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Country report

Non-discrimination

North Macedonia
2022
including summary



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Country report

Non-discrimination

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

North Macedonia

Biljana Kotevska

Reporting period 1 January 2021 – 31 December 2021

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EXECUTIVE SUMMARY

1. Introduction

The Republic of North Macedonia (hereinafter North Macedonia),¹ 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. North Macedonia joined the North-Atlantic Treaty Organization on 27 March 2020. Euro-Atlantic integration is a foreign affairs priority for the country. However, progress has stalled, initially due to the name dispute² with Greece and most recently due to conditions imposed by Bulgaria around issues of history and identity.³ As noted in several European Commission progress reports,⁴ this was compounded by fundamental rule of law issues. However, since the 2017 change of Government, the situation has been improving, including regarding equality and non-discrimination issues.

The preliminary results of the 2021 census show a decrease in the overall population, with the total population being 1 836 713, compared with 2 022 547 in the previous census in 2002.⁵ Ethnic affiliation is important in the national context, as sets of rights and positive action measures are tied to the numerical representation of each ethnic community in the total population. The ethnic composition according to the 2021 census⁶ is 58.44 % ethnic Macedonians (64 % in the 2002 census); 24.30 % ethnic Albanians (25 % in the 2002 census); 3.86 % ethnic Turks (3.86 % in the 2002 census); 2.53 % ethnic Roma (2.66 % in the 2002 census); 1.30 % ethnic Serbs (1.77 % in the 2002 census); 0.87 % ethnic Bosniaks (0.84% in the 2002 census); 0.47 % ethnic Vlachs (0.47% in the 2002 census); and 1 % 'others' (a term used in the Constitution). A high proportion, at 7.20 %, are added in a separate category entitled 'Persons for whom data are acquired from administrative sources' – these are persons for whom the data were taken from state registers. It is known that these persons actively live and work in the country, but they were not registered by the census interviewers and they did not approach the local census offices to register themselves, so they are registered without ethnicity, religion or mother tongue. Considering the widespread campaign for a boycott of the 2021 census, 'Не отварам врата' ('I Won't Open My Front Door') by ethnic Macedonians, a significant part of this 7.20 % might be ethnic Macedonians, which would explain the high drop in representation of Macedonians compared with the 2002 census – 6 %, when all other ethnic groups are represented equally or roughly equally as they were in the 2002 census.⁷

¹ The constitutional name of the country changed from the Republic of Macedonia to the Republic of North Macedonia following the conclusion of the Prespa Agreement – a treaty bringing resolution of the two-decades-long name dispute with Greece. For this reason, the name used throughout this report is North Macedonia, as per the Prespa Agreement.

² On the name dispute, please see the introduction to the 2018 or earlier reports.

³ On the conditions set by Bulgaria, including an assessment against international law, see: Just Access E.V. (2021), *Access to the EU and justice denied: How Bulgaria's actions against North Macedonia amount to abuse of the EU's accession procedural rules*, available at: <https://just-access.de/access-to-the-eu-and-justice-denied/>; Ristevska-Jordanova, M. and Kacarska, S. (2020), *EU - North Macedonia accession negotiations: the implications of the Bulgarian conditions*, European Policy Institute, Skopje, available at: https://epi.org.mk/wp-content/uploads/2020/06/EU_MK-accession-negotiations_implications-of-BG-conditions_small-font.pdf.

⁴ European Commission (2019), *North Macedonia 2019 Report*, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-north-macedonia-report.pdf>.

⁵ Various estimates before the census took place showed that 250 000 to 500 000 people have left the country in the past few years to work abroad. This overlaps in part with the non-residential population who self-registered in the 2021 census (online), which was 260 606 people.

⁶ All figures presented here are rounded percentages from the 2002 census, which is still the most recent one. A new census was scheduled for April 2020; however, it was postponed until April 2021 because of pre-term elections. All statistics from the State Statistical Office can be found at: www.stat.gov.mk/.

⁷ The Prespa Agreement and the name change of the country sparked further public distrust in the Government and the state institutions, which in this campaign manifested as fear that the numbers in the public poll would be manipulated to show a decrease in the numbers of ethnic Macedonians. Including the

Regarding cooperation with civil society organisations, or non-governmental organisations (NGOs), following the appointment of the Government in June 2017, the climate rapidly changed from one of scapegoating and openly prosecuting NGOs, which was the case during the Gruevski Government, to one that is much more open to including NGOs in decision-making processes and working groups and in stepping up to support NGO activities, including on equality and non-discrimination. NGOs have remained vocally critical of the Government and the Parliament and the dubious political commitment to equality and non-discrimination issues throughout 2021. A number of public reactions and cases demonstrating this are listed throughout this report.

After the law was adopted,⁸ NGOs continued to press for the appointment of the new equality body – the Commission for Prevention and Protection against Discrimination (CPPD), and the body was finally established and started operating in 2021.

2. Main legislation

The Constitution of the Republic of North Macedonia⁹ is a written one and the country's highest legal act. It accepts international law as part of domestic law and as higher than the laws and bylaws. The Constitution provides for protection against discrimination. It upholds the equality of citizens before the Constitution and before the law, stating that citizens are equal in their freedoms and rights, regardless of gender, race, colour, national and social origin, political and religious conviction, property and social status. It provides a protection mechanism for all who find their human rights and freedoms breached, before the Constitutional Court. Upholding the monism principle on the application of international law (the signed and ratified international documents), the Constitution provides for the domestic use of these documents, thus also for those providing for protection against discrimination and/or upholding the principle of equality.

Until 2010, anti-discrimination provisions were scattered across various laws, including criminal and labour law, and also beyond. As an EU candidate country, part of the conditionality and an aspect of the transposition of the EU *acquis* was the adoption of a comprehensive Anti-Discrimination Law (ADL). Thus, in April 2010, the first such comprehensive law – the Law on Prevention and Protection against Discrimination (2010 ADL, old ADL)¹⁰ – was adopted. However, this law did not comply with the directives on many points,¹¹ including regarding the equality body it established – the Commission for Protection against Discrimination (CPAD). In order to address these shortcomings, following several years of campaigning by NGOs and international pressure, a new Law on Prevention and Protection against Discrimination was adopted in May 2019 (annulled ADL).¹² This Law was annulled by the Constitutional Court on 14 May 2020 on the grounds that it was adopted without an adequate majority as required by the Constitution. On 28 October 2020, the Parliament adopted the same text annulled by the Constitutional

diaspora as part of the census population added additional fuel to this, because it was interpreted as an effort to increase the number of ethnic Albanians, which parts of the ethnic Macedonian population feel were exaggerated in the previous (2002) census. The census figures are important in North Macedonia since a number of rights are linked to them (such as quotas for employment in the public administration).

⁸ Anti-Discrimination Law, 2020. Full title: Law on Prevention and Protection against Discrimination (*Закон за спречување и заштита од дискриминација*), *Official Gazette of the Republic of North Macedonia*, No. 258/2010 (30 October 2020).

⁹ English language version of the Constitution of the Republic of North Macedonia: Constitution of the Republic of North Macedonia, available at: www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nsp.x.

¹⁰ 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*, Nos. 50/10, 44/2014, 150/2015, 31/2016, 21/2018, Constitutional Court Decision: U.no.82/2010.

¹¹ See previous reports by the European Equality Law Network, available at: <https://www.equalitylaw.eu/country/north-macedonia>.

¹² Anti-Discrimination Law, 2019. Full title: 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).

Court as a new Law on Prevention and Protection against Discrimination (ADL). The Law was published in the *Official Gazette* on 30 October 2020 and entered into force on the same day.

The aim of the law is to 'ensure the principle of equality and prevention of and protection against discrimination in terms of exercising human rights and freedoms' (Article 2). The ADL is in line with the directives. Furthermore, it goes well beyond the directives, including going beyond the proposed equal treatment directive. In Article 5, the ADL provides protection on the following grounds: race, skin colour, origin, nationality or ethnicity, sex, gender, sexual orientation, gender identity, belonging to a marginalised group, language, citizenship, social origin, education, religion or religious belief, political conviction, other convictions, disability, age, family or marital status,¹³ property status, health condition, personal capacity and social status. Thus, the ADL includes all grounds required by the directives and goes beyond them. Moreover, Article 5 is an open-ended provision, ending with 'any other ground'.

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

3. Main principles and definitions

The ADL contains definitions of direct discrimination, indirect discrimination, harassment, incitement, encouragement and instruction to discriminate, victimisation and segregation. The definitions of direct and indirect discrimination are fully replicated from the directives. The law contains articles on harassment and on sexual harassment. Multiple discrimination and intersectional discrimination are included as a graver form of discrimination, as are repeated and extended¹⁴ discrimination. Discrimination by association and by perception are defined. Not providing reasonable accommodation is considered to constitute discrimination.

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

Before the ADL currently in force and the 2010 ADL, various laws incorporated definitions of discrimination. The ADL did include a provision in the Transitory and Final Provisions Section on unification of the various laws with the ADL. This process is to be completed within two years of the ADL's entry into force. *Lex specialis derogat legi generali* and *lex posterior derogat legi priori* are by tradition part of judicial work, but judges tend to rely on existing provisions rather than general legal principles, even in cases where seemingly

¹³ This ground is pending judicial interpretation. Both grounds should be read to include same-sex families; however, this may not apply in the case of 'marital status' in proceedings in the courts, which may use the definition of marriage under the law, thus effectively excluding same-sex marriages and partnerships.

¹⁴ Extended discrimination is discrimination committed on a discrimination ground/s against a person or a group of persons without interruption, during a longer period of time (ADL, Article 4(1-12)).

contradictory provisions exist, as general legal principles are used primarily in the event of legal loopholes (as prescribed under the Law on Courts).

4. Material scope

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

In the field of employment, aside from the Anti-Discrimination Law, there is also a Law on Labour Relations,¹⁵ which prohibits discrimination in line with the standards of the directives. These laws apply to both the public and private sectors.

5. Enforcing the law

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

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

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

In 2021, the first year of its operation, the CPPD received 90 cases and inherited a backlog of 77 cases from the former equality body. From these cases, it seems that it is mainly natural persons, predominantly men, living or residing in Skopje,¹⁶ who file discrimination cases with the CPPD. Among the 167 cases, the highest number related to social status, national or ethnic belonging, sex, and political belief; and in the fields of employment, access to goods and services and access to information, media and social media. The CPPD found discrimination in 40 cases, where direct discrimination was the most frequent form identified, and the discriminator was most predominantly from the public sector.

¹⁵ 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, *Official Gazette of the Republic of North Macedonia*, Nos. 110/2019, 151/2021, 288/2021; 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.

¹⁶ Commission for Prevention and Protection against Discrimination (CPPD) (2022), *Годишен извештај за 2021 година (Annual report for 2021)*, pp. 15-19.

Litigation procedures can be brought in ordinary courts, based on the provisions of the ADL and the Civil Procedure Law. Court procedures have priority over procedures in front of the equality body. The CPPD may not act or must cease acting on a case if a procedure before the court has already been filed regarding the same matter or is being filed in the course of the CPPD procedure or has been completed under an enforceable decision. The relationship between procedures before the Ombudsperson and the CPPD is not regulated by law. The former body (CPAD) and the Ombudsperson had concluded a memorandum of understanding. By the time of the cut-off date for this report, the new equality body and the Ombudsperson had still not regulated their relationship in any way.

Under the ADL, the outcome of the procedure depends on the procedure chosen. Administrative procedures provide for a recommendation to rectify the violation (i.e. the discrimination) within 30 days; a longer period of up to six months can be assigned if there are justified reasons. A misdemeanour procedure can lead to fines in the range of EUR 400 to EUR 5 000.¹⁷ Financial and other sanctions for discrimination are provided in the Criminal Code. These provisions have not been applied to date. A litigation procedure can have several outcomes, depending on the type of lawsuit filed. The lawsuit can be declaratory, prohibitive, restitutional, reparational or a publishing claim. The ADL provides that the Civil Procedure Law is to be applied. The Constitutional Court is another venue where a claim for protection of fundamental rights and freedoms can be filed. In 2021, the Constitutional Court received 14 cases regarding protection of fundamental rights and freedoms (out of 174), of which eight were discrimination cases. The Court did not find violation in any of the cases regarding protection of fundamental rights and freedoms, as was the case in previous years.¹⁸

The Ombudsperson is another possible forum for public sector discrimination cases. In 2021, 43 cases were filed as non-discrimination and equitable representation cases. That represents 1.6 % of the total number of cases filed with this institution in 2021, which was 2 686 cases, and a slight increase compared with 2020. Of the 43 cases, a predominant majority were in the area of employment and labour relations, and on the grounds of national or ethnic origin.¹⁹

Aside from the types of proof provided in the Civil Procedure Law, the ADL explicitly allows for situation testing and statistics as means of proof. Article 206 of this law states that any facts that are important for reaching a decision can be used as evidence, but that it is up to the courts to decide which facts need to be proven and which do not. The Law on Civil Procedure goes on to mention examples of evidence, but situation testing is not one of those examples. No cases of situation testing were reported in 2021.

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

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

6. Equality bodies

The ADL sets out the requirement to establish the CPPD. Its predecessor (the CPAD) was the country's first equality body. Following the entry into force of the new ADL on 30 October 2020, the period for its transitory provisions started running, including on the

¹⁷ All amounts are indicated in EUR and are to be paid in national currency, unless stated otherwise.

¹⁸ Constitutional Court (2022), *Преглед на работата на Уставниот Суд за 2021 година (Overview of the work of the Constitutional Court in 2021)*, February 2021, pp. 8, 10.

¹⁹ Ombudsperson of the Republic of North Macedonia (2022), *Годишен извештај за степенот на обезбедувањето почитување, унапредување и заштита на човековите слободи и права 2021 (Annual report on the degree of ensuring, respecting, advancing and protecting human rights and freedoms 2021)*, pp. 84-85.

selection and appointment of the members of the new equality body – the CPPD.²⁰ The vacancy advertisement was published at the end of November, with a deadline of 24 December 2020. A public interview process for all applicants, regardless of whether they fulfilled the minimum criteria for membership under the law, took place on 29 and 30 December 2020. From these applicants, a shortlist was developed and adopted on 4 January 2021. The vote on appointment took place on 25 January 2021. However, at no point was there a check of whether any of the candidates, including the appointed ones, fulfilled the membership criteria established in Article 17 of the ADL. In addition, the composition of society at large was not taken into account, with only two women being appointed out of seven members (one of whom resigned due to personal reasons a few weeks after the appointment) and no persons who self-identified as persons with a disability.²¹

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

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

²⁰ There was no functioning equality body in the country at the time.

²¹ Flash Report, 'Following the adoption of a new Anti-discrimination Law, a new equality body is being set up', 23 March 2021, <https://www.equalitylaw.eu/downloads/5378-north-macedonia-new-equality-body-establishing-and-setbacks-100-kb>.

or upon its own initiative, it may file a request to the court to enable it to perform the capacity of *amicus curiae*.

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

In exercising these competences, the CPPD is obliged by law to ensure accessibility for persons with disabilities. However, the offices that were provided for the CPPD are not accessible, and the budget for 2022 also does not provide any funds to this end.

Before the old law of 2010 there was no equality body. Public sector discrimination was under the mandate of the Ombudsperson. The ADL does not regulate the relationship between the Ombudsperson and the current body, the CPPD.²² 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.²³

7. Key issues

The key issues of concern in the national context include:

- national legislation has still not been harmonised internally;
- underfunding and understaffing prevents the national human rights institutions from fully exercising their competences and is now again a major problem for the CPPD;
- impunity of hate crime and hate speech persists, especially with regard to sexual orientation;
- persisting rule of law issues and residual state capture features erode trust in institutions, including the judiciary;
- actors who oppose equality or equality for certain groups are gaining traction and political influence (widely known as the "anti-gender movement").²⁴

²² This was also the case with the previous law and the CPAD. The relationship was regulated by a memorandum of understanding.

²³ 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.

²⁴ This is a resurgence of the anti-gender movement, after its initial decline following the fall of the Gruevski Government in 2017. In 2021, 'informal anti-gender groups operating on social media (Facebook) and one registered organisation 'Od nas za nas' ('From Us For Us') have targeted those individuals and CSOs most vocal in gender and LGBTQI equality advocacy. Two topics stood out: opposition to gender-sensitive and sex education, and spreading transphobia. The methods are – as already well identified in the abundant literature on the anti-gender movement – a mix of methods traditionally used by human rights organisations (such as bringing cases to NHRIs and courts, asking to participate in public policy processes); fake news and fear-mongering, recently supplemented by anti-vaccination positions.' Source: Kotevska, B., *Legal environment and space of civil society organisations in supporting fundamental rights and the rule of law – North Macedonia*, FRA, January 2022.

INTRODUCTION

The national legal system

The Republic of North Macedonia (hereinafter North Macedonia) is a unitary, semi-parliamentarian, civil law country. It adopts the monism principle regarding the relationship between international and municipal law, the former being considered part of the latter, and superior to domestic laws and bylaws,²⁵ 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.²⁶ 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.²⁷

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. 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 must 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 tasked with an equality mandate – the Commission for Prevention and Protection against Discrimination (CPPD) (Комисија за спречување и заштита од дискриминација, КЗД)²⁸ and the Ombudsperson (Народен правобранител).

The executive branch is represented by the President (whose role is largely ceremonial) and the Government, which has 16 ministries and four Deputy Prime Ministers.²⁹ The President is directly elected, whereas the Government is appointed by the Parliament. Within the Government, several ministries share human rights competences. The Ministry of Foreign Affairs hosts the inter-ministerial body on human rights, established with the aim of improving coordination and communication among the Government departments on key human rights issues. Aside from this body, and of relevance to this report, an important division of the executive Government is the Ministry of Labour and Social Policy (MLSP), which is tasked with coordination and development of non-discrimination activities and hosts the National Coordinating Body for Non-discrimination Issues. However, since the legal ground for convening this body was the Strategy on Equality and Non-discrimination 2016-2020, and the strategy has now expired, this body formally no longer

²⁵ 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 Parliament of the Republic of North Macedonia, available at: www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspix.

²⁶ Law on Courts, 2006. Article 18(5). Full title: Law on Courts (*Закон за судовите*), *Official Gazette of the Republic of Macedonia*, Nos. 58/2006, 62/2006, 35/2008, 150/2010; 83/2018, 198/2018, 96/2019; Constitutional Court Decisions: U.no.256/2007, U.no.74/2008, U.no.124/2008, U.no.12/2011.

²⁷ Please see the 2018 version of this report, Section 11, for information on the wire-tapping affair, which cast doubt on the respect for the separation of powers and the rule of law in the country in general.

²⁸ The first equality body, the Commission for Protection against Discrimination (CPAD) (Комисија за заштита од дискриминација, КЗД) ceased to exist with the adoption of the new Law on Prevention and Protection against Discrimination in 2020 (and its predecessor, the repealed version from 2019).

²⁹ The minister for the political system and intercommunity relations is also Deputy Prime Minister.

exists. The Representative for Equal Opportunities for Women and Men is based in the MLSP;³⁰ each state administrative body has a legal obligation to appoint a coordinator for equal opportunities.³¹ The Ministry of Political System and Inter-Community Relations is tasked, inter alia, with the coordination, monitoring and financing of the government priorities related to the implementation of the Ohrid Framework Agreement and the advancement of the rights of ethnic communities in the country.³²

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

There are two institutions that can be considered national human rights institutions and that have been tasked with an equality mandate, both acting as quasi-judicial bodies. One is the national equality body – the CPPD (with a sole mandate on equality and non-discrimination). The second is the Ombudsperson (which has a general human rights mandate, extending beyond equality and non-discrimination).

Local governance in the country is organised through decentralised, local self-government units. These units are made up of 80 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

³⁰ However, this representative is, in practice, not operational. For further details, see: Kotevska, B. (2021), *Country Report on Gender Equality* (European Commission), p. 75.

³¹ Law on Equal Opportunities for Women and Men, 2013. Full title: Law on Equal Opportunities for Women and Men (*Закон за еднакви можности на жените и мажите*), *Official Gazette of the Republic of Macedonia*, Nos. 06/2012, 30/2013, 166/2014, 150/2015.

³² Website of the Ministry (not available in English): <https://mpsoz.gov.mk/mk/>.

³³ 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*, Nos. 20/2015, 192/2015, 231/2015, 163/2018.

³⁴ Law on Territorial Organisation of Local Self-government, 2004, Article 16. Full title: Law on Territorial Organisation of Local Self-government (*Закон за територијална организација на локалната самоуправа*), *Official Gazette of the Republic of Macedonia*, Nos. 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 claimants. In the more than 20 years that it has been in operation, the Constitutional Court has only once decided in favour of claimants seeking protection through such a request and has rejected almost all of the filed cases.

List of main legislation transposing and implementing the directives

The Law on Prevention and Protection against Discrimination (hereinafter Anti-Discrimination Law, ADL or 2020 ADL) was adopted on 30 October 2020⁴⁰ after the 2019 Law on Prevention and Protection against Discrimination (hereinafter 2019 Anti-Discrimination Law or 2019 ADL)⁴¹ was annulled by the Constitutional Court in May 2020.⁴² The 2019 ADL replaced the Law on Prevention and Protection against Discrimination (2010 Anti-Discrimination Law or 2010 ADL)⁴³ adopted on 8 April 2010. The new ADL includes all the grounds covered by the directives and goes well beyond them. Article 5 of this law explicitly includes the following discrimination grounds: race, skin colour, origin, nationality or ethnicity, sex, gender, sexual orientation, gender identity, belonging to a marginalised group, language, citizenship, social origin, education, religion or religious belief, political conviction, other convictions, disability, age, family or marital status, property status, health condition, personal capacity, and social status. Like its predecessor, it has a wide material scope, which includes labour and employment; education, science and sport; social security, including social protection, pensions and disability insurance, health insurance and health protection; judiciary and governance; housing; public information and the media; access to goods and services; membership of and activity in political parties, associations, foundations, trade unions and other membership organisations; culture; and all other areas.' (Article 3(2)).

The Law on Labour Relations⁴⁴ was adopted on 28 July 2005. Under Article 6(1), an open-ended clause, the following grounds are explicitly covered by the law: racial or ethnic origin, colour, gender, age, health condition (i.e. disability), religious, political or other belief, membership of trade unions, national or social origin, family status, property and financial situation, sexual orientation or other personal circumstances. The Labour Law applies to labour relations among employers and employees established by the conclusion of employment contracts (Article 1), which is understood as any contractual relationship between the employee and the employer where the employee takes part in the employer's organised working process voluntarily, for salary and other remunerations, and personally and continuously carries out the work according to the instructions and under the supervision of the employer (Article 5(1)1).

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

⁴⁰ Anti-Discrimination Law, 2020.

⁴¹ Anti-Discrimination Law, 2019.

⁴² On this, see: Flash report, 'The Constitutional Court Repealed the 2019 Anti- Discrimination Law' 29 May 2020, <https://www.equalitylaw.eu/downloads/5148-north-macedonia-the-constitutional-court-repealed-the-2019-anti-discrimination-law-104-kb>.

⁴³ Anti-Discrimination Law, 2010.

⁴⁴ Labour Law, 2005.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

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

- Article 9 explicitly covers the following grounds: sex, race, skin colour, national or social origin, political and religious belief, property and social status (closed list of grounds) (paragraph 1). Paragraph 2 contains a general equality clause on equality before the law, which is not tied to a discrimination ground, making the personal scope of the article open, including for the grounds not explicitly mentioned in paragraph 1, but still limited only to citizens and, in accordance with the practice of the Constitutional Court, to natural persons.⁴⁵
- 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 (mainly interpreted as an exhaustive list).

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.⁴⁶ 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.⁴⁷

In practice, there are no requests for interpretation of constitutional provisions from the ordinary courts to the Constitutional Court and there is no practice of referencing the Constitutional Court by the ordinary courts. This is for two reasons. First, regardless of the procedure used, ordinary courts insist that a lawsuit is brought invoking provisions of specific laws, and they tend not to implement the Constitution directly. Second, the Constitutional Court's positioning and practice is such that it does not enter into revisions of verdicts and decisions of the ordinary courts.⁴⁸

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

⁴⁵ Individual cases are filed under Article 54.

⁴⁶ See Section 1(b) of the 2013 report: <https://www.equalitylaw.eu/downloads/4174-fyr-macedonia-country-report-non-discrimination-2013-1-11-mb>.

⁴⁷ This does not mean that ordinary courts do not mention provisions from the Constitution.

⁴⁸ 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) (25 December 2002); U.No.37/1997 (para.3) (19 March 1997).

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

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

- The Law on Prevention and Protection against Discrimination:⁴⁹ race, skin colour, origin, nationality or ethnicity, sex, gender, sexual orientation, gender identity, belonging to a marginalised group, language, citizenship, social origin, education, religion or religious belief, political conviction, other convictions, disability, age, family or marital status, property status, health condition, personal capacity and social status (open-ended clause) (Article 5). The ADL is in line with the directives and goes beyond their scope.
- The Law on Labour Relations (Labour Law) includes the following grounds: race or ethnic origin, colour, sex, age, health condition i.e. disability, religious, political or other belief, membership of a trade union, national or social origin, family status, property status, sexual orientation or other personal circumstances (Article 6(1)).

2.1.1 Definition of the grounds of unlawful discrimination within the directives

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

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 previous equality body - the CPAD. In particular, the guide relies heavily on international law sources (including practice from the human rights bodies and courts) in

⁴⁹ Other laws which include provisions with discrimination grounds and general provisions outlawing discrimination are the following: Law on Courts (Articles 3 (1-3), 6 (1), 43 (1)), Criminal Code (Articles 137 (1), 319 (1), 394-r, 417 (1), Law on the Execution of Sanctions (Article 4(2) and (3)), Law on Volunteering (Article 9), Law on Voluntary Financed Pension Insurance (Article 3), Law on Primary Education (Article 5(1)), Law on Secondary Education (Article 3(3)), Law on Higher Education (Article 108 (5)), Law on the Protection of Children (Article 12 (1)), Law on Social Protection (Article 16 (2)), Law on Patients' Rights (Article 5(2)), Law on Public Health (Article 16(5)), Law on Health Protection (Article 9), Law on Mental Health (Article 20(4)), Law on Equal Opportunities for Women and Men (Article 4(3)), Law on the Media (Article 4), Law on Audio and Audio-visual Media Services (Articles 45, 53, 61), Law on Culture (Article 4(1)), Law on Agencies for Temporary Employment (Article 3b(3)), Law on Insurance in Case of Unemployment (Article 1a(2), Law on Employment of and Work by Foreigners (Article 4(8)), Law on Public Prosecutors (Article 5(2)), Law on Border Control (Article 8(3)), Law on Customs Administration (Article 13(1)), Law on the Protection of Personal Data (Article 5), Law on the Rights of Communities that Represent Less than 20 % of the Population of the Republic of North Macedonia (Article 3), Law on Probation (Article 7(4)), Law on the Protection of Whistle-blowers (Article 8(1)), Law on Child Justice (Article 8), Law on Services (Articles 8(2), 9(2-1), 14 (2-1), 35 (2-1)), Law on Prevention of Corruption and Conflicts of Interest (Articles 4(2) and 5), Law on Teachers and Expert Associates in Primary and Secondary Schools (Articles 5, 15(5), 43, 45), Law on Internships (Article 5), Law on Recordkeeping in the Area of Health (Article 2 (1-34)), Law on the National Security Agency (Article 68), Law on Archival Materials (Article 45(1)), Law on Youth Participation and Youth Policies (Article (5(1-1))). The need for harmonisation of the discrimination grounds across laws has already been identified (see Kotevska B. (2016), *Analysis of the harmonisation of national equality and non-discrimination legislation*, Skopje, OSCE and CPAD). The new ADL contains a transitory provision that all other laws that contain provisions on the prevention of and protection against discrimination 'shall be harmonised with the Law on the Prevention of and Protection against Discrimination within two years as of the day of the entry into force of this Law' (Article 51). Keeping legal provisions with different personal and material scopes of protection in force, while resolvable under the *lex specialis derogat legi generali* rule, contributes to a reduction of legal certainty. An analysis was prepared in 2019 proposing several models for harmonisation of the national legislation (see Najchevska, M. (2019), *Анализа на хармонизацијата на легислативата во областа на антидискриминацијата* (Analysis of the harmonisation of the legislation in the area of anti-discrimination), OSCE).

order to carve out the definitions of the discrimination grounds prescribed under national law.⁵⁰ It is important to note that ratified international treaties rank higher than laws in the national legal hierarchy, but below the Constitution. As reported in Annex 2, the country has ratified the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination Against Women, the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child, so interpretation of the discrimination grounds following from these treaties should be considered as valid at the national level. The same applies to the European Convention on Human Rights and to the Framework Convention on National Minorities, to which the country is also a party.

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

a) Racial or ethnic origin

As discussed above, national law does not define 'racial or ethnic origin' in an equality and non-discrimination context. In fact, such definitions do not appear anywhere in national law, except in the Law on International and Temporary Protection.⁵¹ This law has a definition of race and ethnicity provided in the context of criteria that should be taken into consideration in cases of persecution as characteristics attributed to the person by the persecutor (Article 7). This definition states the following: 'Race includes skin colour, origin or belonging to an ethnic group' (Article 7(1-2)). According to this definition, ethnicity is subsumed under race. In addition, this definition ties in with that of nationality, which states that '[n]ationality does not denote citizenship, its possession or lack thereof, but belonging to a group defined by its cultural, ethnic and linguistic identity, common geographical or political origin or relatedness with the population of another country' (Article 7(1-2)).

b) Religion and belief

As discussed above, national law does not define 'religion and belief'. The Law on International and Temporary Protection contains a definition of religion provided in the context of criteria that should be taken into consideration in cases of persecution as characteristics attributed to the person by the persecutor (Article 7):

'Religion shall include theistic, non-theistic and atheistic beliefs, participation in or abstention from formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief.' (Article 7(1-3))

According to the CPAD's general recommendation⁵² on the exercise of religion without discrimination, the *forum externum* will fall within the understanding of religion, as per

⁵⁰ Kotevska, B. (2013), *Guide on discrimination grounds*, Skopje, OSCE and CPAD, available at: <https://www.osce.org/files/f/documents/6/b/116789.pdf>.

⁵¹ Law on International and Temporary Protection, 2018, Full title: Law on International and Temporary Protection (Закон за меѓународна и привремена заштита), *Official Gazette of the Republic of Macedonia*, No. 64/2018.

⁵² The ADL does not deal with the issue of relevance of the previous opinions or general recommendations of the CPAD for the new CPPD. This is not problematic considering that (1) the opinions of the CPAD were not

CJEU Achbita C-157/15, para 28. 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.⁵³

c) Disability

While the ADL does not define disability, it defines persons with disabilities in Article 4(1(3)) as 'any person with a long-term physical, intellectual, mental or sensory disability which, in interaction with various social barriers, may obstruct his/her full and effective participation in society on equal terms with everyone else' (Article 4(1(3))). This definition is based on the CRPD. This definition has been transposed in the Law on Protection of Patients' Rights (Article 4(2)) and is used in the new Law on Social Protection (Article 4(1-5)).

The Law on Protection of Children⁵⁴ uses a medical approach definition, enumerating forms of disabilities. Article 33 of this Law considers as children with disabilities children with physical disabilities, intellectual disabilities, chronic illness, sight impairment, hearing impairment, speech impairment, autism and combined forms of disabilities. This Law prohibits discrimination (Articles 12(1), 13-15) and harassment (Article 12(2)) of children. It defines as a child any person up to the age of 18 and any person with disabilities up to the age of 26.

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.⁵⁵ A 2020 analysis of the harmonisation of the national legislation focused on 12 laws confirmed and updated these findings.⁵⁶

d) Age

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.⁵⁷

e) Sexual orientation

The national law and case law do not define 'sexual orientation'.

legally binding, and nor are the CPPD's opinions, and (2) the CPAD did not have an express competence to issue general recommendations under the 2010 ADL.

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

⁵⁴ Law on the Protection of Children, 2013. Full title: Law on the Protection of Children (*Закон за заштита на децата*), *Official Gazette of the Republic of Macedonia*, Nos. 23/2013, 12/2014, 44/2014, 144/2014, 10/2015, 25/2015, 150/2015, 192/2015, 27/2016, 163/2017, and *Official Gazette of the Republic of North Macedonia*, Nos. 104/2019, 146/2019, 275/2019, 311/2020, 294/2021.

⁵⁵ 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.

⁵⁶ Scullion, G. and Kotevska, B., 'Harmonization of the national legislation in North Macedonia with the Law on the Prevention and Protection against Discrimination', 2021, MLSP and CoE HFII, pp. 6-7.

⁵⁷ CPAD (2018), Case No. 08-34, *Macedonian Helsinki Committee v Divajn Zoran DOOEL export-import Skopje*, 8 March 2018.

2.1.2 Multiple discrimination

In North Macedonia, multiple discrimination is prohibited by law.

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

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

In North Macedonia, there is no court case law dealing with multiple discrimination. The current equality body and the former one are the only institutions that have been reporting multiple discrimination cases. In 2021, the CPPD received 55 cases (32.93 % of its annual case load) in which claimants claimed discrimination on two or more grounds, and the CPPD found discrimination on more than two grounds in 16 of these cases.⁵⁸ Of these 16 cases, three were on intersectional discrimination, and in all three, the discriminated persons were Roma. However, the way in which intersectional discrimination was engaged with in the three cases was unsatisfactory. Namely, the core of intersectional discrimination, the synergistic effect and its value – pointing out wider power relations at play – seems to have been either not identified or not well elaborated on in the CPPD opinions. The CPPD dealt best with intersectional discrimination in a case in which a Roma woman, a mother, was expelled violently from a bus by the driver in Skopje with her two minor children, one of whom was a child with disabilities (used a wheelchair).⁵⁹ The driver of the bus – a public bus operated by the public enterprise JSP - yelled at them while throwing them out, including using a racial slur to address them. The CPPD found intersectional discrimination.⁶⁰ Regrettably, however, the CPPD did not comment on the particular way in which a synergistic effect had arisen in the case of the Roma child with a disability in this specific instance nor what the wider social implications of the case were. It also did not expressly identify an intersectional aspect in the position of the Roma mother. In addition, in the opinion and the accompanying recommendation to the discriminator, there was no engagement with the fact that the driver's action was actually a reaction to the fact that other passengers were pushing the Roma mother and her two children around the bus. In another case, no synergistic effect was identified but the CPPD nevertheless found intersectional discrimination. This was a case of discrimination in access to services on the grounds of ethnic affiliation, belonging to a marginalised group, societal status, and social status in a case in which a group of Roma were denied entry to a café bar.⁶¹ However, the CPPD did not explain where it identified a synergistic effect; it simply reiterated the definition of intersectional discrimination from the law. Similarly, in a case in which a group of Roma were denied entry to a pool, the CPPD found intersectional discrimination on grounds of race, colour of skin, social origin, ethnic belonging and belonging to a marginalised group, but did not engage with the interaction of the

⁵⁸ CPPD (2022), *Annual Report for 2021*, pp 20, 26.

⁵⁹ The CPPD opinion states that one of the children was using a wheelchair, but the information that the author acquired from the CSO which brought the case to the CPPD states that it was a child in a stroller.

⁶⁰ CPPD, No.0801-136 (01.09.2021).

⁶¹ CPPD, No.0801-19 (26.07.2021).

discrimination grounds and missed the opportunity to discuss the wider social origin and implications of the case, including the power relations at play, in the specific cases.⁶²

It is also worth mentioning that cases of multiple discrimination from North Macedonia have been brought before international bodies. The ERRC successfully argued the case of six pregnant Roma women in front of the UN Committee on the Elimination of Discrimination against Women (CEDAW) for subjecting them to eviction during pregnancy. CEDAW found intersectional discrimination and identified a clear obligation of the state to provide suitable, secure accommodation and make reparations to the Roma women.⁶³

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 prohibited in national law. Article 4(1(9)) defines discrimination by perception as 'any distinction, exclusion or restriction of a person due to a presumed belonging to a particular group upon any ground of discrimination'. There is no case law yet regarding this form.

b) Discrimination by association

In North Macedonia, discrimination based on association with people with particular characteristics is prohibited in national law. Article 4(1(8)) defines it as 'any distinction, exclusion or restriction of a person due to being associated with another person or group upon any ground of discrimination'. There is no case law yet regarding this form. The case of the Roma mother, discussed in section 2.1.2. above, was a missed opportunity by the CPPD to discuss discrimination by association for the mother and her child with a disability.

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

a) Prohibition and definition of direct discrimination

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

Before the adoption of the 2010 Anti-Discrimination Law, direct discrimination was defined in several other laws as well. The Law on Labour Relations (Article 7(2)) replicates fully the definition from the directives. The Law on the Protection of Children prohibits (Article 13(1)) and defines (Article 14(1)) direct discrimination. The definition was amended in 2019 and is now in line with the directives. According to this definition, direct discrimination is when, 'the claimant and the beneficiary of child protection is, has been, or would be treated less favourably than another person or group in an actual or a probable comparable or similar situation, based upon a ground of discrimination'.⁶⁴

⁶² CPPD, No.0801-147 (30.08.2021).

⁶³ ERRC, 'North Macedonia ordered to pay compensation for evicting pregnant Roma', press release, 23 March 2020, <http://www.errc.org/press-releases/north-macedonia-ordered-to-pay-compensation-for-evicting-pregnant-roma>.

⁶⁴ Law on the Protection of Children, 2013, Article 14(1).

b) Justification of direct discrimination

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

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

a) Prohibition and definition of indirect discrimination

In North Macedonia, indirect discrimination is prohibited in national law. It is defined. The Anti-Discrimination Law fully replicates the definition of indirect discrimination from the directives. Indirect discrimination on any protected ground is taken to occur when 'an apparently neutral provision, criterion, programme or practice puts a person or a group in a less favourable position in relation to a discrimination ground compared with other persons or groups of persons, unless it stems from a legitimate objective, and the means for achieving that objective are proportionate, that is appropriate and necessary' (Article 8(2)).

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

b) Justification test for indirect discrimination

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

In addition, the definition in the Law on the Protection of Children (Article 14(2))⁶⁵ replicates the definition from the Anti-Discrimination Law and thus also the justification test for indirect discrimination. The justification test in the definition of indirect discrimination included in the Law on Labour Relations (Article 7(3))⁶⁶ stipulates that the differentiation is justified if it is based on criteria and practices objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

2.3.1 Statistical evidence

a) Legal framework

In North Macedonia, there is legislation regulating the collection of personal data. The main legislation in this area is the Law on State Statistics.⁶⁷ Data are collected covering all five

⁶⁵ Law on the Protection of Children, 2013, Article 14(2).

⁶⁶ Labour Law, 2005. Article 7(3).

⁶⁷ Law on State Statistics (1997). Full title: Law on State Statistics (*Закон за државната статистика*), *Official Gazette of the Republic of Macedonia*, Nos. 54/1997; 21/2007; 51/2011; 104/2013; 42/2014, 192/2015, 27/2016, 83/2018, 220/2018, 31/2020.

grounds except for sexual orientation.⁶⁸ The data are anonymous and therefore the collection of such data does not conflict with the Law on Protection of Personal Data.⁶⁹

The ADL foresees an obligation for data collection disaggregated by discrimination grounds for the 'purposes of promotion and advancement of equality and prevention of discrimination' for all data controllers and data processors (Article 3(4)). Article 21, which regulates the competences of the CPAD, foresees an obligation for this equality body to 'collect and publish statistical and other data and to create databases in relation to discrimination' (Article 21(1)(24)). The CPPD has included a section on its website called 'Analytics'; it contains two parts, one of which is a search option whereby one can search by date, type of opinion (which is basically the form of discrimination and whether the CPPD found or did not find discrimination), field of discrimination and ground of discrimination.⁷⁰

The Ministry of Information Society and Administration collects data on civil servants in the form of a Register of Public Sector Employees.⁷¹ 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.⁷² 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 One Society for All Strategy⁷³ and the 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

⁶⁸ This means that, for state statistics purposes, no data is to be collected on sexual orientation.

⁶⁹ Law on Protection of Personal Data, 2020. Full title: Law on Protection of Personal Data (*Закон за заштита на лични податоци*), *Official Gazette of the Republic of North Macedonia*, Nos. 42/2020, 294/2001.

⁷⁰ CPPD website: <https://kszd.mk/аналитика/број-на-мислења/>.

⁷¹ Law on Administrative Servants (2014). Full title: Law on Administrative Servants (*Закон за административни службеници*), *Official Gazette of the Republic of Macedonia*, Nos. 27/2014, 199/2014, 48/2015, 154/2015, 5/2016, 142/2016, 11/2018 and *Official Gazette of the Republic of North Macedonia*, Nos. 275/2019, 14/2020, 215/2021; Constitutional Court Decisions: U.no. 163/2014 (27 December 2016), U.br.121/2015 (01 February 2017), Article 7(1)-(9).

⁷² Before the adoption of the 2019 Anti-Discrimination Law they were not explicitly admissible as evidence, since the law was silent on the issue.

⁷³ Strategy for Development of the 'One Society For All' Concept and Interculturalism, available at: https://vlada.mk/sites/default/files/dokumenti/strategii/strategy_one_society_interculturalism_en.doc.

⁷⁴ See *Стратегија за Ромите 2014-2020 (Strategy on Roma 2014-2020)*, available at: <http://www.mtsp.gov.mk/content/pdf/strategii/Strategija%20za%20Romite%20vo%20RM%202014-2020.pdf>. Outside the cut-off date for this report, a new strategy on Roma was adopted: the *Strategy on Inclusion of Roma 2022-2030*.

⁷⁵ See *Национална стратегија за изедначување на правата на лицата со инвалидност 2010-2018 – ревидирана (National Strategy on Equalisation of the Rights of Persons with Disabilities)*, available at: <http://mtsp.gov.mk/WBStorage/Files/FINALNA%20Revidirana%20Nacionalna%20Strategija.pdf>.

⁷⁶ See *Национална стратегија за стари лица 2010-2020 (National Strategy on the Elderly)*, available at: <http://mtsp.gov.mk/WBStorage/Files/Strategija%20za%20stari%20lica%20juni.pdf>.

Non-discrimination⁷⁷ 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 may be admitted under national law in order to establish indirect discrimination. The Anti-Discrimination Law explicitly allows for the use of statistical evidence in discrimination cases in Article 38. In addition, Article 206 of the Law on Civil Procedure⁸⁰ states that all facts that are important for reaching a decision can be used as evidence, but that it is up to the courts to decide which facts need to be proven and which do not. Furthermore, the text of the law's subsequent articles focuses on specific forms of evidence, but statistical evidence is not mentioned. Statistical evidence as such is not mentioned elsewhere in national law. The Law on State Statistics⁸¹ 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.

b) Practice

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

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In North Macedonia, harassment is prohibited in national law. It is defined under the Anti-Discrimination Law. Harassment is 'unwanted behaviour towards a person or a group of persons on discriminatory grounds, the purpose or consequence of which is to undermine the dignity or create a threatening, hostile, demeaning, or fear-provoking environment, approach or practice' (Article 10).⁸² The personal and material scope match the scope of the ADL – they apply to both natural and legal persons, on all discrimination grounds, in the public and private sphere and in all fields of the life of society. The definition complies with the directives.

Harassment does not constitute a criminal offence yet.⁸³ It is part of the provisions of the Law on Labour Relations, which deal with harassment, sexual harassment and mobbing.

⁷⁷ See *Национална стратегија за еднаквост и недискриминација 2016-2020 (National Strategy on Equality and Non-discrimination)*, available at: http://www.mtsp.gov.mk/content/pdf/dokumenti/7.7_Strategija%20za%20ednakvost%20i%20nediskriminacija.pdf.

⁷⁸ See *Национална стратегија за еднаквост и недискриминација по основ на етничка припадност, возраст, ментална и телесна попреченост и пол (National Strategy on Equal Opportunities and Non-Discrimination on Grounds of Ethnicity, Age, Mental and Physical Disability)*, available at: http://mtsp.gov.mk/WBStorage/Files/strategija_ednakvost.doc.

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

⁸⁰ Law on Civil Procedure, 2005. Full title: Law on Civil Procedure (*Закон за парничната постапка*), *Official Gazette of the Republic of Macedonia*, Nos. 79/2005, 110/2008, 83/2009, 116/2010, 124/2015.

⁸¹ Law on State Statistics, 1997.

⁸² Paragraph 1 of Article 10 covers harassment and paragraph 2 covers sexual harassment.

⁸³ At the time of writing of this report, a legislative proposal for amending the Criminal Code is in Parliament. The aim of these amendments is to align the national legislation with the Istanbul Convention. One of the

The definition of harassment is in line with the directives (Article 9, 9-a), as is its personal scope (Article 6). This definition states that harassment is unwanted conduct related to the protected grounds with the purpose or effect of violating the dignity of the applicant for employment or the worker, resulting in the creation of an intimidating, hostile, humiliating or offensive environment (Article 9(3)). Sexual harassment is any verbal, non-verbal or physical conduct of a sexual character with the purpose or effect of violating the dignity of the job applicant or worker, or of creating an intimidating, hostile, humiliating or offensive environment (Article 9(4)). The law defines psychological harassment or so-called 'mobbing' as any negative and repetitive (for at least a six-month period) conduct with the purpose or effect of violating the dignity of the job applicant or worker, or of creating an intimidating, hostile, humiliating or offensive environment and which has the ultimate objective of ending the working relationship or forcing the victim to leave their job (Article 9-a(2)).

In North Macedonia, harassment explicitly constitutes a form of discrimination in the ADL (Article 10) and in the Law on Labour Relations (Article 9).

It is important to note that in 2013 a special Law on Protection against Harassment in the Workplace⁸⁴ 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'.⁸⁵ The Ministry of Labour and Social Policy included in its annual report information that a working group has been drafting amendments to this Law, but no information on what the amendments will refer to has been made public.⁸⁶

b) Scope of liability for harassment

Where harassment is perpetrated by an employee, in North Macedonia the employer and/or the employee may be held liable. Who will be held liable will depend on the complaint: who the alleged victim of harassment identifies as the discriminator, as well as the details of the case (most notably whether the individual has decided to first seek protection from the employer or whether he/she has decided to go directly to a court/quasi-judicial body). It is also worth noting that, under the provision on psychological harassment or 'mobbing' in the Law on Labour Relations (Article 9-a), a group of people/employees can be held liable for harassment as well. The Anti-Discrimination Law does not specify in any more detail how liability is established beyond being identified by the alleged victim themselves. Under the law, liability can be shared between employer and employee(s). There is, however, no established practice related to this. Harassment can also be subject to misdemeanour law.

amendments proposes introducing harassment as a criminal offence. It remains to be seen if and in what form this proposal will pass.

⁸⁴ 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*, Nos. 79/2013, 147/2015, *Official Gazette of the Republic of North Macedonia*, No. 103/2021.

⁸⁵ Law on Protection against Harassment in the Workplace (2013), Article 8(3).

⁸⁶ MLSP (2022), *Report on the Implementation of the Annual Working Plan of the Ministry of Labour and Social Policy for the period 1-12.2021* (*Извештај за спроведување на Годишниот план за работа на Министерството за труд и социјална политика за периодот 1-12.2021 година*), p. 80.

The Law on Protection against Harassment in the Workplace applies to the field of employment. The liability scope is the same as that contained in the Law on Labour Relations.⁸⁷

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

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

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

The Criminal Code also contains a prohibition on instructions to discriminate. Although its articles do not include the specific term 'instruction', they do speak of instigating or stimulating discrimination, notably when fuelling national, racial or religious hatred, discord or intolerance, which will be considered a criminal offence (Article 319), or when spreading racist and xenophobic materials through computer systems (Article 394-d). The law does not make specific reference to the liability of legal persons for such actions. However, given the general clause that under the law a person is deemed to be any natural or legal person, one could argue that this is a possibility.

In 2021, the CPPD found 'multiple harassment and instruction, encouragement or incitement of discrimination on grounds of sex, gender, belonging to a marginalised group, family or marital status, and sexual orientation on social media'. The perpetrator was a natural person, who was found to have committed 'instruction, encouragement or incitement of discrimination' by sharing materials promoting racism and xenophobia on social media (Facebook) accompanied by a post with the text 'Radical feminism creates homosexuals from children; for this reason, parental rights should be taken from these women.' The CPPD recommended that they delete the post and they publish a public apology.⁸⁸

In North Macedonia, instructions explicitly constitute a form of discrimination.⁸⁹

b) Scope of liability for instructions to discriminate

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

The 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

⁸⁷ Law on Protection against Harassment in the Workplace (2013), Article 8(3).

⁸⁸ CPPD, No.0801-468, 17 December 2021.

⁸⁹ Anti-Discrimination Law, 2020, Article 9.

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 persons with disabilities in the area of employment

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

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

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

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

The ADL does not define what constitutes a disproportionate burden. It is not possible to know whether state financial assistance will be taken into account when assessing whether there is a disproportionate burden.

The Law on Labour Relations does not specifically mention reasonable accommodation for persons with disabilities. The Law on Employment of Persons with Disabilities⁹⁰ also does not contain a definition of reasonable accommodation, but it contains references to accommodation-related measures for improving employment conditions and the conditions for the execution of work duties of persons 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 persons 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 persons with disabilities to work (Article 5). The way this obligation is formulated suggests that it goes beyond a general obligation to provide accessible workplaces.

⁹⁰ 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 the Republic of Macedonia*, Nos. 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, *Official Gazette of the Republic of North Macedonia*, No. 103/2021. Constitutional Court Decisions: U.no. 80-2008, U.no. 162-2008, U.no. 98-2011, U.no. 57-2013.

b) Case law

There are no legally established specific criteria to assess issues in relation to reasonable accommodation such as the extent of the duty, what is a disproportionate burden, etc. Further guidance on how to interpret 'reasonable accommodation' has not been provided in case-law.

c) Definition of disability and non-discrimination protection

The definition of disability for the purposes of claiming reasonable accommodation is no different from that for claiming protection from non-discrimination in general. As mentioned in Section 2.1.1.(c) of this report, while the Anti-Discrimination Law does not define disability, it defines persons with disabilities in Article 4(1(3)) as 'any person with a long-term physical, intellectual, mental or sensory disability which, in interaction with various social barriers, may obstruct his/her full and effective participation in society on equal terms with everyone else'.

The Law on Employment of Persons with Disabilities does not include a definition of disability or criteria for entitlement to accommodation. It also does not refer to the ADL.

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

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

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

In North Macedonia, there is no duty to provide reasonable accommodation for persons with disabilities outside the employment field. There is, however, a general accessibility duty, including regarding infrastructure and services which, if complied with, can reduce, but not eliminate, the need for individual reasonable accommodation.

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

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

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

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

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

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

In North Macedonia, there are no residence or citizenship/nationality requirements for protection under the relevant national laws transposing the directives. On provisions of relevance for non-discrimination, the Constitution sets a requirement of citizenship in order for a person to enjoy the protection of rights under the Constitution, including protection against discrimination. Stricter conditions with regards to access to employment and acquiring social protection apply to short-term residents without Macedonian citizenship and to Macedonian citizens without permanent residence in the country.⁹¹ In other areas, including self-employment, access to training and membership of workers' organisations, there is no legal restriction and there are no reports of less favourable treatment. With regard to the Constitution, the approach implemented in practice gives foreign citizens the opportunity to participate in the social and economic life of the country. No such requirement exists under the Anti-Discrimination Law. Under the ADL, people with an irregular status would also be protected. The country is a candidate for EU membership. So far, the level of alignment with EU law with regard to the concept of 'third-country nationals' is not very advanced.

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

a) Protection against discrimination

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

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

b) Liability for discrimination

In North Macedonia, the personal scope of the Anti-Discrimination Law covers natural and legal persons for the purpose of liability for discrimination. The ADL does not distinguish between natural and legal persons for the purposes of liability for discrimination. Under the ADL (Article 3(1)), the law is applied to both natural and legal persons, as further confirmed by Article 4(1(2)), which defines person as both a natural and a legal person. Fines for misdemeanours are divided between fines for natural persons and fines for legal persons and vary in amount (Articles 41 to 43).

⁹¹ Law on Social Protection (2019). Full title: Law on Social Protection (*Закон за социјалната заштита*), *Official Gazette of the Republic of North Macedonia*, Nos. 104/2019, 146/2019, 275/2019, 302/2020, 311/2020, 163/2021, 294/2021, Article 13.

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

a) Protection against discrimination

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

b) Liability for discrimination

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

3.2 Material scope

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

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

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

The general non-discrimination article in the Law on Labour Relations⁹² 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.⁹³ However, in relation to access, both in that provision and the law overall, the protection against discrimination for persons 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.⁹⁴ 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.⁹⁵

⁹² Law on Labour Relations (2005), Article 6.

⁹³ Law on Labour Relations (2005), Article 24.

⁹⁴ Law on Labour Relations (2005), Article 25.

⁹⁵ Law on Labour Relations (2005), Article 8.

Conditions for access to employment and criteria for various professional activities in the public sector are mostly determined by specialised laws.⁹⁶ 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.⁹⁷ 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)).⁹⁸

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.

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 - the State Labour Inspectorate (DIT).⁹⁹ In practice, however, the DIT does not seem to process discrimination claims or to identify discrimination elements in labour disputes where these are present, overall demonstrating that it does not see itself as an institution with competences in discrimination claims, as confirmed by the questionnaire responses which the Network against Discrimination (a network of NGOs that provide free legal aid) collected from DIT employees as part of a recent research project.¹⁰⁰

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

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

Article 3(2) of the Anti-Discrimination Law covers the area of employment and labour relations, thus it is to be considered to include pay and dismissals (it applies to both public and private sector).

Aside from this law, the Law on Labour Relations contains a provision stating that for equal work, workers should be equally paid. The only category explicitly mentioned is women,¹⁰¹ 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

⁹⁶ 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.

⁹⁷ Law on Administrative Servants (2014).

⁹⁸ Law on Administrative Servants (2014), Article 31(1).

⁹⁹ Law on Labour Relations (2005), Article 256.

¹⁰⁰ Petkovska, N. (2022), 'State Labour Inspectorate as a Protector of Workers against Discrimination' (Државниот инспекторат за труд како заштитник на работниците од дискриминација), Network against Discrimination.

¹⁰¹ Law on Labour Relations (2005), Article 108.

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.¹⁰² No case-law on this new law exists.

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

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

Article 3(2) of the Anti-Discrimination Law covers the area of employment and labour relations, and includes education, thus it can also be interpreted to include access to guidance and training, as per the directives.

Though not expressly using the wording of Article 3(1)(b) of Directive 2000/43, the prohibitions against discrimination in access to vocational guidance, professional training, continuing professional training and practical work experience are stipulated in the general prohibition on discrimination in the Law on Labour Relations¹⁰³ and in laws on different stages of education. National legislation gives everyone equal rights to acquire higher education and equal rights to lifelong learning.¹⁰⁴

According to the Law on Higher Education,¹⁰⁵ citizens of the country are entitled to education at higher educational institutions in the country on equal terms. The 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.¹⁰⁶

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).¹⁰⁷

¹⁰² Law on Administrative Servants (2014), Articles 85 to 97.

¹⁰³ Law on Labour Relations, 2005, Article 7.

¹⁰⁴ Law on Higher Education, 2018. Full title: Law on Higher Education (*Закон за високото образование*), *Official Gazette of the Republic of Macedonia*, Nos. 82/2018, 154/2019. Article 3(5, 9).

¹⁰⁵ Law on Higher Education, 2018, Article 6.

¹⁰⁶ Law on Higher Education, 2018, Article 149 (3).

¹⁰⁷ Law on Adult Education, 2008. Full title: Law on Adult Education (*Закон за образование на возрасните*), *Official Gazette of the Republic of Macedonia*, Nos. 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.

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

In North Macedonia, national legislation prohibits discrimination in relation to membership of and involvement in workers' or employers' organisations as formulated in the directives for all five grounds and for both private and public employment. Article 3(2) of the Anti-Discrimination Law covers membership of and activity in unions, political parties, associations of citizens and foundations and other organisations based on membership.

The Law on Labour Relations only provides for the freedom of workers and employers to establish and participate or not in the work of such associations.¹⁰⁸ There are no special anti-discrimination provisions related to the grounds of the directives; the general anti-discrimination provision may apply (Article 6). 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.

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

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

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

The Anti-Discrimination Law provides for prohibition of discrimination in social security (including social protection, pension insurance and health protection) (Article 3(2)). The provision on the protected grounds is open-ended and explicitly lists racial and ethnic origin, disability, belief, age and sexual orientation.

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

¹⁰⁸ Law on Labour Relations, 2005, Articles 183, 184, 185, 198.

¹⁰⁹ Law on Social Protection, 2019, Article 16.

¹¹⁰ Law on Social Protection, 2019, Article 350.

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'¹¹¹ or physical disability.¹¹² It does not include sexual orientation as one of the protected grounds, but it could be included depending on judicial interpretation (there have been no cases yet). This law will need to be aligned with the ADL in the next two years, which will remove the doubt as to the inclusion of sexual orientation as it will be clearly included within the scope of protection. 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'.¹¹³

The Law on the Protection of Children also has articles on discrimination.¹¹⁴ In addition to definitions of direct and indirect discrimination, specific measures are included for the protection of children and their parents or guardians when applying for social care. However, the procedure is so complicated that it is very unlikely that these articles will be used in practice (especially because the whole procedure should be carried out by the potential victims without any institutional help).

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

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

3.2.6 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 persons with disabilities and ensures that their involvement in the life of society is possible.¹¹⁵

Social advantages are stipulated under the Law on Social Protection. This law includes equal treatment and non-discrimination as a founding principle for the provision of social protection (Article 16).¹¹⁶ All rights included in this law are to be provided based on equal treatment. All discrimination is prohibited in relation to an open-ended list of discrimination

¹¹¹ Includes intellectual and psychosocial disability.

¹¹² Law on Health Protection, 2012. Full title: Law on Health Protection (*Закон за здравствената заштита*), *Official Gazette of the Republic of Macedonia*, Nos. 43/2012, 145/2012, 87/2013, 164/2013, 39/2014, 43/2014, 132/2014, 188/2014, 10/2015, 61/2015, 154/2015, 192/2015, 17/2016, 37/2016, 20/2019 and *Official Gazette of the Republic of North Macedonia*, Nos. 101/2019, 153/2019, 180/2019, 275/2019, 77/2021, 122/2021. Constitutional Court Decisions: U.no. 59/2012, U.no. 69/2012, U.no. 101/2014.

¹¹³ Law on Health Insurance, 2000. Full title: Law on Health Insurance (*Закон за здравственото осигурување*), *Official Gazette of the Republic of Macedonia*, Nos. 25/2000, 34/2000, 96/2000, 50/2001, 11/2002, 31/2003, 84/2005, 37/2006, 18/2007, 36/2007, 82/2008, 98/2008, 6/2009, 67/2009, 50/2010, 156/2010, 53/2011, 26/2012, 16/2013, 91/2013, 187/2013, 43/2014, 44/2014, 97/2014, 112/2014, 113/2014, 188/2014, 20/2015, 61/2015, 98/2015, 129/2015, 150/2015, 154/2015, 192/2015, 217/2015, 27/2016, 37/2016, 120/2016, 142/2016, 171/2017 and *Official Gazette of the Republic of North Macedonia*, Nos. 275/2019, 77/2021, 285/2021; 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.

¹¹⁴ Law on the Protection of Children, 2013.

¹¹⁵ Constitution of the Republic of North Macedonia, 1991 and subsequent amendments, Article 35.

¹¹⁶ Law on Social Protection, 2019, Article 16.

grounds. This list includes as explicitly mentioned discrimination grounds the list from the new Anti-Discrimination Law. Thus, the personal scope of protection contained in the new Law on Social Protection includes racial and ethnic origin, disability, belief, age and sexual orientation (Article 16(2)). According to the Law on Social Protection, the protection against discrimination is provided in line with the provisions of the new Anti-Discrimination Law (Article 16(3)). This means that the protection applies in both the private and the public sectors, and for both natural and legal persons, as well as that all other provisions of the ADL apply. Because of the open material scope of the Anti-Discrimination Law (Article 3(2)), social advantages fall within this protection and no relevant exceptions are foreseen.

3.2.7 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 (Article 3), at all levels and in all forms, both private and public. All directive grounds are explicitly listed in the provision on protected grounds (Article 5). Also of relevance is Article 12 of the ADL which defines segregation as 'the physical setting apart of a person or a group of persons on discriminatory grounds without a legitimate or objectively justified purpose'.

Aside from the Anti-Discrimination Law (Article 3), laws that regulate primary¹¹⁷ and secondary¹¹⁸ education also prohibit discrimination. Primary and secondary education is compulsory in the country. The Law on Primary Education includes disability as a ground for discrimination (Article 5(1)). It also includes an article on inclusive education which foresees that inclusive education includes 'changes and adjustments in the curriculum, access, structures and strategies for pupils with disabilities, with a common vision and a conviction that the country has an obligation to secure education for all children' (Article 11(3)). It also replicates the provisions on reasonable accommodation and on adjustment of infrastructure and services from the Anti-Discrimination Law (Article 11(6 and 7)).

The Law on Higher Education foresees prohibition of discrimination in the student selection process on all of the grounds contained in the directives,¹¹⁹ including an explicit prohibition of discrimination on the ground of disability.¹²⁰ 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,¹²¹ that students with disabilities should be exempted from payment of tuition fees,¹²² and that they can be awarded other benefits by the university (without further stating what these might be).¹²³ Any curriculum which is to be especially

¹¹⁷ Law on Primary Education, 2019. Full title: Law on Primary Education (*Закон за основното образование*), *Official Gazette of the Republic of North Macedonia*, Nos. 161/2019, 229/2020. Article 5.

¹¹⁸ Law on Secondary Education, 1995. Full title: Law on Secondary Education (*Закон за средното образование*), *Official Gazette of the 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 and *Official Gazette of the Republic of North Macedonia*, No. 229/2020, 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.

¹¹⁹ Law on Higher Education, 2018, Article 149(3).

¹²⁰ Law on Higher Education, 2018, Article 149(3).

¹²¹ Law on Higher Education, 2018, Article 27(4).

¹²² Law on Higher Education, 2018, Article 128(1).

¹²³ Law on Higher Education, 2018, Article 150.

developed for students with disabilities is developed by the Bureau for Development of Education.¹²⁴

The segregation of children with disabilities, rather than their inclusion in mainstream schools, continues, but the implementation of the 2019 Law on Primary Education is starting to show results. First, several bylaws needed to implement the law were adopted: the Decision on regional planning of cooperation among schools with a resource centre or centre for support; a Rulebook on the grading of pupils with disabilities; and a Rulebook on the procedure for application, selection and appointment of an educational/personal assistant. Secondly, the former 'special schools' are now in the process of being designated as 'schools with resource centres' (Articles 17, 179), and the former 'special classes' are being transformed into schools with centres for support of pupils with disabilities (Articles 18, 179). The school year 2022/2023 should be the last year that 'special primary schools' for pupils with disabilities will exist as such. Thirdly, the Ministry of Education has signed contracts with 500 education assistants.¹²⁵ According to the Law on Primary Education, pupils with disabilities are provided with personal and education assistants who are to support them in studying (Article 19). Fourthly, integration teams are already being formed. Training for inclusion teams in 40 schools was organised by the European Union-funded project 'Be IN, be inclusive, be included' and implemented by the NGO Handimak together with the Ministry of Education.¹²⁶ The State Education Inspectorate has prepared a checklist for the inspections regarding inclusion of pupils with disabilities.¹²⁷ As per the Law on Primary Education, integration teams are tasked with conceptualising and implementing inclusion activities in school: one at the school level (school inclusion team) and one at the individual level (pupil inclusion team) (Article 16). The school inclusion team should be composed of two teachers from among the employees in the school, two parents/guardians, the school's pedagogist or psychologist or social worker, the special educator and rehabilitator, and the school's director. The individual pupil inclusion team should be composed of two teachers, the parent/guardian, the school's pedagogist or psychologist or social worker, and the special educator and rehabilitator. If needed, the pupil, or other teachers or associates can also participate in the work of the team. In addition, there are personal assistants. In 2021, 49 new special educators and rehabilitators were employed to support pupils with disabilities and the teaching staff.¹²⁸ Fifthly, funds of MKD 2.5 million (EUR 40 000) have been allocated for adjustments to infrastructure.¹²⁹ In addition, with support from the EU delegation in the country, four primary schools, four secondary schools and four high education facilities will be refurbished in order to make them accessible for pupils and students with disabilities.¹³⁰ The Law on Primary Education envisaged adjustments of the infrastructure as part of the efforts which should be undertaken towards inclusive education (Article 11).

The implementation is not without problems, however. These are noted in the 2021 annual report of the Ombudsperson. Namely, the institution notes that 266 requests for education assistants were not approved. Of the 26 requests for personal assistants filed, only nine were approved. The reason behind the denial of requests for personal assistants, the

¹²⁴ Law on Higher Education, 2018, Article 30.

¹²⁵ Ministry of Education and Science, Strategy Plan 2022-2024 (Стратешки план 2022-2024), <https://mon.gov.mk/stored/document/Strateshki%20plan%20%202022-2024.pdf>, 24.

¹²⁶ See Hendimak, <https://www.stepbystep.org.mk/en/novosti-i-nastani/povik-za-angazhiranje-na-4-obuchuvachi-za-uchilishni-inkluzivni-timovi>.

¹²⁷ State Education Inspectorate, Checklist - Inclusivity (Листа за проверка – инклузивност), <https://dip.gov.mk/wp-content/uploads/2021/09/inkluzivnost-1.docx>.

¹²⁸ Ministry of Education and Science, Strategy Plan 2022-2024 (Стратешки план 2022-2024) <https://mon.gov.mk/stored/document/Strateshki%20plan%20%202022-2024.pdf>, p. 24.

¹²⁹ Ministry of Education and Science, Strategy Plan 2022-2024 (Стратешки план 2022-2024) <https://mon.gov.mk/stored/document/Strateshki%20plan%20%202022-2024.pdf>, p. 24.

¹³⁰ Ministry of Education and Science, Strategy Plan 2022-2024 (Стратешки план 2022-2024) <https://mon.gov.mk/stored/document/Strateshki%20plan%20%202022-2024.pdf>, p. 10.

Ombudsperson notes, is the lack of available certified personal assistants.¹³¹ There were also some negative reactions among the population, albeit very isolated ones.¹³²

As for secondary education, there are still separate schools for children with 'special needs',¹³³ meaning that the segregation of students with disabilities is still institutionalised. Secondary school students with 'special educational needs' are educated under adjusted programmes for job training.¹³⁴ 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. A new law on secondary education is being drafted, which should start a process of resolution of the segregation for pupils with disabilities at this level as well.

In addition, discrimination in education in the national context is prohibited as a field in the private and public sectors, and on all grounds equally (see section 2.1.1.), which means that the scope of protection goes beyond that established in the directives. This has been very beneficial at the national level for triggering a public reform in removing discriminatory content from textbooks at all levels of education and the preparation of a new Law on Textbooks and other Didactic Materials in Primary and Secondary Education. A draft was put forward for public discussion in 2021, after which it was submitted to the Parliament for adoption.¹³⁵ The draft law includes an article banning any form of discrimination on any ground in all teaching, didactic and other materials in primary and secondary education. Part of the process leading up to this policy change involved a number of cases before the former equality body, the CPAD (albeit with no unified approach in practice¹³⁶). The CPPD continues to receive cases relating to discrimination in textbooks and materials, most recently on the grounds of sexual orientation and gender identity in a secondary education textbook on sociology.¹³⁷ In 2021, the CPPD found harassment on the grounds of gender, sexual orientation, gender identity, social origin and belonging to a marginalised group. It identified the authors of the textbook, the authorised peer reviewers and the Ministry of Education and Science as the discriminators, as they all contributed to the textbook being approved and distributed for use.¹³⁸ The CPPD recommended that the Ministry of Education and Science remove the textbook from use with a deadline of six months, within which the authors should revise the parts of the textbook where discriminatory content was identified. The CPPD also recommended that the Ministry not approve textbooks with content which harasses on the grounds of gender, sexual orientation, gender identity,

¹³¹ Ombudsperson of the Republic of North Macedonia (2022), *Annual Report 2021* (Годишен извештај за 2021 година), p. 16.

¹³² While outside the cut-off date for this report, one of the cases which received significant media attention is a good example of this. This case was that of a pupil in the town of Gostivar who was told by the school director that she could no longer attend the classes with the other children after parents of children in her class complained about having a pupil with disabilities in the class. Following public outrage at the exclusion of the little girl and a reaction by the state institutions, the pupil returned to study with her class. The case was first reported through the media, by: TV Klan, 'Embla in the City of Injustice and Absurdity' (Ембла во градот на неправдите и апсурдноста), <https://www.facebook.com/watch/?ref=external&v=484434239967234> (original story in Albanian published at: <http://klanmacedonia.mk/embla-ne-qytetin-e-padrejtessive-dhe-absurditetit-video/>). The CPPD opened a case on its own initiative about this incident; at the time of writing this report, a resolution was still pending.

¹³³ Law on Secondary Education, 1995, Article 43.

¹³⁴ Law on Secondary Education, 1995, Article 50.

¹³⁵ The proposal was still in parliamentary procedure by the cut-off date for this report. The text of the draft law is available at the following link: <https://www.sobranie.mk/materialdetails.nsp?materialId=dc53a25f-bb1a-4b83-b0af-1311a6a5004d>.

¹³⁶ One of the first cases dealt with by the CPAD concerned discrimination on the grounds of sexual orientation in a textbook.

¹³⁷ The textbook was approved for use by the Ministry of Education and Science in 2004 (decision no. 11-3865/1, dated 15.07.2004).

¹³⁸ CPPD, Case No.0801-172 (23.12.2021).

social origin and belonging to a marginalised group in the future, and that the authors refrain from writing and the reviewers from approving textbooks with such content.¹³⁹

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 lower rates of enrolment and segregation. Both were identified and targeted as part of the education section in the Strategy on Roma 2014-2020. But this document expired in 2020. In 2021, Romalítico, a Roma rights NGO, worked with the Ministry of Labour and Social Policy on conducting an evaluation of the strategy and drafting the new strategy. By the cut-off date for this report, the process was still ongoing. A new National Action Plan on the Protection, Promotion and Fulfilment of the Human Rights of Roma Women and Girls for 2022-2024 was finalised in December 2021 (and adopted by the Government after the cut-off date for this report, in March 2022). The overall goal of this NAP is advanced intersectional justice – equal and just access to rights, opportunities, resources and power in society – for Roma women and girls. One of the expected results, result number 2, is: 'secured conditions for acquiring and completing formal education for Roma women and girls'. The following activities are planned for obtaining this result: financial support for Roma families as an incentive for lowering drop-out rates; free transport to/from school; training for education mediators on gender sensitivity, intersectional awareness and unconscious gender bias; introducing minimum quotas for Roma women and girls in the scholarship programmes in place; an awareness-raising campaign to inform parents and Roma women and girls of scholarship opportunities; revision of the checklist of the State Education Inspectorate on pedagogical filing in order to include a category of marriages with minors; and an analysis of textbooks for identifying discriminatory content towards Roma, including through a gender perspective.¹⁴⁰

Regardless of the mandatory character of primary and secondary education, low levels of enrolment persists as an issue. Of all Roma children aged six to 18, 75 % are involved in formal education.¹⁴¹ For comparison, the general net rate of enrolment in primary education is 91 %.¹⁴² Low rates of enrolment have also been noted by the Ombudsperson.¹⁴³

Segregation of Roma pupils continues to be a burning issue. According to the 2014-2020 strategy, some parents of Roma origin intentionally enrol their children without disabilities 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.¹⁴⁴

Yet many studies published on the issue of Roma education in the country, and on segregation in particular, paint a different picture compared to the one presented in the (now expired) strategy. Studies available so far, such as the Open Society Institute (OSI)

¹³⁹ CPPD, Case No.0801-172 (23.12.2021).

¹⁴⁰ National Action Plan on the Protection, Promotion and Fulfilment of the Human Rights of Roma Women and Girls for 2022-2024, available at: https://www.mtsp.gov.mk/content/pdf/2022/NAP_zazastitapromocijaitispolnuvanje20na20cov.20prava20na20zenite20i20devoje20Romki2015.03.2022.pdf.

¹⁴¹ AECOM International Development Europe SL, *Извештај за социјалното мапирање – финален нацрт (Report from the social mapping – final draft)*, July 2019, p. 27.

¹⁴² *Strategy on Education 2018-2025 and Action Plan*, p. 10.

¹⁴³ Ombudsperson (2018), *Инклузија на Ромите по завршувањето на Декадата на Ромите – Тековна состојба и предизвици (Roma inclusion following the Roma Decade – state of affairs and challenges)*, available at: <http://ombudsman.mk/upload/documents/2018/Prezentacija-Inkluzija20Romi-Vrabotuvanje-07.11.2018.pdf>.

¹⁴⁴ *Strategy on Roma 2014-2020*, 2014.

report,¹⁴⁵ Roma Education Fund reports,¹⁴⁶ Macedonian Helsinki Committee and ERRC report,¹⁴⁷ a UNICEF 2008 situation analysis¹⁴⁸ and a 2009 segregation in education analysis,¹⁴⁹ a CPAD 2014 report,¹⁵⁰ an Institute of Human Rights REF-supported 2013 study¹⁵¹ and a Foundation Open Society Macedonia 2015 analysis,¹⁵² 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. Critical¹⁵³ 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.¹⁵⁴ The few cases that have been brought regarding segregation have all failed due to various reasons, such as blame shifting towards the parents because they enrol Roma children in classes for children with disabilities (CPAD case),¹⁵⁵ personal choice (Ombudsperson case),¹⁵⁶ or legal standing challenge (court case).¹⁵⁷ Consequently, no sanctions have been imposed in relation to segregation in schools thus far.¹⁵⁸

Most recently, the ERRC has alerted the public and the authorities to the breach of the right to education of Roma young people who have been sent to juvenile correctional institutions. Finding appalling conditions in general at the correctional facility in Ohrid, the ERRC team also found that there was no organised educational provision at the facility. The ERRC filed lawsuits against the competent institutions for discrimination on grounds of ethnicity and youth-offender status, however the case failed at both the first and second

¹⁴⁵ Open Society Institute (2007), *Equal access to quality education for Roma, Volume 2: Croatia, Macedonia, Montenegro and Slovakia*, available at:

www.opensocietyfoundations.org/sites/default/files/equal_20071218.pdf.

¹⁴⁶ Roma Education Fund (2007), *Advancing education of Roma in Macedonia*, available at:

https://www.romaeducationfund.org/wp-content/uploads/2019/05/macedonia_report.pdf.

¹⁴⁷ Referenced in this report:

[https://www.rcc.int/romaintegration2020/romadecade/decade%20implementation/4.%20civil%20society%20reports/Civil%20Society%20Monitoring%20Report%202012%20\(Former%20Yugoslav%20Republic%20of%20Macedonia.%20English%20language\).pdf](https://www.rcc.int/romaintegration2020/romadecade/decade%20implementation/4.%20civil%20society%20reports/Civil%20Society%20Monitoring%20Report%202012%20(Former%20Yugoslav%20Republic%20of%20Macedonia.%20English%20language).pdf).

¹⁴⁸ UNICEF (2008), *Children in FYR Macedonia – A situation analysis*, available at:

<https://www.unicef.org/northmacedonia/reports/situation-analysis-children>.

¹⁴⁹ UNICEF (2009), *Мултикултурализмот и меѓуетничките односи во образованието (Multiculturalism and interethnic relations in education)*, available at:

<https://www.unicef.org/northmacedonia/reports/multiculturalism-and-interethnic-relations-education>.

¹⁵⁰ CPAD (2014), *Segregation of Roma children in education*, available at:

http://eprints.ugd.edu.mk/16407/1/Reserach%20on%20Roma%20segregation_MK%20BAL.pdf.

¹⁵¹ Institute of Human Rights (2013), *Кршење на сидот на одбивање и сегрегација (Breaking the wall of silence)*, <https://www.ihr.org.mk/storage/app/media/Publications/diskriminacijaromi.pdf>.

¹⁵² Foundation Open Society Macedonia (FOSM) (2015), *Segregation of Roma in education in Macedonia*, Skopje.

¹⁵³ 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 of Human Rights (2013), *Кршење на сидот на одбивање и сегрегација (Breaking the wall of silence)*, available at:

<https://www.ihr.org.mk/storage/app/media/Publications/diskriminacijaromi.pdf>.

¹⁵⁴ Roma Education Fund (2007), *Advancing education of Roma in Macedonia*, available at:

https://www.romaeducationfund.org/wp-content/uploads/2019/05/macedonia_report.pdf.

¹⁵⁵ Commission for Protection against Discrimination (Комисија за заштита од дискриминација), Opinion of the Commission for Protection against Discrimination, No. 07-80 (5 September 2014).

¹⁵⁶ IRIZ (2017), 'ИРИЗ и Хелсиншки комитет со претставка до Народниот правобранител за сегрегација на ученици Роми' ('IRIZ and the Helsinki Committee file a case with the Ombudsperson on segregation of Roma students'), IRIZ website, https://mhc.org.mk/wp-content/uploads/2019/05/Mesecen_IZVESTAJ_za_covekovi_prava-Fevruari_2017.pdf.

¹⁵⁷ CSO KHAM Delcevo, Open Society Foundation Macedonia (FOSM), Macedonian Helsinki Committee (MHK), Institute for Human Rights (IHR) and European Roma Rights Centre (ERRC); 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; Court of Second Instance Skopje, Case No. ГЖ-3165/18, *Institute for Human Rights (IHR) and the European Roma Rights Centre (ERRC) v Ministry of Education, Bitola Municipality, Gjorgji Sugarev Primary School and Todor Angelevski Primary School* (13 July 2018).

¹⁵⁸ *Strategy on Roma 2014-2020*, 2014.

instance. The judgments from both courts found that the lack of education was general and could not be attributed to the fact that the boys were Roma, regardless of the fact that it was predominantly Roma young people who were sent to this facility. This clearly shows that the court did not identify the issue as one of indirect discrimination.¹⁵⁹ The ERRC filed the case again, on behalf of all children, and won in 2021 on account of the children's ethnicity and status as young offenders.¹⁶⁰

An encouraging development in relation to segregation is that the ADL now explicitly defines segregation and outlaws it. In Article 12, it defines segregation as 'the physical setting apart of a person or a group of persons on grounds of discrimination without a legitimate or objectively justified purpose'. This Article was used in court in a case which the Macedonian Helsinki Committee (MHC) brought against the Government of the Republic of North Macedonia, the Ministry of Education and Science, the Ministry of Labour and Social Policy, the Ministry of Health, the State Education Inspectorate, the Municipality of Bitola and the Municipality of Stip, claiming segregation of Roma children in education. The MHC considers that these institutions are responsible for segregation as a result of inaction: (1) lack of activities that will enable that the planning of the regional organisation of the schools is conducted in a way that will not result in segregation; (2) lack of oversight over the process of adoption and implementation of the regional organisation of the schools and the way that Roma pupils are being enrolled in schools; (3) lack of actions that will ensure that the distribution of Roma pupils inside a class does not result in segregation, and lack of sanctions in cases of discrimination; and (4) lack of actions for adopting the necessary laws and bylaws that could ensure that Roma children without disabilities are taken out from the special schools. The CPPD requested from the court to support this claim as an *amicus curiae*. The case is pending.¹⁶¹

The COVID-19 pandemic posed many challenges for the education of children in general. However, it particularly affected access to education for vulnerable children, and in particular Roma children and children with disabilities. For Roma children, the main worry was the low rates of access to internet connections and possession of computers or other electronic means for following the online education programmes, as well as general conditions for engaging with online education from the home,¹⁶² which the Government did not address, thereby leaving Roma children further exposed to exclusion if new waves of the pandemic ensue. For children with disabilities, no measures were undertaken to make the online and national television education accessible.¹⁶³ There have been no reports of cases being filed specifically by or on behalf of vulnerable children regarding education during the pandemic within the reporting period. The Ombudsperson did receive an increased number of cases in 2021 pertaining to child rights (254 cases, compared with 148 in 2020, which is an increase of 71.6 %);¹⁶⁴ however, the jump was not a result of cases pertaining to vulnerable children, but the result of a reaction by parents to an ongoing educational reform whereby textbooks were replaced/supplemented by e-textbooks.

¹⁵⁹ ERRC (2020), 'No education, no future for Romani youth offenders in North Macedonia', <http://www.errc.org/news/no-education-no-future-for-romani-youth-offenders-in-north-macedonia>.

¹⁶⁰ ERRC (2021), 'Court Rules in Favour of Roma & Non-Roma Youth Offenders Denied Education in North Macedonia', <http://www.errc.org/press-releases/court-rules-in-favour-of-roma--non-roma-youth-offenders-denied-education-in-north-macedonia>.

¹⁶¹ CPPD, Request to join court proceedings (*amicus curiae*) (Барање за вклучување во судската постапка како пријател на судот) <https://kszd.mk/wp-content/uploads/2021/12/Amicus-Curiae.pdf>.

¹⁶² Kamberi, I. (2020), *Challenges facing Roma during the crisis caused by COVID-19*, European Policy Institute, Skopje, https://epi.org.mk/wp-content/uploads/2020/06/roma_kovid-19_eng.pdf.

¹⁶³ Kotevska, B. et al (2020), *FRANET National contribution to the Fundamental Rights Report 2021 Republic of North Macedonia*, European Union Agency for Fundamental Rights, https://fra.europa.eu/sites/default/files/fra_uploads/fr2021_north_macedonia-fr2021_en.pdf, pp. 35-36.

¹⁶⁴ Ombudsperson of the Republic of North Macedonia (2022), *Annual Report 2021*, p. 31.

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

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

a) Distinction between goods and services available publicly or privately

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

The Law on Consumer Protection¹⁶⁵ 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.¹⁶⁶ There are no specific grounds for discrimination mentioned.

After the European Roma Rights Centre (ERRC), an NGO working on Roma rights including by providing free legal aid, received information that Roma people were being denied access to the open-air swimming pool, Dovledzik, in the town of Bitola they organised situation testing in order to investigate and secure evidence of the reported discriminatory practice. After the First Instance Court ruling (dated 13 November 2018) the Second Instance Court also confirmed that there was discrimination on grounds of ethnicity and skin colour in the area of access to goods and services against the individual claimants, and that damages should be awarded. The situation testing evidence was submitted and was considered sufficient for shifting the burden of proof. The defendant, the Court found, did not prove that it did not discriminate against the claimants or that there was any justification for the unequal treatment. It examined whether the defendant actually considered any rules in place at the pool for how (potential) guests should behave in order to decide whether the claimants acted in line with this. However, it found that no such rules were broken and that the claimants were denied access solely because they were Roma. All the claimants were awarded EUR 1 000 (MKD 60 000) each for the distress and emotional pain they suffered. The discriminator was prohibited from treating people unequally in access to the pool or from applying unequal treatment in similar situations in the future.¹⁶⁷

The former equality body – the CPAD – has dealt with a similar case. It related to a claim by Bairska Svetlina, an NGO dealing with Roma rights, filed on behalf of F. J., who claimed

¹⁶⁵ Law on Consumer Protection (*Закон за заштита на потрошувачите*), 2004. Full text: Law on Consumer Protection (*Закон за заштита на потрошувачите*), *Official Gazette of the Republic of Macedonia*, Nos. 38/2004, 77/2007, 103/2008, 24/2011, 164/2013, 97/2015, 152/2015, 140/2018.

¹⁶⁶ Law on Consumer Protection, 2004, Article 119.

¹⁶⁷ Second Instance Court Bitola, TCЖ-42/19 J.K., R.E., A.E., D.A., O.A., R.A. and ERRC v Megagrup DOOEL and JP Strezhevo (18.07.2019).

to have been discriminated against on the ground of ethnic affiliation and skin colour (Article 3, ADL) in access to goods and services (Article 4, ADL) because he was not allowed to enter another pool in the same town, Bitola. The CPAD decided in favour of the claimant. This case is different, however, because of the steps the equality body took after the postal delivery of the communication sent to the potential discriminator was twice returned as failed (on grounds of incomplete address). Namely, the claimant and the NGO presented their statements which showed it was probable that discrimination had occurred. This also included documentation of other instances where Roma people were not allowed to enter this particular pool. On this basis, the CPAD shifted the burden of proof and asked the legal person managing the pool to respond. After the communication from the CPAD twice failed to be delivered, the CPAD went on to conclude that there had been discrimination. It recommended to the legal person to apply equal treatment and reminded them of the laws in force which prohibit direct and indirect discrimination on a number of grounds (here the CPAD repeated Article 3).¹⁶⁸ The new equality body – the CPPD – acted similarly in a case of discrimination in access to services when a group of Roma people were refused entry in a café in Prilep. The café bar did not respond, and the CPPD found that there was discrimination and requested that the café bar issued a public apology and refrain from discriminatory actions.¹⁶⁹ However, the bar never published the apology, so the CPPD is pursuing this case further before the court for misdemeanours.¹⁷⁰ The outcome of this case is pending. Another case of discrimination against Roma in access to services was processed by the CPPD, in which it found intersectional discrimination. As discussed in more detail in section 2.1.2 of this report, the CPPD found direct intersectional discrimination in a case in which a Roma woman, a mother, was expelled violently from a bus by the driver in Skopje with her two minor children, one of whom was a child with disabilities (used a wheelchair). The driver of the bus – a public bus operated by the public enterprise JSP - yelled at them while throwing them out, including using a racial slur to address them. The CPPD found intersectional discrimination.¹⁷¹

There are already cases of discrimination in the field of health protection in both the private and the public sectors. The CEDAW committee found discrimination against Roma in access to health services in North Macedonia. In the case of *S.B. and M.B. v North Macedonia*, the Committee found intersectional discrimination against Roma women in the denial of gynaecological services to Roma women and the fact that the state did not provide protection for the women discriminated against.¹⁷² As for the private sector, the CPPD found direct discrimination on the grounds of gender identity against a trans woman by a private pharmacy. The trans woman went to the pharmacy to purchase hormonal therapy, for which she had with her a prescription form. However, the pharmacist asked for an additional document – a report from a specialist, regardless of the fact that a prescription form should be the only document needed. Although the victim was aware that this was not a requirement and pointed that out to the pharmacist, in the end she did share the specialist report with the pharmacist, but was met with even more hostile tone and with a violation of privacy (the pharmacist started reading out loud private information from the specialist report in front of the other persons present in the pharmacy). In the end, the pharmacist provided the woman with only three boxes of the prescribed therapy, although the prescription was for five boxes. The discriminator never responded to the application. The CPPD found direct discrimination and recommended that the pharmacy provide access to goods and services for trans persons, and conduct a training for its employees on discrimination on the grounds of gender identity.¹⁷³ No follow-up on the case has been reported by the CPPD.

¹⁶⁸ Case No. 08/259 - *Bairska Svetlina. v Pool 'Srce Dovledzik'*, CPAD (case on file with author; opinion not dated).

¹⁶⁹ CPPD, No.0801-19 (26.07.2021).

¹⁷⁰ CPPD (2022), *Annual Report for 2021*, p. 44.

¹⁷¹ CPPD, No.0801-136 (01.09.2021).

¹⁷² CEDAW, *S.B. and M.B. v North Macedonia*, Comm. No.143/2019 (01.12.2020).

¹⁷³ CPPD, Case No.0801-247 (13.07.2021).

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

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

Under Article 104 of the Law on Housing,¹⁷⁴ a regulatory commission was established with a mandate, *inter alia*, to prevent discrimination in the field of housing.¹⁷⁵ However, the provision does not contain any further explanations as to protective mechanisms, nor does it mention grounds of discrimination. Disability is only mentioned insofar as the manager of a building should know the standards and norms for accessibility for persons with disabilities in a residential facility (Article 19(12)) (under the same Article, this can also be taken as imposing an obligation on her/him to initiate court procedures against the builders for improper and incomplete execution of the appropriate actions).

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

3.2.9.1 Trends and patterns regarding housing segregation for Roma

In North Macedonia, there are patterns of housing segregation and discrimination against Roma people. According to a 2019 social mapping report, the conditions in which Roma live are, in general, extremely poor. While only 10 % of Roma do not own the housing where they live, only 49 % of the property is legalised. Overcrowding is present, with one household comprising on average five people and 44 % of Roma living in housing smaller than 50m². In all, 1 % report living in improvised housing and 6 % report that their housing is not built from appropriate building materials. 53 % have reported damp in their homes, 15 % do not have sufficient lighting, 3 % do not have access to electricity, 18 % do not have sewerage services, 30 % do not have toilets and 10 % have no access to drinking water inside their homes.¹⁷⁶

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.¹⁷⁷ 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,

¹⁷⁴ Law on Housing (*Закон за домување*), 2009. Full title: Law on Housing (*Закон за домување*), *Official Gazette of the Republic of Macedonia*, Nos. 99/2009, 57/2010, 36/2011, 54/2011, 13/2012, 55/2013, 163/2013, 42/2014, 199/2014, 146/2015, 31/2016, 64/2018 and *Official Gazette of the Republic of North Macedonia*, No. 302/2020; Constitutional Court Decisions: U.no. 246/2009, U.no. 14/2010.

¹⁷⁵ Law on Housing, 2009, Article 104.

¹⁷⁶ AECOM International Development Europe SL, *Report from the Social Mapping – Final Draft (Извештај за социјалното мапирање – финален нацрт)*, July 2019.

¹⁷⁷ UNICEF (2008), *Children in FYR Macedonia – A situation analysis*, available at: <https://www.unicef.org/northmacedonia/reports/situation-analysis-children>.

crime, illiteracy, juvenile delinquency, drug abuse and other social problems, all of which can negatively affect children's social development.¹⁷⁸

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,¹⁷⁹ 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.¹⁸⁰ In 2021, there were media reports of a wall being built around a Roma settlement in Gjorce Petrov in Skopje. The CPPD processed the case *ex officio*¹⁸¹ and found that the information was incorrect. The municipality was building a very low protective fence which served to direct traffic and protect the nearby houses.

In 2016, the ERRC initiated a case against the country before the ECtHR on Article 3, Article 8 and Article 14 in conjunction with Articles 3, 8 and 10, and Article 13 in conjunction with Articles 3 and 8.¹⁸² This case¹⁸³ 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 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, and the ECtHR later also found the applicants did not exhaust domestic remedies regarding the demolition of their homes, and regarding all other claims that the applicants 'have not presented any convincing arguments that *ex post facto* general tort law proceedings could not have provided them with appropriate and sufficient relief for their grievances' under the national Obligations Law; in addition, the Article 13 claims were found to be manifestly ill-founded.¹⁸⁴ However, the ERRC brought a successful case on behalf of six pregnant Roma women from this same community in relation to these same events before the UN Committee on the Elimination of Discrimination against Women (CEDAW). The Committee found intersectional discrimination and located a clear obligation on the part of the state to provide suitable, secure accommodation and reparations to the Roma women.¹⁸⁵

¹⁷⁸ UNICEF (2008), *Children in FYR Macedonia – A situation analysis*, available at: <https://www.unicef.org/northmacedonia/reports/situation-analysis-children>.

¹⁷⁹ Национален ромски центар (National Roma Centrum) *Извештај до комитетот за економски, социјални и културни права на Обединетите нации* (Report to the Committee on Economic, Social and Cultural Rights of the United Nations), available at: <http://www.nationalromacentrum.org/mk/publikacii/istrazuvanja/izvestaj-do-komitot-za-ekonomski/>; Kanal 5, 'Во дискотеката Калипсо во Берово е забранет влезот за Ромите', ('Discoteque Kalipso prohibits entrance to Roma') (Cache); A1, 'Забранет влез за Роми во новиот Аква парк' ('Entrance banned for Roma at the New Aqua Park'), 31 July 2013.

¹⁸⁰ Helsinki Committee for Human Rights of the Republic of Macedonia (2014), *Проценка на напредокот на декадата на ромите* (Assessment of the progress of the Roma Decade), available at: www.mhc.org.mk/?ItemID=3DE4E8C7F50F194281021DB76FAD9E1E.

¹⁸¹ CPPD, Case No.0801-128 (21.06.2021).

¹⁸² *ERRC in the case of Bekir and others v. Macedonia*, 8 November 2016, available at: www.errc.org/cms/upload/file/application-eviction-bekir-and-others-v-macedonia-november-2016.pdf.

¹⁸³ The status of the case still remains as 'communicated' only: *Bekir and Others v Macedonia*, HUDOC, available at: <http://hudoc.echr.coe.int/eng?i=001-167970>.

¹⁸⁴ ECtHR, *Erdjan Bekir and others v North Macedonia*, No. 46889/16, 24 June 2021, <https://hudoc.echr.coe.int/eng?i=001-211327>, paras. 6, 51, 54.

¹⁸⁵ CEDAW, *S.N. and E.R. v North Macedonia*, Comm. No.107/2016 (19.03.2020).

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

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

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

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

This is in line with the directives.

Article 8 of the Law on Labour Relations¹⁸⁶ 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.'¹⁸⁷

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.¹⁸⁸

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

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

The Law on the Legal Position of Churches, Religious Communities and Religious Groups¹⁸⁹ 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

¹⁸⁶ Law on Labour Relations, 2005.

¹⁸⁷ Law on Labour Relations, 2005, Article 8.

¹⁸⁸ 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.

¹⁸⁹ Law on Churches, 2007. Full title: Law on the Legal Position of the Church, Communities of Faith and Religious Groups (*Закон за правна положба на црква, верска задница и религиозна група*), 2007, *Official Gazette of the Republic of Macedonia*, No. 113/07, Constitutional Court Decision, U.br.104/2009.

Relations there is sufficient space for churches, religious communities and groups to be exempt in accordance with Article 4(2) of Directive 2000/78 (Article 8).

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

In North Macedonia, there are specific provisions 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,¹⁹⁰ as well as religious communities and religious groups) regulate this issue, stating that an association will cease to exist if it engages in such actions contrary to the Constitution and laws and violates other people's rights, which includes the right to non-discrimination. The Anti-Discrimination Law contains no such anti-conflict provision.

In the Law on the Legal Position of Churches, Religious Communities and Religious Groups, there are no specific articles related to such conflicts. So far there is no case law on the issue. However, the Macedonian Orthodox Church and the Islamic Religious Community very clearly expressed their opinions that sexual orientation should not be mentioned in the anti-discrimination legislation during the debate for the 2010 ADL.¹⁹¹ In addition, the end of 2010 saw an initiative on their behalf to open a cycle of constitutional changes that should, in their words, strengthen the traditional form of the family, but which are clearly intended to target homosexuals. Notably, these changes state that marriage is the union of one woman and one man, as well as inserting provisions that will limit the possibility for homosexuals to adopt children. The draft amendments to the Constitution, which entered parliamentary procedure and proposed a definition of marriage as the union of one man and one woman, as well as the mandatory registration of unmarried couples ('out-of-wedlock partnerships') defined in the same manner, were not adopted by the Parliament. Thus, this issue is, for now, closed.

Both these religious communities, joined by others, opposed the draft of the ADL that is currently in force, again because of sexual orientation, managing to delay its adoption significantly.¹⁹² Activists and allies¹⁹³ spoke out against this block in Parliament, claiming that the reason why the law was being blocked in Parliament was the letter from the religious communities. MPs also raised personal religious beliefs in the parliamentary procedure as grounds for their refusal to allow the law to pass to the next stage in Parliament. This letter was not released to the public.

¹⁹⁰ Law on CSOs, 2010. Full title: Law on Associations and Foundations (*Закон за здруженија и фондации*), 2010, Article 4, *Official Gazette of the Republic of Macedonia*, Nos. 52/2010, 135/2011, 55/2016.

¹⁹¹ *Dnevnik* newspaper, 'Ориентирани кон сексуална дискриминација' ('Oriented towards sexual discrimination') (only available in print).

¹⁹² Flash Report, 'Public Debate on a Proposal for a New Law on Anti-discrimination', 31 January 2019, <https://www.equalitylaw.eu/downloads/4814-fyr-macedonia-the-proposed-new-law-on-anti-discrimination-blocked-in-parliament-pdf-134-kb>.

¹⁹³ Civil Media, 'Андоновски: Блоката на ВМРО-ДПМНЕ и ДУИ на законот против дискриминација е скандалозна' ('Andonovski: The VMRO-DPMNE and DUI blockage of the Anti-Discrimination Law is scandalous'), 2019, available at: https://civilmedia.mk/andonovski-blokadata-na-vmro-dpmne-i-dui-na-zakonot-protiv-diskriminacija-e-skandalozna/?fbclid=IwAR1f36ebbDTPV-64a_5WVUPTVLqzh8Fp-tgXmHITgwmv-QyQCb8IRFUJCM; Prizma, 'Орвеловска држава на дискриминацијата' ('Orwellian state of discrimination'), 2018, available at: <https://prizma.mk/kolumni/orvelovska-drzhava-na-diskriminatsijata/>.

4.3 Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19 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.

In North Macedonia, the scope of the exception is not limited to safeguarding the combat effectiveness of the armed forces and it does extend to other non-combat staff, such as civilians employed in administrative positions in the army.

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 age¹⁹⁴ at the day of the closing of the recruitment advert. The contract is renewable every three years up to a maximum age of 45.¹⁹⁵ 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),¹⁹⁶ 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).¹⁹⁷ 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).¹⁹⁸

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.¹⁹⁹

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 persons with disabilities to enter the Army.²⁰⁰ 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.²⁰¹

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).²⁰² An extra three days of vacation

¹⁹⁴ Law on Army Service, 2010, Article 36. Full title: Law on Army Service (*Закон за служба во армијата*), *Official Gazette of the Republic of Macedonia*, Nos. 36/2010, 23/2011, 47/2011, 148/2011, 55/2012, 29/2014, 33/2015, 193/2015, 71/2016, *Official Gazette of the Republic of North Macedonia*, No. 14/2020; Constitutional Court, Decision: U.no.60/2010, 22 September 2010.

¹⁹⁵ Law on Army Service, 2010, Articles 40, 42, 43.

¹⁹⁶ Law on Army Service, 2010, Articles 34 and 35.

¹⁹⁷ Law on Army Service, 2010, Article 32.

¹⁹⁸ Law on Army Service, 2010, Article 220 (para. 2).

¹⁹⁹ Law on Army Service, 2010, Articles 40-a, 40-b.

²⁰⁰ Law on Army Service, 2010, Articles 31 and 202-210.

²⁰¹ See Table 3 in: Kotevska B. (2016), *Analysis of the harmonization of national equality and non-discrimination legislation*, Skopje, OSCE and CPAD.

²⁰² Law on Army Service, 2010, Article 78.

are provided for personnel with a disability or someone taking care of a child with a disability.²⁰³

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.²⁰⁴ 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.²⁰⁵ With regard to the oath, the document to be signed is in both Macedonian and the language of that individual.²⁰⁶

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.'²⁰⁷

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 citizenship²⁰⁸ (a legal tie with a state) is explicitly mentioned as a protected ground in national Anti-Discrimination Law (Article 5).²⁰⁹ 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'

Nationality²¹⁰ 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

²⁰³ Law on Army Service, 2010, Article 98 (para. 2).

²⁰⁴ Law on Army Service, 2010, Article 30 (para. 5).

²⁰⁵ Law on Army Service, 2010, Article 39 (para. 2).

²⁰⁶ Law on Army Service, 2010, Article 7 (para. 2).

²⁰⁷ Constitution of the Republic of North Macedonia, 1991 and subsequent amendments, Articles 4 and 6.

²⁰⁸ The ground of citizenship can be used to protect stateless persons.

²⁰⁹ However, please see the exceptions in relation to nationality mentioned in Section 4.4 (b).

²¹⁰ 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.

Law (Article 5).²¹¹ Although not explicitly referred to, the same would be true for stateless persons.

The lack of clarity deepens in some laws that refer to nationality and ethnicity as different grounds for discrimination.²¹² No definition is provided, which also adds to the confusion of the terms, since in some laws the term 'national belonging' is used.²¹³ The courts consistently use the terms 'foreigner' and 'foreign' when referring to nationals of another country.

Motivated by this lack of clarity, an Albanian political party, which is represented in the Parliament and in the Government, put forward a proposal for amending the Law on Personal Identification Documents, requiring that a graph denoting ethnicity be added to ID cards. This was followed by a public reaction by NGOs, which raised an alert regarding the potential negative effect that such a change could have for marginalised groups, and noted that it could lead to an increase in discrimination.²¹⁴ The CPPD published an expert opinion following a request from one of the parliamentary groups that opposed the proposal. In its opinion, the CPPD stated that:

'(1) international practice shows that such policies lead to additional isolation, segregation and discrimination of the most marginalised groups, (2) introducing ethnic belonging in the IDs can potential increase discrimination on grounds of ethnicity, (3) it is expected that discrimination will increase the most against persons where ethnicity is inextricably tied to another discrimination ground, and (4) it will enable the practice of racial and ethnic profiling.'²¹⁵

The proposal was not progressed further.

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

a) Exceptions in relation to disability and health/safety

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

This Article states that:

'It will not be considered discrimination making a difference, exclusion or giving priority, when the nature of the work is such or work is performed in such conditions that the characteristics contained in Article 6 of this law are essential and decisive conditions for performing the work, providing that the objective to be achieved is justified and the requirement has been carefully considered.'²¹⁶

²¹¹ However, please see the exceptions in relation to nationality mentioned below.

²¹² For example, Article 3 of the Law on Voluntary Fully Funded Pension Insurance.

²¹³ Article 6 of the Law on Primary Education and Article 6 of the Law on Labour Relations.

²¹⁴ Helsinki Committee of the Republic of Macedonia (2021), Legal Review and Opinion on the Proposal for Adding a Graph on Ethnic Belonging to the Personal Identification Documents for Citizens (Правен осврт и мислење во однос на предлогот за додавање на графа за етничка припадност во личните карти на граѓаните), <https://mhc.org.mk/wp-content/uploads/2021/02/praven-osvrt-i-mislenie-vo-odnos-na-predlogot-za-dodavanje-na-grafa-za-etnichka-pripadnost.pdf>.

²¹⁵ CPPD, Expert Opinion on the Proposal for Introducing the Category of Ethnic Belonging in IDs as per the Draft-Law on Amendments and Additions to the Law on Personal Identification Documents (Стручно мислење по предлогот за воведување на категоријата етничка припадност во личните карти содржан во предлог законот за измени и дополнувања на Законот за лични карти) No.03-70/1 (14.04.2021).

²¹⁶ Law on Labour Relations, 2005, Article 8.

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 employees²¹⁷ (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.²¹⁸ There are also exceptions for protective measures related to pregnancy and parenting.²¹⁹

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

4.6.1 Direct discrimination

a) Exceptions to the prohibition of direct discrimination on grounds of age

In North Macedonia, national law does not provide for specific exception(s) for direct discrimination on the ground of age. However, the general exception laid out in Article 8 of the Law on Labour Relations could be used to justify such discrimination. The Law on Labour Relations could be interpreted more widely to give the employer the option of setting specific conditions connected with the age of the employee. It states that at the time of signing the contract the applicant is obliged to submit evidence to the employer of capability to fulfil the terms of the contract (Article 26). This provision applies regardless of the age of the applicant. The health condition criteria have been challenged as possibly discriminatory on grounds of disability as well, in the context of public employment.²²⁰

b) Justification of direct discrimination on the ground of age

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

c) Permitted differences of treatment based on age

In North Macedonia, national law permits differences of treatment based on age for any activities within the material scope of Directive 2000/78. The Law on Labour Relations provides for specific protective measures in relation to employees younger than 18, as well as for older employees (over 57 years of age for women and 59 years of age for men). The protection encompasses hours of work, night work, work in special conditions and supplementary vacation (for workers under 18) and prohibition of overtime work and night shifts (for older workers), as well as other special measures provided by this and other laws.²²¹

²¹⁷ Law on Labour Relations, 2005, Chapter XV.

²¹⁸ See Law on Labour Relations, 2005, Chapter XIII: Protection of workers under 18 years, and Chapter XV: Special protection of older workers.

²¹⁹ Law on Labour Relations, 2005, Article 161.

²²⁰ Kotevska, B. (2016), *Analysis of the harmonization of national equality and non-discrimination legislation*, Skopje, OSCE and CPAD.

²²¹ Law on Labour Relations, 2005, Chapter XIII: Protection of workers under 18 years, and Chapter XV: Special protection of older workers.

d) Fixing of ages for admission to occupational pension schemes

In North Macedonia, national law allows occupational pension schemes to fix ages for admission to the scheme, taking up the possibility provided for by Article 6(2).

The pension system is composed of three pillars established by three laws: the Law on Voluntary Fully Funded Pension Insurance, the Law on Pension and Disability Insurance, and the Law on Mandatory Fully Funded Pension Insurance. The Law on Pension and Disability Insurance²²² 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). The law does not prohibit the use of age criteria in actuarial calculations.

4.6.2 Special conditions for younger or older workers

In North Macedonia, there are no special conditions set by law for older and younger workers in order to promote their vocational integration.

4.6.3 Minimum and maximum age requirements

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

The Law on Labour Relations establishes 15 years of age as the minimum age for employment (Article 250). There is a general prohibition on the employment of children under 15 years of age, except for recording films, preparing and performing arts, stage and other similar works (cultural, artistic, sporting and advertising activities). A special procedure and approval is required for this. There are also special provisions for work by students (as practical work experience) and by apprentices.²²³ There are special measures for the protection of older workers in the Law on Labour Relations regarding the working hours of older (and younger) workers. It provides that these workers cannot be assigned to work overtime or night shifts (Article 180). This measure is applicable to workers over the age of 57 for women and 59 for men (Article 179).

4.6.4 Retirement

a) State pension age

In North Macedonia, there is a state pension age at which individuals must begin to collect their state pensions. The 2021 amendments to the Law on Labour Relations removed the provisions which allowed for deferral of the pension up to the age of 67, which effectively means that all persons should retire at the age of 64, unless stated otherwise in another law. The transitory provisions allowed for one final deferral agreement between the employer and the employee, which must expire by mid-2022. The person cannot hold an employment contract after this time. After this amendment was passed, the laws on higher education, scientific and research activity, and on health protection were amended,

²²² Law on Pension and Disability Insurance, 2012. Full title: Law on Pension and Disability Insurance (*Закон за пензиско и инвалидско осигурување*), *Official Gazette of the Republic of Macedonia*, Nos. 166/2012, 15/2013, 170/2013, 43/2014, 44/2014, 97/2014, 113/2014, 160/2014, 188/2014, 20/2015, 61/2015, 97/2015, 129/2015, 147/2015, 154/2015, 173/2015, 217/2015, 27/2016, 120/2016, 132/2016, 27/2018, 35/2018, 220/2018, 245/2018, and *Official Gazette of the Republic of North Macedonia*, Nos. 180/2019, 275/2019, 31/2020, 267/2020, 67/2022.

²²³ Law on Labour Relations, 2005, Article 251.

allowing the possibility for deferring the retirement age up to the age of 67,²²⁴ thus introducing an exception to the general rule. This change was introduced after little to no public debate and with the intention of speeding up the retirement of persons in the public administration as a way of opening up space for the reform of the public administration process.

The Law on Pension and Disability Insurance²²⁵ has still not been amended. The Law on Pension and Disability Insurance provides for different criteria for the calculation of pensions in special cases.²²⁶ 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. An individual cannot collect a pension and continue to work.

b) Occupational pension schemes

In North Macedonia, there is a standard age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. 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 64.²²⁷ 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.²²⁸

d) Retirement ages imposed by employers

In North Macedonia, national law does not permit employers to set retirement ages by contract, collective bargaining or unilaterally. The retirement ages are as set in the national legislation (the Law on Labour Relations and the Law on Pension and Disability Insurance). However, according to the Law on Labour Relations, individual employment contracts or collective agreements may determine rights for workers that are more favourable than those determined by law (Article 12).²²⁹ 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.

²²⁴ Law on Higher Education, 2018, Article 187; Law on Health Protection, 2012, Articles 204, 204a; Law on Scientific and Research Activity, 2008. Full title: Law on Health Protection (*Закон за здравствена заштита*), *Official Gazette of the Republic of Macedonia*, Nos. 103/2008; 24/2011; 80/2012; 24/2013; 147/2013; 41/2014; 145/2015; 154/2015; 30/2016; 53/2016; and *Official Gazette of the Republic of North Macedonia*, Nos. 257/2020, 163/2021. Article 45-e.

²²⁵ Law on Pension and Disability Insurance, 2012.

²²⁶ The standard calculation system is given in Articles 18 and 18-a of the Law on Pension and Disability Insurance; Law on Pension and Disability Insurance, 2012.

²²⁷ Law on Labour Relations, 2005, Article 104. Please note that the Article used to set different limits for men (67) and women (65). However, on the basis of a CSO-led initiative, in 2016 a Constitutional Court decision annulled this part and equalised the limit for men and women. Source: Constitutional Court, Decision No. 114/2014-0-1 (29 June 2016), available at: <http://ustavensud.mk/?p=11545>. Later, an almost identical case was filed and was successful in challenging Article 98(5-6) of the Law on Administrative Servants (a provision mirroring the annulled provision from the Law on Labour Relations). However, in 2021 the possibility of deferring the pension up to the age of 67 was removed, making 64 effectively the mandatory retirement age.

²²⁸ Law on Pension and Disability Insurance, 2012, Article 18.

²²⁹ Law on Labour Relations, 2005.

e) Employment rights applicable to all workers irrespective of age

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

f) Compliance of national law with CJEU case law

In North Macedonia, national legislation is in line with the CJEU case law on age regarding mandatory retirement. However, the issue of mandatory retirement ages has not been a subject of wider discussion, regardless of the fact the legislation was changed in 2021 to effectively introduce 64 as a mandatory age. There was little to no discussion on the matter and it was passed very quietly with little to no opposition. No case law exists in relation to the new provisions yet. The proposal was based on the idea of stimulating turnover in the public administration, but the law is in fact applicable to both the public and the private sectors, which will make it an interesting subject of discrimination claims in terms of legitimate aim and proportional means. The allowing of a very few selected professions to defer pensions has also not been disputed yet. It is expected that cases might start coming before the institutions once the possibility for a final deferral expires (mid-2022).

4.6.5 Redundancy

a) Age and seniority taken into account for redundancy selection

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

b) Age taken into account for redundancy compensation

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

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

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

4.8 Any other exceptions

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

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

a) Scope for positive action measures

In North Macedonia, positive action is permitted in national law in respect of all grounds protected by law, including all grounds contained in the directives. In addition, the national legal and policy frameworks envisage specific positive actions. Among these, the main emphasis is placed on positive action with respect to ethnic origin, disability and age. The positive action measures currently in force do not target religion or belief or sexual orientation. Although beyond the scope of this report, it is also worth noting that there are public policies on positive action pertaining to gender equality.

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

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

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

Ethnic origin seems to be the dominant ground for undertaking positive action and has its basis in the 2001 amendments to the Constitution, which were tailored according to the Ohrid Framework Agreement (a political agreement ending the 2001 conflict).

Several institutions are tasked with ensuring the proper implementation of these measures, the main ones being the Ministry for the Political System and Inter-community Relations (formerly 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 persons with disabilities is the Law on Employment of Persons with Disabilities.²³⁰ Its main goals are the integration of persons with disabilities in the working environment and their safety in the workplace. A new draft law was initiated by the Ministry of Labour and Social Policy almost five years ago, but it has still not entered parliamentary procedure, although the Government's policies in relation to the employment of persons with disabilities have continued to be implemented.

²³⁰ Law on Employment of Persons with Disabilities, 2000, Article 2.

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, which has expired. No evaluation of its implementation, or the drafting of a new strategy, has been announced by the Ministry of Labour and Social Policy.²³¹ Within the framework of a European Union-funded project, the NGOs Humanost and Ecologic assessed the implementation of this strategy. They found only partial implementation, but also unequal implementation throughout the country. They did not identify reasons behind this piecemeal approach but did recommend that the new strategy maintains a sharper focus,²³² i.e. that it is more focused than its predecessor. No new strategy has been adopted yet.

b) Quotas in employment for persons with disabilities

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

²³¹ No such information is included in the Ministry of Labour and Social Policy's annual report for 2021.

²³² CSO Humanost (2020), *GAP Analysis of the National Strategy on Elderly 2010-2020* (Гап анализа на националната стратегија за стари лица 2010-2020), available at: http://humanost.org.mk/wp-content/uploads/2020/01/ГАП-анализа-на-стратегијата-за-стари-лица_со-корици.pdf.

6 REMEDIES AND ENFORCEMENT

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

a) Available procedures for enforcing the principle of equal treatment

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

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

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

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

Under the Anti-Discrimination Law, the outcome of a claim depends on the procedure one chooses to pursue. The administrative procedure envisages a recommendation to rectify the violation (i.e. the discrimination) within 30 days; litigation could lead to an award of regular compensation; while the misdemeanour procedure envisages fines in the range of EUR 400 to EUR 5 000.

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

The procedures for employment in the private and public sectors are different. In the public sector, the Law on State Administration sets out a detailed procedure, which must be conducted in accordance with the law and with very strict criteria, while in the private sector, according to the Law on Labour Relations, employers are free to choose their own methods to find adequate candidates for employment. A worker who believes that they have been discriminated against can inform the employer within eight days, giving the employer a chance to resolve the issue (Article 181). If this is not done within the next eight days, the worker can lodge a lawsuit against the employer (within the next 15 days). This last deadline is directly applicable in cases of dismissal and rejection in the recruitment process due to discrimination. This is a rather costly procedure, as hiring a lawyer is an obligation and the claimant must pay the court costs in advance. Moreover, if a claimant loses a lawsuit against a state employer, he or she has to pay the costs of the State Defender.²³³ As it is a judicial litigation, there are strict time limits for all procedural actions.

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

Although non-binding, if the CPPD finds discrimination, it issues an opinion accompanied by recommendations. The person to whom the recommendation is directed must act on it

²³³ 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.

and notify the CPPD within a deadline of 30 days (Article 27(3)). If the person does not act on the recommendation, the CPPD must open a misdemeanour court procedure against that person (Article 27(4)). The CPPD has brought some cases before the misdemeanour court.²³⁴ However, these are only a few cases out of over 40 in which the CPPD found discrimination, which suggests that the CPPD has not yet systematically organised its follow-up of cases and processing them before the misdemeanour court. In fact, there is no systematic follow-up in the cases in which discrimination was found, which then spills over into a lack of systematic processing before the misdemeanour court. This has been so due to lack of resources, and is one of the points on which the CPPD plans to work on in 2022.²³⁵

In addition, under the ADL, the CPPD can issue a 'general recommendation'. According to Article 28, 'the Commission can on its own initiative issue a general recommendation in cases where a larger number of persons have been discriminated against'. The CPPD issued four such recommendations in 2021 – one on equal access to vaccination for all, one on persons with disabilities in penitentiary institutions, and two on the exercise of the passive electoral rights (right to stand for election) for persons with disabilities.²³⁶

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

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

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

The procedure before the Commission for Prevention and Protection against Discrimination (CPPD) is free of charge. No legal representative is needed for this procedure. The CPPD can be accessed online, in person and by post. Its offices, however, are not fully accessible for persons with disabilities. The annual budget for 2022 did not contain funds for adjustments to the infrastructure of the offices, making it unlikely that the situation will change any time soon.

In relation to the courts, the obstacles can be even greater.²³⁷ The new ADL brings a much-welcomed change in relation to administrative taxes. Article 39 provides that the court

²³⁴ These are mentioned in its 2021 annual report, making the absence of a systematic approach further evident.

²³⁵ Information shared at the press conference for publication of the annual report, which took place on 15 March 2022 in Skopje (in person and online).

²³⁶ The general recommendations are available in the Macedonian language via the following link: <https://kszd.mk/одлуки/>.

²³⁷ On the challenges regarding the availability of discrimination court cases in general: Cvetanovska, A., *Availability of Cases from the Field of Protection from Discrimination in the Republic of North Macedonia*

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

The Law on Free Legal Aid includes discrimination cases. Its fully revised criteria for qualifying for free legal aid allow any person, regardless of citizenship, to apply for free legal aid if they are not in a material position to cover the expenses of the process. The person requesting free legal aid must have a personal monthly income which is less than the national minimum wage and if another member of their family has income too, their income must be lower than 20 % of the minimum wage (Articles 17-20). The minimum (gross) wage in December 2021 was EUR 360 (MKD 22 146).

c) Number of discrimination cases brought to justice

In North Macedonia, statistics on the number of discrimination cases brought to justice are partially available. There is a significant improvement in the availability of numbers of cases since the establishment of the new equality body – the CPPD. As discussed in section 2.3.1 of this report, the CPPD publishes information on its website for cases classified by date, type of opinion (which is basically the form of discrimination and whether the CPPD found or did not find discrimination), field of discrimination and ground of discrimination.²³⁸ The CPPD has also so far complied with its responsibility to publish quarterly and annual reports on its work. In all reports, it has included the numbers of cases categorised by grounds, forms, and fields of discrimination.

In 2021, the CPPD reported processing 167 cases, of which 77 were part of the backlog from the former equality body, the CPAD – some of which date back to 2016 – and 90 were received by the CPPD in 2021. The majority of the cases – 60.48 % - were filed by natural persons, 32.93 % by legal persons, 5.39 % by a group of citizens, and 1.2 % *ex officio* by the CPPD itself. The majority of the cases were filed by persons living or residing in Skopje (92 cases), and in urban areas (138 cases, or 93.88 %), which is a worryingly high concentration in the capital and in urban areas.²³⁹ The CPPD expressed its intent to act in 2022 in order to encourage reporting from outside the capital and from rural areas.²⁴⁰ The majority of applicants did not state an ethnic affiliation (42), followed by Macedonians (41), Roma (7), Albanians (6), Bosniaks (1), Vlachs (1), Serbian (1), Turkish (1) and Bulgarian (1). Applications by natural persons came more from men (60 applications, 59.41 %) than women (41 cases, 40.59 %). Within the ethnic groups, among Macedonians the majority of the applicants were men (25 men and 16 women); among Albanians all were men (6 men); and among Roma a very slight majority was tilted towards women (4 women and 3 men). Out of the other ethnic groups, all applicants, except for the Vlach applicant, were men.²⁴¹

Of the 167 cases processed by the CPPD in 2021, in 84 cases (50.30 %) applicants listed one discrimination ground, in 55 cases (32.93 %) applicants listed more than one ground,

(Пристапност на судските одлуки од областа на заштита од дискриминација во Република Северна Македонија) (Mreza bez diskriminacija, 2020).

²³⁸ CPPD website: <https://kszd.mk/аналитика/број-на-мислења/>.

²³⁹ CPPD (2022), *Annual report for 2021*, pp. 15-19.

²⁴⁰ Information shared at the press conference for publication of the annual report, which took place on 15 March 2022 in Skopje (in person and online).

²⁴¹ CPPD (2022), *Annual report for 2021*, pp. 19-20.

and in 28 (16.77 %) they did not list any ground. The highest number of cases was on grounds of personal or other social status (43), followed by national or ethnic belonging (38), sex (23), political belief (20), belonging to a marginalised group (19), education (17), colour of skin (16), race (15), social origin (14), sexual orientation (14), gender identity (14), property status (11), disability (7), age (7), gender (6), family or marital status (5), health status (3), citizenship (3), religion or religious belief (2), language (2), other belief (2), origin (1), and other ground (20). According to the CPPD's report, women reported discrimination mainly on grounds of education (followed by personal or other social status, political belief, national or ethnic belonging, family and marital status and only 4 on the basis of sex), whereas men reported discrimination on grounds of national or ethnic belonging and political affiliation, followed by personal or other social status, sex (8 cases, more than women), belonging to a marginalised group, and education.²⁴²

The case law of the CPPD usually does not engage in a discussion on how different grounds are distinguished between themselves. This is not very problematic in the national context, since the national law has open lists of discrimination grounds, which results in less interest in the definitions of the individual grounds. Having said that, there is one distinction arising in practice when it comes to ethnicity and race. It seems that these two grounds are frequently raised together only in cases of Roma discrimination, whereas all other ethnic groups (Macedonians, Albanians, Serbs, Vlachs, Turks, etc) use ethnicity.

The CPPD found discrimination in 40 cases and no discrimination in 39 cases; it decided not to act in 10 applications (the applicant withdraw the application – 5 cases, a judicial proceeding was already ongoing – 2 cases, lack of statement of any facts by the applicant – 1 case, lack of grounds based in the new law – 1 case, the equality body has already acted in the same case and no new elements were put forward – 1 case) and rejected 41 applications (lack of competence in 26 cases, lack of formal element in 12 cases, expired deadlines in 2 cases and lack of legal ground in 1); and 37 cases are still being processed. In the 40 cases in which it did find discrimination, the discriminator was predominantly from the public sector (24), followed by the private sector (10), natural person (4), sports federation or sports club (1), and a civil society organisation (1).²⁴³ Of the public entities, the majority of cases in which discrimination was found were filed against the State Electoral Commission (5), the Public Transport Enterprise Skopje (JSP) (4), the Agency for Employment of the Republic of North Macedonia (and its local divisions) (4), and the Ministry of Education and Science (3). In the other instances, discrimination was found in the cases against courts, public primary and secondary schools, other ministries, penitentiary institutions and public enterprises.

In terms of fields, the majority of cases were in employment (15) and access to goods and services (11), with fewer cases involving access to information, media and social media (7), judiciary, elections and administration (4), education (2), and sports (1).²⁴⁴ Of the forms of discrimination, discrimination was established in 13 cases, harassment in 10, direct and extended discrimination in 5, direct and indirect discrimination in 4, direct and intersectional discrimination in 3, indirect discrimination in 2, extended discrimination in 1, incitement and instruction to discriminate in 1, and direct discrimination and harassment in 1 case. Overall, direct discrimination is the most prevalent form, being present in 26 of the cases (48.15 %). In 55 cases (32.93 % of the CPPD's annual case load) claimants claimed discrimination on two or more grounds, and the CPPD found discrimination on more than two grounds in 16 of these cases,²⁴⁵ of which three were on intersectional discrimination; in all three, the persons discriminated against were Roma (for more, see section 2.1.2.).

²⁴² CPPD (2022), *Annual report for 2021*, pp. 20-22.

²⁴³ CPPD (2022), *Annual report for 2021*, pp 22-24.

²⁴⁴ CPPD (2022), *Annual report for 2021*, pp. 24.

²⁴⁵ CPPD (2022), *Annual Report for 2021*, pp. 20, 26.

The Ombudsperson is another possible forum for public sector discrimination cases. In 2021, 43 cases were filed as non-discrimination and equitable representation cases, which represents 1.6 % of the total number of cases filed with this institution in 2021, which was 2 686 cases. This is a slight increase in the overall number of cases compared with 2020, when the number of cases was 2 448 but it is a decrease of one third in the number of discrimination cases compared with 2020 (62 cases). Compared with previous years, the numbers for 2021 are still much lower than for 2018, which remains the year in which the most cases were received - 3 458, and which was also the year with the highest number of discrimination cases thus far - 77, compared with 60 cases, or 1.74 %, in 2019; 70 cases, or 2.17 %, in 2017; 69 cases, or 1.83 %, in 2016; and 53 cases, or 1.2 %, in 2015.

As of 2020, the Ombudsperson started publishing statistics per field of discrimination, citing Article 3(4) of the ADL as the ground for the change in its approach. Of the 43 cases, 22 were in the area of employment and labour relations, 6 in access to goods and services, 4 in the judiciary and administration, 4 in housing, 3 in education, science and sports, 1 in social protection, 1 in public information and media, and 2 in other unspecified fields. In 11 cases the discrimination ground was national or ethnic origin, in 6 it was education, in 3 health status, in 2 language, and the rest remain unspecified in the report.²⁴⁶

In 2021, the Constitutional Court received 14 cases regarding protection of fundamental rights and freedoms (out of 174), of which 8 were discrimination cases. The Court did not find violation in any of the cases regarding protection of fundamental rights and freedoms.²⁴⁷

d) Registration of national court decisions on discrimination

In North Macedonia, discrimination cases are not registered as such by national courts.²⁴⁸

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

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

In North Macedonia, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination. Under the Anti-Discrimination Law, associations of citizens (as well as institutions, foundations, unions and other civil society organisations) can represent a person who considers themselves to have been discriminated against, provided that the person grants consent (Article 23(2)). In labour cases, the Law on Labour Relations provides the option only for trade unions to act on behalf of the victim, as long as they have the consent of the complainant (Article 93).

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

In North Macedonia, associations, organisations and trade unions are entitled to act in support of victims of discrimination (Article 40 of the ADL) and they can join in existing

²⁴⁶ Ombudsperson (2022), *Годишен извештај за степенот на обезбедувањето почитување, унапредување и заштита на човековите слободи и права 2021 (Annual report on the degree of ensuring, respecting, advancing and protecting human rights and freedoms 2021)*, pp. 84-85.

²⁴⁷ Constitutional Court (2022), *Преглед на работата на Уставниот Суд за 2021 година (Overview of the work of the Constitutional Court in 2021)*, February 2021, pp. 8, 10.

²⁴⁸ On the way forward to registering the cases as such (by including a category in the current IT system for automatic case management - ACMIS), see policy brief: Cvetanovska, A., *Availability of Cases from the Field of Protection from Discrimination in the Republic of North Macedonia (Пристапноста на судските одлуки од областа на заштита од дискриминација во Република Северна Македонија)* (Mreza bez diskriminacija, 2020).

proceedings. However, it should be noted that it is up to the court to allow this. The court will be looking into whether the associations/organisations/trade unions have an equality mandate (most likely on the basis of their founding articles) and then decide whether or not it will allow for this (as specified by Article 40 of the Anti-Discrimination Law).

c) *Actio popularis*

In North Macedonia, national law allows associations, organisations and trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*). This is a novelty introduced by the 2020 ADL, which in Article 35(1) defines this as:

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

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

There were *actio popularis* cases even under the old ADL. For example, in a 2016 case, five NGOs,²⁴⁹ 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 NGOs 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 case also failed at the higher instance court.²⁵⁰

d) Class action

In North Macedonia, national law allows associations, organisations and trade unions to act in the interest of more than one individual victim (*class action*) for claims arising from the same event. Associations of citizens (as well as institutions, foundations, unions and other civil society organisations) with 'a legitimate interest to protect the interests of a group or within the frame of their work deal with protection against discrimination' are explicitly allowed to raise a discrimination case 'if they make a likely case that the actions of a natural or a legal person resulted in discrimination against a larger number of persons' (Article 23(3) of the ADL).

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

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

The Anti-Discrimination Law states that the claimant must produce 'facts from which it may be presumed' that discrimination has taken place. The rule is explicitly prescribed both for

²⁴⁹ The five CSOs were: CSO KHAM Delcevo, FOSM, MHK, IHR and ERRC.

²⁵⁰ Details of the case are 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.

the procedure before the equality body (Article 26) and for court proceedings (but not for misdemeanour and criminal proceedings) (Article 37).

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

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

In North Macedonia, there are legal measures of protection against victimisation. The Anti-Discrimination Law declares victimisation to be a form of discrimination. Victimisation is extended beyond the person who reports discrimination to the person who files the complaint and to any witnesses or people who participated in another way in a discrimination procedure (Article 11). So far, this has not been interpreted as excluding groups from the protection. The Constitution also provides for protection against victimisation, as it states that a citizen cannot be called to account or suffer adverse consequences for attitudes expressed in petitions, unless they entail the committing of a criminal offence (Article 24). The Law on Labour Relations provides for protection against victimisation²⁵¹ 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 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 400 to EUR 5 000, to be paid in the national currency (Articles 41 to 44). The ADL does not foresee payment of compensation.

In labour cases as well as other civil court litigation, only compensation for pecuniary and non-pecuniary damages can be claimed.²⁵² In cases of child and social protection, sanctions are fines imposed in a misdemeanour procedure. These can amount to EUR 500 to EUR 1 000 in child protection cases and EUR 3 000 to EUR 5 000 in cases concerning social protection.²⁵³

b) Compensation – maximum and average amounts

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

²⁵¹ Law on Labour Relations, 2005, Article 11(3).

²⁵² Law on Labour Relations, 2005, Articles 264-266.

²⁵³ It should be noted that the average gross monthly salary in the country is approximately EUR 400.

c) Assessment of the sanctions

The Anti-Discrimination Law was only adopted in October 2020. It is thus still too early to draw any conclusions regarding the effectiveness, proportionality and dissuasiveness of the sanctions, as required by the directives. However, considering that the prescribed fines are higher, they can be said to hold larger potential to fulfil this criterion. Thus, this could be seen as a step towards more effective, proportionate and dissuasive sanctions.

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

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

With the new Anti-Discrimination Law, a new body was established on 25 January 2021: the Commission on Prevention and Protection against Discrimination (CPPD). This body also has competences for the promotion of equal treatment irrespective of racial or ethnic origin, according to Article 13 of the Racial Equality Directive. Like its predecessor, the CPAD, the CPPD competences are much wider than required by the directive, including a wide personal and material scope. The mandate of the CPAD ended in August 2019, leaving the country without an equality body from then until the end of January 2021. There was no staff in the previous body, which was one of its key issues, thus there was no staff transfer or other such issues to take care of. There was only one person, who was 'borrowed' from the Ministry of Labour and Social Policy and who supported the old body; she is now part of the staff of the new equality body. The cases that were received after the old body stopped functioning were transferred to the new body. The rest of the documents produced as part of its work should have been archived by the state archive, but they have not been, which creates issues for the new body around access to any document from the previous body that it might wish to consult.

The old Anti-Discrimination Law, which was the first comprehensive anti-discrimination law adopted in 2010 in the course of harmonising the national legislation with the *acquis* (including with the Racial Equality Directive, and its Article 13), provided for the establishment for the first time of an equality body in the country – the Commission for Protection against Discrimination (CPAD).²⁵⁴ This commission was tasked with dealing with both the public and private sectors. It was the first specialised body for equal treatment.

Before this, the Ombudsperson was the only institution that had duties in the protection of the principles of non-discrimination and equality as part of its broader mandate for the protection of human rights in the public sector.²⁵⁵ Some of the earlier versions of the ADL prepared in the drafting process (in 2009) foresaw the Ombudsperson as the designated body as per the directives. At this time, the Ombudsperson formed a special unit focused on non-discrimination and equitable and just representation. In the later drafts, and in the text that was adopted in 2010, it was decided that the designated body would be a new, special equality body, which was the CPAD. However, while the CPAD was the designated body as per the directives, the Ombudsperson has a mandate to promote equal treatment, so it is also discussed in this section of the report.

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

Both bodies 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 the context of an unstable political climate, marked by (recovery from) 'state capture'²⁵⁶ and instability caused by a hung Parliament,²⁵⁷ further complicated

²⁵⁴ Law on Prevention and Protection against Discrimination, 2010, Articles 16 to 33.

²⁵⁵ Law on the Ombudsperson, 2003, Articles 6, 11. 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.

²⁵⁶ 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.

²⁵⁷ No political party or a coalition holds an absolute majority of Parliament seats.

by the persistent stalling of the EU enlargement process.²⁵⁸ The overall elements lacking in terms of the rule of law have already been well documented²⁵⁹ and are at the centre of the major reform efforts at the national level, as is the reform of the judiciary.

The context was also shaped by other factors, such as the COVID-19 pandemic-induced crisis, which severely hit the economy and left many people without a job (of which the majority were women). In addition, there is still a lack of political will to allow not only the CPPD and the Ombudsperson, but also the other independent national bodies, financial independence and independence in recruitment. This then spills over into an inability for these institutions to practise their mandate in full, as is raised several times throughout this report. Other issues which shape the context include the general lack of trust towards state institutions in general. This also affects the courts, which, in a recent survey by the Republican Institute – IRI, were found to enjoy trust among only 8 % of the population.

Moreover, the overall climate in the country for advancing equality and providing protection against discrimination is getting increasingly difficult, since actors with regressive agendas are pulling backwards the policy developments regarding gender equality and equality for all regardless of sexual orientation and gender identity. These are primarily actors from the anti-gender movement,²⁶⁰ which is regaining traction; it is at the stage of formally seeking entrance to state institutions and is already succeeding in pushing equality issues off the agenda.²⁶¹

c) Institutional architecture

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

d) Status of the designated body – general independence

i) Status of the body

Under the law, the CPPD is a separate legal person, established with the Law on Prevention and Protection against Discrimination. The Ombudsperson is also a separate legal person, but it is established under the Constitution and the Law on the Ombudsperson.²⁶²

²⁵⁸ All developments relating to the EU enlargement process have a significant effect at the national level, most recently the Bulgarian veto on setting a date for start of the negotiation process with North Macedonia.

²⁵⁹ European Commission (2015), *The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015*, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf.

²⁶⁰ On the anti-gender movement in North Macedonia, see: Gagovska, E., 'Who is Afraid of Transgender Persons? (Кoj се „плаши“ од трансродовите лица?)' *Meduza*, 16 March 2022); Kotevska B. and Spasovska, E., 'Feminist Activism against the Restriction of Reproductive Rights in the Republic of Macedonia: The Campaign against the New Law on Abortion', 2019, *Women's Studies International Forum*, 77; Miškovska Kajevska, A., 'Suspending Democracy, Harming Gender Equality' in Verloo, M. (ed.) (2018), *Varieties of opposition to gender equality in Europe* (Routledge, Taylor & Francis Group). On the anti-gender movement in general, see: Kuhar, R. and Paternotte, D. (eds.) (2017), *Anti-Gender Campaigns in Europe: Mobilizing Against Equality* (Rowman & Littlefield International); Verloo, M. (ed.) (2018), *Varieties of Opposition to Gender Equality in Europe* (Routledge, Taylor & Francis Group).

²⁶¹ Although outside the scope of this report, it is worth mentioning that there has been a mobilisation against legislative changes which were to serve as implementation of the *X v North Macedonia* ECtHR decision according to which trans persons suffer discrimination due to the lack of a foreseeable, available and fast procedure for legal gender recognition. Source: <https://hera.org.mk/nashite-poddrzhuvachi-vo-sobranieto-zamolknaa-pred-svoite-kolegi-reakcija-na-nmht-po-povlekuvaneto-na-zakonot-za-maticna-evidencija/>.

²⁶² Law on the Ombudsperson, 2003.

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

In practice, the appointment of both compositions of the previous equality body (CPAD) (the first in 2011 and the second in December 2015) raised serious concerns among civil society organisations and the (then) parliamentary opposition. However, the practice of contested appointments has not stopped. While the steps of the procedure as formally prescribed in the law were observed, two significant concerns remain. First, at no point did the Commission on Elections and Appointments check whether the applicants fulfilled the criteria for membership established under Article 17. The opposition persistently demanded that the applications be looked at in detail against Article 17, both at the public session and at the later session where the list of seven candidates was adopted, but to no avail. The majority MPs proposed a list of seven persons. Following a very brief (less than 10 minutes) discussion, which included a rejection of the opposition's proposal to check the biographies of the seven candidates against the criteria set out in Article 17, the proposed list was adopted.²⁶³ This revealed that, in the absence of a strict delegation of competence explicitly mentioned under the law, as to who is to assess whether the candidates fulfil the minimal criteria and at which stage, the process was completed without this assessment. Secondly, the law prescribes that the composition should reflect the composition of the society at large, in particular with regard to ethnicity and gender (Article 16(5)). However, the gender aspect was not observed, as only two of the seven members are women and five are men. This left the representation of women well below its share in 'society at large'. It also completely leaves out all others who do not self-identify as either women or men. In addition, there was no regard for the other categories, such as disability. Although there were three excellent candidates who self-identified as persons with disabilities and who clearly fulfilled the criteria and are well-known public figures, none was appointed as a commissioner.

Following the appointment process, there have been several setbacks for the start of the work of the body in its first year of operation. First, the members were to complete a set of administrative tasks in order to get the body formally registered under the law. This included registration in the Central Register of Legal Persons, which the members had to pay for out of their own pockets. They received no administrative support on this from anyone. Secondly, during the process of registering the body, they were not officially employed, as the law requires. Their insurance status started only two months later. Thirdly, only three weeks after the official appointment, one member – Neda Čalovska Dimovska – resigned for personal reasons.²⁶⁴ Almost a year later, and by the cut-off date for this report, the Parliament has not appointed the seventh member. With this, there is now only one woman and five men members, further disturbing the gender balance in the body. Fourthly, the premises officially allocated for the CPPD in 2020 were reallocated for

²⁶³ Parliament of the Republic of North Macedonia, Предлог на одлука за избор на членови на Комисијата за спречување и заштита од дискриминација (Proposal for a Decision for Election of Members of the Commission on Prevention and Protection against Discrimination), <https://www.sobranie.mk/materialdetails.nsp?materialId=4cea4c0c-fc15-4ec4-986d-73d997226ade>.

²⁶⁴ Parliament of the Republic of North Macedonia, Оставка на Неда Чаловска Димовска од функцијата член на Комисијата за спречување и заштита од дискриминација (Resignation by Neda Čalovska – Dimovska From the Function Member of the Commission on Prevention and Protection against Discrimination), <https://www.sobranie.mk/materialdetails.nsp?materialId=c0645f4a-1fac-4a3e-9d4c-32b29a94697b>.

another purpose, which left the CPPD without official premises for several months, during which its members resorted to working from home and from the Club of Parliamentarians (a socialising and events venue which is public property), all the while using their own resources (laptops, mobile phones, transport). The CPPD was allocated offices in March, although it could only start using them in May. This space is mainly, although not wholly, inaccessible for persons with disabilities. In addition, the CPPD did not receive any budget for maintenance of the space in its annual budget. This left the members having to practically fund the starting up of the new institution with money from their own pockets, and they still maintain the building with their own resources (resorting to performing maintenance tasks including everyday cleaning, during an ongoing pandemic, by themselves). Fifthly, the issue of equipment and basic conditions for work at this space was not settled when the CPPD received the space. The offices were equipped using donations from external donors.

As for the Ombudsperson, in practice, her/his²⁶⁵ election very much depends on the votes of the governing political parties. The possibility of exerting political pressure regarding the appointment of the Ombudsperson was clearly visible during the selection and appointment process in 2020. Namely, the Parliament undertook a series of actions which led NGOs to believe that it was effectively trying to hide the vacancy announcement for the appointment of a new Ombudsperson. This was further supported by the fact that the vacancy announcement was not visibly advertised on the Parliament's website, unlike for other positions. It was only published in the minimum number of papers, including the *Official Gazette*, as per the law. NGOs were rightfully doubtful about this process. Significantly, a post-election announcement was made by one of the ruling parties that their candidate for Prime Minister (Naser Ziberi, who ultimately did not win the elections but was politically advertised as the 'first Albanian Prime Minister' of North Macedonia) would be the next Ombudsperson. When the vacancy announcement closed there were only four applications, one of which was from Naser Ziberi, who was appointed as Ombudsperson on 25 January 2021.

Furthermore, given that the funding of both institutions comes from the state budget, they could also be seen as financially dependent (as there is no annual budget set as a percentage of the overall state annual budget for these institutions).

Both the CPPD and the Ombudsperson are financed through the state budget, but their activities can also be funded through other sources. They have their own budget line which the Parliament votes on separately. This is intended to ensure financial independence. However, the CPPD and the Ombudsperson receive sufficient budget funds only for part of their mandate and not their whole mandate.²⁶⁶ This was also the case for the first year of operation of the CPPD (2021) and for the budget for 2022. In 2021, the CPPD had a budget of MKD 15 100 000 (EUR 245 000). It has 12 employees. In 2021, the Ombudsperson had MKD 77.738.000 (about EUR 1 250 000), a decrease of 5 % compared with 2020. It has 85 employees.

Both bodies have issues with recruiting and managing staff. All hiring that is paid for from the state budget needs to be approved by the Ministry of Finance, which causes issues in the planning of the human resources for both institutions.

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

²⁶⁵ Although all ombudspersons thus far have been men.

²⁶⁶ Kotevska, B. (2020), 'North Macedonia', in *Effectiveness of national human rights institutions in the Western Balkans*, Civil Rights Defenders.

discussion. It was only in 2019 that, for the first time, after several years, there was a plenary discussion of the 2018 reports of the two institutions.

ii) Independence of the body

The independence of both the CPPD and the Ombudsperson is stipulated in their respective founding legal acts. While the worries over the way the members of the CPPD were appointed (discussed in section i, above) remain, the first year of the CPPD's operation shows that it does work independently regardless of all the obstacles to its doing so.

The Ombudsperson is tasked with protecting the constitutional and legal rights of citizens when these are violated by state bodies and other authorities and organisations with public powers. This quasi-judicial institution has a mandate to safeguard *inter alia* the principles of non-discrimination and adequate and equitable representation of communities in the bodies of state power, local government and public institutions and services (Article 77).²⁶⁷ Worries over the independence of the Ombudsperson (discussed in section i, above) remain, but it is yet to see if they will also translate into a change in the work of the institution.

e) Grounds covered by the designated body

The CPPD deals with the following grounds: race, skin colour, origin, nationality or ethnicity, sex, gender, sexual orientation, gender identity, belonging to a marginalised group, language, citizenship, social origin, education, religion or religious belief, political conviction, other convictions, disability, age, family or marital status, property status, health condition, personal capacity and social status (open-ended clause) (Article 5). The Ombudsperson can deal with the following grounds: sex, race, colour, national, ethnic, social, political, religious, cultural, language, property and social background, disability, origin and any other ground. The open-endedness can include grounds not explicitly mentioned, such as sexual orientation and age.

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

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

i) Independent assistance to victims

Both bodies can provide independent assistance to victims.²⁶⁸ 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 both the Ombudsperson and the CPPD fulfil this part of their respective mandates.

ii) Independent surveys and reports

Both the CPPD and the Ombudsperson can conduct independent surveys and publish independent reports, and can undertake special investigative activities.²⁶⁹ Both bodies can conduct various types of research on specific issues and publish these as they see fit. The

²⁶⁷ Constitution of the Republic of North Macedonia, 1991 and subsequent amendments, Article 77.

²⁶⁸ For the CPPD - Article 21(1(16, 18, 19)) of the ADL, and for the Ombudsperson - Articles 11, 116, 11b, 12, 13, 17, 24, 32, and 33.

²⁶⁹ For the CPPD - Article 21(1(5, 24)) of the ADL, and for the Ombudsperson - Articles 11, 11a, 12, 13, 17, 24, 32, and 33.

Ombudsperson seems to be exercising this part of its mandate (more so with regards to the reports), although not regularly when it comes to equality and non-discrimination issues. The CPPD did not use this competence in its first year (on hurdles with the founding of the CPPD and the insufficient budget, see section (d) above).

iii) Recommendations

The Commission for Prevention and Protection Against Discrimination can issue 'general recommendations' on its own initiative in cases of discrimination against multiple people (Article 21(1(6)) of the ADL). It issued four such recommendations in 2021 – one on equal access to vaccination for all, one on persons with disabilities in penitentiary institutions, and two on the exercise of the passive electoral rights for persons with disabilities.²⁷⁰

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

iv) Other competences

The CPPD can collect statistics and other data and can conduct surveys and research on discrimination. It can undertake promotional activities, including awareness-raising. It can propose legislative changes on matters which fall within its scope of work. It can establish advisory expert bodies on specific matters related to the promotion, prevention of and protection against discrimination. The CPPD did not use this competence in its first year (on hurdles with the founding of the CPPD and the insufficient budget, see section (d) above). It did, however, undertake promotional activities – a video campaign for promoting the work of the body with the support of the Centre for Change Management, a local NGO. It also undertook a promotional campaign, together with the Football Federation of Macedonia, against discrimination and hate speech.

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

- bring discrimination complaints on behalf of identified victims to court;
- bring discrimination complaints on behalf of non-identified victims to court;
- intervene in legal cases concerning discrimination, for example, as an *amicus curiae*.²⁷¹

In 2021, the CPPD did intervene in one court case, at the request of the Macedonian Helsinki Committee for Human Rights. It was a case involving the segregation of Roma pupils in Štip (for details, see section 3.2.7. above).

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.

²⁷⁰ The general recommendations are available in Macedonian language on the following link: <https://kszd.mk/одлуки/>.

²⁷¹ Law on Prevention and Protection against Discrimination, 2020, Article 21.

h) Quasi-judicial competences

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

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

The Ombudsperson also has elements of a quasi-judicial institution. Under law, state bodies should implement its recommendations (Article 32). However, as with the CPPD, 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 CPPD and the Ombudsperson registered the number of complaints and decisions (by ground, field, type of discrimination, etc.). The data from the CPPD and the Ombudsperson are available to the public through the annual reports,²⁷² with the data by the CPPD being available in real time, as the status of all cases can be easily checked on its website.²⁷³ In addition, the CPPD has made all opinions in individual cases accessible online (anonymised). It also includes a section on 'Analytics' where data can be obtained on a number of categories, such as the sex of the applicant, grounds raised in the case, fields where the discrimination occurred, type of discrimination cases, status of the case and so on.²⁷⁴

Access to data on individual cases 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, including its own opinions in individual cases. In addition, the number of non-discrimination cases in its annual reports refer to '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) Roma and Travellers

The Ombudsperson institution has not shown through its actions thus far that it considers the situation of Roma as a priority issue. While it is still too early to come to conclusions regarding the CPPD from its actions in its first year of operation, it cannot be concluded that Roma issues are a priority. This does not mean that both institutions remained silent

²⁷² The most recent available data is discussed in Section 6.1 (c).

²⁷³ This function was added after the cut-off date for this report.

²⁷⁴ The 'Analytics' section is available on the website in the Macedonian language: <https://kszd.mk/аналитика/>.

or did not act in relation to discrimination against Roma or other violations of rights against Roma (such actions are discussed throughout this report, mainly in section 3).

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 main activities in relation to the dissemination of information, including capacity building for institutions, continued to be organised and implemented by NGOs (with the Network against Discrimination and its members leading most of the initiatives and court cases) and by the OSCE Mission to Skopje (OSCE). The activities regularly include the Ministry of Labour and Social Policy (MLSP) and the Commission for Prevention and Protection against Discrimination (and formerly did include the CPAD) as partners/co-implementers together with other entities (such as the Academy for Judges and Public Prosecutors and law schools from across the country). The Council of Europe and European Union's Horizontal Facility II project, which also has a non-discrimination component, was also active at the national level in 2021. It designed and implemented a nationwide 'No Hate' campaign against hate crime and hate speech, which was promoted in 2021 and will continue to be implemented in 2022. Otherwise, the focus remains on beneficiaries at national level (institutions) through capacity-building and local NGOs through grants. An UK Embassy-funded project implemented by the Centre for Change Management (CUP) has been a large supporter of the CPPD since its establishment, including in designing and sharing the first online information campaign presenting the CPPD. Two more European Union-funded projects – the 'EU for Rule of Law' IPA project and an EIDHR project by the Macedonian Centre for International Cooperation – started implementation during the reporting period and are expected to produce results in 2022, including on dissemination of information about legal protection against discrimination, the latter focusing on the CPPD and the former on both the CPPD and the Ombudsperson.

- 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)

The climate for dialogue with NGOs has improved in recent years. Several NGOs were invited to participate in the work of the national coordinating body on equality and non-discrimination, by nominating representatives. Although the procedure for appointment was not done through a public call, the representatives on the body are members of some of the most active NGOs in the country.

However, some issues remain. The position and role of NGOs was eroded in 2021 with the adoption of the 2022 state budget, which decreased the already very small amount of support for NGOs and moreover moved the central competent institution for this support from the Government general secretariat to the Ministry of the Political System and Intercommunity Relations, which is basically a transformed former Secretariat for Implementation of the Ohrid Framework Agreement. NGOs objected to this, but to no avail. Inclusion of NGOs in the policy process remains good, but random nonetheless. There is still no established process for the inclusion of NGOs in policy processes, public consultations, working groups, etc. More specific to the subject of this report, there has still been no proper investigation and prosecution of the attacks on the LGBTI Support Centre. In operation since 2012, the centre provides support to LGBTI people and to their family and friends. It has been subject to attacks ever since it opened. People working at the centre have been physically attacked and its offices have been damaged several times. Following one of the attacks, the centre had to close down for renovation for a period of time.²⁷⁵ No proper investigation and prosecution of the attackers of the LGBTI centre has

²⁷⁵ For more on this, please see this flash report: www.equalitylaw.eu/downloads/2177-mk-29-lgbti-centre-attacks-no-reactions.

happened yet and no charges have been made, despite numerous calls by NGOs, 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.²⁷⁶ More recently, NGOs that work on promoting the principle of equal treatment found themselves coming under attack from anti-gender organisations and activists, primarily with fake news, although there was also one case involving a physical attack on an activist in a service support centre. One NGO – H.E.R.A. – brought a civil case for slander to court against one formal anti-gender organisation and won, as the court found spreading of false information which resulted in damage to the reputation of H.E.R.A.²⁷⁷

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

The mechanism for social dialogue between social partners is the Economic and Social Council (ESC). It consists of representatives from the Government, unions and the Associations of Employers.²⁷⁸ 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). The national Strategy on Roma for 2014-2020 has expired.²⁷⁹ In 2021, Romalitico, a Roma rights NGO, worked with the Ministry of Labour and Social Policy on conducting an evaluation of the strategy and drafting the new strategy. By the cut-off date for this report, this process was still ongoing.²⁸⁰ A new National Action Plan on the Protection, Promotion and Fulfilment of the Human Rights of Roma Woman and Girls for 2022-2024 was finalised in December 2021 with the overall goal being to 'advance intersectional justice – equal and just access to rights, opportunities, resources and power in society – for Roma women and girls'.²⁸¹

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

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

The ADL contains a transitional provision according to which all national regulations (including laws) should be brought in line with the ADL within a period of two years. Yet, at the time of drafting of this report, with very few exceptions, no significant efforts had

²⁷⁶ Network against Discrimination (2014), 'Absence of reaction to series of attacks on the LGBTI Support Centre', available at: <https://www.equalitylaw.eu/downloads/2177-mk-29-lgbt-centre-attacks-no-reactions>.

²⁷⁷ See: <https://hera.org.mk/osnovniot-graganski-sud-presudi-od-nas-za-nas-e-odgovorna-za-kleveta-storena-protiv-hera/>.

²⁷⁸ 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.

²⁷⁹ See Стратегија за Ромите (Strategy on Roma 2014-2020), available at: <http://www.mtsp.gov.mk/content/pdf/strategii/Strategija%20za%20Romite%20vo%20RM%202014-2020.pdf>.

²⁸⁰ After the cut-off date for this report, the text of the new strategy was published and adopted by the Government: Strategy on Inclusion of Roma 2022-2030 (Стратегија за инклузија на Ромите 2022-2030), 2022, available at: <https://www.mtsp.gov.mk/content/pdf/2022/Strategija%20za%20inkluzija%20na%20Romite%202022-2030%2003-02-2022%20finalna%20verzija.pdf>.

²⁸¹ This NAP was adopted by the Government after the cut-off date for this report, in March 2022: National Action Plan on the Protection, Promotion and Fulfilment of the Human Rights of Roma Woman and Girls for 2022-2024 (Национален акциски план за заштита, промоција и исполнување на човековите права на жените и девојчињата Ромки 2022-2024), 2022, available at: https://www.mtsp.gov.mk/content/pdf/2022/N%D0%90P_zazastita%20promocija%20i%20ispolnuvane%20na%20cov.%20prava%20na%20zenite%20i%20devoj%20%20Romki%2015.03.2022.pdf.

been made. The Council of Europe and European Union's Horizontal Facility II project supported the preparation of an analysis of the need for harmonisation of the rest of the national legislation with the ADL, with a focus on 12 laws. The analysis was prepared for the Ministry of Labour and Social Policy as a beneficiary.²⁸²

General mechanisms for compliance with the Constitution and national laws and with legal principles such as *lex specialis derogat legi generali* and *lex posterior derogat legi priori* do exist.

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

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

If challenged, collective agreements, internal rules of undertakings and rules governing independent occupations can be subject to a review of constitutionality and legality before the Constitutional Court. The Law on Obligations provides that a contract contrary to the Constitution, laws and good customs is null and void.²⁸³ Compliance of contracts, collective agreements, internal company rules and rules governing independent occupations can be challenged if brought to court, where parts or full documents can be deemed null and void.

The Law on Courts provides that loopholes in laws are no justification for courts to refuse to act on upon a filed case — courts have an obligation to act based on the general principles of law, except when that is strictly forbidden by law.²⁸⁴ 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*.

²⁸² The text has not been published yet, but is available to the author: Scullion G. and Kotevska, B., *Harmonization of the national legislation in North Macedonia with the Law on the Prevention and Protection against Discrimination* (2021, MLSP and CoE HFII), pp. 6-7.

²⁸³ Law on Obligations, 2001, Article 95, paragraph 1. Full title: Law on Obligations (Закон за облигациони односи), *Official Gazette of the Republic of Macedonia*, Nos. 18/2001, 78/2001, 04/2002, 59/2002, 05/2003, 84/2008, 81/2009, 116/2009, 123/2013, *Official Gazette of the Republic of North Macedonia*, No. 215/2021.

²⁸⁴ Law on Courts, 2006.

9 COORDINATION AT NATIONAL LEVEL

The National Coordinating Body on Non-discrimination, established by the Government²⁸⁵ in 2018, did not operate in 2021 since its operation is related to the National Strategy on Equality and Non-discrimination (2016-2020) and that document has expired. The functioning of this body will be continued after a new strategy is adopted.²⁸⁶ 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 was the Minister of Labour and Social Policy (MLSP).

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.²⁸⁷ There is a department on equal opportunities.²⁸⁸ 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.

In 2021, the Ministry of Labour and Social Policy, with support from the OSCE, worked on an evaluation of the expired National Strategy on Equality and Non-discrimination (2016-2020)²⁸⁹ and on the drafting of a new strategy. The general goals of this strategy were: 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.²⁹⁰ The evaluation of the strategy has not been published, but the annual report of the Ministry of Labour and Social Policy for 2021 includes some of the findings. According to this document, the general goals gave good or satisfactory results, with between 26-48 % of the stakeholders interviewed giving a negative assessment for each of the general goals.²⁹¹ At the time of writing of this report, the new strategy was being drafted.²⁹² Its adoption is expected in 2022.

In 2021, the Ministry of Labour and Social Policy prepared (and in 2022 the Government adopted) the new Strategy on the Integration of Roma 2022-2030 and the new National Action Plan on the Protection, Promotion and Fulfilment of the Human Rights of Roma Women and Girls for 2022-2024. By December 2021, the process for drafting the NAP was completed and the draft was discussed in the public. The overall goal of this NAP is 'advanced intersectional justice – equal and just access to rights, opportunities, resources

²⁸⁵ Ministry of Labour and Social Policy (2018), *Формирано национално координативно тело за недискриминација* (National Coordinating Body on Non-discrimination established), available at: www.mtsp.gov.mk/april-2018-ns_article-formirano-nacionalno-koordinativno-telo-za-nediskriminacija.nspix.

²⁸⁶ Information unofficially acquired by the author of this report.

²⁸⁷ Ministry of Labour and Social Policy: www.mtsp.gov.mk/?ItemID=21E7AB9648BFC441AFD588BA0183B4A3.

²⁸⁸ Ministry of Labour and Social Policy: www.mtsp.gov.mk/?ItemID=380B6B1D444D5047B575F402122ED94A.

²⁸⁹ Ministry of Labour and Social Policy (2016), *Национална стратегија за еднаквост и недискриминација 2016-2020* (National Strategy on Equality and Non-discrimination (2016-2020), available at: http://www.mtsp.gov.mk/content/pdf/dokumenti/7.7_Strategija%20za%20ednakvost%20i%20nediskriminacija.pdf.

²⁹⁰ Ministry of Labour and Social Policy (2016), *National Strategy on Equality and Non-discrimination (2016-2020)*.

²⁹¹ Ministry of Labour and Social Policy (2022), *Report of the Implementation of the Annual Workplan of the Ministry of Labour and Social Policy for the period 1-12 2021* (Извештај за спроведување на годишниот план за работа на Министерството за труд и социјална политика за периодот 1-12.2021 година).

²⁹² Outside the cut-off date for this report, in February 2022, the first public debate on the strategy was held. Following this, the strategy was being adjusted according to the feedback gathered. It has been announced that it will be adopted in the first half of 2022.

and power in society – for Roma women and girls’.²⁹³ The NAP foresees the establishing of a coordination body that will oversee its implementation.

²⁹³ National Action Plan on the Protection, Promotion and Fulfilment of the Human Rights of Roma Woman and Girls for 2022-2024, available at: https://www.mtsp.gov.mk/content/pdf/2022/NAP_za%20zastita%20promocija%20i%20ispolnuvanje%20%20na%20cov.%20prava%20na%20zenite%20i%20devoj%20%20Romki%2015.03.2022.pdf.

10 CURRENT BEST PRACTICES

The CPPD has established an official website and made all opinions in individual cases accessible (anonymised). From this website, the section on 'Analytics' can be singled out as an example of good practice. It is a section where data on the cases can be obtained on several categories, such as the sex of the applicant, grounds raised in the case, fields where the discrimination occurred, type of discrimination cases, status of the case, and so on. It also includes a section on opinions which allows users to get an overview of the cases which the CPPD has received, but also to obtain an information on the status of each case in live, as the case progresses through the CPPD. Each result is linked with the CPPD's decision or opinion once this becomes available, which makes it easy to access and read opinions as soon as they are adopted, but also to sift through the cases for those in which one might be particularly interested.²⁹⁴

There are no good practices in relation to the use of artificial intelligence for improving the effective implementation of the national legislation transposing the directives.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives at the national level

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

11.2 Other issues of concern

The main issue of concern is the lack of internal harmonisation of the national legislation, identified in the previous reports and in a 2016²⁹⁵ and a 2021²⁹⁶ analysis. Article 51 of the new ADL also prescribes an obligation for all other national laws to be aligned with the ADL within two years from the date of entry into force of this law. In order to support the harmonisation process, an analysis was prepared looking at possible models and approaches for conducting harmonisation.²⁹⁷ Harmonisation was also 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 the National Strategy on Equality and Non-discrimination (2016-2020)²⁹⁸ and is also at the core of the first strategic goal, 'Advancing the legal framework on equality and non-discrimination' in the draft for the new National Strategy on Equality and Non-discrimination 2022-2026.²⁹⁹ In its Strategic Plan, the CPPD set out the intention to achieve 'Prepared and published list of priority laws which need to be aligned with the Law on Prevention and Protection against Discrimination' within its strategic goal 3.1, on 'Preventing structural inequalities and promotion of values overcoming discrimination'.³⁰⁰

Some steps have been taken to improve access to justice in cases of discrimination, such as the ADL envisaging that there should be no court fees for these cases and the Law on Free Legal Aid including discrimination cases. These are recent changes, so the actual effects from these changes are yet to be seen.

²⁹⁴ The 'Analytics' section is available on the website in the Macedonian language: <https://kszd.mk/аналитика/>.

²⁹⁵ Kotevska, B. (2016), *Analysis of the harmonization of national equality and non-discrimination legislation*, Skopje, OSCE and CPAD.

²⁹⁶ The text of this analysis is not published yet. Text on file with author: Scullion, G. and Kotevska, B., *Harmonization of the national legislation in North Macedonia with the Law on the Prevention and Protection against Discrimination* (2021, MLSP and CoE HFII), pp. 6-7.

²⁹⁷ Najchevska, M. (2019), *Analysis of the harmonization of the legislation in the area of anti-discrimination*, OSCE.

²⁹⁸ Ministry of Labour and Social Policy (2016), *National Strategy on Equality and Non-discrimination (2016-2020)*.

²⁹⁹ Text of the draft strategy is on file with the author.

³⁰⁰ CPPD, Strategic Plan 2021-2026 (Стратешки план 2021-2026), 2021.

No issues of concern can be identified regarding the use of artificial intelligence in relation to the implementation of the national legislation transposing the directives, or regarding the regulation of artificial intelligence. The use of AI at the national level remains underdeveloped, and there is thus very little interest or regulation of this area.

12 LATEST DEVELOPMENTS IN 2021

12.1 Legislative amendments

Law on Labour Relations – amendment of Article 104 removing the possibility for deferral of the retirement from the pensionable age of 64 until 67 years of age, effectively making 64 the mandatory retirement age (discussed in section 4.6.4.).

12.2 Case law

Relevant discrimination ground: race, colour of skin, social origin, ethnicity, and belonging to a marginalised group

Name of the body: Commission for Prevention and Protection against Discrimination

Date of decision: 1 September 2021

Name of the parties: /

Reference number: No.0801-136

Address of the webpage: N/A

Brief summary: A Roma woman, a mother, was expelled violently from a bus by the driver in Skopje with her two minor children, one of whom was a child with disabilities (used a wheelchair).³⁰¹ The driver of the bus – a public bus operated by the public enterprise JSP - yelled at them while throwing them out, including using a racial slur to address them. The CPPD found intersectional discrimination because of the fact one of the children was using a wheelchair regardless of the fact that in its main finding it did not list disability as one of the grounds on which it found discrimination and gender was also not one of the grounds. Regrettably, however, the CPPD did not comment on the particular way in which a synergistic effect had arisen in the case of the Roma child with a disability in this specific instance nor on what the wider social implications of the case were. It also did not expressly identify an intersectional aspect in the position of the Roma mother. In fact, neither gender nor sex were listed in one of the grounds on which the CPPD found discrimination. This would have been interpreted as an early signal that, while the CPPD was not prepared to support the claims, it can point out the grounds which may be at play, regardless of whether the applicants have listed these or not. However, it is evident from this case that it considered disability even though it does not seem to have been claimed by the applicants. In addition, in the opinion and the accompanying recommendation to the discriminator, there was no engagement with the fact that the driver's action was actually a reaction to the fact that other passengers were pushing the Roma mother and her two children around the bus. The key recommendation was for the enterprise to conduct training for its staff, something which the enterprise accepted, and it invited the CPPD to provide this training.

³⁰¹ The CPPD opinion states that one of the children was using a wheelchair, but the information of the author acquired from the CSO which brought the case to the CPPD states that it was a child in a stroller.

ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION

Country: North Macedonia
Date: 01 January 2022

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

Abbreviation: Anti-Discrimination Law

Date of adoption: 30 October 2020

Entry into force: 30 October 2020

Latest relevant amendment: N/A

Weblink: <https://www.slv.esnik.com.mk/Issues/d1cad95799fb48d19825ab843deefe09.pdf>

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

Civil law

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

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

Title of the Law: Law on Labour Relations

Abbreviation: Labour Law

Date of adoption: 28 July 2005

Entry into force: 5 August 2005

Latest relevant amendment: 29 June 2018

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

Grounds covered: Race, colour, sex, age, health condition, disability, religious, political or other belief, membership of trade union, national or social origin, position of the family, property, sexual orientation or other personal issue

Civil law

Material scope: Public employment, private employment

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

Title of the law: Law on Social Protection

Abbreviation: LSP

Date of adoption: 21 May 2019

Entry into force: 23 May 2019

Latest relevant amendment: N/A

Weblink: http://www.mtsp.gov.mk/content/pdf/zakoni/2019/28.5_zakon_SZ.pdf

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

Civil law

Material scope: Social protection, social advantages

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

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

Abbreviation: LEPD

Date of adoption: 2 June 2000

Entry into force: 10 June 2000

Latest relevant amendment: 29 May 2018

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 disabilities, including shelter companies

ANNEX 2: INTERNATIONAL INSTRUMENTS

Country: North Macedonia
Date: 01 January 2022

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) ³⁰²	18.01.1994	No	Yes	Yes
Framework Convention for the Protection of National Minorities	25.07.1996	10.04.1997	No	Yes	Yes
International Covenant on Economic, Social and Cultural Rights	(succession)	18.01.1994	No	Yes	Yes
Convention on the Elimination of All Forms of Racial Discrimination	(succession)	18.01.1994	No	Yes	Yes
Convention on the Elimination of	(succession)	18.01.1994	No	Yes	Yes

³⁰² 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?
Discrimination Against Women					
ILO Convention No. 111 on Discrimination	n/a	17.11.1991	No	Yes	Yes
Convention on the Rights of the Child	(succession)	02.12.1993	No	Yes	Yes
Convention on the Rights of Persons with Disabilities	30.03.2007	14.12.2011	No	Yes	Yes

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