



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

NEWS REPORT

Country:	FYR of Macedonia
Title:	Public debate on a proposal for a new law on anti-discrimination
Date:	24 January 2018
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<u>Context</u>	
Issue at stake:	New proposed law on anti-discrimination put up for public debate
Ground of discrimination:	All
Source:	Other
Field:	Equality body; all fields
Applicable law:	Law on Prevention and Protection against Discrimination (2010)

Content

Policy development: The Ministry of Labour and Social Policy (MLSP) with the support of the Organisation for Security and Cooperation in Europe – Mission to Skopje (OSCE) started a round of public debate on the draft-proposal for a new Law on Prevention and Protection against Discrimination. This law is to replace the old 2010 law.

The grounds of discrimination: Various analyses and activities by experts and NGOs in the past seven years following the adoption of the 2010 law highlighted the need for several key changes in relation to the provision on the discrimination grounds (currently Article 3). We single out four out of these. The first is to mention explicitly sexual orientation as a protected ground. This comes from the obligations of the country under the EU approximation process, and the demands of NGOs which work with LGBT*IQ people and who note the need for protection from discrimination in view of the harsh discriminatory practices and hate crimes to which LGBT*IQ people are exposed. The second is to mention gender identity as a protected ground. The key reason for this are research findings which also show the grave situation in terms of discrimination and violence in relation to gender identity. In addition, at the public debate on the proposed text, the Istanbul Convention which was recently ratified was also mentioned as one of the reasons as to why gender identity needs to be protected. The third change is to amend the wording of disability from 'mental and physical disability' into disability only in order to remove any doubt that other types of disability (such as sensory or psycho-social) fall within the remit of the ground. And finally, the fourth is the need for changing the wording of the open-ended provision from tying the 'any other ground' to a ground arising from another national law or ratified international treaty.

The draft-Law includes all of these novelties save for including gender identity. The representative from the MLSP at the public debate on the proposed text stated that this

was an omission in the technical preparation of the draft-Law and that gender identity will be added in the version which will be proposed to the Parliament.

The forms of discrimination: Previous analysis of the 2010 law suggested several changes as to the forms of discrimination. Firstly, simplification of the definition of direct discrimination and copying in full the definition from the Directives. Second, adding segregation as a form of discrimination. Third, removing 'discrimination in access to goods and services' as a special form, as there were no mirroring articles for the other fields. Fourth, explicitly mentioning intersectional discrimination in the article on grave forms of discrimination. The current article (12) includes 'multiple discrimination' as a prohibited form of discrimination. Fifth, there was a proposal to include traditions and traditional practices harmful to women and girls as a particular form of discrimination.

The draft-Law includes all of these novelties, save for including intersectional discrimination and the harmful traditions and traditional practices. The need for including intersectional discrimination was explicitly stated at the public debate. There seems to be little willingness for now among the working group members to make this addition. The traditions and traditional practices has not been included nor talked about.

The exceptions: The 2010 law was criticised for including an extensive list of exceptions. In addition, some exceptions even contradicted each other. The draft-law includes only a short and simple article where such confusion is avoided.

The equality body: The way the equality body is positioned under the 2010 law is problematic because of several reasons. Firstly, the appointment criteria for the Commissioners permitted the appointment of persons without any specific equality and non-discrimination knowledge and experience. In fact, the persons did not even have to work in Human Rights in order to be appointed. Second, the law was not clear as to when and how a Commissioner can be dismissed. Third, the Commissioners were not professionally engaged full time in the body. Fourth, the 2010 law provides that the administrative matters of the body will be handled by the Commission (which meant no room for employing people for administrative support). The new draft law addresses all of these points. The draft-law proposes that the working experience has to be in Human Rights (7 years) and in equality and non-discrimination (5 years). In addition, the Commission under the draft-law will have a professional administrative support service and the Commissioners will be full-time employees of the body.

The sanctions: The sanctions in the 2010 law were criticised for not holding up to EU standards of being dissuasive, effective and proportionate. The draft-law will change this. However, the problem with the misdemeanours in the country in general remains as does the need to reform the whole system and legal framework. Thus, it is to be expected that even if the provisions as they stand now in the draft-law are adopted, they will soon need to be changed again within the frame of a larger reform. No specific information as to a reform of the misdemeanours in general has started so far.

The scope of the public debate: The scope of public debate is thus far limited. It remains to be seen whether it will be expanded. The MLSP announced that the draft-law will be put up on ENER – official state online platform for public consultations. This is to take place in the first half of 2018.

Internet link source: Akademik, Public debate on the new Law on prevention and Protection against discrimination [Јавна дебата за новиот закон за спречување и заштита од дискриминација], *akademik.mk*, <http://www.akademik.mk/javna-debata-za-noviot-zakon-za-sprechuvane-i-zashtita-od-diskriminatsija/>, Last accessed on: 31.12.2017.