



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

FLASH REPORT

Country:	Republic of North Macedonia
Title:	Adoption of new ADL
Date:	3 June 2019
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Update of news report:	FYR Macedonia - The proposed new law on anti-discrimination blocked in Parliament (PDF 134 kB)
<u>Context</u>	
Issue at stake:	New Law on Prevention and Protection against Discrimination adopted
Grounds of discrimination:	All grounds
Field of application:	All fields
Source:	Policy development
Applicable law:	Law on Prevention and Protection against Discrimination (2010) and Law on Prevention and Protection against Discrimination (2019)

Content

Policy development: On the 16 May 2019, the Assembly of the Republic of North Macedonia (hereinafter the Parliament) adopted a new Law on Prevention and Protection against Discrimination (new ADL). This law will replace the 2010 Law on Prevention and Protection against Discrimination (old ADL). There were many reasons for adopting a new law, but the main ones were that the previous law was not fully in line with the EU acquis and that it did not provide a framework for effective protection against discrimination.

Overall, the new ADL brings some much-needed improvements to the legal framework and is a significant improvement compared to the previous laws. Although drafted in a more inclusive manner, especially in terms of participation of civil society organisations (CSOs) in the working group which drafted the law, the new ADL was blocked in the Parliament and only progressed to adoption following significant protests by CSOs and pressure from representatives of international organisations and institutions in the country, including the European Union. The main reason for the blockage in Parliament was that some MPs opposed the fact that the law included sexual orientation and gender identity among the explicitly protected discrimination grounds.¹

The law was first adopted in March 2019. However, the (then) President Gjorgje Ivanov refused to sign the act promulgating the law because it carried the new name of the country – North Macedonia, to which he opposed. So, he used his constitutional right to veto and returned the laws to the Parliament. In the meanwhile, presidential elections took place and a new president was elected – Stevo Pendarovski. The Parliament adopted the law for

¹ See flash report: <https://www.equalitylaw.eu/downloads/4814-fyr-macedonia-the-proposed-new-law-on-anti-discrimination-blocked-in-parliament-pdf-134-kb>.

a second time and, after President Pendarovski signed it, it was published in the Official Gazette on 22 May 2019.

Key points of analysis: This flash report lists the most important changes brought by the new law. It does so by briefly stating what the old ADL provided for and what the new ADL will bring.

The grounds of discrimination:

The old ADL (1) did not include sexual orientation and gender identity among the explicitly protected discrimination grounds, (2) limited the scope of disability to 'mental and physical disability' alone, and (3) it was an open-ended provision, but the wording went beyond 'any other ground' and into a ground arising from another national law or ratified international treaty (Article 3). The new ADL resolves all of these issues. In its Article 5, the new ADL (1) explicitly includes sexual orientation and gender identity and maintains all other grounds protected by EU directives, including by (2) using a wider formulation of disability as just 'disability', and (3) ends the open-ended provision in 'any other ground'. In addition, the ADL defines a person with a disability as 'person having a long-term physical, intellectual, 'mental' or sensory impairment, which in interaction with various social barriers may prevent the person's full and effective participation in society on an equal basis with others' (Article 4, paragraph 1, point 3).

The forms of discrimination:

The old ADL (1) had a complicated definition of direct discrimination, (2) did not include several forms of discrimination, such as segregation, assumed and associated discrimination, and traditions and traditional practices harmful to women and girls as a particular form of discrimination (3) had discrimination in relation to certain fields of application of the law defined as separate forms of discrimination such as 'discrimination in access to goods and services', whereas there were no mirroring articles for the other fields, and (4) while including multiple discrimination, it did not explicitly include intersectional discrimination. The new ADL (1) replicates fully the definition of direct discrimination from the 2000/43 and 2000/78 directives, (2) prohibits and defines segregation, assumed discrimination, associated discrimination, (3) removed 'discrimination in access to goods and services' as a separate form of discrimination, and (4) included explicitly intersectional discrimination. The law failed to include traditions and traditional practices harmful to women and girls as a separate form of discrimination.

The exceptions:

The old ADL was consistently criticised for its extensive list of exceptions. The new ADL provides a much more concise and clear scope of exceptions, which are titled not as exceptions but as 'Measures and actions which are not discrimination'. In Article 7, the new ADL provides a definition of affirmative action, and prescribes that different treatment of Macedonian citizens compared to non-citizens, and the genuine and determining occupational requirement (which replicates the current Article 14(2)) will not be considered to be discrimination.

The equality body:

The old ADL also raised issues as regards to the equality body – the Commission for Protection against Discrimination (CPAD), the main ones being: (1) the appointment criteria for the Commissioners were so general, that they permitted the appointment of persons without any specific equality and non-discrimination knowledge and experience, (2) the criteria for dismissal of the Commissioners were not clear, and (3) Commissioners were not appointed full time and the establishment of an administrative support unit was prohibited. Under the new ADL, these matters are resolved. The newly titled Commission for Prevention and Protection against Discrimination (CPPD) will (1) be composed of members appointed against a list of criteria which explicitly ask for five years of experience in equality and non-discrimination matters, (2) the criteria for dismissal are clearly stated

in a separate article, and (3) the Commissioners are full-time appointees which will work with the supported of an administrative unit.

The sanctions:

The sanctions in the old ADL were criticised for not holding up to EU standards of being dissuasive, effective and proportionate. The new ADL will change this but will still not resolve the overall issue with misdemeanour sanctions in the country which remains fundamentally flawed, in terms of not reflecting the nature of the misdemeanour adequately.

Procedural matters:

The old ADL (1) did not provide for situation testing as an accepted method for proving discrimination, (2) contained a contested definition of the shifting of the burden of proof requesting facts and proofs about the alleged discrimination, and (3) did not explicitly allow for actio popularis. The new ADL resolves all of these points by (1) explicitly defining situation testing and prescribing that the courts can use situation testing as means for proving discrimination, (2) brings the shifting of the burden of proof in line with EU acquis, and (3) explicitly allows actio popularis. In addition, the new ADL lifts court fees for discrimination cases, thus increasing the accessibility to courts as forums for seeking protection against discrimination.

Other matters:

When the old ADL entered into force, many laws already contained anti-discrimination provisions. However, the law did not prescribe an obligation that these are brought in line with the ADL. This resulted in an unharmonized national legal framework on non-discrimination. The new ADL prescribes such an obligation. Under Article 51, all laws containing anti-discrimination provisions need to be brought in line with the new ADL within two years of the day the law enters into force.

Internet link source:

Law on Prevention and Protection against Discrimination [Закон за спречување и заштита од дискриминација], *Official Gazette of the Republic of North Macedonia*, No.101/2019 (22.05.2019).