

Comments to the Draft Law on Prevention and Protection from Discrimination

Prepared by the Helsinki Committee for Human Rights of RM

- Article 1** of the draft law should include that the law provides for implementation of the **principle of equal treatment**.
 - This principle is the basis of Directive 2000/78/EC and the national anti-discrimination law should be based on this principle.
- Article 2** should be supplemented explicitly saying that the protection against and prohibition of discrimination shall apply **both in the public and private sectors**.
 - This wording is taken from Directive 2000/78/EC and Directive 2000/43/EC and should be reflected in the national law in order not to leave room for speculations regarding the scope of law.
- Article 3** must include **sexual orientation** as a ground for discrimination.
 - Sexual orientation as a ground for discrimination is an integral part of the European Convention of Human Rights (Article 14 and Protocol 12), affirmed through the practice of the European Court for Human Rights, the aforementioned EU Directives as well as the EU Charter of Human Rights. The country has been subject to criticism on this issue clearly stated in the last progress report released by the European Commission. It is necessary to include this ground of discrimination in the law in order to raise the awareness on discrimination of marginalized groups and to provide adequate protection.
- In **Article 5** new paragraph 4 should be added, saying:
 - The **principle of equal treatment** shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds for discrimination.
 - The same explanation applies as in Article 1.
 - After Article 9 we believe it is of crucial importance to add other three articles, reading:

Enticing Discrimination

Any activity with which someone directly or indirectly invites, encourages, gives instructions or convinces someone to discriminate shall be considered as discrimination.

Victimization

Victimization i.e. inappropriate treatment towards the person that has undertaken or is believed to have undertaken or will undertake any activity for protection against discrimination shall be considered as discrimination.

- The protection against enticing discrimination and victimization is absolutely necessary for the law to meet its purpose and to ensure the protection against discrimination to be effective and full and this is why it is needed for these terms to be defined. These types of discrimination are integral part of the two directives 2000/78/EC and 2000/43/EC.

Hate Speech

Any expression of ideas and opinions that entice discrimination, hatred or violence against a person or group of persons because of a different property on any ground, expressed through media, publications, public gatherings and places accessible to the public through writing, showing messages or symbols or in any other way shall be considered as discrimination.

- The hate speech is also discriminatory behavior and appropriate protection should be provided. Because this act is not sanctioned under any of the other laws, we suggest this to be integral part of this law, allowing to raise the awareness about this phenomenon as well as to prevent it and to provide protection.
6. **Article 11** does not state the source of financing of the Commission. Having in mind that this should be an independent and autonomous body, it is necessary to regulate that the funding would come from the Budget of the Republic of Macedonia.
 7. The requirement for 10-year working experience in **Article 13** is inappropriate and should be replaced with experience in the field of human rights.
 8. In **Article 19** of the draft law, the competences of the Commission should be supplemented with:
 - Taking actions to investigate and establish facts for discriminatory actions,
 - Cooperation with the civil society as well as scientific and professional institutions in order to provide protection from discrimination,
 - Undertaking activities for raising the awareness and promotion of human rights by working on prevention from discrimination.
 - The obligations of the state for raising the awareness of the population on the discriminatory actions, promotion of the principle on equal treatment, dialogue with the stakeholders and especially the cooperation with the civil society arise from the aforementioned Directives of the European Union as well as the relevant international mechanisms for protection of human rights, so we believe it is vital to be clearly reflected in the national law.

9. In **Article 20** it is necessary to add new paragraph, saying:

The Commission shall be obligated to act upon and initiate procedures on cases of discrimination, also **ex officio** when it learns of a certain act or action of discrimination.

- For the Commission to be promoted into efficient and vigorous body for promotion and protection against discrimination it is necessary to work on identifying and initiating ex officio procedures in cases of discriminatory actions. Therefore, it is necessary to shorten the deadlines for the proceedings of the Commission defined in **Article 23** of the draft law.

9. **Article 24** should be amended to say that whenever the recommendations of the Commission are not followed, it **WILL** raise an initiative for opening a procedure before the competent law.
- In a situation when the Commission establishes an act of discrimination and the perpetrator does not act upon its recommendations, there is no point in the existence of the Commission unless it is obligated by law to initiate a procedure on sanctioning the discriminatory action. Without this obligation imposed to the Commission, the mechanisms for protection against discrimination defined by law become inefficient and irrelevant, left to the will and consciousness of the members of the Commission.
10. **Article 25** of the draft law should be deleted. The autonomy and independence of the Commission should be affirmed with its financial and otherwise independence from any other body of the state administration. This requirement comes from the criteria of the Paris Principles and the recommendations of the Venice Commission of the Council of Europe.
11. **Articles 26, 27, 37, 38 and 39** of the draft law should be supplemented with obligations and fines for the legal entities from the private sector because this law covers both the public and the private sector of the state in providing protection against discrimination.
12. For the sake of precision and clarity in the court procedure, **Article 31 paragraph 1** should specify the lawsuits against discrimination
- line 1, lawsuit for establishing discrimination;
 - line 2, lawsuit for prohibition or removal of discrimination;
 - line 3, lawsuit for compensation of damages;

Article 31 should introduce new paragraph providing court protection for persons subject to victimization, for the purpose of efficient application of the principle of equality.

- The court protection from victimization is foreseen in the EU Directives, as a precondition for initiating any procedure for protection against discrimination.

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