of the law: Law on Social Protection</p>

<b>(including amending legislation)</b>	<p>Abbreviation: LSP</p> <p>Date of adoption: 24.06.2009</p> <p>Entry into force: 02.07.2009</p> <p>Latest amendments: 05.12.2014</p> <p>Webpages: Text of the law (2009), as in Official Gazette: <a href="http://www.slvesnik.com.mk/Issues/7CEA639634D1054DB351E7FB985665DC.pdf">www.slvesnik.com.mk/Issues/7CEA639634D1054DB351E7FB985665DC.pdf</a></p> <p>Grounds covered: Sex, race, colour, nationality, ethnicity, social status, political, religious, cultural, language, property and social background, disability and origin.</p> <p>Civil law</p> <p>Material scope: Social protection, social advantages.</p> <p>Principal content: Social protection. Of relevance here: prohibition of direct and indirect discrimination.</p>
<b>Title of legislation (including amending legislation)</b>	<p>Title of the law: Law on Employment of Persons with disability</p> <p>Abbreviation: LEPD</p> <p>Date of adoption: 02.06.2000</p> <p>Latest amendments: 03.10.2011</p> <p>Entry into force: 10.06.2000</p> <p>Web link: <a href="http://www.slvesnik.com.mk/Issues/CE827065C11B4A1ABA5546F974EFDA94.pdf">www.slvesnik.com.mk/Issues/CE827065C11B4A1ABA5546F974EFDA94.pdf</a></p> <p>Grounds covered: Disability</p> <p>Civil law</p> <p>Material scope: Public employment, private employment</p> <p>Principal content: Employment of persons with disability, including shelter companies.</p>

## ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

**Country: Former Yugoslav Republic of Macedonia**

**Date: 01.01.2015**

<b>Instrument</b>	<b>Date of signature (if not signed please indicate) Dd/mm/yyyy</b>	<b>Date of ratification (if not ratified please indicate) Dd/mm/yyyy</b>	<b>Derogations / reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
European Convention on Human Rights (ECHR)	09.11.1995	10.04.1997	No	Yes	Yes
Protocol 12, ECHR	04.11.2000	13.07.2004	No	Yes	Yes
Revised European Social Charter	27.05.2009	21.10.2011	No	No	Yes
International Covenant on Civil and Political Rights	(succession) <sup>254</sup>	18.01.1994	No	Yes	Yes
Framework Convention for the Protection of National Minorities	25.07.1996	10.04.1997	No	Yes	Yes
International Covenant on Economic, Social and Cultural Rights	(succession)	18.01.1994	No	Yes	Yes
Convention on the Elimination of All Forms of Racial Discrimination	(succession)	18.01.1994	No	Yes	Yes

<sup>254</sup> Under the Constitutional Law adopted for implementing the Constitution of the Republic of Macedonia, as one of the republics to succeed from the Socialist Federative Republic of Yugoslavia (SFRY), the country assumes all obligations from SFRY membership in international organisations and with other countries, as provided by common principles of international law. This Law also calls upon the Vienna conventions for succession (1978 and 1982) for guidance on regulating the succession. Source: Constitutional Law adopted for implementing the Constitution of the Republic of Macedonia (Уставен закон за спроведување на Уставот на Република Македонија) Official Gazette of the Republic of Macedonia No.52/91.

<b>Instrument</b>	<b>Date of signature (if not signed please indicate) Dd/mm/yyyy</b>	<b>Date of ratification (if not ratified please indicate) Dd/mm/yyyy</b>	<b>Derogations / reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
Convention on the Elimination of Discrimination Against Women	(succession)	18.01.1994	No	Yes	Yes
ILO Convention No. 111 on Discrimination	n/a	17.11.1991	No	Yes	Yes
Convention on the Rights of the Child	(succession)	02.12.1993	No	Yes	Yes
Convention on the Rights of Persons with Disabilities	30.03.2007	14.12.2011	No	Yes	Yes



## HOW TO OBTAIN EU PUBLICATIONS

### Free publications:

- one copy:  
via EU Bookshop (<http://bookshop.europa.eu>);
- more than one copy or posters/maps:  
from the European Union's representations ([http://ec.europa.eu/represent\\_en.htm](http://ec.europa.eu/represent_en.htm));  
from the delegations in non-EU countries  
([http://eeas.europa.eu/delegations/index\\_en.htm](http://eeas.europa.eu/delegations/index_en.htm));  
by contacting the Europe Direct service ([http://europa.eu/europedirect/index\\_en.htm](http://europa.eu/europedirect/index_en.htm))  
or calling 00 800 6 7 8 9 10 11 (freephone number from anywhere in the EU) (\*).

(\*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

### Priced publications:

- via EU Bookshop (<http://bookshop.europa.eu>).

