



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

COUNTRY REPORT 2011

Former Yugoslav Republic of Macedonia (FYROM)

BILJANA KOTEVSKA

State of affairs up to 1st January 2012

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/law/national-legislation/country-reports-measures-combat-discrimination>

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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.

Former Yugoslav Republic of Macedonia (FYROM)¹ is a unitary state with a political system closest to a semi-parliamentarian model. It is a civil law country which adopts the monism principle regarding the relationship between international and municipal law. International law is considered part of the municipal legislation, and is superior to the domestic laws and bylaws.² Additionally, the Law on Courts states that in individual cases, if deemed fitted and appropriate, the court can use the final verdicts of the European Court for Human Rights (ECtHR), International Criminal Court (ICC), or any other international court with jurisdiction over the country.³ Although international law in theory is directly applicable in the country, references to it in the jurisprudence of the domestic courts are scarce.

The Constitution enforces the principle of separation of powers. The three branches of power are: legislative, executive and judicial branch. Local governance⁴ in the country is organized in local self-government units: municipalities (eighty four in total) and the City of Skopje (as a separate local self-government unit).

The legislative is represented by the Assembly of the Republic, whose members are elected on general, direct and free elections and by secret ballot. The Assembly has, among others, the power to adopt and amend the Constitution, ratify international treaties as well as to adopt and amend laws. There are special procedures in place aiming to secure that no law touching upon issues of relevance for the non-majority ethnic communities in the country shall be adopted without them.

¹ The constitutional name of the country is 'Republic of Macedonia'. However, pending settlement with Greece on the (on-going) name dispute, under the UN Resolution A/RES/47/225, the country was admitted as UN member under the temporary reference "the former Yugoslav Republic of Macedonia", which is the term used by the European Commission, thus also used for the purposes of this report.

² Article 118 of the Constitution states: "International agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law". Source: Constitution of the Republic of Macedonia. Official Gazette of the Republic of Macedonia. *Official Gazette of the Republic of Macedonia Website*. <http://www.slvesnik.com.mk/WBStorage/Files/USTAV-eng.pdf>. Last accessed: 07 March 2012.

³ *Закон за судовите* [Law on Courts]. Official Gazette of the Republic of Macedonia. No. 58/2006, 35/2008, 150/2010. Art.18(5).

⁴ Undergoing process of decentralisation foresees further transfer of competences from central government to units of local self-government in phases.



This voting key is called a Badenter principle, and it requires two-thirds of the votes of the members with an affiliation to one of the non-majority ethnic communities to adopt any decision. Within the frame of the Assembly, there is a Standing Inquiry Committee on Human Rights. This is a political body, tasked to follow and alert on developments related to Human Rights.

The executive is represented by the President (who holds rather ceremonial competences) and the Government (with fifteen ministries, four deputy-Prime ministers and four ministers without portfolio). President is elected on general, direct and free elections and by secret ballot.

The President gives the mandate for Prime Minister to the political party with largest number of seats in Parliament that appoints a candidate-Prime Minister and government, which is appointed by the Assembly. Within the government, several ministries share competences related to Human Rights. In order to improve the coordination and communication among the government sections on key Human Rights issues, an Inter-ministerial body on Human Rights was established, seated in the Ministry of Justice. Aside from this body, and of relevance to this report, it is important to note the role of the Ministry of Labour and Social Policy, which is tasked with the coordination and development of non-discrimination activities.

The judiciary consists of the courts. There is one administrative court, 27 courts of first instance (14 with basic competences, and 13 with expanded competences), 4 courts of appeal, and one Supreme Court. Aside from this, there is the Constitutional Court, with primary competence to decide on constitutionality of laws and bylaws.

Citizens have the right to lodge “Requests for protection of Human Rights and freedoms” when they deem they have been discriminated against on the grounds stipulated in the Constitution. This is a procedure based on urgency, and is envisaged as a mechanism to safeguard the set of rights laid out in the Constitution from unconstitutional acts (laws and bylaws). However, this mechanism has not proven to be much effective. Notably, in the over fifteen years of existence of the Constitutional Court, it found only in one case that a right enshrined in the Constitution was breached.

Criminal procedure is an option for the discrimination cases which amount to a criminal offence. It is important to note that initially only the Public Prosecutor has the option to initiate a criminal case. Only after the Prosecutor's Office has established that it cannot undertake proceedings 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 criminal procedure can be initiated or undertaken under Article 417 of the Criminal Code⁵ entitled “Racial and other discrimination”. The

⁵ *Кривичен законик* [Criminal Code]. Official Gazette of the Republic of Macedonia. No. 37/1996, 80/1999, 04/2002, 43/2003, 19/2004, 81/2005, 60/2006, 07/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011.



'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.

Protection through litigation can be undertaken under labour legislation. The recently amended Labour Law⁶ covers all the Directive Grounds (race or ethnic origin, religion or 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 mobbing⁷ are to be considered discrimination. There are two routes that individuals seeking protection in cases of discrimination in the field of social protection (social care, social prevention, non-institutional and institutional protection, financial assistance, etc.) can take. One is the possibility for 'the applicant or user of social protection to seek protection from a 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 euro. There are still no records of either litigation or misdemeanour fines. 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.

There was no comprehensive legislation on anti-discrimination until 2010. Measures to combat discrimination were found scattered in various laws. Law on prevention and protection against discrimination was adopted in April 2010. Subject to severe critique,⁸ the implementation of the law commenced on 01 January 2011.

⁶ *Закон за работни односи* [Labour Law], Official Gazette of the Republic of Macedonia. No. 62/2005, 161/2005, 139/2005, 44/2006, 66/2006, 16/2007, 57/2007, 206/2008, 161/2008, 63/2009, 114/2009, 130/2009, 149/2009, 10/2010, 47/2011.

⁷ Mobbing is psychological harassment in relation to employment.

⁸ For more, see: "How Macedonia can keep pace with European standards for prevention and protection against discrimination". CRPRC Studiorum, Policy Brief Series, 2010.

<http://studiorum.org.mk/en/?p=688>. Last accessed: 12 March 2012.

An issue one must bear in mind is the terminological confusion⁹ that exists in the Macedonian legal system. Various terms are used to refer to seemingly equivalent but in essence various terms.

The Constitution and the laws are not consistent in the terminology they use in relation to discrimination and grounds of discrimination. There are also various definitions of basic terms in the law. These definitions are of: affirmative measures, discrimination, person, architectural surrounding, marriage, equality, effective protection, legitimate (objectively justified) aim, legitimate interest, marginalized group, adjustments of infrastructure and services.

Set of positive actions have been developed in the country, as a result of the 2001 armed conflict and the signing of the Ohrid Framework Agreement (OFA). OFA was signed, *inter alia*, with an aim to advance the position of minority communities in the country, and to preserve and reflect the multi-ethnic character of the country in public life, including through actions directed towards non-discrimination and equitable representation. This agreement was reflected in the Constitution via amendments,¹⁰ as well as via numerous laws that relate to equality on ethnic grounds. These changes regulate, *inter alia*, the use of language and the provision of 'equitable' representation in public administration and public institutions. The fundamental values of the Constitution (Article 8) were enlarged by introducing the principle adequate and equitable representation of citizens from 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 comes into force if and when a minimum of 20 per cent of the population belongs to a particular minority ethnic group.¹¹ All these provisions are restricted exclusively to its citizens. The changes to the Constitution of 2001 also introduced some changes in the mandate of the Ombudsperson's office. The office was tasked to, *inter alia*, safeguard the principles of non-discrimination, and adequate and equitable representation of communities in state structures, local government bodies, and public institutions and services.

⁹ The author would like to draw the attention to several terminology inconsistencies regarding the terms used for grounds of discrimination. These are:

- Disability: Constitution 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.
- Gender: sex and gender are interchangeably used on occasions.
- Sexual orientation: another term that could be encountered for this ground is "sexual direction" (Art. 6, para. 1 of Law on Labour Relations, and Art. 9 of Law on Volunteering).

¹⁰ Constitution of the Republic of Macedonia. Official Gazette of the Republic of Macedonia. *Official Gazette of the Republic of Macedonia Website*. <http://www.slvesnik.com.mk/WBStorage/Files/USTAV-eng.pdf>. Accessed on: 07 March 2012. Amendments IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII and XVIII.

¹¹ *Ibid.* Art.7.

Cooperation with NGOs remains dubious. The practice of cooperation (including NGOs in public and/or legal policy consultation processes, on projects, provision of services, capacity building activities, etc) of the government with selected NGOs continues. Two most recent examples were the strategy on equality, whose draft was presented at a press-conference and was not subject to public consultations, and only selected NGOs were included in the consultations (so were representatives of IGOs in the country);¹² and the attempt to push for the adoption of the Law on Youth Organisations, the draft of which was prepared in consultation with only selected organisations.¹³ Moreover, there have been cases of movements of citizens, or organisations presenting themselves as self-organised civic movements or NGOs, when they actually most probably are Government-Organized Non-Governmental Organization (GONGOs). Their role is usually to show up in public to defend government policies and positions as needed. The most obvious example of such practice in 2011 was an NGO previously largely unknown to the public or to people in the NGO sector, which stood against abortion, and the counter movement organised to the ‘Movement against Police Brutality’ (movement of young people self-organised via the social networks after a young man was beaten to death by a member of the special forces of the police on the main square in Skopje, during the winning elections rally of the ruling party; the murder that was kept secret for over 24 hours).¹⁴ This practice seems to have mirrored itself in the practice of the opposition which seems to ‘produce’ its own “NGOs”.¹⁵

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.

¹² See: *Радио слободна Европа - Radio Free Europe*. ‘Владата не признава сексуална ориентација’ [*The Government does not recognise sexual orientation*]. 16.11.2011. <http://www.makdenes.org/content/article/24393126.html>. Last accessed: 16.04.2012. In the end, the draft-version of the equality strategy was not adopted, and the draft-text was placed online at the website of the MLSP for consultations end of February 2012. No additional activities for public consultations have been announced thus-far.

¹³ After the reaction of forty-five NGOs, led by Младински образовен форум [*Youth Education Forum*] the biggest and one of the oldest youth organisations in the country, the law was withdrawn from Parliament adoption procedure, in order for a new draft to be prepared, in the course of which NGOs will be able to participate freely. Source: *Нова Македонија*, daily newspaper ‘Законот за млади повлечен на доработка’ [*Law on Youth Withdrawn for Re-drafting*]. 01.11.2011. <http://www.novamakedonija.com.mk/NewsDetal.asp?vest=11111838587&id=9&setlzdanie=22419>. Last accessed: 16.04.2012

¹⁴ Source: *Telma*, television. ‘Протести и контра-протести’ [*Protests and Counter-Protests*]. 20.06.2011. <http://telma.com.mk/index.php?task=content&cat=1&rub=6&item=8973>. Last accessed: 16.04.2012.

¹⁵ *Радио слободна Европа - Radio Free Europe*. ‘Протести и контра-протести’ [*Protests and Counter-Protests*]. 27.01.2011. <http://www.makdenes.org/content/article/2289001.html>. Last accessed: 16.04.2012



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.

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.

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.

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

- In general:
 - The Constitution and the laws are not consistent in the terminology they use on discrimination and grounds of discrimination. This could jeopardise legal certainty.
 - The Constitution and the laws proscribe different procedures and rather vague sanctions.
- The Constitution:
 - Principle of equality is foreseen only for citizens of the country.
 - It contains a closed list of grounds for protection against discrimination, and disability, age and sexual orientation are not part of this list. Belief is part of this provision, however only the political and religious belief.¹⁶
 - Terminology used in the Constitution for people with disabilities cannot be considered as in compliance with the spirit of the directives.
- Anti-discrimination Law:
 - Essential weaknesses:
 - The object of the Law is not precisely defined. This resulted in adopting an Anti-discrimination Law which does not aim to contribute to the upholding of the principle of equality, which lies in the essence of the Directives.
 - The area of implementation of the Law is not precisely defined.
 - The Law contains a list of grounds in an open-ended provision. However, it does not explicitly include all standard EU grounds of discrimination. Sexual orientation is not listed as a protected ground.¹⁷

¹⁶ From other grounds protected on EU level, gender is also not part of this provision, but sex.

¹⁷ There was a case, though, on which the Commission acted, where it considered sexual orientation as protected ground. See section '0.3 Case Law' for details.

- According to the Directives, persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish only facts from which it may be presumed that there has been discrimination. The Law, places a huge part of the burden in proving discrimination to the complainant, asking for submission of “facts and proofs from which the act or action of discrimination can be established”,¹⁸ unlike the Directives which set a requirement for establishing only facts. This means that although the law claims that it is not the complainant that is to prove the facts but the respondent, we cannot say it is providing for a reversed burden of proof as a step towards proving the facts is placed on burden of the complainant by asking for proofs aside from laying out of all known facts in relation to the case and leaving the respondent to show these facts as non/existent (i.e it makes a step from *onus proferendi* to *onus probandi*).
 - Unlike the EU Directives which state that "Member States shall encourage dialogue with non-governmental organizations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on grounds foreseen in the Directives, with a view to promoting the principle of equal treatment", the national legislation does not mention cooperation with NGOs.
 - The forms of discrimination as well as their definitions are not fully harmonized with the European ones. The definition of direct discrimination is unnecessarily complicated.
 - The Law contains a wide, imprecise list of exceptions from discrimination. Such a list opens space for legal uncertainty.
 - The mechanism for protection foreseen in the Law is not precisely defined. Selection of members of the equality body is prone to political influence. Moreover, the competence of the members cannot be secured as the law does not require strictly for education and practice related to ‘human rights’ but to social sciences in general. Such provision can cause problems in practice.¹⁹
 - The provisions on the sanctions foreseen in the law cannot be considered to be good grounds for making effective, dissuasive and proportionate sanctions.
- Technical weaknesses:
- The Law contains a list of definitions of terms used in the law which added to terminological confusion already existing from before instead of

¹⁸ Закон за спречување и заштита од diskriminacija [Law on Prevention and Protection against Discrimination], Official Gazette of the Republic of Macedonia, No.50/10. Art.25 (para.2), 38.

¹⁹ This was already the case with the establishing of the Commission for Protection Against Discrimination. For more on this, please see: Flash Report, “The Assembly of the Republic of Macedonia appointed the members of the Commission for Protection against Discrimination”, (01.02.2011). Available at: http://www.non-discrimination.net/content/MK-7-Members_of_first_equality_body_appointed.pdf. Last accessed: 10.03.2012.

- contributing to its resolving. This list also contained terms not used in the law at all.
- Legal terms and key concepts were unnecessarily redefined (for example family).
 - The Law did not foresee any transitional provisions, preparatory activities for commencement of the implementation of the law, nor any deadlines for initiation and completion of these activities.
 - The Law did not foresee procedures for unification of provisions, notably nulling or amending provisions in other laws which are not in line with this law as a *lex specialis*.
 - Other laws:
 - Other laws are not fully in line with the Anti-discrimination Law, nor with the Directives (in terminology they use, listing protected grounds, definitions on direct discrimination, omitting victimisation, social dialogue, etc).
 - An exception to this would be the Labour Law which needs very few amendments to be in line with the Directives. This would be amending the definition on harassment, which is not completely in accordance with the Directives,²⁰ adding provisions on instruction to discriminate, as well as clarifying possibilities for positive actions and reasonable accommodation for people with disability.²¹

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

Date of decision

Name of the parties

Reference number (or place where the case is reported).

Address of the webpage (if the decision is available electronically)

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

→ 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 (also beyond employment on the grounds of

²⁰ The Law on Labour Relations definition refers to establishing behaviour, instead of creating an offensive environment. Source: *Закон за работни односи* [Labour Law], Official Gazette of the Republic of Macedonia. No. 62/2005, 161/2005, 139/2005, 44/2006, 66/2006, 16/2007, 57/2007, 206/2008, 161/2008, 63/2009, 114/2009, 130/2009, 149/2009, 10/2010, 47/2011.

²¹ *Закон за работни односи* [Labour Law], Official Gazette of the Republic of Macedonia. No. 62/2005, 161/2005, 139/2005, 44/2006, 66/2006, 16/2007, 57/2007, 206/2008, 161/2008, 63/2009, 114/2009, 130/2009, 149/2009, 10/2010, 47/2011. Art.9.

Directive 2000/78/EC), 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.

Brief note:

- Availability of cases for public: publishing court practice online is continuing slowly. For now, full publication online and in print is available only of the verdicts of the Constitutional Court. The Supreme court verdicts are also available online, and are published annually in print hardcover editions. Although all courts have functioning websites, currently only the appellate courts and a few courts of first instance have websites on which the most recent cases are posted, with older cases gradually being added. In all uploaded 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.

- Cases presented here coming from the courts' practice are the only cases, rather than important cases. This is so because cases on discrimination brought to judicial or quasi-judicial institutions are (as by a rule) in very small numbers. No institution of the type afore mentioned is an exception to this rule and in 2010. Constitutional court received 230 cases, out of which 9 were in relation to protection of Human Rights and fundamental freedoms (protection against discrimination falls within this category), which was the lowest percentage by category. The percentage of cases filed to the Ombudsperson is the lowest on cases pertaining to discrimination.

- Such situation with legal practice clearly does not allow identification of any trends and/or patterns in cases brought by Roma and Travellers.

Name of the equality body: Commission for Protection Against Discrimination

Date of decision: 21 July 2011

Name of the parties: Destanov Destan v OU Krste Petkov – Misirkov and SOU Kosta Susinov, Radovish

Reference number: 07-41/2

Brief summary: A person claimed direct discrimination on grounds of ethnicity during the recruitment process in the public sector. Applicant is a graduated teacher of 'physical education' of Turkish ethnicity, and has applied for a position of a teacher of physical education to a class being taught in Turkish language in a Turkish (mother tongue) class in one primary school and one high school. He raised the issue before the Commission for Protection against Discrimination as the person who was eventually elected did not speak the Turkish language at all, as required in the job announcement. Decision of the body: The Commission for protection against discrimination (CPAD) decided to discontinue the procedure concerning

discrimination by the primary school, as the school annulled the recruitment after the Commission drew the school's attention on the issue.²² For the case regarding discrimination by the secondary school it also discontinued the procedure, as a court procedure had been initiated in parallel on the same issue.¹ A first instance's decision is expected for most probably end of 2012. There was no decision at the time of writing.

Name of the equality body: Commission for Protection Against Discrimination

Date of decision: 29 June 2011

Name of the parties: Coalition for sexual and health right of marginalized communities v Ministry of Education and Science and a group of authors

Reference number: 02/27/11

Brief summary: Coalition for sexual and health rights of marginalised communities (the Coalition) raised a case against Ministry of Education and Science (MES) and a group of authors in front of the Commission for protection against discrimination, claiming a Pedagogy textbook, in use for third year secondary education (students age might be from 16 to 18 years of age), contains discriminatory content²³ on grounds of sexual orientation. List of textbooks approved for use in primary and secondary education is compiled by the National Commission on Textbooks (NCT) established by the Government (these textbooks previously undergo a review procedure by special review committees selected by the NCT).

The Coalition claims legitimate interest on grounds of its organizations' objectives and mission. It asks from Commission for protection against discrimination to establish discrimination on grounds of sexual orientation, by practice of use of the 'Pedagogy' textbook, to recommend to the MES to withdraw the textbook, and to publicly apologise for the discrimination on ground of sexual orientation; the Coalition also demanded that the 'Commission for protection against discrimination compels the MES to revise all textbooks in use in the educational system in Macedonia [in order to clean the content from such discriminatory content].'

Elaborating on its opinion and recommendation, Commission for protection against discrimination makes way for setting of two important practices by utilising the following legal possibilities:

²² Opinion of the Commission for Protection against Discrimination. 21.07.2011. On file with author.

²³ Notably, the textbook in a chapter on "Contemporary principles of education", subchapter 'The backside of the sexual life', in its sections on 'Homosexuality and lesbians' states they are 'variations of sexual urge and its backsides, manifesting themselves in a turn of the individual towards a sexual partner from the same sex. It can be present at both male and females, although with females it is more rare. Amongst persons with such orientation with both sexes there are many neurotic and psychotic persons. For all abovementioned negative incidences [meaning also homosexuality and lesbians] with regards to sexual life point out to the fact that these participants in such, abnormal sexual life, are persons with psychotic difficulties and obstacless'. (Source: "Petition of the Coalition on sexual and health rights of marginalised communities submitted to the Commission for protection against discrimination. 18 March 2011, Skopje. *On file with author.*).

- 1) Commission for protection against discrimination shows that it is ready to put in practice the provision which states that although the deadline foreseen for initiation of a procedure has well passed (three months from the violation, or one year since learning about the violation), it shall evoke art.25, para.6 of the Anti-discrimination Law under which it can initiate a procedure even after this deadline if it finds the case to be of such importance that it is necessary and purposeful to undergo the procedure.
- 2) While looking into Art.3 of the Anti-discrimination Law on discrimination grounds the Commission for protection against discrimination underlines that although sexual orientation is not explicitly mentioned as a ground for discrimination, it takes into consideration that the provision is an open ended one, which, in its opinion, clearly points to other grounds established by law, or a ratified international treaty (later on in the text, it makes a reference to Art.14 and Protocol 12 of the ECHR and to the European social charter).

In its opinion, Commission for protection against discrimination established that the content of the text book presents harassment (which under national legislation is a form of discrimination)²⁴, creates a feeling of humiliation, and harms dignity of a group of individuals, on grounds of a discriminatory ground, conducted by the MES and the group of authors of the textbook. It issued a recommendation to the MES to revise the content of the textbook in relation to homosexuality, in a non-discriminatory and non-harassment manner.

Follow up on the case: In a reply to the communication from the Commission for protection against discrimination, with which it notifies the MES of its opinion and recommendation, MES informs that the National commission on textbooks has accepted the opinion of the Commission for protection against discrimination, and that a revision of the textbook has been completed. This commission has, as stated in this communication, notified the publishing house and the authors of the needed revision, and their obligation to prepare the textbook for the school year starting 2011, vesting also an obligation to submit to it a copy of the revised edition of the textbook.²⁵

Name of the court: Court of First Instance “Skopje I”

Date of decision: 10 March 2011

Name of the parties: Jelica Makazlieva, Marija Kostova and Aneta Bakarovska v Irena Cvetkovic

Reference number: case not reported online at court’s website

Brief summary: Irena Cvetkovic, Project Coordinator at the Coalition for sexual and health rights of marginalised communities (see case from the Commission above), a human rights activist, columnist and blogger, was accused for libel and insult after

²⁴ Art.7 is on Harassment and is part of ‘Chapter II: Forms of Discrimination’. (Law on prevention and protection against discrimination, 2010).

²⁵ “Reply to the Ministry of Education and Science to the Opinion of the Commission for protection against discrimination. 12 July 2011, Skopje. *On file with author.*”

publishing a column in a daily newspaper criticising homophobic statements in pedagogy textbook that was used for teaching third year high school graders.²⁶ The three authors of the textbook brought the case to court. The court decided in favour of Cvetkovic, dropping all charges against her.

Name of the court: Shtip Appellate Court

Date of decision: 28 January 2010

Name of the parties: I.P. vs. SOU G.V.

Reference number: ROZh 646/09

Address of the webpage: <http://www.asstip.mk/Odluki.aspx?odluka=1940>

Brief summary: Plaintiff, presented himself as job applicant, claims discrimination in area of employment (does not identify any discrimination ground) as being the only one of the job applicants that was not notified of the outcome of his job application, and seeks damages (on grounds of lost gain) amounting to approximately 70.000 MKD (approximately 1.100 EUR). The plaintiff found himself discriminated since all other applicants for a job position were notified of the outcome, aside from him. Investigation reveals that the defendant never received a job application from the plaintiff. The court rejects the appeal on the grounds of facts provided which point that the plaintiff was basically not an applicant for a position to the defendant.

Name of the court: Bitola Appellate Court

Date of decision: 11 May 2010

Name of the parties: F.S vs. F. **Reference number:** ROZh 324/10

Brief summary: Plaintiff claims discrimination on grounds of membership in the Union, since he and Z.V. (see case below) were fired from the company after participating in a strike. However, the court found that F.S was fired because of participation in a strike that was organized not in accordance with the laws and the collective agreement, which is according to the court in accordance with the Law on Labour Relations.

Name of the court: Bitola Appellate Court

Date of decision: 11 May 2010

Name of the parties: Z.V. vs. F.

Reference number: ROZh 245/10

Brief summary: Plaintiff claims discrimination on grounds of membership in the Union, since he and F.S. (see case above) were fired from the company after participating in a strike. However, the court found that Z.V. was fired because of participation in a strike that was organized not in accordance with the laws and the collective agreement, which is according to the court in accordance with the Law on Labour Relations.

²⁶ The original column: Cvetkovic, Irena. *Учебници за огрев* [Textbooks for Firewood], (25 June 2009). Daily Newspaper Dnevnik. <http://www.dnevnik.com.mk/default.asp?ItemID=A7F0D8B77FBDA641AC79C0A27BEE8B52>. Last accessed: 12 March 2012.



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?*

In Article 9, the 1991 Constitution deals with equality regardless of sex, race, colour of skin, national or social origin, political and religious belief, 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, language, religion, national or social origin, property or social status.

Compared to the Directives, racial and ethnic origin, and (political and religious) belief²⁷ are covered. Disability,²⁸ age²⁹ and sexual orientation are not included in these provisions. The aforementioned list of protected grounds is not open-ended. The principle of non-discrimination covers all fields from the Directives, however it does not go beyond the material scope of the Directives. Personal scope is limited, as protection under the discrimination clause includes protection only of citizens, not of every individual.

- b) *Are constitutional anti-discrimination provisions directly applicable?*

Constitution states that 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, through a procedure based upon the principles of priority and urgency. According to the 2010 annual report of the Constitutional Court,³⁰ 9 cases were in the field of protection of Human Rights and fundamental freedoms. The Court rejected them all, save one (a case dealing with right to passive vote). The

²⁷ Although belief is stated in this provision as being only limited to political and religious belief, the formulation of Article 16 implies a wider notion of this ground, meaning that could be considered legitimate grounds for initiating an anti-discrimination case at the Constitutional Court. This article guarantees freedom of personal conviction, conscience, thought and public expression of thought. Religious belief is separately further elaborated in article 19 which states that freedom of religious confession is guaranteed, as well as is the right to express one's faith freely and publicly, individually or with others. It continues by presenting the principle of separation of state and church, and noting the possibility to establish schools and other social and charitable institutions, by means of a procedure regulated by law. Source: Constitution of the Republic of Macedonia. Official Gazette of the Republic of Macedonia. *Official Gazette of the Republic of Macedonia Website*.

<http://www.slvesnik.com.mk/WBStorage/Files/USTAV-eng.pdf>. Last accessed: 10 March 2012.

²⁸ Disability is mentioned only in the context of social assistance but not in the equality clause.

²⁹ Age is mentioned as a term only in the context of electoral rights (age 18), the minimum working age (age 15) and the minimum age for the President of the Republic (age 40).

³⁰ At the time of writing of this report, the numbers were not yet available for 2011.



regular/ordinary courts, have a practice of rejecting cases claiming violation of Human Rights, on grounds of the Constitution.

The Constitution also guarantees judicial protection of the legality of individual acts of the state administration, as well as those of other institutions carrying out public mandates (Art.50, para.1). One can conclude from this that the provisions are directly applicable. However, in practice this is not so.

Practice shows that mechanisms foreseen with the laws which enables regular courts to directly apply the constitutional anti-discrimination provision has had no practical use, and that no verdicts have been delivered under this mechanism. In practice courts insist that a lawsuit is brought invoking provisions of specific laws (be it criminal or civil procedures), and tend not to implement directly the Constitution. On the other hand, the Constitutional Court's practice is such that it clearly avoids revising regular court verdicts and decisions. Another side effect of this is that regular courts never request interpretation of constitutional provisions by the Constitutional Court and close to never implement its interpretations.

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.



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.

Anti-Discrimination Law grounds for unlawful discrimination are enumerated in a separate article on grounds of discrimination (Art.3) and are later repeated within the definition of discrimination (Art.5, para.3). Grounds enumerated in Article 3 of the Anti-Discrimination Law are: sex, race, colour, gender, belonging to a marginalized group, ethnic affiliation, language, citizenship, social origin, religion or religious conviction, other forms of belief, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property status, health condition. Article 3 is an open-ended provision. As can be noted, this law covers all the Directives grounds except sexual orientation.³¹ Thus, the full list of grounds is not wider, as the initial minimum core protection is not explicitly ensured by law.

As until 2010 there was no comprehensive legislation on anti-discrimination in the country, the provisions prohibiting anti-discrimination, and containing protected grounds, were scattered throughout many laws. These laws remain in force as such, as the Anti-discrimination Law did not foresee any unification between it (as *lex specialis*) and these other laws. List of grounds have been included in the following laws:

- Law on Courts: article on aims and functions of courts states that courts aim to secure equality, equal rights and non-discrimination on any ground (Art.3, para.1-3); everybody has equal access to the courts (Art.6, para.1); during the election of judges and lay judges, there should be no discrimination on the basis of sex, race, colour of skin, national and social background, political and religious beliefs, or proprietary or social status (Art.43, para.1);

³¹ Omitting sexual orientation as a protected ground added confusion from a practitioners' point of view, given that it is already part of several other laws that cover same fields. These laws include: *Закон за заштита на права на пациенти* [Law on Protection of Patients' Rights], Official Gazette of the Republic of Macedonia. No. 82/2008, 12/2009, 53/2011 (Art. 5, para.2); *Закон за волонтерство* [Law on Volunteering], Official Gazette of the Republic of Macedonia. No. 85/2007, 161/2008 (Art. 9); *Закон за работни односи* [Labour Law], Official Gazette of the Republic of Macedonia. No. 62/2005, 161/2005, 139/2005, 44/2006, 66/2006, 16/2007, 57/2007, 206/2008, 161/2008, 63/2009, 114/2009, 130/2009, 149/2009, 10/2010, 47/2011 (Art. 6, p.1); *Закон за јавно здравје* [Law on Public Health], Official Gazette of the Republic of Macedonia. No. 22/2010, 136/2011. Art.16(5). Furthermore, the aforementioned Law on Public Health was in procedure in Parliament in parallel with the Anti-discrimination law.



- Criminal code: article on breach of equality among the citizens covers sex, race, colour, national or social origin, political and religious belief, property and social position, language or any other personal quality or occurrence (Art. 137, para.1); article on incitement of national, racial or religious hatred, divisions and intolerance covers national belonging, race and religious belief (Art.319, para.1); article on spread of racist and xenophobic materials through computer systems covers racial, colour, national or ethnic origin, or religious belief (Art. 394-r); article on racial and other discrimination covers race, colour, national or ethnic origin (Art. 417, para.1).
- Law on Execution of Sanctions: covers race, colour, sex, language, religion, political or other beliefs, national or social origin, relation, property and social status or other status. Grounds refer to the person whose sanction is being executed. Special notion is made of the religious feelings, personal convictions and moral norms of the persons against whom the sanctions are enforced and which must be respected (Art.4, para.2,3).
- Law on Labour Relations: race or ethnic origin, colour, sex, age, health condition i.e. disability, religious, political or other belief, membership in a trade union, national or social origin, family status, property status, sexual orientation,³² or other personal circumstances (Art.6, para.1).
- Law on Child Protection: race, colour, sex, language, religious conviction, political and other belief, national, ethnic or social origin, cultural and other affiliation, property status, disability, birth, or other status. Prohibition protects both the child and the child's parent or legal guardian (Art.9, para.1).
- Law on Social Protection: sex, race, colour, national, ethnic social, political, religious, cultural, language, property and social belonging, disability and origin (Art.20, para.1).
- Law on Patients' Rights: sex, race, colour, language, religion, political or any other belief, national or social origin, belonging to a national minority, material position, birth origin, sexual orientation or any other status (Art.5, para.2).
- Law on Public Health: race, sex, national or social origin, or property status, religious belief, sexual orientation, or status of a person with disability (Art.16. para.5)
- Law on Volunteering: race, colour, sex, age, health status or disability, religious or other conviction, national or social origin, family status, property status, sexual orientation, and other personal circumstances (Art.9).

³² Please see footnote 6 of this report for a note on term used to refer to sexual orientation.



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, mental or psychological impairments and which hinders the participation of the person concerned in professional life"?*

Although the Anti-discrimination Law devotes an article to defining terms used in the law (Art. 5), it does not define terms for the Directives' grounds.

Grounds are only enumerated as grounds of discrimination (Art.3 and Art.5, para.3). There is no definition of disability in the Anti-discrimination law, thus the Chacon Navas concept is not reflected in it. Sexual orientation is not mentioned at all, however, during the drafting of the law, notion of belonging to a marginalized group (together with the open ended clause) was noted in public debates³³ as a substitute to not mentioning sexual orientation in the law. Marginalized group is defined in the law as a group of individuals unified by a specific position in the society, being object to prejudice, and having special characteristics which make them likely subjected to certain types of violence, and having less opportunities for protection of their rights, or are subjected to an increased possibility for victimisation (Art.5, para.11).

- 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' for the purposes of freedom of religion, or what is a "disability" sometimes defined only in social security legislation)? Is recital 17 of Directive 2000/78/EC reflected in the national anti-discrimination legislation?*

Anti-discrimination Law does not define these terms.

Law on the Legal Position of the Church, Communities of Faith and Religious Groups³⁴ does not define a religion, however provides a definition of "church, communities of faith and religious groups" altogether, defining these three as voluntary communities of natural persons connected by the same religious determination without defining which is what or even what the difference between

³³ Please see: First reading of the Draft-law on Prevention and Protection against Discrimination. Assembly of the Republic of Macedonia. *Website of the Assembly of the Republic of Macedonia*. <http://www.sobranie.mk/ext/exporteddocumentdownloadwindow.aspx?Id=768ff58d-cd24-4c7c-9221-78a20dd7cdf9&t=doc>. Last accessed: 03 March 2012.

³⁴ *Закон за правна положба на црквите, верските задници и религиозни групи* [Law on the Legal Position of the Church, Communities of Faith and Religious Groups]. Official Gazette of the Republic of Macedonia, No. 113/07.

them is. It also defines freedom of belief, thought and consciousness, as a right belonging to every individual that includes freedom to manifest one's own religion or belief, as an individual or with others, publicly or privately.

Definitions of disability or of a person with a disability can be found in several laws, and in view of lack of definition of disability in the Anti-discrimination Law, definitions from other laws can be used in the context of non-discrimination (in the corresponding fields). Law on Social Protection defines a person with a disability as a person with a physical or intellectual³⁵ impairment (Art.17), while the Law on Employment of People with Disabilities finds this to be a person whose disability has been determined by a competent authority (Art.2). This is not further regulated in this law, however one can conclude that the Commission on Determination of Disability (part of the Ministry of Health), as a body that makes decisions on (among others) preconditions for early retirement because of *inter alia* disability is the authority mentioned in this article. Centres for social protection (part of the MLSP) have Committees that include one or more physicians that examine people requesting social assistance on grounds of *inter alia* disability.

Recital 17 can be partially considered as reflected in national legislation. Labour Law contains a list of exceptions from discrimination, which replicates the formulation of the recital, however is limited only to the recruitment, promotion, maintenance in employment, and does not refer to training in any context (Art. 8).

- 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)?*

Anti-discrimination Law does not prescribe any 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?

Multiple discrimination is foreseen in the Anti-discrimination Law, as a grave form of discrimination, and it is defined as discrimination against a person on more (several) discrimination grounds (Art. 12).

³⁵ 'Intellectual' and 'mental' are sometimes used interchangeably; in the case of this law, intellectual seems to be referring to a disability resulting from mental health problems.

No further legal rules or case law exists to deal with situation of multiple discrimination. The Commission for Protection against Discrimination started its work on 01 January 2011.³⁶

- e) *How have multiple discrimination cases involving one of Art. 19 TFEU 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?*

Multiple discrimination was not foreseen in the national legislation until the adoption of the Anti-discrimination Law. In 2011 no such case was reported.³⁷

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 the Anti-discrimination Law, nor in any other national 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 carer 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?*

Anti-discrimination Law does not contain any notion of a prohibition of discrimination based on association, and neither do other laws. In view of this, national law cannot be regarded as 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?*

Anti-discrimination Law defines direct discrimination; however the definition is unnecessarily more complicated than the one in the Directives. Under this law, direct discrimination shall be taken to occur when one person is treated less favourably, or when there is a differentiation, exclusion, or limitation that results or could result in

³⁶ No case law was reported on multiple discrimination until the time of writing of this report.

³⁷ Please see brief note in section 0.3 on online publication of cases. Also, no such case law was reported on multiple discrimination until the time of writing of this report.

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 (Art.6, para.1). As opposed to the simple comprehensive encompassing wording of the definition contained in the Directives, this definition enters in numerations of treatment (which are gradations of less favourable treatment), thus adding risk of excluding gradations not mentioned in the definition if restrictive judicial interpretation is applied. It ties the definition to Human Rights and basic freedoms, which is the formulation contained in the Constitution. Given the weak practice of using international human rights law in domestic courts practices, this could also be interpreted restrictively by courts (meaning only to discrimination by deprivation, violation or restriction of the equal recognition or exercise of rights mentioned in the Constitution).

Before the adoption of the Anti-discrimination Law, direct discrimination was defined in several other laws as well. These were the Law on Labour Relations (Art.7, para.2) replicating fully the definition from the Directives, and the Child Protection Law (Art.9b, para.1) and Law on Social Protection (Art.21, para.1) also presenting definitions in line with the Directives.

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)

Law on Labour Relations prohibits discriminatory criteria and conditions for selection of job candidates, thus it can be considered to prohibit discriminatory job vacancy announcements (Art.7, para.4/1). Given the definitions of what constitutes discrimination under this law, one can draw a conclusion that such acts can constitute direct discrimination.

A job applicant that has not been selected for the position, and that considers herself/himself discriminated against, can initiate procedures before a competent court of law within 15 days of the receipt of the notification from the employer (Art. 181, para.6).

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).

Anti-discrimination Law permits justification of discrimination generally, and does not tie this to single grounds (Art.14). However, several grounds are much more frequent in the justifications numbered, notably religion or belief, age, ethnic origin, gender. The tests that must be satisfied to justify direct discrimination is the same as the one in the Directives.



Prior to the Anti-discrimination Law, legislation only included exemptions from discrimination, and did not use justified direct discrimination as such. This also implies the non-existence of tests to be satisfied to justify direct discrimination.

- 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 does not specify how such a comparison is to be made.

2.2.1 Situation Testing

- a) *Does national law clearly permit or prohibit 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? If the law is silent please indicate.*

The law is silent on this issue. Situation testing is discussed and mentioned only by NGOs that work on non-discrimination.

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

On very few occasions national NGOs tried using situation testing, with the assistance of trainers from European organizations that have expertise in situation testing. These efforts were conducted within the frame of trainings on doing situation testing, and were not part of any systematic application or regular activities. Also, no results were made public, thus no arguments exist on whether these exercises were carefully planned and documented, as well as whether conditions of comparability, fairness and credibility, and representativeness were respected.

- c) *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 as evidence in court have been reported.

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

There is no case law in relation to this issue.

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

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

Anti-discrimination Law fully replicates the definition of indirect discrimination from the Directives. Indirect discrimination on any protected ground is taken to occur when an apparently neutral provision, criterion or practice would put a person or a group at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (Art.6, para.2).

Definitions of indirect discrimination in accordance with the Directives are also defined in Law on Labour Relations (Art.7, para.3), Child Protection Law (Art.9-b, para.2) and Law on Social Protection (Art.21, para.2). An exception is justified if the differentiation is based on criteria and practices objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

- 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?*

Anti-discrimination Law justifies an indirect discrimination if the provision, criterion, or practice can be considered to have a justified aim, and the means of achieving that aim are appropriate and necessary. Lack of judicial practice disables further comprehension of the elements of the tests.

- c) *Is this compatible with the Directives?*

The provision of the Anti-discrimination Law is compatible with 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 how to use comparable data in particular cases such as age discrimination.

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

Differences in treatment based on language have been perceived as potential indirect discrimination on the grounds of racial or ethnic origin. It is often argued that positive actions directed towards ethnic communities which comprise over 20 per cent of the population unjustly privilege when compared to ethnic communities below 20 per cent, given that there is only one ethnic community in the country on state level that is over 20 per cent, making such provisions an apparently neutral provisions. Notably, the Constitution states that the Macedonian language and its cyrillic alphabet is the official language throughout the country and in its international

relations, and any other language and its alphabet spoken by at least 20 per cent of the population is also an official language³⁸ (Art.7 – Amendment V³⁹).⁴⁰

A provision which can be seen as unequal treatment does exist in the Anti-discrimination Law referring to the language in which members of ethnic communities can initiate a procedure in front of the Commission, as well as file their cases. Notably, this law states that the procedure in front of the Commission for the persons living in the local self-government units in which at least 20% of the citizens speak an official language different from the Macedonian language can address the Commission in any of the official languages (Art.25, para.3). The internal subsequent procedure is conducted in Macedonian, as the Commission translates these cases into Macedonian. However, taking into consideration that in the above case a language is taken to be in official use only on local level, as different procedures are valid for state level; and given that the Commission itself does not have local offices in the units of self-government, one can deem that there is an unequal treatment of members of ethnic communities on the basis of their current residence.

To put it simple, this means that a Turk in Gostivar, for example, can address the Commission in Turkish, while a Turk living in Karposh, cannot, or a Roma from Suto Orizari can address the Commission in Roma language, while the Roma from Bitola cannot, although the Commission does not have local branch offices/units. The fact that such provision is in line with other legislation does not change its discriminatory effect.

Several laws, such as the Criminal Procedure Law, Law on Misdemeanours, and the Law on the General Administrative Procedure, also guarantee the use of another language 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 ethnic community that makes up over 20 per cent of the population, the Albanian community, the

³⁸ 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.

³⁹ Constitution of the Republic of Macedonia. Official Gazette of the Republic of Macedonia. *Official Gazette of the Republic of Macedonia Website*. <http://www.slvesnik.com.mk/WBStorage/Files/USTAV-eng.pdf>. Accessed on: 01 March 2012. Art.7

⁴⁰ *Ibid.*

smaller ethnic communities 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. The fact that they cannot use their own languages in criminal and administrative procedures on equal footing like the state and other languages in use is such an example.

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 is to be used alongside the Macedonian language – is not respected. In practice there are examples where ethnic Albanians use only Albanian language and not together with the Macedonian language, as prescribed by law. Ethnic Albanians believe or state that the Ohrid Framework Agreement of 2001 is not being well implemented, and that they are still not fully able to practice their language freely and without any inhibitions.

As opposed to these two, the other ethnic communities in the country which under law can enjoy benefits under the OFA (so-called “small ethnic communities”)⁴¹ are often forgotten, and feel that the OFA is a contract leading to creation of a bi-national state and not towards preserving and advancing multiculturalism in the country.

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?*

Anti-discrimination Law does not regulate the use of statistical evidence to establish indirect discrimination. This was not even discussed in the course of preparation of the draft-law. Statistical evidence is only mentioned in the law as part of the competences of the Commission on Protection against Discrimination (Art.24, para.10). Statistical evidence are also not mentioned in provisions regulating the procedure in front of the Commission nor other procedural laws.

Statistical evidence as such is not mentioned elsewhere in national law. The Law on State Statistics⁴² does not discuss use of statistical data as evidence in general, meaning it also does not mention such possibility in the context of indirect discrimination. Thus, no procedures, conditions for admissibility of such statistical evidence exist, making a breakthrough and usage of such data a distant possibility.

⁴¹ See sections on non-discrimination in 2011 Baseline Study and Policy Report “Effective Political Participation of the Small(er) Ethnic Communication in Local-Self Government in Macedonia” of the CRPRC Studiorum, at: <http://studiorum.org.mk/en/?p=831>. Last accessed: 12 March 2012.

⁴² Закон за државна статистика [Law on State Statistics]. Official Gazette of the Republic of Macedonia, No.54/97; 21/2007, 135/2011.

- 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. It is still rather an issue of neglecting statistics and collection of statistics in total, rather than an issue of courts' reluctance to use statistics.

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

No such case has been reported 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?*

Main legislation in this area is the Law on State Statistics.⁴³ Data are collected covering all the five grounds except sexual orientation. The data are anonymous and as such are not in collision with the Law on Protection of the Personal Data.⁴⁴

The Agency for Civil Servants is obliged⁴⁵ 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 religion or 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. However, they are widely used for designing of strategic policy documents, including design and planning of national action plans (also on positive actions). 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 priorities in relation to the Decade of the Roma.⁴⁶

⁴³ *Ibid.*

⁴⁴ *Закон за заштита на лични податоци* [Law on Protection of Personal Data]. Official Gazette of the Republic of Macedonia, No. 7/2005, 103/2008, 124/2010, 135/2011.

⁴⁵ *Закон за државни службеници* [Law on Civil Servants] Official Gazette of the Republic of Macedonia, No. 59/2000, 112/2000, 34/2001, 103/2001, 43/2002, 98/2002, 17/2003, 40/2003, 85/2003, 17/2004, 69/2004, 81/2005, 61/2006, 36/2007, 161/2008, 06/2009, 114/2009, 35/10, 167/10, 36/2011.

⁴⁶ The full title is "Decade of Roma Inclusion". For more info on the Decade and the MLSP activities, please see: Ministry of Labour and Social Policy. *Ministry of Labour and Social Policy Website*. http://www.mtsp.gov.mk/WBStorage/Files/strategija_romi.pdf. Last accessed: 07 March 2012.



On disability, this applies to the National Strategy on Equalisation of the Rights of 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.*

Under the Anti-discrimination Law harassment shall be taken to occur when there is an act which violates the dignity of a person or group of persons on any of the discrimination grounds, with an aim to or result in violation of the dignity of a specific person or creating an intimidating, hostile, degrading, humiliating or offensive environment (Art.7).

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

- b) *Is harassment prohibited as a form of discrimination?*

Harassment is prohibited as a form of discrimination. It is part of the chapter on forms of discrimination.

- 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?*



Anti-discrimination Law contains an article on invoking and inciting discrimination which also includes instructions to discriminate. Notably, this article states that it considers as discrimination every activity that directly or indirectly invokes, encourages, instructs or instigates another person to commit discrimination (Art.9).

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

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

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.

Anti-discrimination Law tackles the issue of reasonable accommodation in two ways, by first defining adjustment of infrastructure and services and second by defining discrimination against people with disability.

The law defines adjustment of infrastructure and services as an act of undertaking appropriate measures, where needed in a particular case, to enable a person with an intellectual and physical disability to have access to, participate in, or advance in employment, unless such measures would impose a disproportionate burden on the employer (Art.5, para.12). This definition is similar in wording to the Article 5 of Directive 2000/78, however is limited to infrastructure and service. It also does not define what would be a disproportionate burden for employers or whether the availability of financial assistance from the State is to be taken into account in assessing whether there is a disproportionate burden. The second point is the definition of discrimination against people with disability. Notably, the law deems lack



of measures undertaken for removal of obstacles and limitations, or measures for adjustment of infrastructure, space, usage of publicly available resources or participation in public and social life for people with intellectual disability and physical disability to amount to discrimination (Art.8, para.2). However, the law does not go into this issue into more details than this.

The Labour Law does not specifically mention reasonable accommodation for people with disabilities.⁴⁷ Law on Employment of People with Disabilities⁴⁸ also does not contain a definition of reasonable accommodation, but it contains references to accommodation related measures for improving employment conditions and condition for executing of working duties of people with disabilities. The law establishes a duty for the employer to provide for working space, equipment, and other relevant conditions for work and for adaptation of the working environment. Employers' measures undertaken to accommodate people with disability are subjected to inspection and can be fined, however this law makes no special reference as to whether the worker him/herself can request for the above numbered measures to be undertaken.

It also contains '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 others. 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. Measures established under this law can be used by people with disability who have their disability recognised by the Commission for evaluation of the working capability of a person which is part of the Pensions and Disability Insurance Fund (Art.2).

This means that only a limited group of people with disabilities can claim violations of accommodation under this measure. This would be people that have had both their disability recognised by the social security office and are working in the private sector can claim such benefits. The portion of people with a disability that can benefit from such protection is more limited than the group of people who are protected from discrimination on the ground of disability.

According to the Law on employment of people with disability, there is an obligation for the employer to provide adequate conditions for work and to adapt working position depending on the workplace, the type and level of education and type and

⁴⁷ *Закон за работни односи* [Labour Law], Official Gazette of the Republic of Macedonia. No. 62/2005, 161/2005, 139/2005, 44/2006, 66/2006, 16/2007, 57/2007, 206/2008, 161/2008, 63/2009, 114/2009, 130/2009, 149/2009, 10/2010, 47/2011.

⁴⁸ *Закон за вработување на инвалидни лица* [Law on Employment of People with Disabilities], Official Gazette of Republic of Macedonia, No. 44/00, 16/2004, 62/2005, 113/2005, 29/2007, 88/2008, 161/2008, 99/2009, 136/2011.

degree of disability of the employed person with disability.⁴⁹ Additional measures to enhance conditions for employment and work of people with disabilities are the responsibility of the employer.⁵⁰

In the period 2000-2010, 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 people with disability were offered, including exemption from taxes and providing funds for contributions; and financial support for the employer.⁵¹

In order to finance the above mentioned measures, a Special Fund was established which ring-fences 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.⁵²

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.⁵³ 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 people with disability, equipping and adaptation.

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?*

The Anti-discrimination Law has a specific article relating to discrimination of people with disability (Art.8, para.2). Under this article, discrimination of people with mental and physical handicap shall exist even when no measures are undertaken to remove obstacles, or when no measures are made to adjust infrastructure and space, as well as when there are obstacles for these people to use publicly available resources and/or participate in public life. Thus, this law can provide for reasonable accommodation of people with disability outside of employment.

⁴⁹ *Закон за вработување на инвалидни лица* [Law on Employment of People with Disabilities], Official Gazette of Republic of Macedonia, No. 44/00, 16/2004, 62/2005, 113/2005, 29/2007, 88/2008, 161/2008, 99/2009, 136/2011. Art.5.

⁵⁰ *Ibid.* Art.6.

⁵¹ *Ibid.* Art.4.

⁵² *Ibid.* Art.13.

⁵³ *Закон за вработување на инвалидни лица* [Law on Employment of People with Disabilities], Official Gazette of Republic of Macedonia, No. 44/00, 16/2004, 62/2005, 113/2005, 29/2007, 88/2008, 161/2008, 99/2009, 136/2011.

With regards to reasonable accommodation for people with disabilities in the area of housing, the Law on Housing does not present such a requirement (for provisions from the Law on Construction, please see below).

- 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 Anti-discrimination Law classifies lack of reasonable accommodation for people with intellectual and physical disabilities as discrimination (Art.8, para.2). However, the Law on Employment of People with Disabilities and the Law on Construction do not include specific sanctions if proper adaptation is not carried out. This failure is not considered to be discrimination.

- 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)?*

In prison facilities space for inmates to express their religious commitment is provided. Law on Execution of Sanctions states that inmates are allowed to satisfy their religious feelings and needs in accordance with the conditions and possibilities of the institution.⁵⁴ Limited accommodation in respect of religion is also mentioned in Law on Holidays of the Republic of Macedonia.⁵⁵ Under this law vacation days are to be granted for religious celebrations on the basis of the faith of the employee⁵⁶ and for vacation days for specific celebrations of some ethnic communities (Art.2).

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

⁵⁴, *Закон за извршување на санкции* [Law on Execution of Sanctions], Official Gazette of the Republic of Macedonia, No.2/2006, 57/2010 Art.141.

⁵⁵ *Закон за празниците на Република Македонија* [Law on Holidays of the Republic of Macedonia], Official Gazette of the Republic of Macedonia, No. 21/1998, 18/2007.

⁵⁶ In the ECtHR *Kosteski v the former Yugoslav Republic of Macedonia* case, the applicant complained of a breach to Article 9 alone, and Article 14 in conjunction with Article 9 to the ECHR, for being fined by his employer (a state owned company) for one day unauthorised leave, after failing to show up at work on a Muslim religious holiday. The domestic court found that he did not produce evidence of his religious affiliation, while the defence brought evidence that Kosteski, aside from having his way of life not in line with Muslim customs (including diet) he never prior to that year celebrated Bayram, nor did his family celebrate it. The domestic court found that there was no violation by the employer.

ECtHR concluded that the request by the employer was not unreasonable as all circumstances, including the applicant's previous practice, seemed to point that he was in fact aiming to abuse the holidays provision; it found that there was no violation by the State Party. The ECtHR failed, however, to comment further on what kind of proof he could have submitted in favour of his claim. Source: *Kosteski v Former Yugoslav Republic of Macedonia* [2007] 45 E.H.R.R. 31.



The Anti-discrimination Law does not clearly provide for the shift of the burden of proof when claiming the right to reasonable accommodation.

- 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?*

Law on Construction does give possibility for lowering of basic demands for reconstruction and adaptation of a building if this is intended to provide for free access, movement, stay and work of people with disability. It goes even further posing an obligation for construction plans to ensure that the built object shall provide for open access and movement in and over it aiming to free access, movement, stay and work of people with disability.

The Law on Construction requires public buildings to be designed and built in an accessible way. It asks that 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. Anti-discrimination Law states that failure to comply with such legislation (referring also to relevant provisions in any other laws, such as the aforementioned Law on Construction) would be treated as discrimination.

The manner of providing unimpeded access, movement, residence and work for people with disability to buildings should be prescribed by the minister who heads the state authority responsible for performing the work in the field of urban planning. It also states that there is no need for approval to build structures which allow and facilitate the movement of people with disability in the building.⁵⁷ Furthermore, public and business facilities must ensure unimpeded access to persons with a disability as prescribed by this Law within four years of the date of entry into force of this law, and adapt outside staircases for public use within two years of the date of the entry into force of this Law.⁵⁸

- 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?*

⁵⁷ Закон за градење [Law on Construction], Official Gazette, No. 130/2009, 124/2010, 18/2011, 36/2011, 54/2011.

⁵⁸ *Ibid.* Art.170

Except for the Law on Construction (Art.170), other legislation concerning persons with disabilities does not include any duty to provide accessibility for people with disabilities by anticipation.⁵⁹

The Anti-discrimination Law defines reasonable accommodation⁶⁰ and lack of adjustment of infrastructure as a form of discrimination (Art.8). The formulation is 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 notes that the Republic provides particular protection for people with disability and conditions for their involvement in social life (Art.35).

National law provides for special rights for people with disabilities in the fields of employment (special conditions and protection),⁶¹ social protection, health and education. The Anti-discrimination Law declares discriminatory all actions of not allowing people with disabilities or impediments to exercise their rights in the areas of healthcare, marriage and family, education and employment.

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 people with disability.⁶² 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.⁶³

⁵⁹ *Ibid.* Art.170.

⁶⁰ *Ibid.* Art.5 (para.12).

⁶¹ *Закон за работни односи* [Labour Law], Official Gazette of the Republic of Macedonia. No. 62/2005, 161/2005, 139/2005, 44/2006, 66/2006, 16/2007, 57/2007, 206/2008, 161/2008, 63/2009, 114/2009, 130/2009, 149/2009, 10/2010, 47/2011. Art. 8, 137, 177, 178.

⁶² 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).

⁶³ *Закон за вработување на инвалидни лица* [Law on Employment of People with Disabilities], Official Gazette of Republic of Macedonia, No. 44/00, 16/2004, 62/2005, 113/2005, 29/2007, 88/2008, 161/2008, 99/2009, 136/2011. Art.9.

Employees in the shelter companies that are not disabled, are exempted from payment of personal income tax, and shelter companies as a whole are exempt from paying taxes on profits.⁶⁴

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 pretended to employ people with disability (who are not really engaged or paid), used the funds and then liquidated the firms.⁶⁵

b) *Would such activities be considered to constitute employment under national law- including for the purposes of application of the anti-discrimination law?*

Anti-discrimination Law also covers these activities. In addition, the Law on Employment of People with Disabilities does not make a difference in and during the employment of people with disability 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.

⁶⁴ *Ibid.*

⁶⁵ Grujevski Georgi, "Review on the Law on employment of people with disability". Journal of Special Education and Rehabilitation.
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. Last accessed: 10 March 2012.



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?

Former Yugoslav Republic of Macedonia (FYROM) is a candidate for EU membership. Until today, the course of approximation of the legislation has not reached the stage where provisions on distinction between EU and non-EU nationals are incorporated in laws. Until present, no clear plans or indications have been made on how this will be regulated.⁶⁶

On provisions of relevance for non-discrimination, the Constitution sets a requirement of citizenship in order for a person to enjoy the protection of rights under the Constitution, including protection against discrimination. Stricter conditions also apply to residents without a Macedonian citizenship with regards to employment and acquiring social protection.⁶⁷ In other areas including self-employment, access to training and membership in workers' organisations there is no legal inhibition and there are no reports of less favourable treatment. With regard to the Constitution, the approach implemented in practice gives opportunities for foreign citizens to participate in the social and economic life in the country.

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?

National law does not distinguish between natural and legal persons, either for the purposes of protection against discrimination or for liability for discrimination.

The Anti-discrimination Law defines a person as both natural and legal person (Art.5, para.9). As the law uses the term person throughout the law for both protection against discrimination or for liability for discrimination, it is clear that such a distinction is not made. However, there is a distinction when speaking of the sanctions, as fines for misdemeanours are divided on fines for natural and for legal persons and vary on the amount of the fine (Art. 42 to 45).

⁶⁶ A pointer on planned developments in this direction is that special provisions have been inserted in the Law on Internal Affairs which regulate special rules with much eased procedures for short term and long term stay and residence in the country, for EU citizens.

⁶⁷ *Закон за социјална заштита* [Law on Social Protection], Official Gazette of Republic of Macedonia, No. 79/2009, 36/2011, 51/2011. Art.15.



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?

The Anti-discrimination Law clearly states that legal persons are held liable for natural persons that are employed by or are members of a legal person. However, the issue of third parties would depend, at this stage of court practice, on the character of the relationship with the legal person involved and court decisions.

As far as other legislation is concerned, the Labour Law specifies that liability is only on the side of the employer (Art. 181). If the worker believes that she/ he has been discriminated against, the first step would be 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 responsibility for the discrimination. Under the Law on Social Protection, only a legal person can be held liable. Under the Child Protection Law, all those authorised to deal with children's issues, regardless of being natural or legal persons, can be held liable.

3.2 Material Scope

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?

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.

Anti-discrimination Law applies to all sectors of public and private employment and occupation. Articles 6-11 of the Labour Law⁶⁸ prohibit various aspects of discrimination in labour relations and, in general, do not distinguish between different types of actors (public or private, secular or religious). It states that it regulates the labour relations of workers employed by the state, local government, public

⁶⁸ Labour Law - revised [Закон за работни односи – пречитен текст], Official Gazette, No. 16/2010. Art. 6-11.

institutions, public enterprises, institutes, foundations, organisations and other legal and individual employers, unless another law determines otherwise.⁶⁹

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 Servant,⁷⁰ as well as the Law on the Police,⁷¹ the Law on Defence and the Law on Foreign Affairs for labour relations of the employees in the respective ministries, thus leaving very little to the Labour Law.

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 Law⁷² 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 also regulated with the Labour Law.⁷³ It provides very weak protection against discrimination for people with disabilities.⁷⁴ According to this article, when concluding an employment contract the applicant is not obliged to submit a health certificate, though the employer can send her or him for a medical examination.⁷⁵ The only legal limitation is that the examination should be strictly necessarily linked to 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.⁷⁶

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.

⁶⁹ *Ibid.* Art. 3.

⁷⁰ *Ibid.* Art.5.

⁷¹ *Закон за полицијата* [Law on the Police], Official Gazette, No. 114/2006, 06/2009. Art.96 and *Закон за внатрешни работи* [Law on Internal Affairs], Official Gazette, No. 92/2009, 118/2009 (correction), 39/2010, 36/2011, 158/2011. Art.48.

⁷² *Закон за работни односи – пречитен текст* [Labour Law - revised], Official Gazette of the Republic of Macedonia, No. 16/2010. Art.6.

⁷³ *Ibid.* Art.24.

⁷⁴ *Ibid.* Art.25.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.* Art.8.

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.⁷⁷

According to this law, general conditions for employment as a civil servant are general health capability and other conditions specified in the act of systematisation of jobs (Art.13).⁷⁸ None of these laws sets out a procedure to protect against discrimination. However, there is an established system of state inspection which conducts supervision of implementation of the Labour Law, and of other laws and regulations for labour relations, collective agreements and job contracts that regulate the rights and obligations of the employee and the employer, is carried out by the state body responsible for labour inspection.⁷⁹

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.

Labour Law contains a provision stating that for equal work workers should be equally paid. The only category specifically mentioned is women.⁸⁰ 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.⁸¹ So far no cases of discrimination have been reported in the area of salaries.

⁷⁷ *Закон за државни службеници* [Law on Civil Servants] Official Gazette of the Republic of Macedonia, No. 59/2000, 112/2000, 34/2001, 103/2001, 43/2002, 98/2002, 17/2003, 40/2003, 85/2003, 17/2004, 69/2004, 81/2005, 61/2006, 36/2007, 161/2008, 06/2009 114/2009, 35/10, 167/10, 36/2011.

⁷⁸ *Ibid.*

⁷⁹ *Закон за работни односи – пречитен текст* [Labour Law - revised], Official Gazette of the Republic of Macedonia, No. 16/2010. Art.256.

⁸⁰ *Ibid.* Art.108.

⁸¹ *Закон за државни службеници* [Law on Civil Servants] Official Gazette of the Republic of Macedonia, No. 59/2000, 112/2000, 34/2001, 103/2001, 43/2002, 98/2002, 17/2003, 40/2003, 85/2003, 17/2004, 69/2004, 81/2005, 61/2006, 36/2007, 161/2008, 06/2009 114/2009, 35/10, 167/10, 36/2011.

There are three laws dealing with pensions.⁸² However, only one of these contains a prohibition of discrimination. This is the Law on Voluntary Fully Funded Pension Insurance (Art.3).⁸³ It states that voluntary fully funded pension insurance prohibits any discrimination against members on the grounds of sex, race, colour, language, faith and religion, political or other orientation, national or social origin, belonging to a national or ethnic minority, or on the basis of property, family, health and age. However, in the same Law: a company cannot refuse membership of the Voluntary Pension Fund to any employee if the person is at least 15 years old and not more than 70 years of age.⁸⁴ 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. There are no articles on discrimination or equality in the framework Law on Pensions and Disability Insurance⁸⁵ and in the Law on Mandatory Fully Funded Pension Insurance.

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

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 life long 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

⁸² *Закон за пензиско и инвалидско осигурување* [Law on Pension and Disability Insurance], Official Gazette of the Republic of Macedonia, No.80/93, 80/93, 3/94, 14/95, 71/96, 32/97, 24/2000, 96/2000, 50/2001, 85/2003, 50/2004, 4/2005, 84/2005, 101/2005, 70/2006, 153/2007, 152/2008, 161/2008, 81/2009, 156/2009, 83/10, 156/10, 24/2011, 51/2011.; *Закон за доброволно капитално финансирано пензиско осигурување* [Law on Voluntary Fully Funded Pension Insurance], Official Gazette of the Republic of Macedonia, No.07/2008, 124/2010, 17/2011, *Закон за задолжително капитално пензиско осигурување* [Law on Mandatory Fully Funded Pension Insurance], Official Gazette of the Republic of Macedonia, No.29/2002, 85/2003, 40/2004, 113/2005, 29/2007, 88/2008, 48/2009, 50/2010, 171/2011, 36/2011.

⁸³ *Закон за доброволно капитално финансирано пензиско осигурување* [Law on Voluntary Fully Funded Pension Insurance], Official Gazette of the Republic of Macedonia, No.07/2008, 124/2010, 17/2011.

⁸⁴ *Ibid.* Art.94.

⁸⁵ *Закон за пензиско и инвалидско осигурување* [Law on Pension and Disability Insurance], Official Gazette of the Republic of Macedonia, No.80/93, 80/93, 3/94, 14/95, 71/96, 32/97, 24/2000, 96/2000, 50/2001, 85/2003, 50/2004, 4/2005, 84/2005, 101/2005, 70/2006, 153/2007, 152/2008, 161/2008, 81/2009, 156/2009, 83/10, 156/10, 24/2011, 51/2011.

the general prohibition on discrimination in the Labour Law⁸⁶ and laws on different stages of education. National legislation gives everyone equal rights to acquire higher education and to be educated throughout their lives, and equal rights to lifelong learning.⁸⁷

According to the Law on University Graduate Education,⁸⁸ citizens of the country are equally entitled to education in higher educational institutions in the country. The approach to nationality is different, and foreign nationals can use the principle of reciprocity (meaning that if Macedonian students are given national treatment in a certain country, nationals of that country may study in Macedonia as if they were Macedonian citizens). The right to education of stateless persons has still to be determined in law and under ratified international agreements.

The selection of candidates by the university cannot be discriminatory on the grounds of race, colour of skin, sex, language, religion, political or other beliefs, ethnic, national or social origin, property, birth, social position, disability, sexual orientation or age.⁸⁹

The Law on Adult Education states 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 (Art.4).⁹⁰

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

In 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.

⁸⁶ Закон за работни односи – пречитен текст [Labour Law - revised], Official Gazette of the Republic of Macedonia, No. 16/2010. Art.7.

⁸⁷ Закон за високо образование [Law on University Graduate Education], Official Gazette of the Republic of Macedonia, No. 35/08, 103/2008, 26/2009, 83/2009, 99/2009, 115/10, 17/2011, 51/2011. Art.3.

⁸⁸ Ibid. Art.7.

⁸⁹ Закон за високо образование [Law on University Graduate Education], Official Gazette of the Republic of Macedonia, No. 35/08, 103/2008, 26/2009, 83/2009, 99/2009, 115/10, 17/2011, 51/2011. Art.108.

⁹⁰ Закон за образование на возрасните [Law on Adult Education], Official Gazette of the Republic of Macedonia, No.07/2008, 17/2011, 51/2011.

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.⁹¹ 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.

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;⁹² racial and ethnic origin and disability are protected as grounds, while belief, age and sexual orientation are not. According to the Law on Social Protection, the ban is related to both public institutions for social care and private institutions.⁹³ 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’.⁹⁴ In cases of discrimination, there is shift of the burden of proof⁹⁵ and financial sanctions of 3000-5000 euro in national currency are envisaged.⁹⁶

In the Law on Healthcare there are no provisions concerning discrimination.⁹⁷ In the Law on Health Insurance, in Article 2 it is stated that health insurance is mandatory for all citizens on the principles of comprehensiveness, solidarity, equality and effective use of resources under conditions determined by Law.⁹⁸

⁹¹ *Закон за работни односи – пречитен текст* [Labour Law - revised], Official Gazette of the Republic of Macedonia, No. 16/2010. Art. 183, 184, 185, 198.

⁹² *Закон за социјална заштита* [Law on Social Protection], Official Gazette of Republic of Macedonia, No. 79/2009, 36/2011, 51/2011. Art.21.

⁹³ *Ibid.* Art.20.

⁹⁴ *Ibid.* Art.22.

⁹⁵ *Ibid.* Art.23.

⁹⁶ *Ibid.* Art.254.

⁹⁷ *Закон за здравствената заштита* [Law on Healthcare], Official Gazette of the Republic of Macedonia, No. 38/91, 46/93, 55/95, 10/2004, 84/2005, 111/2005, 65/2006, 05/2007, 77/2008, 67/2009, 88/2010, 44/2011, 53/2011.

⁹⁸ *Закон за здравствено осигурување* [Law on Health Insurance], Official Gazette of the Republic of Macedonia, No. 25/2000, 34/2000, 96/2000, 50/2001, 11/2002, 31/2003, 84/2005, 37/2006, 18/2007, 36/2007, 82/2008, 98/2008, 6/2009, 67/2009, 50/2010, 156/2010, 53/2011.



The Child Protection Law has articles on discrimination.⁹⁹ 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).

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 Constitution says that the Republic provides for social protection and social security of citizens in accordance with the principle of social justice. It guarantees the right of the assistance to those infirm or unfit for work.

It also provides for particular protection for people with disability and ensures that their involvement in social life is possible.¹⁰⁰

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.¹⁰¹ 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.

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.

⁹⁹ Закон за заштита на децата [Law on Protection of Children], Official Gazette of the Republic of Macedonia, No. 98/2000, 17/2003, 65/2004, 113/2005, 98/2008, 107/2008, 83/2009, 156/2009, 50/2011, 51/2011, 157/2011. Art.9, 12, 13.

¹⁰⁰ Constitution of the Republic of Macedonia. Official Gazette of the Republic of Macedonia. *Official Gazette of the Republic of Macedonia Website*. <http://www.slvesnik.com.mk/WBStorage/Files/USTAV-eng.pdf>. Accessed on: 01 March 2012. Art.35.

¹⁰¹ Закон за социјална заштита [Law on Social Protection], Official Gazette of Republic of Macedonia, No. 79/2009, 36/2011, 51/2011. Art.55.

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. Aside from the Anti-discrimination Law (Art.4, para.1, line 2), laws which regulate primary¹⁰² and secondary¹⁰³ education also prohibit discrimination. Primary and secondary education is compulsory in the country. 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. In this sense, a parent of a child with special educational needs has the right to enrol the child at primary school, except in cases where the special educational needs of the child are such that the child should be taught in a specialised primary school.

The manner and conditions for the enrolment of students with special educational needs in primary schools is determined by the Minister, on a proposal of the Bureau for Development of Education (an independent body within the Ministry).¹⁰⁴

According to Macedonian legislation there is specialised primary education for children with disabilities and specialised schools are considered equivalent to state schools.¹⁰⁵ In general, children are enrolled in these specialised schools instead of being enrolled in mainstream schools. The Law on University Graduate Education¹⁰⁶ does not explicitly prohibit discrimination on the ground of disability; however there are articles on the special benefits for students with disabilities (exemption from

¹⁰² “(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 are prohibited.” Source: *Закон за основно образование* [Law on Primary Education], Official Gazette of the Republic of Macedonia, No. 103/2008, 33/2010, 116/2010, 156/2010, 18/2011, 51/2011. Art.2.

¹⁰³ *Закон за средно образование* [Law on Secondary Education], Official Gazette of the Republic of Macedonia, No. 44/95, 24/96, 34/96, 35/97, 82/99, 29/2002, 40/2003, 42/2003, 67/2004, 55/2005, 113/2005, 35/2006, 30/2007, 49/2007, 81/2008, 92/2008, 33/10, 116/10, 156/10, 18/2011, 42/2011 (correction), 51/2011. Art.3.

¹⁰⁴ *Закон за основно образование* [Law on Primary Education], Official Gazette of the Republic of Macedonia, No. 103/2008, 33/2010, 116/2010, 156/2010, 18/2011, 51/2011. Art.51.

¹⁰⁵ At the present, there are: four primary schools for students with moderate intellectual disabilities; one elementary school for children with more severe intellectual disabilities; a primary school for blind and visual impaired children; a primary school for deaf and hearing impaired children; a primary school for students with serious physical disabilities; two secondary schools for students with moderate intellectual disabilities; a school for blind and partially blind students; a school for deaf and hard of hearing students; 80 special classes for pupils in regular primary schools; and two day care centres for young people with moderate or severe combined disabilities. These schools enrol in total about 1700 students. Please see: *Закон за основно образование* [Law on Primary Education], Official Gazette of the Republic of Macedonia, No. 103/2008, 33/2010, 116/2010, 156/2010, 18/2011, 51/2011. Art.186.

¹⁰⁶ *Закон за високо образование* [Law on University Graduate Education], Official Gazette of the Republic of Macedonia, No. 35/08, 103/2008, 26/2009, 83/2009, 99/2009, 115/10, 17/2011, 51/2011.

payment of tuition fees,¹⁰⁷ selection of students,¹⁰⁸ and special benefits settled by the university¹⁰⁹).

According to United Nations Children's Fund (UNICEF), Roma children have the lowest level of educational achievement, noting also that 39 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.¹¹⁰ According to the same study, 95.2 per cent of children of primary school entry age attend primary school. 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).¹¹¹

Many reports have been published on the issue of Roma education in the country (including an European Centre for Minority Issues - ECMI - report on education,¹¹² an Open Society Institute - OSI - report,¹¹³ Roma educational fund¹¹⁴, a UNICEF situation analysis¹¹⁵ and a UNICEF analysis of segregation in education¹¹⁶) with very similar conclusions on segregation and enrolment barriers. They find the most significant problem in the education field regarding Roma to be 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.¹¹⁷

¹⁰⁷ *Ibid.* Art.87.

¹⁰⁸ *Ibid.* Art.108.

¹⁰⁹ *Ibid.* Art.150.

¹¹⁰ "Children in FYR Macedonia – a situation analysis (February 2008)". *UNICEF website*.

http://www.unicef.org/tfymacedonia/MK_SITAN_ENG.pdf. Last accessed: 12 March 2012.

¹¹¹ *Ibid.*

¹¹² "Analysis of the Educational Sector and Recommendations". *ECMI website*.

http://www.ecmimacedonia.org/PDI/documents/PDI_Education_Working_Group_Recommendations.pdf. Last accessed: 12 March 2012.

¹¹³ "Equal Access to Quality Education for Roma, Volume 2: Croatia, Macedonia, Montenegro and Slovakia". *Roma Decade website*.

<http://www.romadecade.org/files/downloads/Education%20Resources/Equal%20Access%20to%20Quality%20Education%20for%20Roma%20Volume%202.pdf>. Last accessed: 10 March 2011.

¹¹⁴ "Advancing Education of Roma in Macedonia". Roma Education Fund. *REF Website*.

http://www.romaeducationfund.hu/sites/default/files/publications/macedonia_report.pdf. Last accessed: 12 March 2012.

¹¹⁵ "Children in FYR Macedonia – a situation analysis (February 2008)". *UNICEF website*.

http://www.unicef.org/tfymacedonia/MK_SITAN_ENG.pdf. Last accessed: 12 March 2012.

¹¹⁶ "Мултикултурализмот и меѓуетничките односи во образованието". *UNICEF website*.

[http://www.unicef.org/tfymacedonia/New_MKVersionsm2\(3\).pdf](http://www.unicef.org/tfymacedonia/New_MKVersionsm2(3).pdf). Last accessed: 10 March 2011.

¹¹⁷ "Advancing Education of Roma in Macedonia". *REF Website*.

http://www.romaeducationfund.hu/sites/default/files/publications/macedonia_report.pdf. Last accessed: 12 March 2012.

In 2005 the policy document “Strategy for the Roma in the Republic of Macedonia” was adopted.¹¹⁸ In this strategy, education for Roma was proclaimed a government priority. The strategy highlighted the following concerns with regard to the situation of the Roma population (of relevance for education): the poor economic and social position of a significant number of Roma families; the high percentage of children not attending preschool education; the small number of children attending elementary education; lack of adequate conditions in the homes; economic exploitation of children; lack of sufficient knowledge of Macedonian language; high number of children dropping out of education; and a lack of awareness for the need of education.¹¹⁹ 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.¹²⁰

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 segregation in schools.

Eight Roma information centres were established to support the implementation of the strategy and to monitor the situation on the ground.¹²¹ Many Roma NGOs are working on countering the issue of segregation in education. However, segregation continues and is becoming even more visible with the increase in the number of Roma pupils. The Macedonian Helsinki Committee filed a case to the Commission for Protection against Discrimination in relation to segregation against five primary schools in Bitola.¹²²

Special provisions provide for education of pupils and students with disabilities. These are educated according to the laws on primary and secondary education. Notably, 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.¹²³

¹¹⁸ There are also several policy documents targeting Roma women. For more, please see MLSP website at: <http://mtsp.gov.mk/?ItemID=6FC822BBA79A61429117F41943673AE4>. Last accessed: 12 March 2012.

¹¹⁹ “Стратегија за Ромите во Република Македонија”. Ministry of Labour and Social Policy. *Ministry of Labour and Social Policy Website*. http://www.mtsp.gov.mk/WBStorage/Files/strategija_romi.pdf. Last accessed: 12 March 2012.

¹²⁰ *Ibid.*

¹²¹ For more information on the Roma Information Centres, please see: Ministry of Labour and Social Policy. *Ministry of Labour and Social Policy Website*. <http://mtsp.gov.mk/?ItemID=16963527D912DC41B48380E0B6034274>. Last accessed: 10 March 2012.

¹²² By the time of writing of this report, the outcome of this case was not publically made known.

¹²³ *Закон за основно образование* [Law on Primary Education], Official Gazette of the Republic of Macedonia, No. 103/2008, 33/2010, 116/2010, 156/2010, 18/2011, 51/2011. Art.6.

There are special curricula for students with disabilities developed by the Department for Development of Education.¹²⁴ At present there is much stronger support for segregated education of children with disabilities than for their inclusion in regular schools.¹²⁵ 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 Ombudsperson of the Republic of Macedonia (the Ombudsperson) prepared a special report on the inclusion of children with special needs in education.¹²⁶ This report underlines that the practical application of legal solutions entails a lot of problems and obstacles that do not allow for the provision of adequate and equal access to education for children with disabilities, having practicing this right to often result in discrimination.¹²⁷

There are separate secondary schools for children with special needs.¹²⁸ Secondary pupils with special educational needs are educated under adjusted programmes for job training.¹²⁹ A programme called “Open the Windows” aimed to promote assistance technology for children with disabilities from primary school.¹³⁰ There are no specific articles which regulate the education of children with special needs in regular secondary schools.

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.*

¹²⁴ *Ibid.* Art.30.

¹²⁵ “Се гетоизираат ромските ученици во Битола”. *Nova Makedonija Website*. <http://www.novamakedonija.com.mk/NewsDetal.asp?vest=9119922592&id=9&setIzdanie=21785>. Last accessed: 12 March 2012.

¹²⁶ “Посебен извештај на народниот правобранител за вклученоста на децата со посебни потреби во образованието”. Ombudsperson of the Republic of Macedonia. *Ombudsperson Website*. <http://ombudsman.mk/upload/documents/Posebni%20potrebi%20na%20decata1%20mak.pdf>. Last accessed: 12 March 2012.

¹²⁷ There are cases of non-admittance of children with disabilities into regular primary education, or in some other cases these children were admitted at first, but after a certain period they were expelled, thus leaving their parents to cope with the children on their own. Teachers themselves have problems dealing with these children because they are not trained adequately to work with them to find the most appropriate methods for including children with special needs in school activities.

¹²⁸ *Закон за средно образование* [Law on Secondary Education]. Official Gazette of the Republic of Macedonia, No. 44/95, 24/96, 34/96, 35/97, 82/99, 29/2002, 40/2003, 42/2003, 67/2004, 55/2005, 113/2005, 35/2006, 30/2007, 49/2007, 81/2008, 92/2008, 33/10, 116/10, 156/10, 18/2011, 42/2011 (correction), 51/2011. Art.43.

¹²⁹ *Ibid.* Art.50.

¹³⁰ „Нова програма за поддршка на учениците со хендикеп“. *Open the windows website*. http://makedonski.openthewindows.org/index.php?option=com_content&task=view&id=110. Last accessed: 12 March 2012.

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.¹³¹

The only mention of equality is in the legislation on consumer protection¹³² where it is stated that a merchant providing public services through a distribution network must allow users to join and use the network and e-services under non-discriminatory, previously known and agreed conditions.¹³³ 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.¹³⁴

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.

Anti-discrimination Law clearly states that housing is an area to which the law applies (Art.4, para.1, line 5). However, 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.

¹³¹ “Бојата на кожата ги затвора кафулињата за битолските роми”. *Utrinski vesnik website*. <http://www.utrinski.com.mk/?ItemID=1ED1DAC6F4C67C4E8B110E7B8869838D>. Last accessed: 12 March 2012.; “Ромска дискриминација”, 02 January 2007. *BBC website*. http://www.bbc.co.uk/macedonian/news/story/2007/01/printable/070102_romi.shtml. Last accessed: 12 March 2012.

¹³² *Закон за заштита на потрошувачите* [Law on Consumer Protection]. Official Gazette of the Republic of Macedonia, No. 38/2004, 77/2007, 103/2008, 24/2011.

¹³³ *Ibid.* Art.119.

¹³⁴ For example, it is difficult for people under a certain age to get travel insurance for travelling abroad.

Under the Law on Housing¹³⁵ a Regulatory Commission was established with a mandate, *inter alia*, to prevent discrimination in the field of housing.¹³⁶ The Law contains no mentioning 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 so far as the manager of the building should know the standards and norms for accessibility for persons with disabilities in a residential facility (Art.19, para.1, line 12) (under the same article, this can also be taken as posing obligation on her/him to initiate court procedures against the constructors for improper and incomplete execution of the actions).

Referring to the issue of housing of Roma in the country, one should bear in mind that they are concentrated in ten municipalities. Usually there is a concentration of the Roma population in one part of the town.¹³⁷ There are no official statistics on racist incidents and discrimination in housing against Roma.

However, the media and NGOs report cases of institutional violence and assault against Roma,¹³⁸ particularly police raids and evictions (after the Roma are accused of residing in unlawfully built buildings), that deprive the Roma of their housing, and do not provide them with alternative accommodation.¹³⁹

A report on the conditions of housing and health in the Roma community states that Roma families often live in badly built sub-standard houses, without in-house water supply and sanitation. Data show that 7.25 per cent of the families live in improvised houses built from non-construction materials (cardboard, nylon, tin, plastic, etc.), 29.5 per cent in dilapidated and montage houses, and only 63 per cent in solid-construction houses.¹⁴⁰ More than 10per cent of the families don't have access to

¹³⁵ Закон за домување [Law on Housing], Official Gazette of the Republic of Macedonia, No. 99/2009, 57/2010, 36/2011, 54/2011.

¹³⁶ *Ibid.* Art.104.

¹³⁷ "Report on the condition of housing and health among the Roma Community in Macedonia". CRPRC Studiorum Website. <http://www.studiorum.org.mk/n_mesechina-en.asp>. Last accessed: 12 March 2012. 13.

¹³⁸ "Извештај до комитетот за економски, социјални и културни права на Обединетите нации". National Roma Centrum NGO. NRC Website. <http://www.nationalromacentrum.org/mk/publikacii/istrazuvanja/izvestaj-do-komitot-za-ekonomski/>. Last accessed: 12 March 2012.; "Во дискотеката Калипсо во Берово е забранет влезот за Ромите". Kanal 5 Television. Kanal 5 Television website. <http://www.kanal5.com.mk/default.aspx?mId=37&egId=13&eventId=53923>. Last accessed: 12 March 2012.

¹³⁹ "Проценка на напредокот на декадата на ромите". Helsinki Committee for Human Rights of the Republic of Macedonia. MHC Website. <http://www.mhc.org.mk/?ItemID=3DE4E8C7F50F194281021DB76FAD9E1E>. Last accessed: 12 March 2012.

¹⁴⁰ Roma houses are small, planned to serve the elementary needs, with housing space less than 5 m² per member for more than 50 per cent of the families. About 40 per cent of the families live in shared houses. Only 16per cent of the houses have toilet and bathroom in the house; 77 per cent of the families use a toilet in the yard and 58per cent use tap in the yard.



any kind of water supply. The sewerage conditions are extremely bad, with an estimate of 50 per cent of families having no access to proper solution for the discharge of the sewage and communal water.¹⁴¹

UNICEF study “Children in FYR Macedonia – a situation analysis”¹⁴² 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 the country impact on children, but official government statistics suggest that 95 per cent (or 47,408) of Roma live in informal settlements located on the cities’ peripheries. 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 to this end, as 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’.¹⁴³ The Law on Housing does not require or promote the availability of housing which is accessible to older people.

¹⁴¹ “Report on the condition of housing and health among the Roma Community in Macedonia”. *CRPRC Studiorum Website*. http://www.studiorum.org.mk/n_mesechina-en.asp. Last accessed: 12 March 2012.

¹⁴² “Children in FYR Macedonia – a situation analysis (February 2008)”. *UNICEF website*. http://www.unicef.org/tfyrmacedonia/MK_SITAN_ENG.pdf. Last accessed: 12 March 2012.

¹⁴³ *Ibid.* 32.



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 Law contains 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 article in the Labour Law¹⁴⁴ uses wording on exemptions from occupational requirements in the context of access to labour (Art.8), which corresponds to the language of Article 4 of Directive 2000/43/EC. Notably the law states that it will not be considered discrimination making a difference, exclusion or giving priority in terms of a certain thing, when the nature of the work is such or the work is performed in such conditions that the characteristics associated with some of the cases (Art.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.¹⁴⁵

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.¹⁴⁶

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?*

¹⁴⁴ Закон за работни односи [Labour Law], Official Gazette of the Republic of Macedonia. No. 62/2005, 161/2005, 139/2005, 44/2006, 66/2006, 16/2007, 57/2007, 206/2008, 161/2008, 63/2009, 114/2009, 130/2009, 149/2009, 10/2010, 47/2011.

¹⁴⁵ *Ibid.* Art.8.

¹⁴⁶ The Directive Grounds Law goes beyond the Directives grounds of race, belief, disability, age and sexual orientation are all covered, and the Law goes beyond them in an open-ended list numbers: sex, health condition, membership of trade union, social origin, position of the family, property, or other personal issue.



The Anti-discrimination Law includes such an exception fully in compliance with Article 4(2) of Directive 2000/78 (Art.14, para.1, line 3-5).

However, under this same law it shall not constitute discrimination if members of duly registered religions (this also applies to NGOs, political parties, trade unions and other organisations) act in accordance with their belief (Art.14, para.1, line 5).

The Law on the Legal Position of Churches, Religious Communities and Religious Groups¹⁴⁷ contains no specific articles on employment and labour relations. Other laws also do not include specific provisions on exemptions for employers with ethos based on religion or belief. However, the Labour Law contains in the exemptions from prohibition of discrimination, sufficient space for churches, religious communities and groups to be exempt in accordance with Article 4(2) of Directive 2000/78 (Art.8).

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. Such case law does not exist until present. 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.¹⁴⁸ Also, the end of 2010 saw an initiative on their behalf to open a cycle of constitutional changes that should, in their words, strengthen the traditional form of the family; however which are clearly motivated to target homosexuals. Notably, these are stating that a marriage is a union of one woman and one man, as well as to insert provisions which will limit the possibility for homosexuals to adopt of children.

In the Anti-discrimination Law there is no such anti-conflict provision. However, it should be noted that it shall not constitute discrimination if members of duly registered religions (this also applies to NGOs, political parties, trade unions and other organisations) act in accordance with their belief (Art.14, para.1, line 5). This would mean that this excuses these members even if, in doing so, they are discriminating on the grounds mentioned in Article 3.

¹⁴⁷ Закон за правна положба на црквите, верските задници и религиозни групи [Law on the Legal Position of the Church, Communities of Faith and Religious Groups]. Official Gazette of the Republic of Macedonia, No. 113/07.

¹⁴⁸ “Ориентирани кон сексуална дискриминација” [Oriented Towards Sexual Discrimination]. Dnevnik, daily newspaper. *Dnevnik website*. <http://www.dnevnik.com.mk/default.asp?ItemID=2747A65351BB6544AC31869A1784FEDC>. Last accessed: 12 March 2012.; “2010 Annual report on sexual and health rights of marginalized communities”. <http://xa.yimg.com/kq/groups/23471982/269959960/name/Analiza+finalna+verzija.pdf>. Last accessed: 12 March 2012.

Laws which regulate the founding and eligible activities of these associations (civil society organizations, foundations,¹⁴⁹ as well as religion communities and religious groups) regulate this issue as well, stating that an association shall cease to exist if they engage in such actions contrary to the Constitution and laws, and violating other people's rights.

It also declares that it shall not constitute discrimination when a marriage, out-of-wedlock community and family are regulated exclusively as communities of opposite sexes i.e. of one man and one woman. (Art.14, para.1, line 6 of the Anti-discrimination Law).

- 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 23 years of age¹⁵⁰ when signing their first working agreement, which is renewable every three years up to a maximum age of 38.¹⁵¹ Junior officers must not be older than 25 years of age (or 33 years of age, depending on experience, qualifications, as well as previous status in the army forces, if any),¹⁵² or senior officer older than 30 years of age when entering the Army (or 35 years of age if coming to the senior officer

¹⁴⁹ *Закон за здруженија и фондации* [Law on associations and foundations]. Official Gazette of the Republic of Macedonia, No.52/2010, 135/2011. Art.4.

¹⁵⁰ *Закон за служба во армијата* [Law on Army Service]. Official Gazette of the Republic of Macedonia, No. 36/2010, 23/2011, 47/2011, 148/2011. Art.36.

¹⁵¹ *Ibid.* Art.40, 42, 43.

¹⁵² *Ibid.* Art.34, 35.

position from a junior officer position).¹⁵³ Upper limit for civilian personal is 40 years of age. The retirement age for active military and civilian personal is 25 years of pension insurance, out of which 15 in army service (if this has not been fulfilled, and army service has ended, the Ministry of Defence must provide for further employment or education to allow the person to accumulate years necessary for retirement age).¹⁵⁴

People with disability are prevented from entering the Army since general and specific health and good physical condition are unavoidable prerequisites.¹⁵⁵

Even if the disability is a result of army service it would still lead to loss of military status. The best scenario is that the person could remain as civilian personnel retaining the salary received and rank held prior to the health degradation (or goes one rank below, if same rank cannot be awarded).¹⁵⁶ Extra three days of vacation are foreseen for personal with disability or a person taking care of a child with disability.¹⁵⁷

Ethnicity is dealt with in law in several respects. Persons belonging to minorities should be adequately and fairly represented in the Army providing they are dully trained and competent.¹⁵⁸ Vacancies public adds need to be published in, *inter alia*, at least one newspaper printed on a language used by at least 20% of the population in the country.¹⁵⁹ With regard to the oath, the document to be signed is both in Macedonian and in the language of that person.¹⁶⁰

With regards to gender, the law states that principle of equality between the sexes should be dully taken into consideration.¹⁶¹ Also, provisions on maternity leave are included in the law.¹⁶²

The previous law - Law on Army Service of 2002, contained "homosexuality"¹⁶³ as in breach of army discipline thus a ground for discipline measure. This was erased in subsequent amendments of this Law. The current law does not contain such reference.

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

¹⁵³ *Ibid.* Art.32.

¹⁵⁴ *Ibid.* Art.220 (para.2).

¹⁵⁵ *Ibid.* Art.31, 202-210.

¹⁵⁶ *Ibid.* Art.78.

¹⁵⁷ *Ibid.* Art.98 (para.2).

¹⁵⁸ *Ibid.* Art.30, para.5.

¹⁵⁹ *Ibid.* Art.39 (para.2).

¹⁶⁰ *Ibid.* Art.7 (para.2).

¹⁶¹ *Ibid.* Art.30 (para.6).

¹⁶² *Ibid.* Art.99 (para.4), 161, 164.

¹⁶³ *Ibid.* Art.121 (para.1, item 16).

Yes, the Law on the Police envisages different age limitations. However, disability is not a ground for losing the status of a police officer. Police officers must not be older than 25 for duties requiring secondary education and 30 for graduate duties when entering the police force.¹⁶⁴ The retirement age is privileged, meaning that each 12 months of service are treated as 16 months.¹⁶⁵

People with disability are in fact prevented from entering the police (like the army) since physical and mental health statuses are unavoidable prerequisites. However police officers that 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.¹⁶⁶

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.¹⁶⁷ 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 (as under the Law).¹⁶⁸

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 number of the total population, though the percentages are not formally declared to be quotas.

The Law on the Police has basically only one, rather short, provision on sex equality, stating that within the employment process in the police, the principle of equality between the sexes should be fully taken into consideration. The Law on Internal Affairs makes a further step by stating that equality of sexes is to be upheld.¹⁶⁹

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).

¹⁶⁴ Закон за полицијата [Law on the Police]. Official Gazette of the Republic of Macedonia, No. 114/2006, 06/2009. Art.95.

¹⁶⁵ Закон за пензиско и инвалидско осигурување [Law on Pension and Disability Insurance], Official Gazette of the Republic of Macedonia, No.80/93, 80/93, 3/94, 14/95, 71/96, 32/97, 24/2000, 96/2000, 50/2001, 85/2003, 50/2004, 4/2005, 84/2005, 101/2005, 70/2006, 153/2007, 152/2008, 161/2008, 81/2009, 156/2009, 83/10, 156/10, 24/2011, 51/2011. Art.102.

¹⁶⁶ Закон за полицијата [Law on the Police]. Official Gazette of the Republic of Macedonia, No. 114/2006, 06/2009. Art.95,109.

¹⁶⁷ Ibid. Art.96.

¹⁶⁸ Закон за внатрешни работи [Law on Internal Affairs]. Official Gazette of the Republic of Macedonia, No. 92/2009, 118/2009 (correction), 35/2010, 36/2011, 158/2011. Art.52.

¹⁶⁹ Ibid. Art.48.



- 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. The Constitution states that "citizens of the Republic of Macedonia have citizenship of the Republic of Macedonia [and it declares] the free expression of national identity[as] a fundamental value".¹⁷⁰

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

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

The lack of clarity deepens in some laws which refer to nationality and ethnicity as different grounds for discrimination.¹⁷¹ No definition is provided, which also adds to the confusion of the terms, since in some laws the term 'national belonging' is used.¹⁷² The courts consistently use the terms 'foreigner' and 'foreign' when referring to nationals of another country.

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

The Anti-discrimination Law features a general exception based on nationality understood as citizenship. This law states that different treatment of persons who are not citizens of the country 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 (Art.14, para.1, line 1).

¹⁷⁰ Constitution of the Republic of Macedonia. Official Gazette of the Republic of Macedonia. *Official Gazette of the Republic of Macedonia Website*. <http://www.slvesnik.com.mk/WBStorage/Files/USTAV-eng.pdf>. Last accessed: 01 March 2012. Art.4,6.

¹⁷¹ For example, Article 3 of the Law on Voluntary Fully Pension Insurance, Article 6 of the Child Protection Law and Article 20 of the Law on Social Protection.

¹⁷² Article 6 of the Law on Primary Education and Article 6 of the Labour Law.



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?*

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 family¹⁷³ could be interpreted as opening space for, *inter alia*, such privileges.¹⁷⁴

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 on these issues.

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

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

¹⁷³ Constitution of the Republic of Macedonia. Official Gazette of the Republic of Macedonia. *Official Gazette of the Republic of Macedonia Website*. <http://www.slvesnik.com.mk/WBStorage/Files/USTAV-eng.pdf>. Last accessed: 01 March 2012. Art.40.

¹⁷⁴ One needs to have in mind here that family is not defined in the Constitution, but it is defined in the Law on Family as a community of parents and children and/or other relatives, provided that they live in the same household (Art. 2(1); Law on Family).



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.

This article states that it will not be considered discrimination making a difference, exclusion or giving priority in terms of a certain thing, when the nature of the work is such or work is performed in such conditions that the characteristics associated with some of the cases in Article 6 of this law are an essential and decisive condition for performing the work, providing that the objective to be achieved is justified and the requirement is carefully considered.¹⁷⁵

b) *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)?*

In the Anti-discrimination Law it is explicitly stated that special protection of pregnant women or mothers shall not be considered as amounting to discrimination (Art.15, para.1, line 1).

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

Labour Law does not specify exceptions in relation to health and safety on any other ground, thus legitimacy and proportionality test indicated in the Labour Law would be applicable for exceptions based on dress codes or religious tenets (Art.8). However, the law does provide for other health and safety related special protective measures in relation to employees younger than 18 years of age, as well as for older employees¹⁷⁶ (over 57 years of age for women and 59 years of age for men). The protection encompasses hours of work, night work, work in special conditions and supplementary vacation (for younger than 18 years of age) and prohibition of overtime work as well as night shift (for older workers), as well as other special measures provided with this and other laws.¹⁷⁷ There are also exceptions for protective measures because of pregnancy and parenting.¹⁷⁸

¹⁷⁵ *Закон за работни односи – пречитен текст* [Labour Law - revised], Official Gazette of the Republic of Macedonia, No. 16/2010. Art.8.

¹⁷⁶ *Ibid.* Chapter XV.

¹⁷⁷ Please see Charter XIII: Protection of Workers under 18 Years, and Chapter XV: Special protection of older workers of: Labour Law - revised [*Закон за работни односи – пречитен текст*], Official Gazette, No. 16/2010.

¹⁷⁸ *Закон за работни односи – пречитен текст* [Labour Law - revised], Official Gazette of the Republic of Macedonia, No. 16/2010. Art.161.



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 Anti-discrimination Law contains a provision that is in line with the test required in Article 6 of The Directive 2000/78 (Art.14, para.1, line 9). 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. 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. It states that at the time of signing of the contract the applicant is obliged to submit evidence to the employer of capability to fulfil the terms of the contract (Art.26).

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

Anti-discrimination Law contains a clause that is in line with the test required in Article 6 of the Directive 2000/78 (Art.14, para.1, line 9). The Labour Law provides for specific protective measures in relation to employees younger than 18, as well as for older employees (over 57 years of age for women and 59 years of age for men). The protection encompasses hours of work, night work, work in special conditions and supplementary vacation (for younger than 18 years of age) and prohibition of overtime work as well as night shift (for older workers), as well as other special measures provided by this and other laws.¹⁷⁹

- 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) ?*

Anti-discrimination Law contains a clause that allows for occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits (Art.14, para.1, line 9).

¹⁷⁹ Charter XIII: Protection of Workers under 18 Years, and Chapter XV: Special protection of older workers. *Закон за работни односи – пречитен текст* [Labour Law - revised], Official Gazette of the Republic of Macedonia, No. 16/2010.

The pension system is composed of three pillars established by three laws: the Law on Voluntary Fully Funded Pension Insurance, the Law on Pension and Disability Insurance, and the Law on Mandatory Fully Funded Pension Insurance. The Law on Pension and Disability Insurance¹⁸⁰ establishes the general age of retirement. This is 64 years of age for men and 62 years of age for women. At least 20 years of age 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 of age (for women) if at least 15 years of age of pension contributions have been accrued.¹⁸¹ The Law on Pension and Disability Insurance provides for different criteria for calculation in special cases.¹⁸² 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.¹⁸³ The ages set for occupational pensions contradict Article 104 of the Labour Law.

These state that the employer will terminate the contract of employment of the employee when the employee turns 64 years old and has made 15 years of age of pension contributions. Furthermore, the employer, upon request of the employee, may extend the contract of employment up to 65 years of age, unless the law determines otherwise.¹⁸⁴

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.

¹⁸⁰ *Закон за пензиско и инвалидско осигурување* [Law on Pension and Disability Insurance], Official Gazette of the Republic of Macedonia, No.80/93, 80/93, 3/94, 14/95, 71/96, 32/97, 24/2000, 96/2000, 50/2001, 85/2003, 50/2004, 4/2005, 84/2005, 101/2005, 70/2006, 153/2007, 152/2008, 161/2008, 81/2009, 156/2009, 83/10, 156/10, 24/2011, 51/2011.

¹⁸¹ *Ibid.* Art.17.

¹⁸² The standard calculation system is given in articles 18 and 18-a of the Law on Pensions and Disability Insurance, Official Gazette, No. 80/93. Source: *Закон за пензиско и инвалидско осигурување* [Law on Pension and Disability Insurance], Official Gazette of the Republic of Macedonia, No.80/93, 80/93, 3/94, 14/95, 71/96, 32/97, 24/2000, 96/2000, 50/2001, 85/2003, 50/2004, 4/2005, 84/2005, 101/2005, 70/2006, 153/2007, 152/2008, 161/2008, 81/2009, 156/2009, 83/10, 156/10, 24/2011, 51/2011.

¹⁸³ *Закон за пензиско и инвалидско осигурување* [Law on Pension and Disability Insurance], Official Gazette of the Republic of Macedonia, No.80/93, 80/93, 3/94, 14/95, 71/96, 32/97, 24/2000, 96/2000, 50/2001, 85/2003, 50/2004, 4/2005, 84/2005, 101/2005, 70/2006, 153/2007, 152/2008, 161/2008, 81/2009, 156/2009, 83/10, 156/10, 24/2011, 51/2011. Art.126.

¹⁸⁴ *Закон за работни односи – пречитен текст* [Labour Law - revised], Official Gazette of the Republic of Macedonia, No. 16/2010.



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.

In the Anti-discrimination Law there is a general clause making an exception in relation to special protection of parentless children and of single parents (Art.15, para.1, line 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).

The Labour Law provides for specific protective measures in relation to employees younger than 18 years of age.¹⁸⁵ The protection encompasses hours of work, night work, work in special conditions and supplementary vacation. It allows for providing special care for older workers (Art.179). The same Law restricts overtime and night work for older workers (Art.180). The same restrictions apply to persons with caring responsibilities for children not older than 7 years of age.¹⁸⁶

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?

The Anti-discrimination Law makes two provisions exempting discrimination with regard to minimum age in relation to professional requirements and career advancement as well maximum age for recruitment for, as stated in law, the need for rational time limitations connected to retirement and stipulated by law (Art.14, para.1, line 8 and 9).

Labour Law establishes 15 years of age as the minimum age for employment (Art.250).

There is a general prohibition on employment of children under 15 years of age, except for recording films, preparing and performing arts, stage and other similar works (cultural, artistic, sports and advertising activities). A special procedure and approval is required for this. There are also special provisions for the work of students (as practical work experience) and for apprentices.¹⁸⁷

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 actually retire

¹⁸⁵ *Ibid.* Charter XIII.

¹⁸⁶ *Ibid.* Art.164.

¹⁸⁷ *Ibid.* Art.251.

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 Insurance¹⁸⁸ establishes the general age for retirement of 64 years of age (for men) or 62 years of age (for women) with at least 20 years of pension contributions accrued. Individuals who reach the pensionable age but want to work longer can continue if their employers agree, but not after the age of 65.¹⁸⁹ An individual who has not fulfilled the requirement of 20 years of pension contributions may retire on turning 65 years of age (for men) or 63 years of age (for women) with at least 15 years of pension contributions accrued.¹⁹⁰

The Law on Pension and Disability Insurance provides for different criteria for calculation in special cases.¹⁹¹

According to this law,¹⁹² 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.

¹⁸⁸ *Закон за пензиско и инвалидско осигурување* [Law on Pension and Disability Insurance], Official Gazette of the Republic of Macedonia, No.80/93, 80/93, 3/94, 14/95, 71/96, 32/97, 24/2000, 96/2000, 50/2001, 85/2003, 50/2004, 4/2005, 84/2005, 101/2005, 70/2006, 153/2007, 152/2008, 161/2008, 81/2009, 156/2009, 83/10, 156/10, 24/2011, 51/2011.

¹⁸⁹ *Закон за работни односи – пречитен текст* [Labour Law - revised], Official Gazette of the Republic of Macedonia, No. 16/2010. Art.104.

¹⁹⁰ *Закон за пензиско и инвалидско осигурување* [Law on Pension and Disability Insurance], Official Gazette of the Republic of Macedonia, No.80/93, 80/93, 3/94, 14/95, 71/96, 32/97, 24/2000, 96/2000, 50/2001, 85/2003, 50/2004, 4/2005, 84/2005, 101/2005, 70/2006, 153/2007, 152/2008, 161/2008, 81/2009, 156/2009, 83/10, 156/10, 24/2011, 51/2011. Art.17.

¹⁹¹ The standard calculation system is given in articles 18 and 18-a of the Law on Pension and Disability Insurance. Source: *Закон за пензиско и инвалидско осигурување* [Law on Pension and Disability Insurance], Official Gazette of the Republic of Macedonia, No.80/93, 80/93, 3/94, 14/95, 71/96, 32/97, 24/2000, 96/2000, 50/2001, 85/2003, 50/2004, 4/2005, 84/2005, 101/2005, 70/2006, 153/2007, 152/2008, 161/2008, 81/2009, 156/2009, 83/10, 156/10, 24/2011, 51/2011..

¹⁹² The base for calculation and payment of contributions for pensions and disability insurance is the gross salary, includes contributions and taxes that are paid. For more, please consult website of the Fund for pensions and disability insurance of Macedonia: <http://www.piom.com.mk/>.

- 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 2000.¹⁹³ 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, regardless of whether the person works at home or abroad.¹⁹⁴

Exceptions from this include some categories such as company stakeholders, judges and prosecutors, as well as university professors. Notably, a full time university 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.¹⁹⁵

- 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. Under the Labour Law, Article 104, when the employee reaches age of 64, but wants to work longer, s/he can continue to do so, but only until the age of 65.¹⁹⁶ There are no sanctions in the Labour Law tied to a breach of this provision.

- 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?*

¹⁹³ „Изгледот на реформиранит пензиски систем“. Ministry of Labour and Social Policy. *Ministry of Labour and Social Policy Website*.

<http://www.mtsp.gov.mk/?ItemID=CBE8C479DD387841905B15D398358B98>. Last accessed: 12 March 2012.

¹⁹⁴ *Закон за пензиско и инвалидско осигурување* [Law on Pension and Disability Insurance], Official Gazette of the Republic of Macedonia, No.80/93, 80/93, 3/94, 14/95, 71/96, 32/97, 24/2000, 96/2000, 50/2001, 85/2003, 50/2004, 4/2005, 84/2005, 101/2005, 70/2006, 153/2007, 152/2008, 161/2008, 81/2009, 156/2009, 83/10, 156/10, 24/2011, 51/2011. Art.15.

¹⁹⁵ *Закон за високо образование* [Law on University Graduate Education], Official Gazette of the Republic of Macedonia, No. 35/08, 103/2008, 26/2009, 83/2009, 99/2009, 115/10, 17/2011, 51/2011. Art.147.

¹⁹⁶ *Закон за работни односи – пречитен текст* [Labour Law - revised], Official Gazette of the Republic of Macedonia, No. 16/2010. Art.104.



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 the Labour Law, individual employment contract or collective agreement may determine rights for workers which are more favourable than those determined by law (Art.12).¹⁹⁷ The same article stipulates that employers cannot include clauses introducing fewer rights than those established in the constitution and law.

- 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)?*

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.

- 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?

¹⁹⁷ Закон за работни односи – пречитен текст [Labour Law - revised], Official Gazette of the Republic of Macedonia, No. 16/2010.



In the Anti-discrimination Law there is one exception of this character and concerning freedom of speech, public appearance, thought and public information (Art.14, para.1, line 7).

4.9 Any other exceptions

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

In the Anti-discrimination Law there are three clauses on exceptions relevant to the Directives in relation to: measures to stimulate employment (Art.15, para.1, line 2); measures to protect the identity of ethnic, religious and linguistic minorities (Art.15, para.1, line 8); and measures in favour of persons and groups in disadvantaged positions (Art. 15, para.1, line 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.*

National legal and policy framework provides for positive actions. Main accent is placed on positive action with respect to ethnic origin, disability and age. It does not provide for positive action with regard to religion or belief, or sexual orientation.

In the Anti-discrimination Law there is a special provision in Article 13 named 'affirmative measures' that corresponds to the Directive term 'positive action'. This article encompasses measures 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.

Ethnic origin seems to be the dominant ground for undertaking positive action. Since independence, ethnic minorities have claimed that they were in a disadvantaged position compared to the ethnic Macedonians. The main sources of that disadvantage were language issues and under-representation at national and local government levels. Calls from the minorities were suppressed for almost a decade after the independence, leading to an armed conflict in 2001. The conflict was ended with the Ohrid Framework Agreement (a political document), and changes foreseen in this agreement were introduced via amendments to the Constitution, thus becoming the general legal framework for these positive actions.

In order to ensure proper implementation of these measures, several institutions were established. In the executive government this is the Secretariat for implementation of the Ohrid Framework Agreement. Within the legislative, this is the Committee for Inter-Community Relations. The Committee considers issues of inter-community relations in the Republic and makes appraisals and proposals for their solution. The Committee can propose positive action measures to Parliament, which decides in plenary on such issues. The Parliament is obliged to take into consideration the appraisals and proposals of the Committee and to make decisions regarding them. In the event of a dispute among members of the Parliament regarding the application of the voting procedure specified in Article 69(2), the Committee shall decide by majority vote whether the procedure applies. This Committee consists of seven members from each of the ranks of the ethnic Macedonians and ethnic Albanians within the Parliament, and five members from among the ethnic Turks, Vlachs, Roma and two other communities. The members of the Committee are elected by the Parliament.

Political participation of Roma changed a lot in the past ten years, partially also due to the Ohrid Framework Agreement. There is a Roma minister in the government, a Roma municipality (direct result of the arrangements within this agreement) and the Roma language is under law a language in official use in the Shuto Orizari municipality.

On disability, the main instrument for positive action measures related to persons with disabilities is the Law on Employment of People with Disabilities.¹⁹⁸ Its main goals are integration of people with disability in the working environment and their safety in the workplace.

On age, in relation to young people, actions are undertaken based on Cabinet decrees. On age in relation to older people, a National strategy for elderly people 2010-2020 exists. However its implementation is yet to be seen.

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 within the government charged with the implementation of the Ohrid Framework Agreement.¹⁹⁹ Although no quotas exist on paper, they do exist in practice due to the implementation of the principle of equitable representation which is used when implementing positive actions. This principle aims to bring about representation of the communities in the institutions to reflect the representation and composition of the ethnic communities in the society (for example, a target percentage for the Albanian population would be a representation of 25 per cent, as this is the per cent of the community from the total population of the country, according to the 2002 census).

Having as one of its main tasks equitable representation of members of ethnic communities in state institutions, employment of persons belonging to these communities in the state and public administration has been one of the main tasks of the Secretariat for Implementation of the Ohrid Framework Agreement. To that end, various trainings have been carried out with great support from the international community.

¹⁹⁸ *Закон за вработување на инвалидни лица* [Law on Employment of People with Disabilities], Official Gazette of Republic of Macedonia, No. 44/00, 16/2004, 62/2005, 113/2005, 29/2007, 88/2008, 161/2008, 99/2009, 136/2011. Art.2.

¹⁹⁹ Although it is not OFA itself that is being implemented, but Constitutional, legal and policy documents resulting from its signing, the expression "implementation of OFA" is used here to avoid long explication pretexts for the wave of reforms after 2001 resulting from it being signed.



Also, there is a Minister without Portfolio in charge of coordination of the government activities in relation to the Decade of Roma inclusion. He is tasked with the inter-ministerial coordination on all Roma issues. “Strategy for Roma in the Republic of Macedonia” (and accompanying national action plans) are regularly adopted and updated, however systematic monitoring of progress is mainly done by NGOs.²⁰⁰

Preferential treatment of people with disabilities is foreseen in the National Strategy for Equalisation of the Rights of People with Disabilities 2010-2018 (and its predecessor). The strategy acts as an operational framework for the UN Convention on the Rights of Persons with Disabilities.²⁰¹ This convention was ratified in November 2011, so the results from its implementation are yet to be seen.

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

There is a National strategy for elderly people 2010-2020.²⁰² Results from its implementation are yet to be seen.

²⁰⁰ Initiative for social change (InSoC) is a civil society organization that does regular annual reporting on the progress accomplished within the Decade of Roma Inclusion. They publish the “Decade Watch”, a comprehensive overview of all activities in relation to the Decade of Roma Inclusion. Latest report can be found here: http://www.insoc.org.mk/publications/DW_MK_2010_EN_1.pdf. Last accessed: 12 March 2012.

²⁰¹ Ministry of Labour and Social Policy. [*Ministry of Labour and Social Policy Website*]. <http://mtsp.gov.mk/WBStorage/Files/FINALNA%20Revidirana%20Nacionalna%20Strategija.pdf>. Last accessed: 12 March 2012.

²⁰² National strategy for elderly people 2010-2020 [*Национална стратегија за стари лица 2010-2020*], MLSP Website. <http://mtsp.gov.mk/WBStorage/Files/Strategija%20za%20stari%20lica%20juni.pdf>. Last accessed: 12 March 2012.



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)?*

Various procedures exist for enforcing the principle of equal treatment. These include judicial, administrative, as well as mediation as an option.

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

Administrative procedures can be raised in front of the Commission for Protection against Discrimination. This procedure is free of charge. Full duration of the procedure is set to 90 days (15 days for the Commission to forward the complaint to the respondent, and 15 days for the respondent to reply). This may result in a Commission's opinion and recommendation. If this recommendation is not acted upon, the Commission can initiate a procedure with a competent body (without further specifications). The location of the Commission is problematic, as it is situated in a building where there are offices of other ministries (including of the Ministry of Interior).

Litigation procedure can also be raised in front of regular courts, based on the provisions of this law. The law does not resolve the priority of the procedures, in case of simultaneous procedures. It does state that if a procedure is raised in front of a court, no procedure can be raised in front of the Commission. However, it does not say what one does if there is a procedure raised in front of the Commission, and after that another procedure is started in front of a court before the procedure ends in front of the Commission. Also, laws do not regulate the relations between the procedures

in front of the Ombudsperson and the Commission, in cases of overlap. This is to be resolved by a Memorandum for Understanding between the two institutions.²⁰³

In the Anti-discrimination Law the outcome of the claim depends on the procedure which one chooses to pursue. The Commission registered approximately 60 cases in 2011.²⁰⁴

The administrative procedure envisages a recommendation for rectifying the violation (i.e. the discrimination) within 30 days; litigation would lead to an award of regular compensation; while the misdemeanour procedure envisages fines in the range of 400 to 1000 euro in national currency.

There are financial sanctions and other sanctions envisaged under the Criminal Code for discrimination. These provisions have not been applied thus far.

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, if a worker believes that she/ he 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 (Art. 181). 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.

²⁰³ A memorandum for cooperation between these two institutions and the Commission for Equal Opportunities of Women and Men of the Assembly of Republic of Macedonia and the Macedonian Women Lobby was signed in December 2011. Source: *24 Vesti*, <http://24vesti.com.mk/index.php/makedonija/293-makedonija/3333-2011-12-29-12-29-17>. Last accessed: 12 March 2012.

²⁰⁴ Detailed statistics on the work of the Commission in 2011 were not published by the time of writing of this report.

This is rather costly procedure, as hiring a lawyer is an obligation and the plaintiff must pay the court costs in advance. Moreover, if the plaintiff loses the lawsuit against a state employer he or she has to pay the costs of the State Defender.²⁰⁵ As it is a judicial litigation, there are strict time limits for all procedural actions.

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.

There are no statistical data on discrimination cases taken up in front of courts, that have been filed as discrimination cases. Discrimination claims can be found in other cases (notably, mostly cases from the field of employment).

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?

The Anti-discrimination Law stipulates time limits concerning 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 applies.

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

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

Yes, this is a possibility under law.

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) What types of entities are entitled under national law to act on behalf or in support of victims of discrimination? (please note that these may be any association).

²⁰⁵ The State Defender is a state budget financed institution. However, they have a practice of requesting litigation costs as private solicitors. When combined with court costs, this is a serious burden on the plaintiff.

Associations of citizens, institutions, foundation, and other civil organizations with legitimate interest as well as any other person working on right to equal treatment are entitled to act on behalf of victims of discrimination. As terms are interchangeably used in laws, the same provisions apply also for an entity acting in support of a victim of discrimination.

The Anti-discrimination Law prescribes an extended right to intervene (Art.39), conditioned upon the approval by both the applicant and the judge, to all organisations and institutions that deal with equality issues. In labour cases, under the Labour Law a possibility is envisaged only for trade unions to act on behalf of the victim however if having the approval of the complainant (Art. 93). Under the Law on the Ombudsperson, this Ombudsperson has to stop its own procedures once a court procedure has been initiated (Art.23).

- b) *What are the respective terms and conditions under national law for associations to engage in proceedings on behalf and in support of complainants? Please explain any difference in the way those two types of standing (on behalf/in support) are governed. In particular, is it necessary for these associations to be incorporated/registered? Are there any specific chartered aims an entity needs to have; are there any membership or permanency requirements (a set number of members or years of existence), or any other requirement (please specify)? If the law requires entities to prove “legitimate interest”, what types of proof are needed? Are there legal presumptions of “legitimate interest”?*

Any association with a mission to uphold the right to equal treatment can act in proceedings on behalf or in support of a complainant. Law specifically mentions legitimate interest, but it does not state what type of proof nor what legal presumptions are considered to be legitimate interest.

- c) *Where entities act on behalf or in support of victims, what form of authorization by a victim do they need? Are there any special provisions on victim consent in cases, where obtaining formal authorization is problematic, e.g. of minors or of persons under guardianship?*

No provision elaborating further the form of acquired consent from the victim exists.

- d) *Is action by all associations discretionary or some have legal duty to act under certain circumstances? Please describe.*

Actions by all associations are discretionary, without a legal duty to act.

- e) *What types of proceedings (civil, administrative, criminal, etc.) may associations engage in? If there are any differences in associations’ standing in different types of proceedings, please specify.*

Standing of associations is tied to the standing of the complainants, thus there is no difference in the type of proceedings they can engage in.

- f) *What type of remedies may associations seek and obtain? If there are any differences in associations' standing in terms of remedies compared to actual victims, please specify*

All actions of associations are tied to the complainants. However, when it comes to the remedies, compared to the actual victims, associations cannot ask for compensations of material and nonmaterial damages. They can seek that violation of the right to equal treatment is established, prohibit actions violating equal treatment, and can ask for publishing the verdict in media on the expense of the respondent.

- g) *Are there any special rules on the shifting burden of proof where associations are engaged in proceedings?*

No such rules exist for the standing of associations.

- h) *Does national law allow associations to act in the public interest on their own behalf, without a specific victim to support or represent (**actio popularis**)? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

Under the Anti-discrimination Law, *actio popularis* is not mentioned in such a context at all. However, it does exist as such option under other laws, and in other procedures. Constitutional Court has the possibility to look into *actio popularis* cases in relation to Human Rights cases, including cases on discrimination.

- i) *Does national law allow associations to act in the interest of more than one individual victim (**class action**) for claims arising from the same event? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

Class actions are an option under the Anti-discrimination Law. The main condition for undertaking a class action is to have the authorisation of the person that finds him/herself discriminated against (Art.41).

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 Anti-discrimination Law declaratively states that it is upon the respondent to prove that no violation of the right to equal treatment occurred. However, in order for a procedure to be initiated, the law asks for facts and proofs from the complainant (Art. 38), thus placing a disproportionate burden upon the complainant.

Child Protection Law enables application of the shift of burden of proof, except for misdemeanour and criminal proceedings (Art.9-i). This leads to the conclusion that the shift is applicable only in administrative cases and litigation. The Labour Law and Law on Social Protection envisage shift of burden of proof as well (Art.11, para.1, 2 and Art.23 respectively).

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 Anti-discrimination Law declares victimisation a form of discrimination. Victimisation is extended beyond the person that reports discrimination, also to the person that files the complaint and any witnesses (Art.10). However, the very basis for protection against victimisation is in the Constitution, which states that a citizen cannot be called to account or suffer adverse consequences for attitudes expressed in petitions, unless they entail the committing of a criminal offence (Art. 24). Labour Law also provided for protection against victimisation²⁰⁶ in a procedure related to psychological harassment (referred to in the law as mobbing). This protection extends also to cover 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.*

Under the Anti-discrimination Law, sanctions vary according to the procedure. The administrative procedure envisages a recommendation for rectifying the violation (i.e. the discrimination) within 30 days; litigation could lead to regular compensation awards; and the misdemeanour procedure envisages fines in the range of 400 to 1000 euro in national currency.

²⁰⁶ *Закон за работни односи* [Labour Law], Official Gazette of the Republic of Macedonia. No. 62/2005, 161/2005, 139/2005, 44/2006, 66/2006, 16/2007, 57/2007, 206/2008, 161/2008, 63/2009, 114/2009, 130/2009, 149/2009, 10/2010, 47/2011. Art.11, para.3.



In labour cases as well as other litigation in civil courts, only compensation can be claimed. In cases of child and social protection, sanctions are fines imposed in a misdemeanour procedure. These can sum up to 500-1000 euro in national currency in child protection cases and 3000-5000 euro in national currency in cases concerning social protection.²⁰⁷

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

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

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, thus at the moment no such conclusions can be drawn.

²⁰⁷ Please have in mind that an average gross monthly salary in the country is approximately 500 euro.

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.)*

The Anti-discrimination Law, adopted in the course of approximation of the national legislation with the european *acquis*, provided for establishment of an equality body - Commission on Protection Against Discrimination.²⁰⁸ This Commission is to deal with both the public and the private sector. It is the first specialised body for promotion of equal treatment as defined in legislation. Before this, the Ombudsperson was the only institution with protection of the principles of non-discrimination and equality as part of its duties as part of its broader mandate for protection of human rights in the public sector.²⁰⁹

An add was published in October 2010 and approximately forty applications arrived at the Assembly for filling in the posts of members of the Commission. Out of these, the Committee for elections and appointing made a list of seven people, which it proposed to the Assembly. The Assembly adopted this list without any amendments. This selection was followed by many public disputes on the eligibility and capacity of some of the appointed members²¹⁰ to fulfil the duties for the position they have been appointed to.

- 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. Is the independence of the body/bodies stipulated in the law? If not, can the body/bodies be considered to be independent? Please explain why.*

²⁰⁸ *Закон за спречување и заштита од дискриминација* [Law on Prevention and Protection against Discrimination], Official Gazette of the Republic of Macedonia, No.50/10. Art.16-33.

²⁰⁹ *Закон за народен правобранител* [Law on the Ombudsperson], Official Gazette of the Republic of Macedonia, No. 60/2003, 114/2009. Art.6, 11.

²¹⁰ For more details, please see: “Flash report: The Assembly of the Republic of Macedonia appointed the members of the first Commission for Protection against Discrimination”. *European Network of Non-discrimination Website*. http://www.non-discrimination.net/content/media/MK-7-Members_of_first_equality_body_appointed.pdf. Last accessed: 12 March 2012.

According to the Anti-discrimination Law²¹¹, the Commission on Protection Against Discrimination is established as an autonomous and independent body. 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. Applications will be collected through a public call for applications. The Commission will be financed through the state budget. The members of the Commission will receive honorarium of two average monthly salaries²¹² (at the moment this is around 500 euro gross per month).

The appointing of the members of the Commission was followed by a wave of concerns expressed by civil society, parliamentary opposition, and some of the candidates for members of the Commission.²¹³ Serious concerns were raised as to the three main following lines: Firstly, concerns were raised on whether all appointed members fulfilled the legal conditions established by the Anti-discrimination law.²¹⁴ Secondly, it is highly questionable whether the best possible candidates were selected from the applicants.²¹⁵ Thirdly, some of the appointed members work and will continue to work in positions in the executive and legislative branches of the government, which brings their capacity to act impartially under question.²¹⁶

Arguments used in defence of the proposed composition of the Commission by the Members of the Parliament who voted in favour, does not provide strong reasoned support justifying the appointment of the most contested candidates, and does not convincingly refute the higher quality of some of the rejected applicants, as can be seen from the transcripts of the Committee and Assembly working sessions.

²¹¹ *Закон за спречување и заштита од дискриминација* [Law on Prevention and Protection against Discrimination], Official Gazette of the Republic of Macedonia, No.50/10.

²¹² *Ibid.* Art.21.

²¹³ For more, please see: Flash report "The Assembly of the Republic of Macedonia appointed the members of the first Commission for Protection against Discrimination" (01.02.2011). http://www.non-discrimination.net/content/media/MK-7-Members_of_first_equality_body_appointed.pdf. Last accessed: 12 March 2012.

²¹⁴ Notably, concluding from the submitted CVs, one of the selected candidates has only working experience as a teaching assistant in arts (music), meaning no experience in Human Rights, nor social sciences, which is part of the legal criteria. CVs of several of the other appointed members qualify their interest in working in Human Rights as questionable (as can be seen from lack of any specific education, experience or at least extracurricular activities in Human Rights).

²¹⁵ As noted in the stenographs from the session of the Committee and of the Assembly, the list of applicants included persons with substantially stronger credentials and competences when measured against the legal criteria, than most of those of the appointed members. The list of rejected applicants includes Human Rights scholars (including applicants teaching Human Rights and related courses at both graduate and post-graduate level) and Human Rights activists (some of which were part of the driving civil society force that pushed for the adoption of the Anti-discrimination law, and that were active during the whole process of drafting of the text of the law; others are active in working with marginalized groups, including LGBTI and Roma).

²¹⁶ Under the Anti-discrimination law, members of the Commission do not have an obligation to discontinue/pause these engagements. However, it is questionable whether this obligation does not exist under other laws.

The other body of relevance here, the Ombudsperson, is tasked to protect the constitutional and legal rights of citizens when violated by state bodies and other authorities and organisations with public powers. This quasi-judicial institution has a mandate to safeguard *inter alia* principles of non-discrimination, and adequate and equitable representation of communities in the organs of state power, bodies of local government and public institutions and services (Art. 77).²¹⁷

The Ombudsperson is elected by the Parliament under the Badenter principle (*i.e* majority vote of the total number of parliamentarians, which must include a majority of the total number of MPs who belong to ethnic communities that are not ethnic majority). The Ombudsperson is elected for a term of eight years, with possibility for one reelection. The Ombudsperson has deputies that are elected under the same procedure as the Ombudsperson, one of which is tasked to focus on non-discrimination and equitable representation.

Any Macedonian citizen can be appointed Ombudsperson if s/he meets the general conditions specified in law for employment in a state body, and if s/he is a graduate lawyer with over nine years of experience in legal affairs and whose activity is proven in the field of protection of citizens' rights and who enjoys a suitable reputation for performing the function of Ombudsperson.²¹⁸ The Ombudsperson and the Deputy Ombudsperson cannot be held responsible for actions, measures and activities undertaken in exercising their function. The independence and autonomy of the office is guaranteed by the Constitution and by law.

In practice the election of the Ombudsperson very much depends on the votes of the governing political parties. Also, given that its funding comes from the state budget, the Ombudsperson could also be seen as financially dependent (as no law prescribed percentages on its budget).

In the Law there is no definition of discrimination or further explanation of the obligation of the Ombudsperson to protect against discrimination. However, following amendments in 2009, a working unit for protection against discrimination has been established in the Ombudsperson's Office.

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.*

The Commission on Protection Against Discrimination deals with all protected grounds under law and under international treaties. Its mandate is to:

²¹⁷ Constitution of the Republic of Macedonia. Official Gazette of the Republic of Macedonia. *Official Gazette of the Republic of Macedonia Website*. <http://www.slvesnik.com.mk/WBStorage/Files/USTAV-eng.pdf>. Last accessed: 01 March 2012. Art.77.

²¹⁸ *Закон за народен правобранител* [Law on the Ombudsperson], Official Gazette of the Republic of Macedonia, No. 60/03, 114/2009. Art.6.

- advise and make recommendations on specific cases of discrimination;
- information on the mechanisms for protection against discrimination;
- 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.

The other institution of relevance here is the Ombudsperson. It has a wider mandate on human rights issues limited to protection in the public sector. The Ombudsperson can deal with any ground of discrimination. It has the following competences:

- 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 in correctional and educational-correctional institutions;
- making opinions and recommendations to government bodies;
- initiating disciplinary cases;
- initiating criminal procedures.

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

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

e) *Are the tasks undertaken by the body / bodies independently (notably those listed in the Directive 2000/43; providing independent assistance to victims of*

discrimination in pursuing their complaints about discrimination, conducting independent surveys concerning discrimination and publishing independent reports)

Given the composition of the members (some of them are full-time employees in ministries, and some in the assembly) one has serious causes for concern on the possibility for independent action. The Commission's situating in premises in a building where there are sections of the Ministry of Interior can also be seen as problematic.

The independence and autonomy of the Ombudsperson's office is guaranteed by the Constitution and by law. In practice the election of the Ombudsperson very much depends on the governing political parties. Given that the budget is not secured, one can argue that this institution can be easily threatened by reduction of financial support.

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

The Commission does not have the legal authority to bring discrimination complaints or to intervene in legal cases concerning discrimination in court. It can only bring to "competent authorities" cases of persons to whom a recommendation was directed but which have not acted upon it (Art. 39, 41).

The Ombudsperson can act on request from an individual or *ex officio*, however it cannot intervene in court cases (Art.13). When the Ombudsperson will conclude that violations are made, s/he may make recommendations, suggestions, opinions and indications on how to act upon detected violations; propose retrial (reopening of the case); initiate disciplinary proceedings against officials or responsible persons; and apply to the competent public prosecutor and to initiate criminal procedures.²¹⁹

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

²¹⁹ *Ibid.* Art.32.



Once the Commission receives a complaint, it forwards it to the respondent within 15 days of receipt. The respondent has 15 days to reply to the complaint. All together, the Commission is to deliver an opinion in 90 days from the day of receipt of the complaint.

The respondent to whom a recommendation has been directed to needs to act in accordance with it within 30 days of the notification it has received from the Commission. If a person does not act upon the recommendation, the Commission can initiate a procedure in front of a “competent authority”.

The Ombudsperson also has elements of a quasi-judicial institution. State organs are obliged to implement its recommendations.²²⁰ If state bodies do not respond, the Ombudsperson has the right to inform the higher responsible body, the Parliament and the public through the media.

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

Nor the Ombudsperson nor the Commission have shown through their actions thus far that they considers the issue of Roma and Travellers as a priority issue. However, the Ombudsperson has been vocal on many occasions about the complexity and specificities of the problems Roma face, including related to discrimination.

²²⁰ *Ibid.* Art. 34.



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 adoption of the Anti-discrimination Law was followed by a series of conferences on specific issues pertaining to the implementation of the legislation, focusing on the establishment of the Commission for Protection against Discrimination – setting grounds for the commencement of its work. Information on these events were distributed via the Ministry of Labour and Social Policy (MLSP) website. The MLSP prepared a manual on non-discrimination with support of the British Council.²²¹ This analysis was presented on the Ministry's website. It also has a Macedonian translation and the original English version of the Directives and wider EU and international legislation on non-discrimination also presented on the website.²²²

Academy for judges and prosecutors organised a training “Concept of Non-discrimination and the judicial practice” in June 2011.²²³ The aim of the training was to strengthen the capacities of the participants coming from the Ministry of Labour and Social Policy, Ministry of Justice, the Commission for Protection against Discrimination, Ombudsperson, Bar Association of Macedonia, through discussions on the practice related to and the implementation of the Anti-discrimination Law.

The British Council, in cooperation with the Ministry of Labour and Social Policy, Citizen's Initiative for Equal Opportunities “Equal Access” and the Organisation of social workers of Bitola and Demir Hisar, implemented a project ‘Effective Implementation of the Law for Prevention and Protection Against Discrimination’. Part of this project was preparation of a Manual for better implementation of the law.²²⁴ A section of the project also included creating a platform for cooperation between the local authorities related to the implementation of the law, and exploring the possibility for engaging the already existing coordinators for equal opportunities on ground in

²²¹ This manual can be found on the website of the Ministry of Labour and Social Policy, on this link: http://www.mtsp.gov.mk/WBStorage/Files/priracnik_antidiskriminacija.pdf.

²²² The Directives' translations can be found on the website of the Ministry of Labour and Social Policy, on this link: <http://www.mtsp.gov.mk/?ItemID=632045AFBECA7447AA9E0DA123EE19E5>.

²²³ “Во Охрид дводневна обука на тема ‘Концептот на не-дискриминација и судската пракса’ [Two day training on subject of ‘Concept of non-discrimination and judicial practice’]. MIA website. <http://miaweb.mia.com.mk/default.aspx?vld=85401649&lld=1>. Last accessed: 12 March 2012.

²²⁴ The manual in Macedonian language is accessible on this page: http://ednakvimosnosti.mk/img_upload/Priracnik_za_efektivna_implementation_na_Zakonot_za_sprecuvanje_i_zastita_od_diskriminacija_makedonski.pdf. Last accessed: 12 March 2012.

the implementation of the Anti-discrimination law (i.e expanding their activities beyond ground of gender).²²⁵

Other activities were undertaken related to gender, however this is not on one of the grounds the present report is concerned with.

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*

In 2011, the building of negative sentiments around NGOs continued.²²⁶ The case reported in the 2010 country report (public criticism of a large donor organization, and of NGOs or individual that are financially supported or in any way related to this donor organization, including hate speech directed towards them) continued in 2011. This culminated with the finding of a Commission for verification of facts (or the 'lustration body') that the head of this organisation has cooperated with the secret services of the previous regime.²²⁷

Similarly to the events related to the adoption of the Anti-discrimination Law,²²⁸ the draft-National Strategy on Equality and Non-discrimination on grounds of ethnic affiliation, age, disability and sex was largely drafted in a closed consultative process. It was publicly announced in mid-November 2011, and said to be pending adoption by end of 2011,²²⁹ leaving less than two months for a consultative process. Activities following this were four public presentations of the draft in four municipalities. CSOs reacted to such closed consultations. The Coalition for sexual and health right of marginalized communities raised the issue of transparency of the process of drafting of the strategy, and of keeping it as a closed negotiation among the government and certain CSOs. Furthermore, they also contested the grounds for discrimination covered by the strategy. According to them, this is one more step towards further marginalization of the LGBTI community in the country.²³⁰

²²⁵ 'За проектот' [About the Project]. *Ednakvi možnosti website*.

http://ednakvimoznosti.mk/za_proektot.asp. Last accessed: 12 March 2012.

²²⁶ Notably, whenever the government and/or opposition presented a new position or wanted prepare the grounds for a new change, or simply just wanted to distract the general public from another emerging problem, an NGO comes out with a press conference (mostly NGOs registered a week/two weeks ago) to support their claims or harshly refute the opposing side's positions. This was done by both the government and the opposition and on numerous occasions.

²²⁷ Lustration for people from the civil society was later stopped by the Constitutional Court in a 2012 proceeding, as being un-constitutional.

²²⁸ See 2010 report, page 83: http://www.non-discrimination.net/content/media/2010%20MK-%20Country%20Report%20LN_FINAL.pdf. Last accessed: 12 March 2012.

²²⁹ Until the time of writing of this report, the strategy was not yet adopted.

²³⁰ "Владата не признава сексуална дискриминација?". Radio Free Europe.

<http://www.makdenes.org/content/article/24393126.html>. Last accessed: 12 March 2012.

- 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)*

Mechanism for social dialogue between social partners is the Economic-social Council. It is consisted of representatives from the Government, from the Unions and the Associations of Employers.²³¹ It was recently established, so results from its work are still not visible.

The Organisation of Employers of Macedonia undertook a project whose aim was to foster dialogue between the social partners.²³² Part of its activities were promotion of the implementation of *acquis communautaire* in the area of social dialogue.

- d) *to specifically address the situation of Roma and Travellers*

The Government continues with the implementation of the activities within the frame of the Decade of Roma Inclusion.

The Minister without Portfolio²³³ is tasked to coordinate the activities of the Decade. The MLSP and the Roma Information Centres all implement various activities in relation to the Decade and beyond, and serve as contact points with the NGO sector. NGO Initiative for Social Change conducts regular monitoring of the implementation of the activities of the Decade and publishes them in annual reports.²³⁴ Macedonia took the presidency with the Roma Decade in 2011 for one year. Discrimination is an inter-sector priority of the presidency.²³⁵

Series of trainings were held, in organization of the MLSP and in cooperation with the International Organization for Migrations towards strengthening of the socio-economic capacities of Roma (most of these as vocational trainings). MLSP started a project on employment policies for women from ethnic communities (focusing on Roma women and women from rural areas).

²³¹ Economic-social Council. *Economic-social Council Website*.

<http://www.ess.mk/?item=page&itemid=3>. Last accessed: 12 March 2012.

²³² "Социјалниот дијалог-можност за компромис и баланс меѓу економскиот и социјалниот развој" [Social dialogue and possibilities for compromise and balance between the economic and social development]. *MLSP Website*.

<http://mtsp.gov.mk/?ItemID=D975FD1E476EBD4A8DA613C0C75995CF>. Last accessed: 10 March 2012.

²³³ Minister without portfolio website and profile can be accessed at this link: <http://www.mbr-ds.gov.mk/?q=node/2>.

²³⁴ Decade Watch Report 2010. INSOC, *INSOC Website*.

http://www.insoc.org.mk/publications/DW_MK_2010_EN_1.pdf. Last accessed: 12 March 2012

²³⁵ For more on the action plan of the presidency, please see: *MLSP Website*.

http://www.mtsp.gov.mk/WBStorage/Files/programa_eng_romi.pdf. Last accessed: 12 March 2012.



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 posterior derogat legi priori (more recent rules prevail over less recent rules).*

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

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

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

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

Official bodies have not established such a case so far. Time allocated for the compilation and writing of this report is insufficient for a comprehensive overview of the full legislation. If sufficient time and resources are allocated, a thorough review might reveal such cases.

²³⁶ Закон за облигациони односи [Law on Obligations]. Official Gazette of the Republic of Macedonia., No. 18/2001, 78/2001, 04/2002, 59/2002, 05/2003, 84/2008, 81/2009, 116/2009. Art.95.para.1.

²³⁷ Закон за судовите [Law on Courts]. Official Gazette of the Republic of Macedonia. No. 58/2006, 62/2006, 35/2008, 150/2010.



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?

The Ministry for Labour and Social Policy is tasked with coordinating issues on anti-discrimination on the grounds covered with this report, as well as with other grounds mentioned in national legislation.²³⁸ Aside from this Ministry, several other sections also have competences touching upon anti-discrimination on the grounds covered in this report:

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

Is there an anti-racism or anti-discrimination National Action Plan? If yes, please describe it briefly.

In November 2011, the Government announced that a draft-National Strategy on Equality and Non-discrimination on grounds of ethnic affiliation, age, disability and sex was prepared, and was going on a public consultation process (which consisted of public presentations of the draft in four municipalities). The strategy was drafted in a closed consultative process (selected CSOs and international organisations were included). It was announced it is pending adoption by end of 2011.²³⁹

CSOs reacted to such closed consultations. The Coalition for sexual and health right of marginalized communities raised the issue of transparency of the process of drafting of the strategy, and of keeping it as a closed negotiation among the government and certain CSOs. Furthermore, they also contested the grounds for discrimination covered by the strategy. According to them, this is one more step towards further marginalization of the LGBTI community in the country.²⁴⁰

²³⁸ Ministry of Labour and Social Policy. *Ministry of Labour and Social Policy Website*. <http://www.mtsp.gov.mk/?ItemID=21E7AB9648BFC441AFD588BA0183B4A3><http://www.mtsp.gov.mk/?ItemID=21E7AB9648BFC441AFD588BA0183B4A3>. Last accessed: 1 March 2011.

²³⁹ Until the time of writing of this report, the strategy was not yet adopted.

²⁴⁰ “Владата не признава сексуална дискриминација”. Radio Free Europe. <http://www.makdenes.org/content/article/24393126.html>. Last accessed: 12 March 2012.



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: Former Yugoslav Republic of Macedonia (FYROM)

Date: 01 January 2012

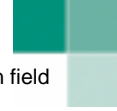
Title of Legislation (including amending legislation)	Date of adoption: Day/month /year	Date of entry in force from: Day/month/ year	Grounds covered	Civil/Administrative / Criminal Law	Material Scope	Principal content
<p>Law on Prevention of and Protection Against Discrimination</p> <p>Basic text (2010), as in Official Gazette: http://www.slvesnik.com.mk/Issues/1654343CD9A0E24998781907DC19A99F.pdf</p>	<p>08.04. 2010</p>	<p>21.04.2010 (implemen- tation starts: 01.01.2011)</p>	<p>Sex, race, colour of skin, gender, belonging to a marginalised group, ethnicity, language, citizenship, social origin, religion or religious belief, other sorts of belief, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property, health condition, or any other ground or stipulated by law</p>	<p>Civil law</p>	<p>All areas (draws specific attention to: public employment, private employment, access to goods and services, social protection, education).</p>	<p>Prohibition of direct and indirect discrimination, harassment, instruction to discriminate, reasonable accommodation, creation of a specialised body.</p>



			or ratified national treaty.			
Labour Law Amended text (2010), as in Official Gazette: http://www.slvesnik.com.mk/Issues/ABCBBB808C582943B4A3287BD0629357.pdf	28.07.2005	05.08.2005	Race, colour, sex, age, health condition, disability, religious, political or other belief, membership of trade union, national or social origin, position of the family, property, sexual orientation or other personal issue.	Civil law	Public employment, private employment.	Regulation of labour relations. Of relevance here: prohibition of direct and indirect discrimination, harassment.
Law on Child Protection Amended text (2010), as in Official Gazette: http://www.slvesnik.com.mk/Issues/5F820C894F8DAB44B5417ECE3BE0E050.pdf	23.11.2000	01.12.2000	Race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, cultural or other origin, property, disability, birth or other status of the child or her/his parent or legal guardian.	Civil law	Social protection, social advantages.	Protection of children. Of relevance here: prohibition of direct and indirect discrimination, harassment.



<p>Law on Voluntary Fully Funded Pension Insurance</p> <p>Basic text (2008), as in Official Gazette: http://www.slvesnik.com.mk/Issues/AE730F612BBE3344863A1C5A3E47E89E.pdf Amendments – 2010, as in Official Gazette: http://www.slvesnik.com.mk/Issues/CCC73CC114432D48894FBFB9A43BDD92.pdf</p>	04.01.2008	23.01.2008	Sex, race, colour,, 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 law	Social protection, social advantages.	Prohibition of direct and indirect discrimination,
<p>Law on Social Protection.</p> <p>Basic text (2009), as in Official Gazette: http://www.slvesnik.com.mk/Issues/7CEA639634D1054DB351E7FB985665DC.pdf</p>	24.06.2009	02.07.2009	Sex, race, colour, nationality, ethnicity, social status, political, religious, cultural, language, property and social background, disability and origin.	Civil law	Social protection, social advantages.	Social protection. Of relevance here: prohibition of direct and indirect discrimination.



ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country: Former Yugoslav Republic of Macedonia (FYROM)

Date: 01 January 2012

Instrument	Date of signature (if not signed please indicate)) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	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)	09.11.1995	10.04.1997	No	Yes	Yes
Protocol 12, ECHR	04.11.2000	13.07.2004	No	Yes	Yes
Revised European Social Charter	27.05.2009	21.10.2011			



Instrument	Date of signature (if not signed please indicate)) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	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?
International Covenant on Civil and Political Rights	(succession) ²⁴¹	18.01.1994	No	Yes	Yes
Framework Convention for the Protection of National Minorities	25.07.1996	10.04.1997	No	Yes	Yes
International Convention on Economic, Social and Cultural Rights	(succession)	18.01.1994	No	Yes	Yes

²⁴¹ Under the Constitutional Law adopted for implementing the Constitution of the Republic of Macedonia, as one of the republics to succeed from the Socialist Federative Republic of Yugoslavia (SFRY), the country assumes all obligations from SFRY membership in international organizations and with other countries, as provided by common principles of international law. This Law also calls upon the Vienna conventions for succession (1978 and 1982) for guidance on regulating the succession. Source: Constitutional Law adopted for implementing the Constitution of the Republic of Macedonia [Уставен закон за спроведување на Уставот на Република Македонија]. Official Gazette of the Republic of Macedonia, No.52/91.



Instrument	Date of signature (if not signed please indicate)) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	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	(succession)	18.01.1994	No	Yes	Yes
Convention on the Elimination of Discrimination Against Women	(succession)	18.01.1994	No	Yes	Yes
ILO Convention No. 111 on Discrimination	n/a	17.11.1991	No	Yes	Yes
Convention on the Rights of the Child	(succession)	02.12.1993	No	Yes	Yes
Convention on the Rights of Persons with Disabilities	30.03.2007	14.12.2011	No	Yes	Yes