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# Country report

## Non-discrimination

North Macedonia  
2020  
including summary



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# **Country report**

## **Non-discrimination**

Transposition and implementation at national level of  
Council Directives 2000/43 and 2000/78

## **North Macedonia**

Biljana Kotevska

Reporting period 1 January 2019 – 31 December 2019

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## EXECUTIVE SUMMARY

### 1. Introduction

The Republic of North Macedonia (hereinafter North Macedonia), a land-locked, multi-ethnic country in south-eastern Europe, declared its independence in 1991, following the dissolution of the Socialist Federal Republic of Yugoslavia. It became a European Union candidate country in 2005 with a recommendation to open negotiations from 2009 and has been invited to join the North-Atlantic Treaty Organization. Both these processes are a foreign affairs priority for the country, but have stalled, initially due to the name dispute<sup>1</sup> with Greece. As noted in several European Commission progress reports,<sup>2</sup> this was compounded by fundamental rule of law issues. The government appointed in June 2017 continued the work of the working group regarding the drafting of a new Law on Prevention and Protection against Discrimination (Anti-Discrimination Law, ADL). This law was adopted in May 2019.<sup>3</sup> Official domestic priorities remain the implementation<sup>4</sup> of the Ohrid Framework Agreement (OFA),<sup>5</sup> lowering unemployment rates<sup>6</sup> and the fight against poverty.<sup>7</sup>

The country's population is just over two million.<sup>8</sup> Ethnic affiliation is important, as sets of rights and positive action measures are tied to the numerical representation of each ethnic community in the total population. The ethnic composition<sup>9</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 % 'others' (a term used in the Constitution). Numerous activities to promote the rights of Roma people have been undertaken but, except in relation to political participation,<sup>10</sup> results remain questionable.

Regarding cooperation with civil society organisations (CSOs), following the appointment of the new Government in June 2017, the climate rapidly changed from one of scapegoating and openly prosecuting CSOs, which was the case during the Gruevski Government, to one that is much more open to including CSOs in decision-making processes and working groups and in stepping up to support CSO activities, including on equality and non-discrimination. In 2019, CSOs contested the blockade in the Parliament regarding the adoption of the ADL.<sup>11</sup> Activists and allies claimed that the reason why the law was being blocked in Parliament was a letter which the MPs received from the two largest religious

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<sup>1</sup> On the name dispute, please see the introduction to the 2018 report or older.

<sup>2</sup> European Commission (2019), *North Macedonia 2019 Report*, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-north-macedonia-report.pdf>.

<sup>3</sup> 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.

<sup>4</sup> Although it is not the OFA itself that is being implemented, but constitutional, legal provisions and strategic documents that resulted from its signing, the expression 'implementation of the OFA' is used for reasons of brevity.

<sup>5</sup> Signed in view of ending the 2001 armed conflict, the OFA aims to advance the position of minority ethnic communities 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>6</sup> According to the State Statistical Office, the unemployment rate in the third quarter of 2019 was 17.1 % of the active population, while 47.4 % are employed.

<sup>7</sup> The Laeken indicator of poverty for 2018 (last available statistic) is 21.9 %.

<sup>8</sup> Although not supported by official figures, estimates show that 250 000 to 500 000 people have left the country in the past few years to work abroad.

<sup>9</sup> All figures presented here are rounded percentages from the 2002 census, which is still the most recent one. A new census was scheduled for 2011, but it was cancelled due to lack of clarity around the implementation of the methodology. A new census was planned for April 2020, however it was postponed because of pre-term elections (due to take place in April 2020). The new census will take place in either autumn 2020 or spring 2021. All statistics from the State Statistical Office can be found at: [www.stat.gov.mk/](http://www.stat.gov.mk/).

<sup>10</sup> There is a Roma minister in the Government, with a portfolio on Roma rights, a Roma municipality (Shuto Orizari) and Roma MPs. In addition, the principle of just and equitable representation, implemented pursuant to the Ohrid Framework Agreement, also applies to Roma.

<sup>11</sup> Flash report 'The proposed new law on anti-discrimination blocked in Parliament' (31.01.2019), available at: <https://www.equalitylaw.eu/downloads/4814-fyr-macedonia-the-proposed-new-law-on-anti-discrimination-blocked-in-parliament-pdf-134-kb>.

communities in the country – the Macedonian Orthodox Church and the Islamic Religious Community – who objected to sexual orientation being added as a protected ground for discrimination. Following this, MPs raised personal religious beliefs in the Parliamentary procedure as grounds for refusal to let the law pass to the next stage in Parliament. This letter has not yet been released to the public. Asked to elaborate on the blocking of the law and what it means for EU integration and the reforms that are expected of the country as an EU membership candidate, Bujar Osmani, Deputy-Prime Minister in charge of European Integration, made the following statement:

'There are certain differences among the political parties in relation to which categories should be protected under the law. There are ongoing talks with the political parties since there is still prejudice among the MPs, or they think that there is prejudice in their electorate which can in turn reflect upon them. However, I believe that through dialogue we can add all categories because this is a matter of European values.'<sup>12</sup>

When asked to clarify which categories he meant, Osmani identified LGBT and some other 'disputed categories'. He also added that he thinks the law should not be forced on his party and the people and that it should not be introduced until these prejudices have been discussed with the electorate. His statement was followed by reactions from the Network against Homophobia and Transphobia. The Network condemned Osmani's statement for calling LGBT people 'a disputed category' and recalled the obligations in the EU acquis which apply to FYR of Macedonia as a candidate EU Member State. The Network insisted on the law being part of the European legal package which the country has to adopt and stated that from the developments it is clear that the political party to which Osmani belongs does not want to see the EU integration processes progress.

After the law was adopted,<sup>13</sup> CSOs continued to press for the appointment of the new equality body – the Commission for Prevention and Protection against Discrimination (CPPD). This was also significantly delayed and, as discussed in Section 6 of this Executive Summary, the members of the new body had not yet been appointed by the cut-off date for this report.

## 2. Main legislation

The Constitution of the Republic of North Macedonia<sup>14</sup> is a written one and the country's highest legal act. It accepts international law as part of domestic law and as higher than the laws and bylaws. The Constitution provides for protection against discrimination. It upholds the equality of citizens before the Constitution and before the law, stating that citizens 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, before the Constitutional Court. Upholding the monism principle on the 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 across various laws, including criminal and labour law, and also beyond. As an EU candidate country, part of the

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<sup>12</sup> *Top tema na vasa strana, 'Жешко столче со вицепремиерот Бужар Османи (22.01.2019)'* (In the Spotlight with the Deputy PM Bujar Osmani (22.01.2019)), Top tema na vasa strana official YouTube Channel, available at: [https://youtu.be/MY\\_MPUr8II4](https://youtu.be/MY_MPUr8II4).

<sup>13</sup> Anti-Discrimination Law, 2019. Full title: Republic of North Macedonia, 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 May 2019).

<sup>14</sup> English language version of the Constitution of the Republic of North Macedonia: Constitution of the Republic of North Macedonia, available at: [www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx](http://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx).



conditionality and an aspect of the transposition of the EU *acquis* was the adoption of a comprehensive Anti-Discrimination Law (ADL). Thus, in April 2010, the first such comprehensive law – the Law on Prevention and Protection against Discrimination (2010 ADL, old ADL)<sup>15</sup> – was adopted. However, this law did not comply with the directives on many points,<sup>16</sup> including regarding the equality body it established – the Commission for Protection against Discrimination (CPAD). In order to address these shortcomings, following several years of campaigning by CSOs and international pressure, a new Law on Prevention and Protection against Discrimination was adopted in May 2019 (ADL).<sup>17</sup> The ADL replaced the 2010 ADL. The aim of the law is to 'ensure the principle of equality and prevention of and protection against discrimination in terms of exercising human rights and freedoms' (Article 2).

The ADL is in line with the directives. Furthermore, it goes well beyond the directives, including going beyond the proposed equal treatment directive. In Article 5, the ADL provides protection on the following grounds: race, skin colour, origin, nationality or ethnicity, sex, gender, sexual orientation, gender identity, belonging to a marginalised group, language, citizenship, social origin, education, religion or religious belief, political conviction, other convictions, disability, age, family or marital status, property status, health condition, personal capacity and social status. Thus the ADL includes all grounds required by the directives and goes beyond them. Moreover, Article 5 is an open-ended provision, ending with 'any other ground'.

Article 3 foresees that the law applies to 'all natural persons and legal entities' (paragraph 1) and that its material scope is even across all areas (paragraph 2), providing the following areas as examples: labour and employment; education, science and sport; social security, including social protection, pensions and disability insurance, health insurance and health protection; judiciary and governance; housing; public information and the media; access to goods and services; membership of and activity in political parties, associations, foundations, trade unions and other membership organisations; and culture. It also recasts the equality body as the Commission for Prevention and Protection against Discrimination (CPPD), removing the previously existing issues with independence, internal organisation and capacity. The CPPD's mandate has been re-envisioned and its remit now includes proactive action, which is also reflected in the fact that its new name includes 'protection'.

### **3. Main principles and definitions**

The ADL contains definitions of direct discrimination, indirect discrimination, harassment, incitement, encouragement and instruction to discriminate, victimisation and segregation. The definitions of direct and indirect discrimination are fully replicated from the directives. The law contains articles on harassment and on sexual harassment. Multiple discrimination and intersectional discrimination are included as a graver form of discrimination, as are repeated and extended discrimination. Discrimination by association and by perception are defined. Not providing reasonable accommodation is considered to constitute discrimination.

The law defines a list of measures and activities that are not considered to be discrimination. These include affirmative measures, genuine occupational requirements, protection measures and other different treatment which is not considered to be discrimination.

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<sup>15</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, 150/2015, 31/2016, 21/2018, Constitutional Court Decision: Y.6p.82/2010 (15 September 2010).

<sup>16</sup> See previous reports by the European Equality Law Network, available at: <https://www.equalitylaw.eu/country/north-macedonia>.

<sup>17</sup> Anti-Discrimination Law, 2019.

Before the 2019 ADL and the 2010 ADL, various laws incorporated definitions of discrimination. The ADL did include a provision in the Transitory and Final Provisions Section on unification of the various laws with the ADL. This process is to be completed within two years of the ADL's entry into force. *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 the event of legal loopholes (as prescribed under the Law on Courts).

#### 4. Material scope

The ADL is applicable to both the private and public sectors and applies to all fields. The law illustratively notes several fields and closes with 'all other fields'. The explicitly listed fields are: employment and working relations; education, science and sport; social security, including social protection, pensions and disability insurance, health insurance and healthcare; judiciary and administration; housing; public information and the media; access to goods and services; membership of and involvement in political parties, CSOs, foundations, trade unions and other membership organisations; and culture. Thus, it goes beyond the directives. Other laws also include discrimination provisions, defining the material scope. All of them relate to both the public and private sectors, apart from the Law on the Ombudsperson, which provides protection against discrimination only in the public sphere.

In the field of employment, aside from the Anti-Discrimination Law, there is also a Law on Labour Relations,<sup>18</sup> which prohibits discrimination in line with the standards of the directives. These laws apply to both the public and private sectors.

#### 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 Constitutional Court in a prompt procedure. However, in practice, although these procedures have been invoked, the Constitutional Court has been very reluctant to act in such cases.

There is ambiguity when it comes to addressing discrimination complaints. Various laws provide different types of proceedings in similar cases. Proceedings vary from monitoring conducted by inspectorates to misdemeanour procedures, litigation procedures, administrative procedures and criminal procedure. The ADL envisages several options for procedural protection. These are administrative, litigation and misdemeanour procedures.

Administrative procedures before the CPPD are free of charge. This body may give its opinion and recommendations. The procedure can last up to 60 days. If the recommendation is not acted upon, the CPPD can initiate a misdemeanour procedure in front of the competent misdemeanours court.

In 2018,<sup>19</sup> the CPAD reported receiving 132 cases, which is a significant increase from 2017 when it received 59 cases. The reporting by discrimination ground was as follows: 'personal or other social status 25 %; political affiliation 21.97 %; health status 9.09 %; sex 9.09 %; belonging to a marginalised group 8.33 %; ethnicity 7.58 %; age 6.06 %; "mental" or physical disability 3.79 %; gender 3.03 %; family or marital status 3.03 %;

<sup>18</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, 20/2015, 33/2015, 72/2015, 129/2015, 27/2016, 120/2018, 110/2019; 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, U. no. 114/2014.

<sup>19</sup> These are the most recent available statistics on the work of the equality body. The 2019 annual report had not yet been published at the time of writing.

religion or religious belief 2.27 %; sexual orientation 2.27 %, etc.<sup>20</sup> The reported distribution by field is as follows: 49.24 % in employment and labour relations; 19.70 % in access to goods and services; 8.33 % in judiciary and administration; 6.82 % in education, science and sport; 3.79 % in social security; 2.27 % in public information and the media; 0.76 % in housing; 3.79 % no field stated and 6.82 % in other fields established under the law.<sup>21</sup>

Litigation procedures can be brought in ordinary courts, based on the provisions of the ADL and the Civil Procedure Law. Court procedures have priority over procedures in front of the equality body. The CPPD may not act or must cease acting on a case if a procedure before the court has already been filed regarding the same matter or is being filed in the course of the CPPD procedure or has been completed under an enforceable decision. The relationship between procedures before the Ombudsperson and the CPPD is not regulated by law. The former body (CPAD) and the Ombudsperson had concluded a memorandum of understanding. Currently, there are no such rules in place because the new body (CPPD) has not yet been established.

Under the ADL, the outcome of the procedure depends on the procedure chosen. Administrative procedures provide for a recommendation to rectify the violation (i.e. the discrimination) within 30 days; a longer period of up to six months can be assigned if there are justified reasons. A misdemeanour procedure can lead to fines in the range of EUR 400 to EUR 5 000.<sup>22</sup> Financial and other sanctions for discrimination are provided in the Criminal Code. These provisions have not been applied to date. A litigation procedure can have several outcomes, depending on the type of lawsuit filed. The lawsuit can be declaratory, prohibitive, restitutional, reparational or a publishing claim. The ADL provides that the Civil Procedure Law is to be applied.

The Ombudsperson is another possible forum for public sector discrimination cases. In 2019, 60 cases were filed as non-discrimination and equitable representation cases, which represents 1.7 % of the total number of cases filed (3 453 cases, which is a slight decrease from 2018, when the number of cases was 3 458). This is a fall compared to the previous year, when the Ombudsperson had 77 cases - the highest in this category of cases since the Ombudsperson started to report them separately (that is, higher than the 70 cases or 2.17 % reported in 2017, the 69 cases or 1.83 % reported in 2016 or the 53 cases or 1.2 % reported in 2015).

Under the separate category of cases of 'adults and children with disabilities', the Ombudsperson reports having received a higher number of cases compared to the previous year – 24 cases or 0.66 % (compared to 21 cases or 0.61 % in 2018, five cases or 0.16 % in 2017 and 15 cases or 0.4 % in 2016). As was the case in the previous year, the Ombudsperson did not publish detailed statistics on the grounds and fields in which the cases were filed. However, it noted a continuing trend from previous years in that employment remained the dominant field. It also reports that ethnic affiliation was the dominant discrimination ground.<sup>23</sup>

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<sup>20</sup> The CPAD reported the distribution of cases by discrimination ground in percentages and did not provide a full list (the sentence ends with 'etc'), as can be seen from this quote. Source: Commission for Protection against Discrimination (2019), *Годишен извештај за 2018 година (Annual report for 2018)*, available at: [www.sobranie.mk/materialdetails.nsp?materialId=a554ee4c-74e0-44a2-a5bb-04b4e411c353](http://www.sobranie.mk/materialdetails.nsp?materialId=a554ee4c-74e0-44a2-a5bb-04b4e411c353).

<sup>21</sup> Commission for Protection against Discrimination (2019), *Годишен извештај за 2018 година (Annual Report for 2018)*, available at: [www.sobranie.mk/materialdetails.nsp?materialId=a554ee4c-74e0-44a2-a5bb-04b4e411c353](http://www.sobranie.mk/materialdetails.nsp?materialId=a554ee4c-74e0-44a2-a5bb-04b4e411c353).

<sup>22</sup> All amounts are indicated in EUR and are to be paid in national currency, unless stated otherwise.

<sup>23</sup> Ombudsperson (2020), *Годишен извештај за степенот на обезбедувањето почитување, унапредување и заштита на човековите слободи и права 2019 (Annual report on the degree of ensuring, respecting, advancing and protecting human rights and freedoms 2019)*, available at: <http://ombudsman.mk/upload/Godisni%20izvestai/GI-2019/GI-2019.pdf>.

Aside from the types of proof provided in the Civil Procedure Law, the ADL explicitly allows for situation testing and statistics as means of proof. Article 206 of this law states that any 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. Situation testing was initially used in practice only by CSOs, even before the adoption of the Anti-Discrimination Law. But in 2016, the Ombudsperson conducted a situation testing exercise in order to cross-check a submission it received from a CSO on discrimination on the ground of sex in the field of healthcare provision.<sup>24</sup>

The ADL prescribes shifting the burden of proof, as do several other laws. The definition is fully in line with the directives.

CSOs support complaints and bring cases of discrimination to public attention. The media report discrimination cases, although further awareness-raising and training is needed.

## 6. Equality bodies

The ADL sets out the requirement to establish the CPPD. Its predecessor (CPAD) was the first equality body in the country. The ADL entered into force on 22 May 2019. The publication of a public vacancy announcement for CPPD members (published on 11 June 2019)<sup>25</sup> only attracted a low level of interest, so the Parliament planned to re-advertise the positions. However, in the meantime, the mandate of the old equality body (CPAD) ended on 23 August 2019, leaving the country without an equality body.<sup>26</sup> On 6 December 2019, the Parliamentary Commission on Elections and Appointments held a session consider the candidates for the CPPD. However, without discussing the applications, it decided to annul the public call from June<sup>27</sup> and to publish a new call.<sup>28</sup> The public vacancy announcement was published on 14 December 2019 with a deadline of 30 days,<sup>29</sup> thus the competition closed on 13 January 2020. By the cut-off date for this report, the CPPD members had not been selected and there was no functioning equality body. Considering that the Parliament was to dissolve for the pre-term parliamentary elections by mid-February at the latest, it seems unlikely that there will be a new equality body established before the end of 2019.

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<sup>24</sup> Helsinki Committee of the Republic of Macedonia (2016), *Информатор за дискриминација (Info-sheet on Discrimination)*, May 2016, available at: [https://mhc.org.mk/wp-content/uploads/2019/06/DISCRIMINATION\\_III\\_2\\_.pdf](https://mhc.org.mk/wp-content/uploads/2019/06/DISCRIMINATION_III_2_.pdf).

<sup>25</sup> Parliament of the Republic of North Macedonia, *Одлука за објавување јавен оглас за избор на членовите на Комисијата за спречување и заштита од дискриминација (11.06.2019)* (Decision to publish a vacancy advertisement for the appointment of members of the Commission for Prevention and Protection against Discrimination (11.06.2019)), available at: <https://www.sobranie.mk/content/Javen%20oglas-diskriminacija%2019/Odluka-Komisija%20za%20sprecurvanje%20i%20zashtita%20od%20diskriminacija.pdf>.

<sup>26</sup> Flash report No.77 dated 13 September 2019, 'Country left without an equality body in operation', available at: <https://www.equalitylaw.eu/downloads/4954-republic-of-north-macedonia-country-left-without-an-equality-body-in-operation-pdf-68-kb>.

<sup>27</sup> Parliament of the Republic of North Macedonia, 'Проверка на кандидатурите доставени по Одлуката за објавување јавен оглас за избор на членовите на Комисијата за спречување и заштита од дискриминација („Службен весник на Република Северна Македонија" број 120/2019)' (Evaluation of applications received following the Decision to publish a vacancy advertisement for the appointment of members of the Commission for Prevention and Protection against Discrimination), *Official Gazette of the Republic of North Macedonia*, No.120/2019, available at: <https://www.sobranie.mk/materialdetails.nspx?materialId=daa0b4a4-2263-4f18-9668-91326d67f67c>.

<sup>28</sup> Parliament of the Republic of North Macedonia, *Предлог - одлука за објавување јавен оглас за избор на членовите на Комисијата за спречување и заштита од дискриминација* (Draft- Decision to publish a vacancy advertisement for the appointment of members of the Commission for Prevention and Protection against Discrimination), available at: <https://www.sobranie.mk/materialdetails.nspx?materialId=3d70d5d2-fa78-40fb-933d-774efd6da42f>.

<sup>29</sup> *Одлука за објавување јавен оглас за избор на членовите на Комисијата за спречување и заштита од дискриминација* (Decision to publish a vacancy advertisement for the appointment of members of the Commission for Prevention and Protection against Discrimination), *Official Gazette of the Republic of North Macedonia*, available at: <http://www.slvesnik.com.mk/Issues/7b660cd3435f4fa29e566577544c4f8f.pdf>.

In the meantime, there is one person, acting as a member of staff, in the CPAD offices who continues to receive the newly submitted applications, even though the body has ceased to exist. However, these applications cannot be processed, thus the deadlines for responding established under the law are being missed. It is not known how many applications will be affected by the lack of an equality body at the moment. NGOs have highlighted the fact that many claimants go to the CPAD first, and then to the courts, and they use the CPAD decisions as supporting evidence in their court applications. The current impasse will negatively affect this practice.<sup>30</sup>

According to the ADL, the CPPD is to undertake promotion, protection and prevention activities for the purposes of ensuring equality, human rights and non-discrimination, and its remit includes the following competences:

- Advise: establish advisory bodies comprised of experts in specific matters related to the promotion, prevention of and protection against discrimination; give general recommendations on particular matters in the area of equality and non-discrimination and monitor their implementation; provide opinions and recommendations regarding the implementation of the ADL.
- Promote: promote the principle of equality, the right to non-discrimination and the addressing of all forms of discrimination through raising public awareness, information and education; advocate for the ratification of bilateral or multilateral international agreements in the area of human rights or for accession thereto and monitor their implementation.
- Educate: contribute to the development and application of programmes and materials in the sphere of formal and informal education.
- Monitor: monitor the implementation of the ADL and give opinions and recommendations thereon.
- Regulate: promote and propose the harmonisation of national legislation, regulations and practices with international and regional human rights instruments; initiate the modification of regulations for the purposes of implementing and promoting protection against discrimination; provide opinions on proposals regarding laws which have a bearing on the prevention of and protection against discrimination.
- Cooperate: contribute to producing the reports which the country is obliged to submit to the international and regional authorities competent for human rights and contribute to the implementation of their recommendations; establish cooperation with natural persons and legal entities, as well as with associations, foundations and social partners for the purposes of implementing the principal of equality and promoting the prevention of and protection against discrimination; cooperate with relevant national bodies of other countries, as well as with international and regional organisations in the area of protection against discrimination.
- Protect: act upon complaints, adopt opinions, recommendations and conclusions regarding specific cases of discrimination; initiate ex officio procedures for protection against discrimination; provide information to stakeholders pertaining to their rights and possibilities for initiating a court or another procedure for protection against discrimination; monitor the implementation of the opinions and recommendations pertaining to specific cases of discrimination for as long as the recommendations given by the Commission are complied with; initiate and appear as an intervener in court procedures for protection against discrimination; upon the request of the party or upon its own initiative, it may file a request to the court to enable it to perform the capacity of *amicus curiae*.

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<sup>30</sup> 24 Vesti, *HBO итно да се формира комисијата за заштита од дискриминација, партиите да се воздржат од политички игри* (NGOs demand that the Commission for Protection against Discrimination is urgently established and ask that political parties refrain from political games), 27.09.2019, available at: <https://www.24.mk/details/nvo-itno-da-se-formira-komisijata-za-zashtita-od-diskriminacija-partiite-da-se-vozdrzhat-od-politichki-igri>.

- Research: collect and publish statistical and other data and establish databases related to discrimination; prepare and publish special and thematic reports pertaining to particular issues in the area of equality and non-discrimination.
- Inform: share information with the public on a quarterly basis regarding discrimination cases; disseminate the Commission's opinions, findings and recommendations and address the public through a range of media.
- Report: submit the annual report on the Commission's operation for consideration to the Parliament of the Republic of North Macedonia at the latest by 31st March of the ongoing year for the previous year.
- Internal activities: adopt rules of procedure, an annual plan and a work programme and other actions related to the Commission's operation; publish any reports, including financial statements, on the webpage of the Commission; and organise promotion, protection and prevention activities for the purposes of ensuring equality, human rights and non-discrimination.

In exercising these competences, the CPPD is obliged by law to ensure accessibility for people with disabilities.

Before the old law of 2010 there was no equality body. Public sector discrimination was under the mandate of the Ombudsperson. The ADL does not regulate the relationship between the Ombudsperson and the current body, the CPPD.<sup>31</sup> According to the Ombudsperson's general mandate, it can accept individual claims, investigate, give recommendations and 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.<sup>32</sup>

## 7. Key issues

The key issues of concern in the national context include:

- there is no functioning equality body;
- national legislation has still not been harmonised internally;
- underfunding and understaffing prevents the national human rights institutions from fully exercising their competences;
- impunity of hate crime and hate speech persists, especially with regard to sexual orientation;
- persisting rule of law issues and residual state capture features erode trust in institutions, including the judiciary.

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<sup>31</sup> This was also the case with the previous law and the CPAD. The relationship was regulated by a memorandum of understanding.

<sup>32</sup> Law on the Ombudsperson (*Закон за народниот правобранител*), *Official Gazette of the Republic of Macedonia* Nos. 60/2003, 114/2009, 181/2016, 189/2016, 35/2018, Constitutional Court Decisions: U. no. 111/2007.



## INTRODUCTION

### The national legal system

The Republic of North Macedonia (hereinafter North Macedonia) is a unitary, semi-parliamentarian, civil law country. It 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>33</sup> and where, if it is deemed fit and appropriate, courts can use the final judgments of the European Court of Human Rights (ECtHR), the International Criminal Court (ICC) or any other international court with jurisdiction over the country.<sup>34</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 national laws.

The Constitution prescribes the principle of the separation of powers. The three branches of power are: legislative, executive and judicial.<sup>35</sup>

Legislative power is vested in the Assembly of the Republic (the Parliament). The members are elected through what the Constitution and the laws set out as general, direct and free elections and by secret ballot.<sup>36</sup> The Parliament has the power to adopt and amend the Constitution and 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, 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 Prevention and Protection against Discrimination (CPPD) (*Комисија за спречување и заштита од дискриминација, КСЗД*) (former Commission for Protection against Discrimination (CPAD) (*Комисија за заштита од дискриминација, КЗД*)) and the Ombudsperson (*Народен правобранител*).

The executive branch is represented by the President (whose role is largely ceremonial) and the Government, which has 16 ministries, five Deputy Prime Ministers and seven 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. The Ministry of Foreign Affairs hosts the inter-ministerial body on human rights, established with the aim of improving coordination and communication among the Government departments on key human rights issues. Aside from this body, and of relevance to this report, an important division of the executive Government is the Ministry of Labour and Social Policy (MLSP), which is tasked with coordination and development of non-discrimination activities and hosts the National Coordinating Body for Non-discrimination Issues. The Representative for Equal Opportunities for Women and Men

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<sup>33</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 North Macedonia, 1991 and subsequent amendments. Full title: Republic of North Macedonia, Constitution of the Republic of North Macedonia (*Устав на Република Северна Македонија*). Official website of the Parliament of the Republic of North Macedonia, available at: [www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx](http://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx).

<sup>34</sup> Law on Courts, 2006. Article 18(5). Full title: Republic of North Macedonia, Law on Courts (*Закон за судовите*), *Official Gazette of the Republic of Macedonia* No. 58/2006, 62/2006, 35/2008, 150/2010; 83/2018, 198/2018, 96/2019; Constitutional Court Decisions: U.no.256/2007, U.no.74/2008, U.no.124/2008, U.no.12/2011.

<sup>35</sup> Please see the 2018 version of this report, Section 11, for information on the wire-tapping affair, which cast doubt on the respect for the separation of powers and the rule of law in the country in general.

<sup>36</sup> The wire-tapping affair also raises issues in relation to elections.

is based in the MLSP; each state administrative body has a legal obligation to appoint a coordinator for equal opportunities.<sup>37</sup>

The judiciary consists of the courts.<sup>38</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. One is the national equality body; this was the CPAD until August 2019 and thereafter the CPPD. The second is the Ombudsperson (which has a general human rights mandate, extending beyond equality and non-discrimination).

Local governance in the country is organised through decentralised, local self-government units. These units are made up of 80 municipalities<sup>39</sup> and the City of Skopje (as a separate local self-government unit).

Protection in discrimination cases, depending on the personal and material scope of the case, can be sought through several procedures: criminal procedure,<sup>40</sup> civil procedure,<sup>41</sup> administrative procedure,<sup>42</sup> quasi-judicial procedure<sup>43</sup> and a procedure before the Constitutional Court.<sup>44</sup>

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

A new Law on Prevention and Protection against Discrimination (hereinafter Anti-Discrimination Law, new ADL) was adopted on 16 May 2019.<sup>45</sup> It replaced the Law on Prevention and Protection against Discrimination (2010 Anti-Discrimination Law, old ADL)<sup>46</sup> adopted on 8 April 2010. The new ADL includes all the grounds covered by the directives and goes well beyond them. Article 5 of this law explicitly includes the following

<sup>37</sup> Law on Equal Opportunities for Women and Men, 2013. Full title: Republic of North Macedonia, Law on Equal Opportunities for 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, 150/2015.

<sup>38</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, the Academy of Judges and Public Prosecutors was established as a public institution for vocational training of candidates for judges and public prosecutors. Source: Republic of North Macedonia, Law on the Academy of Judges and Public Prosecutors, 2015. Full title: Law on the Academy of Judges and Public Prosecutors (*Закон за Академијата за судии и јавни обвинители*), *Official Gazette of the Republic of Macedonia*, No. 20/2015, 192/2015, 231/2015, 163/2018.

<sup>39</sup> Law on Territorial Organisation of Local Self-government, 2004, Article 16. Full title: Republic of North Macedonia, Law on Territorial Organisation of 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: U.no. 40/2005.

<sup>40</sup> Criminal procedure is an option for discrimination cases that amount to a criminal offence.

<sup>41</sup> Under various laws, in civil proceedings (more details follow in the report below).

<sup>42</sup> Including for misdemeanours.

<sup>43</sup> Procedures before the CPAD and the Ombudsperson.

<sup>44</sup> Citizens have the right to lodge 'Requests for protection of human rights and freedoms' with the Constitutional Court if 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 package of rights set out in the Constitution from unconstitutional acts (laws and bylaws). However, the effectiveness of this mechanism is still in question (according to the ECtHR, a legal remedy needs to be effective not just in theory but also in practice) because of the very low success rate of claimants. In the more than 20 years that it has been in operation, the Constitutional Court has only once decided in favour of claimants seeking protection through such a request and has rejected almost all of the filed cases.

<sup>45</sup> Anti-Discrimination Law, 2019.

<sup>46</sup> Anti-Discrimination Law, 2010. Full title: Republic of North Macedonia, 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, 150/2015, 31/2016, 21/2018, Constitutional Court Decision: U.no.82/2010.



discrimination grounds: race, skin colour, origin, nationality or ethnicity, sex, gender, sexual orientation, gender identity, belonging to a marginalised group, language, citizenship, social origin, education, religion or religious belief, political conviction, other convictions, disability, age, family or marital status, property status, health condition, personal capacity, and social status. Like its predecessor, it has a wide material scope, which includes labour and employment; education, science and sport; social security, including social protection, pensions and disability insurance, health insurance and health protection; judiciary and governance; housing; public information and the media; access to goods and services; membership of and activity in political parties, associations, foundations, trade unions and other membership organisations; culture; and all other areas.’ (Article 3(2)).

The Law on Labour Relations<sup>47</sup> was adopted on 28 July 2005. Under Article 6(1), an open-ended clause, the following grounds are explicitly covered by the law: racial or ethnic origin, colour, gender, age, health condition (i.e. 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 Labour Law applies to labour relations among employers and employees established by the 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, and personally and continuously carries out the work according to the instructions and under the supervision of the employer (Article 5(1)1).

It should be noted that these are only the two main pieces of legislation transposing the two directives, and those which, at the time of adoption, were explicitly referred to as being adopted for the purposes of transposing EU law. As the country’s first comprehensive Anti-Discrimination Law was only adopted 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 and health security) and in the field of employment.

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<sup>47</sup> Labour Law, 2005. Full title: Republic of North Macedonia, 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, 20/2015, 33/2015, 72/2015, 129/2015, 27/2016, 120/2018, 110/2019; 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, U.no.114/2014.

## 1 GENERAL LEGAL FRAMEWORK

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

The Constitution of North Macedonia includes the following articles dealing with non-discrimination:

- Article 9 explicitly covers the following grounds: sex, race, skin colour, national or social origin, political and religious belief, property and social status (closed list of grounds) (paragraph 1). Paragraph 2 contains a general equality clause on equality before the law, which is not tied to a discrimination ground, making the personal scope of the article open but still limited only to citizens and, in accordance with the practice of the Constitutional Court, to 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.

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

In theory, these provisions are directly applicable, but this is not so in practice.<sup>48</sup> Under the Constitution, every citizen may invoke the protection of freedoms and rights prescribed in the Constitution before the ordinary courts and before the Constitutional Court, through a procedure based upon the principles of priority and urgency. However, the ordinary courts have a practice of rejecting Constitution-based human rights claims. The Constitution also guarantees judicial protection of the legality of individual acts of the state administration and of other public institutions (Article 50). Thus the letter of the law says that the constitutional provisions are directly applicable, but practice indicates otherwise. The mechanisms enabling ordinary courts to directly apply the constitutional anti-discrimination provision have not been used.<sup>49</sup>

In practice, there are no requests for interpretation of constitutional provisions from the ordinary courts to the Constitutional Court and there is no practice of referencing the Constitutional Court by the ordinary courts. This is for two reasons. First, regardless of the procedure used, ordinary courts insist that a lawsuit is brought invoking provisions of specific laws, and they tend not to implement the Constitution directly. Second, the Constitutional Court's positioning and practice is such that it does not enter into revisions of verdicts and decisions of the ordinary courts.<sup>50</sup>

Although judicial interpretation would be required, there is no reason to expect that constitutional equality clauses cannot be enforced against private actors (as well as against the state). However, in view of the comments above on the actual use of these provisions before the ordinary courts, the practical relevance of this is questionable.

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<sup>48</sup> See Section 1(b) of the 2013 Report: <https://www.equalitylaw.eu/downloads/4174-fyr-macedonia-country-report-non-discrimination-2013-1-11-mb>.

<sup>49</sup> This does not mean that ordinary courts do not mention provisions from the Constitution.

<sup>50</sup> See, for example, Constitutional Court cases: U.No.55/2015 (para.4) (24 June 2015); U.No.152/2012-0-0 (para.4) (14 November 2012); U.No.172/2002 (para.4) (25December 2002); U.No.37/1997 (para.3) (19 March 1997).

## 2 THE DEFINITION OF DISCRIMINATION

### 2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in the main legislation transposing the two EU anti-discrimination directives (listed in the Introduction in the section on the main legislation transposing and implementing the directives):

- The new Law on Prevention and Protection against Discrimination:<sup>51</sup> race, skin colour, origin, nationality or ethnicity, sex, gender, sexual orientation, gender identity, belonging to a marginalised group, language, citizenship, social origin, education, religion or religious belief, political conviction, other convictions, disability, age, family or marital status, property status, health condition, personal capacity and social status (open-ended clause) (Article 5). In contrast to the 2010 Anti-Discrimination Law, the new ADL is in line with the directives and goes beyond their scope.
- The Law on Labour Relations (Labour Law) includes the following grounds: 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)).

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

Although the Law on Prevention and Protection against Discrimination (hereinafter Anti-Discrimination Law, ADL) contains an article defining key terms used in the law (Article 4), it does not contain definitions of the grounds from the directives except for disability (see section c here, above). No issues arising from this have yet been reported.

It is important to note, however, that ratified international treaties rank higher than laws in the national legal hierarchy, but below the Constitution. As reported in Annex 2, the country has ratified the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination Against Women, the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child, so interpretation of the discrimination grounds following from these treaties should be considered as valid at the national level. The same applies to the European Convention on Human Rights and to the Framework Convention on National Minorities, to which the country is also a party. The resourcefulness and absolute necessity of turning to international law for definitions of the discrimination grounds is made clear in

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<sup>51</sup> Other laws which include provisions with discrimination grounds are the following: Law on Courts (Articles 3 (1-3), 6 (1), 43 (1)), Criminal Code (Articles 137 (1), 319 (1), 394-r, 417 (1), Law on the Execution of Sanctions (Article 4(2) and (3)), Law on Volunteering (Article 9), Law on Voluntary Financed Pension Insurance (Article 3), Law on Primary Education (Article 5(1)), Law on Secondary Education (Article 3(3)), Law on Higher Education (Article 108 (5)), Law on the Protection of Children (Article 12 (1)), Law on Social Protection (Article 16 (2)), Law on Patients' Rights (Article 5(2)), Law on Public Health (Article 16(5)), Law on Health Protection (Article 9), Law on Mental Health (Article 20(4)), Law on Equal Opportunities for Women and Men (Article 4(3)), Law on the Media (Article 4), Law on Audio and Audio-visual Media Services (Articles 45, 53, 61), Law on Culture (Article 4(1)), Law on Agencies for Temporary Employment (Article 3b(3)), Law on Insurance in Case of Unemployment (Article 1a(2)), Law on Employment of and Work by Foreigners (Article 4(8)), Law on Public Prosecutors (Article 5(2)), Law on Border Control (Article 8(3)), Law on Customs Administration (Article 13(1)). The need for harmonisation of the discrimination grounds across laws has already been identified (see Kotevska B. (2016), *Analysis of the harmonisation of national equality and non-discrimination legislation*, Skopje, OSCE and CPAD). The new ADL contains a transitory provision that all other laws that contain provisions on the prevention of and protection against discrimination 'shall be harmonised with the Law on the Prevention of and Protection against Discrimination within two years as of the day of the entry into force of this Law' (Article 51). Keeping legal provisions with different personal and material scopes of protection in force, while resolvable under the *lex specialis derogat legi generali* rule, contributes to a reduction of legal certainty. A new analysis was prepared proposing several models for harmonisation of the national legislation (see Najchevska, M. (2019), *Анализа на хармонизацијата на легислативата во областа на антидискриминацијата* (Analysis of the harmonisation of the legislation in the area of anti-discrimination), OSCE).

the *Guide on Discrimination Grounds*, published by the Commission for Protection against Discrimination (the national equality body) in cooperation with the OSCE. In particular, the guide relies heavily on international law sources (including practice from the human rights bodies and courts) in order to carve out the definitions of the discrimination grounds prescribed under national law.<sup>52</sup>

The lack of definitions of discrimination grounds in national law can be aggravating for the design and implementation of public policies and related actions. For example, in relation to ethnicity, a complex set of measures is activated around ethnicity and the implementation of the Ohrid Framework Agreement. However, the legislative changes and strategic documents do not define ethnicity or ethnic origin/belonging/affiliation. Nevertheless, for protection against discrimination purposes, since in the national context the personal scope is wide and the discrimination ground provisions open, the definitions of specific grounds become less important and their absence less limiting.

a) Racial or ethnic origin

As discussed above, the national law does not define 'racial or ethnic origin'.

b) Religion and belief

As discussed above, the national law does not define 'religion and belief'. However, CPAD's practice shows that *forum externum* will fall within the understanding of religion, as per CJEU Achbita C-157/15, para 28. Namely, in 2017, the CPAD published a general recommendation on the exercise of religion without discrimination wherein they focused solely on *forum externum*. The recommendation was inspired by a case where girls were refused entry to their school (a state school) on the first school day of the new school year because they were wearing head scarves. Refusing them entry to the school was a violation of the principle of equal treatment.<sup>53</sup>

c) Disability

While the ADL does not define disability, it defines persons with disabilities in Article 4(1(3)) as 'any person with a long-term physical, intellectual, mental or sensory disability which, in interaction with various social barriers, may obstruct his/her full and effective participation in society on equal terms with everyone else' (Article 4(1(3))).

A 2015 analysis of the harmonisation of national legislation found insensitive disability terminology to be a cross-cutting issue. The analysis was conducted on 139 laws, of which 40 laws referred to disability; in all of these 40 laws the terminology used could not be considered to be in line either with the spirit of the directives or with the UN Convention on the Rights of Persons with Disabilities (CRPD), to which the country is a party.<sup>54</sup> In addition, Article 4(1(3)) definition is based on the CRPD.

d) Age

As discussed above, the national law does not define 'age'. Case-law points to this ground being understood very broadly. For example, in a 2018 case, the CPAD found discrimination

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<sup>52</sup> Kotevska, B. (2013), *Guide on discrimination grounds*, Skopje, OSCE and CPAD, available at: <https://www.osce.org/files/f/documents/6/b/116789.pdf>.

<sup>53</sup> CPAD (2017), 'General Recommendation on equal enjoyment of the freedom of religion' (text on file with author).

<sup>54</sup> The analysis was conducted on 139 laws and includes a list of all provisions that contain disability terminology that needs revising. Source: Kotevska, B. (2016), *Analysis of the harmonization of national equality and non-discrimination legislation*, Skopje, OSCE and CPAD.

on grounds of age in a job advertisement because the way the advertisement was worded implied that anyone above the age of 26 was excluded from applying.<sup>55</sup>

e) Sexual orientation

As discussed above, national law and case law do not define 'sexual orientation'.

### **2.1.2 Multiple discrimination**

In North Macedonia, multiple discrimination is prohibited by law.

Multiple discrimination is prohibited in the Anti-Discrimination Law as a graver form of discrimination (Article 13) and is defined as 'discrimination practised against a person or a group based on multiple grounds of discrimination' (Article 4(1(10))). Given the scope of the Anti-Discrimination Law, this means that multiple discrimination is prohibited in all fields. There is a separate article on fines for multiple discrimination, prescribing higher fines for it. No further legal rules or case-law exists that would provide more detailed guidance on how to deal with multiple discrimination cases.

In addition to multiple discrimination, the new Anti-Discrimination Law also explicitly prohibits intersectional discrimination (Article 13), as a graver form of discrimination. It defines intersectional discrimination as 'any discrimination upon two or more grounds which are concurrently and inseparably related' (Article 4(1(13))). This definition helps to clearly differentiate intersectional discrimination.

In North Macedonia, there is no court case-law dealing with multiple discrimination. As in previous years, the only institution reporting multiple discrimination cases is the CPAD. In 2018,<sup>56</sup> the CPAD received 29 cases (27 % of its annual case load) where claimants claimed discrimination on two or more grounds.<sup>57</sup> As in previous years, a few cases were reported where gender and age were claimed together as discrimination grounds in the field of employment, pertaining to job advertisements. For example, the CPAD found discrimination on grounds of gender and age in a job advertisement which sought people to promote products who should be female and below the age of 26.<sup>58</sup> However, and in addition to a very similar case from 2017,<sup>59</sup> this case contained further elements which were found also to constitute harassment and an affront to the dignity of women. Namely, the advert also requested that the eligible candidates should not be 'shorter than 165 cm tall, larger than size M... submitting a full body photograph is mandatory'.<sup>60</sup> As in previously reported case-law, the CPAD did not ask the potential discriminator to respond, as it found that the text of the advertisement was sufficient fact and proof of discrimination and the discriminatory action could not be subject to any of the possible exceptions to discrimination and so could not be justified. The CPAD requested that the discriminator withdraw the original advert and re-publish it without the discriminatory criteria.

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

a) Discrimination by assumption

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<sup>55</sup> CPAD (2018), Case No. 08-34, *Macedonian Helsinki Committee vs Divajn Zoran DOOEL export-import Skopje*, 8 March 2018.

<sup>56</sup> The 2019 CPAD report was not yet available at the time of writing of this report.

<sup>57</sup> CPAD (2019), *Annual Report for 2018*, official website of the Parliament of the Republic of North Macedonia.

<sup>58</sup> CPAD (2018), Case No. 08-34, *Macedonian Helsinki Committee vs Divajn Zoran DOOEL export-import Skopje*, 8 March 2018.

<sup>59</sup> The case *Helsinki Committee vs Hotel Glam* (19 May 2017) was reported on the Helsinki Committee's website: <https://mhc.org.mk/en/reports-en/monthly-report-on-human-rights-may-2017/>.

<sup>60</sup> CPAD (2018), Case No. 08-34, *Macedonian Helsinki Committee vs Divajn Zoran DOOEL export-import Skopje*, 8 March 2018.

In North Macedonia, discrimination based on a perception or assumption of a person's characteristics is prohibited in national law. Article 4(1(9)) defines discrimination by perception as 'any distinction, exclusion or restriction of a person due to a presumed belonging to a particular group upon any ground of discrimination'. The 2010 Anti-Discrimination Law did not prohibit this form of discrimination. There is no case law yet regarding this form.

b) Discrimination by association

In North Macedonia, discrimination based on association with people with particular characteristics is prohibited in national law. Article 4(1(8)) defines it as 'any distinction, exclusion or restriction of a person due to being associated with another person or group upon any ground of discrimination'. The 2010 Anti-Discrimination Law did not prohibit this form of discrimination. There is no case law yet regarding this form.

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

a) Prohibition and definition of direct discrimination

In North Macedonia, direct discrimination is prohibited in national law. It is defined in the Anti-Discrimination Law as being, 'where a person or a group is treated, has been treated or would be treated less favourably than another person or group in an actual or a probable comparable or similar situation, based upon a ground of discrimination' (Article 8(1)). A person is considered to be both a natural and a legal person (Articles 3(1) and 4(1(2)) and this has not been interpreted so far as to exclude groups from the protection. This definition is a significant improvement compared to that contained in the 2010 Anti-Discrimination Law which was rather complicated and not fully in line with the directives.

Before the adoption of the 2010 Anti-Discrimination Law, direct discrimination was defined in several other laws as well. The Law on Labour Relations (Article 7(2)) replicates fully the definition from the directives. The Law on the Protection of Children prohibits (Article 13(1)) and defines (Article 14(1)) direct discrimination. The definition was amended in 2019 and is now in line with the directives. According to this definition, direct discrimination is when, 'the claimant and the beneficiary of child protection is, has been, or would be treated less favourably than another person or group in an actual or a probable comparable or similar situation, based upon a ground of discrimination'.<sup>61</sup>

b) Justification of direct discrimination

The Anti-Discrimination Law does not allow direct discrimination (Article 8(1)). However, it does contain an article on measures that will not be considered discrimination (Article 7). The old ADL was consistently criticised for its extensive list of exceptions. The new ADL provides a much more concise and clear scope for exceptions. 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 genuine and determining occupational requirements (which replicates the old ADL's Article 14(2)) will not be considered to be discrimination.

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

a) Prohibition and definition of indirect discrimination

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<sup>61</sup> Law on the Protection of Children, 2013. Full title: Republic of North Macedonia, Law on the Protection of Children (*Закон за заштита на децата*), *Official Gazette of Republic of Macedonia*, Nos. 23/2013, 12/2014, 44/2014, 144/2014, 10/2015, 25/2015, 150/2015, 192/2015, 27/2016, 163/2017, and *Official Gazette of Republic of North Macedonia*, Nos. 104/2019, 146/2019, 275/2019. Art. 14(1).

In North 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, programme or practice puts a person or a group in a less favourable position in relation to a discrimination ground compared with other persons or groups of persons, unless it stems from a legitimate objective, and the means for achieving that objective are proportionate, that is appropriate and necessary' (Article 8(2)).

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

#### b) Justification test for indirect discrimination

Under the Anti-Discrimination Law, indirect discrimination is justified if the 'apparently neutral provision, criterion, programme or practice' that results in less favourable treatment 'stems from a legitimate objective, and the means for achieving that objective are proportionate, that is appropriate and necessary' (Article 8(2)).

In addition, the definition in the Law on the Protection of Children (Article 14(2))<sup>62</sup> replicates the definition from the Anti-Discrimination Law and thus also the justification test for indirect discrimination. The justification test in the definition of indirect discrimination included in the Law on Labour Relations (Article 7(3))<sup>63</sup> stipulates that the differentiation is justified if it is based on criteria and practices objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

### 2.3.1 Statistical evidence

#### a) Legal framework

In North Macedonia, there is legislation regulating the collection of personal data. The main legislation in this area is the Law on State Statistics.<sup>64</sup> Data are collected covering all five grounds except for sexual orientation.<sup>65</sup> 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>

The new ADL foresees an obligation for data collection disaggregated by discrimination grounds for the 'purposes of promotion and advancement of equality and prevention of discrimination' for all data controllers and data processors (Article 3(4)). Article 21, which regulates the competences of the CPAD, foresees an obligation for this equality body to 'collect and publish statistical and other data and to create databases in relation to discrimination' (Article 21(1(24))).

The Ministry of Information Society and Administration collects data on civil servants in the form of a Register of Public Sector Employees.<sup>67</sup> The data to be collected and the access

<sup>62</sup> Law on the Protection of Children, 2013. Art. 14(2).

<sup>63</sup> Labour Law, 2005. Art. 7(3).

<sup>64</sup> Law on State Statistics (1997). Full title: Republic of North Macedonia, 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, 192/2015, 27/2016, 83/2018, 220/2018.

<sup>65</sup> This means that, for state statistics purposes, no data is to be collected on sexual orientation.

<sup>66</sup> Law on Protection of Personal Data, 2005. Full title: Republic of North Macedonia, 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, 153/2015, 99/2016, 64/2018.

<sup>67</sup> Law on Administrative Servants (2014). Full title: Republic of North Macedonia, Law on Administrative Servants (*Закон за административни службеници*), *Official Gazette of the Republic of Macedonia*, No. 27/2014, 199/2014, 48/2015, 154/2015, 5/2016, 142/2016, 11/2018 and *Official Gazette of the Republic of North Macedonia*, No. 275/2019; Constitutional Court Decisions: U.no. 163/2014 (27 December 2016), U.br.121/2015 (01 February 2017). Article 7(1)-(9).

to the register are specified in a bylaw. The data are not publicly 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.

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

Statistics are not used in litigation.<sup>68</sup> However, they are widely used for designing strategic policy documents and 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 for under-represented, non-majority communities (national minorities) and the priorities in relation to the national Strategy on Roma 2014-2020.<sup>69</sup>

On disability, statistics were used for the 'National Strategy on Equalisation of the Rights of Persons with Disabilities'<sup>70</sup> and on age they were used for the 'National Strategy on the Elderly'.<sup>71</sup> Statistics were also used in the 2016-2020 'National Strategy on Equality and Non-discrimination'<sup>72</sup> and for its predecessor, the 'National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability',<sup>73</sup> as well as for the 2015-2020 'National Action Plan for the Implementation of the Law on Prevention and Protection against Discrimination'.<sup>74</sup>

In North Macedonia, statistical evidence may be admitted under national law in order to establish indirect discrimination. The Anti-Discrimination Law explicitly allows for the use of statistical evidence in discrimination cases in Article 38. In addition, Article 206 of the Law on Civil Procedure<sup>75</sup> 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. Statistical evidence as such is not mentioned elsewhere in national law. The Law on State Statistics<sup>76</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

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<sup>68</sup> Before the adoption of the new Anti-Discrimination Law they were not explicitly admissible as evidence, since the law was silent on the issue.

<sup>69</sup> Стратегија за Ромите 2014-2020 (Strategy on Roma 2014-2020), available at: <http://www.mtsp.gov.mk/content/pdf/strategii/Strategija%20za%20Romite%20vo%20RM%202014-2020.pdf>.

<sup>70</sup> Национална стратегија за изедначување на правата на лицата со инвалидност 2010-2018 – ревидирана (National Strategy on Equalisation of the Rights of Persons with Disabilities), available at: <http://mtsp.gov.mk/WBStorage/Files/FINALNA%20Revidirana%20Nacionalna%20Strategija.pdf>.

<sup>71</sup> Национална стратегија за стари лица 2010-2020 (National Strategy on the Elderly), available at: <http://mtsp.gov.mk/WBStorage/Files/Strategija%20za%20stari%20lica%20juni.pdf>.

<sup>72</sup> Национална стратегија за еднаквост и недискриминација 2016-2020 (National Strategy on Equality and Non-discrimination), available at: [http://www.mtsp.gov.mk/content/pdf/dokumenti/7.7\\_Strategija%20za%20ednakvost%20i%20nediskriminacija.pdf](http://www.mtsp.gov.mk/content/pdf/dokumenti/7.7_Strategija%20za%20ednakvost%20i%20nediskriminacija.pdf).

<sup>73</sup> Национална стратегија за еднаквост и недискриминација по основ на етничка припадност, возраст, ментална и телесна попреченост и пол (National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability), available at: [http://mtsp.gov.mk/WBStorage/Files/strategija\\_ednakvost.doc](http://mtsp.gov.mk/WBStorage/Files/strategija_ednakvost.doc).

<sup>74</sup> Национален акциски план за спроведување на Законот за заштита и спречување од дискриминација 2015-2020 (National Action Plan for the Implementation of the Law on Prevention and Protection against Discrimination), available at: [http://www.mtsp.gov.mk/content/word/NAP%20for%20ADL%202015-2020\\_MK.doc](http://www.mtsp.gov.mk/content/word/NAP%20for%20ADL%202015-2020_MK.doc).

<sup>75</sup> Law on Civil Procedure, 2005. Full title: Republic of North Macedonia, Law on Civil Procedure (*Закон за парничната постапка*), *Official Gazette of Republic of Macedonia*, No. 79/2005, 110/2008, 83/2009, 116/2010, 124/2015.

<sup>76</sup> Law on State Statistics, 1997.



admissibility of such statistical evidence exist, making a breakthrough and use of such data a remote possibility.

b) Practice

In North Macedonia, statistical evidence is not used in practice in order to establish indirect discrimination. It remains an issue of a general disregard for statistics and the collection of statistics overall, rather than an issue of the courts' reluctance to use statistics. Moreover, before the new Anti-Discrimination Law, statistical evidence was not explicitly allowed for under law, thus making it a risky endeavour for a court party to raise a case on grounds of statistics.

## 2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In North Macedonia, harassment is prohibited in national law. It is defined under the Anti-Discrimination Law. Harassment is 'unwanted behaviour towards a person or a group of persons on discriminatory grounds, the purpose or consequence of which is to undermine the dignity or create a threatening, hostile, demeaning, or fear-provoking environment, approach or practice' (Article 10).<sup>77</sup> The personal and material scope match the scope of the ADL – they apply to both natural and legal persons, on all discrimination grounds, in the public and private sphere and in all fields of the life of society. The definition complies with the directives.

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), as is its personal scope (Article 6). This definition states that harassment is unwanted conduct related to the protected grounds with the purpose or effect of violating the dignity of the applicant for employment or the worker, resulting in the creation of an intimidating, hostile, humiliating or offensive environment (Article 9(3)). Sexual harassment is any 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 any 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 ultimate objective of ending the working relationship or forcing the victim to leave their job (Article 9-a(2)).

In North Macedonia, harassment explicitly constitutes a form of discrimination in the ADL (Article 10) 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>78</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 those 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. It is important to note here that the legislature obviously intended to create a distinction between harassment in the workplace and other activities that would not be

<sup>77</sup> Paragraph 1 of Article 10 covers harassment and paragraph 2 covers sexual harassment.

<sup>78</sup> Law on Protection against Harassment in the Workplace (2013). Full title: Republic of North Macedonia, 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.

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 in law'.<sup>79</sup>

#### b) Scope of liability for harassment

Where harassment is perpetrated by an employee, in North Macedonia the employer and/or the employee may be held liable. Who will be held liable will depend on the complaint: who the alleged victim of harassment identifies as the discriminator, as well as the details of the case (most notably whether the individual has decided to first seek protection from the employer or whether he/she has decided to go directly to a 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 people/employees can be held liable for harassment as well. The Anti-Discrimination Law does not specify in any more detail how liability is established beyond being identified by the alleged victim themselves. Under the law, liability can be shared between employer and employee(s). There is, however, no established practice related to this. Harassment can also be subject to misdemeanour law.

The Law on Protection against Harassment in the Workplace applies to the field of employment. The liability scope is the same as that contained in the Law on Labour Relations.<sup>80</sup>

The liability for actions by 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 North Macedonia, instructions to discriminate are prohibited in national law. Instructions are not defined. The Anti-Discrimination Law contains an article on encouraging, inciting and instructing discrimination. Notably, this article states that 'any activity with which the practicing of discrimination on grounds of discrimination is, directly or indirectly, encouraged, stimulated, instructed or incited, shall be deemed encouragement, incitement and instruction of discrimination' (Article 9). The personal and material scope match the scope of the ADL – they apply to both natural and legal persons, in the public and private sphere and in all fields of the life of society.

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.

An older case decided under the provisions of the old Anti-Discrimination Law,<sup>81</sup> reported to the equality body in 2013 by Sumnal (a CSO dealing with Roma rights), remains of relevance in relation to instructions to discriminate.<sup>82</sup> A company that was contracted by a major (now closed) supermarket located in one of the largest malls in the country, instructed its sub-contracted company to 'remove' all employees of Roma ethnic origin who

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<sup>79</sup> Law on Protection against Harassment in the Workplace (2013), Article 8(3).

<sup>80</sup> Law on Protection against Harassment in the Workplace (2013), Article 8(3).

<sup>81</sup> This law also outlawed instruction to discriminate (in Article 9).

<sup>82</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 May 2013.

worked in the food department. Although the instruction to discriminate was evident, the case was found to be one of direct discrimination by the contracted company and there was no deliberation on the element of instruction.

In North Macedonia, instructions explicitly constitute a form of discrimination.<sup>83</sup>

b) Scope of liability for instructions to discriminate

In North Macedonia, the instructor and/or the discriminator are liable (Article 9, Anti-Discrimination Law). This applies to both natural and legal persons, and liability can be shared. Who will be held liable depends on the complaint – whom the alleged victim of discrimination identifies as the potential discriminator.

The case of the contracted company being held responsible for direct discrimination (mentioned above, in Section 2.5 (a)), did not involve a deliberation on the instruction. Thus, although the instructor was held liable for discrimination, formally speaking, the case was not classified under the category 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 through 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 for people with disabilities in the area of employment

In North Macedonia, the duty to provide reasonable accommodation for people with disabilities is included in the law and 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. Under the Constitution the ratification of the convention means that it has become part of domestic law. The Convention defines a failure to make reasonable accommodation as a form of discrimination.

According to the Anti-Discrimination Law, which also applies in the field of employment, lack of reasonable accommodation is considered to be a form of discrimination. The definition of reasonable accommodation is as follows:

‘Necessary and appropriate modification and accommodation required in a specific case, which does not cause a disproportionate or unnecessary burden, with a view to ensuring the enjoyment or realisation of all human rights and freedoms of persons with disabilities on equal terms with everyone else. Failure to ensure reasonable accommodation shall be deemed to constitute discrimination.’ (Article 4(1(4)))

The Anti-Discrimination Law also expanded the definition of adjustment of infrastructure and services to include goods and takes the emphasis away from employment, widening the scope of the provision compared to that in the 2010 Anti-Discrimination Law. The new law provides for a more general accessibility duty, including with regard to infrastructure and services.

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<sup>83</sup> Anti-Discrimination Law, 2010. Article 9.

'Access to infrastructure, goods and services means taking adequate measures that ensure that persons with disabilities are provided with access on equal grounds with everyone else to the physical surroundings, transport, information and communications, including information and communication technologies and systems, other public facilities and services in urban and rural areas. Any failure to ensure accessibility and availability of infrastructure, goods and services shall be deemed discrimination.' (Article 4(1(5)))

Unlike the old ADL, the new law does not include a special provision on 'discrimination against persons with disabilities'. However, in Article 6, where discrimination in general is defined, in a single paragraph the law states the definition and continues, adding that:

'This includes all forms of discrimination, including not enabling reasonable accommodation and not enabling accessibility of infrastructure, goods and services' (Article 6).

Thus, this omission of the special provision cannot be interpreted as reducing protection compared to the old law.

The Law on Labour Relations does not specifically mention reasonable accommodation for people with disabilities. The Law on Employment of People with Disabilities<sup>84</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)). Measures undertaken by employers to accommodate people with disabilities 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.

The Law on Employment of Persons with Disabilities requires adjustments to the workplace. This should result in creating conditions allowing people with disabilities to work (Article 5). The way this obligation is formulated suggests that it goes beyond a general obligation to provide accessible workplaces.

In addition, the Law on Primary Education replicates the provisions on reasonable accommodation and on adjustment of infrastructure and services from the Anti-Discrimination Law (Article 11(6 and 7)).

#### b) Practice and case law

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. Further guidance on how to interpret 'reasonable accommodation' has not been provided in case-law. The new ADL also does not define what constitutes a disproportionate burden. 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

The definition of disability for the purposes of claiming reasonable accommodation is no different from that for claiming protection from non-discrimination in general. As

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<sup>84</sup> Law on Employment of Persons with Disabilities, 2008. Full title: Republic of North Macedonia, Law on Employment of Persons with Disabilities (*Закон за вработување на инвалидни лица*), *Official Gazette of Republic of Macedonia*, No. 35/2008, 103/2008, 26/2009, 83/2009, 99/2009, 115/2010, 17/2011, 51/2011, 123/2012, 15/2013, 24/2013, 41/2014, 116/2014, 130/2014, 10/2015, 20/2015, 98/2015, 145/2015, 154/2015, 30/2016, 120/2016, 127/2016, 99/2018. Constitutional Court Decisions: U.no. 80-2008, U.no. 162-2008, U.no. 98-2011, U.no. 57-2013.

mentioned in Section 2.1.1.(c) of this report, while the Anti-Discrimination Law does not define disability, it defines persons with disabilities in Article 4(1(3)) as 'any person with a long-term physical, intellectual, mental or sensory disability which, in interaction with various social barriers, may obstruct his/her full and effective participation in society on equal terms with everyone else'.

d) Failure to meet the duty of reasonable accommodation for people with disabilities

In North Macedonia, failure to meet the duty of reasonable accommodation in the employment of people with disabilities counts as discrimination. Article 6 of the Anti-Discrimination Law includes lack of reasonable accommodation and 'not enabling accessibility of infrastructure, goods and services' in the general article which defines discrimination, explicitly stating that these are to be considered to constitute discrimination (Article 6). Thus, it is a free-standing form of discrimination. The rules on the shifting of the burden of proof apply when claiming the right to reasonable accommodation.

e) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

In North Macedonia, there is a duty to provide reasonable accommodation for people with disabilities outside the employment field. Article 6 of the Anti-Discrimination Law includes lack of reasonable accommodation and 'not enabling accessibility of infrastructure, goods and services' in the general article which defines discrimination, explicitly stating that these are to be considered to constitute discrimination (Article 6) and they apply in all fields of implementation of the law which goes beyond the field of employment.

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

In North Macedonia, there is no legal possibility to provide reasonable accommodation in respect of other grounds in the public and private sectors.

### **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 North 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 with regards to access to employment and acquiring social protection apply to short-term residents without Macedonian citizenship and to Macedonian citizens without permanent residence in the country.<sup>85</sup> In other areas, including self-employment, access to training and membership of workers' organisations, there is no legal restriction 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. Under the ADL, people with an irregular status would also be protected.

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 about how this will be regulated. One sign of planned developments in this direction is that special provisions have been inserted into the Law on Internal Affairs,<sup>86</sup> which regulate special rules for EU citizens, with greatly eased procedures for short-term and long-term stay and residence.

##### **3.1.2 Natural and legal persons (Recital 16 Directive 2000/43)**

###### **a) Protection against discrimination**

In North Macedonia, the personal scope of the Anti-Discrimination Law covers natural and legal persons for the purpose of protection against discrimination. It does not distinguish between natural and legal persons for the purposes of protection against discrimination. Article 3(1) of the Anti-Discrimination Law provides that the law is applied to both natural and legal persons, while Article 4(1(2)) defines person as both a natural and a legal person.

It should be noted, however, that the Constitution only includes citizens in the general equality clause. 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) Liability for discrimination**

In North Macedonia, the personal scope of the Anti-Discrimination Law covers natural and legal persons for the purpose of liability for discrimination. The ADL does not distinguish between natural and legal persons for the purposes of liability for discrimination. Under the ADL (Article 3(1)), the law is applied to both natural and legal persons, as further confirmed by Article 4(1(2)), which defines person as both a natural and a legal person.

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<sup>85</sup> Law on Social Protection (2019). Full title: Republic of North Macedonia, Law on Social Protection (*Закон за социјалната заштита*), *Official Gazette of the Republic of North Macedonia*, No. 104/2019, 146/2019, 275/2019, Article 13.

<sup>86</sup> Law on Internal Affairs (2014). Full title: Republic of North Macedonia, Law on Internal Affairs (*Закон за внатрешни работи*), *Official Gazette of the Republic of Macedonia*, No. 42/2014, 116/2014, 33/2015, 5/2016, 120/2016, 127/2016, 142/2016, 190/2016, 21/2018, 135/2018, 108/2019, 275/2019.

Fines for misdemeanours are divided between fines for natural persons and fines for legal persons and vary in amount (Articles 41 to 43).

### **3.1.3 Private and public sector including public bodies (Article 3(1))**

#### **a) Protection against discrimination**

In North Macedonia, the personal scope of national law covers the private and public sectors, including public bodies, for the purpose of protection against discrimination. The Anti-Discrimination Law states that the law applies to all natural and legal persons (Article 3(1)) and that it covers both the private and the public sector, including public bodies (Article 3(2)).

#### **b) Liability for discrimination**

The personal scope of the Anti-Discrimination Law in North Macedonia covers both the private and public sectors, including public bodies, for the purpose of liability for discrimination (Article 3(2)).

## **3.2 Material scope**

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

In North 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, and includes self-employment (Article 3(2)). Articles 6 to 11 of the Law on Labour Relations<sup>87</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). The Law 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>88</sup>

All major areas of public employment are also covered by the Law on Administrative Servants,<sup>89</sup> the Law on the Police,<sup>90</sup> the Law on Defence<sup>91</sup> and the Law on Foreign Affairs<sup>92</sup> with regard to the labour relations of employees of the respective ministries. These do not contain anti-discrimination provisions, which means the provisions from the Law on Labour Relations, as *lex generalis*, is applicable in this respect.

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<sup>87</sup> Law on Labour Relations (2005), Articles 6 to 11.

<sup>88</sup> Law on Labour Relations (2005), Article 3.

<sup>89</sup> Law on Administrative Servants (2014).

<sup>90</sup> Law on the Police (2006). Full title: Republic of North Macedonia, Law on the Police (*Закон за полицијата*), *Official Gazette of the Republic of Macedonia*, No. 114/2006, 06/2009, 145/2012, 41/2014, 33/2015, 31/2016, 106/2016, 120/2016, 21/2018, 64/2018. Article 96 and Republic of North Macedonia, Law on Internal Affairs (2014).

<sup>91</sup> Law on Defence (2001). Full title: Republic of North Macedonia, Law on Defence (*Закон за одбрана*), *Official Gazette of the Republic of Macedonia*, No. 42/2001, 5/2003, 58/2006, 110/2008, 51/2011, 151/2011, 215/2015, Constitutional Court Decision: U.br.37/2002, U.br.135/2001 and U.br.155/2001.

<sup>92</sup> Law on Foreign Affairs (2006). Full title: Republic of North Macedonia, Law on Foreign Affairs (*Закон за надворешни работи*), *Official Gazette of the Republic of Macedonia*, No. 46/2006, 107/2008, 26/2013, 39/2014, 61/2015, 226/2015, Constitutional Court Decision: U.br.80/2006, U.br.225/2007.

### **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))**

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

The Anti-Discrimination Law includes labour and labour relations in the public and private sectors (Article 3(2)), thus it should be read as including employment, self-employment and occupation. It does not seem to deal differently with the private sector in this regard.

The general non-discrimination article in the Law on Labour Relations<sup>93</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>94</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>95</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>96</sup>

Conditions for access to employment and criteria for various professional activities in the public sector are mostly determined by specialised laws.<sup>97</sup> 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, the Law on Army Service and the Law on Administrative Servants.<sup>98</sup> The Law on Administrative Servants sets out general conditions for employment as a civil servant, which aside from general health capacity, 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>99</sup>

The Anti-Discrimination Law does not distinguish between people who hold citizenship of Macedonia and others for the purposes of protection against discrimination. However, the above-stated citizenship criteria mean that migrants cannot access jobs in the public sector on an equal footing. Given that one of the current exceptions under the ADL is that special rights only for citizens are not deemed discriminatory, a national body is very unlikely to find this distinction on grounds of citizenship to be discrimination. No research exists that could supplement this finding with information as to how these conditions operate in practice.

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<sup>93</sup> Law on Labour Relations (2005), Article 6.

<sup>94</sup> Law on Labour Relations (2005), Article 24.

<sup>95</sup> Law on Labour Relations (2005), Article 25.

<sup>96</sup> Law on Labour Relations (2005), Article 8.

<sup>97</sup> Please note that when these laws do not regulate a matter in a specific way, the Law on Labour Relations applies, as *lex generalis*. This includes on matters of discrimination, since the two laws mentioned here do not contain provisions protecting against discrimination.

<sup>98</sup> Law on Administrative Servants (2014).

<sup>99</sup> Law on Administrative Servants (2014), Article 31(1).



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>100</sup>

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

In North Macedonia, national legislation prohibits discrimination in working conditions including pay and dismissals, for all five grounds and for both private and public employment.

Article 3(2) 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>101</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>102</sup> No case-law on this new law exists.

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

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

Article 3(2) 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>103</sup> and in laws on different stages of education. National legislation gives everyone equal rights to acquire higher education and equal rights to lifelong learning.<sup>104</sup>

According to the Law on Higher Education,<sup>105</sup> citizens of the country are entitled to education at higher educational institutions in the country on equal terms. The approach

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<sup>100</sup> Law on Labour Relations (2005), Article 256.

<sup>101</sup> Law on Labour Relations (2005), Article 108.

<sup>102</sup> Law on Administrative Servants (2014), Articles 85 to 97.

<sup>103</sup> Law on Labour Relations, 2005, Article 7.

<sup>104</sup> Law on Higher Education, 2018. Full title: Republic of North Macedonia, Law on Higher Education (*Закон за високото образование*), *Official Gazette of Republic of Macedonia*, No. 82/2018. Article 3 (5, 9).

<sup>105</sup> Law on Higher Education, 2018, Article 6.

to nationality is different and foreign nationals can use the principle of reciprocity (meaning that if Macedonian students are given the same treatment as nationals in a certain country, nationals of that country may study in Macedonia as if they were Macedonian citizens). Other foreign nationals who cannot avail themselves of the principle of reciprocity can study under terms established by the higher education institution. Stateless persons enjoy the right to education on an equal footing with the citizens of the country.

The selection of candidates by the university cannot be discriminatory on the grounds of race, colour of skin, sex, gender, language, religion, political or other beliefs, ethnic, national or social origin, property, birth, social position, disability, sexual orientation or age.<sup>106</sup>

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 meet the requirements of society and the labour market (Article 4).<sup>107</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 North Macedonia, national legislation prohibits discrimination in relation to 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 3(2) of the Anti-Discrimination Law covers membership of and activity 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 associations.<sup>108</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 North Macedonia, national legislation prohibits discrimination in 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 3(2)). The provision on the protected grounds is open-ended and explicitly lists racial and ethnic origin, disability, belief, age and sexual orientation.

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<sup>106</sup> Law on Higher Education, 2018, Article 149 (3).

<sup>107</sup> Law on Adult Education, 2008. Full title: Republic of North Macedonia, 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, 144/2014, 146/2015, 30/2016, 64/2018; Constitutional Court Decision: U.no. 46/2008.

<sup>108</sup> Law on Labour Relations, 2005, Articles 183, 184, 185, 198.

The new Law on Social Protection includes equal treatment and non-discrimination as a founding principle for the provision of social protection (Article 16).<sup>109</sup> All rights included in this law are to be provided based on equal treatment. All discrimination is prohibited in relation to an open-ended list of discrimination grounds. This list includes as explicitly mentioned discrimination grounds the list from the new Anti-Discrimination Law. Thus the personal scope of protection contained in the new Law on Social Protection includes racial and ethnic origin, disability, belief, age and sexual orientation (Article 16(2)). According to the Law on Social Protection, the protection against discrimination is provided in line with the provisions of the new Anti-Discrimination Law (Article 16(3)). This means that the protection applies in both the private and the public sectors, and for both natural and legal persons, as well as that all other provisions of the ADL apply. The fine for breaching the prohibition of discrimination under the Law on Social Protection is EUR 800 to 1 000 for the legal person providing social protection. EUR 200 to 500 is the fine for the competent person, whereas the fine is EUR 150 to 200 for the worker and for the line manager from the legal person providing social protection.<sup>110</sup>

The Law on Health 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 discrimination is prohibited in the provision of healthcare on grounds of race, sex, age, nationality, social origin, religion, political or other belief, property status, culture, language, type of illness, 'mental'<sup>111</sup> or physical disability.<sup>112</sup> It does not include sexual orientation as one of the protected grounds, but it could be included depending on judicial interpretation. This law will need to be aligned with the ADL in the next two years. Article 2 of the Law on Health Insurance states 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>113</sup>

The Law on the Protection of Children also has articles on discrimination.<sup>114</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).

a) Article 3(3) exception (Directive 2000/78)

The national 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)**

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<sup>109</sup> Law on Social Protection, 2019, Article 16.

<sup>110</sup> Law on Social Protection, 2019, Article 350.

<sup>111</sup> Includes intellectual and psychosocial disability.

<sup>112</sup> Law on Health Protection, 2012. Full title: Republic of North Macedonia, Law on Health Protection (*Закон за здравствена заштита*), *Official Gazette of Republic of Macedonia*, No. 43/2012, 145/2012, 87/2013, 164/2013, 39/2014, 43/2014, 132/2014, 188/2014, 10/2015, 61/2015, 154/2015, 192/2015, 17/2016, 37/2016, 20/2019 and *Official Gazette of Republic of North Macedonia*, No. 101/2019, 153/2019, 180/2019, 275/2019. Constitutional Court Decisions: U.no. 59/2012, U.no. 69/2012, U.no. 101/2014.

<sup>113</sup> Law on Health Insurance, 2000. Full title: Republic of North Macedonia, 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, 20/2015, 61/2015, 98/2015, 129/2015, 150/2015, 154/2015, 192/2015, 217/2015, 27/2016, 37/2016, 120/2016, 142/2016, 171/2017 and *Official Gazette of the Republic of North Macedonia*, No. 275/2019; Constitutional Court Decision: U.no.85/2000, U.no.173/2000, U.no.37/2001, U.no.60/2006, U.no.40/2007, U.no.167/2006, U.no.45/2006, U.no. 199/2008, U.no.109/2009, U.no.185/2009, U.no.112/2011.

<sup>114</sup> Law on the Protection of Children, 2013.

In North Macedonia, national legislation prohibits discrimination in relation to social advantages as formulated in the Racial Equality Directive.

The Constitution states that the Republic provides for social protection and social security for 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 disabilities and ensures that their involvement in the life of society is possible.<sup>115</sup>

Social advantages are stipulated under the new Law on Social Protection. This law includes equal treatment and non-discrimination as a founding principle for the provision of social protection (Article 16).<sup>116</sup> All rights included in this law are to be provided based on equal treatment. All discrimination is prohibited in relation to an open-ended list of discrimination grounds. This list includes as explicitly mentioned discrimination grounds the list from the new Anti-Discrimination Law. Thus the personal scope of protection contained in the new Law on Social Protection includes racial and ethnic origin, disability, belief, age and sexual orientation (Article 16(2)). According to the Law on Social Protection, the protection against discrimination is provided in line with the provisions of the new Anti-Discrimination Law (Article 16(3)). This means that the protection applies in both the private and the public sectors, and for both natural and legal persons, as well as that all other provisions of the ADL apply. Because of the open material scope of the Anti-Discrimination Law (Article 3(2)), social advantages fall within this protection and no relevant exceptions are foreseen.

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

In North Macedonia, national legislation prohibits discrimination in 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. Aside from the Anti-Discrimination Law (Article 3), laws that regulate primary<sup>117</sup> and secondary<sup>118</sup> education also prohibit discrimination. Primary and secondary education is compulsory in the country. The 2018 Law on Higher Education foresees prohibition of discrimination in the student selection process on all of the grounds contained in the directives.<sup>119</sup>

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<sup>115</sup> Constitution of the Republic of North Macedonia, 1991 and subsequent amendments, Article 35.

<sup>116</sup> Law on Social Protection, 2019, Article 16.

<sup>117</sup> Law on Primary Education, 2019. Full title: Republic of North Macedonia, Law on Primary Education (*Закон за основното образование*), *Official Gazette of Republic of North Macedonia*, No. 161/2019. Article 5.

<sup>118</sup> Law on Secondary Education, 1995. Full title: Republic of North Macedonia, Law on Secondary Education (*Закон за средното образование*), *Official Gazette of Republic of Macedonia*, No. 44/1995, 24/1996, 34/1996, 35/1997, 82/1999, 29/2002, 40/2003, 42/2003, 67/2004, 55/2005, 113/2005, 35/2006, 30/2007, 49/2007, 81/2008, 92/2008, 33/2010, 116/2010, 156/2010, 18/2011, 42/2011, 51/2011, 6/2012, 100/2012, 24/2013, 41/2014, 116/2014, 135/2014, 10/2015, 98/2015, 145/2015, 30/2016, 127/2016, 67/2017, 64/2018; Constitutional Court Decisions: U.no. 355/1995, U.no. 210/2000, U.no. 83/2003, U.no. 31/2005, U.no. 102/2005, U.no. 226/2008, Article 3.

<sup>119</sup> Law on Higher Education, 2018, Article 149(3).

a) Pupils with disabilities

In North Macedonia, the general approach to education for pupils with disabilities gives rise to problems.

The ADL prohibits discrimination in the field of education (Article 3) and on grounds of disability (Article 5(1)). It also includes an article outlawing segregation in the chapter 'Forms and Types of Discrimination'. Article 12 defines segregation as 'the physical setting apart of a person or a group of persons on grounds of discrimination without a legitimate or objectively justified purpose'.

The laws that regulate primary<sup>120</sup> and secondary<sup>121</sup> education prohibit discrimination too. The Law on Primary Education includes disability as a ground for discrimination (Article 5(1)). It also includes an article on inclusive education which foresees that inclusive education includes 'changes and adjustments in the curriculum, access, structures and strategies for pupils with disabilities, with a common vision and a conviction that the country has an obligation to secure education for all children' (Article 11(3)). It also replicates the provisions on reasonable accommodation and on adjustment of infrastructure and services from the Anti-Discrimination Law (Article 11(6 and 7)).

The 2018 Law on Higher Education<sup>122</sup> does explicitly prohibit discrimination on the ground of disability, but in relation to the selection of students.<sup>123</sup> This is not a particular treatment of disability, but it is the approach to non-discrimination contained in the law. Namely, no single general provision on non-discrimination is included in the law. In addition to this, there are articles establishing that special benefits for students with disabilities should be established within the statutes of the higher education institutions,<sup>124</sup> that students with disabilities should be exempted from payment of tuition fees,<sup>125</sup> and that they can be awarded other benefits by the university (without further stating what these might be).<sup>126</sup> Any curriculum which is to be especially developed for students with disabilities is developed by the Bureau for Development of Education.<sup>127</sup>

At present, the dominant practice seems to be segregated education of children with disabilities, rather than their inclusion in mainstream schools. This can be confirmed by the practice of children being taken out of primary education at the request of parents among other things, because of resistance on the part of teaching staff to teaching children with disabilities and because of bullying by other children.<sup>128</sup> According to the Law on Primary Education, children with disabilities are entitled to shorter class time, a smaller number of children per class and the engagement of specialists. However, both the *Holistic Report on Persons with Disabilities in Macedonia*,<sup>129</sup> produced by the Open the Windows project, and the 2013 Ombudsperson's information report on the inclusion of children with disabilities in education<sup>130</sup> (which followed the 2006 special report)<sup>131</sup> confirm that the implementation

<sup>120</sup> Law on Primary Education, 2019, Article 5(1).

<sup>121</sup> Law on Secondary Education, 1995, Article 3.

<sup>122</sup> Law on Higher Education, 2018, Article 7.

<sup>123</sup> Law on Higher Education, 2018, Article 149(3).

<sup>124</sup> Law on Higher Education, 2018, Article 27(4).

<sup>125</sup> Law on Higher Education, 2018, Article 128(1).

<sup>126</sup> Law on Higher Education, 2018, Article 150.

<sup>127</sup> Law on Higher Education, 2018, Article 30.

<sup>128</sup> *Otvorete gi prozorcite* (Open the Windows) (2015), *Холистички извештај за лицата со попреченост во Македонија* (*Holistic report on persons with disabilities in Macedonia*), p. 22.

<sup>129</sup> *Otvorete gi prozorcite*, *Holistic report on persons with disabilities in Macedonia*, 2015.

<sup>130</sup> Ombudsperson of the Republic of Macedonia (2013), *Информација за состојбата со вклученоста на децата со посебни потреби во основните и средните посебни училишта* (*Information from the Ombudsperson on the inclusion of children with disabilities in primary and secondary special schools*), available at: <http://ombudsman.mk/upload/documents/2013/Izvestaj-Posebni%20ucilista-2014.pdf>.

<sup>131</sup> Ombudsperson of the Republic of Macedonia (2006), *Посебен извештај на народниот правобранител за вклученоста на децата со посебни потреби во образованието* (*Special report by the Ombudsperson on the inclusion of children with disabilities in education*), available at: <http://ombudsman.mk/upload/documents/Posebni%20potrebi%20na%20decata1%20-mak.pdf>.

of the standards prescribed in the law is problematic. The *Holistic 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 exercising the right to education often results in discrimination.<sup>132</sup>

There are separate secondary schools for children with 'special needs'.<sup>133</sup> Secondary school students with 'special educational needs' are educated under adjusted programmes for job training.<sup>134</sup> Open the Windows aims to promote assistance technology for children with disabilities from primary school.<sup>135</sup> There are no specific articles that regulate the education of children with disabilities in ordinary secondary schools. However, this does not mean that children with disabilities are integrated into the education (thus the lack of special provisions). In fact, it is the opposite. If the students fall within the category of students with 'special educational needs', they cannot enrol in mainstream secondary schools.

#### b) Trends and patterns regarding Roma pupils

In North Macedonia, there are specific patterns (whether legal or societal) in education regarding Roma pupils, such as segregation.

The Ombudsperson recently published the results of research on the inclusion of Roma following the Roma Decade, looking at the current situation and the challenges. The research was conducted in 2018 and covers the period 2005-2015. Education is one of the areas it covers. The largest number of Roma pupils enrolled in primary and secondary schools was in 2008/2009 (10 187 pupils enrolled in primary school and a high percentage (95 %) of those in the final year of primary school continuing their education into secondary school),<sup>136</sup> whereas the smallest numbers for primary school were in 2015/2016 (8 785) and for secondary school in 2013/2014 (with only 35 % of those in the final year of primary school continuing their education into secondary school). The percentage of children not enrolled in primary school varied over the years, with the average being 30 %. The average drop-out rate is 6-8 %. The drop-out rate was the highest in 2014/2015 with an average of 17 % from all nine grades (1<sup>st</sup> to 9<sup>th</sup> grade) and the drop-out rate from 8<sup>th</sup> to 9<sup>th</sup> grade representing 53 % of all students who dropped out. The Ombudsperson does not provide a possible interpretation for this.

As for secondary school, after a steady growth in the number of Roma students enrolled in secondary school in the period 2005-2012, as of 2013, the numbers start to drop. For illustration, the number of Roma students enrolled in secondary schools was: 1 220 in 2005/2006, 1 628 in 2009/2010, 1 717 in 2013/2014 and 1 420 in 2015/2016). The average drop-out rate for secondary education is 15 %, but this rate seems to be falling (in 2016/2017 it reached 4 %). On average, 39 % of Roma students who finish high school enrol in higher education (the largest percentage for enrolment in higher education being 51 % in 2009/2010 and the lowest being 37 % in 2015/2016).<sup>137</sup>

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<sup>132</sup> There are cases of children with disabilities not being admitted to 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>133</sup> Law on Secondary Education, 1995, Article 43.

<sup>134</sup> Law on Secondary Education, 1995, Article 50.

<sup>135</sup> Open the Windows website: <http://openthewindows.org>.

<sup>136</sup> Please note that, as of this school year, secondary school became mandatory in the country.

<sup>137</sup> Ombudsperson (2018), *Инклузија на Ромите по завршувањето на Декадата на Ромите – Тековна состојба и предизвици (Roma inclusion following the Roma Decade – state of affairs and challenges)*, available at: <http://ombudsman.mk/upload/documents/2018/Prezentacija-Inkluzija%20Romi-Vrabotuvanje-07.11.2018.pdf>.

The Strategy on Roma 2014-2020 (the successor to the 2005 Roma strategy), was adopted in 2014.<sup>138</sup> Like its predecessor, this strategy also has education for Roma as a 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 the Macedonian language; a high number of children dropping out of education; and a lack of awareness for the need of education.<sup>139</sup> Eight Roma information centres were established to support the implementation of the strategy and to monitor, inter alia, the situation on the ground.<sup>140</sup>

Segregation of Roma pupils continues to be a burning issue. According to the strategy, 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>141</sup> 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.<sup>142</sup>

However, the many studies published on the issue of Roma education in the country, and on segregation in particular, paint a more nuanced picture. Studies available so far, such as the Open Society Institute (OSI) report,<sup>143</sup> Roma Education Fund reports,<sup>144</sup> Macedonian Helsinki Committee and the ERRC report,<sup>145</sup> a UNICEF 2008 situation analysis<sup>146</sup> and a 2009 segregation in education analysis,<sup>147</sup> a CPAD 2014 report,<sup>148</sup> an Institute of Human Rights REF-supported 2013 study<sup>149</sup> and a Foundation Open Society Macedonia 2015 analysis,<sup>150</sup> have all reached 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<sup>151</sup> issues include low

<sup>138</sup> There are also several policy documents targeting Roma women. For more, please see MLSP website at: <http://mtsp.gov.mk/?ItemID=6FC822BBA79A61429117F41943673AE4>.

<sup>139</sup> Strategy on Roma 2014-2020, 2014. Full title: Republic of North Macedonia, Министерство за труд и социјална политика (Ministry of Labour and Social Policy), Стратегија за Ромите 2014-2020 (Strategy on Roma 2014-2020), available at: <http://mtsp.gov.mk/content/word/Roma%20Strategy%20in%20Macedonia%202014-2020.docx>.

<sup>140</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>141</sup> Strategy on Roma 2014-2020, 2014.

<sup>142</sup> Strategy on Roma 2014-2020, 2014.

<sup>143</sup> Open Society Institute (2007), *Equal access to quality education for Roma, Volume 2: Croatia, Macedonia, Montenegro and Slovakia*, available at: [www.opensocietyfoundations.org/sites/default/files/equal\\_20071218.pdf](http://www.opensocietyfoundations.org/sites/default/files/equal_20071218.pdf).

<sup>144</sup> Roma Education Fund (2007), *Advancing education of Roma in Macedonia*, available at: [https://www.romaeducationfund.org/wp-content/uploads/2019/05/macedonia\\_report.pdf](https://www.romaeducationfund.org/wp-content/uploads/2019/05/macedonia_report.pdf).

<sup>145</sup> Referenced in this report: [https://www.rcc.int/romaintegration2020/romadecadefold//decade%20implementation/4.%20civil%20society%20reports/Civil%20Society%20Monitoring%20Report%202012%20\(Former%20Yugoslav%20Republic%20of%20Macedonia.%20English%20language\).pdf](https://www.rcc.int/romaintegration2020/romadecadefold//decade%20implementation/4.%20civil%20society%20reports/Civil%20Society%20Monitoring%20Report%202012%20(Former%20Yugoslav%20Republic%20of%20Macedonia.%20English%20language).pdf).

<sup>146</sup> UNICEF (2008), *Children in FYR Macedonia – A situation analysis*, available at: <https://www.unicef.org/northmacedonia/reports/situation-analysis-children>.

<sup>147</sup> UNICEF (2009), *Мултикултурализмот и меѓуетничките односи во образованието (Multiculturalism and interethnic relations in education)*, available at: <https://www.unicef.org/northmacedonia/reports/multiculturalism-and-interethnic-relations-education>.

<sup>148</sup> CPAD (2014), *Segregation of Roma children in education*, available at: [http://eprints.ugd.edu.mk/16407/1/Reserach%20on%20Roma%20segregation\\_MK%20BAL.pdf](http://eprints.ugd.edu.mk/16407/1/Reserach%20on%20Roma%20segregation_MK%20BAL.pdf).

<sup>149</sup> Institute of Human Rights (2013), *Кршење на ѕидот на одбивање и сегрегација (Breaking the wall of silence)*, <https://www.ihr.org.mk/storage/app/media/Publications/diskriminacijaromi.pdf>.

<sup>150</sup> Foundation Open Society Macedonia (FOSM) (2015), *Segregation of Roma in education in Macedonia*, Skopje.

<sup>151</sup> Other important issues range from general living conditions to discrimination and clear examples of segregation (including making Roma children sit in the back rows in classes, complaints by parents of 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



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 education and a lack of support for further education.<sup>152</sup>

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 claimants 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 enrol their children in a specific primary school, however it failed to state on what it based its argument and bluntly added that it 'further supports this argument' with a report from a person from another state institution who claimed that this process is one of 'natural segregation'.<sup>153</sup>

Although it had deliberated on this case for over three years, the CPAD added a surprisingly short elaboration of its opinion, the majority of which consists of a bullet point list of 14 letters/requests that it sent and received while processing the 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>154</sup> Interestingly enough, at the same time that the CPAD adopted this opinion, it was working on a study on segregation of Roma pupils, which was published in November 2014 and found the following: 'In the period from 2010 to 2014, a high level of segregation of Roma children is noticeable in both regular and special schools, and in regular and special classes, which represents *an indirect systemic and long-lasting discrimination*' (emphasis added).<sup>155</sup>

In January 2017, graffiti containing racists slurs were written over the walls of a primary school in Bitola (town in the south of the country), where 80% of the pupils are Roma (the same school as referred to above). The school was quick to remove the graffiti which (luckily) were written over the weekend, so that pupils were not be exposed to the messages when they came to classes on the Monday morning. The Macedonian Helsinki Committee (MHK) raised a criminal claim against an unknown perpetrator for the case; as yet no progress on the case has been reported.<sup>156</sup>

The MHK, together with a Roma NGO, IRIZ, raised another case with the Ombudsperson of possible segregation in relation to a high school in Skopje. They noted that the students of Roma origin at the Arseni Jovkov high school were frequently concentrated in one or two classes and were seldom placed in a mixed class. In addition, the numbers of Roma students in this mixed school were dropping after Shaip Jusuf High School opened in the Roma municipality of Shuto Orizari. The opening of this school was part of a larger

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origin). Source: Institute on Human Rights (2013), *Кршење на сидот на одбивање и сегрегација (Breaking the wall of silence)*, available at: <https://www.w.ihr.org.mk/storage/app/media/Publications/diskriminacijaromi.pdf>.

<sup>152</sup> Roma Education Fund (2007), *Advancing education of Roma in Macedonia*, available at: [https://www.romaeducationfund.org/wp-content/uploads/2019/05/macedonia\\_report.pdf](https://www.romaeducationfund.org/wp-content/uploads/2019/05/macedonia_report.pdf).

<sup>153</sup> Commission for Protection against Discrimination (Комисија за заштита од дискриминација), Opinion of the Commission for Protection against Discrimination, No. 07-80 (5 September 2014).

<sup>154</sup> Commission for Protection against Discrimination (Комисија за заштита од дискриминација), Opinion of the Commission for Protection against Discrimination, No. 07-80 (5 September 2014).

<sup>155</sup> CPAD (2014), *Segregation of Roma children in education*, available at: [http://eprints.ugd.edu.mk/16407/1/Reserach%20on%20Roma%20segregation\\_MK%2BAL.pdf](http://eprints.ugd.edu.mk/16407/1/Reserach%20on%20Roma%20segregation_MK%2BAL.pdf).

<sup>156</sup> Macedonian Helsinki Committee (2017), 'Говор на омраза во основното училиште Ѓорѓи Сугарев во Битола' ('Hate speech in Gjorgji Sugarev Primary School in Bitola'), MHK website, <https://mhc.org.mk/en/news-en/hate-speech-at-primary-school-gjorgji-sugarev-in-bitola/>.



programme for renovating existing high schools and expanding the network of high schools in order to increase the accessibility of secondary education, which is otherwise mandatory in the country. Since there was no high school in Shuto Orizari, it was built and opened as part of this programme. The Ombudsperson did not find segregation, as there were mixed classes in the first school and as students were free to choose where they wanted to enrol (and to move from one class to another), and some chose to enrol or move to a school close to where they live (the second school). It did, however, state that should the trend continue it might indicate hidden discrimination.<sup>157</sup>

Following the 2016 case of five CSOs<sup>158</sup> which, supported by the OSCE Mission to Skopje, submitted (and lost) an *actio popularis* claim of Roma segregation in education against the Government,<sup>159</sup> the Institute for Human Rights (IHR) and the European Roma Rights Centre (ERRC) attempted another *actio popularis* claim on Roma pupils' segregation in state primary education. They claimed direct and indirect discrimination against Roma pupils which resulted in the creation of segregated classes and schools. However, the court rejected the claim because it lacked express consent from an individual who believed they had been discriminated against.<sup>160</sup> Following a complaint by the CSOs, the higher court confirmed the decision of the lower court, stating that, when it comes to personal rights, agreement cannot be implied but must be proven (which, again, defies the purpose of *actio popularis*).<sup>161</sup>

An encouraging development in relation to segregation is that the new ADL explicitly defines segregation and outlaws it. In Article 12 it defines segregation as 'the physical setting apart of a person or a group of persons on grounds of discrimination without a legitimate or objectively justified purpose'.

### **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 North Macedonia, national legislation prohibits discrimination in access to and the 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 3(2)), and applies to all the grounds of the directives and more (Article 5). Unlike the old ADL, which included a separate article according to which failure to adapt goods or services to meet the needs of a person with disabilities was considered as a separate form of discrimination, the new ADL does not include such an article. However, in Article 6, where discrimination in general is defined, in a single paragraph the law states the definition and continues that: 'This includes all forms of discrimination, including not enabling reasonable accommodation and not enabling accessibility and availability of infrastructure, goods and services' (Article 6). Thus, although the law no longer has a separate article on this, it keeps the approach of explicitly stating that not enabling reasonable accommodation is discrimination in all areas of life, which is arguably a wider scope than the provision under the old ADL.

#### **a) Distinction between goods and services available publicly or privately**

<sup>157</sup> IRIZ (2017), 'ИРИЗ и Хелсиншки комитет со претставка до Народниот правобранител за сегрегација на ученици Роми' ('IRIZ and the Helsinki Committee file a case with the Ombudsperson on segregation of Roma students'), IRIZ website, [https://mhc.org.mk/wp-content/uploads/2019/05/Mesecen\\_IZVESTAJ\\_za\\_covekovi\\_prava-Fevruari\\_2017.pdf](https://mhc.org.mk/wp-content/uploads/2019/05/Mesecen_IZVESTAJ_za_covekovi_prava-Fevruari_2017.pdf).

<sup>158</sup> NGO KHAM Delcevo, Open Society Foundation Macedonia (FOSM), Macedonian Helsinki Committee (MHK), Institute for Human Rights (IHR) and European Roma Rights Centre (ERRC).

<sup>159</sup> On this, see the 2017 edition of this report.

<sup>160</sup> Court of First Instance Skopje, Case No. П4-932/17, *Institute for Human Rights (IHR) and the European Roma Rights Centre (ERRC) vs Ministry of Education, Bitola Municipality, Gjorgji Sugarev Primary School and Todor Angelevski Primary School*, 28 March 2018.

<sup>161</sup> Court of Second Instance Skopje, Case No. ГЖ-3165/18, *Institute for Human Rights (IHR) and the European Roma Rights Centre (ERRC) vs Ministry of Education, Bitola Municipality, Gjorgji Sugarev Primary School and Todor Angelevski Primary School* (13 July 2018).

In North Macedonia, national law does not distinguish between goods and services that are available to the public (e.g. in shops, restaurants and banks) and those that are only available privately (e.g. those restricted to members of a private association).

The Law on Consumer Protection<sup>162</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>163</sup> There are no specific grounds for discrimination mentioned.

After the European Roma Rights Centre (ERRC), an NGO working on Roma rights including by providing free legal aid, received information that Roma people were being denied access to the open-air swimming pool, Dovledzik, in the town of Bitola they organised situation testing in order to investigate and secure evidence of the reported discriminatory practice. After the First Instance Court ruling (dated 13 November 2018) the Second Instance Court also confirmed that there was discrimination on grounds of ethnicity and skin colour in the area of access to goods and services against the individual claimants, and that damages should be awarded. The situation testing evidence was submitted and was considered sufficient for shifting the burden of proof. The defendant, the Court found, did not prove that it did not discriminate against the claimants or that there was any justification for the unequal treatment. It examined whether the defendant actually considered any rules in place at the pool for how (potential) guests should behave in order to decide whether the claimants acted in line with this. However, it found that no such rules were broken and that the claimants were denied access solely because they were Roma. All the claimants were awarded EUR 1 000 (MKD 60 000) each for the distress and emotional pain they suffered. The discriminator was prohibited from treating people unequally in access to the pool or from applying unequal treatment in similar situations in the future.<sup>164</sup>

The equality body has also dealt with a similar case. It related to a claim by Bairska Svetlina, an NGO dealing with Roma rights, filed on behalf of F. J., who claimed to have been discriminated against on the ground of ethnic affiliation and skin colour (Article 3, ADL) in access to goods and services (Article 4, ADL) because he was not allowed to enter another pool in the same town, Bitola. The CPAD decided in favour of the claimant. This case is different, however, because of the steps the equality body took after the postal delivery of the communication sent to the potential discriminator was twice returned as failed (on grounds of incomplete address). Namely, the claimant and the NGO presented their statements which showed it was probable that discrimination had occurred. This also included documentation of other instances where Roma people were not allowed to enter this particular pool. On this basis, the CPAD shifted the burden of proof and asked the legal person managing the pool to respond. After the communication from the CPAD twice failed to be delivered, the CPAD went on to conclude that there had been discrimination. It recommended to the legal person to apply equal treatment and reminded them of the laws in force which prohibit direct and indirect discrimination on a number of grounds (here the CPAD repeated Article 3).<sup>165</sup>

A similar case was reported in 2017, but this time in relation to disability. When calling to enquire about time slots and logistics for taking her child with disabilities to a pool in Skopje, a mother was told that people with disabilities were not allowed in the pool. She reported this on social media. Following public outrage about prohibiting the disabled

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<sup>162</sup> Law on Consumer Protection (*Закон за заштита на потрошувачите*), 2004. Full text: Republic of North Macedonia, 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, 164/2013, 97/2015, 152/2015, 140/2018.

<sup>163</sup> Law on Consumer Protection, 2004, Article 119.

<sup>164</sup> Second Instance Court Bitola, TCЖ-42/19 J.K., R.E., A.E., D.A., O.A., R.A. and ERRC vs Megagrup DOOEL and JP Strezhevo (18.07.2019).

<sup>165</sup> Case No. 08/259 - *Bairska Svetlina. v Pool "Srce Dovledzik"*, CPAD (case on file with author; opinion not dated).

child's entrance to the pool, the director of the pool issued a statement saying that the entrance to the pool and all its facilities were not accessible, so they could not guarantee the safety of people with disabilities. No adjustments have been made to make the pool physically accessible. This case was taken to court. The First Instance Court found discrimination, but the Second Instance Court reversed the decision and returned the case to the first instance court for a repeat trial.<sup>166</sup>

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

In North Macedonia, national legislation prohibits discrimination in the area of housing as formulated in the Racial Equality Directive. The Anti-Discrimination Law clearly states that housing is an area to which the law applies (Article 3(2)); it explicitly includes all the grounds of the directives (Article 5). However, a prohibition of discrimination (with regard to any of the protected grounds) is not included in the Law on Housing, which deals specifically with selling or renting a piece of land or a building for housing purposes or illegal forced evictions.

Under Article 104 of the Law on Housing,<sup>167</sup> a regulatory commission was established with a mandate, *inter alia*, to prevent discrimination in the field of housing.<sup>168</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 a 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 builders 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 people (Article 7(3)). However, it does not go beyond providing for the possibility of establishing such a unit and there is further clarification of the issue. No assessment on the implementation of or compliance with this provision has yet been conducted.

#### **3.2.10.1 Trends and patterns regarding housing segregation for Roma**

In North Macedonia, there are patterns of housing segregation and discrimination against Roma people. According to a 2019 social mapping report, the conditions in which Roma live are, in general, extremely poor. While only 10 % of Roma do not own the housing where they live, only 49 % of the property is legalised. Overcrowding is present, with one household comprising on average five people and 44 % of Roma living in housing smaller than 50m<sup>2</sup>. In all, 1 % report living in improvised housing and 6 % report that their housing is not built from appropriate building materials. 53 % have reported damp in their homes, 15 % do not have sufficient lightning, 3 % do not have access to electricity, 18 % do not have sewerage services, 30 % do not have toilets and 10 % have no access to drinking water inside their homes.<sup>169</sup>

In general, while many Macedonians were found to live in privately-owned apartments (former state-owned public housing that was made available for sale), some 15 to 25 %

<sup>166</sup> Information provided in personal correspondence to the author of this report.

<sup>167</sup> Law on Housing (*Закон за домување*), 2009. Full title: Republic of North Macedonia, Republic of North Macedonia, 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, 199/2014, 146/2015, 31/2016, 64/2018; Constitutional Court Decisions: U.no. 246/2009, U.no.14/2010.

<sup>168</sup> Law on Housing, 2009, Article 104.

<sup>169</sup> AECOM International Development Europe SL (2019), *Report from the Social Mapping – Final Draft* (*Извештај за социјалното мапирање – финален нацрт*), July 2019.

of the population lived in about 100 informal urban settlements.<sup>170</sup> According to the same source, '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 delinquency, drug abuse and other social problems, all of which can negatively affect children's social development.'<sup>171</sup>

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>172</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>173</sup>

In 2016, the ERRC initiated a case against the country before the ECtHR on Article 3, Article 8, Article 14 in conjunction with Articles 3, 8 and 10, and Article 13 in conjunction with Articles 3 and 8.<sup>174</sup> This case<sup>175</sup> concerns the eviction of over 120 Roma people from the Poligon settlement in Skopje. They are very poor people, living in an informal settlement and some of them have been there for many years. Their houses have been torn down many times before being repeatedly rebuilt. The Government destroyed their homes and the local water pump. In a month that was full of storms and floods, these people were left in the open air without a roof over the heads. The ERRC reports that they were offered accommodation in a shelter centre, but that there was not have enough space (and it was already notorious for its cramped, degrading conditions and inter-ethnic violence). The ERRC did not succeed in securing interim measures but the case is pending.<sup>176</sup>

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<sup>170</sup> UNICEF (2008), *Children in FYR Macedonia – A situation analysis*, available at: <https://www.unicef.org/northmacedonia/reports/situation-analysis-children>.

<sup>171</sup> UNICEF (2008), *Children in FYR Macedonia – A situation analysis*, available at: <https://www.unicef.org/northmacedonia/reports/situation-analysis-children>.

<sup>172</sup> Национален ромски центар (National Roma Centrum) *Извештај до комитетот за економски, социјални и културни права на Обединетите нации (Report to the Committee on Economic, Social and Cultural Rights of the United Nations)*, available at: <http://www.nationalromacentrum.org/mk/publikacii/istrazuvanja/izvestaj-do-komitotot-za-ekonomski/>; Kanal 5, 'Во дискотеката Калипсо во Берово е забранет влезот за Ромите', ('Discoteque Kalipso prohibits entrance to Roma') (*Cache*); A1, 'Забранет влез за Роми во новиот Аква парк ('Entrance banned for Roma at the New Aqua Park'), 31 July 2013.

<sup>173</sup> Helsinki Committee for Human Rights of the Republic of Macedonia (2014), *Проценка на напредокот на декадата на ромите (Assessment of the progress of the Roma Decade)*, available at: [www.mhc.org.mk/?ItemID=3DE4E8C7F50F194281021DB76FAD9E1E](http://www.mhc.org.mk/?ItemID=3DE4E8C7F50F194281021DB76FAD9E1E).

<sup>174</sup> *ERRC in the case of Bekir and others v. Macedonia*, 8 November 2016, available at: [www.errc.org/cms/upload/file/application-eviction-bekir-and-others-v-macedonia-november-2016.pdf](http://www.errc.org/cms/upload/file/application-eviction-bekir-and-others-v-macedonia-november-2016.pdf).

<sup>175</sup> The status of the case still remains as 'communicated' only: *Bekir and Others v Macedonia*, HUDOC, available at: <http://hudoc.echr.coe.int/eng?i=001-167970>.

<sup>176</sup> *ERRC in the case of Bekir and others v. Macedonia*, 8 November 2016., available at: [www.errc.org/cms/upload/file/application-eviction-bekir-and-others-v-macedonia-november-2016.pdf](http://www.errc.org/cms/upload/file/application-eviction-bekir-and-others-v-macedonia-november-2016.pdf).

## 4 EXCEPTIONS

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

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

Article 7 of the Anti-Discrimination Law, entitled 'Measures and actions which are not discrimination' contains the following formulation for genuine and determining occupational requirements:

'Different treatment of persons upon any of the discrimination grounds due to the nature of their occupation or activity or due to the context in which such occupation is performed, which constitute a genuine and determining requirement, the purpose of which is legitimate, while such conditions do not breach the required level in the course of their fulfilment.' (Article 7(3(2)))

This is in line with the directives.

Article 8 of the Law on Labour Relations<sup>177</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, when the nature of the work is such or the work is performed in such conditions that the characteristics contained in 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>178</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. However, from the publicly available data it cannot be concluded whether such an interpretation has been applied in practice.

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>179</sup>

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

In North Macedonia, national law does not provide for an exception for employers with an ethos based on religion or belief.

The Law on the Legal Position of Churches, Religious Communities and Religious Groups<sup>180</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

<sup>177</sup> Law on Labour Relations, 2005.

<sup>178</sup> Law on Labour Relations, 2005, Article 8.

<sup>179</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.

<sup>180</sup> Law on Churches, 2007. Full title: Republic of North Macedonia, 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*), 2007, *Official Gazette of the Republic of Macedonia*, No. 113/07, Constitutional Court Decision, U.br.104/2009.

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

However, these provisions are not in the Anti-Discrimination Law. The laws that regulate the founding and eligible activities of associations (civil society organisations and foundations,<sup>181</sup> as well as religious communities and religious groups) regulate this issue, stating that an association will cease to exist if it engages in such actions contrary to the Constitution and laws and violates other people's rights, which includes the right to non-discrimination. The Anti-Discrimination Law contains no such anti-conflict provision.

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 very clearly expressed their opinions that sexual orientation should not be mentioned in the anti-discrimination legislation during the debate for the 2010 ADL.<sup>182</sup> In addition, 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 marriage is the union of one woman and one man, as well as inserting provisions that will limit the possibility for homosexuals to adopt children. The draft amendments to the Constitution, which entered parliamentary procedure and proposed a definition of marriage as the union of one man and one woman, as well as the mandatory registration of unmarried couples ('out-of-wedlock partnerships') defined in the same manner, were not adopted by the Parliament. Thus, this issue is, for now, closed.

Both these religious communities, joined by others, opposed the 2018 Draft ADL too, again because of sexual orientation.<sup>183</sup> Activists and allies<sup>184</sup> spoke out against this block in Parliament, claiming that the reason why the law was being blocked in Parliament was the letter from the religious communities. MPs also raised personal religious beliefs in the parliamentary procedure as grounds for their refusal to allow the law to pass to the next stage in Parliament. This letter was not released to the public.

- Religious institutions affecting employment in state funded entities

In North Macedonia, religious institutions are not permitted to select people (on the basis of their religion) to be hired for or dismissed 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

<sup>181</sup> Law on CSOs, 2010. Full title: Republic of North Macedonia, Law on Associations and Foundations (*Закон за здруженија и фондации*), 2010, Article 4, *Official Gazette of the Republic of Macedonia*, No.52/2010, 135/2011, 55/2016.

<sup>182</sup> *Dnevnik* newspaper, 'Ориентирани кон сексуална дискриминација' ('Oriented towards sexual discrimination') (only available in print).

<sup>183</sup> Although outside of the scope of this report, it is worth mentioning that the opposition was rallied around sexual orientation and gender identity.

<sup>184</sup> Civil Media, 'Андоновски: Блоката на ВМРО-ДПМНЕ и ДУИ на законот против дискриминација е скандалозна' ('Andonovski: The VMRO-DPMNE and DUI blockage of the Anti-Discrimination Law is scandalous') (2019), available at: [https://civilmedia.mk/andonovski-blokadata-na-vmro-dpmne-i-dui-na-zakonot-protiv-diskriminatsija-e-skandalozna/?fbclid=IwAR1f36ebbDTPV-64a\\_5WVUPTVLqzh8Fp-tgXmHITgwmv-QyQCb8IRFUJCM](https://civilmedia.mk/andonovski-blokadata-na-vmro-dpmne-i-dui-na-zakonot-protiv-diskriminatsija-e-skandalozna/?fbclid=IwAR1f36ebbDTPV-64a_5WVUPTVLqzh8Fp-tgXmHITgwmv-QyQCb8IRFUJCM); Prizma, 'Орвеловска држава на дискриминацијата' ('Orwellian state of discrimination') (2018), available at: <https://prizma.mk/kolumni/orvelovska-drzhava-na-diskriminatsijata/>.

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>185</sup>

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

In North Macedonia, national legislation provides for an exception for the armed forces in relation to age (Article 3(4), Directive 2000/78). There is no specific disability exception, but there is a general health and physical condition requirement.

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>186</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>187</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>188</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>189</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, 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>190</sup>

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 unemployed status up to 31 December 2013.<sup>191</sup>

As noted above, there is no specific disability exception, but there is a general health and physical condition requirement. As they stand, the Army's specific requirements in relation to health and good physical condition are substantial barriers for people with disabilities to enter the Army.<sup>192</sup> As noted in the 2015 analysis on the harmonisation of the national equality legislation, the medical check-up that is mandatory for issuing a certificate of fulfilment of these criteria includes checking the nervous system and 'mental condition', 'mental disorders' in the family (including epilepsy), eyesight and hearing, personal habits and physical injuries – one of the rulebooks even includes notes on tattoos as part of this assessment. This is documented in detail in the above-mentioned 2015 analysis, which identifies a number of provisions that include a general health condition as a discriminatory criterion, meaning that this criterion is a cross-cutting discriminatory issue, preventing access to public service.<sup>193</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 a member of civilian personnel, retaining the salary received and rank held prior to the health degradation (or would drop

<sup>185</sup> Constitutional Court, Decision U.No. 202/2008, (15 April 2009).

<sup>186</sup> Law on Army Service, 2010, Article 36. Full title: Republic of North Macedonia, 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, 33/2015, 193/2015, 71/2016; Constitutional Court, Decision: U.no.60/2010, 22 September 2010.

<sup>187</sup> Law on Army Service, 2010, Articles 40, 42, 43.

<sup>188</sup> Law on Army Service, 2010, Articles 34 and 35.

<sup>189</sup> Law on Army Service, 2010, Article 32.

<sup>190</sup> Law on Army Service, 2010, Article 220 (para. 2).

<sup>191</sup> Law on Army Service, 2010, Articles 40-a, 40-6.

<sup>192</sup> Law on Army Service, 2010, Articles 31 and 202-210.

<sup>193</sup> See Table 3 in: Kotevska B. (2016), *Analysis of the harmonization of national equality and non-discrimination legislation*, Skopje, OSCE and CPAD.

one rank down, if the same rank could not be awarded).<sup>194</sup> An extra three days of vacation are provided for personnel with a disability or someone taking care of a disabled child.<sup>195</sup> Ethnicity is dealt with in law in several respects, all of which rest on the constitutional principle of equitable and just representation which, simply put, means that the representation of each ethnic group needs to be equal to the percentage of the population found in the census. People belonging to minorities should be adequately and fairly represented in the Army, providing that they are duly trained and competent.<sup>196</sup> Public job advertisements 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>197</sup> With regard to the oath, the document to be signed is in both Macedonian and the language of that individual.<sup>198</sup>

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

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

In North 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:

'The citizens of the Republic of North Macedonia have citizenship of the Republic of North Macedonia [and it declares] the free expression of national identity [as] a fundamental value.'<sup>199</sup>

However, in later articles, nationality, rather than ethnicity, is mentioned as a ground of discrimination (Articles 9, 20, 54 and 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 North Macedonia, nationality as a term can be interpreted to have two meanings. Nationality understood as citizenship<sup>200</sup> (a legal tie with a state) is explicitly mentioned as a protected ground in national Anti-Discrimination Law (Article 5).<sup>201</sup> Nationality understood as origin from another country is not covered by the Anti-Discrimination Law. An example of an 'origin from another country' would be 'national minorities' as per the Framework Convention on National Minorities of the Council of Europe.

##### **b) Relationship between nationality and 'racial or ethnic origin'**

Nationality<sup>202</sup> understood as origin from another country is not covered by the Anti-Discrimination Law. However, nationality understood as citizenship, that is as the legal link of a person with a certain country, is part of the grounds covered by the Anti-Discrimination Law (Article 5).<sup>203</sup> Although not explicitly referred to, the same would be true for stateless persons.

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<sup>194</sup> Law on Army Service, 2010, Article 78.

<sup>195</sup> Law on Army Service, 2010, Article 98 (para. 2).

<sup>196</sup> Law on Army Service, 2010, Article 30 (para. 5).

<sup>197</sup> Law on Army Service, 2010, Article 39 (para. 2).

<sup>198</sup> Law on Army Service, 2010, Article 7 (para. 2).

<sup>199</sup> Constitution of the Republic of North Macedonia, 1991 and subsequent amendments, Articles 4 and 6.

<sup>200</sup> The ground of citizenship can be used to protect stateless persons.

<sup>201</sup> However, please see the exceptions in relation to nationality mentioned in Section 4.4 (b).

<sup>202</sup> On the dilemma as to the possible issues which may arise in practice from this, please see this article by Christopher McCrudden on the Bulgarian case of *Chez* which is relevant since Bulgaria also has these nuances in the meaning of 'nationality': [www.equalitylaw.eu/downloads/3867-european-equality-law-review-1-2016](http://www.equalitylaw.eu/downloads/3867-european-equality-law-review-1-2016).

<sup>203</sup> However, please see the exceptions in relation to nationality mentioned below.



The lack of clarity deepens in some laws that refer to nationality and ethnicity as different grounds for discrimination.<sup>204</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>205</sup> The courts consistently use the terms 'foreigner' and 'foreign' when referring to nationals of another country.

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

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

In North 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, when the nature of the work is such or work is performed in such conditions that the characteristics contained in 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>206</sup>

However, aside from this, issues of dress or personal appearance (turbans, hair, beards, jewellery, etc.) are not subject to special regulations 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>207</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>208</sup> There are also exceptions for protective measures related to pregnancy and parenting.<sup>209</sup>

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

##### **4.6.1 Direct discrimination**

In North Macedonia, national law does not provide for specific exception(s) for direct discrimination on the ground of age. 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

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<sup>204</sup> For example, Article 3 of the Law on Voluntary Fully Funded Pension Insurance.

<sup>205</sup> Article 6 of the Law on Primary Education and Article 6 of the Law on Labour Relations.

<sup>206</sup> Law on Labour Relations, 2005, Article 8.

<sup>207</sup> Law on Labour Relations, 2005, Chapter XV.

<sup>208</sup> See Law on Labour Relations, 2005, Chapter XIII: Protection of workers under 18 years, and Chapter XV: Special protection of older workers.

<sup>209</sup> Law on Labour Relations, 2005, Article 161.

setting specific conditions connected with the age of the employee. It states that at the time of signing the contract the applicant is obliged to submit evidence to the employer of capability to fulfil the terms of the contract (Article 26). This provision applies regardless of the age of the applicant. The health condition criteria have been challenged as possibly discriminatory on grounds of disability as well, in the context of public employment.<sup>210</sup>

a) Justification of direct discrimination on the ground of age

In North Macedonia, national law does not provide for justifications for direct discrimination on the ground of age. There are no relevant and/or recent cases in this respect.

b) Permitted differences of treatment based on age

In North Macedonia, national law permits differences of treatment based on age for any activities within the material scope of Directive 2000/78. 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>211</sup>

c) Fixing of ages for admission or entitlements to benefits of occupational pension schemes

In North 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 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>212</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).

#### **4.6.2 Special conditions for young people and older workers**

In North Macedonia, there are special conditions set by law for older and younger workers in order to promote their vocational integration.

The Law on Labour Relations provides for specific protective measures in relation to employees under 18 years old.<sup>213</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).<sup>214</sup>

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<sup>210</sup> Kotevska, B. (2016), *Analysis of the harmonization of national equality and non-discrimination legislation*, Skopje, OSCE and CPAD.

<sup>211</sup> Law on Labour Relations, 2005, Chapter XIII: Protection of workers under 18 years, and Chapter XV: Special protection of older workers.

<sup>212</sup> Law on Pension and Disability Insurance, 2012.

<sup>213</sup> Law on Labour Relations, 2005, Chapter XIII.

<sup>214</sup> Law on Labour Relations, 2005, Article 164.

### 4.6.3 Minimum and maximum age requirements

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

The 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, sporting and advertising activities). A special procedure and approval is required for this. There are also special provisions for work by students (as practical work experience) and by apprentices.<sup>215</sup> 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 night shifts (Article 180). This measure is applicable to workers over the age of 57 for women and 59 for men (Article 179).

### 4.6.4 Retirement

#### a) State pension age

In North Macedonia, there is a state pension age at which, in principle, individuals must begin to collect their state pensions. If an individual wishes to work beyond the state pension age, the pension can be deferred. An individual cannot collect a pension and still work.

The Law on Pension and Disability Insurance<sup>216</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>217</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.<sup>218</sup> The Law on Pension and Disability Insurance provides for different criteria for the calculation of pensions in special cases.<sup>219</sup> According to this law, pension and disability insurance rights depend on wages earned and the total length of contributions. The amount of the pension awarded 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 North Macedonia, there is a standard age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. If an individual wishes to work longer, payments from such occupational pension schemes can be deferred and the individual can continue to work if their employer agrees, but not after the age of 67.<sup>220</sup> An individual cannot collect a pension and still work.

#### c) State imposed mandatory retirement ages

In North Macedonia, there is a state-imposed 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

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<sup>215</sup> Law on Labour Relations, 2005, Article 251.

<sup>216</sup> Law on Pension and Disability Insurance, 2012.

<sup>217</sup> Law on Labour Relations, 2005, Article 104.

<sup>218</sup> Law on Labour Relations, 2005, Article 104.

<sup>219</sup> The standard calculation system is given in Articles 18 and 18-a of the Law on Pension and Disability Insurance; Law on Pension and Disability Insurance, 2012.

<sup>220</sup> Law on Labour Relations, 2005, Article 104.

only until the age of 67, applicable to both women and men.<sup>221</sup> The employer needs to consent to this, too. Literature analysing the pension system does not mention widespread practice of using the later retirement age. There are no sanctions in the Law on Labour Relations tied to a breach of this provision. Under the Law on Pension 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>222</sup>

d) Retirement ages imposed by employers

In North Macedonia, national law does not permit employers to set retirement ages by contract, collective bargaining or unilaterally. The retirement ages are as set in the national legislation (the Law on Labour Relations and the Law on Pension and Disability Insurance). However, 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>223</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

The law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, even if they remain in employment after attaining pensionable age or any other age. General anti-discrimination articles do not include any provisions on different treatment in relation to protection against dismissal on grounds of age. The protection in the Law on Labour Relations against dismissal applies to all workers irrespective of age. If the employee has reached the standard pensionable age and has made 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 North Macedonia, national legislation is in line with the CJEU case law on age regarding mandatory 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).

#### **4.6.5 Redundancy**

a) Age and seniority taken into account for redundancy selection

In North 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 North Macedonia, national law provides compensation for redundancy. Article 97 of the Law on Labour Relations provides the criteria applied to calculate the compensation. Although the number of years an employee has spent working for an employer is one of

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<sup>221</sup> Law on Labour Relations, 2005, Article 104. Please note that the article used to set different limits for men (67) and women (65). However, on the basis of a CSO-led initiative, in 2016 a Constitutional Court decision annulled this part, and equalised the limit for men and women. Source: Constitutional Court Decision No. 114/2014-0-1 (29 June 2016), available at: <http://ustavensud.mk/?p=11545>. Later, an almost identical case was filed and was successful in challenging Article 98(5-6) of the Law on Administrative Servants (a provision mirroring the annulled provision from the Law on Labour Relations).

<sup>222</sup> Law on Pension and Disability Insurance, 2012, Article 18.

<sup>223</sup> Law on Labour Relations, 2005.

the criteria for establishing the amount of compensation, this is not tied to the age of the worker.

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

In North Macedonia, national law does not include exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

#### **4.8 Any other exceptions**

In North Macedonia, there are no other exceptions to the prohibition of discrimination (on any ground) provided in national law.

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

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

In North Macedonia, positive action is permitted in national law in respect of all grounds protected by law, including all grounds contained in the directives. In addition, the national legal and policy frameworks envisage specific positive actions. Among these, the main emphasis is placed on positive action with respect to ethnic origin, disability and age. The positive action measures currently in force do not target 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 action pertaining to gender equality.

Article 7 of the Anti-Discrimination Law, entitled 'Measures and actions which are not discrimination' includes positive action measures. Its first two paragraphs include the following:

'Measures and actions taken for the sole purpose of eliminating any unequal enjoyment of human rights and freedoms until equality in fact is achieved for all persons and groups shall not be deemed discrimination, provided that the distinction is justified and objective and the means for the achievement of the objective are proportionate, that is adequate and necessary.' (para.1)

'The measures and actions referred to in paragraph (1) of this Article shall be of limited time duration and applicable until equality in fact is achieved for persons or a group in terms of the enjoyment of their rights.' (para.2)

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 with ensuring 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 resolution. It can also propose positive action measures to Parliament, which decides in plenary on such matters. 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 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 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.

On disability, the main instrument for positive action measures related to people with disabilities is the Law on Employment of People with Disabilities.<sup>224</sup> Its main goals are the integration of people with disabilities in the working environment and their safety in the workplace.<sup>225</sup> A new draft law was initiated by the Ministry of Labour and Social Policy almost four years ago, but it has still not entered parliamentary procedure, although the

<sup>224</sup> Law on Employment of Persons with Disabilities, 2000, Article 2.

<sup>225</sup> In relation to the implementation of this law, in a 2017 statement, the director of the State Agency for Employment said that, from the start of the implementation of this law until the end of 2016, almost EUR 34 million (MKD 2 088 660 754) was spent on the 'employment of persons with disabilities, adaptations of workplaces, purchase of equipment, training of persons with disabilities as well as construction and expansion of working space.' Source: Ministry of Labour and Social Policy – news archive (in Macedonian language only), [http://www.mtsp.gov.mk/fevruari-2017-ns\\_article-zapocnuva-proektot-centar-za-vrabortuvanje-na-lica-so-hendikep.nspix](http://www.mtsp.gov.mk/fevruari-2017-ns_article-zapocnuva-proektot-centar-za-vrabortuvanje-na-lica-so-hendikep.nspix).

Government's policies in relation to the employment of people with disabilities have continued to be implemented.

On age, actions in relation to young people are undertaken based on Cabinet decrees. In relation to older people, there is a 'National Strategy for Elderly People 2010-2020'. However, results from its implementation are not expected for some time, as the coordinating body tasked to follow its implementation was only recently established.

b) Quotas in employment for people with disabilities

In North Macedonia, national law does not provide for a quota/quotas for the employment of people with disabilities.

## **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 North Macedonia, the following procedures exist for enforcing the principle of equal treatment: judicial, administrative and 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 initiated before the Commission for Prevention and Protection against Discrimination (Chapter IV, Anti-Discrimination Law), and the Labour and Education inspectorates. The procedure before the CPPD is free of charge. The entire duration of the procedure is set to last no more than 60 days (including five days for the CPPD to forward the complaint to the respondent and 15 days for the respondent to reply). This may result in the CPPD giving an opinion and recommendation. If the recommendation is not acted upon, the CPPD must initiate a court misdemeanour procedure (Article 27(4)).

Litigation proceedings can be initiated before ordinary courts, based on the provisions of the Anti-Discrimination Law (Chapter V, Articles 32-40). The court proceedings have priority in the event of simultaneous procedures (Article 27(5)).

Under the Anti-Discrimination Law, the outcome of a claim depends on the procedure one chooses to pursue. The administrative procedure envisages a recommendation to rectify 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 EUR 5 000.

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 sets out a detailed procedure, which must be conducted in accordance with the law and with very strict criteria, while in the private sector, according to the 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 process due to discrimination. This is a 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>226</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.

Although non-binding, if the CPPD finds discrimination, it issues an opinion accompanied by recommendations. The person to whom the recommendation is directed must act on it and notify the CPPD within a deadline of 30 days (Article 27(3)). If the person does not act

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<sup>226</sup> The State Defender is an institution financed by the state budget. However, its practice is to request litigation costs like a private solicitor. When combined with court costs, this is a serious burden on the claimant.



on the recommendation, the CPPD must open a misdemeanour court procedure against that person (Article 27(4)).

In addition, under the ADL, the CPPD can issue a 'general recommendation'. According to Article 28, 'the Commission can on its own initiative issue a general recommendation in cases where a larger number of persons have been discriminated against'.

Although this is a very welcome expansion of competence, the wording of the article raises concerns on at least three points. First, it does not state whether the general recommendation can be issued in cases filed by individual claimants, those pursued by the CPPD itself or both. Secondly, if such recommendations can arise from individual cases, it is not clear what kind of relationship the individual case will have with the 'general recommendation'. Several questions arise, such as whether the individual case will be pursued and, following resolution, a general recommendation be issued, or whether the two will run separately or in parallel and, if so, what the implications are. Thirdly, it is not clear how these general recommendations are actually meant to be followed through – how they will be communicated and to whom, how they will be monitored and what the implications are, if any, for those who do not follow them.

At present, this provision is not tied to any of the sanctions prescribed under Articles 41-43 of the Anti-Discrimination Law. Furthermore, there is the question of what will happen to cases that are filed with the CPAD after such a general recommendation has been issued, if they fall within the realm of the recommendation; whether such cases will be accepted, and the general recommendation merely reiterated and whether the case will be escalated in any way and how. The ADL does not offer an answer to these questions.

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

The procedure before the Commission for Prevention and Protection against Discrimination (CPPD) is free of charge. No legal representative is needed for this procedure. However, at the time of writing of this report this equality body, as a new equality body under the new ADL, had still not been established. Thus, effectively, at the cut-off date for this report there was no equality body where claimants could seek redress.

In relation to the courts, the obstacles can be even greater. The new ADL brings a much-welcomed change in relation to administrative taxes. Article 39 provides that the court procedure for those pursuing discrimination cases will be free of charge and that the burden for the expenses of these procedures will fall on the state budget. However, court cases can still take much longer. The time limits are strict. In addition, they raise the issue of the obligation to engage a lawyer. While representation is not mandatory for civil law cases (Article 80), considering that discrimination case law in front of the regular courts under the comprehensive ADL started rather recently (since 2010) and considering the difficulty of proving discrimination cases, the alleged victim of discrimination can hope for little if they approach the courts with no legal representation (a jurist or lawyer costs up to EUR 16 260 (MKD 1 000 000), or a jurist or lawyer who has passed the bar exam – a higher sum).

The newly adopted Law on Free Legal Aid includes discrimination cases. Its fully revised criteria for qualifying for free legal aid allow any person, regardless of citizenship, to apply for free legal aid if they are not in a material position to cover the expenses of the process. The person requesting free legal aid must have a personal monthly income which is less than the national minimum wage<sup>227</sup> and if another member of their family has income too, their income must be lower than 20 % of the minimum wage (Articles 17-20). The minimum wage at the moment is EUR 235 (MKD 14 500).

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

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<sup>227</sup> In April 2019, the minimum wage was EUR 203 (MKD 12 507).

In North Macedonia, statistics on the number of discrimination cases brought to justice are partially available. There are statistics on the work of the old equality body (CPAD), the Ombudsperson and the Constitutional Court, but there is a lack of statistics from ordinary courts. In addition, since the new equality body (CPPD), has not yet been established, it is not relevant to the present discussion.

In 2018,<sup>228</sup> the former body (the CPAD<sup>229</sup>) reported receiving 132 cases, which is a significant increase from 2017 when it received 59 cases. The reporting per discrimination ground was as follows: 'personal or other social status: 25 %; political affiliation: 21.97 %; health status: 9.09 %; sex: 9.09 %; belonging to a marginalised group: 8.33 %; ethnicity: 7.58 %; age: 6.06 %; 'mental' or physical disability: 3.79 %; gender: 3.03 %; family or marital status: 3.03 %; religion or religious belief: 2.27 %; sexual orientation: 2.27 %, etc'.<sup>230</sup> The reported distribution per field is as follows: 49.24 % in employment and labour relations; 19.70 % in access to goods and services; 8.33 % in judiciary and administration; 6.82 % in education, science and sport; 3.79 % in social security; 2.27 % in public information and the media; 0.76 % in housing; 3.79 % no field stated and 6.82 % in other fields established under the law.<sup>231</sup>

The Ombudsperson is another possible forum for public sector discrimination cases. In 2019, the Ombudsperson received 60 cases that were filed as non-discrimination and equitable representation cases, which represents 1.7 % of the total number of cases filed (3 453 cases, which is a slight decrease from 2018, when the number of cases was 3 458). This is a reduction from last year, when the Ombudsperson had 77 cases – the highest representation of this category of cases since the Ombudsperson started to report them separately (that is, higher than the 70 cases or 2.17 % reported in 2017, the 69 cases or 1.83 % reported in 2016 or the 53 cases or 1.2 % reported in 2015). Under the separate category of cases of 'adults and children with disabilities', the Ombudsperson reports having received a higher number of cases compared to the previous year – 24 cases or 0.66 % (compared to 21 case or 0.61 in 2018, five cases or 0.16 % in 2017, and 15 cases or 0.4 % in 2016). As was the case in the previous year, the Ombudsperson did not publish detailed statistics on the grounds and fields in which the cases were filed. However, it noted a continuing trend from previous years in that employment remained the dominant field. It also reports that ethnic affiliation was the dominant discrimination ground.<sup>232</sup>

In 2018, the Constitutional Court received 11 cases in relation to the protection of human rights and fundamental freedoms. Protection against discrimination falls within this category, however, compared to previous years, the Constitutional Court did not actually say how many of these cases were cases for protection against discrimination. The Constitutional Court finally found discrimination in one case (it has never found discrimination before). This was a case of discrimination on grounds of political affiliation, in relation to the right to thoughts and opinions. The case concerned a violation of the right to protest of a group of anti-NATO activists against a NATO parade in the capital. The police

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<sup>228</sup> At the time of writing, none of the national human rights institutions and the Constitutional Court had yet published their 2019 annual reports.

<sup>229</sup> The CPAD ceased to function in August 2019.

<sup>230</sup> The CPAD reported the distribution of cases by discrimination ground in percentages and did not provide a full list (the sentence ends with 'etc. '), as can be seen from this quote. Source: Commission for Protection against Discrimination (2019), *Годишен извештај за 2018 година (Annual report for 2018)*, available at: [www.sobranie.mk/materialdetails.nspx?materialId=a554ee4c-74e0-44a2-a5bb-04b4e411c353](http://www.sobranie.mk/materialdetails.nspx?materialId=a554ee4c-74e0-44a2-a5bb-04b4e411c353).

<sup>231</sup> Commission for Protection against Discrimination (2019), *Годишен извештај за 2018 година (Annual Report for 2018)*, available at: [www.sobranie.mk/materialdetails.nspx?materialId=a554ee4c-74e0-44a2-a5bb-04b4e411c353](http://www.sobranie.mk/materialdetails.nspx?materialId=a554ee4c-74e0-44a2-a5bb-04b4e411c353).

<sup>232</sup> Ombudsperson (2020), *Годишен извештај за степенот на обезбедувањето почитување, унапредување и заштита на човековите слободи и права 2019 (Annual Report on the Degree of Ensuring, Respecting, Advancing and Protecting Human Rights and Freedoms 2019)*, available at: <http://ombudsman.mk/upload/Godisni%20izvestai/GI-2019/GI-2019.pdf>.

used excessive force to stop the peaceful protest of a group of protesters who held a banner with anti-NATO content. The group were also supporters of Levica, a political party.<sup>233</sup>

d) Registration of discrimination cases by national courts

In North 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) Engaging in proceedings on behalf of victims of discrimination (representing them)

In North Macedonia, associations, organisations and 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, unions and other civil society organisations) can represent a person who considers themselves to have been discriminated against, provided that the person grants consent (Article 23(2)). 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 consent of the complainant (Article 93).

b) Engaging in proceedings in support of victims of discrimination (joining existing proceedings)

In North Macedonia, associations, organisations and trade unions are entitled to act in support of victims of discrimination (Article 40 of the ADL) and they can join in existing proceedings. However, it should be noted that it is up to the court to allow this. The court will be looking into whether the associations/organisations/trade unions have an equality mandate (most likely on the basis of their founding articles) and then decide whether or not it will allow for this (as specified by Article 40 of the Anti-Discrimination Law).

c) *Actio popularis*

In North Macedonia, national law allows associations, organisations and trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*). This is a novelty introduced by the new ADL, which in Article 35(1) defines this as:

'Associations, foundations, trade unions or other organisations from civil society and informal groups with a justified interest in protecting the interests of a particular group or that work on protection against discrimination may file a lawsuit if they present facts indicating the probability that the defendant's actions have discriminated against a larger number of persons.'

The Constitutional Court has the ability to look into *actio popularis* cases in relation to human rights cases, including discrimination cases.

There were *actio popularis* cases even under the old ADL. For example, in a 2016 case, five CSOs,<sup>234</sup> supported by the OSCE Mission to Skopje, submitted an *actio popularis* claim on Roma segregation in education against the Government. They claimed an interest on the grounds of long-term work in the area and findings from studies that they have published, all of which they claim show beyond doubt the segregation of Roma children in education. The first instance court accepted that they had a legitimate interest to present such a case, but the court went on to dismiss the case on the basis that the CSOs did not have the express consent from an individual who believed they had been discriminated. As

<sup>233</sup> Constitutional Court (2019), *Преглед на работата на Уставниот Суд за 2018 година (Overview of the Work of the Constitutional Court in 2018)*, April 2019.

<sup>234</sup> The five CSOs were: NGO KHAM Delcevo, FOSM, MHK, IHR and ERRC.

discussed below in this report, this is a criterion in the ADL under Article 41(4), for class action, and yet the court applied it to an *actio popularis* case. As discussed elsewhere, requesting such consent defies the very purpose of *actio popularis*. The court also requested that such consent be provided in writing without calling upon any legal provision to support this claim. The CSOs complained to the higher instance court.<sup>235</sup>

#### d) Class action

In North 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. Associations of citizens (as well as institutions, foundations, unions and other civil society organisations) with 'a legitimate interest to protect the interests of a group or within the frame of their work deal with protection against discrimination' are explicitly allowed to raise a discrimination case 'if they make a likely case that the actions of a natural or a legal person resulted in discrimination against a larger number of persons' (Article 23(3) of the ADL).

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

In North Macedonia, national law requires a shift of the burden of proof from the complainant to the respondent (except in criminal and misdemeanour proceedings).

The Anti-Discrimination Law states that the claimant must produce 'facts from which it may be presumed' that discrimination has taken place. The rule is explicitly prescribed both for the procedure before the equality body (Article 26) and for court proceedings (but not for misdemeanour and criminal proceedings) (Article 37).

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), as does the Law on Psychological and Sexual Harassment (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 the Protection of Children 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 North 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 or people who participated in another way in a discrimination procedure (Article 11). So far, this has not been interpreted as excluding groups from the protection. 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>236</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).

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<sup>235</sup> The case is not publicly available. Information has been acquired by the author of this report from people involved in the preparation of the legal documents related to the process.

<sup>236</sup> Law on Labour Relations, 2005, Article 11(3).

## **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 5 000, to be paid in the national currency (Articles 41 to 44). The ADL does not foresee payment of compensation.

In labour cases as well as other civil court litigation, only compensation for pecuniary and non-pecuniary damages can be claimed.<sup>237</sup> 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 child protection cases and EUR 3 000 to 5 000 in cases concerning social protection.<sup>238</sup>

### **b) Compensation – maximum and average amounts**

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**

The Anti-Discrimination Law was only adopted in May 2019. It is thus too early to draw any conclusions regarding the effectiveness, proportionality and dissuasiveness of the sanctions, as required by the directives. However, considering that the prescribed fines are higher, they can be said to hold larger potential to fulfil this criterion. Thus, this could be seen as a step towards more effective, proportionate and dissuasive sanctions.

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<sup>237</sup> Law on Labour Relations, 2005, Articles 264-266.

<sup>238</sup> It should be noted that the average gross monthly salary in the country is approximately EUR 400.

## **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 old Anti-Discrimination Law, which was the first comprehensive anti-discrimination law adopted in 2010 in the course of harmonising the national legislation with the *acquis* (including with the Racial Equality Directive, and its Article 13), provided for the establishment for the first time of an equality body in the country – the Commission for Protection against Discrimination (CPAD).<sup>239</sup> This commission was tasked with dealing with both the public and private sectors. It was the first specialised body for equal treatment.

Before this, the Ombudsperson was the only institution that had duties in 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>240</sup> Some of the earlier versions of the ADL prepared in the drafting process (in 2009) foresaw the Ombudsperson as the designated body as per the directives. At this time, the Ombudsperson formed a special unit focused on non-discrimination and equitable and just representation. In the later drafts, and in the text that was adopted in 2010, it was decided that the designated body would be a new, special equality body - which is today's CPAD. However, while the CPAD is the designated body as per the directives, since both the CPAD and the Ombudsperson have a mandate to promote equal treatment, they are both discussed in this and in the following subsections of Section 7 of this report.

With the new Anti-Discrimination Law a new body is to be established. It is the Commission on Prevention and Protection against Discrimination (CPPD). This body also has competences for the promotion of equal treatment irrespective of racial or ethnic origin, according to Article 13 of the Racial Equality Directive. Like its predecessor, its competences are much wider than required by the directive, including a wide personal and material scope. However, the process of appointment of the new members of the body, as well as other processes needed for its establishment, have all been extended. With the mandate of the CPAD ending in August 2019 and the new body (CPPD) not being established yet, North Macedonia has been without a functioning equality body for six months and this situation still applied at the cut-off date for this report.

- b) Political, economic and social context of the designated body

Both designated bodies (the CPAD at the time and the Ombudsperson) operated in a country which struggles with finances and where there are very high rates of poverty among the population (according to the World Bank, a quarter of the population lives in poverty).

Both bodies operated in a context of state capture – the European Commission, in its last three progress reports, has assessed the situation in the country as a 'state capture'.<sup>241</sup> This ties into the backsliding in terms of fulfilment of political criteria for membership of the EU, especially with regard to questions about the independence of the judiciary already reported over several successive years. The endemic proportions of the rule of law issues

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<sup>239</sup> Law on Prevention and Protection against Discrimination, 2010, Articles 16 to 33.

<sup>240</sup> Law on the Ombudsperson, 2003, Articles 6, 11. Full title: Republic of North Macedonia, Law on the Ombudsperson (*Закон за народниот правобранител*), *Official Gazette of the Republic of Macedonia*, Nos. 60/2003, 114/2009, 181/2016, 189/2016, 35/2018; Constitutional Court Decisions: U.no. 111/2007.

<sup>241</sup> The concept of 'state capture' is mentioned here in terms of the Transparency International concept, that is: 'a situation where powerful individuals, institutions, companies or groups within or outside a country use corruption to shape a nation's policies, legal environment and economy to benefit their own private interests'. This is also how the European Commission has used it in its report on the country's progress.

were confirmed by the special EC Rule of Law mission led by Reinhard Priebe.<sup>242</sup> The situation at the national level started to improve with the overturning of the Gruevski government and a new government coming into power in June 2017. However, the state capture context has not yet been fully surmounted. While the new equality body (CPPD) has not been established yet, the Ombudsperson still operates in this context.

c) Institutional architecture

In North Macedonia, the CPPD does not have multiple mandates (neither did its predecessor – the CPAD), whereas the Ombudsperson does. The CPPD is only an equality body, whereas the Ombudsperson is a national human rights institution. In the case of the Ombudsperson, the equality and non-discrimination mandate falls within the competence of a Deputy-Ombudsperson charged with these issues and is the subject of work by a special division within the institution.

d) Status of the designated body – general independence

i) Status of the body

Under the law, the CPPD is a separate legal person, established with the Law on Prevention and Protection against Discrimination. The Ombudsperson is also a separate legal person, but it is established under the Constitution and the Law on the Ombudsperson.<sup>243</sup>

The CPPD is composed of seven members appointed by the Parliament with five-year mandates. In the first composition, four members will be elected with a five-year mandate, whereas three will be elected with a three-year mandate (Article 16(3)). Macedonian citizens, with university degrees and seven years of experience in human rights (five of which in equality and non-discrimination), and who have no criminal convictions and hold no positions in a political party, are eligible for membership. Applications are collected through a public call for applications.

In practice, the appointment of both compositions of the previous equality body (CPAD) (the first in 2011 and the second in December 2015) raised serious concerns among civil society organisations and the (then) parliamentary opposition. However, the practice of contested appointments has not stopped.

Namely, according to the transitional provisions of the Law on Prevention and Protection against Discrimination adopted in May 2019 (new ADL), the CPAD was to stop operating with the appointment of the members of the new Commission for Prevention and Protection against Discrimination and, at the latest, three months after the entry into force of the new ADL (Article 48(1)). The new ADL entered into force on 22 May 2019.

The publication of a public vacancy announcement for members of the new equality body, the Commission for Prevention and Protection against Discrimination (CPPD) (published on 11 June 2019),<sup>244</sup> only attracted a low level of interest, so the Parliament planned to re-advertise the positions. In the meantime, as informed in flash report No.77 dated 13

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<sup>242</sup> European Commission (2015), *The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015*, available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news\\_corner/news/news-files/20150619\\_recommendations\\_of\\_the\\_senior\\_experts\\_group.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf).

<sup>243</sup> Law on the Ombudsperson, 2003.

<sup>244</sup> Parliament of the Republic of North Macedonia, Одлука за објавување јавен оглас за избор на членовите на Комисијата за спречување и заштита од дискриминација (11.06.2019) (Decision to publish a vacancy advertisement for the appointment of members of the Commission for Prevention and Protection against Discrimination (11.06.2019)), available at: <https://www.sobranie.mk/content/Javen%20oglas-diskriminacija%2019/Odluka-Komisija%20za%20sprecuvanje%20i%20zashtita%20od%20diskriminacija.pdf>.

September 2019,<sup>245</sup> the mandate of the old equality body, the Commission for Protection against Discrimination (CPAD), ended on 23 August, leaving the country without an equality body.

One month after the mandate of the CPAD ended, the Network against Discrimination (a network of NGOs providing legal aid in discrimination cases) organised a public event calling for the election of members and thus the establishment of the new body – the CPPD.<sup>246</sup> At the public event, attended by people from state institutions, NGOs and international organisations, it was discussed that the election and appointment of the new members may be difficult due to the low quality of the applications received, including the fact that many of the candidates did not fulfil the appointment criteria. It was also noted that, in order to establish this as a valid reason, a public discussion about the applications already received should be held and the applications should be publicly scrutinised. Until that point, this had not happened.

On 6 December 2019, the Parliamentary Commission on Elections and Appointments held a session to consider the candidates for the CPPD. However, without discussing the applications, it decided to annul the June public call<sup>247</sup> and to publish a new call.<sup>248</sup> The public vacancy announcement was published on 14 December 2019 with a deadline of 30 days,<sup>249</sup> until 13 January 2020. Thus, by the cut-off date for this report the new body was still not established.

In the meantime, there is a person, acting as a member of staff, in the CPAD offices who continues to receive the newly submitted applications, even though the body has ceased to exist. However, these applications cannot be processed, thus the deadlines for responding established under the law are being missed. It is not known how many applications will be affected by the lack of an equality body at the moment. NGOs at the aforementioned public event highlighted the fact that many claimants go to the CPAD first, and then to the courts, and they use the CPAD decisions as supporting evidence in their court applications. The current impasse will negatively affect this practice.<sup>250</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

<sup>245</sup> Flash report No.77 dated 13 September 2019, 'Country left without an equality body in operation', available at: <https://www.equalitylaw.eu/downloads/4954-republic-of-north-macedonia-country-left-without-an-equality-body-in-operation-pdf-68-kb>.

<sup>246</sup> 24 Vesti, 'HBO итно да се формира комисијата за заштита од дискриминација, партиите да се воздржат од политички игри' (NGOs demand that the Commission for protection against discrimination is urgently established and ask that political parties refrain from political games'), available at: <https://www.24.mk/details/nvo-itno-da-se-formira-komisijata-za-zashtita-od-diskriminacija-partiite-da-se-vozdrzhat-od-politichki-igri>.

<sup>247</sup> Parliament of the Republic of North Macedonia, *Проверка на кандидатурите доставени по Одлуката за објавување јавен оглас за избор на членовите на Комисијата за спречување и заштита од дискриминација* („Службен весник на Република Северна Македонија" број 120/2019) (Evaluation of applications received following the Decision to publish a vacancy advertisement for the appointment of members of the Commission for Prevention and Protection against Discrimination), *Official Gazette of the Republic of North Macedonia*, No.120/2019, available at: <https://www.sobranie.mk/materialdetails.nsp?materialId=daa0b4a4-2263-4f18-9668-91326d67f67c>.

<sup>248</sup> Parliament of the Republic of North Macedonia, *Предлог - одлука за објавување јавен оглас за избор на членовите на Комисијата за спречување и заштита од дискриминација* (Draft – Decision to publish a vacancy advertisement for the appointment of members of the Commission for Prevention and Protection against Discrimination), available at: <https://www.sobranie.mk/materialdetails.nsp?materialId=3d70d5d2-fa78-40fb-933d-774efd6da42f>.

<sup>249</sup> Official Gazette of the Republic of North Macedonia, *Одлука за објавување јавен оглас за избор на членовите на Комисијата за спречување и заштита од дискриминација* (Decision to publish a vacancy advertisement for the appointment of members of the Commission for Prevention and Protection against Discrimination), available at: <http://www.slvesnik.com.mk/Issues/7b660cd3435f4fa29e566577544c4f8f.pdf>.

<sup>250</sup> 24 Vesti, 'HBO итно да се формира комисијата за заштита од дискриминација, партиите да се воздржат од политички игри' (NGOs demand that the Commission for protection against discrimination is urgently established and ask that political parties refrain from political games'), available at: <https://www.24.mk/details/nvo-itno-da-se-formira-komisijata-za-zashtita-od-diskriminacija-partiite-da-se-vozdrzhat-od-politichki-igri>.



number of MPs who belong to ethnic communities that are not the ethnic majority). The 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 with focusing on non-discrimination and equitable representation. Any Macedonian citizen can be appointed Ombudsperson if they meet the general conditions specified in law for employment and if they are a graduate lawyer with over nine years' experience in legal affairs with proven activity in the field of citizens' rights protection. They must also be a reputable professional.<sup>251</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. Furthermore, given that its funding comes from the state budget, the Ombudsperson could also be seen as financially dependent (as there is no annual budget set as percent from the overall state annual budget). The institution has a working unit for protection against discrimination.

Both the CPPD and the Ombudsperson are financed through the state budget, but their activities can also be funded through other sources. They have their own budget line which the Parliament votes on separately. This ensures its financial independence.

Both bodies have issues with recruiting and managing staff. All hiring which is paid for from the state budget needs to be approved by the Ministry of Finance, which has caused issues in the past for the Ombudsperson in planning its human resources. It is expected that this will affect the new CPPD as well.

Both bodies need to file a report to the Parliament and to the public annually. They do not need to defend this report, just submit it. However, at present, the lack of an obligation of the Parliament to discuss this report (not to approve it, but to discuss it) meant that some of the annual reports were just filed to Parliament and were never put on the agenda for discussion. It was only in 2019 that, for the first time, after several years, there was a plenary discussion of the 2018 reports of the two institutions.

## ii) Independence of the body

The independence of both the CPPD and the Ombudsperson is stipulated in their respective founding legal acts. The new body (CPPD), has still not been established. Thus, no conclusion with regards to its independence can be drawn yet. The old equality body (CPAD), could not have been considered to be an independent body. The Ombudsperson has shown significantly more independence than the CPAD.

The Ombudsperson is tasked with protecting the constitutional and legal rights of citizens when these are violated by state bodies and other authorities and organisations with public powers. This quasi-judicial institution has a mandate to safeguard *inter alia* the principles of non-discrimination and adequate and equitable representation of communities in the bodies of state power, local government and public institutions and services (Article 77).<sup>252</sup>

## e) Grounds covered by the designated body

The CPPD deals with the following grounds: race, skin colour, origin, nationality or ethnicity, sex, gender, sexual orientation, gender identity, belonging to a marginalised group, language, citizenship, social origin, education, religion or religious belief, political conviction, other convictions, disability, age, family or marital status, property status,

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<sup>251</sup> Law on the Ombudsperson, 2003, Article 6 (as amended and as entered into force on 7 April 2017).

<sup>252</sup> Constitution of the Republic of North Macedonia, 1991 and subsequent amendments, Article 77.

health condition, personal capacity and social status (open-ended clause) (Article 5). The Ombudsperson can 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. The open-endedness can include grounds not explicitly mentioned, such as sexual orientation and age.

No systematic approach to dealing the grounds or for ensuring that they are all properly dealt with can be identified. The Ombudsperson seems to invest more in planning of activities, however, it is not very clear from the information available in the public domain as to how they undertake this planning.

f) Competences of the designated body – and their independent exercise

i) Independent assistance to victims

Both bodies can provide independent assistance to victims.<sup>253</sup> This is largely done by assisting them in navigating the laws and procedures on matters which do not fall within their competence. In practice, from the information provided in the annual reports, it seems that the Ombudsperson fulfils this part of its mandate, while the old equality body (CPAD) did not. The new equality body (CPPD) has not yet been established.

ii) Independent surveys and reports

Both the CPPD and the Ombudsperson can conduct independent surveys and publish independent reports, as well as undertaking special investigative activities.<sup>254</sup> Both bodies can conduct various types of research on specific issues and publish these as they see fit. The Ombudsperson seems to be exercising this part of its mandate (more so with regards to the reports), although not regularly when it comes to equality and non-discrimination issues. The new equality body (CPPD), has not yet been established.

iii) Recommendations

The Commission for Prevention and Protection Against Discrimination can issue 'general recommendations' on its own initiative in cases of discrimination against multiple people (Article 21(1(6)) of the ADL).

The Ombudsperson can make recommendations and submit independent reports to the media and the Parliament (Articles 28, 32, 34 and 35). The institutions have to act in accordance with the Ombudsperson's recommendation.

iv) Other competences

The CPPD can collect statistics and other data and can conduct surveys and research on discrimination. It can undertake promotional activities, including awareness-raising. It can propose legislative changes on matters which fall within its scope of work. It can establish advisory expert bodies on specific matters related to the promotion, prevention of and protection against discrimination.

The Ombudsperson can submit independent reports to the media and the Parliament. It can undertake promotional activities, including awareness raising and promotion of good practices. It can propose legislative changes on matters which fall within its scope of work.

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<sup>253</sup> For the CPPD - Article 21(1(16, 18, 19)) of the ADL, and for the Ombudsperson - Articles 11, 116, 11b, 12, 13, 17, 24, 32, and 33.

<sup>254</sup> For the CPPD - Article 21(1(5, 24)) of the ADL, and for the Ombudsperson - Articles 11, 11a, 12, 13, 17, 24, 32, and 33.

g) Legal standing of the designated bodies

In North Macedonia, according to Article 21 of the ADL, the CPPD has legal standing to:

- bring discrimination complaints on behalf of identified victims to court;
- bring discrimination complaints on behalf of non-identified victims to court;
- intervene in legal cases concerning discrimination, for example, as an *amicus curiae*.<sup>255</sup>

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 about how to act upon detected violations; propose a retrial (reopening of the case); initiate disciplinary proceedings against officials or persons responsible; and apply to the competent public prosecutor for initiating criminal procedures.

h) Quasi-judicial competences

In North Macedonia, the CPPD is a quasi-judicial institution. However, it does not have the power to 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* proofs to support the claims.

Once the CPPD receives a complaint, it forwards it to the respondent within five days of receipt. The respondent has 15 days to reply to the complaint. Altogether, the CPPD must deliver an opinion in 60 days from the date of receipt of the complaint. The respondent to whom a recommendation has been directed must act in accordance with it within 30 days of the notification it has received from the CPPD. The CPPD's opinion is not legally binding and there is no appeal procedure. If a person does not act upon the recommendation, the CPPD can initiate a court misdemeanour procedure.

The Ombudsperson also has elements of a quasi-judicial institution. Under law, state bodies should implement its recommendations (Article 32). However, as with the CPAD, the Ombudsperson's opinions are not legally binding and there is no forced compliance mechanism which can be activated. However, 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.

i) Registration by the bodies of complaints and decisions

In North Macedonia, the CPAD and the Ombudsperson registered the number of complaints and decisions (by ground, field, type of discrimination, etc.). The CPPD has not yet been established. The data from the CPAD and the Ombudsperson are available to the public through the annual reports,<sup>256</sup> but they are not regularly made public and they are not available in a raw format which can later be processed for research purposes as needed. Thus, a researcher, for instance, has to rely on the way the cases have been processed by the bodies. For example, in 2017, the CPAD grouped the number of cases filed under gender and sex, which it had not done in previous years. There was no indication in the report as to why it did this, nor how many cases were filed under the individual grounds. However, the CPAD has the software to generate such statistics and it also grants access to anonymised documents from the complete case documentation. Thus, albeit through a lengthier process, it is possible to obtain raw data from the CPAD. Although the software

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<sup>255</sup> Law on Prevention and Protection against Discrimination, 2019, Article 21.

<sup>256</sup> The most recent available data is discussed in Section 6.1 (c).

is capable of providing updated statistics on the website, this is not done and the statistics are made public only in the annual reports.

This is much more difficult with the Ombudsperson. Apart from the annual report, the Ombudsperson grants access only to the statistics upon request, but it does not give access to other case documentation. An issue in relation to the statistics coming from the Ombudsperson's office is that they mix the fields and the grounds of discrimination. In addition, they provide a qualitative conclusion as to fields and grounds for which the largest number of cases were filed, but no quantitative data is given, save for the overall number of cases. In addition, the number of non-discrimination cases is included in the 'non-discrimination and equitable representation' category, so from the text of the annual reports it is not possible to ascertain the distribution between these two. Thus, the information provided in the annual reports is of little practical use, especially for research purposes.

j) Stakeholder engagement

In North Macedonia, the designated body does engage with stakeholders as part of implementing its mandate. The new equality body has not yet been established. The old equality body (CPAD), cooperated with international organisations in the country (the OSCE Mission to Skopje in particular), non-governmental organisations (on projects or events or joint activities) and governmental institutions (the body participated in the working group which drafted the new ADL), the judiciary (especially with the Academy for Judges and Public Prosecutors) and also the Ombudsperson (cooperation regulated with a Memorandum of Understanding).

k) Roma and Travellers

The new equality body has not yet been established. Neither the Ombudsperson nor the old equality body (CPAD) have 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 people face, including problems related to discrimination and most recently on the issue of racial profiling of Roma people at border crossings.<sup>257</sup> Moreover, it is thanks to the instruction that the Ombudsperson issued to the CPAD that the CPAD finally resolved a case filed by the Helsinki Committee of the Republic of Macedonia in 2011 regarding the segregation of Roma children in schools in Bitola. Namely, the Ombudsperson acted upon a case filed with it by the Network against Discrimination against the CPAD for violating the body's obligation to respond to a filed case within 90 days. After breaching all possible procedural deadlines, the CPAD finally decided the Bitola case in September 2014, although the claimants only received the decision in December 2014. The CPAD did not find discrimination on grounds of ethnicity in the case, nor did it find segregation. As already explained above, the CPAD actually found the situation to be a result of the parents' choice to enrol their children at a specific primary school. However, it failed to state on what it based its argument and bluntly added that it, 'further supports this argument' with a report from a person from another state institution who claimed that this process is one of 'natural segregation'.<sup>258</sup>

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<sup>257</sup> On the issue of Roma racial profiling and the state's systematic violation of Roma people's right to freedom of movement, see: European Policy Institute – Skopje and KHAM Delcevo (2016), *Right to equality, freedom of movement and legal protection*, available at: [http://epi.org.mk/docs/Right%20of%20Free%20Movement%20Over%20Borders%20\(Case%20Study\)\\_EN.pdf](http://epi.org.mk/docs/Right%20of%20Free%20Movement%20Over%20Borders%20(Case%20Study)_EN.pdf).

<sup>258</sup> CPAD (2014), Case No. 07-80, *Macedonian Helsinki Committee vs Primary School GS Bitola*, 5 September 2014.

Although it had deliberated on this case for over three years, the CPAD provided a surprisingly short elaboration of its opinion, the majority of which consists of a bullet point list of 14 letters/requests that it sent and received while processing the 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 disregarded 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>259</sup>

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<sup>259</sup> CPAD (2014), Case No. 07-80, *Macedonian Helsinki Committee vs Primary School GS Bitola*, 5 September 2014.

## **8 IMPLEMENTATION ISSUES**

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

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

The trend noted in previous years continued in 2019. The main activities in relation to the dissemination of information, including capacity building of institutions, continued to be organised and implemented by CSOs (with the Network against Discrimination and its members leading most of the initiatives and the Macedonian Young Lawyers Association also being active in bringing cases to court) and by the OSCE Mission to Skopje (OSCE). The activities regularly include the Ministry of Labour and Social Policy (MLSP) and the Commission for Protection against Discrimination (CPAD, the former equality body) as partners/co-implementers (such as the Academy for Judges and Public Prosecutors and law schools from across the country).

- b) Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78)

As reported in the 2017 and 2018 reports, following the appointment of the new Government, in June 2017, the climate for dialogue with NGOs rapidly changed. The Government established a national coordinating body on equality and non-discrimination. Several CSOs were invited to participate in the work of the body, by sending their representatives. The Government published several calls for expressions of interest by CSOs to take part in working groups. It has included CSOs and experts in working groups.

The new ADL was drafted by a working group that included representatives from the most active CSOs working on equality issues, including those which provide free legal aid in discrimination cases. The draft was presented to a debate to which many CSOs working on equality issues were invited, although it should be noted that this was again an 'invitation only' event and there was no public announcement to enable all interested parties to join the discussion. According to the organisers (the MLSP and the OSCE Mission to Skopje), this approach was chosen on the grounds of keeping the debate at an expert level.

In addition, there has still been no proper investigation and prosecution of the attacks on the LGBTI Support Centre. In operation since 2012, the centre provides support to LGBTI people and to their family and friends. It has been subject to attacks ever since it opened. People working at the centre have been physically attacked and its offices have been damaged several times. Following one of the attacks, the centre had to close down for renovation for a period of time.<sup>260</sup> No proper investigation and prosecution of the attackers of the LGBTI centre has happened yet and no charges have been made, despite numerous calls by CSOs, organised protests demanding action, the existence of video recordings in which the attackers can easily be identified (available on YouTube) and calls by the European Commission itself.<sup>261</sup>

- c) Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice and workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

The mechanism for social dialogue between social partners is the Economic and Social Council (ESC). It consists of representatives from the Government, unions and the

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<sup>260</sup> For more on this, please see flash report: [www.equalitylaw.eu/downloads/2177-mk-29-lgbti-centre-attacks-no-reactions](http://www.equalitylaw.eu/downloads/2177-mk-29-lgbti-centre-attacks-no-reactions).

<sup>261</sup> Network against Discrimination (2014), 'Absence of reaction to series of attacks on the LGBTI Support Centre', available at: <https://www.equalitylaw.eu/downloads/2177-mk-29-lgbti-centre-attacks-no-reactions>.

Associations of Employers.<sup>262</sup> The ESC seems to have focused on implementing actions set out in the Government strategic documents, which includes the setting up of an infrastructure for the peaceful resolution of disputes.

d) Addressing the situation of Roma and Travellers

The Government continues to run the Roma Information Centres (RICs). It is also continuing with the implementation<sup>263</sup> of the national Strategy on Roma 2014-2020.<sup>264</sup> In addition to this, the Government still has a Minister without Portfolio<sup>265</sup> tasked with coordinating Government activities in relation to Roma people.

## **8.2 Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)**

a) Compliance of national legislation (Articles 14(a) and 16(a))

The country has commenced a process of undertaking the necessary measures to ensure that any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished. Namely, the newly adopted ADL contains a transitional provision according to which all national regulations (including laws) should be brought in line with the ADL within a period of two years. Yet, at the time of drafting of this report, no significant efforts in this direction had been recorded.

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.

b) Compliance of other rules/clauses (Articles 14(b) and 16(b))

No mechanisms exist that ensure all contracts, collective agreements, internal 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.

If challenged, collective agreements, internal rules of undertakings and rules governing independent occupations 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>266</sup> Compliance of contracts, collective agreements, internal company rules and rules governing independent occupations can be challenged if brought to 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>267</sup> Furthermore, 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

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<sup>262</sup> Ministry of Labour and Social Policy (Министерство за труд и социјална политика) Economic and Social Council [www.mtsp.gov.mk/socijalno-partnerstvo-ns\\_article-ekonomsko-socijalen-sovet.nspj](http://www.mtsp.gov.mk/socijalno-partnerstvo-ns_article-ekonomsko-socijalen-sovet.nspj).

<sup>263</sup> No official report on the implementation has been published yet.

<sup>264</sup> Стратегија за Ромите (Strategy on Roma 2014-2020), available at: <http://www.mtsp.gov.mk/content/pdf/strategii/Strategija%20za%20Romite%20vo%20RM%202014-2020.pdf>.

<sup>265</sup> The website and profile of the Minister without Portfolio can be accessed at: <https://www.mbr-ds.gov.mk/>.

<sup>266</sup> Law on Obligations, 2001, Article 95, paragraph 1. Full title: Republic of North Macedonia, 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.

<sup>267</sup> Law on Courts, 2006.

the *lex specialis derogat legi generali* including changes made on the principle of *lex posterior derogat legi priori*.



## 9 COORDINATION AT NATIONAL LEVEL

The National Coordinating Body on Non-discrimination, established by the Government in 2018, continued to operate.<sup>268</sup> This body was established for the purposes of monitoring the situation with non-discrimination and the implementation of all the relevant laws and policies in this area. The main coordinator in this body is the Minister of Labour and Social Policy (MLSP). No official report has been released as part of the work of the body yet, but it seems to be active and working regularly.<sup>269</sup>

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>270</sup> There is a department for equal opportunities, as well as a deputy minister tasked with non-discrimination issues.<sup>271</sup> Aside from this ministry, several other executive departments of Government also have duties that touch upon anti-discrimination on the grounds covered in this report. The inter-ministerial body on human rights, based within the Ministry of Foreign Affairs, is tasked with, *inter alia*, strengthening coordination of all the activities of the ministries and other Government bodies with competences in human rights. One of the ministers without portfolio is tasked with coordination of all Government activities pertaining to Roma (until 2015, the Decade of Roma Inclusion 2005-2015 and, after that, the Strategy on Roma). 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 those on disability and age.

The 'National Strategy on Equality and Non-discrimination (2016-2020)' was adopted in 2016.<sup>272</sup> It has the same general goals as its predecessor, the 2012-2015 'National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability and Gender',<sup>273</sup> which are: advancing the legal framework for equality and non-discrimination; strengthening the capacities and advancing the work and cooperation of the institutional mechanisms for prevention and protection against discrimination and promotion of equal treatment; raising awareness in recognising forms of discrimination; and promoting the concepts of non-discrimination and equal opportunities. The introduction of the strategy states that it was prepared on the basis of an evaluation of the implementation of the previous strategy which, according to the text, found that the strategy had had a positive role in the development of non-discrimination policy in the country.<sup>274</sup> This evaluation has not been published.

Unlike its predecessor, the new strategy focuses on fields, rather than grounds. Moreover, compared to the previous document, it includes a reference to 'LGBTI' people in the mission of the strategy. Specifically, the strategy's mission is:

'Effective protection against discrimination and respect for the principle of equal opportunities and prohibition of discrimination against any person and/or groups of

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<sup>268</sup> Ministry of Labour and Social Policy (2018), *Формирано национално координативно тело за недискриминација (National Coordinating Body on Non-discrimination established)*, available at: [www.mtsp.gov.mk/april-2018-ns\\_article-formirano-nacionalno-koordinativno-telo-za-nediskriminacija.nspix](http://www.mtsp.gov.mk/april-2018-ns_article-formirano-nacionalno-koordinativno-telo-za-nediskriminacija.nspix).

<sup>269</sup> Information unofficially acquired by the author of this report.

<sup>270</sup> Ministry of Labour and Social Policy: [www.mtsp.gov.mk/?ItemID=21E7AB9648BFC441AFD588BA0183B4A3](http://www.mtsp.gov.mk/?ItemID=21E7AB9648BFC441AFD588BA0183B4A3).

<sup>271</sup> Ministry of Labour and Social Policy: [www.mtsp.gov.mk/?ItemID=380B6B1D444D5047B575F402122ED94A](http://www.mtsp.gov.mk/?ItemID=380B6B1D444D5047B575F402122ED94A).

<sup>272</sup> Ministry of Labour and Social Policy (2016), *Национална стратегија за еднаквост и недискриминација 2016-2020 (National Strategy on Equality and Non-discrimination (2016-2020))*, available at: [http://www.mtsp.gov.mk/content/pdf/dokumenti/7.7\\_Strategija%20za%20ednakvost%20i%20nediskriminacija.pdf](http://www.mtsp.gov.mk/content/pdf/dokumenti/7.7_Strategija%20za%20ednakvost%20i%20nediskriminacija.pdf).

<sup>273</sup> Ministry of Labour and Social Policy (2012), *Национална стратегија за еднаквост и недискриминација по основ на етничка припадност, возраст, ментална и телесна попреченост и пол 2012-2015 (National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability and Gender 2012-2015)*, available at: [www.mtsp.gov.mk/WBStorage/Files/strategija\\_ednakvost.doc](http://www.mtsp.gov.mk/WBStorage/Files/strategija_ednakvost.doc).

<sup>274</sup> Ministry of Labour and Social Policy (2016), *National Strategy on Equality and Non-discrimination (2016-2020)*.

persons, on grounds of their personal characteristics and especially of vulnerable groups (ethnic communities, women, LGBTI people, people with mental and physical disabilities, older people, children, refugees, people with lower social status, internally displaced people and other vulnerable groups, members of religious communities and anyone who has been treated differently without objective justification and a legitimate aim).<sup>275</sup>

No report on the progress with the implementation of the strategy has yet been reported.

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<sup>275</sup> Ministry of Labour and Social Policy (2016), National Strategy on Equality and Non-discrimination (2016-2020).

## 10 CURRENT BEST PRACTICES

The ongoing publication of the 'Info-sheet on Discrimination' (*Информатор за дискриминација*), a monthly info-sheet published since March 2016 by the OSCE Mission to Skopje and the Macedonian Helsinki Committee, continues to feature as a best practice and one that was relevant for 2019 too. It is an excellent and much-needed resource that has reinvigorated the climate of work on equality and non-discrimination issues in the country. It provides fresh information on various issues in relation to discrimination, contains information on pending cases, new cases, grounds and fields of discrimination, as well as examples from court practice and new resources on equality and non-discrimination. Although the information is brief and not conclusive, it provides a basic overview of what is happening before the courts, which was previously lacking.<sup>276</sup> This cooperation between an NGO and an IGO, running for almost three years now, has produced something that, if published on a long-term basis, can be of invaluable assistance for everyone working on equality and non-discrimination issues.

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<sup>276</sup> One such info-sheet can be accessed on the following link (all other issues are on the [www.mhc.org.mk](http://www.mhc.org.mk) website): Helsinki Committee of the Republic of Macedonia (2019), Информатор за дискриминација ('Info-sheet on Discrimination'), December 2019, available at: <https://mhc.org.mk/reports/mesechen-informator-za-diskriminacija-za-mesec-dekemvri-2019/>.

## **11 SENSITIVE OR CONTROVERSIAL ISSUES**

### **11.1 Potential breaches of the directives at the national level**

The new Anti-Discrimination Law removed all of the breaches of the directives as per the old ADL. Thus, there are no breaches of the directives.

### **11.2 Other issues of concern**

Two main issues of concern remain. The first one is the fact that the country currently has no functioning equality body. This was elaborated in detail in Chapter 7 (section d) of this report. The second one is the issue of the lack of internal harmonisation of the national legislation, identified in the previous report and in a 2016 analysis.<sup>277</sup> The harmonisation was identified as a general strategic goal of both the 'National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability and Gender 2012-2015' and of its successor, the 'National Strategy on Equality and Non-discrimination (2016-2020)'.<sup>278</sup> Article 51 of the new ADL also prescribes an obligation for all other national laws to be aligned with the ADL within two years from the date of entry into force of this law. In order to support the harmonisation process, a new analysis was prepared looking at possible models and approaches for conducting harmonisation.<sup>279</sup>

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<sup>277</sup> Kotevska, B. (2016), *Analysis of the harmonization of national equality and non-discrimination legislation*, Skopje, OSCE and CPAD.

<sup>278</sup> Ministry of Labour and Social Policy (2016), *National Strategy on Equality and Non-discrimination (2016-2020)*.

<sup>279</sup> Najchevska, M. (2019), *Analysis of the harmonization of the legislation in the area of anti-discrimination*, OSCE.

## 12 LATEST DEVELOPMENTS IN 2019

### 12.1 Legislative amendments

On 16 May 2019, the Parliament of the Republic of North Macedonia adopted a new Law on Prevention and Protection against Discrimination. This law replaced the 2010 Law on Prevention and Protection against Discrimination. 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 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.<sup>280</sup>

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 was opposed. He therefore used his constitutional right to veto and returned the law to the Parliament. In the meantime, presidential elections took place and a new president was elected – Stevo Pendarovski. The Parliament adopted the law for a second time and, after President Pendarovski signed it, it was published in the Official Gazette on 22 May 2019.

A new Law on Social Protection was also adopted. Instead of elaborating on various legal institutes, this law contains a reference to the Anti-discrimination Law. Article 16(3) of the Law on Social Protection refers to the Anti-Discrimination Law, stating: 'The protection against discrimination is provided in line with the Law on Prevention and Protection against Discrimination'.

In addition, the new Law on Free Legal Aid (FLAL) was adopted.<sup>281</sup> This law will replace the 2009 Law on Free Legal Aid (the old law). The law was adopted in a very participative process. Prominent CSOs which provide free legal aid took part in the drafting of the FLAL and expressed satisfaction with the version of the FLAL that was adopted.<sup>282</sup> The FLAL, which entered into force on 22 May 2019 and was to be implemented as of October 2019, transposes the Council Directive 2002/8/EC on improving access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

The old law was criticised on many points, and primarily by CSOs which provide free legal aid. The law was said to provide legal aid only for a narrow set of strictly listed legal areas and for a small part of the expenses. The law applied to procedures related to securing 'rights in the field of social, health, pension or disability insurance, labour relations, protection of children, victims of domestic violence, protection of victims of crime, protection of victims of human trafficking, recognition of the right to asylum and property-legal issues' (Article 8). As can be read from this provision, cases of discrimination were

<sup>280</sup> See flash report: <https://www.equalitylaw.eu/downloads/4814-fyr-macedonia-the-proposed-new-law-on-anti-discrimination-blocked-in-parliament-pdf-134-kb>

<sup>281</sup> Law on Free Legal Aid, 2019. Full title: Republic of North Macedonia, Law on Free Legal Aid (*Закон за бесплатна правна помош*), *Official Gazette of the Republic of North Macedonia*, No.101/2019.

<sup>282</sup> Pravdiko (2019), Новиот Закон за бесплатна правна помош со подобрени решенија за пристап до правда ('The new free legal aid law with improved solutions for access to justice'), *Pravdiko Website*, <https://www.pravdiko.mk/noviot-zakon-za-besplatna-pravna-pomosh-so-podobreni-reshenija-za-pristap-do-pravda/>.

not explicitly included, thus making the right to free legal aid for discrimination cases subject to interpretation.

Free legal aid did not apply to 'cases of mandatory defence anticipated in the Criminal Procedure Code nor to the exemption from payment of the procedure costs anticipated in the Law on Litigation Procedure and the Law on General Administrative Procedure' (Article 7). The criteria for obtaining free legal aid were strict, thus aid was unavailable to many. According to the old law, free legal aid was available to persons who, 'regarding their material position, are not able to exercise their rights guaranteed by the Constitution and law, without imperilling their own sustenance and the sustenance of the members of their family living in a joint household'. (Article 12 (1)).

Only citizens were eligible for free legal aid and specifically citizens who were: 'a child at risk, a child under suspicion of having committed an act defined as a crime or offence under law, beneficiaries of social security, beneficiaries of the right to disability allowance, who do not generate other incomes on the basis of earnings or income from immovable property, beneficiaries of the lowest retirement pension living in a family household and supporting two or more persons, and families or a self-supporting parent with one or more juveniles exercising the right to child allowance' (Article 12 (2)). Foreigners were eligible for free legal aid if they were an 'asylum seekers, person with an asylum status, internally displaced person, as well as displaced or expelled person who has a temporary residence on the territory of the Republic of Macedonia, a foreign citizen, who in accordance with the international agreements, no matter if he/she has a permanent or temporary residence on the territory of the Republic of Macedonia, exercises his/her rights under the competence of the state body of the Republic of Macedonia, a stateless person legally residing in the Republic of Macedonia, and a citizen of a member state of the European Union under the conditions and in the manner determined by this Law' (Article 12(2, 3)).

In addition, CSOs highlighted the fact that the decision-making process for awarding free legal aid was highly centralised and slow, there was no independent body overseeing the implementation of the Law on Free Legal Aid, and the law did not align well with other laws, including laws regulating procedures.<sup>283</sup>

The recently adopted FLAL addresses all these points. The FLAL does not limit the provision of free legal aid to a list of areas but applies to all legal areas. The criteria for qualifying for free legal aid have been fully revised. Any person, regardless of citizenship, can apply for free legal aid. They must satisfy the criteria that they are not in a material position to cover the expenses of the process. The criteria are much better defined than before and take into consideration the fact that a majority of people own the home where they live (a house or a flat) and a piece of land and one car. While the old law would have rendered these people ineligible for free legal aid, the recently adopted FLAL does not.

The income criteria are clearly set and are tied to the national minimum wage.<sup>284</sup> The person requesting free legal aid must have a personal monthly income which is less than the national minimum wage and, if another member of their family also has an income, their income must be lower than 20 % of the minimum wage (Articles 17-20, FLAL).

The law is aligned with the other laws, including process laws, thus making it better situated within the overall legal system and better positioned to provide timely assistance and legal certainty for citizens who are in need of free legal aid. In addition, the overall provision of legal aid is set to be improved in the long run, with a new grant scheme which

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<sup>283</sup> Access to Justice Project (*Проект "Пристап до правда"*), Мислење за новиот Закон за бесплатна правна помош (Opinion about the new Law on Free Legal Aid), Access to Justice Project official website, <http://pristapdopravda.mk/wp-content/uploads/2016/09/Pismo-so-preporaki-za-noviot-Zakon-za-besplatna-pravna-pomosh1.pdf>.

<sup>284</sup> In April 2019, the minimum wage was EUR 203 (MKD 12 507).

will be run by the Ministry of Justice and which will support organisations which provide free legal aid.

## 12.2 Case law

**Name of the body:** Second Instance Court Bitola

**Date of decision:** 18 July 2019

**Name of the parties:** J.K., R.E., A.E., D.A., O.A., R.A. and ERRC vs Megagrup DOOEL and JP Strezhevo

**Reference number:** TCЖ-42/19

**Address of the webpage:**

[http://www.sud.mk/wps/portal/central/sud/odluki!/ut/p/z1/04\\_Sj9CPykssy0xPLMnMz0vMAfIjo8zizdxNTAwwwA183ANCzQ0cfV0MPEIsvYwsjMz0w\\_EpcDc304-iQD9IAUi\\_AQ7gaADVj0cBQfujCFkRh8MkBCjqW4wRyiw93ADKgh1NTR1tAg0MnEx1w8GmZGZW5CTmZxZ4pufkpqjH1ISVJqqX5AbGhphkGVakK6oCADGFdsn/p0/IZ7\\_6G4408K0LOHF70AUE15A8Q24D7=CZ6\\_6G4408K0LGPU70AMD0HT9J2826=NJdocumentDownload=/?caseId=0FF2A9F2-1689-4525-B58C-558B17F2BD64&connected=false](http://www.sud.mk/wps/portal/central/sud/odluki!/ut/p/z1/04_Sj9CPykssy0xPLMnMz0vMAfIjo8zizdxNTAwwwA183ANCzQ0cfV0MPEIsvYwsjMz0w_EpcDc304-iQD9IAUi_AQ7gaADVj0cBQfujCFkRh8MkBCjqW4wRyiw93ADKgh1NTR1tAg0MnEx1w8GmZGZW5CTmZxZ4pufkpqjH1ISVJqqX5AbGhphkGVakK6oCADGFdsn/p0/IZ7_6G4408K0LOHF70AUE15A8Q24D7=CZ6_6G4408K0LGPU70AMD0HT9J2826=NJdocumentDownload=/?caseId=0FF2A9F2-1689-4525-B58C-558B17F2BD64&connected=false)

**Brief summary:** This is a case of discrimination in relation to access to goods and services on grounds of ethnicity. The European Roma Rights Centre (ERRC), an NGO working on Roma rights including by providing free legal aid, received information that Roma people were being denied access to the open-air swimming pool, Dovledzik, in the town of Bitola. The ERRC therefore organised situation testing in order to investigate and secure evidence of the reported discriminatory practice. The Second Instance Court confirmed the First Instance Court ruling (dated 13 November 2018) that there was discrimination and that damages should be awarded.

The Second Instance Court confirmed that there had been discrimination on grounds of ethnicity and skin colour in the area of access to goods and services against the individual claimants. The situation testing evidence was submitted and was considered sufficient for shifting the burden of proof. The defendant, the Court found, did not prove that it did not discriminate against the claimants or that there was any justification for the unequal treatment. It examined whether the defendant actually considered any rules in place at the pool for how (potential) guests should behave in order to decide whether the claimants acted in line with this. However, it found that no such rules were broken and that the claimants were denied access solely because they were Roma. All claimants were awarded EUR 1 000 (MKD 60 000) each for the distress and emotional pain they suffered. The discriminator was prohibited from treating people unequally in access to the pool or from applying unequal treatment in similar situations in the future.

This case is important because it is the first time that a national court has accepted situation testing as proof in court. Before this case, situation testing was accepted by the Ombudsperson and the national equality body.

**Name of the body:** Second Instance Court Bitola

**Date of decision:** 13 December 2019

**Name of the parties:** E.A., S.Š., S.A. and F.A. vs Municipality Prilep and Public Communal Enterprise Water and Sewer Prilep

**Reference number:** ГЖ-1671/19

**Address of the webpage:**

[http://sud.mk/wps/portal/central/sud/odluki!/ut/p/z1/04\\_Sj9CPykssy0xPLMnMz0vMAfIjo8zizdxNTAwwwA183ANCzQ0cfV0MPEIsvYwsjMz0w\\_EpcDc3048iRr8BDuBoQJx-PAqi8Bsfrh9FSEkUPjeAvBgJdIM5QoG\\_hxtQQairoamjRaCRiYu5fjDIjMzcgpzM5MwS3\\_yU1Bz9yJKi0IT9gtzQ0AiDLNOCdEVFAM09eA0!/p0/IZ7\\_6G4408K0LOHF70AUE15A8Q24D7=CZ6\\_6G4408K0LGPU70AMD0HT9J2826=NJdocumentDownload=/?caseId=FF825D3C-47FC-4403-B9DA-A7F1FD253958&connected=false](http://sud.mk/wps/portal/central/sud/odluki!/ut/p/z1/04_Sj9CPykssy0xPLMnMz0vMAfIjo8zizdxNTAwwwA183ANCzQ0cfV0MPEIsvYwsjMz0w_EpcDc3048iRr8BDuBoQJx-PAqi8Bsfrh9FSEkUPjeAvBgJdIM5QoG_hxtQQairoamjRaCRiYu5fjDIjMzcgpzM5MwS3_yU1Bz9yJKi0IT9gtzQ0AiDLNOCdEVFAM09eA0!/p0/IZ7_6G4408K0LOHF70AUE15A8Q24D7=CZ6_6G4408K0LGPU70AMD0HT9J2826=NJdocumentDownload=/?caseId=FF825D3C-47FC-4403-B9DA-A7F1FD253958&connected=false)

**Brief summary:** The claimants, all of Roma ethnic origin, live in part of the town of Prilep where there is no access to water or the sewerage system. They found out that access to

this system is not available in the area where they live, which is entirely inhabited by Roma. They complained that, by not providing access to the water and sewerage system for this part of the town, the Municipality of Prilep violated their right to equal treatment in relation to equal access to clean, drinkable water. Interpreting the factual situation as a failure of the claimants to apply for access to the water and sewerage system, the first instance court found that the claim was unfounded and decided in favour of the respondents. The claimants complained to the second instance court.

The second instance court found that the first instance court had wrongly interpreted the factual situation; it disregarded the fact that the infrastructure of the water and sewerage system does not reach the areas where Roma live and that the current access to water, which is neither clean nor drinkable, has been secured by the improvised efforts of the applicants themselves and not by the respondents. Thus, the court found discrimination on grounds of ethnicity in relation to the human right to water, and in particular the elements of availability and accessibility of a sufficient quantity of water of appropriate quality. The respondents were required to pay to each claimant non-pecuniary damages of EUR 500 (MKD 30 000) for mental distress and to cover their procedural costs of EUR 4 413 (MKD 271 440). However, the municipality was not ordered to build the water and sewerage system.

### **12.3 Cases brought by Roma and Travellers**

Regarding Roma cases, the same trend was maintained as in 2018, meaning they were mainly on (1) breach of the freedom of movement and (2) obstacles to access to goods and services.



## ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION

**Country:** North Macedonia  
**Date:** 31 December 2019

### **Title of the Law: Law on Prevention and Protection against Discrimination**

Abbreviation: Anti-Discrimination Law

Date of adoption: 16 May 2019

Latest relevant amendment: n/a

Entry into force: 22 May 2019

Weblink:

<http://www.slvesnik.com.mk/Issues/93af90af565443e38308333c2c2146cd.pdf>

Grounds covered by the article: race, skin colour, origin, nationality or ethnicity, sex, gender, sexual orientation, gender identity, belonging to a marginalised group, language, citizenship, social origin, education, religion or religious belief, political conviction, other convictions, disability, age, family or marital status, property status, health condition, personal capacity and social status or any other grounds.

Civil law

Material scope: All areas (draws specific attention to: labour and employment; education, science and sport; social security, including social protection, pension and disability insurance, health insurance and health protection; judiciary and governance; housing; public information and media; access to goods and services; membership of and activity in political parties, associations, foundations, trade unions and other membership organisations; culture)

Principal content: Prohibition of direct and indirect discrimination, harassment, instruction to discriminate, reasonable accommodation, multiple discrimination, creation of a specialised body

### **Title of the Law: Law on Labour Relations**

Abbreviation: Labour Law

Date of adoption: 28 July 2005

Entry into force: 5 August 2005

Latest relevant amendments: 29 June 2018

Weblink: <http://www.mtsp.gov.mk/content/pdf/zakoni/ZRO%20Precisten%2074-15.pdf>

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

Civil law

Material scope: Public employment, private employment

Principal content: Regulation of labour relations. Of relevance here: prohibition of direct and indirect discrimination, harassment

### **Title of the law: Law on Social Protection**

Abbreviation: LSP

Date of adoption: 21 May 2019

Entry into force: 23 May 2019

Latest relevant amendment: n/a

Weblink:

[http://www.mtsp.gov.mk/content/pdf/zakoni/2019/28.5\\_zakon\\_SZ.pdf](http://www.mtsp.gov.mk/content/pdf/zakoni/2019/28.5_zakon_SZ.pdf)

Grounds covered by the article: Race, skin colour, origin, nationality or ethnicity, sex, gender, sexual orientation, gender identity, belonging to a marginalised group, language, citizenship, social origin, education, religion or religious belief, political conviction, other convictions, disability, age, family or marital status, property status, health condition, personal capacity and social status or any other grounds

Civil law

Material scope: Social protection, social advantages

Principal content: Social protection. Of relevance here: prohibition of discrimination

**Title of the law: Law on Employment of Persons with Disabilities**

Abbreviation: LEPD

Date of adoption: 2 June 2000

Latest relevant amendments: 29 May 2018

Entry into force: 10 June 2000

Weblink: [www.slvesnik.com.mk/Issues/CE827065C11B4A1ABA5546F974EFDA94.pdf](http://www.slvesnik.com.mk/Issues/CE827065C11B4A1ABA5546F974EFDA94.pdf)

Grounds covered: Disability

Civil law

Material scope: Public employment, private employment

Principal content: Employment of persons with disabilities, including shelter companies

## ANNEX 2: INTERNATIONAL INSTRUMENTS

**Country:** North Macedonia  
**Date:** 31 December 2019

<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</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>285</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
Convention on the Elimination of	(succession)	18.01.1994	No	Yes	Yes

<sup>285</sup> Under the Constitutional Law adopted for implementing the (then) 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 North 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</b>	<b>Date of ratification</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>
Discrimination Against Women					
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

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