



**REPORT ON MEASURES TO COMBAT DISCRIMINATION
Directives 2000/43/EC and 2000/78/EC**

COUNTRY REPORT 2009

MACEDONIA (FYR)

MIRJANA NAJCHEVSKA

State of affairs up to 31 December 2009

This report has been drafted for the **European Network of Legal Experts in the Non-discrimination Field** (on the grounds of Race or Ethnic Origin, Age, Disability, Religion or Belief and Sexual Orientation), established and managed by:

Human European Consultancy
Maliestraat 7
3581 SH Utrecht
Netherlands
Tel +31 30 634 14 22
Fax +31 30 635 21 39
office@humanconsultancy.com
www.humanconsultancy.com

Migration Policy Group
Rue Belliard 205, Box 1
1040 Brussels
Belgium
Tel +32 2 230 5930
Fax +32 2 280 0925
info@migpolgroup.com
www.migpolgroup.com

All reports are available on the website of
the European network of legal experts in the non-discrimination field:
<http://www.non-discrimination.net/en/law/NationalLegislation/country-reportsEN.jsp>

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INTRODUCTION

0.1 The national legal system

Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed among different levels of government.

The most fundamental aspect of the national legal system in this context is probably the transition from a detailed constitution to a framework constitution in 1991, without corresponding changes in legislative and court practice. Therefore, there is a very important terminological inconsistency from law to law: the same legal concept can have different definitions, and categories can differ between laws.

This inconsistency is inherent in legislation on discrimination. In Article 9, the 1991 Constitution deals with equality regardless of sex, race, colour of skin, national or social origin, political and religious beliefs, property and social status. In defining cases in which the freedoms and rights of the individual and the citizen may be limited, the Constitution specifies (in Article 54) that this limitation may not be discriminatory with regard to sex, race, colour of skin, language, religion, national or social origin, property or social status. When analysed against 'Directive grounds' (meaning Directives 2000/43/EC and 2000/78/EC) racial and ethnic origin, and specifically political and religious beliefs are covered; while the missing grounds are disability¹, age, sexual orientation and belief (more generally). The list of protected grounds in the Constitution is not open-ended.

Citizens have the right to lodge so-called 'Requests for protection of human rights and freedoms' when they believe that they have been discriminated against on the grounds stipulated in the Constitution (Constitutional Court procedure).

Macedonia adopted an Anti-Discrimination Law in 2010.² The Law has entered into force but implementation will begin on 1 January 2011. Therefore, currently measures to combat discrimination are found in a range of different laws.

Protection through criminal procedure can be initiated or undertaken under Article 417 of the Criminal Code entitled 'Racial and other discrimination.' The 'Directive grounds' covered by this article are racial and ethnic origin, while the missing grounds are disability, age, sexual orientation and religion or other belief.

¹ In the Constitution of the Republic of Macedonia and in most national laws, the terms *invalid* and *invalidity* are used in place of *disabled* and *disability*. The term *invalidity* is used even in the titles of some state bodies. The term *disability* used in the text of this report is not a literal translation of the wording of legislation. The term *invalidity* reflects earlier conceptualisation of disability and may create conceptual problems.

² Official Gazette, No. 50/2010



It is important to note that initially only the Public Prosecutor has the option to initiate a criminal case (though there are no records of a case being initiated in this way). Only once the Prosecutor's Office has established that it cannot undertake proceedings can a private citizen lodge a so-called Private Criminal Lawsuit, which requires hard evidence (there is no shift in the burden of proof).

Protection through litigation can be undertaken under labour legislation. The recently amended Labour Law³ covers all the Directive Grounds of race, belief, disability, age and sexual orientation, and goes beyond them in an open-ended list which includes sex, health status, trade union membership, social origin, position of the family, property, or *other personal circumstances*. Discrimination is prohibited in a number of areas: recruitment (criteria and selection); career promotion; vocational training and qualifications; working conditions, equal pay and working rights; dismissal; and rights to membership of associations of workers and employers or professional organisations. The Law prohibits any direct or indirect discrimination or victimisation. Harassment, sexual harassment and mobbing are to be considered discrimination.

The Labour Law stipulates a shifted burden of proof in court proceedings and provides the opportunity to claim compensation under the Obligation Law. However, it does not authorise misdemeanour penalties. In addition, it does not specifically refer to reasonable accommodation for people with disabilities.

The only Directive Grounds covered under the Law on Social Protection, adopted in June 2009, are race and disability. The Law does not cover belief, age or sexual orientation. The wording 'national, ethnic, political, religious ... belonging' (in Macedonian: 'припадност') is unclear. The Law prohibits direct or indirect discrimination and the ban explicitly covers both public and private institutions for social care (including those providing financial and other support for groups such as older citizens, the poor and unemployed people). There is a shift in the burden of proof. However, there are no provisions on harassment or mobbing.

There are two routes that individuals seeking protection in cases of discrimination in the field of social care can take. One is the possibility for 'the applicant or user of social protection to seek protection from the competent authority... through a court procedure' by claiming compensation: in other words, a civil litigation procedure.

The other possibility is a misdemeanour procedure under which, if state inspection bodies detect cases of discrimination, there is a possibility for a fine of €3000-5000. There are still no records of either litigation or misdemeanour fines.

It is important to note that Macedonian legislators have continued the practice of introducing anti-discrimination provisions into other laws. The latest example, from July 2009, is the Child Protection Law.

³ Official Gazette, No. 16/2010

On the one hand it is good that the definitions of direct and indirect discrimination have been further developed. Now the fields are wider and disciplinary responsibility has been introduced for officials involved in child protection.

However, these provisions are not consistent with those in the Labour Law or the Law on Social Protection. This highlights the importance of adopting the Law on Prevention of and Protection against Discrimination (henceforward: the new Anti-Discrimination Law).

The adoption of the Anti-Discrimination Law was part of the process of Euro-integration of the Republic of Macedonia which at the moment has the status of candidate-country, which requires general harmonisation of legislation with European Law.

Thus, in April 2010 the new Anti-Discrimination Law was adopted.⁴ The Law covers all the Directive grounds apart from sexual orientation. It includes an even wider range of grounds,⁵ and has two reserve clauses: one specific and open-ended ('belonging to a marginalised group', which is defined rather widely in Article 5(11)); and one general and open ('any other ground').

0.2 Overview/State of implementation

List below the points where national law is in breach of the Directives. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.

1. The Constitution of the Republic of Macedonia guarantees the equality of citizens of the Republic, and not of every person on the territory of Macedonia.⁶ 'Directive grounds' (meaning Directives 2000/43/EC and 2000/78/EC) covered are racial and ethnic origin, while protected belief is qualified as just political and religious. The Constitution does not include the grounds of disability, age, sexual orientation and belief (in general);
2. In the new Anti-Discrimination Law, sexual orientation is not mentioned as a ground for discrimination, despite very clear recommendations by the EU Commission, parliamentarians and many NGOs and experts in the Republic of Macedonia during the drafting and adoption of the law;
3. In addition, the new Anti-Discrimination Law contains no provisions on the process of harmonisation of other national laws with it,⁷ which means that the relationship between the Anti-Discrimination Law and other laws is unclear;

⁴ Official Gazette, No. 50/2010

⁵ Additional grounds are gender, language, citizenship, social origin, personal or social status, property status, and health condition.

⁶ Article 9, Constitution of the Republic of Macedonia

⁷ This could provoke further confusion in terminology, grounds of protection and different court decisions in similar cases

4. The definition of harassment in the Labour Law is not completely in accordance with the Directives,⁸ and there are no provisions relating to instruction to discriminate, reasonable accommodation for disabled persons, or positive action;⁹
5. The requirement that sanctions be 'effective', 'dissuasive' and 'proportionate' seems not to be met by Macedonian legislation;
6. No cases of discrimination have been brought before regular courts with one dubious exception. This may indicate contravention of the spirit of the directives, under which: 'Persons who have been subject to discrimination based on racial and ethnic origin should have adequate means of legal protection';
7. Until 2009 there was no specialised body on equality with a mandate to monitor, inform and help victims of discrimination in the initiation of legal proceedings. In 2009 a change was made in the Law on the Ombudsman¹⁰ which stipulates establishment of a dedicated working unit for protection against discrimination. Under the new Anti-Discrimination Law the Commission for Protection against Discrimination should be established in 2011;
8. In the period 2002-2009, several laws (the Labour Law,¹¹ the Laws on Primary¹² and Secondary Education¹³ and the Child Protection Law¹⁴) have been amended to include provisions prohibiting discrimination. However, no effective procedures are in place to enforce these provisions; and
9. All laws prohibit slightly different grounds of discrimination (compared to each other and to the Constitution). All these lists are closed, except those in the Labour Law and in the new Anti-Discrimination Law.

This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.

The Constitution and the laws are not consistent and coherent with regard to the terminology that is used, or with regard to different grounds of discrimination both in what grounds are included and how they are named. What is more, the different instruments establish different procedures, while the sanctions envisaged are rather vague. However in 2005, in the process of adaptation to the Council Directive 2000/78/EC, a highly developed definition of discrimination was introduced to the Labour Law.¹⁵

⁸ The Labour Law definition refers to establishing behaviour, instead of creating of an offensive environment

⁹ Article 9, Labour Law (revised), Official Gazette, No. 16/2010

¹⁰ Law on the Ombudsman, Official Gazette, No. 60/03

¹¹ Articles 6 -11, Labour Law (revised), Official Gazette, No. 16/2010

¹² Article 2, Law on Primary Education, Official Gazette, No. 103/08

¹³ Article 3, Law on Secondary Education (revised), Official Gazette, No. 52/02

¹⁴ Articles 3-6, Law on Amendments to the Law on Child Protection, Official Gazette, No.83/09

¹⁵ Labour Law, Official Gazette, No.62/05

As a result of the armed conflict in Macedonia (2001) and the signing of the Ohrid Framework Agreement, changes to the Constitution were made¹⁶ and numerous laws that relate to equality on ethnic grounds were changed.¹⁷ Most of these changes regulate the use of language and the provision of 'equitable' representation in public administration and public institutions. Thus, it is overwhelmingly believed in Macedonian political circles that Macedonia has overcome the problem of discrimination, and has entered a phase of 'achieving equality'.

The fundamental values of the Constitution (Article 8) were enlarged by introducing the term 'adequate and equitable representation of citizens belonging to all communities in the government and other public institutions at all levels'. Use of languages other than Macedonian and activation of certain provisions on achieving equality on ethnic grounds come into force if and when a minimum of 20 per cent of the population belongs to a particular minority ethnic group.¹⁸ These provisions are restricted exclusively to citizens of Macedonia.

The changes to the Constitution of 2001 also introduced some changes in the mandate of the Ombudsman's office:¹⁹

'The Ombudsman pays particular attention to safeguarding the principles of non-discrimination, and adequate and equitable representation of communities in state structures, local government bodies, and public institutions and services.'

Since 2003, and more intensively from 2004, NGOs started initiative for adoption of non-discrimination legislation. In 2008 (under EU pressure), the government decided to form a working group to draft such legislation.²⁰ The NGOs, together with representatives of the Government, developed a draft Law (the NGO version). However at the same time the Cabinet developed a parallel draft Law (the Cabinet version) that does not comply with Council Directives 2000/43/EC and 2000/78/EC, nor with ECRI recommendations, particularly with regard to the creation of bodies for the promotion of equal treatment.²¹ In September 2008 the Cabinet version, at the request of the NGOs, was sent to the Venice Commission, which made many observations and recommended that the law be redrafted.²² With the support of the OSCE office and the EU Delegation in the Republic of Macedonia, the previously mentioned working group was re-established (composed of representatives of NGOs, representatives of individual ministries and individual experts).

¹⁶ Amendments IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII and XVIII

(http://www.president.gov.mk/UserFiles/File/Ustav%20na%20RM/Ustav_na_RM%20nov.pdf)

¹⁷ <http://test.anet-design.com/siofa/default.asp?shema=Dokumenti&temalD=7&sodrzinalD=49>

¹⁸ Article 7 of the Constitution of the Republic of Macedonia

¹⁹ Amendments IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII and XVIII to the Constitution of the Republic of Macedonia, Official Gazette, No.91/01

²⁰ <http://www.mtsp.gov.mk/?ItemID=21E7AB9648BFC441AFD588BA0183B4A3>

²¹ http://www.centrodiritiumani.unipd.it/a_temi/razzismo/coe/ecirecc2.pdf

²² [http://www.venice.coe.int/docs/2008/CDL-AD\(2008\)042-e.asp](http://www.venice.coe.int/docs/2008/CDL-AD(2008)042-e.asp)

The working group drafted a new version of the Law (the Expert version), which was presented to the EU Commission in Brussels. It was favourably assessed, and explicitly mentioned in the context of visa liberalisation in favour of the Republic of Macedonia. Despite this, in February 2010 the Government proposed the Cabinet version of the Law to Parliament.

After a very strong reaction from many NGOs, many amendments were adopted. However the final version of the new Anti-Discrimination Law still misses important points and contains a wide range of flaws.

1. The following issues are not covered in the new Anti-Discrimination Law:
 - Definitions of basic terms (including discrimination, equality, marginalised group and reasonable accommodation). This makes it more difficult to recognise, prevent and effectively protect against discrimination;
 - The article where the purpose of the law was stated, *inter alia* the principle of equal treatment, has been completely deleted;
 - Sexual orientation is not explicitly listed as a ground for discrimination, in contravention of the minimum standards set out in the EU Directives;
 - The provision providing for a separate complaint of discrimination has been removed. This complicates the work of the courts in determining the urgency of proceedings, the shift in the burden of proof and the potential role of other interested parties (the Commission for Protection against Discrimination and NGOs) in the proceedings; and
 - There is no provision on overlapping and contradictory jurisdiction with the Labour Law, the Law on Social Protection and other laws relating to discrimination.

2. In the new Anti-Discrimination Law there are significant changes concerning the mandate and structure of the proposed equality body, the Commission for Protection against Discrimination (henceforward the Commission):
 - The independence of the equality body – in this context referring to the ability to provide independent assistance to victims and produce independent reports and independent surveys – is weakened in the new Anti-Discrimination Law. Independence is only declaratively mentioned in Article 16 and is not reinforced by articles on structure, organisational issues and financial support that would enable real independence.
 - The section that would have enabled the Commission to initiate court proceedings and to engage in mediation (a recommendation of the Committee of Ministers of the Council of Europe applied in Belgium, Austria, Ireland, Sweden, Germany and the Netherlands) has been deleted;
 - The transitional provision for the establishment of the Commission has been removed. This provision should have guaranteed appropriate selection of committee members, secured resources and allowed for adoption of appropriate regulations for its work; and

- In a weakening with regard to the burden of proof, the Commission is to act on the basis of evidence to be brought by the victim, not on the basis of facts to be confirmed during the procedure;

It is worth mentioning that provisions against discrimination on the grounds of disability were incorporated in a 2006 civil initiative for adoption of a law for protection of persons with disabilities. Over 10,000 signatures were collected from citizens, and in accordance with Article 71 of the Constitution the draft law entered into parliamentary procedure. However, the Parliamentary Speaker, without any explanation, did not put it on the parliamentary agenda. Therefore, the draft law was not discussed in any parliamentary committee, and was not adopted.

This could also be used to give an overview on the way (if at all) national law has given rise to complaints or changes, including possibly a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.

Since Macedonia is a candidate for EU membership, and since in 2009 the law on anti-discrimination had not been adopted, it is important to note that in 2009 there were only a few complaints of discrimination. Therefore, any rise of the number of complaints should be easily visible.

In 2009, the complaints procedure was just a vague possibility given in:

- 1) the Constitution (Constitutional petition) without real procedures laid down to utilise;
- 2) a range of different partial mechanisms outlined in various laws (including the Criminal Code), which confused judges rather than helping them to deal with cases of discrimination; and
- 3) the latest Law on the Ombudsman.

- 1) According to Article 51 of the Constitution:

'Every citizen may invoke the protection of the rights and freedoms stipulated by the Constitution before the courts and the Constitutional Court of the Republic of Macedonia in a procedure based on the principles of priority and urgency.'

As there is not specifically defined procedure,²³ this option is not a practical tool that can be used by citizens. In 2009 there were 11 petitions to the Constitutional court based on discrimination and none of them was decided in favour of the applicant;²⁴

²³ According to Article 110 of the Constitution, the Constitutional Court: *'Protects the rights and freedoms of people and citizens relating to freedom of belief, conscience, thought and public expression of thought, political association and activity, and the prohibition of discrimination among citizens on the grounds of sex, race, religion, nationality, social and political affiliation.'*

²⁴ (<http://www.ustavensud.mk/domino/WEBSUD.nsf>)

- 2) Current practice confirms the previous conclusion that no lawsuits for protection against discrimination (on any ground or in any area) have been brought to regular courts (except, perhaps, the ones mentioned in Section 0.3 Case-law below); and
- 3) Even the number of complaints submitted to the Ombudsman's office is insignificant and unworthy of further scrutiny.²⁵

Please bear in mind that this report is focused on issues closely related to the implementation of the Directives. General information on discrimination in the domestic society (such as immigration law issues) are not appropriate for inclusion in this report. Please ensure that you review the existing text and remove items where national law has changed and is no longer in breach.

0.3 Case-law

Provide a list of any important case law within the national legal system relating to the application and interpretation of the Directives. This should take the following format:

Name of the court: Bitola Appellate Court

Date of decision: 04.11.2009

Name of the parties /

Reference number: ROZh (POЖ)-624/09

Address of the webpage: <http://www.asbitola.mk/Odluki.aspx>

Brief summary of the key points of law and of the actual facts (no more than several sentences).

This was the first noted invocation at appellate level of Article 10 of the Labour Law, under which a victim of discrimination during the recruitment process is entitled to compensation. In this context, the petitioner asked for gross salary for the period in which she was not notified that she was one of the candidates that had been rejected. The Appellate Court ruled that she be awarded net salary for the period.

The real grounds of discrimination or details about the case are unclear as the initial verdict of Prilep Municipality Court is unavailable.

Name of the court: Skopje Administrative Court

Date of decision: 02 September 2009

Name of the parties: Plaintiff against the President of the Republic²⁶

Reference number: U. No. 1229/2008

Address of the webpage /

²⁵ In 2008 only 0.069 per cent of the total number of complaints to the Ombudsman were related to discrimination (of any kind)

²⁶ The case was presented on behalf of a plaintiff who asked for his name to be withheld



Brief summary: The plaintiff complained that his colleague had been promoted to Macedonian ambassador abroad in contravention of the rules enshrined in the Law on Foreign Affairs. In particular, the required recruitment process for the position had not occurred, the successful candidate did not meet the condition on foreign language knowledge and the candidate had not completed the necessary period of work in Skopje before being posted abroad.

The procedure was avoided in the case, according to the plaintiff, because the promoted colleague belonged to the ruling political party (discrimination based on political belief).

The Court ruled the lawsuit inadmissible ruling that the President is not a state function or administration under the Law on Administrative Dispute.

→ Please use this section not only to update, complete or develop last year's report, but also to include information on important and relevant case law concerning the equality grounds of the two Directives, even if it does not relate to the legislation transposing them (e.g. if it concerns previous legislation unrelated to the transposition of the Directives)

Please describe trends and patterns in cases brought by Roma and Travellers, and provide figures – if available.

The posting of court verdicts on the internet is continuing slowly. Only verdicts of the Constitutional Court are fully available both electronically and in printed form (the Official Gazette). Other than this, only the appellate courts and a few courts of first instance currently have websites on which the most recent cases are posted, with older cases gradually being added. In all the posted cases, the names of the parties involved are deleted. Since cases that are not posted to the internet are distributed only to the parties involved, there is no other public transparency unless one of the parties agrees to make the case public.

There were no court cases related to discrimination against Roma people in 2009.



1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

- a) *Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?*

The Macedonian Constitution covers the Directive grounds²⁷ of racial / ethnic origin and political and religious belief. It does not cover the grounds of disability, age, sexual orientation and belief (as a philosophical view). In the Constitution, the grounds are listed explicitly and in general terms in the equality provision (Article 9)²⁸ and the anti-restriction clause (Article 54/3.4.)²⁹ Protection against discrimination on these grounds is detailed in separate provisions of the Constitution.

1. Due to the specific circumstances of Macedonia and recent historical developments, the ground of racial or ethnic origin is extensively treated³⁰ from Article 7 until the final clauses. Language is treated as one of the most significant issues, immediately followed by employment of persons belonging to national minorities (referred to as non-majority communities) by the state and the local government. Nevertheless this is not listed as a potential ground of discrimination.
2. The ground of belief, which in the aggregate provision in Article 9 is (dubiously) formulated as “political and religious belief” is elaborated in Article 16 as: ‘Freedom of personal conviction, conscience, thought and public expression of thought is guaranteed. (...)’. All these aspects of belief (non-religious belief included) can be used as grounds for a Constitutional petition (Article 110), meaning that, in theory, they could be legitimate grounds for initiating an anti-discrimination case at the Constitutional Court.

A more striking issue at first sight is the formulation of religious belief which is extensively elaborated in Article 19.

²⁷ Directive 2000/43/EC and Directive 2000/78/EC

²⁸ Constitution, Article 9: ‘(1) Citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of sex, race, colour of skin, national and social origin, political and religious beliefs, property and social status. (2) All citizens are equal before the Constitution and the law.’

²⁹ Constitution, Article 54: ‘(...) (3) Restrictions of freedoms and rights cannot discriminate on the grounds of sex, race, colour of skin, language, religion, national or social origin, property or social status. (4) Restriction of freedoms and rights cannot be applied (...) to the freedoms of personal conviction, conscience, thought and religious confession.’

³⁰ Constitution, Article 7: ‘(1) The Macedonian language and its Cyrillic alphabet is the official language throughout the Republic of Macedonia and in the international relations of the Republic of Macedonia. (2) Any other language and its alphabet spoken by at least 20 per cent of the population is also an official language, as specified in this Article. (3) Any official personal documents of citizens speaking an official language other than Macedonian shall also be issued in that language, in addition to Macedonian language, in accordance with the law. (...)’

'(1) Freedom of religious confession is guaranteed. (2) The right to express one's faith freely and publicly, individually or with others is guaranteed. (3) The Macedonian Orthodox Church, as well as the Islamic Religious Community in Macedonia, the Catholic Church, the Evangelical Methodist Church, the Jewish Community and other religious communities and groups, is separate from the state and equal before the law. (4) The Macedonian Orthodox Church, as well as the Islamic Religious Community in Macedonia, the Catholic Church, the Evangelical Methodist Church, the Jewish Community and other religious communities and groups, is free to establish schools and other social and charitable institutions, by means of a procedure regulated by law.'

This wording immediately creates a problem. In spite of insisting on equality, there are obviously four categories of religious community outlined, viz.:

- a) the church that is mentioned first and separately from the other religious communities mentioned;
- b) the other three institutions mentioned in the Constitution and recognised as religious communities;
- c) the fifth mentioned, which is not officially a religious community (or at least not by name); and
- d) all others, also equal, yet not churches but religious communities not mentioned by name.

Neither in the Constitution nor in any law is there a definition and a special procedure to recognise a "religious community" in the meaning of the constitutional provisions.

In practice there is quite visible differentiation (discrimination) between religious groups.

The missing grounds are:

- **Disability** which is mentioned in the context of social assistance³¹ (one could even say that the Constitution itself does not accept persons with disabilities as equal; however, it does distinguish them from the 'infirm and unfit for work');
- **Age** which is not mentioned, except in the context of electoral rights (18), the minimum working age (15) and the minimum age for the President of the Republic (40); and
- **Sexual orientation** which is not mentioned anywhere.

One could argue that sexual orientation actually is excluded since even the out-of-wedlock community³² was envisaged only as heterosexual couples that had not been officially registered, or had married 'without licence'.

³¹ Constitution, Article 35

³² Constitution, Article 40

The general nature of Article 9 of the Constitution theoretically confirms that the principle of non-discrimination is fully covered. Provisions on the workplace (Article 32), social and health care (Article 34 & 39) and education (Article 44) support this understanding. However, the constitutional scope is not broader than the material scope of the Directives: issues of access to and supply of goods, as well as housing, are not covered either directly or in another context.

b) Are constitutional anti-discrimination provisions directly applicable?

In theory they should be, particularly given Article 50 of the Constitution.³³ However, in practice they are not applicable. Generally speaking, even in the early stages, regular courts insist that the lawsuit be brought in accordance with, and invoking the provisions of, specific laws (be it criminal or civil procedures) thus preventing direct application of the Constitution *per se*. Meanwhile, the Constitutional Court is careful to ensure that it is not seen as a body that can revise regular court verdicts and decisions. Perhaps this is why regular courts neither request interpretation of constitutional provisions by the Constitutional Court nor implement its interpretations.

This is also true of the newly established Administrative Court. The 2006 Law on Administrative Dispute devotes chapter VIII to the protection of the rights and freedoms guaranteed by the Constitution, provided there is no protection from another court (residual competence). In such circumstances, the Administrative Court deals with the '*proposal for protection from unlawful activity*' through a panel of three judges and urgently. A second, appellate, level of protection is provided by the Supreme Court.

This mechanism within the regular courts should see the most direct applicability of the constitutional anti-discrimination provision. However, no verdicts have been delivered under this mechanism.

The constitutional anti-discrimination provisions also potentially serve as a basis for initiating procedures in the Constitutional Court itself. According to the same survey, there has been a dramatic fall in the use of this constitutional mechanism. In 2005 113 cases were initiated, while only 6 were initiated in 2006, 6 in 2007, and 5 in 2008. Practically all of them were rejected. The author of the survey believes that the reasons for rejection include first a failure to observe technical procedures by the initiators, second their wish that the Constitutional Court act as a supervisory third level court, and third their failure to present sufficient evidence.

³³ Constitution, Article 50: '(1) Every citizen may invoke the protection of freedoms and rights determined by the Constitution before the regular courts, as well as before the Constitutional Court of Macedonia, through a procedure based upon the principles of priority and urgency. (2) Judicial protection of the legality of individual acts of the state administration, as well as those of other institutions carrying out public mandates, is guaranteed. (...)



The authors of this report believe that the sound reasons listed above could be complemented *with a fourth* – the impotence of an anti-discrimination procedure under which the burden of proof still lies with the plaintiff.

This supposition is supported by practice in 2009 – 10 individual discrimination cases were taken to the Constitutional Court: three in the field of employment, three concerning religious belief, and four related to social inequality. The Court rejected them all. This was sometimes because of so called ‘procedural obstacles’ (allegedly non-observance of proper procedures by the initiators), but in three of the cases no real explanation was given: the decisions just stated that the applicants ‘*formally and declaratively invoke discrimination*’ (which probably meaning that the applicants failed to present credible evidence to prove that discrimination occurred).

c) *In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?*

There is no specific provision in the Constitution on the public and private sector in this context. Therefore there is no reason to suppose that the private sector is not under the jurisdiction of constitutional provisions.

Article 56 of the Law on Administrative Dispute, which deals with procedures based on the rights and liberties guaranteed by the Constitution, and establishes the equality of state or public administration and private actors (private and legal persons). Meanwhile, the Law on Courts states that nobody is exempt from judicial power, but the immunity cases regulated by the Constitution and ratified international agreements, could also be construed as establishing that private actors cannot have immunity.



2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination

Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.

Since the anti-discrimination law³⁴ was not in place in 2009, and since there is no system or constitutional law regulating the issue across Macedonian legislation, the grounds are scattered in different laws. The general approach is set out in the Law on Courts³⁵ where one of the aims and functions of courts is to secure equality, equal rights and non-discrimination on any ground (Article 3(1-3)).³⁶ The Law also affirms that everybody has equal access to the courts (Article 6(1)). This is a completely open list and in theory sexual orientation should be encompassed. However, the authors could not find any case in which a court has invoked these provisions. In addition, the Law states that during the election of judges and lay judges, there should be no discrimination on the basis of sex, race, colour of skin, national and social background, political and religious beliefs, or proprietary or social status.³⁷ Concurrently, violation of the non-discrimination principle on any grounds by a judge is considered a serious disciplinary violation requiring the initiation of procedures for dismissal of the judge.

The key law dealing with criminal responsibility for discrimination is the Criminal Code of the Republic of Macedonia. Article 417³⁸ is entitled *Racial and other discrimination*. This article covers only the grounds of racial and ethnic origin: belief, disability, age and sexual orientation are missing.

Instructing to discriminate (the term discrimination is explicitly used) is illegal under the 'spread of racist and xenophobic materials by computer systems' section,³⁹ which covers racial and ethnic origin and religious belief: belief (other than religion), disability, age and sexual orientation are not included.

³⁴ The Law on Prevention and Protection against Discrimination (henceforward the new Anti-Discrimination Law) was adopted in April 2010, and published in Official Gazette no. 50/2010

³⁵ Official Gazette, No. 58/2006

³⁶ In public appearances, representatives of the ruling political party VMRO-DPMNE claimed that this formulation includes sexual orientation

³⁷ Article 43 paragraph 1 of the Law on the Courts

³⁸ Article 417 of the Criminal Code

³⁹ Article 394-d of the Criminal Code

While the Criminal Procedure Law only incorporates equality provisions, the Law on Execution of Sanctions prohibits discrimination.⁴⁰ In addition, the latter Law obliges officials to perform their duties without discrimination.⁴¹

The Law directly mentions racial and ethnic origin, and belief; it does not mention the grounds of disability, age and sexual orientation, but contains an open-ended list ('...or other status of the person on whom the sanction is imposed).

The recently amended Labour Law is the only law at the moment that covers all the 'Directive Grounds' and explicitly mentions sexual orientation. In addition to race or ethnicity, belief, disability, age and sexual orientation, the Law includes additional grounds in an open-ended list - sex, health condition, membership of a trade union, social origin, position of the family, property, *or other personal circumstances*.

The Law on Social Protection adopted most recently (in June 2009), covers only the 'Directive Grounds' of race or ethnicity and disability. It does not include belief, age and sexual orientation; and adds sex, culture, language, property and social status, as well as "origin" (most probably a residual clause).

The Child Protection Law covers all the 'Directive Grounds' except sexual orientation: it includes race or ethnicity, belief, and disability. It also includes additional grounds in an open-ended list: sex, social origin, cultural or other sort of "belonging", property, "birth" *or other personal status*. It is important to note that all these grounds are extended not only to the child but also to the child's parents or legal guardians.

In the new Anti-Discrimination Law, grounds for unlawful discrimination are enumerated in Article 3 (Grounds of Discrimination) and repeated in Article 5/3 within the definition of discrimination. The Law covers all the Directive grounds except sexual orientation, covering an even wider range,⁴² and including two reserve clauses: one specific but open-ended ('belonging to a marginalised group', and defining that marginalised group (in Article 5(11)) rather widely) and one general and open ('any other ground'). As of yet, nobody has raised any concerns with regard to the narrower list of grounds protected by the Constitution.

⁴⁰ Article 4 paragraphs 2 and 3 of the Law on Execution of Sanctions: 'discrimination on the basis of the race, colour of skin, sex, language, religion, political or other beliefs, national or social origin, relation, property and social status or other status of the person to which the sanction is executed. The religious feelings, personal convictions and moral norms of the persons against whom the sanctions are enforced must be respected.'

⁴¹ Article 163 paragraph 2 of the Law on Execution of Sanctions: "State officials should carry out their duties in an honourable and impartial way, without malice or bad intention, regardless of the status, sex, race, nationality, religion and political convictions of the convicts."

⁴² The additional grounds are gender, language, citizenship, social origin, personal or social status, property status, and health condition.



2.1.1 Definition of the grounds of unlawful discrimination within the Directives

- a) *How does national law on discrimination define the following terms: racial or ethnic origin, religion or belief, disability, age, sexual orientation? Is there a definition of disability at the national level and how does it compare with the concept adopted by the European Court of Justice in case C-13/05, Chacón Navas, Paragraph 43, according to which ‘the concept of ‘disability’ must be understood as referring to a limitation which results in particular from physical, intellectual or psychological impairments and which hinders the participation of the person concerned in professional life’?*

In 2009 there was still no national law on discrimination.

In the new Anti-Discrimination Law the terms racial or ethnic origin, religion or belief, disability and age are not defined but only enumerated as grounds for discrimination. The term sexual orientation is not mentioned at all.

- b) *Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law (e.g. the interpretation of what is a ‘religion’, or a ‘disability’, sometimes defined only in social security legislation)? Is recital 17 of Directive 2000/78/EC reflected in the national anti-discrimination legislation?*

National law does not define racial or ethnic origin, religion or belief, age or sexual orientation. This also applies to the Law on the Legal Position of the Church, Communities of Fate and Religious Groups⁴³ which defines the three categories mentioned in the title as voluntary communities of natural persons connected by the same religious determination without defining which is what or even what the difference between them is. It should be noted that in practice, three Islamic religious groups are registered. However there is only one Orthodox Church (the Macedonian Orthodox Church).

The Law on Social Protection (Article 17) defines a disabled person as “a person with a physical or intellectual impairment”, while the Law on Employment of People with Disabilities⁴⁴ goes a step further:

‘For the purposes of this Law, a person with a disability is a person whose disability has been determined by the competent authority.’

⁴³ Official Gazette, No. 113/07

⁴⁴ Article 2, Law on Employment of People with Disabilities, Official Gazette, No. 44/ 00

The Law does not specify what the competent authority is. However, there is a Commission on Determination of Disability within the Ministry of Health which makes decisions on, for example, the preconditions for early retirement because of health issues or disability. In addition, within the centres for social protection, which are under the Ministry of Labour and Social Policy, there are committees that include one or more physicians that examine people that request social assistance on grounds of health or disability.

This whole approach leads to a provision in Article 19 of the Labour Law which defines both the job or jobs that the person with disabilities finds it difficult to perform and the jobs that that person can and is entitled to do. This is further regulated by the Chapter 14 of the Labour Law. In this regard, one could state that the approach is compatible with the definition in the Chacon-Navas case.

Recital 17 is not reflected in national anti-discrimination legislation. In fact, the concepts COMPETENT and CAPABLE are not defined either in the Constitution or in the laws that have anti-discrimination provisions. Specialised laws and by-laws contain lists of prerequisites or conditions for employment, promotion, maintenance in employment and other issues, but in practice state and public administration in particular do not respect these conditions to the extent they should.

- c) *Are there any restrictions related to the scope of 'age' as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?*

No, there are no such restrictions.

In the new Anti-Discrimination Law there are no restrictions related to the scope of 'age' as a protected ground.

- d) *Please describe any legal rules (or plans for the adoption of rules) or case law (and its outcome) in the field of anti-discrimination which deal with situations of multiple discrimination. This includes the way the equality body (or bodies) are tackling cross-grounds or multiple grounds discrimination.*
- *Would national or European legislation dealing with multiple discrimination be necessary in order to facilitate the adjudication of such cases?*

In 2009 there were no legal rules dealing with cases of multiple discrimination.

In the new Anti-Discrimination Law, multiple discrimination is incorporated in Article 12, in general accordance with the spirit of the Directives. It is placed under the title 'More Serious Forms of Discrimination' which also refers to repeated discrimination, continued discrimination and discrimination with more severe consequences.

- e) *How have multiple discrimination cases involving one of Art. 13 grounds and gender been adjudicated by the courts (regarding the burden of proof and the award of potential higher damages)? Have these cases been treated under one single ground or as multiple discrimination cases?*



There have been no such cases.

2.1.2 Assumed and associated discrimination

- a) *Does national law (including case law) prohibit discrimination based on perception or assumption of what a person is? (e.g. where a person is discriminated against because another person assumes that he/she is a Muslim or has a certain sexual orientation, even though that turns out to be an incorrect perception or assumption).*

Assumed discrimination does not feature in national law, including in the new Anti-Discrimination Law.

- b) *Does national law (including case law) prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group or the primary care of a disabled person)? If so, how? Is national law in line with the judgment in Case C-303/06 Coleman v Attridge Law and Steve Law?*

National law, including the new Anti-Discrimination Law, contains no such prohibition. National law is not in line with the judgement in Case C-303/06 Coleman v Attridge Law and Steve Law.

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

- a) *How is direct discrimination defined in national law?*

Direct discrimination is defined in the most recent laws viz.: the Labour Law⁴⁵ (Article 7(2)), the Child Protection Law⁴⁶ (Article 9-(b/1)) and the Law on Social Protection⁴⁷ (Article 21(1)), in accordance with common Article 2 of the EU Directives.

These three laws state that direct discrimination shall be taken to have occurred when by means of activities connected to protected grounds one person (applicant or beneficiary of child / social protection) was or is or could be treated less favourably than another in a comparable situation.

The Criminal Code does not define direct discrimination.

⁴⁵ Labour Law (revised), Official Gazette, No. 16/2010

⁴⁶ Law on Amendments to the Law on Child Protection, Official Gazette, No.83/09

⁴⁷ Law on Social Protection, Official Gazette, No. 79/09

In the new Anti-Discrimination Law, direct discrimination is defined in accordance with the provisions in the Directives and at length. Under Article 6(1): direct discrimination on any of the discrimination grounds is when one person is treated less favourably, or there is a differentiation, exclusion, or limitation that results or could result in deprivation, violation or restriction of the equal recognition or exercise of human rights and basic freedoms as compared to the treatment that another person has or could have in the same or similar conditions.

- b) *Are discriminatory statements or discriminatory job vacancy announcements capable of constituting direct discrimination in national law? (as in Case C-54/07 Firma Feryn)*

Without specifically classifying discriminatory statements or discriminatory job vacancy announcements as direct or indirect, the Labour Law (Article 7(4)), immediately after defining these two sorts of discrimination, envisages that discriminatory job vacancy announcements are forbidden, discriminatory statements are forbidden in any aspect of work (such as promotion or training) and discriminatory clauses are null and void. In Article 181 of the same Law it is stressed that a worker who has been discriminated against as an individual can initiate procedures before a competent court of law.

- c) *Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).*

Prior to the new Anti-Discrimination Law, legislation only included exemptions from discrimination (see chapter 3 below), and does not use the term or the concept of 'justified direct discrimination'. Hence, there were no tests that had to be satisfied to justify direct discrimination.

The NGO and Expert versions of the draft Anti-Discrimination Law envisaged such a differentiation.

In the new Anti-Discrimination Law there is a general justification of direct discrimination (see Article 14(2)) as well as a justification in relation to particular grounds: religion or belief in relation to employment; commitment to religious institutions and organisations for religious education; and also age with regard to minimum and maximum age for employment.

The tests that must be satisfied to justify direct discrimination are the same as the ones in the Directives.

- d) *In relation to age discrimination, if the definition is based on 'less favourable treatment' does the law specify how a comparison is to be made?*

The law contains no such specifications.



2.2.1 Situation Testing

- a) *Does national law permit the use of 'situation testing'? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court? For what discrimination grounds is situation testing permitted? If not all grounds are included, what are the reasons given for this limitation?*

'Situation testing' is not mentioned at all in national law. Since anything that is not prohibited by the Constitution or by law is permitted in the Republic of Macedonia, there should not be any formal obstacles to situation testing.

- b) *Is there any reluctance to use situation testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?*

No attempts to use situation testing have been noted.

- c) *Outline important case law within the national legal system on this issue.*

No such case has been noted.

- d) *Outline how situation testing is used in practice and by whom (e.g. NGOs, equality body, etc)*

On a very few occasions NGOs tried using situation testing. As a result, according to the Roma NGO 'Moon' (in 2008) and the NGO coalition 'Macedonia Without Discrimination' (in 2009), perpetrators of discrimination ended their practices temporarily.

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

- a) *How is indirect discrimination defined in national law?*

Indirect discrimination is defined in the most recent laws viz.: the Labour Law (Article 7(3)), the Child Protection Law (Article 9-b(2)) and the Law on Social Protection (Article 21(2)), in accordance with Articles 2 of the EU Directives.

These three laws state that indirect discrimination occurs when an apparently neutral provision, criterion or practice puts or would put the applicant for employment or the worker (applicant or beneficiary of child / social protection) in a less favourable position than others because of: [under the Labour Law] a quality, status, determination or belief stated in Article 6 of the Law; [under the Child Protection Law] racial, ethnic or other belonging; [under the Social Protection Law] sex, race, colour of skin, national, ethnic, social, political, religious, cultural, linguistic, property, social belonging, disability and origin.



The latter two (Child and Social Protection) continue identically with the proviso 'unless there are criteria and practices objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.'

In the new Anti-Discrimination Law, indirect discrimination is defined entirely in accordance with Directive Article 2(2-b). In Article 6(2): Indirect discrimination on any discrimination ground is when an apparently neutral provision, criterion or practice would put person or group at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

b) *What test must be satisfied to justify indirect discrimination? What are the legitimate aims that can be accepted by courts? Do the legitimate aims as accepted by courts have the same value as the general principle of equality, from a human rights perspective as prescribed in domestic law? What is considered as an appropriate and necessary measure to pursue a legitimate aim?*

There are no precise and clear explanations in current legislation dealing with discrimination.

In the new Anti-Discrimination Law the test that must be satisfied to justify indirect discrimination is the same as in Directive 2000/78/EC article 2(2-b_i).

c) *Is this compatible with the Directives?*

In 2009 there was no proper definition, while the provision in the new Anti-Discrimination Law is identical to the one in the Directives.

d) *In relation to age discrimination, does the law specify how a comparison is to be made?*

There are no specific references provided on how to develop a test and on the use of comparable data in particular cases such as age discrimination.

e) *Have differences in treatment based on language been perceived as indirect discrimination on the grounds of racial or ethnic origin?*

Yes. The common perception of the majority population (ethnic Macedonians) and the minorities with populations less than 20 per cent (meaning all but the Albanian community) is either that the Albanian-speaking population (about 23 per cent) is unjustly privileged or else that their group is disadvantaged in comparison to the members of the Albanian community based on apparently neutral provisions in the Constitution.



The “formula” is specified in the Constitution in its Article 7, amended in 2001:

‘(1) The Macedonian language and its Cyrillic alphabet, is the official language throughout the Republic of Macedonia and in the international relations of the Republic of Macedonia.

(2) Any other language and its alphabet spoken by at least 20 per cent of the population is also an official language, as specified in this Article...’⁴⁸

Several laws, such as the Criminal Procedure Law, the Law on Misdemeanours, and the Law on the General Administrative Procedure, also guarantee the use of another language which is spoken by at least 20 per cent of citizens in the respective procedure. Due to the implementation of these provisions only in favour of the only minority that makes up over 20 per cent of the population, the Albanian community, the smaller minorities believe that not only language rights, but also the whole spectrum of rights in fact is predicated on census findings of over 20 per cent. They thus feel that they are in a disadvantageous position. The fact that they cannot use their own languages in criminal and administrative procedures is only one of the most striking examples.

The majority population of ethnic Macedonians believe that they are in a less favourable position since the condition emphasised in the language provisions mentioned above – that the other language be used ‘beside Macedonian language’ – is not respected. In practice there are numerous examples where ethnic Albanians use only Albanian language and not Macedonian language.

This leads to a wide range of problems. For example, desk administrators or physicians that do not speak Macedonian at all or to an adequate standard are sometimes employed instead of native Macedonian speakers.

Ethnic Albanians believe or state that the Ohrid Framework Agreement of 2001 has not entirely been implemented, and that they are still not fully able to practice their language freely and without any inhibitions.

⁴⁸ The Article continues: ... (3) Any official personal documents of citizens speaking an official language other than Macedonian shall also be issued in that language, in addition to the Macedonian language, in accordance with the law. (4) Any person living in a unit of local self-government in which at least 20 per cent of the population speaks an official language other than Macedonian may use any official language to communicate with the regional office of central government with responsibility for that municipality; this office shall reply in that language in addition to Macedonian. Any person may use any official language to communicate with a main office of the central government, which shall reply in that language in addition to Macedonian. (5) In the organs of the Republic of Macedonia, any official language other than Macedonian may be used in accordance with the law. (6) In the units of local self-government where at least 20 per cent of the population speaks a particular language, that language and its alphabet shall be used as an official language in addition to the Macedonian language and the Cyrillic alphabet. With respect to languages spoken by less than 20 per cent of the population of a unit of local self-government, the local authorities shall decide on their use in public bodies.

Therefore, significant numbers of persons belonging to the majority population, the most numerous minority (Albanians) and the less numerous minorities (the three involved sides) believe that their ethnicities are being discriminated against due to the language provision. Therefore there have been numerous initiatives by all three sides to revise the Ohrid Framework Agreement or to amend the Constitution. The Government still maintains that this is unnecessary.

However, in the new Anti-Discrimination Law, language is declared to be a ground of discrimination and is enumerated immediately after ethnicity. This wording enables language to be treated both as a cornerstone of ethnicity and as an independent ground of discrimination (unrelated to any ethnic group living in Macedonia).

2.3.1 Statistical Evidence

- a) *Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court?*

Statistical evidence is not mentioned in national law. Since anything that is not prohibited by the Constitution or by law is permitted in the Republic of Macedonia, there should not be any formal obstacles to statistical evidence.

In the new Anti-Discrimination Law the collection of statistical evidence is only mentioned as an activity within the terms of reference for the envisaged Commission on Protection against Discrimination (see Article 24/10).

- b) *Is the use of such evidence widespread? Is there any reluctance to use statistical data as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law?*

There is no record of cases where statistics were used as evidence. Current court practice does not favour its introduction. Evolution in other countries may be beneficial, especially since Macedonia is an EU candidate-member.

- c) *Please illustrate the most important case law in this area.*

There is no case law in this area.

- d) *Are there national rules which permit data collection? Please answer in respect to all five grounds. The aim of this question is to find out whether or not data collection is allowed for the purposes of litigation and positive action measures. Specifically, are statistical data used to design positive action measures? How are these data collected/generated?*

There are various data collection processes, including statistical data collection (official and unofficial).⁴⁹

The most universal system is based on the Law on State Statistics.⁵⁰ Data are collected covering all the five grounds except sexual orientation. The data are anonymous and thus are not in collision with the Law on Protection of the Personal Data.⁵¹

The Agency for Civil Servants is obliged⁵² to collect data on civil servants only; they are not anonymous and include the grounds of racial or ethnic origin and age. The grounds of belief, disability and sexual orientation are not covered.

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

Statistics are not used in litigation.

The Ministerial Cabinet uses statistics extensively in national strategies and positive action measures. With regard to issues of ethnicity, these include employment of under-represented non-majority communities (national minorities) and the Decade of the Roma.⁵³ On disability, this applies to the National Strategy on Equalisation of the Rights of Invalids (Persons with Disabilities).

2.4 Harassment (Article 2(3))

- a) *How is harassment defined in national law? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives.*

The only definition of harassment is in the Labour Law (Article 9 & 9-a). The first article deals with harassment and sexual harassment while the second covers so-called 'mobbing', or psychological harassment. These definitions are in line with the Directives.

⁴⁹ The State Statistical Office offers different data with some cross-cutting on some of the grounds for possible discrimination. (http://www.stat.gov.mk/english/glavna_eng.asp?br=01). There are no official data connected with sexual orientation. However, there has been some research carried out to gather data on this ground as well

(<http://www.nvoinfoentar.org.mk/event.asp?site=nvo&menu=3&lang=mak&id=296>). This unofficial data was received with a great deal of animosity and rejection because of homophobic stereotypes.

⁵⁰ Official Gazette, No. 54/1997

⁵¹ Official Gazette, No. 7/2005

⁵² Law on Civil Servants (revised), Official Gazette, No. 108/ 05

⁵³ The full title in Macedonia is "The Decade of the Roma"; please see

http://www.mtsp.gov.mk/WBStorage/Files/strategija_romi.pdf (last time entered on 28.02.2010)

Thus, harassment (Art. 9(3)) '...is an unwanted conduct related to the grounds stated in Article 6 of this Law with the purpose or effect of violating the dignity of the applicant for employment or the worker and of creating an intimidating, hostile, humiliating or offensive environment. Sexual harassment (Art. 9(4)) '...is every verbal, non-verbal or physical conduct of a sexual character with the purpose or effect of violating the dignity of the job applicant or worker or of creating an intimidating, hostile, humiliating or offensive environment.

'Psychological harassment' [so-called "mobbing"] (Art. 9-a(2)) '...is every negative and repetitive (for at least a six month period) conduct with the purpose or effect of violating the dignity of the job applicant or worker, or of creating an intimidating, hostile, humiliating or offensive environment and which has the final objective of ending the working relationship or forcing victims to leave their working positions.'

Harassment is not a criminal offence. The closest criminal offence is causing national, racial or religious hatred, discord and intolerance (Article 319 of the Criminal Code):

(1) A person who by coercion, maltreatment, endangering safety, ridiculing national, ethnic or religious symbols, damage to property, desecration of monuments, graves or other means causes or fuels national, racial or religious hatred, discord or intolerance will be punished with imprisonment of one to five years. (2) A person who shall perform the act of paragraph 1 by abuse of position or authority or if that act causes turmoil and violence against people or damage to property on a large-scale, shall be punished with imprisonment from one to ten years.

However, Article 319(2) has been somewhat contrarily interpreted. Mr. Jovan Vraniskovski was found guilty of inciting religious intolerance for believing that a different Christian Orthodox church than the 'ruling' Macedonian Orthodox Church should be established. Claiming that they are 'being harassed', believers of the Macedonian Orthodox Church have threatened to physically attack Vraniskovski.

b) Is harassment prohibited as a form of discrimination?

Until 2009 it was prohibited only within the above mentioned Labour Law. Even the Child Protection Law and the Law on Social Protection, that do contain provisions on discrimination, do not mention harassment or deal with it in any way. Harassment is only prohibited indirectly in some circumstances. For instance, if harassment leads to a sexual act, either between an adult and his or her dependent or between a teacher (or other educational worker) and a child over 14 years of age, it would fall under the criminal offence entitled Sexual Activities Based on Abuse of Position (Article 189).

In the new Anti-Discrimination Law, harassment is defined in accordance with the Directives (though with some tautology) and is prohibited as a form of discrimination.

In Article 7: Harassment or degrading conduct is violation of the dignity of a person or group of persons arising from a discriminatory ground which has the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, humiliating or frightening environment, approach or practice.

c) *Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?*

No.

2.5 Instructions to discriminate (Article 2(4))

Does national law (including case law) prohibit instructions to discriminate? If yes, does it contain any specific provisions regarding the liability of legal persons for such actions?

The previously mentioned (see 2.4(a)) Article 319 of the Criminal Code could be interpreted in this way since it uses the phrase: “fuel national, racial or religious hatred, discord or intolerance”. The same is also true for the criminal offence ‘Spreading of racist and xenophobic materials by computer systems.’⁵⁴ Both articles include the concept of ‘instigating or stimulating someone else to do something’: the term ‘instructions to discriminate’ as such is not used.

In the new Anti-Discrimination Law there is a relatively clear definition of instructions to discriminate in Article 9, under the title ‘Invoking and instigating discrimination’ (under which discrimination shall be deemed as every activity with which one person directly or indirectly invokes, encourages, gives instructions or instigates another person to commit discrimination).

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

a) *How does national law implement the duty to provide reasonable accommodation for people with disabilities? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of ‘reasonable’. For example, does national law define what would be a ‘disproportionate burden’ for employers or is the availability of financial assistance from the State taken into account in assessing whether there is a disproportionate burden? Please also specify if the definition of a disability for the purposes of claiming a reasonable accommodation is the same as for claiming protection from non-discrimination in general, i.e. is the personal scope of the national law different (more limited) in the context of reasonable accommodation than it is with regard to other elements of disability non-discrimination law.*

⁵⁴ Article 394-d of the Criminal Code

The phraseology ‘providing reasonable accommodation for people with disabilities’ did not appear in Macedonian legislation until 2009. The Labour Law, which contains the most precise and developed articles on anti-discrimination, does not specifically mention reasonable accommodation for people with disabilities.⁵⁵ However, reasonable accommodation (in slightly different wording) does appear in a special Law on Employment of People with Disabilities (first enacted in 2000).⁵⁶

There is no definition of ‘reasonable accommodation’ in this Law, but it regulates ‘the specific employment and working conditions of people with disabilities’, when they run their own businesses or when they are employed in individual commercial companies owned by other owners. It sets out measures to enhance the employment and working conditions of people with disabilities, their vocational training, and financial support for employers who employ persons with disabilities.

Therefore, for the purposes of this report we shall use the term ‘factual reasonable accommodation’ that entails creating adequate working conditions and adaptation of the workspace.⁵⁷ Since there are no further legal explanations and/or standards for recruitment (including, most probably, for job applicants) and for employed workers with disabilities, the authors cannot presume what kind of “accommodations” would be covered by this duty. However, the Law does not cover the public sector, and the laws on the public sector do not mention reasonable accommodation in any way or in any context.

This means that only a limited group of people who both have had their disability recognised by the social security office and are working in the private sector can claim such benefits. The group of disabled people who can benefit from this ‘factual reasonable accommodation’ is more limited than the group of people who are protected from discrimination on the ground of disability.

In the period 2000-2009, financial incentives to support factual reasonable accommodation have been gradually withdrawn. In 2000, when the law was adopted ‘special conditions for employment and benefits to disabled people’ were offered, including exemption from taxes and providing funds for contributions; and financial support for the employer.⁵⁸

According to the 2000 Law, there is an obligation for the employer to provide factual reasonable accommodation:

⁵⁵ Labour Law (revised), Official Gazette, No. 16/2010

⁵⁶ Law on Employment of People with Disabilities, Official Gazette, No. 44/00

⁵⁷ Article 5 of the Law on Employment of People with Disabilities, states: *For employment of disabled people, the employer is obliged to create appropriate working conditions and adaptations in the workplace depending on the work that should be done, the type and level of education, and the type and degree of disability of the employee*

⁵⁸ Article 4, Law on Employment of People with Disabilities, Official Gazette, No. 44/00

*'... the employer is obliged to create adequate conditions for work and adapt working position depending on the workplace, the type and level of education and type and degree of disability of the disabled person who is employed.'*⁵⁹

Additional measures to enhance conditions for employment and work of people with disabilities are the responsibility of the employer.⁶⁰

In order to finance the above mentioned measures, a Special Fund was established which ringfences 15 per cent of total revenue from the existing tax on employment, placing it in a the sub-account of the Employment Agency, by the thirtieth day of the month at the latest for the previous month. The Agency is obliged to use the resources set apart in the Special Fund exclusively for these purposes.⁶¹

In the period 2004-2009, the Law underwent eight changes that gradually restricted the benefits provided by the state and reduced the benefits for employment of persons with disabilities.⁶² The percentage allocation to the Special Fund was reduced initially from 15 per cent to 10 per cent, and later to 5 per cent. Thus there is now a lack of funds for employment of disabled people, equipping and adaptation, especially with the reduction to 5 per cent. This was pointed out by the Employment Agency, because it cannot respond to all applications for new employment for 197 disabled people, 26 applications for purchasing equipment and two applications for adaptation of working facilities.⁶³

Some other changes have also been made which are making it even more difficult and undesirable to employ people with disabilities:

*'...for re-employment of disabled persons referred to in Article 2 paragraph 1 of this bill for whom funds have already been used from the Special Fund, the new employer may not use funds from the Special Fund for Employment of Disabled Persons in a five year period from the first day of the new employment.'*⁶⁴

The new Anti-Discrimination Law tackles the issue of reasonable accommodation in two ways. First, Article 5(12) goes as follows:

⁵⁹ Article 5, Law on Employment of People with Disabilities, Official Gazette, No. 44/00

⁶⁰ Article 6, Law on Employment of People with Disabilities, Official Gazette, No. 44/00

⁶¹ Article 13, Law on Employment of People with Disabilities, Official Gazette, No. 44/00

⁶² Article 15, Law on Amendments to the Law on Employment of People with Disabilities, Official Gazette, No. 16/04; Article 15, Law on Amendments to the Law on Employment of People with Disabilities, Official Gazette, No. 62 of 28 July .2005; Article 1, Law on Amendments to the Law on Employment of People with Disabilities, Official Gazette, No. 29 of 09.03.2007; Article 4, Law on Amendments to the Law on Employment of People with Disabilities, Official Gazette, No. 88 of 16.07.2008

⁶³ Ljupcho Efremov, *Conditions of employment of people with disabilities in the Republic of Macedonia*. Paper presented at a roundtable discussion on *Conditions, problems and development for people with disabilities in the Republic of Macedonia*, held in the Member of Parliament Club on 26 September 2007.

⁶⁴ Art 18 Law on Amendments to the Law on Employment of People with Disabilities, Official Gazette, No. 62/05

'Adjustment of infrastructure and services is undertaking appropriate measures, where needed in a particular case, to enable a person with an intellectual and physical disability⁶⁵ to have access to, participate in, or advance in employment, unless such measures would impose a disproportionate burden on the employer.'

This definition is almost identical to the provision in Article 5 of Directive 2000/78. Next is the provision in Article 8(2) where lack of reasonable accommodation for people with intellectual and physical disability is declared to be discrimination.

The new Anti-Discrimination Law does not define what would be a 'disproportionate burden' for employers or whether the availability of financial assistance from the State is to be taken into account in assessing whether there is a disproportionate burden.

- b) *Does national law provide for a duty to provide a reasonable accommodation for people with disabilities in areas outside employment? Does the definition of "disproportionate burden" in this context, as contained in legislation and developed in case law, differ in any way from the definition used with regard to employment?*

There is *de facto* reasonable accommodation for people with disabilities in the area of housing (see under 'a' above).

In the new Anti-Discrimination Law, while Article 5(12) stipulates an obligation for employers, the provision in Article 8(2) goes beyond that and also refers to use of public facilities and participation in public and societal life. There are no further definitions in the Law.

- c) *Does failure to meet the duty of reasonable accommodation count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination?*

The Law on Employment of People with Disabilities and the Construction Law do not include specific sanctions if proper adaptation is not carried out. This failure is not considered to be discrimination.

In the new Anti-Discrimination Law, Article 8(2) classifies lack of reasonable accommodation for people with intellectual and physical disabilities as discrimination.

- d) *Has national law (including case law) implemented the duty to provide reasonable accommodation in respect of any of the other grounds (e.g. religion)?*

⁶⁵ Meaning intellectual or physical disability or both

Limited accommodation in respect of religion is spelled out in Article 2 of the Law on Amendments to the Law on Holidays of the Republic of Macedonia.⁶⁶ Under this law vacation days are to be granted for religious celebrations on the basis of the faith of the employee and for vacation days for specific celebrations of some ethnic communities.⁶⁷

In prison facilities space for inmates to express their religious commitment is provided:

*'Inmates are allowed to satisfy their religious feelings and needs in accordance with the conditions and possibilities of the institution.'*⁶⁸

e) *Does national law clearly provide for the shift of the burden of proof, when claiming the right to reasonable accommodation?*

It is not clear if the provision on the shift of the burden of proof is applicable in cases of factual reasonable accommodation.

The new Anti-Discrimination Law does not clearly provide for the shift of the burden of proof when claiming the right to reasonable accommodation. However, since the lack of provision of reasonable accommodation is discrimination according to Article 8(2), the shift of burden of proof (Article 38) encompasses these cases as well.

f) *Does national law require services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/78?*

⁶⁶ Law on Amendments to the Law on Holidays of the Republic of Macedonia, Official Gazette, No. 18/07

⁶⁷ In the Republic of Macedonia, celebrated holidays and days for believers of the Orthodox faith are:

- Christmas Eve, the day before Christmas;
- January 19, Epiphany;
- Good Friday, the Friday before Easter;
- August 28, Assumption of Mary (Great Mother) and
- Pentecost, the Friday before Pentecost.

Macedonia also celebrates the following days:

- First day of Eid al-Adha for Muslims;
- 22 November, Day of the Albanian Alphabet for members of the Albanian community;
- 21 December, Day of Teaching Turkish language for members of the Turkish community;
- Yom Kippur, the first day of Yom Kippur, for members of the Jewish community;
- The first day of Christmas, the second day of Easter and the All Saints Day according to the Gregorian calendar for Catholics;
- 27 January, St. Sava for members of the Serbian community;
- 8 April, International Day of Roma for members of the Roma community;
- 23 May, National Day of Vlachs for members of the Vlach Community and
- 28 September, International Day for members of the Bosniak community.'

⁶⁸ Article 141, Law on Execution of Sanctions, Official Gazette, No.206

The Law on Construction requires public buildings to be designed and built in a disability-accessible way:

'1) Construction of public buildings and structures for commercial use, those with the purpose of residential housing and buildings with housing and business purpose must be designed and constructed to allow unimpeded access, movement, residence and work to persons with disabilities. 2) The manner of providing unimpeded access, movement, residence and work for disabled persons to buildings under paragraph 1 of this Article shall be prescribed by the minister who heads the state authority responsible for performing the work in the field of urban planning.'

In the same Law it is stated that there is no need for approval to build structures which allow and facilitate the movement of disabled persons in the building.⁶⁹

*'Public and business facilities must ensure unimpeded access to persons with a disability as prescribed by this Law within four years of the date of entry into force of this law, and adapt outside staircases for public use within two years of the date of the entry into force of this Law.'*⁷⁰

In the new Anti-Discrimination Law, failure to comply with legislation (referring to relevant provisions in any other law) would be treated as discrimination.

g) Does national law contain a general duty to provide accessibility for people with disabilities by anticipation? If so, how is accessibility defined, in what fields (employment, social protection, goods and services, transport, housing, education, etc.) and who is covered by this obligation? On what grounds can a failure to provide accessibility be justified?

Except for Article 170 of the Construction Law, legislation concerning persons with disabilities does not include any duty to provide accessibility for people with disabilities by anticipation.⁷¹

The new Anti-Discrimination Law defines reasonable accommodation⁷² and lack of adjustment of infrastructure is deemed to be a form of discrimination according to Article 8. The solutions are in line with the Directives.

h) Please explain briefly the existing national legislation concerning people with disabilities (beyond the simple prohibition of discrimination). Does national law provide for special rights for people with disabilities?

The Constitution of the Republic (Article 35) notes that:

⁶⁹ Article 73, Law on Construction, Official Gazette, No. 130/09

⁷⁰ Article 170, Law on Construction, Official Gazette, No. 130/09

⁷¹ Law on Construction, Official Gazette, No. 130/09

⁷² Article 5(12)

'The Republic provides particular protection for disabled persons and conditions for their involvement in social life'.

National law provide for special rights for people with disabilities in the fields of employment (special conditions and protection),⁷³ social protection, health and education.

The new Anti-Discrimination Law declares any action that disables people with disabilities or impedes their exercise of these special rights in the areas of healthcare, marriage and family, education and employment to be discrimination.

2.7 Sheltered or semi-sheltered accommodation/employment

a) *To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for workers with disabilities?*

Under the Law on Employment of People with Disabilities, sheltered companies have been established for the employment of disabled persons.⁷⁴ A sheltered company can be established if it employs at least five persons; of whom at least 40 per cent are people with disabilities. Of this 40 per cent, at least half should be visually impaired, hearing impaired, physically disabled, persons with intellectual disabilities, people with mixed disabilities and / or people with psychosis who, due to the extent of damage, have specific needs in employment and work.⁷⁵

Employees in the shelter companies who are not disabled, are exempted from payment of personal income tax, and shelter companies as a whole are exempt from paying taxes on profits.⁷⁶

Unfortunately, many employers attracted by the benefits were only interested in using the irretrievable funds given by the Special Fund at the Employment Agency. They pretend to employ disabled people (who are nor really engaged or paid), used the funds and then liquidated the firms.⁷⁷

⁷³ Articles 8, 137, 177, 178, Labour Law (revised), Official Gazette, No. 16/2010

⁷⁴ Currently in the Republic of Macedonia there are about 650 registered shelter commercial companies that employ 3,550 people with disabilities and 4,350 people without disabilities, or a total of 7,900 employees. (Ljupco Efremov, *Conditions of employment of people with disabilities in the Republic of Macedonia*, Paper presented at a roundtable discussion on *Conditions, problems and development of people with disabilities in the Republic of Macedonia*, held in the Member of Parliament Club on 26 September 2007.)

⁷⁵ Article 9, Law on Employment of People with Disabilities, Official Gazette, No. 44/00

⁷⁶ Article, Law on Employment of People with Disabilities, Official Gazette, No. 44/00

⁷⁷ Georgi Grujevski, Association of Organisations for Disabled People of Macedonia, http://jser.fzf.ukim.edu.mk/index.php?option=com_content&view=article&id=301:review-on-law-for-employment-of-disabled-people&catid=48:200412&Itemid=1



b) *Would such activities be considered to constitute employment under national law?*

According to the Law on Employment of People with Disabilities,⁷⁸ there is no difference in and during the employment of disabled people in the shelter company and in the open economy; the employers utilise the same benefits and financial exemptions, and enjoy the same protection under non-discrimination legislation.

⁷⁸ Law on Employment of People with Disabilities, Official Gazette, No. 44/ 00



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)

Are there residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives?

It should be noted that Macedonia is not an EU member state, and that formally still no distinction is made in law between EU and non-EU nationals. There is no indication as of yet how it is planned, or indeed whether it is planned to make the necessary adjustments to this end.

Nevertheless, it should be noted that the current legal duality between citizens and third country nationals is in theory treated as 'soft' since Macedonia is predominantly a country of emigration. On the other hand, Macedonia has a high unemployment rate and this leads the authors to conclude that third-country nationals only have stricter conditions with regard to getting employed and acquiring social care / protection.⁷⁹ In all other areas including self-employment, access to training and membership in workers' organisations there is no legal inhibition and there are no reports of less favourable treatment. With regard to the Constitution, the approach implemented in practice gives opportunities for foreign citizens to participate in the social and economic life of the Republic of Macedonia.

Hence, there are no predictable problems for the future introduction of the distinction between EU and non-EU nationals, beyond everyday stereotypes and prejudice.

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

Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or liability for discrimination?

No, there is no such distinction, but the wording of both the Constitution and relevant legislation is oriented towards protection of natural persons.

The new Anti-Discrimination Law follows this Constitutional line. However, since 'person' is defined (see Article 5(9)) as both natural and legal persons and in the context of passive identification (*legitimatio pasiva* / protection against discrimination) the term that is in use is 'person' - it transpires that legal persons fall under this category as well.

⁷⁹ Article 15, Law on Social Protection

With regard to active identification (*legitimatío activa* / liability for discrimination), particularly in the articles regulating fines for misdemeanours, there is a clear distinction (see Articles 42-45) but only concerning the amount of the fine.

Furthermore, since class action is regulated (Article 41) it is indisputable that both natural and legal persons hold *legitimatío activa et pasiva*.

3.1.3 Scope of liability

What is the scope of liability for discrimination (including harassment and instruction to discriminate)? Specifically, can employers or (in the case of racial or ethnic origin) service providers (e.g. landlords, schools, hospitals) be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?

Practically only in the context of the three most recent laws – the Labour Law, the Child Protection Law and the Law on Social Protection – can we speak of clear guidance on the scope of liability. The Labour Law specifies that liability is only on the side of the employer (Article 181). That is, if the worker believes that he or she has been discriminated against, the first step is to inform the employer giving the employer a chance to resolve the issue. Only if this is not done can the worker lodge a lawsuit against the employer. In this case, the employer takes on him or herself responsibility for the discrimination regardless of whether he or she or someone on his or her behalf had discriminated.

The Law on Social Protection goes in completely in opposite direction. Only a legal person can be liable. The most likely reason for this is that all decisions in the process are teamwork.

Only the Child Protection Law goes along both lines. All those who are authorised to deal with children's issues, regardless of being natural or legal persons, can be liable.

In all three of these laws, there are no indications as to whether the defendant can be held liable for the actions of third parties

The new Anti-Discrimination Law, which contains sanctions against both natural and legal persons in the misdemeanour procedure, clearly states that legal persons are held liable for natural persons that are employed by or members of these legal persons. However, the issue of third parties would depend, at this stage of legal practice, on the character of the relationship with the legal person involved and court decisions. Therefore, especially at the beginning, it will depend on forthcoming court practice.



3.2 Material Scope

In the new Anti-Discrimination Law the areas of material scope are only enumerated without further elaboration. The following table indicates compliance with Directive areas:

Directive 200/43 & 78 (a-d)	Macedonian new Anti-discrimination Law
<p>(a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;</p> <p>(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;</p> <p>(c) employment and working conditions, including dismissals and pay;</p> <p>(d) 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;</p> <p>(e) social protection, including social security and healthcare;</p> <p>(f) social advantages;</p> <p>(g) education;</p> <p>(h) access to and supply of goods and services which are available to the public, including housing.</p>	<ul style="list-style-type: none"> ➤ (1) Employment and working relations ➤ ➤ ➤ ➤ (8) Membership of and involvement in trade unions, political parties, NGOs, foundations, and other membership organisations ➤ (3) Social security, including social protection, pension and disability insurance, health insurance and healthcare ➤ (2) Education ➤ (7) Access to goods and services ➤ (5) Housing
	(10) 'Other areas stipulated by law.' ⁸⁰

3.2.1 Employment, self-employment and occupation

Does national legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office?

⁸⁰ Standard residual clause in case a future law stipulates an area

Articles 6-11 of the Labour Law⁸¹ 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). To preserve its role as general law (*lex generalis*) it states that:

*'Labour Law 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.'*⁸²

Having agreed with the general approach, it should be noted that practically all major areas of public employment are covered by at least two laws since there is a Law on Civil Servants.⁸³ Furthermore, the Law on the Police,⁸⁴ the Law on Defence and the Law on Foreign Affairs speak also of labour relations of the employees in the respective ministries, thus leaving very little to the Labour Law.

However, since none of these laws have anti-discrimination provisions (apart from equality provisions related to ethnic origin), all discrimination issues must be treated under the provisions of the Labour Law.

In paragraphs 3.2.2 - 3.2.5, you should specify if each of the following areas is fully and expressly covered by national law for each of the grounds covered by the Directives.

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)) Is the public sector dealt with differently to the private sector?

The general non-discrimination article in the Labour Law⁸⁵ 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 regulated by Article 24 of the Labour Law (the only exception is on the ground of sex).⁸⁶

Article 25 of the Labour Law provides very weak protection from discrimination for people with disabilities and people considered to be ill.⁸⁷

⁸¹ Articles 6-11, Labour Law (revised), Official Gazette, No. 16/2010

⁸² Article 3 Labour Law (revised), Official Gazette, No. 16/2010

⁸³ Article 5, Law on Civil Servants (revised), Official Gazette, No. 108/ 05

⁸⁴ Article 96, Law on the Police, Official Gazette, No. 114/06 and Article 48, Law on Internal Affairs, Official Gazette, No. 9/09

⁸⁵ Article 6, Labour Law (revised), Official Gazette, No. 16/2010

⁸⁶ Labour Law (revised), Official Gazette, No. 16/2010

⁸⁷ Labour Law (revised), Official Gazette, No. 16/2010

According to this article, when concluding an employment contract the applicant is not obliged to submit a health certificate, though the employer can send him or her for a medical examination.⁸⁸ The only legal limitation is that the examination should be strictly necessary for the specific working position.

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.⁸⁹

Conditions for access to employment and criteria for various professional activities in the public sector are mostly determined by specialised laws. However, no equivalent and consistent approach or scope of protection is contained in these laws.

State of health is also mentioned as a condition for employment in the Law on the Police and the Law on Army Service, and following the latest changes, the Law on Civil Servants.⁹⁰ According to Article 13 of this Law, the general conditions for employment as a civil servant are: 'general health capability' and 'other conditions specified in the act of systematisation of jobs'. Both of these requirements have very broad meanings and could be misused in a discriminatory way.⁹¹

None of these laws sets out a procedure to protect against discrimination. However, there is a system of state inspection:

*'Supervision of implementation of this Law, other laws and regulations for labour relations, collective agreements and job contracts that regulate the rights and obligations of the employee and the employer, is carried out by the state body responsible for labour inspection.'*⁹²

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

In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 EC? NB: Case C-267/06 Maruko confirmed that occupational pensions constitute part of an employee's pay under Directive 2000/78 EC.

Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.

⁸⁸ Labour Law (revised), Official Gazette, No. 16/2010

⁸⁹ Article 8, Labour Law (revised), Official Gazette, No. 16/2010

⁹⁰ Law on Civil Servants (revised), Official Gazette, No. 108/05

⁹¹ Law on Amendments to the law on Law on Civil Servants, Official Gazette, No.114/09

⁹² Article 256, Labour Law (revised), Official Gazette, No. 16/2010



In the Labour Law there is only one provision stating that for equal work workers should be equally paid. The only category specifically mentioned is women.⁹³

The Law on Civil Servants has a whole range of provisions introducing so-called salary scales. Salaries are elaborated in detail; but no specific category of employees is mentioned by name.⁹⁴

No cases of discrimination have been reported in the area of salaries.

There are three laws dealing with pensions in Macedonia.⁹⁵ There are no articles on discrimination or equality in the framework Law on Pensions and Disability Insurance⁹⁶ and in the Law on Mandatory Fully Funded Pension Insurance (last amended in 2009) but in Article 59: 'The form of contract for membership under paragraph (1) of this Article is the same for all members of the pension fund that manages the company'.⁹⁷ Only in the Law on Voluntary Fully Funded Pension Insurance is the prohibition of discrimination mentioned explicitly (in Article 3).⁹⁸

'Voluntary fully funded pension insurance prohibits any discrimination against members on the grounds of sex, race, colour skin, language, faith and religion, political or other orientation, national or social origin, belonging to a national or ethnic minority, or on the basis of property, family, health and age.'

However, in the same Law: a company cannot refuse membership of the Voluntary Pension Fund to any employee if the person is at least 18 years old and not more than 70 years of age.⁹⁹ This means that disability is not a ground for refusal; or if it is treated as a health condition it falls under anti-discrimination protection.

The Law on Voluntary Fully Funded Pension Insurance does not include any sanction equivalent to the prohibition of discrimination for facultative pension schemes.

⁹³Article 108

⁹⁴Law on Public Servants (revised), Official Gazette, No. 108/ 05

⁹⁵Law on Pension and Disability Insurance, Official Gazette, No.80/93, Law on Voluntary Fully Funded Pension Insurance, Official Gazette, No.7/08, Law on Mandatory Fully Funded Pension Insurance, Official Gazette, No.29/02

⁹⁶Law on Pension and Disability Insurance, Official Gazette, No.80/93 (in the period 1993-2009, 19 changes were made to this law).

⁹⁷Law on Mandatory Fully Funded Pension Insurance, Official Gazette, No.29/02

⁹⁸Law on Voluntary Fully Funded Pension Insurance, Official Gazette, No.7/08

⁹⁹Article 94, Law on Voluntary Fully Funded Pension Insurance, Official Gazette, No.7/08

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

Note that there is an overlap between 'vocational training' and 'education'. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category. Does the national anti-discrimination law apply to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult lifelong learning courses?

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 is stipulated in the general prohibition on discrimination in the Labour Law¹⁰⁰ and laws on different stages of education. The laws:

- Give everyone equal rights to acquire higher education and to be educated throughout their lives,
- Give everyone equal rights to lifelong learning.¹⁰¹

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

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

In Article 4 of the Law on Adult Education, it is stated that the point of adult education is to provide an opportunity for everyone in all adult groups to achieve their appropriate educational level and enable them to acquire knowledge, skills and attitudes that will comply with the requirements of society and the labour market.¹⁰⁴

In some other laws on education (such as the Law on Vocational Training and Education)¹⁰⁵ discrimination and equal treatment are not mentioned at all.

¹⁰⁰Article 7, Labour Law (revised), Official Gazette, No. 16/2010

¹⁰¹Article 3, Law on University Graduate Education, Official Gazette, No. 35/08

¹⁰²Article 7, Law on University Graduate Education, Official Gazette, No. 35/08

¹⁰³Article 108, Law on University Graduate Education, Official Gazette, No. 35/08

¹⁰⁴Law on Adult Education, Official Gazette, No.7/08

¹⁰⁵Law on Vocational Training and Education, Official Gazette, No. 71/06

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))

The Labour Law only enshrines the freedom of the workers and employers to establish and participate or not in the work of such an association.¹⁰⁶ There are no anti-discrimination provisions related to the Directive grounds. Having said that, it should be also noted that *mutatis mutandi* the general anti-discrimination provision in the Labour Law should be applicable to these situations as well.

In relation to paragraphs 3.2.6 – 3.2.10 you should focus on how discrimination based on racial or ethnic origin is covered by national law, but you should also mention if the law extends to other grounds.

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

In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?

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

The general and specific provisions on prohibition of discrimination in social services are listed in the Law on Social Protection;¹⁰⁷ racial and ethnic origin and disability are covered, while belief, age and sexual orientation are missing.

According to the Law on Social Protection, the ban is related to both public institutions for social care and private institutions.¹⁰⁸

Protection in cases of discrimination in the field of social care is covered by the possibility for the 'applicant or user of social protection to seek protection from the competent authority'.¹⁰⁹ In cases of discrimination, there is shift of the burden of proof¹¹⁰ and financial sanctions of €3000 to 5000 are envisaged.¹¹¹

In the Law on Healthcare there are no provisions concerning discrimination.¹¹²

¹⁰⁶ Articles 183-5 & 198, Labour Law (revised), Official Gazette, No. 16/2010

¹⁰⁷ Article 21, Law on Social Protection, Official Gazette, No. 79/09

¹⁰⁸ Article 20, Law on Social Protection, Official Gazette, No.79/09

¹⁰⁹ Article 22, Law on Social Protection, Official Gazette, No.79/09

¹¹⁰ Article 23, Law on Social Protection, Official Gazette, No.79/09

¹¹¹ Article 254, Law on Social Protection, Official Gazette, No.79/09

¹¹² Law on Healthcare, Official Gazette, No. 17/97

In the Law on Health Insurance, in Article 2 it is stated that health insurance is mandatory for all citizens of Macedonia on the principles of comprehensiveness, solidarity, equality and effective use of resources under conditions determined by Law.¹¹³

The latest changes to the Child Protection Law introduced precise articles on discrimination.¹¹⁴ In addition to definitions of direct and indirect discrimination, specific measures are introduced for 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).¹¹⁵

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

This covers a broad category of benefits that may be provided by either public or private actors to people because of their employment or residence status, for example reduced rate train travel for large families, child birth grants, funeral grants and discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of 'social advantages' or if discrimination in this area is likely to be unlawful.

The safeguard clause, inserted in the Constitution, says:

'The Republic provides for social protection and social security of citizens in accordance with the principle of social justice.

The Republic guarantees the right of the assistance to those infirm or unfit for work.

The Republic provides particular protection for disabled persons and ensures that their involvement in social life is possible.¹¹⁶

Social advantages are stipulated by law. For instance, the Law on Social Protection envisages that due to age and disability, beneficiaries of social financial assistance are relieved from public service duties.¹¹⁷ It is safe to conclude that the legal framework implicitly upholds the concept of social advantages.

However, there is no anti-discrimination provision concerning social advantages.

¹¹³ Law on Health Insurance (revised), Official Gazette, No.119/05

¹¹⁴ Articles 6-9, Law on Amendments to the Law on Child Protection, Official Gazette, No.83/09

¹¹⁵ Some of the protective measures are taken from one of the proposals for a law on protection from discrimination, but without the equality commission, the special mechanism developed in the law.

¹¹⁶ Article 35, Constitution

¹¹⁷ Article 55, Law on Social Protection, Official Gazette, No. 79/09



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

This covers all aspects of education, including all types of schools. Please also consider cases and/ or patterns of segregation and discrimination in schools, affecting notably the Roma community and people with disabilities. If these cases and/ or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.

Please briefly describe the general approach to education for children with disabilities in your country, and the extent to which mainstream education and segregated "special" education are favoured and supported.

Discrimination is prohibited in the educational process, at all levels and in all forms, both private and public. Primary¹¹⁸ and secondary¹¹⁹ education is compulsory, and the laws regulating this prohibit discrimination. The legislation covers the Directive grounds of race or ethnic origin and belief (political and religious), while disability, sexual orientation and belief (other aspects) are missing.

Although disability is not covered as a ground for discrimination, there are specific articles dealing with the education of children with disabilities:

- 1) The parent of a child with special educational needs has the right to enrol the child at primary school, except in cases where the special educational needs of the child are such that the child should be taught in a specialised primary school.
- 2) The manner and conditions for the enrolment of students with special educational needs in primary schools is determined by the Minister, on the proposal of the Bureau for Development of Education (an independent body within the Ministry).¹²⁰

According to Macedonian legislation there is specialised primary education for children with disabilities and specialised schools are considered equivalent to state schools.¹²¹ In general, children are enrolled in these specialised schools instead of being enrolled in mainstream schools.

¹¹⁸ Article 2, Law on Primary Education, Official Gazette, No.103/08: (1) Every child has the right to primary education. (2) Discrimination on the grounds of sex, race, colour, national, social, political, religious, property and social background in realisation of the rights of education and primary education, as defined by this Law, is prohibited.

¹¹⁹ Article 3, Law on Secondary Education (revised), Official Gazette, No. 52/02

¹²⁰ Article 51, Law on Primary Education, Official Gazette, No.103/08

¹²¹ Article 186, Law on Primary Education, Official Gazette, No.103/08 At the present moment there are:

- Four primary schools for students with moderate intellectual disabilities;
- One elementary school for children with more severe intellectual disabilities;
- A primary school for blind and visual impaired children;
- A primary school for deaf and hearing impaired children;
- A primary school for students with serious physical disabilities;
- Two secondary schools for students with moderate intellectual disabilities;
- A school for blind and partially blind students;

The Law on University Graduate Education¹²² does not explicitly prohibit discrimination on the ground of disability; however there are articles on the special benefits for students with disabilities (exemption from payment of tuition fees,¹²³ selection of students,¹²⁴ and special benefits settled by the university¹²⁵).

Please also consider cases and/ or patterns of segregation and discrimination in schools, affecting notably the Roma community and people with disabilities.

According to UNICEF, the Roma ‘population has the lowest level of educational achievement.’ Thirty nine per cent of Roma do not attend primary school; only 44.6 per cent complete primary school; and only 17.4 per cent enrol in secondary education.¹²⁶ According to the same study, 95.2 per cent of children of primary school entry age attend primary school in Macedonia. The lowest proportion of children attending primary school is observed in the poorest wealth quintile (86.3 per cent), and among the Roma (61.1 per cent).¹²⁷

Many reports have been published on the issue of Roma education in Macedonia (including an ECMI report on education,¹²⁸ an OSI report,¹²⁹ Roma educational fund¹³⁰, a UNICEF situation analysis¹³¹ and a UNICEF analysis of segregation in education¹³²) with very similar conclusions on segregation and enrolment barriers.

‘...The most significant problems in the education field regarding Roma in Macedonia are similar to those faced by Roma throughout the Western Balkans. Critical issues include low enrolment, poor performance, and a high drop-out rate for Roma children – combined with in-school segregation and discrimination, referral to special schools, restricted availability to pre-school, and lack of support for further education...’¹³³

In 2005, a strategy for the Roma population was developed. In this strategy, education was stated to be a governmental priority. The strategy highlighted the following concerns with regard to the situation of the Roma population:

- A school for deaf and hard of hearing students;
- 80 special classes for pupils in regular primary schools and
- Two day care centres for young people with moderate or severe combined disabilities.

In total about 1700 students attend these institutions.

¹²² Law on University Graduate Education, Official Gazette, No. 35/08

¹²³ Article 87, Law on University Graduate Education, Official Gazette, No. 35/08

¹²⁴ Article 108, Law on University Graduate Education, Official Gazette, No. 35/08

¹²⁵ Article 150, Law on University Graduate Education, Official Gazette, No. 35/08

¹²⁶ http://www.unicef.org/tfymacedonia/MK_SITAN_ENG.pdf (last entered on 28.02.2010)

¹²⁷ http://www.unicef.org/tfymacedonia/MK_SITAN_ENG.pdf

¹²⁸ http://www.ecmimacedonia.org/PDI/documents/PDI_Education_Working_Group_Recommendations.pdf

¹²⁹ Open Society Institute, Equal Access to Quality Education for Roma, Macedonia, 2007

http://www.eumap.org/journal/announcements/launch_serbia_macedonia

¹³⁰ http://www.romaeducationfund.hu/documents/Macedonia_report.pdf (last entered on 28.02.2010)

¹³¹ http://www.unicef.org/tfymacedonia/MK_SITAN_ENG.pdf

¹³² [http://www.unicef.org/tfymacedonia/New_MKVersionsm2\(3\).pdf](http://www.unicef.org/tfymacedonia/New_MKVersionsm2(3).pdf)

¹³³ http://www.romaeducationfund.hu/documents/Macedonia_report.pdf (last entered on 28.02.2010)

- 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;
- a lack of adequate conditions in the homes;
- economic exploitation of children;
- a lack of sufficient knowledge of Macedonian language;
- the high number of children dropping out of education; and
- a lack of awareness for the need of education.¹³⁴

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.¹³⁵

According to the Strategy, segregation often occurs in the process of education. However, in spite of numerous inspections and public statements, no sanctions have been imposed on segregating schools.

Several ongoing discussions, projects and activities¹³⁶ are focussing on improving the situation of Roma people in education but, so far, no legal changes have been made to guarantee non-discrimination and equality in this field.

If these cases and/or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.

There are ongoing discussions on the issue.¹³⁷ Eight Roma information centres have been established to support implementation of the strategy and to monitor the situation on the ground.¹³⁸

More than 50 Roma NGOs are working on the issue of segregation in education. However, segregation continues¹³⁹ and is becoming even more visible with the increase in the number of Roma schoolchildren.¹⁴⁰

¹³⁴ http://www.mtsp.gov.mk/WBStorage/Files/strategija_romi.pdf (last entered on 28.02.2010)

¹³⁵ http://www.mtsp.gov.mk/WBStorage/Files/strategija_romi.pdf (last time entered on 28.02.2010)

¹³⁶ For example, to encourage the enrolment of Roma in secondary education, in 2008/09 the Ministry of Education and Science introduced a special scholarship programme for Roma high school students, including a sum of 2200 denars (approximately €35) per month for each of the 650 students from the Roma community enlisted in the first year. Government measures to stimulate education among Roma include a secondary school for economic, legal and commercial studies in the Roma municipality of Shuto Orizari that began operating three months ago

¹³⁷ sonce.org.mk/KBF_mk/Informacija%20za%20trkalezna%20masa.doc,
www.mtsp.gov.mk/WBStorage/Files/ric_2008.doc,

¹³⁸ <http://www.mtsp.gov.mk/?ItemID=FF5ABCD0FB50E44BACE7E5044640B7C6>

¹³⁹ <http://www.nationalromacentrum.org/documents/coe-meeting-mk.pdf>

¹⁴⁰ The most recent case is the case of Bitola where an informal policy among schools is leading to a situation where Roma children can only attend Gjorgji Sugare schools, as other schools reject them (<http://www.a1.com.mk/vesti/default.aspx?VestiID=113536>,

Please briefly describe the general approach to education for children with disabilities in your country, and the extent to which mainstream education and segregated "special" education are favoured and supported.

Pupils and students with disabilities are educated according to the laws on primary and secondary education:

*'Students with special educational needs are provided with appropriate conditions for acquiring basic education and life skills in regular and special primary schools and are entitled to individual assistance for the acquisition of primary education.'*¹⁴¹

There are special curricula for students with disabilities developed by the Department for Development of Education.¹⁴² At present there is much stronger support for segregated education of children with disabilities than for their inclusion in regular schools.¹⁴³

According to the Law on Primary Education, children with disabilities are entitled to shorter class time, a lower number of children per class and engagement of specialists. In practice, just a few of the standards in the law are implemented.

In 2006, the Macedonian Ombudsman prepared a special report on the inclusion of children with special needs in education.¹⁴⁴

According to this report: 'In the practical application of legal solutions, there are a lot of problems and obstacles that do not allow for the provision of adequate and equal access to children with disabilities, and therefore the exercise of the right to education of these children often results in discrimination.'¹⁴⁵

There are separate secondary schools for children with special needs.¹⁴⁶ Secondary pupils with special educational needs are educated under adjusted programmes for job training.¹⁴⁷ There are no specific articles which regulate the education of children with special needs in regular secondary schools.

¹⁴¹ Article 6, Law on Primary Education, Official Gazette, No. 103/08

¹⁴² Article 30, Law on Primary Education, Official Gazette, No.103/08

¹⁴³ http://www.ringeraja.mk/forum/inkluzija-na-decata-so-posebni-potrebi/m_66149/tm.htm

¹⁴⁴ http://www.ombudsman.mk/comp_includes/webdata/documents/Posebni%20potrebi%20na%20decata1%20mak.pdf

¹⁴⁵ There are cases of non-admittance of children with disabilities into regular primary education. Or, in some other cases these children were admitted at first, but after a certain period they were expelled, thus leaving their parents to cope with the children on their own. Teachers themselves have problems dealing with this category of children because they are not trained adequately to work with them to find the most appropriate methods for including children with special needs in school activities

¹⁴⁶ Article 43, Law on Secondary Education (revised). Official Gazette, No. 52/02

¹⁴⁷ Article 50, Law on Secondary Education (revised). Official Gazette, No. 52/02



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

- a) *Does the law distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association)? If so, explain the content of this distinction.*

There are no specific articles forbidding discrimination concerning goods and services available to the public. In recent years there were several cases of discrimination against Roma people in this area.¹⁴⁸

The only mention of equality is in the legislation on consumer protection¹⁴⁹ where it is stated that a merchant who provides public services through a distribution network must allow users to join and use the network and e-services under non-discriminatory, known in advance and previously agreed conditions.¹⁵⁰ There are no specific grounds for discrimination mentioned.

- b) *Does the law allow for differences in treatment on the grounds of age and disability in the provision of financial services? If so, does the law impose any limitations on how age or disability should be used in this context, e.g. does the assessment of risk have to be based on relevant and accurate actuarial or statistical data?*

There is no prohibition of discrimination on the grounds of age and disability in the provisions of financial services. There have been cases of differential treatment of people on the ground of age and there is no possibility for protection.¹⁵¹

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

To which aspects of housing does the law apply? Are there any exceptions? Please also consider cases and patterns of housing segregation and discrimination against the Roma and other minorities or groups, and the extent to which the law requires or promotes the availability of housing which is accessible to people with disabilities and older people.

There is no legislation that covers selling or renting a piece of land or a building for housing purposes, or illegal forced evictions and deportations with regard to any of the grounds protected.

¹⁴⁸ <http://www.utrinski.com.mk/?ItemID=1ED1DAC6F4C67C4E8B110E7B8869838D>;
http://www.bbc.co.uk/macedonian/news/story/2007/01/printable/070102_romi.shtml

¹⁴⁹ Law on Consumer Protection, Official Gazette, No. 17/06/04

¹⁵⁰ Article 119, Law on Consumer Protection, Official Gazette, No. 17/06/04

¹⁵¹ For example, it is difficult for people under a certain age to get travel insurance for travelling abroad: http://atlantikturs.com/?page_id=91; <http://www.savatabak.com.mk/patnichko>,
<http://star.vest.com.mk/default.asp?id=164666&idg=9&idb=2620&rubrika=Makedonija>;
<http://www.vreme.com.mk/DesktopDefault.aspx?tabindex=11&tabid=1&EditionID=1792&ArticleID=120153>

Under the Law on Housing¹⁵² a special 'Regulatory Commission' has been established with a mandate, *inter alia*, to prevent discrimination in the field of housing.¹⁵³

The Law contains no mention of grounds of discrimination. Also, there are no further explanations on the issue of possible discrimination or protective mechanisms or about how the commission will protect victims of discrimination. Disability is only mentioned in Article 19: 'The manager of the building should know the standards and norms for accessibility for persons with disabilities in a residential facility.'

Roma in Macedonia are concentrated in 10 municipalities. Usually there is a concentration of the Roma population in one part of the town in a form of ghettoisation from other ethnic communities.¹⁵⁴

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 Roma¹⁵⁵, particularly police raids and evictions (after the Roma are accused of residing in unlawfully built buildings), that deprive the Roma of their housing¹⁵⁶, and do not provide them with alternative accommodation.¹⁵⁷

According to the 'Report on the condition of housing and health in the Roma Community in Macedonia':

'The Roma families very often live in badly built sub-standard houses, without in-house water supply and sanitation. Some data, for 7 Roma communities in the capital city of Skopje (excluding Shuto Orizari) showed that 7.25% of the families live in improvised houses built from non-construction materials (cardboard, nylon, tin, plastic, etc.), 29.5% in dilapidated and montage houses, and only 63% in solid-construction houses. Roma houses are small, planned to serve the elementary needs, with housing space less than 5 m² per member for more than 50% of the families. About 40% of the families live in shared houses. Only 16% of the houses have toilet and bathroom in the house; 77% of the families use a toilet in the yard and 58% use tap in the yard. Yet, it is worth noticing that more than 10% of the families don't have access to any kind of water supply.'

¹⁵² Law on Housing, Official Gazette, No. 99/09

¹⁵³ Article 104, Law on Housing, Official Gazette, No. 99/09

¹⁵⁴ Page.13, Report on the condition of housing and health among the Roma Community in Macedonia (http://www.studiorum.org.mk/n_mesechina-en.asp)

¹⁵⁵ <http://www.nationalromacentrum.org/mk/извештај-до-комитетот-за-економски-со/>;
<http://www.kanal5.com.mk/default.aspx?mId=37&eglId=13&eventId=53923>;
<http://www.kapital.com.mk/DesktopDefault.aspx?tabindex=0&tabid=65&EditionID=369&ArticleID=6192>

¹⁵⁶ <http://www.a1.com.mk/vesti/default.aspx?VestID=101881>

¹⁵⁷ <http://www.mhc.org.mk/?itemID=3DE4E8C7F50F194281021DB76FAD9E1E>

*The sewerage conditions in communities where the Roma population live are extremely bad, with an estimate of 50% of families having no access to proper solution for the discharge of the sewage and communal water.*¹⁵⁸

The UNICEF Situation Analysis in Macedonia¹⁵⁹ claims that Roma generally live in informal settlements on the outskirts of urban centres and that this further obstructs their access to basic social services.

In general, while many Macedonians live in privately owned apartments (previously state-owned public housing made available for sale), some 15 to 25 per cent of the population live in about 100 informal urban settlements.

According to the same study: 'There has been no research to date on how housing conditions in Macedonia impact on children but official government statistics suggest that 95 per cent (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.

The lack of stable land tenure can be a factor – without a sense of permanence and stability, communities are less cohesive and more prone to dysfunction. Roma and Albanians are sometimes forced by land tenure disputes, bureaucratic delays, high communal taxes and the high birth rates within their communities to erect illegal buildings without a construction permit which may result in further tenure disputes and unsafe building practices'.¹⁶⁰

The Law on Housing does not require or promote the availability of housing which is accessible to older people.

¹⁵⁸ Page 14, Report on the condition of housing and health among the Roma Community in Macedonia (http://www.studiorum.org.mk/n_mesetchina-en.asp)

¹⁵⁹Page 32, http://www.unicef.org/tfymacedonia/MK_SITAN_ENG.pdf

¹⁶⁰Page 32, http://www.unicef.org/tfymacedonia/MK_SITAN_ENG.pdf

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

Does national law provide an exception for genuine and determining occupational requirements? If so, does this comply with Article 4 of Directive 2000/43 and Article 4(1) of Directive 2000/78?

The anti-discrimination articles in the Labour Law¹⁶¹ include Article 8 that 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:

*'It will not be considered discrimination making a difference, exclusion or giving priority in terms of a certain thing, when the nature of the work is such or the work is performed in such conditions that the characteristics associated with some of the cases of 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.'*¹⁶²

The grounds covered by the Labour Law 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.¹⁶³

There are also some exceptions for protective measures because of pregnancy and parenting.¹⁶⁴ Special protection is also provided for older workers.¹⁶⁵

In the new Anti-Discrimination Law there is a general clause stating that difference of treatment which is based on a characteristic related to any of the discriminatory grounds shall not constitute discrimination if, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement does not overstep the level necessary for implementation (the underlined text is the only difference with common Article 4 of the Directives).

¹⁶¹ Labour Law (revised), Official Gazette, No. 16/2010

¹⁶² Article 8, Labour Law (revised), Official Gazette, No. 16/2010

¹⁶³ The Directive Grounds of race, belief, disability, age and sexual orientation are all covered, and the Law goes beyond them in an open-ended list: sex, health condition, membership of trade union, social origin, position of the family, property, or other personal issue.

¹⁶⁴ Article 161, Labour Law (revised), Official Gazette, No. 16/2010

¹⁶⁵ Chapter XV, Labour Law (revised), Official Gazette, No. 16/2010



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

- a) *Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?*

In the Law on the Legal Position of Churches, Religious Communities and Religious Groups¹⁶⁶ there are no specific articles on employment and labour relations.

The Anti-Discrimination articles in Macedonian legislation do not include specific provisions on exemptions for employers with ethoses based on religion or belief. However, as previously explained, Article 8 of the Labour Law, entitled "Exemptions from prohibition of discrimination", in the opinion of the authors is sufficient for churches, religious communities and groups to be exempt in accordance with Article 4(2) of Directive 2000/78.

In the new Anti-Discrimination Law this exception, which complies with Article 4(2) of Directive 2000/78, is elaborated in length in Article 14(3-5).

- b) *Are there any specific provisions or case law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination? (e.g. organisations with an ethos based on religion v. sexual orientation or other ground.)*

In the Law on the Legal Position of Churches, Religious Communities and Religious Groups there are no specific articles related to such conflicts. We are not aware of such case law.

However, the Macedonian Orthodox Church and the Islamic Religious Community have very clearly expressed their opinions that sexual orientation should not be mentioned in the anti-discrimination legislation.¹⁶⁷

In the new Anti-Discrimination Law there is no such anti-conflict provision. However, it should be noted that it shall not constitute discrimination (Article 14(5)) if members of duly registered religions (this also applies to NGOs, political parties, trade unions and other organisations) act in accordance with their belief. The very next paragraph (art. 14(6)) declares that it shall not constitute discrimination when: '...the marriage, out-of-wedlock community and family are regulated exclusively as communities of opposite sexes that is to say of one man and one woman.'

¹⁶⁶ Law on the Legal Position of Churches, Religious Communities and Religious Groups, Official Gazette, No.113/07

¹⁶⁷ <http://www.dnevnik.com.mk/default.asp?ItemID=2747A65351BB6544AC31869A1784FEDC>; page. 12(http://www.soros.org/initiatives/health/focus/sharp/articles_publications/publications/marginalized-communities-report-20091201/macedonia-sexual-health-20091201.pdf)

Bearing in mind the fact that the quoted wording was offered by independent experts in order to reassure lawmakers if they included sexual orientation in the new Anti-Discrimination Law as a ground for discrimination, it is likely that the order (Article 14(5) then 14(6)) is not accidental but eliminates the possibility of future transformation of sexual orientation, if introduced as a discriminatory ground, into a legal basis for same sex marriage and/or partnership.

- c) *Are there cases where religious institutions are permitted to select people (on the basis of their religion) to hire or to dismiss from a job when that job is in a state entity, or in an entity financed by the State (e.g. the Catholic church in Italy or Spain can select religious teachers in state schools)? What are the conditions for such selection? Is this possibility provided for by national law only, or international agreements with the Holy See, or a combination of both?*

There are no such possibilities according to Macedonian legislation. The only attempt in that direction was the introduction of religious education into state elementary schools. Without any legal basis, the main two religious groups – the Macedonian Orthodox Church and Islamic Religious Community – selected the teachers. However the Constitutional Court, acting upon petition by NGOs, declared the introduction of religious education null and void.

4.3 Armed forces and other specific occupations (Art. 3(4) and Recital 18 Directive 2000/78)

- a) *Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?*

Yes, the Law on Army Service envisages different age limitations, and disability is a ground for losing military status.

Professional soldiers are not to be older than 28 when signing their first working agreement, which is renewable every three years, and which expires in any case after the fourth term, meaning a maximum age of 40.¹⁶⁸ Junior officers must not be older than 28, or senior officer older than 35 when entering the Army.¹⁶⁹ The retirement age for officers is not an exception to the general law.

Disabled people are prevented from entering the Army since general and specific health and good physical condition are unavoidable prerequisites.¹⁷⁰ Even if the disability is a result of army service it would still lead to loss of military status. The best scenario is that the person could remain as civilian personnel retaining the salary received and rank held prior to the health degradation.¹⁷¹

¹⁶⁸ Articles 31 & 35, Law on Army Service

¹⁶⁹ Articles 28 & 27, Law on Army Service

¹⁷⁰ Articles 25, Law on Army Service

¹⁷¹ Articles 79, Law on Army Service

Ethnicity is dealt with in two provisions. With regard to the oath, the document to be signed is both in Macedonian and in the language of that person. In addition, persons belonging to minorities should be adequately and fairly represented in the Army providing they are dully trained and competent.¹⁷²

At the time of adoption of the Law, sexual orientation was a discrimination ground¹⁷³ since homosexual acts were a ground for disciplinary measures. After a strong campaign by the NGO sector, this wording was erased from the Law.

The wording of the Law is quite neutral and carefully avoids any sex implications. There is even a provision¹⁷⁴ on maternity leave. Overall, this should mean that Army is not against female soldiers, but this has not been tested.

b) Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?

Yes, the Law on the Police envisages different age limitations. However, disability is not a ground for losing the status of police officer.

Police officers must not to be older than 25 for duties requiring secondary education and 30 for graduate duties when entering the police force.¹⁷⁵ The retirement age is privileged, meaning that each 12 months of service are treated as 16 months.¹⁷⁶

Disabled people are in fact prevented from entering the police (like the army) since physical and mental health status are unavoidable prerequisites. However police officers who are rendered disabled as a result of their policing work should be redeployed according to their capabilities, keeping the salary and rank they held prior to the incident.¹⁷⁷

Ethnicity is treated as an issue of balanced representation - persons belonging to minorities should be adequately and fairly represented in the police, providing they are duly trained and competent.¹⁷⁸ Like in the Army, there is an obligatory oath, yet although the Law is more recent (from 2009) the document is to be signed, unlike that for the Army, only in Macedonian language (at least according to the Law).¹⁷⁹

In practice, both structures are gradually increasing the percentage of employees from minority ethnic groups. Success is measured by coming closer to the percentages of each community in the overall population of Macedonia, though the percentages are not formally declared to be quotas.

¹⁷² Articles 9 & 24, Law on Army Service

¹⁷³ Articles 121/1-16, Law on Army Service, with amendments of 2002

¹⁷⁴ Articles 159, Law on Army Service

¹⁷⁵ Article 95, Law on the Police

¹⁷⁶ Article 102, Law on Pensions and Social Insurance

¹⁷⁷ Article 95 & 109, Law on the Police

¹⁷⁸ Article 96, Law on the Police

¹⁷⁹ Article 52, Law on Internal Affairs

The Law on the Police has basically only one, rather short, provision on sex equality: 'Within the employment process in the police, care should be taken about the principle of sex equality.' The Law on Internal Affairs is more progressive than this – the phrase 'take care' is upgraded to 'uphold'.¹⁸⁰

4.4 Nationality discrimination (Art. 3(2))

Both the Racial Equality Directive and the Employment Equality Directive include exceptions relating to difference of treatment based on nationality (Article 3(2) in both Directives).

- a) *How does national law treat nationality discrimination? Does this include stateless status?
What is the relationship between 'nationality' and 'race or ethnic origin', in particular in the context of indirect discrimination?
Is there overlap in case law between discrimination on grounds of nationality and ethnicity (i.e. where nationality discrimination may constitute ethnic discrimination as well?)*

The Constitution does not clearly distinguish between nationality (in the meaning of state citizenship) and ethnic affiliation. On the one hand Article 4 states that:

'(1) Citizens of the Republic of Macedonia have citizenship of the Republic of Macedonia. (2) A national of the Republic of Macedonia may neither be deprived of citizenship, nor expelled or extradited to another state. (3) Citizenship of the Republic of Macedonia is regulated by law.'

On the other hand, Article 8 the Constitution declares 'the free expression of national identity' to be a fundamental value. Later, in Articles 9, 20, 54 and 110 of the Constitution, nationality, rather than ethnicity, is mentioned as a ground of discrimination. The words ethnic and ethnicity are not mentioned in the Constitution at all. However, Article 29 states that:

'(1) A foreigner enjoys freedoms and rights guaranteed by the Constitution in the Republic of Macedonia, under conditions regulated by law and international agreements. (2) The Republic guarantees the right of asylum to foreigners and stateless persons expelled because of their democratic political convictions and activities. (...)'

This makes it clear that all the provisions that use the term 'citizen' mean that these rights and freedoms are reserved only for Macedonian nationals, and not for every human being, while nationality is understood as freely expressed 'national identity'.

In this context, the term national discrimination in Macedonian law actually refers to ethnic discrimination.

¹⁸⁰ Article 48, Law on Internal Affairs

Nationality understood as citizenship of another country (being a foreigner) is not covered by anti-discrimination provisions on any ground. The same is true for stateless persons as well.

The lack of clarity deepens in some laws which refer to nationality and ethnicity as different grounds for discrimination (for instance Article 3 of the Law on Voluntary Fully Pension Insurance,¹⁸¹ Article 6 of the Child Protection Law¹⁸² and Article 20 of the Law on Social Protection¹⁸³). No definition is provided, which also adds to the confusion of the terms, since in some laws the term 'national belonging' is used (Article 6 of the Law on Primary Education¹⁸⁴ and Article 6 of the Labour Law¹⁸⁵).

The courts consistently use the terms 'foreigner' and 'foreign' when referring to nationals of another country (in Macedonian: 'странец' / 'странско'), thus sidestepping the possibility to clarify the conceptual and terminological confusion.

b) *Are there exceptions in anti-discrimination law that seek to rely on Article 3(2)?*

There are no exceptions in Macedonian anti-discrimination legislation that seek to rely on Article 3(2) of the Directives.

In the new Anti-Discrimination Law there is a general exception based on nationality understood as citizenship (in Macedonian: државјанство). Under Article 14: 'Different treatment of persons who are not citizens of the Republic of Macedonia regarding the freedoms and rights enshrined in the Constitution, in laws and in international treaties, which directly stem from citizenship, will not be considered discrimination.'

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

Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employees and their partners. Certain employers limit these benefits to the married partners (e.g. Case C-267/06 Maruko) or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note: this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.

a) *Would it constitute unlawful discrimination in national law if an employer provides benefits that are limited to those employees who are married?*

¹⁸¹ Law on Voluntary Fully Funded Pension Insurance, Official Gazette, No. 7/08

¹⁸² Law on Amendments to the Law on Child Protection, Official Gazette, No. 83/09

¹⁸³ Law on Social Protection, Official Gazette, No. 79/09

¹⁸⁴ Law on Primary Education, Official Gazette, No. 103/08

¹⁸⁵ Labour Law (revised), Official Gazette, No. 16/2010

Macedonian legislation does not mention the right of employers to provide benefits solely to a certain category of employees (such as those married or with children). However, the constitutional provision under which the republic provides particular care and protection for the family¹⁸⁶ could be interpreted as a possibility for such privileges.

Partnerships are not recognised under Macedonian law and possible benefits can only arise from legally recognised relations.

b) Would it constitute unlawful discrimination in national law if an employer provides benefits that are limited to those employees with opposite-sex partners?

Same-sex partnership is not recognised under Macedonian legislation, while the Law on Family and Marriage clearly states that marriage is a union between a man and a woman. Therefore, it would not constitute unlawful discrimination if an employer provides benefits that are limited to those employees with opposite-sex partners.

There has not been a case or even disputes on these issues. However the authors believe that the prohibition of discrimination on grounds of sexual orientation in the Labour Law cannot make it unlawful for an employer to discriminate between unmarried same-sex and unmarried opposite-sex couples. This is particularly because of the specific wording of Article 40 of the Constitution: 'The Republic provides particular care and protection for the family. The legal relations in marriage, the family and the out-of-wedlock community are regulated by law.'

For instance, the Law on Foreign Relations uses in three articles¹⁸⁷ the phrase 'spouse / person out-of-wedlock'. There is no record that someone has used this wording and requested a salary bonus based on same-sex partnership as a 'person out-of-wedlock'.

4.6 Health and safety (Art. 7(2) Directive 2000/78)

Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?

Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery etc)?

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 Labour Law could be applicable:

¹⁸⁶ Article 40, Constitution

¹⁸⁷ Articles 71, 76 & 83, Law on Foreign Affairs, Official Gazette, No. 46/2006

*'It will not be considered discrimination making a difference, exclusion or giving priority in terms of a certain thing, when the nature of the work is such or work is performed in such conditions that the characteristics associated with some of the cases in Article 6 of this law are an essential and decisive condition for performing the work, providing that the objective to be achieved is justified and the requirement is carefully considered.'*¹⁸⁸

As the Labour Law does not specify exceptions relating to health and safety law in relation to any other grounds, we can presume that the legitimacy and proportionality test indicated in Article 8 of the Labour Law would be applicable for exceptions based on dress codes or religious tenets.

In the new Anti-Discrimination Law there are three clauses stipulating exceptions in relation to pregnant women or mothers (Article 15(1)); the educational needs of invalid people (i.e. people with disabilities); and generally to 'special protection of ... invalid people' (both Article 15(7)).

4.7 Exceptions related to discrimination on the ground of age (Art. 6 Directive 2000/78)

4.7.1 Direct discrimination

- a) *Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the European Court of Justice in the Case C-144/04, Mangold ?*

The Labour Law does not mention specific exceptions concerning discrimination on the ground of age, that relate to the wording of Article 6 of Directive 2000/78. However, the general exception laid out in Article 8 of the Labour Law could be used to justify such discrimination.

Article 26 of the Labour Law could be interpreted more widely to give the possibility to the employer of setting specific conditions connected with the age of the employee:

'At the time of signing of the contract the applicant is obliged to submit evidence to the employer of capability to fulfil the terms of the contract'

- b) *Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?*

¹⁸⁸ Article 8, Labour Law (revised), Official Gazette, No. 16/2010

The Labour Law provides for specific protective measures in relation to employees younger than 18.¹⁸⁹ The protection encompasses hours of work, night work, work in special conditions and supplementary vacation.

- c) *Does national legislation allow 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 Law on Pension and Disability Insurance¹⁹⁰ establishes the general age of retirement. This is 64 years for men and 62 years for women. At least 20 years of pension contributions (i.e. working years covered by pension insurance) is also required. A person who has not fulfilled this requirement may retire on turning 65 years (for men) or 63 years (for women) if at least 15 years of pension contributions have been accrued.¹⁹¹ The Law on Pension and Disability Insurance provides for different criteria for calculation in special cases.¹⁹²

In some occupations, the length of time in post is multiplied for insurance purposes by a factor of (for example) 1.5. This is because these jobs are considered to require high levels of physical fitness that would prevent an older employee from being able to successfully perform certain tasks.¹⁹³

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 ages set for occupational pensions contradict Article 104 of the Labour Law:

- (1) *The employer will terminate the contract of employment of the employee when the employee turns 64 years old and has made 15 years of pension contributions.*
- (2) *The employer, upon request of the employee under paragraph (1), may extend the contract of employment up to 65 years of age, unless the law determines otherwise.¹⁹⁴*

¹⁸⁹ Charter XIII: Protection of Workers under 18 Years, Labour Law (revised), Official Gazette, No. 16/2010

¹⁹⁰ Law on Pensions and Disability Insurance, Official Gazette, No.80/93 and its amendments in 2000

¹⁹¹ Article 17, Law on Pensions and Disability Insurance, Official Gazette, No. 80/93

¹⁹² The standard calculation system is given in Article 18 of the Law on Pensions and Disability Insurance, Official Gazette, No. 80/93

¹⁹³ Article 126, Law on Pensions and Disability Insurance, Official Gazette, No. 80/93

¹⁹⁴ Labour Law (revised), Official Gazette, No. 16/2010



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

Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.

The Labour Law provides for specific protective measures in relation to employees younger than 18.¹⁹⁵ The protection encompasses hours of work, night work, work in special conditions and supplementary vacation.

Article 179 of the Labour Law provides special care for older workers:

'Workers older than 57 years (women) and 59 years (men) enjoy special protective measures, under this law and other laws.'

Article 180 of the same Law restricts overtime and night work for older workers.

The same restrictions apply to persons with caring responsibilities for children not older than 7 years.¹⁹⁶

In the new Anti-Discrimination Law there is only a general clause making an exception in relation to 'special protection of parentless children... [and] single parents ...' (art. 15/7). Although the term "parentless children" should mean persons up to 18 years of age, it is used also in the context of protective measures once these persons have reached adulthood (such as privileged housing and privileged employment).

4.7.3 Minimum and maximum age requirements

Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training?

Article 250 of the Labour Law establishes 15 as the minimum age for employment. There is a general prohibition on employment of children under 15, except for recording films, preparing and performing arts, stage and other similar works (cultural, artistic, sports and advertising activities). A special procedure and approval is required for this.

There are special provisions for the work of students (as practical work) and apprentices.¹⁹⁷

¹⁹⁵Charter XIII: Protection of Workers under 18 Years, Labour Law (revised), Official Gazette, No. 16/2010

¹⁹⁶ Article 164, Labour Law (revised), Official Gazette, No. 16/2010

¹⁹⁷ Article 251, Labour Law (revised), Official Gazette, No. 16/2010

In the new Anti-Discrimination Law there are two clauses exempting discrimination with regard to minimum age in relation to professional requirements and career advancement (Articles 14(8) and 14(9)) as well maximum age for recruitment or, we quote: '... for the need of rational time limitations connected to retirement and stipulated by law...'

4.7.4 Retirement

In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals retire from work), and mandatory retirement ages (which can be state-imposed, employer-imposed, imposed by an employee's employment contract or imposed by a collective agreement).

For these questions, please indicate whether the ages are different for women and men.

- a) *Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work longer, or can a person collect a pension and still work?*

The Law on Pension and Disability Insurance¹⁹⁸ establishes the general age for retirement of 64 years (for men) or 62 years (for women) with at least 20 years of pension contributions accrued. An individual who has not fulfilled the requirement of 20 years of pension contributions may retire on turning 65 years (for men) or 63 years (for women) with at least 15 years of pension contributions accrued.¹⁹⁹ The Law on Pension and Disability Insurance provides for different criteria for calculation in special cases.²⁰⁰

According to the Law on Pension and Disability Insurance,²⁰¹ pension and disability insurance rights depend on wages earned and the total length of contributions. The amount of age pension depends on the monthly average wage which determines the pension base, while the percentage of the pension is determined based on the length of pension contributions.

Individuals who reach the pensionable age but want to work longer can continue if their employers agree, but not after the age of 65.²⁰²

¹⁹⁸ Law on Pensions and Disability Insurance, Official Gazette, No. 80/93 and its amendments in 2000

¹⁹⁹ Article 17, Law on Pensions and Disability Insurance, Official Gazette, No. 80/93

²⁰⁰ The standard calculation system is given in Article 18 of the Law on Pension and Disability Insurance, Official Gazette, No. 80/93

²⁰¹ After the most recent changes (December 2009), the base for calculation and payment of contributions for pensions and disability insurance is the gross salary, includes contributions and taxes that are paid (<http://www.piom.com.mk/?idPage=120&idCategory=10>)

²⁰² Article 104, Labour Law (revised), Official Gazette, No. 16/2010

- b) *Is there a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be deferred if an individual wishes to work longer, or can an individual collect a pension and still work?*

The three pillar system was introduced in 2000.²⁰³ A mandatory personal accounts system was introduced at the beginning of 2002. A system of voluntary pension schemes started operating in 2008.

After retiring, pensioners can work under an individual work contract but in this case, the pensioner cannot collect both pension and salary:

*The payment of pension will stop while the user of pension is employed or is performing some activity in the Republic or abroad.*²⁰⁴

Exceptions from this include some categories such as company stakeholders, judges and prosecutors, as well as university professors:

*A full professor in retirement can teach postgraduate studies and can work on a research project under conditions specified by the statute of the university or other independent higher education institution.*²⁰⁵

- c) *Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, and if so please state which. Have there been recent changes in this respect or are any planned in the near future?*

The state-imposed retirement age is mandatory, and persons of pensionable age who want to carry on working cannot do so after the age of 65.

- d) *Does national law permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally?*

National Collective Agreements for the public sector and the economy do not mention reductions or expansions of the pensionable age in any sector.

According to Article 12 of the Labour Law, 'the individual employment contract or collective agreement may determine rights for workers which are more favourable than those determined by law.'²⁰⁶ The same article stipulates that employers cannot include clauses introducing less rights than those established in the constitution and law.

²⁰³ <http://www.mtsp.gov.mk/?ItemID=CBE8C479DD387841905B15D398358B98>.

²⁰⁴ Article 15, Law on Pensions and Disability Insurance, Official Gazette, No. 80/93

²⁰⁵ Article 147, Law on University Graduate Education, Official Gazette, No. 35/08

²⁰⁶ Labour Law (revised), Official Gazette, No. 16/2010

- e) *Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment, or are these rights lost on attaining pensionable age or another age (please specify)?*

The general anti-discrimination articles do not include any provisions on different treatment in relation to protection against dismissal on grounds of age.

The Labour Law's protection against dismissal applies to all workers irrespective of age. If the employee has reached the standard pensionable age and has contributed the required number of years of contributions to state pension schemes, the employer can ask for termination of employment even if the employee did not file a request for retirement or does not want to retire.

4.7.5 Redundancy

- a) *Does national law permit age or seniority to be taken into account in selecting workers for redundancy?*

Age or seniority is not expressly taken into consideration in the law with regard to selecting workers for redundancy.

In practice it is clear that senior workers are selected for redundancy.

- b) *If national law provides compensation for redundancy, is this affected by the age of the worker?*

There are no provisions for different levels of compensation for redundancy depending on the age of the worker in the anti-discrimination provisions or in labour legislation in general.

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

Does national law include any exceptions that seek to rely on Article 2(5) of the Employment Equality Directive?

There are no such exceptions in the existing law. In the new Anti-Discrimination Law there is only one exception of this character and that concerns '... freedom of speech, public appearance, thought and public information...' (art. 14/7).

4.9 Any other exceptions

Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.



No other exceptions are provided in national law.

In the new Anti-Discrimination Law there are three residual clauses on exceptions relevant to the Directives in relation to (a) measures to stimulate employment (Article 15(2)); (b) measures to protect the identity of ethnic, religious and linguistic minorities (Article 15(8)); and (c) specific measures in favour of persons and groups in disadvantaged positions (Article 15(6)).

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

- a) *What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case law or relevant legal/political discussions on this topic.*

The national law of Macedonia provides for taking positive action in respect of ethnic origin, disability and age (in favour of young people). It does not provide for positive action with regard to religion or belief, age (for elder people) or sexual orientation.

Ethnic origin. - Since independence, ethnic minorities in Macedonia have claimed that they were in a disadvantaged position compared to the ethnic Macedonian majority. The main sources of that disadvantage were, according to them, language issues and under-representation at national and local government levels. These feelings of being in a less favourable position in the areas of employment and education even led to armed conflict in 2001. That is why the two problems were addressed by introducing positive action measures in the Constitution, in legislation and in practice.

There have been numerous amendments to the Constitution, which has thus become a general legal framework.

In order to ensure proper implementation of these measures, a committee has been established in accordance with Article 78:

'(1) The Parliament shall establish a Committee for Inter-Community Relations. (2) The Committee consists of seven members each from the ranks of the Macedonians and Albanians within the Parliament, and five members from among the Turks, Vlachs, Roma and two other communities. The five members each shall be from a different community; if fewer than five other communities are represented in the Parliament, the Public Attorney, after consultation with relevant community leaders, shall propose the remaining members from outside the Parliament. (3) The Parliament elects the members of the Committee. (4) The Committee considers issues of inter-community relations in the Republic and makes appraisals and proposals for their solution. (5) The Parliament is obliged to take into consideration the appraisals and proposals of the Committee and to make decisions regarding them. (6) In the event of a dispute among members of the Parliament regarding the application of the voting procedure specified in Article 69(2), the Committee shall decide by majority vote whether the procedure applies.'

The Committee can propose positive action measures to Parliament, which decides in plenary on such issues. The Committee started its work ambitiously, but it has been blocked for a long period by permanent failure to fulfil the quorum condition.

However, these positive action measures have impacted, *inter alia*, very significantly on the situation of Roma in Macedonia. Until recently, there was no visible presence of the Roma in the state administration.

Disability. – The main instrument for positive action measures related to persons with disabilities is the Law on Employment of People with Disabilities.²⁰⁷ Its main goals are integration of disabled people in the working environment and their safety in the workplace.

Age (young people). – Action is undertaken based on Cabinet decrees.

In the new Anti-Discrimination Law there is a special provision in Article 13 named 'affirmative measures' that corresponds to the Directive term 'positive action'. This article encompasses measures in favour of: (1) a person, group of persons or community, in order to eliminate or diminish factual inequality; and (2) marginalised groups with the same aim.

People with disabilities are not specifically mentioned in this article as in Directive 2000/78. However, there is no basis for preventing them from being treated as a marginalised group especially bearing in mind Article 8, according to which even a lack of measures is declared to be discrimination.

- b) *Do measures for positive action exist in your country? Which are the most important? Please provide a list and short description of the measures adopted, classifying them into broad social policy measures, quotas, or preferential treatment narrowly tailored.*
Refer to measures taken in respect of all five grounds, and in particular refer to the measures related to disability and any quotas for access of people with disabilities to the labour market, any related to Roma and regarding minority rights-based measures.

There is a special secretariat, headed by a vice-prime minister, in charge of 'Ohrid Framework Agreement' implementation. Basically, this deals almost exclusively with employment of persons belonging to national minorities (or communities) in the state and public administration. To that end, various training events have been carried out with great support from the international community. Formally, there are no quotas. However, the percentage of a minority in the overall population of Macedonia is a factual quota.

Preferential treatment of people with disabilities is summarised in the 'National Strategy for Equalisation of the Rights of People with Disabilities.'²⁰⁸ The strategy acts like an operational framework for the UN Convention on the Rights of Persons with Disabilities (2006).²⁰⁹

However, as Macedonia has not ratified this convention, the Strategy is more of a wish list, than an indication of real intentions, as can be seen from the lack of budgetary support for these activities.

²⁰⁷ Article 2, Law on Employment of People with Disabilities, Official Gazette, No. 44/ 00

²⁰⁸ Official Gazette, No. 101/2001, revised in 2010

²⁰⁹ <http://www.sakamznammozam.gov.mk/clientControls/upload/predlogstrategija.pdf>



Young people are covered in two ways. The Ministry of Labour and Social Policy supports a programme entitled “Intermediation for Employment of Unemployed Young Graduates”. Meanwhile, the Ministry of Transport and Communications has a programme called ‘Building Flats for Young Couples’.

6 REMEDIES AND ENFORCEMENT

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

In relation to each of the following questions please note whether there are different procedures for employment in the private and public sectors.

In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body).

Are there available statistics on the number of cases related to discrimination brought to justice? If so, please provide recent data.

- a) *What procedures exist for enforcing the principle of equal treatment (judicial/administrative/alternative dispute resolution such as mediation)?*

The procedures for employment in the private and public sectors are different. In the public sector, in accordance with the Law on State Administration, the procedure starts with an initiative from the interested body, followed by approval from the Agency for Civil Servants, then announcement of the vacancy in at least two printed public media. Finally a commission, which must include a representative of the Agency, makes the first selection after which a further selection process can be undertaken by the body in question.

In the private sector, according to Labour Law, employers are free to choose their own methods to find adequate candidates for employment.

Due to this difference, civil servants can invoke administrative procedures and disputes, while such possibilities do not exist in the Labour Law. The State Administration Law envisages only an administrative procedure (establishing a special commission within the Agency on Civil Servants) and administrative dispute. The administrative procedure and dispute must be invoked within strict time limits, but they are not complex or costly.

In the private sector, in accordance with the Labour Law (Article 181), if a worker believes that he or she has been discriminated against, the first step (in 8 days) is to inform the employer giving him or her a chance to resolve the issue. If this is not done within the next 8 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.

Because this procedure involves judicial litigation, not only are the time limits very strict, but the process is expensive. Hiring a lawyer is a *de facto* necessity, the plaintiff must pay the court costs in advance and if the plaintiff loses the lawsuit against a state employer he or she has to pay the costs of the State Defender.



In spite of the fact that the State Defender is an institution paid for by taxpayer money, they always request litigation costs as if they were private solicitors, and when they win cases they are awarded the sum requested purportedly as litigation costs.²¹⁰ When combined with court costs, this is a serious burden on the plaintiff. For instance, the costs can mount to 250,000 denars (about €4,000) which is about 20 average monthly salaries.

There are no statistical data on discrimination cases, but just on labour relations cases.

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

The new Anti-Discrimination Law envisages three levels of legal remedies:

- a) an administrative procedure in front of the Commission for Protection against Discrimination (to be established based on this Law);
- b) litigation in front of a regular court (Articles 34 & 35) based on the provisions of this Law including specific requests that should be contained in the legal suit (Article 36); and
- c) a misdemeanour procedure based on misdemeanours stipulated by this Law (Articles 42-45).

The administrative procedure is regulated by Articles 25-29; it is free of charge for the applicant. The procedure may end up with an Opinion and Recommendation of the Commission within 90 days. If this Opinion is not implemented, the Commission can initiate a procedure at the competent body (it is not specified which body this is).

b) *Are these binding or non-binding?*

Yes, they are legally binding.

c) *What is the time limit within which a procedure must be initiated?*

Concerning labour litigation, the deadline is 33 days after the violation has occurred. The other laws mentioned above do not specify a deadline. This means that a general deadline of 30 days is applied.

In the new Anti-Discrimination Law, the stipulated time limits concern only the administrative procedure: the application should be lodged at the most three months after the act or one year from after receiving the information, though the Commission can extend this deadline if necessary. That means that for the other procedures the general deadline of 30 days also applies.

²¹⁰ Article 157, Law on Litigation



d) *Can a person bring a case after the employment relationship has ended?*

Yes.

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

Please list the ways in which associations may engage in judicial or other procedures

a) *in support of a complainant*

In labour cases, Article 93 of the Labour Law envisages this possibility only for trade unions with approval of the complainant.

Nobody else can act in support. Even the Ombudsman's Office has to stop its own procedures once a court procedure has been initiated (the Law on the Ombudsman, Article 23).

In the new Anti-Discrimination Law (Article 39) the right to intervene is extended, with approval both of the applicant and the judge, to all organisations and institutions that deal with equality issues.

b) *on behalf of one or more complainants (please indicate if class actions are possible)*

Same as 'in support of'.

In the new Anti-Discrimination Law (Article 41) class actions are legalised. This possibility can be used by NGOs, foundations and other organisations with a legitimate interest.

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

Does national law require or permit a shift of the burden of proof from the complainant to the respondent? Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).

The shift of the burden of proof was recently and partially introduced in three laws mentioned above. The Labour Law envisages this shift in Article 11(1&2), while the Law on Social Protection does the same in Article 23. Meanwhile, the Child Protection Law, in Article 9-i, the first paragraph stipulates the shift, while in the second paragraph its application is excluded from misdemeanour and criminal proceedings. This leads to the conclusion that the shift is applicable only in administrative cases and litigation.

The only requirement is that the complainant presents facts; with no other criteria.

The new Anti-Discrimination Law (Article 38) uses the same formula as the Child Protection Law.

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

What protection exists against victimisation? Does the protection against victimisation extend to people other than the complainant? (e.g. witnesses, or someone who helps the victim of discrimination to bring a complaint)

The basis for protection against victimisation is Article 24 of the Constitution:

'(1) Every citizen has the right to petition the state and other public bodies, and to receive an answer. (2) 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.'

Before 2009, direct mention of victimisation only occurred in the Labour Law²¹¹ and only in the procedure related to psychological harassment ('mobbing').²¹² This also covers witnesses.

In the new Anti-Discrimination Law (Article 10), victimisation itself is declared a form of discrimination and encompasses the person that reports discrimination, the person who files the complaint and any witnesses.

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

a) *What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.*

In labour cases as well as other litigation in civil courts, only compensation can be claimed.

In cases of child and social protection, the first sanctions to be imposed are fines within the misdemeanour procedure to a sum of €500-1000 in child protection cases and €3,000-5,000 in cases concerning social protection.

In the new Anti-Discrimination Law the sanction depends on 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 €400-1000.

²¹¹ Article 11(3), Labour Law

²¹² This term is used in the Labour Law



b) *Is there any ceiling on the maximum amount of compensation that can be awarded?*

There are no limits stipulated by law. Thus the amount of compensation fully depends on the court verdict.

In other areas of compensation (such as traffic accidents), court practice is to correspond the sum of compensation with the living standard in Macedonia. The range, very approximately, is from €5,000 to €30,000. Therefore it is expected that these sums would be applied in potential discrimination cases.

c) *Is there any information available concerning:*

- *the average amount of compensation available to victims*
- *the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as required by the Directives?*

This is yet to be seen in court practice.

7 SPECIALISED BODIES, Body for the promotion of equal treatment (Article 13 Directive 2000/43)

When answering this question, if there is any data regarding the activities of the body (or bodies) for the promotion of equal treatment, include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly). For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.

- a) *Does a 'specialised body' or 'bodies' exist for the promotion of equal treatment irrespective of racial or ethnic origin?(Body/bodies that correspond to the requirements of Article 13. If the body you are mentioning is not the designated body according to the transposition process, please clearly indicate so.)*

Until 2011 there is not specialised body for promotion of equal treatment as defined in legislation (except partially the office of the Ombudsman which has a broader mandate for protection of human rights only in the public sector).²¹³

In the new Anti- Discrimination Law the specialised body is defined as the Commission on Protection from Discrimination.²¹⁴ The Commission on Protection from Discrimination will be established in 2011, and will deal with both the public and the private sector.

- b) *Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable.*

The presently active anti-discrimination body, the Ombudsman, is defined in the Constitution as a body which:

*'...protects the constitutional and legal rights of citizens when violated by state bodies and other authorities and organisations with public powers. The Ombudsman protects the constitutional and legal rights of citizens when violated by state bodies and other bodies and organisations with public powers. The Ombudsman pays particular attention to safeguarding the principles of non-discrimination, adequate and equitable representation of communities in the organs of state power, bodies of local government and public institutions and services.'*²¹⁵

The Ombudsman is elected by the Parliament of the Republic of Macedonia, by a majority of the total number of parliamentarians, which must include a majority of the total number of MPs who belong to communities that are not the ethnic majority in Macedonia.

²¹³ <http://www.ombudsman.mk/>

²¹⁴ Articles 16-33, Anti-Discrimination Law

²¹⁵ Article 77, Constitution

The Ombudsman is elected for a term of eight years, with the right for one more term. The Ombudsman has a certain number of deputies who are elected under the same procedure as the Ombudsman, on the proposal of the Ombudsman.

Any Macedonian citizen can be appointed Ombudsman under the following conditions:

- *the person meets the general conditions specified in law for employment in a state body,*
- *the person is a graduate lawyer who has over nine years experience of legal affairs and whose activity is proven in the field of protection of citizens' rights and who enjoys a suitable reputation for performing as Ombudsman.*²¹⁶

According to the Law on the Ombudsman

*‘The Ombudsman in performing the duties under his jurisdiction takes actions and measures which are authorised by this law to protect the constitutional and legal rights of citizens or protect the principles of non-discrimination and adequate and equitable representation of citizens belonging to all communities when violated by bodies stated in Article 2 of this law.’*²¹⁷

The Ombudsman and the Deputy Ombudsman cannot be held responsible for actions, measures and activities undertaken in exercising their function.

The independence and autonomy of the Ombudsman's Office is guaranteed by the Constitution and by law. In practice the election of the Ombudsman very much depends on the governing political parties will and the Ombudsman could easily be threatened with cutting financial support. This occurred in 2009 when the Ombudsman's annual budget was reduced while his mandate was enlarged.

*“For carrying out his office, the Ombudsman has adequate resources, assets and personnel. The funds for the work of the Ombudsman shall be provided by the Budget of the Republic of Macedonia. The Parliament allocates a special part of the Budget of the Republic of Macedonia for the Ombudsman's Office.”*²¹⁸

In the Law there is no definition of discrimination or further explanation of the obligation of the Ombudsman to protect from discrimination.

Under amendments passed in 2009, a special working unit for protection against discrimination has been established in the Ombudsman's Office. The Ombudsman has not revealed the number of staff in this unit.

²¹⁶ Article 6, Article 11, Law on the Ombudsman, Official Gazette, No. 60/03

²¹⁷ Article 11, Law on the Ombudsman, Official Gazette, No. 60/03

²¹⁸ Article 48, Law on the Ombudsman, Official Gazette, No. 60/03

*'The Ombudsman establishes special departments for protection of the rights of children and persons with disabilities, protection of citizens from discrimination, torture and other forms of cruel, inhuman or degrading treatment or punishment, and equitable representation of citizens.'*²¹⁹

According to the new Anti-Discrimination Law²²⁰, the Commission on Protection from Discrimination will be established as an autonomous and independent body. The Commission will be financed through the budget of the Republic of Macedonia.

The Commission will be composed of seven members appointed by the Parliament with five year mandates. Macedonian citizens with regular residence in the country, university degrees and experience in human rights are eligible for membership. Selection will be by public competition. The members of the Commission will receive salaries of two average monthly salaries²²¹ (at the moment this is around €500).

c) *Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.*

According to the Law on the Ombudsman, the Ombudsman exercises a mandate in the following areas:

- investigating, finding and sanctioning cases of discrimination;
- monitoring cases of discrimination;
- providing specialised assistance to victims of discrimination.
- initiating amendment of laws and secondary legislation to ensure harmonisation with ratified international agreements
- particular monitoring of the situation, and protecting the constitutional and legal rights, of detainees, persons in pre-detention, and individuals who are in correctional and educational-correctional institutions²²²
- making opinions and recommendations to government bodies
- initiating disciplinary cases
- initiating criminal procedures

The mandate of the Ombudsman in its wider sense is for human rights protection, while in the narrow sense it is for protection only from violations by state institutions. The Ombudsman can deal with any ground of discrimination.

The mandate of the Commission on Protection from Discrimination will be:

- advice and recommendations on concrete cases of discrimination
- information on the mechanisms for protection from discrimination

²¹⁹ Article 5, Law on Amendments to the Law on the Ombudsman, Official Gazette, No. 114/09

²²⁰ Anti-Discrimination Law, Official Gazette, No. 50/10

²²¹ Article 21, Anti-Discrimination Law, Official Gazette, No.50/10

²²² In those institutions where people with disabilities reside

- initiation of the procedure in front of the relevant state body because of violation of the Anti-Discrimination Law
 - an annual report in front of the Parliament
 - promotion of, and education for, equality, human rights and non-discrimination
 - initiation of legislative changes
 - cooperation with local government
 - recommendations and opinions for the government
 - collecting statistical data, establishment of databases, research and training
 - cooperation with other equality bodies and with international organisations
 - adoption of bylaws for its work and internal structure
- d) *Does it / do they have the competence to provide independent assistance to victims, conduct independent surveys and publish independent reports, and issue recommendations on discrimination issues?*

The Ombudsman has the rights to receive individual complains, to investigate, to provide independent assistance to victims, to make recommendations and to submit independent reports to the media and the Parliament.

The Ombudsman is empowered to conduct special research and investigations on concrete issues.

The Commission on Protection from Discrimination will have the right to receive individual complaints, to investigate, to provide independent assistance to victims, to make recommendations and to initiate procedures to establish the responsibility of people who will not obey its recommendations.

- e) *Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?*

According to Article 13, the Ombudsman can act on request from an individual or *ex officio*. However, he cannot intervene in a court case (see part 6.2 of this Report).

When the Ombudsman will conclude that violations are made, he/she may:

- *Make recommendations, suggestions, opinions and indications on how to end the detected violations*
- *Propose retrial (reopening of the case)*
- *Initiate disciplinary proceedings against officials or responsible persons*
- *Apply to the competent public prosecutor and to initiate criminal procedures*²²³

The Commission does not have the legal authority to bring discrimination complaints or to intervene in legal cases concerning discrimination in court.

²²³ Article 32, Law on the Ombudsman, Official Gazette, No. 60/03

Is / are the body / bodies a quasi-judicial institution? Please briefly describe how this functions. Are the decisions binding? Does the body /bodies have the power to impose sanctions? Is an appeal possible? To the body itself? To courts?) Are the decisions well respected? (Please illustrate with examples/decisions)

The state organs are obliged to implement the Ombudsman's recommendations.²²⁴ If state bodies do not respond, the Ombudsman has the right to inform the higher responsible body, the Parliament and the public through the media.

On a declarative level (Articles 28 and 29 of the Anti-Discrimination Law), the Commission on Protection from Discrimination can initiate a procedure because of non-implementation of its recommendations. However, it is absolutely unclear to whom this initiative would be addressed and what form the procedure would take.

g) Is the work undertaken independently?

The independence and autonomy of the Ombudsman's office is guaranteed by the Constitution and by law. In practice the election of the Ombudsman very much depends on the will of governing political parties and could easily be threatened by reduction of financial support.

"For carrying out the mandate, the Ombudsman has adequate resources, assets and personnel. The funds for the work of the Ombudsman shall be provided by the Budget of the Republic of Macedonia. The Parliament allocates a specific proportion of the Budget of the Republic of Macedonia for the Ombudsman's Office."²²⁵

h) Does the body treat Roma and Travellers as a priority issue? If so, please summarise its approach relating to Roma and Travellers.

The only special focus of the Ombudsman on Roma issues is translation of the Law on the Ombudsman and several other documents into Roma language.²²⁶

There are no indications that the Commission on Protection from Discrimination will treat Roma as a priority issue in its future work.

²²⁴ Article 34, Law on the Ombudsman, Official Gazette, No. 60/03

²²⁵ Article 48, Law on the Ombudsman, Official Gazette, No. 60/03

²²⁶ <http://www.ombudsman.mk/default.aspx?menu=events&Lan=MK&GroupID=1&EventID=117>



8 IMPLEMENTATION ISSUES

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

Describe *briefly* the action taken by the Member State

- a) *to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)*

The Ministry of Labour has analysed Macedonian non-discrimination legislation and presented the findings on the Ministry website.²²⁷

The Directives and wider EU and international legislation on non-discrimination are also presented on the website.²²⁸

- b) *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) and*

The working group to draft the non-discrimination legislation included NGOs. The Ministry of Labour runs a joint project with several NGOs on non-discrimination and harmonisation of Macedonian legislation with EU standards.

After more than one year of joint work, the Ministry of Labour submitted a quite different draft law on non-discrimination to the Government and to a great extent rejected the work that was carried out in cooperation with the NGOs.

Parallel to the Working Group, a National Coordinative Body on Discrimination composed of representatives of Parliament, Government, NGOs and individual experts was established. The body was designed as a discussion forum and a possible link between NGOs and decision-making bodies. It only began working on the anti-discrimination law at a later stage.

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

Governmental institutions do not have as an objective promoting dialogue with social partners to give effect to the principle of equal treatment within the workplace.

No initiatives have been taken to involve trade unions and employers' organisations in social dialogue on the principle of equal treatment in the workplace.

²²⁷ <http://www.mtsp.gov.mk/?ItemID=21E7AB9648BFC441AFD588BA0183B4A3>

²²⁸ <http://www.mtsp.gov.mk/?ItemID=632045AFBECA7447AA9E0DA123EE19E5>



d) *to specifically address Roma and Travellers*

There are specific activities being carried out to fight discrimination against members of Roma community connected with the Roma decade.²²⁹ A special unit has been established at the Ministry of Labour to work on Roma issues, and eight information centres have been established to ensure proper dissemination of information, and create a contact point for dialogue with NGOs.

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

a) *Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment? These may include general principles of the national system, such as, for example, 'lex specialis derogat legi generali (special rules prevail over general rules) and lex posteriori derogat legi priori (more recent rules prevail over less recent rules).*

No, there are no such mechanisms.

b) *Are any laws, regulations or rules that are contrary to the principle of equality still in force?*

Answering this question would require careful scrutiny of all legislation in relation to the new Anti-Discrimination Law.

²²⁹ <http://www.mtsp.gov.mk/?ItemID=FF5ABCD0FB50E44BACE7E5044640B7C6>



9 CO-ORDINATION AT NATIONAL LEVEL

Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?

At the present moment this is the Ministry for Labour and Social Policy.²³⁰

²³⁰ <http://www.mtsp.gov.mk/?ItemID=21E7AB9648BFC441AFD588BA0183B4A3>



Annex

- 1. Table of key national anti-discrimination legislation**
- 2. Table of international instruments**

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Name of Country: Macedonia

Date: 31 December 2008

Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrative/Criminal Law	Material Scope	Principal content
This table concerns only key national legislation; please list the main anti-discrimination laws (which may be included as parts of laws with wider scope). Where the legislation is available electronically, provide the webpage address.	Please give month / year			e.g. public employment, private employment, access to goods or services (including housing), social protection, social advantages, education	e.g. prohibition of direct and indirect discrimination, harassment, instruction to discriminate or creation of a specialised body
Law on Prevention of and Protection from Discrimination (the Anti-Discrimination Law)	04/2010 Implementation suspended until 01/2011	Sex, race, colour of skin, gender, belonging to a marginalised group, ethnicity, language, citizenship, social origin, religion or religious belief, other sorts of belief, education, political affiliation, personal or social status, mental	Civil law	public employment, private employment, access to goods and services, social protection, education	prohibition of direct and indirect discrimination, harassment, instruction to discriminate, reasonable accommodation, creation of a specialised body



Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrative/Criminal Law	Material Scope	Principal content
		or physical disability, age, family or marital status, property, health condition, or any other ground or stipulated by law or ratified national treaty (further on: discriminatory ground)			
Labour Law (revised) http://pravo.org.mk/documentDetail.php?id=285&gid=79&tid=1&page=documentlaws.php	02/2010	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	Public employment, private employment	Prohibition of direct and indirect discrimination, harassment
Law on Amendments to the Law on Child Protection http://pravo.org.mk/documentDetail.php?id=11&gid=91	01/12/09	race, colour of skin, sex, language, religion, political or other opinion,	Civil	Social protection, social advantages	Prohibition of direct and indirect discrimination, harassment,



Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrative/Criminal Law	Material Scope	Principal content
&tid=1&page=documentlaws.php		national, ethnic or social origin, cultural or other origin, property, disability, birth or other status of the child or his/her parent or legal guardian.			
Law on Voluntary Fully Funded Pension Insurance http://pravo.org.mk/documentDetail.php?id=791&gid=29&tid=1&page=documentlaws.php	01/01/08	Sex, race, colour skin, language, faith and religion, political or other affiliation, national or social origin, belonging to a national or ethnic minority, property, family, health and age.	Civil	Social protection, social advantages,	Prohibition of direct and indirect discrimination,
Law on Social Protection. http://pravo.org.mk/documentDetail.php?id=4642&gid=91&tid=1&page=documentlaws.php	01/07/09	Sex, race, colour, nationality, ethnicity, social status, political, religious, cultural, language, property and social	Civil	Social protection, social advantages,	Prohibition of direct and indirect discrimination,



Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrative/Criminal Law	Material Scope	Principal content
		background, disability and origin			
Law on the Ombudsman, Law on Amendment to the Law on the Ombudsman,	09/ 2003 09/ 2009	Sex, race, colour, national, ethnic, social, political, religious, cultural, language, property and social background, disability and origin	Administrative	Protection	Creation of a specialised body
Law on Employment of the People with Disabilities Changes and amendments	06/2000 07/2005 12/2005 03/2007 07/2008 1 2/2008 08 /2009	Disability	Civil	Public employment, private employment,	Exceptions from discrimination



ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country: Macedonia

Date: 31 December 2008

Instrument	Signed (yes/no)	Ratified (yes/no)	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	Yes	Yes	Yes	Yes	Yes
Protocol 12, ECHR	Yes	Yes	Yes	Yes	Yes
Revised European Social Charter	Yes	No		Ratified collective complaints protocol?	
International Covenant on Civil and Political Rights	Yes	Yes	Yes	Yes	Yes
Framework Convention for the Protection of National Minorities	Yes	Yes	Yes	Yes	Yes
International Convention on Economic, Social and Cultural Rights	Yes	Yes	Yes	Yes	Yes



Instrument	Signed (yes/no)	Ratified (yes/no)	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
Convention on the Elimination of All Forms of Racial Discrimination	Yes	Yes	Yes	Yes	Yes
Convention on the Elimination of Discrimination Against Women	Yes	Yes	Yes	Yes	Yes
ILO Convention No. 111 on Discrimination	Yes	Yes	Yes	Yes	Yes
Convention on the Rights of the Child	Yes	Yes	Yes	Yes	Yes
Convention on the Rights of Persons with Disabilities	Yes	No			