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Non-discrimination

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Macedonia

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including summary



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Country report

Non-discrimination

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

Republic of North Macedonia

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Reporting period 1 January 2018 – 31 December 2018

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EXECUTIVE SUMMARY

1. Introduction

The Republic of North Macedonia, a land-locked, multi-ethnic country in south-eastern Europe, declared its independence in 1991, following the dissolution of the Socialist Federal Republic of Yugoslavia. It became a European Union candidate country in 2005 with a recommendation to open negotiations from 2009 and has had a conditional invitation to join the North-Atlantic Treaty Organization since 2008. Both these processes are a foreign affairs priority for the country, but have been stalled, initially due to the name dispute¹ with Greece. However, as noted in several consecutive European Commission progress reports,² this was later compounded by fundamental rule of law issues and, ultimately, state capture.³ A series of events⁴ led to the resignation of Nikola Gruevski (who had been Prime Minister since 2006), pre-term Parliamentary elections in December 2016, a hung parliament and physical violence⁵ on 27 April 2017 when, during the election and appointment of a new President of the Parliament, protestors were let into the parliament building by MPs from Gruevski's party.⁶ A new government was formed in June 2017. While some loosening of the pressure on civil society, media and state institutions is evident, some of the reforms which this Government promised are still pending, including the adoption of the new Law on Prevention and Protection against Discrimination.⁷

Official domestic priorities remain the implementation⁸ of the Ohrid Framework Agreement (OFA),⁹ lowering unemployment rates¹⁰ and the fight against poverty.¹¹

¹ On the name dispute, please see the introduction to reports from previous years.

² European Commission (2016), *The Former Yugoslav Republic of Macedonia – Progress Report* https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_the_former_yugoslav_republic_of_macedonia.pdf.

³ The concept of 'state capture' is as per Transparency International's definition: 'a situation where powerful individuals, institutions, companies or groups within or outside a country use corruption to shape a nation's policies, legal environment and economy to benefit their own private interests'. This is also how the European Commission described the situation in the country in the 2016 report. Source: European Commission (2016), *The Former Yugoslav Republic of Macedonia – Progress Report*.

⁴ These events included protests (see Protestiram, 'About the Protests', Protestiram website, http://webcache.googleusercontent.com/search?q=cache:vGdieyV9NWEJ:protestiram.info/%3Fpage_id%3D40+%&cd=1&hl=en&ct=clnk&gl=mk; DW (2016), 'Macedonia: "Colourful Revolution" paints raucous rainbow', DW website, www.dw.com/en/macedonia-colorful-revolution-paints-raucous-rainbow/a-19203365); the wire-tapping affair (Balkan Insight, (2015), 'Macedonia PM accused of large-scale wire-tapping' (9 February 2015), Balkan Insight website, www.balkaninsight.com/en/article/eavesdropping-bombshell-explodes-in-macedonia) and the Pržino agreement: EU (2015), 'Recommendations of the Senior Experts Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015', https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf).

⁵ Nova TV (2017), 'Half a year after bloody Thursday only one prison sentence' (*Пола година по крвавиот четврток само една затворска казна*), <http://novatv.mk/pola-godina-po-krvaviot-chetvrtok-samo-edna-zatvorska-kazna/>.

⁶ Security camera footage was released to the public in which one can clearly see the MPs opening the doors and greeting the crowd that stormed in.

⁷ Assembly of the Republic of North Macedonia, Draft Law on Prevention and Protection against Discrimination (*Предлог-закон за спречување и заштита од дискриминација*), www.sobranie.mk/materialdetails.nsp?materialId=d364c285-1319-4d6f-82b4-e46ab25965e1.

⁸ Although it is not the OFA itself that is being implemented, but constitutional, legal provisions and strategic documents that resulted from its signing, the expression 'implementation of the OFA' is used for reasons of brevity.

⁹ Signed in view of ending the 2001 armed conflict, the OFA aims to advance the position of minority ethnic communities and to preserve and reflect the multi-ethnic character of the country in public life, including through actions to promote non-discrimination and equitable representation.

¹⁰ According to the State Statistical Office, the unemployment rate in the last quarter of 2016 was 23.4 % of the active population, while 43.4 % are employed.

¹¹ The Laeken indicator of poverty for 2014 (last available statistic) is 22.1 %.

The country's population is just over two million.¹² Ethnic affiliation is important, as sets of rights and positive action measures are tied to the numerical representation of each ethnic community in the total population. The ethnic composition¹³ is 64 % ethnic Macedonians, 25 % ethnic Albanians, 4 % ethnic Turks, 3 % ethnic Roma, 2 % ethnic Serbs, 1 % ethnic Bosniaks, 0.5 % ethnic Vlachs and 1 % 'others' (a term used in the Constitution). Numerous activities to promote the rights of Roma people have been undertaken but, except in relation to political participation,¹⁴ the results are questionable.

Regarding cooperation with civil society organisations (CSOs), following the appointment of the new Government in June 2017, the climate rapidly changed from one of scapegoating and openly prosecuting CSOs, which was the case during the Gruevski Government, to one that is much more open to including CSOs in decision-making processes and working groups and in stepping up to support CSO activities, including on equality and non-discrimination. In 2018, senior government officials continued to demonstrate clear support and to participate in CSO activities.

2. Main legislation

The Constitution of the Republic of North Macedonia¹⁵ is a written one and the country's highest legal act. It accepts international law as part of domestic law and as higher than the laws and bylaws. The Constitution provides for protection against discrimination. It upholds the equality of citizens before the Constitution and before the law, stating that citizens are equal in their freedoms and rights, regardless of gender, race, colour, national and social origin, political and religious conviction, property and social status. It provides a protection mechanism for all who find their human rights and freedoms breached, before the Constitutional Court. Upholding the monism principle on the application of international law (the signed and ratified international documents), the Constitution provides for the domestic use of these documents, thus also for those providing for protection against discrimination and/or upholding the principle of equality.

Until 2010, anti-discrimination provisions were scattered in various laws. In April 2010, the Anti-Discrimination Law (ADL)¹⁶ – the first comprehensive equality law – was adopted as part of the EU *acquis* approximation process. The ADL does not comply with the directives regarding minimum protected grounds, definitions and forms of discrimination, effective, proportionate and dissuasive sanctions, use of statistical data or dialogue with the CSO sector. The equality body established by the act, the Commission for Protection against Discrimination (CPAD), cannot be said to meet the requirements of Directive 2000/43/EC.

In Article 3, the ADL provides protection on the following grounds: sex, gender, belonging to a marginalised group, race, ethnic affiliation, colour, religion or religious beliefs, other types of beliefs, language, citizenship, social origin, education, political affiliation, personal or social status, family or marital status, mental and physical disability, age, property ownership and health condition. Although this provision includes many grounds that are not part of the directives, with sexual orientation excluded from the list, the ADL cannot be said to be fully in line with EU standards. However, Article 3 is an open-ended provision,

¹² Although not supported by official figures, estimates show that 250,000 to 500,000 people have left the country in the past few years to work abroad.

¹³ All figures presented here are rounded percentages from the 2002 census, which is still the most recent census. A new census was scheduled for 2011, but it was cancelled due to lack of clarity around the implementation of the methodology. A new census is planned for 2020. All statistics from the State Statistical Office can be found at: www.stat.gov.mk/.

¹⁴ There is a Roma minister in the Government, with a portfolio on Roma rights, a Roma municipality (Shuto Orizari) and Roma MPs. In addition, the just and equitable representation, implemented pursuant to the Ohrid Framework Agreement, also applies to Roma.

¹⁵ English language version of the Constitution of the Republic of North Macedonia: Constitution of the Republic of North Macedonia www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nsp.x.

¹⁶ Law on prevention and protection against discrimination (*Закон за спречување и заштита од дискриминација*) Official Gazette of the Republic of Macedonia No.50/10, 44/2014, 150/2015, 31/2016, 21/2018, Constitutional Court Decision: Y.6p.82/2010 (15 September 2010).

ending with 'any other ground established by law or a ratified international treaty'. This opens some space for sexual orientation to be read into it. The practice of the equality body went in this direction; since the first year of implementation, there has never been a case where a claim for discrimination on grounds of sexual orientation was rejected and not read into the provision under 'any other ground established by law or a ratified international treaty'.

The ex-post evaluation of the ADL implementation showed that the aims of the law¹⁷ were only partly achieved and identified many points where implementation could be improved, justifying the situation as resulting from a lack of allocated funds. Three recommendations for legislative changes were issued: amending the ADL to allow for the establishment of administrative support for the CPAD; explicit prescription of the 'shift of burden of proof' for the CPAD; and enhancing the CPAD accountability mechanisms. Following this, an all-encompassing harmonisation analysis was conducted, which focused on the harmonisation of the ADL with international standards and the harmonisation of other domestic laws and bylaws with the ADL. The analysis identifies many points for legislative changes, both on general issues (such as, for example, amending insensitive terminology on disability) and on specific points (specific proposals for articles).¹⁸

A draft of a new law, which is to replace the 2010 law, was prepared and submitted to the Parliament in June 2018. However, at the end of 2018 it was still being blocked by MPs both from the parties in power and from opposition parties.¹⁹ The draft law has the same title as the current law: Law on Prevention and Protection against Discrimination (referred to hereinafter as the 2018 Draft ADL).²⁰ The text was drafted by a working group comprising people from the relevant ministries, representatives from international organisations and CSOs working on equality issues, including those providing legal aid in discrimination cases. The Ministry of Labour and Social Policy (MLSP) coordinated the process, with significant support from the Organisation for Security and Cooperation in Europe (OSCE) Mission to Skopje. The working group worked on the text for almost two years. One of the most important changes is the extension of the personal scope of protection by the law. Of relevance to this report are the extension of the scope to explicitly include sexual orientation and the expansion of the scope of protection of 'mental or physical disability' to 'disability' (Article 5, 2018 Draft ADL). These and other important changes proposed by the 2018 Draft ADL are discussed further in the relevant sections of the country report.

3. Main principles and definitions

The ADL contains definitions of direct and indirect discrimination, harassment, instruction to discriminate and victimisation. Compared to the directives, the definition of direct discrimination is unnecessarily complex, whereas the definition of indirect discrimination is fully replicated. The law contains an article on harassment and on sexual harassment, as well as a separate article on discrimination against people with disabilities. Multiple discrimination is included as a serious form of discrimination, as are repeated and extended discrimination. The law also has a provision on inciting and encouraging discrimination.

¹⁷ As the Anti-Discrimination Law does not contain a provision on its aims, by analysing other documents, the ex-post evaluation team identified the aims as prevention of and protection against discrimination.

¹⁸ Kotevska, B. (2016), *Analysis of the harmonization of national equality and non-discrimination legislation (OSCE and CPAD)*, available at: www.researchgate.net/publication/332466241_Analysis_of_the_harmonization_of_the_national_legislation_on_equality_and_non-discrimination_ANALIZA_NA_HARMONIZIRANOSTA_NA_DOMASNOTO_ZAKONODAVSTVO_ZA_EDNAKVOSTA_I_NEDISKRIMINACIJATA.

¹⁹ For more on this blocking process, please see: www.equalitylaw.eu/downloads/4814-fyr-macedonia-the-proposed-new-law-on-anti-discrimination-blocked-in-parliament-pdf-134-kb.

²⁰ The text of the 2018 Draft ADL, as it stood at the cut-off date for this report, is available at: Assembly of the Republic of North Macedonia, Proposal Materials: Law on Prevention and Protection against Discrimination (*Материјали: Закон за спречување и заштита од дискриминација*) (2018), official website of the Assembly of the Republic of North Macedonia: www.sobranie.mk/materialdetails.nsp?materialId=11a48c40-c491-481f-9136-adbc62285ad6.

Reasonable accommodation is included primarily in the Law on the Employment of Persons with Disabilities. There is no provision on discrimination by association.

The law defines a list of exceptions and exemptions, albeit with a lack of precision, thus leaving room for readings of the law that could narrow protection against discrimination. Chapter III – Exceptions to Discrimination (ADL), prescribes the following three exceptions and exemptions:

- Affirmative measures (Article 13): Actions undertaken by natural or legal persons that will not be considered as discrimination if they are established as justified in the past, in the present or in the future and may be undertaken until complete factual equality is achieved and factual inequalities are eliminated or reduced.
- Unequal treatment that will not be considered as discrimination (Article 14): different treatment of non-citizens; genuine occupational requirements; different treatment of persons on the basis of religion, belief, sex or other characteristics in relation to education and training for the aims of an occupation related to a particular religion; actions by members and bodies of churches and religious communities, citizens' organisations, political parties, unions and other organisations conducted in accordance with their doctrine, convictions or beliefs and/or the aims determined in their statutes, programmes and/or regulations; regulation of marriage; exercise of the constitutionally guaranteed principle of freedom of speech, public appearance, opinion and public information; and establishment of a minimum and maximum age in relation to entering a profession/granting privileges/retirement provided that there is a legitimate aim.
- Protective mechanisms for specific categories of persons (Article 15): protection of pregnant women and mothers; children without parents, juveniles, single parents and people with disabilities; equal participation of women and men; promoting employment; training and education for people with disabilities; anticipation of minimum and maximum ages for access to certain levels of training and education, provided that it is objectively justified for the achievement of the legitimate aim and the extent of this differentiation does not exceed that necessary in relation to the nature of the training or education or the conditions in which they are delivered and the extent of this differentiation does not exceed the level necessary for the achievement of the aim; special measures beneficial to people or groups who are placed in an unfavourable position as a result of any of the discriminatory grounds, for the purpose of equalising their opportunities, as long as those measures are necessary; measures for the protection of the specifics and identity of people belonging to ethnic, religious or linguistic minorities and their right to cherish and develop their own identity individually or in a community with other group members and measures stimulating conditions for promotion of that identity; and measures in the field of education and training to ensure the participation of ethnic minorities, as such measures are necessary.

Before the adoption of the ADL, various laws incorporated definitions of discrimination. As the ADL does not establish a unification of provisions amongst various laws in its transitory and final provisions, it may be expected that the institutions that are supposed to implement the law could face doubts about which legislation and/or provision to apply to a certain case and which provisions should have precedence. *Lex specialis derogat legi generali* and *lex posterior derogat legi priori* are by tradition part of judicial work, but judges tend to rely on existing provisions rather than general legal principles, even in cases where seemingly contradictory provisions exist, as general legal principles are used primarily in the event of legal loopholes (as prescribed under the Law on Courts).

In 2018, the most significant development was the proposal for a new law on anti-discrimination. If adopted as proposed, the law will resolve the issues with the current law. It fully replicates the definition of direct discrimination from the directives. It adds a definition of discrimination by association and discrimination by perception. In addition, it

explicitly adds intersectional discrimination as a serious form of discrimination. Furthermore, the proposal foresees that the long list of exceptions is shortened and clarified.

4. Material scope

The ADL is applicable to both the private and public sectors and applies to all fields. The law notes that specific attention should be paid to the fields of employment and working relations; membership of and involvement in trade unions, political parties, CSOs, foundations and other membership organisations; social security, including social protection, pensions and disability insurance; health insurance and healthcare; education; access to goods and services; and housing. Thus, it goes beyond the directives. Other laws also include discrimination provisions, defining the material scope. All of them relate to both the public and private sectors, apart from the Law on the Ombudsperson, which provides protection against discrimination only in the public sphere.

In the field of employment, aside from the Anti-Discrimination Law, there is also a Law on Labour Relations,²¹ which prohibits discrimination in line with the standards of the directives. These laws apply to both the public and private sectors.

The 2018 proposal for a new law on anti-discrimination leaves the same material scope for the law. Thus, if adopted as proposed, the new law will also cover all fields as per the directives and go beyond these.

5. Enforcing the law

According to the Constitution, citizens are entitled to bring a case for the protection of fundamental rights and freedoms to the Constitutional Court in a prompt procedure. However, in practice, although these procedures have been invoked, the Constitutional Court has been very reluctant to act in such cases.

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

Administrative procedures before the CPAD are free of charge. This body may give its opinion and recommendations. The procedure can last up to 90 days. If the recommendation is not acted upon, the CPAD can initiate a procedure with a competent body (the law does not specify this further).

In 2018, the CPAD reported receiving 132 cases, which is a significant increase from 2017 when it received 59 cases. The reporting by discrimination ground was as follows: 'personal or other social status 25 %; political affiliation 21.97 %; health status 9.09 %; sex 9.09 %; belonging to a marginalised group 8.33 %; ethnicity 7.58 %; age 6.06 %; "mental" or physical disability 3.79 %; gender 3.03 %; family or marital status 3.03 %; religion or religious belief 2.27 %; sexual orientation 2.27 %, etc.'²² The reported distribution by field

²¹ Law on Labour Relations (*Закон за работните односи*), Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014, 20/2015, 33/2015, 72/2015, 129/2015, 27/2016, 120/2018; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013, U. no. 114/2014.

²² The CPAD reported the distribution of cases by discrimination ground in percentages and did not provide a full list (the sentence ends with 'etc'), as can be seen from this quote. Source: Commission for Protection against Discrimination (2019), *Annual Report for 2018 (Годишен извештај за 2018 година)*, www.sobranie.mk/materialdetails.nsp?materialId=a554ee4c-74e0-44a2-a5bb-04b4e411c353.

is as follows: 49.24 % in employment and labour relations; 19.70 % in access to goods and services; 8.33 % in judiciary and administration; 6.82 % in education, science and sport; 3.79 % in social security; 2.27 % in public information and the media; 0.76 % in housing; 3.79 % no field stated and 6.82 % in other fields established under the law.²³

Litigation procedures can be brought in ordinary courts, based on the provisions of the ADL. The law does not resolve the priority of the procedures in a case of simultaneous procedures, but it states that if a procedure is brought in a court, no procedure can be brought before the CPAD. Nevertheless, it does not state what should be done if a procedure is brought before the CPAD and after that (but before the procedure with the CPAD ends) another procedure is started before a court. Furthermore, the relationship between procedures before the Ombudsperson and the CPAD are not regulated by law, but are governed by a memorandum of understanding between the two institutions.

Under the ADL, the outcome of the procedure depends on the procedure chosen. Administrative procedures provide for a recommendation to rectify the violation (i.e. the discrimination) within 30 days; litigation would lead to an award of regular compensation; and a misdemeanour procedure can lead to fines in the range of EUR 70 to EUR 1 000.²⁴ Financial and other sanctions for discrimination are provided in the Criminal Code. These provisions have not been applied to date.

The Ombudsperson is another possible forum for public sector discrimination cases. In 2018, 77 cases were filed as non-discrimination and equitable representation cases, which represents 2.23 % of the total number of cases filed (3 458 cases, which is an increase from 2017, when the number of cases was 3 224). This is the highest representation of this category of cases since the Ombudsperson started to report them separately (that is, higher than the 70 cases or 2.17 % reported in 2017, the 69 cases or 1.83 % reported in 2016, or the 53 cases or 1.2 % reported in 2015). Under the separate category of cases of 'adults and children with disabilities', the Ombudsperson also reports having received a higher number of cases compared to the previous year – 21 cases or 0.61 % (compared to five cases or 0.16 % in 2017, and 15 cases or 0.4 % in 2016). As was the case in the previous year, the Ombudsperson did not publish detailed statistics on the grounds and fields in which the cases were filed. However, it noted a continuing trend from previous years in that employment remained the dominant field. It also reports that political affiliation is the dominant discrimination ground, followed by ethnic affiliation. Harassment reporting remained high.

The ADL is silent on situation testing. It is worth noting that Article 206 of the Law on Civil Procedure states that any facts that are important for reaching a decision can be used as evidence, but that it is up to the courts to decide which facts need to be proven and which do not. The Law on Civil Procedure goes on to mention examples of evidence, but situation testing is not one of those examples. Situation testing was initially used in practice only by CSOs, even before the adoption of the Anti-Discrimination Law. But in 2016, the Ombudsperson conducted a situation testing exercise in order to cross-check a submission it received from a CSO on discrimination on the ground of sex in the field of healthcare provision.²⁵ The 2018 proposal for a new Anti-discrimination Law explicitly includes situation testing as a means of proving discrimination before both the equality body and the courts.

²³ Commission for Protection against Discrimination (2019), *Annual Report for 2018 (Годишен извештај за 2018 година)*, www.sobranie.mk/materialdetails.nsp?materialId=a554ee4c-74e0-44a2-a5bb-04b4e411c353.

²⁴ All amounts are indicated in EUR and are to be paid in national currency, unless stated otherwise.

²⁵ Helsinki Committee of the Republic of Macedonia (2016), 'Info-sheet on Discrimination' (*Информатор за дискриминација*), May 2016, www.mhc.org.mk/system/uploads/redactor_assets/documents/1587/DISCRIMINATION_III_2_.pdf.

The ADL prescribes shifting the burden of proof, as do several other laws. However, its definition is not in line with the directives, as the law requires the alleged victim of discrimination to provide facts and proofs to justify their claim. This puts an unreasonably large portion of the burden on the alleged victim. A shift of the burden of proof does not apply for criminal offences related to breach of equal treatment. The CPAD has thus far applied the shift of the burden of proof in accordance with national legislation.

CSOs support complaints and bring cases of discrimination to public attention. The media still reports discrimination cases in a sensationalist manner, although improvements are evident.

6. Equality bodies

The ADL provided for the establishment of the first equality body in the country – the Commission for Protection against Discrimination (CPAD). The CPAD can: give advice and make recommendations on cases of discrimination; provide information and initiate procedures within relevant state bodies; produce reports; provide education and training; initiate changes to legislation; cooperate with local government, CSOs, other equality bodies and international organisations; and collect statistical data, establish databases and conduct research. The CPAD works on discrimination cases on the grounds of 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 ownership, health condition, or any other ground stipulated in law or a ratified international treaty. For reporting per ground and field, please see Executive Summary Section 5 'Enforcing the Law'.

There was no equality body before the adoption of the ADL. Public sector discrimination duties came under the mandate of the Ombudsperson. The ADL does not regulate the relationship between the Ombudsperson and the CPAD (it operates partly under a memorandum of understanding). According to the Ombudsperson's general mandate, it can accept individual claims, investigate, give recommendations and opinions, initiate procedures, and monitor and research specific issues, focusing protection on the grounds mentioned in the Constitution and covering violations made by public bodies.²⁶

7. Key issues

The key issues of concern in the national context include:

- sexual orientation is not an explicitly protected ground in the ADL;
- national legislation is not harmonised internally nor with international standards;
- underfunding prevents the national human rights institutions from fully exercising their competences;
- impunity of hate crime and hate speech, especially with regard to sexual orientation;
- persisting rule of law issues and lingering state capture erode trust in institutions, including the judiciary;
- lack of independence of the equality body which, in its present positioning and operation, cannot be seen to be in line with the directives.

²⁶ Republic of North Macedonia, Law on Ombudsperson (*Закон за народниот правобранител*), Official Gazette of the Republic of Macedonia Nos. 60/2003, 114/2009, 181/2016, 189/2016, Constitutional Court Decisions: U. no. 111/2007.

INTRODUCTION

The national legal system

The Republic of North Macedonia is a unitary, semi-parliamentarian, civil law country. It adopts the monism principle regarding the relationship between international and municipal law, the former being considered part of the latter, and superior to domestic laws and bylaws,²⁷ and where, if it is deemed fit and appropriate, courts can use the final judgments of the European Court of Human Rights (ECtHR), the International Criminal Court (ICC) or any other international court with jurisdiction over the country.²⁸ Although in theory directly applicable, references to international law in the jurisprudence of the domestic courts are still very rare and, in practice, the courts do not seem to treat it as higher in the national legal hierarchy than national laws.

The Constitution prescribes the principle of the separation of powers. The three branches of power are: legislative, executive and judicial.²⁹

Legislative power is vested in the Assembly of the Republic (the Parliament). The members are elected through what the Constitution and the laws set out as general, direct and free elections and by secret ballot.³⁰ The Parliament has the power to adopt and amend the Constitution and ratify international treaties, as well as to adopt and amend laws. There are special procedures in place that aim to ensure that no law touching upon issues of relevance for the non-majority ethnic communities in the country will be adopted without them. This voting mechanism is called the Badinter principle and it requires that a law gain two-thirds of the votes of the members with an affiliation to one of the non-majority ethnic communities. The Parliament has a Standing Inquiry Committee on Human Rights, tasked to follow and alert the Parliament on developments related to human rights. The Parliament also elects and appoints the members of the two national human rights institutions – the Commission for Protection against Discrimination (CPAD) (*Комисија за заштита од дискриминација, КЗД*) and the Ombudsperson.

The executive branch is represented by the President (whose role is largely ceremonial) and the Government, which has 15 ministries, five Deputy Prime Ministers and seven ministers without portfolio. The President is directly elected, whereas the Government is appointed by the Parliament. Within the Government, several ministries share human rights competences. The Ministry of Foreign Affairs hosts the inter-ministerial body on human rights, established with the aim of improving coordination and communication among the Government departments on key human rights issues. Aside from this body, and of relevance to this report, an important division of the executive Government is the Ministry of Labour and Social Policy (MLSP), which is tasked with coordination and development of non-discrimination activities. The Representative for Equal Opportunities for Women and Men is based in the MLSP; each state administrative body has a legal obligation to appoint a coordinator for equal opportunities.³¹

²⁷ Article 118 of the Constitution states: 'International agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law'. Source: Constitution of the Republic of North Macedonia, 1991 and subsequent amendments. Full title: Constitution of the Republic of North Macedonia (*Устав на Република Северна Македонија*). Official website of the Assembly of the Republic of North Macedonia, www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nsp.x.

²⁸ Republic of North Macedonia, Law on Courts, 2006. Article 18(5). Full title: Republic of North Macedonia, Law on Courts (*Закон за судовите*), Official Gazette of the Republic of Macedonia No. 58/2006, 62/2006, 35/2008, 150/2010; 83/2018, 198/2018; Constitutional Court Decisions: U.no.256/2007, U.no.74/2008, U.no.124/2008, U.no.12/2011.

²⁹ Please see Section 11 below for information on the wire-tapping affair, which cast doubt on the respect for the separation of powers and the rule of law in the country in general.

³⁰ The wire-tapping affair also raises issues in relation to elections.

³¹ Republic of North Macedonia, Law on Equal Opportunities of Women and Men, 2013. Full title: Republic of North Macedonia, Law on Equal Opportunities for Women and Men (*Закон за еднакви можности на жените и мажите*), Official Gazette of the Republic of Macedonia No.06/2012, 30/2013, 166/2014, 150/2015.

The judiciary consists of the courts.³² There are 27 courts of first instance (14 with basic competences and 13 with expanded competences), four courts of appeal and one Supreme Court. There is also an Administrative Court (court of first instance) and a Higher Administrative Court (court of second instance) with competence in processing administrative cases. Aside from the ordinary courts, there is the Constitutional Court, the primary duty of which is to decide on the constitutionality of laws and bylaws.³³

There are two institutions that can be considered as national human rights institutions, both acting as quasi-judicial bodies: the CPAD (the national equality body) and the Ombudsperson (which has duties pertaining to human rights extending beyond equality and non-discrimination).

Local governance in the country is organised through decentralised, local self-government units. These units are made up of 80 municipalities³⁴ and the City of Skopje (as a separate local self-government unit).

Protection in discrimination cases, depending on the personal and material scope of the case, can be sought through several procedures: criminal procedure,³⁵ civil procedure,³⁶ administrative procedure,³⁷ quasi-judicial procedure³⁸ and a procedure before the Constitutional Court.³⁹

List of main legislation transposing and implementing the directives

The Law on Prevention and Protection against Discrimination (Anti-Discrimination Law – ADL)⁴⁰ was adopted on 8 April 2010. Under Article 3, an open-ended clause, the following discrimination grounds are explicitly protected: sex, race, colour, gender, belonging to a marginalised 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 and health condition. Article 4 on fields of implementation of the law lists several fields, but states that the law also applies to any other field specified under law. The Anti-Discrimination Law applies to both the public and private sectors and to natural and legal persons.

³² The Judicial Council is the body established to secure and guard the autonomy and independence of the courts. Under the Law on the Academy of Judges and Public Prosecutors the Academy of Judges and Public Prosecutors was established as a public institution for vocational training of candidates for judges and public prosecutors. Source: Republic of North Macedonia, Law on the Academy of Judges and Public Prosecutors, 2015. Full title: Law on the Academy of Judges and Public Prosecutors (*Закон за Академијата за судии и јавни обвинители*) Official Gazette of the Republic of Macedonia No. 20/2015, 192/2015, 231/2015, 163/2018.

³³ Please see Section 11 below on the allegations of the complete control of the ruling party over the judiciary as well as on the way in which the appointment of judges has been operating.

³⁴ Republic of North Macedonia, Law on Territorial Organisation of Local Self-government, 2004, Article 16. Full title: Republic of North Macedonia, Law on Territorial Organisation of Local Self-government (*Закон за територијална организација на локалната самоуправа*), Official Gazette of the Republic of Macedonia, No.55/2004, 12/2005, 98/2008, 149-2014; Constitutional Court Decision: U.no. 40/2005.

³⁵ Criminal procedure is an option for discrimination cases that amount to a criminal offence.

³⁶ Under various laws, in civil proceedings (more details follow in the report below).

³⁷ Including for misdemeanours.

³⁸ Procedures before the CPAD and the Ombudsperson.

³⁹ Citizens have the right to lodge 'Requests for protection of human rights and freedoms' with the Constitutional Court if they believe that they have been discriminated against on the grounds stipulated in the Constitution. This is a procedure based on urgency and is envisaged as a mechanism to safeguard the package of rights set out in the Constitution from unconstitutional acts (laws and bylaws). However, the effectiveness of this mechanism is still in question (according to the ECtHR, a legal remedy needs to be effective not just in theory but also in practice) because of the very low success rate of applicants. In the more than 20 years that it has been in operation, the Constitutional Court has only once decided in favour of applicants seeking protection through such a request and has rejected almost all of the filed cases.

⁴⁰ Republic of North Macedonia, Anti-Discrimination Law, 2010. Full title: Law on Prevention and Protection against Discrimination (*Закон за спречување и заштита од дискриминација*) Official Gazette of the Republic of Macedonia No.50/10, 44/2014, 150/2015, 31/2016, 21/2018, Constitutional Court Decision: U.no.82/2010.

A draft for a new law, intended to replace the 2010 law, was prepared and submitted to the Parliament in June 2018. However, at the end of 2018 it was still being blocked by MPs from both the ruling coalition and the opposition parties.⁴¹ The draft law has the same title as the current law: Law on Prevention and Protection against Discrimination (it will be referred to hereinafter as the 2018 Draft ADL).⁴² The text was drafted by a working group comprising people from the relevant ministries, representatives from international organisations and NGOs working on equality issues, including those providing legal aid in discrimination cases. The MLSP coordinated the process, with significant support from the OSCE Mission to Skopje. The working group worked on the text for almost two years. The previous paragraph on the ADL would also apply to the 2018 Draft ADL, although there are several changes in the discrimination grounds. Of relevance to this report are the addition of sexual orientation and the change from 'mental or physical disability' to 'disability' (Article 5, 2018 Draft ADL). These and other important changes proposed by the 2018 Draft ADL are discussed further in the relevant sections of the report. Where no comment on the 2018 Draft ADL is added, it means the situation remains the same as under the current ADL.

The Law on Labour Relations⁴³ was adopted on 28 July 2005. Under Article 6(1), an open-ended clause, the following grounds are covered by the law: racial or ethnic origin, colour, gender, age, health condition (i.e. disability), religious, political or other belief, membership of trade unions, national or social origin, family status, property and financial situation, sexual orientation or other personal circumstances. The Labour Law applies to labour relations among employers and employees established by the conclusion of employment contracts (Article 1), which is understood as any contractual relationship between the employee and the employer where the employee takes part in the employer's organised working process voluntarily, for salary and other remunerations, and personally and continuously carries out the work according to the instructions and under the supervision of the employer (Article 5(1)1).

It should be noted that these are only the two main pieces of legislation transposing the two directives, and those which, at the time of adoption, were explicitly referred to as being adopted for the purposes of transposing EU law. As the Anti-Discrimination Law was only adopted in 2010, there are provisions on equality and non-discrimination scattered through many laws, including those on primary, secondary and higher education, adult education, various aspects of social protection (including the pension system and health security) and in the field of employment.

⁴¹ For more on the blocking process, please see: www.equalitylaw.eu/downloads/4814-fyr-macedonia-the-proposed-new-law-on-anti-discrimination-blocked-in-parliament-pdf-134-kb. After the cut-off date for this report (May 2019), the new Law on Prevention and Protection against Discrimination was adopted. The proposed text was adopted as proposed, with no amendments. Source: Law on Prevention and Protection against Discrimination (*Закон за спречување и заштита од дискриминација*), *Official Gazette of the Republic of North Macedonia*, No.101/2019 (22 May 2019).

⁴² The text of the 2018 Draft ADL, as it stood at the cut-off date for this report, is available at: 2018 Draft ADL, Assembly of the Republic of North Macedonia (2018), Full title: Assembly of the Republic of North Macedonia, Proposal Materials: Law on Prevention and Protection against Discrimination (*Материјали: Закон за спречување и заштита од дискриминација*) (2018), official website of the Assembly of the Republic of North Macedonia, www.sobranie.mk/materialdetails.nsp?materialId=11a48c40-c491-481f-9136-adbc62285ad6.

⁴³ Republic of North Macedonia, Labour Law, 2005. Full title: Law on Labour Relations (*Закон за работните односи*) *Official Gazette of the Republic of Macedonia* Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014, 20/2015, 33/2015, 72/2015, 129/2015, 27/2016, 120/2018; Constitutional Court Decisions: U.no. 139/2005, U.no. 161/2005, U.no. 134/2005, U.no. 187/2005, U.no. 111/2006, U.no. 188/2006, U.no. 170/2006, U.no. 200/2008, U.no. 20/2009, U.no. 176/2009, U.no. 263/2009, U.no. 62/2013, U.no.114/2014.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

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

- Article 9, a general equality clause on equality before the law, covers the following grounds: sex, race, colour of skin, national or social origin, political and religious belief, property and social status (closed list of grounds). Its personal scope is limited to citizens and, in accordance with the practice of the Constitutional Court, natural persons.
- Article 54 prohibits discriminatory limitations of constitutionally prescribed rights and freedoms on grounds of sex, race, colour, language, religion, national or social origin, property or social status.

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

In theory, these provisions are directly applicable, but this is not so in practice.⁴⁴ Under the Constitution, every citizen may invoke the protection of freedoms and rights prescribed in the Constitution before the ordinary courts and before the Constitutional Court, through a procedure based upon the principles of priority and urgency. However, the ordinary courts have a practice of rejecting Constitution-based human rights claims. The Constitution also guarantees judicial protection of the legality of individual acts of the state administration and of other public institutions (Article 50). Thus the letter of the law says that the constitutional provisions are directly applicable, but practice indicates otherwise. The mechanisms enabling ordinary courts to directly apply the constitutional anti-discrimination provision have not been used.⁴⁵ In practice, regardless of the procedure used, courts insist that a lawsuit is brought invoking provisions of specific laws, and they tend not to implement the Constitution directly. On the other hand, the Constitutional Court's positioning and practice is such that it does not enter into revisions of ordinary courts' verdicts and decisions.⁴⁶ As a result, there are no requests for interpretation of constitutional provisions from the ordinary courts to the Constitutional Court and there is no practice of referencing the Constitutional Court by the ordinary courts.

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

⁴⁴ See Section 1(b) of the 2013 Report: www.equalitylaw.eu/downloads/4174-fyr-macedonia-country-report-non-discrimination-2013-1-11-mb.

⁴⁵ This does not mean that ordinary courts do not mention provisions from the Constitution.

⁴⁶ See, for example, Constitutional Court cases: U.No.55/2015 (para.4) (24 June 2015); U.No.152/2012-0-0 (para.4) (14 November 2012); U.No.172/2002 (para.4) (25December 2002); U.No.37/1997 (para.3) (19 March 1997).

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

- The following grounds of discrimination are explicitly prohibited in the Law on Prevention and Protection against Discrimination:⁴⁷ sex, race, colour, gender, belonging to a marginalised 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',⁴⁸ age, family or marital status, property status and health condition (open-ended clause) (Article 3).
- The 2018 Draft ADL⁴⁹ includes the following grounds: race, colour, national or ethnic origin, sex, gender, sexual orientation, gender identity, belonging to a marginalised group, language, citizenship, social origin, education, religion or religious belief, political conviction, other beliefs, disability, age, family or marital status, property status, health condition, personal capacity and social status, or any other grounds (open-ended clause) (Article 5).
- The Law on Labour Relations (Labour Law) includes the following grounds: race or ethnic origin, colour, sex, age, health condition i.e. disability, religious, political or other belief, membership of a trade union, national or social origin, family status, property status, sexual orientation, or other personal circumstances (Article 6(1)).

2.1.1 Definition of the grounds of unlawful discrimination within the directives

Although the Law on Prevention and Protection against Discrimination (hereinafter Anti-Discrimination Law, ADL) contains an article defining key terms used in the law (Article 5), it does not contain definitions⁵⁰ of the grounds from the directives. Grounds are only listed in the article on discrimination grounds (Article 3) and in the definition of discrimination (Article 5(3)). No issues arising from this have been reported yet.

It is important to note, however, that ratified international treaties rank higher than laws in the national legal hierarchy. As reported in Annex 2, the country has ratified the

⁴⁷ Other laws which include provisions with discrimination grounds are the following: Law on Courts (Articles 3 (1-3), 6 (1), 43 (1)), Criminal Code (Articles 137 (1), 319 (1), 394-r, 417 (1), Law on the Execution of Sanctions (Article 4(2) and (3)), Law on Volunteering (Article 9), Law on Voluntary Financed Pension Insurance (Article 3), Law on Primary Education (Article 2(2)), Law on Secondary Education (Article 3(3)), Law on Higher Education (Article 108 (5)), Law on the Protection of Children (Article 12 (1)), Law on Social Protection (Article 20 (1)), Law on Patients' Rights (Article 5(2)), Law on Public Health (Article 16(5)), Law on Health Protection (Article 9), Law on Mental Health (Article 20(4)), Law on Equal Opportunities for Women and Men (Article 4(3)), Law on the Media (Article 4), Law on Audio and Audio-visual Media Services (Articles 45, 53, 61), Law on Culture (Article 4(1)), Law on Agencies for Temporary Employment (Article 3b(3)), Law on Insurance in Case of Unemployment (Article 1a(2)), Law on Employment of and Work by Foreigners (Article 4(8)), Law on Public Prosecutors (Article 5(2)), Law on Border Control (Article 8(3)), Law on Customs Administration (Article 13(1)). Biljana Kotevska analysed these provisions, revealing an issue of unharmonised national law with regards to protected grounds. Thus, in *Analysis of the harmonisation of national equality and non-discrimination legislation*, she emphasises the need for harmonisation of the discrimination grounds in two phases. The first phase should be a harmonisation of the Anti-Discrimination Law with the country's obligations under international law (including the EU directives, in terms of the explicit inclusion of sexual orientation) and the second phase should be a harmonisation of all domestic laws with the Anti-Discrimination Law. Source: Kotevska B. (2016), *Analysis of the harmonization of national equality and non-discrimination legislation*, Skopje, OSCE and CPAD.

⁴⁸ As the term 'mental disability', used in the ADL (and other national laws), is generally considered unacceptable, the author has placed this term and the phrase 'mental or physical disability' in inverted commas throughout the report, although it should be noted that there is no such punctuation in any of the original legislation quoted in this report. See Section 2.1.1 of this report for further discussion on the use of insensitive terminology and the proposed changes.

⁴⁹ 2018 Draft ADL, Assembly of the Republic of North Macedonia (2018).

⁵⁰ The only ground with a definition in the law is 'belonging to a marginalised group'. Article 5(1), line 11, defines marginalised group as: 'a group of individuals unified by a specific position in society, subjected to prejudices, who have special characteristics that make them susceptible to certain types of violence, who have fewer opportunities for exercising and protecting their own rights, or who are exposed to a greater chance of further victimisation'.

International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination Against Women, the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child, so interpretation of the discrimination grounds following from these treaties should be considered as valid at the national level. The same applies to the European Convention on Human Rights and to the Framework Convention on National Minorities, to which the country is also a party. The resourcefulness and absolute necessity of turning to international law for definitions of the discrimination grounds is made clear in the *Guide on Discrimination Grounds*, published by the Commission for Protection against Discrimination (the national equality body) in cooperation with the OSCE. In particular, the guide relies heavily on international law sources (including practice from the human rights bodies and courts) in order to carve out the definitions of the discrimination grounds prescribed under national law.⁵¹

The lack of definitions of discrimination grounds in national law can be aggravating for the design and implementation of public policies and related actions. For example, in relation to ethnicity, a complex set of measures is activated in relation to ethnicity and the implementation of the Ohrid Framework Agreement. However, the legislative changes and strategic documents do not define ethnicity or ethnic origin/belonging/affiliation.

a) Racial or ethnic origin

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

b) Religion and belief

As discussed above, the national law does not define 'religion and belief'. However, CPAD's practice shows that *forum externum* will fall within the understanding of religion, as per CJEU Achbita C-157/15, para 28. Namely, in 2017, the CPAD published a general recommendation on the exercise of religion without discrimination wherein they focused solely on *forum externum*. The recommendation was inspired by a case where girls were refused entry to their school (a state school) on the first school day of the new school year because they were wearing head scarves. Refusing them entry to the school was a violation of the principle of equal treatment.⁵²

c) Disability

As discussed above, the national law does not define 'disability'. Although it does not define disability, the ADL refers to 'physical and mental disability', from which 'mental' disability could be interpreted to include psychosocial disability and intellectual disability. In addition to this, several other laws include various terms to refer to disability and various types of disability. A 2015 analysis of the harmonisation of national legislation found insensitive disability terminology to be a cross-cutting issue. The analysis was conducted on 139 laws, of which 40 laws referred to disability; in all of these 40 laws the terminology used could not be considered to be in line either with the spirit of the directives or with the UN Convention on the Rights of Persons with Disabilities (CRPD), to which the country is a party.⁵³

⁵¹ Kotevska, B. (2013), *Guide on discrimination grounds*, Skopje, OSCE and CPAD, available at: www.osce.org/skopje/116789?download=true.

⁵² CPAD (2017), 'General Recommendation on equal enjoyment of the freedom of religion' (text on file with author).

⁵³ The analysis was conducted on 139 laws and includes a list of all provisions that contain disability terminology that needs revising. Source: Kotevska, B. (2016), *Analysis of the harmonization of national equality and non-discrimination legislation*, Skopje, OSCE and CPAD.

The 2018 Draft ADL reflects the findings of the harmonisation analysis. Aside from listing 'disability', rather than 'physical and mental disability', in order to avoid any narrow readings of the scope of the ground, it provides the following definition of disability:

'Person with disability shall mean any person having a long-term physical, intellectual, 'mental' or sensory impairment, which in interaction with various social barriers may prevent the person's full and effective participation in society on an equal basis with others' (Article 4, paragraph 1, point 3).

d) Age

As discussed above, the national law does not define 'age'. Case-law points to this ground being understood very broadly. For example, in a 2018 case, the CPAD found discrimination on grounds of age in a job advertisement because the way the advertisement was worded implied that anyone above the age of 26 was excluded from applying.⁵⁴

e) Sexual orientation

As discussed above, aside from not providing explicit protection, the national law also does not define 'sexual orientation'.

2.1.2 Multiple discrimination

In North Macedonia, multiple discrimination is prohibited in the law.

Multiple discrimination is specified in the Anti-Discrimination Law as a severe form of discrimination and is defined as discrimination against a person on several discrimination grounds (Article 12). Given the scope of the Anti-Discrimination Law, this means that multiple discrimination is prohibited in all fields covered by any national law. No further legal rules or case-law exists that would provide more detailed guidance on how to deal with multiple discrimination cases, including on the consequent sanctions (no separate provisions on sanctions for this form of discrimination exist).

The 2018 Draft ADL kept the title 'severe form of discrimination' for the article where it outlaws multiple discrimination and also explicitly includes intersectional discrimination (Article 13 of the 2018 Draft ADL). It provides definitions for both. Multiple discrimination is defined as 'discrimination against a person or a group of persons on multiple discrimination grounds'. The wording of the article could have been clearer and might signal a problem in terms of establishing what 'multiple' means; an example of a better formulation might be: 'more than one discrimination ground' (Article 4 (10) of the 2018 Draft ADL). Intersectional discrimination is defined as 'discrimination on two or more discrimination grounds at the same time and that are inseparably connected' (Article 4 (13) of the 2018 Draft ADL).

In North Macedonia, there is no court case-law dealing with multiple discrimination. As in previous years, the only institution reporting multiple discrimination cases is the CPAD. In 2018, the CPAD received 29 cases (27 % of its annual case load) where applicants claimed discrimination on two or more grounds.⁵⁵ As in previous years, a few cases were reported where gender and age were claimed together as discrimination grounds in the field of employment, pertaining to job advertisements. For example, the CPAD found discrimination on grounds of gender and age in a job advertisement which sought people to promote products who should be female and below the age of 26.⁵⁶ However, and in

⁵⁴ CPAD (2018), Case No.08-34, *Macedonian Helsinki Committee vs Divajn Zoran DOOEL export-import Skopje* (08 March 2018).

⁵⁵ CPAD (2019) *Annual Report for 2018*, official website of the Assembly of the Republic of North Macedonia.

⁵⁶ CPAD (2018), Case No.08-34, *Macedonian Helsinki Committee vs Divajn Zoran DOOEL export-import Skopje* (8 March 2018).

addition to a very similar case from 2017,⁵⁷ this case contained further elements which were found also to constitute harassment and an affront to the dignity of women. Namely, the advert also requested that the eligible candidates should not be 'shorter than 165 cm tall, larger than size M... submitting a full body photograph is mandatory'.⁵⁸ As in previously reported case-law, the CPAD did not ask the potential discriminator to respond, as it found that the text of the advertisement was sufficient fact and proof of discrimination and the discriminatory action could not be subject to any of the possible exceptions to discrimination and so could not be justified. The CPAD requested that the discriminator withdraw the original advert and re-publish it without the discriminatory criteria.

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

In North Macedonia, discrimination based on a perception or assumption of a person's characteristics is not prohibited in national law.

Article 4 of the 2018 Draft ADL, on definitions of the key terms used in the law, defines 'discrimination by perception', as 'any distinction, exclusion or restriction of an individual or a group based on an assumed discrimination ground' (Article 4(9)). There is no relevant recent case-law.

b) Discrimination by association

In North Macedonia, discrimination based on association with persons with particular characteristics is not prohibited in national law.

Article 4 of the 2018 Draft ADL, on definitions of the key terms used in the law, defines 'discrimination by association', as 'any distinction, exclusion or restriction of a person based on their relationship with another person or group based on any discrimination ground' (Article 4(8)).

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

a) Prohibition and definition of direct discrimination

In North Macedonia, direct discrimination is prohibited in national law. It is defined in the Anti-Discrimination Law, however the definition is unnecessarily more complicated than that in the directives. Under the Anti-Discrimination Law, direct discrimination is taken to occur when a person is treated less favourably or when there is a differentiation, exclusion or limitation that results or could result in deprivation, violation or restriction of the equal recognition or exercise of human rights and basic freedoms as compared to the treatment that another person receives or could receive in the same or similar conditions (Article 6(1)). A person is considered to be both a natural and a legal person (under Article 5(1-9)), and this has not been interpreted so far as to exclude groups from the protection. As opposed to the simple comprehensive, encompassing wording of the definition contained in the directives, this definition includes types of treatment (which are gradations of less favourable treatment), thus adding the risk of excluding gradations not mentioned in the definition if a 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, this could also be interpreted restrictively by courts (meaning it might only be applied to

⁵⁷ The case *Helsinki Committee vs Hotel Glam* (19 May 2017) was reported on the Helsinki Committee's website: <http://mhc.org.mk/announcements/594#.WrgmULaZPox>.

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

discrimination by deprivation, violation or restriction of the equal recognition or exercise of rights mentioned in the Constitution).

The 2018 Draft ADL follows the text of the directives more closely. It states that 'direct discrimination occurs when a person or group of persons is treated, was treated or would be treated less favourably compared to another person or group in a similar or comparable situation, on a discriminatory ground' (Article 8(1)).

Before the adoption of the Anti-Discrimination Law, direct discrimination was defined in several other laws as well. The Law on Labour Relations (Article 7(2)) replicates fully the definition from the directives and the Law on Social Protection (Article 21(1))⁵⁹ also provides a definition in line with the directives. The Law on the Protection of Children prohibits (Article 13(1)) and defines (Article 14(1)) direct discrimination. The definition in this law is not in line with the directives as it defines direct discrimination only as a situation where a person has been treated less favourably in a comparable situation, but not if the person would be treated in such a manner. Although the literal meaning of the provision might suggest that a person who is treated less favourably is also not covered under the provision (because of the use of the past tense in the provision), such a reading does not seem very likely.

b) Justification of direct discrimination

Although the Anti-Discrimination Law does not allow direct discrimination (justification *strictu sensu*) (Article 6(1)), it does contain provisions where differences in treatment will not be considered as discriminatory. These are prescribed in more general terms and are not tied to single grounds (Article 14). However, several grounds are much more frequently listed in the justifications – notably religion or belief, age, ethnic origin and gender (for more on exceptions, see Section 4 below). There are tests that must be satisfied to justify such difference in treatment, which include: objective justification, proportionality, legitimate aim, appropriateness and necessity, and genuine and determining occupational requirement. This also includes the possibility for the justification of ethnicity as a 'genuine and determining occupational requirement' (Article 14(1)). Although the wording of the provision states 'overstepping the level necessary for implementation' instead of 'proportional', it can be expected that its interpretation will largely be in line with the Racial Equality Directive.

The 2018 Draft ADL does not include articles that mirror the long, ambiguous lists of exceptions in the current Articles 14 and 15. Article 7 covers both affirmative action and a general exception which includes the genuine and determining occupational requirement (in line with the directives) and different treatment of citizens compared with others (mirroring the nationality exception in the directives).

2.2.1 Situation testing

a) Legal framework

In North Macedonia, the law is silent on situation testing. There is no mention of situation testing in the Anti-Discrimination Law. It is worth noting that Article 206 of the Law on Civil Procedure states that all facts that are important for reaching a decision can be used as evidence, but that it is up to the courts to decide which facts need to be proven and which do not; situation testing is not mentioned. The outcome of one court use of situation testing shows the legal uncertainty without a specific legal provision allowing for situation testing

⁵⁹ Republic of North Macedonia, Law on Social Protection, 2009. Full title: Law on Social Protection (*Закон за социјалната заштита*), Official Gazette of Republic of Macedonia No. 79/2009, 36/2011, 51/2011, 166/2012, 15/2013, 79/2013, 187/2013, 38/2014, 44/2014, 116/2014, 180/2014, 33/2015, 72/2015, 104/2015, 150/2015, 173/2015, 192/2015 33/2015, 72/2015, 104/2015, 150/2015, 173/2015, 192/2015, 30/2016; 163/2017, 51/2018; Constitutional Court Decision: U.no.165/2009.

to be used as evidence. Namely, in 2018, the Macedonian Helsinki Committee (MHK) reported different outcomes of the use of situation testing in a single court case. The court of first instance accepted situation testing as evidence but rejected the application nonetheless on other grounds. The MHK approached a court of second instance which, aside from confirming the decision of the first court, stated that situation testing cannot be accepted as evidence as it is 'merely a simultaneous case conducted within the frame of a project in which the witnesses were contracted to play a certain role'.⁶⁰ This case concerned both ethnicity and gender; it was a case of access to gynaecological services for Roma women.

The 2018 Draft ADL does mention situation testing. First, it defines situation testing in Article 4(14) as a 'method of proving discrimination via organised testers who are placed in a comparable situation in order to investigate the discrimination in various cases, processes and areas on various grounds.' Secondly, it explicitly includes situation testing under evidence that can be used before the court (Article 38).

b) Practice

In North Macedonia, situation testing was initially used in practice only by civil society organisations (CSOs). Even before the adoption of the Anti-Discrimination Law in 2010, CSOs were carrying out training and practising situation testing.⁶¹ However, in 2016, the Ombudsperson conducted a situation test in order to cross-check a submission it received from a CSO. Namely, the MHK lodged a claim of direct discrimination on grounds of sex in the field of healthcare provision, as it found that fathers and men in general are not allowed as companions of hospitalised children in public health facilities. If a child is to be hospitalised, they have to be accompanied by a female. The Ombudsperson conducted a situation test via telephone and found that this really was the case. Relying on its situation testing as proof, the Ombudsperson concluded that there was *indirect*⁶² discrimination on the ground of sex in public healthcare service provision.⁶³

The MHK reported having carried out situation testing regarding access to services on grounds of ethnicity in 2018. This was in relation to information which the MHK received from a local Roma rights NGO, Roma S.O.S., that Roma people were not allowed to enter a specific café bar in the town of Prilep. Their situation testing proved this information. They filed the case with the CPAD, asking that it establish discrimination on the basis of the situation testing results.⁶⁴

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

a) Prohibition and definition of indirect discrimination

In North Macedonia, indirect discrimination is prohibited in national law. It is defined. The Anti-Discrimination Law fully replicates the definition of indirect discrimination from the

⁶⁰ Helsinki Committee of the Republic of Macedonia (2018), 'Info-sheet on discrimination' (*Информатор за дискриминација*), (June 2018), available at: www.mhc.org.mk/system/uploads/redactor_assets/documents/3154/DISCRIMINATION_MONITOR_JUNI_2018_III.pdf.

⁶¹ The situation testing training was on the ground of ethnicity in access to goods and services. (Information and source known to the author of the report.)

⁶² However, the applicant (the MHK) claimed direct discrimination. Having no access to the files of the case prevents an understanding of the Ombudsperson's decision as to the form of discrimination it established.

⁶³ Helsinki Committee of the Republic of Macedonia (2016), 'Info-sheet on discrimination' (*Информатор за дискриминација*), (May 2016), available at: www.mhc.org.mk/system/uploads/redactor_assets/documents/1587/DISCRIMINATION_III_2_.pdf.

⁶⁴ This information is outside of the cut-off date for this report, but it is worth adding here: the CPAD did accept the situation testing results and found that the café had discriminated on grounds of ethnicity against Roma. Source: MHK, 'The CPAD establishes for the first time discrimination on the basis of situation testing' (*КЗД за првпат утврди дискриминација по спроведено тестирање на ситуација*), MHK website: www.mhc.org.mk/announcements/917?locale=mk#.XJdWIS2ZO8o.

directives. Indirect discrimination on any protected ground is taken to occur when an apparently⁶⁵ 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 (Article 6(2)).

The 2018 Draft ADL amended this definition only by adding 'proportionate', so that it reads: 'the means of achieving that aim are proportionate, that is, appropriate and necessary' (Article 8(2)).

Definitions of indirect discrimination in accordance with the directives are also included in the Law on Labour Relations (Article 7(3)), the Law on the Protection of Children (Article 14(2)) and the Law on Social Protection (Article 21(2)).

b) Justification test for indirect discrimination

Under the Anti-Discrimination Law, indirect discrimination is justified 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' (Article 6(2)).

The lack of judicial practice prevents any further comprehension of the elements of these tests.

In addition, the definitions of indirect discrimination included in the Law on Labour Relations (Article 7(3)),⁶⁶ the Law on the Protection of Children (Article 14(2))⁶⁷ and the Law on Social Protection (Article 21(2))⁶⁸ provide that 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.

2.3.1 Statistical evidence

a) Legal framework

In North Macedonia, there is legislation regulating the collection of personal data. The main legislation in this area is the Law on State Statistics.⁶⁹ Data are collected covering all five grounds except for sexual orientation.⁷⁰ The data are anonymous and therefore the collection of such data does not conflict with the Law on Protection of Personal Data.⁷¹

In relation to data collection, it is also worth noting that Article 206 of the Law on Civil Procedure⁷² states that all facts that are important for reaching a decision can be used as

⁶⁵ Please note that a literal translation of the term used for 'apparently' in the Macedonian language version of the law would be 'obviously'. However, this is a clear language error, as the term in the Albanian version of the law (also an official version of the law) is 'të dukshme' ('apparently'). Thus, the intent of the legislature seems clear.

⁶⁶ Republic of North Macedonia, Labour Law, 2005. Art. 7(3).

⁶⁷ Republic of North Macedonia, Law on the Protection of Children, 2013. Full title: Law on the Protection of Children (*Закон за заштита на децата*), Official Gazette of Republic of Macedonia, No. 23/2013, 12/2014, 44/2014, 144/2014, 10/2015, 25/2015, 150/2015, 192/2015, 27/2016, 163/2017. Art. 14(2).

⁶⁸ Republic of North Macedonia, Law on Social Protection, 2009. Art.21(2).

⁶⁹ Republic of North Macedonia, Law on State Statistics (1997), Full title: Law on State Statistics (*Закон за државната статистика*), Official Gazette of the Republic of Macedonia No. 54/1997; 21/2007; 51/2011; 104/2013; 42/2014, 192/2015, 27/2016, 83/2018, 220/2018.

⁷⁰ This means that, for state statistics purposes, no data is to be collected on sexual orientation.

⁷¹ Republic of North Macedonia, Law on Protection of Personal Data (2005), Full title: Law on Protection of Personal Data (*Закон за заштита на лични податоци*) Official Gazette of the Republic of Macedonia No. 7/2005, 103/2008, 124/2010, 135/2011, 43/2014, 153/2015, 99/2016, 64/2018.

⁷² Republic of North Macedonia, Law on Civil Procedure, 2005. Full title: Law on Civil Procedure (*Закон за парничната постапка*), Official Gazette of Republic of Macedonia, No. 79/2005, 110/2008, 83/2009, 116/2010, 124/2015.

evidence, but that it is up to the courts to decide which facts need to be proven and which do not. Furthermore, the text of the law's subsequent articles focuses on specific forms of evidence, but statistical evidence is not mentioned.

The Ministry of Information Society and Administration collects data on civil servants in the form of a Register of Public Sector Employees.⁷³ The data to be collected and the access to the register are specified in a bylaw. The data are not publicly available and only persons specified in the rulebook can have access to the register. The data are not anonymous and include the following grounds covered by the directives: ethnic origin, disability, sex and age.

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

Statistics are not used in litigation. However, they are widely used for designing strategic policy documents and action plans (including those on positive action). The ministerial cabinet uses statistics extensively in national strategies and positive action measures. With regard to issues of ethnicity, use of data includes planning employment for under-represented, non-majority communities (national minorities) and the priorities in relation to the national Strategy on Roma 2014-2020.⁷⁴

On disability, statistics were used for the 'National Strategy on Equalisation of the Rights of Persons with Disabilities'⁷⁵ and on age they were used for the 'National Strategy on the Elderly'.⁷⁶ Statistics were also used in the 2016-2020 'National Strategy on Equality and Non-discrimination'⁷⁷ and for its predecessor, the 'National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability',⁷⁸ as well as for the 2015-2020 'National Action Plan for the Implementation of the Law on Prevention and Protection against Discrimination'.⁷⁹

In North Macedonia, statistical evidence is not explicitly permitted by national law in order to establish indirect discrimination. The law is silent on this, which means it would be possible to use statistical evidence in discrimination cases. Statistical evidence is only mentioned in the law as part of the duties of the CPAD (Article 24(10)). Statistical evidence is not mentioned in provisions regulating the procedure before the CPAD or in other procedural laws.

⁷³ Republic of North Macedonia, Law on Administrative Servants (2014), Full title: Law on Administrative Servants (*Закон за административни службеници*) Official Gazette of the Republic of Macedonia, No. 27/2014, 199/2014, 48/2015, 154/2015, 5/2016, 142/2016, 11/2018; Constitutional Court Decisions: U.no. 163/2014 (27 December 2016), U.br.121/2015 (01 February 2017). Article 7(1)-(9).

⁷⁴ Strategy on Roma 2014-2020 (*Стратегија за Ромите 2014-2020*),

http://arhiva.vlada.mk/registar/files/Strategija_Romite_%202014-2020.pdf.

⁷⁵ National Strategy on Equalisation of the Rights of Persons with Disabilities (*Национална стратегија за изедначување на правата на лицата со инвалидност 2010-2018 - ревидирана*)

<http://mtsp.gov.mk/WBStorage/Files/FINALNA%20Revidirana%20Nacionalna%20Strategija.pdf>.

⁷⁶ National Strategy on the Elderly (*Национална стратегија за стари лица 2010-2020*)

<http://mtsp.gov.mk/WBStorage/Files/Strategija%20za%20stari%20lica%20juni.pdf>.

⁷⁷ National Strategy on Equality and Non-discrimination (*Национална стратегија за еднаквост и недискриминација 2016-2020*)

www.mtsp.gov.mk/content/pdf/dokumenti/7.7_Strategija%20za%20ednakvost%20i%20nediskriminacija.pdf.

⁷⁸ National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability (*Национална стратегија за еднаквост и недискриминација по основ на етничка припадност, возраст, ментална и телесна попреченост и пол*)

http://mtsp.gov.mk/WBStorage/Files/strategija_ednakvost.doc.

⁷⁹ National Action Plan for the Implementation of the Law on Prevention and Protection against Discrimination (*Национален акциски план за спроведување на Законот за заштита и спречување од дискриминација 2015-2020*) www.mtsp.gov.mk/content/word/NAP%20for%20ADL%202015-2020_MK.doc.

The 2018 Draft ADL mirrors this competence of the CPAD but also adds statistical data as one of the types of evidence that are admissible in processing discrimination claims in court (Article 38). Considering that, thus far, the courts have referred to the chapter of the ADL on court procedure and treated it as a special law compared to the general Civil Procedure Law, if the text of the draft law is adopted, there should be no problem with the admissibility of statistical evidence in the courts.

Statistical evidence as such is not mentioned elsewhere in national law. The Law on State Statistics⁸⁰ does not discuss the use of statistical data as evidence in general, meaning it also does not mention such a possibility in the context of indirect discrimination. Thus, no procedures or conditions for admissibility of such statistical evidence exist, making a breakthrough and use of such data a remote possibility.

b) Practice

In North Macedonia, statistical evidence in order to establish indirect discrimination is not used in practice. It remains an issue of a general disregard for statistics and the collection of statistics overall, rather than an issue of the courts' reluctance to use statistics. Thus, it cannot be said that practice in other countries influences national law or developments in this respect.

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In North Macedonia, harassment is prohibited in national law. It is defined under the Anti-Discrimination Law. Harassment is 'a violation of the dignity of a person or a group of persons that results from a discriminatory ground and is aimed at or results in violation of the dignity of a particular person or creation of intimidating, hostile, humiliating or offensive environment, approach or practice' (Article 7). The personal and material scope match the scope of the ADL – they apply to both natural and legal persons, in the public and private sphere and in all fields of the life of society. The definition complies with the directives.

Harassment does not constitute a criminal offence. It is part of the provisions of the Law on Labour Relations, which deal with harassment, sexual harassment and mobbing. The definition of harassment is in line with the directives (Article 9, 9-a), as is its personal scope (Article 6). This definition states that harassment is unwanted conduct related to the protected grounds with the purpose or effect of violating the dignity of the applicant for employment or the worker, resulting in the creation of an intimidating, hostile, humiliating or offensive environment (Article 9(3)). Sexual harassment is any verbal, non-verbal or physical conduct of a sexual character with the purpose or effect of violating the dignity of the job applicant or worker, or of creating an intimidating, hostile, humiliating or offensive environment (Article 9(4)). The law defines psychological harassment or so-called 'mobbing' as any negative and repetitive (for at least a six-month period) conduct with the purpose or effect of violating the dignity of the job applicant or worker, or of creating an intimidating, hostile, humiliating or offensive environment and which has the ultimate objective of ending the working relationship or forcing the victim to leave their job (Article 9-a(2)).

In North Macedonia, harassment does explicitly constitute a form of discrimination in the ADL (Article 7) and in the Law on Labour Relations (Article 9).

⁸⁰ Republic of North Macedonia, Law on State Statistics (1997).

It is important to note that in 2013 a special Law on Protection against Harassment in the Workplace⁸¹ was adopted. In terms of the elements constituting harassment, the definitions of the different types of harassment — psychological and sexual — are in line with those in the directives. This legislation also outlaws instruction or incitement to harass. The law is silent as to the grounds it covers for psychological harassment. For sexual harassment, the ground – sex — is contained in the title of the type of harassment, although without any clear guidance as to whether multiple grounds could also be considered. It is important to note here that the legislature obviously intended to create a distinction between harassment in the workplace and other activities that would not be considered as such, including ‘any unjustified distinction during unequal treatment towards the employee on any ground of discrimination which is prohibited and for which protection is provided for in law’.⁸²

b) Scope of liability for harassment

Where harassment is perpetrated by an employee, in North Macedonia the employer and/or the employee may be held liable. Who will be held liable will depend on the complaint: who the alleged victim of harassment identifies as the discriminator, as well as the details of the case (most notably whether the individual has decided to first seek protection from the employer or whether he/she has decided to go directly to a court/quasi-judicial body). It is also worth noting that, under the provision on psychological harassment or ‘mobbing’ in the Law on Labour Relations (Article 9-a), a group of people/employees can be held liable for harassment as well. The Anti-Discrimination Law does not specify in any more detail how liability is established beyond being identified by the alleged victim herself/himself.

The Law on Protection against Harassment in the Workplace applies to the field of employment. The liability scope is the same as that one contained in the Law on Labour Relations.⁸³

The liability for actions by third parties (tenants, clients, customers, etc.) seems to be subject to judicial interpretation.

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In North Macedonia, instructions to discriminate are prohibited in national law. Instructions are not defined. The Anti-Discrimination Law contains an article on invoking and inciting discrimination, which also includes instructions to discriminate. Notably, this article states that it considers as discrimination any activity that directly or indirectly invokes, encourages, instructs or instigates another person to commit discrimination (Article 9). The personal and material scope match the scope of the ADL – they apply to both natural and legal persons, in the public and private sphere and in all fields of the life of society.

The 2018 Draft ADL does not propose any changes in relation to instructions to discriminate (Article 9).

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

⁸¹ Republic of North Macedonia, Law on Protection against Harassment in the Workplace (2013), Full title: Law on Protection against Harassment in the Workplace (*Закон за заштита од вознемирување на работно место*) Official Gazette of the Republic of Macedonia No.79/2013.

⁸² Republic of North Macedonia, Law on Protection against Harassment in the Workplace (2013), Article 8(3).

⁸³ Republic of North Macedonia, Law on Protection against Harassment in the Workplace (2013), Article 8(3).

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

An older case, reported to the equality body in 2013 by Sumnal (a CSO dealing with Roma rights) remains of relevance in relation to instructions to discriminate.⁸⁴ A company that was contracted by a major (now closed) supermarket located in one of the largest malls in the country, instructed its sub-contracted company to 'remove' all employees of Roma ethnic origin who worked in the food department. Although the instruction to discriminate was evident, the case was found to be one of direct discrimination by the contracted company and there was no deliberation on the element of instruction.

In North Macedonia, instructions do explicitly constitute a form of discrimination.⁸⁵

b) Scope of liability for instructions to discriminate

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

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

The Criminal Code contains provisions making it a criminal offence to fuel national, racial or religious hatred, discord or intolerance (Article 319; provides for one to ten years of imprisonment) and to spread racist and xenophobic materials through computer systems (Article 394-r; provides for one to ten years of imprisonment). It provides that the persons committing the crimes will be held liable for the actions (including where the crime is conducted through the media; Article 395-r (2)).

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

a) Implementation of the duty to provide reasonable accommodation for people with disabilities in the area of employment

In North Macedonia, the duty to provide reasonable accommodation is included in the law and is defined.

To begin with, it is worth mentioning that the Convention on the Rights of Persons with Disabilities was signed and ratified in 2012. Under the Constitution the ratification of the convention means that it has become part of domestic law. The Convention defines a failure to make reasonable accommodation as a form of discrimination.

The Anti-Discrimination Law, which also applies in the field of employment, tackles the issue of reasonable accommodation in two ways, first by defining adjustment of infrastructure and services and second by defining discrimination against people with disabilities, both considered to be forms of discrimination. It defines adjustment of infrastructure and services as an act of undertaking appropriate measures, where needed in a particular case, to enable a person with 'mental'⁸⁶ or physical disabilities to have access

⁸⁴ Commission for Protection against Discrimination (*Комисија за заштита од дискриминација*) No.07-633/4 *Association for Development of the Roma Community Sumnal vs Marcem DOO Skopje*, 23 May 2013.

⁸⁵ Republic of North Macedonia, Anti-Discrimination Law, 2010. Article 9.

⁸⁶ Mental disability may be understood to include psychosocial disability and intellectual disability.

to, participate in or advance in employment, unless such measures would impose a disproportionate burden on the employer (Article 5(12)). This definition is similar in wording to Article 5 of Directive 2000/78/EC, although it is limited to infrastructure and service which makes it more narrow than the directive. 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 disabilities which states that:

'Discrimination of persons with mental and physical impediment shall refer to intentional disabling or hindered access to health protection, i.e. restriction of the rights to health protection, regular medical treatment and medicinal products, rehabilitation means and measures in accordance with their needs, restriction of the right to marry and to create a family, and other marriage and family relations rights, restriction of the right to education, work and labour relation rights' (Article 8(1) ADL).

The law also defines as discrimination the failure to undertake measures for the removal of obstacles and limitations or the absence of measures for the adjustment of infrastructure, space, use of publicly available resources or participation in public and social life for people with 'mental' disabilities and physical disabilities (Article 8(2)). However, the law does not go into this issue in any more detail.

The 2018 Draft ADL changes this approach. First, it adds a definition of reasonable⁸⁷ accommodation as:

'necessary and appropriate modification and adjustment required in a particular case, which is not a disproportionate or undue burden, aimed at ensuring the exercise or enjoyment of all human rights and freedoms of persons with disabilities on an equal basis with others.' (Article 4(4))

Secondly, the 2018 Draft ADL expands the definition of adjustment of infrastructure and services to include goods and takes the emphasis away from employment, widening the scope of the provision. It adds the following definition:

'Access to infrastructure, goods and services means taking appropriate measures to ensure that persons with disabilities have access, on an equal basis with others, to the physical surroundings, transportation, information and communication, including information and communication technologies and systems, other public facilities and services in both urban and rural areas.' (Article 4(5))

Thirdly, it does not include a special provision on 'discrimination against persons with disabilities'. However, in Article 6, where discrimination in general is defined, in a single paragraph the law states the definition and continues, adding that: 'This includes all forms of discrimination, including not enabling reasonable accommodation and not enabling accessibility of infrastructure, goods and services' (Article 6). Thus, the proposal changes nothing in relation to the scope of protection in relation to this ground.

The Law on Labour Relations does not specifically mention reasonable accommodation for people with disabilities. The Law on Employment of People with Disabilities⁸⁸ also does not

⁸⁷ The term used in the law might be better translated as 'adequate accommodation' rather than 'reasonable accommodation'.

⁸⁸ Republic of North Macedonia, Law on Employment of Persons with Disabilities, 2008. Full title: Law on Employment of Persons with Disabilities (*Закон за вработување на инвалидни лица*), Official Gazette of Republic of Macedonia, No. 35/2008, 103/2008, 26/2009, 83/2009, 99/2009, 115/2010, 17/2011, 51/2011, 123/2012, 15/2013, 24/2013, 41/2014, 116/2014, 130/2014, 10/2015, 20/2015, 98/2015, 145/2015, 154/2015, 30/2016, 120/2016, 127/2016, 99/2018. Constitutional Court Decisions: U.no. 80-2008, U.no. 162-2008, U.no. 98-2011, U.no. 57-2013.

contain a definition of reasonable accommodation, but it contains references to accommodation-related measures for improving employment conditions and the conditions for the execution of work duties of people with disabilities. The law establishes a duty on the employer to provide for working space, equipment and other relevant conditions for work and for the adaptation of the working environment (Article 7(2)). Measures undertaken by employers to accommodate people with disabilities are subject to inspection and employers can be fined, however, the law makes no special reference as to whether the worker themselves can request that such measures be undertaken.

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

b) Practice

There are no legally established specific criteria to assess issues in relation to reasonable accommodation such as the extent of the duty, what is a disproportionate burden, etc. Further guidance on how to interpret 'reasonable accommodation' has not been provided in case-law. It is not possible to know whether state financial assistance will be taken into account when assessing whether there is a disproportionate burden.

c) Definition of disability and non-discrimination protection

In the Anti-Discrimination Law, disability is understood as 'mental' and physical disability,⁸⁹ however, this law does not go into more detail than this in defining disability. Thus, in the context of reasonable accommodation, disability must be understood in the same way.

The 2018 Draft ADL adds to this a definition of 'person with a disability'. Under Article 4 (3):

'Person with disability shall mean any person having a long-term physical, intellectual, 'mental' or sensory impairment, which in interaction with various social barriers may prevent the person's full and effective participation in society on an equal basis with others.'

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

In North Macedonia, there is a duty to provide reasonable accommodation for people with disabilities outside the employment field. The Anti-Discrimination Law deems discriminatory a lack of measures undertaken for the removal of obstacles and limitations or for the adjustment of infrastructure, space, use of publicly available resources or participation in public and social life, including in education and training (Article 15(3)), for people with 'mental' disabilities or physical disabilities (Article 8(2)).⁹⁰ The article uses the same formulation as is used in the field of employment.

⁸⁹ Psychosocial disability is not explicitly covered, thus suggesting a gap in the scope of disability protected under the law. The analysis of the harmonisation of national legislation identified this gap and recommended that a general term 'disability' remain in the law, in order to prevent limiting disability to intellectual disability or physical disability. Source: Kotevska, B. (2016), *Analysis of the harmonization of national equality and non-discrimination legislation*, Skopje, OSCE and CPAD.

⁹⁰ Psychosocial disability is not explicitly covered, thus suggesting a gap in the scope of disability protected under the law. The analysis of the harmonisation of national legislation identified this gap and recommended that a general term 'disability' remain in the law, in order to prevent limiting disability to intellectual disability or physical disability. Source: Kotevska, B. (2016), *Analysis of the harmonization of national equality and non-discrimination legislation*, Skopje, OSCE and CPAD.

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

In North Macedonia, failure to meet the duty of reasonable accommodation does count as discrimination.

The Anti-Discrimination Law classifies a lack of reasonable accommodation for people with 'mental' or physical disabilities as discrimination (Article 8(2)).⁹¹ However, the Law on Employment of People with Disabilities does not include specific sanctions if proper adaptations are not carried out. This failure is not considered to be discrimination. In addition, the misdemeanour provisions in the Anti-Discrimination Law do not contain a special provision on fines regarding lack of reasonable accommodation as per Article 8(2).

There is no exception for the shift of burden of proof rule for reasonable accommodation, as lack of it is considered a form of discrimination, thus the same rules for shifting the burden of proof should apply.

Although the 2018 Draft ADL does not include a provision mirroring Article 8(2) of the current law, given that the Draft ADL includes a definition of reasonable accommodation in Article 4(2), and of adjustments to infrastructure, goods and services in Article 4(5), it should be understood that the failure to meet the duty of reasonable accommodation would still count as discrimination.

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

In North Macedonia, there is a legal possibility to provide reasonable accommodation in respect of other grounds in the public and private sectors. However, most of the measures that have been introduced thus far would be better defined as general adaptation measures or positive action measures, rather than reasonable accommodation measures as individualised measures to accommodate the needs of a specific person.

⁹¹ Please see above footnote on psychosocial disability – the same explanation applies.

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78)

In North Macedonia, there are no residence or citizenship/nationality requirements for protection under the relevant national laws transposing the directives. On provisions of relevance for non-discrimination, the Constitution sets a requirement of citizenship in order for a person to enjoy the protection of rights under the Constitution, including protection against discrimination. Stricter conditions also apply to residents without Macedonian citizenship with regard to employment and acquiring social protection.⁹² In other areas, including self-employment, access to training and membership of workers' organisations, there is no legal restriction and there are no reports of less favourable treatment. With regard to the Constitution, the approach implemented in practice gives foreign citizens the opportunity to participate in the social and economic life of the country. No such requirement exists under the Anti-Discrimination Law. Under the ADL, undocumented/irregular migrants would also be protected.

The country is a candidate for EU membership. So far, the course of harmonisation of the legislation has not reached the stage where provisions on distinctions between EU and non-EU nationals are incorporated in laws. As yet, no clear plans have been made about how this will be regulated. One sign of planned developments in this direction is that special provisions have been inserted into the Law on Internal Affairs,⁹³ which regulate special rules for EU citizens, with greatly eased procedures for short-term and long-term stay and residence.

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

a) Protection against discrimination

The personal scope of the Anti-Discrimination Law in North Macedonia covers natural and legal persons for the purpose of protection against discrimination. It does not distinguish between natural and legal persons for the purposes of protection against discrimination. Article 2 of the Anti-Discrimination Law provides that the law is applied to both natural and legal persons, while Article 5(9) defines a person as both a natural and legal person. Article 4 provides for the fields of discrimination covered by the law, adding that the law applies to all natural and legal persons.

It should be noted, however, that the Constitution only includes citizens in the general equality clause. The Constitutional Court's practice is clear that human rights protection, which also includes protection against discrimination, can be sought by natural persons only.

b) Liability for discrimination

In North Macedonia, the personal scope of the Anti-Discrimination Law covers natural and legal persons for the purpose of liability for discrimination. The ADL does not distinguish between natural and legal persons for the purposes of liability for discrimination. Under the ADL (Article 2), the law is applied to both natural and legal persons, as further confirmed by Article 5(9), which defines a person as both a natural and legal person. Article 4 provides for the fields of discrimination covered by the law, adding that the law applies

⁹² Republic of North Macedonia, Law on Social Protection (2009), Article 15.

⁹³ Republic of North Macedonia, Law on Internal Affairs (2014), Full title: Law on Internal Affairs (*Закон за внатрешни работи*) Official Gazette of the Republic of Macedonia No. 42/2014, 116/2014, 33/2015, 5/2016, 120/2016, 127/2016, 142/2016, 190/2016, 21/2018, 135/2018.

to all natural and legal persons. Fines for misdemeanours are divided between fines for natural persons and for legal persons and vary in amount (Articles 42 to 45).

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

a) Protection against discrimination

In North Macedonia, the personal scope of national law covers the private and public sectors, including public bodies, for the purpose of protection against discrimination. The anti-discrimination law states that the law applies to all natural and legal persons (Article 2) and that it covers both the private and the public sector, including public bodies (Article 4).

b) Liability for discrimination

The personal scope of the Anti-Discrimination Law in North Macedonia covers both the private and public sectors, including public bodies, for the purpose of liability for discrimination (Article 4).

3.2 Material scope

3.2.1 Employment, self-employment and occupation

In North Macedonia, national legislation applies to all sectors of private and public employment, self-employment and occupation, including contract work, self-employment, military service and holding statutory office, for the five grounds.

The Anti-Discrimination Law applies to all sectors of public and private employment and occupation (Article 4). Articles 6 to 11 of the Law on Labour Relations⁹⁴ prohibit various aspects of discrimination in labour relations and, in general, do not distinguish between different types of actors (public or private, secular or religious). The Law states that it regulates the labour relations of workers employed by the state, local government, public institutions, public enterprises, institutes, foundations, organisations and other legal and individual employers, unless another law determines otherwise.⁹⁵

Practically all major areas of public employment are also covered by the Law on Administrative Servants,⁹⁶ the Law on the Police,⁹⁷ the Law on Defence⁹⁸ and the Law on Foreign Affairs⁹⁹ with regard to the labour relations of employees of the respective ministries. These do not contain anti-discrimination provisions, which means the provisions from the Law on Labour Relations, as *lex generalis*, is applicable in this respect.

⁹⁴ Republic of North Macedonia, Law on Labour Relations (2005), Articles 6 to 11.

⁹⁵ Republic of North Macedonia, Law on Labour Relations (2005), Article 3.

⁹⁶ Republic of North Macedonia, Law on Administrative Servants (2014).

⁹⁷ Republic of North Macedonia, Law on the Police (2006), Full title: Law on the Police (*Закон за полицијата*), Official Gazette of the Republic of Macedonia No. 114/2006, 06/2009, 145/2012, 41/2014, 33/2015, 31/2016, 106/2016, 120/2016, 21/2018, 64/2018. Article 96 and Republic of North Macedonia, Law on Internal Affairs (2014).

⁹⁸ Republic of North Macedonia, Law on Defence (2001), Full title: Law on Defence (*Закон за одбрана*), Official Gazette of the Republic of Macedonia No. 42/2001, 5/2003, 58/2006, 110/2008, 51/2011, 151/2011, 215/2015, Constitutional Court Decision: U.br.37/2002, U.br.135/2001 and U.br.155/2001.

⁹⁹ Republic of North Macedonia, Law on Foreign Affairs (2006), Full title: Law on Foreign Affairs (*Закон за надворешни работи*), Official Gazette of the Republic of Macedonia No. 46/2006, 107/2008, 26/2013, 39/2014, 61/2015, 226/2015, Constitutional Court Decision: U.br.80/2006, U.br.225/2007.

3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))

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

The Anti-Discrimination Law includes labour and labour relations in the public and private sectors (Article 4), thus it should be read as including employment, self-employment and occupation. It does not seem to deal differently with the private sector in this regard.

The general non-discrimination article in the Law on Labour Relations¹⁰⁰ encompasses selection criteria, recruitment conditions, treatment at work, promotion, professional training and other benefits, as well as ending employment. A specific ban on discrimination in vacancy announcements is prescribed in the Law on Labour Relations.¹⁰¹ However, in relation to access, both in that provision and the law overall, the protection against discrimination for people with disabilities can be considered as being very weak because, although the applicant is not obliged to submit a health certificate when concluding an employment contract, the employer can send her or him for a medical examination.¹⁰² The only legal limitation is that the examination should be strictly and necessarily linked to the specific post.

None of the provisions in the non-discrimination articles should be interpreted as restrictions on the employer's right to refuse to hire a person who does not meet the occupational requirements in that particular field, as long as the measures are objectively justified by a legitimate aim and the methods pursued are adequate and necessary.¹⁰³

Conditions for access to employment and criteria for various professional activities in the public sector are mostly determined by specialised laws.¹⁰⁴ However, no equivalent and consistent approach or scope of protection is contained in these laws. Health status is mentioned as a condition for employment in the Law on the Police, the Law on Army Service and the Law on Administrative Servants.¹⁰⁵ The Law on Administrative Servants sets out general conditions for employment as a civil servant, which aside from general health capacity, also include citizenship, active knowledge of the Macedonian language, being at least 18 years of age and having no criminal conviction in relation to conducting a profession or duty (Article 31(1)).¹⁰⁶

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

¹⁰⁰ Republic of North Macedonia, Law on Labour Relations (2005), Article 6.

¹⁰¹ Republic of North Macedonia, Law on Labour Relations (2005), Article 24.

¹⁰² Republic of North Macedonia, Law on Labour Relations (2005), Article 25.

¹⁰³ Republic of North Macedonia, Law on Labour Relations (2005), Article 8.

¹⁰⁴ Please note that when these laws do not regulate a matter in a specific way, the Law on Labour Relations applies, as *lex generalis*. This includes on matters of discrimination, since the two laws mentioned here do not contain provisions protecting against discrimination.

¹⁰⁵ Republic of North Macedonia, Law on Administrative Servants (2014).

¹⁰⁶ Republic of North Macedonia, Law on Administrative Servants (2014), Article 31(1).

There is an established system of state inspection that conducts supervision of the implementation of the Law on Labour Relations and of other laws and regulations for labour relations, collective agreements and job contracts that regulate the rights and obligations of the employee and the employer. Such inspections are carried out by the state body responsible for labour inspection.¹⁰⁷

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

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

Article 4 of the Anti-Discrimination Law covers the area of employment and labour relations, thus it is to be considered to include pay and dismissals (it applies to both public and private sector).

Aside from this law, the Law on Labour Relations contains a provision stating that for equal work, workers should be equally paid. The only category explicitly mentioned is women,¹⁰⁸ however in the general provisions section, in Article 7(4), it explicitly states that discrimination is prohibited on all grounds mentioned in Article 6 (which include all the directives grounds) in relation to, inter alia, 'working conditions, all rights from a labour relation and in relation to such a relation, including equality of pay'.

The Law on Administrative Servants devotes a chapter – Chapter XIV – to salaries, without mentioning equality of pay. It establishes the following as the main elements on which salary is based: education level, level of working position, and years of experience.¹⁰⁹ No case-law on this new law exists.

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))

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

Article 4 of the Anti-Discrimination Law covers the area of employment and labour relations, and includes education, thus it can also be interpreted to include access to guidance and training, as per the directives.

Though not expressly using the wording of Article 3(1)(b) of Directive 2000/43, the prohibitions against discrimination in access to vocational guidance, professional training, continuing professional training and practical work experience are stipulated in the general prohibition on discrimination in the Law on Labour Relations¹¹⁰ and in laws on different stages of education. National legislation gives everyone equal rights to acquire higher education and equal rights to lifelong learning.¹¹¹

According to the newly adopted Law on Higher Education,¹¹² citizens of the country are entitled to education at higher educational institutions in the country on equal terms. The

¹⁰⁷ Republic of North Macedonia, Law on Labour Relations (2005), Article 256.

¹⁰⁸ Republic of North Macedonia, Law on Labour Relations (2005), Article 108.

¹⁰⁹ Republic of North Macedonia, Law on Administrative Servants (2014), Articles 85 to 97.

¹¹⁰ Republic of North Macedonia, Law on Labour Relations, 2005, Article 7.

¹¹¹ Republic of North Macedonia, Law on Higher Education, 2018. Full title: Law on Higher Education (*Закон за високото образование*), Official Gazette of Republic of Macedonia, No. 82/2018. Article 3 (5, 9).

¹¹² Republic of North Macedonia, Law on Higher Education, 2018, Article 6.

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

The selection of candidates by the university cannot be discriminatory on the grounds of race, colour of skin, sex, gender, language, religion, political or other beliefs, ethnic, national or social origin, property, birth, social position, disability, sexual orientation or age.¹¹³

The Law on Adult Education states that the aim of adult education is to provide an opportunity for everyone in all adult groups to achieve their appropriate educational level and enable them to acquire knowledge, skills and attitudes that will meet the requirements of society and the labour market (Article 4).¹¹⁴

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

In North Macedonia, national legislation prohibits discrimination in the following areas: membership of and involvement in workers' or employers' organisations as formulated in the directives for all five grounds and for both private and public employment. Article 4 of the Anti-Discrimination Law covers membership of and activity in unions, political parties, associations of citizens and foundations and other organisations based on membership.

The Law on Labour Relations only provides for the freedom of workers and employers to establish and participate or not in the work of such associations.¹¹⁵ There are no anti-discrimination provisions related to the grounds of the directives. Having said that, it should be also noted that *mutatis mutandi* the general anti-discrimination provision in the Law on Labour Relations should be applicable to these situations as well. Following the same line of reasoning, the provisions in the Anti-Discrimination Law would also be applicable.

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

In North Macedonia, national legislation prohibits discrimination in social protection, including social security and healthcare as formulated in the Racial Equality Directive.

According to the Constitution, the Republic provides for social protection and social security of citizens in accordance with the principle of social justice, and it guarantees the right of assistance to those who are infirm or unfit for work (Article 35).

The Anti-Discrimination Law provides for prohibition of discrimination in social security (including social protection, pension insurance and health protection) (Article 4(3)). The provision on the protected grounds is open-ended and explicitly lists racial and ethnic origin, disability, belief and age. Sexual orientation is not explicitly mentioned in this provision. However, as discussed in Section 7, there are no issues in practice as to reading

¹¹³ Republic of North Macedonia, Law on Higher Education, 2018, Article 149 (3).

¹¹⁴ Republic of North Macedonia, Law on Adult Education, 2008. Full title: Republic of North Macedonia, Law on Adult Education (*Закон за образование на возрасните*), Official Gazette of the Republic of Macedonia No.07/2008, 17/2011, 51/2011, 74/2012, 41/2014, 144/2014, 146/2015, 30/2016, 64/2018; Constitutional Court Decision: U.no. 46/2008.

¹¹⁵ Republic of North Macedonia, Law on Labour Relations, 2005, Articles 183, 184, 185, 198.

sexual orientation in the open-ended provision. There has not been an instance where a case of discrimination was rejected for claiming discrimination on grounds of sexual orientation.

The general and specific provisions on prohibition of discrimination in social services are also listed in the Law on Social Protection;¹¹⁶ 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.¹¹⁷ Protection in cases of discrimination in the field of social care is covered by the potential for the 'applicant or user of social protection to seek protection from the competent authority'.¹¹⁸ In cases of discrimination, there is a shift of the burden of proof¹¹⁹ and financial sanctions of EUR 3 000-5 000 are envisaged.¹²⁰

The Law on Health Protection defines, as one of the basic principles of the provision of healthcare, the principle of equity, which it defines through the prohibition of discrimination. Notably, in Article 9, the law states that discrimination is prohibited in the provision of healthcare on grounds of race, sex, age, nationality, social origin, religion, political or other belief, property status, culture, language, type of illness, 'mental'¹²¹ or physical disability.¹²² It does not include sexual orientation as one of the protected grounds, but it could be included pending judicial interpretation. Article 2 of the Law on Health Insurance states that health insurance is mandatory for all citizens on the principles of 'comprehensiveness, solidarity, equality and effective use of resources under conditions determined by Law'.¹²³

The Law on the Protection of Children also has articles on discrimination.¹²⁴ In addition to definitions of direct and indirect discrimination, specific measures are included for the protection of children and their parents or guardians when applying for social care. However, the procedure is so complicated that it is very unlikely that these articles will be used in practice (especially because the whole procedure should be carried out by the potential victims without any institutional help).

a) Article 3.3 exception (Directive 2000/78)

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

¹¹⁶ Republic of North Macedonia, Law on Social Protection, 2009, Article 21.

¹¹⁷ Republic of North Macedonia, Law on Social Protection, 2009, Article 20.

¹¹⁸ Republic of North Macedonia, Law on Social Protection, 2009, Article 22.

¹¹⁹ Republic of North Macedonia, Law on Social Protection, 2009, Article 23.

¹²⁰ Republic of North Macedonia, Law on Social Protection, 2009, Article 254.

¹²¹ Includes intellectual and psychosocial disability.

¹²² Republic of North Macedonia, Law on Health Protection, 2012. Full title: Law on Health Protection (*Закон за здравствена заштита*), Official Gazette of Republic of Macedonia, No. 43/2012, 145/2012, 87/2013, 164/2013, 39/2014, 43/2014, 132/2014, 188/2014, 10/2015, 61/2015, 154/2015, 192/2015, 17/2016, 37/2016. Constitutional Court Decisions: U.no. 59/2012, U.no. 69/2012, U.no. 101/2014.

¹²³ Republic of North Macedonia, Law on Health Insurance (*Закон за здравственото осигурување*), 2000. Full title: Republic of North Macedonia, Law on Health Insurance (*Закон за здравственото осигурување*), Official Gazette of the Republic of Macedonia No. 25/2000, 34/2000, 96/2000, 50/2001, 11/2002, 31/2003, 84/2005, 37/2006, 18/2007, 36/2007, 82/2008, 98/2008, 6/2009, 67/2009, 50/2010, 156/2010, 53/2011, 26/2012, 16/2013, 91/2013, 187/2013, 43/2014, 44/2014, 97/2014, 112/2014, 113/2014, 188/2014, 20/2015, 61/2015, 98/2015, 129/2015, 150/2015, 154/2015, 192/2015, 217/2015, 27/2016, 37/2016, 120/2016, 142/2016 и 171/2017; Constitutional Court Decision: U.no.85/2000, U.no.173/2000, U.no.37/2001, U.no.60/2006, U.no.40/2007, U.no.167/2006, U.no.45/2006, U.no. 199/2008, U.no.109/2009, U.no.185/2009, U.no.112/2011.

¹²⁴ Republic of North Macedonia, Law on the Protection of Children, 2013. Full title: Law on the Protection of Children (*Закон за заштита на децата*), Official Gazette of Republic of Macedonia, No. 23/2013, 12/2014, 44/2014, 144/2014, 10/2015, 25/2015, 150/2015, 192/2015, 27/2016, 163/2017. Articles 12, 13, 14, 15.

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

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

The Constitution states that the Republic provides for social protection and social security for citizens in accordance with the principle of social justice. It guarantees the right to assistance to those who are infirm or unfit for work. It also provides for particular protection for people with disabilities and ensures that their involvement in the life of society is possible.¹²⁵

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 of the obligation to carry out public service duties for a duration of up to 90 days.¹²⁶ This law also contains a general anti-discrimination provision (Article 20) and an article defining direct and indirect discrimination (Article 21). Discrimination in the area of social advantages is also likely to be unlawful under the Anti-Discrimination Law, the material scope of which includes 'social security, including the area of social protection, pension and disability insurance, health insurance and health protection' (Article 4(1), line 3) and 'other areas determined by law' (Article 4(1), line 10). Albeit not containing a special anti-discrimination provision specifically concerning social advantages, it is safe to conclude that the legal framework implicitly upholds the concept of non-discrimination with regard to the social advantages.

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

In North Macedonia, national legislation prohibits discrimination in: education as formulated in the Racial Equality Directive.

Under the Anti-Discrimination Law, discrimination is prohibited in the educational process, at all levels and in all forms, both private and public. All directive grounds are explicitly listed in the provision on protected grounds, apart from sexual orientation. Aside from the Anti-Discrimination Law (Article 4(2)), laws that regulate primary¹²⁷ and secondary¹²⁸ education also prohibit discrimination. Primary and secondary education is compulsory in the country. The legislation covers the directives' grounds of race or ethnic origin and belief (political and religious), while disability, age, sexual orientation and belief (other aspects) are missing. The 2018 Law on Higher Education foresees prohibition of discrimination in the student selection process on all of the grounds contained in the directives.¹²⁹

¹²⁵ Constitution of the Republic of North Macedonia, 1991 and subsequent amendments, Article 35.

¹²⁶ Republic of North Macedonia, Law on Social Protection, 2009, Article 55.

¹²⁷ Article 2 of the Law on Primary Education states: '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: Republic of North Macedonia, Law on Primary Education, 2008. Full title: Law on Primary Education (*Закон за основното образование*), Official Gazette of Republic of Macedonia, No. 103/2008, 33/2010, 116/2010, 156/2010, 18/2011, 51/2011, 100/2012, 24/2013, 41/2014, 116/2014, 135/2014, 10/2015, 98/2015, 145/2015, 30/2016, 127/2016, 67/2017, 64/2018; Constitutional Court Decisions: U.no. 212/2008, U.no. 202/2008, U.no.234/2008, U.no.226/2008.

¹²⁸ Republic of North Macedonia, Law on Secondary Education, 1995. Full title: Law on Secondary Education (*Закон за средното образование*), Official Gazette of Republic of Macedonia, No. 44/1995, 24/1996, 34/1996, 35/1997, 82/1999, 29/2002, 40/2003, 42/2003, 67/2004, 55/2005, 113/2005, 35/2006, 30/2007, 49/2007, 81/2008, 92/2008, 33/2010, 116/2010, 156/2010, 18/2011, 42/2011, 51/2011, 6/2012, 100/2012, 24/2013, 41/2014, 116/2014, 135/2014, 10/2015, 98/2015, 145/2015, 30/2016, 127/2016, 67/2017, 64/2018; Constitutional Court Decisions: U.no. 355/1995, U.no. 210/2000, U.no. 83/2003, U.no. 31/2005, U.no. 102/2005, U.no. 226/2008, Article 3.

¹²⁹ Republic of North Macedonia, Law on Higher Education, 2018, Article 149(3).

a) Pupils with disabilities

In North Macedonia, the general approach to education for pupils with disabilities does raise problems.

Aside from the ADL, which applies to the field of education and disability as a ground, the laws that regulate primary¹³⁰ and secondary¹³¹ education prohibit discrimination and although they do not cover disability as a ground for discrimination, they include 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. Also, students with special educational needs are to be 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.¹³²

The manner and conditions for the enrolment of students with special educational needs in primary schools is determined by the Minister of Education, on a proposal of the Bureau for Development of Education (an independent body within the ministry).¹³³ According to Macedonian legislation there is specialised primary education for children with disabilities and special schools are considered equivalent to state schools.¹³⁴ In general, children are enrolled in these special schools instead of being enrolled in mainstream schools (as discussed below).

The 2018 Law on Higher Education¹³⁵ does explicitly prohibit discrimination on the ground of disability, but in relation to the selection of students.¹³⁶ This is not a particular treatment of disability, but it is the approach to non-discrimination contained in the law. Namely, no single general provision on non-discrimination is included in the law. In addition to this, there are articles establishing that special benefits for students with disabilities should be established within the statutes of the higher education institutions,¹³⁷ that students with disabilities should be exempted from payment of tuition fees,¹³⁸ and that they can be awarded other benefits by the university (without further stating what these might be).¹³⁹ Any curriculum which is to be especially developed for students with disabilities is developed by the Bureau for Development of Education.¹⁴⁰

At present, the dominant practice seems to be segregated education of children with disabilities, rather than their inclusion in mainstream schools. This can be confirmed by the practice of children being taken out of primary education at the request of parents among other things, because of resistance on the part of teaching staff to teaching children with disabilities and because of bullying by other children.¹⁴¹ According to the Law on Primary

¹³⁰ Republic of North Macedonia, Law on Primary Education, 2008, Article 2.

¹³¹ Republic of North Macedonia, Law on Secondary Education, 1995, Article 3.

¹³² Republic of North Macedonia, Law on Primary Education, 2008, Article 6.

¹³³ Republic of North Macedonia, Law on Primary Education, 2008, Article 51.

¹³⁴ Currently, 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 visually 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 have a total of about 1,700 students on their rolls. Please see: Republic of North Macedonia, Law on Primary Education, 2008, Article 186.

¹³⁵ Republic of North Macedonia, Law on Higher Education, 2018, Article 7.

¹³⁶ Republic of North Macedonia, Law on Higher Education, 2018, Article 149 (3).

¹³⁷ Republic of North Macedonia, Law on Higher Education, 2018, Article 27 (4).

¹³⁸ Republic of North Macedonia, Law on Higher Education, 2018, Article 128 (1).

¹³⁹ Republic of North Macedonia, Law on Higher Education, 2018, Article 150.

¹⁴⁰ Republic of North Macedonia, Law on Higher Education, 2018, Article 30.

¹⁴¹ Open the Windows (2015), *Holistic report on persons with disabilities in Macedonia (Холистички извештај за лицата со попреченост во Македонија)* (Otvorete gi prozorcite, 2015), p.22.

Education, children with disabilities are entitled to shorter class time, a smaller number of children per class and the engagement of specialists. However, both the *Holistic Report on Persons with Disabilities in Macedonia*,¹⁴² produced by the Open the Windows project, and the 2013 Ombudsperson's information report on the inclusion of children with disabilities in education¹⁴³ (which followed the 2006 special report)¹⁴⁴ confirm that the implementation of the standards prescribed in the law is problematic. The *Holistic Report* underlines that the practical application of legal provisions entails a lot of problems and obstacles that do not allow for the provision of adequate and equal access to education for children with disabilities, thus exercising the right to education often results in discrimination.¹⁴⁵

There are separate secondary schools for children with 'special needs'.¹⁴⁶ Secondary school students with 'special educational needs' are educated under adjusted programmes for job training.¹⁴⁷ Open the Windows aims to promote assistance technology for children with disabilities from primary school.¹⁴⁸ There are no specific articles that regulate the education of children with disabilities in ordinary secondary schools. However, this does not mean that children with disabilities are integrated into the education (thus the lack of special provisions). In fact, it is the opposite. If the students fall within the category of students with 'special educational needs', they cannot enrol in mainstream secondary schools.

An encouraging development which is expected to assist in dealing with segregation practices is that the 2018 Draft ADL, if adopted as proposed, will include segregation as a separate form of discrimination. The proposal defines segregation as 'physical separation of a person or a group of persons on grounds of a discrimination ground without a legitimate or objectively justified aim' (Article 12).

b) Trends and patterns regarding Roma pupils

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

The Ombudsperson recently published the results of research on the inclusion of Roma following the Roma Decade, looking at the current situation and the challenges. The research was conducted in 2018 and covers the period 2005-2015. Education is one of the areas it covers. The largest number of Roma pupils enrolled in primary and secondary schools was in 2008/2009 (10 187 pupils enrolled in primary school and a high percentage (95 %) of those in the final year of primary school continuing their education into secondary school),¹⁴⁹ whereas the smallest numbers for primary school were in 2015/2016 (8,785) and for secondary school in 2013/2014 (with only 35 % of those in the final year of primary school continuing their education into secondary school). The percentage of children not enrolled in primary school varied over the years, with the average being 30 %. The average drop-out rate is 6-8 %. The drop-out rate was the highest in 2014/2015 with an average of 17 % from all nine grades (1st to 9th grade) and the drop-out rate from 8th

¹⁴² *Holistic report on persons with disabilities in Macedonia*, 2015.

¹⁴³ Ombudsperson of the Republic of Macedonia (2013), *Information from the Ombudsperson on the inclusion of children with disabilities in primary and secondary special schools* (Информација за состојбата со вклученоста на децата со посебни потреби во основните и средните посебни училишта), available at: <http://ombudsman.mk/upload/documents/2013/Izvestaj-Posebni%20ucilista-2014.pdf>.

¹⁴⁴ Ombudsperson of the Republic of Macedonia (2006), *Special report by the Ombudsperson on the inclusion of children with disabilities in education* (Посебен извештај на народниот правобранител за вклученоста на децата со посебни потреби во образованието), available at: <http://ombudsman.mk/upload/documents/Posebni%20potrebi%20na%20decata1%20-mak.pdf>.

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

¹⁴⁶ Republic of North Macedonia, Law on Secondary Education, 1995, Article 43.

¹⁴⁷ Republic of North Macedonia, Law on Secondary Education, 1995, Article 50.

¹⁴⁸ Open the Windows website: <http://openthewindows.org>.

¹⁴⁹ Please note that, as of this school year, secondary school became mandatory in the country.

to 9th grade representing 53 % of all students who dropped out. The Ombudsperson does not provide a possible interpretation for this.

As for secondary school, after a steady growth in the number of Roma students enrolled in secondary school in the period 2005-2012, as of 2013, the numbers start to drop. For illustration, the number of Roma students enrolled in secondary schools was: 1 220 in 2005/2006, 1 628 in 2009/2010, 1 717 in 2013/2014 and 1 420 in 2015/2016). The average drop-out rate for secondary education is 15 %, but this rate seems to be falling (in 2016/2017 it reached 4 %). On average, 39 % of Roma students who finish high school enrol in higher education (the largest percentage for enrolment in higher education being 51 % in 2009/2010 and the lowest being 37 % in 2015/2016).¹⁵⁰

The Strategy on Roma 2014-2020 (the successor to the 2005 Roma strategy), was adopted in 2014.¹⁵¹ Like its predecessor, this strategy also has education for Roma as a priority. The strategy highlighted the following concerns with regard to the situation of the Roma population (of relevance for education): the poor economic and social position of a significant number of Roma families; the high percentage of children not attending preschool education; the small number of children attending elementary education; lack of adequate conditions in the homes; economic exploitation of children; lack of sufficient knowledge of the Macedonian language; a high number of children dropping out of education; and a lack of awareness for the need of education.¹⁵² Eight Roma information centres were established to support the implementation of the strategy and to monitor, inter alia, the situation on the ground.¹⁵³

Segregation of Roma pupils continues to be a burning issue. According to the strategy, some parents of Roma origin intentionally enrol their non-disabled children in special schools for children with moderate intellectual disabilities where they can learn crafts. The reasons for this include the fact that it is much easier for the children to complete these schools and find employment.¹⁵⁴ Segregation often occurs in the process of education. However, in spite of numerous inspections and public statements, no sanctions have been imposed in relation to segregation in schools.¹⁵⁵

However, the many studies published on the issue of Roma education in the country, and on segregation in particular, paint a more nuanced picture. Studies available so far, such as the Open Society Institute (OSI) report,¹⁵⁶ Roma Education Fund reports,¹⁵⁷ Macedonian Helsinki Committee and the ERRC report,¹⁵⁸ a UNICEF 2008 situation analysis¹⁵⁹ and a

¹⁵⁰ Ombudsperson (2018), *Roma inclusion following the Roma Decade – state of affairs and challenges (Инклузија на Ромите по завршувањето на Декадата на Ромите – Тековна состојба и предизвици)*, <http://ombudsman.mk/upload/documents/2018/Prezentacija-Inkluzija%20Romi-Vrabetuvanje-07.11.2018.pdf>.

¹⁵¹ There are also several policy documents targeting Roma women. For more, please see MLSP website at: <http://mtsp.gov.mk/?ItemID=6FC822BBA79A61429117F41943673AF4>.

¹⁵² Strategy on Roma 2014-2020, 2014; Full title: Ministry of Labour and Social Policy (Министерство за труд и социјална политика), 'Strategy on Roma 2014-2020' (Стратегија за Ромите 2014-2020) <http://mtsp.gov.mk/content/word/Roma%20Strategy%20in%20Macedonia%202014-2020.docx>.

¹⁵³ For more information on the Roma Information Centres, please see Ministry of Labour and Social Policy website: <http://mtsp.gov.mk/?ItemID=16963527D912DC41B48380E0B6034274>.

¹⁵⁴ Strategy on Roma 2014-2020, 2014.

¹⁵⁵ Strategy on Roma 2014-2020, 2014.

¹⁵⁶ Open Society Institute (2007), *Equal access to quality education for Roma, Volume 2: Croatia, Macedonia, Montenegro and Slovakia*, www.opensocietyfoundations.org/sites/default/files/equal_20071218.pdf.

¹⁵⁷ Roma Education Fund (2007), *Advancing education of Roma in Macedonia*, www.romaeducationfund.hu/sites/default/files/publications/macedonia_report.pdf.

¹⁵⁸ Referenced in this report: http://insoc.org.mk/files/MC_civil%20society%20monitoring%20report_MC_web.pdf.

¹⁵⁹ UNICEF (2008), *Children in FYR Macedonia – A situation analysis*, www.unicef.org/tfyrmacedonia/MK_SITAN_ENG.pdf.

2009 segregation in education analysis,¹⁶⁰ a CPAD 2014 report,¹⁶¹ an Institute of Human Rights REF-supported 2013 study¹⁶² and a Foundation Open Society Macedonia 2015 analysis,¹⁶³ have all reached very similar conclusions on segregation and enrolment barriers. They find that the most significant problems in Roma education are similar to those faced by Roma throughout the Western Balkans. Critical¹⁶⁴ 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 access to preschool education and a lack of support for further education.¹⁶⁵

A case was filed with the CPAD by the Helsinki Committee of the Republic of Macedonia in 2011 regarding the segregation of Roma children in schools in Bitola. After breaching all possible procedural deadlines, the CPAD finally decided this case in September 2014 and the applicants received the decision in December 2014. CPAD did not find discrimination on grounds of ethnicity in the case, nor did it find segregation. The CPAD actually found the situation to be a result of the parents' choice to enrol their children in a specific primary school, however it failed to state on what it based its argument and bluntly added that it 'further supports this argument' with a report from a person from another state institution who claimed that this process is one of 'natural segregation'.¹⁶⁶

Although it had deliberated on this case for over three years, the CPAD added a surprisingly short elaboration of its opinion, the majority of which consists of a bullet point list of 14 letters/requests that it sent and received while processing the case, one of which is a rather vague explanation of proceedings which states, 'numerous phone calls on the case topic with relevant sides and numerous meetings on the case topic'. There is no further elaboration as to whom the CPAD talked to or with whom and when they met and what was discussed and possibly decided. It also disregards reports on Roma children in education and on segregation in education, including a statement from the director of the primary school saying that the parents of children from other ethnicities, although living in the school's region, choose to register their children in other primary schools in order to avoid sending them to school with Roma children.¹⁶⁷ Interestingly enough, at the same time that the CPAD adopted this opinion, it was working on a study on segregation of Roma pupils, which was published in November 2014 and found the following: 'In the period from 2010 to 2014, a high level of segregation of Roma children is noticeable in both regular and special schools, and in regular and special classes, which represents *an indirect systemic and long-lasting discrimination*' (emphasis added).¹⁶⁸

¹⁶⁰ UNICEF (2009), *Multiculturalism and interethnic relations in education (Мултикултурализмот и меѓуетничките односи во образованието)*, [www.unicef.org/tfyrmacedonia/New_MKVersionsm2\(3\).pdf](http://www.unicef.org/tfyrmacedonia/New_MKVersionsm2(3).pdf).

¹⁶¹ CPAD (2014), *Segregation of Roma children in education* http://eprints.ugd.edu.mk/16407/1/Reserach%20on%20Roma%20segregation_MK%2BAL.pdf.

¹⁶² Institute of Human Rights (2013), *Breaking the wall of silence*, www.ihr.org.mk/uploads/publications_pdf/diskriminacijaromi.pdf.

¹⁶³ Foundation Open Society Macedonia (FOSM) (2015), *Segregation of Roma in education in Macedonia* (Skopje).

¹⁶⁴ Other important issues range from general living conditions, to discrimination and clear examples of segregation (including making Roma children sit in the back rows in classes, complaints by parents of other ethnicities that they do not want their children to study with Roma children, even reporting getting lower grades with explicit comments by the teacher that the grade is lower because the student is of Roma ethnic origin). Source: Institute on Human Rights (2013), *Breaking the wall of silence*, www.ihr.org.mk/uploads/publications_pdf/diskriminacijaromi.pdf.

¹⁶⁵ Roma Education Fund (2007), *Advancing education of Roma in Macedonia*, www.romaeducationfund.hu/sites/default/files/publications/macedonia_report.pdf.

¹⁶⁶ Commission for Protection against Discrimination (Комисија за заштита од дискриминација), Opinion of the Commission for Protection against Discrimination, 5 September 2014, www.kzd.mk/sites/default/files/dokumenti/mislenja/2014/etn_pripadnost/07-80.%2005.09.2014.pdf.

¹⁶⁷ Commission for Protection against Discrimination (Комисија за заштита од дискриминација), Opinion of the Commission for Protection against Discrimination, 5 September 2014, www.kzd.mk/sites/default/files/dokumenti/mislenja/2014/etn_pripadnost/07-80.%2005.09.2014.pdf.

¹⁶⁸ CPAD (2014), *Segregation of Roma children in education* http://eprints.ugd.edu.mk/16407/1/Reserach%20on%20Roma%20segregation_MK%2BAL.pdf.

In January 2017, graffiti containing racist slurs were written over the walls of a primary school in Bitola (town in the south of the country), where 80% of the pupils are Roma (the same school as referred to above). The school was quick to remove the graffiti which (luckily) were written over the weekend, so that pupils were not be exposed to the messages when they came to classes on the Monday morning. The Macedonian Helsinki Committee (MHK) raised a criminal claim against an unknown perpetrator for the case; as yet no progress on the case has been reported.¹⁶⁹

The MHK, together with a Roma NGO, IRIZ, raised another case with the Ombudsperson of possible segregation in relation to a high school in Skopje. They noted that the students of Roma origin at the Arseni Jovkov high school were frequently concentrated in one or two classes and were seldom placed in a mixed class. In addition, the numbers of Roma students in this mixed school were dropping after Shaip Jusuf High School opened in the Roma municipality of Shuto Orizari. The opening of this school was part of a larger programme for renovating existing high schools and expanding the network of high schools in order to increase the accessibility of secondary education, which is otherwise mandatory in the country. Since there was no high school in Shuto Orizari, it was built and opened as part of this programme. The Ombudsperson did not find segregation, as there were mixed classes in the first school and as students were free to choose where they wanted to enrol (and to move from one class to another), and some chose to enrol or move to a school close to where they live (the second school). It did, however, state that should the trend continue it might indicate hidden discrimination.¹⁷⁰

Following the 2016 case of five CSOs¹⁷¹ which, supported by the OSCE Mission to Skopje, submitted (and lost) an *actio popularis* claim of Roma segregation in education against the Government,¹⁷² the Institute for Human Rights (IHR) and the European Roma Rights Centre (ERRC) attempted another *actio popularis* claim on Roma pupils' segregation in state primary education. They claimed direct and indirect discrimination against Roma pupils which resulted in the creation of segregated classes and schools. However, the court rejected the claim because it lacked express consent from an individual who believed they had been discriminated against.¹⁷³ Following a complaint by the CSOs, the higher court confirmed the decision of the lower court, stating that, when it comes to personal rights, agreement cannot be implied but must be proven (which, again, defies the purpose of *actio popularis*).¹⁷⁴

An encouraging development in relation to segregation is that the 2018 Draft ADL, if adopted as proposed, will include segregation as a form of discrimination. The proposal defines segregation as 'physical separation of a person or a group of persons on grounds of a discrimination ground without a legitimate or objectively justified aim' (Article 12).

¹⁶⁹ Macedonian Helsinki Committee (2017), 'Hate speech in Gjorgji Sugarev Primary School in Bitola' (*Говор на омраза во основното училиште Ѓорѓи Сугарев во Битола*), MHK website, www.mhc.org.mk/announcements/521#.WwSd5C-ZO8o.

¹⁷⁰ IRIZ (2017), 'IRIZ and the Helsinki Committee file a case with the Ombudsperson on segregation of Roma students' (*ИРИЗ и Хелсиншки комитет со претставка до Народниот правобранител за сегрегација на ученици Роми*), IRIZ website, <https://iriz.org.mk/ириз-и-хелсиншки-комитет-со-претставка/>.

¹⁷¹ NGO KHAM Delcevo, Open Society Foundation Macedonia (FOSM), Macedonian Helsinki Committee (MHK), Institute for Human Rights (IHR) and European Roma Rights Centre (ERRC).

¹⁷² On this, see the 2017 edition of this report.

¹⁷³ Court of First Instance Skopje, Case No. П4-932/17, *Institute for Human Rights (IHR) and the European Roma Rights Centre (ERRC) vs Ministry of Education, Bitola Municipality, Gjorgji Sugarev Primary School and Todor Angelevski Primary School* (28 March 2018).

¹⁷⁴ Court of Second Instance Skopje, Case No. ГЖ-3165/18, *Institute for Human Rights (IHR) and the European Roma Rights Centre (ERRC) vs Ministry of Education, Bitola Municipality, Gjorgji Sugarev Primary School and Todor Angelevski Primary School* (13 July 2018).

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

In North Macedonia, national legislation prohibits discrimination in access to and supply of goods and services as formulated in the Racial Equality Directive. The Anti-Discrimination Law includes access to goods and services in the fields of the law's implementation (Article 4), and applies to all the grounds of the directives and more (Articles 3 and 5(3)), except for sexual orientation which is not explicitly included in this article or the law, although, as Article 3 is an open-ended provision and includes ratified international treaties as well as other grounds established under law, there is space to seek protection on this ground as well. It is also important to note that Article 11, which is part of the chapter on forms of discrimination, establishes that 'disabling or limiting the use of goods and services by persons or groups of persons on any of the grounds established in Article 5, point 3 of this law is discrimination'. The law has a special article on discrimination against people with 'mental' and physical disabilities (Article 8). It enumerates a number of areas in which this prohibition applies, including goods and services explicitly in relation to health services. It also states that reasonable accommodation measures, by way of adapting infrastructure and space, will not be considered to be discrimination.

The 2018 Draft ADL, if adopted as proposed, will not include a separate article where failure to adapt goods or services to meet the needs of a person with disabilities is considered as a separate form of discrimination. However, in Article 6, where discrimination in general is defined, in a single paragraph the law states the definition and continues that: 'This includes all forms of discrimination, including not enabling reasonable accommodation and not enabling accessibility of infrastructure, goods and services' (Article 6). Thus, although the law no longer has a separate article on this, it keeps the approach to explicitly state that not enabling reasonable accommodation is discrimination in all fields of life, which is arguably a wider scope than the current provision (discussed above).

a) Distinction between goods and services available publicly or privately

There are no specific articles forbidding discrimination concerning goods and services available to the public that make a distinction between the goods and services available to the public and those available privately.

The Law on Consumer Protection¹⁷⁵ notes that a merchant providing public services through a distribution network must allow users to join and use the network and e-services under non-discriminatory, previously known and agreed conditions.¹⁷⁶ There are no specific grounds for discrimination mentioned.

The equality body continues to deal with this field, as it did in previous years.¹⁷⁷ In 2018, Bairska Svetlina, an NGO dealing with Roma rights, filed a case with the CPAD on behalf of F. J. claiming discrimination on the ground of ethnic affiliation and skin colour (Article 3, ADL) in access to goods and services (Article 4, ADL) because he was not allowed to enter a pool in Bitola. The applicant and the NGO presented their statements which showed it was probable that discrimination had occurred. This also included documentation of other

¹⁷⁵ Republic of North Macedonia, Law on Consumer Protection (*Закон за заштита на потрошувачите*), 2004. Full text: Republic of North Macedonia, Law on Consumer Protection (*Закон за заштита на потрошувачите*), Official Gazette of the Republic of Macedonia No. 38/2004, 77/2007, 103/2008, 24/2011, 164/2013, 97/2015, 152/2015, 140/2018.

¹⁷⁶ Republic of North Macedonia, Law on Consumer Protection, 2004, Article 119.

¹⁷⁷ One of the cases initially processed by the equality body, and later (March 2015), taken to court, concerned accessibility of pavements for persons with disability in the town of Delcevo. Both the equality body and the Delcevo court of first instance found discrimination. Commission for Protection Against Discrimination (*Комисија за заштита од дискриминација*) (2015), *2014 Annual Report of the Commission for Protection Against Discrimination*, p.14, www.sobranie.mk/materialdetails.nsp?materialId=d93111d8-975d-471e-be2c-e07a2df372f3; Primary Court Delcevo (*Основен суд Делчево*), Judgment P-4. no. 14/2014 (20 March 2015).

instances where Roma people were not allowed to enter this particular pool. On this basis, the CPAD shifted the burden of proof and asked the legal person managing the pool to respond. The communication from the CPAD twice failed to be delivered, on grounds of an incomplete address. The CPAD went on to conclude that there had been discrimination. It recommended to the legal person to apply equal treatment and reminded them of the laws in force which prohibit direct and indirect discrimination on a number of grounds (here the CPAD repeated Article 3).¹⁷⁸

A similar case was reported in 2017, but this time in relation to disability. When calling to enquire about time slots and logistics for taking her child with disabilities to a pool in Skopje, a mother was told that people with disabilities were not allowed in the pool. She reported this on social media. Following public outrage about prohibiting the disabled child's entrance to the pool, the director of the pool issued a statement saying that the entrance to the pool and all its facilities were not accessible, so they could not guarantee the safety of people with disabilities. No adjustments have been made to make the pool physically accessible. This case has been taken to court and is still pending at the time of writing of this report.¹⁷⁹

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

In North Macedonia, national legislation prohibits discrimination in the area of housing as formulated in the Racial Equality Directive. The Anti-Discrimination Law clearly states that housing is an area to which the law applies (Article 4(5)); it explicitly includes all the grounds of the directives except for sexual orientation, which is not explicitly included in the article or the law, although, as Article 3 is an open-ended provision that includes ratified international treaties as well as other grounds established under law, there is space to seek protection on this ground as well. However, a prohibition of discrimination (with regard to any of the protected grounds) is not included in the Law on Housing, which deals specifically with selling or renting a piece of land or a building for housing purposes or illegal forced evictions.

Under Article 104 of the Law on Housing,¹⁸⁰ a regulatory commission was established with a mandate, *inter alia*, to prevent discrimination in the field of housing.¹⁸¹ However, the provision does not contain any further explanations as to protective mechanisms, nor does it mention grounds of discrimination. Disability is only mentioned insofar as the manager of a building should know the standards and norms for accessibility for persons with disabilities in a residential facility (Article 19(12)) (under the same article, this can also be taken as imposing an obligation on her/him to initiate court procedures against the builders for improper and incomplete execution of the appropriate actions).

The Law on Housing neither requires nor promotes the availability of housing that is accessible to the elderly. The article on types of apartments contains a special provision defining housing units for elderly and incapacitated people as units where such tenants get 24-hour assistance from an institution under the condition that these are architecturally adjusted as apartments for elderly people (Article 7(3)). However, it does not go beyond providing for the possibility of establishing such a unit and there is further clarification of the issue. No assessment on the implementation of or compliance with this provision has yet been conducted.

¹⁷⁸ Case No. 08/259 - *Bairska Svetlina. v Pool "Srce Dovledzik"*, CPAD (case on file with author; opinion not dated).

¹⁷⁹ Information provided in personal correspondence to the author of this report.

¹⁸⁰ Republic of North Macedonia, Law on Housing (*Закон за домување*), 2009. Full title: Republic of North Macedonia, Law on Housing (*Закон за домување*), Official Gazette of the Republic of Macedonia No. 99/2009, 57/2010, 36/2011, 54/2011, 13/2012, 55/2013, 163/2013, 42/2014, 199/2014, 146/2015, 31/2016, 64/2018; Constitutional Court Decisions: U.no. 246/2009, U.no.14/2010.

¹⁸¹ Republic of North Macedonia, Law on Housing, 2009, Article 104.

a) Trends and patterns regarding housing segregation for Roma

In North Macedonia, there are patterns of housing segregation and discrimination against Roma people. In 2008, according to the most recent data available, Roma people were primarily concentrated in 10 municipalities and the Roma population was usually concentrated in one part of the town,¹⁸² with 95 % of Roma living in towns, while only 5 % live in villages.¹⁸³ About 70 % of Roma do not have any proof of ownership of their property.

An earlier (2008) report¹⁸⁴ on the conditions of housing and health in the Roma community, which provides the most robust and primary data to date, states that Roma families often live in informal settlements on the outskirts of urban centres, which further obstructs their access to basic social services. They live in badly built, sub-standard houses, without in-house water supplies and sanitation. Data show that 7.25 % of families live in improvised houses built from non-construction materials (cardboard, nylon, tin, plastic, etc.), 29.5 % in dilapidated and montage houses and only 63 % in solid-construction houses.¹⁸⁵ More than 10 % of the families don't have access to any kind of water supply. The sewerage conditions are extremely bad, with an estimate of 50 % of families having no access to proper solutions for the discharge of sewage and waste water.¹⁸⁶

In general, while many Macedonians were found to live in privately-owned apartments (former state-owned public housing that was made available for sale), some 15 to 25 % of the population lived in about 100 informal urban settlements.¹⁸⁷ According to the same source, '95 % (or 47 408) of Roma live in informal settlements located on the peripheries of Macedonia's cities. These settlements are typified by higher levels of unemployment, crime, illiteracy, juvenile delinquency, drug abuse and other social problems, all of which can negatively affect children's social development.'¹⁸⁸

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,¹⁸⁹ 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.¹⁹⁰

¹⁸² CRPRC Studiorum and Mesecina (ЦПРС Студиорум и Месечина) (2008), *Report on the condition of housing and health among the Roma Community in Macedonia*, www.studiorum.org.mk/?p=41.

¹⁸³ Samet Skenderi (2014) *Домување на ромите и социјална интеграција во Република Македонија (Housing of Roma and social integration in the Republic of Macedonia)*. p.7.

¹⁸⁴ This is still the most relevant report on housing of Roma. The 2018 research by the Ombudsperson largely reiterates the findings of the 2008 study. Cf. Ombudsperson (2018), *Roma inclusion following the decade on Roma – State of affairs and challenges (Инклузија на Ромите по завршувањето на Декадата на Ромите – Тековна состојба и предизвици)*, <http://ombudsman.mk/upload/documents/2018/Prezentacija-Inkluzija%20Romi-Vrabotuvanje-07.11.2018.pdf>.

¹⁸⁵ Roma houses are small, planned to serve only elementary needs, with housing space of less than 5 m² per member for more than 50 % of the families. About 40 % of families live in shared houses. Only 16 % of the houses have a toilet and bathroom in the house; 77 % of families use a toilet in the yard and 58 % use a tap in the yard.

¹⁸⁶ CRPRC Studiorum and Mesecina (ЦПРС Студиорум и Месечина), *Report on the condition of housing and health among the Roma Community in Macedonia*, www.studiorum.org.mk/?p=41.

¹⁸⁷ UNICEF (2008), *Children in FYR Macedonia – A situation analysis*, www.unicef.org/tfyrmacedonia/MK_SITAN_ENG.pdf.

¹⁸⁸ UNICEF (2008), *Children in FYR Macedonia – A situation analysis*, www.unicef.org/tfyrmacedonia/MK_SITAN_ENG.pdf.

¹⁸⁹ National Roma Centrum (Национален ромски центар) *Report to the Committee on Economic, Social and Cultural Rights of the United Nations (Извештај до комитетот за економски, социјални и културни права на Обединетите нации)*, www.nationalromacentrum.org/mk/publikacii/istrazuvanja/izvestaj-do-komiteto-za-ekonomski/; Kanal 5, 'Discoteque Kalipso prohibits entrance to Roma' (Во дискотеката Калипсо во Берово е забранет влезот за Ромите) (Cache); A1, 'Entrance banned for Roma at the New Aqua Park' (Забранет влез за Роми во новиот Аква парк) (31 July 2013).

¹⁹⁰ Helsinki Committee for Human Rights of the Republic of Macedonia (2014), *Assessment of the progress of the Roma Decade (Проценка на напредокот на декадата на ромите)*, www.mhc.org.mk/?ItemID=3DE4E8C7F50F194281021DB76FAD9E1E.

In 2016, the ERRC initiated a case against the country before the ECtHR on Article 3, Article 8, Article 14 in conjunction with Articles 3, 8 and 10, and Article 13 in conjunction with Articles 3 and 8.¹⁹¹ This case¹⁹² concerns the eviction of over 120 Roma people from the Poligon settlement in Skopje. They are very poor people, living in an informal settlement and some of them have been there for many years. Their houses have been torn down many times before being repeatedly rebuilt. The Government destroyed their homes and the local water pump. In a month that was full of storms and floods, these people were left in the open air without a roof over the heads. The ERRC reports that they were offered accommodation in a shelter centre, but that there was not have enough space (and it was already notorious for its cramped, degrading conditions and inter-ethnic violence). The ERRC did not succeed in securing interim measures but the case is pending.¹⁹³

¹⁹¹ *ERRC in the case of Bekir and others v. Macedonia* (8 November 2016)

www.errc.org/cms/upload/file/application-eviction-bekir-and-others-v-macedonia-november-2016.pdf.

¹⁹² The status of the case still remains as 'communicated' only: *Bekir and Others v Macedonia*, HUDOC, <http://hudoc.echr.coe.int/eng?i=001-167970>.

¹⁹³ *ERRC in the case of Bekir and others v. Macedonia* (8 November 2016)

www.errc.org/cms/upload/file/application-eviction-bekir-and-others-v-macedonia-november-2016.pdf.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

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

The Anti-Discrimination Law contains a general clause stating that difference of treatment that is based on a characteristic related to any of the discriminatory grounds will 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 (Article 14(2)). This is in line with the directives.

The 2018 Draft ADL amends the overall approach to the exceptions to the non-discrimination norm. In Article 7, entitled 'Measures and actions which are not discrimination' it provides a definition of affirmative action, and prescribes that different treatment of Macedonian citizens compared to others and the genuine and determining occupational requirement (which replicates the current Article 14(2)) will not be considered to be discrimination.

Article 8 of the Law on Labour Relations¹⁹⁴ uses wording on exemptions from occupational requirements in the context of access to labour, which corresponds to the language of Article 4 of Directive 2000/43/EC. Notably, the law states that

'it will not be considered discrimination making a difference, exclusion or giving priority, when the nature of the work is such or the work is performed in such conditions that the characteristics contained in Article 6 of this law are essential and decisive conditions for performing the work, providing that the objective to be achieved is justified and the requirement has been carefully considered.'¹⁹⁵

Although a careful consideration of the requirement (*одмерен*) is not the same as being proportionate (*пропорционален*), there is room to interpret it as such. However, from the publicly available data it cannot be concluded whether such an interpretation has been applied in practice.

The grounds covered by the Law on Labour Relations are broader than the protected grounds of the two directives and the differences in treatment in cases of determining occupational requirements need not only be based on the five grounds mentioned in the directives, but can cover all protected grounds.¹⁹⁶

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

In North Macedonia, national law provides for an exception for employers with an ethos based on religion or belief. Paragraph 1 (3, 4) of Article 14 of the ADL states that the following will not constitute discrimination:

'3) the different treatment of persons on the basis of religion, belief, sex or other characteristics related to an occupation carried out in religious institutions or organisations when, according to the nature of the relevant occupation or activity, or

¹⁹⁴ Republic of North Macedonia, Law on Labour Relations, 2005.

¹⁹⁵ Republic of North Macedonia, Law on Labour Relations, 2005, Article 8.

¹⁹⁶ The directives' grounds of race, belief, disability, age and sexual orientation are all covered, and the Law on Labour Relations goes beyond them in an open-ended list: sex, health condition, membership of a trade union, social origin, position of the family, property or other personal circumstances.

due to the requirements under which the religion is exercised, belief, sex or other characteristics represent an essential and decisive requirement from the point of view of the institution or the organisation, when the aim is legitimate and the requirement is necessary;

4) the different treatment of persons on the basis of religion, belief, sex or other characteristics in regard to education and training for the aims of an occupation related to the relevant religion;'

While the exception on religion or belief itself is in compliance with Directive 2000/78, the fact it extends beyond these grounds is not. However, under this same law it does not constitute discrimination if members of legally registered¹⁹⁷ churches and religious communities (this also applies to NGOs, political parties, trade unions and other organisations) act in accordance with their belief (Article 14(5)), which goes beyond religion and into the realm of any belief which they might have in their founding and internal acts, programmes or statutes. Considering the broad nature of this exception, it cannot be considered to be in line with the directive.

As stated in the above section, with the 2018 Draft ADL, if adopted as proposed, the overall approach to the exceptions to the non-discrimination norm will be amended. Affirmative action, different treatment of Macedonian citizens compared to others and the genuine and determining occupational requirement (which replicates the current Article 14(2)) will be considered as 'Measures and actions which are not discrimination' (Article 7 of the 2018 Draft ADL). The exceptions for ethos-based organisations (Article 14, para.1 (3-5)) will be repealed under the new ADL.¹⁹⁸

The Law on the Legal Position of Churches, Religious Communities and Religious Groups¹⁹⁹ contains no specific articles on employment and labour relations. Other laws also do not include specific provisions on exemptions for employers with an ethos based on religion or belief. However, in the exemptions from prohibition of discrimination in the Law on Labour Relations there is sufficient space for churches, religious communities and groups to be exempt in accordance with Article 4(2) of Directive 2000/78 (Article 8).

- Conflicts between rights of organisations with an ethos based on religion or belief and other rights to non-discrimination

In North Macedonia, there are specific provisions or case-law 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.

However, these provisions are not in the Anti-Discrimination Law. The laws that regulate the founding and eligible activities of associations (civil society organisations and foundations,²⁰⁰ as well as religious communities and religious groups) regulate this issue, stating that an association will cease to exist if it engages in such actions contrary to the Constitution and laws and violates other people's rights, which includes the right to non-discrimination. The Anti-Discrimination Law contains no such anti-conflict provision. It should be noted, however, that it would not constitute discrimination if members of religions registered under the law (this also applies to NGOs, political parties, trade unions

¹⁹⁷ There have been issues with registration; these were grounded in inter-religious disputes rather than in discrimination by one religion against another. The most notable cases in this regard would be the cases of Vraniškovski and of the Bektaši community. For more on religious freedom in Macedonia, see: www.state.gov/documents/organization/256427.pdf.

¹⁹⁸ The draft ADL was adopted after the cut-off date for this report.

¹⁹⁹ Republic of North Macedonia, Law on the Legal Position of the Church, Communities of Faith and Religious Groups (*Закон за правна положба на црква, верска задница и религиозна група*), 2007. Official Gazette of the Republic of Macedonia No. 113/07.

²⁰⁰ Republic of North Macedonia, Law on Associations and Foundations (*Закон за здруженија и фондации*), 2010, Article 4. Official Gazette of the Republic of Macedonia No.52/2010, 135/2011, 55/2016.

and other organisations) act in accordance with their belief (Article 14(5)). This would mean that it excuses these members even if, in doing so, they are discriminating on the grounds mentioned in Article 3. However, there is no case-law on this provision yet. It also declares that it will not constitute discrimination if marriage, unmarried couples' relationships ('out-of-wedlock partnerships') and family are regulated exclusively as heterosexual unions i.e. of one man and one woman (Article 14(6) of the Anti-Discrimination Law).

The 2018 Draft ADL foresees a new approach to the exceptions. It narrows down the list of exceptions to three 'measures and actions which will not be considered as discrimination', including genuine and determining occupational requirement, affirmative action and different treatment of Macedonian citizens. All other exceptions, present in the law currently in force, will no longer exist if the draft law is adopted as proposed.

In the Law on the Legal Position of Churches, Religious Communities and Religious Groups, there are no specific articles related to such conflicts. So far there is no case-law on the issue. However, the Macedonian Orthodox Church and the Islamic Religious Community very clearly expressed their opinions that sexual orientation should not be mentioned in the anti-discrimination legislation during the debate for the 2010 ADL.²⁰¹ In addition, the end of 2010 saw an initiative on their behalf to open a cycle of constitutional changes that should, in their words, strengthen the traditional form of the family, but which are clearly intended to target homosexuals. Notably, these changes state that marriage is the union of one woman and one man, as well as inserting provisions that will limit the possibility for homosexuals to adopt children. The draft amendments to the Constitution, which entered parliamentary procedure and proposed a definition of marriage as the union of one man and one woman, as well as the mandatory registration of unmarried couples ('out-of-wedlock partnerships') defined in the same manner, were not adopted by the Parliament. Thus, this issue is, for now, closed.

Both these religious communities, joined by others, have opposed the 2018 Draft ADL too, again because of sexual orientation.²⁰² Activists and allies²⁰³ have spoken out against this block in Parliament, claiming that the reason why the law is being blocked in Parliament is the letter from the religious communities. MPs also raised personal religious beliefs in the parliamentary procedure as grounds for their refusal to allow the law to pass to the next stage in Parliament. This letter has not yet been released to the public.

- Religious institutions affecting employment in state funded entities

In North Macedonia, religious institutions are not permitted to select people (on the basis of their religion) or to hire or to dismiss individuals from a job when that job is in a state entity or in an entity financed by the state. However, there was an attempt in that direction with the introduction of religious education into state elementary schools. Without any legal basis, the two main religious groups – the Macedonian Orthodox Church and Islamic Religious Community – selected the teachers. However, the Constitutional Court, acting upon a petition by NGOs, declared the introduction of religious education null and void.²⁰⁴

²⁰¹ *Dnevnik* newspaper, 'Oriented towards sexual discrimination' ('Ориентирани кон сексуална дискриминација') (only available in print).

²⁰² Although outside of the scope of this report, it is worth mentioning that the opposition was rallied around sexual orientation and gender identity.

²⁰³ Civil Media, 'Andonovski: The VMRO-DPMNE and DUI blockage of the Anti-discrimination Law is scandalous' (Андоновски: Блокадата на ВМРО-ДПМНЕ и ДУИ на законот против дискриминација е скандалозна ()), available at: https://civilmedia.mk/andonovski-blokadata-na-vmro-dpmne-i-dui-na-zakonot-protiv-diskriminatsija-e-skandalozna/?fbclid=IwAR1f36ebbDTPV-64a_5WVUPTVLqzh8Fp-tgXmHITgwmv-QyQqCb8IRFUJCM; Prizma, 'Orvel's state of discrimination' (Орвеловска држава на дискриминацијата), available at: <https://prizma.mk/kolumni/orvelovska-drzhava-na-diskriminatsijata/>.

²⁰⁴ Constitutional Court, Decision U.No. 202/2008, (15 April 2009).

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

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

The Law on Army Service establishes different age limitations and disability is a ground for losing military status. Professional soldiers must not be older than 26 years of age²⁰⁵ at the day of the closing of the recruitment advert. The contract is renewable every three years up to a maximum age of 45.²⁰⁶ Junior officers must not be older than 25 years of age (or 33 years of age, depending on experience, qualifications, as well as previous status in the armed forces, if any),²⁰⁷ or senior officers older than 30 years of age when entering the Army (or 35 years of age if coming to the senior officer position from a junior officer position).²⁰⁸ The upper limit for civilian personnel is 40 years of age. The retirement age for active military and civilian personnel is 25 years of pension insurance, of which 15 have been spent in army service (if this has not been fulfilled and army service has ended the Ministry of Defence must provide for further employment or education to allow the person to accumulate the years necessary to reach retirement age).²⁰⁹

After 45 years of age, professional soldiers will be transferred to an appropriate position in the central state or municipal administration, under a contract with an unlimited duration. There is a retroactive application for this provision, according to which it also applies to professional soldiers whose army service ceased under the law previously due to reaching the maximum age limit of 35 or 38 years of age, if they have unemployed status up to 31 December 2013.²¹⁰

As noted above, there is no specific disability exception, but there is a general health and physical condition requirement. As they stand, the Army's specific requirements in relation to health and good physical condition are substantial barriers for people with disabilities to enter the Army.²¹¹ As noted in the 2015 analysis on the harmonisation of the national equality legislation, the medical check-up that is mandatory for issuing a certificate of fulfilment of these criteria includes checking the nervous system and 'mental condition', 'mental disorders' in the family (including epilepsy), eyesight and hearing, personal habits and physical injuries – one of the rulebooks even includes notes on tattoos as part of this assessment. This is documented in detail in the above-mentioned 2015 analysis, which identifies a number of provisions that include a general health condition as a discriminatory criterion, meaning that this criterion is a cross-cutting discriminatory issue, preventing access to public service.²¹²

Even if the disability is a result of army service it would still lead to loss of military status. The best scenario is that the person could remain as a member of civilian personnel, retaining the salary received and rank held prior to the health degradation (or would drop one rank down, if the same rank could not be awarded).²¹³ An extra three days of vacation are provided for personnel with a disability or someone taking care of a disabled child.²¹⁴

²⁰⁵ Republic of North Macedonia, Law on Army Service (*Закон за служба во армијата*), 2010, Article 36. Full title: Republic of North Macedonia, Law on Army Service (*Закон за служба во армијата*), Official Gazette of the Republic of Macedonia No. 36/2010, 23/2011, 47/2011, 148/2011, 55/2012, 29/2014, 33/2015, 193/2015, 71/2016; Constitutional Court, Decision: U.no.60/2010, (22 September 2010).

²⁰⁶ Republic of North Macedonia, Law on Army Service, 2010, Articles 40, 42, 43.

²⁰⁷ Republic of North Macedonia, Law on Army Service, 2010, Articles 34 and 35.

²⁰⁸ Republic of North Macedonia, Law on Army Service, 2010, Article 32.

²⁰⁹ Republic of North Macedonia, Law on Army Service, 2010, Article 220 (paragraph 2).

²¹⁰ Republic of North Macedonia, Law on Army Service, 2010, Articles 40-a, 40-6.

²¹¹ Republic of North Macedonia, Law on Army Service, 2010, Articles 31 and 202-210.

²¹² See Table 3 in: Kotevska B. (2016), *Analysis of the harmonization of national equality and non-discrimination legislation*, Skopje, OSCE and CPAD.

²¹³ Republic of North Macedonia, Law on Army Service, 2010, Article 78.

²¹⁴ Republic of North Macedonia, Law on Army Service, 2010, Article 98 (para.2).

Ethnicity is dealt with in law in several respects, all of which rest on the constitutional principle of equitable and just representation which, simply put, means that the representation of each ethnic group needs to be equal to the percentage of the population found in the census. People belonging to minorities should be adequately and fairly represented in the Army, providing that they are duly trained and competent.²¹⁵ Public job advertisements need to be published in, *inter alia*, at least one newspaper printed in a language used by at least 20 % of the population in the country.²¹⁶ With regard to the oath, the document to be signed is in both Macedonian and the language of that individual.²¹⁷

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In North Macedonia, national law includes exceptions relating to difference of treatment based on nationality. The Constitution does not clearly distinguish between nationality (in the meaning of state citizenship) and ethnic affiliation. The Constitution states that,

‘The citizens of the Republic of North Macedonia have citizenship of the Republic of North Macedonia [and it declares] the free expression of national identity [as] a fundamental value’.²¹⁸

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

In North Macedonia, nationality as a term can be interpreted to have two meanings. Nationality understood as citizenship²¹⁹ (a legal tie with a state) is explicitly mentioned as a protected ground in national Anti-Discrimination Law (Article 3).²²⁰ Nationality understood as origin from another country is not covered by the Anti-Discrimination Law. An example of an ‘origin from another country’ would be ‘national minorities’ as per the Framework Convention on National Minorities of the Council of Europe.

b) Relationship between nationality and ‘racial or ethnic origin’

Nationality²²¹ understood as origin from another country is not covered by the Anti-Discrimination Law. However, nationality understood as citizenship, that is as the legal link of a person with a certain country, is part of the grounds covered by the Anti-Discrimination Law (Article 3).²²² Although not explicitly referred to, the same would be true for stateless persons.

²¹⁵ Republic of North Macedonia, Law on Army Service, 2010, Article 30 (para.5).

²¹⁶ Republic of North Macedonia, Law on Army Service, 2010, Article 39 (para.2).

²¹⁷ Republic of North Macedonia, Law on Army Service, 2010, Article 7 (para.2).

²¹⁸ Constitution of the Republic of North Macedonia, 1991 and subsequent amendments, Articles 4 and 6.

²¹⁹ The ground of citizenship can be used to protect stateless persons.

²²⁰ However, please see the exceptions in relation to nationality mentioned in Section 4.4 (b).

²²¹ On the dilemma as to the possible issues which may arise in practice from this, please see this article by Christopher McCrudden on the Bulgarian case of *Chez* which is relevant since Bulgaria also has these nuances in the meaning of ‘nationality’: www.equalitylaw.eu/downloads/3867-european-equality-law-review-1-2016.

²²² However, please see the exceptions in relation to nationality mentioned below.

The lack of clarity deepens in some laws that refer to nationality and ethnicity as different grounds for discrimination.²²³ No definition is provided, which also adds to the confusion of the terms, since in some laws the term 'national belonging' is used.²²⁴ The courts consistently use the terms 'foreigner' and 'foreign' when referring to nationals of another country.

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

a) Benefits for married employees

In North Macedonia, it would not constitute unlawful discrimination in national law if an employer only provided benefits 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 family²²⁵ could be interpreted as opening space for, *inter alia*, such privileges²²⁶ Although this has not been claimed in practice yet. An addition to this argumentation is the provision that is part of an article on unequal treatment that will not be considered as discrimination, in the Anti-Discrimination Law, which includes the regulation of the family, marriage and unmarried couples ('out-of-wedlock partnerships') as limited to opposite-sex partners (Article 15(6)).

As discussed above, the 2018 Draft ADL does not retain the problematic long lists of exceptions contained in Articles 14 and 15 of the Anti-Discrimination Law currently in force. Should this law be adopted, the above-noted issue caused by the current exception will no longer be present under the law.

b) Benefits for employees with opposite-sex partners

In North Macedonia, it would not constitute unlawful discrimination in national law if an employer only provided benefits 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 and the same applies for unmarried couples recognised under this law (which refers to cohabitating opposite-sex partners living in a relationship akin to marriage). There has not been a case on these issues. Moreover, the Anti-Discrimination Law provides, as part of the article on unequal treatment that will not be considered as discrimination, the regulation of the family, marriage and 'out-of-wedlock partnerships' as limited to opposite-sex partners (Article 15(6)). A 2015 analysis of the harmonisation of the national equality and non-discrimination legislation against international standards and of the harmonisation at the national level with the comprehensive Anti-Discrimination Law raises the issue of inequalities in relation to out-of-wedlock partnerships as well as to partnerships and marriages of same-sex couples. It notes that limiting partnerships solely to opposite-sex couples is discriminatory and not in line with the ECHR and the practice of the ECtHR.²²⁷

The 2018 Draft ADL does not retain the problematic long lists of exceptions contained in Articles 14 and 15 of the Anti-Discrimination Law currently in force (see discussion above,

²²³ For example, Article 3 of the Law on Voluntary Fully Funded Pension Insurance and Article 20 of the Law on Social Protection.

²²⁴ Article 6 of the Law on Primary Education and Article 6 of the Law on Labour Relations.

²²⁵ Constitution of the Republic of North Macedonia, 1991 and subsequent amendments, Article 40.

²²⁶ It should be borne in mind here that, although family is not defined in the Constitution, 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 (Article 2(1); Law on Family).

²²⁷ Kotevska, B. (2016), *Analysis of the harmonization of national equality and non-discrimination legislation*, Skopje, OSCE and CPAD.

in Section 4.1). Should this law be adopted, the above-noted issue caused by the current exception will no longer be present under the law.

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

a) Exceptions in relation to disability and health/safety

In North Macedonia, there are no exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78). The anti-discrimination legislation does not provide for specific exceptions in relation to disability in the context of health and safety regulations similar to the provisions of Article 7(2) of Directive 2000/78. However, the general exception of objective and justified limitation, allowed for by Article 8 of the Law on Labour Relations, could be applicable.

This article states that,

'it will not be considered discrimination making a difference, exclusion or giving priority, when the nature of the work is such or work is performed in such conditions that the characteristics contained in Article 6 of this law are essential and decisive conditions for performing the work, providing that the objective to be achieved is justified and the requirement has been carefully considered.'²²⁸

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

The Law on Labour Relations does not specify exceptions in relation to health and safety on any other ground, thus the legitimacy and proportionality test indicated in the Law on Labour Relations would be applicable for exceptions based on dress codes or religious tenets (Article 8). However, the law does provide for other health-and-safety-related special protective measures in relation to employees under 18 years of age, as well as for older employees²²⁹ (over 57 years of age for women and 59 years of age for men). The protection encompasses hours of work, night work, work in special conditions and supplementary vacation (for workers under 18) and prohibition of overtime work and night shifts (for older workers), as well as other special measures provided in this and other laws.²³⁰ There are also exceptions for protective measures related to pregnancy and parenting.²³¹

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

4.7.1 Direct discrimination

National law in North Macedonia provides for specific exceptions for direct discrimination on the ground of age. The Anti-Discrimination Law contains a provision that is in line with the test required in Article 6 of Directive 2000/78 (Article 14(9)). The Law on Labour Relations 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 Law on Labour Relations could be used to justify such discrimination. The Law on Labour Relations could be interpreted more widely to give the employer the option of setting specific conditions connected with the age of the employee. It states that at the time of signing the contract the applicant is obliged to submit evidence

²²⁸ Republic of North Macedonia, Law on Labour Relations, 2005, Article 8.

²²⁹ Republic of North Macedonia, Law on Labour Relations, 2005, Chapter XV.

²³⁰ See Republic of North Macedonia, Law on Labour Relations, 2005, Chapter XIII: Protection of Workers under 18 Years, and Chapter XV: Special protection of older workers.

²³¹ Republic of North Macedonia, Law on Labour Relations, 2005, Article 161.

to the employer of capability to fulfil the terms of the contract (Article 26). This provision applies regardless of the age of the applicant. The health condition criteria have been challenged as possibly discriminatory on grounds of disability as well, in the context of public employment.²³²

a) Justification of direct discrimination on the ground of age

In North Macedonia, national law provides for justifications for direct discrimination on the ground of age (Article 14(8 and 9), Article 15(4)). There is no relevant and/or recent case in this respect.

The 2018 Draft ADL does not retain the problematic long lists of exceptions contained in Articles 14 and 15 of the Anti-Discrimination Law currently in force (see discussion above, under Section 4.1).

b) Permitted differences of treatment based on age

In North Macedonia, national law permits differences of treatment based on age for any activities within the material scope of Directive 2000/78. The Anti-Discrimination Law contains a clause that is in line with the test required in Article 6 of Directive 2000/78 (Article 14(9)). The Law on Labour Relations provides for specific protective measures in relation to employees younger than 18, as well as for older employees (over 57 years of age for women and 59 years of age for men). The protection encompasses hours of work, night work, work in special conditions and supplementary vacation (for workers under 18) and prohibition of overtime work and night shifts (for older workers), as well as other special measures provided by this and other laws.²³³

The 2018 Draft ADL does not retain the problematic long lists of exceptions contained in Articles 14 and 15 of the Anti-Discrimination Law currently in force (see discussion above, under Section 4.1).

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

In North Macedonia, national law allows occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by Article 6(2). The Anti-Discrimination Law contains a clause that allows for occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits (Article 14(9)).

The 2018 Draft ADL does not retain the problematic long lists of exceptions contained in Articles 14 and 15 of the Anti-Discrimination Law currently in force (see discussion above, under Section 4.1).

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 Insurance²³⁴ establishes the general age of retirement, which is 64 years of age for men and 62 years of age for women. At least 15 years of pension contributions (i.e. working years covered by pension insurance) is also required (Article 18).

²³² Kotevska, B. (2016), *Analysis of the harmonization of national equality and non-discrimination legislation*, Skopje, OSCE and CPAD.

²³³ Republic of North Macedonia, Law on Labour Relations, 2005, Chapter XIII: Protection of Workers under 18 Years, and Chapter XV: Special protection of older workers.

²³⁴ Republic of North Macedonia, Law on Pension and Disability Insurance, 2012.

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

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

In the Anti-Discrimination Law there is a general clause making an exception in relation to special protection for parentless children and single parents (Article 15(7)). Although the term 'parentless children' should mean individuals up to 18 years of age, it is also used in the context of protective measures once those people have reached adulthood (such as priority housing and employment).

The 2018 Draft ADL does not retain the problematic long lists of exceptions contained in Articles 14 and 15 of the Anti-Discrimination Law currently in force (see discussion above, under Section 4.1).

The Law on Labour Relations provides for specific protective measures in relation to employees under 18 years old.²³⁵ The protection encompasses hours of work, night work, work in special conditions and supplementary vacation. It allows for providing special protection for older workers (Article 179). The same law restricts overtime and night work for older workers (Article 180). The same restrictions apply to people with caring responsibilities for children under the age of seven.²³⁶

4.7.3 Minimum and maximum age requirements

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

The 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 (Article 14 (8 and 9)).

The 2018 Draft ADL does not retain the problematic long lists of exceptions contained in Articles 14 and 15 of the Anti-Discrimination Law currently in force (see discussion above, under Section 4.1).

The Law on Labour Relations establishes 15 years of age as the minimum age for employment (Article 250). There is a general prohibition on the employment of children under 15 years of age, except for recording films, preparing and performing arts, stage and other similar works (cultural, artistic, sports and advertising activities). A special procedure and approval is required for this. There are also special provisions for work by students (as practical work experience) and by apprentices.²³⁷ There are special measures for the protection of older workers in the Law on Labour Relations regarding the working hours of older (and younger) workers. It provides that these workers cannot be assigned to work overtime or night shifts (Article 180). This measure is applicable to workers over the age of 57 for women and 59 for men (Article 179).

²³⁵ Republic of North Macedonia, Law on Labour Relations, 2005, Chapter XIII.

²³⁶ Republic of North Macedonia, Law on Labour Relations, 2005, Article 164.

²³⁷ Republic of North Macedonia, Law on Labour Relations, 2005, Article 251.

4.7.4 Retirement

a) State pension age

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

The Law on Pension and Disability Insurance²³⁸ establishes the general pension age as 64 years of age (for men) or 62 years of age (for women) with at least 15 years of pension contributions accrued.²³⁹ If someone chooses to continue working, they are not entitled to receive a pension; pension payments can only start after a person ceases working.²⁴⁰ The Law on Pension and Disability Insurance provides for different criteria for the calculation of pensions in special cases.²⁴¹ According to this law, pension and disability insurance rights depend on wages earned and the total length of contributions. The amount of the pension awarded depends on the monthly average wage, which determines the pension base, while the percentage of the pension is determined according to the length of pension contributions.

b) Occupational pension schemes

In North Macedonia, there is a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. If an individual wishes to work longer, payments from such occupational pension schemes can be deferred and the individual can continue to work if their employer agrees, but not after the age of 67.²⁴² An individual cannot collect a pension and still work.

c) State imposed mandatory retirement ages

In North Macedonia, there is a state-imposed retirement age. The state-imposed retirement age is mandatory. Under the Law on Labour Relations, Article 104, when an employee reaches the age of 64, but wants to work longer, s/he can continue to do so, but only until the age of 67, applicable to both women and men.²⁴³ The employer needs to consent to this, too. Literature analysing the pension system does not mention widespread practice of using the later retirement age. There are no sanctions in the Law on Labour Relations tied to a breach of this provision. Under the Law on Pension and Disability Insurance, the age set for acquiring the right to a pension by age remains as 62 for women and 64 for men.²⁴⁴

d) Retirement ages imposed by employers

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

²³⁸ Republic of North Macedonia, Law on Pension and Disability Insurance, 2012.

²³⁹ Republic of North Macedonia, Law on Labour Relations, 2005, Article 104.

²⁴⁰ Republic of North Macedonia, Law on Labour Relations, 2005, Article 104.

²⁴¹ The standard calculation system is given in Articles 18 and 18-a of the Law on Pension and Disability Insurance; Republic of North Macedonia, Law on Pension and Disability Insurance, 2012.

²⁴² Republic of North Macedonia, Law on Labour Relations, 2005, Article 104.

²⁴³ Republic of North Macedonia, Law on Labour Relations, 2005, Article 104. Please note that the article used to set different limits for men (67) and women (65). However, on the basis of a CSO-led initiative, in 2016 a Constitutional Court decision annulled this part, and equalised the limit for men and women. Source: Constitutional Court Decision No. 114/2014-0-1 (29 June 2016), available at:

www.ustavensud.mk/domino/WEBSUD.nsf/ffc0feee91d7bd9ac1256d280038c474/475a0c0c3291f1e6c1257ff10041c84d?OpenDocument. Later, an almost identical case was filed and was successful in challenging Article 98(5-6) of the Law on Administrative Servants (a provision mirroring the annulled provision from the Law on Labour Relations).

²⁴⁴ Republic of North Macedonia, Law on Pension and Disability Insurance, 2012, Article 18.

However, according to the Law on Labour Relations, individual employment contracts or collective agreements may determine rights for workers that are more favourable than those determined by law (Article 12).²⁴⁵ The same article stipulates that employers cannot include clauses introducing fewer rights than those established in the Constitution and law. National collective agreements for the public sector and the economy do not mention reductions or expansions of the pensionable age in any sector.

e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights do apply to all workers irrespective of age, even if they remain in employment after attaining pensionable age or any other age. General anti-discrimination articles do not include any provisions on different treatment in relation to protection against dismissal on grounds of age. The protection in the Law on Labour Relations against dismissal applies to all workers irrespective of age. If the employee has reached the standard pensionable age and has made the required number of years of contributions to state pension schemes, the employer can ask for termination of employment even if the employee has not filed a request for retirement or does not want to retire.

f) Compliance of national law with CJEU case law

In North Macedonia, national legislation is in line with the CJEU case law on age regarding mandatory retirement. However, the issue of mandatory retirement ages has not been a subject of wider discussions as yet (nor have EU directives and CJEU case law been discussed in this context).

4.7.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In North Macedonia, national law is silent on permitting age or seniority to be taken into account in selecting workers for redundancy.

b) Age taken into account for redundancy compensation

In North Macedonia, national law does provide compensation for redundancy. Article 97 of the Law on Labour Relations provides the criteria applied to calculate the compensation. Although the number of years an employee has spent working for an employer is one of the criteria for establishing the amount of compensation, this is not tied to the age of the worker.

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)

In North Macedonia, national law includes exceptions that seek to rely on Article 2(5) of the Employment Equality Directive. In the Anti-Discrimination Law there is one exception of this type, which concerns freedom of speech, public appearance, thought and public information. The provision states that 'the exercise of the constitutionally guaranteed principle of freedom of speech, public appearance, opinion and public information' will not be deemed to be discrimination (Article 14(7)). No related case-law exists thus far.

The 2018 Draft ADL does not retain the problematic long lists of exceptions contained in Articles 14 and 15 of the Anti-Discrimination Law currently in force (see discussion above, under Section 4.1).

²⁴⁵ Republic of North Macedonia, Law on Labour Relations, 2005.

4.9 Any other exceptions

In North Macedonia, other exceptions to the prohibition of discrimination (on any ground) provided in national law include those that are considered as protective mechanisms for particular groups, and are established in Article 15 of the Anti-Discrimination Law. Article 15 states that,

'the following shall not be deemed to be discrimination: measures provided for in the Law on Employment Promotion (Article 15(2)), measures for protection of the characteristics and identity of persons belonging to ethnic, religious or linguistic minorities and their right to maintain and develop their own identity individually or in a community with other members of their group as well as to stimulate conditions for promotion of that identity (Article 15(8)); and special measures to benefit persons or groups placed in a less favourable position as a result of any of the discriminatory grounds, for the purpose of equalising their opportunities, as long as those measures are necessary (Article 15(6))'.²⁴⁶

The 2018 Draft ADL does not retain the problematic long lists of exceptions contained in Articles 14 and 15 of the Anti-Discrimination Law currently in force (see discussion above, under Section 4.1).

²⁴⁶ Republic of North Macedonia, Anti-Discrimination Law, 2010.

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

a) Scope for positive action measures

In North Macedonia, positive action is permitted in national law in respect of all grounds protected by law, including all grounds contained in the directives, except sexual orientation for which judicial interpretation would be required. In addition, the national legal and policy frameworks envisage specific positive actions. Among these, the main emphasis is placed on positive action with respect to ethnic origin, disability and age. The positive action measures currently in force do not target religion or belief or sexual orientation. Although beyond the scope of this report, it is also worth noting that there are public policies on positive action pertaining to gender equality. In the Anti-Discrimination Law there is a special provision in Article 13 named 'affirmative measures' that corresponds to the term 'positive action' in the directives. This article encompasses measures to eliminate or reduce factual inequality in favour of: (1) a person, group of persons or community; and (2) marginalised groups.

The 2018 Draft ADL will keep the scope of protection while amending the approach slightly in two ways. Firstly, positive action was previously filed under the section on 'exception from discrimination', whereas it now comes under 'measures and actions which are not discrimination' (Article 7). Secondly, since the 2018 Draft ADL, if adopted as proposed, will explicitly include sexual orientation, there will be legal ground for undertaking positive action on this ground as well which, as discussed above, is not the case with the law currently in force.

Ethnic origin seems to be the dominant ground for undertaking positive action and has its basis in the 2001 amendments to the Constitution, which were tailored according to the Ohrid Framework Agreement (a political agreement ending the 2001 conflict). It is also reflected in the exceptions section of the ADL, in Article 15(8), as a protective mechanism which will not be considered to constitute discrimination.²⁴⁷

Several institutions are tasked with ensuring the proper implementation of these measures, the main ones being the Secretariat for Implementation of the Ohrid Framework Agreement, the Committee for Inter-Community Relations and the Agency for Realisation of the Rights of the Communities. The Committee for Inter-Community Relations considers issues of inter-community relations in the Republic and makes appraisals and proposals for their resolution. It can also propose positive action measures to Parliament, which decides in plenary on such matters. Parliament is obliged to take into consideration the appraisals and proposals of the committee and to make decisions regarding them. In the event of a dispute among Members of Parliament regarding the application of the voting procedure specified in Article 69(2), the committee will decide by majority vote whether the procedure applies. The Committee for Inter-Community Relations consists of seven members from each of the ranks of ethnic Macedonians and ethnic Albanians within the Parliament, and five members from among the ethnic Turks, Serbs, Vlachs, Roma and Bosniaks. The members of the Committee are elected by the Parliament.

On disability, the main instrument for positive action measures related to people with disabilities is the Law on Employment of People with Disabilities.²⁴⁸ Its main goals are the integration of people with disabilities in the working environment and their safety in the workplace.²⁴⁹ A new draft law was initiated by the Ministry of Labour and Social Policy

²⁴⁷ The same is applies in Article 15(5) for equality between men and women.

²⁴⁸ Republic of North Macedonia, Law on Employment of Persons with Disabilities, 2000, Article 2.

²⁴⁹ In relation to the implementation of this law, in a recent statement, the director of the State Agency for Employment said that, from the start of the implementation of this law until the end of 2016, almost EUR 34 million (MKD 2,088,660,754) was spent on the 'employment of persons with disabilities, adaptations of workplaces, purchase of equipment, training of persons with disabilities as well as construction and expansion of working space.' Source: Ministry of Labour and Social Policy – news archive (in Macedonian

almost four years ago, but it has still not entered parliamentary procedure, although the Government's policies in relation to the employment of people with disabilities have continued to be implemented.

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

b) Quotas in employment for people with disabilities

In North Macedonia, national law does not provide for quotas for people with disabilities in employment.

language only), www.mtsp.gov.mk/fevruari-2017-ns_article-zapocnuva-proektot-centar-za-vrabotuvanje-na-lica-so-hendikep.nsp.

6 REMEDIES AND ENFORCEMENT

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

- a) Available procedures for enforcing the principle of equal treatment

In North Macedonia, the following procedures exist for enforcing the principle of equal treatment (judicial/ administrative/alternative dispute resolution such as mediation).

The Anti-Discrimination Law provides several options for procedural protection. These are: administrative, litigation and misdemeanour procedures.

Administrative procedures can be initiated before the Commission for Protection against Discrimination (Chapter V, Anti-Discrimination Law), and the Labour and Education inspectorates. The procedure before the CPAD is free of charge. The entire duration of the procedure is set to last no more than 90 days (including 15 days for the CPAD to forward the complaint to the respondent and 15 days for the respondent to reply). This may result in the CPAD giving an opinion and recommendation. If the recommendation is not acted upon, the CPAD can initiate a procedure with a competent body (without further specifications). The location of the CPAD office is problematic, as it is situated in a building where there are offices of ministries (including the Ministry of the Interior).

The 2018 Draft ADL makes three important changes to this. First, it shortens the duration to 60 days (Article 27(1)). Secondly, it has a provision for regulating cases where a person has not acted in line with a recommendation of the CPAD (discussed further, below). Thirdly, should the CPAD not comply with the deadline of resolving the case within 60 days of receiving the claim (or longer, under certain conditions but no more than six months), the CPAD can file a claim with the competent court for misdemeanours (Article 27(4)), which is the Administrative Court.

Litigation proceedings can be initiated before ordinary courts, based on the provisions of the Anti-Discrimination Law (Chapter VI, Articles 34-41). The law does not resolve the priority of procedures in the event of simultaneous procedures. It states that if a procedure is brought before a court, no procedure can be initiated with the CPAD. However, it does not say what should be done if a procedure is initiated with the CPAD and then another procedure is started in a court before the CPAD procedure has ended. In practice, the CPAD has stopped its procedure once it was informed that a case had also been brought to court. In addition, the law does not regulate the relationship between procedures before the Ombudsperson and the CPAD, in cases of overlap. This issue has been resolved by a memorandum of understanding between the two institutions.²⁵⁰

Under the Anti-Discrimination Law, the outcome of a claim depends on the procedure one chooses to pursue. The CPAD registered 59 cases in 2017. The administrative procedure envisages a recommendation to rectify the violation (i.e. the discrimination) within 30 days; litigation could lead to an award of regular compensation; while the misdemeanour procedure envisages fines in the range of EUR 400 to 1 000.

Financial sanctions and other sanctions for discrimination are provided under the Criminal Code. These provisions have not been applied thus far.

The procedures for employment in the private and public sectors are different. In the public sector, the Law on State Administration sets out a detailed procedure, which must be conducted in accordance with the law and with very strict criteria, while in the private

²⁵⁰ A memorandum for cooperation between these two institutions and the Commission for Equal Opportunities for Women and Men of the Assembly of the Republic of Macedonia and the Macedonian Women's Lobby was signed in December 2011.

sector, according to the Law on Labour Relations, employers are free to choose their own methods to find adequate candidates for employment. A worker who believes that they have been discriminated against can inform the employer within eight days, giving the employer a chance to resolve the issue (Article 181). If this is not done within the next eight days, the worker can lodge a lawsuit against the employer (within the next 15 days). This last deadline is directly applicable in cases of dismissal and rejection in the recruitment process due to discrimination. This is a rather costly procedure, as hiring a lawyer is an obligation and the claimant must pay the court costs in advance. Moreover, if a claimant loses a lawsuit against a state employer, he or she has to pay the costs of the State Defender.²⁵¹ As it is a judicial litigation, there are strict time limits for all procedural actions.

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

Although non-binding, if the CPAD finds discrimination, it issues an opinion accompanied by recommendations. The person to whom the recommendation is directed needs to act on it and notify the CPAD within a deadline of 30 days (Article 28(2) and (3)). However, the CPAD has no power to push for the enforcement of its opinion; it is not legally binding and there is no appeal procedure. If the person does not act on the recommendation, the CPAD can open a procedure with a competent body (the law does not specify further which body would be considered as a competent body) to establish the person's responsibility (Article 29).

The 2018 Draft ADL changes this, by introducing an obligation for the CPAD to file a claim with the Administrative Court (Article 27(4)). The 2018 Draft ADL expands the potential actions of the CPAD by adding a competence to issue a 'general recommendation'. Namely, the draft provides that, 'the Commission can on its own initiative issue a general recommendation in cases where a larger number of persons have been discriminated against' (Article 28).

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

At present, this provision is not tied to any of the sanctions prescribed under the law, in the final chapter of the 2018 Draft ADL. Furthermore, there is the question of what will happen to cases that are filed with the CPAD after such a general recommendation has been issued, if they fall within the realm of the recommendation; whether such cases will be accepted, and the general recommendation merely reiterated and whether the case will be escalated in any way and how. The 2018 Draft ADL, as proposed, does not seem to offer an answer to these questions.

b) Barriers and other deterrents faced by litigants seeking redress

The procedure before the Commission for Protection against Discrimination (CPAD) is free of charge. No legal representative is needed for this procedure. However, it should be

²⁵¹ The State Defender is an institution financed by the state budget. However, its practice is to request litigation costs like a private solicitor. When combined with court costs, this is a serious burden on the claimant.

noted that there are some obstacles in filing a case with the Commission. The CPAD offices are in the building where the Ministry of Interior has some of its offices. Taken alongside the politicised procedure of the appointment of the first members of the Commission, it can be said that there is a psychological barrier to accessing it. There is also a physical barrier as the offices are on the 20th floor and the lift only goes up to the 19th floor.²⁵²

Watchdog CSOs have reported a substantial backlog in the CPAD's handling of cases.²⁵³ In an older but still relevant case, the Network against Discrimination (a network of CSOs working on equality and non-discrimination issues) filed a claim against the CPAD with the Ombudsperson, following silence from the CPAD on 10 cases submitted to it in the period 2011- 2013, which is in clear violation of its obligation to respond within 90 days. Once instructed by the Ombudsperson (with a notice in which it points out to the CPAD that it is not acting in accordance with the law), the CPAD sent opinions on all these cases to the Network against Discrimination. The annual report of the Network against Discrimination containing this information highlights that it is evident from the dates stated on the opinions that some of them were delivered quite some time before being sent to the Network, which it interprets as a sign of weak administrative capacity and negligence on the part of the CPAD. The report also notes that, due to the CPAD's tendency not to respect the legal deadline of 90 days to respond to a filed case, the Network has decided to address its cases to other institutions, rather than to the CPAD, should it be in a position to choose. The Network also notes that, to date, the Ombudsperson, although it has a more limited mandate, seems to be a more efficient institution in resolving cases when compared to the CPAD.

In relation to the courts, the obstacles can be even greater. The proceedings are subject to administrative taxes and they can take much longer. The time limits are strict. In addition, they raise the issue of the obligation to engage a lawyer. While representation is not mandatory for civil law cases (Article 80), considering that the ADL is relatively new (since 2010) and considering the difficulty of proving discrimination cases, the alleged victim of discrimination can hope for little if they approach the courts with no legal representation (a jurist or lawyer – up to MKD 1 000 000 or EUR 16 260, or a jurist who has passed the bar exam or a lawyer – a higher sum). There is a law on free legal aid, but interpretation is required as to whether it includes discrimination cases because these are not explicitly mentioned as eligible cases. However, this law does include some fields in which discrimination occurs (such as labour law), which can be used as a ground for claiming free legal aid in discrimination cases.²⁵⁴

The 2018 Draft ADL brings a much-welcomed change in relation to administrative taxes. Article 39 provides that the court procedure for those pursuing discrimination cases will be free of charge and that the burden for the expenses of these procedures will fall on the state budget.

c) Number of discrimination cases brought to justice

In North Macedonia, there are partially available statistics on the number of discrimination cases brought to justice. There are statistics on the work of the CPAD, the Ombudsperson and the Constitutional Court, but statistics from ordinary courts are lacking.

In 2018, the CPAD reported receiving 132 cases, which is a significant increase from 2017 when it received 59 cases. The reporting per discrimination ground was as follows: 'personal or other social status: 25 %; political affiliation: 21.97 %; health status: 9.09 %; sex: 9.09 %; belonging to a marginalised group: 8.33 %; ethnicity: 7.58 %; age: 6.06 %;

²⁵² Furthermore, according to CPAD's 2018 annual report, the lift did not work at all for a large part of 2018.

²⁵³ See: www.equalitylaw.eu/downloads/2864-fyr-macedonia-cso-network-annual-report-pdf-72-kb.

²⁵⁴ Outside the cut-off date for this report, a new Law on Free Legal Aid was adopted (May 2019). This law does not limit eligibility for free legal aid on grounds of the subject matter of the case, thus removing any doubt as to whether discrimination cases are covered by free legal aid.

“mental” or physical disability: 3.79 %; gender: 3.03 %; family or marital status: 3.03 %; religion or religious belief: 2.27 %; sexual orientation: 2.27 %, etc’.²⁵⁵ The reported distribution per field is as follows: 49.24 % in employment and labour relations; 19.70 % in access to goods and services; 8.33 % in judiciary and administration; 6.82 % in education, science and sport; 3.79 % in social security; 2.27 % in public information and the media; 0.76 % in housing; 3.79 % no field stated and 6.82 % in other fields established under the law.²⁵⁶

In 2018, the Ombudsperson received 77 cases as non-discrimination and equitable representation cases, which represents 2.23 % of the total number of cases filed (3 458 cases, which is an increase from 2017, when the number of cases was 3 224). This is the highest representation of this category of cases since the Ombudsperson started to report them separately (that is, higher than the 70 cases or 2.17 % reported in 2017, the 69 cases or 1.83 % reported in 2016, or the 53 cases or 1.2 % reported in 2015). Under the separate category of cases of ‘persons and children with disabilities’, the Ombudsperson also reports having received higher number of cases compared to previous years – 21 cases or 0.61 % (compared to five cases or 0.16 % in 2017 and 15 cases or 0.4 % in 2016). As was the case in the previous year, the Ombudsperson did not publish detailed statistics on the grounds and fields in which the cases were filed. However, it noted a continuing trend from previous years in that employment remained the dominant field. It also reports that political affiliation is the dominant discrimination ground, followed by ethnic affiliation. Harassment reporting remained high.

In 2018, the Constitutional Court received 11 cases in relation to the protection of human rights and fundamental freedoms. Protection against discrimination falls within this category, however, compared to previous years, the Constitutional Court did not actually say how many of these cases were cases for protection against discrimination. The Constitutional Court finally found discrimination in one case (it has never found discrimination before). This was a case of discrimination on grounds of political affiliation, in relation to the right to thoughts and opinions. The case concerned a violation of the right to protest of a group of anti-NATO activists against a NATO parade in the capital. The police used excessive force to stop the peaceful protest of a group of protesters who held a banner with anti-NATO content. The group were also supporters of Levica, a political party.²⁵⁷

d) Registration of discrimination cases by national courts

In North Macedonia, discrimination cases are not registered as such by national courts.

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

a) Engaging on behalf of victims of discrimination (representing them)

In North Macedonia, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination. Under the Anti-Discrimination Law (Article 39), associations of citizens (as well as institutions, foundations and other civil organisations) with a legitimate interest as well as any other person working on the right to equal

²⁵⁵ The CPAD reported the distribution of cases by discrimination ground in percentages and did not provide a full list (the sentence ends with ‘etc’), as can be seen from this quote. Source: Commission for Protection against Discrimination (2019), *Annual Report for 2018 (Годишен извештај за 2018 година)*, www.sobranie.mk/materialdetails.nsp?materialId=a554ee4c-74e0-44a2-a5bb-04b4e411c353.

²⁵⁶ Commission for Protection against Discrimination (2019), *Annual Report for 2018 (Годишен извештај за 2018 година)*, www.sobranie.mk/materialdetails.nsp?materialId=a554ee4c-74e0-44a2-a5bb-04b4e411c353.

²⁵⁷ Constitutional Court (2019), *Overview of the Work of the Constitutional Court in 2018 (Преглед на работата на Уставниот Суд за 2018 година)* (April 2019), <http://ustavensud.mk/wp-content/uploads/2019/05/Pregled-za-rabotata-na-Ustavniot-sud-za-2018-qodina.pdf>.

treatment are explicitly allowed to act on behalf of victims of discrimination (legitimate interest is defined in Article 5(10)). In labour cases, the Law on Labour Relations provides the option only for trade unions to act on behalf of the victim, as long as they have the consent of the complainant (Article 93).

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

In North Macedonia, associations, organisations and trade unions are entitled to act in support of victims of discrimination (Article 39) and they can join in existing proceedings. However, it should be noted that it is up to the court to allow this. The court will be looking into whether the associations/organisations/trade unions have an equality mandate (most likely on the basis of their founding articles) and then decide whether or not it will allow for this (as specified by Article 39 of the Anti-Discrimination Law).

c) *Actio popularis*

In North Macedonia, national law does not explicitly allow associations, organisations and trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*). However, this is a well-established practice by the equality body. *Actio popularis* claims have been filed to the CPAD by CSOs since it started operating. The most frequent examples include challenging harassment and other forms of discrimination in the media and discriminatory content in textbooks in official use at all levels of education. *Actio popularis* does exist expressly as an option in other laws and in other procedures. The Constitutional Court has the ability to look into *actio popularis* cases in relation to human rights cases, including discrimination cases.

However, the *actio popularis* practice before the courts came to light through a 2016 court case and paints a picture that is different from the quasi-judicial practice of the CPAD (reported in the above paragraph) and from that of the Constitutional Court (also reported above). In this case, five CSOs,²⁵⁸ supported by the OSCE Mission to Skopje, submitted an *actio popularis* claim on Roma segregation in education against the Government. They claimed an interest on the grounds of long-term work in the area and findings from studies that they have published, all of which they claim show beyond doubt the segregation of Roma children in education. The first instance court accepted that they had a legitimate interest to present such a case, but the court went on to dismiss the case on the basis that the CSOs did not have the express consent from an individual who believed they had been discriminated. As discussed below in this report, this is a criterion in the ADL under Article 41(4), for class action, and yet the court applied it to an *actio popularis* case. As discussed elsewhere, requesting such consent defies the very purpose of *actio popularis*. The court also requested that such consent be provided in writing without calling upon any legal provision to support this claim. The CSOs complained to the higher instance court.²⁵⁹

The 2018 Draft ADL explicitly permits *actio popularis*. Article 35, entitled 'Lawsuit for protection against discrimination of public interest (*actio popularis*)', establishes as follows: 'associations, foundations, trade unions or other organisations from civil society and informal groups with a justified interest in protecting the interests of a particular group or that work on protection against discrimination may file a lawsuit if they present facts indicating the probability that the defendant's actions have discriminated against a larger number of persons.' (Article 35 (1))

²⁵⁸ The five CSOs were: NGO KHAM Delcevo, FOSM, MHK, IHR and ERRC.

²⁵⁹ The case is still not publicly available. Information has been acquired by the author of this report from people involved in the preparation of the legal documents related to the process.

d) Class action

In North Macedonia, national law allows associations, organisations and trade unions to act in the interest of more than one individual victim (*class action*) for claims arising from the same event. A class action ('joint lawsuit' under the Anti-Discrimination Law) can be brought by associations of citizens, foundations or other civil society institutions and organisations that have a justified interest in pursuing the case. The main condition for undertaking a class action is to have the consent of the individual who believes they have been discriminated against (Article 41(4)), i.e. an actual person concerned with the class action. It is an opt-in model, wherein people who have opted in will be considered as co-litigants against the person who has violated the right to equal treatment (Article 41(1)). This specific article refers to court proceedings, however such an approach is also permitted in cases before the equality body.

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

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

The Anti-Discrimination Law states that it is for the respondent to prove that no violation of the right to equal treatment has occurred. However, in order for a procedure to be initiated, the law asks for facts and proof from the complainant (Article 38). According to the directives, people who consider themselves wronged because the principle of equal treatment has not been applied to them must only present facts from which it may be presumed that there has been discrimination. The Anti-Discrimination Law therefore seems to place an enormous part of the burden of proving discrimination on the complainant, by asking for the submission of '*facts and proofs*' from which the act or action of discrimination can be *established*', unlike the directives, which set a requirement for *facts* from which the discrimination may be *presumed* (emphasis added).

This means that, although the law claims that it is not the complainant who has to prove the facts but the respondent, we cannot say that it provides for a reversed burden of proof, as per the directives, because, as a step towards proving the facts, a burden is placed on the complainant by asking for proofs in addition to presenting all the known facts in relation to the case and requiring the respondent to show these facts to be non-existent (i.e. it moves from *onus proferendi* to *onus probandi*).

The 2018 Draft ADL rectifies this and prescribes only facts, leaving proofs out both in an article on shifting the burden of proof in procedures before the CPAD (Article 26) and in court proceedings (Article 37(1)). Regrettably, the proposal also leaves misdemeanour procedures outside the realm of the obligation to reverse the burden of proof; as per Article 37(2), the rule for shifting of the burden of proof does not apply to misdemeanour and criminal proceedings.

The Law on Labour Relations and the Law on Social Protection also include provisions on the shift of burden of proof (Articles 11(1) and (2) and Article 23 respectively), as does the Law on Psychological and Sexual Harassment (Article 33). Since these provisions differ from the provision in the Anti-Discrimination Law, it remains subject to judicial interpretation which provision will be applied to a labour case. The Law on the Protection of Children prescribes that the procedure for protection against discrimination shall be conducted as prescribed by the Anti-Discrimination Law, thus one can conclude that the same rules for shifting the burden of proof will apply.

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

In North Macedonia, there are legal measures of protection against victimisation. The Anti-Discrimination Law declares victimisation to be a form of discrimination. Victimisation is

extended beyond the person who reports discrimination to the person who files the complaint and to any witnesses (Article 10). So far, this has not been interpreted as excluding groups from the protection. The Constitution also provides for protection against victimisation, as it states that a citizen cannot be called to account or suffer adverse consequences for attitudes expressed in petitions, unless they entail the committing of a criminal offence (Article 24). The Law on Labour Relations provides for protection against victimisation²⁶⁰ in a procedure related to psychological harassment (referred to in the law as 'mobbing'). This protection also extends to cover witnesses. Protection against victimisation is also granted under the new Law on Psychological and Sexual Harassment (Article 30).

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

a) Applicable sanctions in cases of discrimination – in law and in practice

Under the Anti-Discrimination Law, sanctions vary according to the procedure. The administrative procedure envisages a recommendation for rectifying the violation (i.e. the discrimination) within 30 days; litigation could lead to regular compensation awards; and the misdemeanour procedure envisages fines in the range of EUR 70²⁶¹ to 1 000, to be paid in the national currency (Articles 42 to 45(6)). Alignment with the Law on Misdemeanours (adopted on 23 July 2015), resulted in amendments to Chapter VII-Misdemeanours of the Anti-Discrimination Law. Following the amendments, paragraphs one in Articles 42-45 are now on legal persons, paragraphs two on responsible persons within the legal entity, and paragraphs three for responsible persons within public bodies, while new fourth paragraphs are added to cover natural persons. The fines for legal persons are raised, the fines for responsible persons with public duties and natural persons are lowered, whereas the fines for the responsible person within a legal entity are set on a strict scale (the amounts equal to a mid-value of the minimum and the maximum amount prescribed thus far). Before the amendments, paragraph one prescribed fines for 'anyone' who carries out the above-mentioned acts, paragraph two set out fines for a responsible person within a legal entity (be it private or public) and paragraph three set out fines for the legal person itself.

The 2018 Draft ADL prescribes higher fines, from EUR 400 to 5,000, to be paid in the national currency (Articles 41-47).

In labour cases as well as other civil court litigation, only compensation for pecuniary and non-pecuniary damages can be claimed.²⁶² In cases of child and social protection, sanctions are fines imposed in a misdemeanour procedure. These can amount to EUR 500 to 1 000 in child protection cases and EUR 3 000 to 5 000 in cases concerning social protection.²⁶³

b) Ceiling and amount of compensation

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

c) Assessment of the sanctions

At present no conclusions can be drawn as to whether the available sanctions are likely to be effective, proportionate and dissuasive, as required by the directives. When compared

²⁶⁰ Republic of North Macedonia, Law on Labour Relations, 2005, Article 11(3).

²⁶¹ The lowest fine dropped from EUR 100 to EUR 70 with the 2015 amendments to the ADL.

²⁶² Republic of North Macedonia, Law on Labour Relations, 2005, Articles 264-266.

²⁶³ It should be noted that the average gross monthly salary in the country is approximately EUR 400.

to the available sanctions provided for other misdemeanours²⁶⁴ and so on, the anti-discrimination sanctions cannot be seen as dissuasive, effective or proportionate. This is also the finding in the analysis of the harmonisation of equality and non-discrimination legislation.²⁶⁵

As noted above, the 2018 Draft ADL prescribes higher fines, from EUR 400 to 5 000, to be paid in the national currency (Articles 41-47). Thus, this could be seen as a step towards more effective, proportionate and dissuasive sanctions.

²⁶⁴ For example, the value of the fine in some discrimination cases is equal to the value of a fine for dropping a cigarette butt in the street.

²⁶⁵ Kotevska, B. (2016), *Analysis of the harmonization of national equality and non-discrimination legislation*, Skopje, OSCE and CPAD.

7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

The Anti-Discrimination Law, adopted in the course of harmonising the national legislation with the *acquis* (including with the Racial Equality Directive, and its Article 13) provided for the establishment for the first time of an equality body in the country – the Commission for Protection against Discrimination (CPAD).²⁶⁶ This commission is tasked with dealing with both the public and private sectors. It is the first specialised body for equal treatment. According to the preparation materials for the Anti-Discrimination Law, the CPAD is the designated body, established and tasked with equality according to the transposition process.

Before this, the Ombudsperson was the only institution that had duties in the protection of the principles of non-discrimination and equality as part of its broader mandate for the protection of human rights in the public sector.²⁶⁷ Some of the earlier versions of the ADL prepared in the drafting process (in 2009) foresaw the Ombudsperson as the designated body as per the directives. At this time, the Ombudsperson formed a special unit focused on non-discrimination and equitable and just representation.

In the later drafts, and in the adopted text of the ADL which is in force, it was decided that the designated body would be a new, special equality body - which is today's CPAD. However, while the CPAD is the designated body as per the directives, since both the CPAD and the Ombudsperson have a mandate to promote equal treatment, they are both discussed in this and in the following subsections of Section 7 of this report.

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

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

Both bodies operate in a context of state capture – the European Commission, in its last three progress reports, has assessed the situation in the country as a 'state capture'.²⁶⁸ This ties into the backsliding in terms of fulfilment of political criteria for membership of the EU, especially with regard to questions about the independence of the judiciary already reported over several successive years. The endemic proportions of the rule of law issues were confirmed by the special EC Rule of Law mission led by Reinhard Priebe.²⁶⁹ The situation at the national level started to improve with the overturning of the Gruevski government and a new government coming into power in June 2017. However, the state capture context has not yet been fully surmounted.

²⁶⁶ Republic of North Macedonia, Law on Prevention and Protection against Discrimination, 2014, Articles 16 to 33.

²⁶⁷ Republic of North Macedonia, Law on the Ombudsperson, 2003, Articles 6, 11.

²⁶⁸ The concept of 'state capture' is mentioned here in terms of the Transparency International concept, that is: 'a situation where powerful individuals, institutions, companies or groups within or outside a country use corruption to shape a nation's policies, legal environment and economy to benefit their own private interests'. This is also how the European Commission has used it in its report on the country's progress.

²⁶⁹ European Commission (2015), *The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015*, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf.

c) Institutional architecture

In North Macedonia, the CPAD as a designated body does not have multiple mandates, whereas the Ombudsperson does. The CPAD is only an equality body, whereas the Ombudsperson is a national human rights institution. In the case of the Ombudsperson, the equality and non-discrimination mandate falls within the competence of a Deputy-Ombudsperson charged with these issues and is the subject of work by a special division within the institution.

d) Status of the designated body – general independence

i) Status of the body

The CPAD is a separate legal person, established with the Law on Prevention and Protection against Discrimination. The Ombudsperson is also a separate legal person, but it is established under the Constitution and the Law on the Ombudsperson.²⁷⁰

The CPAD is 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 are collected through a public call for applications.

In practice, the appointment of both compositions of the CPAD (the first in 2011 and the second in December 2015) raised serious concerns among civil society organisations and the (then) parliamentary opposition. This was especially the case with the second composition. These concerns ran along three main lines: failure to fulfil the prescribed criteria for membership, failure to select far better qualified candidates and failure to meet the Paris Principles (appointment of people from the executive branch in a decision-making role and a composition which does not reflect society at large).

On 11 January 2016, the Assembly appointed seven new members (with one reappointment).²⁷¹ Among the newly appointed members there are people who, aside from being publicly known as supporters of the (then) ruling party, had publicly voiced homophobic statements and relativised discrimination, hate crime and hate speech. Opposition members of Parliament voiced strong objections to the appointment of two of the now-appointed members because of their open support for the Government.²⁷² This also raised concerns among human rights activists and civil society organisations. The largest network of organisations working on equality and non-discrimination, the Network for Protection against Discrimination, published a public reaction to the new composition, calling into question the competence of the members and stating that people who are discriminated against cannot get justice from Government supporters.²⁷³

²⁷⁰ Republic of North Macedonia, Law on the Ombudsperson, 2003. Full title: Law on the Ombudsperson (*Закон за народниот правобранител*) Official Gazette of the Republic of Macedonia Nos. 60/2003, 114/2009, 181/2016, 189/2016, 35/2018; Constitutional Court Decisions: U.no. 111/2007.

²⁷¹ Parliament website, 'Proposal for a decision for appointment of the members of the Commission for protection against discrimination' (*Предлог-одлука за именување на членови на Комисијата за заштита од дискриминација*), www.sobranie.mk/materialdetails.nsp?materialId=631e99a8-f038-41d6-ae48-1589f8985e41.

²⁷² Video recording from the parliamentary debate: <http://reporter.mk/nashi-faci/bogoev-vlasta-ne-smee-da-bide-pribezhish/>.

²⁷³ Macedonian Helsinki Committee website, 'Incompetent composition of the Commission for Protection against Discrimination' (*Некомпетентен состав на Комисијата за заштита од дискриминација*), www.mhc.org.mk/announcements/357#.Vssc28cj0wB.

Concerns about the CPAD's independence have existed from its very inception and not without reason. They started with issues surrounding the first composition of the body,²⁷⁴ but escalated with the new composition of the body. The way the members of the CPAD were connected to the ruling party, in both contested compositions, seems to be well illustrated by the content of the conversations published during the wire-tapping affair. In February 2015, the largest opposition party started to publicly release what were allegedly recordings from the illicit interception of the communications of more than 20 000 people which are alleged to have been carried out by the state Counterintelligence Agency.²⁷⁵ The content of the published recordings removed doubts about the already existing claims of state capture and extreme concentration of power in the ruling party, including the complete exercise of party control not only over the judiciary, but over *all* aspects of society.

It is raised here as of interest for this report because, aside from the rule of law issues, it had direct implications for the CPAD. In particular, what seems to be the voice of the president of the 2011-2015 equality body, Dushko Minovski, also featured in the publicly broadcast conversations. He can be heard to be a person working for VMRO – DPMNE (the then ruling party) on the ground during the election campaign and, even more seriously, to be (ab)using his position as someone in the employment of the Ministry of Labour and Social Policy by instructing people who had been awarded social assistance what party to vote for.²⁷⁶

The issues with the independence of the current composition of the CPAD came to light most clearly in 2018. Namely, the CPAD was implicated in the escape and acquiring of asylum status by the former Prime Minister, Nikola Gruevski. Gruevski led the government in the period 2006-2016 and effectively led the country into a situation of 'state capture'. However, Gruevski escaped from the country after he was convicted and sentenced to two years in prison for one of the crimes for which a prosecution was brought on the basis of evidence from the wire-tapping affair. Gruevski escaped to Hungary and filed an asylum application, claiming that he had been prosecuted and subject to an unfair trial on political grounds. As proof of this, he filed an opinion from the CPAD²⁷⁷ which he received a week before he fled the country. In it the CPAD finds that Gruevski has been discriminated against on grounds of personal or other status by the court (which later sentenced him to two years in prison) because it had not observed his right to a fair trial.²⁷⁸ There was a dissenting minority within the CPAD, which stated that the right to a fair trial does not fall within their competence and that the majority did not offer a single argument as to how the alleged violation was, indeed, an act of discrimination. This was not the first such case; a few months earlier the CPAD found, in a very similar case, discrimination against the former Minister of the Interior in Gruevski's government, Gordana Jankulovska.²⁷⁹ Both Gruevski and Jankulovska belong to VMRO – DPMNE.

The 2018 Draft ADL brings some welcome changes as well as points of concern. First, it ends the part-time status of the members and introduces the position

²⁷⁴ Country Report 2013 www.equalitylaw.eu/downloads/4174-fyr-macedonia-country-report-non-discrimination-2013-1-11-mb p.86.

²⁷⁵ Balkan Insight (2015), 'Macedonia PM Accused of Large-Scale Wire-Tapping' (09 February 2015), Balkan Insight website, <http://www.balkaninsight.com/en/article/eavesdropping-bombshell-explodes-in-macedonia>.

²⁷⁶ A1On online media portal, 'SDSM: Jankulovska says "By the ears, Gipsy by Gipsy, we'll drag them"' (СДСМ: Јанкуловска вели – За уши, циган по циган ќе вадиме) <http://a1on.mk/wordpress/archives/465799>. Please note that in the national context 'Gipsy' ('Циган') is a derogatory word for Roma.

²⁷⁷ CPAD (2018), Case No.08-295, *Nikola Gruevski vs Court of First Instance Skopje 1* (5 November 2018).

²⁷⁸ This is how the CPAD saw it; it is not an error in translation in this report.

²⁷⁹ CPAD (2018), Case No.08-193, *G.J. vs D.K.* (22 August 2018).

as a full-time appointed position (Article 19(1)). The status of the commissioners will now mirror that of the Ombudsperson. The 2018 Draft ADL keeps the number of members to seven serving a five-year mandate, with the exception of the first composition of the CPAD following the entry of the law in force. Namely, as per the transitional provisions, the mandate of the current commissioners will cease when the law enters into force and new commissioners will be elected under the new law (Article 44). In the first composition, four members will be elected with a five-year mandate, whereas three will be elected with a three-year mandate (Article 16(3)).

The execution of the transition from the current CPAD composition to the new one under the 2018 Draft ADL (if the text is adopted as it stands at the time of writing), raises several concerns. First, from a legal point of view, the pre-term end of the mandate of the current composition of the CPAD is problematic in terms of the potential for the CPAD's independence in the future. It sets a precedent of it being acceptable to adopt legal changes to terminate a CPAD composition if the legislature is not happy with the way the CPAD is operating, as a way of bypassing the procedures for the dismissal of individual members and having to account for its actions. The background of this provision, which is at odds with similar provisions in other laws when such transitions have occurred, is tied to the current politicised composition and the lack of relevant competence among the majority of the current members, recorded in previous reports. Thus, the adoption of the new law is most probably seen as a way of dealing with the current composition, which can be considered to be in line with the law. However, this does not alleviate the worries raised above.

Secondly, it is not clear who will determine which member will be elected for five and which for three years and on what grounds. It is also unclear whether the individuals themselves will apply for a three-year or a five-year mandate and whether these will be advertised as two different positions or as one. The 2018 Draft ADL is silent on this issue. Thirdly, no appeal procedure is tied to the appointment procedure and no further details are prescribed as to the procedure for selection for a second mandate.

The 2018 Draft ADL also foresees that the CPAD will have an administrative service (Article 22). This will be a welcome change compared to the current law which provided that the commissioners would be responsible for administrative matters themselves. In addition, the CPAD is to be allowed to submit its own budget proposal on which the Parliament will vote separately from the overall budget and it is also to be allowed to use the funds independently (Article 15).

The Ombudsperson is elected by the Parliament under the Badinter principle (i.e. majority vote of the total number of parliamentarians, which must include a majority of the total number of MPs who belong to ethnic communities that are not the ethnic majority). The Ombudsperson is elected for a term of eight years, with the possibility for one re-election. The Ombudsperson has deputies who are elected under the same procedure as the Ombudsperson, one of whom is tasked with focusing on non-discrimination and equitable representation. Any Macedonian citizen can be appointed Ombudsperson if they meet the general conditions specified in law for employment and if they are a graduate lawyer with over nine years' experience in legal affairs with proven activity in the field of citizens' rights protection. They must also be a reputable professional.²⁸⁰ The Ombudsperson and the Deputy Ombudsperson cannot be held responsible for actions, measures and activities undertaken in exercising their function. The

²⁸⁰ Republic of North Macedonia, Law on the Ombudsperson, 2003, Article 6 (as amended and as entered into force on 7 April 2017).

independence and autonomy of the office is guaranteed by the Constitution and by law.

In practice, the election of the Ombudsperson very much depends on the votes of the governing political parties. Furthermore, given that its funding comes from the state budget, the Ombudsperson could also be seen as financially dependent (as there is no annual budget set as percent from the overall state annual budget). The institution has a working unit for protection against discrimination.

The CPAD is financed through the state budget, but its activities can also be funded through other sources. The members of the Commission receive an honorarium of two average monthly salaries²⁸¹ (around EUR 800 gross per month). However, its annually allocated budget within the state budget remains very small, creating a barrier to the CPAD fully exercising its duties. The CPAD has been a beneficiary of several projects conducted by CSOs and, until recently, has been one of the main institutions in the focus of the OSCE Mission to Skopje anti-discrimination project. The OSCE had already announced its exit strategy from the CPAD, under which it is to completely stop providing support to the body by 2020 (this is related to concerns about the body's independence concerns and it becoming closed to cooperation, as discussed elsewhere in this chapter). Furthermore, the CPAD's 2018 annual report continues the trend of a drop in cooperation with the body, reporting very few CSO-CPAD cooperation projects and activities.

The Ombudsperson is financed through the state budget, but its activities can also be funded from other sources. Unlike the CPAD, the Ombudsperson has its own budget line which the Parliament votes on separately. This ensures its financial independence. Should the 2018 Draft ADL be adopted as proposed, this will also be the case with the CPAD.

Both bodies have issues with recruiting and managing staff. The issue with CPAD is that it cannot have its own administration under the ADL. This will be corrected with the 2018 Draft ADL, if adopted as proposed, which explicitly foresees that the CPAD can have an administrative service. All hiring which is paid for from the state budget needs to be approved by the Ministry of Finance, which has caused issues in the past for the Ombudsperson in planning its human resources.

Both bodies need to file a report to the Parliament and to the public annually. They do not need to defend this report, just submit it. However, at present, the lack of an obligation of the Parliament to discuss this report (not to approve it, but to discuss it) meant that some of the annual reports were just filed to Parliament and were never put on the agenda for discussion. Thus, the Parliament never deliberated on the work of the institutions.

ii) Independence of the body

The independence of both the CPAD and the Ombudsperson is stipulated in their respective founding legal acts. The CPAD cannot be considered to be an independent body. The Ombudsperson has shown significantly more independence than the CPAD.

The Ombudsperson is tasked with protecting the constitutional and legal rights of citizens when these are violated by state bodies and other authorities and

²⁸¹ Republic of North Macedonia, Law on Prevention and Protection against Discrimination, 2010, Article 21.

organisations with public powers. This quasi-judicial institution has a mandate to safeguard *inter alia* the principles of non-discrimination and adequate and equitable representation of communities in the bodies of state power, local government and public institutions and services (Article 77).²⁸²

A study on national human rights institutions in Macedonia looked at both these institutions, aiming to assess them against the international framework of standards, including the EU *acquis*. For the CPAD, in terms of the legal framework and related to the issues raised in this section of the report, it recommended that: a guarantee of pluralism in the CPAD beyond ethnicity should be made a legal requirement, to ensure the composition of the CPAD mirrors society as a whole; the law should include an obligation for the Parliament to debate the CPAD annual report, accompanied with an obligation for Government representatives to be present at the session where the report is discussed; and that the general reference to social sciences should be excluded from the provision, so as to allow only people with specific equality and non-discrimination or human rights education and experience to be able to stand as candidates for members of the CPAD.²⁸³

The study reiterated previous findings that, 'the discussions at the parliamentary session devoted to the appointment of members show the whole process of the establishment of the first composition of the first equality body in the country to be highly politicised'.²⁸⁴ On the resources of the CPAD, it made the following recommendations: allow under law the creation of a secretariat or another form of administrative support for the CPAD; give due consideration to the possibility of professionalisation of the members of the CPAD by making this their full-time job and position; allow the CPAD to be in a position, similar to the Ombudsperson, to agree its annual budget with the Government for funds that should be sufficient for CPAD to be able to exercise its full mandate; consider establishing formal links with the regional offices of the Ombudsperson, in order to expand the reach of the CPAD.²⁸⁵

The study's recommendations on independence for the Ombudsperson, which has non-discrimination duties, suggested appointing the Ombudsperson for a single non-renewable term, as a way to reduce susceptibility to political pressure, while in relation to resources it recommended the allocation of sufficient funds for the Ombudsperson to exercise its full mandate.²⁸⁶

e) Grounds covered by the designated body

The CPAD deals with the following grounds: sex, race, colour, gender, belonging to a marginalised group, ethnic affiliation, language, citizenship, social origin, religion or religious belief, other beliefs, education, political belonging, personal or social status, 'mental or physical impairment', age, family or marital status, property status, health condition and any other ground prescribed by law or ratified international treaty. The Ombudsperson can deal with the following grounds: sex, race, colour, national, ethnic, social, political, religious, cultural, language, property and social background, disability, origin and any other ground.

²⁸² Constitution of the Republic of North Macedonia, 1991 and subsequent amendments, Article 77.

²⁸³ Kotevska, Biljana, *National human rights institutions in Macedonia* (2012); Full title: Kotevska, Biljana (2012), *National human rights institutions in Macedonia: Normative models and challenges*. CRPRC Studiorum, Skopje, http://studiorum.org.mk/en/wp-content/uploads/2013/03/NHRI_Study_MKD-2012for_web.pdf, pp. 48-49.

²⁸⁴ Kotevska, Biljana, *National human rights institutions in Macedonia* (2012), p. 45.

²⁸⁵ Kotevska, Biljana, *National human rights institutions in Macedonia* (2012), p. 50.

²⁸⁶ Kotevska, Biljana, *National human rights institutions in Macedonia* (2012), pp. 39-40.

Although not provided for under the law, both bodies have used the open-ended nature of the respective provisions in order to deal with sexual orientation. The practice of the CPAD shows that it does consider sexual orientation as a protected ground, as it has processed several cases pertaining to this ground, using the open-ended character of this provision. In addition, in December 2015, as a result of a project implemented by CPAD together with H.E.R.A. (a civil society organisation), the CPAD adopted a protocol for handling discrimination cases on grounds of sexual orientation and gender identity. The greatest achievement of this action is probably not the protocol itself, as it largely reiterates rules of procedure already established under other (legal and internal) acts, but is instead the annex to the protocol, which is an amended form for filing a complaint to the CPAD. The form that CPAD had used previously included a special section where all protected grounds from Article 3 of the ADL were numbered and the claimant had to circle one of them. This section did not contain sexual orientation and gender identity, whereas in the amended form, an additional option is included where the claimant can circle 'sexual orientation and gender identity'. Although somewhat symbolic, it is reasonable to expect that it will encourage people who want to claim discrimination on such grounds. Moreover, it shows an effort by the current equality body members to leave some legacy for their successors.²⁸⁷ In addition, as of 2017, the CPAD includes sexual orientation cases as a separate category when reporting discrimination cases received and processed in its annual reports, unlike before when these cases were counted under the 'other grounds'.

The 2018 Draft ADL proposes explicitly adding sexual orientation to the protected grounds (Article 5).

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

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

i) Independent assistance to victims

Both bodies can provide independent assistance to victims. This is largely done by assisting them in navigating the laws and procedures on matters which do not fall within their competence. In practice, from the information provided in the annual reports, it seems that the Ombudsperson completes this part of its mandate while the CPAD does not.

ii) Independent surveys and reports

Both the CPAD and the Ombudsperson can conduct independent surveys and publish independent reports. The Ombudsperson can also undertake special investigative activities. Under the 2018 Draft ADL, if adopted as proposed, this will also be possible for the CPAD (Article 29). Both bodies can conduct various types of research on specific issues and publish these as they see fit.

iii) Recommendations

The Commission on Protection Against Discrimination can make recommendations. However, the legal provisions currently in force do not add any bite to this competence. This will change with the 2018 Draft ADL, if adopted as proposed, as it will add procedural opportunities for the CPAD to pursue the enforcement of its recommendations. In addition, under the

²⁸⁷ For more on this, please see: www.equalitylaw.eu/downloads/2963-equality-body-and-civil-society-organizations-join-to-make-sure-that-sexual-orientation-and-gender-identity-is-regarded-as-a-protected-ground-in-macedonia-pdf-86-kb; and the text of the protocol (in Macedonian): <http://hera.org.mk/wp-content/uploads/2015/11/Protokol-Zastita-od-diskriminacija-MK.pdf>.

proposal, the CPAD will gain a competence to issue 'general recommendations' on its own initiative in cases of discrimination against multiple people.

The Ombudsperson can make recommendations and submit independent reports to the media and the Parliament. The institutions have to act in accordance with the Ombudsperson's recommendation.

iv) Other competences

The CPAD collects statistics and other data and can conduct surveys and research on discrimination. It can undertake promotional activities, including awareness-raising ones. It can propose legislative changes on matters which fall within its scope of work.

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

g) Legal standing of the designated bodies

In North Macedonia, the CPAD can intervene in legal cases concerning discrimination (such as *amicus curiae*). However, it cannot bring discrimination complaints (on behalf of identified victims) to court on behalf of either identified or non-identified victims. No case-law exists pointing to problems in relation to this thus far. An older case, from 2013, confirms that the CPAD can intervene in a discrimination case before the courts.²⁸⁸

Under the 2018 Draft ADL, if adopted as proposed, the CPAD will be explicitly allowed to intervene and to bring cases to court. Moreover, it is obliged to bring a case to court if a discriminator does not act in accordance with its opinion and or recommendation (Article 27(4)).

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

h) Quasi-judicial competences

In North Macedonia, the body is a quasi-judicial institution. However, it does not have the power to impose sanctions, but only delivers opinions and recommendations. It can receive a case on any of the grounds in the public and private sphere in order to protect complainants. Complaints are filed free of charge but need to contain facts *and* proofs to support the claims.

Once the CPAD receives a complaint, it forwards it to the respondent within 15 days of receipt. The respondent has 15 days to reply to the complaint. Altogether, the CPAD must deliver an opinion in 90 days from the day of receipt of the complaint. The respondent to whom a recommendation has been directed needs to act in accordance with it within 30 days of the notification it has received from the CPAD. The CPAD has no powers to push for enforcement of its opinion; it is not legally binding and there is no appeal procedure. Thus, if a person does not act upon the recommendation, the only thing that the CPAD can do further is to initiate a procedure before a 'competent authority'.

²⁸⁸ Court of First Instance Štip (2013), *Sonja Šijakov v SOU Gimnazija Slavčo Stojmenski*, Po.6p. 766/11.

Under the 2018 Draft ADL, the CPAD will need to resolve a claim within 60 days (Article 27 (1)). It also makes it possible for the CPAD to bring a case to the Administrative Court if the person(s) do not act upon its recommendation within a prescribed deadline.

The Ombudsperson also has elements of a quasi-judicial institution. Under law, state bodies should implement its recommendations (Article 32). However, as with the CPAD, the Ombudsperson's opinions are not legally binding and there is no forced compliance mechanism which can be activated. However, if state bodies do not respond, the Ombudsperson has the right to inform the higher responsible body, the Parliament and the public through the media.

i) Registration by the bodies of complaints and decisions

In North Macedonia, the bodies register the number of complaints and decisions (by ground, field, type of discrimination, etc.). These data are available to the public through the annual reports,²⁸⁹ but they are not regularly made public and they are not available in a raw format which can later be processed for research purposes as needed. Thus, a researcher, for instance, has to rely on the way the cases have been processed by the bodies. For example, in 2017, the CPAD grouped the number of cases filed under gender and sex, which it had not done in previous years. There was no indication in the report as to why it did this, nor how many cases were filed under the individual grounds. However, the CPAD has the software to generate such statistics and it also grants access to anonymised documents from the complete case documentation. Thus, albeit through a lengthier process, it is possible to obtain raw data from the CPAD. Although the software is capable of providing updated statistics on the website, this is not done and the statistics are made public only in the annual reports.

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

j) Stakeholder engagement

In North Macedonia, the designated body does engage with stakeholders as part of implementing its mandate. The CPAD has cooperated with international organisations in the country (the OSCE Mission to Skopje in particular), non-governmental organisations²⁹⁰ (on projects or events or joint activities) and governmental institutions (the body participated in the working group which drafted the 2018 Draft ADL), the judiciary (especially with the Academy for Judges and Public Prosecutors) and also the Ombudsperson (cooperation regulated with a Memorandum of Understanding).

k) Roma and Travellers

Neither the Ombudsperson nor the CPAD has shown through their actions thus far that they consider the situation of Roma and Travellers as a priority issue. However, the Ombudsperson has been vocal on many occasions about the complexity and specificities

²⁸⁹ The most recent available data is discussed in Section 6.1 (c).

²⁹⁰ Please note, however, that the current composition has closed off more, lessening cooperation with both international organisations and national non-governmental organisations.

of the problems Roma people face, including problems related to discrimination and most recently on the issue of racial profiling of Roma people at border crossings.²⁹¹

Moreover, it is thanks to the instruction that the Ombudsperson issued to the CPAD that the CPAD finally resolved a case filed by the Helsinki Committee of the Republic of Macedonia in 2011 regarding the segregation of Roma children in schools in Bitola. Namely, the Ombudsperson acted upon a case filed with it by the Network against Discrimination against the CPAD for violating the body's obligation to respond to a filed case within 90 days. After breaching all possible procedural deadlines, the CPAD finally decided the Bitola case in September 2014, although the applicants only received the decision in December 2014. The CPAD did not find discrimination on grounds of ethnicity in the case, nor did it find segregation. As already explained above, the CPAD actually found the situation to be a result of the parents' choice to enrol their children at a specific primary school. However, it failed to state on what it based its argument and bluntly added that it, 'further supports this argument' with a report from a person from another state institution who claimed that this process is one of 'natural segregation'.²⁹² Although it had deliberated on this case for over three years, the CPAD provided a surprisingly short elaboration of its opinion, the majority of which consists of a bullet point list of 14 letters/requests that it sent and received while processing the case, one of which is a rather vague explanation of proceedings which states, 'numerous phone calls on the case topic with relevant sides and numerous meetings on the case topic'. There is no further elaboration as to whom the CPAD talked to or with whom and when they met and what was discussed and possibly decided. It also disregarded reports on Roma children in education and on segregation in education, including a statement from the director of the primary school saying that the parents of children from other ethnicities, although living in the school's region, choose to register their children in other primary schools in order to avoid sending them to school with Roma children.²⁹³

²⁹¹ On the issue of Roma racial profiling and the state's systematic violation of Roma people's right to freedom of movement, see: European Policy Institute – Skopje and KHAM Delcevo (2016), *Right to equality, freedom of movement and legal protection* [http://epi.org.mk/docs/Right%20of%20Free%20Movement%20Over%20Borders%20\(Case%20Study\)_EN.pdf](http://epi.org.mk/docs/Right%20of%20Free%20Movement%20Over%20Borders%20(Case%20Study)_EN.pdf).

²⁹² CPAD (2014), Case No.07-80, *Macedonian Helsinki Committee vs Primary School GS Bitola*. (5 September 2014).

²⁹³ CPAD (2014), Case No.07-80, *Macedonian Helsinki Committee vs Primary School GS Bitola*. (5 September 2014).

8 IMPLEMENTATION ISSUES

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

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

The trend noted in previous years continued in 2018. The main activities in relation to the dissemination of information, including capacity building of institutions, continued to be organised and implemented by CSOs (with the Network against Discrimination and its members leading most of the initiatives and the Macedonian Young Lawyers Association also being active in bringing cases to court) and by the OSCE Mission to Skopje (OSCE). The activities regularly include the Ministry of Labour and Social Policy (MLSP) and the Commission for Protection against Discrimination (CPAD) as partners/co-implementers. As in 2017, in 2018 such activities again included the Academy for Judges and Public Prosecutors and law schools from across the country.

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

There has been a noticeable drop in cooperation with the equality body since the appointment of the new composition,²⁹⁴ which was met with strong reactions from NGOs.²⁹⁵ Following this, it is noticeable that the only two members without questionable biographies and direct links to the ruling party (both university professors), are the only people to have been invited by CSOs to speak at events, which was not previously the case.

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

The 2018 Draft ADL, mentioned several times in this report, was drafted by a working group that included representatives from the most active CSOs working on equality issues, including those which provide free legal aid in discrimination cases. The draft was presented to a debate to which many CSOs working on equality issues were invited, although it should be noted that this was again an 'invitation only' event and there was no public announcement to enable all interested parties to join the discussion. According to the organisers (the MLSP and the OSCE Mission to Skopje), this approach was chosen on the grounds of keeping the debate at an expert level.

Nevertheless, in terms of some of the legacies of the previous Government, there have been no positive changes. In particular, although the Government changed the composition of many state bodies which for many years had been seen to be politicised and non-independent, it did not change the composition of the CPAD, in spite of cases of evident incompetence and the political affiliation of some of the current members.

In addition, there has still been no proper investigation and prosecution of the attacks on the LGBTI Support Centre. In operation since 2012, the centre provides support to LGBTI people and to their family and friends. It has been subject to attacks ever since it opened.

²⁹⁴ Video recording from the parliamentary debate: <http://reporter.mk/nashi-faci/bogoev-vlasta-ne-smee-da-bide-pribezhish/>.

²⁹⁵ Macedonian Helsinki Committee (2016), 'Incompetent composition of the Commission for Protection against Discrimination' (*Некомпетентен состав на Комисијата за заштита од дискриминација*), Macedonian Helsinki Committee website, www.mhc.mk/announcements/357#.Vssc28cj0wB.

People working at the centre have been physically attacked and its offices have been damaged several times. Following one of the attacks, the centre had to close down for renovation for a period of time.²⁹⁶ No proper investigation and prosecution of the attackers of the LGBTI centre has happened yet and no charges have been made, despite numerous calls by CSOs, organised protests demanding action, the existence of video recordings in which the attackers can easily be identified (available on YouTube) and calls by the European Commission itself.²⁹⁷

- c) Measures 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)

The mechanism for social dialogue between social partners is the Economic and Social Council (ESC). It consists of representatives from the Government, unions and the Associations of Employers.²⁹⁸ The ESC seems to have focused on implementing actions set out in the Government strategic documents, which includes the setting up of an infrastructure for the peaceful resolution of disputes.

- d) Addressing the situation of Roma and Travellers

The Government continues to run the Roma Information Centres (RICs). It is also continuing with the implementation²⁹⁹ of the national Strategy on Roma 2014-2020.³⁰⁰ In addition to this, the Government still has a Minister without Portfolio³⁰¹ tasked with coordinating Government activities in relation to Roma people.

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

- a) Mechanisms

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

If challenged, collective agreements, internal rules of undertakings and rules governing independent occupations can be subject to a review of constitutionality and legality before the Constitutional Court. The Law on Obligations provides that a contract contrary to the Constitution, laws and good customs is null and void.³⁰² Compliance of contracts, collective agreements, internal company rules and rules governing independent occupations can be challenged if brought to court, where parts or full documents can be deemed null and void.

The Law on Courts provides that loopholes in laws are no justification for courts to refuse to act on upon a filed case — courts have an obligation to act based on the general

²⁹⁶ For more on this, please see flash Report: www.equalitylaw.eu/downloads/2177-mk-29-lgbti-centre-attacks-no-reactions.

²⁹⁷ Network against Discrimination (2014), 'Absence of reaction to series of attacks on the LGBTI Support Centre', www.equalitylaw.eu/component/edocman/mk-29-lgbti-centre-attacks-no-reactions.

²⁹⁸ Ministry of Labour and Social Policy (Министерство за труд и социјална политика) Economic and Social Council www.mtsp.gov.mk/socijalno-partnerstvo-ns_article-ekonomsko-socijalen-sovet.nsp.x.

²⁹⁹ No official report on the implementation has been published yet.

³⁰⁰ Strategy on Roma 2014-2020 (Стратегија за Ромите), http://arhiva.vlada.mk/registar/files/Strategija_Romite_%202014-2020.pdf.

³⁰¹ The website and profile of the Minister without Portfolio can be accessed at this link: www.mbr-ds.gov.mk.

³⁰² Republic of North Macedonia, Law on Obligations (Закон за облигациони односи), 2001, Article 95, paragraph 1. Full title: Republic of North Macedonia, Law on Obligations (Закон за облигациони односи), Official Gazette of the Republic of Macedonia No. 18/2001, 78/2001, 04/2002, 59/2002, 05/2003, 84/2008, 81/2009, 116/2009, 123/2013.

principles of law, except when that is strictly forbidden by law.³⁰³ Furthermore, respecting general legal principles is in the tradition and teaching of the legal system and applies to national laws. These laws almost always include in the final provision section a notion of the *lex specialis derogat legi generali* including changes made on the principle of *lex posterior derogat legi priori*.

b) Rules contrary to the principle of equality

Harmonisation of the legal framework with the Anti-Discrimination Law was a general strategic goal in the 'National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability and Gender' adopted in May 2012. The action plan for the implementation of the strategy envisaged that this activity would be completed by the end of 2013.³⁰⁴ This was not achieved, so the new strategy, 'National Strategy on Equality and Non-discrimination (2016-2020)' (see Section 9, below), also set the same goal, this time to be completed in the period 2016-2020.³⁰⁵

In 2014 and 2015, with OSCE support, the CPAD conducted an in-depth assessment of the harmonisation of the Anti-Discrimination Law with international equality and non-discrimination standards, and of other laws/provisions pertaining to equality and non-discrimination with the Anti-Discrimination Law and with international standards. The study identifies points for harmonisation and contains concrete proposals for amendments of legislative provisions from a range of laws. It also draws some general conclusions, including a need for urgent harmonisation of the Anti-Discrimination Law with international standards followed by harmonisation of other laws with the Anti-Discrimination Law, as well as reviews of the terminology on disability, criteria for access to public services and the position of LGBTIQ people. The study also identifies a need for gender mainstreaming, equalisation of married and unmarried couples and a change in policy-making processes which will, in principle, result in the consideration of equality and non-discrimination when adopting laws and policies, including scrutinising them for possible indirect effects.³⁰⁶

One of the final and transitional provisions of the 2018 Draft ADL, Article 51, states that all laws need to be harmonised with the new ADL within two years of its entry into force. There is no *vacatio legis* for the law and it is expected that it will enter into force as soon as it is published in the Official Gazette.

³⁰³ Republic of North Macedonia, Law on Courts, 2006.

³⁰⁴ Ministry of Labour and Social Policy (2013), *Action Plan - 2013 for implementation of the National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability and Gender for 2012-2015*, p.5. www.mtsp.gov.mk/WBStorage/Files/akciski_1_eng.doc.

³⁰⁵ Ministry of Labour and Social Policy (2016), *National Strategy on Equality and Non-discrimination (2016-2020)*, www.mtsp.gov.mk/content/pdf/dokumenti/7.7_Strategija%20za%20ednakvost%20i%20nediskriminacija.pdf.

³⁰⁶ Kotevska, B. (2016), *Analysis of the harmonization of national equality and non-discrimination legislation*, Skopje, OSCE and CPAD.

9 COORDINATION AT NATIONAL LEVEL

In 2018, the Government established the National Coordinating Body on Non-discrimination.³⁰⁷ This body was established for the purposes of monitoring the situation with non-discrimination and the implementation of all the relevant laws and policies in this area. The main coordinator in this body is the Minister of Labour and Social Policy. Although no official report has been released as part of the work of the body, it seems to be active and working regularly.³⁰⁸

The MLSP is tasked with coordinating issues on anti-discrimination on the grounds covered in this report, as well as on other grounds mentioned in national legislation.³⁰⁹ There is a department for equal opportunities, as well as a deputy minister tasked with non-discrimination issues.³¹⁰ Aside from this ministry, several other executive departments of Government also have duties that touch upon anti-discrimination on the grounds covered in this report. The inter-ministerial body on human rights, based within the Ministry of Foreign Affairs, is tasked with, *inter alia*, strengthening coordination of all the activities of the ministries and other Government bodies with competences in human rights. One of the ministers without portfolio is tasked with coordination of all Government activities pertaining to Roma (until 2015, the Decade of Roma Inclusion 2005-2015 and, after that, the Strategy on Roma). There are also coordinating bodies tasked with monitoring the implementation of strategic documents related in part to the discrimination grounds that are the subject of this report, notably those on disability and age.

A new strategy, the 'National Strategy on Equality and Non-discrimination (2016-2020)', was adopted in 2016.³¹¹ It has the same general goals as its predecessor, the 2012-2015 'National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability and Gender',³¹² which are: advancing the legal framework for equality and non-discrimination; strengthening the capacities and advancing the work and cooperation of the institutional mechanisms for prevention and protection against discrimination and promotion of equal treatment; raising awareness in recognising forms of discrimination; and promoting the concepts of non-discrimination and equal opportunities. The introduction of the strategy states that it was prepared on the basis of an evaluation of the implementation of the previous strategy which, according to the text, found that the strategy had had a positive role in the development of non-discrimination policy in the country.³¹³ This evaluation has not been published.

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

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

³⁰⁷ Ministry of Labour and Social Policy (2018), *National Coordinating Body on Non-discrimination Established (Формирано национално координативно тело за недискриминација)*, www.mtsp.gov.mk/april-2018-ns_article-formirano-nacionalno-koordinativno-telo-za-nediskriminacija.nspх.

³⁰⁸ Information unofficially acquired by the author of this report.

³⁰⁹ Ministry of Labour and Social Policy: www.mtsp.gov.mk/?ItemID=21E7AB9648BFC441AFD588BA0183B4A3.

³¹⁰ Ministry of Labour and Social Policy: www.mtsp.gov.mk/?ItemID=380B6B1D444D5047B575F402122ED94A.

³¹¹ Ministry of Labour and Social Policy (2016), *National Strategy on Equality and Non-discrimination (2016-2020) (Национална стратегија за еднаквост и недискриминација 2016-2020)*, www.mtsp.gov.mk/content/pdf/dokumenti/7.7_Strategija%20za%20ednakvost%20i%20nediskriminacija.pdf.

³¹² Ministry of Labour and Social Policy (2012), *National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability and Gender 2012-2015 (Национална стратегија за еднаквост и недискриминација по основ на етничка припадност, возраст, ментална и телесна попреченост и пол 2012-2015)*, www.mtsp.gov.mk/WBStorage/Files/strategija_ednakvost.doc.

³¹³ Ministry of Labour and Social Policy (2016), *National Strategy on Equality and Non-discrimination (2016-2020)*.

persons, on grounds of their personal characteristics and especially of vulnerable groups (ethnic communities, women, LGBTI people, people with mental and physical disabilities, older people, children, refugees, people with lower social status, internally displaced people and other vulnerable groups, members of religious communities and anyone who has been treated differently without objective justification and a legitimate aim).³¹⁴

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

³¹⁴ Ministry of Labour and Social Policy (2016), *National Strategy on Equality and Non-discrimination (2016-2020)*.

10 CURRENT BEST PRACTICES

The ongoing publication of the 'Info-sheet on Discrimination' (*Информатор за дискриминација*), a monthly info-sheet published since March 2016 by the OSCE Mission to Skopje and the Macedonian Helsinki Committee, continues to feature as a best practice and one that was relevant for 2018 too. It is an excellent and much-needed resource that has reinvigorated the climate of work on equality and non-discrimination issues in the country. It provides fresh information on various issues in relation to discrimination, contains information on pending cases, new cases, grounds and fields of discrimination, as well as examples from court practice and new resources on equality and non-discrimination. Although the information is brief and not conclusive, it provides a basic overview of what is happening before the courts, which was previously lacking.³¹⁵ This cooperation between an NGO and an IGO, running for almost two years now, has produced something that, if published on a long-term basis, can be of invaluable assistance for everyone working on equality and non-discrimination issues.

³¹⁵ One such info-sheet can be accessed on the following link (all other issues are on the www.mhc.org.mk website): Helsinki Committee of the Republic of Macedonia (2016), 'Info-sheet on Discrimination' (*Информатор за дискриминација*) (May 2016), www.mhc.org.mk/system/uploads/redactor_assets/documents/1587/DISCRIMINATION_III_2_.pdf.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives (if any)

Breaches of the text and the spirit of the directives are as follows:

Essential weaknesses:

- The objective of the ADL is not precisely defined. This resulted in the adoption of an Anti-Discrimination Law that does not aim to contribute to the upholding of the principle of equality, which lies at the heart of the directives.
 - Note: the 2018 Draft ADL sets out an objective in line with this (Article 2).
- The area of implementation of the ADL is not precisely defined.
- Although the ADL contains a list of grounds in an open-ended provision, it does not explicitly include all standard EU grounds of discrimination. Namely, sexual orientation is not listed as a protected ground in this law.³¹⁶
 - Note: the 2018 Draft ADL includes sexual orientation as an explicitly protected ground (Article 5).
- According to the directives, people who consider themselves wronged because the principle of equal treatment has not been applied to them need only establish facts from which it may be presumed that there has been discrimination. The ADL places an enormous part of the burden of proving discrimination on the complainant, by asking for submission of '*facts and proofs* from which the act or action of discrimination can be *established*',³¹⁷ unlike the directives, which set a requirement for *facts* from which the discrimination may be *presumed* (emphasis added). This means that, although the law claims that it is not for the complainant to prove the facts but for the respondent, we cannot say that it provides for a reversed burden of proof, as per the directives, because, as a step towards proving the facts, a burden is placed on the complainant by asking for proof in addition to presenting all the known facts in relation to the case and requiring the respondent to show these facts to be non-existent (i.e. it moves from *onus proferendi* to *onus probandi*).
 - Note: the 2018 Draft ADL prescribes that only facts will be needed to shift the burden of proof (Articles 26 and 37).
- Unlike the EU directives, which state that 'Member States shall encourage dialogue with non-governmental organisations 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 ADL does not mention cooperation with NGOs.
 - Note: the 2018 Draft ADL includes this under the competences of the CPAD (Article 21(12)).
- The forms of discrimination as well as their definitions in the ADL are not fully harmonised with European ones. The definition of direct discrimination is unnecessarily complicated. The scope for reasonable accommodation is more restrictive than that in Directive 2000/78. The definition of harassment in the ADL lacks the element 'unwanted'.
 - Note: the 2018 Draft ADL contains definitions mirroring those of the directives, including by replicating the definition of direct discrimination (Article 8).
- The ADL contains a wide, imprecise list of exceptions from discrimination. Such a list opens space for legal uncertainty. Moreover, some of these exceptions can be considered to be in breach of the EU directives. For example, it will 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 beliefs (Article 14(5)). This would mean that this excuses these members even if, in

³¹⁶ However, as discussed in Section 7 of this report, the practice of the CPAD shows that it does consider sexual orientation as a protected ground, as it has processed several cases pertaining to this ground, using the open-ended character of this provision.

³¹⁷ Republic of North Macedonia, Law on Prevention and Protection against Discrimination, 2010, Articles 25(2) and 38.

doing so, they are discriminating on the grounds mentioned in Article 3 of the Anti-Discrimination Law.

- Note: the 2018 Draft ADL does not include the problematic lists of exceptions contained in the current law as Articles 14 and 15. In Article 7, entitled 'Measures and actions that are not discrimination', it contains only affirmative action, genuine occupational requirement and rights of citizens of the country which stem from their citizenship.
- The mechanism for protection provided in the ADL is not precisely defined. In addition, although the CPAD is financed under the state budget, the allocated amount is not enough for this body to exercise its full mandate, thus bringing its effectiveness into question.
- Selection of members of the CPAD is prone to political influence. Moreover, the competence of the members cannot be guaranteed, as the law does not strictly require them to have education and practice related to 'human rights' but to social sciences in general. The implementation so far clearly shows these concerns being realised in practice with both the first and the second composition of the equality body.³¹⁸
 - Note: the 2018 Draft ADL will set a requirement for specific experience in human rights matters for seven years. of which five must be in the field of equality and non-discrimination (Article 17(3)). It also sets out that the CPAD will submit its own budget proposal, which will be voted upon in Parliament separately from the overall state budget. The CPAD will be able to manage the allocated funds independently (Article 15).
- The provisions on the sanctions provided in the ADL cannot be considered to be good grounds for making effective, dissuasive and proportionate sanctions.
 - Note: the 2018 Draft ADL raises the fines from EUR 70-1 000 to EUR 100-5 000 (Article 41-47).

Technical weaknesses:

- The ADL contains an article with definitions of terms used in the law. Some of these terms are not clearly defined, whereas some are of terms not used in the law at all. Furthermore, legal terms and key concepts were unnecessarily redefined (for example the term 'family').
 - Note: the 2018 Draft ADL removes these definitions.
- The ADL did not provide for any transitional provisions, preparatory activities for commencement of the implementation of the law or for any deadlines for initiation and completion of these activities.
 - Note: the 2018 Draft ADL contains some such provisions, albeit making part of the transition from the current CPAD composition to the new one slightly problematic.
- The ADL did not provide procedures for the unification of provisions, notably annulling or amending provisions in other laws that are not in line with this law as a *lex specialis*.
 - Note: the 2018 Draft ADL prescribes in Article 51 an obligation for all other national laws to align with this law within two years of the day of entry into force of this law.
- Other laws are not fully in line with the ADL, nor with the directives (in their terminology, listing protected grounds, definitions of direct discrimination, omitting victimisation, social dialogue, etc.). The harmonisation of the legal framework with the ADL has been identified as a general strategic goal of both the 'National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability and Gender 2012-2015' and of its successor, the 'National

³¹⁸ On the first composition see Non-Discrimination Country Report for 2013, www.equalitylaw.eu/downloads/4174-fyr-macedonia-country-report-non-discrimination-2013-1-11-mb%20p.86 and on the second, see flash report 'Appointment of new members of the equality body' (26 February 2016), www.equalitylaw.eu/downloads/3752-macedonia-appointment-of-new-members-of-the-equality-body-pdf-123-kb.

Strategy on Equality and Non-discrimination (2016-2020)'.³¹⁹ Under the flagship of the OSCE and the CPAD, an analysis of the harmonisation of the national equality and non-discrimination legislation against international standards and of the harmonisation at the national level with the comprehensive Anti-Discrimination Law was conducted in 2015, which identifies many issues individually singled out in the relevant sections of the report – see above.³²⁰ An exception to this would be the Law on Labour Relations, which needs very few amendments to be in line with the directives. The necessary steps would be to amend the definition of harassment, which is not completely in accordance with the directives,³²¹ to add provisions on instruction to discriminate, as well as clarifying the potential for positive actions and reasonable accommodation for people with disabilities.³²²

- Note: the 2018 Draft ADL prescribes in Article 51 an obligation for all other national laws to align with this law within two years of the day of entry into force of this law.

11.2 Other issues of concern

The country continues to be in a fragile political situation, which was assessed three years ago by the European Commission's progress report as 'state capture'.³²³ This affects the overall climate for dealing with equality and non-discrimination quite specifically. While retrogression in the protection of rights in law and in practice seems to have stopped, the country continues to exist with a state of general failure of the system for administering justice, extensive politicisation of society and partisanism of state institutions. These also affect the practical implementation of national legislation, as confirmed by the 2015 recommendations of the special EC Rule of Law mission led by Reinhard Priebe.³²⁴

The aftermath of the state capture has clearly left the field of equality and non-discrimination with lasting consequences. Namely, the composition of the CPAD which was appointed by the previous Government is still in place, in spite of clear proof of it not acting in line with its mandate and evidence of irresponsible and incompetent actions. The latest in a line of such actions is the opinion it issued in the case of the former Prime Minister Gruevski, on the grounds of which he was awarded asylum in Hungary, having escaped from the country following the issuing of a sentence of two years' imprisonment (discussed elsewhere in this report).

The Government has a majority in Parliament, but it has not found the strength to start a process and dismiss the current composition. This can be seen as part of a wider effort not to undertake any actions which might be interpreted as political revenge (including by the international community observing the situation in the country). Instead of initiating the legal procedure which is available under the law, the whole process will go through a back door. Namely, one of the transitional provisions of the 2018 Draft ADL provides that the mandate of the current CPAD ends with the appointment of the new composition of the

³¹⁹ Ministry of Labour and Social Policy (2016), *National Strategy on Equality and Non-discrimination (2016-2020)*.

³²⁰ Kotevska, B. (2016), *Analysis of the harmonization of national equality and non-discrimination legislation*, Skopje, OSCE and CPAD.

³²¹ The Law on Labour Relations definition refers to establishing behaviour, instead of creating an offensive environment. Source: Republic of North Macedonia, Law on Labour Relations, 2005.

³²² Republic of North Macedonia, Law on Labour Relations, 2005, Article 9.

³²³ The concept of 'state capture' is mentioned here in terms of the understanding by Transparency International, that is: 'a situation where powerful individuals, institutions, companies or groups within or outside a country use corruption to shape a nation's policies, legal environment and economy to benefit their own private interests'. This is also how the European Commission has used it in its report on the country's progress. Please note that at the time of writing of this report the new progress report had not yet been published.

³²⁴ European Commission (2015), 'The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015', https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf.

CPAD in line with the 2018 Draft ADL. This, as has rightfully been pointed out by the Venice Commission, paves the way for a dangerous precedent which could affect the independence of the national human rights institutions and other bodies established as independent bodies under the law on a long run. A future new government might not be very happy with the work of the equality body (because, say, it is doing its job properly) and might propose a new law which would end the mandate of the composition early. The room for this is even wider, considering that there is no written evidence in Parliamentary procedure which clearly states that this transitional provision was drafted in order to deal with the current situation in the aftermath of the state capture. The issues with the current composition and its demonstrated incompetence are cited nowhere in the narrative accompanying the 2018 Draft ADL legislative proposal as submitted to Parliament.

As noted above, the study on the harmonisation of national equality and non-discrimination legislation called for an urgent revision of the Anti-Discrimination Law.³²⁵ The CPAD continued to receive training and support from the OSCE Mission to Skopje and to be included in projects coordinated and led by CSOs. However, with the appointment of the new composition,³²⁶ cooperation with NGOs has dropped markedly, while the OSCE – the biggest partner of the CPAD – has already announced its phasing out strategy from the CPAD (the reasons for this have not been reported).³²⁷ The problem of not having administrative support for its work is ongoing, despite the announcement of a Government decision to resolve this issue being made two years ago. As discussed throughout this report, this should be rectified with the 2018 Draft ADL, if adopted as proposed.

The problem of misrepresentation and misunderstanding of the notion and scope of the grounds remains, the main issues being:

- Disability is still a source of stigma. Policies regarding accommodation and positive action for people with disabilities have been formally adopted, but are not implemented. However, a positive move in this direction was the ratification of the Convention on the Rights of Persons with Disabilities and its accompanying Optional Protocol. Multiple provisions using insensitive terminology still persist in laws, as already mentioned several times above.
- Sexual orientation continues to be stigmatised or, 'at best', ignored. The multitude of problems facing LGBTIQ people were identified in the first baseline study by Andonovski et al and published in 2016, and include discrimination.³²⁸ Hate speech is still widely tolerated. Debates around the Anti-Discrimination Law were filled with hate speech directed towards homosexuals and people who publicly advocated for and supported inserting sexual orientation as a protected ground. However, the second half of 2017 brought some positive changes in this respect. As noted elsewhere in this report, after the new Government was formed in 2017, the Minister of Culture opened the Pride weekend that had been organised by a group of NGOs, while the Prime Minister gave a keynote speech and opened a celebration of the fifth birthday of the LGBT centre – the NGO whose offices had been repeatedly attacked

³²⁵ Kotevska, B. (2016), *Analysis of the harmonization of national equality and non-discrimination legislation*, Skopje, OSCE and CPAD.

³²⁶ On issues in relation to the second composition, see: www.equalitylaw.eu/downloads/3752-macedonia-appointment-of-new-members-of-the-equality-body-pdf-123-kb.

³²⁷ CPAD annual report.

³²⁸ Full name of the original study (not available online at the time of writing): Andonovski, K. et al (2016), *Analysis of the problems and needs of LGBT persons in the Republic of Macedonia in the area of social protection, legal services and police conduct* (Анализа проблемите и потребите на ЛГБТИ луѓето во Република Македонија во областа на социјалната заштита, правните услуги и полициското постапување), LGBT Centre and МНК. Source: Flash report, 'Study on Problems and Needs of LGBTI Persons in the Fields of Social Protection, Legal Services and Police Conduct' (15 March 2016) www.equalitylaw.eu/downloads/3754-macedonia-study-on-problems-and-needs-of-lgbti-persons-in-the-fields-of-social-protection-legal-services-and-police-conduct-pdf-82-kb.

in previous years and for which no one has yet been prosecuted.³²⁹ On both occasions, the new Government showed both symbolically and declaratively that it plans to support equality for all, regardless of sexual orientation and gender identity.

³²⁹ On the attacks and failure of the state to investigate, see flash report: 'Absence of reaction to series of attacks on the LGBTI Support Centre' (2013) www.equalitylaw.eu/downloads/2177-mk-29-lgbti-centre-attacks-no-reactions.

12 LATEST DEVELOPMENTS IN 2018

12.1 Legislative amendments

The big promise of a legislative change – the 2018 Draft ADL – has not yet come into effect. The draft was presented to the Parliament in June 2018. If adopted as proposed, it will bring the letter of the national law further in line with the directives. However, at the end of 2018 it was still being blocked by MPs from both parties in power (DUI, the Albanian partner in the government coalition and former coalition partner in the VMRO-DPMNE Government until 2017) and opposition parties (principally, VMRO-DPMNE) who did not even allow the law to be included on the agenda of the relevant working body – the Commission on Labour and Social Policy. Several attempts to put the law on the agenda of the relevant working bodies has failed, with the above-mentioned MPs repeatedly voting down the proposal which came from MPs from the Social Democratic Union of Macedonia (SDSM), the main partner in the current government coalition, and from opposition MPs from the Liberal Party. The last of these attempts was in December 2018, where the law was again blocked in the Commission on Social Issues.³³⁰ Activists and allies³³¹ have spoken out against this block, claiming that the origin of the block is in a letter which the MPs received from the two largest religious communities in the country – the Macedonian Orthodox Church and the Islamic Religious Community – who object to sexual orientation being added to the Draft ADL. Following this, MPs have raised personal religious beliefs as grounds for refusing to let the law be added to the agenda, so that it can pass to the next stage in Parliament. This letter has not yet been released to the public.³³²

12.2 Case law

Name of the body: First Instance Court Skopje II

Date of decision: April 2018

Name of the parties: *Worker vs Municipality of Gazi Baba*

Reference number: Not available

Address of the webpage:

http://mhc.org.mk/system/uploads/redactor_assets/documents/3003/DISCRIMINATION_MONITOR_APRIL_2018_II.pdf

Brief summary: The First Instance Court Skopje II found discrimination on grounds of ethnicity and language in the field of employment. The worker, during working hours in his office which he shared with other colleagues, answered his phone and spoke in his mother tongue of Albanian. However, his colleague reacted to this and reported it to the line manager. The manager informed the worker that, in line with the laws in force in the country, the working language at the Municipality is Macedonian and that he should use this language in communications. The worker took the case first to the CPAD, which found discrimination. However, since the employer did nothing to act in line with CPAD's opinion, he took the case to court. The First Instance Court Skopje II, citing the Law on Prevention and Protection against Discrimination and the Labour Law, Article 14 of the European Convention on Human Rights and its Protocol 12, established that banning the worker from using his mother tongue when answering his phone during working hours violated his right to equal treatment. No information on sanctions was released.

³³⁰ The president of this commission is Vlatko Gjørčev, who was also one of the most vocal VMRO-DPMNE MPs during the time when the 2010 ADL was being adopted.

³³¹ Civil Media (2019), 'Andonovski: The VMRO-DPMNE and DUI blockage of the Anti-discrimination Law is scandalous' (Андоновски: Блокадата на ВМРО-ДПМНЕ и ДУИ на законот против дискриминација е скандалозна), available at: https://civilmedia.mk/andonovski-blokadata-na-vmro-dpmne-i-dui-na-zakonot-protiv-diskriminatsija-e-skandalozna/?fbclid=IwAR1f36ebbDTPV-64a_5WVUPTVLqzh8Fp-tgXmHITgwmv-QyQqCb8IRFUJCM; Prizma (2018), 'Orwellian state of discrimination' (Орвеловска држава на дискриминацијата), available at: <https://prizma.mk/kolumni/orvelovska-drzhava-na-diskriminatsijata/>.

³³² For more on the block, please see: www.equalitylaw.eu/downloads/4814-fyr-macedonia-the-proposed-new-law-on-anti-discrimination-blocked-in-parliament-pdf-134-kb.

Name of the body: First Instance Court Skopje II

Date of decision: March 2018

Name of the parties: *Worker vs Ministry of Agriculture*

Reference number: Not available

Address of the webpage:

www.mhc.org.mk/system/uploads/redactor_assets/documents/3002/DISCRIMINATION_MONITOR_MART_2018_II.PDF

Brief summary: The First Instance Court Skopje II found discrimination on grounds of political affiliation of an individual working at the Ministry of Agriculture. The individual exercised their active voting right and stood for one of the positions in the local elections in 2017. However, as soon as this information was made public, the employer changed his working position to a lower one. The court prevented the employer from engaging in victimisation and, furthermore, it requested that the employer remove the consequences of the discriminatory action and pay monetary compensation (value not reported) for emotional damages resulting from the unequal treatment experienced.

Name of the body: Commission for Protection against Discrimination

Date of decision: 2018 (not dated)

Name of the parties: *Bairska Svetlina. v Pool "Srce Dovledzik"*

Reference number: 08/259

Address of the webpage: n/a (case on file with author)

Brief summary: On behalf of F.J., Bairska Svetlina, an NGO dealing with Roma rights, complained to the CPAD for discrimination on the ground of ethnic affiliation and skin colour (Article 3, ADL) in access to goods and services (Article 4, ADL). Namely, F.J. was not allowed to enter a pool in Bitola. The applicant and the NGO presented their statements which indicated that it was probable that discrimination had occurred, including documentation of other instances where Roma people were not allowed to enter this particular pool. On that basis, the CPAD shifted the burden of proof and asked the legal person managing the pool to respond. The communication from the CPAD twice failed to be delivered, on grounds of an incomplete address. The CPAD concluded that there was discrimination. It recommended to the legal person to apply equal treatment and reminded them of the laws in force which prohibit direct and indirect discrimination on a number of grounds (here the CPAD repeated Article 3).

Roma cases trends in 2018

The Roma cases in 2018 were mainly on (1) breach of the freedom of movement and (2) obstacles to access to goods and services.

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

The **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

Country: Republic of North Macedonia
Date: 31 December 2018

<p>Title of the Law: Law on Prevention and Protection against Discrimination Abbreviation: Anti-Discrimination Law Date of adoption: 08.04.2010 Latest relevant amendments: 02.02.2018 Entry into force: 21.04.2010 Weblink: www.slvesnik.com.mk/Issues/1654343CD9A0E24998781907DC19A99F.pdf Grounds covered: 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 or ratified national treaty. Civil law Material scope: All areas (draws specific attention to: public employment, private employment, access to goods and services, social protection, education). Principal content: Prohibition of direct and indirect discrimination, harassment, instruction to discriminate, reasonable accommodation, creation of a specialised body.</p>
<p>Title of the Law: Law on Labour Relations Abbreviation: Labour Law Date of adoption: 28.07.2005 Entry into force: 05.08.2005 Latest relevant amendments: 29.06.2018 Weblink: www.slvesnik.com.mk/Issues/ABCBBB808C582943B4A3287BD0629357.pdf Grounds covered: Race, colour, sex, age, health condition, disability, religious, political or other belief, membership of trade union, national or social origin, position of the family, property, sexual orientation or other personal issue. Civil law Material scope: Public employment, private employment. Principal content: Regulation of labour relations. Of relevance here: prohibition of direct and indirect discrimination, harassment.</p>
<p>Title of the law: Law on Social Protection Abbreviation: LSP Date of adoption: 24.06.2009 Entry into force: 02.07.2009 Latest relevant amendments: 21.03.2018 Weblink: Text of the law (2009), as in Official Gazette: www.slvesnik.com.mk/Issues/7CEA639634D1054DB351E7FB985665DC.pdf Grounds covered: Sex, race, colour, nationality, ethnicity, social status, political, religious, cultural, language, property and social background, disability and origin. Civil law Material scope: Social protection, social advantages. Principal content: Social protection. Of relevance here: prohibition of direct and indirect discrimination.</p>

Title of the law: Law on Employment of Persons with disability

Abbreviation: LEPD

Date of adoption: 02.06.2000

Latest relevant amendments: 29.05.2018

Entry into force: 10.06.2000

Weblink: www.slvesnik.com.mk/Issues/CE827065C11B4A1ABA5546F974EFDA94.pdf.

Grounds covered: Disability

Civil law

Material scope: Public employment, private employment

Principal content: Employment of persons with disability, including shelter companies.

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Republic of North Macedonia
Date: 31 December 2018

Instrument	Date of signature	Date of ratification	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	No	No	Yes
International Covenant on Civil and Political Rights	(succession) ³³³	18.01.1994	No	Yes	Yes
Framework Convention for the Protection of National Minorities	25.07.1996	10.04.1997	No	Yes	Yes
International Covenant on Economic, Social and Cultural Rights	(succession)	18.01.1994	No	Yes	Yes
Convention on the Elimination of All Forms of Racial Discrimination	(succession)	18.01.1994	No	Yes	Yes

³³³ Under the Constitutional Law adopted for implementing the (then) Constitution of the Republic of Macedonia, as one of the republics to succeed from the Socialist Federative Republic of Yugoslavia (SFRY), the country assumes all obligations from SFRY membership in international organisations and with other countries, as provided by common principles of international law. This Law also calls upon the Vienna conventions for succession (1978 and 1982) for guidance on regulating the succession. Source: Constitutional Law adopted for implementing the Constitution of the Republic of North Macedonia (*Уставен закон за спроведување на Уставот на Република Македонија*), Official Gazette of the Republic of Macedonia No.52/91.

Instrument	Date of signature	Date of ratification	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 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

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