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COMMENTARY

on the law on prevention and protection against discrimination

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COMMENTARY ON

THE LAW ON PREVENTION AND PROTECTION AGAINST DISCRIMINATION

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Abbreviations

ECRI – European Commission against Racism and Intolerance

ECHR – European Convention for the Protection of Human Rights and Fundamental Freedoms

ESC – European Social Charter (revised)

ECtHR – European Court of Human Rights

EU – European Union

LPPD – Law on Prevention and Protection against Discrimination

LSC – Law on the Securing of Claims

LCP – Law on Civil Procedure

LMD – Law on Misdemeanours

CRPD – Convention on the Rights of Persons with Disabilities

CPD – Commission for Protection against Discrimination

CPPD – Commission for Prevention and Protection against Discrimination

HRC – Human Rights Committee

LGBTI – Lesbian, gay, bisexual, transgender and intersex persons

MK – Republic of North Macedonia

ICERD – International Convention on the Elimination of All Forms of Racial Discrimination

ILO – International Labour Organisation

ICCPR – International Covenant on Civil and Political Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

MLSP – Ministry of Labour and Social Policy

NCB – National Coordinating Body for monitoring the processes of anti-discrimination and implementation of laws, by-laws and all strategic documents in this area

OMB – Ombudsperson

OSCE – Organisation for Security and Co-operation in Europe

UN – United Nations

EU Charter – Charter of Fundamental Rights of the European Union

CJEU – Court of Justice of the European Union

CoE – Council of Europe

UNESCO – United Nations Educational, Scientific and Cultural Organisation

CC – Constitutional Court

CEDAW – Convention on the Elimination of All Forms of Discrimination against Women

Review

Review by Judge Dr. Mirjana Lazarova-Trajkovska

A review of the *Commentary on the Law on Prevention and Protection against Discrimination* by the authors Dr. Žaneta Poposka (editor), Dr. Bekim Kadriu, Lidija Dimova, Bojana Velkovska and Nataša Boškova, published by the Organisation for Security and Co-operation in Europe (OSCE) Mission to Skopje and the Academy for Judges and Public Prosecutors (AJPP), Skopje 2023.

The manuscript of the publication *Commentary on the Law on Prevention and Protection against Discrimination* by the authors Dr. Žaneta Poposka (editor), Dr. Bekim Kadriu, Lidija Dimova, Bojana Velkovska and Nataša Boškova is a rather voluminous paper (263 pages of text, plus the bibliography). The contents of the text follows the structure of the *Law on Prevention and Protection against Discrimination (LPPD)* of the Republic of North Macedonia, which has been in force since 30 October 2020. The commentary has been structured into seven parts, as has been the Law; however, the numeration of the parts, instead of the Roman numerals, as in the Law, makes use of the Arabic numerals. Within each part, the comments have been elaborated individually for each of the (total of 48) articles of the Law.

By using the inductive-deductive method, the authors have successfully achieved the goal set by the *Commentary* to contribute to an in-depth understanding of the subject-matter and the objectives of the Law in its entirety, as well as of the sense, the meaning and the applicability of specific legal provisions. On a primary level, the *Commentary* points out that, by setting the assurance of the principles of equality as the main objective of the Law, the new LPPD, compared to the previous one, stipulates the prevention and protection against discrimination as the basic precondition for equality and the enjoyment of human rights and freedoms.

On a secondary level, with the purpose of deepening the knowledge and the applicability of the legal provisions, the *Commentary* links the specific legal arrangements and institutes with the on-going discussions on these topics in the relevant professional literature; with the previous legal arrangements in our country, and their limitations in practice; and with the arrangements in other countries (Serbia, Croatia, Montenegro and others). A particularly valuable achievement of the *Commentary* is its analysis of how harmonised the specific legal arrangements are with the European Convention on Human Rights, as well as with the case law of the European Court of Human Rights.

Every individual article of the Law has been commented in this comparative approach. In doing so, despite the large number of authors involved, the presentation has been methodically aligned and is consequential. This makes the contents readable and understandable, not only for the expert audiences, for whom this *Commentary* has been primarily intended, but also for the wider public. This is exactly why the *Commentary* may find its way on the reading list at different levels of education, particularly that of judges, prosecutors and civil servants.

A particularly valuable achievement of this *Commentary* is its critical approach. To point out the specificities of the recent enactments, the authors were justified and correct in undertaking a critical analysis of some of the provided legal arrangements.

This approach is significant for the further development of this matter in our country because, as demonstrated by this Law compared to the previous one, it concerns the regulation of a subject-matter which is susceptible to the changes in the value system of our society.

Taking into account the notable achievements of this *Commentary*, it is my pleasure to make the conclusion that its publication will satisfy the current need for an in-depth understanding of the Law on Prevention and Protection against Discrimination in a high-quality manner and from the quill of renowned connoisseurs of the subject-matter.

Judge Dr. Mirjana Lazarova-Trajkovska

21 June 2023, Skopje

REVIEW BY DR. BILJANA KOTEVSKA

The *Commentary on the Law on Prevention and Protection against Discrimination (Commentary)* is a successful pioneering attempt to bring closer the contents of the Law on Prevention and Protection against Discrimination (the Law, LPPD) by analytically deconstructing the scope of its articles, for which the authors have provided support from the relevant equality and non-discrimination literature, practice and case law of domestic and international courts and bodies. Moreover, the clear expression of the language and the exceptional level of elaborating the subject-matter make the *Commentary* potentially useful for different professional backgrounds and different levels of understanding of the subject-matter.

One of the qualities of this *Commentary* is that it not only dwells on the theoretical and practical side of the LPPD, but it also holds a normative component. Namely, the authors have successfully considered the Law's shortcomings, too, and made proposals for its improvement, thereby using their own critical and analytical quill and other existing literature and data from relevant institutions. In such a way, this *Commentary* is a logical follow-up on the many analyses made so far of the various aspects of the Law, from its scope and regulation to its compliance with the domestic nomotechnical rules, which were identified both in relation to the previous 2010 law, and the current LPPD. By cultivating the continuity in this manner, the authors have additionally provided a relevant place for the *Commentary* in the domestic legal thought related to the equality and non-discrimination legislation. More importantly, in this way, the authors have made a step forward from the frequent, fatal, but widespread practice in our country of ignoring or non-referencing the existing literature, with which our domestic legal thought, instead of building on and growing, is condemned to initiating discussions about the domestic law and practice over and over again from the same starting points. This also reflects the foundations and the width of the legal thought related to equality and non-discrimination, which slowly but surely is becoming developed in our country, but also of the quality and the ethical standard of the authors themselves, which is particularly welcomed.

A particular contribution has been made by selecting and presenting the domestic practices, particularly the case law of domestic courts. These practical aspects remain the least available to the public, and thus to the critical, analytical audiences engaged in the area of equality and non-discrimination, which makes the complete references of domestic case law given in the *Commentary* important. The clear and visible distinction of the case-law is an excellent approach in formatting the *Commentary*. Moreover, some of the authors come from domestic institutions responsible for processing the cases of discrimination, so their contribution, by critically presenting the practice of those institutions, from where they themselves come, adds a note of self-reflection and self-criticism, giving additional value and dimension to this *Commentary*.

The *Commentary* includes many comparative references from the legislation of other countries and from the international law and practice. This approach, although unevenly developed across the jurisdictional scope and the place and weight given to the comparative component itself in the analysis, makes a significant contribution as it helps understand the contents of the LPPD, particularly where certain issues have remained unregulated or where the domestic practice is still missing. In relation to this, our domestic legal practitioners will certainly value the frequent revisiting of the legislative provisions of most of the countries in the region.

From a personal aspect, the *Commentary* has an excellent presence and elaboration of examples related to physical and legal persons. The issue of nationality and its possible effects on the cases has also been adequately addressed. Considering the increasingly large number of cases before domestic courts and bodies where the applicants invoke more than one grounds of discrimination, it would have been beneficial if the *Commentary* had examined all of the articles more evenly and more critically from the aspect of application of the Law in possible cases of multiple discrimination. A large portion of the *Commentary* relies on the existing practice so as to clarify the provision on the more severe forms of discrimination. In doing so, it replicates the uncritical, mechanical attitude towards this provision and these forms of discrimination, which can also be found in the CPPD practice. However, the overview of this practice clearly captures the complexity of the reality of discriminatory experiences in the country, which is in itself a significant contribution. Regarding the substantive coverage of the LPPD, the *Commentary* provides an excellent balance of examples in different areas. Examples have been provided from the areas of employment, education, healthcare, access to goods and services in various sectors, etc. In this way, the *Commentary* manages to successfully capture the breadth and the opportunities for protection against discrimination provided for in the LPPD.

From an institutional aspect, the focus has been placed on the CPPD and its practice. This is understandable considering the contents of the LPPD. However, the *Commentary* makes an effort, a rather successful one, to ensure a place for and make an observation of the work of the Ombudsman – an important institution which also has competences related to the enforcement of this Law. The authors have managed to by-pass, as realistically possible as one might expect, the obstacle imposed by the comparative non-transparency of the Ombudsman when it comes to their practice in resolving the cases, by using the short, frequently scant examples from the Ombudsman's practice as reported in their annual reports. Such non-transparency is unbecoming of a National Human Rights Institution and prevents a serious critical consideration to be given to the protective function of this institution; it is also indicative of the lack of accountability and transparency in the work of this institution. The way in which the CPPD can simultaneously ensure staying open and yet protect the applicants' personal data and dignity shows that being enclosed and non-transparent, in contemporary times, is a matter of choice. The result from this is that, looking at the examples in the "case law excerpts", the CPPD is imposed as a superior institution and protector of the principle of equality compared to the Ombudsman, and even compared to the courts, and the CPPD has earned this status both due to its efforts, openness and accountability as much as due to the unapproachability and non-transparency of the Ombudsman, and the continued issue with systematising and publishing the courts' case law. Maybe this *Commentary* will serve as motivation for them to follow the example of the CPPD, so that a possible future commentary

can include more and reflect more the efforts and the contribution of the Ombudsman in the fight against discrimination.

From a procedural aspect, the input made by this *Commentary* is significant, as placing the discussion of discrimination cases within the frames of the domestic procedural law is particularly valuable contribution. In a clear and logical way, the usual procedural path has been shown and the way it changes in the context of equality and non-discrimination legislation. For issues that may invite several approaches, the authors have offered a number of options, and for issues which the legislator had missed to regulate, analogous or comparative examples have been provided. In this way, the authors have successfully drafted a clear procedural map that the interested parties can follow in their work.

Concerning the use of sources that served the authors to compile this *Commentary*, one may conclude that, by and large, references have been made to the relevant (predominantly) domestic literature, including by making use of the reports by domestic and international governmental and non-governmental organisations and bodies, as well as academic and specialised literature. It is refreshing to also see a text where, in general, there is a proper and unified referencing of the sources, as well as an index, which will prove particularly beneficial to the practitioners.

The *Commentary* has come out in the right time. Although less than three years have gone by since the adoption of the LPPD, the number of cases on which the Commission for Prevention and Protection against Discrimination (CPPD) had to act in these three years has become significant and allows for a solid critical baseline to observe the direction in which the provisions are implemented, which the authors have successfully identified. On the other hand, there is a distance enough to perceive how the changes brought about with the adoption of the LPPD have played out, compared to its 2010 precedent. Additionally, the *Commentary* has arrived in a time when some of the exceptional contributions made by the LPPD in combating discrimination have been under attack, such as, for example, creating the legal grounds for equality of all people irrespective of their gender identity. This *Commentary* is yet another reminder about the serious legal entrenchment and the need for protection of the gender identity-based equality and its foundations in the international law. This makes clearer the contribution and the significance of the LPPD both for the domestic legal framework and for the tendency to offer protection to the most marginalised people in times when they need it the most.

Finally, it is inevitable to mention that this is merely a first *Commentary on the Law on Prevention and Protection against Discrimination* and, as such, it would have been significant even in the absence of the quality of material it evidently possesses. I am thankful for the privilege to follow the development and the growth of the text of the *Commentary* over the years as its authors worked on it meticulously, carefully and committedly. Seeing the end result, I can freely say that the effort invested over the years in producing the *Commentary* has been justified. An exceptionally valuable compilation that will be found on top of my desk more often than on the shelves.

Dr. Biljana Kotevska

14 June 2023, Skopje

Introduction

The Republic of North Macedonia (hereinafter: MK) has established the principle of equality with Article 9 of its 1991 Constitution, and has ratified all the international agreements that prohibit discrimination and provide for the right to equality. In 2010, the first nation-wide Law on Prevention and Protection against Discrimination (hereinafter: the former law) was adopted as *lex specialis*, which precisely defined the principle of equality, the prohibition of discrimination on many grounds, and the judicial and quasi-judicial mechanisms for protection against discrimination. The first Commission for Protection against Discrimination (hereinafter: CPD) was formed in 2011, as an equality body which should, above all, protect the citizens against discrimination. In 2016, five years into implementing the law, the Ministry of Labour and Social Policy, supported by the OSCE Mission to Skopje, together with the practitioners and the professionals working in the field of anti-discrimination, launched the process of improving the legislation. In 2020, the Assembly adopted the new Law on Prevention and Protection against Discrimination (hereinafter: LPPD), which entered into force on 30 October 2020.

To consistently apply the LPPD, the OSCE Mission to Skopje, together with the Academy for Judges and Public Prosecutors, developed the present *Commentary on the Law on Prevention and Protection against Discrimination* (hereinafter: Commentary), which was developed over several years by a team of experts in the area of anti-discrimination. The team consisted of: university professors in international law who have authored doctorates on the topic of protection and prevention against discrimination based on disability and age, properly representing the legal theory and critical thought; experienced judges in the area of civil and labour law experienced in cases of protection against discrimination, representing the judiciary, who are the ones most directly applying and interpreting the LPPD and creating and building the case law; and a lawyer of many years specialised in protection against discrimination of the marginalised groups of people, whose work experience contributed for the analysis of the application of the law to be carried out in a different light, that is, from the aspect of the stakeholders' expectations and actions, in the capacity of parties in the proceedings held either before the Commission for Prevention and Protection against Discrimination or before the courts. The *Commentary* has the purpose to contribute to an in-depth understanding of the efficient and effective application of the LPPD, thus promoting equality. The *Commentary* includes examples from the case law of the European Court of Human Rights (hereinafter: ECtHR), the Court of Justice of the European Union (hereinafter: CJEU), a rich compendium of cases from the work of the Commission for Prevention and Protection against Discrimination (hereinafter: CPPD) and the Ombudsperson (hereinafter: OMB), as well as numerous national examples from the case law to this day, which we hope will be useful for the legal practitioners so that they can teleologically interpret the provisions of the law, especially the ones giving rise to dilemmas and different interpretations. The *Commentary* also makes use of a comparative analysis of the legislation of the countries which have a similar legal context and legal tradition as our country, but also including some examples from the legislation of the European Union and the United States of America, so that it can more easily serve as motivation for implementing the LPPD, with the purpose of eliminating discrimination, promoting equality and encouraging good relations between the different groups of citizens in MK.

The *Commentary* elaborates all the provisions of the LPPD in its seven chapters. It lists the literature used at the end, and it also includes an index of the case law and the legal, international and national texts. Incorporated in the text of the *Commentary*, in separated

segments (text boxes), are given excerpts from the case law; from the practice of the CPPD, the OMB and the former CPD; as well as from the specialised literature, which explain a given legal institute in greater detail. The annual reports from the work of the CPPD as well as the annual reports by the OMB have also been used. The authors also found it beneficial to comparatively elaborate the legislation of the neighbouring countries, and certain positive examples have been illustrated from the states using the Anglo-Saxon and the Continental legal traditions, so as to illustrate the good practices in applying and interpretating the anti-discrimination provisions. Certain terms have been translated into Macedonian language, and their language reference to the original form has been indicated with a text in parenthesis initiated with an abbreviation for the corresponding language; for example, for the English language the abbreviation "Eng." is used, for the Latin language the abbreviation "Lat." is used, and so on.

The authors wish to express their gratitude to the two reviewers, Dr. Mirjana Lazarova-Trajkovska and Dr. Biljana Kotevska, for their in-depth constructive comments; also to the member of the existing CPPD, Igor Jadrovski, for his experiential observations; the lawyer Keti Jandrijeska-Jovanova, for sharing the final judgements from several of her cases involving protection against discrimination; as well as to the many legal practitioners who, with their feedback shared during targeted focus groups and legal seminars in the Academy for Judges and Public Prosecutors and in-depth interviews, unselfishly contributed for improving the text.

1. GENERAL PROVISIONS

1.1. Subject Matter and Purpose of the Law

Article 1
Subject Matter of the Law

This Law shall regulate the prevention and prohibition of discrimination, the forms and types of discrimination, the procedures for protection against discrimination, and the composition and work of the Commission for Prevention and Protection against Discrimination.

Article 1 of the LPPD defines the topic of the Law, or the subject matter to be regulated by the Law, which is based on the crucial role of the prevention and prohibition of discrimination. This subject matter is divided in three parts, including: the forms and types of discrimination, the procedures for protection against discrimination, and the composition and work of the Commission for Prevention and Protection against Discrimination (hereinafter: CPPD), which have been mentioned explicitly; as well as the proceedings before the CPPD, the judicial protection in cases of discrimination, and the penalty provisions, which, although not explicitly mentioned in Article 1, have been provided for as separate chapters in the Law. In this way, Article 1 unifies the substantive, procedural and institutional segments of the LPPD subject matter.

The substantive part is reflected in the definition that the subject matter of the Law includes the interception, or prevention, and prohibition of discrimination in the exercise of one's rights, as well as the special forms of discrimination. Although it speaks about prevention and prohibition of discrimination, Article 1, however, should be understood from the aspect of the right to equality. Namely, the subject matter of the Law includes not only the prohibition of discrimination, but also the issue of equality, or achieving equality, which is reflected in the very purpose of the Law, as defined in Article 2.

The legal definition of the term discrimination implies unequal treatment based on particular personal qualities or characteristics, that is, discrimination grounds, which includes unfounded classifications and differentiations in a given legal context. In the area of human rights, the term discrimination means the difference in the enjoyment of rights based on various statutory or informally incorporated grounds and principles. Discrimination can be intentional or unintentional, it may result from individual or group actions, or from a particular state policy, and it can be even part of the legislative framework. However, no matter what kind of discrimination it is, it always includes in itself a different, that is, less favourable, and unjustified treatment which is committed through action or inaction towards a particular person, solely because of a particular protected characteristic. This can be inferred from the very etymological meaning of the concept of discrimination (Lat. *discriminare*, *discriminatio*), which means *making a distinction*, *differentiating*, *classifying*. Most often, these distinctions are based on the existing stereotypes and prejudices held about particular groups of people. However, every differentiation in itself does not mean discrimination.

Excerpt from the Case Law No. 1

According to the ECtHR, discrimination, within the context of the European Convention on Human Rights (hereinafter: ECHR), is the very differentiation that has no legitimate aim or, if such legitimate aim did exist, the differentiation made exhibits no reasonable proportion between the means used and the desired aim, as pointed out in the *Belgium Linguistics Case* (Case relating to certain aspects of the laws on the use of languages in education in Belgium v. Belgium, App. Nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63 and 2126/64, Judgment of 23 July 1968, Paragraph 10).

As regards the prevention and prohibition of discrimination, it should be mentioned that the Law uses this provision to make an effort to regulate a wider spectrum of measures for both preventing and protecting against discrimination. This derives from, or is reflected in, the very title of the Law – Law on Prevention and Protection against Discrimination. Consequently, the competences of the CPPD can be divided into competences the purpose of which is to prevent the discrimination from occurring, and competences that are related to protection against discrimination. On the other hand, the court proceedings for protection against discrimination belong to the segment of protection against discrimination. So, what needs to be understood at the very beginning is that the Law is seeking to include broader measures that will cover both the intercepting (prevention) of discrimination, the prohibition of the special forms of discrimination, and the protection against discrimination.

The law also regulates the prohibition of the special forms of discrimination, including the direct discrimination (Article 8 Paragraph 1), indirect discrimination (Article 8, Paragraph 2), calling for, inciting and instructing to discrimination (Article 9), harassment (Article 10), victimisation (Article 11), segregation (Article 12), and the more severe forms of discrimination (Article 13). The prohibition of the special forms of discrimination is in compliance with the European Union acquis (hereinafter: EU), and is particularly important because this is the only law in our country that clearly defines all the forms of discrimination. This should allow the courts to build a clear case law through applying the enacted regulations that concern the prohibition and protection against discrimination.

The procedural part of the subject matter of the LPPD is reflected in the regulation of the special procedures for protection against discrimination. This, above all, refers to the regulation of the court proceedings for protection against discrimination, as detailed in the special Chapter V of the Law (Articles 32 to 40). Proceedings for protection against discrimination also include the proceedings before the CPPD, as regulated in Chapter IV (Articles 23 to 31).

The institutional part of the subject matter of the LPPD is reflected in the provision on setting up a dedicated body responsible for prevention and protection against discrimination, which is the Commission for Prevention and Protection against Discrimination. The CPPD is an equality body, the establishment of which had the purpose to make the legislation harmonised with the *Directives 2000/43/EC, 2006/54/EC, 2004/113/EC* and *2006/154/EC* of the European Union, which were explicitly specified in the correspondence tables, and also with the *Directive 2010/41/EU*, even though it was not specified in the harmonisation form. The CPPD has broad competences, as defined in Article 21 of the Law, which include both prevention measures and protection measures.

By comparison, as regards the subject matter of the LPPD, the *Law on Prohibition of Discrimination of the Republic of Serbia* (The Official Gazette of the Republic of Serbia Nos. 22/2009, 52/2021) defines the subject matter of the law, with the difference that it does not speak about "prevention and protection against discrimination", rather, it speaks about a

"general prohibition of discrimination" (Article 1). This approach is narrower than the approach adopted in the LPPD as it only deals with the prohibition of discrimination as a form of violation of human rights. On the other hand, the *Law on Combating Discrimination of the Republic of Croatia* (The Official Gazette of the Republic of Croatia No. 85/08, 112/12) takes on a wider approach. In Article 1, the subject matter of the law is stipulated as "ensuring the protection and promoting equality as the highest value of the constitutional order, creating the preconditions for exercising equal opportunities, and regulating the protection against discrimination" (Paragraph 1).

Article 2
Purpose of the Law

The purpose of this Law shall be to ensure the principle of equality and to provide prevention and protection against discrimination in the exercise of human rights and freedoms.

Unlike the previous Law on Prevention and Protection against Discrimination (2010), the new Law on Prevention and Protection against Discrimination (2020) contain a separate article that refers to the purpose of the Law. As it can be seen, the purpose of the Law is not set restrictively, to only cover discrimination – by preventing it and protecting against it, rather, the purpose of the Law is, above all, to ensure equality, as the basic precondition for the enjoyment of human freedoms and rights. This definition of the purpose of the Law, by including the prevention and protection against discrimination, but also by adding the achievement of equality, allows for a further statutory regulation of the public sector obligation to prevent the discrimination and promote equality, as laid down in Article 3 Paragraph 3 of the LPPD, that is, taking special measures and actions that ensure equality. The list of such measures may include positive action measures, measures for gender-balanced representation, or the constitutional principle of adequate and fair representation of ethnic communities, as part of the domestic practice. These measures may also be observed within the context of the Law on Prevention and Protection against Discrimination, the purpose of which is achieving equality.

Excerpt from the Academic Literature No. 1

"The right to equality is a basic human rights principle, which is based on the equal value and dignity of all human beings. This principle has been articulated in all international and regional human rights instruments.

When talking about equality, a distinction should be made between formal and substantive equality. Namely, *formal equality*, or, as it is also called, statutorily ensured equality, implies the formal recognition that all people have equal rights and freedoms guaranteed by the law and equal application of the laws by the state authorities. This understanding of equality is based on the Aristotle's maxim that equals should be treated equally, and the non-equals differently (Aristotle, *Ethica Nicomachea*, V.3), that is, on the symmetrical approach. This form of equality assumes that equality has been achieved if there exists a legal framework according to which people are equal in enjoying their rights and freedoms, thereby paying no attention to the results of this, that is, this form of equality excludes the indirect discrimination from its notion.

On the other hand, *substantive equality*, which presupposes a broader interpretation of the concept of equality, implies enforcing the statutory equality in the everyday life, whereby the results and the effects arising from the application of laws, policies and practices should not be discriminatory. A special account is given to the diversity of the particular protected groups, such as, for example, in the cases of pregnancy (on the ground of sex). This is exactly why substantive equality is an indicator referring to possible inconsistencies in relation to the application of the formal, or statutory, equality. The goal of a democratic society is to achieve the substantive equality, above all. This type of equality is most clearly expressed in the theory of multidimensional inequality, which is currently very topical, and which underlines the existence of a multidisciplinary individual and group identities that result in an increased vulnerability of the protected individual and/or group, which is manifested in the interdependence with the complex structural social factors.

Conceptually, equality and prohibition of discrimination may be seen as a positive and a negative formulation of the same principle. Although legal instruments are typically formulated in a way that they stipulate what is prohibited, which is discrimination, still, this prohibition serves to ensure the ideal of equality, which, in fact, is the objective of this prohibition. For example, the *Explanatory Report to the Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms* states that: "…the non-discrimination and equality principles are closely intertwined. For example, the principle of equality requires that equal situations are treated equally and unequal situations differently. Failure to do so will amount to discrimination unless an objective and reasonable justification exists" (Paragraph 15). It can be clearly concluded from this that the principles of equality and prohibition of discrimination do not require equal treatment of similar situations, rather, different treatment of unequal situations. This position is clearly expressed in the case law of the ECtHR, in the case of *Thlimmenos* (Thlimmenos v. Greece, [GC] App. No. 34369/97, Judgment of 6 April 2000, Paragraph 44), which emphasises the objective of the anti-discrimination legislation, and this is "not only equality of opportunities, but equality of the very results" (Poposka and Jovevski, 2017, p. 14-15).

In today's frameworks, one speaks of achieving inclusive equality, according to the understanding of the United Nations Committee on the Rights of Persons with Disabilities. Namely, in its *General Comment No. 6*, the Committee talks about inclusive equality as a new model of understanding equality, which embraces the substantive model of equality and extends and elaborates on the content of equality in: (a) a fair redistributive dimension to address socioeconomic disadvantages; (b) a recognition dimension to combat stigma, stereotyping, prejudice and violence and to recognise the dignity of human beings and their intersectionality; (c) a participative dimension to reaffirm the social nature of people as members of social groups and the full recognition of humanity through inclusion in society; and (d) an accommodating dimension to make space for difference as a matter of human dignity (Paragraph 11).

By comparison, a similar provision as in the LPPD, in terms of the purpose of the law, can be found in the *Law on Non-discrimination of Finland* (*Yhdenvertaisuuslaki*, 1325/2014, FIN-2014-L-101088) According to Article 1, the purpose of the law is to promote equality and prevent discrimination, as well as to provide protection against discrimination for those discriminated against. In this provision, the first objective is achieving equality as a value, and then follow the measures for preventing the discrimination from occurring. Finally, listed last is the protection against discrimination, once it has happened.

1.2. Application of the Law

Article 3
Application of the Law

(1) This Law shall apply to all natural and legal persons.

(2) This Law shall be applied by all state authorities, local self-government authorities, legal persons with public authority and all other legal and physical persons in the areas of:

1)employment and labour relations;

2)education, science and sports;

3)social security, including the area of social protection, pension and disability insurance, health insurance and health care;

4)justice and administration;

5)housing;

6)public information and media;

7)access to goods and services;

8)membership and activity in political parties, associations, foundations, trade unions or other membership-based organisations;

9)culture; and

10)any other area.

(3) Entities referred to in Paragraph (2) of this Article shall have the obligation to take measures or actions for promotion and advancement of equality and prevention of discrimination.

(4) All entities that are statutorily obliged to collect, record and process data shall have the obligation to present such data according to the discrimination grounds referred to in Article 5 of this Law, relevant in the area, for the purposes of promotion and advancement of equality and prevention of discrimination.

Article 3 of the LPPD refers to the implementation of the Law from the aspect of both the persons concerned (Lat. *ratione personae*) and the area of application (Lat. *ratione materiae*). The LPPD makes it clear In Paragraph 1 of Article 3, which concerns the entities to which the prohibition of discrimination applies, that any physical or legal person, that is, any entity of the law, is under such obligation. In this way, the LPPD has a broad *ratione personae* application and includes all the physical and legal persons. Of course, every physical and legal person should respect the obligation for prohibition of discrimination within the scope of the rights, responsibilities and powers they have when taking decisions regarding the rights and freedoms of individuals. On the other hand, care must be taken this obligation not to encroach into other rights of physical persons, such as, among other things, the right to freedom of choice, freedom of assembly, or freedom of private and family life. So, for example, when it comes to private relations of physical persons, greater balancing is required in cases when the

obligation for prohibition of discrimination is contradicting one's right to freedom of choice, freedom of assembly or other rights, without derogating the rights of others.

As already mentioned, discrimination does occur in the process of enjoying the guaranteed rights. In this way, this article of the Law provides that the Law applies exactly to the discriminatory treatment in the process of achieving (exercising, enjoying) the statutorily guaranteed rights, that is, guaranteed by the Constitution and the individual laws. Although it has been omitted to mention that rights may as well derive from international agreements ratified by the country, this can be nevertheless implied by both the independent and joint reading of the LPPD and Article 118 of the Constitution, with the latter stipulating that the ratified international agreements constitute an integral part of the internal legal order of the state. Also, the LPPD should apply to exercising the rights derived from the by-laws and other regulations, rights which should anyway be enjoyed by anybody without any discrimination.

It is worth noting that discrimination will also be established in cases when only the right to equality is violated, without having to analyse whether any other right has been violated, as this right is stand-alone by its nature, and is not an accessory, or accompanying one.

Excerpt from the Case Law No. 2

Although Article 14 of the ECtHR is principally accessory in its nature, that is, it is invoked only in cases when the applicant claims that the principle of prohibition of discrimination has been violated in exercising the rights and freedoms laid down in the ECHR, the ECtHR confirmed in its case law that the application of Article 14 does not necessarily always constitute violation of other articles of the Convention, as was the case of *Sahin* (Sahin v. Germany, App. No. 30943/96, Judgment of 8 July 2003, Paragraph 85).

A typical example of violation of the right to equality, without violating any other right, is the racial profiling, which is a phenomenon also characteristic in our country. In the case of racial profiling, for example, at a border crossing, the right to free movement should not necessarily have been violated. However, the very fact that members of a particular ethnic community are targeted during border crossing checks more often than others constitutes discrimination in itself. In such cases, the victim may not have been restricted in his/her travel in that he/she was prohibited from entering or exiting the territory of the country where he/she is a national, but the very fact that he/she has been subjected to a particular unequal treatment on account of his/her belonging to a particular race or ethnicity does constitute discrimination.

The LPPD defines the areas of its application in Paragraph 2 of Article 3. The areas listed comprise the substantive scope (Lar. *ratione materiae)* of the LPPD. Since the areas of application of the LPPD have been set broadly, the LPPD itself acts as a general law (from the aspect of areas), unlike other special laws that prohibit discrimination or provide protection against discrimination in precisely specified areas, such as labour relations, education, access to goods and services, etc. On the other hand, however, as regards the issues of equality and non-discrimination, the LPPD appears to be a special law, as no other law may otherwise regulate the issue of equality and non-discrimination. In such a way, the LPPD should be given priority in application compared to other laws that treat the issue of equality and non-discrimination only partially, and concern specific areas.

Finally, Paragraph 2 leaves room for the LPPD to be applied to other areas, too, that have been stipulated in other laws. This means that if a special law which regulates a particular area that is not referred to in Article 4 of the LPPD deals with prohibition of discrimination, the provisions of the LPPD may apply to that area as well. This approach is a very good one as

it leaves room for the provisions of the LPPD to be considered reference provisions for all areas, whether or not covered with specific provisions on discrimination in special laws, which reference provisions would apply and ensure uniformity in approach to all issues related to discrimination, such as definitions, exceptions, legal protection, etc.

Similarly to the LPPD, the *Law on Combating Discrimination of the Republic of Croatia* (The Official Gazette of the Republic of Croatia No. 85/08, 112/12), in its Article 8, lists the same areas where the law is to be applied. On the other hand, the *Law on Prohibition of Discrimination of the Republic of Serbia* (The Official Gazette of the Republic of Serbia No. 22/2009, 52/2021), does not list by name the areas in a single article, rather, it prohibits the discrimination regarding particular areas in separate articles. And so, there is a special article on discrimination in proceedings before public authorities (Article 15), an article on discrimination in labour relations (Article 16), an article on discrimination in the provision of public services and the use of public structures and surfaces (Article 17), and an article on discrimination in education and vocational training (Article 19). Other legislations do not find it uncommon to adopt a special law on protection against discrimination that would apply only in particular areas. For example, there is a special law in the United States of America that prohibits the discrimination on the ground of age that is applicable only in the area of labour relations *(Age Discrimination in Employment Act of the United States, 29 U.S.C. 621 to 29 U.S.C 634).* The Republic of Bulgaria is a specific example because its *Law on Protection against Discrimination of the Republic of Bulgaria* (The State Gazette of the Republic of Bulgaria No. 86/30.9.2003) refers to all the statutorily recognised rights (deriving from the constitution and the individual laws), implicitly stipulating that it is applicable to all areas (Article 6). In this way, both the courts and the equality body take decisions that recognise this universal substantive scope of the law, which offers a comprehensive protection.

From the aspect of the CPPD practice, as regards the applications for which the Commission adopted Opinions on Establishing Discrimination in 2021, majority concern the areas of employment and labour relations (15 cases) and access to goods and services (11 cases), which together account for more than 65%. Then follow the areas of public information, media and social networks (7 cases), justice, administration and electoral rights (4 cases), education (2 cases) and sport (1 case) (CPPD, *2021 Annual Report*, p. 24). In 2022, out of the total number of 70 adopted Opinions on Establishing Discrimination, more than half concern the areas of public information, media and social networks (37 cases), followed by the area of employment and labour relations (15 cases) and access to goods and services (10 cases). Then follow education, science and sport (6 cases) and social security (2 cases) (CPPD, *2022 Annual Report*, p. 28-29).

A similar practice was confirmed by the CPPD predecessor, the Commission for Protection against Discrimination (hereinafter: CPD) whose annual reports in the period between its formation in 2011 until 2018 are dominated by applications concerning employment and labour relations, followed by applications from the area of social security (CPD, *2015 Annual Report*, p. 9) or the area of access to goods and services (CPD, *2014 Annual Report*, p. 11) or the area of education, science and sport (CPD, *2013 Annual Report*, p. 8).

The same practice could be noticed in the reports of the Ombudsperson (hereinafter: OMB), who also has the competence to act on applications concerning discrimination. According to their 2021 Report, 43 applications for protection against discrimination had been filed with the OMB Office, and the OMB opened 7 additional cases at their own initiative. The applications received and the cases opened at their own initiative can be divided as follows: employment and labour relations (22 applications), access to goods and services (6 applications), justice and administration (4 applications), housing (4 applications), education,

science and sport (3 applications), social security, including the area of social protection (1 application), public information and media (1 application) and the rest (2 applications) have been registered under other areas (OMB, *2021 Annual Report*, p. 84). Although the number of cases in the 2022 Report has increased, 76 or 2.37% of the total number of registered cases concern the protection against discrimination, with, however, the same areas. The applications received and the cases opened at their own initiative can be divided as follows: employment and labour relations (total of 34 applications), access to goods and services (4 applications), justice and administration (4 applications), housing (1 application), education, science and sport (8 applications), social security, including the area of social protection (2 applications), public information and media (5 applications) and the rest (18 applications) have been registered under other areas (OMB, *2022 Annual Report*, p. 61 and 82).

Paragraph 3 provides a broad obligation for all entities to which the LPPD applies, including the state authorities, local self-government authorities, legal persons with public authority and all other legal and physical persons to take measures to promote equality and prevent discrimination. As it can be seen, the legislator's intention here was for entities to take measures for preventing discrimination and promoting equality as value, and to take measures for intercepting the discrimination. Considering the wide spectrum of measure that can be taken, and the wide range of entities to which this obligation applies (state authorities, local self-government authorities, legal persons with public authority and all other physical and legal persons), it is difficult to paint a clear picture of all possible measures. They can be of different nature, and can range from raising the public awareness, setting up dedicated bodies or appointing dedicated persons within the institutions or legal persons, to even taking positive action measures as a form or promoting equality. It is important that the obligation exists, and that entities need to do as much as possible towards promoting equality and preventing discrimination. This is why the National Coordinating Body for monitoring the processes of anti-discrimination and implementation of the laws, by-laws and all strategic documents in this area (hereinafter: NCB) has prepared the *Draft Guidelines for State Authorities on the Promotion and Advancement of Equality and Prevention against Discrimination*, with a corresponding *Handbook on Promoting and Advancing Equality and Preventing Discrimination*. In this way, the obligation of the public sector to promote and advance the principle of equality and to prevent discrimination has been statutorily regulated. The obligation itself has the objective to overcome the differences in the access to one's rights between the different groups of people and make it an everyday business of the public authorities to consider the equality and the good relations between the different groups in the society, thereby helping achieve the goal of the LPPD – assurance of the principle of equality and prevention and protection against discrimination in one's exercise of human rights and freedoms (Article 2). Therefore, the duty is imposed on all entities to reflect on how they can make a positive contribution to the promotion of equality and good relations between the different groups of men and women in the society. Equality needs to be taken into account in the decision-making, in the policy design and in the delivery of public goods and services, including internal policies, and these issues should be regularly reviewed.

Excerpt from the Academic Literature No. 2

"This duty has several objectives that can be grouped in three major, as follows: 1. preventing discrimination and taking steps to eliminate discrimination; 2. promoting equal opportunities between people with a protected characteristic, that is, people that are protected according to a particular discrimination ground, as well as people without such characteristics; and 3. encouraging good relations between people with a protected characteristic, or discrimination grounds, and those without.

COMMENTARY on the law on prevention and protection against discrimination

The duty of promoting and advancing equality consists of a general obligation and special obligations. These obligations apply to all entities. Still, compliance with the obligations should correspond to the size of the entity and the nature of its functions. And the relevance of the duty to the very activity and function of the entity should always be taken into account. Some entities will be more affected by this duty, particularly the ones providing public services in the areas of education, employment, housing, social protection, healthcare, etc. Also, not every entity will be affected in every of its functions by every protected characteristic. The more affected a group is by a particular function, the greater the obligation is. However, one should not forget that even when a group is less affected, still, the function will bear importance in fulfilling the duty, because the potential effect from this function on the affected group will be significant" (Amdiju and Poposka, 2023, p. 19-25).

For more information on the obligation of the public sector to promote equality see the 2023 *Handbook for State Authorities on Promoting and Advancing Equality and Preventing Discrimination*, by the authors Nataša Amdiju and Žaneta Poposka.

The *Law on Protection against Discrimination of the Republic of Bulgaria* (The State Gazette of the Republic of Bulgaria No. 86/30.9.2003) lays down a similar obligation, however, only for preventing discrimination, and not for promoting equality. Also, provisions of Article 18 to Article 29 Paragraph 2 of this law apply only to the employers or training institutions. This means that these measures have been limited both substantively (Lat. *ratione materiae*), and from the aspect of the institutions which have the obligation to take such measures (Lat. *ratione personae*). The *Law on Non-discrimination of Finland* (*Yhdenvertaisuuslaki*, 1325/2014) includes a wider provisions on equality promotion measures. According to Article 5 Paragraph 1, state authorities, local self-government authorities, independent bodies, and bodies exercising public administrative authority have the obligation to take measures to promote and ensure equality. These measures should be effective and proportionate, taking into account the functional environment of the institution, the resources and other circumstances. These institutions must have a plan for the necessary equality promotion measures (with the exception of private institutions employing less than 30 staff). Educational institutions and employers have a special obligation to promote equality (Articles 6 and 7).

The last Paragraph, 4, of this Article lays down a special obligation for entities that are statutorily obliged to collect, record and process data. These entities are obliged to present such data according to the discrimination grounds, too, as referred to in Article 5 of the LPPD, which are relevant for the specific areas. Disaggregation of data according to discrimination grounds means separating the data according to a protected characteristic. For example, ethnicity-based disaggregation of the overall results from the final exam of the high school students (graduation exam) and cross-referencing the data with the students' sex for the purpose of observing the situation by using the principle of intersectionality. The same analyses can be made by disaggregating the data on the ground of disability, again, cross-referenced with sex. Moreover, disaggregation of data about public service beneficiaries according to discrimination grounds would include information about access to services, satisfaction from the service, complaints, petitions and proposals, and these will serve as grounds for analysing the principle of equality in the work of the corresponding institutions. However, this does not apply only to the public service beneficiaries, but also to the employees in the very entities. For example, disaggregation of employee data according to discrimination grounds for the worker profiles, qualifications, work positions and levels, the process of employment and promotion, the number of full-time and part-time employees, salaries and benefits, training, dismissals and resignations, disciplinary measures, complaints, petitions and proposals, may serve as grounds

for analysing the equality principle in the employment and work policies of the corresponding institutions.

The purpose of this is for the collected data to help design evidence-based policies and legal arrangements, programmes, budgets and activities, thus targeting them exactly for the people that need them. The usefulness of collecting such data is multi-dimensional as it helps: identify the key challenges, potential discrimination and key issues related to equality in the entity itself; assess the outward effectiveness/performance of the very entity (towards clients) as well as the inward one (towards employees); take constructive measures for satisfying the needs of employees and service beneficiaries that share a particular relevant protected characteristic; and adopt specific policies.

A similar obligation exists in the *Law on Equal Opportunities of Women and Men*. According to Article 18 of that law, the state authorities, institutions, associations, foundations, public enterprises, political parties, public media, other entities and entities that are statutorily obliged to collect, record and process statistical data, are obliged to present these data according to sex, too, and to report this data to the State Statistical Office.

Excerpt from the Academic Literature No. 3

"Such data are very important from several aspects. First and foremost, they are needed for taking quality decisions, considering the fact that quality of decisions (from adopting the legal acts, through taking positive action measures, to launching equality campaigns) will depend on the data about the forms of discrimination that need to be targeted and other aspects of application of equality. Then, secondly, statistical data are needed in court proceedings to prove the existence of discrimination. Thirdly, statistical data are needed to determine to what extent individuals enjoy their human rights, according to the grounds of discrimination. Fourthly, statistical data are needed for entities (employers, educational institutions, etc.) to know whether their policies are in compliance with the equality and non-discrimination legislation. Also, statistical data are needed to take education measures and raise the awareness about (non-)discrimination" (Makkonen, 2016, p. 19-21).

The process of data collection and storage should be compliant with the statutorily established protection measures, including the enacted regulations on personal data protection, so as to ensure the confidentiality and respect of privacy of the affected persons; as well as with the internationally adopted norms on protection of human rights and fundamental freedoms and ethical principles when collecting and using statistical data. The classification whether someone belongs to a particular group or not should be self-declaratory.

Excerpt from the Academic Literature No. 4

"The *General Comment No. 6* of the Committee on the Rights of Persons with Disabilities points out that State Parties must collect and analyse adequate data and research information so as to identify inequalities, discriminatory practices and inequality trends and analyse the effectiveness of the equality promotion measures. The Committee notes that many State Parties lack up-to-date data about disability-based discrimination and that often, even when the national laws and regulations allow it, the data are not disaggregated according to disability, sex, gender, gender identity, ethnicity, religion, age or other identity characteristics. Such data and their analysis are of huge importance for developing effective anti-discrimination measures and equality promotion measures (Paragraph 34)" (Poposka, 2018, p. 62).

The obligation laid down in this way refers to both quantitative (numerical) and qualitative (descriptive) data. Qualitative information may focus more on factors that are hard to measure or represent quantitatively. This means that the collected data should be extensive and include statistics, narratives and other forms of data, such as indicators used to evaluate the implementation and monitor the progress and effectiveness of the new or on-going initiatives and policies. Indicators that are inclusive on various discrimination grounds must be developed and used in a way that is compliant with the *United Nations 2030 Agenda for Sustainable Development* and in consultation with the civil society organisations. Finally, it is the state's responsibility to disseminate the statistical data and ensure their availability and accessibility for the interested parties and others.

Still, it is little likely that institutions will be able to disaggregate the data according to every ground in every area and for every entity, due to the sensitivity around the collection of some of the data and/or the low number of employees or beneficiaries that have the particular protected characteristic. For example, it may prove more difficult to disaggregate the data based on religion or belief, sexual orientation and gender identity than on other grounds. Also, disaggregation of data in sub-groups may pose a challenge, particularly for the ground of disability and subsequent disaggregation in terms of the type of disability – physical, sensory, mental or intellectual, or multiple disabilities.

1.3. Glossary

Article 4
Glossary

Certain terms used in this Law shall have the following meanings:

Article 4 of the LPPD includes a Glossary, that is, it provides the meanings of particular terms used in the Law. Specifically, the meaning of 14 terms used in the Law is explained. Since this article is a provision of general importance, explaining the meaning of each of the terms has an overarching significance for the entire regulation.

1. Equality shall mean the principle under which all people have equal rights, that is, they are equal in the enjoyment and exercise of their rights and freedoms;

At the start of the Glossary, equality is defined as people having the same rights, that is, being the same in enjoying all the rights and freedoms they have. This constitutes the basis for equal treatment and the non-discrimination principle. Namely, equality should, above all, be proclaimed, so that we can be able to fight the discrimination. Still, what is missing from this definition is the emphasis that equality sometimes requires unequal treatment of people who are different from one another. Namely, since people are not the same and they differ from one another, and these differences may be of biological, societal, historical, cultural and other nature, equality sometimes requires (as with positive action measures) treating people unequally so as to overcome the existing inequalities.

Excerpt from the Case Law No. 3

The ECtHR was of the opinion that the completely equal treatment of individuals who are different from one another may produce inequality and discrimination, similar to the case of

Thlimmenos (Thlimmenos v. Greece, [GC] App. No. 34369/97, Judgment of 6 April 2000, Paragraph 44).

Excerpt from the Case Law No. 4

The Committee on the Rights of Persons with Disabilities, in the case of *H.M* (H.M v. Sweden, Communication No. 3/2011, CRPD/C/7/D/3/2011, Views adopted on 21 May 2012), noted that a law which is applied in a neutral way may have a discriminatory effect when no account is given to the specific circumstances of the people with reference to whom the provision is applied. The right to not be discriminated against when enjoying the rights guaranteed by the Convention on the Rights of Persons with Disabilities (hereinafter: CRPD) may be violated when State Parties, without objective and reasonable justification, fail to differently treat the people whose situations are significantly different (Paragraph 8.3). It is exactly in this case that the Committee established violation on part of the State Party that refused to issue a construction permit to the applicant, thereby failing to give account to the specific circumstances of her case and to her disability-related needs. Therefore, this decision of domestic authorities, to refuse to make a derogation from the urban zoning plan so as to permit her to construct a hydrotherapy pool on the property she owned, is disproportionate and produced discriminatory effect which adversely affected the applicant's access, as a person with disability, to healthcare and rehabilitation required for her specific health condition (Paragraph 8.8).

2. Person shall mean any natural or legal person;

Point 2 of Article 2 defines the term "person". According to the definition, person may mean both natural and legal person. Although it is not explicitly specified that it refers to any person, regardless of its nationality, residence or place of registration or operation, this is implied.

The CPPD accepts applications both against natural and against legal persons as potential discriminators. In 2021, out of the total of 40 applications where the Commission established discrimination, in 24 cases the discrimination was committed by legal persons from the public sector (directly – by actions from the managing and other authorised persons, or indirectly – through acts and regulations adopted by them or governing their competences); then, in 10 cases – entities from the private sector, in 4 cases – natural persons, and in 1 case each a sports federation and a civil society organisation (CPPD, *2021 Annual Report*, p. 23). In the CPPD 2022 Annual Report this information is missing. On the other hand, based on the type of the applicant filing the application with the CPPD, the data indicate that majority of the applications in 2021 were filed by natural persons, with a total of 101 applications (60.48%); then follow applications filed by legal persons, 55 (32.93%), and 9 applications were filed by a group of citizens (5.39%); whereas the CPPD initiated 2 proceedings for establishing discrimination (1.20%) as per rumoured information (CPPD, *2021 Annual Report*, p. 16). The situation was similar in 2022 since, once again, majority of applications were filed by natural persons, accounting for a total of 157 applications (from the overall 248), and the remaining 91 applications were filed by legal persons. The CPPD initiated 7 proceedings for establishing discrimination ex officio (CPPD, *2022 Annual Report*, p. 12).

The same practice was evident with the CPD, too, where the most frequent applications involved legal persons as discriminators (a state authority or another institution, an employer or another legal person); but there were noteworthy cases when claims were made to establish discrimination committed by e natural person. For example, in the Commission Opinion adopted on 5.10.2018, pursuant to the *Application No. 0801-268* dated 27.8.2018, the CPD established that harassment has been committed by a Council of Inspection Authorities member as a natural person.

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

Point 3 defines what the LPPD implies with the term "person with disability". This definition is welcome as it can be useful regarding the scope of protection of disability as a discrimination ground. When defining a person with disability, the legislator had the elements of the CRPD definition of disability into account. *Firstly*, a person with disability is a person that has a long-lasting physical, intellectual, mental or sensory impairment. In this way, the definition covers all forms of disability, but it requires them to be long-lasting. *Secondly*, the definition of a person with disability builds on the social model of perceiving disability, according to which the person is placed in a less favourable and discriminatory position not because of the impairment itself, but because of the interaction of the impaired person with the social barriers imposed on them, which in correlation with the impairment become barriers to the equal enjoyment of freedoms and rights. And, *thirdly*, what is considered here is the full and effective participation of the person with disability in the society, on an equal basis with the other, non-disabled people.

Excerpt from the Case Law No. 5

The CPPD adopted in 2021 a General Recommendation for transposing the CRPD provisions in the corresponding pieces of domestic legislation for the purpose of ensuring and promoting the exercise of human rights and freedoms by all persons with disabilities without any discrimination whatsoever on the ground of disability. The CPPD recommended to the National Coordinating Body for implementation of the United Nations Convention on the Rights of Persons with Disabilities to prepare an Annual Report on the implementation of the 2021 Action Plan and, when developing the 2022 Action Plan, to stipulate obligations for the line ministries to begin the processes of amending and supplementing the existing departmental laws so as to transpose the Convention provisions that apply to those departments. Moreover, the CPPD recommended to the Government of the Republic of North Macedonia to adopt the proposed amendments and supplements to the laws and to submit them to the Assembly of the Republic of North Macedonia for adoption; and it recommended to the Assembly to process the said amendments and supplements in a fast-track procedure, so as to come into effect, if possible, already in the course of 2022. Finally, it recommended to the Ministry of Labour and Social Policy to commence, within the shortest possible period, activities for setting up a Register of Persons with Disabilities according to the degree and type of disability, so that realistic and efficient policies can be designed with a view to promoting the rights of persons with disabilities guaranteed in the Convention (*General Recommendation* dated 3.12.2021).

For the elements of the "disability" definition and the access to the Court of Justice of the European Union and to the United Nations Committee on the Rights of Persons with Disabilities, see more in *Part 1.4. Discrimination Grounds and Definition of Discrimination.*

For further information about the Convention on the Rights of Persons with Disabilities and the practices of the United Nations Committee on the Rights of Persons with Disabilities see the 2018 *Commentary to the United Nations Convention on the Rights of Persons with Disabilities* by the author Žaneta Poposka.

4. Reasonable accommodation shall mean a necessary and appropriate modification and adjustment required in a particular case, which does not cause disproportionate or undue burden, aimed at ensuring the exercise or enjoyment of all human rights and freedoms of persons with disabilities on an equal footing with others. Denying reasonable accommodation shall constitute discrimination;

Point 4 provides a definition of reasonable accommodation, which is again based on the contemporary concepts from the UN CRPD, that is, Article 2 of the Convention. As it can be seen, this definition does not link the reasonable accommodation only to the employment process, as was with the previous (2010) law, but much wider, with the enjoyment of all rights and freedoms by persons with disabilities. The obligation for reasonable accommodation is an integral part of the human rights based model. It can be noticed from the very definition that the focus of reasonable accommodation is on the specific circumstances of each individual case, giving account to the effectiveness of the accommodation. For these reasons, entities should establish a dialogue with persons with disabilities so as to determine the most reasonable accommodation within the given circumstances of the case.

According to the UN CRPD, the key characteristics of the obligation for reasonable accommodation include: 1) identifying and eliminating the barriers that prevent the persons with disabilities from enjoying their human rights; 2) considering the "necessity and appropriateness" (effectiveness) of the modifications or adjustments required to overcome the person-specific barriers; 3) adopting the modifications or adjustments that do not impose disproportionate or undue burden for the implementer of the obligation; 4) identifying the response or the solution that is adjusted to the individual circumstances of the person with disability; and 5) accepting the crucial objective of the accommodation, which is to promote equality and eliminate the discrimination against persons with disabilities.

Moreover, according to the definition provided in the LPPD, denying the reasonable accommodation is considered discrimination, although the Law does not define what form and type of discrimination the denying of reasonable accommodation constitutes, whether direct or indirect discrimination, or a special (Lat. *sui generis*) form of discrimination.

Excerpt from the Academic Literature No. 5

"The Convention on the Rights of Persons with Disabilities makes an important step forward not only in that it provides that the unjustified denying of reasonable accommodation constitutes discrimination, but also in that it poses this perception in a single article with horizontal application, meaning that it should be applied throughout the entire CRPD. Moreover, introducing the reasonable accommodation in the definition of discrimination premises that the exercise of fundamental civil and political rights requires personalised

measures, so as to resolve the existing systemic discrimination of persons with disabilities" (Poposka, Šavreski and Amdiju, 2014, p. 27).

This approach is also valid for reasonable accommodation as given in Article 4 Point 4 of the LPPD.

Excerpt from the Case Law No. 6

The Committee on the Rights of Persons with Disabilities has in one case invoked the need for a case-specific enforcement of the enacted rules, so as to make sure the persons with disabilities can enjoy all the rights and freedoms equally, without discrimination. This is the case of *H.M.* (Committee on the Rights of Persons with Disabilities, H.M v. Sweden, Communication No. 3/2011, CRPD/C/7/D/3/2011, Views adopted on 21 May 2012). In this case, the applicant, a person with disability, was refused a building permit for extension of her house on land that was in her private ownership, with the argument that "it is in the interest of the general public to preserve the area in complete compliance with the detailed urban plan". The Committee came to the conclusion that, with the decisions of the municipal authorities and the High Administrative Court, the applicant was discriminated against under Article 5 of the CRPD, because they failed to take into account her right to equal opportunities for rehabilitation and health improvement, on the same footing as others.

Excerpt from the Case Law No. 7

The Committee on the Rights of Persons with Disabilities stated in its jurisprudence, as in the case of *Gemma Beasley* (Gemma Beasley v. Australia, Communication No. 11/2013, CRPD/C/15/D/11/2013, Views adopted on 25 May 2016), or in the case of *Michael Lockrey* (Michael Lockrey v. Australia, Communication No. 13/2013, CRPD/C/15/D/13/2013, Views adopted on 30 May 2016), that the State Party has not taken the necessary steps to ensure reasonable accommodation for the applicant, and concluded that the refusal to provide Auslan sign language interpretation or shorthand notes, without thoroughly assessing that this would pose a disproportionate or undue burden, constitutes a disability-based discrimination and violates the Article 5 of the Convention (Paragraph 84 and Paragraph 85 respectively). Moreover, in the case of *F v. Austria* (F v. Austria, Communication No. 21/2014, CRPD/C/14/D/21/2014, Views adopted on 21 September 2015), the Committee considered that the failure of the State Party to install an audio system in the tram network extension has resulted in preventing the persons with sensory disabilities (blind persons) from accessing the information and communication technologies and the services open to the public on an equal footing with others, and consequently in violating the Articles 5 and 9 of the Convention (Paragraph 8.7) (Poposka, 2018, p. 24).

Excerpt from the Case Law No. 8

The case of *Çam* (Çam v. Turkey, App. No. 51500/08, Judgment of 23 February 2016) involves refusing the applicant – a visually impaired girl – to enrol as a student at the Turkish National Music Academy. Even though Ms. Çam had demonstrated adequate abilities to play the Turkish flute (saz) and had passed the entrance exam, she was rejected by the Dean's Office because the music courses were not accessible to the visually impaired people and they required her to present a certificate from the Medical Office that she can attend the courses. The applicant claimed that she was discriminated against on the ground of disability. In the decision it adopted, the ECtHR considered that discrimination on the ground of

disability includes the failure to provide reasonable accommodation. The court pointed out that, by rejecting the applicant's application without meeting her needs, the Turkish authorities prevented her from exercising her right to education without any objective justification (Paragraph 69).

Excerpt from the Case Law No. 9

In a 2016 case, the then CPD established discrimination committed by banks in the area of access to goods and services. On behalf of a discriminated blind person, the Helsinki Committee had filed an application with the Commission, stating that this person was directly discriminated against because no equal treatment had been ensured in the use of banking services and products with the persons who do not have complete visual impairment. Also, the person could not use the electronic banking and other online services because they were not accessible to the computer programme (screen reader) that they were using. In this case, the Commission established direct discrimination on the ground of disability against blind and partially sighted persons, as well as violation of the right to reasonable accommodation. The Commission also made a General Recommendation pointing to the obligation of the National Bank to tighten the control of the commercial banks in their assurance of equal access to services and products. The Commission recommended to the banks not to require the blind persons to authorise a proxy for their dealings with the bank, but rather, to create conditions for them to use their personal signatures or facsimiles. As far as reasonable accommodation is concerned, the Commission recommended that the banks should implement reasonable accommodation that will meet the needs of the visually impaired people and that will cover both branch services and electronic banking.

For more information on the types of reasonable accommodation according to legal areas, see the 2020 *Guide to Reasonable Accommodation* by the authors Elena Kočoska and Milica Trpevska.

5. Access to infrastructure, goods and services shall mean taking appropriate measures to ensure that persons with disabilities have access, on an equal footing with others, to the physical environment, transportation, information and communication, including the information and communication technologies and systems, and to other public facilities and services in both urban and rural areas. Denying the access and availability of infrastructure, goods and services shall constitute discrimination;

This concept, too, is based on one of the basic principles and rights provided for in the CRPD, which is accessibility. This principle requires taking such measures that will enable the persons with disabilities to have equal access to the physical environment, transportation, information and communication, public facilities and services, in urban and rural areas. According to the definition given in Point 5, preventing accessibility is in itself a discrimination, again, without specifying what form and type of discrimination it constitutes.

According to the UN CRPD, in order to enable the persons with disabilities to live independently and fully participate in the public life, Member States have an obligation to take appropriate measures to ensure equal access of persons with disabilities to the physical environment, transportation, information and communications, etc. These measures, according to the Convention, also include measures aimed at eliminating the obstacles and barriers to the

application of accessibility (CRPD, Article 9). Moreover, *General Comment No. 2* of the Committee on the Rights of Persons with Disabilities points out that the obligation for ensuring accessibility is an obligation that is applied anticipatorily (Lat. *ex ante*) and is unconditional (Paragraph 25). Unlike the reasonable accommodation obligation, which is applied reactively pursuant to a reasonable accommodation enforcement request (Lat. *ex nunc*), this obligation entails that the State Parties are bound to ensure the accessibility of services, goods or structures even before receiving any individual request for their use or entry. To achieve this, it is necessary to adopt accessibility standards in consultation with disability organisations, which will be standardised and broadly scoped. On the other hand, the unconditionality of this obligation means that the obliged entity cannot justify its failure to ensure accessibility by invoking the burden that would be imposed with such assurance of accessibility for persons with disabilities. Moreover, the accessibility obligation should be taken in all its complexity, including communication.

Excerpt from the Case Law No. 10

In the case of *Szilvia Nyusti and Péter Takács* (Szilvia Nyusti and Péter Takács v. Hungary, Communication No. 1/2010, CRPD/C/9/D/1/2010, Views adopted on 21 June 2013), the Committee considered that the inaccessibility of ATMs to persons with sensory disability, that is, the lack of Braille printing, or of audio instructions and voice support, for bank card related operations has resulted in violation of Article 9 of the Convention (Paragraph 96), stating that all services open to the public should also be accessible to persons with disabilities(Poposka, 2018 p. 32).

Excerpt from the Case Law No. 11

The CPPD adopted in 2021 a General Recommendation for the promotion and protection of human rights and dignity of convicted persons with disabilities and for the respect of their physical and mental integrity during the serving of sentences in penal institutions and correctional facilities. In doing so, among other things, the CPPD recommended to the Directorate for Execution of Sanctions to prepare an Action Plan of measures and activities and to secure the financial resources for ensuring a full infrastructure accessibility to and within the buildings housing the convicts with disabilities, thus ensuring the freedom of their medically aided movement, as well as measures and activities for reconstructing the sanitary facilities and providing the appropriate hygienic conditions. Moreover, the Commission recommended to the managers of the penal institutions and correctional facilities to make sure the buildings where the outpatient clinics providing health care to convicts are located are fully accessible to persons with disabilities and equipped with medical equipment adapted to the needs of persons with disabilities. Finally, it was recommended that unhampered access to secondary and tertiary health care must be ensured for persons with disabilities (*General Recommendation* dated 3.12.2021).

Excerpt from the Case Law No. 12

In its *Opinion No. 07-922* dated 27.3.2014, the CPD established discrimination on the ground of disability in access to goods and services. The case involved a 17-year-old person with multiple disabilities who, for an extended period of time, could not leave their family house without an attendant because no curb or pavement was adjacent to the front yard, rather, one had to exit right onto the busy street. Although this person's father and grandfather had

addressed the municipal authorities several times requesting them to install curbs and pavements on the street around the house, the Municipality took no actions. Since this failure to take action and construct the pavement persisted for more than 3 years, the CPD established discrimination. The same case was heard by the Basic Court Delčevo, which also established discrimination in its *Judgment P-4 No. 14/2014* dated 5.3.2015.

Namely, the case of *R.M. v. The Municipality of Delčevo*, which was handled by the Macedonian Young Lawyers Association, was the first in the national case law to result in a final judgment establishing discrimination on the ground of disability. In this case, the court established discrimination through the denial of accessibility to and availability of infrastructure, goods and services and ordered the Municipality to adapt the infrastructure and the surrounding area and to take all the necessary adaptation measures by constructing the pavement and the curbs in compliance with the technical standards on accessibility (*Basic Court Delčevo P4 No. 14/2014* dated 5.3.2016).

Excerpt from the Case Law No. 13

In one of its General Recommendations adopted in 2021, the CPPD recommended to the State Election Commission to take all the necessary actions, within the shortest possible time, with a view to ensuring accessibility and reasonable accommodation of the polling stations, thus allowing an equal access for the physically disabled to and within the polling stations throughout the country (*General Recommendation* dated 3.12.2021).

6. Marginalised group shall mean any group of individuals associated through their specific position in the society, who are subjected to prejudice and have special characteristics which make them susceptible to discrimination and/or violence, and a limited opportunity for exercising and protecting their rights and freedoms;

Point 6 of Article 4 defines the term “marginalised group”. According to the definition provided, a marginalised group can have several characteristics, but it does not have to possess all of them cumulatively, rather, only few or one will suffice. The group’s specific position in the society can be observed through these characteristics. First and foremost, the marginalised group, or its members, are subjected to prejudice. This is the *first* element. This element will be a question of fact, to be established on a case-by-case basis. The *second* element is that group members, because of their characteristic(s), are more susceptible to becoming victims of discrimination and/or violence. The *third* element is that the marginalised group’s position in the society is such that fewer opportunities exist for its members to exercise and protect their own rights. And according to the last, *fourth* element, the marginalised group’s members are exposed to an increased possibility of victimisation.

Excerpt from the Academic Literature No. 6

“To examine the possibility of this ground being applied in a particular case, we have to deal with the issue of determining the exact meaning of several of the definition elements. First and foremost, this concerns the elements of “specific position in the society” and “certain types of violence”. The element of “specific position in the society” can be interpreted as “the ability to identify the group or its characteristics easily or relatively easily. This may include one’s geographical location, a small-sized religious community, etc. These groups do not

receive the equally available resources in a society, for example, infrastructural opportunities; or they do not have the same life opportunities that other groups have on average, for example, education or employment opportunities, etc.” The element of “certain types of violence”, on the other hand, should be interpreted in accordance with the criminal law.

When defining this ground, it is necessary to make a distinction between a marginalised versus a vulnerable group. Although the characteristics of these two groups largely coincide, what sets the marginalised groups apart is the constant tendency of the society and the state to push these people to the margins of the society.

Persons who are more likely to be discriminated against on various grounds may be considered persons protected on this ground. This group typically includes people living with HIV, homeless people, refugees, sex workers, etc., and sometimes even ethnic communities or religious groups can be added to this group. It was in the case of *Kiyutin* (Kiyutin v. Russia, App. No. 2700/10, Judgment of 10 March 2011) that the ECtHR explicitly confirmed, for the first time in its case law, that people living with HIV constitute a vulnerable group that should enjoy special protection, and that a greater degree of protection should be applied when their rights have been limited.

Any unjustified unequal treatment of these people will be considered discrimination. For some of these people, seeking protection against the unjustified unequal treatment that has resulted from their belonging to a marginalised group would best reflect their status, which needs to be protected (for example, sex workers); while for other groups, it would be beneficial to apply this ground if, the context of the specific case permitting, it has been concluded that the determining circumstances will be the ones of specific position in the society and susceptibility to violence” (Kotevska, 2013, p. 54).

Excerpt from the Case Law No. 14

The stereotype associated with the position of a woman of African descent working as a sex worker compared to a women with a “European phenotype” also involved in the same profession was considered by the case law of the European Court of Human Rights, In the case of *B.S.* (B.S. v. Spain, App. No. 47159/08, Judgment of 24 July 2012), the Court established violation of Article 14 in conjunction with Article 3 of the Convention because the domestic courts had failed to give account to the applicant’s particular vulnerability related to her position as a woman of African descent working as a sex worker. In this way, the authorities had failed to take all the possible steps so as to establish whether the discriminatory behaviour of the police (racist remarks with offensive content based on sex and ethnicity) played a role in the events (Paragraph 62).

Excerpt from the Case Law No. 15

Acting on an application, the CPPD established harassment on the ground of belonging to a marginalised group, gender identity and sexual orientation committed by a physical person against members of the LGBTI+ community in the area of public information and media. Namely, by making a public post on their Facebook profile, the person in question spread xenophobic written materials promoting hatred against the marginalised group (*Application No. 08-34/3* dated 9.12.2022, *Opinion* dated 11.4.2022).

7. Legitimate and objectively justified aim shall mean the aim for the achievement of which the means should correspond to the real needs of a specific case, should be precisely defined in advance, should be necessary for the achievement of the aim, and should be proportionate to the effects to be achieved;

Point 7 of Article 4 defines the legitimate and objectively justified aim. A legitimate and objectively justified aim is part of the objective justification test, which helps establish whether or not discrimination exists in a particular case. The first part of this test is precisely the existence of a legitimate and objectively justified aim. This means that, to justify a particular unequal treatment, there must exist, first and foremost, a legitimate and objectively justified reason for the unequal treatment to take place. A legitimate aim may include protection of public safety, protection of public health, morality, protection of the internal labour market, promotion of youth employment, integration of persons with disabilities, equal participation of women in public life, etc. However, this does not mean that the existence of any legitimate aim may justify the unequal treatment.

Excerpt from the Case Law No. 16

In the case of *Larkos* (Larkos v. Greece, App. No. 29515/95, Judgment of 18 February 1999), the ECtHR did not accept that protection of public interest is a legitimate aim to justify the different treatment of tenants in their protection against forced eviction, depending on whether the apartment they are renting is in state or private ownership.

Excerpt from the Case Law No. 17

In the case of *Marckx* (Marckx v. Belgium, App. No. 6833/74, Judgment of 13 June 1979), the ECtHR did not accept that the protection of the child's interest is a legitimate aim to justify the different treatment of children born in wedlock and those born out of wedlock.

As for the existence of a legitimate aim, the case law of the CJEU has shown that it would rarely accept the justification of the different treatment that is based on certain views of the management which are related to the employers; concerns about economic implications. The Court would accept the different treatment if it was based on a wider understanding of the social policy aims or employment policy aims which carry certain fiscal implications. In that case, the Court would allow the Member States a wide margin of discretion (Eng. margin of discretion). On the other hand, the ECtHR would rarely accept the justification of the different treatment when this concerns issues closely related to personal dignity, such as discrimination in the private and family life, and would accept if the different treatment is based on a wider social policy, particularly where it causes fiscal implications. In that case, the ECtHR would allow the Member States a wide margin of appreciation (Eng. margin of appreciation), which refers to the discretionary right of the states to decide on the justification of the different treatment. Where this margin is narrowly set, the Court accepts a higher level of scrutiny. It is worth noting that states' experiences on this issue are different; however, in many of them, to automatically exclude a certain group by invoking a legitimate aim is not typical.

According to the definition given in the LPPD, a legitimate and objectively justified aim is, first and foremost, an aim for the achievement of which the means should correspond to the real needs, should be precisely defined in advance, and should be necessary and proportionate to the effects to be achieved.

Excerpt from the Case Law No. 18

In the case of *Bilka-Kaufhaus* (Bilka-Kaufhaus GmbH v. Weber Von Hartz, Case 170/84, Judgment of 13 May 1986), which concerns gender discrimination, the CJEU stated that appropriateness means the absence of other measures to achieve the legitimate aim which would require less interference with the right to equality. In other words, this inequality is the minimum level of damage that is required to achieve a given aim. Necessity is assessed by looking at whether the aim to be achieved is important enough to justify this level of interference. These two elements are very important for proving proportionality and the Court should always take into account whether the decision maker could have achieved the same legitimate aim through some other form or measure, rather than through measures that disproportionately affect a group just because of their protected characteristic.

8. Associative discrimination shall mean any distinction, exclusion or restriction of a person based on their association with another person or group, on any discrimination ground;

Point 8 of Article 4 defines the associative discrimination. Associative discrimination occurs when the victim of discrimination is a person who is inherently related in one way or another to a person or a group that is treated less favourably only because of a discrimination ground they have. For example, a person of a certain origin is not allowed to enter a restaurant because they are in the company of friends belonging to the Roma community, who are directly discriminated against.

Excerpt from the Case Law No. 19

In the case of *Coleman* (S. Coleman v Attridge Law, Steve Law, Case C-303/06, Judgment of 17 July 2008), the CJEU laid down the general principle that discrimination should be prohibited even in cases where it is based on the person's association with other persons to whom the discrimination ground applies. Namely, the Court considered in this case that Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation prohibits the direct discrimination against the mother of a child with disability, when that discrimination is based on the disability of her child (associative discrimination).

Excerpt from the Case Law No. 20

In the case of *CHEZ* (CHEZ Razpredelenie Bulgaria AD v. Komisia za zashtita ot diskriminatsia, Case C 83/14, Judgment of 16 July 2015), the CJEU considered that discrimination on the ground of ethnic origin was committed, even though the applicant had explicitly claimed that he was not of Roma origin, but had become a victim of discrimination together with the residents of the neighbourhood where the applicant's shop was located. In this case, the CJEU specified that the prohibition of discrimination on the ground of race and ethnic origin does not apply only to certain categories of persons, rather, this prohibition should also protect the persons who, though not members of the specific race, or the ethnicity in question, are nevertheless victims of a less favourable treatment precisely on that ground (Paragraph 56).

Excerpt from the Case Law No. 21

In the case of *Guberina* (Guberina v. Croatia, App. No. 23682/13, Judgment of 22 March 2016), the ECtHR held that the Croatian authorities had failed to take into account the needs of the child with disability when they had established that the father should not be exempted from paying the sales tax on the real estate he had purchased, which was accessible to his child with disability. Namely, under the Croatian legislation, this exemption was, in fact, available to buyers who moved in order to solve their "housing need", that is, when their previous property did not possess the "basic infrastructure". The applicant argued that accessibility was an element of basic infrastructure and that his previous apartment did not meet his family's housing needs. The Croatian authorities, on the other hand, disagreed and rejected the request without taking into account the special circumstances of his son. The ECtHR confirmed the need to give a broad interpretation to the concept of non-discrimination on the ground of disability, including associative discrimination, and in this particular case established that there was discrimination against the father on the ground of his child's disability.

Associative discrimination was not always expressly prohibited in the national legislation of the states. From our region, the new *Law on Protection against Discrimination of Kosovo* (Law No. 05-L.021, The Official Gazette of Kosovo No. 16/2015, 26.6.2015), in its Article 4 Paragraph 1 Point 1.7., explicitly prohibits the associative discrimination and defines it as "targeting the persons who do not belong to a certain group, but who are a third party associated with that group". Similarly, the *Law on Combating Discrimination of the Republic of Croatia* (The Official Gazette of the Republic of Croatia No. 85/08, 112/12), in its Article 1 Paragraph 2, stipulates that discrimination can also occur when persons who have familial or other relations with a person with a protected characteristic are placed in an unfavourable position on a discrimination ground. A similar wording exists in the *Law on Prohibition of Discrimination of the Republic of Serbia* (The Official Gazette of the Republic of Serbia No. 22/2009, 52/2021); whereas the *Law on Protection against Discrimination of the Republic of Slovenia* (The Official Gazette of the Republic of Slovenia No. 1427, p. 4817) includes the associative discrimination while providing that equal treatment under this Law is also guaranteed to "a person who is physically or legally related to a person with a particular personal characteristic".

9. Perceptive discrimination shall mean any distinction, exclusion or restriction of a person based on their perceived affiliation with a particular group, on any discrimination ground;

Point 10 of Article 4 defines the perceptive discrimination. In perceptive discrimination, the less favourable treatment (distinction, exclusion or restriction) is based on a perception. Namely, the victim of discrimination does not necessarily have to actually have the protected characteristic, rather, the decisive factor is the perception of the discriminator who assumes that the victim is a member of a particular group, or a person with such a characteristic, regardless of whether this is truly so or not. The potential discriminator's perception of the person's status is decisive here. For example, a person is discriminated against because the discriminator assumes that the person is a member of the Roma community (because of the darker skin colour), even though the victim is a member of another community.

The *Law on Protection against Discrimination of Kosovo* (Law No. 05-L.021, The Official Gazette of Kosovo No. 16/2015, 26.6.2015) defines the perceptive discrimination as "putting the spotlight not on the persons who belong to a particular group, rather, on third parties who are perceived as belonging to that group" (Article 4 Paragraph 1 Point 1.9). Similarly, the *Law on Combating Discrimination of the Republic of Croatia* (The Official Gazette of the Republic of Croatia No. 85/08, 112/12), in its Article 1 Paragraph 3, provides that discrimination may also occur when placing a person in an unfavourable position based on a wrong perception that a discrimination ground exists. The *Law on Protection against Discrimination of the Republic of Slovenia* (The Official Gazette of the Republic of Slovenia No. 1427, p. 4817) includes the perceptive discrimination, while providing that, under the law, equal treatment is guaranteed to "a person who is discriminated against because of a wrong conclusion about the existence of a particular personal characteristic". The *Law on Prohibition of Discrimination of Montenegro* (The Official Gazette of Montenegro Nos. 46/2010, 40/11, 18/2014 and 42/2017) lays down the prohibition of discrimination based on perception (Article 2 Paragraph 2).

10. Multiple discrimination shall mean discrimination against a person or a group on several discrimination grounds;

The LPPD defines the multiple discrimination as discrimination that is committed on two or more discrimination grounds. It can be committed at different time intervals for each discrimination ground, or it can be committed simultaneously, in which case it is referred to as cumulative discrimination. Sex and ethnicity or race are often given as example, when they are taken as grounds on which a woman can be discriminated against simultaneously. For example, a woman belonging to the Roma community may suffer multiple discrimination. Also, a woman with disability can be a victim of multiple discrimination, both on the ground of her sex and gender and her disability. In the example where a job is not offered because the applicant is young and planning to start a family, the grounds of sex, gender, age and family status can potentially be cumulated. In Article 13, the LPPD considers the multiple discrimination as a more severe form of discrimination, along with the repeated, continued and intersectional discrimination.

Excerpt from the Case Law No. 22

From the CJEU case law, in the case of *Marshall* (M. H. Marshall v Southampton and South-West Hampshire Area Health Authority, C-152/84, Judgment of 26 February 1986), the Court established multiple discrimination against older women, who were victims of less favourable treatment compared to men, but also compared to younger women. So, there was multiple discrimination on the grounds of sex and age.

Excerpt from the Case Law No. 23

In the case of *S.B. and M.B. v. Republic of North Macedonia (*CEDAW/C/77/D/143/2019), two Roma women were restricted in their access to gynaecological services due to their ethnicity. In its *Decision*, the Committee emphasised that discrimination against women on the grounds of sex and gender is inextricably linked to other factors affecting women, such

as race, ethnicity, religion or belief, health status, age, class, caste, sexual orientation and gender identity, so that this discrimination may affect women belonging to these groups to a different degree and in a different way than men, and State Parties must statutorily recognise and prohibit such multiple forms of discrimination and their cumulative adverse impact on the affected women (Paragraph 7.3). The applicants were treated less favourably than other women of reproductive age who did not belong to a minority ethnic group and who were seeking gynaecological services at the same time (Paragraph 7.4). The Committee noted that, in this particular case, the courts did not understand the occurrence of discrimination and the vulnerability of Roma women in the society and that, despite the evidence of unequal treatment, the courts failed to establish that the gynaecologist had exhibited a discriminatory attitude and to provide legal protection (Paragraph 7.5), which is why the Committee established that the State has discriminated the applicants on the grounds of sex, gender and ethnicity.

Multiple discrimination is defined in a number of pieces of the national legislation. The *Law on Protection against Discrimination of the Republic of Bulgaria* (The State Gazette of the Republic of Bulgaria No. 86/30.9.2003), in the glossary located at the end of the law, (Additional Provisions), defines the multiple discrimination as discrimination committed on multiple grounds of discrimination. According to this law, state authorities should take measures to even up the opportunities for persons who are victims of multiple discrimination (Article 11, Paragraph 2). The *Law on Combating Discrimination of the Republic of Croatia* (The Official Gazette of the Republic of Croatia No. 85/08, 112/12) provides the multiple discrimination as one of the more severe forms of discrimination, together with repeated discrimination, continued discrimination and discrimination whose consequences affect the discrimination victim more severely. Multiple discrimination is defined in Article 6 as "discrimination committed against a particular person on multiple grounds".

Excerpt from the Case Law No. 24

Pursuant to an application filed by a member of the Bosniak people against the Ministry of Education and Science, citing several History textbooks containing inappropriate and discriminatory contents, the CPPD established the existence of harassment on the grounds of ethnicity and religion or religious belief in the area of education. According to the Commission, the contents of the textbooks have given rise to a feeling of humiliation and violated dignity of a group of people, resulting from a discrimination ground, so it recommended to the Ministry of Education and Science to remove the inappropriate contents referring to Bosniaks and Bosnia and Herzegovina from the high-school History textbooks. Moreover, when designing the primary and secondary education curricula and programmes, the Ministry of Education and Science should make sure the textbooks do not contain discriminatory contents (*Application No. 0801-295/1* dated 22.10.2019, *Opinion* dated 17.2.2022).

Excerpt from the Case Law No. 25

The CPD established discrimination committed on multiple discrimination grounds in job advertisements, when the employer had set multiple discriminatory criteria for employment. In the Commission's *Opinion* dated 8.3.2018, adopted pursuant to the *Application No. 08-36/1* dated 9.2.2018, multiple discrimination against potential candidates was established due to the employer's stipulation of sex and age as employment criteria.

11. Repeated discrimination shall mean any discrimination committed multiple times against a person or a group on the same discrimination grounds;

In case of a repeated discrimination, which is defined in Point 11 of Article 4, the discrimination ground is the same, but the discrimination is repeated several times. For example, a person may become a victim of repeated discrimination in labour relations when the employer commits the discrimination against this person on several occasions. Repeated discrimination requires that both the discriminator and the victim of discrimination be the same. If the discriminator discriminates against different persons, these would constitute individual cases of discrimination. Repeated discrimination is also considered a more severe form of discrimination, together with multiple, continued and intersectional discrimination, defined as such in Article 13 of the LPPD.

Likewise, the *Law on Combating Discrimination of the Republic of Croatia* (The Official Gazette of the Republic of Croatia No. 85/08, 112/12) provides the repeated discrimination and defines it as discrimination committed more than once (Article 6 Paragraph 1). Also the *Law on Prohibition of Discrimination of Montenegro* (The Official Gazette of Montenegro Nos. 46/2010, 40/11, 18/2014 and 42/2017, MGO-2010-L-86176), in its Article 20 Point 2, defines the repeated discrimination as a more severe form of discrimination, namely discrimination "committed multiple times against the same person or group of persons". The *Law on Protection against Discrimination of Kosovo* (Law No. 05-L.021, The Official Gazette of Kosovo No. 16/2015, 26.6.2015) provides the repeated discrimination expressly in its Article 4 Paragraph 1 Point 1.10, as discrimination committed multiple times. The *Law on Protection against Discrimination of the Republic of Slovenia* (The Official Gazette of the Republic of Slovenia No. 1427, p. 4817, SVN-2016-L-104553) also provides the repeated discrimination as a more severe form of discrimination (Article 12 Paragraph 1 Point 3). According to the *Law on Protection against Discrimination of the Republic of Bulgaria* (The State Gazette of the Republic of Bulgaria No. 86/30.9.2003), repeated discrimination occurs when "the violation is committed within a period of one year from the entry into force of the decision, and the perpetrator was punished for the same form of violation" (Additional Provisions, Item 12). In the case of a repeated discrimination, the perpetrator of the discriminatory act receives twice a bigger punishment than the first one (Article 81).

Excerpt from the Case Law No. 26

Acting on an application, the CPPD established the existence of repeated and multiple harassment on the grounds of ethnicity, religion or religious belief and other conviction in the area of public information and media, as well as in the area of the Municipal Council's work. According to the Commission, the harassment was repeated because it was committed by the Councillor against the applicant on two separate occasions; first, by expressing the harassing contents in her address at the Municipal Council session, and then again, by posting the same contents on her Facebook profile. The CPPD recommended to the Councillor to remove the contents in question from her Facebook profile within 30 days of receiving the Opinion, to send a written apology to the applicant, and, in the future, to refrain

from expressing harassing contents on any discrimination ground (*Application No. 08-597/2* dated 22.11.2022, *Opinion* dated 1.2.2023).

12. Continued discrimination shall mean any discrimination committed against a person or a group continuously, for an extended period of time, on any discrimination ground.

Continued discrimination differs from repeated discrimination in that the discrimination is committed over a longer period of time or continuously. So, compared to repeated discrimination, which is committed on multiple occasions (two, three or more times), continued discrimination is committed without interruptions or over an extended period of time. The LPPD does not specify this period of time, so it will depend on the context of the case. Accordingly, it is possible for a particular person to be discriminated against or harassed at their workplace on a daily basis because of their disability, ethnicity, sexual orientation or any other discrimination ground. Moreover, continued discrimination may be committed on more than one grounds, in which case it may take the form of a continued multiple or a continued intersectional discrimination. Continued discrimination, too, is considered a more severe form of discrimination, along with multiple, repeated and intersectional discrimination.

Excerpt from the Case Law No. 27

In the case of *Sejdič and Finci* (Sejdič and Finci v. Bosnia and Hercegovina, App. Nos. 27996/06 and 34836/06, Judgment of 22 December 2009), the ECtHR established discrimination because the Constitution of Bosnia and Herzegovina provides for the members of the Lower House of the Parliament and the Presidency to be members of the largest ethnic communities (as constituent nations: Bosniaks, Croats and Serbs), which automatically excludes the members of smaller communities from being able to run for these positions, such as the applicants, who were Jewish and Roma. Due to the fact that the Constitution of Bosnia and Herzegovina has not been changed and therefore the discrimination has not been overcome, it has, in fact, become continued.

Likewise, the *Law on Combating Discrimination of the Republic of Croatia* (The Official Gazette of the Republic of Croatia No. 85/08, 112/12) provides the continued discrimination and defines it as discrimination committed over an extended period of time (Article 6 Paragraph 1). The *Law on Prohibition of Discrimination of the Republic of Serbia* (The Official Gazette of the Republic of Serbia No. 22/2009, 52/2021) defines the continued discrimination as discrimination that is committed over an extended period of time “against the same person or group of persons”. This law, too, provides the continued discrimination as a more severe form of discrimination (Article 13 Point 6). The *Law on Protection against Discrimination of the Republic of Slovenia* (The Official Gazette of the Republic of Slovenia No. 1427, p. 4817) provides the continued discrimination as a more severe form of discrimination (Article 12 Paragraph 1 Point 3) by referring to it as “long-term”.

Excerpt from the Case Law No. 28

Restricting the men’s access as attendants to hospitalised children in the country’s public health facilities is a systemic problem faced by male parents/guardians. This shortcoming constitutes discrimination against men on the ground of sex, but also against women on the ground of gender, as it merely reinforces the stereotypical view of the social role of women solely as mothers and caregivers. This issue was for the first time addressed in 2011, when the OMB reacted in public. To verify whether this situation still prevails, the Helsinki

Committee, with the support from the OSCE Mission to Skopje, conducted a situation testing in 2015 and the findings did prove the existence of this discrimination.

Acting on an identical application submitted by a father who was not allowed to accompany his child during hospitalisation, the CPPD established the existence of direct continued discrimination on the ground of sex committed by the public health institution University Clinic for Childhood Diseases in the area of health care. The CPPD recommended to the institution to remove the discriminatory practice and to find a way to allow the fathers to accompany their hospitalised children under equal conditions as mothers (*Application No. 08-424* dated 18.8.2022, *Opinion* dated 13.12.2022).

Allowing the male parents to be more involved in the care of their children will also help change the gender roles of women as the main caregivers and men as the providers of financial stability for the family.

Excerpt from the Case Law No. 29

Acting ex officio pursuant to a rumoured information, the CPPD established direct continued discrimination committed by the State Election Commission (SEC) on the ground of disability in the area of participation in the public and political life against persons with physical disability, due to the inaccessible regional office of the SEC in the Municipality of Karpoš. In this office, people living in the Municipalities of Karpoš, Ǵorče Petrov and Saraj can deposit their signatures in support of independent candidates for members of the Municipal Councils. Having inspected the premises of the regional office, the CPPD issued a General Recommendation recommending to the SEC to take all the necessary extraordinary actions with a view to ensuring the right of persons with physical disability to be able to support one of the independent candidate lists in the upcoming local elections (*Application No. 0801-228/3*, *Decision* dated 17.8.2021, *Opinion* dated 18.8.2021).

Excerpt from the Case Law No. 30

The CPPD initiated a proceeding for an ex officio protection against discrimination after the media had announced that a wheelchair-bound person with physical disability, who was aided by a trained assistance dog, was not allowed to use the public transport, on account that the dog was not wearing a muzzle. Having taken the necessary actions, the CPPD established the existence of a direct continued discrimination on the grounds of disability and belonging to a marginalised group in the area of access to goods and services, committed by the Skopje-based public enterprise JSP “Skopje”. The Commission recommended to the management bodies of this public enterprise to prepare a draft decision that would allow the people with different types of disabilities to use the services of this public enterprise accompanied by their assistance dogs that are trained to provide them with assistive support, and to publish it on their website. The CPPD recommended that JSP “Skopje” – Skopje should also prepare appropriate and easy-to-see stickers to mark the buses and other vehicles, indicating that the transportation of persons with disabilities using assistance dogs is allowed, without the obligation to wear muzzles (*Application No. 08-481*, *Decision* dated 22.12.2021, *Opinion* dated 28.3.2022).

In its *Opinion* adopted on 19.5.2016, pursuant to the *Application No. 07-839* submitted on 24.10.2013, the former CPD, too, established direct discrimination on the ground of disability committed by the banks across the country. According to the CPD, the banks were

committing discrimination because they required the blind persons and the persons with severe visual impairment, unlike other persons (comparable situation), to have a proxy representing them in their dealings with the bank, and also because these persons could not use all the banking services, including internet services. Given that the discrimination was repeated on several occasions and was committed over an extended period of time, in an undefined number of cases (to a group of persons), this constituted a more severe form of discrimination. Although the CPD did not say it explicitly, this case involved continued discrimination because, unlike repeated discrimination, which is reiterated, the continued discrimination is committed consistently, over an extended period of time.

13. Intersectional discrimination shall mean any discrimination on two or more discrimination grounds that are concurrent and inseparable;

Intersectional discrimination is a more specific form of discrimination that is committed on multiple discrimination grounds, which makes it similar to multiple discrimination. However, unlike the multiple discrimination, in intersectional discrimination the grounds operate concurrently and inseparably.

Excerpt from the Academic Literature No. 7

"In intersectional discrimination, the discrimination is at play on multiple grounds concurrently, and there is a mutual connection and inseparability between the grounds" (Makonen, as cited in Kotevska 2015, p. 12).

Intersectionality helps to understand the complex effects of various overlapping systems of power – such as patriarchy, racism, homophobia, ableism, etc. – and their specific impact on vulnerable and marginalised groups in the society. A single person may often exhibit more than one protected characteristic, so it can easily be assumed that unequal treatment may occur simultaneously on several grounds. For example, an older worker with back problems who is engaged in manual labour or who comes from a particular ethnic community which, on average, has a lower level of education, will find it difficult to secure a permanent job due to the combination of their age, personal status, ethnicity and health status; or a person with disability who is a member of an ethnic community may have their cultural or linguistic needs overlooked when provided with assistance related to their disability. Also, women are one of the most vulnerable groups especially when their sex or gender intersects with age, religion, race or disability. In such cases, it is multiple discrimination, or intersectional discrimination, that is at play. Due to this synergistic nature of multiple discrimination, it is very difficult to crystallise particular policies for this phenomenon. For example, Muslim women may not be discriminated against because they are women or because they are Muslims; however, they will be discriminated against because they are Muslim women due to the prejudices surrounding them exactly.

Excerpt from the Case Law No. 31

In the case of *Carvalho Pinto de Sousa Morais* (Carvalho Pinto de Sousa Morais v. Portugal, App. No. 17484/15, Judgment of 25 July 2017), with its verdict by 5 votes to 2, the ECtHR decided that there existed violation of Article 14 of the ECHR (prohibition of discrimination), as well as Article 8 (right to private and family life). The case concerned a woman who complained that, due to a medical error during a gynaecological intervention, she was rendered unable to have sexual intercourse, and therefore claimed damages through a court proceeding. She was initially awarded 80,000 euros, but the Court of Second Instance

reduced the amount to 50,000 euros on the grounds that sexuality is not such an important aspect of the life of a fifty-year-old woman and a mother of two children, compared to a younger woman. Before that, the national courts awarded two men aged 55 and 59, who were victims of a medical error of a similar nature, 224,459 euros and 100,000 euros respectively, on the grounds that the fact that the men could not have normal sexual intercourse affected their self-esteem and resulted in a severe psychological trauma. In their reasoning, the domestic courts have reflected the traditional idea of female sexuality which is tied to reproduction, childbirth and rearing of children, and they have neglected the importance of the physical and psychological fulfilment of women. Because of this, the ECtHR considered that discrimination was committed on the ground of gender in close connection with the applicant's age.

Intersectional discrimination is defined as a more severe form of discrimination in Article 13 of the LPPD, together with multiple, repeated and persistent discrimination. Comparatively speaking, laws that make an explicit mention of intersectional discrimination are rare. It is listed as a more severe form of discrimination in the *Law on Prohibition of Discrimination of the Republic of Serbia* (The Official Gazette of the Republic of Serbia No. 22/2009, 52/2021), in its Article 13 Point 5. On the other hand, even more rare are the legislations which define the intersectional discrimination.

Excerpt from the Academic Literature No. 8

"In a research that included the legislations of all EU and EEA Member States and candidate countries, including our country, 21 European legislation (Belgium, Cyprus, Czechia, Denmark, Estonia, Finland, France, Hungary, Iceland, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Portugal, Slovakia, Slovenia, Sweden) defined neither multiple nor intersectional discrimination. On the other hand, in most of them, the courts allow claims on multiple discrimination grounds, although this is not explicitly specified in the law. In France, for example, discrimination grounds cumulation is allowed, given that it prohibits the discrimination on multiple grounds. However, in some legislations, such as the Belgian one, filing a claim is a difficult procedure because there exist different laws that prohibit discrimination on different grounds, so it is necessary to challenge each ground separately citing the individual law that prohibits the discrimination on that ground specifically. In all the legislations that have regulated the multiple discrimination, the case law has reported no problems in addressing the intersectional discrimination, and some countries (such as, for example, Italy and Liechtenstein) have even regulated the relationship between the grounds in such cases" (Fredman, 2016, p. 52-53).

Excerpt from the Case Law No. 32

In a case in which the applicants claimed that, according to the existing regulations, women owners of agricultural holdings, registered as individual farmers, do not have the right to wage-related benefits during their absence from work on account of pregnancy, childbirth and maternity, that is, a paid maternity leave, as well as paid sick leave (together with men farmers), the CPPD established indirect, persistent and intersectional discrimination on the grounds of sex, gender, personal status (being women farmers from rural areas) and belonging to a marginalised group committed by the Ministry of Health. In its argumentation, the Commission considered that individual women farmers, who are mandatory health insurance payers, based on the intersectional grounds of sex, gender, personal status and

belonging to a marginalised group, were placed in a less favourable position compared to other mandatory insurees who can fully exercise their rights arising from health insurance. The Commission considered that this case involved persistent discrimination, as a more severe form of discrimination, because it was committed continuously, without interruptions, and over an extend period of time (*Application No. 08-574/1* dated 7.11.2022, *Opinion* dated 2.3.2023).

14. Situation testing shall mean the method of proving discrimination by involving organised testers placed in a comparable situation to investigate the occurrence of discrimination in various cases, processes and areas, on any discrimination ground.

Point 14 of Article 4 defines the situation testing. Situation testing is a special method of proving discrimination cases. It consists of deliberately organised testers who are placed in comparative situations to prove the existence of less favourable treatment. For example, in the case of discrimination in access to goods and services, two groups are organised, one of which includes members of the discriminated group, who have to prove that the provider of the goods and/or services behaves less favourably, that is, in a discriminatory manner, towards the members of one group, while quite normally serving the members of the other group.

Excerpt from the Academic Literature No. 9

"The Anti-Discrimination Agency (ADA) performed situation testing in several discotheques in the city of Enschede. People of minority ethnicities were not allowed entry, while the Dutch were. In an application filed with the Equal Treatment Commission, the ADA argued that the groups participating in the test could be considered average disco-goers. They were not related to the ADA, had no criminal records, did not differ from the other visitors in terms of their hairstyle, clothes, shoes, etc. and had sufficient knowledge of the Dutch language to communicate with the bouncer.

The Equal Treatment Commission emphasised: "We believe that, depending on the circumstances, situation testing may provide evidence of unequal treatment". Subsequent opinions of the Commission follow the same line of thought (Netherlands Anti-Discrimination Agency, *Opinion No. 1997-65*, June 10, 1997)" (Čalovska, 2014, p. 30-31).

The LPPD defines the situation testing separately in Point 14 of Article 4, and one upside of this Law is that it also lays down the situation testing as a special means of proof in Article 38. Unlike the LPPD, the previous law (2010) did not explicitly provide for situation testing, although it did not prohibit it explicitly, either. In the discrimination cases heard by courts, the courts accepted the situation testing as a means of possible proof of discrimination, even though the previous law did not stipulate it explicitly.

Excerpt from the Case Law No. 33

Accordingly, the Basic Court Skopje 2 in Skopje, in its *Judgment 16P-894/16* dated 7.6.2017, underlined (on page 3 of the judgment) that it allowed the situation testing report to be produced as evidence and inspected, even though the defendant had objected that situation testing is not laid down as a means of proof in the Law on Prevention and Protection against Discrimination then in force (the 2010 Law). The situation testing was carried out by

a civil society organisation, and the discrimination case involved a possible discrimination of the members of the Roma community by a gynaecological practice.

For more information on the situation testing method, see the 2014 *Situation Testing – A Method for Proving Discrimination*, by the author Neda Čalovska.

1.4. Discrimination Grounds and Definition of Discrimination

Article 5
Discrimination Grounds

Any discrimination based on race, colour of skin, descent, national or ethnic origin, sex, gender, sexual orientation, gender identity, belonging to a marginalised group, language, nationality, social origin, education, religion or religious belief, political belief, other beliefs, disability, age, family or marital status, property status, health status, personal capacity and social status, or on any other ground (hereinafter: discrimination grounds) shall be prohibited.

This article provides the discrimination grounds, that is, the grounds on which all forms of discrimination are prohibited according to the LPPD.

Excerpt from the Academic Literature No. 10

"There are different definitions of 'ground of discrimination'. One of the most frequently cited definitions is that of the European Court of Human Rights (ECtHR), according to which, discrimination ground is the "personal characteristic ('status') by which persons or groups of persons are distinguishable from each other" (*Kjeldsen, Busk Madsen and Pedersen v. Denmark*, App. Nos. 5095/71, 5920/71, 5929/72, Judgment of 7 December 1976, Paragraph 56). In the case of *Wagner and J.M.W.L.* (Wagner and J.M.W.L. v. Luxembourg, App. No. 76240/01, Judgment of 28 June 2007), the ECtHR clarified that unequal treatment should not necessarily be linked to a ground that encourages prejudice and stereotypes and which enjoys a high level of protection, rather, it may as well be linked to any arbitrary action resulting in unequal treatment. According to another definition, a ground of discrimination is any characteristic of an individual that should not be considered relevant in respect to the different treatment or in the enjoyment of certain benefits" (Kotevska, 2013, p. 7).

Discrimination ground is any protected characteristic which must not serve as the basis for unallowed different treatment, and which may include an actual personal characteristic or status, or, alternatively, a perceived or related personal characteristic or status, through which a person or a group of persons identify with a particular race, skin colour, ethnicity, language, nationality, sex, gender, sexual orientation, gender identity, religion, belief, education, disability, age, family or marital status, health status, etc.

Excerpt from the Academic Literature No. 11

"Those legislations that have laid down the grounds of discrimination in the form of lists of grounds typically do not go into defining what constitutes a ground of discrimination, but resolve the issue either by enumerating the personal characteristics or statuses on which the

unallowed different treatment may not be based or they leave them to be established through the case law.

There are different terms used for 'grounds of discrimination'. In addition to this term, the following are also used: protected ground, protected characteristic, distinction badge, protection basis, discrimination ground, etc. They have the same meaning as the term used in Article 5 of the LPPD" (Kotevska, 2013, p. 3).

Our legislation belongs to the group that enumerates the grounds of discrimination, in Article 5 of the LPPD. Namely, the characteristics on the grounds of which discrimination is prohibited are provided as a list, which also reveals the legislator's aim to provide legal protection on the listed grounds of discrimination. Given that this article enumerates a large number of discrimination grounds, coupled with the open nature of this list of discrimination grounds, the law demonstrates that the legislator's aim was to offer legal protection against discrimination on all possible discrimination grounds, while not stipulating any hierarchy of the protected characteristics. On the other hand, in this way, the LPPD constitutes a general anti-discrimination law, unlike other laws, which can offer protection against discrimination only on precisely defined grounds (such as the *Law on Equal Opportunities of Women and Men*).

The discrimination ground, as a protected characteristic, will typically be realistic, in the sense that the victim of discrimination will be a person who features the specific characteristic (skin colour, race, sex, etc.). However, the discrimination ground may also be perceived, which means that the person does not necessarily have to feature the specific characteristic, rather, the decisive factor is the perception of the discriminator who assumes that the victim is a member of a particular group, or a person with such a characteristic, regardless of whether this is truly so. This is called a perceived characteristic or a perceived discrimination ground. Perceptive discrimination is defined in Article 4 Point 9, as explained in *Part 1.3. Glossary*.

Likewise, discrimination may occur on multiple grounds, such as multiple discrimination (Article 4 Point 10) or intersectional discrimination (Article 4 Point 13), as well as associative discrimination (Article 4 Point 8), which are explained in *Part 1.3. Glossary*.

Race, colour of skin, descent, national or ethnic origin

Race, skin colour, descent, and national and ethnic origin, as grounds of discrimination, are mutually related. As laid down in Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter: ICERD), "race" includes the race, but also skin colour, descent, and national or ethnic origin. In the European context, the European Commission against Racism and Intolerance (hereinafter: ECRI), in its *General Recommendation No. 7* also recommends that racial discrimination should be associated with race, skin colour, language, religion and national or ethnic origin.

International law considers the concept of race to be a social construct, not a biological one. According to research studies, there is no such thing as different races, rather, there exists a single human race (*Declaration on Race and Racial Prejudice*, UNESCO, 27 November 1969, E/CN.4/Sub.2/1982/2/Add.1, Annex V, 1982, Article 1). Likewise, within the context of the European Union, *Directive 2000/43/EC* rejects the theories of the existence of different races (Recital 6). Consequently, racial discrimination is based on such visible elements of the individual as skin colour, language, religion, ethnic origin, etc.; however, it remains referred to as racial discrimination because the way it is perceived is exactly that.

Skin colour is associated with belonging to a certain race; however, as already mentioned, since race does not exist as a biological concept, racial discrimination is more of a discrimination on the ground of skin colour.

Excerpt from the Academic Literature No. 12

"Skin colour is a biological characteristic and depends on the pigmentation of the human skin, which can be darker or lighter" (Najčevska and Kadriu, 2008, p. 13).

Descent, as used in the section on discrimination grounds, is related precisely to the race, that is, the national and ethnic origin of the individual. It also follows from the ICERD, where descent constitutes one of the grounds on which racial discrimination may occur, along with race, skin colour, and national and ethnic origin. Descent as a ground of discrimination is important especially in those societies where there exists division of society into groups (classes, castes), and belonging to the group is determined according to the individual's descent, meaning, it is inherited. In practice, descendants of the members of a particular racial or ethnic group may be victims of discrimination, even though they are nationals of the state where they are discriminated against, they went to school in that state, they fluently speak the language of that state, etc. However, their descent may serve as a ground of discrimination. The grounds of "descent" and "social origin" often overlap.

Ethnic origin is linked to race because the characteristics of an ethnicity may be manifested as characteristics of a race, so ethnic discrimination is in fact manifested as a form of racial discrimination.

Excerpt from the Case Law No. 34

Ethnicity is based on certain characteristics that make the individuals part of a single social group, such as common descent, common language, culture, traditions, religious belief, etc. (*Timishev v. Russia*, App. Nos. 55762/00 and 55974/00, Judgment of 13 December 2005, Paragraph 44).

The ECtHR has set a high level of protection for these forms of discrimination, considering the racial discrimination as "a severe form of discrimination, which, due to its catastrophic consequences, requires a particularly careful and decisive response from the authorities" (Paragraph 56).

The manifestational forms of discrimination on these closely related grounds are common. This discrimination, among other things, may occur both in labour relations and in education, in access to public goods and services, etc.

Excerpt from the Case Law No. 35

On the other hand, according to the ECtHR, the different treatment based exclusively on the ethnic origin of individuals cannot be objectively justified in a democratic society based on pluralism and respect for different cultures (*D.H. and Others v. Czech Republic*, [GC] App. No. 57325/00, Judgment of 13 November 2007, Paragraph 176).

In our country, discrimination on the ground of ethnicity is one of the most common forms of discrimination, according to citizens' perceptions. As reported by the *Equal Opportunities Barometer* 2019 survey, ethnic discrimination comes in second (with 50% of the respondents finding it commonplace), right after the discrimination on the ground of political affiliation (Kimov and Kimova, 2019, p. 24). Discrimination on the ground of ethnicity most often occurs in access to goods and services, then in education in the form of segregation of

Roma students, in labour relations, in access to clean drinking water, with the Roma people being particularly discriminated against in the form of racial profiling when leaving the country.

Excerpt from the Case Law No. 36

In its *Judgment P4 1228/13* dated 11.4.2014, the Basic Court Skopje 2 established that the state, that is, the Ministry of Internal Affairs, as the defendant in the case, has violated the right to equality of a citizen of Roma ethnicity, by not allowing him to cross the state border on 12.6.2013. The same verdict was confirmed in the Appellate Court Skopje *Judgment GŽ 5169/14* dated 23.9.2015.

In the case *GŽ-183/18*, which was handled by the Macedonian Young Lawyers Association, the judgment established that the defendant – the Ministry of Internal Affairs – has violated the claimant's right to equality by not allowing him to cross the state border on 27.6.2014, and obliged the defendant to pay compensation to the claimant for material and non-material damage caused through violation of his personal rights. The claimant, a Macedonian national of Roma ethnicity, who was supposed to travel to Sweden to visit his relatives, for which he had obtained a letter of guarantee, was informed that the reason why he was not allowed to cross the state border was that they, as Roma people, were only going abroad to become asylum seekers, and he was escorted by police officers to the very exit of the airport (*Judgment GŽ-183/15* dated 9.3.2015 of the Appellate Court Štip, *P5 No. 2/14* dated 26.11.2014 of the Basic Court Kočani).

Likewise, in the case *GŽ-2086/16*, the Appellate Court Bitola confirmed the judgment of the Basic Court Bitola, which had established that the defendant had violated the claimants' right to an equal treatment and had violated their right to free movement by not allowing them to leave the territory of the state on 14.9.2015 (*Judgment GŽ-2086/16* dated 12.12.2016 of the Appellate Court Bitola, *P4-130/16* dated 3.1.2016 of the Basic Court Bitola).

This is one of the many cases in which domestic courts have established violation of the right to equality in relation to the right to free movement on the grounds of ethnicity and/or race.

In 2021, out of the total number of applications (167), the applicants most often reported discrimination on the ground of personal capacity and social status (43); followed by the grounds of national or ethnic origin (38), compound with skin colour (16) and race (15); whereas discrimination on the ground of national or ethnic origin was confirmed by the CPPD in 8 cases, in addition to 5 cases where the Commission established discrimination on the ground of skin colour (CPPD, *2021 Annual Report*, p. 21 and 27). In 2022, the situation remained similar in that, out of the total number of applications (248), the applicants most often reported discrimination on the ground of national or ethnic origin (124); followed by the grounds of personal capacity and social status (75), compound with skin colour (6) and race (10); whereas discrimination on the ground of national or ethnic origin was confirmed by the CPPD in 19 cases, in addition to 3 cases where the Commission established discrimination on the ground of race and 2 on the ground of skin colour (CPPD, *2022 Annual Report*, p. 27).

Excerpt from the Case Law No. 37

In a case filed by the Helsinki Committee, it was alleged that a bus driver of the Public Transportation Company (JSP) Skopje forcibly threw out of the bus an ethnic Roma woman with her two minor children, one of whom was in a stroller. The family, who were pushed by other passengers on the bus, were eventually thrown out by the driver, while using abusive language. Once the proceeding was initiated and JSP Skopje was requested to provide a

statement regarding the claims specified in the application, to which the JSP failed to respond, the CPPD established violation of the Law on Prevention and Protection against Discrimination, or more exactly, direct intersectional discrimination on the ground of race, skin colour, social origin, ethnicity and belonging to a marginalised group in the area of access to goods and services. The CPPD recommended to the JSP Skopje to take measures that will contribute to preventing the future discriminatory practices by their bus drivers and to deliver an anti-discrimination training to its employees (*Application No. 0801-136* dated 25.6.2021, *Opinion* dated 30.8.2021).

In another, identical case, the CPPD established direct discrimination on the ground of ethnicity and skin colour committed by the JSP against two persons, who, although they had properly purchased annual bus passes, were kicked out of the bus by the controllers, while insulting them on the grounds of their ethnicity and skin colour (*Application No. 0801-18* dated 17.2.2020, *Opinion* dated 13.7.2021).

Excerpt from the Case Law No. 38

The CPPD also issued a General Recommendation in 2022, in which it recommended that municipalities and their regional public enterprises operating in the field of public utility services should ensure access to clean water on the entire territory under their jurisdiction. If there exist legal barriers for a regular connection to drinking water through the water supply network of the municipality, the competent authorities should, using appropriate means based on international practices, ensure immediate access to water in the settlements inhabited by the socially vulnerable categories of citizens, such as the Roma ethnic community (*General Recommendation* dated 8.4.2022).

Excerpt from the Case Law No. 39

In its case *GSŽ-1671/19*, the Appellate Court Bitola established discrimination committed by the Municipality of Prilep and the public utility enterprise "JKP Vodovod i kanalizacija" in the area of access to water and sewer for the Roma citizens. Namely, according to the verdict, the obligation of the municipality under Article 22 Point 4 of the *Law on Local Self-Government* is "execution of works in the area of public utility services, which includes drinking water supply, technological water delivery, and waste water drainage and treatment, so that, in this sense, the municipality must take measures regarding the supply of drinking water". The public utility enterprise is obliged to ensure, through its water supply system, a permanent and continuous supply of clean drinking water, which is an activity of public interest, as laid down in Article 3 of the *Law on the Supplying of Drinking Water and the Draining of Urban Wastewater*.

Sex and gender

Excerpt from the Academic Literature No. 13

"Sex is a biological feature of a person, which is typically determined according to one's biological characteristics – reproductive organs, genes and hormones. According to these characteristics, people are defined as being male and female. However, the set of biological characteristics by which people are divided as male and female is not completely exclusive,

since there are persons who have the characteristics of both sexes” (Najčevska and Kadriu, 2008, p. 76).

Excerpt from the Academic Literature No. 14

“Discrimination on the ground of sex is considered to include, for example, the distinctions made between men and women with regard to the requirements for acquiring the right to social assistance (Human Rights Committee, *S. W. M. Broeks v. The Netherlands*, Communication No. 172/1984, CCPR/C/OP/2 Views adopted on 9 April 1987); the pay gap between men and women for an equal amount of work; the different treatment of sexes with regard to pensions, which results from the different salaries received by men and women in the past (*Rijksdienst voor Pensionen v. Elisabeth Brouwer*, Case C-577/08, Judgment of 29 July 2010); and restricting the rights required only by women, such as health and reproductive rights” (Kotevska, p. 18-19).

Similarly, discrimination due to pregnancy is considered discrimination on the ground of sex, although this view of the CJEU has been criticised for being based in a medical understanding of the issue and is binary.

Applications for discrimination on the ground of sex are regularly received by the CPPD. If the applications received are analysed by year, in 2021, out of the total number of applications (167), the applicants reported discrimination on the ground of sex in 23 applications, and discrimination on the ground of sex was established by the CPPD in 5 cases (CPPD, *2021 Annual Report*, p. 21 and 27). In 2022, the situation remained similar in that, out of the total number of applications (248), the applicants reported discrimination on the ground of sex in 56 applications, and discrimination on the ground of sex was established by the CPPD in 17 cases (CPPD, *2022 Annual Report*, p. 21 and 27).

Excerpt from the Case Law No. 40

Acting on the application filed against the Directorate for Execution of Sanctions, the CPPD established direct discrimination on the ground of sex in the area of justice and administration, committed both against the individual applicant and against the female convicts serving in the KPU Idrizovo penal and correctional facility, due to the inability of women convicts to exercise their right to progression within the institutions of the penal system. Taking into account the current regulation, the is, the fact that women can serve their prison sentence only in KPU Idrizovo, which is a closed type of facility, the conclusion can be drawn that women convicts are placed in a less favourable position compared to men convicts. This is why the CPPD recommended to the Directorate to prepare within six months, in cooperation with other relevant authorities, an action plan of activities and sources of financing for adapting/ reconstructing/ constructing semi-open and open type of facilities for women convicts (*Application No. 08-674/1* dated 22.12.2022, *Opinion* dated 16.3.2023).

Moreover, the CPPD made a General Recommendation in 2023 with the same proposal to the Directorate for Execution of Sanctions to adopt an action plan, while stating that this need is necessarily caused by the fact that women sentenced to prison from all over the country are sent to serve their prison sentence in KPU Idrizovo, as the only penitentiary in the country that has a separate unit for women. The measures and actions provided for in this General Recommendation should ensure that women, sent to serve a prison sentence, can, on an equal footing with men, progress in penal institutions with a portion of the prison sentence served, in accordance with Article 220 of the *Law on Execution of Sanctions* and

the corresponding provisions of the Rulebook on the time to be spent and the requirements to be fulfilled by the convicted person in a specific-type facility or in a corresponding unit of general-type facility. Namely, the current Rulebook, although being a neutral regulation, does not at all apply to women who are serving a prison sentence due to the fact that there are no semi-open and open facilities in the country intended for women convicts where they could be sent to serve the prison sentence and later possibly progress, as there are for men. This means that progressing to another, more liberal facility is not possible for women because there is no other facility in the country where women could serve their prison sentence (*General Recommendation* dated 27.3.2023).

Excerpt from the Case Law No. 41

The CPD established discrimination on the ground of sex committed by the School Sports Federation when organising the primary schools’ national judo championship, in that, upon completion of the championship, they awarded recognitions and prizes to boy participants, but not to girl participants (*Opinion No. 08/1714* dated 2016). The Commission established discrimination on the ground of sex also in the case of a fixed-term employee in a private health facility whose employment contract was terminated right when she was determined to have a pathological pregnancy (CPD, *2016 Annual Report*, p. 17-19).

Discrimination on the ground of sex was also established in cases where job advertisements sought to recruit a person of a particular sex, even though sex was not an essential prerequisite for that job. In such cases, the Commission has always established discrimination. Accordingly, in a job advertisement for a mechanical engineer, the private employer emphasised that “during the selection process, persons of the male sex will be given priority”. The Commission established direct discrimination on the ground of sex (*Opinion No. 08-35/1* dated 8.3.2018).

Excerpt from the Case Law No. 42

The *Case No. 1000/2017* was registered with the OMB regarding a Civil Education textbook for the eighth grade of primary education, which, according to a non-governmental organisation, contained texts with discriminatory content, among other things, on the ground of sex. Once the OMB addresses their recommendation to the Ministry of Education and Science to review the contents of the controversial textbook, the Ministry formed an appropriate commission that analysed the textbook and made a proposal to withdraw it from instruction (OMB, *2017 Annual Report*, p. 111).

In another example, the OMB initiated a proceeding on their own initiative for protection against discrimination on the ground of sex (*OMB No. 2148/16*), considering that the Law on Administrative Servants, with regard to termination of employment, lays down different retirement ages for men and women (OMB, *2016 Annual Report*, p. 135).

In a third case (*OMB No. 500/11*), the OMB established unequal treatment and discrimination committed against women detainees in the Skopje prison, due to the fact that the search procedure performed by members of the Security Service was carried out with omissions and with a different approach to women detainees (OMB, *2011 Annual Report*, p. 117).

Gender, on the other hand, as a discrimination ground, is not based on biological characteristics, rather, is a social construct that determines the social roles that men and women

should have in the social life. These roles are variable and depend on the community and historical context, and are transmitted through religion, education, science, laws, cultural practices and the social system. Discrimination on the ground of gender is not exclusively based on sex as a biological characteristic, rather, on the assumption that a person should have a particular role in the society.

Excerpt from the Academic Literature No. 15

"However, in practice, this division between sex and gender becomes less visible, given that certain gender aspects are treated within the framework of sex" (Kotevska, 2013, p. 17).

The CPPD has been receiving applications for discrimination on the ground of gender, albeit fewer in number compared to those on the ground of sex. In 2021, 6 applications for discrimination on the ground of gender were received, and the CPPD established discrimination on this ground in 2 cases (CPPD, *2021 Annual Report*, p. 21 and 27). In 2022, the situation remained similar in that, out of the total number of applications (248), the applicants reported discrimination on the ground of gender in 9 applications, and discrimination on this ground was established by the CPPD in 5 cases (CPPD, *2022 Annual Report*, p. 21 and 27).

Excerpt from the Case Law No. 43

Acting on an application, the CPPD established that, by formulating the text of the job advertisement in a way that it read "we are recruiting girls", the legal person has committed discrimination on the ground of sex in the area of employment and labour relations (*Application No. 0801-257* dated 26.8.2019, *Opinion* dated 7.7.2021).

A similar example occurred in another application, where the CPPD established again that the formulation of the text in the job advertisement prevented the men from applying, with which the legal person has committed discriminated on the ground of sex in the area of employment and labour relations. At the same time, the CPPD made a General Recommendation to all legal and physical persons who implement a recruitment process to set such employment requirements that will allow for everyone's equal access without discrimination on any ground (*Application No. 0801-243/1* dated 30.7.2019, *Opinion* dated 8.7.2021).

Excerpt from the Case Law No. 44

In one case, the former CPD established harassment on the ground of gender in a campaign called "Campaign for Overly Emancipated Women" running on three radio stations. With regard to this campaign, which contained such phrases as "...all the overly emancipated women who have lost their femininity while running after their targeted careers. Emancipated women with dominant frustrations, wake up. You have become men...", the Commission establishes elements of discrimination on the ground of gender because the campaign has an adverse impact on the position of women in the society and feeds even more into the stereotypes about the roles of men and women in the public life (*Opinion 0801 229/1* dated 7.2.2018).

Sexual orientation and gender identity

Sexual orientation and gender identity are two grounds of discrimination that were not listed in the previous Law on Prevention and Protection against Discrimination (2010).

Excerpt from the Academic Literature No. 16

"Sexual orientation is an emotional and sexual attraction towards another person, which is usually associated with the sex of the persons involved" (Najčevska and Kadriu, 2008, p. 89).

According to another definition, "sexual orientation refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, another person. Sexual orientation itself has three separate components: who someone is attracted to (sexual attraction), who the person is sexual with (sexual behaviour) and how the person identifies (sexual identity) (*Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender Identity and Sex Characteristics, A Manual for Human Rights Institutions*, 2016, p. 11)

Sexual orientation can be heterosexual, which means emotional and sexual attraction to a person of the opposite sex. Sexual orientation can be homosexual, which means emotional and sexual attraction to a person of the same sex. Sexual orientation can be bisexual, which means emotional and sexual attraction to people of any sex; or pansexual, regardless of sex, which implies being attracted both to people of the same sex and to people of the opposite sex. Sexual orientation can even be asexual, which means the person feels no sexual attracted to other people.

Gender identity is a person's inner feeling about the sex to which the person belongs. Most often, a person will have the gender identity of a man or a woman based on their sense of belonging to the sex assigned to them at birth. But there are situations when a person's gender identity does not match the sex that was assigned to them at birth. Accordingly, a person who is registered as a male person may not feel as such, rather, they may feel like a female person, or they may feel as not belonging to any of these sexes (gender queer / gender non-conforming). These persons may combine the behaviour of both male and female persons, or neither. Gender identity differs from sexual orientation, so people with different gender identity may have different sexual orientation.

Excerpt from the Academic Literature No. 17

Transgender and trans are umbrella terms to describe people whose gender identity does not match the sex they were assigned at birth. It is used as an umbrella term to encompass a wide range of gender diversity, including people who identify as transsexual, transgender, third gender, queer / gender non-conforming, Male to Female (MtF) or trans women, Female to Male (FtM) or trans men, or transgender men who simply identify as men and transgender women who simply identify as women (*Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender Identity and Sex Characteristics, A Manual for Human Rights Institutions,* 2016, p. 12).

Intersex people are people with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies.

Excerpt from the Academic Literature No. 18

"The term 'intersex' is also an umbrella term that covers a broad range of congenital physical variations. People with intersex variations are born with bodies, chromosomes or hormones that do not match a stereotypical 'ideal' of what it means to be male or female." (*Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender Identity and Sex Characteristics, A Manual for Human Rights Institutions*, 2016, p. 12).

When talking about the relevant ground of discrimination, the terms most commonly used are 'intersex status' or 'sex characteristics'. Australia is one of the rare countries in the world that explicitly provides the intersex status as a ground of discrimination. When this ground is not stipulated, another acceptable ground may be used, such as "another characteristic" when there is an open list of discrimination grounds in the law, or the grounds of sex or gender identity. For example, discrimination applications of intersex persons before the Human Rights Commission in New Zealand are based on the ground of sex (*Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender Identity and Sex Characteristics, A Manual for Human Rights Institutions*, 2016, p. 78). It would be unacceptable to use the ground of health status here, because being intersex does not mean that the person is having a health issue, so the use of such a term would be stigmatising. The *Law on Prohibition of Discrimination of Bosnia and Herzegovina* (The Official Gazette of Bosnia and Herzegovina Nos. 59/09 and 66/16) lays down the "gender characteristics: in Article 2 Paragraph 1 as a separate discrimination ground.

Discrimination on the ground of sexual orientation and gender identity occurs when an employer refuses to hire a person because of their sexual orientation or gender identity. Harassment of persons with homosexual orientation often occurs in labour relations and education, which is a special form of discrimination. Intersex people can be victims of discrimination and harassment in labour relations, education, sports activities and competitions, and in their private and intimate relationships. However, although this ground is quite common in everyday life, the *Equal Opportunities Barometer* 2019 survey found that sexual orientation is fifth ranked out of the total of seven analysed grounds (with 40% of respondents considering it to be commonplace) (Kimov and Kimova, 2019, p. 24).

Excerpt from the Case Law No. 45

The ECtHR established discrimination on the ground of sexual orientation in a case where the national courts had refused to give the father custody over his child after the divorce solely because of his homosexual orientation (*Salgueiro da Silva Mouta v. Portugal*, App. No. 33290/96, Judgment of 21 December 1999). In another case, the ECtHR established discrimination on the ground of sexual orientation also when the national authorities refused to allow a woman to adopt a child solely because of her homosexual orientation (*E.B. v. France*, [GC] App. No. 43546/02, Judgment of 22 January 2008).

In 2021, out of the total number of applications (167), the applicants reported discrimination on the ground of sexual orientation (11), compound with gender identity (11); whereas discrimination on the ground of sexual orientation was confirmed by the CPPD in 7 cases, in addition to 8 cases where the Commission established discrimination on the ground of gender identity (CPPD, *2021 Annual Report*, p. 21 and 27). In 2022, the situation changed because there was a significant increase in the number of applications received on these two grounds. Namely, from the total number of applications (248), the applicants reported discrimination on the ground of sexual orientation (43), compound with gender identity (45); whereas discrimination on the ground of sexual orientation was confirmed by the CPPD in 25 cases, in addition to 20 cases where the Commission established discrimination on the ground of gender identity (CPPD, *2022 Annual Report*, p. 21 and 27).

Excerpt from the Case Law No. 46

Acting on an application for protection against discrimination submitted by the Helsinki Committee for Human Rights in Skopje against the Bitola-based "Pelister" Motorcycle Club regarding the discrimination they had committed by sharing a post on the Facebook social network, which stated that members of the LGBT community could not become members of this club and that they are not welcome to attend at their events, the CPPD established direct discrimination on the ground of sexual orientation in the area of access to goods and services. The CPPD made a recommendation to immediately remove the discriminatory content published on the club's Facebook profile and, at the same time, it charged the civil society organisation "Pelister" Motorcycle Club from Bitola to allow, in the future, equal access and membership to all persons regardless of their sexual orientation or gender identity, in compliance with the Law on Prevention and Protection against Discrimination (*Application No. 0801-139* dated 28.6.2021, *Opinion* dated 30.6.2021).

Excerpt from the Case Law No. 47

Acting on an application, the CPPD established direct discrimination on the ground of gender identity in access to health services when the dignity of the applicant, a transgender woman, was violated and she was not issued the medications for which she had a prescription in the amount she requested, while being subjecting to rude and unprofessional behaviour by the pharmacist in the respective pharmacy. The CPPD made a recommendation that, in the future, the pharmacy should provide unobstructed and equal access to goods and services without harassment and discrimination on any ground, recommending to the person in charge of the pharmacy to organise a training for its staff so as to raise their awareness and sensitise them to work with marginalised groups, including transgender persons (*Application No. 0801-247/3* dated 31.7.2019, *Opinion* dated 12.7.2021).

Excerpt from the Case Law No. 48

From the domestic practice, the CPD established harassment on the ground of sexual orientation in its *Opinion* dated 13.7.2017 pursuant to *Application No. 94-1* dated 18.4.2017. In its Opinion, the Commission considered that harassment had been committed because the text published in a domestic internet portal was unobjective, unilateral, and its contents violated the dignity of people with homosexual orientation.

Excerpt from the Case Law No. 49

From the case law of domestic courts, with its *Judgment U No. 909/2015* dated 2.10.2017, the Administrative Court accepted the claim of the claimant and ruled in her favour for her sex to be changed in the civil registers along with her unique master citizen number. Firstly, the Administrative Court accepted that the claimant, having undergone a medical intervention for gender reassignment, is now a person of the female sex. Secondly, the Court changed the data in the Civil Register of Births by entering "female" instead of "male" in the 'sex' field. Thirdly, the Administrative Court invalidated the claimant's unique master citizen number and charged the Ministry of Internal Affairs to allocate her a new number that will reflect the claimant's sex. In their reasoning, the Administrative Court also referred to the case law of the ECtHR (*H v. Finland*, App. No. 37359/09, Judgment of 13 November 2012), which insisted on the positive obligation of the states to recognise the change of sex in post-operative transgender persons, by changing the data on their civil status (p. 10 of the judgment).

Belonging to a marginalised group

This ground does not appear as such in international law, nor in the national legislation. On the other hand, this is the only ground that is defined in Article 4 of the LPPD. It is defined as "a group of individuals who are united by a specific position in the society, who are the object of prejudices, who have special characteristics that make them susceptible to discrimination and/or violence, and who have less opportunity for the exercise and protection of their rights and freedoms".

Excerpt from the Academic Literature No. 19

"Most often, this group includes the people living with HIV, the homeless, sex workers, refugees, etc." (Najčevska and Kadriu, 2008; Kotevska, 2013).

For the definition of marginalised group, see the more detailed explanation in *Part 1.3. Glossary.*

In 2021, out of the total number of applications (167), applicants reported discrimination on this ground (19); whereas discrimination on the ground of belonging to a marginalised group was confirmed by the CPPD in 8 cases (CPPD, *2021 Annual Report*, p. 21 and 27). In 2022, the situation remained similar in that a total of 51 applications were submitted on this ground; whereas the CPPD established discrimination in 22 of them (CPPD, *2022 Annual Report*, p. 21 and 27).

Excerpt from the Case Law No. 50

IIn a case in which the applicants claimed that, according to the existing regulations, women owners of agricultural holdings, registered as individual farmers, do not have the right to wage-related benefits during their absence from work on account of pregnancy, childbirth and maternity, that is, a paid maternity leave, as well as paid sick leave (together with men farmers), the Commission established indirect, persistent and intersectional discrimination on the grounds of sex, gender, personal status (being women farmers from rural areas) and belonging to a marginalised group committed by the Ministry of Health. In its argumentation, the Commission considered that individual women farmers, who are mandatory health insurance payers, based on the intersectional grounds of sex, gender, personal status and belonging to a marginalised group, were placed in a less favourable position compared to other mandatory insurees who can fully exercise their rights arising from health insurance. The Commission considered that this case involved persistent discrimination, as a more severe form of discrimination, because it was committed continuously, without interruptions, and over an extended period of time (*Application No. 08-574/1* dated 7.11.2022, *Opinion* dated 2.3.2023).

Excerpt from the Case Law No. 51

In a 2017 case, the then CPD established harassment on the ground of belonging to a marginalised group in two secondary school textbooks. The Commission established that the content of the textbooks constitutes harassment, triggering the feeling of humiliation, violation of the dignity of a group of people, which stems from a discrimination ground. Through their textbooks, the authors have contributed to deepening the stigma, harassment and marginalisation of people using certain opiate drugs and people who are infected with HIV/AIDS. The CPD considered that textbooks must not include contents that stigmatise a particular group of people, especially considering that textbooks, above all, serve an

educational and rearing purpose, and therefore the contents of the textbooks must not be targeted towards violating human rights (*Application No. 243/1* dated 16.11.2017, *Opinion* dated 11.4.2018).

Language

Language as a ground of discrimination is often treated as part of race or ethnicity.

Excerpt from the Case Law No. 52

In the case of *Cyprus v. Turkey* (Cyprus v. Turkey, [GC] App. No. 25781/94, Judgment of 12 May 2014, Paragraphs 316 and 317), the ECtHR considered that language is the main characteristic by which an ethnic community is distinguished from other ethnic communities.

In other cases, discrimination on the ground of language may occur when addressing the authorities only in particular language or languages, when language is set unnecessarily and without justification as a criterion for employment or as a criterion for exercising the right to vote.

Excerpt from the Case Law No. 53

In the case of *Antonina Ignatane v. Latvia*, the Human Rights Committee established discrimination because the state prevented the applicant from running in local elections due to her lack of knowledge of the Latvian language, even though she had a certificate for it. The Committee established violation of Article 25, in connection with Article 2 of the International Covenant on Civil and Political Rights, considering that the state authorities had assessed her language knowledge based on non-objective criteria, with only one examiner testing her knowledge, while at the time when the applicant obtained her language certificate, her knowledge was assessed by five experts. In this way, the Committee established that the exclusion of the applicant from the race for local elections on the ground of lack of knowledge of the language, in the case where the assessment of knowledge was performed by only one examiner immediately before the elections, all the while possessing an appropriate language certificate which is valid for an unlimited period of time, is contrary to the State's obligations under Article 25 in conjunction with Article 2 (*Antonina Ignatane v. Latvia*, Communication No. 884/1999, CCPR/C/72/D/884/1999, Views adopted on 31 July 2001, Paragraph 7.4-7.5).

In 2021, out of the total number of applications (167), the applicants reported discrimination on this ground in only 2 cases; whereas the CPPD did not establish discrimination in any of them (CPPD, *2021 Annual Report*, p. 21). In 2022, the situation remained similar in that the reported number of applications of discrimination on this ground was 8; whereas in only 2 cases the CPPD established discrimination (CPPD, *2022 Annual Report*, p. 21 and 27).

Excerpt from the Case Law No. 54

In its *Opinion No. 0801-1751* dated 2.3.2017, the CPD established discrimination on the ground of language. In this case, an employee in a municipality in Skopje was restricted by his superior from using his native language in private communication with colleagues at work, with the pretext that the official language in the municipality is the Macedonian language. The Commission made a distinction between the use of the official language in official communication and the need for everyone to be able to use their mother tongue in private communication with colleagues. Because of that, discrimination was established.

Excerpt from the Case Law No. 55

An *Application No. 3988/15* was filed with the OMB by a citizen from the Albanian ethnic community who complained that, contrary to the enacted regulations, he was not allowed to use the Albanian language in an administrative procedure before the Ministry of Internal Affairs. The OMB established violation in this case, and requested that the *Law on Misdemeanours* and the *Law on Criminal Procedure*, as well as the *Law on the Use of the Language Spoken by At Least 20% of the Citizens in the State and in the Local Self-Government Units* and the *Law on Prevention and Protection against Discrimination* be enforced Following the notification from the OMB, action was taken by the authority in question (OMB, *2016 Annual Report*, p. 133).

Excerpt from the Case Law No. 56

In the applications filed by members of the Bosniak community for discrimination on the ground of language, the complaints concerned the inability of students from this community to enter their mother tongue on the University's website during student enrolments, as well as when obtaining personal documents from the Ministry of Internal Affairs. Having considered the applications, the OMB established that the rights of the students from this community have been violated, so they addressed the rector of the "St. Cyril and Methodius" University in Skopje with a suggestion to instruct the responsible services to take measures to enable the declaration of ethnicity and native language, as a right guaranteed to every citizen by the Constitution. The Rector of the University fully accepted the OMB's suggestion and notified them that a procedure has been launched to supplement the software base of the I-Know System, so that from the options for choosing one's ethnicity and mother tongue, in the future, it will be possible to select the Bosniak ethnicity and Bosniak language. Concerning an application for discrimination on the ground of language committed by the Ministry of Internal Affairs when issuing personal documents, the OMB submitted instructions on how to remove the identified violations to the line Ministry, after which a response was received that the instructions were accepts, that is, that the Ministry of Internal Affairs has revised the by-laws in which the term "Bosniak language and script" were specified. Namely, they reported in their response that, to this end, they have adopted a *Rulebook amending the Rulebook on the Form of the Identity Card Issuance Application, the Form of the Confirmation of Received Identity Card Issuance Application, the Form of the Identity Card, the Procedure for the Issuance and Replacement of an Identity Card and for Keeping Records of the Issued Identity Cards*, with a view to allowing the citizens of Bosniak ethnicity to enjoy their rights on an equal footing with members of other ethnic communities when preparing the personal documents issued by the Ministry of Internal Affairs (OMB, *2018 Annual Report*, p. 57).

Excerpt from the Case Law No. 57

From the case law, an applicant from the same case that was considered by the CPD filed a claim with the Basic Civil Court Skopje for discrimination on the grounds of language and ethnicity. The court passed down a first-instance *Judgment 7 RO 956/17* dated 13.2.2018. With this judgment, the Court established violation of the right to equal treatment, that is, it established discrimination on the grounds of language and ethnicity. According to the Court,

the comment made by the Head of Financial Affairs Department of the Municipality that the Municipality staff must talk in Macedonian even in their private communication (rather than in their mother tongue) constitutes discrimination on the ground of language and ethnicity (Basic Court Skopje 2, *Judgment 7 RO 956/17* dated 13.2.2018, p.13).

Nationality

Nationality is defined as the legal relationship that exists between the state and a physical person (*European Convention on Nationality*, Article 2(1)). Human rights, in general, do not depend on a person's nationality, rather, they are granted to everyone who is found in the territory of the state or under the jurisdiction of the state (under the concept of effective control) (Human Rights Committee, *General Comment No. 31*, Paragraph 10). However, it often happens that states tend to restrict some of the rights of people invoking the nationality of a person. In a similar fashion, in its Article 7 Paragraph 3 Point 1, the LPPD also lays down that the different treatment of non-nationals will not be considered discrimination if it concerns the freedoms and rights granted under the Constitution, the laws and the international agreements to which the state has acceded, which directly derive from one's nationality. As it can be seen, the LPPD recognises that not every right can be restricted on the ground of nationality, rather, only those that "directly derive" from nationality.

Discrimination on the ground of nationality is often committed against persons who have regulated residence in a country, but do not have the nationality of that country, and the authorities restrict their rights to employment, social protection or education.

Excerpt from the Case Law No. 58

In the case of *Gaygusuz* (Gaygusuz v. Austria, App. No. 17371/90, Judgment of 16 September 1996), the ECtHR considered that it was not justified to restrict the disbursement of unemployment cash benefits only to the nationals of Austria. The applicant was a foreign national, with a regulated residence in Austria, who had been working in Austria for a particular period of time. Moreover, the applicant had been regularly making payments to the Unemployment Insurance Fund, in the same capacity and on the same grounds as Austrian nationals. The ECtHR established that the refusal to grant him benefits was based only on the fact that the applicant was not an Austrian national, and therefore considered that the differential treatment could not have any "objective and reasonable justification" (Paragraphs 46 to 50).

In 2021, out of the total number of applications (167), the applicants reported discrimination on this ground in only 3 cases; whereas the CPPD did not establish discrimination in any of them (CPPD, *2021 Annual Report*, p. 21). In 2022, no case of discrimination on this ground was reported to the CPPD (CPPD, *2022 Annual Report*, p. 21).

Social origin

Excerpt from the Academic Literature No. 20

"Social origin as a ground of discrimination refers to a person's inherited social status, the position that they have acquired through birth into a particular social class or community, or from one's social situation, such as poverty and homelessness" (*Handbook on European Non-discrimination Law*, EU FRA and CoE, 2010, p.129). The very term "origin" indicates

that here the affiliation of a person is determined depending on the affiliation of their ancestors (Najčevska Mirjana and Bekim Kadriu, *Terminology Glossary for Discrimination*, OSCE and MCMS, Skopje, 2008, p. 93), which is the main difference between this ground and the ground of "social status" (Kotevska, 2013, p. 51).

Social origin is particularly characteristic of societies where there is a clear division of social groups or classes, and today majority of societies fall into this group. Discrimination on this ground can also be in the form of segregation, stigmatisation and persistent discrimination, when victims are considered a part of a group that, by origin, has an underprivileged status. They are often discriminated against in the provision of all public services, such as education, health care, housing, etc. Although this ground is quite often found in practice, no case law has been established in the international law to explain the application of this ground.

However, cases before the CPPD are frequently initiated exactly on this ground. Namely, in 2021, out of the total number of applications (167), the applicants reported discrimination on this ground in 14 cases, of which, in four cases the CPPD established discrimination (CPPD, *2021 Annual Report*, p. 21 and 27). In 2022, the situation remained similar in that, out of the total number of applications (248), the applicants reported discrimination on this ground in 17 cases, of which, in 5 cases the CPPD established discrimination (CPPD, *2022 Annual Report*, p. 21 and 27.

Excerpt from the Case Law No. 59

Acting on a application, the CPPD established direct discrimination on the grounds of social origin and personal capacity and social status committed by the manager of a furniture showroom in Gostivar in the area of access to goods and services in that she did not allow the applicant to enter the showroom because he was wearing work clothes. Having established discrimination, the CPPD recommended to the manager to apologise to the applicant for her behaviour, in writing or orally, and in the future to ensure unobstructed and equal access to services in the showroom to all citizens regardless of their personal capacity and social status (*Application No. 0801-458/1* dated 15.12.2021, *Opinion* dated 27.1.2022).

Education

Excerpt from the Academic Literature No. 21

"Education implies a person's individual educational status, achievement, ability, credential and opportunity (Stuart Tannock, The problem of education-based discrimination, British Journal of Sociology of Education, 2008, 29:5, p. 439). It includes both formal and informal education" (Kotevska, 2013, p. 46).

Discrimination on the ground of education occurs when the level of education (skills, credentials, etc.) is taken as a criterion for placing a person in a less favourable position, when such criterion is not objective in the specific relationship in which it appears. Accordingly, level of education is often required as a criterion for employment. However, setting a criterion for the level of education that is not reasonable and justified for the specific job may constitute discrimination. Such cases, when a certain type or level of education is required for employment, will be analysed from the aspect of the exception from discrimination known as "substantial and decisive condition for employment" provided by the LPPD in its Article 7 Paragraph 3 Point 2.

In 2021, out of the total number of applications (167), the applicants reported discrimination on this ground in 17 cases, of which, in five cases, the CPPD established discrimination (CPPD, *2021 Annual Report*, p. 21 and 27). In 2022, the situation remained similar in that 12 applications were submitted on this ground, of which only in one case the CPPD established discrimination (CPPD, *2022 Annual Report*, p. 21 and 27).

Excerpt from the Case Law No. 60

Acting on two applications, the CPPD established indirect discrimination on the ground of educational status and unequal access to higher scholarships in the area of education when, in the summer of 2021, the Ministry of Education and Science (MES) ran competitions for awarding university and high school scholarships for the school year, or academic year, 2021/2022, emphasising that the Government had decided to almost double the amount of scholarships for new beneficiaries. The applications on which the CPPD acted were submitted by a female university student and a male high school student, recipients of scholarships, who had exercised their right before the academic year, or school year, 2021/2022 and whose scholarship contracts automatically continued to be disbursed at a lower amount, even though the requirements for receiving the scholarships were identical in the last two competitions published by the MES. Having established indirect discrimination, the CPPD recommended to the MES to prepare amendments and supplements to the programmes for implementing activities related to the university student / high school student standard, with an action plan and corresponding budgetary implications, in order to level up the scholarships to 6050, or 3500 denars, respectively, and to deliver them to the Government for adoption. During the adoption of the 2023 Budget, the Assembly voted for the amendments that provided the funds for the disbursement of about 3,000 university and 1,000 high school scholarships in the higher amount, in accordance with the recommendations of the CPPD (*Application No. 0801-275* dated 21.9.2021, *Opinion* dated 14.12.2021 and *Application No. 0801-259* dated 6.9.2021, *Opinion* dated 24.12.2021).

Excerpt from the Case Law No. 61

Acting on an application, the CPPD established persistent indirect discrimination on the ground of education committed in the area of employment and labour relations by the public health facility JZU Clinical Hospital Štip against the applicants, but also against other employees whose occupation was that of radiological technicians, that is, a total of 11 employees. The CPPD recommended to the hospital to take appropriate actions to eliminate the indirect discrimination within 60 days (*Application No. 08-374/1* dated 6.7.2022, *Opinion* dated 8.2.2023).

Religion and religious belief

In international law, a distinction is made between freedom of religion and freedom to manifest one's faith. The freedom to have or not to have a certain religion is considered as an internal element (Lat. *forum internum*) and does not suffer any restrictions. Everyone may have or not have a particular religion, without any restriction, of free choice (Human Rights Committee, General Comment No. 22, Paragraph 3). On the other hand, the freedom to manifest religion is expressed individually or collectively, through wearing religious symbols, wearing clothing or covering the head, building religious buildings, preparing and distributing

religious texts and publications, establishing religious schools, maintaining posts and the like (Human Rights Committee, General Comment No. 22, Paragraph 4).

The freedom to manifest one's religion may be restricted provided that the restrictions are provided for by law, and are necessary to protect public safety, order, health, morals or the protection of the rights and freedoms of others (Human Rights Committee, General Comment No. 22, Paragraph 8). It is precisely in the area of restrictions on the freedom to manifest a particular religion that states often discriminate. Thus, discrimination will occur if the state unjustifiably restricts the wearing of religious symbols or clothing, when it restricts the building of religious buildings, even if the state has a different approach to the registration of religious organizations.

Excerpt from the Case Law No. 62

In the case of *Thlimmenos* (Thlimmenos v. Greece, [GC] App. No. 34369/97, Judgment of 6 April 2000, Paragraphs 44 to 47), the applicant, who is a member of Jehovah's Witnesses, was restricted in exercising his own profession - an accountant, therefore that he did not serve his military term due to conscientious objection, and because of that he committed a severe crime. According to the Greek legislation at the time, a person who commits severe crimes cannot practice that profession. The ECtHR established discrimination in view of the fact that the applicant was not treated differently from the perpetrators of other crimes. Namely, since the state did not take into account the fact that the conviction for a "severe crime" was due to conscientious objection (which is a form of manifestation of the specific religion), and treated the applicant the same as the perpetrators of other crimes, it committed discrimination.

Excerpt from the Case Law No. 63

Acting on the ground of a voice, CPPD opened a procedure and established calling, incitement, instruction for discrimination and harassment on the ground of ethnicity and religion or religious belief on social networks committed by a natural person against members of the Albanian ethnic community and Macedonians of the Muslim faith. Making fun of the bus accident that happened in November 2021, where 45 citizens died, most of whom were members of the Albanian ethnic community and Macedonians of the Muslim faith through video content that, at the time of the adoption of the Commission's opinion, had over 60,000 views on the social network Facebook and 2700 on the YouTube channel, the natural person injured the LPPD. CPPD recommended that the content be deleted, that the person publicly apologize and in the future refrain from publishing disturbing video content that incites, invites and instructs discrimination in public discourse (*Application No. 0801-413* dated 1.12.2021, *Opinion* dated 4.3.2022).

Excerpt from the Case Law No. 64

On September 21, 2017, the CPD adopted a Recommendation for the equal enjoyment of freedom of religion. The recommendation was adopted because of a broken voice, and for banning two schoolgirls from attending classes because of wearing religious clothes, that is, a symbol (a headscarf as a religious symbol). CPD considered that "[t]he restriction of freedom of religion through the ban on wearing religious symbols in schools for members of any religious community provided for in the Constitution, constitutes direct discrimination on the ground of religion". According to the CPD, such a prohibition is not

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provided for by national law, and therefore does not meet the basic criterion required for the limitation of such a right.

Another form of discrimination in our country, according to religious belief, is the non-registration of religious groups in accordance with the law on the legal position of the church, religious community and religious group. Thus, in 2015, the Basic Court Skopje 2 received four requests for such registrations, and rejected all of them on different grounds (US Department of State, 2015 International Religious Freedom Report (Macedonia), p. 4).

Excerpt from the Case Law No. 65

The Constitutional Court had a case for alleged discrimination through the non-registration of religious communities, but did not establish a violation. Contrary to the ECtHR's practice, the Constitutional Court considers that individuals do not have to establish organizations, if they can manifest their religion even without such an organization. Secondly, the Constitutional Court in its decision considers that in order to register a new religious organization, it must have a different name, sources of learning and basic characteristics, because otherwise they create delusion and confusion among believers, "competitiveness, endless parallelism and fragmentation" (Constitutional Court, *Decision U. No. 24/2012-0-0* dated 20.11.2012).

For the position of the ECtHR on the issue in question, see "Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy)" v. "the former Yugoslav Republic of Macedonia" (App. No. 3532/07, Judgment of 16 November 2017), in which the ECtHR established a violation of Article 11 (freedom of assembly and association) of the ECHR, interpreted in connection with Article 9 (freedom of thought, conscience and religion).

Excerpt from the Case Law No. 66

The ECtHR in its own practice considers that freedom of religion should be interpreted together with freedom of association, and in that context when it manifests itself in a community, freedom of religion includes the right of believers to associate freely, without restrictions imposed by the state (Metropolitan Church of Bessarabia and Others v. Moldova, App. No. 45701/99, Judgment of 13.12.2001, Paragraph 118). Also, the ECtHR considers that when certain aspects of freedom of religion are subject to prior permission by the authorities, the authorities must be neutral and must not, in the procedure of granting such permission (such as registration), assess the legitimacy of beliefs or the manner in which such beliefs are expressed, nor to include already recognized religious authorities in the procedure (Paragraph 117).

In 2021, out of the total number of applications (167), the applicants reported discrimination on this basis in only 2 cases, in none of which the CPPD established discrimination (CPPD, *2021 Annual Report*, p. 21 and 27). In 2022, the situation is similar in that out of 7 applications submitted on this basis, in 3 of them the CPPD established discrimination (CPPD, *2022 Annual Report*, p. 21 and 27).

Political affiliation

Political belief as a basis of discrimination is a broader and more acceptable concept than the narrow concept of "political affiliation". This is so because sometimes discrimination

can occur due to having or not having a certain political opinion, which does not necessarily mean belonging or not belonging. Therefore, political belief as a basis includes both formal and informal membership or other connections with political parties, but also having or not having a certain opinion about a certain political party, and the expression of that opinion. In the *Law on Labour Relations*, it is listed as "political or other conviction", which is a more flexible term (Article 6, Paragraph 1).

In international law, the term "political opinion" dominates. The ECHR in Article 14 and the International Covenant on Civil and Political Rights (Articles 2 and 26) cover this basis with the term "political or other opinion", while the Charter of Fundamental Rights of the European Union (hereinafter: the EU Charter) enumerates as "political or any other opinion" (Article 21, Paragraph 1).

In our country, discrimination based on political affiliation is the most common form of discrimination according to the perception of respondents. According to the 2019 Equal Opportunities Barometer survey, 77% of respondents believe that it is a common occurrence (Kimov and Kimova, 2019, p. 23).

In 2021, out of the total number of applications (167), the applicants reported discrimination on this basis in 20 cases, of which in 3 cases the CPPD established discrimination (CPPD, *2021 Annual Report*, p. 21 and 27). In 2022, the situation is similar in that, out of the total number of applications (248), the applicants reported discrimination on this basis in 17 cases, of which in 5 cases the CPPD established discrimination (CPPD, *2022 Annual Report*, p. 21 and 27.

Excerpt from the Case Law No. 67

Acting on an application, CPPD established harassment based on political affiliation in the area of work and labour relations committed by the Ministry of Internal Affairs. Namely, for a long time, the applicant was prevented from being engaged in a job longer than full-time, that is, overtime work and work on a holiday, unlike other colleagues, as well as she tended to be moved to a workplace outside her place of residence, to which she did not have transportation. Although, even before the opinion was issued, the applicant was returned to her previous workplace by decision, the Commission established harassment and recommended the Ministry to refrain from harassing actions in the future (*Application No. 08-613/1* dated 21.11.2022, *Opinion* dated 3.2.2023).

Excerpt from the Case Law No. 68

Acting on an application, CPPD established direct discrimination based on political conviction in the area of work and labour relations committed by the Ministry of Internal Affairs due to obstruction in exercising the right to payment of transportation costs to and from the workplace (*Application No. 08-467/1* dated 5.9,2022, *Opinion* dated 11.1.2023).

Excerpt from the Case Law No. 69

In Opinion No. 7-1617 of June 30, 2016, the Commission established direct discrimination based on political affiliation because the Council of a municipality did not make a decision on compensation of election expenses for only one political entity, that is, a group of voters. In the case, the CPD established that the burden of proof shifts to the Council, given that

the applicant probably managed to prove that there was unequal treatment by the Council. However, the Municipal Council did not prove that such less favourable treatment of the applicant had an objective justification, with which the CPD established discrimination.

Excerpt from the Case Law No. 70

In one case from 2012, the OMB established discrimination based on political (and ethnic) affiliation in a public enterprise in Kumanovo Municipality. Namely, "the leader, a member of the ruling political option and a member of the majority community, did not allow a member of the Municipal Council, otherwise a member of the Roma community and a member of another political party, to participate in the sessions of the Council". Following the actions taken by the OMB and the recommendation to the director of the public enterprise to take action to stop the obstruction, the recommendation was accepted and it was possible to exercise the rights of the victim of discrimination (OMB, *2012 Annual Report*, p. 66-67).

Excerpt from the Case Law No. 71

From the judicial practice, the Basic Court Skopje 2 in Skopje, on 27.2.2018, passed a judgment establishing discrimination based on political affiliation in the area of labour relations committed by the Ministry of Agriculture, Forestry and Water Management. The claimant was employed by the defendant, and due to political activities outside the workplace, although he was evaluated with positive grades ("excellent" and "satisfactory"), he was assigned to a lower position, although he met the conditions for promotion. Another person was employed in the place of the claimant, with a different political affiliation than the claimant. When determining discrimination, the court applies both the *Law on Labour Relations* and the *Law on Prevention and Protection against Discrimination*, and also refers to Article 14 of the ECHR and Protocol No. 12 to it, as well as the case law of the ECtHR. In addition, the court is used by passing the burden of proof in this case, stating that the defendant did not prove that he did not commit prolonged discrimination that manifests itself as direct discrimination, harassment and victimization of the claimant (*Judgment 5 RO 87/17* dated 27.2.2018 of the Basic Court Skopje 2).

Excerpt from the Case Law No. 72

The Constitutional Court, too, with its *Decision U No. 116/2017-0-0* of 27 June 2018 established discrimination based on political belief against two members of a political party. Namely, on July 29, 2017, when there was an event organized by the Army of the Republic of North Macedonia and NATO on Macedonia Square, and where there were also citizens who supported this event, members of the Ministry of Internal Affairs took action only against two members of the political party who did not supported this event. Namely, according to the Constitutional Court, "the discriminatory behaviour of the police officers by using physical force, handcuffing and depriving them of their freedom, actually declares the institution of discrimination with all its protective features and putting the applicants in a disadvantageous situation, unequal condition, that is, different treatment from all those present at the event..." (Constitutional Court, *Decision U. No. 116/2017-0-0* dated 27.6.2018, p. 19).

Other conviction

The LPPD also defines "other belief" as a special discrimination grounds.

Excerpt from the Academic Literature No. 22

"[A] belief implies more than mere opinion or deep feelings. [Conviction presupposes the existence of a certain] […] spiritual or philosophical belief which has an identifiable formal content (McFeeley v. Great Britain) and has a certain level of seriousness, cohesion and meaning (Campbell and Cosans v. Great Britain)" (Kotevska, 2013, p. 35).

In 2021, out of the total number of applications (167), the applicants reported discrimination on this basis in only 2 cases, in none of which did the CPPD establish discrimination (CPPD, *2021 Annual Report*, p. 21 and 27). In 2022, the situation is similar in that 7 applications were submitted on this basis, and only in one case did the CPPD establish discrimination (CPPD, *2022 Annual Report*, p. 21 and 27).

Disability

Disability as a discrimination grounds is listed without listing the types of disability, contrary to the Law (2010), which is positive because the term "disability" includes all types of disability. For the definition of the term person with a disability, see explained in more detail in Part 1.3. Glossary

Excerpt from the Case Law No. 73

The CJEU defines disability as "a limitation that is particularly the result of a long-term physical, mental or psychological obstacle, which, in interaction with various barriers, prevents the full and effective participation of the person concerned in professional life under equal conditions with others" (Fag og Arbejde (FOA) acting on behalf of Karsten Kaltoft v Kommunernes Landsforening (KL), Case C-354/13, Judgment of 18 December 2014, Paragraph 53).

Excerpt from the Academic Literature No. 23

"The disability significantly limits the person in performing one or more life activities or is perceived as limiting the performance of a certain number of activities. Disability differs from illness due to its long duration, that is, its permanent character" (Najčevska and Kadriu, 2008, p. 42-43).

The same can be seen from the definition accepted by the CJEU. Today, the social model of seeing disability dominates, because disability is not seen as a health condition of the person, but the roots of discrimination based on disability are in the very interaction with society that creates obstacles according to the standards of the "able-bodied". Therefore, it is not the person with a disability that should be intervened, but the social standards, values and the surrounding environment should be intervened in order to eliminate those barriers that have been created and that appear as an obstacle in the inclusion of persons with a disability. Therefore, the non-adjustment of the environment as well as the information, transport and services that are available to the public appears precisely as one of the forms of discrimination based on disability.

Excerpt from the Case Law No. 74

The Committee on the Rights of Persons with Disabilities in the case of *Bujdosó* (Zsolt Bujdosó, Jánosné Ildikó Márkus, Viktória Márton, Sándor Mészáros, Gergely Polk and János Szabó v. Hungary, Communication No. 4/2011, CRPD/C/10/D/4/ 2011, Views adopted on 16 October 2013), established discrimination on the ground of disability in the enjoyment of voting rights in Hungary, because Hungarian legislation had a general prohibition on the enjoyment of those rights for persons under guardianship. Namely, the Committee considered that the ban on voting for persons with disabilities, including a restriction based on individual assessment, constitutes discrimination, contrary to Article 2 of the CRPD. Such discrimination also violates Article 29 of the CRPD, where states are required to ensure full and effective participation of persons with disabilities in public and political life (Paragraph 9.4). In addition, the Committee stated that States parties should adapt voting procedures, ensuring their appropriateness, accessibility and ease of understanding and use, and where necessary, provide persons with disabilities, upon their request, assistance in voting. In doing so, States Parties shall enable persons with intellectual disabilities to cast their vote competently, on an equal basis with others, while guaranteeing the secrecy of the vote (Paragraph 9.6).

In 2021, out of the total number of applications (167), applicants reported discrimination on this basis (7), and discrimination on the ground of disability was confirmed by CPPD in 3 cases (CPPD, *2021 Annual Report*, p. 21 and 27). In 2022, out of the total number of applications (248), applicants reported discrimination based on this basis (15), and discrimination based on disability was confirmed by the CPPD in 6 cases (CPPD, *2022 Annual Report*, p. 21 and 27).

Excerpt from the Case Law No. 75

CPPD initiated a procedure for protection against discrimination on official duty after the media announced that a person with a physical disability in a wheelchair who uses the assistance of a trained companion dog was not allowed to use public transport, on the grounds that the dog was not wearing a protective mask. After the actions taken, CPPD established the existence of direct persistent discrimination based on disability and belonging to a marginalised group in the area of access to goods and services, carried out by JSP "Skopje" from Skopje. The commission recommended the management bodies in the public company to prepare a draft decision that would allow people with different types of disabilities to use the services of this public company accompanied by their dogs that are trained to provide assistive support to these people and the same publish it publicly on their website. CPPD recommended that JSP "Skopje" Skopje should also prepare appropriate and easily recognizable labels for marking buses and other vehicles that will indicate that the transportation of persons with disabilities with a companion dog is permitted, without the obligation to wear protective masks (*Application No. 08- 481*, *Decision* dated 22.12.2021, *Opinion* dated 28.3.2022).

Excerpt from the Case Law No. 76

Application No. 2447/17 from a citizen who could not exercise his right to vote independently, unaccompanied, with the help of Braille. Namely, on the day of voting, he did not receive an auxiliary voting template from the Electoral Board, so he had to vote with an escort. According to the information of the President of the Electoral Board, the voting templates for blind people were not delivered with the voting material. OMB has been asked

to take the necessary measures to provide the necessary Braille templates so that blind people can exercise their right to vote (OMB, *2017 Annual Report*, p. 120).

Excerpt from the Case Law No. 77

Acting on an application from the Association "Polio Plus" from Skopje for discrimination on the ground of disability, in which an application is expressed about the violation of the rights of persons with disabilities in the sphere of service activities, during the vehicle registration procedure, OMB, acting in protection of these citizens established a violation of their rights, as well as a violation in the part of the taxatively listed diagnoses in Article 65 of the Basic *Law on Public Roads* of 2008, which can be interpreted as discrimination on the ground of mental and physical condition, since the law only provides for a diagnosis, but not state which can be a variable category. Due to the situation established in this way, the Ombudsman sent a recommendation to the Ministry of Transport and Communications, pointing out the need for the most urgent harmonization of the existing law with the Convention on the Rights of Persons with Disabilities, and also recommended holding a public debate and a meeting with the representative associations that represent the persons with a handicap, a recommendation that has been accepted by the Ministry (OMB, *2019 Annual Report*, p. 51).

Age

Excerpt from the Academic Literature No. 24

"When we talk about age as a discrimination grounds, we mean the biological age, that is, the years of old age of the person. As such, any person can be a victim of discrimination, older or younger, if they are placed in a less favourable position compared to a person or persons of other age groups. Age as a discrimination grounds has a fluid character and it is difficult to draw a clear line between victims of discrimination and other persons compared to whom the victims are discriminated against (the comparator)" (Kadriu, 2015, p. 45-51).

Excerpt from the Academic Literature No. 25

"Therefore, the application of age as a discrimination grounds makes it very context-dependent, as does the application of exceptions to discrimination" (Kotevska, 2013, p. 43-44).

Age as a discrimination grounds often appears in labour relations, through age as a criterion for employment, for dismissal, for retirement, for providing additional training or education. However, age-based discrimination also occurs in other areas, such as education (scholarships are often age-related), health services (which are also often targeted at certain age groups, which raises the issue of this form of discrimination), access to goods and services (especially financial and banking services) and the like.

International jurisdictions have built up practice on age discrimination. The CJEU has a large number of decisions that refer to age as a criterion in labour relations, especially in the case of mandatory retirement. The CJEU places its decisions in the context of the possible justifications of these distinctions based on age, in accordance with Article 6(1) of Directive 2000/78/EC, which only requires to provide that it is necessary to make the exclusion in the

manner of which will be able to identify the goal and be able to evaluate its legitimacy as well as the suitability and necessity of the means by which it is achieved, and not as a request that the member states compile a list of possible justified exceptions.

Excerpt from the Case Law No. 78

In the case of *Werner Mangold* (Werner Mangold v. Rüdiger Helm, Case C-144/04, Judgment of 22 November 2005), the CJEU established discrimination based on age in a case where the employer is not obliged to provide an explanation as to why he concludes a fixed-term contract with the employee who is older than 52 years, an obligation that he has if he is a younger worker. This puts this group of employees in a disadvantageous position because they are excluded from the possibility of having stable employment (Paragraph 64).

In 2021, out of the total number of applications (167), the applicants reported discrimination on this basis (7), and discrimination on the ground of age was confirmed by CPPD in 3 cases (CPPD, *2021 Annual Report*, p. 21 and 27). In 2022, the situation is similar in that in 10 submitted applications, discrimination is claimed on this basis, of which only in one case does the CPPD establish discrimination (CPPD, *2022 Annual Report*, p. 21 and 27).

Excerpt from the Case Law No. 79

CPPD established direct discrimination on the ground of age committed against persons who reached the age of 18 between the two electoral rounds of the 2019 presidential elections, committed by the State Election Commission. In the same case, CPPD indirect discrimination arising from the provisions contained in the Electoral Code which caused such discrimination against 1218 persons who reached the age of 18 between the two election rounds (between 21.4.2019 and 5.5.2019) and were not registered in the Electoral Code (*Application No. 0801-232/1* dated 19.7.2019, *Opinion* dated 9.8.2021).

Excerpt from the Case Law No. 80

CPD in the *Opinion No. 08-58* dated 22.6.2017, established direct discrimination based on age in case the employer redeploys the oldest employee to a branch that is more than 100 km away from her place of residence. In this case, the CPD respects that employers need to redistribute employees, considering the volume of work in specific units of the employer, but is not convinced that the employer had no other more appropriate measure to achieve that goal, other than the oldest employee in a period of 9 months to redeploy it at a distance of over 100 km.

Excerpt from the Case Law No. 81

In the case *RO-1969/17*, the judgment establishes that the defendant violated the right of the claimant with unequal treatment and committed direct discrimination on the ground of age in work and employment, by redeploying her (*Judgment RO-1969/17* dated 20.3.2018 of the Basic Civil Court Skopje).

Family or marital status

Excerpt from the Academic Literature No. 26

"Family or marital status refers to the family, marital, kinship or other similar relationships of one with other persons. The person can be married, divorced, widowed or widowed, not married, a child can be born in or out of wedlock, have or not a registered partnership, single mother or single father, be a person under guardianship and the like" (Kotevska, 2013, p.48).

Discrimination on the ground of marital or marital status occurs when children born in or out of wedlock are not treated equally, although this same issue can also be brought under the ground of "birth" if the law provides for it. Discrimination also occurs when an employer does not want to hire a married person because he believes that family obligations would be an obstacle for that person's greater commitment to work. In this case, due to the existing gender stereotypes in our society, the victims of this type of discrimination would most often be women, which also opens the debate about possible intersectional discrimination, given the stereotypes about the division of the roles of men and women in the family.

Excerpt from the Case Law No. 82

The ECtHR has a rich body of practice regarding the right to social protection or other property issues (such as taxes) of married and unmarried persons. In principle, the ECtHR does not establish discrimination with the argument that married persons have decided to assume certain obligations by the fact of entering into marriage, therefore unmarried persons cannot claim that they are discriminated against because the situations are not comparable (Shackell v. United Kingdom, App. No. 45851/99, Judgment of 27 April 2000, Paragraphs 59-61).

However, in the practice of both the ECHR and the CJEU, this approach is relaxed and various forms of privileging of spouses, compared to non-marital heterosexual or homosexual partners, are considered discrimination. The CJEU in the Tadao Maruko case (Tadao Maruko v Versorgungsanstalt der deutschen Bühnen, Case-267/06, Judgment of 1 April 2008) established that the right to inheritance benefits, which is limited only to spouses, and not to life partners who have concluded a lifetime community of mutual support and assistance, constitutes discrimination (Paragraphs 67 to 71).

In 2021, out of the total number of applications (167), the applicants reported discrimination on this basis (5), and discrimination on the ground of family and marital status was confirmed by the CPPD in only one case (CPPD, *2021 Annual Report*), p. 21 and 27). In 2022, the situation is similar in that 8 applications were submitted on this basis, and only in one case did the CPPD establish discrimination (CPPD, *2022 Annual Report*, p. 21 and 27).

Excerpt from the Case Law No. 83

Acting on an application, the CPPD established harassment based on sex, gender, marital status and personal and social status committed by the internet portal dokazmakedonija.mk and the owner of the portal against the applicant in the area of public information and media. Namely, the person in question published texts with untrue and disturbing content through his internet portal that violated the privacy and disturbed the applicant. Due to the published content, CPPD recommended to the owner of the portal to remove the two disturbing texts from the portal within 3 days of receiving the opinion. CPPD states that the deadline was shortened because the contents represented prolonged harassment to the applicant and are

publicly available to a larger population of people (*Application No. 0801-2781* dated 26.9.2019, *Opinion* dated 5.7.2021).

Excerpt from the Case Law No. 84

In the case *ROŽ-1019/18*, handled by the Macedonian Association of Young Lawyers, the judgment establishes that the defendants violated the claimant's right to equal opportunities and equal treatment and committed discrimination based on family status, family and marital status, that is, parentage -pregnancy at work and the employment relationship, with the withdrawal of the request for the transformation of the employment relationship of the claimant for the reason that she, at work, in the teacher's office, publicly announced that she was pregnant. It is positive that in this case the court analysed all the constitutive elements of direct discrimination, that is, in the explanation it states how it concludes that there is less favourable treatment on a discrimination grounds compared to other colleagues whose requests for transformation of the contract were not withdrawn, while highlighting the procedural the legal institute of passing the burden of proof (*Judgment ROŽ-1019/18* dated 26.9.2018 of the Appellate Court Skopje, *RO-17/18* dated 3.5.2018 Basic Court Kumanovo).

Property status

Excerpt from the Academic Literature No. 27

"The property status represents the property power of the individual, that is, of the family in which he is born or belongs" (Najčevska and Kadriu, 2008, p. 42).

"Property status refers to immovable property (...), personal property (...) or the absence of such property (General Comment No. 20, of the Committee on Economic, Social and Cultural Rights, Paragraph 25). Seen through the prism of ownership, property status can also refer to the status of a person in relation to land or in relation to another type of property (tenant, owner, illegal tenant, illegal buildings) (Handbook on European Non-discrimination Law', EU FRA and CoE, 2010. p.129; General comments number 15, 4 and 20 of the Committee on Economic, Social and Cultural Rights)" (Kotevska, 2013, p. 52).

Property status, most often, appears as a basis for discrimination against persons with lower property status.

Excerpt from the Case Law No. 85

In the case of *Airey* (Airey v. Ireland, App. No. 6289/73, Judgment of 9 October 1979), the ECtHR analysed whether the fact that the applicant had no income to initiate legal proceedings, and in the absence of free legal aid, she did not have access to an effective legal remedy, thus discriminating against her due to her property status. The ECtHR established a violation of Article 6 of the ECHR, but did not analyse whether there was discrimination, given the previous practice (Kotevska, 2013, p. 52-53).

In 2021, out of the total number of applications (167), the applicants reported discrimination on this basis (11), and discrimination based on property status was confirmed by the CPPD in only one case (CPPD, *2021 Annual Report*, p. 21 and 27). In 2022, the situation is similar in that 7 applications were submitted on this basis, and only in three cases did the CPPD establish discrimination (CPPD, *2022 Annual Report*, p.21 and 27).

Excerpt from the Case Law No. 86

Acting on an application, CPPD established harassment based on race, skin colour, national or ethnic affiliation, belonging to a marginalised group, property status or other grounds committed by the mayor of the Municipality of Struga, because he declared and used in public through the media with threats of deportation and detention for 24 hours to all those who begged and collected scrap metal in Struga Municipality. CPPD recommended the mayor to issue a public apology to the citizens of the relevant social categories in at least 3 (three) public media (*Application No. 0801-119/1* dated 15.6.2021, *Opinion* dated 9.7.2021).

Health status

Excerpt from the Academic Literature No. 28

"Health means a state of complete physical, mental, social and spiritual functioning of a certain person (be it a factual state or a state that the person himself or others perceive" (Najčevska and Kadriu, 2008, p. 36).

"[Discrimination on the ground of health status] protects persons from unequal treatment based on current and former health status" (Kotevska, 2013, p. 41).

The degree of discrimination related to some health conditions, especially infectious diseases, is higher compared to others (for example, people living with HIV or hepatitis C). It often happens that these people are victims of unfavourable treatment in labour relations, health services, access to other goods and services (hotel accommodation) and the like.

Excerpt from the Case Law No. 87

In the case of *Kiyutin* (Kiyutin v. Russia, App. No. 2700/10, Judgment of 10 March 2011), the ECtHR recognizes that people living with HIV are a vulnerable category that should enjoy special protection (Paragraph 64). The ECtHR establishes discrimination against a person living with HIV when the state refuses the request for a residence permit. Although, according to the court, the protection of public health is a legitimate goal in itself, however, in the specific case the state fails to convince the court that through the refusal of the entry and residence permit, such goal is protected (Paragraph 72).

Excerpt from the Case Law No. 88

The ECtHR has established discrimination on the ground of health status when the employer, under pressure from other employees, dismisses the employee upon learning that he is a person living with HIV (I.B. v Greece, App. No. 552/10, Judgment of 3 October 2013). In the same direction, see the case of *Novruk and Others v. Russia* (Novruk and Others v. Russia, App. Nos. 31039/11, 48511/11, 76810/12, 14618/13 and 13817/14, Judgment of 15 March 2016).

In 2021, out of the total number of applications (167), the applicants reported discrimination on this basis (3), and discrimination on the ground of health status was confirmed by the CPPD in only one case (CPPD, *2021 Annual Report*, p. 21 and 27). In 2022, the situation is similar in that 13 applications were submitted on this basis, and in only one case did the CPPD establish discrimination (CPPD, *2022 Annual Report*, p. 21 and 27).

Excerpt from the Case Law No. 89

CPPD established direct discrimination based on health condition in the area of work and labour relations committed by the school OOU "St. Kliment Ohridski" from Delčevo due to the failure to act on the given finding, evaluation and opinion from the Pension and Disability Insurance Fund and failure to assign the applicant to another job. CPPD recommended that the school adopt a decision to assign the applicant to another job appropriate to her education and ability, which is not related to heavy physical effort, lifting heavy objects, standing for long periods and traveling, in order to prevent the occurrence of disability (*Application No. 08-639/1* dated 21.11.2022, *Opinion* dated 8.2.2023).

Excerpt from the Case Law No. 90

CPD, in its *Opinion No. 07-1185* dated 13.4,2017, established discrimination based on health status against a person living with HIV in the event that, when providing health services, the privacy and anonymity of the patient is not respected, in violation of the legal provisions that require such observance. In this particular case, the patient's discharge letter notes that he is a person living with HIV, which opens the possibility for further stigmatization and discrimination of the patient.

Excerpt from the Case Law No. 91

OMB, too, in the *Case No. 3512/14* established discrimination on the ground of health condition when in the hospital, a patient with HIV infection, who was staying in the hospital for appendicitis surgery, the HIV infection was not coded as required by the regulations of the health field. The OMB recommends in the future consistent application of the *Law on the Protection of the Population from Infectious Diseases*, which requires the anonymity of the patient's HIV infection and the expression of this infection with a code (OMB, *2014 Annual Report*, p. 116).

Excerpt from the Case Law No. 92

In the case *RO No. 2824/19*, the judgment establishes that the defendant Wholesale and Retail Trade Company from Skopje violated the rights of the claimant, who was being treated for a long time from a state of addiction in a program with substitution therapy with methadone, that is, with the actions he took with the non-continuation discriminated on the ground of health status in the employment contract (*Judgment X RO No. 2824/19* dated 2.2.2019 of the Basic Civil Court Skopje).

Personal property and social status

Excerpt from the Academic Literature No. 29

"Personal or social status is a basis for protection that is linked to the external physical appearance and its characteristics, to its origin, its connection to a certain profession, to the current or former status of a prisoner or immigrant, etc." (Kotevska 2013, p.49 and included reference).

Cases of discrimination in the provision of public services are often mentioned as examples, when people from a certain profession are privileged, or people are discriminated against because of their clothes, etc.

Excerpt from the Case Law No. 93

In the case of *Laduna* (Laduna v. Slovakia, App. No. 31827/02, Judgment of 13 December 2011), the ECtHR asserted that the status of a detained person, regardless of whether it is a temporary status, and which is imposed on the person against his will, however, is a status that is "unequivocally linked to the personal circumstances of the person's existence" (Paragraph 55).

In 2021, out of the total number of applications (167), the applicants mostly reported discrimination on this basis (43), and the CPPD established discrimination on this basis in 11 cases (CPPD, *2021 Annual Report*, p. 21 and 27). In 2022, the situation is similar in that 75 applications were submitted on this basis, and in 20 cases CPPD established discrimination (CPPD, *2022 Annual Report*, p. 21 and 27).

Excerpt from the Case Law No. 94

In a case in which the applicant claimed that her son was discriminated against on the ground of vaccination status, that is, personal status, by the school by refusing to enrol because there was no confirmation of mandatory vaccinations, the Commission did not establish discrimination, but made a General Recommendation. In the General Recommendation of 2021, the Commission states that the Convention on the Rights of the Child guarantees the "best interests of the child". It bases its argument on the ECtHR's *Vavrichka* case, which states the existence of a general consensus that vaccination is one of the most successful and cost-effective health interventions and that the laws, measures, recommendations and other relevant acts aimed at preventing, treating and controlling the situation of epidemic, endemic and other diseases do not represent a violation of the individual's right to privacy, to his personal and family life and to his dignity and the reputation. They are aimed at guaranteeing the protection of the public good and the public health of all citizens, especially children (*Application No. 0801-262/1* dated 2.9.2019, *Opinion* dated 7.7.2021).

Excerpt from the Case Law No. 95

Acting on an application, CPPD established direct and prolonged discrimination based on personal and social status in the area of sports committed by the Karate Federation of the Republic of North Macedonia. Namely, according to the Commission's opinion, the Karate Federation acted arbitrarily and eliminated four athletes who met the conditions to obtain representative status under equal conditions as the selected athletes, thereby committing discrimination infringing the competitors' right to be ranked in the World karate federation, the right to be financed by the Agency for Youth and Sports, the right to receive scholarships, the right to receive awards and recognitions and the right to achieve sports results. In addition, in the same case, the CPPD also established indirect discrimination arising from the Rulebook for selection, financing and advancement of the state representative selections of the Republic of North Macedonia because it does not contain defined provisions that would prescribe procedures and rules for the selection of competitors - candidates for representatives for participation in European championships, in the event that several candidates appear with the same number of points, which resulted in putting a group of athletes and sports workers at a disadvantage compared to another group based on personal

and social status. CPPD recommended to the Karate Federation to propose and adopt a way to remove the concrete violation of the right to equality of the athletes and sports workers concerned and to introduce amendments and additions to the Regulations, while arranging precise and clear procedures for the selection of representatives for participation in all karate championships, with special reference to the way in which the selection will be made in the event that several candidates with the same number of points appear in one category (*Application No. 08-478/1* dated 16.9.2022, *Opinion* dated 2.3.2023).

Excerpt from the Case Law No. 96

The former CPD, in *Opinion No. 1729* dated 25.8.2016, established discrimination of a more severe kind against a person who was not elected to a higher teaching position at the Institute of National History. In this case, the CPD takes as a basis the personal or social status of the person, but the opinion does not see what kind of status it is, which would distinguish that person from others and would be a basis for less favourable treatment.

OMB, monitoring the situation of persons who are exposed to social risk, submitted an initiative to amend and supplement the *Law on Health Insurance*, with the aim of creating a legal basis for facilitating access to health care for the beneficiaries of social cash assistance and their exemption from participation in hospital treatment. The Ministry of Education accepted this initiative, which is expected to overcome the state of inequality and discrimination of a certain category of citizens due to their social status (OMB, *2017 Annual Report*, p. 22).

Any other ground

Excerpt from the Case Law No. 97

In the case of *Pinkas and Others* (Pinkas and Others v. Bosnia and Herzegovina, App. No. 8701/21, Judgment of 4 October 2022), 51 applicants who were, or still are, judicial officers from the courts of Bosnia and Herzegovina claimed that there is discrimination against "other status" because there was a difference in treatment regarding allowances for meals, travel and separate life between judges and court officials, which was decided in two legal proceedings before national courts. Court officials only received these allowances from January 2013 onwards, while judges were also paid for the period before that. This situation arose as a result of a decision of the Constitutional Court of 2013, by which the non-existence of compensation for both categories until that moment was declared unconstitutional, and based on that, the national courts made different decisions in proceedings for judges and court officials. The ECtHR considered that court officials (a category of public officials to which the applicants belonged) and judges were in a comparable situation, since the same legal regime applied to both categories of public officials in terms of allowances for meals, travel and separate life.The Court held that "a general policy or measure that has disproportionately harmful consequences on a particular group of persons may be considered discriminatory even when it is not specifically aimed at that group" (Paragraph 62). The ECtHR stated that the special feature of the present case was that the judges and judicial officials had brought a joint civil action relying on the same legal provisions, which were later separated into two cases by the civil courts based on their status which ultimately resulted in different, contrary conclusions regarding one of the key legal issues raised in those cases. Accordingly, the Court established that this difference in treatment was based on "other status" which neither the domestic courts nor the state could objectively justify, establishing a violation of Article 1 of Protocol No. 12 of the ECHR (Paragraphs 63 to 66).

The list of discrimination grounds from Article 5 is of an open nature, which means that the LPPD prohibits discrimination and offers legal protection for suffered discrimination not only on the grounds expressly listed in Article 5, but also on some other characteristic, according to which a certain person would be placed at a disadvantage compared to another person. The openness of the list of grounds of discrimination is significant because it includes other grounds that are not named, and such grounds that may not be relevant today, but could appear in the future.

Excerpt from the Case Law No. 98

Application No. 2527/14 for discrimination by a student from a neighbouring country, with dual nationality, one of which is Macedonian, because even though he met all the conditions of the competition, he was not admitted to a student dormitory. When determining the factual situation, the OMB established that in the electronic application of the candidates, there was no technical possibility to choose a city outside the country. The instructions of the OMB were acted upon and the applicant exercised his right (OMB, *2014 Annual Report*, p. 118).

In 2021, out of the total number of applications (167), the applicants reported discrimination on this basis (20), and the CPPD established discrimination in only one case (CPPD, *2021 Annual Report*, p. 21 and 27). In 2022, the situation is similar in that 34 applications were submitted on this basis, and only in one case did the CPPD establish discrimination (CPPD, *2022 Annual Report*, p. 21 and 27).

Excerpt from the Case Law No. 99

Acting on an application, CPPD established persistent discrimination based on the place of schooling, in the area of access to public goods and services committed by the City of Skopje against the students of the secondary school DSU "Sveti Naum Ohridski". On the street in front of the school, which was quite busy, there was no proper traffic signal indicating that there was a school there. CPPD carried out an inspection from which it concluded that in the immediate vicinity of the respective school there is another school in front of which there is adequate signalling to increase security. CPPD recommended to the City of Skopje to ensure equal protection, safety and traffic regime in the access to the secondary school DSU "Sveti Naum Ohridski" - Skopje, as it is ensured for the rest of the students who study in other schools in the territory of the city of Skopje by will install vertical and horizontal road signs no later than within 60 days after receiving the opinion (*Application No.* 08-525/1 dated 5.10.2022, *Opinion* dated 16.12.2022).

For more information on the interpretation of the scope of discrimination grounds, see the Guide to Grounds of Discrimination, by the author Biljana Kotevska of 2014.

Article 6

Definition of Discrimination

Discrimination shall mean any distinction, exclusion, restriction or preference based on any discrimination grounds, whether by doing or not, aimed at or resulting in preventing, restricting, recognising, enjoying or exercising the rights and freedoms of any person or group on an equal basis with the others. This shall cover all forms of discrimination, including disabling the reasonable accommodation and disabling the accessibility and availability of infrastructure, goods and services.

The general definition of discrimination is given in Article 6 of the Social Security Act, without distinguishing between different forms of discrimination, such as direct, indirect, harassment, segregation, etc. This way of defining discrimination is characteristic of the first international conventions that refer to discrimination, such as the UNESCO Convention against Discrimination in Education (1960), the Convention of the International Labour Organization (hereinafter: ILO), the Convention on Discrimination in Employment and Occupations (1958), International Convention on the Elimination of All Forms of Racial Discrimination (1965) and the Convention on the Elimination of All Forms of Discrimination Against Women (1979).

The given definition contains three constitutive elements, namely: first, the activity through which discrimination is carried out; second, the basis of discrimination; and third, the goal, that is, the consequence of such behaviour.

(1) The first element of the general definition of discrimination is the activity by which the discrimination is carried out. It can be any distinction, exclusion, restriction or priority that constitutes less favourable treatment. A distinction is an unjustified distinction in a particular legal context. Exclusion implies the complete inability of the person to use a certain right. Limitation means when the person is not excluded completely, but is limited in the possibility to use or enjoy a certain right or in a certain part or at a certain time. Finally, giving priority to someone always implies discrimination against others, but in the case of positive action measures it is legally justified. These activities can be carried out by action or omission, which leaves room for discrimination to include certain omissions that would result in less favourable treatment of a person or a group of persons with a certain protected characteristic.

(2) The second element of the general definition of discrimination is the discrimination grounds. Namely, the discrimination grounds is the most significant element of discrimination, because it distinguishes discrimination from other forms of violation of rights. Thus, for example, if someone is not allowed to enter a public facility, a certain right may be violated, while discrimination will only exist if the entry ban or denial is made on a discrimination grounds (for example, because of ethnicity, sexual orientation, age, disability, etc., or due to multiple reasons, multiple or intersectionally related to each other). For definition of discrimination grounds, see explained in more detail in Part 1.4. Discrimination grounds and definition of discrimination.

(3) The third element of the general definition of discrimination is that with the procedures, their purpose, that is, result (consequence) is to prevent or limit the recognition, enjoyment or exercise of the rights and freedoms of the person on an equal basis with others. Specific to this definition of discrimination is precisely the mention of the "consequence" or "result" of the actions (action or omission) with which discrimination is carried out, that is, highlighting the causal connection between these elements. Through this, it should be understood that in order for discrimination to exist, the person should not always intend to discriminate, but his actions should have such a (discriminatory) consequence, that is, result in a discriminatory result. On the other hand, this element unequivocally indicates the inclusion of indirect discrimination in this definition, where one of the constitutive elements is the existence of the consequence (disproportionately high concern of the group and a negative effect on it) from the application of an apparently neutral norm, criterion or practice.

Finally, the definition of discrimination unequivocally states that it covers all forms of discrimination, including the denial of adequate accommodation and the denial of accessibility and availability of infrastructure, goods and services. Reasonable accommodation and

accessibility mean a positive obligation for the state to take measures, one at the request of the person with a disability and the other anticipatory for the entire group of persons with a disability depending on the type of disability. Otherwise, the failure to provide the adaptation, that is, the denial of accessibility, represents a special form of discrimination, which is also in accordance with the UN Convention on Human Rights.

According to the European Union's Directive 2000/78/EC on equal treatment in employment (which only applies to employment relations), reasonable accommodation measures are "effective and practical measures to adapt the workplace to the disability concerned, for example, adapting premises and equipment, working hours, division of labour or training provisions or means of integration" (preamble, recital 20). According to Recital 21 of the Directive, "[i]n order to establish whether the measures in question give rise to a suspicion of a disproportionate burden, particular account should be taken of the financial and other costs incurred, the scale and financial sources of the organization or undertaking, as well as the possibility of obtaining funds from public sources or any other assistance". According to the Committee on the Rights of Persons with Disabilities, too, the obligation to provide adequate accommodation is individual and applies from the moment a person with a disability needs it in a given situation, for example, at school or at work. Accordingly, reasonable accommodation is more specific than accessibility because reasonable accommodation seeks to achieve individual justice, through accommodation for persons who need it, and the necessary measures to be taken go beyond the standard of accessibility that is (perhaps) ensured (CPPD, *General Comment No. 2*, Paragraph 26).

Excerpt from the Academic Literature No. 30

"This is also confirmed by the Court of Justice of the European Union in the Coleman case [...] in which it clearly stated that, as far as the obligation of adequate accommodation is concerned, it can be initiated exceptionally only by a person with a disability [...] excluding the possibility of discrimination by association for issues related to appropriate adjustment" (Poposka, Šavreski, Amdiju, 2014, p. 31).

"Regarding the question of disproportionate burden […] the national legislation does not analyse and does not condition it […] with the size and status of the legal entity (public or private), the financial costs, the volume and the financial sources of the employer, as well as the possibility to receive funds from public sources or any other assistance" (Poposka, Šavreski, Amdiju, 2014, p. 54).

"[When determining] whether or not the cost of the adjustment is proportionate [...] [should take into account, in particular] the nature and cost of the adjustment, the overall financial costs of the undertaking [...], the overall financial resources of the person concerned [...], and the type of activity of the legal entity, including the structure and type of workforce" (Poposka, Jovevski, 2017, p. 38).

Excerpt from the Case Law No. 100

The Committee on the Rights of Persons with Disabilities has practice regarding appropriate accommodation. In the case of *Michael Lockrey* (Michael Lockrey v. Australia, Communication No. 13/2013, CRPD/C/15/D/13/2013, Views adopted on 30 May 2016), the applicant complained that the Australian authorities had not made adequate adjustments to him when they did not give him stenographic access to the documents from the trial, so that he could honour his own obligation to be part of the jury. He wanted to participate in the

fulfilment of this obligation, but the authorities did not make an appropriate adjustment, thus limiting his right to participate in the jury, under equal conditions with others. Although the State contends that the use of stenographers would have an impact of complexity, however, the length and cost of the proceeding provides no evidence to show that it would constitute a disproportionate or unnecessary burden. Also, according to the Committee, and with respect to the confidentiality of the jury's opinions, the authorities have not adduced any evidence to show that no accommodation could have been made to enable persons using stenographers to perform this function, without violate the principle of confidentiality. Finally, the Committee asserts that the use of stenographers is not new, there are hearing impaired judges and lawyers who perform their daily duties with such accommodations. Therefore, the Committee considers that the State party (Australia) has not taken the necessary measures to ensure adequate accommodation for the applicant and concludes that the refusal to provide stenographic access, without providing arguments as to whether this constitutes a disproportionate or unnecessary burden, constitutes discrimination based on of disability, contrary to Article 5(1) and Article 3 of the CRPD (Paragraph 8.5).

1.5. Measures and Actions not deemed to constitute Discrimination

Article 7
Measures and Actions not deemed to constitute Discrimination

(1)Any measures and actions undertaken with the sole purpose to eliminate unequal enjoyment of human rights and freedoms until the de facto equality of any person or group is achieved shall not be considered as discrimination, if such differentiation is justified and fair, and the means of achieving such purpose are proportionate, that is, appropriate and necessary.

(2)The measures and actions referred to in Paragraph (1) of this Article shall be limited in time and apply until the de facto equality of persons or groups in the enjoyment of their rights is achieved.

(3)The following shall not constitute discrimination:

1)Different treatment of persons who are not citizens of the Republic of North Macedonia regarding the rights and freedoms provided by the Constitution of the Republic of North Macedonia, laws and international agreements ratified in line with the Constitution of the Republic of North Macedonia, and which derive directly from the Republic of North Macedonia nationality;

2)Different treatment of individuals based on any discrimination grounds resulting from the nature of their occupation or activity, or from the conditions in which such occupation is performed, which constitutes a genuine and determining occupational requirement, and where the goal is legitimate and the requirement does not exceed the level required for its realisation.

Article 7 of the LPPD contains the measures and actions that do not constitute discrimination. Three measures are explicitly stated, namely: (1) the positive action measures contained in Paragraphs 1 and 2; (2) the exception made on the ground of nationality provided for in Paragraph 3 Point 1; and (3) the exception that is made due to the essential and decisive requirement for employment (genuine occupational requirement), provided for in Paragraph 3 Point 2. It should be noted that it is impossible to reduce to only three types of measures and actions that do not constitute discrimination in such a general *Law on Prevention and Protection against Discrimination*, which has a wide material scope and with a wide and open list of grounds of discrimination, while no general clause justifying the less favourable treatment is provided. However, the legislator chose this way to regulate the matter.

Positive action measures (Article 7 Paragraph1 and 2)

When analyzing positive action measures, three elements are significant. First, the purpose of positive action measures is to remove the unequal enjoyment of human rights and freedoms until de facto equality of a person or group is achieved (legitimate goal); second, they must be proportionate, that is, appropriate and necessary to achieve the legitimate goal; and third, they should be time-limited and applied until the achievement of the legitimate goal, that is, the actual equality of persons or groups in enjoying their rights, so that they do not constitute discrimination.

(1) The aim of positive action measures is the elimination or reduction of factual inequalities. It follows from the introductory part of Paragraph 1, where it is stated that these measures are taken until de facto equality is achieved. Given that the need to take positive action measures when factual inequalities exist, they should provide equal opportunities for everyone, which will affect the reduction, that is, the elimination of factual inequalities.

(2) The provided positive action measures should be adequate and necessary to achieve their goal, which is the reduction or elimination of factual inequalities. As long as they are necessary (necessary) and appropriate (least interference by the state to achieve the legitimate goal), they will not be considered discrimination. But if the measures taken as positive action fail to achieve the goal for which they are intended, or are disproportionate to that goal (there are other more appropriate measures and they are not necessary), they will be considered to constitute discrimination. This element of positive action measures is necessary because in this way positive action measures are brought under judicial control. With this element, the measures taken as positive action do not mean that they will be treated as such in any case, but they are placed in the context of certain legal relationships and the courts analyse whether they are proportionate, that is, whether they are necessary and appropriate, or not. The goals that are put as an argument in favour of positive action measures are also significant here.

Excerpt from the Academic Literature No. 31

"Positive action measures should be clearly defined, time-limited and targeted, which are used to cause prejudices against persons who would in principle be discriminated against in order to eliminate existing inequalities and prevent future ones." So, these measures should not be seen only as a political tool, but as a binding obligation to exercise the right to equality.

It is interesting to note that the question of the proportionality of the positive action measures taken is strictly examined by the Court of Justice of the European Union (CJEU) in the cases of *Kalanke*, *Marschall* and *Abrahamsson*, cases concerning the judicial review of certain positive action measures that arose in the context of gender equality (Kalanke v. Freie

Hansestadt Bremen, Case C-450/93, Judgment of 17 October 1995, Marschall v. Land Nordrhein-Westfalen, Case C-409/95, Judgment of 11 November 1997, and Abrahamsson and Leif Anderson v. Elisabeth Fogelqvist, Case C-407/98, Judgment of 6 July 2000).

But in general, the Court is cautious and its approach does not allow positive action measures to rise above the principle of fair treatment, that is, substantive equality between groups must not prevent equality between individuals themselves. In doing so, the Court, when reviewing these measures, has created a test consisting of three steps, namely: in the first step, the measures must help overcome the existing situation of inequality between the protected group and another group in society; in the second step, the measures should meet the appropriateness test, that is, those measures should enable overcoming the specific situation of lower representation of the affected group compared to others in certain spheres of social life; and with the third step, such measures should not derogate from the principle of fair treatment, and this is precisely where the biggest challenge to the justification of positive action measures lies. However, the CJEU allows a diversity in national choices of appropriate positive action measures taken in member states, as long as they are justified, permitted and proportionate" (Poposka and Jovevski, 2017, p. 29-30).

(3) The last element of positive action measures is that they are always temporary, that is, temporal. This element derives from Paragraph 2 of this article. Namely, Paragraph 2 stipulates that the positive action measures are limited in time and serve to achieve a certain legitimate goal, which, when achieved, renders the positive action measures void. Continuation of the application of positive action measures even after achieving such a goal will mean privileging the person or group that is the beneficiary of such measures, which is discrimination in itself.

Positive action measures also have support in international law, as an "exception from discrimination". Of course, such measures should be temporary, and aim at eliminating inequalities, not creating a situation of privilege. According to the Committee on the Elimination of Racial Discrimination, for such measures to be permissible, they must have the sole purpose of eliminating existing inequalities and preventing future imbalances (CERD, General Comment No. 32, Paragraphs 21 to 26). According to the Committee on the Elimination of Discrimination against Women, such temporary special measures may include preferential treatment; targeted recruitment, hiring or promotion; numerical goals that are done in certain time frames; and a quota system (CEDAW=, General Recommendation No. 25, Paragraph 22).

Excerpt from the Academic Literature No. 32

"According to General Comment No. 6 of the Committee on the Rights of Persons with Disabilities, these measures must be in accordance with all the principles and provisions of the Convention, in particular, they must not result in the perpetuation of isolation, segregation, stereotyping, stigmatization or other way of discrimination against persons with disabilities. Therefore, the contracting states must consult and actively involve the organizations of persons with disabilities during the adoption of specific measures (Paragraph 29)" (Poposka, 2018, p. 24-25).

Since positive action is conditioned by its necessity and proportionality to achieve its goals, courts will play a significant role in determining when positive action is permissible and when it exceeds these principles and becomes discriminatory.

Excerpt from the Case Law No. 101

In the case of *Kalanke* (Kalanke v. Freie Hansestadt Bremen, Case C-450/93, Judgment of

17 October 1995), The CJEU takes the position that preferential treatment that gives women an automatic advantage compared to men in the employment process cannot accepted as admissible. Namely, in this case, the legislation provided for the automatic preference of women during employment or promotion, in case they have the same qualifications as male candidates, in case women are not represented (below 50%) in a certain sector. The Court accepts that such a rule has a legitimate purpose, namely the elimination of de facto inequality in employment. This means that such measures would be allowed in the hiring and promotion process, as long as they are applied with the aim of improving the ability of women to compete in the labour market. However, given that any exception to equal treatment should be viewed restrictively, the CJEU established that, where the rule guarantees women "absolute and unconditional preference for employment and promotion", this would be disproportionate to achieving the objective, which is elimination of inequalities. Therefore, in the specific case, the Court established that such preferential treatment constitutes discrimination.

Excerpt from the Case Law No. 102

In the case of *Marschall* (Marschall v. Land Nordrhein-Westfalen, Case C-409/95, Judgment of 11 November 1997), the CJEU accepted that the rule giving women an advantage in the case of low representation, but not an absolute and unconditional advantage, does not it is considered discrimination. In the case of *Marschall* (Marschall v. Land Nordrhein-Westfalen, Case C-409/95, Judgment of 11 November 1997), the CJEU accepted that the rule giving women an advantage in the case of low representation, but not an absolute and unconditional advantage, does not it is considered discrimination. The CJEU considers that such a rule is not disproportionate to the legitimate aim of eliminating inequalities, as long as in each specific case it gives male candidates a certain guarantee that their candidacy (for employment or promotion) will be subject to an individual assessment.

Excerpt from the Case Law No. 103

In the case of *Abrahamsson* (Abrahamsson and Leif Anderson v. Elisabeth Fogelqvist, Case C-407/98, Judgment of 6 July 2000), the rule was between, on the one hand, giving absolute preference to the underrepresented sex, and, on the other hand, the individual assessment of each case. The rule was that priority was given to the candidate belonging to the underrepresented sex, unless there were such great differences between the qualifications of the candidates that it would be considered a violation of the principle of objectivity in employment. The CJEU established that such a rule gives, however, an automatic advantage to persons of the underrepresented sex. According to the Court, the fact that this provision does not allow this advantage when there is a significant difference between the candidates, is not enough to prevent the rule from having a disproportionate effect, however.

Exception due to nationality (Article 7 Paragraph 3 Point 1)

This point provides an exception that is known in international law, namely, the different treatment of domestic and foreign citizens. The different treatment on the ground of nationality is not treated as discrimination, but as it provides from this point, only in relation to the rights that "directly derive from the nationality of the Republic of North Macedonia". As for other rights that are not related to nationality, every person enjoys them under equal

conditions. Such rights are, for example, the right to life, freedom from torture or inhuman or degrading treatment or punishment, freedom from slavery, the right to a fair trial, the right to liberty and security, freedom of religion, freedom of expression, and the like.

According to Directive 2000/43/EC on racial equality and Directive 2000/78/EC on equal treatment in employment, different treatment based on nationality does not cover third-country nationals. Moreover, the directives do not address and are without effect the conditions relating to the entry and stay of third-country nationals and stateless persons in the territory of the member state (Article 3(2)). The prohibition of discrimination on the ground of nationality for citizens of EU member states within the Union is provided for by Article 18 of the Treaty on the Functioning of the European Union.

Exception due to an essential and decisive condition for employment (Article 7 Paragraph 3 Point 2)

In this point, the so-called essential and decisive condition for employment (Eng. *genuine occupational requirement*) is provided as an "exception from discrimination". This exception is also known in international law, including in Directive 2000/78/EC on equal treatment in employment. This exception covers the provision of an employment criterion that is related to some discrimination grounds (for example: gender, age, ethnicity, disability, etc.), and is an essential and decisive condition for performing the work due to the nature of the occupation or activity or due to the conditions in which that occupation or work activity takes place. Such a criterion will not constitute discrimination if it has a legitimate aim and meets the test of proportionality. Namely, it is necessary to have a close relationship between the condition or criterion that is set and the work that is performed. If that criterion is not appropriate and necessary, then it may constitute discrimination. For example, employment applications often require certain education, experience, language skills, and sometimes even gender or age. The employer in such cases, in a procedure for protection against discrimination, will have to prove that these criteria are necessary, necessary for the performance of the work, but also suitable for the work or occupation in question. If he does not prove it, then it is a question of a criterion that is arbitrary and represents discrimination. The practice of the CJEU shows that this exception is always interpreted restrictively, which is justified because it is an exception to the principle of equal treatment, that is, the right to equality. Namely, the CJEU accepts that in certain professions this exception can be applied. Particular attention is paid to artistic professions that require certain attributes that an individual possesses as an indivisible characteristic, such as, for example, looking for a performer with a certain singing style, a young actor or actress for a specific role, a person without a physical disability who can play (dance), either a male or female person to work in a fashion company as a model or model for a specific fashion line. This list is not closed. Another example could be the requirement to employ a person of Chinese origin in a Chinese restaurant, to preserve the authenticity of the restaurant, or to employ only women in a women's fitness club, etc.

Excerpt from the Case Law No. 104

In particular, in the case of *Commission v. France* (Commission v France, Case 248/83, Judgment of 21 May 1985), the CJEU established that sometimes it is not impermissible to reserve employment only for male, that is, female candidates, in prisons where mostly male prisoners are housed, that is, female. However, according to the CJEU, this exception is interpreted restrictively and will be used only for those positions that include work that, being of a certain gender, is significant. Which means that one must not generalize the exception. In the present case, the French authorities failed to convince the Court that these were positions that should have been filled only by male workers, because they failed to

convince the Court of the type of work that should have been guaranteed only to male employees. gender

Excerpt from the Case Law No. 105

In the case of *Mahlburg*, too (Mahlburg v. Land Mecklenburg-Varpommern, Case C-207/98, Judgment of 3 February 2000), the CJEU established discrimination and a violation of the principle of proportionality. The job candidate was a pregnant woman and applied for employment as a nurse for an indefinite period, and most of the work was to be done in operating rooms. She was refused with the argument that working in operating rooms and exposure to dangerous substances in them would have a harmful effect on the baby. However, the court did not accept this argument. The court, in particular, proceeds from the fact that it was employment for an indefinite period, while her inability to work in the operating rooms was only temporary. With that, the court established a violation of proportionality. According to the court, this refusal is disproportionate considering that her inability to work is temporary, and she is refused employment for an indefinite period of time.

Excerpt from the Case Law No. 106

Application No. 08-80 dated 4.4.2017 was submitted to the former CPD for a job advertisement in which the employer sought to hire female persons between the ages of 30 and 45. CPD established the existence of multiple discrimination because neither gender nor age in the specific case are essential conditions for employment for "working in the kitchen serving breakfast (buffet)" (Commission *Opinion No. 08-80* dated 19.5.2017).

Identical examples where gender is considered an essential and decisive condition for employment in job advertisements, while restricting male persons from applying to the advertisement, are also found in the practice of the CPPD, which established discrimination on the ground of gender (*Application No. 0801-243/1* dated 30.7.2019, *Opinion* dated 8.7.2021; and *Application No. 0801-257* dated 26.8.2019, *Opinion* dated 7.7.2021).

2. FORMS AND TYPES OF DISCRIMINATION

2.1. Direct and Indirect Discrimination

Article 8
Direct and Indirect Discrimination

(1) Direct discrimination occurs when a person or group of persons is treated, was treated or would be treated less favourably compared to another person or group in a factual or possible similar or comparable situation, on discrimination grounds.

(2) Indirect discrimination occurs when a person or group is put at a disadvantage compared to other persons or group of persons through seemingly neutral provisions, criteria or practices, except when they arise from a legitimate aim and the means of achieving such goal are proportionate, that is, they are appropriate and necessary.

Article 8 of the LPPD elaborates on the two basic forms of discrimination, direct and indirect.

Direct discrimination

Paragraph 1 of Article 8 defines direct discrimination. The definition is in line with the European Union directives relating to anti-discrimination. In these directives, direct discrimination will exist when "a person is treated, has been treated or would be treated less favourably than another person in an identical situation" on some discrimination ground (Directive 2000/78/EC on equal treatment in employment, Article 2.2(a)). From the given definition, it can be seen that, first, direct discrimination is a less favourable treatment towards a person. Second, the treatment is causally linked to one or more discrimination grounds. For definition of discrimination grounds, see explained in more detail in Part 1.4. Discrimination grounds and Definition of Discrimination. The basis can be real, perceived, multiple, intersectional, and discrimination can occur by association. And third, the person is treated less favourably than another person in the same, similar or comparable situation. The last element insists on finding a comparator, that is, a person compared to whom the victim is treated less favourably (discriminated against). The comparator is usually a member of a group that is fundamentally different because of the discrimination ground or grounds. For example, in discrimination based on sex, a female person is discriminated against if she is treated less favourably than a male person. Or vice versa. In discrimination based on ethnicity, the comparator is a member of another ethnic group, one or more, the majority or another minority (a larger as opposed to a smaller community).

For example, direct discrimination exists when age is used as a criterion for access to banking services, such as loans. When there is a maximum intended age, say 65, it means that people over 65 are discriminated against because they are treated less favourably than people under 65. When a minimum age is provided, say 18 years, persons under 18 are discriminated against. In another example, when people of a certain ethnicity are prohibited from entering public facilities, such as swimming pools, theatres, cinemas, etc., there is a less favourable treatment of those people, compared to people from another ethnic community, who, in turn, have no problem entering these facilities. In both cases, the less favourable treatment based on

some discrimination grounds is clearly seen, and it is clear who would be the person who will make the comparison in each of the cases.

In 2021, out of the total number of applications in which CPPD established discrimination (40), direct discrimination occurs in 15, but it often happens that several types of discrimination are established in one case. Thus, in 5 cases direct and prolonged discrimination was established, in 4 direct and indirect discrimination and in 3 direct and intersectional discrimination (CPPD, *2021 Annual Report*, p. 25). In 2022, the situation is different, therefore, out of the total number of opinions determining discrimination (70), direct discrimination is not the most common type, although it is established in 25 cases. Although this year, in the largest number of cases, the CPPD established discrimination in one specific form (54 cases), just like in 2021, it is common to find cases in which several types of discrimination are present at the same time or are created as a consequence (16 cases) (CPPD, *2022 Annual Report*, p. 25-26).

Excerpt from the Case Law No. 107

Acting on an application, the CPPD established direct discrimination against members of the Roma community on the ground of ethnicity, belonging to a marginalised group, social origin and property status in the area of access to goods and services committed by the Municipality of Kavadarci. CPPD recommended to the Municipality of Kavadarci to provide access to clean water in the settlement where Roma live. If there are legal obstacles to the legalization of the settlement, to provide a temporary solution that will enable access to water for all Roma families living in this settlement (*Application No. 08-305/1* dated 8.10.2021, *Opinion* dated 13.4.2022).

Excerpt from the Case Law No. 108

CPPD established direct persistent intersectional discrimination based on gender, race, belonging to a marginalised group, ethnicity and social origin committed against Roma women living in the territory of the Šuto Orizari Municipality committed by the Ministry of Health in the area of health insurance and health care. Over a long period of time, almost 8000 Roma women of reproductive age were left without access to primary gynaecological-obstetrical health care on an equal basis with women living in other municipalities in the city of Skopje (*Application No. 08-121/1* dated 18.2.2022, *Opinion* dated 16.8.2022).

Excerpt from the Case Law No. 109

In its *Opinion No. 08-1744* dated 8.11.2016, the former CPD established direct discrimination based on skin colour in the area of access to goods and services. In this case, the applicant complained that he was discriminated against because of his skin colour because he was not allowed to enter the swimming pool, unlike other persons with a lighter skin complexion who were not prevented from entering.

Excerpt from the Case Law No. 110

From the international jurisdictions, in the case of *P.* (P. v. S. and Cornwall County Council, Case C-13-94, Judgment of 30 April 1996), the CJEU established direct discrimination in a case where the employer dismissed the employee because of his gender identity. Namely, the appellant was in the process of changing his gender from male to female, in which situation the employer decided to fire him, and the court established direct discrimination. Considering the comparator, the court considers that, when it comes to persons who are in the process of changing their gender, the persons who belong to the gender in which the person is considered to have belonged before the change are considered as a comparator.

Excerpt from the Case Law No. 111

In the case of *Luczak* (Luczak v. Poland, App. No. 77782/01, Judgment of 27 March 2007), before the ECtHR, a French farmer in Poland considered that he was discriminated against on the ground of nationality because he did not have access to a special social security regime, which was guaranteed only to Polish nationals (less favourable treatment based on nationality). The court established direct discrimination in view of the fact that the applicant was in a comparable situation to Polish farmers, had a residence in Poland, paid taxes like citizens and contributed to filling the social security regimes, and was part of the general social security regime. Accordingly, the unfavourable treatment based on nationality had no justification and constitutes discrimination.

In the definition of direct discrimination, there is no general exception from discrimination, which is needed due to the general nature of LPPD. Namely, considering that the Social Security Act applies to all possible grounds of discrimination, it is not possible to exhaustively enumerate the exceptions from direct discrimination in the Law. For example, age as a criterion for obtaining a loan, which criterion is used by banks, given that there is no exception to discrimination, can be considered as discrimination. In other areas, too, a number of criteria for less favourable treatment are used, which does not mean that they will constitute discrimination in any case. Therefore, such criteria must pass the proportionality test, as part of the general exception to discrimination supplemented by specifying the legitimate aim, which is missing from the definition of direct discrimination.

There is no general exception for direct discrimination in the European Union directives (except for different treatment on the ground of age in Directive 2000/78/EC on equal treatment in employment), but these directives refer to precisely defined grounds, and the directives, given that the bases are enumerated exhaustively, they enumerate exhaustively the exceptions from discrimination. But LPPD is a general law that covers all possible bases additionally with an open list of bases. On the other hand, LPPD also applies to a large number of areas of social life. Therefore, a general exception to direct discrimination must exist, in order for criteria that place persons in less favourable treatment to be justified, when they have a legitimate purpose and are appropriate and necessary (proportional) to achieve that purpose.

For example, the *Law on Combating Discrimination of the Republic of Croatia* (The Official Gazette of the Republic of Croatia Nos. 85/8 and 112/12), in Article 9 Paragraph 2 provides for a broad exception from discrimination, conditioned by the test of necessity. According to this provision, placing at a disadvantage is not considered discrimination if "such treatment is established by law for the purpose of preserving health, public safety, maintaining public order and peace, preventing crimes and protecting the rights and freedoms of others, and if the measures used are proportionate and necessary to achieve the desired goal in a democratic society". In addition to this exception, the Law also has an exception for positive action measures, an exception for essential employment conditions, an exception based on nationality, social policy measures, an exception for less favourable treatment based on age, and other specific exceptions. Finland's *Law on Non-Discrimination* Act (Yhdenvertaisuuslaki,

1325/2014) also provides for a general and simple exception to discrimination conditional on proportionality. According to Article 11 of the Law, "different treatment does not constitute discrimination if it is based on law and has a legitimately acceptable goal, and the measures to achieve that goal are proportionate." The *Law on Prohibition of Discrimination of Montenegro* (The Official Gazette of Montenegro Nos. 46/2010, 40/11, 18/2014 and 42/2017) provides a similar provision as the Law of the Republic of Croatia. According to Article 2a, putting people in a less favourable position does not constitute discrimination if "such action is prescribed by law for the purpose of preserving the health, safety of citizens, maintaining public order and peace, preventing crimes and protecting the rights and freedoms of others, if the measures used are appropriate and necessary to achieve any of those goals in a democratic society and proportionate to the goal that such measure should achieve."

Excerpt from the Case Law No. 112

In a large number of proceedings that were initiated from 2011 to 2016, various courts throughout the Republic of North Macedonia were required to establish discrimination and violation of the right to freedom of movement by the border services when performing border checks by the Ministry of internal affairs, whose authorized officials either prevented Macedonian citizens from leaving the country on the grounds that there is a suspicion that these citizens will abuse the visa-free regime and seek asylum in some of the Schengen zone countries, calling them "false asylum seekers" and creating their profile based on ethnicity – racial profiling. Citizens from the Roma ethnic community were disproportionately negatively affected by this action. In some of these cases, the courts established discrimination (P4-171/15, P4-155/15, P4-171/15, P4-42/16, P4-268/20, P4-64/17, P4-641/17, P4-1318/15, P4-709/15, P4-730/15, P4-625/17).

Excerpt from the Case Law No. 113

In the case *TSŽ No. 21/19* before the Bitola Appellate Court, the judgment of the Basic Court in Bitola *TS No. 2/18* with which dated 3.10.2018 in Paragraph 1, 2, 3 and 5 of the sentence establishing a violation of the right to equality and committed direct discrimination on the ground of ethnicity by not allowing the claimant, an ethnic Roma, to enter the pool Dovledžik on June 28, 2017. The court forbids the defendant to discriminate in the future when entering the Dovledžik swimming pool and to take such or similar actions in violation of the right to equality. In the judgment, the court analysed all the elements of passing the burden of proof as a procedural legal institute, and states that the court appreciated that the claimant submitted evidence and presented facts from which it is probable that he was not allowed to enter the pool because of his ethnicity and, on the other hand, the defendant did not submit sufficiently convincing evidence that such behaviour was not done on a discrimination grounds. That is, according to the court, the defendant did not present facts that other visitors to the swimming pool were treated identically regardless of their national or ethnic origin, which would remove the suspicion that the diversity of ethnic origin was the reason for the actions of the persons who provided security for the facility he managed the defendant (*TS No. 2/18* dated 3.10.2018 of the Basic Court Bitola confirmed by *TSJ No. 21/19* dated 18.2.2019 of the Appellate Court Bitola).

Indirect discrimination

Paragraph 2 of Article 8 defines indirect discrimination. The basic element of indirect discrimination is contained in the definition itself, which is the existence of apparently neutral provisions, criteria or practices. Such provisions, criteria or practices, although they seem neutral, actually have a disproportionately negative effect on the members of a certain group, that is, a large part of them are excluded or limited in the enjoyment of their rights. In the given definition, although the "effect" of such neutral provisions, criteria or practices is not mentioned at all, it nevertheless has an implicit meaning. Neutral provisions, criteria or practices offer formally equal treatment. That is why they are called "neutral". But the consequence, that is, the effect of such "neutral" provisions, criteria and practices should be analysed and for there to be discrimination it must be negative for the person or group that identifies with some discrimination grounds. If the consequence is that a significant number or all members of the group (on any discrimination grounds) are excluded or limited in the enjoyment of the specified right, then it can be a matter of indirect discrimination.

Excerpt from the Case Law No. 114

Precisely because of the analysis of how many members of the group are affected by the neutral provision, criterion or practice, statistical data play a major role in indirect discrimination (D.H. and Others v. the Czech Republic, [GC] App. No. 57325/00, Judgment of 13 November 2007, Paragraph 187).

The definition of indirect discrimination contains a general exception, in that it is provided that it does not constitute discrimination if such provisions, criteria or practices result from a justified legitimate goal, and the means to achieve that goal are appropriate and necessary. Here, the imprecision that exists must be mentioned. Namely, the provisions, criteria or practices do not have to derive from a specific justified goal, but must be justified through some legitimate goal that exists, and the measures taken (that is, the provisions, criteria or practices as measures) are appropriate and necessary to achieve that, in advance defined, legitimate purpose.

Excerpt from the Case Law No. 115

Among the international jurisdictions, the CJEU considered the issue of indirect discrimination in the case of *Hilde Schönheit* (Hilde Schönheit v. Stadt Frankfurt am Main and Silvia Becker v. Land Hessen, Joined case, C-4/02 and C-5/02, Judgment of 23 October 2003). In this case, pensions for part-time employees were calculated according to a different rate than the rate provided for full-time employees. The different rate existed even though full-time and part-time employees would have the same amount of time worked, but in different time intervals. Thus, this rate is considered as a neutral rate, which was applied equally to all part-time workers. However, considering the fact that about 88% of part-time employees were women, the effect of this neutral norm, ie rate, is such that it has a disproportionately negative effect on women than on men. With that, the CJEU established indirect discrimination based on gender. The CJEU does not accept the argument of the government, which claims that this measure is a corrective to the pension system, which tries to make it fair between the members. The CJEU does not consider that such an argument can justify indirect discrimination based on gender.

The ECHR also accepts the concept of indirect discrimination, although it is not defined in the ECHR.

Excerpt from the Case Law No. 116

In the case of *D.H. and Others v. the Czech Republic* (D.H. and Others v. the Czech Republic, [GC] App. No. 57325/00, Judgment of 13 November 2007), the authorities provided for various tests of intelligence and suitability in order to establish whether students should be accommodated in special schools. These special schools were intended for students with intellectual disabilities and learning difficulties, and the tests were applied to all students. Thus, the tests were applied neutrally "towards everyone". But the tests were prepared according to the majority of the Czech population, with a high chance that the Roma children would show poor results, which happened to them. Depending on the source of the data, over a longer period, more than 50 to 90% of the children placed in special schools were Roma. With that, the ECtHR established that such tests, which seem neutral, have the effect of placing a large number of Roma students in special schools. With that, the Court established a difference in treatment. The Czech government tries to justify this treatment with the need to adapt the educational system to children with disabilities. Namely, the state sets the need for special treatment of children with disabilities as a legitimate goal (Paragraph 197). The ECtHR accepts that it is necessary for the state to have a special educational system for children with special educational needs (Paragraph 198). However, the ECtHR considers that the tests were not adequate, and the results were not placed in the context of the peculiarities and characteristics of Roma children (Paragraph 201). Thus, the ECtHR is not satisfied with the segregation produced by this system, which is why the court established the existence of indirect discrimination.

In 2021, out of the total number of applications in which CPPD established discrimination (40), indirect discrimination occurs in 4 cases (CPPD, *2021 Annual Report*, p. 25). In 2022, the situation is identical to the established indirect discrimination in 4 cases (CPPD, *2022 Annual Report*, p.26).

Excerpt from the Case Law No. 117

Based on the personal status, age and state of health in the area of exercising the right to vote of the citizens who, during the election rounds on April 21 and May 5, 2019, in the presidential elections, were placed in health care facilities, the CPPD established indirect discrimination committed by The State Election Commission. Seemingly, the neutral norm for what constitutes a "home" in which sick and infirm persons can vote according to the *Law on Housing* does not cover health and hospital facilities and therefore voting is not carried out for persons who are housed there for a longer or shorter term, making it impossible exercise their right to vote (*Application No. 08-231/1* dated 13.7.2019, *Opinion* dated 13.9.2021).

2.2. Calling, Incitement and Instruction to Discrimination

Article 9

Calling, Incitement and Instruction to Discrimination

Calling, incitement and instruction to discrimination shall mean any activity through which discrimination is directly or indirectly called for, incited, instructed or prompted on any discrimination grounds.

COMMENTARY on the law on prevention and protection against discrimination

LPPD also considers calling, inciting and instructing about discrimination as discrimination. The LPPD places these forms of discrimination in one article and does not try to separate them, but tries to define them all in one definition. Thus, as stated in Article 9, "invoking, inciting and instructing discrimination is any activity that directly or indirectly invites, encourages, instructs or incites to discriminate on a discrimination grounds". It is clearly seen that the goal of the legislator is not to define these forms separately, but to be able to more easily find a violation of Article 9 in certain actions, regardless of whether it will be an incitement, call or instruction for discrimination. Unlike the directives of the European Union, which contain explicit provisions only for the instruction to discriminate, the LPPD goes much wider and prohibits the incitement and incitement of discrimination.

Invoking discrimination is an open and direct activity by which one person invites another person or several persons to discriminate. It is the same with giving instructions to discriminate. For example, a discrimination instruction exists when the owner of a club or restaurant instructs the porter not to let people into the premises of the club, that is, the restaurant, because of their race, skin colour, ethnicity, sexual orientation, disability, etc. Also, in the case where the owner of the company instructs the human resources manager not to invite persons of a certain gender or age for a job interview, there is again an instruction to discriminate.

An encouragement to discriminate is similar to an invitation to discriminate, in that the person or persons are not openly and directly invited to discriminate, but encouraged in some other way to discriminate. On the other hand, inciting discrimination is not an open call, but it is more about raising people's awareness, by strengthening prejudices against members of a certain group, to discriminate against them.

The incitement of discrimination will often be related to harassment, due to the fact that the creation of an offensive, hostile or humiliating environment in society towards members of a certain group affects the incitement of discrimination.

Excerpt from the Case Law No. 118

Thus, in one case before the Bulgarian courts, a member of the parliament, in several statements, verbally attacked Roma, Jews and Turks, as well as foreigners in general. The comments were in the direction that these communities in Bulgaria hinder Bulgarians from running their own country, committed crimes, deprived Bulgarians of their rights to health care. With these statements, citizens are urged to prevent the state from becoming a "colony" of these groups. The Regional Court in Sofia in this case established both harassment and an instruction to discriminate (Regional Court in Sofia, Decision number 164 for civil dispute 2860/2006 of June 21, 2006).

Excerpt from the Case Law No. 119

In the case of *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV (C-54/07)*, the CJEU considered that there is direct discrimination when the employer publicly declares that it will not employ persons of a certain ethnic or racial origin.

In 2021, out of the total number of applications in which CPPD established discrimination (40), only in one case it considered that it was a matter of calling, inciting and instructing discrimination (CPPD, *2021 Annual Report*, p. 25). On the other hand, in 2022, the

situation is completely different, therefore out of the total number of opinions establishing discrimination (70), invocation, incitement and instruction for discrimination occurred in 17 cases (CPPD, *2022 Annual Report*, p. 26).

Excerpt from the Case Law No. 120

CPPD established calling, incitement and instruction for discrimination as well as harassment on the ground of gender, belonging to a marginalised group, ethnicity, sexual orientation and gender identity committed by a natural person through his profile on the social network Facebook. Namely, the person against whom the application was filed created and spread racist and xenophobic material that promotes hatred towards different groups of citizens. CPPD recommended him to remove the disputed content and apologize publicly through his Facebook profile (*Application No. 0801-278/1* dated 22.9.2021, *Opinion* dated 22.11.2021).

Excerpt from the Case Law No. 121

In *Application No. 0801-157/1* dated 19.7.2017, the applicant complains about a person who had a status on Facebook that was offensive to members of the Roma community. In the text on Facebook, the word "gypsy" is used, which etymologically means an unclean person, who should not be touched, who deals with magic and fortune-telling. There were more than 120 comments on the status, which, in general, had a negative and disturbing content towards members of the Roma community. Due to this status and context of what was written, CPD in *Opinion No. 0801-157* dated 26.9.2017, did not only establish harassment (due to the disturbing consequences that such a text has towards the members of the Roma community), but also established a violation of Article 9 due to the fact that such comments, which are in this way offensive to the members of a certain community, have the effect of inviting, giving instructions and inciting discrimination.

The ECtHR in its own practice includes the instruction on discrimination, which it places in the context of other rights from the Convention, such as freedom of association or freedom of religion. Namely, when there is a discriminatory motive in violation of these rights, then the ECtHR will analyse whether there is a violation of the corresponding article correlated with article 14, which prohibits discrimination.

Excerpt from the Case Law No. 122

In the case of *Bączkowski* (Bączkowski and Others v. Poland, App. No. 1543/06, Judgment of 3 May 2007), the mayor of Warsaw made a public comment with homophobic content to the effect that he would not allow a march to raise awareness about discrimination based on sexual orientation. When the request to hold such a march reached the competent institutions, the request to hold the march was rejected, but for other reasons, especially the need to prevent clashes between different groups of protesters. However, the ECtHR established a violation of the freedom of peaceful assembly (Article 11), in connection with the prohibition of discrimination (Article 14), due to the fact that the mayor's statement had an influence in the decision making. Namely, according to the ECtHR, the decision to refuse the holding of the march was made by the local authorities acting on behalf of the mayor, and after the mayor's statement in which he expressed his own position on the march. By doing so, the ECtHR implicitly accepted the discrimination instruction.

2.3. Harassment

Article 10
Harassment

(1) Harassment shall mean unwanted treatment of a person or group of persons on any discrimination grounds, whose purpose or effect is to violate the dignity or to create a threatening, hostile, humiliating or intimidating environment, approach or practice.

(2) Sexual harassment shall mean any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect of violating the dignity or creating a threatening, hostile, humiliating or intimidating environment, approach or practice.

Article 10 of the Social Security Act defines harassment and sexual harassment as a special form. The definitions are in line with the accepted definitions in the directives of the European Union.

(1) The first element of harassment is that it represents unwanted behaviour, that is, behaviour. Unwanted behaviour can be physical, verbal or expressed in another form. Harassment, tripping, hair pulling, standing over someone who is sitting, stroking the face, touching the hair (the last two forms as a form of sexual harassment) and the like are considered forms of physical harassment. On the other hand, verbal harassment can also take different forms, from cursing, threatening, repeating words in an offensive way, mocking, telling jokes at someone's expense, insulting, etc. Harassment can occur with a single action or with multiple actions in continuity.

Excerpt from the Case Law No. 123

In the case of *Coleman* (S. Coleman v Attridge Law, Steve Law, Case C-303/06, Judgment of 17 July 2008), the CJEU established harassment due to offensive comments made in the workplace towards a mother and her disabled child, which the mother cared. According to the court, the ban on harassment applies not only when such comments refer directly to the employee (who does not have a disability), but when they refer to the disability of the child, for whom the employee cares (Paragraph 63).

(2) The second element of harassment is the discrimination grounds, which is mentioned as an element in the definition of Article 10 of the LPPD. For the definition of the separate discrimination grounds, see explained in more detail in Part 1.4. Discrimination grounds and Definition of Discrimination. According to this element, a certain individual is disturbed by belonging to a group on some discrimination grounds. Thus, there are known forms of harassment based on gender (which can be committed by a person of the same sex), racial harassment, religious harassment, harassment due to age, disability, sexual orientation, and the like.

The discrimination grounds distinguishes harassment from psychological harassment or mobbing, which in principle appears as "negative behaviour by an individual or group that is repeated, continuously and systematically, constitutes a violation of the dignity, integrity, reputation and honour of the employee and causes a feeling of fear or creates discomfort,

humiliation, the ultimate goal of which may be injury to physical and mental health, compromising the professional future of the employee, termination of the employment relationship or leaving the workplace" (*Law on Protection from Harassment in the Workplace*, The Official Gazette of the Republic of Macedonia[1] No. 79/2013, Article 5 Paragraph 1). So, mobbing is not done because of the individual's affiliation to a certain group, but directly affects the individual as such, and has other elements similar to harassment.

(3) The third element of harassment, which is also mentioned in the definition of LPPD, is that such unwanted behaviour towards a certain person has as its purpose or consequence a violation of dignity or the creation of a threatening, hostile, humiliating or intimidating environment. According to this definition, similar to discrimination, harassment does not require intent to harass. Also, the existence of harassment does not require the existence of a comparator, that is, a person who is in a similar or comparable situation. This is a result of the fact that harassment is wrong in itself because of the form it takes (verbal, non-verbal or physical) and because of the potential effect it has on human dignity, which can be different depending on the degree of tolerance of the specific individual.

Excerpt from the Case Law No. 124

In one case before the Swedish national courts, the applicant wanted to buy a pet (puppy). But the moment the seller found out that the buyer was gay, he refused to sell the pet to protect its welfare, claiming that homosexuals engage in sexual acts with animals. The Court of Appeal of Sweden established harassment based on sexual orientation in access to goods and services (Ombudsman Against Discrimination on Grounds of Sexual Orientation v. A.S., Case No. T-3562-06, Svea Court of Appeal, 11 February 2008).

In 2021, out of the total number of applications in which CPPD established discrimination (40), direct discrimination occurred in 11 (CPPD, *2021 Annual Report*, p. 25). In 2022, the situation is different, therefore, from the total number of opinions determining discrimination (70), harassment is the most common type, which is established in more than half of all cases, that is, in 39 cases (CPPD, *2022 Annual Report*, p. 26). Applications about harassment on various grounds, including on ethnic grounds, sexual orientation, gender identity, gender, political affiliation, etc., are very common in the area of public information and media, especially those made with posts on the social network Facebook.

Excerpt from the Case Law No. 125

CPPD established harassment based on ethnicity committed by a natural person through his profile on the social network Facebook. Namely, the person against whom the application was filed created and disseminated biased material that hurt the feelings of the Vlach ethnic community. CPPD, appreciating the freedom of thought, belief and expression of thought, however, considered that in order to encourage an objective discussion on any topic, the person against whom the application was submitted should have taken into account the reputation, dignity and rights of the Vlachs. Because this was not the case in the specific case, CPPD recommended him to remove the disputed contents and apologize publicly through his Facebook profile and to refrain from similar posts in the future in any media or format (*Application No. 08-176 /1* dated 15.2.2023, *Opinion* dated 11.4.2023).

In a similar case, CPPD established harassment on the ground of ethnicity committed by a natural person through his profile on the social network Facebook against the citizens of the

[1] The country changed its name in 2019 in accordance with the Prespa Agreement. Most legal acts had been created before the country's name change, are still in force and their titles contain the country's previous name. In this document, the country's previous name is used solely for legal precision.

Republic of North Macedonia with Bulgarian national self-awareness. CPPD recommended him to delete the published text dated 11.7.2022, from his own fan page and apologize publicly through his Facebook profile and to refrain from such posts in the future in any media or format (*Application No. 08- 520/1* dated 29.9.2022, *Opinion* dated 22.3.2023).

Excerpt from the Case Law No. 126

In the case *P4 No. 775/19* before the Basic Civil Court - Skopje, a violation of the right to equality and dignity with discrimination and harassment and the creation of a humiliating environment was established on 19.12.2017 against six minors based on their ethnicity and belonging to a marginalised group of children who visited the Day Centre for street children by the Inter-Municipal Centre for Social Work of the City of Skopje (*P4 No. 775/19* dated 22.4.2021 of the Basic Civil Court - Skopje).

Sexual harassment

Paragraph 2 of Article 10 of the LPPD defines sexual harassment. This definition also contains the constitutive elements, so it is defined as unwanted behaviour. That unwanted behaviour can take any form, physical, verbal or non-verbal. The unwanted behaviour is sexual in nature. Finally, the same unwanted behaviour has as its purpose or effect the violation of a person's dignity or the creation of a hostile, threatening, degrading or humiliating environment.

Excerpt from the Case Law No. 127

Acting on the application, CPPD established that with the presented content in a certain show through sexual objectification of the appearance of the applicant, the presenter caused a violation of her dignity and created a threatening, hostile and humiliating environment, thereby committing sexual harassment based on sex and gender in the area of public information and media. CPPD recommended that the disputed content be removed and that the presenter publicly apologize in his show and refrain from presenting disturbing content in the future (*Application No.* 08-343/1 dated 20.6.2022, *Opinion* dated 15.9.2022).

The *Law on Labour Relations* in Article 9 contains definitions of harassment and gender harassment. Those definitions contain the constitutive elements of harassment, but there is an inconsistency between the definitions of one law and the other, which should be overcome and harmonized in the future.

2.4. Victimisation

Article 11
Victimisation

Victimisation shall mean bearing the adverse consequences by a person who has taken action to be protected against discrimination, or who has reported discrimination, initiated proceedings for protection against discrimination, testified during such proceedings or otherwise participated in the procedure for protection against discrimination.

Victimization as a legal institution aims to encourage persons to seek institutional protection of their rights. Given that the institutional protection of rights is their constitutive element, and without their protection one cannot talk about human rights, victimization prevents people from suffering negative consequences just because they seek protection of their legally guaranteed rights. It is identical to the request for protection against discrimination before the competent institutions. If a person feels that he has been discriminated against, he has the right to seek protection before the competent institutions, whether they are institutions within the employer, whether they are courts, independent institutions for the protection of human rights, inspectorates or other bodies. Whatever action is taken to protect against discrimination, the person should be freed from the fear that he will suffer negative consequences just because of it.

European Union directives expressly prohibit victimization. According to Directive 2000/78/EC (Article 11), Directive 2000/43/EC (Article 9), Directive 2006/54/EC (Article 24) and Directive 2004/113/EC (Article 10) member states have an obligation in their national legal systems to take the necessary measures to protect individuals from any negative treatment or consequence in response to an application or other action taken aimed at protecting the principle of equal treatment. Victimization prohibits a person from suffering any harmful consequences as a result of taking action to protect against discrimination.

Article 11 of the LPPD enumerates the reporting of discrimination, the initiation of the procedure and the testimony in such a procedure, but such forms of procedural actions are given only as an illustrative example. Whatever action is taken to protect against discrimination, it is the legal right of the person and the person must not suffer harmful consequences because of it. If it suffers any harmful consequences, it is victimization, and the LPPD in Article 11 defines it as a special form of discrimination.

The Danish Ethnic Equal Treatment Act (Ref. No. 2002/5000-6, 28 May 2003), in Article 8, defines victimization as "any negative treatment or consequence" in response to "an application or any type of procedure". for the application of the principle of equal treatment. Thus, as required by the directives of the European Union, this Law defines victimization as any unfavourable treatment or unfavourable consequence, for the purpose of any procedure for protection against discrimination.

The Dutch Equal Treatment in Employment (Equal treatmen in employment (Age discrimination) Act, 2002 provides for victimization in Part 10. In this Part, victimization does not refer to the consequences suffered by the employee, but only to the unfavourable treatment he suffers, in response to the invocation of the provisions of the Law for the protection of his rights, or because he provided assistance in connection with the same. Also, in Part 8 of the *Law on Equal Treatment* (Equal Treatment Act, 1.1.2005), unfavourable treatment of the person in response to invoking the provisions of the Law or providing protection in relation to it is prohibited. These definitions in the Dutch legislation are narrower and do not provide that any negative consequence to the person (not only unfavourable treatment) is prohibited for the purpose of any procedure for the protection of rights.

In Belgium, protection against victimization is limited only to the victim who seeks Protection against Discrimination or who appears as a witness in the proceedings. This limitation means that not all persons are protected, such as, for example, persons who provide assistance or support to the victim (*General Federal Law on Non-Discrimination*, Articles 16 and 17). This approach is restrictive compared to the European Union directives that protect "all persons" from victimization.

In 2021, out of the total number of applications in which CPPD established discrimination (40), victimization did not occur in any case (CPPD, *2021 Annual Report*, p. 25). Whereas, in 2022, only in one case (CPPD, *2022 Annual Report*, p. 26).

Excerpt from the Case Law No. 128

The applicant, as an employee in the administration of a larger municipality, stated that after the end of the local elections in 2021, she received an order to immediately leave her workplace and perform her work tasks in municipal premises about one kilometre away from the municipal building, which she refused because there were no conditions for her to perform her work tasks in the new premises. After several on-the-spot inspections in the municipality to establish the actual situation, during which it collected and documented a series of evidence, CPPD issued an Opinion in which it established direct and prolonged discrimination based on a political conviction made by the mayor, in the area of work and labour relations. In addition, the Commission also established harassment in the workplace based on the mayor's political conviction towards the applicant, as well as victimization of the applicant by the secretary of the municipality, when he fined her for disciplinary misconduct that happened several years ago and in in accordance with the law, the act is time-barred (*Application No. 08-506/1* dated 30.12.2021, *Opinion* dated 11.7.2022).

Excerpt from the Case Law No. 129

The former CPD has established victimization in adopted *Opinion No. 0801-1722* dated 19.5.2016. In the specific case, the applicant was discriminated against in the form of victimization because she suffered damage due to the intention to report and request Protection against Discrimination. Namely, the intention to report discrimination on the part of the applicant was taken into account as an aggravating circumstance in the procedure for her disciplinary responsibility. It was also written in the decision on disciplinary responsibility, which the CPD had no difficulty in ascertaining.

Excerpt from the Academic Literature No. 33

"From the domestic judicial practice, the Basic Court Skopje II - Skopje as a civil court, with a Judgment of 10.4.2014 established discrimination in the form of victimization. In the specific case, according to the Court, the claimant suffered harmful consequences from the legal representative of the defendant due to undertaking specific activities for protection against discrimination. The harmful consequences were in the form of hindering the transfer of funds for wages for the claimant. With the verdict, the defendant undertakes to enable the claimant to exercise all rights from the employment relationship and in the future to refrain from taking actions that violate the claimant's right to equal treatment" (Aleksov and Cvetanovska, 2014, p. 51).

With the verdict RO-1007/12 of the Basic Court Skopje II - Skopje, it is established that discrimination was committed on the ground of victimization of the claimant by the Chess Club "13 November" from Skopje, carried out by non-payment of salary and non-payment of contributions due to activities undertaken for protection against discrimination in the exercise of employment rights (*RO No. 1007/12* dated 10.4.2014 of the Basic Court Skopje II - Skopje, retrial *RO No. 472/15* dated 3.7.2015 of the Basic Court Skopje II - Skopje).

2.5. Segregation

Article 12
Segregation

Segregation shall mean any physical separation of a person or group of persons on any discrimination grounds, without a legitimate or objectively justified purpose.

The LPPD also defines segregation as a special form of discrimination, which was missing in the previous Law (2010). Segregation is defined as (1) physical separation of persons or groups of persons, (2) which is done on a discrimination grounds, and (3) which does not have a legitimate or objectively justified purpose. The European Commission against Racism and Intolerance (hereinafter: ECRI), too, in its Explanatory Memorandum to the revised General Recommendation No. 7, similarly defines segregation as (1) "action by which a (natural or legal) person separates other persons (2) on some from the listed grounds, (3) without objective and reasonable justification..." (ECRI, General Recommendation No. 7, Paragraph 16 of the Explanatory Memorandum). What ECRI points out is that only forced physical separation constitutes discrimination, while arbitrary, voluntary separation does not meet the elements of segregation.

According to the definition, the constitutive elements of segregation also arise.

(1) The basic element of segregation is the physical separation or separation of persons. It derives from the etymological meaning of the word segregation, from the Latin expressions "separate" (Lat. *se*) and "from the herd" (Lat. *greg*), thus creating the verb that means separation, separation or separation (Lat. *segregare*). Thus, the basic element of segregation is the physical separation of persons. However, physical separation or segregation itself does not constitute discrimination if there is justification for it. For example, separation based on gender or ethnicity may not constitute discrimination (segregation), as long as members of both sexes, that is, of both ethnic groups, receive the same services, and there is an objective and legitimate justification for the separation. But in case there is duplication, and the members of the groups do not receive the same services and there is no objective justification for it, then it is a question of segregation. For example, if there is physical separation of children in schools or classes on ethnic grounds, there may not be discrimination, as long as such separation is necessary (because of the language of instruction). But if the teaching is carried out in the same language, and there is a physical separation of children on ethnic grounds, and the members of one group receive a lower quality of education, and this is done in a systemic way and not voluntarily, that is, there is coercion, then it is a matter of segregation as a form of discrimination.

It should be noted that, if physical separation is voluntary, it does not constitute segregation. In this Part, the ECtHR requires that this voluntariness (consent) be genuine, that is, be the result of the ability of the persons involved to weigh all aspects of a certain situation and the consequences of giving such consent. Otherwise, if the persons concerned cannot understand all aspects of the situation and the consequences of giving "consent", it cannot be acceptable. Moreover, taking into account the importance of the prohibition of racial discrimination, even with the actual consent of the persons concerned, the ECtHR held that there cannot be a question of waiving the right not to be discriminated on the ground of race, because it is not only for a personal right that can be waived, but a significant public interest is

also violated (D.H. and Others v. Czech Republic, [GC] App. No. 57325/00, Judgment of 13 November 2007, Paragraphs 202 to 204).

(2) The second element of segregation is that the physical separation of persons is done on some discrimination grounds. All grounds of discrimination can be taken into account, however, in practice segregation most often occurs on the ground of race and skin colour, ethnicity, religion or religious belief, sex, disability, sexual orientation, gender identity, and the like. For the definition of the separate discrimination grounds, see explained in more detail in Part 1.4. Discrimination grounds and Definition of Discrimination.

(3) The third element of segregation is the lack of a legitimate or objective and justified purpose for physical separation on a discrimination grounds. In other words, this element means that there is no justification for the physical separation. Even such separation, even if there is some formal justification, would be discrimination if it does not meet the test of appropriateness and necessity, which is not mentioned in the definition of segregation. However, in Article 4 of the Social Security Act, which defines the terms used in the Law in point 7, the "legitimate and objectively justified goal" is defined as a goal for the achievement of which the means should correspond to the real needs in the specific case, be precisely defined in advance, necessary to achieve that goal, as well as being proportional to the effects to be achieved. For the definition of the terms used in the Law, see the detailed explanation in Part 1.3. Glossary As mentioned, physical separation based on gender in swimming pools, toilets, fitness clubs, saunas might have a justified purpose, so it would not constitute discrimination which would be analysed on a case-by-case basis. Likewise, the division of children into different classes due to the different language of instruction would not constitute segregation. But in similar situations, when the members of one group would receive better services compared to the members of the other group, there can be segregation again, if the same is not voluntary and is enforced in a systematic way and is not objectively justified.

Excerpt from the Academic Literature No. 34

"Segregation can be the result of laws and their application, which would constitute de jure segregation. However, segregation can also exist without being provided for in the laws, but rather be the result of various processes in society, without being provided for in the laws, which represents de facto segregation. Also, segregation can be done by state or other authorities, but also by private entities of a public nature (schools, cinema halls, swimming pools, restaurants, transport companies, etc.)" (Spasovski, 2015, p. 4-7).

As examples of segregation can be listed: the pairing of Roma children in school in separate classes in case the language of instruction is the same as the language taught by other children, separate sections in restaurants or bars for members of different ethnic or racial groups, forced concentration of population from a certain ethnic community or religious group in one part of the settlement, special places for sitting in buses for members of a certain racial or ethnic group, etc.

In international law, the Convention against Discrimination in Education of 1960 expressly prohibits segregation in education in Article 1(c). According to this provision, the creation or maintenance of special educational systems or institutions for persons or groups of persons is considered discrimination. The exceptions provided in Article 2 of the Convention that allow the establishment of special educational institutions, when their creation is justified, still insist on the same quality of education, that is, the quality of education that meets certain standards required by the competent institutions (Convention against Discrimination in Education, Article 2).

The ECHR has several judgments in which it finds that the segregation of Roma students in special classes constitutes discrimination.

Excerpt from the Case Law No. 130

In the case of *Oršuš and Others* (Oršuš and Others v. Croatia, [GC] App. No. 15766/03, Judgment of 16 March 2010), the Court considered that the separation of Roma students in separate classes was not justified (Paragraph 184) despite the state's claim that this was done due to insufficient knowledge of the language of instruction (Croatian) by the students (Paragraph 124). In the case of *D.H. and Others* (D.H. and Others v. Czech Republic, [GC] App. No. 57325/00, Judgment of 13 November 2007), the ECtHR established discrimination in the segregation of a large percentage of Roma children in schools for children with mental disabilities, where students have a simplified curriculum and where their difficulties are deepened and where their development is threatened, instead of helping towards the integration of children in regular schools and developing their abilities (Paragraph 207).

Excerpt from the Case Law No. 131

In the case of *Horváth and Kiss* (Horváth and Kiss v. Hungary, App. No. 11146/11, Judgment of 29 January 2013), where two Roma applicants, while they were children, were diagnosed with a mild mental disability, due to which they were placed in a "special" school, the ECtHR established that the state committed indirect discrimination. In this case, the Court considered whether and to what extent the special protective measures were used to prevent a wrong diagnosis due to which the children would end up in special schools or classes with curricula and programs that could harm their future educational process. The court observed that Roma children are the most numerous in "special" schools and that this was a consequence of an apparently neutral measure that was not specifically aimed at Roma, but which disproportionately affected them as a particularly vulnerable group. The ECtHR emphasized that this was noticeable even when comparing the effect that practice has on other socially marginalised groups. The court established that the applicants studied in schools for children with mild mental disabilities where a simplified curriculum was followed and where they were isolated from the rest of the population. As a consequence, they acquired an education that did not offer the necessary guarantees arising from the positive obligation of the state to remove the consequences of racial segregation in "special" schools. The court pointed out that such education may have further complicated their problems and compromised their later personal development instead of helping them integrate into regular schools and develop their abilities.

Excerpt from the Academic Literature No. 35

"In our country, segregation as a form of discrimination appears especially in education. Two basic forms of segregation in education are known, which affect Roma children in particular. The first form is the physical separation of Roma students in different schools and/or classes, while the Roma children in those schools and/or classes generally receive a lower quality of education. This phenomenon has been recorded in several municipalities, such as in Štip, Bitola, Kumanovo, as well as in municipalities in the City of Skopje. This segregation is the result of legal decisions that children enrol and study in schools that are close to their homes. Given that Roma are often segregated in neighbourhoods in or around cities, Roma students are "naturally assigned to one school." Even when there is an opportunity for students from other communities to go to that school, it often happens that parents withdraw their children and transfer them to another school. Also in the case when Roma students study in a school with children from other communities, it happens that they are segregated in one class, or they sit in the back desks of the classroom, or Roma students sit on one side of the classroom, and from on the other hand students from other communities" (Institute for Human Rights, Discrimination of Roma in the educational process: breaking the wall of rejection and segregation, 2013, p. 47-49).

The second form of segregation of Roma students is through their high representation in special schools or in special classes in regular schools. This form of segregation is carried out through the categorization of Roma children as children with moderate disabilities in mental development, a categorization that has the consequence that those children are in a discriminated position compared to other children, because they are not educated according to the same curricula, they are not they get the same education as children who do not have developmental disabilities and, of course, they have a restrictive approach when enrolling in secondary education and further in the labour market. However, not enabling the inclusion of children with disabilities in the regular education system and their separation in schools for children with disabilities is a separation that does not meet the test of objective justification and is contrary to the UN Convention on Human Rights.

Excerpt from the Case Law No. 132

CPPD in two of its opinions, in cases numbered 08-89/1 and 08-92/1, considered that the primary schools "Ǵorǵi Sugarev" in Bitola and "Goce Delčev" in Štip violated the right to education of Roma children through segregation, determining indirect discrimination. In the case of *Elmazova and Others v. North Macedonia*, explained below, the ECtHR in its judgment states the opinion of the Commission. At the same time, CPPD adopted General Recommendation No. 08-244/1, with which it recommended the competent bodies of the local self-government to undertake activities for consistent compliance with the acts of rezoning in their municipalities, which would aim at the desegregation of Roma children (*Application No. 08 -89/1* dated 8.10.2021, *Opinion* dated 3.2.2022, *Application No. 08-92/1* dated 9.2.2022, *Opinion* dated 13.4.2022, and *General Recommendation No. 08-244/1* dated 27.4.2022).

In the case of *Elmazova and Others* (Elmazova and Others v. North Macedonia, App. nos. 11811/20 and 13550/20, Judgment of 13 December 2022), 87 Roma applicants, children and their parents, claimed segregation of Roma students in two state primary schools in Bitola and Štip, in that, in the case of the former, they were placed in a school that was claimed to be for Roma only, and in the case of the latter, they were placed in classes in which only Roma studied. The court established a violation of Article 14 in connection with Article 2 of Protocol No. 1 of the Convention, although there was no intention on the part of the state, but the court considered that the state has an obligation, primarily, to take positive and effective measures to correct the actual inequality of the applicants and to prevent the continuation of discrimination that resulted from their overrepresentation in the respective school and thereby breaking the cycle of marginalization and enabling them to live as equal citizens from the early stages of their lives.

In 2021, out of the total number of applications in which CPPD established discrimination (40), segregation was not established in any case (CPPD, *2021 Annual Report*, p. 25). While in 2022, the situation is slightly different, therefore, out of the total number of

opinions determining discrimination (70), segregation was established in 3 cases (CPPD, *2022 Annual Report*, p. 26).

Excerpt from the Case Law No. 133

After receiving information through the media that contained clues about the possible segregation of a student with a disability in a primary school in Gostivar, CPPD made a decision to initiate a procedure for protection against official duty discrimination. Namely, the information said that following an application signed by the parents of the student's classmates, she and her educational assistant were transferred to an inappropriate room, without proper heating, in order to teach. Acting on the subject, members of the CPPD held a meeting with the mayor and representatives of the municipal government, as the founders of the school, who organized a joint meeting with the parents - signatories of the application, as well as with all the professional representatives of the school, included in the school's inclusive team. In addition, CPPD also had immediate and direct meetings with the Regional Resource Centre "Dr. Zlatan Sremac" Skopje as well as with representatives of the Regional Expert Body for Assessment of Functional Disability and Health - Skopje, from where they received additional information and documents related to the case. CPPD also carried out an immediate inspection of the school room where the student was stationed, and during the inspection, she also received the weekly reports from the assistant, which she sent to the Resource Centre on the course of the student's educational process.

CPPD established segregation and exclusion on the ground of disability carried out by the elementary school, committed by unjustified and illegitimate physical separation of the discriminated student from the rest of her classmates without disabilities, which resulted in exclusion, that is, in denying her right to access to inclusive education process. The commission also established direct persistent discrimination by the school, carried out by not adjusting the school infrastructure in terms of providing a resource-sensory room equipped with appropriate assistive technology, which resulted in the denial of access to education on an equal basis with others on the ground of disability and special educational needs of the student. In addition, the CPPD also established calling, inciting and instructing on discrimination based on disability and health condition carried out by eleven parents of the female and male classmates of the student, carried out by signing an application to remove the student from regular classes and boycotting classes by not leaving of their children until their demands are met, which has resulted in segregation based on disability and special educational needs. CPPD recommended to the elementary school to provide conditions for the smooth development of the educational process of the student in the same class with her classmates, and to prevent any form of exclusion and segregation of the student from the educational process. CPPD tasked the school with the support of the Regional Resource Centre to provide an effective modified curriculum for the student with special educational needs. In addition, the school was tasked with creating an action plan, approved by the Resource Centre, which will specify in detail the measures, activities and deadlines in which an appropriate resource-sensory room equipped with assistive technology adapted to the special needs of the student should be provided. CPPD recommended that the school ask the Resource Centre to hold mandatory training for teachers and professional associates who are directly involved in the educational work of the student on inclusive principles and the way to use the provided assistive technology for her specific educational needs. In the end, CPPD recommended that the director of the school organize a meeting with the parents-signatories of the application, to whom they will present the principles and the mandatory application of the Concept and the legal prohibition to call, encourage and give instructions for discrimination, with the mandatory presence of each parent.. Within the stipulated deadlines,

the CPPD was notified in writing that all recommendations were fulfilled (Application No. 08-82/1, Decision of 02/03/2022, Opinion of 03/07/2022).

2.6. More Severe Forms of Discrimination

Article 13
More Severe Forms of Discrimination

In terms of this Law, more severe forms of discrimination shall mean multiple discrimination, intersectional discrimination, repeated discrimination and continued discrimination.

In Article 13, LPPD defines more severe forms of discrimination. LPPD considers four forms of discrimination more severe.

(1) Discrimination committed against one person on multiple discrimination grounds. This more severe type of discrimination is called multiple discrimination. There are a large number of cases where a person or a group of persons is a victim of discrimination on several discrimination grounds. How, for example, women belonging to minority ethnic communities can be victims of discrimination based on gender and ethnicity; social protection can be denied on the ground of gender and disability (Committee on Economic, Social and Cultural Rights, General Comment No. 20, Paragraph 27). For a definition of what constitutes multiple discrimination, see further explained in Part 1.3. Glossary

Excerpt from the Academic Literature No. 36

"When we talk about multiple discrimination, it should be noted that there are two separate types. The first type is called cumulative or additional discrimination and occurs when there is an overlap of discrimination grounds. For example, a person is not allowed to enter a restaurant because he is Roma and is a person in a wheelchair – in this case the grounds of discrimination are: ethnic origin and disability. The second type of multiple discrimination is intersectional discrimination, which the Social Security Act lists as a special more severe form of discrimination" (Poposka and Jovevski, 2017, p. 40).

(2) The second more severe form of discrimination is intersectional discrimination. It arises when there is a unique combination of discrimination grounds, and it is located at the intersection between the individual grounds protected by anti-discrimination legislation (Makkonen). For a definition of what constitutes multiple discrimination, see further explained in Part 1.3. Glossary

Excerpt from the Academic Literature No. 37

"For example, women of the Islamic religion who may not be discriminated against because they are women or because they have the Islamic religion, but because they are women of this religion, because of the prejudices that affect them" (Poposka and Jovevski, 2017, p..40-41).

Excerpt from the Case Law No. 134

From the practice of the CJEU, in the case of *Coleman* (S. Coleman v Attridge Law, Steve Law, Case C-303/06, Judgment of 17 July 2008), the Court had the opportunity to recognize intersectional discrimination, but did not do so. Namely, it established harassment based on disability against a woman who takes time off to care for her son who has a disability (discrimination by association), while neglecting the gender aspect which is also significant for this case.

In the case of *Parris* (David L. Parris v Trinity College Dublin and Others, C-443/15, Judgment of 24 November 2016), the CJEU, considering that it did not establish discrimination either on the ground of sexual orientation or on the ground of age, considered that "it cannot be claimed that there is a new category of discrimination that is the result of a combination of more than one basis of discrimination, such as sexual orientation and age, when no discrimination based on these grounds taken separately has been established" (Paragraph 80).

The CJEU did not touch the issue of intersectional discrimination (gender and religion) even in the cases in which the wearing of headscarves as a religious symbol by employees in the workplace was considered (the case of *Samira Achbita* and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV, C-157/15, Judgment of 14 March 2017 and the case of *Asma Bougnaoui* and Association de défense des droits de l'homme (ADDH) v Micropole SA, C-188/15, Judgment of 14 March 2017).

Excerpt from the Case Law No. 135

In the case of *B.S.* (B.S. v. Spain, Application No. 47159/08, Judgment of 24 July 2012), the ECtHR considered that states, in their obligation to investigate violent incidents, must take into account the particularly vulnerable position in which the applicant was, as a woman of African origin who worked as a sex worker (Paragraph 62). In this way, the ECtHR recognizes that discrimination made on multiple grounds (whether multiple or intersectional) can be an aggravating circumstance and impose greater responsibility on states in their conduct.

Excerpt from the Case Law No. 136

In the case of *Mental Disability Advocacy Centre* (Mental Disability Advocacy Centre v. Bulgaria, Application No.41/2007, Decision of 3 June 2008), the Committee established a violation of the revised European Social Charter, of the right to education seen in accordance with Article E (non-discrimination). Namely, the Committee criticizes Bulgaria for the active practice of excluding children with intellectual disabilities from the education system, stating that 3,000 children with medium and severe intellectual disabilities who live in 28 homes for children with mental disabilities have been denied the right to an effective education. education. The committee stated that: "the regular education system is neither accessible nor adapted for children with disabilities who live in homes for children with mental disabilities; the training received by teachers is not adequate and the curriculum and aids are not adapted to the special educational needs of children with intellectual disabilities; The Government of Bulgaria has failed to implement the 2002 Law which requires children staying in these

homes to be included in the educational process; as a result of the non-implementation of this Law, only 6.2% of these children go to school, while the percentage of attendance in primary education of all children in Bulgaria is 94%; the difference between the attendance of classes by children with and without disabilities is so great that it constitutes discrimination against children with disabilities living in homes for children with mental disabilities."

CPPD in its subject operations often defines multiple, but also intersectional discrimination. Namely, in 2021, out of the total number of applications in which the CPC established discrimination (40), in two cases it was based on six discrimination grounds, of which in one case discrimination was established on the ground of race, skin colour, national or ethnic affiliation, belonging to a marginalised group, property status and other grounds, and in the second case based on national or ethnic origin, gender, belonging to a marginalised group, sexual orientation, gender identity and personal characteristic and social status. Discrimination on five grounds was established in three cases, of which in two cases discrimination was established on the ground of race, skin colour, national or ethnic origin, belonging to a marginalised group and social origin, and in one of the cases on the ground of gender, sexual orientation, gender identity, belonging to a marginalised group and social origin. In one case, discrimination was established on four discrimination grounds, in four cases on three grounds, and discrimination on two grounds occurred in six cases (CPPD, *2021 Annual Report*, p. 26). In 2022, the situation is identical, so from the total number of opinions establishing discrimination (70), in 61% of cases (43), the CPPD established that it was committed on two or more grounds of discrimination, namely: 23 cases of discrimination against two grounds, 3 cases of discrimination on three grounds, 4 cases of discrimination on four grounds and 13 cases of discrimination on five grounds. In doing so, CPPD established discrimination in only 9 cases where it was committed on the following 5 grounds of discrimination: gender, belonging to a marginalised group, sexual orientation, gender identity and personal characteristic and social status (CPPD, *2022 Annual Report*, p. 28).

Excerpt from the Case Law No. 137

Acting on an application, CPPD established direct discrimination against members of the Roma community on the ground of ethnicity, belonging to a marginalised group, skin colour, language and race in the area of access to goods and services committed by a restaurant from Skopje. Namely, the restaurant also had a recreational pool in its complex that worked every day, in which Roma were allowed to enter only on Tuesday with a clearly placed inscription on their notice board that read "Tuesday only for Roma". Even though the inscription was removed before the Commission's opinion was issued, the CPPD established discrimination due to the damage that had already been done and recommended to the employees, the responsible persons and the owner of the restaurant not to repeat this behaviour and not to act with prejudices against the people from the Roma community and to give them access to the pool (*Application No. 08-369/1* dated 1.7.2022, *Opinion* dated 25.10.2022).

Excerpt from the Case Law No. 138

Acting on an application, CPPD established harassment based on gender, belonging to a marginalised group, sexual orientation, gender identity and personal and social status directed at the LGBTI+ community in the area of social networks committed by a current Member of Parliament from Prilep.CPPD considered that with the published content on the social network Facebook, which was also commented on by other users, which spread

homophobic content supplemented by the fact that the person against whom the application was submitted is a public figure whose posts reach a wide range of citizens, harassment was committed. CPPD recommended the person to remove the disputed content and publicly apologize on his Facebook user profile, and in the future to refrain from the same or similar disturbing content in his posts and comments on social networks (*Application No. 0801-15/1* dated 3.1.2022, *Opinion* dated 15.2.2022).

Excerpt from the Case Law No. 139

In *Application No. 04-489* submitted to the former CPD on 4/4/2017, the applicant claimed that he was discriminated against on the ground of both gender and age when a legal entity published a job advertisement, but was looking for a "female person aged 30 up to 45 years old". In the *Opinion No. 04-489* dated 19.5.2017, the Commission established direct discrimination committed on more than one discrimination grounds (multiple discrimination).

(3) Discrimination committed several times or repeated discrimination is also a more severe form of discrimination. In this form of discrimination, it is necessary for the victim and the discriminator to be identical in several cases, that is, for one person to be a victim of discrimination committed by the same discriminator on several occasions. Differently, if the victim of discrimination is discriminated against by different people, there is no room for a more severe form of discrimination, but it will be two different cases of discrimination.

(4) Discrimination made over a longer period of time or continued discrimination implies the same circumstances under which the discrimination is carried out, circumstances that last for a longer time, and thus the discrimination itself continues. For example, a person who is discriminated against in a workplace, which discrimination lasts for a long time and is carried out by the same employer.

Excerpt from the Case Law No. 140

Acting on an application, CPPD established prolonged and multiple harassment as a more severe type of discrimination based on national and ethnic affiliation, other belief and personal and social status in the area of activity of associations, foundations or other organizations based on membership, carried out by the Association - Cultural Centre "Ivan Mihailov" - Bitola to the members, families, supporters and admirers of the Union of Fighters from the NOB and the Anti-Fascist War 1941-1945, to the Macedonian people and members of all ethnic communities in the Macedonian society. In the same case, CPPD established prolonged and repeated calling, incitement and instruction for harassment as a more severe type of discrimination based on national and ethnic affiliation, other belief and personal and social status in the area of media and public information, carried out by the Association - Cultural Centre "Ivan Mihailov" - Bitola to the members, families, supporters and admirers of the Union of Fighters from the NOB and the Anti-Fascist War 1941-1945, to the Macedonian people and members of all ethnic communities in Macedonian society. The Commission also established indirect discrimination committed by the Ministry of Justice, due to the failure to perform its legal responsibilities, which enabled the Association Cultural Centre "Ivan Mihailov" - Bitola to carry out actions prohibited by Articles 5 and 6 of the LPPD which resulted in the above types of discrimination. CPPD recommended to the Association to remove all objectionable elements in the name, statute and program that cause harassment within 45 days, as well as to remove all objectionable contents on its page on the social network Facebook that cause harassment and give instructions for harassment in the shortest possible time possible term, but not longer than 30 days. In addition, she recommended that the Association in the future refrain from creating and disseminating content that may cause disturbing feelings in accordance with the Social Security Act. CPPD recommended to the Ministry of Justice within 45 days to supervise the legality and application of the provisions of the *Law on Associations and Foundations* in accordance with Article 58 of the same law, especially in the part of the Acts of the Association in relation to Article 4 of the same, while taking into account Article 20 of the Constitution of the Republic of North Macedonia (*Application No. 08-368* dated 30.6.2022, *Opinion* dated 12.10.2022).

Excerpt from the Case Law No. 141

The former CPD, in *Opinion No. 07-839* dated 19.5.2016, which refers to discrimination based on disability - blindness, committed by banks, establishes the existence of a more severe form of discrimination, due to the fact that it is a repeated discrimination, that is, "performed multiple times, in an indefinite number of cases and because it is performed for a longer period than the banks". In this case, it is also about repeated discrimination, because a person who has such a disability is discriminated against several times by the same bank, but there is also persistent discrimination, because the circumstances have not changed and the discrimination is repeated under the same circumstances. The CPD does not make a distinction between these forms of discrimination, but only states that it is a more severe form of discrimination and a violation of Article 12 of the then LPPD (2010).

More severe forms of discrimination should have certain consequences in the procedures for protection against discrimination, when determining the responsibility for the committed discrimination and when determining the sanction. Thus, in court proceedings for damages for suffered discrimination, for a more severe form of discrimination, logically, the compensation should be higher. In misdemeanour proceedings, when determining the amount of fines, in the case of more severe forms of discrimination, the amount of fines is higher in accordance with LPPD (Article 42).

Comparatively, state laws often recognize more severe forms of discrimination, and most of them contain provisions only for multiple discrimination. Legislations differ among themselves in which more severe forms of discrimination they prohibit, and how they define them. Thus, in Greece in 2011, for the first time, multiple discrimination is expressly prohibited, with application only in labour relations (Law No. 3996/2011, August 5, 2011, Article 2(1)). According to Romanian legislation, multiple discrimination is an aggravating circumstance when determining responsibility (Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, article 2(6)). Similarly in Austria, where compensation for non-material damage can be higher due to multiple discrimination (Equal treatment act, Paragraphs 12/13, 26/13, 51/10). In Croatia, according to the *Law on Combating Discrimination of the Republic of Croatia* (The Official Gazette of the Republic of Croatia Nos. 85/8 and 112/12), similar forms of more severe forms of discrimination are provided as in the LPPD. Thus, there is also the multiple, repeated, prolonged discrimination that has more severe consequences for the victim (Article 6 Paragraph 1). The law of Croatia provides an obligation for the court to take into account the circumstances of the more severe forms of discrimination, when determining the amount of compensation for non-material damage, that is, the amount of the penalty for the offense (Article 6 Paragraph 2). Such a provision does not exist in the LPPD. The *Law on Prohibition of Discrimination of Montenegro* (The Official Gazette of Montenegro Nos. 46/2010, 40/11, 18/2014 and 42/2017), too, provides for the same forms of more severe form of discrimination as LPPD (2018). Namely, multiple discrimination,

repeated discrimination, prolonged discrimination and discrimination with more severe consequences towards the victim are prohibited. In addition to them, discrimination committed through the media or through writing text or drawing symbols with discriminatory content in public places is also considered a severe form of discrimination (Article 20). In some laws, discrimination that has more severe consequences for the victim is considered a more severe form of discrimination. According to the *Law on Prohibition of Discrimination of Montenegro* (The Official Gazette of Montenegro Nos. 46/2010, 40/11, 18/2014 and 42/2017), this more severe form of discrimination also exists when the consequences apply to the person himself as a victim, of a group of persons or, on the other hand, of the person's property (Article 20 Paragraph 5). Whereas, according to the *Law on Prohibition of Discrimination of the Republic of Serbia* (The Official Gazette of the Republic of Serbia Nos. 22/2009 and 52/2021), discrimination with more severe consequences towards the victim exists especially in the case when it involves a punishable action prohibited by law or an action that is exceptionally motivated by hatred or enmity towards the victim because of the personal characteristics he possesses (Article 13(7)). The Law states that some actions that contain elements of criminal acts, such as slavery, human trafficking, apartheid, genocide, ethnic cleansing or reference to them, are considered more severe forms of discrimination; calling for discrimination by public authorities; the incitement of inequality, hatred or enmity based on national, racial or religious affiliation, language, political opinion, gender, gender identity, sexual orientation and disability (Article 13).

3. COMMISSION FOR PREVENTION AND PROTECTION AGAINST DISCRIMINATION

3.1. Legal Status, Budget and Composition of the Commission

Article 14
Legal Status of the Commission

(1) Commission for Protection against Discrimination is an autonomous and independent body working in accordance with its responsibilities defined by this Law (hereinafter: the Commission).

(2) The Commission is a legal entity.

(3) The Commission is based in Skopje.

The 2010 *Law on Protection against Discrimination* established the Commission for Protection against Discrimination as an independent and independent body whose competences were established by law. According to the LPPD of 2018, the name of the Commission is supplemented in such a way that prevention is added as one of the essential competences, so the current name is the Commission for Prevention and Protection against Discrimination. Although the CPPD is not considered a legal successor of the previous CPD, the new Commission functions as an independent and independent body with amended and supplemented competences, composition and status of the members. CPPD represents an equality body that has both legal (Lat. *de jure*) and factual (Lat. *de facto*) independence as a separate legal entity separated from the executive and legislative authorities. Equality bodies, in the case of CPPD, belong to the so-called extrajudicial mechanisms for protection against discrimination.

Excerpt from the Academic Literature No. 38

"Through its mandate, the equality body should provide independent assistance to victims of discrimination in processing their applications; to conduct independent analyses of the discrimination situation and to publish independent reports and recommendations on any issue related to discrimination' (Equinet, 2008, p.11).

The same is stated in Commission Recommendation (EU) 2018/951 on standards for equality bodies, recital 13.

The obligation to ensure the independence of equality bodies is established by the directives of the European Union, in particular: Directive 2000/43/EC, Directive 76/207/EEC, Directive 2004/113/EC, Directive 2006/54/EC and Directive 2010/41/EU. In addition, the principles and standards of independent bodies are elaborated in documents of relevant institutions that are not legally binding, but represent a basis for establishing strong and efficient institutions for protection against discrimination and/or human rights, in general. These are the Principles of the UN General Assembly relating to the status of national human rights institutions (Resolution 48/134) or known as the Paris Principles as well as the General Observations on the interpretation and implementation of these principles by the International

Coordinating Committee of National Institutions on the promotion and protection of human rights of 21 February 2018, General Recommendation No. 2 (revised) of the European Commission against racism and intolerance and Commission Recommendation (EU) 2018/951 on standards for equality bodies.

According to the structure made by the European Network of Equality Bodies, in which the standards from the previously mentioned documents have been translated, there are several structural elements that affect formal independence, and should be taken into account when establishing and functioning of the Equality Body (Equinet, 2008, p. 14).

Managerial independence means that the body should not suffer external influences in the selection and use of its own resources and independently decides on the way of organizing the work. This is related to the method of collection and distribution of funds for the work of CPPD (more on this below in the explanation of Article 15) and the establishment and organization of the professional service (more on this below in the explanation of Article 22).

Independence in enacting the body's policies means that it is necessary for the body to have the authority to independently decide on its plans, programs and strategies, but also to be essentially involved and consulted by the authorities in the policies it adopts, which affect the work of the body. Article 21 Paragraph 1 Point 22 provides for the adoption of the Rules of Procedure, the Annual Plan and Program of Work and other acts related to the operation of the CPPD.

Structural independence means that the body should be free from direct political influence and control. The property of a legal entity of CPPD in Paragraph 2 of this article is one of the elements of structural independence because it is not part of the already existing government structure. The composition of CPPD as a collective body further contributes to structural independence (more on this below in the explanation of Article 16).

Financial independence means that it is necessary for the body to have sufficient funds to implement the competences prescribed by the Law. It is crucial that the body is not dependent solely on the funds received from the state budget, so the additional possibility of generating funds through other sources ensures a greater degree of independence (more on this below in the explanation of Article 15). However, the provision of sufficient funds and guaranteed funds from the state budget, which CPPD will dispose of on its own in terms of both planning and spending, is key to guaranteeing financial independence.

Legal independence is established through the degree of precision of the provisions that regulate the action and whether the possibility is left for essential discretion of the CPPD in order to implement the provisions of the LPPD, which essentially ensures a higher degree of independence. See more about this in Part 4. Procedure for preventing and protecting against discrimination before the Commission for preventing and protecting against discrimination (explanation of articles 23 to 31).

Interventional independence is established by the fact that the LPPD allows responsibility and punishment of the LPPD for activities carried out contrary to the will of the government. If the body may be exposed to sanctions due to its actions as a result of the control mechanisms by the Government, this may have an effect on its professional and legal conduct. See more about this in Part 3.3. Status of Commission Members and Dismissal and Termination of Office of a Commission Member

LPPD establishes CPPD as the central authority in the protection and prevention of discrimination and a kind of body for equality following the example of European experiences

and regulation in this area. CPPD has the status of a legal entity and is headquartered in Skopje, although according to its competences it operates on the entire territory of the country. In accordance with Article 3 of the Rules of Procedure of the CPPD, the headquarters of the CPPD is at "Dame Gruev" street number 1 (Paragraph 2), and a sign with the coat of arms of the Republic of North Macedonia is displayed on the building where the official premises of the CPPD are located. under which in the Macedonian language and its Cyrillic script, as well as in the language spoken by at least 20% of the citizens and its script, there is an inscription REPUBLIC OF NORTH MACEDONIA - COMMISSION FOR PREVENTION AND PROTECTION AGAINST DISCRIMINATION (Paragraph 3).

Excerpt from the Academic Literature No. 39

"The lack of regional offices limits equal access to protection against discrimination for all people who are in [the state's] territory." For example, in the period from 2011 to 2014, about one third of the applications submitted to the CPD were from victims who live outside of Skopje" (Hera, 2016, p.28).

In 2021, out of the total number of applications (167), the largest number of applications on which CPPD acted were submitted by applicants and organizations with residence/headquarters in Skopje (92), followed by Bitola (7), Prilep (7), Štip (6), Kumanovo (5), Delčevo, Dolneni and Kočani each (3), Gostivar, Demir Hisar, Negotino, Ohrid and Tetovo each (2) and 11 other municipalities from which one application was received each (CPPD, *2021 Annual Report*, p. 18). The largest number of applications for protection against discrimination in 2022 were submitted by citizens and organizations based in Skopje (151 applications, or 61%), followed by the municipalities of Bitola (18), Štip (14), Veles (7) and Kumanovo (5), Gevgelija, Kavadarci and Radovish each (4), Gostivar, Kičevo, Prilep and Tetovo each (3), six municipalities each (2) applications and 11 other municipalities from which (1) application was received. (CPPD, *2022 Annual Report*, p. 15).

For comparison in EU member states, it is a common practice for equality bodies to have their own regional offices, and a positive example of the functioning of this decentralized principle is the Republic of Bulgaria, where although all decisions and decisions are made at the Commission's headquarters in Sofia, nevertheless, they have several offices in the most underdeveloped regions of the country because the majority of the population from the Roma community lives there and where discrimination is common.

In the absence of regional offices, citizens who believe that they are victims of discrimination can access the CPPD through mail, telephone, the Internet site, the Facebook page. The electronic submission of applications is enabled through the established electronic service "Report Discrimination" which is located on the website of the Commission (https://kszd.mk/prijavi-discriminanica/) or by sending an e-mail to contact@kszd.mk.

In addition, CPPD can use the opportunity from Article 31 Paragraph 2 of LPPD and through a memorandum of cooperation that the two institutions signed in March 2023, to use the regional offices of OMB in Tetovo, Kumanovo, Štip, Bitola, Strumica and Kičevo for receiving applications and other forms of communication with the citizens of these regions.

In the countries of the region, there is a different practice of regulating the territorial distribution of equality bodies. Similar to our law, the Commissioner for the Protection of Equality in Serbia (Serb. *Poverenik za zaštitu ravnopravnosti*) has a centralized position based in Belgrade, but in 2014 a regional office was opened in Novi Pazar, through which persons from other parts of Serbia will be able to access this institution. In Bulgaria, in addition to the central headquarters of the Commission for Protection against Discrimination (Bulg.: *Komisiya*

za zashtita ot diskriminatsiya) in the capital, the law also regulates the existence of regional offices. The Office of the Ombudsman in Croatia (Cr. *Pučki pravobranitelj*) is headquartered in Zagreb and has two regional offices in Rijeka and Split. In order to improve cooperation and achieve greater visibility at the regional level, the ombudsman has established cooperation with citizens' associations as regional anti-discrimination contact points through which citizens from other parts of the country can be informed about the exercise of the right to protection against discrimination.

Article 15
Budget of the Commission

(1) Funds of the Commission shall be provided from the Budget of the Republic of North Macedonia, including the funds for reasonable accommodation for people with disability.

(2) Funds for Commission's operation shall be established by the Assembly of the Republic of North Macedonia upon Commission's proposal.

(3) The Assembly of the Republic of North Macedonia shall specifically vote the Part related to the Commission in the Budget of the Republic of North Macedonia.

(4) The use, allocation and assignment of such funds provided in the Part of the Republic of North Macedonia's Budget allocated to the Commission, shall be independently disposed of by the Commission.

(5) The Commission may also provide funds from other sources such as donations, grants, etc.

Financial independence is a key element for the consistent implementation of the competences of CPPD that lead to the fulfilment of the purpose of the law. LPPD guarantees funds from the State Budget for work of CPPD and for appropriate adaptation for persons with disabilities. CPPD is obliged to ensure accessibility during the implementation of competences (Article 23 Paragraph 2). The obligation to provide funds and for appropriate adaptation for persons with disabilities will increase their physical accessibility to the CPPD and to the results of the implemented activities of the CPPD, significant for the promotion of the principle of equality and the prevention of discrimination. The means of appropriate adaptation can be used to enable physical access to and in the facility where the CPPD is located, to produce the documents adopted by the CPPD in an appropriate format for people with sensory disabilities as well as in an easy-to-understand format (Eng. easy-to-read), assistance for people with deprived or limited business capacity, accessible software for submitting applications as well as an accessible website of the Commission, as well as other measures aimed at enabling as many women and men with disabilities as possible to access CPPD and to receive adequate Protection against Discrimination, but also promotion of the principle of equality and prevention of discrimination. In addition to accessibility, the means for appropriate adaptation can also be used to enable specific adaptation that a person with a disability would request in a specific case by the CPPD in the implementation of its competences. This provision is aimed at fulfilling the state's obligations stipulated by Article 9 of the UN Charter to ensure access of people with disabilities to institutions and services open to the public on an equal basis with others. Appropriate accommodation funds will be used to provide physical access to

institutions; providing information in a form that is easy to read and understand; access to assistants and intermediaries, including guides, readers and professional sign language interpreters; and other measures to improve the access of persons with disabilities to CPPD. In accordance with Commission Recommendation (EU) 2018/951 on standards for equality bodies, standards for equality bodies should comply with the accessibility requirements set out in the UN CRPD (recital 31).

In the anti-discrimination laws of the countries of the region, there is no special provision that obligatorily provides means for appropriate adaptation for persons with disabilities. For example, the financial means for the work of the Commissioner in Serbia and the professional service, at the proposal of the Commissioner, are provided by the Budget of the Republic of Serbia. Similarly in Croatia, the funds for the functioning of the Ombudsman institution are provided from the annual budget of the state.

Formal financial independence is ensured by Article 15 of the LPPD in a way that provides that the CPPD, based on its needs, proposes the amount of the Budget that should be voted by the Assembly (Paragraph 2) and the allocation of a special Part of the state budget intended for the CPPD that The Assembly votes it separately (Paragraph 3). This provision is an improvement in relation to the previous decision which placed the Commission in a position of formal and actual financial dependence. The General Recommendation No. 2 (revised) of the European Commission against racism and intolerance states that it is necessary for the amount of funds to be adequate for the implementation of all the separate competences established by the LPPD, especially in the provision of legal aid and support to people who are victims of discrimination and intolerance. Also, Commission Recommendation (EU) 2018/951 on standards for equality bodies states that it is necessary "to provide each equality body with the human, technical and financial resources, premises and infrastructure necessary to carry out its tasks" tasks and efficient performance of their competences. When allocating resources to equality bodies, the assigned competences and tasks should be taken into account. Resources can only be considered adequate and sufficient if they allow equality bodies to effectively carry out each of their equality functions, within a reasonable time and within the time limits set by national legislation" (Part 1.2.2. Resources, Paragraph 1).

An additional benefit in the direction of financial independence is the possibility given in Paragraph 4 of this article, for CPPD to independently dispose, allocate and spend these funds, which also contributes to the improvement of managerial independence. However, in its annual reports, CPPD notes that the allocated budget is not sufficient for the full realisation of its competences and that the independent use of the funds is threatened. Namely, neither the Ministry of Finance nor the Assembly of the Republic of North Macedonia, during the adoption of the Budget for 2022, consulted CPPD or called on it to explain the proposal of the Budget (which was tripled from the one allocated to them in 2021). so the Commission was faced with the fact that, as a state administration body, the Ministry of Finance responsible for preparing and executing the Budget of the Republic of North Macedonia allocated a budget for 2022 again in the same amount as the one in 2021 (CPPD, *2021 Annual Report*, p. 38).

It is positive that, with Paragraph 5 of this article, LPPD allows CPPD to independently generate funds from other sources through projects, donations, cooperation with other partner institutions, and thus provide financial resources that will be independent of the funds received by CPPD from the Budget. In accordance with Article 26 of the *Law on Prevention of Corruption and Conflict of Interest*, as a legal entity that has state capital, CPPD is obliged to notify the State Commission for Prevention of Corruption about the plan for using funds from donations, as well as the obligation to submit a final report on the use of those funds. When we talk about the generation of funds, it should be taken into account that the procedure before

CPPD is free and in that sense it cannot earn income from its work by collecting administrative fees or other charges for conducting the procedure based on submitted individual applications. However, CPPD can generate income from its other activities, such as, for example, during the implementation of trainings or support in the development of plans for equality of certain employers in the private sector, etc.

Article 16
Composition of the Commission

(1) The Commission shall consist of seven members appointed and dismissed by the Assembly of the Republic of North Macedonia.

(2) Commission Members shall be appointed for a mandate of five years with the right to be re-elected only once.

(3) When choosing the first composition of the Commission, four members shall be elected for a five-year mandate, while three members for a three-year mandate, with the right to be re-elected only once.

(4) From among the members referred to in Paragraph (2) of this Article, the Commission shall elect its President for a one-year mandate, without the right to re-election.

(5) Commission Members should reflect the composition of society as a whole and in the election of Commission Members, the principles of adequate representation of all social groups, adequate and equitable representation of community members and gender-balanced participation shall apply.

As with the previous Law (2010), in accordance with Paragraph 1 of this article, CPPD is composed of seven members and functions as a collective body. The basic principles of the organization, the work procedure, the method of allocating the cases and the work of the sessions of CPPD are regulated by the Rules of Procedure of the Commission for Prevention and Protection against Discrimination, with No. 01-301/1 of October 7, 2021 (hereinafter: the Rules of Procedure) published in The Official Gazette of the Republic of North Macedonia No. 232/2021 and amendments to the *Rules of Procedure No. 0101-301/3* dated 29.12.2021. Until now, the CPPD made all decisions with a majority of votes from the total number of members, that is, with at least 4 votes.

The members of the CPPD are elected and dismissed by the Assembly of the Republic of North Macedonia with a majority of votes from the total number of deputies and have the status of appointed persons who perform the function professionally, incompatible with the performance of another public office, profession or position in a political party. The procedure for electing the members of the CPPD is regulated below with the other members, and the provisions of the Rules of Procedure of the Assembly are applied accordingly. The current composition of the Commission was elected on January 25, 2021.

Compared to other equality bodies in the region and Europe, there are different forms of organization of equality bodies.

Excerpt from the Academic Literature No. 40

"Most countries in the European Union have established specialized bodies for the promotion of equal treatment regardless of racial or ethnic origin in accordance with the obligation of Article 13 of the Racial Equality Directive. For example, in the Republic of Bulgaria, the Commission for Protection against Discrimination (*Komisiya za zashtita ot diskriminatsiya*) is a collective body composed of nine members who perform this function professionally for a period of five years and do not perform other professional duties. Other EU member states that have set up entirely new bodies are Denmark with the Equal Treatment Board (Ligebehandlingsnævnet), France with the Defender of Rights (Défenseur des droits), Hungary with the Equal Treatment Authority (Egyenlö Bánásmód Hatóság), Italy with the National Office against Racial Discrimination (Ufficio Nazionale Antidiscriminazini Razziali) and Slovenia with the Advocate for the Principle of Equality (Zagovornik nacela enakosti)" (Polio plus, 2006, p.80-85).

There is also a difference in the structure of these bodies. Some of them are collective bodies that take decisions by a majority vote (for example, in Bulgaria, Denmark), such as CPPD, while others are managed by an individual, and have deputies and a professional and/or administrative support service in the implementation of jurisdictions (for example, in France, Hungary, Italy and Slovenia). In the Netherlands, the Commission for Equal Treatment was merged with the newly formed Institute for Human Rights, which had the authority to monitor and protect human rights, to promote respect for human rights, including equal treatment in practice, policies and laws in the Netherlands. The Institute's board of commissioners has a minimum of 9 and a maximum of 12 members, including the president and two assistants to the president. In Germany, in 2006, a Federal Anti-Discrimination Agency was established which operates within the Ministry of Family Relations, Adults, Women and Youth. Other countries, on the other hand, have approached the expansion of the competences of the bodies that already existed in their systems. In the Republic of Croatia, no separate body for equality has been established, but the responsibility for protection against discrimination is entrusted to the Ombudsman (Cr. *Pučki pravobranitelj*), which is a single-member body with deputies supported by a professional and administrative service, but there are three other ombudsmen who work to protect the rights of persons with disabilities, children and gender equality. Similar to the Croatian model and in the Czech Republic, the competence for protection against discrimination is held by the Ombudsman as an external authority. Furthermore, the Ombudsman of Cyprus, the Chancellor of Justice of Estonia, the National Office for Human Rights of Latvia, the Ombudsman for Equal Opportunities of Latvia, the Plenipotentiary for the Equal Status of Men and Women of Poland, the Slovak National Centre for Human Rights, the Ombudsman of Montenegro, the Ombudsman of Bosnia and Herzegovina and the Ombudsman of Kosovo are institutions that have broader competence for the protection and promotion of human rights, with the added obligation to act in cases of discrimination. In the Republic of Albania, there are two bodies that work on protection against discrimination, namely the Ombudsman and the Commissioner for Protection against Discrimination. Similarly as in our country, where in addition to the CPPD and the Ombudsperson, it acts in cases of discrimination, with the difference that the OMB acts only in the public sphere and the Commission acts in both the public and the private sphere.

In accordance with Paragraph 2 of this article, the term of office of the members of the CPPD is five years, with the possibility of another election after the end of the first term. With the LPPD, the status and competences of the CPPD have changed, and new criteria have been introduced that members must meet in order to be part of this body. Because of this, the LPPD

provides for the termination of the mandate of the previous CPD established under the LPPD from 2010 and the election of a new composition that will reflect these provisions. In accordance with Paragraph 3 of this article, when electing the first composition of the CPPD, the Assembly will elect four members with a mandate of five years, and three members with a mandate of three years with the right to re-election with a mandate of five years. When registering the candidates for the first composition of members of the CPPD, each candidate will state the time period, that is, the length of the mandate for which he/she would like to be elected. This legal solution with different length of the mandates of the different members of CPPD enables continuity in the work and partial re-election of new members who will be able to work with the members from the previous composition for a certain period. During the re-election of members who had a first term of three years, they will be provided with an additional period of five years, that is, by electing new members in place of those who had a term of three years, they will be enabled to work with members who already have institutional memory about the previous work, policies and plans for the future development of CPPD. An additional opportunity for male and female candidates to apply for a different mandate to the first composition of the new CPPD is the fact that they will be able to choose how long they will distance themselves from their existing work positions in order to devote themselves professionally to establishing and working in the new CPPD.

Comparative experiences between EU member states differ regarding the duration of mandates of equality bodies and the possibility of re-election. There are countries where the re-election of members is allowed, while in other countries there are certain criteria to limit such an election. For example, in the Republic of Ireland, the mandate lasts for five years, and members have the right to one more re-election. If they are re-elected, the members do not have the right to run for office in the next five years, counted from the last day of the second term. The *Law on Protection against Discrimination of the Republic of Bulgaria* (The State Gazette of the Republic of Bulgaria No. 86/30.09.2003) does not provide the possibility of re-election of the members of the Commission. The term of office of the head of the Equal Treatment Authority in Hungary is nine years without the possibility of re-election. The ombudsman in our country has a mandate of eight years with the possibility of one more election.

In accordance with Paragraph 4 of this article, the members of the CPPD elect a president from their ranks for a term of one year, without the right to re-election, which actually gives the opportunity to a larger number of members to be elected to this position. According to the existing Rules of Procedure, the president is elected by a majority of votes from the total number of members of the CPPD (Article 8 Paragraph 2 of the Rules of Procedure). The President presides over the CPPD, represents and represents the Commission, organizes and coordinates its entire work process, signs the acts and minutes of the sessions adopted by the Commission, monitors the promptness of the work on them, presides over the sessions of the Commission and performs other tasks established by law (Article 8 Paragraph 3 of the Rules of Procedure). In all other powers and responsibilities, the members of the Commission are equal and their voice is equally valued when making decisions.

On the other hand, in accordance with Article 9 of the Rules of Procedure, the competences of the members of the CPPD are as follows: they participate in the work and decision-making of the sessions of the CPPD, propose the convening of sessions and propose items on the agenda, implement the procedure for completing the subjects that as reporter members are assigned to work in cooperation with the expert service, prepare the requests and urgencies that require data from the institutions of the public sector in relation to subjects assigned to them in work, they sign all correspondence and carry out the overall communication for the collection and exchange of data and documents necessary for dealing with the assigned

cases, refer to the cases assigned to them at work, participate in debates and discussions regarding the cases that are on the agenda, prepare draft acts for subjects assigned to them in their work, participate in voting for the adoption of acts under the competence of the CPPD and perform other tasks established by law and the Rules of Procedure.

CPPD as a collective body enables greater representativeness of the various communities living in the Republic of North Macedonia. Namely, Paragraph 5 of this article stipulates that the composition of CPPD should reflect the composition of society as a whole, which imposes the obligation to apply the principle of adequate representation of all social groups, the principle of adequate and fair representation and gender balanced participation. The demand for gender-balanced participation in the work of the CPPD should contribute to increasing the number of women in the structure of the body, but also in the professional service that should be established. The current compositions of the Commission, both of the previous CPD and the existing CPPD, did not achieve the appropriate level of representation of community members and gender representation. The first composition of the previous CPD (2011-2015) had three women out of a total of seven members and two ethnic Albanians and one Vlach, in the second composition of the previous CPD (2016-2018) there was only one woman and two ethnic Albanians, while representatives of other ethnic communities or women from other ethnic communities, except for one Vlach in the first composition, were completely absent from the compositions. The existing CPPD had only two women and 5 men at the time of the election, of which one month after the election by the Assembly and assuming the position, one woman resigned from her position, while the CPPD remained functioning with only one woman. At the end of 2022, another member of the Commission resigned due to personal reasons, so now the existing CPPD functions with 5 members, of which 4 are men and one woman, one Roma, one Albanian and one Turkish and two ethnic Macedonians. CPPD points out in its *2022 Annual Report* that, "[in] conditions of the increasing presence and visibility of CPPD in the Macedonian democratic society and the significantly increased number of received cases for protection against discrimination in 2022, this situation seriously complicates the normal functioning, but also creates risks of prolongation of decision-making deadlines and reduction of efficiency in the operation of CPPD as a whole" (CPPD, *2021 Annual Report*, p. 9).

Additionally, in this provision, the LPPD imposes an obligation for "adequate representation of all social groups", which emphasizes the need to include other social groups that are less represented and visible (persons with disabilities, LGBTI+ people, members of marginalised groups in society) and representatives of other ethnic communities, especially those exposed to a greater degree of discrimination (Roma). In none of the composition of the Commission, both the previous CPD and the existing CPPD, neither as a member nor as part of the professional service was there a person with a disability. The principles of gender and other appropriate representation apply not only to the members of the CPPD but also to all employees of the professional service (Article 22), and the advisory bodies that may be formed for certain specific issues related to promotion, prevention and Protection against Discrimination (Article 21 Paragraph 1 Point 23). This is a standard established by the Paris Principles, according to which national human rights institutions should reflect the composition of the social forces that will be represented, coming from civil society organizations, trade unions, professional associations (of lawyers, doctors, journalists, scientists), representatives of philosophical and religious thought, representatives of universities and prominent experts, the parliament and representatives of government institutions that will have an advisory role.

Regarding the composition of the body, some of the states have introduced specific provisions through which adequate representation of social groups is ensured. Thus, in Great

Britain, the composition of the body is provided to include a person with a disability, a person with knowledge of the conditions in Scotland and a person with knowledge of the conditions in Wales (Equality Act (2006) of Great Britain). In the Republic of Ireland, the number of members of the Commission may vary between 12 and 15, but the ratio of men to women must be at least 6:6 if the body has 12 or 13 members, or 7:7 if the body has 14 or 15 members. The body in Belgium is composed of 21 members, ten of whom are elected by the federal parliament, four by the Flemish parliament, two by the Walloon parliament, two by the parliament of the French-speaking community, two by the Brussels parliament and one member elected by the parliament of the German-speaking community.

3.2. Requirements for Election of Commission Members

Article 17
Requirements for Election of Commission Members

Any person who fulfils the following requirements may be elected as Commission Member:

1)to be a citizen of the Republic of North Macedonia;

2)to have acquired 240 credits according to ECTS or VII/1 level of education and to have a minimum of seven-year work experience in the area of human rights, of which five years in the area of equality and non-discrimination;

3)At the time of appointment, shall not have been imposed any imprisonment of more than six months or prohibition to perform a profession, activity or duty by an effective court judgement;

4) not to be an office-holder in a political party.

This article regulates the conditions that a person has to fulfil in order to be elected as a member of the CPPD. The first criterion contained in Point 1 of this article is that the candidate is a citizen of our country, a formal condition that is essential and decisive for practicing the profession. Foreigners during their legal stay in the Republic of North Macedonia have the same rights and obligations as citizens of our country, unless otherwise established by law. The application of the *Law on Foreigners* is carried out in accordance with the international agreements that the Republic of North Macedonia has ratified in accordance with the Constitution, and which put the foreigner in a more favourable position. The Republic of North Macedonia has the right by law to regulate special rights for citizens and non-citizens if those laws do not discriminate against members of a certain nationality in accordance with the Committee for the Elimination of All Forms of Racial Discrimination (General Recommendation No. 30, CERD/C/64/ Misc.11/rev.3, 2004, Paragraph 1). The International Covenant on Civil and Political Rights guarantees that every citizen in the signatory state, among other rights, is guaranteed access to public service (ICCPR, 1965, Article 25). As holders of public office, the members of the CPPD should be citizens of our country, and this criterion does not represent a different treatment in relation to people who are not citizens because it qualifies as the difference that is justified, that is, it falls under a measure and actions that do not represent discrimination in accordance with article 7 Paragraph 3 Point 1 of the

LPPD. See more about this in Part 1.5. Measures and Actions not deemed to constitute Discrimination Nationality is proven by submitting a nationality certificate issued by a competent institution.

The second criterion from Point 2 of this article is a prediction of a certain degree of education and experience that the member of the CPPD should possess in order to be elected. First of all, the candidate for a member of CPPD should have at least a higher education, that is, have obtained 240 credits according to the European Credit Transfer System (ECTS) or have a VII/1 degree of education. The previous LPPD (2010) stipulated that members have at least a higher education in the area of human rights or social sciences. The current provision does not limit the type of education acquired, only the degree is limited to VII/1 or higher, but there is an additional criterion that the person must cumulatively fulfil in addition to a higher education in order to be elected as a member of the CPPD. Namely, in addition to education, the LPPD provides for a minimum of seven years of work experience in the area of human rights, of which five years in the area of equality and non-discrimination. This means that the candidates for the members of the CSC should have many years of experience in the area of discrimination, unlike the previous criteria in the CSC (2010) for which the general criterion of five years of work experience was valid regardless of the area in which they worked.

Excerpt from the Academic Literature No. 41

"The need to possess a certain level of completed formal education, like any other criterion, should be a means of providing people with the special knowledge and skills for a certain position, and not be a means of exclusion" (Kotevska, 2015, p. 23).

In our country, there are people who have many years of domestic and international experience in the area of human rights and non-discrimination, and they do not have a formal higher education, which limits their ability to apply their knowledge and contribute to the work of CPPD as members. Introducing a certain number of years of work experience in the area of human rights and non-discrimination aims to ensure a better quality of the composition of the CPPD. The previous requirement for five years of work experience, without a specific determination of the area, was not enough to provide a guarantee that the members of the previous CPD would have enough knowledge and experience to be able to perform their competence in promotion, prevention and Protection against Discrimination. The weaknesses of the previous composition of the Commission were also noted in the reports of the European Commission on the state's progress in the European integration process. For the first composition, it was noted that "the overall capacity of the Commission remains weak" (European Commission, 2012, p.19), "there are insufficient staff and resources, and there are concerns regarding its independence" (European Commission, 2015, p. 73). Regarding the second lineup, the 2016 report says: "The new members of the Commission for Protection against Discrimination were appointed in a non-transparent election process. Some members have made public statements that have called into question the appropriateness of their appointment and their ability to act in an objective and professional manner. The Commission's impartiality and independence are still at a worrying level' (European Commission, 2016, p.88). Regarding the existing composition of the CPPD, the State Progress Report for 2021 states that "The Assembly carried out a transparent election for members of the Commission for Prevention and Protection against Discrimination" (European Commission, 2021, p.9).

The third criterion for the selection of a member of the CPPD in accordance with Point 3 of this article at the moment is that the appointee has not been sentenced to a prison sentence of more than six months or a ban on performing a profession, activity or duty. This provision provides a guarantee that the newly elected member who is to take office should not serve a

prison sentence longer than six months for the duration of the mandate. The ban applies to any crime, regardless of the area in which it was committed.

Excerpt from the Academic Literature No. 42

"Regarding the condition that he/she has not been sentenced to a ban on performing a profession, activity or duty, it should be noted that the ban on performing a profession, activity or duty is one of the penalties provided for in the Criminal Code in Article 38-b or a misdemeanour sanction ban on performing a profession, activity or duty provided for by Article 13 Paragraph 1 Point 5 of the *Law on Misdemeanours*. In general, the need for this criterion is not disputed, but the absence of clarification, that is, of matching the pronounced ban with the duties of the job, for which the person is applying, points to potential discrimination. A person may be considered not to meet this requirement even though the prohibition he has may refer to the performance of a profession, activity or duty that is not at all related to the job for which he is applying. Although not in the same case, the principles laid down in the judgment of the ECtHR in the *Thlimmenos* case (Thlimmenos v. Greece, [GC], App. No. 34369/97, Judgment of 6 April 2000) are also applicable in the analysis of this criterion. Namely, a person to whom such a ban has been imposed for a specific profession, activity or duty cannot have a general obstacle to employment" (Kotevska, 2015, p. 21-22).

The fourth criterion that the candidates for CPPD members should fulfill is that they should not hold office in a political party. LPPD does not limit the right to membership in a political party as a condition for election, although in practice it may affect the impartiality and objectivity of the action. However, it is a collective body that decides on everything with a majority of votes from the members of the CPPD. The prohibition from Point 4 of this article refers to the performance of party functions in the bodies of the political party.

In comparison, different countries have different criteria for members/heads of equality bodies. For example, in the Republic of Serbia, the Commissioner for the Protection of Equality has to meet the following formal conditions in order to be elected: (1) be a law graduate; (2) to have at least 10 years of experience in legal affairs in the area of human rights protection; and (3) possess high moral and professional qualities. Likewise, the Commissioner cannot perform any other public or political office, nor any professional activity. In the Republic of Bulgaria, the Commission has 9 members, of which at least 4 in each composition must be lawyers. Furthermore, the Law also requires adequate experience in the protection of human rights without specifying a minimum number of years. As in the Republic of Serbia, this position is incompatible with any other political or other position, or any paid work, unless it is for scientific research purposes. On the other hand, the Danish Equal Treatment Board is composed of three judges who make up the presidency and nine members who are law graduates, and all members have expert knowledge of labour market regulation and discrimination.

The composition of the CPPD, including the employees in the professional-administrative field, is extremely important for ensuring independence in the implementation of the competences. The provisions of the LPPD provide a guarantee for a higher quality composition of members than what was previously provided for in the Law, but also the result in practice. Independence has several aspects, that is, in addition to the legal guarantee, it is necessary to ensure the de facto independence of the members. In doing so, it is necessary for the members to perform their function in accordance with their views, to communicate with an understanding of equality, non-discrimination and diversity in accordance with their analyses, as well as to independently manage the resources made available to them.

Article 18
Procedure for Election of Commission Members

(1) The Assembly of the Republic of North Macedonia shall publish a public announcement for the election of Commission Members in at least two daily newspapers circulated across the Republic of North Macedonia, one of which shall be published in the language spoken by at least 20% of the citizens speaking an official language other than Macedonian. The announcement must be published in the “OfficialGazette of the Republic of North Macedonia”, on the website of the Assembly of the Republic of North Macedonia and on the Commission’s website in all the languages of the communities in the Republic of North Macedonia.

(2) The announcement referred to in Paragraph (1) of this Article shall be valid for 30 days as from the date of its publication in the “Official Gazette of the Republic of North Macedonia”.

(3) The Commission for Elections and Appointments of the Assembly of the Republic of North Macedonia defines a proposed list of the registered candidates, after a previously conducted public hearing and within 14 days after the expiration of the period from Paragraph (2) of this article, submits it to the Assembly of the Republic of North Macedonia in an attachment with material from all submitted applications and a report from the conducted public hearing.

(4) If the Assembly does not elect members of the Commission, the election procedure shall be repeated in its entirety by publishing a public announcement immediately, and not later than within ten days.

This article defines the procedure for electing members that is carried out before the Assembly. In accordance with Paragraph 1 of this article, the procedure begins with the publication of a public announcement for the election of members of the CPPD in the Official Gazette by the Assembly. For the sake of greater dissemination of information about the publicly published announcement, the LPPD imposes an obligation to publish the announcement in at least two daily newspapers published throughout the country, one of which is published in the language spoken by at least 20% of the citizens. who speak an official language other than the Macedonian language. In addition to this, there is an obligation to publish the announcement on the websites of the Assembly and the CPPD translated into the languages of all communities. In accordance with Article 45, the public announcement is published by the Parliament within 15 days from the entry into force of the LPPD and in the first announcement for the election of members of the CPPD after the entry into force of the LPPD there is no obligation to publish the announcement on the website of CPPD. See Part 7 for more information on the publication of the first announcement for the election of CPPD members. Transitional and Final Provisions

Paragraph 2 of this article stipulates that the announcement will last 30 days from its publication in the Official Gazette, which is long enough for the announcement to be disseminated to more people, potential candidates and candidates for CPPD members. In order to achieve the purpose of this article and for the advertisement to be available to as many people as possible, it is extremely important that the advertisement is published simultaneously in all

the channels of communication with the public provided for in Paragraph 1 of this article in order to ensure a sufficiently long time for the dissemination of the announcement, taking into account that a small number of people have access to the editions of the Official Gazette. The provision of language availability of the advertisement is also to be welcomed.

After the end of the announcement, and in accordance with Paragraph 3 of this article for the total number of registered candidates who meet the requirements to be a member of the CPPD, the Commission on Elections and Appointments of the Assembly schedules a public hearing where the biographies of the candidates. Based on the conclusions of the public hearing, the Commission on Elections and Appointments of the Assembly establishes a proposed list of members that will be subject to voting before the plenary composition of the Assembly, no later than within 14 days after the deadline for publishing the announcement in Official Gazette. In addition to the proposed list, the Committee on Elections and Appointments of the Assembly also submits materials from all submitted applications from the candidates and a report from the conducted public hearing, so that the MPs can have an insight into the remaining applications before casting their vote for the proposal list.

Excerpt from the Academic Literature No. 43

"Publishing a public announcement for the selection of members of the CPPD is a good practice that contributes to greater independence of the body" (Equinet, 2012, p.15).

In practice, it has been shown that the sole obligation to publish in the Official Gazette and printed daily newspapers is not enough for wide distribution of the call for candidates to register. As a result of this, the announcement, registration and selection of the previous composition of the CPD was non-transparent, and even the associations of citizens and individuals working in the area of protection against discrimination found out about some of the candidates after seven of them were officially elected by the Parliament (Network for protection against discrimination, 2016). During the selection of the first composition, there was a discussion at the plenary session of the Assembly about some of the candidates for members of the first composition of the CPD.

Thus, as the legal solution and the concept of appointed persons are set, the Assembly implements the procedure and elects the members of the CPPD. The decision-making process for the members of the CPPD is closed within the framework of the Assembly and there is no possibility of reconsidering this decision. The list prepared by the Commission on Elections and Appointments of the Assembly contains only those candidates who meet the conditions stipulated by the LPPD, that is, those seven candidates that they voted for as a draft composition of the CPPD. With Article 16 Paragraph 5, explained in Part 3.1. Legal subjectivity, budget and composition of the Commission, an obligation is imposed during the preparation of this proposal-list, for the deputies to apply the principles of adequate representation of all social groups, the principle of adequate and fair representation of the members of the communities and gender-balanced participation, but there is no guarantee that this proposal list will, indeed, reflect the composition of society as, in fact, is the requirement of the Paris Principles. It is precisely the gender imbalanced composition of the existing CPPD that proves this contradiction in practice.

The Rules of Procedure of the Assembly in the Part Elections, appointments and dismissals of holders of public and other functions provides that the Assembly carries out the election, appointment and dismissal of holders of public and other functions in a manner established in the Constitution and laws (Article 114). The LPPD provides for a mandatory public hearing in the Assembly's Elections and Appointments Committee after the applications of the candidates, which is the only mechanism for controlling the process of preparing the

proposed list of candidates that is subject to the Assembly's vote. For greater transparency of the process of selecting the members, representatives of civic organizations, institutions, prominent individuals in the area should participate in the public session so that they can contribute to the selection of the candidates according to their quality and expertise with their discussion. The public discussion should especially focus on the experience of the candidates in the area of human rights and discrimination and on the diversity in the composition of the proposal list. A criticism of the selection process for the existing composition of the CPPD, although it was transparent and all interested persons could apply for the announcement, was that there was no technical check of the candidates' applications to see if they met all the selection criteria listed in Article 17. The process of interviewing all registered candidates before the Commission on Elections and Appointments of the Assembly, which was also open to citizens' associations and was also broadcast on the Assembly channel, is commendable.

After the Election and Appointments Committee of the Assembly has voted for each individual candidate from the proposed list and established the proposed list, together with other materials, it will be submitted for voting at the plenary session of the Assembly. MPs will receive applications from other candidates who are not on the proposed list, however, they will not be able to vote for other candidates except for those who are on the list, that is, MPs will be able to vote "for"; "against" or "abstain" for the entire proposal list. Changing the names on the proposed list can be done if the Committee on Elections and Appointments of the Assembly withdraws the proposal with the proposed list and proposes other candidates. The decision of the Assembly on the election of the members of the CPPD is final and is published in the Official Gazette.

In the event that the Assembly does not elect members of the Commission, in accordance with Paragraph 4 of this article, the selection procedure is repeated in its entirety by cancelling the previous announcement and publishing a new public announcement immediately, and not later than ten days. Then there will be a public document, determination of a proposed list of candidates for the Commission on Elections and Appointments of the Assembly and its submission to the plenary composition of the Assembly for a vote.

Candidates who are not elected as members of the CPPD may file a claim with the Administrative Court in accordance with Article 55 of the *Law on Administrative Disputes*, which ensures the protection of freedoms and rights guaranteed by the Constitution, if the right is violated by a final individual act, and not there is a possibility of other judicial protection.

Excerpt from the Academic Literature No. 44

"For comparison, the way of choosing or appointing equality bodies in European countries is different. There are examples of a board elected partly by a council of organizations working in the area of human rights and partly through nominations from universities, and the board chooses its own president/chairman from among its own ranks. This is an example of good practice [from Hungary and the Republic of Ireland] considering that the entire process of electing body members is independent of the state. In other cases, equality bodies, whether collective or indirect, are elected by the Parliament (Croatia, France, Belgium, Latvia, Czech Republic). This is also recognized as good practice considering that the selection process is independent of the state administration or other specific political body and the appointees may be perceived as independent of the influence of the administration or other political body. There are equality bodies which have part of the leadership/commissioners elected by the Parliament and another part by the President of the State or Minister (Bulgaria). Most of the equality bodies, members of the European Network

of Equality Bodies are appointed by the president of the state or by a competent minister in the respective government (Denmark, Spain, Germany, Austria)" (Equinet, 2012, p.15).

However, the number of countries where equality bodies are elected on the ground of a public announcement through which the collective or international body is chosen is small. For example, in the Equality Act of Great Britain, it is provided that the selection of the members of the body is carried out through a public announcement, and the selection is carried out by the Secretary of State. In Bosnia and Herzegovina, the Parliamentary Assembly forms a special temporary (Lat. *ad hoc*) commission whose task is to publish the public announcement for the application of attorneys-at-law, and based on the applications to compile the list of candidates who meet the conditions to be selected. The list of candidates is submitted to the House of Representatives and the House of People for further voting. The decision to elect ombudsmen enters into force with the voting in both houses of the Parliamentary Assembly. In Serbia, the Commissioner for the Protection of Equality is elected by the Parliament on the proposal of the Parliamentary Commission for Constitutional and Legislative Affairs. Each parliamentary group has the right to propose one candidate to the Commission for Constitutional and Legislative Affairs, which candidates are further subject to voting and election within the commission.

The selection of the members of the CPPD through a public announcement increases transparency and enables the largest number of people who meet the criteria to apply as candidates. The model of election of the body for equality by the Parliament is a good practice, considering that the election is independent from the state administration, however, in our context, it is necessary to improve the transparency in the election process within the Commission for Elections and Appointments and the method of forming the list of candidates proposed for election to the Assembly. One of the proposals is the submission of an open list of candidates who are given preference for election, which will be longer than seven members, which the members of parliament can discuss and vote for each member separately.

3.3. Status of Commission Members and Dismissal and Termination of Office of a Commission Member

Article 19
Status of Commission Members

(1) Commission Members shall have the status of appointed persons who shall perform their function professionally and such function shall be incompatible with the performance of another public office, profession or political party function. The Commission Member's public office shall be terminated. If a Commission Member was employed before his/her appointment, such employment shall be on stand.

(2) Commission Member whose term of office has expired shall serve until the appointment of a new member, but no longer than three months.

(3) Commission Members shall be entitled to salaries and other benefits in accordance with the Law on Salaries and Other Benefits of Elected and Appointed Officials.

COMMENTARY on the law on prevention and protection against discrimination

This article defines the status and the right to compensation for the work of the members of CPPD. Like the previous Law, the current one also stipulates that the members of the CPPD are appointed persons, but unlike the previous decision, the members perform the function of a member of the CPPD professionally, that is, during the performance of the function, they may not perform any other public function, profession or position in a political party. The status of an appointed person has the status of any person elected from among the deputies, as well as the persons elected or appointed by the Parliament, the holders of judicial functions, as well as the persons appointed by the President and appointed by the Government. The named persons have rights and obligations that are regulated by the special laws that provide for their election. They are different from administrative officers, who, in turn, are persons who have established an employment relationship for the purpose of performing administrative work in the state or local government or other institutions that perform public activities established by the *Law on Administrative Servant*. Hence, the manner of their employment and termination of employment is tied to a specific process of selection, testing and evaluation as a criterion for employment and advancement. On the other hand, the appointed persons have special obligations and powers in relation to the ban on performing other activities, the restriction on establishing cooperation with legal entities, disposal of state property, use of foreign aid and others. This is regulated in the *Law on the Prevention of Corruption*.

The elected members of CPPD have an obligation upon election, that is, no later than within 30 days from the day of election, to fill out a questionnaire with a detailed inventory of immovable property, movable objects of greater value, securities and claims and debts, as well as other property that is in their possession, or in the possession of their family members, stating the basis of acquisition of the reported property and to submit it to the State Commission for the Prevention of Corruption and the Administration of Public Revenues. They have the same obligation even after the termination of their position.

If the candidate holds a public office or is employed, upon his/her election, his/her public office will cease, and his/her employment will be suspended until the end of the mandate as a member of the CPPD.

Paragraph 2 of this article stipulates that the member of the CPPD whose mandate has expired can perform the function until a new member is appointed, but not longer than three months. With this provision, it is guaranteed that the expiration of the mandate provided by law does not automatically mean that CPPD will be left without one or more members whose mandate has expired, but will ensure smooth functioning in full composition until the procedure for electing and appointing new members is completed. The legislator provided a limit of three months within which the procedure for electing new members should be completed, in order to prevent unjustified stretching of the procedure for electing new members who will succeed the members with an expired mandate.

Paragraph 3 of this article guarantees compensation for the members of the CPPD, which is more precisely regulated by the *Law on Salaries and other Remunerations of the Members of Parliament and other Elected and Appointed Persons in the Republic*. Salary funds are provided by the state budget, and the amount is established depending on the social significance and value of the work and tasks they perform, as well as the complexity, volume and total contribution of the official in the exercise of the rights and duties of the authority in which he performs the function. The salary is calculated in such a way that the basis for calculating the salary is multiplied by the established coefficient and increased by the percentage for the work experience, and the average paid monthly salary per employee for the previous year is taken as the basis, according to the data of the State Statistics Office. The amount of the remuneration of the members of the Commission was established by Article 21

of the LPPD (2010), and not by the *Law on Salary and other Remunerations of the Members of Parliament and other Elected and Appointed Persons in the Republic*, so they had the right to a monthly remuneration in the amount of two average net salaries paid per worker in the country.

In the Republic of Bulgaria, the amount of the monthly salary of the president of the Commission is three average salaries of employees in the public sector, according to the National Institute of Statistics. The other members, as well as the vice-president, receive 75-80% of the salary of the president of the Commission, depending on their seniority and experience. However, in the European legislation, as well as in the members of the European Network for Equality - Equinet, there are different experiences which, above all, depend on the fact that the members are professionally engaged persons and during their mandate they must not have another paid engagement, or, on the other hand, these are appointed persons for whom this engagement is usually an additional activity.

Article 20
Dismissal and Termination of Office of a Commission Member

(1) The Assembly of the Republic of North Macedonia shall dismiss a Commission Member before the end of his/her mandate, upon a proposal from the Commission of Elections and Appointments, if:

1)The Commission Member was issued a final decision imposing a ban on performing his/her profession, activity or duty;

2)The Commission Member has been issued a final court decision sentencing him/her to more than six months of imprisonment;

3)The Commission Member has permanently lost his/her legal capacity to perform his/her office in line with the Law; and

4)The Commission Member has performed his/her office in an unprofessional, biased and unethical manner.

(2) A Commission Member's term of office shall be terminated if:

1)He/she requests this on his/her own;

2)Due to death;

3)Upon fulfilment of age retirement conditions.

(3) The fulfilment of requirements for dismissal under Paragraph (1) of this Article shall be established by the Commission of Elections and Appointments by a majority vote of its total number of members upon a previously conducted public hearing, and it shall submit an initiative to dismiss a Member of the Commission for Protection against Discrimination to the Assembly of the Republic of North Macedonia, along with a Report on the Public Hearing held.

(4) When a Commission Member has been dismissed or his/her term of office ceased in accordance with the provisions of Paragraphs (1) and (2) of this Article, the Assembly of the Republic of North Macedonia shall publish an announcement for appointment of a

Commission Member with a mandate until the expiry of the mandate of the Member being replaced.

According to Article 16 Paragraph 1 of the Law, the Assembly elects and in accordance with Article 20 Paragraph 1 dismisses the members of the CPPD. This article exhaustively enumerates the cases when a member of the CPPD can be dismissed before the end of the mandate, and when he/she ceases to be a member of the CPPD. Namely, Paragraph 1 lists the cases when the Parliament dismisses the member of the CPPD before the end of the mandate. The Committee on Elections and Appointments at the Parliament makes a proposal to the MPs for the dismissal of a member of the CPPD, if during the performance of the member's office, he/she is prohibited from performing a profession, activity or duty by a final decision (item 1) or has been sentenced to imprisonment for more than six months (item 2). Absence of these penalties are a condition for the member's election, and their imposition is a reason for his/her dismissal from office. In addition, the permanent loss of psychophysical ability to perform the function is a reason for a member of the CPPD to be dismissed (item 3). Proving the state of health during the candidacy is not a condition for the election of a member of the CPPD, but if during the performance of the office the psychophysical ability of the member is impaired to the extent that he cannot perform his duties in accordance with the law, the Committee on Elections and Appointments at the Assembly will make a proposal for dismissal. However, the provision is not clear in which way the Commission on Elections and Appointments at the Assembly will establish the permanent (in)capacity of the member without violating his/her right to mental and physical integrity. It is particularly important to specify the procedure for assessing the health status of the members, that is, their loss of psychophysical ability to perform the function in order to prevent discrimination based on health status and/or disability.

Finally, in accordance with Point 4 of Paragraph 1 of this article, the reason for dismissal of a member of the CPPD is the unprofessional, biased and negligent performance of the function. Unprofessional, biased and negligent work is a wording that is used to establish the reasons for the dismissal of other elected and appointed persons (for example: OMB, judges, public prosecutors, etc.). However, the reason for dismissal set in this way is too general and leaves the possibility for arbitrary interpretation and certain abuse or, on the other hand, non-application of the provision when objectively there are conditions for it. For example, in the previous composition of the CPD, "members of the Commission publicly made statements that represented discrimination, that is, a violation of the *Law on Prevention and Protection against Discrimination*" (European Commission, 2016, p.88), and they did not take responsibility for that. Because of this, a clearer definition of unprofessional, biased and negligent behaviour is needed through a wording that will indicate a violation of the laws that the members are obliged to respect. Unprofessional work may include the actions of a member of the CPPD contrary to the LPPD and other regulations in the area of discrimination, which indicates that he/she does not possess sufficient expertise to be able to carry out his/her competences. While negligent and biased behaviour refers more to inefficient and/or inefficient implementation of the competences which may include inefficient and inefficient conduct of the procedure, abuse of position, overstepping of authority, violation of the independence of CPPD and other behaviour that can affect the quality and the efficiency of CPPD operations. Bias can also refer to a subjective interpretation of the LPPD in accordance with the views and opinions of the member of the Commission without an objective review of the relevant position. These criteria should be generally accepted and applied to all elected and appointed persons. From the previous practice, the Agency for Audio and Audiovisual Services has submitted a *Notice* to the President of the Assembly *03-1291/2* dated 30.3.2017, with which it

informs him about the obstacles in the inter-institutional cooperation with the Commission and the change in the practice of the Commission in applying the provisions of The law in the Part on handling applications, but there was no reaction from the Assembly as the competent authority for monitoring the operation of the CPPD.

Paragraph 2 of this article exhaustively enumerates the cases when the mandate of a member of CPPD ends, that is, when the member himself/herself requests it, when the death of the member has occurred or if the member has fulfilled the conditions for old-age pension. Each member can submit a request to the Commission on Elections and Appointments at the Assembly to have his mandate terminated. According to the Rules of Procedure of the Assembly, every holder of a public or other office elected or appointed by the Assembly has the right to submit a resignation and can explain it within 15 minutes. In accordance with Article 115 of the Rules of Procedure of the Assembly, at the first following session, without a search, the Assembly ascertains that the public office holder's mandate ends on the day of the session. In the event of the death of a member of the CPPD, the Assembly adopts a decision terminating his/her mandate. When the members reach the legally prescribed age for acquiring the right to an old-age pension at 64 years, that is, 67 years of age, the Assembly will pass a decision stating the termination of the member's mandate.

Excerpt from the Case Law No. 142

The CJEU accepts that compulsory retirement must not be accepted a priori as justified. In the case of *Palacios de la Villa* (Félix Palacios de la Villa v Cortefiel Servicios SA, Case C-411/05, Judgment of 16 October 2007) the Court states that in order for compulsory retirement to exist, the conditions of necessity and proportionality provided for in Article 6 of Directive 2000/78/EC. This approach allows mandatory retirement to be placed under judicial control and not to negatively affect workers who are able to work and want to work (Poposka and Jovevski, 2017, p. 61).

Hence, the need to revise this criterion is imposed as a basis for the termination of the position of a member of the CPPD for the reason that there are no specific requirements for the health and physical fitness of individuals for this position, and, on the other hand, the experience and knowledge of individual members in the area of protection and prevention of discrimination can be of great importance for strengthening the capacity of the entire institution.

In accordance with Paragraph 3 of this article, the Commission on Elections and Appointments at the Assembly defines whether the conditions for the dismissal of a member of the CPPD have been met by organizing a public hearing at which all stakeholders will be invited to participate in the discussion following the proposal for dismissal of a particular member. After the debate on the proposal for dismissal of the member is exhausted, the Committee on Elections and Appointments at the Assembly makes a decision with a majority of votes from the total number of members, and submits an initiative for dismissal to the Assembly. Along with the dismissal initiative, the Commission will also submit a report of the conducted public hearing on the dismissal proposal in order to provide the MPs with an insight into the method of determining and evaluating the dismissal conditions. Finally, the MPs decide with a majority vote whether the member of the CPPD will be dismissed.

When a member of the CPPD is dismissed or his/her mandate ends, in accordance with Paragraph 4 of this article, the Assembly is obliged to publish an announcement for the appointment of a member of the CPPD with a mandate until the expiration of the mandate that the member had change. For the procedure for announcing and selecting the members of the CPPD, see Part 3.2. Requirements for Election of Commission Members

In comparison, the Commissioner for the Protection of Equality in Serbia can be dismissed due to unprofessional and negligent work in cases where: he/she has been convicted by a final decision of a criminal offense with a prison sentence that makes him/her unworthy or unfit to perform the function, if loses his nationality, if he performs a function or professional activity, performs another duty or work that may affect his/her independence or if he acts contrary to the Law regulating the prevention of conflicts of interest when performing public functions. The procedure for the dismissal of the Commissioner for the Protection of Equality in Serbia can be initiated by one third of the deputies in the Assembly of the Republic of Serbia. In Bulgaria, on the other hand, the mandate of a member of the Commission can be terminated at the request of the member, due to being prevented from being able to perform the function for longer than six months, in case of being convicted of a criminal offense and in case of incompatibility of the function. In case of fulfilment of conditions for terminating the mandate, the chairman of the Commission will submit a reasoned proposal for dismissal to the Assembly or to the President of the Republic, respectively, for those members of the Commission appointed by the Assembly and/or the President.

3.4. Competences of the Commission

Article 21
Competences of the Commission

(1) The Commission shall:

1)Undertake activities for promotion, prevention and protection regarding equality, human rights and non-discrimination;

2)Monitor the implementation of this Law and issue opinions and recommendations;

3)Promote the principle of equality, freedom from discrimination and tackling all forms of discrimination by public awareness raising, information and education;

4)Contribute to the development and implementation of programmes and materials in the area of both formal and informal education;

5)Prepare and publish special thematic reports on specific issues in the area of equality and non-discrimination;

6)Provide General Recommendations on specific issues in the area of equality and non-discrimination and monitor their implementation;

7)Advocate the ratification of bilateral or multilateral international agreements in the area of human rights or accession to such agreements and monitor their implementation;

8)Contribute to the preparation of the reports that the state is obliged to submit to international and regional human rights bodies and contribute to the implementation of their recommendations;

9)Promote and propose harmonisation of national legislation, regulations and practices with international and regional human rights instruments;

10)Initiate amendments to regulations to enforce and improve the protection against discrimination;

11)Provide opinions on proposals of laws relevant to the prevention and Protection against Discrimination;

12)Establish cooperation with natural and legal entities, as well as associations, foundations and social partners to achieve the principle of equality and promotion of prevention and protection against discrimination;

13)Cooperate with relevant national authorities of other countries, as well as with both international and regional organisations in the area of protection against discrimination;

14)Act upon applications, and give opinions, recommendations and conclusions on specific cases of discrimination;

15)Initiate ex officio proceedings for protection against discrimination;

16)Provide information to any person interested in his/her rights and opportunities of initiating judicial or other proceedings for protection against discrimination;

17)Monitor the implementation of opinions and recommendations given regarding particular cases of discrimination up until the fulfilment of such recommendations made by the Commission;

18)Initiate and appear as an intervener in court proceedings for protection against discrimination;

19)On request by the party or on its own initiative may request the court to allow the Commission to act as a friend of the court (amicus *curiae*);

20)Quarterly inform the public about discrimination cases in a manner established by an act of the Commission;

21)Share its opinions, findings and recommendations and address the public through any media;

22)Adopt Rules of Procedure, Annual Work Plan and Programme and other acts related to its operations;

23)May establish advisory bodies of experts on specific issues related to the promotion, prevention and protection against discrimination;

24)Collect and publish statistical and other data, and establish databases related to discrimination;

25)Submit for consideration an Annual Report on its work to the Assembly of the Republic of North Macedonia by 31 March of the current year for the previous year;

26)Publish all reports, including its Financial Statement, on the Commission's website.

(2) The Commission shall ensure accessibility when performing its competences referred to in Paragraph 1 of this Article.

Paragraph 1 of this article lists the competences of the CPD that give it the role of a body for equality within national frameworks. The responsibilities are aimed at fulfilling the three functions of CPPD, that is, prevention and Protection against Discrimination and promotion of equality. Article 21 Paragraph 1 lists 26 separate competences that are interconnected and only if they are applied in a complementary manner, the purpose of the Social Security Act can be fulfilled. In the following, all the points from this article are commented on separately, in which the competences of CPPD are specified.

1. As an equality body, CPPD has the authority to undertake activities for prevention and protection against discrimination and promotion of equality, human rights and non-discrimination. Unlike the previous Law (2010), LPPD has a focus on the promotion of the principle of equality as one of the ways to achieve the inclusive equality of people. For the purpose of the Law, see Part 1.1. Subject and Purpose of the Law

Excerpt from the Academic Literature No. 45

"After the establishment of the CPPD, starting from April 2021, a practice of regularly informing the public through social media about the work of the CPPD and the legal competences undertaken has been established. The main channel for communication with the public is the Commission's Facebook page and website. In the period from April 2021 to October 2022, the total number of posts is 152, with 3,309 reactions, 100 comments and 396 shares of the published information by users of the social network who visited the CPPD page.... In terms of the nature of the published information, the largest number of publications were related to the performance of the promotional-preventive function of the CPPD (46%), mostly about the undertaken activities of the Commission in relation to the promotion of equality, human rights and non-discrimination, as well as the promotion of the principle of equality, increasing public awareness, information and education. Then, there is information regarding the protection function of the Commission (22%), that is, information on handling the submitted applications for protection against discrimination and the adopted opinions by the Commission. Part of the published information refers to the cooperation of the CPPD with the relevant factors, such as civil society organizations, international organizations, institutions (19%). Proportionately, the least amount of information has been published regarding the advisory-expert function of CPPD (3%), which is a reflection of the activities undertaken by the Commission in this field. Part of the published information referred to the preparation of the internal acts of the Commission, such as the strategy, the Work Program and the Rules of Procedure, the strengthening of the capacities of the members of the CPPD and the staffing of the expert service" (Mishev and Gliguroska, 2022, p.12).

2. CPPD has the authority to monitor the implementation of LPPD and to give opinions and recommendations. The LPPD imposes an obligation on all state bodies, bodies of local self-government units, legal entities with public powers and all other legal and natural persons to respect the principle of equality, to prevent discrimination through measures and actions for the promotion and advancement of equality and prevention of discrimination and to provide adequate protection against discrimination in case of violation of the provisions of the LPPD. CPPD monitors the implementation of these obligations by the subjects, follows the laws and policies, as well as the implementation of the opinions and recommendations that CPPD gave in relation to specific cases of discrimination. In accordance with Commission Recommendation (EU) 2018/951 on standards for equality bodies, states need to "ensure that their public authorities take into account recommendations from equality bodies on legislation,

policies, procedures, programs and practice." It should be ensured that public authorities inform equality bodies about how the recommendations are implemented and you should make this information public" (Part 1.1.2. Powers covered by the mandate of equality bodies, Paragraph 10).

The bodies for equality in the region have a similar competence, that is, the Ombudsman of Croatia issues recommendations, opinions, proposals and warnings regarding cases of discrimination. The Commissioner for the Protection of Equality of Serbia issues opinions and recommendations within the scope of his authority.

3. The promotion of equality, the right to non-discrimination and dealing with all forms of discrimination is carried out by CPPD through activities to increase public awareness, information and education. This formulation leaves a wide space for devising creative ways to communicate with the public. Activities for increasing public awareness can refer to informing the public about the work of the CPPD, information about the problem of discrimination in general, or specific issues, grounds and areas where discrimination occurs. Also, activities can be focused on separate target groups (for example: young people, elderly people, women, people with disabilities, etc.), subgroups within certain target groups in which multiple and/or intersectional discrimination occurs (women from ethnic communities, young Roma, elderly persons with disabilities, etc.) or the general public and to be implemented at the national and/or local level. CPPD can conduct educational activities on the principle of equality, the forms and types of discrimination on various grounds, the obligation of legal and natural persons to promote equality and prevent discrimination, the possibilities of protecting men and women from discrimination and on other issues within its jurisdiction. In the current practice, given the limited budget resources, this activity is reduced to a minimum and, mainly, it is realised with the support of donations and projects in cooperation with international institutions and organizations, present in our country, but also in cooperation with civil society organizations. One of the regular activities of this type of CPPD, are the public presentations of the annual reports, when data on the work done in the last year, as well as some more specific phenomena or cases of discrimination, are presented to the professional and media public. CPPD has a positive experience of convening press conferences for the announcement of quarterly reports as well as for special cases of discrimination. The obligation to publish information on the fight against discrimination, through raising public awareness, education and information through all communication channels is one of the standards provided for in the Paris Principles following Commission Recommendation (EU) 2018/951 on standards for equality bodies. They state that "in order to promote equality and diversity, States should enable equality bodies to contribute to the prevention of discrimination, in particular by providing training, information, advice, guidance and support to duty bearers under the Directives on equality, institutions and individuals and raising the awareness of the general public both about the existence of equality bodies and about the content of existing anti-discrimination legislation and how to seek legal protection" (Part 1.1.2. Powers covered by the mandate of the bodies on equality, Paragraph 11).

The *Law on the Ombudsman* provides the ways in which the Ombudsperson carries out preventive competence through research in the domain of human freedoms and rights, campaigns and various forms of raising awareness and education among the general public, as well as joint promotional activities in cooperation with the civil sector, international organizations and the academic public. Comparatively, the Ombudsman in Croatia has a similar competence in promoting the principle of equality, through regularly informing the public about the situation with discrimination, conducting research activities, encouraging and maintaining cooperation with civil society organizations, international organizations and

scientific research institutions. The Commissioner for the Protection of Equality in Serbia undertakes activities aimed at employers, service providers and other subjects through trainings, guides, practical support and other preventive activities. It also conducts activities for communication with the public through campaigns to raise awareness of the issue of discrimination. On the other hand, the Commission in Bulgaria is focused on the protective function and the Law does not provide for specific competences for the promotion of the issue of discrimination.

4. One of the new competences is the contribution that CPPD should have in the preparation and application of programs and materials in the area of formal and informal education. This competence provides the possibility for institutions, organizations responsible for the implementation of formal and informal education to request an opinion from CPPD about the program and materials that will be used in the implementation of education. Curricula, textbooks and materials should promote the principle of equality and should not contain negative stereotypes and prejudices regarding gender roles, sexuality, ethnicity, disability, addictions and all other discrimination grounds from Article 5 of the LPPD.During the preparation of the text of the LPPD, the current situation with educational programs, textbooks and aids used in formal education, which contain disturbing content on various grounds, was taken into account. (Coalition of sexual and health rights of marginalized communities, 2015; Coalition of sexual and health rights of marginalized communities, 2011; Kotevska, 2016). Namely, since the adoption of the former LPPD (2010) and the formation of the first composition of the former CPD, it has been acting on applications for textbooks containing disturbing content on various grounds (sex, gender, ethnicity, sexual orientation, gender identity, belonging to a marginalised group, religion or religious belief), and are used in formal primary, secondary and higher education. In addition, an analysis of Stereotypes, prejudices and discrimination in education has been prepared with expert support: Focus on primary education textbooks in 2016. In the period 2011-2018, the CPD acted on 17 applications for textbooks and teaching aids used in primary, secondary and higher education. The number of textbooks with contentious content is much higher, so the legislator has provided the monitoring of the curricula and their application by the CPPD in a systematic way that will ensure the reduction of discrimination and harassment in education. In fact, the comprehensive strategy for education 2018-2025 provides the revision of curricula and programs in primary and secondary education in order to establish quality and current textbooks as a source of modern and relevant knowledge and as a tool for promoting multiculturalism, respect for diversity and democratic values.

Excerpt from the Case Law No. 143

In May 2022, in accordance with Article 21 Paragraph 1 Point 4 of the LPPD, after a request for the submission of an expert opinion, the CPPD issued an expert opinion on the terminology used in material for formal education, a prepared chapter from a textbook - Children's Dentistry, with the title Dental protection of children with disabilities. The request to CPPD for an expert opinion on the terminology used in the indicated chapter in the Children's Dentistry textbook is from the aspect of whether it contains outdated terms and disturbing speech based on disability and whether it is in accordance with LPPD.

Taking into account that it is a specific request, the answer to which requires special and additional expertise, and with the aim of professional and efficient handling of the same, the CPPD, in accordance with Article 21 Paragraph 23 of the LPPD, made a decision to establish a temporary advisory body for the preparation of the expert opinion with the inclusion of

external experts on the rights of persons with disabilities from the association of citizens Polio Plus - movement against disability.

Based on the findings of the analysis of terminology used in material for formal education, CPPD gave the following expert opinion and recommendations for correcting the text and harmonizing it with LPPD and CRPD of the UN:

- to use the classification of types of disability in accordance with Article 1 of the CRPD;

- not to identify a disease with a state of disability. This identification constitutes harassment based on disability within the meaning of Article 9 of the LPPD.

- to correct the parts of the text that emphasize special needs and attention in working with children with disabilities, which are also needed for working with children without disabilities, such as the dentist's good communication with children with disabilities, establishing a friendly relationship, receiving affection and sympathy from side of children and the appearance of hyperactivity, anxiety, unpredictable reactions and retention of attention for a short time. These characteristics are typical of all children, regardless of whether or not they have a disability.

The ombudsman also has the authority to take actions to prevent and protect against discrimination in the area of education, although this is not explicitly stated in the *Law on the Ombudsman*. Since the adoption of LPPD (2010) until today, the Ombudsperson has acted on applications regarding discriminatory and disturbing content in textbooks used in educational programs in primary, secondary and higher education. This competence is specific to the CPPD that does not appear in the legally provided competences of the bodies for equality in the region and beyond, which does not mean that they also do not have the opportunity to influence educational programs and the elimination of discrimination in the materials used in formal and informal education. For example, the *Law on Protection against Discrimination of the Republic of Bulgaria* (The State Gazette of the Republic of Bulgaria No. 86/30.09.2003), imposes an obligation on the Ministry of Education, local self-government units and educational institutions to take measures that will not allow segregation and other forms of discrimination during teaching by any interested party in the educational process.

5. CPPD has an obligation to report on issues in the area of equality and non-discrimination in special thematic reports. In its operations, the CPPD monitors the trends in society with discrimination, its bases, forms and types, the areas in which it most often appears, and accordingly prepares thematic reports through which it informs the public. Previous CPD published analyses and research on specific areas, for example, Discriminatory advertisements (2013), Segregation of Roma children in education (2014), Gender pay gap at the national level (2015), Appropriate accommodation for persons with disabilities (2016) and others. The existing CPPD has not produced a special thematic report until now, but in 2021 it prepared an expert opinion on the proposal for the introduction of the category of ethnicity in identity cards, contained in the Draft-law amending and supplementing the *Law on ID Cards* (CPPD, *2021 Annual Report* year, p. 32). In 2022, CPPD produced two expert opinions, namely on the terminology used in the material for formal education, a prepared chapter from a textbook on Children's Dentistry entitled Dental protection of children with disabilities and an expert opinion on the draft *Law on Administrative Servants* (CPPD, *2022 Annual Report*, p. 39-41). The OMB can submit to the Assembly a special report on the affairs of its competence to the bodies of the local self-government units in whose territory the office is organized as an organizational unit. In accordance with Commission Recommendation (EU) 2018/951 on standards for equality bodies there is an obligation for states "to enable equality bodies to regularly publish independent reports and present them to the relevant public institutions,

including the relevant national or regional governments and parliaments where appropriate. Their scope should be wide enough to allow an overall assessment of the situation regarding discrimination in the country for each of the protected grounds" (Part 1.1.2. Powers covered by the mandate of equality bodies, Paragraph 8).

In comparison, the Ombudsman in Croatia, as an equality body, informs the Parliament about discrimination on various grounds in its annual report, and prepares special reports as necessary. The Commission for Protection against Discrimination in Bulgaria has the authority to publish independent reports with recommendations regarding all aspects related to discrimination.

6. CPPD has the authority to give General Recommendations on certain issues in the area of equality and non-discrimination. In 2021, CPPD adopted four General Recommendations (CPPD, *2021 Annual Report*, p. 32), supplemented by two more in 2022 (CPPD, *2022 Annual Report*, p. 36-38). Until April 30, 2023, CPPD has adopted two more General Recommendations. For General Recommendations on protection against discrimination, see Part 4.5. Commission’s Decisions General Recommendation for Protection against Discrimination

7. Through its promotional and protective function, CPPD advocates for the ratification of bilateral and multilateral agreements with other countries in the area of human rights that will improve the situation with human rights and protection against discrimination. After the ratification, CPPD monitors the translation of these agreements into the national legislation and the implementation of these agreements in practice by monitoring the process of harmonization and implementation of the laws, preparation of reports to the bodies for the protection of human rights at the UN and other activities. In 2022, CPPD sent its contribution to the European Commission's consultation on preparing standards for equality bodies in which it highlighted the importance of having strong and efficient equality bodies in the fight against discrimination and promotion of the principle of equality, guaranteeing the independence of bodies for equality, accessibility of the services of equality bodies for all citizens and the impact of binding minimum standards for strengthening equality bodies and ensuring their independence and efficiency (CPPD, *2022 Annual Report*, p. 43). The ombudsman also has the authority to give the authorized proponents initiatives for the ratification of international agreements and conventions that refer to issues of protection and promotion of human freedoms and rights.

8. CPPD as a body for equality, although it is independent and can submit its own reports, has an obligation to contribute to the preparation of state reports that our country is obliged to submit to international and regional human rights bodies. Equality as a universal principle is the basis of all human rights instruments, so the bodies for monitoring the implementation of international and regional human rights instruments have a special interest in the functioning of the mechanisms for protection against discrimination at the national level and the access of citizens to effective protection. In 2022, CPPD participated in the preparation of the fourth report of the Republic of North Macedonia on the International Covenant on Civil and Political Rights. In its contribution, CPPD informed about the legislative and other measures taken during the reporting period in order to prevent and fight against discrimination based on sexual orientation, gender, gender identity, disability, socioeconomic status, age, race, ethnicity, religion, HIV status and /or nationality. At the same time, CPPD reported on the status of implementation of LPPD as well as all steps taken to ensure independent and effective functioning of CPPD. The commission also reported on the problem of segregation of Roma children in education, especially on the established indirect discrimination that causes the segregation of Roma children in two schools in the cities of Štip and Bitola, based on ethnicity in the area of education, resulting from the legal provisions of the *Law on Primary Education*,

as well as the adopted General Recommendation for the desegregation of Roma children in education (CPPD, *2022 Annual Report*, p. 44).

CPPD has an obligation to follow the implementation of the recommendations of these bodies, which sometimes relate directly to its work. For example, the Committee for the Elimination of All Forms of Discrimination Against Women in its concluding observations on the state in 2013 expressed concern: "due to the lack of visibility, transparency and accessibility to these mechanisms [the Commission for Protection against Discrimination, the Ombudsman, the Legal Representative for equal opportunities in the Ministry of Labour and Social Policy], the overlapping of the mandates of these institutions, as well as the small number of applications on gender-based discrimination received by them and submitted to the courts of the member state" (CEDAW/C/MKD/ CO/4-5, 2013, Paragraph 12). In 2018, at the country's next reporting cycle, CEDAW noted that there was "[c]ontinuous under-reporting of cases related to discrimination based on sex or gender, submitted to the Commission for Protection against Discrimination and the Office of the Ombudsman" (CEDAW /C/MKD/6, Paragraph 13(g)). Some of the remarks refer to the quality of the LPPD, the situation with de facto discrimination against certain communities (CCPR/C/MKD/CO/3, 2015, Paragraph 21) and other issues within the jurisdiction of the CPPD.

9. In addition to point 7, it is also the competence of the CPPD to promote and propose harmonization of national legislation, regulations and practices with international and regional human rights instruments. This is significant due to the fact that after ratification it is necessary to operationalize the provisions of the international agreements in practice. After ratification, agreements that promote and protect human rights become part of the legal system in the country and can be applied in accordance with Article 118 of the Constitution. However, for the exercise of certain rights in practice, it is necessary to establish certain services, institutions, allocation of financial resources and other measures, which can be done by adopting laws and policies that will enable easier implementation of international and regional human rights instruments. rights. The OMB has the authority to give the authorized proponents the initiative to amend and supplement laws and other by-laws and their alignment with international agreements ratified in accordance with the Constitution of the Republic of Macedonia. Similarly, the Ombudsman of Croatia can indicate to the Government the need to adopt a law, by-law, strategy, program and other acts in the area of protection of human rights and freedoms and ensuring the rule of law. It also participates in the preparation of draft regulations from its scope.

10. Similar to the previous authority, the CPPD can initiate the amendment of regulations for the purpose of implementing and improving protection against discrimination. The term regulations is broader and includes not only laws, but also regulations, guidelines and other by-laws that may be a source of discrimination. So far, not a single initiative to amend a regulation in the area of discrimination has been given by the CPPD. Comparatively, the Commissioner for Protection of Equality in Serbia has the authority to initiate the adoption or amendment of laws in order to improve the situation with discrimination, while the Commission for Protection against Discrimination in Bulgaria does not have the ability to initiate amendments and additions to laws and other regulations, or, in turn, to initiate the ratification of an international agreement that will contribute to the improvement of the situation with discrimination.

11. In terms of Point 11 of this article, the CPPD can give opinions on proposals for laws of importance for protection against discrimination. The protection and prohibition of discrimination can be found in several laws, especially from the sphere of social and health protection, education, labour relations, etc., so the opinion of CPPD on the compliance of these

laws with LPPD would be of particular importance when bringing new or amendment and addition of the existing legal solutions. The provision does not establish the manner in which the opinions will be given, that is, at which stage of the procedure the PSC can and should be involved in commenting on draft laws. On the other hand, imposing an obligation on the authorized proposers to regularly submit the opinion proposals will burden the work of CPPD. From this, it follows that CPPD has the discretionary right to decide with an internal act about which laws it will give an opinion and in what way it will do so. The previous CPD had signed a memorandum of cooperation with the Commission for Equal Opportunities between Women and Men at the Parliament. The purpose of this memorandum was to define the field and scope of cooperation between the two parties, within their powers, in terms of prevention and Protection against Discrimination, as well as in terms of promotion and affirmation of the concepts of equality, tolerance and non-discrimination. Through this memorandum CPPD was involved in the consideration of the laws that affect the issue of equality, which are the subject of consideration by this commission. CPPD can also use other ways to give its opinion on the draft law, that is, upload a comment to ENER, submit its written opinion to the authorized proposer or to the Parliament, respectively, depending on the stage in which the draft law is. CPPD may post opinions on draft laws on its website or on its social network profiles in order to inform stakeholders and the general public. In 2022, CPPD using this competence passed an expert opinion on the draft law for administrative officials placed on the Single National Electronic Register of Regulations, explained below (CPPD, *2022 Annual Report*, p. 40-41).

Excerpt from the Case Law No. 144

In November 2022, in accordance with Article 21 Paragraph 1 item 11 of the LPPD, the CPPD issued an expert opinion on the draft law for administrative officers placed on the Single National Electronic Register of Regulations (ENER) - October 2022, establishing that the draft law contains discriminatory provisions in Article 71, which regulates the salaries of administrative officers employed in ministries and secretariats in a different way, compared to administrative officers employed in public sector institutions.

During the analysis of the full text of the proposed law, CPPD indicated that certain provisions of the Law, if adopted as such, would result in an unequal position of the majority of administrative officers in relation to the rest of administrative officers. With the proposed provisions, administrative officers employed in ministries and secretariats would have a significantly higher amount of fixed basic salary compared to administrative officers in all other institutions of the public sector, even though they have the same status as an administrative officer, distributed at the same level, that is, they fulfil the same general and special conditions for the specified level. In that sense, the provision thus established would lead to direct discrimination in accordance with Article 8 of the LPPD, that is, one group of persons would be treated less favourably than another in an actual or possible comparable or similar situation, on a discrimination grounds.

The proposer of the Law did not at all try to explain and justify the reason for this concept of unequal treatment when scoring administrative officials of the same levels, based on the institution in which they based their employment relationship, which indicates that such a criterion cannot be considered justified and objective. The absence of a legitimate purpose for the different valuation of labour will result in significant differences in the salaries of administrative officials working in jobs at the same level, which is contrary to the provision contained in Article 7 of the International Covenant on Economic, Social and Cultural Rights. This proposal is contrary to the concept of "equal pay for work of equal value", as well as to the general prohibition of discrimination established by the Constitution, LPPD and a number of ratified international instruments for the protection of human rights and

freedoms, which according to Article 118 of the Constitution, are part of the domestic legal order. In the long term, there is a danger of creating structural inequality that will make it impossible to achieve the material equality of citizens as the ultimate goal of every democratic society.

The Commission for Prevention and Protection against Discrimination submitted the expert opinion to the Government of the Republic of North Macedonia and to the Ministry of Information Society and Administration.

The Commissioner for the Protection of Equality in Serbia gives an opinion on the provisions of draft laws and other regulations that refer to the prohibition of discrimination.

12. In the implementation of the competences, CPPD can establish cooperation with natural and legal persons, as well as with associations, foundations and social partners, such as employers' organizations, trade unions, for the achievement of the principle of equality and promotion of the prevention and protection against discrimination. In accordance with Commission Recommendation (EU) 2018/951 on standards for equality bodies there is an obligation for states to "enable equality bodies to cooperate with relevant bodies including the national frameworks designated under Article 33(2) of the CRPD on the UN; National Roma contact persons; civil organizations.... " (Part 1.3. Coordination and cooperation, Paragraph 4).

This authority provides the opportunity for various forms of cooperation, which were part of the work of the former CPD compositions as well as the existing CPPD. For example, signing a memorandum of cooperation with citizens' associations (CPD, *2015 Annual Report*, p. 30; CPPD, *2021 Annual Report*, p. 35-37; CPPD, *2022 Annual Report*, p. 44 -46), partner implementation of projects, implementation of research, work meetings and the like. In addition, CPPD can also cooperate with natural persons, such as, for example, hiring experts to conduct certain research; consultation with experts from various fields for which there is no expertise among the members of the CPPD, and it is necessary for the implementation of the competences. For example, during the preparation of the expert opinion on the terminology used in formal education material, a chapter was prepared from a textbook on Children's Dentistry, entitled Dental protection of children with disabilities, bearing in mind that it is a specific request, the answer to which requires a special and additional expertise, and with the aim of professional and efficient handling of the same, the CPPD, in accordance with article 21 Paragraph 23 of the LPPD, made a decision to establish a temporary advisory body for preparing the expert opinion with the inclusion of external experts on the rights of persons with disabilities from the citizens' association Polio Plus – movement against handicap. CPPD also cooperates with local self-government units through open days organized in 2022 and 2023, and the previous CPD had the same practice. This is of particular importance, taking into account the fact that CPPD does not have its own regional offices, and therefore this is a good way for citizens from other cities in the country to become familiar with the work of the Commission, as well as with the protection it provides in cases of discrimination., as well as the victims of discrimination.

In order to promote human rights and freedoms, among other things, OMB cooperates with the civil sector, international organizations and the academic public. For comparison, in order to improve cooperation and achieve greater visibility at the regional level, the Office of the Ombudsman in Croatia has established cooperation with citizens' associations as regional anti-discrimination contact points through which citizens from other parts of the country can be informed about implementation of the right to protection against discrimination. The Commissioner for the Protection of Equality of Serbia has the same practice.

13. CPPD has the competence and opportunity to cooperate with appropriate national bodies of other countries, as well as with international organizations in the area of protection against discrimination, which is of particular importance for strengthening its capacities and positioning in the national system for protection against discrimination. In accordance with Commission Recommendation (EU) 2018/951 on standards for equality bodies there is an obligation for states to "provide appropriate capacities for equality bodies to cooperate at European and international level with other equality bodies and other organisations, including and through joint research" (Part 1.3. Coordination and cooperation, Paragraph 3).

CPPD is a member of Equinet - the European Network of Equality Bodies, which is very significant for strengthening its capacities through the exchange of information and knowledge, establishing a platform for mutual cooperation and support on various issues, regular trainings for the professional service and members of the bodies for equality and other activities to improve the situation with discrimination at the European and national level. CPPD is also a member of the network of Equality Bodies in South-Eastern Europe, in which it actively participates since its establishment in 2015 (first the previous CPD and after the establishment in January 2021 and the existing CPPD). Also, LPPD cooperates with other equality bodies of other countries, as well as with international and regional organizations in the area of protection against discrimination. CPD participated in study visits that were organized in Belgium, Ireland, Sweden, Austria and Bulgaria, and the existing CPPD made study visits to Great Britain and Serbia.

14. Acting on applications is one of the basic competences of CPPD for protection against discrimination. Chapter 4 of the LPPD elaborates the procedure for prevention and protection against discrimination and the way in which the CPPD acts and decides on specific cases of discrimination by making an opinion, recommendation or conclusion, while the Rules of Procedure establish in detail the course of the procedure and the way of work of the CPPD after the submitted application (in Chapter 3, articles 15-25). According to the Rules, CPPD, acting on the application, may not initiate a procedure, initiate a procedure or terminate the procedure. The decisions of CPPD do not have a mandatory or so-called legally binding character, however, in a large number of cases it has been shown that the perpetrators of discrimination partially comply with these recommendations. For the procedure for applications before CPPD, see Part 4. Procedure for preventing and protecting against discrimination before the Commission for preventing and protecting against discrimination. In accordance with Commission Recommendation (EU) 2018/951 on standards for equality bodies, there is an obligation for states "to take into account the following aspects for providing independent assistance to victims: receiving and acting on individual or collective applications; providing legal advice to victims, including in relation to the application filed; engaging in mediation and conciliation activities; representation of applicants in court; and acting as a friend of the court (Lat. *amicus curiae*) or expert where necessary" (Part 1.1.2. Powers covered by the mandate of equality bodies, Paragraph 1).

In order to clarify the position and the protective role of the CPPD, below are presented comparative experiences of the position of equality bodies in three member states of the European Union, namely the Kingdom of Belgium, the Republic of Croatia and the Republic of Bulgaria. The role of the equality body in the Kingdom of Belgium is entrusted to the Centre for Equal Opportunities and the Fight against Racism. This body has a predominantly preventive task in the fight against discrimination, with also significant competences in providing legal support to victims of discrimination. Among the competences of a procedural nature, the possibility to file a claim before a competent court in their own name, as well as to appear as intervenors in proceedings already initiated before the court, would stand out. One

of the main competences consists in bringing formal opinions and recommendations for the cases brought before the Centre, which, like in our case, do not have legal binding force. Also, the Centre for Equal Opportunities and Combating Racism has the authority to compile written advice and recommendations to the Government, in order to improve the legislation, to provide assistance within its legal powers to any person seeking support, advice or information about their rights and obligations, as well as to act as a mediator between the potential victim and the person against whom the application is filed.

In the Republic of Croatia, the role of protection against discrimination and promotion of the principle of equality is entrusted to the Ombudsman (Cr. *Pučki pravobranitelj*), although there are three other ombudsmen who specialize in children, persons with disabilities and gender equality. The competences of the Ombudsman of Croatia in this area consist in the possibility to file a claim before a competent court in his own name, to appear as an intervener in already initiated proceedings before the court and to bring formal opinions and recommendations on the cases, which have been initiated before the Ombudsman, which do not have legal binding force. This means that in this case as well, the main goal and role of this body is to act preventively and promote the principles of equality and non-discrimination, to increase awareness among citizens, but also to act with legal instruments within its competences. Unlike the Centre for Equal Opportunities and the Fight against Racism of the Kingdom of Belgium, it is possible to initiate and be a party to the misdemeanour proceedings against a certain person for the violation of a right due to discrimination, as well as to submit a criminal application in connection with a discrimination case to the State public prosecutor's office of the Republic of Croatia.

The Commission for Protection against Discrimination in the Republic of Bulgaria (Bulg. Komisiya za zashtita ot diskriminatsiya) has a broad mandate, providing protection on 19 grounds specified in the *Law on Protection against Discrimination of the Republic of Bulgaria* (The State Gazette of the Republic of Bulgaria No. 86/30.09.2003) and has a preventive role and a role in raising awareness of issues of equality and tolerance. However, unlike the previous two examples, the Commission has the authority and mandate to make legally binding decisions and impose mandatory administrative measures to stop, prevent discrimination or to return to the original situation, as well as to monitor the implementation of the measures and sanctions that will pronounce them. The way in which proceedings are conducted before the Commission, in which the parties and their attorneys - lawyers are present, in many ways resembles a court proceeding before a civil court, which is why these types of equality bodies are often called quasi-judicial bodies. The victim, based on the decision of the Commission, can start an appropriate court procedure before a competent civil court with a request for compensation for material and non-material damage caused as a result of the discrimination. Furthermore, the Commission can establish appropriate measures for the prevention of discrimination, for the cessation of actions that cause discrimination, as well as establish appropriate measures for establishing the former situation before the actions of discrimination began. In that direction, the Commission can also give mandatory guidelines and instructions to other state authorities, institutions, natural or legal persons for compliance with laws and regulations that ensure equal treatment of citizens. The Commission can file an appeal against any administrative act that it considers to be in conflict with the *Law on Protection against Discrimination* or another law that regulates equal treatment, as well as take appropriate actions before a competent court in order to initiate a procedure in the capacity of " interested party". Similar to the example of Bulgaria, Hungary and Romania are among the few countries that have an equality body that makes legally binding decisions.

15. The LPPD introduces the possibility for the CPPD to initiate a procedure for protection against discrimination on official duty. When CPPD learns about an action which there is an indication that it constitutes discrimination, through a tip-off or in another way, it can start a procedure to establish discrimination. Protection against discrimination is mainly carried out in administrative and/or civil proceedings where the basic principle is the existence of a victim/damaged person who will initiate the procedure before the competent institutions, in contrast to criminal legal protection where the prosecution is usually carried out ex officio. The efficient implementation of the Law imposes the need for proactive action by CPPD by starting procedures on its own initiative whenever there is a suspicion of structural discrimination or violation of equality. For the procedure for applications before CPPD, see Part 4.1. Commission's Actions In 2021, the CPPD initiated a procedure for protection against official duty discrimination in 4 cases, and that number increases to 6 cases in 2022 (*2021 Annual Report*, p. 17; CPPD, *2022 Annual Report*, p. 12). In the Republic of North Macedonia and OMB, in accordance with Article 13 Paragraph 3 of the *Law on the Ombudsman*, he can initiate proceedings on his own initiative, if he considers that the constitutional and legal rights of the citizens have been violated.

For comparison, there are different bodies for equality, with different competences, for which there is no mandatory obligation to initiate proceedings by virtue of the office (Lat. *ex officio*). However, this possibility is available to a good number of equality bodies in the member states of the European Union.

Excerpt from the Academic Literature No. 46

"In Austria, Bulgaria, Estonia, France, Hungary, Luxembourg, Malta, the Netherlands, Romania and Great Britain, equality bodies have the competence to carry out ex officio investigations into violations of the principle of equality, while in Croatia, Finland, Latvia, Lithuania, the Netherlands and Poland, the ombudsmen have this competence" (European Anti-discrimination Law Review Issue 17, 2013, p.33).

16. In accordance with its competences, CPPD can also provide individual legal assistance and support to victims of discrimination and inform interested persons about their rights and the possibility of submitting an application or claim to a competent court for protection against discrimination. It is not clear from the provision what kind of information about the rights and possibilities can be given by CPPD or its member, that is, whether this issue is only of a technical nature, that the party can initiate a court action, or, on the other hand, other information can also be given. advice and information. This is a particularly important issue considering some preclusive deadlines that are given in the *Law on Labour Relations* and the *Law on Civil Procedure*, and due to the omission of which the protection of the right could be lost. Because of that, CPPD can and should provide information about the rights and possibilities for initiating a judicial or other procedure for the protection of applicants, if necessary. The members of the focus group with whom the disputed issues from the Law were discussed were of a similar opinion, where the majority of the members were decisive that this authority does not imply the provision of legal advice or legal assistance for the essential aspects of the case, but they should provide information to the victim about mechanisms for protection against discrimination that can use the deadlines, so that the potential victim of discrimination can choose the most appropriate way of protection against discrimination in the specific case, that is, to be able to decide whether to choose extrajudicial or judicial protection of his rights (Focus group on the Commentary on the *Law on Prevention and Protection against Discrimination*, held at the Academy for Judges and Public Prosecutors on November 21, 2016). The OMB has the opportunity to provide legal support to victims and their families as part of the competences for civil control to investigate the conduct of police

officers and members of the prison police for crimes during the performance of an official action and for crimes committed outside the service with the use of severe threat, force or means of coercion resulting in death, grievous bodily harm, bodily harm, unlawful deprivation of liberty, torture and other cruel, inhuman or degrading treatment and punishment.

Comparatively speaking, the Ombudsman in Croatia provides the necessary information for natural and legal persons who have filed an application for protection against discrimination regarding their rights and obligations and the possibility of initiating a judicial proceeding for protection against discrimination or another type of protection, but does not provide legal help. The Commission for Protection against Discrimination of Bulgaria has the authority to provide independent assistance to victims of discrimination in the initiated procedures for protection against discrimination.

Excerpt from the Academic Literature No. 47

"Some equality bodies offer help in the form of support until legal action is taken - the Belgian, Finnish, Hungarian, Irish, Italian, Northern Irish, British and Swedish bodies can do this. Others give their usual non-binding opinion on applications submitted to them, for example, the Austrian and Dutch Equal Treatment Commissions, the Danish Ethnic Applications Commission, the Cypriot Ombudsman, the Hungarian Equal Treatment Representative and others" (Polio Plus, 2006, p. 81).

17. CPPD has the obligation to monitor the execution of the opinions and recommendations given for specific cases of discrimination. This provision strengthens the protective role of the body, which can not only establish discrimination and give a recommendation to remove the violation, but has the obligation to monitor the fulfilment of the recommendation by the perpetrator of discrimination. Article 27 of the LPPD elaborates the decisions of the CPPD and the consequences that these decisions cause for the parties. For the decisions made by CPPD, see Part 4.5. Commission’s Decisions General Recommendation for Protection against Discrimination Namely, failure to act on the recommendation within the given period of 30 days from the day of receipt of the recommendation or for a longer period if there are particularly justified reasons, but not longer than six months, is the basis for the CPPD to submit a request to initiate criminal proceedings before a competent court for offenses. With the previous Law (2010), the CPD did not have a mandatory obligation to initiate misdemeanour proceedings against the offender if he did not act on the recommendation, but it was a discretionary right for each individual case. In practice, not a single misdemeanour procedure has been initiated, although by 2016, only 66.6% of the Commission's recommendations have been implemented. On the other hand, in 2021, CPPD submitted 2 requests to initiate misdemeanour proceedings, and in 2022, it submitted 14 requests to initiate misdemeanour proceedings against established discriminators, who did not act on the Commission's recommendations within the legally stipulated period. Out of the 14 requests submitted, 4 requests were rejected by the decisions of the competent courts, and for 2 of these 4 decisions, CPPD submitted appeals to the appellate courts. One of the applications was rejected as untimely, and one was rejected as unfounded. One request for the initiation of misdemeanour proceedings was withdrawn by the CPPD in order to fulfill the recommendation of the opinion issued by the discriminator, and after 9 submitted requests, the courts initiated misdemeanour proceedings (*2021 Annual Report*, p. 33; CPPD, *2022 Annual Report*, p. 38-39).

OMB has the authority to initiate disciplinary and misdemeanour proceedings against an official, that is, a responsible person who will not act on his requests, proposals, opinions and recommendations or indications. Compared to other countries, the Commissioner for the

Protection of Equality of Serbia has the authority to file a misdemeanour report in case of violation of the provisions of the *Law on Protection against Discrimination*.

18. LPPD gives the possibility to CPPD to initiate court proceedings and appear as an intervenor in court proceedings for protection against discrimination. Intervenor, in accordance with the *Law on Civil Procedure*, is a third person who can participate in the procedure, in addition to the persons who participate as parties - the claimant and the defendant. The basic condition for the CPPD to appear as an intervenor and enter the litigation is to have a legal interest in intervening by joining one of the parties. The law does not provide clear guidelines according to which criteria it will be decided in which cases CPPD will appear as an intervenor, but there are no restrictions in that sense. There are several criteria that the CPPD should take into account when making the decision in which court cases for protection against discrimination will appear as an intervenor. Some of them are the following: cases of systemic discrimination, discrimination that lasts longer, discrimination that affects a larger group of people, or, on the other hand, individual cases of discrimination with more severe consequences for the victim, which should be the priority of the CPPD. The wider possibility of action will enable the CPPD over time and practice to establish the criteria that will be applied when deciding in which cases the CPPD will appear as an intervenor. In any case, there is a possibility, if there is a need, for the CPPD to adopt an internal act clarifying the criteria for involvement in judicial proceedings for protection against discrimination. From the previous practice, in two cases, the CPPD has submitted a request to appear as an intervenor, and in one case the court rejected the request because the claimant was a citizens' association, and in the other, where the claimant is a natural person, the court accepted the request for the involvement of the CPPD in the side of the claimant, but then the CPPD withdrew the proposal because the recommendation it made in its opinion on discrimination was fulfilled by the legal entity to which it was addressed.

For comparison, the *Law on Combating Discrimination of the Republic of Croatia* (The Official Gazette of the Republic of Croatia Nos. 85/8 and 112/12) allows interference on the part of the claimant by a body, organization, institution, association or other person which, within the scope of its action, departs with the protection of the right to equal treatment in relation to the community whose rights are decided during the procedure. In order for the intervenor to take action in the court proceedings, the consent of the claimant is required. In comparison, other equality bodies had the opportunity to intervene in court proceedings. For example, the Belgian Centre for Equal Opportunities has the authority in the name of the public interest and with the consent of the victim to intervene in civil and criminal proceedings in cases of discrimination in the area of access to goods and services and labour relations. With regard to the competence to intervene in court proceedings, the CPPD is equal to the equality bodies in the largest number of European countries, including Belgium, Croatia, Bulgaria and Hungary.

In relation to the previous legal decision (2010), CPPD has extended competence to independently initiate court proceedings in its own name and appear as a claimant, which strengthens the proactive role of the body. The manner in which it will be decided in which cases the CPPD will initiate court proceedings for protection against discrimination is a question that the body should decide according to clearly established criteria (for example: number of victims affected by discrimination, prevalence of the phenomenon, length of duration of the discriminatory action, consequences, public interest, etc.). In accordance with Commission Recommendation (EU) 2018/951 on standards for equality bodies, states "should take into account that independent assistance to victims may include giving equality bodies the opportunity to engage or assist in judicial proceedings, in order to to resolve structural and

systematic discrimination in cases selected by the bodies themselves due to their number, seriousness or their need for legal clarification. Such judicial proceedings may be conducted either in the name of the body or in the name of victims or associations of citizens representing victims, in accordance with national procedural law" (Part 1.1.2. Powers covered by the mandate of equality bodies, Paragraph 2).

According to the previous Law (2010), the CPD had the right to appear, only, as an intervener in a procedure for protection against discrimination, that is, to participate in the procedure, in addition to the persons who participate as parties - claimant and defendant. The CPD could appear as an intervener in the civil proceedings initiated by an individual or joint claim, by the person who claims to have been discriminated against. In practice, the previous CPD intervened in one case of discrimination, at the request of the discriminated person in court proceedings for protection against discrimination based on personal and social status in the area of employment. Similar to the case of interference, when deciding to start this type of procedure, the CPPD should take into account whether it is systemic discrimination, discrimination that lasts longer, discrimination that affects a larger group of people, that is, in a specific case of discrimination, there is a higher degree of the impact of the public interest and whether there is consent from the victims to start the procedure. A wider opportunity for action of the CPPD in determining the criteria for which case they will initiate on their own initiative will allow them, over time and practice, to establish the criteria that will be applied when deciding which cases they will independently initiate. In any case, there is a possibility, if the CPPD needs it, to adopt an internal act clarifying the criteria for initiating court proceedings for protection against discrimination.

19. In addition to the active legitimization for the initiation of court proceedings and the possibility of interference, CPPD, at the request of the party or on its own initiative, can submit a request to the court to enable it to act as a friend of the court (Lat. *amicus curiae*). A friend of the court is an entity that is not a party to the proceedings, and at the request of one of the parties or independently, offers the court information, expertise or insight regarding the issue that is the subject of the hearing. This is a new competence that provides an opportunity for the CPC with its capacity to contribute to the court proceedings and by submitting a written submission to help the court to more clearly perceive the situation regarding discrimination. In 2021, CPPD submitted two submissions as a friend of the court, while no new submission of this nature was submitted in 2022 (CPPD, *2021 Annual Report*, p. 33).

Excerpt from the Case Law No. 145

In March 2021, the Helsinki Committee for Human Rights submitted a request to CPPD for inclusion in court proceedings as a "friend of the court". The case was initiated on the ground of a public interest claim (Lat. *actio popularis*) initiated by the Helsinki Committee regarding discrimination against persons with disabilities in terms of accessibility to and in polling stations. CPPD, as a professional body for equality, in the request for inclusion as a friend of the court, included the interpretation of articles from the UN CRPD that refer to appropriate accommodation, general accessibility, equality and non-discrimination, in relation to access to polling stations and enabling persons with disabilities exercise the right to vote, as part of participation in political and public life. In addition, in its submission, CPPD performed a brief review of the ECtHR's jurisprudence, in cases in which the court established discrimination on the ground of disability, due to inadequate adaptation.

Excerpt from the Case Law No. 146

In June 2021, the Helsinki Committee for Human Rights submitted a request to CPPD for inclusion in court proceedings as a "friend of the court". The case was initiated on the ground of a public interest claim (Lat. *actio popularis*) by the Helsinki Committee regarding segregation, as a special form of discrimination, against Roma children in the educational process. CPPD, as a professional body for equality, in the request for inclusion as a friend of the court, included the interpretation of provisions of several signed and ratified international agreements and the recommendations of the bodies that monitor the implementation of the named international agreements, which refer to prevention and Protection against Discrimination in education and removing segregation as a special form of discrimination, namely: UN CRPD with special attention to enjoyment of the right to education, Concluding observations and recommendations of the Committee for the Elimination of Racial Discrimination, Convention on the Rights of the Child of the United Nations, Convention against Discrimination in Education of UNESCO, ECRI's Fifth Report on the Republic of North Macedonia at the Council of Europe, the Framework of the European Union for national strategies for the integration of the Roma and the Report of the European Commission on the progress of the Republic of North Macedonia dated 19.10.2021.

OMB, too, has the opportunity to appear as a friend of the court in ongoing court proceedings for the protection of citizens' rights. But from the previous practice, the Court, in the interest of appropriate administration of justice, may approve the CPPD, in cases where it does not appear as a party to the proceedings, to be able to submit a written submission that will give an expert opinion on the form, type, basis and/or area of discrimination in the subject of the procedure, legal practice and trends at the national, regional and international level that exist in relation to these forms and types of discrimination, comparative experiences from other countries, judicial practice at the international and/or national level, findings obtained from research, monitoring the situation with discrimination and other information relevant to the correct resolution of the specific case. As with other competences according to which CPPD can be involved or initiate court proceedings, the question arises in which cases CPPD should or can appear as a friend of the court. Of course, it is significant for the CPPD to provide additional information on cases of systemic discrimination, cases where the public interest is affected, but also on cases that affect issues for which the CPPD has research, analysis, statistical data that can help the court in the administration of justice. The involvement of CPPD in cases of discrimination does not mean defence or protection of the victim of discrimination, or support for the potential perpetrator of discrimination. On the contrary, the written submission from CPPD aims to offer the court modern, relevant and objective information about the legal framework, trends and the situation with discrimination and to help it in a better resolution of the specific case and to contribute to the consistent development of good legal practice for Protection against Discrimination, because the CPPD is the national expert body for equality that knows this issue best. During the discussion with a focus group on the Commentary on the *Law on Prevention and Protection against Discrimination*, held at the Academy for Judges and Public Prosecutors, the participants expressed their views regarding the cases in which CPPD should appear as a friend of the court. Part of the practitioners believe that the submissions of the CPPD can help the court to obtain information about the existing legal practice, which, among other things, will affect the harmonization of the practice in our courts in the cases of protection against discrimination. Some of the judges expressed reticence about the way they will use the content of the submission from CPPD. The "friend of the court" institution is known to the ECtHR where there is a possibility for it to call a third party that is

not a party to the proceedings or to grant a request to a third party to provide relevant information regarding current cases, in order to help the court to advance the protection in the specific area. In the cases in which written submissions (amicus briefs) were submitted, the ECtHR in the reasoning of the judgment also refers to the information offered by friends of the court, indicating that it took them into account when deciding on a specific legal issue. The opportunity to include equality bodies as friends of the court has a large number of equality bodies, as, for example, in Bulgaria, Finland, France, Ireland, Latvia, Lithuania, Slovenia and others. The Ombudsman of Slovenia and Kosovo also had this competence.

20. CPPD is obliged to inform the public quarterly about cases of discrimination. The way in which the information will be prepared and distributed, CPPD should establish with a separate act. Unlike the annual report, which informs the public about all its activities, these quarterly reports aim to regularly inform specifically about cases of discrimination. This includes information on: the number of applications received, the number of applicants, against whom the applications are submitted, the grounds on which the applications were submitted and on which the discrimination was carried out, the area where the discrimination was carried out, the decisions made and their implementation by the parties, the number of General Recommendations, the number of proceedings initiated ex officio, the number of court proceedings initiated, the number of court proceedings in which CPPD appeared as an intervener, the number of interventions to the court in the capacity of a friend of the court, the number of recommendations according to which acted, the number of misdemeanour proceedings initiated and others. From the previous work of the CPPD, it is noted, in their quarterly reports, available on the website of the CPPD (kszd.mk), that in addition to information on the handling of cases of discrimination, information on the position, legal competences and composition of the CPPD should also be included as well as for the implemented activities of CPPD.

21. At the same time, CPPD has the obligation to announce all its decisions to the public through any media (internet site, social networks, electronic and printed media) in order to ensure the greatest possible visibility of the work of the Commission, but also to educate the public about the situation with discrimination.. The purpose of the existence of CPPD is to achieve a positive change in society by acting on applications, monitoring the implementation of the legal and institutional framework for equality and protection against discrimination and actively promoting the principle of equality. In order to increase the effect of the operation, CPPD should be present in the public with information about its work, results achieved, actions taken, campaigns, promotion of publications, by using all available channels for communication with the public. Informing the public about the decisions made will affect the prevention of future similar cases, as well as familiarization with the actions prohibited by the Social Security Act. It is commendable that CPPD informs the public about a large number of its decisions through press releases, press conferences and through its website and profiles on social networks.

22. In order to better organize the work and further regulate issues that are not regulated by the LPPD, the CPPD adopts rules of procedure, annual work plan and program and other acts in accordance with the needs. In the text of the LPPD itself, certain issues are left to be further regulated by an act of the CPPD, for example, the method of quarterly informing the public about cases of discrimination (see Point 20); the internal organization and systematization of the work of the professional service (see Article 22 Paragraph 2) and the form, content and procedure for issuing, using and revocation of official ID (Article 29 Paragraph 2). CPPD adopted its Rules of Procedure of the Commission for Prevention and Protection against Discrimination, with No. 01-301/1 of October 7, 2021, published in The

Official Gazette of the Republic of North Macedonia No. 232/2021, as well as the amendments to the *Rules of Procedure No. 0101-301/3* dated 29.12.2021. Among the other internal acts, the CPPD adopted a Program for volunteering in the professional service of the CPPD, with No. 01-207/1 dated 6.4.2022, as well as the Rulebook on the formation of advisory bodies of experts for certain specific issues related to promotion, prevention and protection against discrimination, with No. 01-122/1 dated 16.2.2023. Additionally, in October 2021, CPPD adopted its Strategic Plan for 2021-2026, the Annual Work Program for 2022, the Annual Financial Expenditure Plan for 2021 and the Proposal for the Annual Budget for 2022. During the months of October and November 2021, a procedure was carried out for the preparation of the Functional Analysis of CPPD and an Improvement Plan. The procedure for business trips was established by CPPD through the Guidelines for Business Trips and the Rules for Using Own Vehicle for Official Needs. CPPD has adopted both the Rules for internal organization and the Rules for the systematization of the jobs of the professional service. The regulation on the security of personal data processing of the CPPD was adopted in accordance with the *Law on Personal Data Protection* and refers to the system for the protection of personal data. However, it is a matter of criticism that although CPPD adopted numerous internal acts, only some of them are publicly published and available to the public on the website of CPPD. However, it is a matter of criticism that although CPPD adopted numerous internal acts, only some of them are publicly published and available to the public on the website of CPPD.

23. For certain issues related to the promotion, prevention and protection against discrimination, the CPPD can form advisory bodies of experts. All the rules that apply to the representation of social groups in the composition of the CPPD and the professional service should also be applied during the formation of these advisory bodies. On February 16, 2023, the CPPD adopted the Rulebook on the formation of advisory bodies from experts on certain specific issues related to the promotion, prevention and Protection against Discrimination. According to the Rulebook, these advisory bodies are temporary (Lat. *ad hoc*) established by decision of CPPD, which aim to provide expert assistance and support to the Commission in specific cases or in the preparation of General Recommendations. The number of members is established by the CPPD with a decision by which it establishes the advisory body. CPPD itself forms a list of experts by area after conducting a public announcement in a transparent and fair manner. In addition to individual support and professional assistance, the CPPD can also request professional support from a certain scientific and professional institution.

24. The competence of the Commission for collecting statistical and other data, and establishing databases, is of particular importance not only because of the obligation and importance of recording cases of discrimination, but also because the proof of cases of discrimination is often, in the absence of specific evidence is based on statistical data, analyses, studies and the like. This especially applies to cases of indirect discrimination, so this kind of authority, if exercised in practice, should strengthen the expertise and competence of CPPD. Statistical data and data from the database may be useful in court proceedings in which the Commission appears as a friend of the court (see Point 19). For the consistent implementation of this authority, it is necessary to establish an efficient and competent professional service that will regularly collect, process and store the necessary data.

25. CPPD prepares an annual report on its work and submits it to the Parliament no later than March 31 in the current year for the activities carried out for the previous year. The President of the Commission submits the report with a cover letter to the President of the Assembly for consideration and adoption. According to the Rules of Procedure of the Assembly, it can search analyses, reports, information and other materials submitted by authorized proposers. The search of the materials ends with the adoption of a conclusion by

which the report is adopted or not adopted. In the current practice, the Assembly regularly adopts the annual report of the previous CPD without an explanation of the content of the report by the authorized person. The report for the year 2021 of the existing CPPD was not reviewed by the Assembly or its working bodies.

The OMB submits an annual report to the Parliament with an analysis of the work done in the past year, the degree of ensuring respect, promotion and protection of the constitutional and legal rights of citizens, respect for the principles of non-discrimination and adequate and fair representation of the members of the communities by the state authorities, as well as recommendations for overcoming the ascertained conditions. The report of the National Assembly is considered at a session of the Assembly, which is attended by representatives of the Government. After reviewing the report, the Assembly defines measures to implement the recommendations and submits it to the Government for competent action.

26. In addition to the obligation to submit the annual report to the Parliament, CPPD has the obligation to publish it, together with the financial report, on the Commission's website. The obligation to publish all reports on its operations in as many media as possible will increase the knowledge about equality and non-discrimination and the trust of citizens in the work of CPPD. In 2022, CPPD publicly announced the findings of the annual report on the operation of CPPD for 2021.

The annual report of the OMB is compulsorily published in the means of public information.

Article 21 Paragraph 2 stipulates the obligation for the CPPD to ensure continuity of accessibility during the implementation of all its competences. In accordance with Commission Recommendation (EU) 2018/951 on standards for equality bodies, states have the obligation to "ensure that all persons have easy access to the physical premises of equality bodies, their information and communication, including information technologies, as well as services and products such as documents and audiovisual material or meetings and events open to the public. They should, in particular, be accessible to persons with disabilities, who should additionally be provided with appropriate accommodation as defined in the United Nations Convention on the Rights of Persons with Disabilities, to ensure that persons with disabilities have access to facilities for equality on an equal basis with others" (Part 1.2.3. Submission of applications, access and accessibility, Paragraph 4). CPPD is located in inaccessible premises, but works to ensure full accessibility by developing a project and providing financial resources for accessibility of premises for persons with disabilities. The CPPD website is accessible for people with sensory disabilities.

For the definition of appropriate accommodation and accessibility, see further explained in Part 1.3. Glossary

3.5. Commission's Professional Service

Article 22
Commission's Professional Service

(1) A Professional Service shall be established to perform professional, administrative and technical activities of the Commission.

(2) The Commission shall adopt special acts regulating the internal organisation and work systematisation (job description) of the Professional Service.

(3) Staff members of the Commission's Professional Service shall have the status of administrative officers, and provisions under the Law on Administrative Servants shall apply to them.

In accordance with Paragraph 1 of this article, CPPD is a collective body for the support of which a professional, administrative and technical service is established. As an independent body, it has the right to independently organize the operation of the service through the adoption of an internal organization act that will establish work units and workplaces necessary for the implementation of the competences established by the Law (Paragraph 2 of this article). In addition, with the act on the systematization of jobs, CPPD will establish the jobs by groups, categories and levels and will establish the schedule of jobs by organizational units in the institution. On the ground of this article, CPPD has adopted Rules for internal organization and Rules for systematization of professional service jobs. In accordance with Commission Recommendation (EU) 2018/951 on standards for equality bodies, states have an obligation to "ensure that the staff of equality bodies is sufficiently large and appropriately qualified in terms of skills, knowledge and experience, to adequately and effectively fulfils every function of equality bodies' (Part 1.2.2. Resources, Paragraph 2).

On the ground of the functional analysis of the CPPD in 2021, the Rules for internal organization and the Rules for the systematization of the jobs of the professional service were adopted and are in force, which established the organizational arrangement of the CPPD in three sectors.First, the Department for Prevention and Protection against Discrimination consists of the Department for Protection against Discrimination and the Department for Prevention of Discrimination and Promotion of the Principle of Equality. Second, the Department for analytics, inter-institutional, national and international cooperation consists of a Department for international cooperation and cooperation with institutions and civil organizations and a Department for research and analysis. And third, the Department for Administrative-Financial Support, which consists of the Department for General and Legal Affairs, the Department for Public Relations and the Department for Financial Affairs. According to the Annual Report of the CPPD for 2022, although the Rulebook for the systematization of jobs in the CPPD has established 40 positions of administrative officers with a total of 46 executors, of which only 16 jobs have been filled, which represents 34.8%. The number of employees compared to 2021 has increased by 6 administrative officers who established an employment relationship in CPPD through permanent takeover from other institutions (4 employees) and through employment in a public announcement procedure (3 employees). During the reporting period, one administrative officer in a managerial position had his employment in CPPD terminated due to a permanent transfer to another institution.

Despite the improvement of the situation with human resources, the filling of the jobs of only 34.8% reduces the potential of the professional service for smooth functioning, fulfilment of the work tasks and exercise and implementation of the legal competences of CPPD (CPPD, *2022 Annual Report*, p. 10-11).

Excerpt from the Academic Literature No. 48

"It is worrying that the Ministry of Finance did not approve the employment of new persons, that is, the employment was through taking over the administrative officers from other institutions. In addition, in the Annual Budget for 2022, only 3 new employments were approved, while the Budget for 2023 does not provide for the employment of new persons at all, which means that employment will continue to be realised through taking over from other institutions. It is a negative practice that represents a major limitation of the selection of experts and professional persons in the professional service, who should contribute to strengthening the independence and expertise and to the execution of the extended legal competences of the Commission. Such situations have also been ascertained in the Report of the European Commission on the Republic of North Macedonia for 2021, which emphasizes the need to overcome the logistical and financial challenges faced by the CPPD in order to be functional and implement its broad legal competences (European Commission, North Macedonia 2021 Report, Fundamental Rights, p. 33)" (Mishev and Gliguroska, 2022, p. 16-17).

In accordance with Paragraph 3 of this article, the employees of the professional service have the status of administrative officers and the provisions in accordance with the *Law on Administrative Servants* apply to their employment, deployment and promotion. The professional service is managed by a general secretary appointed by the CPPD. It is necessary to mention that the employees of the professional service should act objectively and with integrity. In accordance with Commission Recommendation (EU) 2018/951 on standards for equality bodies, states have an obligation to ensure that the staff of equality bodies are not involved in any conflicting activity during their mandate, regardless of whether it is profitable. or not (Part 1.2.1. Independence, Paragraph 2). The previous Law (2010) provided that the professional-administrative and technical work was carried out by the previous CPD, so in practice this made the work and the possibility of implementing the competences more difficult. In support of the work of the CPD, people from other institutions were hired or were hired with the support of the OSCE Mission in Skopje, citizens' associations (HERA) (CPD, *2015 Annual Report*, p. 37).

4. PROCEDURE FOR PREVENTION AND PROTECTION AGAINST DISCRIMINATION BEFORE THE COMMISSION FOR PREVENTION AND PROTECTION AGAINST DISCRIMINATION

4.1. Commission's Actions

Article 23
Commission's Actions

(1) Persons believing they have suffered discrimination may file an application to the Commission in writing or orally, recorded in a report, without the obligation to pay any taxes or fees.

(2) A person believing to be discriminated may be represented before the Commission by an association, foundation or union upon prior consent given to either of them.

(3) Any associations, foundations, unions or other civil society organisations that have a justified interest in protecting the interests of a particular group or deal with protection against discrimination as part of their activities, may file an application if itis likely that the actions of a certain natural or legal person have discriminated a higher number of people.

(4) The Commission shall initiate proceedings ex officio if any circumstances or facts, as well as information obtained through rumours, give rise to a grounded suspicion that the authorities referred to in Article 3 Paragraph (2) of this Law have committed discrimination based on any discrimination grounds.

This article regulates and explains the way of initiating a procedure before CPPD and who can be the applicant. Paragraph 1 stipulates that any person, natural or legal, who believes that he has suffered discrimination can file an application. In accordance with Article 15 Paragraph 2 of the Rules of Procedure of the CPPD, in addition to the domestic one, a foreign natural or legal person can also submit an application for rights and legal interests that are not guaranteed by the Constitution and law only for domestic natural or legal persons. The application can be submitted in written form, or the person can present his allegations about the possible discrimination orally directly and immediately in the premises of CPPD. In accordance with Article 15, Paragraph 6 of the Rules of Procedure of the CPPD, if the party wants to submit an application orally, it is done in the organizational units of the CPPD for receiving applications, while the administrative officer in this organizational unit makes a record by filling in the the application form. The minutes should contain all the data listed above in order for the CPPD to act. The completed form of the application is given to the applicant for signature, it is recorded in the business book and one copy of the application is given to the party as proof of its receipt. In accordance with Article 15 Paragraph 5 of the Rules of Procedure of the CPPD, if the application is received by post or immediately at the premises of the CPPD, the official authorized to keep the records immediately puts a receipt stamp and then enters it into the electronic system of CPPD. The existing CPPD has experience of submitting an application and minutes and it was submitted in Serbian language. Given that

CPPD is centralized, victims of discrimination from other cities can also submit their applications by mail by filling out the application form for reporting discrimination. Citizens from other cities outside of Skopje also have access to the CPPD with the introduction of electronic reporting of discrimination. The electronic submission of applications is made possible through the established electronic service "Report Discrimination" which is located on the CPPD website (https://kszd.mk/prijavi-diskriminanica/) or by sending an e-mail to contact@kszd.mk. In accordance with Article 15 Paragraph 7 of the Rules of Procedure of the CPPD, if the application is received electronically, without an electronic signature, it is taken into account and the CPPD undertakes activities to confirm the identity of the applicant by summoning him/her to the premises of the CPPD or in another appropriate way without causing unnecessary costs for the applicant. Establishing new ways of filing applications is not enough to increase the number of applications, if there is no constant promotion and informing the public about the possibility of filing applications.

The application, regardless of whether it is given in writing or orally on the record, by mail or electronically, is submitted without obligation to pay a fee or other compensation, which means that the procedure before the CPPD is completely free. Such an approach is justified because it allows potential victims without additional financial burdens to submit an application that would protect the right to equal treatment. This is an effective way in the fight against under-reporting, which is quite common in cases of discrimination, and it will enable easier access to justice for victims of discrimination. Also, this approach would lead to a faster promotion of this extrajudicial mechanism, as well as to an easier and faster creation of practice in discrimination disputes. The same principle is used by the Office of the OMB as a national institution for human rights that also has competence in the area of anti-discrimination. In accordance with Commission Recommendation (EU) 2018/951 on standards for equality bodies, states have the obligation to "ensure the possibility to submit applications to equality bodies orally, in writing and online, in a language of the applicant's choice" the application, which is customary in the Member State where the equality body is located" (Part 1.2.3. Submission of applications, availability and accessibility, Paragraph 1). The recommendations also stipulate an obligation for states to "ensure that the procedure for submitting applications to equality bodies is simple and free" (Paragraph 2). Finally, there is a recommendation for states to "provide sufficient budget and resources to equality bodies to enable them to carry out effective awareness-raising aimed at informing the general public of their existence and of the possibility of filing discrimination applications" (para. 6).

According to the 2019 Equal Opportunity Barometer survey, 57% of respondents would hypothetically seek Protection against Discrimination or harassment, while a third or 32% would not report a case of discrimination or harassment. Willingness to report a case of discrimination is significantly higher (71 %) among those who have been a victim of discrimination on any basis, compared to those (47 %) who have not been a victim of discrimination (at least in the last 12 months). However, approximately one quarter of those who survived discrimination stated that they would not seek protection from any relevant institution. The analysis shows that there are no big differences between the various vulnerable groups subject to discrimination, when it comes to their willingness to turn to the state institutions for help and protection. In all seven groups of victims of discrimination covered by the research, the majority of them (the percentages range from 51% for age to 63% for sexual orientation) answered that they would seek protection (Kimov and Kimova, 2019, p. 82-83).

Paragraph 2 gives the opportunity to persons who have been discriminated against, with their consent, to be represented by an association of citizens, a foundation or a trade union in the procedure before the CPPD. LPPD provides an opportunity for the application to be

submitted by an association, foundation or trade union in the event that it is an individual case, and the victim has consented to it.

Excerpt from the Academic Literature No. 49

"Most of the marginalized communities do not seek legal aid, and those who have decided to seek legal aid usually turn to associations" (Cekovski and Dimitrievski, 2018, p.98).

The possibility of initiating a procedure by associations encourages people to initiate and lead the procedure for protection against discrimination. The previous Law (2010) did not explicitly provide for the possibility of submitting an application by a citizen's association, foundation or trade union on behalf of the victim, but in practice the previous CPD acted and decided. For example, in the *Opinion* of the CPD *No. 07-607* of August 1, 2013, discrimination based on ethnic grounds against A.B. was established, following an application submitted by the Helsinki Committee for Human Rights.

This is different from Paragraph 3 of this article, according to which citizens' associations, foundations, trade unions or other organizations and institutions can submit an application themselves, if they have a justified interest in protecting the interests of a certain group or within the framework of their activity are deal with protection against discrimination, and should do, probably, that the actions of a certain natural or legal person have discriminated against a larger number of people. For this type of application, the applicant does not need the consent previously given by the victim. The previous law (2010) did not provide a special possibility for submitting applications to the previous CPD by associations, foundations, unions or other organizations and institutions. In practice, this was allowed whenever the organization explained in the application its justified interest in starting a procedure for protection against discrimination on a specific basis and/or in a specific area. The previous CPD also acted on applications and information submitted by institutions. This is confirmed in the *Opinion* of the CPD *No. 03-814/1* dated 15.2.2018, which established harassment by City Radio DOOEL Skopje on the ground of gender, in the area of public information and the media, and following an application submitted by the Agency for audio and audiovisual media services.

The submission of an application by a citizen's association, foundation, other organization or institution is allowed only if the applicant makes it likely that the actions of a certain natural or legal person discriminated against a larger group of people. If it is an individual case of discrimination, associations, foundations or unions need the consent of the victim in order to file an application. Institutions do not have the right to file an application for protection against discrimination on behalf of an individual victim.

Paragraph 4 of this article elaborates on the competence of the CPPD to initiate a procedure ex officio. If, from the circumstances and facts, as well as from the knowledge obtained after a voice vote, it reasonably follows that discrimination has been committed by a state authority, an authority of the local self-government units, a legal entity with public powers or any other legal or physical entity, the CPPD has authority to initiate a procedure for protection against discrimination. The previous CPD did not have the possibility to initiate a procedure on its own initiative. The existing CPPD does this by making a decision to initiate a procedure ex officio. In the past two years since the CPPD acted, it initiated a procedure for protection against official duty discrimination in a total of 10 cases, 4 cases in 2021 and 6 other cases in 2022 (CPPD, *2021 Annual Report*, p. 17; CPPD, *2022 Annual Report*, p. 12).

Excerpt from the Case Law No. 147

After receiving information about a statement made in a debate show that contains elements of disturbing speech, CPPD made a decision to initiate a procedure ex officio. When determining the factual situation in which a natural person who was a guest in a debate show on television pointed out that the citizens of Albanian ethnicity in the Republic of North Macedonia declared themselves as Turks in the census in order to enjoy conveniences and that the citizens declared as Turks have Albanian roots, CPPD established harassment on the ground of ethnicity in the area of public information and media towards the Turkish ethnic community. In the same case, it was established that the television station, as the organizer of the debate show, did not distance itself from such statements of its guest in the area of public information and media towards the Turkish ethnic community. were a nuisance directly ensuring that this speech reached a larger number of citizens who followed the broadcast live. An additional aggravating circumstance, according to CPPD, was that the disputed debate show had 61,000 views, 421 comments and was shared 95 times on the social network Facebook (*Application No. 08-227/1* dated 13.4.2022, *Decision* dated 11.4.2022, *Opinion* dated 6.6.2022).

In accordance with Article 6 of the Rules of Procedure of the CPPD, when conducting proceedings and dealing with cases, the CPPD is guided by the principles of economy, efficiency, equality, impartiality, objectivity, material truth, free assessment of evidence and delegation.

4.2. Elements, Language and Deadlines of the Application

Article 24
Elements, Language and Deadlines of the Application

(1) An application shall contain the following elements: information on the applicant, information on the person against whom the application is filed, circumstances and facts underlying the application, information on legal actions previously lodged by the applicant, if any, and a signature of the applicant.

(2) If the application does not contain the elements referred to in Paragraph (1) of this Article or it is unclear, the Commission shall oblige the applicant to clarify it further within eight days as from the date of receipt of the application.

(3) The provisions of the Law on Use of Languages shall apply to proceedings before the Commission. The sign language may also be used in direct communication with the Commission.

(4) Parties who do not understand Macedonian and its Cyrillic alphabet shall have the right to an interpreter.

(5) The application may be filed no later than six months of becoming aware of the act of discrimination or no later than one year as from the date when the violation occurred.

(6) The Commission may initiate proceedings even after the deadline if it defines that it is a case which concerns a larger group of people or when the effect thereof continues or affects the public interest.

(7) The Commission shall submit the application to the person against whom it was filed within 5 days of the receipt thereof, while the person may plead on application allegations within 8 days of the receipt thereof.

In Paragraph 1 of this article, the elements that each application should contain are established in order for it to be considered by the CPPD. In accordance with Article 15 Paragraph 3 of the Rules of Procedure of the CPPD, the application should contain information about the applicant, that is,: name and surname for a natural person/title for a legal person, address for a natural person/seat for a legal person, gender, date of birth, telephone, e-mail address, membership of the community as optional data, statement on whose behalf the application is submitted, data on another person if the application is submitted on his behalf and a statement of consent from the other person to submit the application). Furthermore, the application should also contain data about the person, that is, the authority against whom the application is filed, namely: name, headquarters, telephone number and a statement that the applicant is an employee of the legal entity if the application is filed against a legal entity/authority. If the application is filed against a natural person, then the following information is required: name and surname, address, telephone, statement as to whether the discrimination was committed in a workplace while performing work tasks, and if the discrimination was committed in the workplace, data where the person who is the discriminator is employed. In accordance with the law, the application should also contain the circumstances and facts on which the application is based, which Article 15 Paragraph 3 of the Rules of Procedure of the CPPD divides into four categories that include: stating the basis/s for discrimination, the place where the event occurred on the occasion of which the application was submitted (that is, the areas of discrimination), a description of the event that is expected to be descriptive, and the evidence that should be listed taxatively. The applicant can submit the documents in original, as a certified copy or as an ordinary copy made of an original document by the professional service of the CPPD (Article 18 Paragraph 1 of the Rules of Procedure), and documents issued in a foreign language are submitted with certified translation (Article 18 Paragraph 2 of the Rules of Procedure). The member leading the procedure can call the applicant who refers to a document to submit it if he has it, or if he can obtain it (Article 18 Paragraph 4 of the Rules of Procedure). And finally, if the document is in the possession of a natural or legal person against whom the application was filed and he does not want to submit or show it voluntarily, the member of the CPPD who is conducting the procedure will call on him to submit or show the document (Article 18 Paragraph 5 of the Rules of Procedure). The application should also contain information about the legal actions taken by the applicant, if any, that is, a statement is required as to whether the court proceedings have been initiated, if so, in which court the proceedings have been initiated, whether there has been an appeal to another institution and, if so, to which one. regardless of whether a request, application, application, notice or other is submitted. Finally, the application should contain the signature of the applicant with an indication of the place and date of submission.

If any of the basic elements of the application are missing due to which it cannot be acted upon or the application is unclear, the CPPD will oblige the applicant to finalize the application within eight days from the day of receipt of the application (Paragraph 2). In accordance with Article 16 Paragraph 3 of the Rules of Procedure of the CPPD, if the member of the CPPD to whom the application is distributed defines that it is incomplete, he makes a

conclusion obliging the applicant to complete and arrange it within eight days from the day of receipt of the conclusion. In accordance with Paragraph 4 of Article 16 of the Rules of Procedure, if after the expiry of this period the applicant does not complete and arrange the application, the member to whom it is allocated prepares a proposal for the rejection of the application, unless it is for the protection of public interest, in which case he continues to work ex officio. According to the previous experience of the CPPD, a frequent practice is the editing of the application. Most often, it is about editing in the sense of providing data about the person against whom the application is filed (address) or his precise identification. Less often, confusing and contradictory applications are sought to be resolved, clarifying the act of discrimination and the factual situation.

Paragraph 3 of this article regulates the possibility of persons living in local self-government units in which at least 20% of the citizens speak an official language other than the Macedonian language, to use any of the official languages and its script in accordance with the *Law on the Use of Languages*. In accordance with Article 5 Paragraph 3 of the Rules of Procedure of the CPPD, any person in communication with the CPPD can use one of the official languages and its script, and the CPPD responds to the Macedonian language and its Cyrillic script as well as to the official language and script that is used by the applicant. So far, only in one case, when the application was submitted orally on the record, the applicant addressed the CPPD in Serbian. The application form is available in Macedonian language in printed form, but on the website of CPPD it is available in Macedonian, Albanian and English languages. In addition to the provision for the use of language in the proceedings before the CPPD, the parties who do not understand the Macedonian language and its script have the right to an interpreter (Paragraph 4). In order to increase the accessibility of persons with disabilities to CPPD, parties with impaired speech can also use sign language in direct communication. This is fully in line with Commission Recommendation (EU) 2018/951 on standards for equality bodies which stipulates an obligation for states to enable people to have access to equality bodies by providing that "they should in particular be accessible to persons with disabilities, which should further be provided with appropriate accommodation as defined in the United Nations Convention on the Rights of Persons with Disabilities, to ensure that persons with disabilities have access to equality bodies on an equal basis with others" (Part 1.2.3.Submission of applications, availability and accessibility, Paragraph 4).

Paragraphs 5 and 6 of this article define the deadlines in which the application should be submitted to the CPPD. Namely, in accordance with Paragraph 5, the subjective term is six months from the day when the violation was committed, while the objective term is one year from learning about the act of discrimination. Despite the deadlines established in Paragraph 5, Paragraph 6 leaves the opportunity for the CPPD to act on the application even after the expiration of six months, that is, one year from the act of discrimination, if it considers that it is a case of such importance that it would be necessary and expedient to conduct proceedings. The provision clarifies that CPPD can act on these applications if it deems that it is a case that affects a larger group of people, the consequence lasts even after one year from the execution of the act of discrimination or the act of discrimination affects the public interest. This is a good solution, considering the fact that sometimes the parties are not fully aware of the deadlines for submitting their application, so this possibility of the CPPD is in the direction of protecting individual rights, as well as in the direction of conducting proceedings for cases that are significant, or due to which discrimination would be removed, or, on the other hand, a positive extrajudicial practice of CPPD as an equality body would be created. In the current practice, the existing CPPD did not have a single case that it initiated after the deadline from Paragraph 5 of this article. The previous CPD, on the other hand, with the Opinion No. 2/27/11 dated 29.6.2011 established discrimination based on sexual orientation in the Pedagogy textbook,

which was issued much earlier than the establishment of the competence of the CPD in 2011, but it acted with considering the fact that the textbook was still being used and the injury had a prolonged effect.

Paragraph 7 of this article provides for the time period in which CPPD submits the response application to the person against whom it was submitted. Namely, the CPPD is obliged to submit the application in response to the opposite party, that is, to the person who is alleged to have committed discrimination, within five days of receipt, and the person against whom the application is submitted can be judged according to the allegations in the application in within 15 days of receipt. In accordance with Article 14 of the Rules of Procedure, CPPD delivers the opinions and acts as a rule by registered letter (Paragraph 1) and as an exception, if the party's place of residence/seat is unknown or when it comes to acts that refer to more than one parties or when the delivery by registered letter cannot be carried out, CPPD makes the delivery by public announcement (Paragraph 2). The announcement is made through a daily press that is distributed throughout the entire territory of the country, during two consecutive days (Paragraph 3) and a one-time announcement in The Official Gazette of RNM (Paragraph 4). In this way, it is considered that the party has been properly notified of the written request (Paragraph 5). The announcement contains: the title of the CPPD, the name of the natural person or the title of the legal entity, the last address of residence/seat, the number of the case, a brief description of the basis of the case and the period in which the party should address the public authority (Paragraph 6) with a warning that this method of delivery is considered an orderly delivery and that the party itself bears the negative consequences that may arise (Paragraph 7).

In accordance with Article 25 of the Rules of Procedure, the applicant and the person against whom the application was filed have the right to review the files of the case (Paragraph 1). Any other person who can prove his legal interest in the specific procedure after submitting an application has the right to review the files of the case if he has a legal interest (Paragraph 2). The interested persons should submit a written request for review of the files no later than 2 working days before the day for review, and the CPPD decides on this with a written decision (Paragraph 3). The right to review the files includes the right to copy the necessary documents (Paragraph 4). The files are reviewed in the premises of the CPPD under the supervision of an official (Paragraph 5), and when they are in electronic format, the CPPD provides the technical means for reviewing the documents as well as for their printing or copying (Paragraph 6).

4.3. Prevention of Conflict of Interest

Article 25
Prevention of Conflict of Interest

A Commission Member shall be exempted from the work on the case upon his/her own request or by a majority vote of the Commission, if:

1)In the case for which the procedure has been initiated he/she was previously involved, is or was a party, co-owner, that is, co-payer, witness, expert witness, attorney or legal representative of the party;

2)With the party, legal representative or attorney of the party, he/she is related by blood in a straight line, while in terms of side-line blood relation, up to the fourth

degree, and regarding spouse or spouse relatives, up to the second degree even when the marriage was terminated; and/or

3)With the party, legal representative or attorney of the party, he/she has a relation of a guardian, adoptive parent, adopted person, foster parent or dependent.

This article defines the cases when a member of the CPPD should be exempted from work in a specific case due to a conflict of interests. If a member of CPPD believes that there is a reason that will affect his/her bias in a specific case, he/she can request to be exempted. Also, with a majority of votes, the exemption of a member from the work in a specific subject can be voted. Neither the LPPD nor the Rules of Procedure establish what "work in the case" means, that is, whether it includes working on the case as a reporter of the same, that is, a member of the CPPD to whom the application is distributed or exemption from voting on the opinion itself, because the CPPD is a collective body. However, in accordance with Article 12 Paragraph 6 of the Rules of Procedure, the president and members of CPPD, as well as all other persons involved in the procedure before CPPD adhere to the highest standards of personal integrity and professional ethics and respect the regulations governing these standards. Up to the current practice of the existing CPPD, there is no formal exemption from work of a member of the CPPD, neither at his own request nor with a majority of votes, but there is one case of exemption from voting on a relevant subject due to personal reasons.

If any of the members was previously or is involved in the capacity of a party, co-owner, that is, co-obligor, witness, expert, proxy or legal representative of the party in the matter that is the subject of the work of the CPPD, he will be exempted (Paragraph 1 Point 1). It will also be exempted if one of the parties in the proceedings, the representative or the attorney of the party is related by blood in the direct line, and in the lateral line up to the fourth degree, a spouse or a relative by the spouse up to the second degree and when the marriage has ended (Paragraph 1 Point 2) and/or is in relation to a guardian, adoptive parent, adoptee, breadwinner or dependent (Paragraph 1 Point 3).

4.4. Burden of Proof in the Procedures before CPPD

Article 26
Burden of Proof

The applicant claiming that discrimination has been committed under the provisions of this Law shall state all the facts making such claim probable. If the Commission defines the claim is probable, then the burden of proof shall be transferred to the person against whom the application was filed.

This article specifically elaborates the principle of shifting the burden of proof in the procedure for protection against discrimination before the CPPD.

Excerpt from the Academic Literature No. 50

COMMENTARY on the law on prevention and protection against discrimination

"The problem of the burden of proof as a procedural legal institute is complex, so in its elaboration numerous theoretical and practical issues should be covered, both from a material-legal and from a procedural-legal aspect. The content of the legal obligation consists of certain behaviour for the subject, action or non-action, which is expressed as an imperative addressed to the subject of the obligation to behave in a prescribed manner. The basic (primary) obligation of the legal norms is to ensure that the civil-legal order fulfils its function, the holders of civil subjective rights and legal obligations behave in the manner established by the legal norms. When the primary efficiency of the legal norms is not achieved, and due to the absence of self-initiative, voluntariness and spontaneous behaviour of the subjects in accordance with the legal norms, it is necessary to build a mechanism for additional - secondary protection, that is, efficiency through their forced execution. This is achieved through the organized mechanism of the state, from which mechanism the subject demands to be forcibly intervened in the protection of his right. Here, it can be a matter of preventive action taken by the interested entities through extrajudicial protection such as the procedure before the CPPD, or of repressive-restorative action of the interested entities which is established in the court proceedings (civil, misdemeanour, criminal)" (Poposka, Mihajloski and Georgievski, 2013, p.30-31).

Due to the specificity of the occurrence of discrimination, in these cases there are quite a few difficulties in proving them if the regular burden of proof would be used, that is, everyone who claims has to prove it. In order to facilitate the proof of discriminatory treatment or the effect of a certain, apparently, neutral norm, criterion or practice, in cases of discrimination it is allowed to share the burden of proof between the applicant and the person against whom the application is filed.

Excerpt from the Academic Literature No. 51

"In general, there are two main reasons why the law of the European Union regulates the passing of the burden of proof: protection of the weaker side of the legal relationship and provision of access to information as an expression of the principle of equality of the parties in the procedure. The protection of the weaker side of the legal relationship and the passing of the burden of proof from the applicant to the person against whom the application is filed, contributes to the achievement of one of the basic goals of the European policy for the equality of the parties in the procedure, that is, it is a function of realisation of the legal protection of the victims from the inequality in the procedure. The EUJ continuously confirms in its jurisprudence, that in the law of the European Union, the social dimension, which includes equal treatment, is equal, if not more important, than the economic dimension. The second reason concerns the availability of information. Namely, the party injured by discrimination, as a rule, does not have access to important information that affects the proof of the violation of the right to the principle of equality of the procedure, so the burden should shift to the other party that has this information, that is, data, in order for the victims to have at their disposal an effective legal remedy" (Amdiju and Poposka, 2023, p.11).

The standard of shifting the burden of proof regulated in the law of the European Union, that is, the anti-discrimination and gender directives, stipulates that: "Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment".

Excerpt from the Academic Literature No. 52

"This means that it is not necessary to establish several supporting facts that occur in cases of discrimination, in order to legally prove the case.

• First, there is no need to prove whether the person against whom the application is filed is motivated by prejudice, that is, there is no need to prove that there is prejudice against the specific person or group of persons in order to prove the case of discrimination. Law cannot regulate people's attitudes, because they are purely internal states. What can and does regulate is the behaviour through which those attitudes can be manifested. For example, in the Feryn case, explained below, although the owner claimed that his clients, and not himself, only wanted white Belgians to work in their home, the CJEU did not consider this fact to be relevant at all in deciding whether in the case there is discrimination.

• Second, it is not necessary to demonstrate that a certain provision, criterion or practice has the purpose, specifically, to have a less favourable effect on a certain group of persons. On the contrary, if it is shown that a certain provision, criterion or practice is intended in good faith, but still has a less favourable effect on the relevant group of persons, then it will be discriminatory. For example, in the case of *D.H.*, although the state argued that the system of special schools was created to help Roma students overcome the language barrier and the lack of pre-school education, the ECtHR considered this to be irrelevant and that in order to to prove discrimination, it is necessary to show that the Roma were disproportionately and negatively affected (affected) in the specific instance compared to the majority population, and not the existence of an intention to discriminate.

• Third, as it applies only to the anti-discrimination legislation of the European Union, there is no need to prove the existence of a specific identifiable victim, as demonstrated in the Feryn case. On the other hand, according to the ECHR, if the specific victim does not demonstrate locus standi, then the case would not satisfy the admissibility criteria in accordance with Article 34 of the ECHR" (Handbook on European non-discrimination law, 2018, p. 239-241).

The burden of proof represents the duty of a certain procedural subject to propose evidence that will confirm the truth of a certain claim about legally relevant facts. The burden of proof is preceded by the burden of assertion, which indicates the duty of a certain procedural subject before the court or before the CPPD to state the assertions about the facts on which he/she bases his/her request or with which he/she refutes the allegations of the opposite party. Passing the burden of proof has a procedural-legal character. The right to shift the burden of proof from the applicant to the person against whom the application is filed needs to be analysed in the context of establishing legal protection in proceedings based on the principle of equal treatment.

In order for the burden of proof to shift from the victim (the applicant) to the alleged discriminator (the person against whom the application is filed), the former must present facts that make it probable that discrimination could have been committed, that is, should establish a probable (Lat. *prima facie*) case of discrimination, from which the probability can be clearly perceived that precisely the protective characteristic, that is, the discrimination grounds, is the circumstance that led to less favourable treatment or the effect of the treatment, in contrast to others. Also, the applicant must make probable the existence of a causal connection between the less favourable treatment or the effect of the treatment and the resulting injury (damage) or disproportionate negativity. The fact that one person has a certain protective characteristic and another does not, is not enough to pass the burden of proof, because this distinction will always

exist and if it is accepted as sufficient, then we will always have established a probable (Lat. *prima facie*) case of discrimination, and this is a legal nebula.

Excerpt from the Academic Literature No. 53

"In addition to the existence of a discrimination grounds, that is, a protective characteristic, in order to establish a presumption of discrimination, it is necessary to present some other fact or evidence that will indicate the use of the protective characteristic as a criterion for distinguishing the specific person in the case in question. For example: if the person with a certain ethnic origin had better qualifications than the other person and the other person was chosen, or if other people are allowed to enter a restaurant and only the Roma are not allowed, then a prima facie case is already based and the burden of proof goes to the person against whom the application is filed, so he/she has to prove the opposite. Or, if in addition to having a disability, there are additional circumstances that indicate the existence of stereotypes about people with a disability, on which the decision of the person with a disability is based. Such circumstances are, for example: comments that indicate the intention to discriminate, previous cases/policies of discrimination against persons with disabilities or a certain type of disability (mostly persons with mental or intellectual disabilities) committed by that particular natural or legal person, questions set at the interview (for example, about the type of disability that the person in question has), non-transparency or unexplained procedural violations, request for additional data such as, for example, those from the health card of the person with a disability and so on" (Amdiju and Poposka, 2023, p.13-14).

In other words, the applicant, in order to make a probable (Lat. *prima facie*) case of discrimination, must show the clear causal link between the less favourable treatment and the resulting injury, but also between the less favourable treatment and the discrimination grounds, but should it only made the causal connection between the discrimination grounds and the resulting injury probable. When proving the cases of indirect discrimination where it is necessary to prove that a certain, seemingly neutral provision, criterion or practice has a particularly unfavourable effect on a certain group of persons, it is necessary for the applicant to prove that this disproportionately unfavourable effect is the result of the application of the specific provision, criterion or practice, which is attacked. That is, the applicant has to show that there is a causal relationship between the measure being attacked and the imbalance between different groups in the enjoyment of a certain benefit. When the distinction is made by a legal provision and if the effect of the implementation of this provision is disputed before the CPPD, the applicant establishes a probable (Lat. *prima facie*) case only by indicating this provision and its effect on the group related to the discrimination grounds of discrimination. Furthermore, the person against whom the application is filed has the obligation to prove that this provision is not discriminatory against the specific person or group of persons.

After the burden of proof has shifted from the applicant to the person against whom the application was filed, the latter can rebut the presumption of discrimination if he proves that the applicant is not, in fact, in a similar situation with its comparator, or if it proves that the different treatment is not based on the protected characteristic, but on the ground of another objective distinction. If the person against whom the application is filed fails to rebut the presumption of discrimination in either of these two ways, then he/she will have to justify the different treatment/different effect, proving that it is objectively justified and proportionate. That is, in the cases of a probable (Lat. *prima facie*) case of discrimination, the person against whom the application is filed must prove that the respective distinction based on a discrimination ground tends to achieve a goal that is objective and justified, and the distinction itself is appropriate and necessary to achieve that goal.

The European Union initially in a separate directive, Council Directive 97/80/EC on the burden of proof in cases of discrimination based on sex, and then in the two anti-discrimination directives of 2000 (Directive 2000/78/EC, Article 10 and Directive 2000/43/EC, Article 8) and gender directives (Directive 2004/113/EC, Article 9 and Directive 2006/54/EC, Article 19) provide for this procedural legal institute explicitly. In points 8 and 18 of the preamble of Directive 97/80/EC, it is stated that the passing of the burden of proof is in function of achieving the legal protection of the victims from the inequality in the procedure.

In a proceeding, the CPPD has before itself the task of coming to an understanding of the truth, the factual situation, on which it makes an appropriate decision, that is, adopts an opinion. At the same time, CPPD defines the facts that are in dispute between the parties, based on the proposed facts and evidence in all stages of the procedure. From the analysis of the opinions of CPPD, it is noted that, in general, it follows the elements of passing the burden of proof and bases its decision on the application of this procedural rule. In some of the cases, it clearly states Article 26 and indicates the exact moment when the burden of proof passes, that is, when it considers that a probable (prima facie) case of discrimination has been created and does not establish discrimination in cases in which the presumption of discrimination has been refuted by side of the person against whom the application is filed. In procedures initiated by virtue of the office (Lat. *ex officio*), the burden of proof is usually transferred with the decision to initiate a procedure ex officio for the reasons that the information obtained by wiretapping created a high degree of conviction, that is, presumption of discrimination.

Excerpt from the Case Law No. 148

Acting on an application, the CPPD reviewed the allegations of the applicant who claimed that there was direct discrimination on the ground of education against the Basic Criminal Court Skopje. With the application, numerous facts and evidences were submitted which, according to the CPPD, made the claim of discrimination probable and therefore the burden of proof was transferred to the person against whom the application was filed to prove that he did not discriminate against the applicant. When analysing all the facts and evidence in the case, the Commission established direct discrimination based on education in the area of work and labour relations (*Application No. 0801-273* dated 19.9.2019, *Opinion* dated 19.7.2021).

Excerpt from the Case Law No. 149

Acting on an application, the CPPD reviewed the allegations of the applicant who claimed that there was harassment based on sex and gender against a natural person, then a candidate for mayor of one of the municipalities in the state. In a debate show, in which the applicant also participated, he used disturbing speech based on sex and gender, directed directly at the applicant. CPPD considered that the allegations from the application and the attached evidence, recordings of the statements made in the show, made the claim probable and therefore shifted the burden of proof to the person against whom the application was filed. When analysing all the facts and evidence in the case, CPPD established harassment based on sex and gender in the area of media and public information (*Application No. 0801-312* dated 12.10.2021, *Opinion* dated 13.12.2021).

Excerpt from the Case Law No. 150

Acting on an application, the HCPC considered the allegations of the applicants against the Ministry of Health, who claimed that there was discrimination based on disability in exercising the right to vaccination. The application stated that physical access to vaccination points is denied to persons with disabilities, their information about the immunization process is inadequate and health authorities do not issue appropriate certificates to persons with disabilities who, due to their health condition, may not be vaccinated. CPPD considered that the allegations from the application and the attached evidence made the claim probable and therefore shifted the burden of proof to the person against whom the application was filed – the Ministry of Health to refute the presumption of discrimination. During the analysis of all the facts and evidence in the case, the Commission established direct persistent discrimination based on disability in the area of access to (health) goods and services related to vaccination (*Application No. 0801-265* dated 14.9.2021, *Opinion* dated 9.12.2021).

Excerpt from the Case Law No. 151

Acting on an application, in which the applicant claimed that there was discrimination based on political belief by the Agency for Administration in the Area of Employment and Labour Relations, CPPD shifted the burden of proof. However, in the response to the application, explanatory facts were given that helped the CPPD in analysing all the facts and evidence in the case to establish that the Agency for Administration refuted the presumption of discrimination because all candidates were allowed to apply for the job and to be scored in accordance with the *Law on Administrative Servants* (*Application No. 08-7* dated 22.1.2020, *Opinion* dated 7.7.2021).

In the same direction as in the case explained above, and in the case in which the applicant claimed discrimination on the ground of ethnicity by the Academy of Judges and Public Prosecutors, CPPD transferred the burden of proof. However, in the response from the application, explanatory facts were given that helped the CPPD in analyzing all the facts and evidence in the case to establish that the Academy for Judges and Public Prosecutors refuted the presumption of discrimination because it acted in accordance with the provisions of the *Law on the Academy for Judges and Public Prosecutors* and the by-laws of the Academy (*Application No. 0801-269* dated 23.9.2021, *Opinion* dated 13.10.2021).

Excerpt from the Case Law No. 152

Acting on an application, the CPPD considered the allegations of the applicant who claimed that there is indirect discrimination based on the health condition by the insurance company in the area of access to goods and services. CPPD considered that the applicant confirmed the allegation of discrimination probably by submitting a copy of the viber communication and the letter of rejection of the private family health insurance offer because she previously had hepatitis C. With the response to the application, explanatory facts were given and evidence was attached that helped the CPPD in analysing all the facts and evidence in the case to establish that the insurance company, although it did not refute the presumption of discrimination, nevertheless objectively justified it. In its opinion, CPPD states that in this particular case, the refusal of admission to private insurance by the insurer is a proportionate and necessary means of fulfilling the insurer's legitimate goal – avoiding any potential high risk that may lead to financial losses (*Application No.* 0801-225 dated 16.8.2021, *Opinion* dated 8.10.2021).

The previous Law (2010) did not provide an explicit possibility of passing the burden of proof in the procedure before the previous CPC, but only during the conduct of the court procedure. However, there was no prohibition for the CPD to apply this principle in the proceedings conducted before it.

Excerpt from the Case Law No. 153

In cases *07-778* and *07-572* of the LCP of 2013, the applicants submitted sufficient facts and evidence from which they established that discrimination was probably committed. In the specific cases, the perpetrators of discrimination had the opportunity to prove that they did not discriminate, but in the absence of a response from the discriminator regarding the allegations in the application, the CPC established discrimination.

In cases where discriminatory intent can be identified (although intent is not a constitutive element of any form of discrimination) through irrefutable public statements made by the person against whom the application is filed, no comparator is required. CPPD follows the same logic of thinking, which can be seen in their practice in dealing with applications related to the media and public information field, and related to announcements on the Internet and social media, where the application itself is also submitted with the announcements that in themselves, without the need for a comparator, create a presumption of discrimination. In these cases, CPPD shifts the burden of proof from the applicant to the person against whom the application was filed to prove the opposite. The same practice was also observed by the previous CPD in cases of discriminatory advertisements where, in the absence of the possibility of justification, the CPD did not even ask for an answer from the potential discriminator, stating that the job advertisement itself is a sufficient fact and proof, and due to the nature of the job, described in the advertisement, no discrimination exceptions can be applied, that is, the advertisement cannot be justified due to its discriminatory content based on gender and age because the given job description does not require the exclusion of a certain age or gender group.

Excerpt from the Academic Literature No. 54

"As for good practices from equality bodies for written guidelines regarding passing the burden of proof we would single out the guidelines of the Advisory Board of the Hungarian Equality Authority. Since 2021, the Equality Authority of Hungary has been merged with the Office of the Commissioner for Fundamental Rights of Hungary, which combines the two mandates, that is, it is both a national human rights institution and an equality body. The guidelines state that:

• The person initiating the procedure (the applicant) has to prove that he suffered some kind of damage and that he has a protective characteristic, but does not prove the causal connection between the damage and the protective characteristic;

• The person who initiates the procedure (the applicant) does not have to prove that he suffered legal damage, but only ordinary damage. This means that the person does not have to prove that the action violated any special legal provision, but that it was less favourable for him/her than his/her established position;

• The person against whom the procedure is initiated proves that there is no causal connection between the damage and the protective feature;

• In addition, if there is a causal connection between the damage and the protective feature, with the recognition of the causal connection, the person against whom the procedure is

initiated has the opportunity to prove that he was not obliged to respect the obligation of equal treatment" (Amdiju and Poposka, 2023, p.74 -75).

For more on the burden of proof in court proceedings, see Part 5.5. Burden of Proof

For more information on the interpretation of shifting the burden of proof in both extrajudicial and judicial proceedings, see the 2023 Guide to Shifting the Burden of Proof of the Commission for Prevention and Protection against Discrimination, by the authors Nataša Amdiju and Žaneta Poposka.

4.5. Commission's Decisions General Recommendation for Protection against Discrimination

Article 27
Commission's Decisions

(1) The Commission shall give its opinion within 60 days as of the date of filing the application and deliver it to both the applicant and the person against whom the application was filed.

(2) Along with the written opinion referred to in Paragraph (1) of this Article, and after it has established discrimination, the Commission shall propose measures to eliminate such violations of the right.

(3) The person to whom such recommendation is addressed shall act on the recommendation and eliminate the violation of the right within 30 days as of such recommendation receipt, or within a longer period if there are particularly justifiable reasons but no longer than six months, and inform the Commission thereon.

(4) If the person to whom the recommendation is addressed fails to act upon the recommendation in accordance with Paragraph (3) of this Article, the Commission shall submit a request to initiate infringement proceedings before the competent Misdemeanour Court.

(5) The Commission shall make either a conclusion not to act or to terminate the procedure upon the application in case a procedure on the same matter has already been initiated or is being initiated before the court in parallel with its procedure or if its procedure has been effectively completed, and it shall inform the applicant thereon.

(6) The Commission shall make a conclusion not to initiate a procedure regarding an application that has already been acted upon, and on which new facts and circumstances have not been offered, and it shall inform the applicant thereon.

(7) The Commission shall make a conclusion for non-initiation or termination of procedure if the applicant decides to withdraw the application during the proceedings.

(8) The Commission shall make a conclusion for non-initiation or termination of procedure if during the procedure the applicant died unless his/her successors demand the continuation of such procedure commenced.

In accordance with Paragraph 1 of this article, within 60 days from the date of submission of the application, the CPPD should give an opinion whether in the specific case it is discrimination or not, as well as notify both parties by submitting a copy of the opinion. The terms that existed in the previous Law (2010) have been shortened with the LPPD, that is, from 90 days, the obligation to submit the opinion has been shortened to 60 days. In accordance with Article 16 Paragraph 7 of the Rules of Procedure, after fully determining the factual situation, the member of the CPPD to whom the application is assigned, if he defines that there is discrimination, prepares a written proposal-opinion on whether or not there is discrimination, and if he defines that there is discrimination in the proposal-opinion also contains recommendations and measures to remove the violation of the right.

When determining the factual situation, the CPPD uses evidentiary means, that is, means that are suitable for determining the facts in a separate case, such as documents, statements of witnesses, statements of the parties, expert opinions and inspection (Article 17 of the Rules of Procedure). Expert opinions are elaborated in Article 21 of the Rules of Procedure, providing for their use when the member of CPPD, to whom the application is assigned, does not have expert knowledge of a fact that is important for the adoption of the opinion, may propose to CPPD to appoint an expert or form expert group (Paragraph 1). CPPD has the right to call the expert for an oral clarification of the opinion, to request a written clarification or to appoint another expert (Paragraph 2). The Rules stipulate that if the expenses for the expert are disproportionately high according to the importance or value of the matter, the factual situation will be established by other means of evidence (Paragraph 3). The rest of the evidence is elaborated below.

The 60-day deadline is aimed at speeding up the action of the CPPD, but also of all parties involved in the procedure, and to improve the efficiency of protection against discrimination. This is how the CPPD is set up, with professional members employed full-time, professional service, increased financial resources, including the explicit obligation to pass the burden of proof before the CPPD, will enable faster action. After reviewing the application and analysing the facts and evidence, if they are attached, the CPPD assesses whether they are sufficient to confirm that discrimination could have been committed, that is, the applicant has established a probable (Lat. *prima facie*) case of discrimination, from which clearly shows that the protective feature led to a less favourable treatment or effect. If this is the case, the application is submitted for judgment to the potential discriminator, that is, the person against whom the application is filed, who has the obligation to testify and submit facts and evidence that will prove that in the specific case no discrimination has been committed. For a correct and complete determination of the factual situation, the CPPD may call the parties to give a statement orally, to submit additional data and information, or the CPPD to inspect premises and documents. By analysing all the facts and evidence individually and together as a whole, CPPD defines the factual situation on the ground of which it decides whether it is discrimination in the specific case.

In accordance with Article 23 Paragraph 2 of the Rules of Procedure, the Opinion of CPPD contains: introduction, opinion, rationale, recommendation, General Recommendation (if any), signature of the notifying member, signature of the president or his deputy and seal. The introduction should contain: the name of the CPPD, the jurisdiction regulation, the name of the party and its legal representative or attorney, if there is one, and a brief description of the subject of the procedure (Paragraph 3). The opinion presents the position of CPPD on whether or not there is discrimination (Paragraph 4). The reasoning should be understandable and contain: a brief statement of the party's request, if any, the established facts according to which the opinion was issued, the legal regulations and the reasons for which, based on the established facts, the opinion was adopted, the reasons for which some of the requests, the

claims or proposals of the parties are not accepted, as well as the reasons why some of the statements made during the procedure were not taken into account (Paragraph 5). The recommendation is given when discrimination has been established, and it contains activities and measures that should be taken to prevent further discrimination, as well as a deadline for carrying out those activities and measures (Paragraph 6). The General Recommendation is given when discrimination against a large number of people has been established, and it contains activities and measures that should be taken to prevent further discrimination, as well as a deadline for carrying out those activities and measures (Paragraph 7). The opinion is signed by the notifying member who worked on the case and the president of the CPPD, and exceptionally, in case of his absence, by the member of the CPPD who replaces him (Paragraph 8). On the signature of the president of the CPPD, that is, his deputy, the stamp of the CPPD is placed (Paragraph 9).

If it defines discrimination, the CPPD, with its written opinion, recommends to the discriminator a way to remove the violation of the right (Paragraph 2 of this article) and obliges him within 30 days of receiving the recommendation to implement it (Paragraph 3 of this article). In cases where there are justified reasons that the recommendation cannot be implemented within 30 days, the CPPD may provide for a longer period, but not longer than six months. After the removal of the violation, the discriminator has the obligation to notify CPPD. In accordance with Article 24 of the Rules of Procedure, CPPD monitors the execution of the recommendations it has given (Paragraph 2), while, on the other hand, after the deadline for acting on the recommendation has passed, the expert service prepares a report that will contain data and evidence on whether it has been implemented the recommendation or not and submits it to CPPD for consideration (Paragraph 3). According to the CPPD, as of December 31, 2022, the CPPD concluded that the recommendations have been fulfilled, that is, discrimination has been removed in a total of 16 cases that were established in 2022. For 34 cases that were established in 2022, CPPD did not receive a written notification from the identified discriminator after the expiration of the legally provided deadline for acting on the given recommendation. CPPD continues to monitor the implementation of the recommendations for the remaining 20 applications whose deadline for action expired in 2023 (CPPD, *2022 Annual Report*, p. 38).

For comparison, the Commissioner for the Protection of Equality of Serbia, after receiving the application, has the obligation to establish the factual situation by inspecting the submitted documents and taking statements from the parties or from third parties.

In accordance with Paragraph 4, in cases where the legal and natural persons did not act on the recommendation of the CPPD within the prescribed period, the CPPD will submit a request for the initiation of misdemeanour proceedings to a competent court, which, in turn, will issue a sanction for the perpetrator of the discrimination in a misdemeanour proceeding. The previous Law (2010) gave the previous CPD the discretionary right to decide whether to initiate a procedure for establishing liability due to failure to act on the recommendation, while the current Law provides for the mandatory submission of a request for criminal liability. In practice, the previous CPD did not initiate a request for misdemeanour procedure, although about 30% of the recommendations of the previous CPD compositions were not implemented. The existing CPPD initiates misdemeanour proceedings, and in 2021 it has submitted two requests to initiate misdemeanour proceedings before a competent court for misdemeanours (CPPD, *2021 Annual Report*, p. 33). In 2022, CPPD submitted 14 requests to initiate misdemeanour proceedings against established discriminators, who did not act on the Commission's recommendations within the legally stipulated period. Out of the 14 requests submitted, 4 were rejected by the decisions of the competent courts, for 2 of these 4 decisions,

CPPD submitted appeals to the appeals courts, and one of the appeals was rejected as untimely, and one was rejected as unfounded. One request for the initiation of a misdemeanour procedure was withdrawn by CPPD in order to fulfill the recommendation of the adopted opinion by the discriminator. After 9 submitted requests to initiate misdemeanour proceedings, the courts initiated misdemeanour proceedings. Within the framework of these proceedings, 1 first-instance judgment was passed, declaring legal and natural persons guilty of offenses under Article 6, Article 8, Paragraph 1, and punishable under Article 41, Paragraphs 1, 2 and 3 of the LPPD. 8 of the 9 misdemeanour proceedings initiated are still ongoing. The most common problems and challenges faced by CPPD in relation to the procedural misdemeanour procedure is that the courts in several procedures also engage in material decision-making as to whether there is discrimination in the specific case, which directly violates and undermines the independence in the work of CPPD and the finality of the opinions held by the institution (CPPD, *2022 Annual Report*, p. 38-39).

Paragraph 5 of this article stipulates that if a procedure has been initiated before the court for the same matter or it has been legally concluded, the CPPD will not act in the specific case. Such a provision is logical considering the fact that the recommendations of CPPD do not have binding legal force, unlike court decisions, so the victim of discrimination has the right to choose whether to use both legal remedies, whether to decide on one of them, or will directly decide on judicial protection by filing an appropriate claim before a competent court. If this is the case, the CPPD will issue a conclusion for non-action, that is, for stopping the procedure, which will leave it to the court to conduct the procedure and decide whether the principle of equal treatment has been violated in the specific case. He or she informs the applicant about the adopted conclusion. In addition, this provision guarantees the legal certainty of people and prevents two authorities from making different decisions on the same case. OMB has the competence to act in cases of protection against discrimination, if the potential perpetrator of discrimination is a state authority. In practice, it used to happen that the same application for protection against discrimination was submitted to both the previous CPD and the OMB, so as a result of insufficient coordination, they made different decisions on the same case. The first composition of the previous CPD had a regular practice of meeting representatives of the Commission and representatives of the OMB for coordination and mutual support in cases of discrimination, so every time the CPD received an application against a state body, it informed the OMB that a procedure had been initiated and the OMB himself the cases of discrimination. in the private sphere he forwarded them to the CPD. In March 2023, the two institutions signed a Memorandum of Cooperation in which it is stated that CPPD and OMB will mutually cooperate professionally in handling applications and specific cases of discrimination, as well as exchange available information, opinions and recommendations in the area of equality and protection from non-discrimination. This will reduce the possibility of adopting different legal opinions on the same legal issue between the two institutions competent to act on applications for protection against discrimination.

Paragraphs 6 to 8 regulate the cases when CPPD makes a conclusion about not starting or stopping the procedure. In the event that the CPPD has already acted on a certain case, and the applicant, when resubmitting the application, did not offer new facts and circumstances from which the CPPD could make a different decision, it will make a conclusion on not initiating a procedure and deliver it to the applicant. The applicant can withdraw the application at any time during the procedure, and for that reason, the CPPD will issue a conclusion that will stop the procedure for determining discrimination. In case of the death of the applicant, the heirs have the right to request the continuation of the started procedure. Otherwise, CPPD makes a conclusion for not starting or stopping the procedure.

What is missing in this provision is the possibility for the CPPD to make a conclusion in cases where it is incompetent to act, but this is decided by the CPPD in an identical way as the OMB. Namely, in the conclusions of the CPPD, it states that the subject of the application does not fall within the legal competences of the Commission specified in Article 21 of the LPPD, and they give legal advice to the applicant who is the competent institution for solving the relevant problem. It is noted that in connection with the conclusions for the rejection of the applications, in the previous practice, when the CPPD considers that it is incompetent in an application for incompetence, it refers to the *Law on General Administrative Procedure* and refers to the right to appeal, that is, to an administrative procedure.

Excerpt from the Academic Literature No. 55

"There is a different practice regarding the form and content of the decisions to reject the application due to the lack of competence of the Commission. Some of these decisions are named as notification, decision or conclusion, and in two cases they were named as solution.... There is no specific provision in the Law for not starting or stopping the procedure due to lack of competence of the Commission, which contributes to the Commission applying the *Law on the General Administrative Procedure* instead of the parent law. This is a negative practice that should be abandoned by the CPPD, especially due to the repercussions that the application of the *Law on the General Administrative Procedure* has on the further action of the Commission, such as the obligation to prepare a legal instruction and the possibility of conducting an appeal procedure against the decisions of CPPD, although the Commission is an independent and not an administrative body.... On the other hand, there is also a difference in terms of the content of the decisions rejecting a certain application due to lack of jurisdiction. In the submissions in which incompetence is invoked, the Commission usually explains that in the specific case no determination of discrimination is required or it is not discrimination, but a violation of the law. Then, there are submissions in which the Commission explains that there is not enough documentation with which to support the application, so that it is not competent to evaluate the work of certain institutions, such as, for example, the Public Institution Intermunicipal Centre for Social Work of the City of Skopje. and finally, incompetence is invoked in cases where it is a criminal procedure. In a large part of the submissions in which incompetence is invoked, the Commission contacted the applicants, and after some applications also the potential discriminators" (Mishev and Gliguroska, 2022, p.41).

Article 28
General Recommendation for Protection against Discrimination

The Commission shall, on its own initiative, indicate a General Recommendation in case of discrimination committed against a larger number of persons.

In addition to the possibility of initiating a procedure ex officio, CPPD on its own initiative can make a General Recommendation in case of discrimination against a large number of people. The intention of this provision is to encourage proactivity on the part of CPPD to act not only when there is a specific case of discrimination, but also when there is no specific application to be able to make recommendations for the advancement of the principle of equality or when there is such a case that affects an identically larger group of persons. The General Recommendations are an excellent way to raise awareness on the part of CPPD about systemic and/or structural discrimination, with which it would indicate to the competent institutions and other legal entities about the less favourable treatment or the effect of treatment on a certain group of persons, it would recommend to them how to overcome the established situation and at the same time, by publishing the General Recommendations, it would act educationally and raise the awareness of the general public about the specific problem.

In the current practice, until the end of April 2023, CPPD has adopted eight General Recommendations. In 2021, CPPD adopted the following 4 General Recommendations:

• General recommendation aimed at promoting the right to protection and access to immunization of persons with disabilities in conditions of a pandemic;

• General recommendation for the promotion and protection of the human rights and dignity of convicted persons with disabilities and respect for their physical and mental integrity during the serving of sentences in penal institutions and correctional homes;

• General recommendation for the implementation of the provisions contained in the Convention on the Rights of Persons with Disabilities in the relevant domestic legislation in order to ensure and promote the exercise of human rights and freedoms of all persons with disabilities without any discrimination based on disability;

• A General Recommendation recommending the State Election Commission to take all necessary actions in the shortest possible time in order to ensure accessibility and appropriate adaptation of the polling stations, which will enable equal access of persons with physical disabilities to and in polling stations across the country.

In 2022, CPPD adopted 2 General Recommendations:

• A General Recommendation recommending the local self-government to provide equal access to water to all citizens with a particular focus on the Roma ethnic community;

• General recommendation for removing segregation in primary education with a particular focus on Roma students.

Until the end of April 2023, CPPD adopted 2 General Recommendations:

• The General Recommendation recommending the Ministry of Justice and the Administration for the Execution of Sanctions to ensure systematic, sustainable and continuous access to compulsory education for all convicted persons who have been sentenced to a factory educational measure - referral to an educational correctional facility, for time of execution of the prison sentence or institutional measure;

• A General Recommendation recommending the Administration for the Execution of Sanctions and other relevant authorities to ensure equal exercise of the right to progression in the institutions of the penal system for all convicted persons regardless of their gender.

Excerpt from the Case Law No. 154

In 2023, CPPD adopted a General Recommendation recommending to the Ministry of Justice and the Administration for the Execution of Sanctions to ensure systematic, sustainable and continuous access to compulsory education for all convicted persons who have been sentenced to institutional educational measures - referral to educational institutions. correctional facility, during the execution of the prison sentence or institutional measure. CPPD states that by not providing access to compulsory education for all convicted persons or children who have been sentenced to a factory educational measure - referral to a correctional institution, the competent institutions as responsible for organizing the educational process in penal and correctional institutions discriminate by not doing something, that is, failing to do something on a discrimination grounds (personal status), which results in the exclusion of the respective person or group of persons from enjoying or exercising certain rights. CPPD states that such omission constitutes direct persistent discrimination (*General Recommendation* dated 27.3.2023).

In accordance with the LPPD, the CPPD has the legal authority to monitor the implementation of all its recommendations, including the General Recommendations it makes on its own initiative.

The previous CPD, too, made General Recommendations, although there was no explicit legal possibility for that. For example, in September 2017, the previous CPD, after receiving information that students in a primary school in Ohrid were partially denied the right to education because of their religion, indicated that "the restriction of wearing religious symbols in schools is a form of discrimination based on religion".

Excerpt from the Academic Literature No. 56

"[In] June 2016, the CPD, acting on an application of the Network for Protection against Discrimination against all banks in the country due to discrimination against the blind and visually impaired, established discrimination and made a recommendation to the banks: "not to require an authorized person to act on behalf of the blind and visually impaired and to create conditions for personal signature and facsimile. CPD recommends that each bank make a reasonable adjustment to the specific needs of these persons, both in its branches and on the Internet. In relation to the control of the operations of the banks, the CPD makes a recommendation to the National Bank, as the responsible institution for the supervision of the operations of the banks, to strengthen the control in achieving equal access to the services and products of the banks by the blind and the disabled. kind" (Helsinki Committee for Human Rights, 2016, p.3).

4.6. Inspection of Documents and Premises and Collecting Data and Information from Natural and Legal Persons

Article 29
Inspection of Documents and Premises

(1) While performing the duties within its competence, the Commission may directly inspect the documents and premises of all legal entities, state authorities, local self-government bodies, other authorities and organisations exercising public authority, and request and obtain from them copies of any documents pertaining to any particular case concerned, as well as from public institutions and services that avail of data and information on cases and general practices of discrimination, while respecting the right to privacy.

(2) Commission Members and Professional Service staff shall have official identification. The form, content, procedure and manner of issuance, usage and revocation of official identification shall be prescribed by the Commission's general act.

In accordance with Paragraph 1 of this article, and in the implementation of its competences, CPPD has the authority to enter the premises of all legal entities, state bodies, bodies of local self-government units, other bodies and organizations exercising public powers and public institutions and services that have data and information about cases and general practices of discrimination and to request an inspection and/or a copy of the documents that are related to a specific case of discrimination. The direct inspection means that members of the CPPD or employees of the professional service who have authority, by observing the state of things, can immediately, through their senses, establish the circumstances that are important for the decision of the CPPD, and are located in the premises of the legal entity. The inspection provides the opportunity to the CPPD to remove ambiguities regarding certain circumstances, to check the truth of certain claims and to create an accurate representation of what exactly happened or is happening, so that it can reliably establish the facts that are important for making the right decision. The right to privacy is protected during the inspection. In accordance with Article 12 Paragraph 4 of the Rules of Procedure, the president and members of the CPPD, as well as all other persons involved in the procedure before the CPPD, handle personal, official and classified data in the manner and under the conditions established by the *Law on Classified Information*.

In accordance with Article 22 of the Rules of Procedure, if a member of the CPPD believes that he should perform an immediate inspection of the documentation and the premises, he does so accompanied by another administrative officer employed in the professional service in charge of preparing the minutes of the inspection (Paragraph 1). The inspection can be carried out with or without notice, and if the natural or legal person does not allow an unobstructed inspection, the member of the CPPD to which the application is distributed prepares a request for the initiation of criminal proceedings in accordance with the Law and submits it to the CPPD (Paragraph 2). The person who is inspected has the right to attend the inspection (Paragraph 3). For failure to act on the request of CPPD to carry out an immediate inspection of the documentation and the premises, as well as to provide a copy of the documents, CPPD will demand criminal responsibility from the legal entity and from the

responsible person and will impose a fine in accordance with Article 45 of LPPD. From the past experience of CPPD, in half of the cases the Commission has carried out an inspection in order to establish the actual situation, which makes this a regular practice. Most of the time, the inspection is announced and in the majority of cases it is allowed by the concerned persons, but there are cases when it is postponed for a different date than the one originally proposed by CPPD.

In accordance with Paragraph 2 of this article, the members of the CPPD and the employees of the professional service have an official identification with which they identify themselves during the inspection. They have an obligation to respect the right to privacy when conducting the inspection but also in all other actions they take. The appearance, form and content of the CPPD identification will be established by a separate act. Also, with an internal act, it will also prescribe the procedure for issuing, using and withdrawing the official ID card. In 2022, CPPD adopted a Rulebook on the form, content and procedure for issuing, using and revoking official identification of members and employees of the professional service of the Commission for Prevention and Protection against Discrimination dated 31.5.2022 published in The Official Gazette of the Republic of North Macedonia No. 123/2022.

This article is a logical addition to the next article and is in its function, for the simple reason that sometimes it is necessary to inspect certain documentation in order to obtain relevant information useful and necessary when dealing with specific cases of discrimination. OMB, within the scope of its competence, when considering the application, may request necessary explanations, information and evidence for the allegations in the application; to enter the official premises and perform an immediate inspection of the objects and matters under their jurisdiction, as well as provide material and verbal evidence; to call for an interview an elected or appointed person, an official and any other person who can provide certain data in the procedure; to request an opinion from scientific and professional institutions and skilled persons and to undertake other actions and measures established by law or other regulation. In implementing the powers of the civil control mechanism, the OMB has access to classified information in accordance with the regulations relating to classified information and evidence regardless of the degree of confidentiality. Refusal and non-compliance with OMB's requests to take actions to collect data and information relevant to the cases are considered as obstructing the OMB's work. The ombudsman, the deputies of the ombudsman and the employees of the expert service of the OMB have official identification.

In comparison, the Commission for Protection against Discrimination in Bulgaria has the authority to collect written evidence, clarifications in order to establish the factual situation. All entities, state, local self-government units are obliged to assist the Commission in the investigation and provide the required information and documents and provide the necessary clarifications. The existence of data representing a business, industrial or other type of secret protected by law cannot be an excuse for subjects not to cooperate with the Commission. In case of resistance from the subjects to provide the requested information, the Commission can request with a court order and the assistance of the police to obtain the same.

Article 30
Collecting Data and Information from Natural and Legal Persons

(1)Any natural and legal entities, state authorities, local self-government bodies, other bodies and organisations exercising public powers, and any public facilities and services

shall, at Commission's request, provide information on specific cases of discrimination and general discriminatory practices within 8 (eight) days as of the date of receipt of the application.

(2)The Commission may summon for an interview any person who can provide specific information on cases of discrimination.

In addition to the competence of the CPPD to inspect the premises and documents of legal entities, there is also the obligation, in accordance with Paragraph 1 of this article, of all natural and legal persons, state authorities, authorities of local self-government units, other authorities and organizations that perform public authorities and public institutions and services, at the request of CPPD to provide data on specific cases of discrimination and general practices of discrimination. In accordance with Article 16 Paragraph 5 of the Rules of Procedure, if a member of the CPPD, to whom the application has been assigned, considers that there is a need to obtain evidence and documents, he makes a written request to the holder of those evidence and documents to submit them. The obligation to submit the requested data should be fulfilled within eight days from the day of receipt of the request, otherwise they will be subject to criminal liability. In accordance with Article 16 Paragraph 6 of the Rules of Procedure, if the natural or legal person does not submit the required evidence, the member of the CPPD to whom the application is assigned is obliged to prepare a proposal for a request to initiate criminal proceedings in accordance with the law and submit it to CPPD. In addition, in accordance with Article 18 Paragraph 6 of the Rules of Procedure, all documents that are issued by a domestic public authority, and which are important for the adoption of an opinion, can be requested by the relevant public authority to be submitted by the CPPD. From the previous practice of CPPD, in general, data and information were collected from natural and legal persons for specific cases of discrimination, but not for general practices of discrimination.

In cases where there is a need to clarify a circumstance, and a clear idea of this can be obtained without making an immediate inspection of the premises of the legal entity, the CPPD, in accordance with Paragraph 2 of this article, may summon and interrogate persons who have certain information relevant to a specific case of discrimination. In accordance with Article 19 of the Rules of Procedure, the statements of the witnesses are submitted either in the form of a certified statement by a notary or are given orally on the record of the member of the CPPD to whom the application is distributed when he decides that it is necessary for the witness to appear in person for determination of the facts (Paragraph 1) and if this is the case, a copy of the statement signed by the witness and the reporting member is given to the witness (Paragraph 2). In the current practice, the CPPD rarely uses this possibility, although a case has been recorded where a statement from a witness was submitted through the applicant and at the request of the notifier from the CPPD.

The ombudsman has the authority to call for an interview an elected or appointed person, an official and any other person who can provide certain data relevant to the proceeding being conducted. Also, the Commission for Protection against Discrimination in Bulgaria has the authority to summon and interrogate witnesses in order to collect additional information during the procedure.

4.7. Cooperation with Institutions that act upon Applications for Protection against Discrimination and Human Rights

Article 31
Cooperation with Institutions that act upon Applications for Protection against Discrimination and Human Rights

(1) In the performance of the activities within its competence, the Commission shall cooperate with institutions acting on applications for protection against discrimination and human rights in specific cases of discrimination.

(2) The Commission shall achieve the cooperation of Paragraph (1) of this Article through Memoranda of Cooperation publicly published on the Commission's website.

This article refers to the cooperation of the CPPD with the OMB as a national institution for human rights, whose competence also includes the handling of submitted applications for protection against discrimination. Paragraph 1 of this article refers to cooperation that refers to specific cases of discrimination. Taking into account the competence of the OMB, this article does not imply a decision on how to proceed in the case where an application has been submitted for the same event both to the CPPD and to the OMB, as opposed to article 27 Paragraph 5 of the Law, which provides a solution in the case where a procedure is conducted for the same event both before CPPD and before a competent court. See more about this in Part 4.5. Commission's Decisions General Recommendation for Protection against Discrimination

In the previous Law (2010), the obligation to cooperate with the OMB as a national institution for the protection of human rights and protection against discrimination was clearly stated, while the existing LPPD imposes an obligation to cooperate with other institutions that have the authority to act on applications for protection against discrimination and human rights. For example, in accordance with the *Law on Equal Opportunities for Women and Men*, within the Ministry of Labour and Social Policy there is a person in charge of acting on applications for protection against discrimination on the ground of gender - legal representative (Article 21), with whom the CPPD can cooperate on specific cases. Also, the inspectorates from different areas (health, labour relations, education) have the competence within their actions to protect people from discrimination. If in the meantime competence is established for other institutions to act in cases of discrimination, CPPD will have to cooperate with them as well.

Paragraph 2 envisages the signing of memoranda of cooperation as a way of further regulating the way of achieving mutual cooperation for specific cases of discrimination. These memoranda should be publicly available so that the public can become familiar with the way in which the cooperation will take place, especially when the two institutions have to decide on the same subject. From the experience of the first composition of the previous CPD, as of December 2015, a regular practice of meeting representatives of the CPD and representatives of the OMB for coordination and mutual support in cases of discrimination was established.

Inadequate coordination between these two institutions in cases of discrimination can disrupt the legal certainty of citizens in a way that two institutions will make conflicting decisions for the same case.

Excerpt from the Case Law No. 155

Thus, for example, in 2016, an application was submitted to establish discrimination based on sexual orientation in the textbook "Social Pathology" used in higher education, both to the CPD and to the OMB. In April 2017, the OMB issued an opinion that "stated that the

disputed texts are not in line with and do not correspond to the current domestic and international regulations, that is, that they are outdated, full of prejudices and stereotypes that are not acceptable for a modern and democratic society " (Coalition of sexual and health rights of marginalized communities, Skopje, 2018). For the same textbook, the CPD issued an opinion in May 2017 in which it did not establish discrimination based on any of the discrimination grounds in the Law (CPD, *Opinion No. 08-1880/9* dated 5.5.2017).

Precisely because of this, a clear and transparent regulation of the relations between the institutions that have the authority to lead procedures for protection against discrimination is needed to prevent inconsistent decisions being made in the same or similar situations and to violate legal security and people's trust in the institutions. In that direction, the cooperation between CPPD and OMB was renewed with the signing of the Memorandum of Cooperation in March 2023, which regulates the cooperation not only in dealing with specific cases, but also in the other competences of the two institutions in the area of promotion, education and research for the promotion of the principle of equality and the principle of non-discrimination, as well as events and activities for raising public awareness.

In addition, CPPD can cooperate with other natural and legal persons to achieve the principle of equality and promote the prevention and protection against discrimination. See more about the cooperation of CPPD with other persons in Part 3.4. Competences of the Commission

5. COURT PROTECTION

5.1. Jurisdiction and Procedure and Territorial Competence

Article 32
Jurisdiction and Procedure

(1) Any person deeming to be discriminated against may file an lawsuit before the competent civil court.

(2) Provisions of the Law on Civil Procedure shall apply during the procedure, unless otherwise regulated by this Law.

(3) The procedure shall be urgent.

Paragraph 1 of this article establishes the possibility for the person who believes that he has been discriminated against to file a claim before a competent civil court. Analysing the LPPD in comparison with the *Law on Combating Discrimination of the Republic of Croatia* (The Official Gazette of the Republic of Croatia Nos. 85/8 and 112/12), the *Law on Prohibition of Discrimination of the Republic of Serbia* (The Official Gazette of the Republic of Serbia Nos. 22/2009 and 52/2021), and the *Law on Prohibition of Discrimination of Bosnia and Herzegovina* (The Official Gazette of Bosnia and Herzegovina Nos. 59/09 and 66/16), it can be seen that they all start from the same starting points, in that, unlike the previous Law (2010) in which there were differences in the solutions for certain legal issues in court protection, in the new LPPD the holders authorized to file a claim have been equalized. Namely, in the previous Law (2010) there was a difference in determining the holders who can file a claim for protection against discrimination, as well as a difference in the legal basis for filing a claim for protection against discrimination. Regardless of whether the term "authorized person" or "person entitled to file a claim" is used, the end result is still the same - anyone who feels discriminated against, whether a natural person or a legal entity, can file a claim before the competent court. However, with this term, it is more clearly established that there is no need for a person to be authorized to file a claim if they believe they have been discriminated against. At the same time, the amendment does not mention the violation of any right at all, which equates the terminology with the laws of the countries in the region as well as the EU law that are covered in this analysis.

Excerpt from the Academic Literature No. 57

"[I]n Germany court proceedings must be preceded by mediation proceedings stating that 'any person who believes that he or she has been discriminated against on the ground of any of the grounds listed in Part 1 may present his or her case to the Federal Anti-Discrimination Agency " (Paragraph 27)" (Federal Anti-Discrimination Agency, 2010, p.55).

In the Republic of France, on the other hand, the Labour Law (French Code du Travail) aims to enable the filing of claims before the court in cases of discrimination. Labour inspectors have access to all evidence, documents and information that can be useful in determining facts that are valid for proving discrimination. If during the supervision (referred to as

"investigation") they have knowledge of committed discrimination, they have the authority to file a claim before the competent court. At the same time, the representative union among employers has the right to report discrimination within 15 days from the day of receipt of the written report. The representative union acts on behalf of the employees who are alleged to be victims of discrimination, without seeking the consent of the victim of discrimination, in contrast to the LPPD which in Article 39 Paragraph 2 stipulates that "the participation of the interloper is decided by the court by applying the provisions of the *Law on Civil Procedure*", if it does not conflict with trade union action. Citizens' associations dealing with anti-discrimination also have the right to file a claim, if they have been legally constituted for at least 5 years and have written consent from the interested party. LPPD gives the opportunity for citizens' associations, trade unions and other institutions to appear as intervenors in the procedure, in accordance with Article 40 Paragraph 1. In addition, associations, foundations, unions or other organizations from civil society and informal groups that have a justified interest in protecting the interests of a specific group or within the framework of their activity deal with protection against discrimination, can file a claim for protection against discrimination from public interest (Lat. *actio popularis*), if "they make it likely that a greater number of people have been discriminated against by the actions of the defendant" (Article 35 Paragraph 1).

In Article 175 of the *Law on Civil Procedure* (hereinafter: LCP), it is stipulated that the civil procedure is initiated by a claim. The content of the claim is provided in Article 176 Paragraph 1 which further stipulates that "the claim should contain a specific claim regarding the main case and the secondary claims, facts on which the claimant bases the claim, evidence establishing these facts, as well as other data that every submission must have" (Article 98).

LPPD contains a certain difference in Paragraph 1 of article 32 compared to article 34 Paragraph 1 of the previous Law (2010). Namely, in the previous Law (2010) it was provided that the person who believes that a right has been violated due to discrimination, has the right to file a claim before the competent court, while in the LPPD it is provided that the person who is considered to have been discriminated against can file a claim before a competent civil court. The draft law clearly defines the real jurisdiction of the court - the civil court. At the same time, although it may be possible to think that the amendment of the provision in the part of the words "the person who believes that due to discrimination a right has been violated" and "the person who believes that he is discriminated" is only a terminological change, however, if one goes deeper into the interpretation of the provision, it can be concluded that there is a radical change in terms of the obligation to create a probable (Lat. *prima facie*) case of filing a claim by the person who believes that he has been discriminated against. Namely, in the previous Law (2010) the person has to make it probable that some right has been violated due to discrimination, while according to the LPPD (2020) the person only has to consider that he has been discriminated against and file a claim before the competent civil court. That is, the violation of the principle of non-discrimination itself is considered to be a violation of a right and is sufficient to file a claim, and is not accessory (associated) with a violation of another right. With this solution, more space is given for persons who believe that they are discriminated against to initiate proceedings before the competent civil courts and only when the right to equality is violated.

With the adoption of the provision of Article 35 - claim for protection against discrimination in the public interest (Lat. *actio popularis*), in a clear and unambiguous way, the legislator provided for the possibility that groups of persons who have a justified interest in protecting the interests of a certain group can file a claim for protection against discrimination. The same is in accordance with Article 186 of the LCP, which provides for the possibility of

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several persons jointly filing a claim if they have a common legal interest. Namely, this article in Paragraph 1 stipulates that several persons can sue with one claim, that is, be sued (litigants), if with regard to the subject of the dispute they are in a legal community or if their rights, that is, obligations arise from the same factual and legal basis. Then, in Paragraph 2, it is stated that the subject of the dispute are claims, that is, obligations of the same kind that are based on essentially the same factual and legal basis, even though the same court has actual and local jurisdiction for each claim and for each defendant.

At the same time, in the previous Law (2010) there was a difference between the determination of the legal basis for filing a claim, that is, it was stipulated that a person who believed that due to discrimination some right was violated was authorized to file a claim. The LPPD provides that "a person who believes that he has been discriminated against can file a claim before a competent court". With such a solution, the *Law on Social Security* comes closer to the solutions in other laws from the region and the European Union, although there are certain differences. In the LPPD only the term "the person" is provided, while in the *Law on Prohibition of Discrimination of Bosnia and Herzegovina* (The Official Gazette of Bosnia and Herzegovina Nos. 59/09 and 66/16) it is provided that "the person and the group that has been exposed to any form of discrimination provided by the Law are authorized to file a claim." The difference in terminology previously consisted in the legal basis, a person who believes that a right has been violated, that is, a person or group exposed to any form of discrimination. The previous Law (2010) perceived that there must have been a violation of a right due to acts of discrimination, while the *Law on Prohibition of Discrimination of Bosnia and Herzegovina* (The Official Gazette of Bosnia and Herzegovina Nos. 59/09 and 66/16) provides that the person has been exposed to any form of discrimination as a basis for filing a claim. In the LPPD there is a difference in the holder for filing a claim. In the Law, only the term "person" is provided, while in the *Law on Prohibition of Discrimination of Bosnia and Herzegovina* (The Official Gazette of Bosnia and Herzegovina Nos. 59/09 and 66/16) in addition to the term "person", it is also defined the term "group". However, this legal solution should not be an obstacle in practice, taking into account that in Article 32 Paragraph 2 it is provided that in the procedure for protection against discrimination, the provisions of the *Law on Civil Procedure*, which, in turn, in Article 186, regulates the possibility of several persons jointly filing a claim if they have a common legal interest. Considering that discrimination in itself implies a violation of any right of the individual, the legal solution set in this way facilitates the procedure for presenting a claim for protection against discrimination. According to the previous Law (2010), the claimant had to establish exactly which right was violated due to certain discriminatory actions. Before the new LPPD was passed, it was reasonable to ask whether there was a possibility that if the claimant in the claim wrongly stated the right that was violated, even though there is discrimination, his claim would be rejected as unfounded only because of the wrongly stated violation of the right. However, even in that case, in accordance with Article 176 Paragraph 3 of the LCP, the court will proceed according to the claim even when the claimant did not state the legal basis of the claim, and if the claimant stated the legal basis, the court is not bound by it. That means that the legal basis of the claim is actually that legal provision, according to which the right of the claimant derives from the facts presented in the claim. In doing so, it is not necessary for the claimant to state the legal basis of the claim, but it is necessary to state the facts in the claim in such a way that his claim is presented as founded in fact and in legal terms.

In addition, in the *Law on Prohibition of Discrimination of the Republic of Serbia* (The Official Gazette of the Republic of Serbia Nos. 22/2009 and 52/2021), in Article 41, in the Part on initiating and conducting the procedure, it is provided that "everyone who has been injured by discriminatory treatment has the right to filed a claim in court." In the *Law on Combating*

Discrimination of the Republic of Croatia (The Official Gazette of the Republic of Croatia Nos. 85/8 and 112/12), in Article 16, as the title holder for filing a claim, it is provided that "anyone who believes that due to discrimination, a right has been violated, may seeks protection of that right in a procedure in which that right is decided as the main claim, and may also seek protection in a procedure provided for in Article 17 of the Law". At the same time, unlike the rest of the commented laws, only Article 16 Paragraph 2 of the Croatian law provides that "special procedures for protection against discrimination in the area of labour relations and employment will be considered labour disputes."

It is interesting that there is a difference in the terminology for the possibility, that is, the right to file a claim. The previous Law (2010) and the *Law on Prohibition of Discrimination of Bosnia and Herzegovina* (The Official Gazette of Bosnia and Herzegovina Nos. 59/09 and 66/16) use the term is authorized/are authorized, instead of the term has the right, which Serbian law uses, and Croatian law uses the term may claim protection. The legal terms "entitled" or "authorized" can be commented on. Although there is a difference in the definition of the terminology for the authorized holders to file a claim, whether they are authorized, or have the right, however, as a final conclusion it can be drawn that all the commented laws establish that any person, or group of persons who consider themselves to be discriminated against they have the right, that is, they are authorized to file a claim for protection against discrimination. In the LPPD, instead of the term "authorized", the term "may" is used, which leads to the conclusion that anyone who believes that he has been discriminated against can and has the right and is also authorized to file a claim for protection against discrimination.

Paragraph 2 of this article stipulates that in the procedure for protection against discrimination, the provisions of the LCP shall be applied, unless otherwise regulated by this Law. Although it is not decisively stated in the LPPD, however, given that it is provided that the provisions of the LCP will be applied accordingly, in the submission, that is, in the claim that starts the procedure before the court, the facts and the description of the actions with which discrimination was committed, as well as a description of the violation of a certain right. Namely, Article 176 of the Civil Procedure Code stipulates that "1) The claim should contain a specific claim with regard to the main case and the secondary claims, facts on which the claimant bases the claim, evidence establishing these facts, as well as other data that must every submission has them (Article 98)".

It is worth noting that, as in the previous Law (2010), the possibility of filing a claim by the heirs of a discriminated person is not regulated in the LPPD. Namely, it can be perceived that due to certain acts of discrimination, the death of the discriminated person may occur. The question arises, do these people have the right to file a claim to the competent court to establish the existence of discrimination? The question will be raised as to what would be their legal interest in filing such a claim. The legal interest could be compensation for material and non-material damage suffered, and they may also have lost earnings, so this legal basis could also be highlighted as a basis for a claim. For example, the person who was a victim of discrimination was the sole breadwinner of the family who was engaged in private work. Due to the actions of the alleged discriminator, death occurred, and as a result, the family of the victim of discrimination was left without the only support they received. At the same time, the family suffered a loss of income. The question remains open with the existing legal solution, whether these persons - the legal heirs - have the right to file a claim before the competent court. If the provisions of the LPPD are considered in isolation, then they do not have the right to file a claim. However, if we consider them in relation to the provisions of the LCP, then there is no doubt that they have the right. Namely, Article 177 of the LCP stipulates that the claimant can only ask the court to establish the existence or non-existence of a right or legal

relationship or the truth or falsity of a document. Such a claim can be filed when it is provided for by special regulations, when the claimant has a legal interest in the court establishing the existence, that is, the non-existence of a right or legal relationship, or the truth, that is, the falsity of a document before the request for payment from the same arrives. relationship, or when the claimant has some other legal interest in filing such a claim. The ECHR allows the same, that is, the heirs can submit an application if they show that they have a legitimate interest in it, and it can also be seen whether the injury was personal or affected other people. In addition, the question arises, whether due to the death of the discriminated person, who started litigation with a claim for protection against discrimination, his heirs can continue the interrupted litigation. Since the provision of Article 32 Paragraph 2 of the LPPD stipulates that the provisions of the LCP are appropriately applied in the procedure, it follows that in such a case the provision of Article 200 Paragraph 1 Point 1 according to which "the procedure is terminated when the party dies" will be appropriately applied.. With the provision of Article 203 Paragraph 1 of the LCP, the procedure that has been interrupted for the reasons stated in Article 200 points 1 to 5 of this Law, will be persistent when the heir or guardian of the estate, the new legal representative, the bankruptcy trustee or the legal successors of the legal person will take over the procedure or when the court calls them to do so on the motion of the opposing party. According to this provision, the court is not authorized ex officio to decide to continue the procedure that was interrupted for the mentioned reason, which means that the court only has the obligation to establish the termination of the procedure. The taking over of the proceedings by the heirs is carried out as a rule, with a submission submitted to the court, in the same way as a proposal is made by the opposite party, that those persons - the heirs of the deceased claimant - be summoned for the purpose of ruling on whether they will take over and continue the interrupted proceedings, or not. It has been decided in the same way in the ECtHR's practice with the difference that the Court can act in a case when the applicant dies and has no heirs, and in the case itself a legal issue that is "an important issue of general interest" is highlighted for consideration.

Excerpt from the Case Law No. 156

In the case of *Karner* (Karner v. Austria, App. No. 40016/98, Judgment of 24 July 2003), in which the applicant claimed that the Supreme Court's decision not to recognize his right to inherit the tenancy after the death of his partner constituted discrimination based on his sexual orientation and thus a violation of Article 14 (prohibition of discrimination) of the Convention in relation to Article 8 (right to respect for private and family life). During the procedure before the ECtHR, the applicant dies and there are no established heirs. In the judgment, the Court states that, in a number of cases in which the applicant died during the proceedings, the ECtHR took into account the statements of his/her heirs or close family members who expressed a wish to continue the proceedings before the Court (see: Deweer v Belgium, Judgment of 27 February 1980, Series A No. 35, p. 19-20, Paragraphs 37-38; X v. the United Kingdom, Judgment of 5 November 1981, Series A No. 46, p. 15, Paragraph 32; Vocaturo v. Italy, Judgment of 24 May 1991, Series A No. 206-C, p. 29, Paragraph 2; G. v. Italy, Judgment of 27 February 1992, Series A No. 228-F, p. 65, Paragraph 2; Pandolfelli and Palumbo v. Italy, Judgment of 27 February 1992, Series A No. 231-B, p. 16, Paragraph 2; X v. France, Judgment of 31 March 1992, Series A No. 234- C, p. 89, Paragraph 26; and Raimondo v. Italy, Judgment of 22 February 1994, Series A No. 281-A, p. 8, Paragraph 2) (Paragraph 22). On the other hand, the Court's practice was to reject applications from the list of cases in the absence of an heir or a close relative who expressed a desire to submit a request for continuation of the proceedings (Paragraph 23). However, the ECtHR considered that the subject matter of this application, which concerned the difference in treatment of persons with a homosexual orientation in relation to the inheritance of a tenancy under

Austrian law, involved an important question of general interest not only for Austria, but also for other States Parties to the Convention. In this regard, the Court referred to the submissions submitted by ILGA - Europe, Liberty and Stonewall, whose intervention in the proceedings as third parties was authorized as it highlighted the general importance of the issue. For those reasons, the ECtHR considered that the continuation of the review of this application will contribute to the clarification, protection and development of the protection standards according to the ECHR. The ECtHR established a violation of the prohibition of discrimination (Article 14) in relation to the right to respect for private and family life (Article 8), in this case.

The court will act in the same way when the defendant dies during the procedure (if it is a natural person) or according to Point 4, stating that the party that is a legal person will cease to exist, that is, when the competent authority decides by force of law to prohibit the work, that is, when according to Point 5 - the legal consequences of opening bankruptcy proceedings will occur. At the same time, it must be taken into account that the claimant's heirs will be able to continue the procedure only if it is a claim that seeks to establish that the defendant violated the claimant's right to equal treatment, that is, the action he took or omitted can immediately to lead to a violation of the rights of equality in treatment, to compensate the material damage caused by the violation, and to publish in the media the verdict that established a violation of the rights of equal treatment at the expense of the defendant.

The question remains whether the heirs could continue the procedure when the claim seeks to prohibit taking actions that violate or may violate the claimant's right to equal treatment, that is, to perform actions that eliminate discrimination or its consequences and to compensate the non-material damage caused by violation of the rights protected by this Law? This is due to the fact that the claim filed in this way protects the personal right of the claimant (as a natural person), on the one hand, and, on the other hand, with the provisions of Article 193 Paragraph 1 of the *Law on Obligations*, the claim for the compensation of the immaterial damage passes to the heir only if it is recognized by a final court decision or by a written agreement, and according to Paragraph 2, under the same conditions, that claim can be subject to assignment, set-off and forced execution. This means that the heirs of the injured party can neither file a claim for compensation of non-material damage, nor continue the dispute started by the injured party who died in the meantime.

Excerpt from the Academic Literature No. 58

"Only with a final judgment can the heirs exercise the right to inherit the awarded compensation for non-material damage, or if the compensation was established by an agreement between the injured person and the responsible person. That written agreement does not have to be concluded in the form of a public document, but it is sufficient that it be signed by the injured party and the responsible person and that the amount of compensation for non-material damage is established in it" (Čavdar, *Commentary on the Law on Obligation*, 2014, p. 353).

The court's action would be similar if the termination of the procedure would be due to the conditions provided for in Article 200 Paragraph 1 Point 4 of the LCP, which stipulates that the party that is a legal entity will cease to exist, that is, when the competent authority decides by force of law on the prohibition of the work, and when according to Point 5 - the legal consequences of opening bankruptcy proceedings will occur, through the application of Article 203 Paragraph 1 of the LCP.

In the context of the analysed provision of Paragraph 1 of article 32 of the LPPD, the application of the provision of article 70 of the LCP deserves its attention, according to Paragraph 1 it is provided that any natural and legal person can be a party to a proceeding, and according to Paragraph 2 that special regulations establish who can be a party to the procedure, except natural and legal persons. Starting from the fact that the legislator provided with the LPPD that "[a] person who believes that he has been discriminated against can file a claim before a competent civil court", the conclusion follows that in these procedures for protection against discrimination, the claimant can be any natural or legal person. This is in accordance with Article 4 Paragraph 1 Point 1 of the LPPD which explains what constitutes a "person". For more information on this see Part 1.3. Glossary Considering the claims that can be requested with the claim, the accepted conclusion is not contrary to the provision of Article 9-a of the *Law on Obligations*, which guarantees the protection of the personal rights of every natural person as well as every legal person., and refer to all the listed personal rights as in Article 9a Paragraph 2, except those related to the biological essence of the natural person.

Paragraph 2 of Article 34 of the previous Law (2010) provided that "the provisions of the *Law on Civil Procedure* shall be applied accordingly". However, with the LPPD in Article 32 Paragraph 2 it is provided that "in the procedure, the provisions of the *Law on Civil Procedure* shall be applied accordingly, unless otherwise established by this law". This amendment to the Law clearly defines that the LPPD is a special law (Lat. *lex specialis*) and therefore, in the case where there is a certain provision for the court procedure in cases of filed claims for protection against discrimination, the provisions of the LPPD will be applied. Such a solution provides clear guidelines especially in the case of passing the burden of proof. Namely, in the LCP in Article 176 Paragraph 1 it is provided that the claimant with the claim should state all the facts and submit all the evidence on the ground of which he bases his claim, however, the LPPD clearly states that the provisions will be applied from LPPD, which means that the burden of proof shifts to the side of the defendant - the "discriminator" and he has to prove that he did not discriminate. The claimant only needs to submit a claim with facts so that the court can be convinced that the existence of a case of discrimination (Lat. *prima facie*) is probable.

For comparison, in the *Law on Prohibition of Discrimination of Bosnia and Herzegovina* (The Official Gazette of Bosnia and Herzegovina Nos. 59/09 and 66/16), in Article 15 Paragraph 3 it is provided that "for the requests from Paragraph 1 (in the *Law on Prohibition of Discrimination* in Bosnia and Herzegovina, the types of claims are established in Paragraph 1 of article 15) the court decides by applying the provisions of the *Law on Civil Procedure* that are applied in Bosnia and Herzegovina, if this Law does not establish otherwise". In the *Law on Prohibition of Discrimination of the Republic of Serbia* (The Official Gazette of the Republic of Serbia Nos. 22/2009 and 52/2021), identically to the previous Law (2010), it is provided that "in the procedure, the provisions of the *Law on Civil Procedure* shall be applied accordingly". In contrast, the application of the provisions of the *Law on Civil Procedure* in the *Law on Combating Discrimination of the Republic of Croatia* (The Official Gazette of the Republic of Croatia Nos. 85/8 and 112/12) is provided for in Article 17 Paragraph 2, in the Part of special claims for Protection against Discrimination, where the types of claims that can be filed by the claimant are provided - "the court shall decide on the requests from Paragraph 1 of this article applying the provisions of the *Law on Civil Procedure*, if this law does not specify otherwise".

However, although it is established in the LPPD that the provisions of the LCP are properly applied, unless otherwise regulated by the LPPD, however, there are differences in

certain legal issues, for example, in local jurisdiction, which is elaborated in detail in the commentary to Article 33.

In Paragraph 3 of this article, it is stipulated that the procedure is urgent. The urgency of the procedure is also provided for in Croatian and Serbian law. In the *Law on Prohibition of Discrimination of the Republic of Serbia* (The Official Gazette of the Republic of Serbia Nos. 22/2009 and 52/2021), in Article 41 Paragraph 3, as well as in the LPPD, it is provided that the procedure is urgent. In the *Law on Combating Discrimination of the Republic of Croatia* (The Official Gazette of the Republic of Croatia Nos. 85/8 and 112/12), in Article 16 Paragraph 3 in the Part common provisions, it is provided that "the court and other bodies that implement the procedure are obliged to act in the procedure to are taking them on as a matter of urgency, endeavouring to investigate all claims of discrimination as quickly as possible." The urgency of the procedure is also provided for in Article 11 Paragraph 4 of the *Law on Prohibition of Discrimination of Bosnia and Herzegovina* (The Official Gazette of Bosnia and Herzegovina Nos. 59/09 and 66/16). In addition, the Serbian law in Article 41 Paragraph 4 provides the permissibility of the revision and always, just like in the Croatian law in Article 23 and the *Law on Prohibition of Discrimination of Bosnia and Herzegovina* (The Official Gazette of Bosnia and Herzegovina Nos. 59/09 and 66/16) in Article 12 Paragraph 2, in contrast to the LPPD, where there is no revision at all in the procedures for protection against discrimination. Given that discrimination is a violation of basic human rights from any area of life, to the most subtle ones - the right to treatment, religion, education, work, etc., a review of the final judgment before the Supreme Court should be allowed, which would an even greater certainty was guaranteed in the judicial protection of the parties in this type of disputes.

Article 33
Territorial Jurisdiction

Besides the court of general territorial jurisdiction, the court in whose area the claimant's residence or registered office is located shall also have territorial jurisdiction in the procedure for protection against discrimination.

Although in Article 32 Paragraph 2 of the LPPD it is provided that the provisions of the LCP are applied accordingly, however, there are different solutions for certain legal issues. Thus, for example, in Article 38 Paragraph 1 of the LCP it is provided that "if the law does not establish the exclusive local jurisdiction of another court, the court that has general territorial jurisdiction over the defendant is competent for trial". Unlike the general provisions of the LCP, the LPPD provides for a special local jurisdiction of the court - the court whose territory is the residence, that is, the headquarters of the claimant. With such a decision, the claimant's procedure in terms of submitting the claim to the competent court is facilitated, if the discriminator is not from the place where the claimant's residence is located, that is, the claimant's place of residence (travel expenses for the party, travel expenses for expenses for attorney, etc.). This is a better solution in order to facilitate the conduct of court proceedings in the area of discrimination and access to justice.

Comparatively, in the *Law on Prohibition of Discrimination of Bosnia and Herzegovina* (The Official Gazette of Bosnia and Herzegovina Nos. 59/09 and 66/16), in Article 14 Paragraph 3 it is provided that "municipal courts are competent to decide on claims for

determination of discrimination that refer to the actions of all public bodies or private legal entities, that is, persons responsible exclusively to the local authority, that is, the headquarters of the institution against which a claim for determination of discrimination has been filed". At the same time, in Paragraph 4 of the same article it is provided that "the appeal against the first-instance verdict is submitted to the local competent Cantonal Court in the Federation of Bosnia and Herzegovina, the District Court of the Republika Srpska and the Court of Appeal of the Brčko District of Bosnia and Herzegovina". Article 14 Paragraph 5 provides for the competence of the Appellate Department of the Court of Bosnia and Herzegovina to make a decision requiring the competent court to change the court decisions for the purpose of unifying the legal practice in the area of discrimination. Just like the LPPD, and in the *Law on Prohibition of Discrimination of the Republic of Serbia* (The Official Gazette of the Republic of Serbia Nos. 22/2009 and 52/2021), Article 42 provides that "in addition to the court of general local jurisdiction, in proceedings for protection against discrimination the competent court is the court in whose territory the headquarters, that is, the place of residence of the claimant is located". In contrast, in the *Law on Combating Discrimination of the Republic of Croatia* (The Official Gazette of the Republic of Croatia Nos. 85/8 and 112/12), in Article 18 Paragraph 1 it is provided that "unless the law provides otherwise, for disputes to establish discrimination (Article 17 Paragraph 1 of the Law), in the first instance the municipal court is competent". Also, in Article 18 Paragraph 2 it is provided, just like in the LPPD and the Serbian law, that "in addition to the court of general local jurisdiction, in proceedings for protection against discrimination, the court in whose area the seat or residence of the claimant is located" is competent. However, there is a difference in that it is also provided that the competent court is the court in the place where the damage was caused or the act of discrimination was carried out. Namely, the action of discrimination may be carried out in another city, and the consequence - the damage may occur in a second city. With this decision, as it was commented earlier, the procedure for the claimants is facilitated.

Given that the LPPD does not provide for special provisions regarding the actual jurisdiction of the courts, regardless of the provided local jurisdiction, there will be an exception to the application of Article 33 of the LPPD when the value of the dispute will be over 50,000 euros, because in such a case in accordance with article 30 Paragraph 2 points 1 and 7 and article 31 Paragraph 2 Point 1 of the *Law on Courts*, only the basic courts with extended jurisdiction will be actually competent. This is especially due to the fact that with the provision of Article 16 Paragraph 1 of the LCP, each court during the entire procedure ex officio pays attention to its actual jurisdiction.

Particular attention deserves the application of Article 15 Paragraph 1 of the LCP according to which, during the entire procedure, the court ex officio pays attention to whether the resolution of the dispute falls within the jurisdiction of the court and whether the resolution of the dispute falls within the jurisdiction of a court in the state, and Paragraph 2 according to which, when the court defines in the course of the procedure that it is not the competent court to resolve the dispute, but some other domestic authority, will announce itself as incompetent, cancel the actions taken in the procedure and reject the claim.

Excerpt from the Case Law No. 157

In the modest judicial practice, a case has been recorded in which the claimant filed a claim against a public institution and the Administrative Court in which he sought to establish that in an administrative procedure for exercising the right to permanent financial assistance and in a judicial procedure before the Administrative Court and the Higher Administrative Court, his rights were violated. right on the ground of discrimination - ethnicity. The Court of First Instance accepted the substantive jurisdiction and rejected the claim with a verdict, and the

Court of Second Instance annulled the verdict indicating to the Court of First Instance, when proceeding again, to pay attention to whether it is a dispute that falls under the jurisdiction of a court in the state or some other domestic authority. that is, court.

There is also a case in which the claimant filed a claim to the Civil Court, because he believed that he was discriminated against during the court proceedings. The first-instance court rejected the claim on the grounds that in proceedings against public institutions, the person who believes that he has been discriminated against can initiate proceedings before the Constitutional Court, referring to the provisions of Articles 51 and 56 of the Rules of Procedure of the Constitutional Court. Resolution *P4 No. 453/17* dated 17.7.2017 was confirmed by the decision of the Appellate Court Skopje *GŽ 5953/17* dated 15.11.2017.

5.2. Lawsuit

Article 34
Lawsuit

(1) The lawsuit as in Article 32 Paragraph (1) of this Law may be used to request:

1) To establish that the defendant has violated the claimant's right, that is, that the action the defendant has taken or has failed to take constitutes discrimination;

2) To prohibit the undertaking of actions which violate or may violate the claimant's right;

3) To oblige the defendant to take actions that eliminate the discrimination or its consequences;

4) To compensate both tangible and intangible damage caused by the violation of rights protected by this Law; and

5) To publish in the media the disposition of the judgment establishing discrimination in an accessible format at the expense of the defendant.

(2) Requests as in Paragraph (1) of this Article may be submitted together with requests for protection of other rights decided upon in a civil procedure if all such requests are interconnected and if the same court has actual and local jurisdiction for them.

(3) The decision ordering disclosure in the media shall be mandatory for the publisher of the media in which to publish the operative part of the judgment, regardless of whether such publisher was a party in the proceedings.

Article 34 of the LPPD provides for the types and content of the legal protection that can be requested by the claimant with the claim. In accordance with Article 2 Paragraph 1 of the LCP, the court will decide within the framework of the set claim. In accordance with Article 176 Paragraph 3 of the LCP, the court will act according to the claim even when the claimant has not stated the legal basis of the claim, and if the claimant has stated the legal basis, the court is not bound by it. That means that the legal basis of the claim is actually that legal provision,

according to which the right of the claimant derives from the facts presented in the claim. In doing so, it is not necessary for the claimant to state the legal basis of the claim, but it is necessary to state the facts in the claim in such a way that his claim is presented as founded in fact and in legal terms.

Excerpt from the Academic Literature No. 59

"From which legal points of view a claim will prove to be founded, is not decided based on the legal understanding stated by the claimant in the claim, but based on the legal relationship arising from the facts stated in the claim. Тоа значи дека судот е тој што врши правна квалификација на фактичката основа на тужбата и на тужбеното барање кое тужителот го поставува како петитум. The provision of Paragraph 3 of Article 176 of the Civil Procedure Code is actually an expression of the principle of iura novit curia, or the court knows the law and it must indicate according to which legal regulation it decided the specific dispute. Therefore, the term legal relationship should not be equated with the term legal basis. The legal relationship consists of the rights and obligations of the parties that make up its content, which derives from the facts established in the hearing on the occasion of the claim and the claim, and the legal basis constitutes the qualification of that legal relationship, that is, under which legal regulation and provision it will be submitted the established legal relationship" (Čavdar p.263-264).

The protection of the right to equal treatment often appears in connection with the protection of another right. Therefore, anti-discrimination protection can be achieved in two ways, in the procedure in which the right, which is violated due to discrimination, is decided, or in independent judicial protection. In that sense, in Article 34 Paragraph 2 of the LPPD it is provided that "the requirements from Paragraph (1) of this article can be highlighted together with the requirements for the protection of other rights that are decided in a civil procedure, if all the requirements are mutually relationship and if the same court is actually competent for them, regardless of whether those claims are settled in a general or special litigation procedure". The protection given in this way to the potential victims of discrimination allows them to seek the protection either in a procedure in which a secondary right is decided as a main issue, or in a separate procedure. Thus, there are two procedural possibilities that are available to the person who believes that his rights have been violated due to discrimination: first, to file a claim in which he will request the protection of subjective rights (for example: rights from labour relations) and at the same time invoke that the violation of rights is due to discrimination (incidental anti-discrimination claim), or second, to file a claim seeking to have the discrimination decided as the main issue (separate individual anti-discrimination claim).

Excerpt from the Academic Literature No. 60

"In the incident court procedure, the issue of possible discrimination is evaluated and decided as for the so-called previous issue in accordance with Article 11 of the LCP. The previous question is defined as a question regarding the existence of the right or the legal relationship that the court must resolve in any litigation, how it would decide on the merits of the main claim. The issue of the existence or non-existence of discrimination is not only a factual issue, but also a complex legal issue that should be decided in accordance with the provisions of the Social Security Act, and on that basis, of course, qualify as a preliminary issue. The decision on the existence or non-existence of discrimination in an incident procedure will not be included in the sentence, but in the reasoning of the court judgment and therefore that question cannot be a basis for the existence of lis pendens. If in some other procedure the existence of discrimination has already been legally decided, such a decision will, of course, be binding also in the procedure in which the question of discrimination was incidentally

raised. On the other hand, the incidental decision on the existence of discrimination will bind both the court and the parties only in that litigation, because the facts of the finality will be connected only with what is included in the sentence of the court judgment, and not with what is in its rationale. Regarding the fact that the incident resolution procedure mostly refers to the procedural provisions of other regulations, two more procedural peculiarities arise from the LPPD, however:

- The first is the provision for the urgency of all procedures in which the existence of discrimination is decided (Article 34 Paragraph 3 of the LPPD), which also applies to procedures in which this issue appears only as a preliminary issue. The fact that the imperative of urgency does not apply only to special anti-discrimination procedures stems from the constituent content of these provisions in the so-called common provisions (Article 36 of the LPPD), as well as from the express norms that mandate that all claims of discrimination be investigated as soon as possible.
- The second norm that also comes to the fore in the incidental resolution of the claim of inequality of treatment is the provision on the burden of proof. Thus, the standard of evidence and the rules for shifting the burden of proof must be applied equally in all civil proceedings, which are decided on the same issue, regardless of the manner in which it is decided (incidentally or by separate action).

From the ratio of the general rules and the special requirements of the anti-discrimination protection, some further particularities arise. Thus, for example, in litigations in which the issue of discrimination appears as a prior issue, it is necessary to look with great care at the possibility of applying the provision of Article 201 Paragraph 1 of the LCP, according to which the conditions in which the court will stop the procedure. In those cases, the court retains its discretionary right to decide what is more justified: whether to independently resolve the previous issue, or to stop the procedure pending the outcome of this issue, as the main issue to be resolved in another procedure. If the imperative of quick action is taken into account, it means that the procedure could be stopped only exceptionally, when waiting for the final decision could not threaten the important delay of the procedure. Also, as in the provision for the urgency of the procedure, not only the order for urgent resolution is retained, but also a kind of ranking and prioritization in decision-making, the court should choose the way and order in taking actions before conducting the procedure which would enable the facts of discrimination to be established first, and not be left for the end of the procedure" (Poposka, Dimova, Velkovska, Georgievski and Kocevska, 2014, p.18).

In Paragraph 1 of this article, the LCP provides for the special individual anti-discrimination claim, that is, it provides for different types of independent anti-discrimination claims that can be brought forward by the claimant with so-called special anti-discrimination claims. These are: a claim to establish discrimination, the so-called declaratory claim, claim for compensation of damages, so-called condemnation action; a claim for the prohibition of the performance of a certain action, that is, the omission of an action (so-called prohibitive request) as well as the filing of a request to oblige the alleged discriminator to take actions that eliminate discrimination or its consequences, the so-called restitutionary action and action for publication of the so-called judgment. publication claim. With this way of enumerating the types of claims, it is clearer what kind of claim claims can be highlighted.

In this Paragraph, the LPPD has deleted the text from the previous Law (2010), which says "he violated the claimant's right to equal treatment, that is, the action he took or omitted may directly lead to a violation of the rights to equality in treatment." There is only the possibility of filing a claim with a request to establish that the defendant violated the right of

the claimant, that is, the action he took or failed to take constitutes discrimination. Then in Point 2 of Paragraph 1 of article 34, only the possibility of presenting a claim to prohibit the taking of actions that violate or may violate the right of the claimant is provided. This legal solution is completely unclear, because the legislator does not define the violation of the right to equal treatment in general. Namely, in the previous Law (2010) it was clearly stated that there should be a violation of the right to equal treatment, while the existing LPPD does not explain at all what kind of right could be violated.

With the declaratory action - action for determining discrimination, provided for in Paragraph 1 Point 1 of this article, the claimant presents a request to establish the violation of the right to equal treatment, that is, to request the determination of the violation of the right to equal treatment that has already occurred by the claimant, which he committed by the action he took or failed to take.

Excerpt from the Academic Literature No. 61

"The legal protection that is given by adopting that request is of a preventive nature: a court ruling that authoritatively establishes the discriminatory nature of the specific action against the claimant. The decision on the claim removes doubt and has a binding effect in all future relations between the parties. In all future proceedings between the claimant and the defendant, the verdict, by which the discrimination is legally established for the specific behaviour of the defendant, will have the effect of a res judicata (Lat. *res judicata*). The adoption of the declaratory anti-discrimination request is a presumption for the adoption of the publication request" (Poposka, Dimova, Velkovska, Georgievski and Kocevska, 2014, p. 20).

A prohibitive anti-discrimination request, provided for in Paragraph 1 Point 2 of this article, is a request requesting a ban on taking actions that violate or may violate the claimant's right to equal treatment. The claim is of a condemnatory character, and in case of adoption, the defendant will be required to passivity, that is, refrain from further actions.

With the restitution claim - a claim for prohibition, that is, omission, provided for in Paragraph 1 Point 3 of this article, the claimant presents a request for certain legal consequences on the defendant.

Excerpt from the Academic Literature No. 62

"The defendant is prohibited from taking certain actions that violate or may violate the claimant's right to equal treatment, that is, he is ordered to take certain actions that eliminate discrimination or its consequences. The purpose of such a request is to return the situation to the state it was in before the violation of the right to equal treatment. The claim is reprehensible (condemnatory) and requires active action of the defendant" (Poposka, Dimova, Velkovska, Georgievski and Kocevska, 2014, p.24).

With the condemnation claim - a claim for compensation for damage, the claimant presents a request to compensate the material and non-material damage caused by the illegal violation of the rights protected by the LPPD. Damages that could not be returned to their original state through the fulfilment of obligations are compensated. It can be claimed as compensation for material damage and as compensation for non-material damage.

The LPPD also provided for the possibility that the claimant could submit a request for publication of the dispositive of the judgment in the media in an accessible format at the expense of the defendant - a publication claim. In order to be allowed, this claim by the nature of things must be cumulated with a declaratory anti-discrimination claim, and the court will

approve the request only if the declaratory request is approved, that is, if it defines the existence of discrimination.

Excerpt from the Academic Literature No. 63

"The publication of the verdict should be in place and in the most appropriate way." In case the discrimination was caused through the media, the court should make the publication in the same medium, in a manner identical or comparable to the original publication. The specificity of the decision on publication anti-discrimination claims is that it causes consequences not only between the parties (Lat. *inter partes*), but is also binding on third parties (Lat. *ultra partes*) based on explicit legal provisions. Specifically, the publisher of the media in which the judgment is to be published is obliged to enable the publication in accordance with the sentence of the judgment, regardless of whether he has cooperated in the judicial proceedings in any capacity. In turn, the public media, which will announce the verdict, has the right to be paid all the appropriate costs that are reimbursed by the defendant" (Poposka, Dimova, Velkovska, Georgievski and Kocevska, 2014, p.28).

The LPPD clearly stipulates that there is no need to publish the entire text of the judgment in the media, but only the wording of it, which, in fact, is the executive title of it. The legislator unnecessarily provided in Paragraph 3 of Article 34 that the publisher of the media is obliged to publish the dispositive of the judgment, regardless of whether he was a party to the proceedings, because if there is an obligation to publish any judgment, the publisher of the media is obliged to act according to it, otherwise forced execution may occur in accordance with the provisions of the *Law on Execution*, and also the issuer may be put in a situation of paying fines due to failure to act according to a final court decision. It should be noted that when preparing the text of this provision, nomotechnical rules related to language expression, or in the choice of a certain legal term, were not properly applied. Namely, in Article 32 Paragraph 2 Point 4 instead of the word "dispositive" it is more appropriate to use the word "proverb", in accordance with Article 327 of the LCP. This is especially so because in the sentence of the judgment which decides on this request when it is founded, when writing this term will be mandatory taken as it reads in Article 32 Paragraph 2 Point 4, without the possibility for the court to improvise and change the wrongly used term.

Paragraph 2 of this article provides for the cumulation of claims from Paragraph 1 (all listed above), that is, that they can be asserted together with claims for the protection of other rights that are decided in civil proceedings, if all claims are interrelated and if the same court is physically and territorially competent for them. The legislator does not at all relate whether those claims are prescribed to be resolved in a general or special litigation procedure. The above means that the claimant can point out only one claim, for example, he can claim only the existence of a violation of rights due to discrimination. LPPD does not establish the obligation of cumulative claims, but leaves the possibility for the same. However, it is reasonable to ask the question - can the so-called publication claim (claim for publication of the judgment in the media at the expense of the defendant), without having previously established a violation of the right to equality in treatment? Or, can the claimant file a claim for damages without first establishing the existence of a violation of a certain right due to acts of discrimination. Although there is no obligation in the cumulative filing of claims, however, a violation of a certain right must first be established due to discriminatory actions, so that then, if the claimant so decides, he can file a claim for compensation for damage, for certain prohibitions against the discriminator and for publication of the verdict in the media. At the same time, as a consequence of this question, another one is immediately raised - when will the verdict be published in the media - after its announcement by the Court of First Instance, or when will the verdict become final? In our country, the judgments that have been passed are

published on the website of the courts of first instance, but this does not conflict with the publication of the dispositive of the judgment in the media. However, it is desirable that the verdict for committed discrimination be published in the media after its finality, and what should be stated in the sentence of the same - "this verdict should be published in the daily newspaper ----- within 8 days from the day of its validity".

For comparison, in the *Law on Prohibition of Discrimination of Bosnia and Herzegovina* (The Official Gazette of Bosnia and Herzegovina Nos. 59/09 and 66/16) in Article 15, apart from the holders for filing a claim, the requirements that can be noted in the disputes on the prohibition and protection against discrimination which are identical to the LPPD with the exception of the possibility "e) with the judgment which established the violation of the right to equal treatment, the defendant may be fined for an offense in accordance with Article 21 of the Law". However, Paragraph 4 of the same article also stipulates that "the request for the publication of the judgment from Paragraph 1 point d) "The Court will approve it if it defines that: a) the violation of the right to equal treatment occurred through the mediation of the media, or, b) that the information about the action that violates the right to equal treatment was published in the media, and the publication of the verdict is necessary for the purpose of full compensation for the damage caused or protection from unequal treatment in future cases". In Paragraph 5 of the same article, it is provided that "if the request for publication of the judgment is approved, the court will order the judgment to be published in its entirety, and as an exception, it may decide to publish parts of the judgment or to remove certain parts from the text of the judgment personal data if it is necessary to protect the privacy of the parties and other persons, and this does not call into question the purpose of the provided legal protection". The *Law on Combating Discrimination of the Republic of Croatia* (The Official Gazette of the Republic of Croatia Nos. 85/8 and 112/12) provides for the same solution in Article 17. Just like the Bosnian law, the Croatian law in Paragraph 4 of article 17 stipulates that "the request for publication of the verdict will be accepted if the court defines that: 1. the violation of the right to equal treatment has occurred through the mediation of the media, or 2. that the information about the action that violates the right to equal treatment was published in the media, and the publication of the judgment is necessary for the purpose of full compensation for the damage or protection from unequal treatment in future cases". At the same time, in Paragraph 5 it is provided that "if the court approves the request for publication of the judgment, it will order that the judgment be published in its entirety, and as an exception, the court may establish that the judgment be published in parts or that it be removed from the text of the judgment personal data if it is necessary for the protection of the privacy of the parties and other persons, and the purpose of the provided legal protection is not questioned". There is a difference in the determination of the claims that the claimant can make in the *Law on Prohibition of Discrimination of the Republic of Serbia* (The Official Gazette of the Republic of Serbia Nos. 22/2009 and 52/2021). Namely, in Article 43 it is provided that "with the claim, the following can be requested: 1. prohibition of the execution of an action that threatens discrimination, prohibition of further execution of an action of discrimination, that is, prohibition of repetition of the action of discrimination; 2. establishing that the defendant acted in a discriminatory manner towards the claimant or towards someone else; 3. performance of an action for the purpose of removing the consequences of discriminatory treatment; 4. compensation for material and non-material damage and 5. publication of the judgment passed on the occasion of any of the claims from points 1 to 4 of the same article". It can be seen that the *Law on Prohibition of Discrimination* of the Republic of Serbia, in the provisions relating to possible claims, first of all, defines the protection of repeated discrimination, and also provides for the protection of discriminated persons who do not appear as claimants.

The difference in the provision of legal protection regarding the publication claim can be seen. In the LPPD and in the Serbian law, no distinction is made in which way the discrimination is committed. If the claimant puts forward such a request, and the court defines a violation of the right to equal treatment, then the media will publish it, or, alternatively, will publish a part of the verdict. In Croatian and Bosnian law, in order for such a claim to be made, the act of discrimination must have been committed through the media, or the information about the action that violates the right to equal treatment must have been published in the media, and the publication of the judgment is necessary for full compensation for the damage or protection from unequal treatment in future proceedings on the occasion of protection and prohibition of discrimination. The LPPD provides a better solution, as it does not limit the provision of legal protection as Serbian law does.

It can be seen that all the commented laws provide protection except for already committed discrimination, and for actions that could constitute discrimination. In such cases, the claimants are allowed to file a declaratory action to establish the existence of potential discrimination and a restitution action for the prohibition or omission of an action that could constitute discrimination. Namely, Article 34 of the previous Law (2010) provided for the prohibition of potential discrimination - to establish that the defendant violated the right of the claimant, that is, the action he took or omitted could directly lead to a violation of the rights of equality in treatment, as well as the prohibition of taking actions that may violate the claimant's right to equal treatment. This is also sanctioned in the same way in the Serbian law in Article 43, where it is provided that the claim can be requested to prohibit the execution of an action that threatens discrimination. In the Croatian law, the prohibition of potential discrimination is provided for in Article 17 Paragraph 1, providing that the person who claims to be a victim of discrimination may demand that it be established that the defendant violated the claimant's right to equal treatment, that is, that the action he took or omitted it can directly lead to a violation of the right to equal treatment, that is, to prohibit the taking of actions that violate or may violate the right to equal treatment. The prohibition of potential discrimination is also provided for in the *Law on Prohibition of Discrimination of Bosnia and Herzegovina* (The Official Gazette of Bosnia and Herzegovina Nos. 59/09 and 66/16) in Article 15, providing that the person, that is, a group of persons who have been exposed of any form of discrimination according to the provisions of the Law are authorized to file a claim and demand a determination that the defendant has violated the claimant's right to equal treatment, that is, that the action taken or failed to be taken by the defendant may directly lead to a violation of rights of equal treatment, that is, they may request a ban on taking actions that violate or may violate the claimant's right to equal treatment.

For comparison, only in the Serbian law, Article 43 explicitly provides for the prohibition of the more severe forms of discrimination - repeated discrimination - with the claim, the prohibition of the further performance of an act of discrimination, that is, the prohibition of the repetition of an act of discrimination, can be requested. Although repeated discrimination is provided as a more severe form of discrimination in Article 13 of the LPPD, it does not refer to it in the types of claims that claimants can file. The same is the case with the *Law on Prohibition of Discrimination of Bosnia and Herzegovina* (The Official Gazette of Bosnia and Herzegovina Nos. 59/09 and 66/16) and with the *Law on Combating Discrimination of the Republic of Croatia* (The Official Gazette of the Republic of Croatia Nos. 85/8 and 112/12). However, although repeated, that is, persistent discrimination is not provided for in the types of claims that can be filed by discriminated persons, the very provision of more severe forms of discrimination in the LPPD provides legal protection in these cases as well.

The registration of the case initiated by the initiation of the procedure for violation of the right to equality and protection against discrimination and recording it is an extremely big problem because there is no basis for discrimination in the stated grounds for registration and in the markings in the court rules. Because the registration is left to the discretion of each judge or each court to decide on this type of case, an inconsistent practice appears which, in turn, results in difficulties when searching for decisions made on this type of case.

Excerpt from the Academic Literature No. 64

"Decisions that refer to the field of labour relations, and the basis of the claim for their initiation is a violation of the right to equality and determination of discrimination bear the mark RO (Judgments of the Basic Civil Court Skopje, RO-904/15; RO-178/17; RO-464/16; RO-2844/11; RO-1215/16; RO-1356/16; RO-618/15; RO-1305/14; RO-980/17; RO-974/14; RO -45/12; RO-2034/17; RO-1227/10; RO-66/16; RO-881/14; RO-1121/16; RO-1574/16; RO-430/09; RO-441 /09; RO-440/09; RO-437/09; RO-445/09; RO-439/09; RO-435/09; RO-436/09; RO-438/09; RO-432/09; PO-442/09; PO-883/14; PO-900/14; PO. No. 410/18; PO-1359/14; PO-1226/14; PO-1332/15; PO-1710/10; RO-927/1; RO-97/15), and are mostly recorded as: subject type - litigation, type of basis - labour relations, civil area, with a subtype of subject - labour disputes, and basis - prohibition of discrimination. But there are cases when the judgment, that is, the procedure requires the determination of discrimination, and the procedure is conducted as a labour dispute based on "other types of labour relations" (Decision RO-2235/11 of the Basic Court Skopje 2). Also, a large part of the decisions that are registered as employment relations, and by which it is requested, that is, a decision was made to establish a violation of the right to equality, are established on the ground of compensation for damage from an employment relationship (Judgment RO-814/14 of Basic Court Skopje 2; Verdict RO-971/14 of Basic Court Skopje 2; Verdict RO-784/14 of Basic Court Skopje 2; Verdict RO-972/14 of Basic Court Skopje 2; Verdict RO-531/13 of Basic Court Skopje 2).

Cases recorded on the grounds of non-discrimination are rare, but they can still be encountered. This confirms the fact that, although there is no special type of register for discrimination proceedings, there is still the possibility to record the proceedings in this way in the electronic system in the court. A positive practice in this regard is observed in the case registered in the sub-category of the subject of labour disputes, and the basis is the prohibition of discrimination (in the case *RO-433/12* of the Basic Court Skopje 2, a violation of the right to equal treatment and a prohibition on taking further actions on discrimination), as well as in cases from the civil area in the sub-type of labour relations that are recorded on the ground of prohibition of discrimination (These are cases that require the determination of a violation of the right to equal treatment by the adoption of a Collective Agreement on 8.3.2012 and other individual acts that refer to an unpaid jubilee award for 10 years of service.)" (Cvetanovska, 2021, p. 12-13).

Excerpt from the Case Law No. 158

In the case *P4 No. 265/20* before the Basic Civil Court Skopje, initiated by the European Centre for the Rights of the Roma, it is established that there is a violation of the right to health care of children who use narcotic drugs and psychotropic substances by the Ministry of Health by not providing treatment for addiction treatment. In addition, the court established that the Ministry of Health violated the right to equality of the same group of children by discriminating and failing to act, that is, not providing treatment for addiction

treatment, based on their age, ethnicity and belonging to a marginalised group and that is, direct discrimination against all children who use narcotic drugs and psychotropic substances based on age and as members of a marginalised group, and indirect discrimination against Roma children who use narcotic drugs and psychotropic substances based on ethnicity. The court ordered the Ministry of Health to adopt a specific program for the treatment and care of children who use narcotic drugs and psychotropic substances, to start its application and to open a Centre for the treatment of children who use psychotropic substances, as a specialized health facility for treatment and care of minor drug addicts, within 3 months of the finality of the verdict. The positive thing in the verdict is that the court presents a group of evidence, including the Special Report of the OMB on the situation with children who use narcotic drugs and psychotropic substances, as well as the standards set by the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the ECHR and the revised European Social Charter (*P4 No. 265/20* dated 22.3.2021 of the Basic Civil Court Skopje).

5.3. Lawsuit for Protection against Discrimination of Public Interest (actio popularis)

Article 35
Lawsuit for Protection against Discrimination of Public Interest (actio popularis)

((1) Any associations, foundations, unions or other civil society organisations and informal groups that have justified interest in protecting the interests of a particular group or that deal with protection against discrimination as part of their activities may file a lawsuit if it is probable that the defendant's actions have discriminated against a larger number of people.

(2) The application referred to in Paragraph (1) of this Article may be put forward in order to:

1) Establish that the defendant has committed discrimination against the group whose interests are represented by the claimant, that is, that the action the defendant has taken or overlooked may directly lead to discrimination against the group;

2) Forbid activities that discriminate the group whose interests are represented by the claimant;

3) Oblige the defendant to take actions that eliminate the discrimination or its consequences;

4) Publish in the media the disposition of the judgment establishing the discrimination in an accessible format at the expense of the defendant.

In the judicial procedure according to the LPPD, in addition to the individual protection of the right, Article 35 provides for the possibility of filing a "claim for protection against discrimination in the public interest (Lat. *actio popularis*)".

In this sense, according to Paragraph 1 of article 35, several entities are actively legitimized to file a claim for protection against discrimination in the public interest: citizens' associations, foundations, trade unions or other organizations from civil society, as well as informal groups that have a justified interest in protecting their interests. of a certain group or within the framework of their activity, they deal with protection against discrimination, provided that they make it likely that a greater number of people have been discriminated against by the actions of the defendant. This legal solution stipulates a condition that entities that can file a joint, that is, a claim for protection against discrimination in the public interest justify the interest in protecting the interests of a specific group, or within the framework of their activity, deal with protection against discrimination. These conditions are not set cumulatively, that is, they either have to show that they have a justified interest in protecting the interests of a specific group or show that they deal with protection against discrimination within their activity.

The term "justified interest" is not domesticated in our legislation and jurisprudence, as opposed to the term "legal interest". The reasons for the need for the term used in this way, according to some practitioners, is that, in order to file discriminatory claims, it is necessary to "justify" the interest that is the subject of protection, which may or may not be a "legal" interest. Therefore, in practice, it will be necessary for the courts, when evaluating the question of whether associations, foundations, trade unions or other organizations from civil society and informal groups have a justified interest to file an anti-discrimination claim and to conduct litigation, to assess the circumstances of the case, or when the defendant will refer to the non-existence of the so-called "justified interest" of the claimant.

Excerpt from the Academic Literature No. 65

"If the court defines that the claimants have not "justified the interest" that is the subject of protection, in such a case, the court, by analogous application of Article 274 Paragraph 2 of the Civil Procedure Code, will dismiss such a claim with a decision" (Čavdar, 2016).

In the previous Law (2010), in the provision of Article 41 Paragraph 1, after listing the authorized entities that can file a joint claim, the term "to protect the collective interests of a certain group" was used as a protected group, which indicated that the claimant would have to to make the collective interest probable to the point of proof. This meant that the association or other entity had to prove that it has a legitimate and justified interest in protecting the rights of a certain group as a protected group of persons who are discriminated against, that is, that in its goals, according to its founding acts and other general acts, it has and the goal of protecting the rights and interests of a specific group of persons.

A claim for protection against discrimination in the public interest (Lat. *actio popularis*) is a mechanism to protect a certain group from systemic violations of rights, which represents the public interest of a society that strives to be defined as democratic. As a legal institution of Roman criminal law, it is a claim that can be brought by anyone either on behalf of another or on behalf of the public interest in order to impose a certain punishment. In order to highlight the public interest in cases of discrimination, there should be a greater concern of a group that faces discrimination and it should usually be systemic, structural or institutional. Because it refers to a group it is not necessary that there be a specific identifying victim. This is the difference between this type of claim and a class action.

Excerpt from the Academic Literature No. 66

"During his tenure at the Inter-American Court of Human Rights, Judge Antonio Augusto Cansado Trindade noted a distinction between actio popularis and collective action, stating

that the latter developed out of procedural necessity in cases where an individual, as a member of a community, institutes an action to prevent or for remedying an injury that coincides with the harm inflicted on all members of a given community, so it is therefore a claim whose purpose is to protect the unprotected. He also believes that there is a convergence between these two tools, but that the class action more explicitly requires the existence of victims. Given the fact that the collective action is filed in the interest of a larger number of people (which can be partially identified as public interest), it can be considered as a subspecies of *actio popularis*. From a practical point of view, lawyers working on strategic representation point out that *actio popularis* is particularly effective in cases related to segregation in educational institutions, where given the vulnerability of the persons concerned (children) it helps to avoid secondary victimization and that it is easier to discriminatory practices are proven by submitting statistical evidence. The examples from Hungary indicate that *actio popularis* can also be used when equal treatment is violated by ethnic profiling" (Čalovska-Dimovska and Čubric, 2016, p.7).

A particularly important question that arises in the application of this method is what is meant by public interest and what is meant by a larger group of citizens, that is, a community. For a country that considers itself democratic, it is particularly important to ensure effective protection of various minority as well as vulnerable groups in society, including access to justice when these rights are violated. When it comes to the legal terms used for "protection of the interests of a certain group" or "larger number of persons", from the point of view of sociology as a science, a group of people means the association of at least two members who have mutual relations and thus form certain communities, institutions or organizations. So, for example, sociology as a science studies the following institutions: family, religion, politics, economy and education. Characteristics of social groups/communities are: a) that each group is composed of at least 2 members, b) that each group exists because of a certain value and purpose, c) that each member in the group has a certain role, d) to realise the value, that is, the goal should be to respect some norms, e) in the group there is a hierarchy between the members, f) for violation of the norms follow sanctions and g) with the disappearance of the value for which the group was formed, the group disintegrates. Applying this principle to our legal question, it would mean that if the smallest group is the group that is composed of two persons, analogously under the term "larger number of persons" as part of a group, the one that is larger should be considered of two persons, or is composed of at least three or more persons. However, we would state that the legislator, when defining this term, considered that the disproportionate concern of the group should be highlighted, that is, it should be shown that a significant number of members of the relevant group are affected by the disputed action.

The interests that can be protected by a "claim for protection against discrimination in the public interest" (Lat. *actio popularis*), most often, are in the area of protection of the human environment and environment, in the area of consumer rights, for the protection of anti-discrimination and other interests, which are guaranteed by the Constitution and the law and which must be seriously injured and seriously threatened by the actions or actions of others. Such a claim in our country before the adoption of the Consumer Protection Act was provided by Article 83 of the *Law on Consumer Protection*, which can also be filed by consumer protection associations, which in terms of Article 128 of the same law, among other rights, have the right to represent the interests of consumers in collective disputes before competent courts. The specificity of this type of claim consists in the possibility of legal proceedings being initiated by persons and organizations who are not themselves victims of discrimination, and who initiate the proceedings for the purpose of protecting a group of individually unidentified persons, or a large group of persons or future victims. The claimants in this case are not conducting proceedings for their own interests, but for other people's interests, which are

considered public.

Excerpt from the Case Law No. 159

In the case of *Feryn* (Centrum voor gelijkheid van kansen en racismebestrijding v. Firma Feryn NV, Case C-54/07, Judgment of 10 July 2008), against a company, a case was initiated by the Centre for Equal Opportunities and Combating Racism after the statements of one of its directors that his company does not want to employ "immigrants". In the case, it could not be proven that someone tried to apply for a job and was rejected, and no person could be found who would say that they decided not to apply to the advertised job. In other words, there is no "obvious" victim in the case and the case was handled by the Centre for Equal Opportunities and the Fight against Racism, as the equality body in Belgium. The CJEU ruled that there is no need to indicate another person who was discriminated against, that is, it decided that the existence of such direct discrimination does not depend on identifying a claimant who would claim to be a victim of discrimination. This was due to the fact that the wording of the job advertisement clearly indicated that "non-whites" were not encouraged to apply for the job because it was known in advance that they would not succeed. In addition, the Court pointed out that Directive 2000/43 does not prevent Member States, in their national legislation, from establishing the right of associations with a legitimate interest to initiate legal or administrative proceedings to enforce the obligations arising from the directive and without representing a specific applicant or in the absence of an identifiable claimant. Also, the CJEU notes that only the national court can assess whether the national legislation allows such a possibility.

In comparison, the *Law on Combating Discrimination of the Republic of Croatia* (The Official Gazette of the Republic of Croatia Nos. 85/8 and 112/12), allows a joint action for protection against discrimination in the way that associations, bodies, institutions or other organizations established in accordance with law, and have a justified interest in protecting the collective interests of certain groups or within the framework of their activity, they deal with the protection of the right to equal treatment, they can file a claim against the person who violated the right to equal treatment, if they make it likely that the defendant's actions violated the right to equal treatment of a larger number of people who mostly belong of the group whose rights the claimant wants to protect. In the possibility of filing a joint claim for protection against discrimination by civil society organizations in the Croatian law, no consent is required at all from a person who claims to have been discriminated against, that is, such a condition is not required to prove the active identification of civil society organizations in initiating court proceedings for protection against discrimination. In the so-called joint action (collective action) against the person who violated the right to equal treatment, it must be shown prima facie (at first sight) that the behaviour of the defendant violated the right to equal treatment of a larger number of people who mostly belong to the group whose rights the association defends them, that is, represents them.

Excerpt from the Academic Literature No. 67

"Non-governmental organizations dealing with the rights of the LGBTI community (community of lesbian, gay, bisexual, transgender and intersex people) have filed a number of claims against presidents of football clubs, who have made homophobic statements, but the judicial practice seems inconsistent, that is, the Supreme Court once ruled in favour of the claimants, and in another similar case, their request was rejected" (Čalovska-Dimovska and Čubrić, 2016, p.12).

Similar to the Croatian law, the *Law on Prohibition of Discrimination of Bosnia and Herzegovina* (The Official Gazette of Bosnia and Herzegovina Nos. 59/09 and 66/16) provides the possibility to initiate this type of claim. Also, the Serbian law provides for the filing of this type of claim for protection against discrimination in accordance with Article 46 of the *Law on Prohibition of Discrimination of the Republic of Serbia* (The Official Gazette of the Republic of Serbia Nos. 22/2009 and 52/2021), where it is stipulated that a claim for protection against discrimination can be filed by the Commissioner for the Protection of Equality and civil organizations that work on the protection of human rights, that is, on the protection of the rights of certain groups of persons. With this provision, the Serbian law gives the opportunity to the state body for the protection of the right to equality, but also to the associations of citizens to come forward as initiators of court proceedings for protection against discrimination on official duty.

Excerpt from the Academic Literature No. 68

"The possibility of starting a court procedure for protection against discrimination is used by the associations of citizens and the Commissioner for the Protection of Equality. Citizens' associations have initiated a large number of *actio popularis* court cases, from which we will single out the case of the "Gay Straight" Alliance against a journalist for making a disturbing and homophobic statement one day before the beginning of the gay parade in Belgrade. The journalist stated in the electronic and print media that she is not against peaceful demonstrations, but she believes that the gay parade will promote something that she considers a disease. The Court of First Instance rejected the claim as unfounded, but the Court of Appeal in Belgrade overturned the decision, determining that a more severe form of discrimination against LGBTI persons was committed. The Court of Appeal forbade the journalist to make such statements in the future and ordered her to compensate the court costs of the claimant - the "Gay Straight" Alliance (Čalovska-Dimovska and Čubrić, 2016, p. 15).

The filing of a joint claim for protection against discrimination is regulated in Article 30 of the *Law on Prohibition of Discrimination of Montenegro* (The Official Gazette of Montenegro Nos. 46/2010, 40/11, 18/2014 and 42/2017). In it, it is prescribed that "a claim for protection against discrimination can also be filed by civil organizations that work for the protection of human rights." The claim can be filed only with the written consent of the person or group of persons who were discriminated against." The Montenegrin law is precise regarding the form in which consent must be given by the person/persons who are discriminated against so that civil society organizations can file a claim for protection against discrimination and clearly states that the consent must be in writing. On the other hand, the same Law gives legal powers to the human rights defender to be able to file a claim for protection against discrimination ex officio, without, at the same time, seeking the consent of the person/persons who were discriminated against.

In addition, in Hungary citizens' associations are legally allowed to initiate legal proceedings for protection against discrimination when it is not possible to individually identify all victims of discrimination. Thus, in principle, they have the right to file a claim in the interest of the public, but also nothing in the legislation prevents them from starting a collective action.

Excerpt from the Case Law No. 160

A positive example also exists when filing this type of claim to the courts of an association of citizens in order to establish the segregation of Roma children. In a specific case, the Foundation "Chance for Children" filed a claim for protection against discrimination in the public interest (Lat. *actio popularis*) on behalf of Roma children, and against the local council and two elementary schools of the city of Hajdúhadház. In the claim, the Foundation left statistics showing that the percentage of Roma students assigned to the additional school buildings was significantly higher (86 and 96 percent in one school and 100 percent in the second school) than the percentage of Roma students assigned to the central school buildings (28 percent in one and 22 percent in the second school). In both schools, the central building is much better equipped than the additional buildings, where there is no gym, library, computers or specialized classrooms. The above percentages were established by an education expert of Roma origin appointed by the court at the claimant's proposal. The court gave specific instructions on how the expert would conduct the research. The expert was instructed to include in the research Roma students, those who had Roma origin, as well as those children who can be perceived as Roma by the majority of students. The court was able to establish segregation based on the data provided by the expert. This decision of the First Instance Court was partially accepted by the Second Instance Court, but the Supreme Court fully accepted, stating that the percentages obtained by the expert research confirm the existing segregation.

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Excerpt from the Case Law No. 161

In the case following the application submitted to the OMB by the Network for Protection against Discrimination, regarding discriminatory content in the "Civic Education" textbook for the 8th grade, it was stated on page 34 and 35 where women's rights are taught and that only respected women and healthy mothers can ensure healthy families. In the same lesson, two photos were posted, one showing a woman in an apron cooking and standing in front of a computer, and the other a woman sitting with her legs crossed and a magazine in her hand, while a man cleans with a vacuum cleaner. Below the photos was a question: "Which of these women fought for their rights?" In the further part of the lesson, the authors reviewed the role of women at the time when Adam and Eve lived in paradise, thus favouring the Christian religion, against all other religions in the country, thus the applicant considered that discrimination is being carried out on the ground of religion and religious belief against women and students who belong to other religions or are not religious. Such an attempt to explain women's rights through the prism of a religion encouraged and promoted discrimination against women and gender prejudices and violated the principle of secularism in education.

After the procedure was carried out and the discrimination established, the OMB submitted to the Ministry of Education a Recommendation on the method of carrying out the ascertained violations, which contained specific instructions for the action of the line ministry. The Ministry of Education and Science accepted the recommendations of the OMB and made a decision to withdraw the disputed textbook from use.

The good side of the joint, that is, the claim for protection of public interest, enables the application of the principle of procedural economy so that, instead of multiple claims by multiple claimants against the same defendant in which the evidence and facts are the same, or substantially the same, it is possible to to concentrate it in one place and to settle it with a single claim and in a single litigation with much lower costs. In addition, it is impossible to make different decisions for the same matter, which is also important for legal certainty in the application of the law.

Paragraph 2 of this article contains the requirements that can be set with the claim, which are identical to some of the requirements in individual discrimination claims. Thus, the

following requirements can be highlighted that can be set with: 1). declaratory anti-discrimination requests - requests to establish that the defendant's actions discriminated against members of a certain group of people, that is, to establish that the defendant discriminated against the group whose interests are represented by the claimant, that is, the action he took or omitted could lead to discrimination of the group, 2). prohibitive anti-discrimination requests - requests to prohibit the performance of discriminatory actions, that is, to prohibit taking actions that discriminate against the group whose interests are represented by the claimant, 3). restitutionary anti-discrimination requests - reprehensible (condemnatory) requests that require the defendant to perform actions that remove discrimination or its consequences and whose purpose is to return the situation to the state it was in before the violation of the right to equal treatment, and 4). publication requests - requests for the publication of a court judgment establishing discrimination, that is, a request to publish in the media the dispositive of the judgment establishing discrimination in an accessible format at the defendant's expense.

With regard to the mentioned requirements for declaratory anti-discrimination and prohibitive anti-discrimination requirements, the content of the legal requirements and the content of the court decisions for the legal requirements set in this way should correspond to the established judicial practice when making decisions on the legal requirements set in this way, regardless of the legal area from which they arise. What is specific about anti-discrimination claims is the need to provide a description of the defendant's discriminatory behaviour when setting up a declaratory claim.

Declaratory anti-discrimination claims should be filed with the following content:

Excerpt from the Academic Literature No. 69

"IT IS ESTABLISHED that the defendant violated the right to equal treatment of the claimant, in a way that during the publication of announcement No.... in the daily newspaper "Večer" from the year..., in the terms of employment of an executor - a waiter on fixed working hours, it was stipulated that only interested candidates of the female sex and not older than 25 years of age can apply for the advertisement, thus he committed a violation of the rights of equality of treatment, based on age and gender" (Poposka, Dimova, Velkovska, Georgievski and Kocevska, 2014, p.20).

Prohibitive anti-discrimination requirements should be adapted to contain the prohibition according to the manner in which the discrimination was carried out, namely:

Excerpt from the Academic Literature No. 70

"The defendant, who manages the restaurant "Soup Kitchena", is FORBIDDEN to treat Roma people unequally as members of a special ethnic community;

IT IS ORDERED that the defendant, within three days of receiving the judgment, remove the written warning in front of the main entrance door with the content "forbidden to Roma" and to provide equal treatment to all Roma guests in the restaurant, under the same conditions as for all others guests;

IT IS FORBIDDEN for the defendant to take such or similar actions in the future in violation of the right to equal treatment" (Poposka, Dimova, Velkovska, Georgievski and Kocevska, 2014, p.22).

In restorative anti-discrimination claims, or reprehensible (condemnatory) claims, the defendant is required to perform certain actions for the sake of equal treatment of the protected person or group of persons.

Excerpt from the Academic Literature No. 71

"The defendant Public Health Organization, within 60 days from the receipt of the judgment, is OBLIGED to provide adapted access to the infrastructure and space of the building located in..... (town, street and number), due to the use of public the available resources in the area of health care, for the claimant and for all persons with physical disabilities (in a wheelchair), in a way that will carry out the necessary construction works that will enable the claimant, as a person with a physical disability, and all other people with a physical disability (persons in a wheelchair), to have equal treatment with other people in the future, which includes and the right to equal opportunities for health care" (Poposka, Dimova, Velkovska, Georgievski and Kocevska, 2014, p. 24).

The right to the so-called publication request, that is, a request to publish in the media the dispositive of the judgment which established the discrimination in an accessible format at the expense of the defendant, deserves its special importance. With the provision of article 35 Paragraph 2 Point 4 e of the LPPD, it is possible through the public announcement of the judgments in the media to raise the level of legal certainty among citizens against illegal discriminatory behaviour, but only if the claimant, that is, the claimants have made such a request with the claim. This means that the court does not publish the sentence from the verdict in the media ex officio, but only at the request of the claimant. This claim cannot be raised independently in the claim, but cumulatively with the declaratory claim, according to the narrower interpretation of the provision. In order to be allowed, this claim by the nature of things must be cumulated with a declaratory anti-discrimination claim, and the court will approve the request only if the declaratory request is approved, that is, if it defines the existence of discrimination. The legislator expressly did not provide such a possibility for prohibitive, that is, restitutionary anti-discrimination claims, which opens up the dilemma of whether when the claimant with the claim has set a declaratory, prohibitive, restitutive and publication claim, and the declaratory, prohibitive and restitutive anti-discrimination claim is founded, he will accept the claim for the publication of only part of the sentence that refers to the adopted declaratory request, or to the other adopted requests. Considering the purpose for which the publication requirement is intended, the court should interpret the provision more broadly and in such cases adopt the publication requirement that applies to all adopted anti-discrimination requirements. This is because the verdict is an important way to raise public awareness about: what discrimination is, for the public to know about the success of the procedure, but also about the fact that the state protects citizens from discriminatory behaviour, that such behaviour is not allowed and for certain legal consequences are provided for that behaviour.

Excerpt from the Case Law No. 162

In a ruling of the Municipal Court in Šabac, the court ordered the Sports and Recreational Centre "Krsmanović" to publish a public apology to the discriminated persons in a certain daily newspaper, and if it does not do so, the claimant has the authority to publish the pronounced judgment in the same newspaper at a cost of the defendant (Court Handbook on Discrimination, 2013, p.27)

The absence of provisions in the LPPD, which will more closely regulate the conditions for the adoption of a public request, can be considered a deficiency of the Law, which in practice could cause confusion and different actions of the courts.

Excerpt from the Academic Literature No. 72

"The best road map in solving this problem will be the judicial practice that would be brought forward by the interpretation and application of the provisions of the *Law on Obligation*

Relations (LOR) and the comparative judicial practice" (Nezirović, 2012, p.8).

The dilemmas regarding the publication of the judgment, when the violation is committed via the Internet, billboards, leaflets at rallies, in stadiums, or during public appearances or otherwise, will especially arise when the publicity request is made in terms of Article 9 -a of the *Law on Obligation*, as a violation of discriminatory treatment of personal rights, in connection with which, Article 188 of the same Law provides that - in the event of a violation of personal rights, the injured party may request, and the court may order, at the expense of the victim, the publication of the verdict, that is, the correction, the withdrawal of the statement by which the violation was committed, or something else with that will be able to achieve the goal achieved by the fair monetary compensation. The verdict is published at the expense of the discriminator, otherwise if the defendant refuses to publish it, it will be published with the claimant's funds, which can be collected from the defendant in the enforcement procedure. Since the LPPD provided for a special provision regarding the public announcement of judgments, the court remains with the request set forth in Article 35 Paragraph 2 Point 4 of the LPPD to decide to adopt it if the claimant cumulatively with this request succeeds in all types of anti-discrimination claims, in a medium at the claimant's choice-proposal, and only the sentence of the judgment which established the discrimination in an accessible format, at the expense of the defendant.

As to the part of the provision that directs, or explains, that only the disposition of the judgment establishing discrimination in an "accessible format" shall be published, the same term should be contained in the sentence of the judgment granting this request. See more about what accessibility is in Part 1.3. Glossary

Excerpt from the Academic Literature No. 73

"IT IS ESTABLISHED that the defendant violated the right to equal treatment of the claimant, in such a way that during the publication of Advertisement No....... in the daily newspaper "..........." of... year, in the terms of employment of a worker - a waiter on fixed working hours, provided for a condition that the advertisement can be only interested candidates of the female sex and not older than 25 years apply, thus violating the rights of equality of treatment, based on age and gender.

TO PUBLISH the sentence of this verdict, in an accessible format, in the daily newspaper "........" at the expense of the defendant, within 15 days after receiving the verdict" (Poposka, Dimova, Velkovska, Georgievski and Kocevska, 2014, p.28).

With a claim for protection against discrimination in the public interest (Lat. *actio popularis*), compensation for damages cannot be claimed, and if it is filed, even though it is not allowed, the question arises whether the court will reject the claim, or decide on the merits by passing a judgment that will reject the claim thus set. The prevailing expert opinion is that in such a case, the claim for protection against discrimination in the public interest in the part of the claim for damages should be rejected as impermissible.

Excerpt from the Academic Literature No. 54 74

"In the case of *Autism-Europe v France*, by a decision of the European Committee of Social Rights, reviewed by the Council of Europe, it was established that France failed to fulfill its obligations towards people with autism in the area of education, in accordance with the European Social Charter. The Autism Europe Association together with the Autism France Association and other French organizations filed a collective application before the European Committee of Social Rights against the Republic of France due to the failure to provide

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education to people with autism, as a result of the lack of inclusion in regular education and especially the reduced number of specialized educational institutions. According to the Committee's decision, in accordance with the European Social Charter, states guarantee the right to education of persons with disabilities, regardless of the nature and origin of their disability and age... France has failed to sufficiently adapt and advance legislation in the education of people with autism.... Proportionally, the number of children with autism who are educated in regular or specialized schools is much lower, compared to other children, regardless of whether they are children with disabilities.... According to the charter, states agreed to provide adequate education and training to persons and children with disabilities, "in particular to enable the development or maintenance of institutions and services that are adequate and sufficient to achieve this goal." France must take not only legal actions but also put them into practice in order to effectively provide people with autism with the right to education.... Due to the fact that the charter prohibits not only direct discrimination, but also forms of indirect discrimination that can result from the "inappropriate treatment" of people with autism, France had to make the best choice and make the most of the available resources/ resources to meet the needs of people with autism and their families. The decision should change the fate of people with autism in France and a large number of other people with disabilities who cannot exercise the guaranteed right to education" (Georgievska and Noveska, 2016, p.26).

Excerpt from the Case Law No. 163

"In Bosnia and Herzegovina, it is known the collective claim that was filed in February 2011 by the Association "Your Rights in BiH" - Sarajevo, against the defendants, the Ministry of Education, Culture and Sports of the Hercegovina-Neretva Canton, the OU in Stolac and the OU in Chapljina, with a request to establish discrimination and violation of the principle of equal treatment due to segregation based on ethnicity in educational institutions, through the so-called system of "two schools under one roof". In the history of the claim, in the factual substratum, it was stated that in the Federation of Bosnia and Herzegovina, there were 54 schools in which segregation based on ethnicity was present. With this way of functioning of the schools, it was expected to return the feeling of security of the rights of the returnees whose children attended classes in facilities in which there were no adequate conditions and which were not intended for educational purposes. Although this concept was intended to facilitate the reintegration of students, it was misused, so that it divided the children according to ethnicity (Bosniak children and Croat children). In those schools, the teachers who used different rooms were physically separated, the children were separated according to ethnicity in different shifts, or they used the facilities through two different entrances and physically separated rooms - classrooms, but also the curricula and programs were different on the same discrimination grounds. After this claim, in 2012, the Municipal Court in Mostar issued a first-instance verdict, with which it was established that the defendants, by organizing classes based on ethnic principles, acted in a discriminatory manner, which is why the Ministry of Education was tasked with canceling the said practice by September 1, 2012. The second-instance court overturned the first-instance verdict and with a decision dismissed the claim due to untimeliness, interpreting that in the case both the subjective and objective deadlines for filing the claim had expired (contrary to the legal opinion of the First-instance Court), given that the *Law on Prohibition of Discrimination*, a deadline was stipulated for filing a claim, namely the subjective one - within three months from the day of learning about the discrimination, and the objective one - within one year from when the discrimination occurred. After revision, the Supreme Court in 2014 confirmed the first-instance verdict, and cancelled the decision of the Second-instance Court. Despite this, this

judgment in Bosnia and Herzegovina has not yet been implemented" (Practicum of the *Law on Prevention and Protection against Discrimination*, 2014, p.35).

In civil proceedings following this type of claims, the legal consequences of a positive verdict extend not only to the parties in the proceedings, but also to all members of the group in relation to which the defendant's discriminatory behaviour has been established. Therefore, a judgment establishing discrimination (but not a judgment dismissing the claim) has a prejudicial effect on any litigation that may be conducted thereafter between the victims of discrimination and the discriminator. In the separate litigation, for compensation of damages, if the claimant is a member of the group, the court on the previous question of the existence of discrimination will be bound by the final judgment in which discrimination against that group was established, so that in the same litigation for damages, it would not be necessary again to decide on that, but only on the existence of damage to the claimant and its amount. Said extended subjective effect of a damning, affirmative judgment rendered in a public interest claim allows all, and in certain cases future class members, to invoke the judgment in their individual damages suits. For the same reasons and with regard to the execution of the judgment, each member of the group would be legitimate to demand it. On the contrary, there is no lis pendens due to the ongoing litigation that is conducted with a collective claim and in parallel with an individual claim, that is, it is not an obstacle for conducting a parallel litigation with an individual anti-discrimination claim.

Of particular importance is the significance of this type of claims for protection against discrimination in developing the concept of the so-called "strategic litigation" which aims to achieve success in one case through which in the future changes will be encouraged in the exercise of that contested right. Strategic subjects are also those subjects that have the potential to encourage an amendment or consistent application of a certain law, that is, to introduce a change in society. Therefore, strategic subjects and judicial practice in certain cases have significance for the wider social community as well as for the development of legal education and legal awareness.

Content of a lawsuit for protection against discrimination in the public interest (Lat. *actio popularis*)

The court procedure initiated as a lawsuit for protection against discrimination in the public interest (Lat. *actio popularis*) is initiated by a claim in which an association/associations of citizens appear as claimants, and the basis is the determination of discrimination based on a certain protected characteristic of a larger group of people. The lawsuit must contain detailed data on the work of the association/associations of citizens in the protection of the principle of equal treatment or data on the work, that is, the protection and promotion of the rights of the specific group of people. Such data are necessary to demonstrate the justified interest of the citizens' association in protecting the interests of a specific group, that is, protection against discrimination. For example, when a public interest discrimination claim is brought in court proceedings for job advertisements that may be discriminatory on various grounds, a citizen association working to protect the right to equal treatment may initiate this type of court action. to establish discrimination in job advertisements and to request from the court that actions be taken to remove the discrimination or its consequences in relation to the members of the group. Also, a court action following a claim for protection against discrimination in the public interest can be initiated by an association of citizens that works with the specific group in different ways, protects its interests and works to improve its status in society.

Furthermore, the lawsuit must contain facts that make the discrimination committed probable, that is, with which it should be made probable that in the specific case discrimination

was committed by the defendant. This part refers to the burden of proof, which also in proceedings for protection against discrimination in the public interest should shift to the defendant after determining a probable (Lat. *prima facie*) case of discrimination. Based on this, the claim should contain data from analyses, reports, documented cases, witnesses and statistical data. In addition, the claim also contains certain evidence, for example, clippings from a newspaper where there is certain discriminatory content, a recording of an attachment, a show or other content broadcast by a broadcaster obtained by the Agency for Audio and Audiovisual Media.

At the end of the lawsuit, a request, that is, several requests, should be made to establish that the action of the defendant violated the equal treatment in relation to the members of the group, to prohibit the taking of actions that violate or may violate equal treatment, that is, to carry out actions that remove discrimination or its consequences in relation to members of the group. It may also be required that the sentence of the judgment establishing a violation of the rights of equal treatment be published in the media at the expense of the defendant. It is particularly important that the request of the claim be correctly and clearly expressed, in order for the court to be able to make a decision that will establish the defendant's actions that caused the discrimination, specific actions to prohibit the taking of actions that violate or may the claimant's right to equal treatment was violated, that is, to perform actions that eliminate discrimination or its consequences. The specific wording of the lawsuit is particularly important in cases of systemic discrimination, where more action needs to be taken by the state to eliminate the discrimination. For example, in cases of segregation in the educational process, it is not enough for the court to only establish the existence of segregation, but also to indicate which actions should be taken by the state in order to carry out the process of desegregation, that is, which desegregation measures should be taken and within what time frame.

For more information on filing public interest claims in cases of discrimination, see Using *actio popularis* in cases of discrimination, by the authors Slavica Čubric and Neda Čalovska-Dimovska of 2016.

5.4. Precautionary Measures

Article 36
Precautionary Measures

Before the beginning of, or during the procedure related to the claim, the court may, upon a proposal of the party, impose precautionary measures even without hearing the other party in order to eliminate immediate unlawful damage threat or prevent violence or eliminate irreparable damage.

Article 36 provides for special protection of the person who believes that his right to equal treatment has been violated by imposing precautionary measures. It is provided that the court may, at the proposal of the party, impose precautionary measures before the start or during the procedure on the occasion of the claim for violation of the right to equal treatment. However, it is interesting that the LPPD does not provide what kind of precautionary measure the person, who believes that his right to equal treatment has been violated, can request. First

of all, it is not delineated whether the person can request a preliminary or temporary measure and what type of precautionary measure he can request, considering that it is a specific type of dispute.

The *Law on the Securing of Claims* (hereinafter: LSC) provides measures for securing monetary and non-monetary claims. Thus, for example, in Article 1 it is provided that "the *Law on the Securing of Claims* defines the means for securing claims, the manner in which they are established, the rules according to which the court acts to secure claims, as well as the actions of the notary and the to the executor in connection therewith." In Article 3 Paragraph 1 it is provided that "the security procedure is urgent", and in Paragraph 2 of the same article it is stated that "the court is obliged to take the case into action within 3 days from the day of receipt of the request at the latest".

In the previous Law (2010), as well as in Article 4 Paragraph 1 of the LSC, it is provided that "the procedure for securing the claims is initiated at the request (claim or proposal) of the claimant, that is, the creditor". As means of securing claims in Article 9 Paragraph 1, the following are provided: lien on real estate and lien on movable objects, previous measures, temporary measures, transfer of ownership of objects and transfer of rights and security measures provided for by another law. The local jurisdiction of the court is provided for in Article 11, which stipulates that "a) for security with a lien on real estate and in Article 16 under b) for security with a lien on movable objects, thus for deciding on the proposal to secure a monetary claim with establishing a lien on real estate and the court in whose territory the cadastre in which the registration is kept is competent for the implementation of that security, for deciding on the proposal for securing a monetary claim based on a lien on movable objects and for the implementation of that security, the court in whose territory is competent the debtor has a place of residence, that is, in whose area is the registered office of the legal entity".

Considering that the security measures that the legislator was referring to are not specified in the LPPD, and also taking into account that the determination of a previous measure requires an invalid, that is, non-enforceable, decision based on a monetary claim, it can be concluded that the legislator, when making this provision considered temporary measures as security measures. Article 31 of the LSC provides that "a temporary measure may be allowed before the initiation and during the judicial or administrative procedure". As conditions for the determination of a temporary measure in Article 33 Paragraph 1 of the LSC, it is established that "a temporary measure to secure a monetary claim can be allowed if the creditor makes the existence of the claim likely and the danger that without such a measure the debtor will frustrate or significantly make it difficult to collect the claim, by alienating, concealing or otherwise disposing of his property, that is, his funds".

Article 34 Paragraph 1 of the LSC defines the types of temporary measures for securing monetary claims, and in Article 35 the types of temporary measures for securing non-monetary claims. Namely, for temporary measures to secure a monetary claim, it is provided that "any measure that achieves the purpose of such security can be allowed, and in particular: 1) prohibition of the debtor to dispose of movable objects, as well as keeping those objects, 2) prohibition of the debtor to alienate or encumber his real estate or real rights recorded in his favour, with an annotation of that prohibition in a public book or to lease them, 3) prohibition of the debtor to sell securities and shares, 4) prohibition of the debtor's debtor to pay the debtor a claim or hand over objects to him, as well as a prohibition of the debtor to receive objects, collect a claim and dispose of them, and 5) an order of the debtor's payment transaction holder or a third party person, on the order of the debtor, not to allow the payment of the amount of money for which a temporary measure is allowed from the accounts of the debtor".

For the provision of a non-monetary claim in Article 35, it is provided that "a temporary measure may be allowed if the creditor has made the existence of the claim probable and the danger that the realisation of the claim will otherwise be thwarted or made significantly more difficult". Also, in Paragraph 2 of the same article, it is provided that "a temporary measure can be allowed when the creditor makes it probable that the measure is necessary to prevent the use of force or the occurrence of irreparable damage". The types of temporary measures are provided for in Article 36, stating that "for the security of a non-monetary claim, any measure that achieves the purpose of such security may be allowed, and in particular: 1) prohibition of alienation and encumbrance of movable objects to which it is directed the claim, as well as keeping those items, 2) prohibition of alienation and encumbrance of the real estate to which the claim is directed, with an annotation of the prohibition in a public book, 3) prohibition of the debtor to undertake actions that may cause damage to the creditor, as well as prohibition to make changes to the objects to which the claim is directed, 4) prohibition of the debtor's debtor to hand over to the debtor the objects to which the claim is directed, and 5) payment of salary compensation to the employee during a dispute due to the illegality of the decision to terminate the employment relationship, if this is necessary for his maintenance and the maintenance of the persons whom he is obliged to support according to the law".

Apart from the temporary measure provided for in Article 36 Paragraph 5 - payment of salary compensation to the employee during a dispute due to the illegality of the decision to terminate the employment relationship, if it is necessary for his maintenance and the maintenance of the persons whom he is obliged to support according to the law, none of the other measures can be correlated with a dispute brought on the ground of protection against discrimination, or, perhaps, when adopting the provision for determining security measures, the legislator was referring to the part of the provisions of Articles 34 and 35 - any measure that achieves the purpose of such provision.

During the proceedings, the court will approve the proposal if the conditions of Article 36 of the LPPD are cumulatively met. That is, if the determination of the measure is necessary due to the removal of the danger of irreparable damage, especially severe violations of the rights to equal treatment or prevention of violence. Thus, it will be necessary in the specific case, according to the judgment of the court, that there is a need to impose a temporary measure, and that for at least one of three reasons: to remove the danger of irreparable damage, or because it is a particularly severe violation of the right of equal treatment, or to prevent violence. These reasons, which differ from the standard conditions for the imposition of a temporary measure provided for in the LSC, authorize the court to temporarily act and order certain activities before, in general, fully investigating the disputed allegations. The individual temporary measures would mean their issuance, for example, in the case of: ban on undertaking any activities that could cause damage, temporary return of an employee to work, payment of compensation during the labour dispute, but also other measures that the disputed relations between the parties are temporarily regulated.

Just as the LPPD does not provide for security measures that can be requested by the claimant, neither does the *Law on Prohibition of Discrimination of Bosnia and Herzegovina* (The Official Gazette of Bosnia and Herzegovina Nos. 59/09 and 66/16) it is not provided what security measures the claimant can request, however, the type of security measure that the court can adopt is provided, that is, the court can allow a temporary measure. It is interesting that the principle that the other party should be heard (Lat. *audi alteram partem* or *audiatur et altera pars*) has been abandoned in Bosnian law regarding the determination of a temporary measure. Without prior notification and hearing of the other party, the court, at the request of the party, may establish a temporary measure if the proposer presents valid reasons for the urgency of

the measure based on which it can be concluded that a different action would lose its purpose. The deadline and the procedure for acting on the occasion of a submitted proposal for making a decision on the determination of a temporary measure have been established. It is provided that the court delivers the decision immediately to the opposite party, who within 3 days in his answer can dispute the reasons for determining a temporary measure, after which the court must schedule a hearing in the next 3 days. Also, unnecessarily, it is provided that the response of the opposite party must be reasoned. Any response to a submission must be reasoned. The legislator established that the court, after the hearing held, will cancel the decision on the determination of a temporary measure with a separate decision or will replace that decision with a new decision on the determination of a temporary measure. It is reasonable to ask the question - Why, if a decision for a temporary measure has already been adopted, should the court bring a new decision to replace the already adopted decision?

Unlike the LPPD, which in Article 36 provides that before starting or during the procedure on the occasion of the claim, the claimant can submit a proposal for security, in Article 44 of the *Law on Prohibition of Discrimination of the Republic of Serbia* (The Official Gazette of the Republic of Serbia Nos. 22/2009 and 52/2021), it is provided that "the claimant can with the claim, during the procedure, as well as after the end of the procedure, until the execution is carried out, can ask the court to prevent the discriminatory treatment with a temporary measure for the purpose of removing danger of violence or greater irreparable harm". It is stipulated that "in the proposal for the issuance of a temporary measure, it must be made probable that the measure is necessary to prevent the danger of violence due to the discriminatory treatment, the use of force or the occurrence of irreparable damage". The deadline for making a decision on the proposal for the issuance of a temporary measure has also been established, that is, "the court is obliged without delay, and no later than within 3 days from the receipt of the proposal, to make a decision on the proposal for the issuance of a temporary measure".

As well as in the LPPD and in the *Law on Combating Discrimination of the Republic of Croatia* (The Official Gazette of the Republic of Croatia Nos. 85/8 and 112/12), in Article 19, the possibility of submitting a proposal for issuing a security measure is provided, as it is established what kind of safeguards may be required with the proposal. Namely, before the start of the procedure, or during the procedure, at the proposal of the party, the court can establish temporary measures. Unlike the rest of the commented laws, only the *Law on Combating Discrimination* of Croatian stipulates that "the provisions of the *Law on Execution* shall be applied in an appropriate manner for temporary measures". At the same time, it is stipulated that "the conditions for the determination of a temporary measure are: first, that the applicant has made it probable that his right to equal treatment has been violated, and second, that the determination of a temporary measure is necessary in order to remove the danger of irreparable damage, especially severe violation of the rights of equal treatment, or prevention of violence". We would conclude that the law does not provide for the types of security measures that the claimant may request before starting or during the proceedings regarding the claim for protection against discrimination. This lack of definition should not create problems in highlighting the proposals for the adoption of security measures, because the legal solution from Article 35 provides that any measure that achieves the goal of such security really gives complete freedom in highlighting the proposals for the adoption of temporary security measures, taking into account all forms of discrimination that occur and can occur.

In the LPPD, the types of security measures are not specified at all, nor are the conditions specified, as required by the LSC, but it is only provided that the court can establish security measures before or during the procedure, by introducing a novelty, namely: without

hearing the opposite side. Such a solution represents an approach to the legal solution provided for in the *Law on Prohibition of Discrimination of Bosnia and Herzegovina* (The Official Gazette of Bosnia and Herzegovina Nos. 59/09 and 66/16) where, with regard to the determination of a temporary measure, the principle that should hear the other party (Lat. *audi alteram partem* or *audiatur et altera pars*). Without prior notification and hearing of the other party, the court, at the request of the party, may establish a temporary measure if the proposer presents valid reasons for the urgency of the measure based on which it can be concluded that a different action would lose its purpose. However, unlike the Bosnian law, where it is decidedly stipulated that the proposer must present well-founded reasons for the urgency of the measure, from which the court would reasonably conclude that if the measure were not adopted, all further proceedings would lose their meaning, and what is actually provided and in our LSC, in the LPPD, neither the obligation of the proposer to fulfil the claim is provided, nor the danger that if a security measure is not adopted, irreparable damage could occur, that is, the claim of the proposer could be made more difficult or thwarted.

Also, LPPD uses the term "unlawful damage", which is unclear. Illegality as a term is known in the area of criminal legislation, that is, it represents a punitive action. Also, in order to be able to use the term "unlawful damage", there should be a valid court decision in which it is established that the alleged discriminator committed a certain illegal action that caused damage to the proposer. For those reasons, the term used in this way is completely unclear.

Excerpt from the Academic Literature No. 75

"The claimant's motion to establish a precautionary measure IS ADOPTED.

The defendant is OBLIGED to provide the minor claimant with accommodation in the Day Care Centre for children with special needs immediately after receiving the decision.

The decision is immediately enforceable and has legal effect until the final conclusion of the litigation following the claim of the minor claimant, or

The decision will be implemented by an official of the court..." (Poposka, Dimova, Velkovska, Georgievski and Kocevska, 2014, p.32).

5.5. Burden of Proof in the Court Proceedings

Article 37
Burden of Proof

(1) The claimant claiming that discrimination has been committed under the provisions of this Law, shall state the facts that make the claim probable, and then the burden of proof shall shift to the defendant to prove that there was no discrimination committed.

(2) The provision of Paragraph (1) of this Article shall not apply in misdemeanour and criminal proceedings.

The LCP regulates the rules of procedure on the ground of which the court deliberates and decides in disputes about the basic rights and obligations of man and citizen, about personal and family relations, such as work, commercial, property and other civil-law disputes, if with the law does not establish for some of those disputes to be decided by the court, according to the rules of some other procedure (Article 1). According to the standard rules of procedural law, the person who in the procedure should have favourable decisive facts for himself, has the burden of proof (Lat. *onus probandi*), which means that he is obliged to prove with a degree of certainty the facts he refers to. Otherwise, the litigation may be lost (Lat. *actore non probante, reus absolvitur*), that is, the court, in accordance with Article 208 of the LCP, will apply the rules on the burden of proof to the existence of the fact, or will accept that the fact which not proven - does not exist. For the division of the burden of proof between the parties, as a standard rule in civil proceedings, the rule applies that the claimant bears the risk of unproven facts on which he bases his claim for the protection of the subjective right, and that the defendant bears the risk of unproven facts that prevent the creation of the subjective right, or they cancel, that is, they deny the subjective right of the claimant. Accordingly, under the standard rule on the burden of proof, the claimant would be required to prove his claim that he was, or is now, discriminated against.

The greatest burden when it comes to proving discrimination is the burden that falls on the victims of discrimination. This is because most of the time, discrimination is not manifested openly, nor can it be simply identified. Proving discrimination is difficult, even when the unequal treatment is based on some characteristic of the individual or group. This is so, because the motives for the discriminatory treatment are often individual for each alleged discriminator and depend on his view of the persons who have a protective characteristic, which, in turn, is encouraged by the prejudices and stereotypes about these persons as a group, which exist in society. It is difficult to prove discrimination also due to the existence of conflicting interests between the claimant and the alleged perpetrator of the discrimination. Also, a large part of the evidence is owned by the alleged discriminator, that is, the defendant.

Excerpt from the Academic Literature No. 76

"Transferring the burden of proof to the defendant who knows the reasons for the unequal treatment towards the claimant, aims to ensure the principle of equality of the parties in the procedure, which is an inseparable part of the right to a fair trial as well as the establishment of such procedural obligations in which each opposing party must have "a reasonable opportunity to present its case in a way that does not place itself at a significant disadvantage compared to the other party (Bulut v. Austria, Application No. 17358/90, Judgment of 22 February 1996, Paragraph 47)" (Topic, 2015, p.3).

Due to the specificity of the incidence of discrimination, in these cases there are quite a few difficulties in proving them when the regular burden of proof would be used, that is, everyone who claims has to prove it. In order to facilitate the proof of discriminatory treatment or the effect of a certain, apparently, neutral norm, criterion or practice, in cases of discrimination it is allowed to share the burden of proof between the claimant and the defendant. This principle, which was developed by the CJEU in cases of discrimination on the ground of sex and related to equal pay for the same work and work of the same value, such as the case of *Danfoss* (C-109/88, Handels- og Kontorfunktionærners Forbund i Danmark v. Dansk Arbejdsgiverforening (acting on behalf of Danfoss), Judgment of 17 October 1989) and the case of *Enderby* (C-127/92, Dr. Pamela Mary Enderby v. Frenchay Health Authority and Secretary of State of Health, Judgment of 27 October 1993), is today deeply rooted in European anti-discrimination legislation. The CJEU clearly points out in its jurisprudence that without dividing the burden of proof between the two parties in the procedure, there are no prerequisites

for implementing in practice the principle of equality and the prohibition of discrimination. The cases will not be able to be proven and thus the practice will not change.

Excerpt from the Case Law No. 164

In the case of *Danfoss* (C-109/88, Handels- og Kontorfunktionærners Forbund i Danmark v. Dansk Arbejdsgiverforening (acting on behalf of Danfoss), Judgment of 17 October 1989) the trade union brought a case on behalf of female workers in a company because they, on average, they earned 7% less than their male colleagues in the same or similar workplace. The CJEU expressly states in the case that in cases where the company implements a system of salary calculation that is completely non-transparent and statistical data show the existence of inequality in the paid salary between female and male workers, the burden of proof shifts to the employer to prove that the difference in the salary paid refers to factors unrelated to the workers' gender

In the *Enderby* case (C-127/92, Dr. Pamela Mary Enderby v. Frenchay Health Authority and Secretary of State of Health, Judgment of 27 October 1993) which refers to discrimination based on sex and in connection with the payment of the same salary for work of the same value, the CJEU confirmed its position previously taken in the Danfoss case, while comparing the salary of speech therapists, who were mostly women, and pharmacists, who were mostly men. The court considered that if the salary of speech therapists is significantly lower than the salary of pharmacists, and the former are predominantly women, unlike the latter, who are predominantly men, this alone leads to the existence of a probable (Lat. *prima facie*) case of discrimination based on gender. When there is a probable (Lat. *prima facie*) case of discrimination, too, the employer is responsible for showing that there is an objective reason for the difference in salary. The Court uses the opportunity to state that male and female workers will be prevented from enforcing the principle of equal pay before national courts if the proof of the existence of a probable (Lat. *prima facie*) case of discrimination does not allow passing the burden of proof.

Although the provision for passing the burden of proof before the ECtHR is not explicitly recognized, it is applied in practice.

Excerpt from the Academic Literature No. 77

"When the ECtHR examines the cases before it from the point of view of evidence, the Court usually applies the principle *affirmanti incumbit probatio*, that is, that the applicant must prove his or her claim. The Court applies the standard of proof "beyond reasonable doubt" as the usual standard for all Convention rights. In the proceedings before the ECtHR, there are no procedural obstacles to the admissibility of evidence or predetermined formulas on which their assessment is based. The court adopts the conclusions which, according to it, are supported by the free assessment of all the evidence, including the conclusions that may arise from the facts and submissions of the parties in the proceedings.

However, the burden of proof is applied by the ECtHR, which can be seen from its jurisprudence. For example, where the events in question are wholly, or in large part, within the exclusive knowledge of the authorities, the burden of proof may be held to be on the authorities to produce a satisfactory and convincing explanation (Salman case, Anguelova case, Makuchyan and Minasyan case). The court also shifted the burden of proof in other cases where in practice it would be extremely difficult for the applicant to prove discrimination (the Cînța case).

The ECtHR looks at the presented evidence as a whole, due to the fact that, most of the time, it is the states that have the information (facts and evidence) with which the respective claim can be confirmed. That is, if the facts presented by the applicant appear to the Court to be credible and are consistent with other evidence presented, the ECtHR will accept them as proven, unless the state is unable to present another plausible explanation.. The court will accept as fact those allegations that are "supported by a free evaluation of all the evidence, including those allegations arising from the facts and pleadings of the parties... [e]vidence may result from the coexistence of sufficiently strong, clear, and consistent assertions or from similar undisputed factual assumptions. Also, the level of persuasiveness required to reach a certain conclusion and, in this regard, the division of the burden of proof, are inextricably linked to the particularity of the facts, the nature of the allegations presented and the rights from the ECHR that are in question" (ECtHR, the *Nachova* case, the *Timishev* case, the *D.H.* case)" (Amdiju and Poposka, 2023, p.19-20).

Excerpt from the Case Law No. 165

In the case of *Makuchyan and Minasyan* (Makuchyan and Minasyan v. Azerbaijan and Hungary, App No. 17247/13, Judgment of 26 May 2020), taking into account the special features of the case which consisted of the promotion of a convicted murderer of an Armenian soldier, giving him more benefits without any legal basis, his glorification as a hero by a number of high-ranking Azerbaijani officials, as well as the creation of a special page on the president's website, in the opinion of the ECtHR, the applicants presented sufficiently strong, clear and coherent conclusions to show the existence of a probable (Lat. *prima facie*) a case in which the disputed measures under consideration were motivated by the ethnic origin of the victims. Given the difficulty for the applicants to prove this bias beyond a reasonable doubt, the Court, in the particular circumstances of the case, shifted the burden of proof so that Azerbaijan was required to rebut the contested claim of discrimination, which it ultimately failed to do.

It was decided identically before the European Committee for Social Rights established by the European Social Charter of the Council of Europe, which in several cases considered before it provided that in cases of discrimination the burden of proof should not lie entirely on the side of the applicant. rather, it should be subject to appropriate adjustment.

Excerpt from the Academic Literature No. 78

"According to the *Handbook of European Law on Non-Discrimination*, this practice is observed by the Committee on Economic, Social and Cultural Rights as well as the Committee on the Elimination of Racial Discrimination of the United Nations. Namely, the Committee on Economic, Social and Cultural Rights indicated that "in cases in which the facts and events in question are fully or partially within the exclusive knowledge of the authorities or other responsible bodies, the burden of proof should be considered to be responsibility of the authorities, or of other responsible bodies, respectively" (Handbook on European non-discrimination law, 2018, p. 239).

Paragraph 1 of this article regulates that the claimant who claims that discrimination has been committed is obliged to state only the facts that make the claim probable, that is, to create a probable (Lat. *prima facie*) case of discrimination. That is, a case in which it is clearly seen that precisely the protective feature is the circumstance that led to less favourable treatment, compared to others.

Excerpt from the Case Law No. 166

According to the Belov case (Belov v CHEZ Elektro Balgaria, C-394/11, AG [2013] 2 CMLR 29), which alleged discrimination on the ground of ethnicity. The Advocate General of the CJEU Kokot states in her opinion that in order to transfer the burden of proof, nothing more than a "presumption" of discrimination is required, and any stricter interpretation would jeopardize the need for practical efficiency and would mean that the rule itself would be unnecessary. In other words, a presumption and not a conclusion or unequivocal proof of committed discrimination is required.

It does so by submitting facts, and where there is evidence, which indicate that it is likely that discrimination has occurred, that is, which lead to the creation of a presumption of discrimination. That is, it includes listing and describing the events, actions, relations between the parties due to which the claimant believes that discrimination has been committed. This is required in order to avoid unjustified or partial accusations of committed discrimination, not based on any relevant facts. Very often, a probable (Lat. *prima facie*) case of direct discrimination on a discrimination ground is shown, if the claimant shows a clear discriminatory policy of a certain legal entity or, alternatively, a rule that is applied and treats the concerned persons differently, in contrast to the rest.

Excerpt from the Case Law No. 167

In the case of *Meister* (Galina Meister v. Speech Design Carrier Systems GmbH, C-415/10, Judgment of 19 April 2012), the claimant claimed that there was discrimination based on gender, age and ethnic origin in the selection of a candidate for employment and while asking the court that the employer should make public the information whether he hired another candidate at the end of the process. The CJEU considered that although the anti-discrimination directives do not provide a right of access to this type of information, however, the Court cannot exclude that the defendant's refusal to grant any access to the claimant's information could be one of the factors that would be taken into account in context of establishing the facts from which it can be perceived that direct or indirect discrimination has occurred. The CJEU stated that it is the national court that should establish whether this is the case in the specific case, taking into account all the circumstances of the case before it (Paragraphs 45 to 48).

Excerpt from the Academic Literature No. 79

"This is especially important in proving cases of indirect discrimination, where it has to be proven that a certain, apparently, neutral provision, criterion or practice has a particularly unfavourable effect on a certain group of people. It is necessary for the claimant to present facts that this disproportionately less favourable effect is the result of the application of the specific provision, criterion or practice, which is contested as discriminatory. In other words, the claimant must show that there is a causal relationship between the contested measure and the imbalance between different groups in the enjoyment of a certain benefit" (Poposka, 2012, p.47-52).

In cases of indirect discrimination, there is no need to demonstrate the causal link between the discrimination grounds and the action. The effect of the action is important here.

Excerpt from the Case Law No. 168

In the case of the *European Action of the Disabled* (European Action of the Disabled (AEH) v. France, App. No. 81/2012, Decision of 11 September 2013), the European Committee of Social Rights considered that the limited funds in the state budget in the area of social services intended for the education of children and adolescents with autism indirectly disenfranchises people with disabilities. The committee considered that although limited public funding for social care may affect everyone covered equally, people with disabilities are more likely to be dependent on community care funded through the state budget in order to live independently and dignified, compared to other persons. Thus, budget constraints related to social policy place persons with disabilities in a disproportionally disadvantaged position. Accordingly, the Committee established that the limitations of the budget in the state, in the area of social welfare, represent indirect discrimination against persons with disabilities.

The burden of proof then shifts to the respondent to prove that there is no discrimination. The provision of Article 32 of the LPPD stipulates that "In the procedure, the provisions of the *Law on Civil Procedure* shall be applied accordingly, unless this law provides otherwise". As in other civil proceedings, the court decides within the limits of the requirements set in the claim, and the parties are obliged to present all the facts that establish those facts, and which facts will be taken as proven, the court decides at its own discretion, based on of conscientious and careful assessment of each piece of evidence separately and of all pieces of evidence together, and based on the results of the overall procedure. In that sense, the provisions of articles 206 and 207 of the LCP are applied in terms of which facts should and which should not be proven. Thus, according to Article 206 Paragraph 1 of the Civil Procedure Code, "The evidence includes all the facts that are important for making a decision", and according to Paragraph 2 "The court decides which of the proposed evidence will be presented for the purpose of determining the decisive facts". In addition, with Article 207 Paragraph 1 of the same law, "The facts that the party admitted to the court during the litigation should not be proven, but the court can order to prove such facts if it considers that the party's recognition of them leads to that to dispose of a request that it cannot dispose of", with Paragraph 2 that "the Court, taking into account all the circumstances, will, according to its conviction, evaluate whether to consider it recognized or disputed fact that the party first admitted and then fully or partially denied or limited the recognition by adding other facts", with Paragraph 3 that "Facts whose existence is perceived by law do not need to be proved, but it can be proved that these facts do not exist, if something else is not established by law" and with Paragraph 4 that "It is not necessary to prove facts that are generally known".

Applying these provisions of the LCP in the procedures for protection against discrimination means that it is not necessary to establish some types of facts that accompany cases of discrimination, in order to prove the case: there is no need to prove whether the perpetrator is motivated by prejudices, it is not necessary to show that the particular provision, criterion or practice aims, in particular, affect less favourably a certain group of persons, and as far as EU anti-discrimination legislation is concerned, there is not always a need to prove the existence of a specific victim before the CJEU, as argued in the case of *Firma Feryn* (Centrum voor gelijkheid van kansen en racismebestrijding v. Firma Feryn NV, Case C-54/07, Judgment of 10 July 2008). On the other hand, in the proceedings before the ECtHR, it is necessary to have a concrete, identified victim, that is, to have the status of a victim (Lat. *losus standi*).

After the burden of proof has shifted from the claimant to the defendant, the alleged discriminator may rebut the presumption of discrimination if he shows that there is no less favourable treatment of the individual or disproportionate adverse effect on the group than that

the claimant, in fact, is not in a similar situation with its comparator, or if it shows that the different treatment is not based on the protective characteristic, but on the ground of another objective distinction.

Excerpt from the Case Law No. 169

In the case of *Brunnhofer* (Susanna Brunnhofer v. Bank der österreichischen Postsparkasse AG, C-381/99, Judgment of 26 June 2001), in which the claimant alleged discrimination on the ground of sex, because she was paid less than her male colleagues who were on the same salary level as her, the CJEU stated that the claimant had to prove the following: first, that she was paid less than her male colleagues who were on the same level, and, second, that she was working which was of equal value as the work they performed. This was enough to make it likely that the disparate treatment could be explained solely because of her gender, and thus the burden of proof automatically shifted to the employer to prove otherwise. On the other hand, the CJEU gave guidelines on how to rebut the presumption of committed discrimination. First, if it is proven that the employed men and women are not in a similar situation, because work of the same value was not performed, that is, the work includes duties and tasks that have a different essential nature, and second, by establishing other objective factors that contributed to the difference in the salary, and are not related to the claimant's belonging to a certain gender, in this case the female gender, invoices such as compensation for living separately or travel expenses and the like (Paragraphs 51 to 62).

Excerpt from the Case Law No. 170

In the case of *Asociaţia ACCEPT* (Asociaţia Accept v. Consiliul Naţional pentru Combaterea Discriminării, C-81/12, Judgment of 25 April 2013), on discrimination based on sexual orientation in the recruitment of players by a professional football club, the CJEU considered that probable (Lat. *prima facie*) a case of discrimination based on sexual orientation can be refuted by a set of consistent evidence....such a body of evidence may include, for example, a reaction by the respondent clearly distancing itself from the public statements on which the presumption of discrimination is based, as well as the existence of express provisions relating to the employment policy aimed at ensuring compliance with the principle of equal treatment. The Court went on to state that shifting the burden of proof does not require the production of impossible evidence without interfering with the right to privacy (Paragraphs 58 and 59).

If the respondent fails to rebut the presumption of discrimination in any of these three ways, then he/she will have to justify the different treatment, or the different effect, by proving that the different treatment, or the different effect is objectively justified and proportionate. That is, in the cases of a probable (Lat. *prima facie*) case of discrimination, the defendant must prove that the respective distinction based on a protective characteristic tends to achieve a legitimate goal that is objective and justified, and the distinction itself is appropriate and necessary to achieve that goal. If the defendant does not prove with a degree of certainty that there is no discrimination, the court is obliged to establish that the right to equal treatment has been violated (Lat. *in dubio pro discriminatione*).

Excerpt from the Case Law No. 171

In the case of *Bilka-Kaufhaus* (Bilka - Kaufhaus GmbH v Karin Weber von Hartz, C-170/84, Judgment of 13 May 1986), the department store "Bilka" claimed that the purpose behind the different treatment was to discourage part-time work and to stimulate to full-time work

due to the fact that part-time workers claimed to refuse to work night shifts and on Saturdays, with which the company had difficulties in securing a sufficient number of employees. The CJEU considered that the measure, practice or incident can be objectively justified on a basis different from the stated discrimination grounds and that the enterprise can adopt a justified policy of excluding part-time workers from the social payment scheme, regardless of their gender, to achieve the goal of employing as few part-time workers as possible, if it shows that the means chosen to achieve that goal, which correspond to the real needs of the employer, are appropriate and necessary for its achievement (Paragraph 37). The CJEU established that this could be a legitimate aim, however, it did not answer the question of whether the exclusion of part-time workers from the pension fund was proportionate to the achievement of that aim. The requirement that the measures taken should be "necessary" implies that there is no reasonable alternative means which would cause less interference with the right to equality. Hence, the CJEU left it to the National Court to apply the law based on the facts of the case.

Excerpt from the Case Law No. 172

In the case of *Mahlburg* (Mahlburg v. Land Mecklenburg-Vorpommern, C-207/98, Judgment of 3 February 2000), the applicant, who was pregnant, was refused a permanent position as a nurse whose duties were, to a large extent, to be performed in an operating room, on the grounds that exposure to dangerous substances in the operating room could harm her child. The CJEU established that, given that it was a permanent post, it was disproportionate to prohibit the applicant from applying for the post as her inability to work in an operating theater would only be temporary. Although restrictions on working conditions for a pregnant woman have been accepted, they should be strictly limited only to duties that could harm her and must not imply a general ban on work.

The CJEU is clear on the view that purely monetary goals are not acceptable as an objective justification, and that the simple generalization of a goal that is not related to the wider social welfare does not pass the threshold required for the objective justification of discrimination. According to international standards, there are certain principles that limit which legitimate goals can be considered acceptable, namely: only budgetary (financial) considerations can never serve as an objective justification for discrimination, the purpose of such a practice must not be related to discrimination and it is not enough to generalize, proportionality implies that the specific measure taken to achieve a legitimate goal should be adequate to achieve such goal, proportionality also implies that the applicant should show that another measure with a lesser effect or without a harmful effect it would not be effective.

Excerpt from the Case Law No. 173

The case of *Vasil Ivanov Georgiev* (Vasil Ivanov Georgiev v. Tehnicheski universitet - Sofia, filial Plovdiv, C-250/09, C-268/09, Judgment of 18 November 2010), before the CJEU, refers to the question regarding the mandatory departure to old age pension. Bulgarian legislation allowed the employer to terminate the employment contract of a university professor when he reached the age of 65 and after that age to give him a maximum of three one-year fixed-term contracts. Before the Supreme Court of Justice, the Bulgarian government argued that the contested national legislation gives younger generations the opportunity to reach professorships, thus contributing to maintaining the quality of teaching and research work as a legitimate goal. During the analysis of the case, the CJEU established that the Council Directive 2000/78/EC allows the adoption of national laws confirming that

university professors can continue to work after reaching the age of 65, only through one-year fixed-term contracts and to retire at the age of 68 years. However, the Court emphasized that such a law must have a legitimate aim in relation to the labour market or employment policy and that this aim should be expected to be achieved through appropriate and necessary means. Legitimate goals according to CJEU can include ensuring quality teaching, as well as optimal distribution of professorships between different generations.

In some countries, the higher courts, through their judicial practice or independently of it, have developed practical guidelines for the lower courts that refer to the transfer of the burden of proof in practice, that is, how the courts should assess whether the claimant has established a probable (Lat. *prima facie*) case of discrimination and when they should shift the burden of proof to the employer for him/her to provide a satisfactory explanation for his/her actions. Namely, as a good practice we would single out the guidelines of the Court of Appeal in England and Wales in the case of *Igen Ltd v. Wong* and referring to the cases *Chamberlin and Emizie v. Emokpae and Webster v. Brunel University* (Court of Appeal of England and Wales, Igen Ltd (formerly Leeds Careers Guidance) and Others v. Wong, Chamberlin and Another v. Emokpae and Webster v Brunel University, [2005] IRLR 258). The Guidelines explain that this should be seen as a two-step approach in which: first, the claimant has to prove the existence of facts from which the court can conclude, on a balance of probabilities and in the absence of an adequate explanation, that the defendant or the defendant committed unlawful discrimination against the defendant or the defendant. At this stage, the court does not make a definitive decision that the facts presented lead to a decision that discrimination has occurred, but the court only considers the primary facts before considering what inferences about secondary facts can be drawn from them. In drawing inferences from the primary facts, the court must assume that there is no adequate explanation for these facts. Conclusions can be drawn from both questionnaire responses and non-compliance with the code of practice if one exists. Second, the defendant has to prove, based on a balance of probabilities, that he/she did not commit illegal discrimination. At this stage, the court assesses not only whether the defendant has presented an explanation of the facts from which such conclusions can be drawn, but additionally whether this is sufficient to relieve him/her of the burden of proof on a balance of probabilities. Because the facts needed to provide an explanation are, most often, in the possession of the respondent, the court expects reliable evidence to relieve the burden of proof. In particular, the court carefully considers the defendant's or defendant's explanations for his/her non-compliance with the questionnaire response procedure or non-compliance with the code of practice, if any.

Excerpt from the Case Law No. 174

In the case *P4 No. 123/17* before the Basic Court Bitola, taking into account the cited provisions, especially the provision of Article 38 Paragraph 1 of the LPPD which stipulates that the burden of proving that there was no discrimination falls on the defendant, this court considered that the claimants presented evidence from which it was committed, probably, that they were treated in a discriminatory way when refusing to allow them to leave the country, and the defendant did not prove that there was no discrimination, that is, the actions of the police officers were taken in the same way as for all citizens. The claimants were unreasonably not allowed to leave the country by the officials employed at the border crossings, which put them in an unequal position compared to other citizens. The court considered that the defendant did not prove that there were justified reasons prescribed by regulation for not allowing the claimants to leave the country, and therefore that there was no discrimination in the specific case (*P4 No. 123/17* dated 30.3.2018 of the Basic Court Bitola).

Excerpt from the Case Law No. 175

Regarding the indication by the Court of Appeal that it is not clear where the conclusion that the defendant would have persistent the employment relationship with the claimant if she had not been pregnant, and taking into account that her employment contract was for a fixed period of time, in accordance with Article 38 Paragraph 1 of the LPPD, the Basic Court Skopje 2 in the case *RO-980/17* stated that the proof that there was no discrimination falls on the opposing party. In the specific case, the defendant did not prove to the court that even if the claimant had not been pregnant, he would not have extended her employment contract, all the more so that when a decision was made to terminate the employment relationship for the claimant, 6 workers established an employment relationship with the defendant, and the defendant did not submit evidence that the reason for the decision to terminate the claimant's employment was not her pregnancy (*RO-980/17* dated 6.7.2017, at the Basic Court Skopje 2, as well as *RO-618/15* dated 3.3.2016, *ROŽ-1336/17* dated 7.2.2018 from the Appellate Court Skopje, *Rev. No. 55/2018* dated 18/12/2018 of the Supreme Court).

Paragraph 2 of this article states that the passing of the burden of proof is not applied in the misdemeanour and criminal proceedings, due to the higher level of proof for determining criminal responsibility and the presumption of innocence.

Excerpt from the Academic Literature No. 80

"When we talk about the burden of proof, we should keep three things in mind, namely:

First, it is national legislation that defines what type of facts/evidence is admissible and required to be presented before national courts and other competent authorities and how it will be conducted, and this may be more strictly defined than by the ECtHR or the ECJ.

Second, the rules for shifting the burden of proof do not apply in criminal proceedings when the state prosecutes the perpetrators of crimes motivated by hate or gender-based violence due to the higher level of proof for determining criminal responsibility (Handbook on European non-discrimination law, 2018 p. 236).

Thirdly, states can establish the rules for shifting the burden of proof not to be applied in cases where courts or other competent authorities carry out investigative actions, due to the principle of presumption of innocence, but also due to the principle of objectivity and impartiality" (Amdiju and Poposka, 2023, p.15).

The principle is equally applied in cases of all forms and types of discrimination, that is, in cases of direct and indirect discrimination (Article 8), as well as invocation, incitement and instruction for discrimination (Article 9), harassment (Article 10), victimization (Article 11), segregation (Article 12) as well as in cases of more severe forms of discrimination (article 13), explained below. Also, because LPPD implies that preventing reasonable accommodation and preventing accessibility and availability of infrastructure, goods and services is considered discrimination (Article 6), the principle of shifting the burden of proof is also applied in these cases.

The provision for shifting the burden of proof is fully compliant with anti-discrimination standards, in particular with EU law and existing case law. However, from the previous application of the rule for transferring the burden of proof in the national practice, there is an unevenness in the actions of the courts.

Excerpt from the Academic Literature No. 81

"In more than half of the analysed court decisions, the courts do not rule at all regarding the burden of proof, nor do they apply this rule, which significantly complicates access to an effective court procedure for protection against discrimination." The reasons for this behaviour are the insufficient training, as well as the weak activity of the higher courts in achieving equal application of the laws (Kocevski, 2020, p. 7).

Only in 36 judgments, less than half of those analysed, the burden of proof was transferred. But it is also a good practice that in some of the judgments the courts explicitly and unequivocally base their decision on the application of the rules of the burden of proof" (Kocevski, 2020, p. 26-28).

In comparison, the Belgian *Federal Law on Combating Certain Forms of Discrimination* contains examples of facts that allow the creation of a presumption of direct discrimination, specifically stating two types of facts, namely: first, elements that demonstrate a certain repetition of less favourable treatment towards persons who jointly share a certain protective feature, such as, for example, repeated reports of discrimination to the equality body or to civil organizations against discrimination and second, elements that confirm that the situation of the applicant is comparable to that of the person who does not have the protective characteristic in question and he/she was treated more favourably.

In connection with the method of norming the passing of the burden of proof, in the *Law on Combating Discrimination of the Republic of Croatia* (The Official Gazette of the Republic of Croatia Nos. 85/8 and 112/12) and in the *Law on Prohibition of Discrimination of the Republic of Serbia* (The Official Gazette of the Republic of Serbia Nos. 22/2009 and 52/2021), stylistically much more clearly and simply the same thing is standardized, than in the previous Law (2010), so, for example, Article 45 Paragraph 2 of the Serbian Law reads: "If the claimant believes that the defendant probably committed an act of discrimination, the defendant bears the burden of proving that in connection with that act there was no violation of the principle of equality, that is, the principle of equal rights and obligations." Therefore, it is more than useful that in the arrangement of Article 37 of the LPPD, the comparative experiences of norming the passing of the burden of proof in anti-discrimination disputes were accepted, and this enabled not only an equal interpretation and application of the principle of passing the burden of proof, but also preventing any different interpretation.

The transfer of the burden of proof to the national legislation is expressly provided for in the LPPD, but also in the *Law on Labour Relations* (Article 11 Paragraphs 1 and 2) and in the *Law on Protection from Harassment at the Workplace* (Article 33). However, the passing of the burden of proof for certain forms of discrimination, such as the denial of reasonable accommodation and the denial of accessibility and availability of infrastructure, goods and services (Article 6 of the LPPD) is not expressly provided for in separate laws, which means that in in cases of those forms of discrimination, the provisions of Article 37 of the LPPD will be applied and the burden of proof will pass after the creation of a probable (Lat. *prima facie*) case of discrimination.

Excerpt from the Case Law No. 176

With a final judgment, the claim of several claimants employed by the defendant - Ministry of Internal Affairs, to establish that the defendant committed a violation of the right to equal treatment against them in the period from 1.5.2011 inclusive of 31.7.2012 of working conditions and employment rights and to oblige the defendant to pay the claimants individually certain amounts in the name of compensation for damage caused by

discrimination. When passing the judgment, the Court of First Instance took into account the provisions of Article 11 Paragraph 1 of the *Law on Labour Relations* that refer to the burden of proof, but in the case, on the one hand, the claimants did not present facts that the employer treated them contrary to Articles 6 and 9 of the *Law on Labour Relations*, and, on the other hand, regardless of that, the defendant accepted the burden of proving that in his actions there was no discriminatory behaviour towards the claimants compared to the behaviour towards comparable colleagues, submitting evidence for the reasons why in certain regional Centres there were, and in others there was no organized transportation.

In that sense, both the Court of First Instance and the Court of Second Instance took into account the provisions of Article 38 of the LPPD, according to which, if the party claims in court proceedings that in accordance with the provisions of this Law, her right to equal treatment has been violated, she is obliged to present all the facts and evidence that justify her claim. In the case, the claimants did not present sufficient facts and evidence to justify their claim to the degree of probability that the defendant compared to other employees in other regional Centres violated their rights to equal treatment with other employees, nor did they make it probable that the defendant they committed actions to the detriment of the claimants due to discrimination grounds compared to other employees in other regional Centres (*RO.106/13* dated 17.4.2014 of the Basic Court Veles, confirmed by judgment *ROŽ-731/14* dated 18.11.2015 of the Appellate Court Skopje).

See more about the burden of proof in the procedure before CPPD in Part 4.4. Burden of Proof in the Procedures before CPPD

For more information on the interpretation of shifting the burden of proof in both extrajudicial and judicial proceedings, see the 2023 Guide to Shifting the Burden of Proof of the Commission for Prevention and Protection against Discrimination, by the authors Nataša Amdiju and Žaneta Poposka.

5.6. Evidence

Article 38
Evidence

In addition to the evidence stipulated by the Law on Civil Procedure, in court proceedings for protection against discrimination, statistical data and/or data obtained through situation testing may also be used.

Evidence in its broadest sense includes anything used to establish the truth of a claim. Giving or obtaining evidence is the process of using evidence to demonstrate the truth of some claim. Evidence is the means by which the burden of proof is met. The evidence that can be presented by the claimant, as well as by the defendant, can be either direct or indirect.

Excerpt from the Academic Literature No. 82

"Direct evidence is that which allows the establishment of facts without requiring the court to draw conclusions about them, while circumstantial evidence is only part of the puzzle that

the court has to put together in accordance with the rules of logic" (Farkas, O'Farrell, 2014, p. 36).

Article 38 of the LPPD provides that in the judicial procedure for protection against discrimination, in addition to the evidence prescribed in the LCP, statistical data and/or data obtained by testing a situation can be used as evidence. According to the provisions of the LCP, as evidence that establishes all the facts that are important for making a decision, the following are provided: inspection, documents, witnesses, experts and hearing of parties. Article 215 of the Law amending and supplementing the LCP has changed the title "documents" to "documents and documents", so that Article 215a Paragraph 1 states that a document is a written record, image, drawing, data or information. of any kind stored on paper or recorded in electronic, audio, visual or other form. With Paragraph 2, it is defined that a document in the sense of the LCP means a group of documents of the same category or class with a specific narrow scope and specific content, within which statistical data can also be submitted.

With the provision of Article 38, the list of evidence that can be used in anti-discrimination court proceedings is expanded and specified, in which, in addition to the evidence prescribed in the LCP, statistical data and data obtained by testing a situation can be used as evidence, which creates a basis for better protection against discrimination, because in some cases, the existence of discrimination can be done exceptionally with them.

In other words, considering the nature of the case, the evidence that could be used in the procedure would be: 1). documents, if they have content related to discrimination or refer to the specific case of the applicant, 2). reports and analyses from relevant sources, 3). witnesses to discriminatory treatment, 4). expert opinion on the material and non-material damage due to the resulting discrimination, 5). audio and video materials and recordings, recorded in accordance with the law, 6). other written evidence, clippings from inscriptions, posts on social networks, etc., 7). hearing of the parties, 8). insight, 9). statistical data, 10). testing situation and 11). other evidence that would be relevant in the given, specific case, and the court considers that attention should be paid to them. For example, when it comes to deciding on a choice based on a published advertisement or competition, it can only be a matter of written evidence available to the defendant. If, on the other hand, it is a question of discrimination against the claimant, who is employed by the employer, depending on the nature of the decision, during the procedure it is possible to take into account the statements of the witnesses regarding the possible discrimination. The witnesses should be proposed by the claimant with the claim itself or during the procedure.

Statistics, as a branch of mathematics, refers to the collection and interpretation of data. Since one of the goals of statistics as a science is to produce the "best" information from the available data, some consider it a branch of decision theory. Statistical data as evidence are of particular importance, or almost mandatory, when determining the existence of indirect discrimination, but also in the case of direct discrimination, especially intersectional discrimination, which in the ECtHR's jurisprudence, were the basis for determining the facts on which the Court's decision depended. The practice shows the use of statistical data, databases, reports on constant trends from international institutions and national relevant sources as well as other sources.

Excerpt from the Academic Literature No. 83

"Ringelheim in his paper explains about a special statistical method, called the "panel method", which was developed in France in the 90s of the 20th century to serve as a means of proof in cases of discrimination. Originally created in the context of discrimination based

on union membership, it consisted of comparing the career development of workers and workers employed by the same employer in order to establish whether one or several specific workers experienced a decline or difference in development compared to the average male or female worker, from the moment they were elected as trade union representatives. Then, the same method mutatis mutandis was applied in cases involving discrimination based on gender and, to a lesser extent, in cases of discrimination based on origin. This method has been recognized by the Supreme Court of France and the Council of State as a reliable basis on which to conclude that there is a presumption of discrimination (Supreme Court of France, Social Rights Part, P+B Fluchère, Dick and CFDT v SNCF, No. 1027, March 28, 2000; French Council of State, No. 16-102017, October 16, 2017) (Ringelheim, 2019, p. 58.)" (Amdiju and Poposka, 2023, p. 42).

However, the provision of statistical evidence is not an obligation, but an opportunity that may or may not be used in the specific case to make a presumption of indirect discrimination. It is not always necessary to present statistical evidence in order to create a probable (Lat. *prima facie*) case of discrimination.

Excerpt from the Academic Literature No. 84

"De Schutter concurs, arguing that disadvantage does not have to be statistically established to demonstrate a disproportionately negative effect on the affected group, because sometimes general knowledge is sufficient to create a presumption of discrimination" (De Schutter, 2003, p 24.).

Excerpt from the Case Law No. 177

In the case of *Seymour-Smith and Perez* (Regina v. Secretary of State for Employment, *ex parte* Seymour-Smith and Perez, C-167/97, Judgment of 9 February 1999), which refers to unfair dismissal, which gives special protection to those who have continuously worked for the specific employer for longer than two years. The CJEU considered that the conditions for obtaining certain rights from employment or privileges would represent a probable (Lat. *prima faciae*) case of indirect discrimination, if the available statistical data show that a significantly lower percentage of women than men were able to fulfil the conditions.

Excerpt from the Case Law No. 178

In the case of *Schönheit* (Hilde Schönheit v. Stadt Frankfurt am Main and Silvia Becker v. Land Hessen, C-4/02, C-5/02, Judgment of 23 October 2003), part-time employees' pensions were calculated according to a different rate compared to that applicable to full-time employees. The application of a different rate was not based on differences in time spent at work. Hence, part-time employees received a lower pension than full-time employees, even after taking into account the different time spent on the job, essentially meaning that part-time employees received lower pensions. Ostensibly, the neutral rule for calculating pensions was equally applied to all part-time employees. However, since about 88% of part-time employees were women, the effect of this rule was disproportionately negative for women compared to men. That alone establishes a presumption of discrimination and the burden of proof shifts to the other party to prove that it did not discriminate.

Excerpt from the Case Law No. 179

In the case of *Mental Disability Advocacy Centre* (Mental Disability Advocacy Centre v. Bulgaria, App. No. 41/2007, Decision of 3 June 2008), the European Committee for Social Rights established a violation of the revised European Social Charter, namely a violation of the right to education in accordance with Article E (non-discrimination). Namely, in its decision, the Committee openly criticizes Bulgaria due to the active practice of excluding children with intellectual disabilities from the education system, stating that 3,000 children with medium and severe intellectual disabilities who live in 28 homes for children with mental disabilities have been cut short the right to effective education. Criticizing the inadequacy of inclusive education standards in Bulgaria, the Committee stated that: "the regular education system is neither accessible nor adapted for children with disabilities living in homes for children with mental disabilities; the training received by teachers is not adequate and the curriculum and aids are not adapted to the special educational needs of children with intellectual disabilities; The Government of Bulgaria failed to implement the 2002 Law, which envisages that children staying in homes for children with mental disabilities should be included in the educational process; as a result of the non-implementation of this Law, only 6.2% of children staying in homes for children with mental disabilities go to school, while the percentage of attendance in primary education of all children in Bulgaria is 94%; the difference between the attendance of classes by children with and without disabilities is so great that it constitutes discrimination against children with intellectual disabilities who live in homes for children with mental disabilities."

Excerpt from the Case Law No. 180

In the case of *D.H. and Others* (D.H. and Others v. the Czech Republic, App. No. 57325/00, Judgment of 13 November 2007), the applicants were Roma who were excluded from the regular educational process and enrolled in special schools for children with disabilities. They complained that this treatment was due to their ethnicity and that they were consequently subject to discrimination contrary to Article 14, and in connection with the right to education provided for in Article 2 of Protocol No. 1 of the ECHR. They did not complain that the school system of student selection was explicitly and deliberately aimed at isolating the Roma, but they believed that the way it was implemented in practice led to a disproportionately high number of Roma students enrolling in these schools. Placement in these schools was based on tests that established the intellectual ability of the children. Placement in these schools was based on tests that established the intellectual ability of the children. Although neutral in nature, in practice these tests proved to be extremely difficult for Roma children. As a consequence, Roma students received a lower-quality education than that in regular schools, which resulted in difficult access to secondary schools and limited employment opportunities. Relying on statistical data, the Court established that a particularly high percentage of all children enrolled in these schools were Roma. Thus, according to the statistics provided by the applicants, about 50 to 56% of all children enrolled, in a certain area in the Czech Republic, in these special schools were Roma, while they represented only 2% of the total number of children enrolled in schools in the Czech Republic. Data from international organizations suggested that between 50 and 90% of Roma in the entire country attended classes in such special schools. Such data were sufficient for the Court to conclude that the Roma were "disproportionately affected" considering their participation in the total population of the country. The court did not accept the state's argument that this practice was intended to help raise the educational level of the Roma, which was low given the difficulties the Roma had in mastering the Czech language and the

absence of pre-school education. Also, it was irrelevant for the Court that this practice was not tendentious, that is, that there was no intention on the part of the authorities to specifically target the Roma with the application of such tests. Finally, for the Court, it was also irrelevant that the parents of the Roma students agreed to this practice, given that the parents did not have enough information to make a correct and reasonable decision and, moreover, there was no possibility for an individual to waive the right to be protected from discrimination.

The most important thing is that the statistical data used in court proceedings as evidence should be relevant and representative.

In addition to statistical data, Article 38 of the LPPD explicitly mentions the use of data obtained through the test situation method as evidence. Namely, the testing situation involves direct observation of unequal treatment of equals, a simple, concrete formulation that has great narrative power. Situation testing is a method used to prove direct discrimination against a specific person who has specific identity characteristics protected by law, by placing them in a comparative situation with another person who is otherwise identical to the first person except that they do not possess the specific characteristic or characteristics, (when it comes to multiple or intersectional discrimination) and which is not discriminated against because of that. The situation test method is used to prove direct or systemic discrimination. This method is also used to conduct research, the results of which are further used for advocacy or lobbying to change discriminatory practices or change legislation, to increase public awareness of the existence of a certain discriminatory practice, as well as for observation and documentation. of the state of discrimination, in general.

Excerpt from the Academic Literature No. 85

"Pairs used in testing situations are formed by distinguishing each other on the ground of a single characteristic that is protected by law (discrimination grounds). The purpose of such a method of proof in cases of discrimination is to create situations in which the alleged perpetrator of discrimination is challenged, without highlighting the fact of observing such alleged discriminatory behaviour. Candidates, on the other hand, who participate in testing situations should consistently represent persons who, according to their personal characteristics, are exposed to discriminatory treatment, that is, possess such characteristics and be part of situations of alleged discrimination. Finally, the aim of this method is to expose the practice of discrimination in the most plastic and clear way. Apart from the name used in this document, situational testing can also be met with another name, such as situational tests, testing, audition, paired-comparative testing, discriminative testing and practical testing" (Čalovska, 2014, p. 26-27).

Situation testing is most appropriate for proving direct discrimination and ideal for the area of access to goods and services. Thus, in modern conditions, the best-known examples of testing situations are the European examples of restrictive admission policies in public places, that is, not allowing the entry of some persons of foreign origin or a certain ethnicity or disability. Test findings can be intuitively understood by policy makers, the media and the public. Situation testing as a method to prove direct discrimination is used by civil society organizations, equality bodies, but also by journalists, especially those engaged in investigative journalism, and in some cases also by citizens.

Excerpt from the Academic Literature No. 86

"Historically, situation testing began to be used in Great Britain and the United States of America (USA) in the 1970s to measure discrimination and to create public policies to prevent it. The method was also developed by sociologists as "research testing" as part of

the work of government commissions and think tank initiatives working in the area of social issues. Hence, testing situations represents a significant procedure in the systematic research of social relations and the creation of strategies for fair treatment" (Čalovska, 2014, p.27).

Excerpt from the Case Law No. 181

In the case of Havens (455 U.S. 363, 365), the United States Supreme Court unequivocally defended the right of testers and organizations working for fair housing conditions based on evidence provided by the testing situation. The court stated that "A person of dark skin colour (Coleman) has standing to sue as a testator." Part 804(d) of the Act states that "every individual" has the right to truthful information related to housing. Any tester who receives misleading housing-related information has his Charter rights violated and is therefore entitled to sue for damages. The testator may have approached the real estate agent in the belief that he would receive misleading information and with no intention of buying or renting a home, but that does not change the fact of the violation of rights under Part 804(d). If, as alleged, Coleman was told she had no vacant apartments, while the white tester was told she did, Coleman would have suffered a "specific injury" under the law. According to this, the tester with white skin colour (Willis) stated that he was told that there were vacant apartments, which means that he did not receive wrong information, from which it follows that there is no violation of his right to access accurate information and he has no right to sue in the testator's capacity, and therefore no proceeding pursuant to Part 804(d) has been commenced.

Both in the United States and in Europe, the use of testing situations as a way of gathering evidence and pleadings for a claim is a practice that is expressly provided for in the national legislations of Hungary, France and Belgium. The United Kingdom and the Netherlands have a continuing practice of situation testing used to combat discrimination, but the same is observed in numerous other European Union countries, such as Belgium, Bulgaria, the Czech Republic, Denmark, Finland, France, Hungary, Latvia, Slovakia, Sweden and Romania.

For comparison, in the *Law on Prohibition of Discrimination of the Republic of Serbia* (The Official Gazette of the Republic of Serbia Nos. 22/2009 and 52/2021), in Article 46 from Paragraphs 3 to 6, the situation testing is provided for as an effective means of evidence in these proceedings, which in practice means that the authorized claimant can hire a person or group of persons who can voluntarily verify the existence of discrimination, testing and documenting the behaviour of the potential discriminator in a similar situation as the victim. It is about checking whether the discriminator is carrying out acts of discrimination. That voluntary examiner (the so-called tester, or tester) of discrimination, can himself file a claim for the prohibition of discrimination (except for compensation for damages), but also be heard as a witness. According to the *Law on Prohibition of Discrimination of Bosnia and Herzegovina* (The Official Gazette of Bosnia and Herzegovina Nos. 59/09 and 66/16) with the provision of Article 15 (burden of proof) in Paragraph 2, it is provided that in cases of discrimination statistical data or the database can be used as a means of proof for exercising the right to protection. In the provision of Paragraph 4 of Article 15, it is provided that "persons who have knowingly exposed themselves to discriminatory treatment, with the intention of directly verifying the application of the rules for the prohibition of discrimination, can appear as witnesses in the procedures for protection against discrimination". The provision of Paragraph 5 is characteristic, which stipulates that the person from Paragraph 4 of this article is obliged to notify the Ombudsman for Human Rights of Bosnia and Herzegovina about the planned action, unless the circumstances of the case do not allow it, in that for such the action

taken should be reported to the Ombudsman in writing. Paragraph 6 stipulates that the court may hear as a witness the person from Paragraph 4 of this article.

During the application of the previous Law (2010), although there was no express provision that provided evidence by testing a situation, the courts in several court proceedings for the protection of rights against discrimination accepted and performed this evidence by hearing as a witness the person who voluntarily accepted to exposed himself to discriminatory treatment as well as the responsible persons who conducted the testing (coordinators).

Excerpt from the Case Law No. 182

In the case *P4 No. 641/17* before the Basic Court Skopje 2 Skopje, a violation of the right to equality of the claimant and the claimant, spouses from the Roma ethnic community, by not allowing them to cross the state border on three occasions, on 4.6.2013, 8.6.2013 and 7.12.2013 by the Ministry of Interior. The court ordered the defendant to pay the claimant an amount in the name of non-material and material damage. The positive thing in the verdict is that the court presents numerous evidences, including a group of evidences through which a situation was reached by testing, including the statements of the witnesses - testers who were of non-Roma ethnic origin (*P4 No. 641/17* dated 1.11.2017 of the Basic Court Skopje 2 Skopje).

More about the concept of testing situation see in Part 1.3. Glossary

For more information on the situation testing method, see Situation testing – a method for proving discrimination, by the author Neda Čalovska of 2014.

5.7. Court Fees

Article 39
Court Fees

(1) Persons initiating court proceedings for protection against discrimination shall be exempt from paying the costs of court fees.

(2) The cost of court fees for persons as in Paragraph (1) of this Article shall be borne by the Budget of the Republic of North Macedonia.

By stipulating in the Law that the party, that is, the person who initiates court proceedings for protection against discrimination, is exempted from paying the costs of court fees, the legislator expectedly wanted to achieve a higher level of access to the right to court protection against violation of the principle of equality and prevention and protection against discrimination. This is especially common because court proceedings are expensive and when it comes to low-income persons who would come forward as victims of discrimination, they would not be able to enjoy judicial protection of their rights due to the costs that would be created by paying the court fee.

The legal institute "exemption from payment of court fees" is provided by the provision in Article 163 of the LCP, which regulates the possibility of exemption from payment of costs related to court fees for (claim, decision, appeal and other submissions of for which a court fee

is payable according to the *Law on Court Fees*). The difference between the content of the provision of Article 163 of the LCP and the provision of Article 39 of the LPPD is that with the said provision in the LCP the right to exemption from payment of court fees applies to both parties (both the claimant and the defendant /a) who has a poor financial situation, and with the provision of Article 39 of the LPPD, this right applies only to the person who will initiate court proceedings for protection against discrimination.

Similar legal solutions are known in the national legislation on the ground of which a certain party is exempted from paying court fees by a special law, such as, for example: in the *Law on Health Insurance* with Article 49 Paragraph 4 it is provided that "The Fund is exempted from payment of court fees in proceedings conducted before the competent courts".

In this way, access to judicial protection without restrictions will be ensured for any affected person whose rights have been violated on any of the grounds or forms of discrimination provided by the LPPD. The principle of exemption from payment of court fees for persons who initiate court proceedings for protection against discrimination should also be accepted when it comes to a claim for protection against discrimination in the area of labour relations, but also in all other areas for which special laws provide for the prohibition of discrimination, because the right to judicial protection, the affected person derives from the LPPD.

5.8. Third Party Participation

Article 40
Third Party Participation

(1) In the proceedings regarding the application under Article 34 of this Law, any authority, organisation, institution, association or trade union or another person dealing with the protection of rights to equality and non-discrimination within its activity may join as an intervener on the side of the person claiming to be discriminated against and whose rights are decided in the proceedings.

(2) Intervener's participation shall be decided by the court, which shall apply the provisions of the Civil Procedure Law.

With Paragraph 1 of this article, it is provided that an authority, organization, institution, association or union or another person who within the framework of its activity, it deals with the protection of the rights of equality and non-discrimination, whose rights are decided in the procedure. In Paragraph 2, a reference provision is provided, with which it is normalized that the participation of the intervenor is decided by the court by applying the provisions of the LCP. Chapter 15 of the LCP contains the provisions from Article 194 to Article 197 that refer to the participation of third parties in the litigation. Thus, by its legal nature, the intervenor is a third party, who can participate in the procedure, in addition to the persons who participate in the procedure as a party-claimant and defendant. He intervenes in the proceedings by joining one of the parties and is authorized after he has already intervened to make proposals and take all other litigation actions within the time limits in which those actions could be taken by the party he joined, but only if those actions do not contradict the actions of the party he joined -

Article 196 Paragraphs 1 and 3 of the LCP. This will confirm that the person who joins the procedure as an intervener is not a party to the procedure, but is a third party who has a legal interest in the party he joins winning the dispute. As the content of Article 194 of the LCP provides, it can be concluded that the basic condition for a person (natural or legal) to appear as an intervenor and enter the litigation is that he has a legal interest. His legal interest may also be in the fact that the judgment in that litigation, due to certain reasons, that is, existing legal relations, will have a legal effect on the legal position of the intervenor. The outcome of the dispute may also depend on whether the intervenor will have any obligations towards any of the parties in the dispute. The intervenor's interest must be legal, but not always civil-legal, but may also be from some other area of law. That interest should be current, existing at the time of the litigation, which means it must not depend on any future event.

The general condition that should be met by the intervener as a third party, both according to the previous Law (2010) and according to the LPPD, is that he, within the scope of his activity, deals with the protection of the rights of equal treatment that are decided in the procedure. Considering that in Paragraph 2 it is provided that litigation related to the claim from Article 34 will be conducted according to the provisions of the LCP, it follows that the third party, that is, the intervenor, can intervene during the entire procedure until the finality of the decision. During the procedure, he can make proposals and take all the litigation actions that the claimant himself can take, within deadlines that also apply to the claimant.

The difference in the application of the provisions for the participation of an intervenor according to the LCP and the previous Law (2010), is that the intervenor could appear only on the side of the claimant and he could take actions that benefit the claimant, and cannot appear on the side of the defendant or the defendant. If a person appears in the litigation who requests to allow the participation of an intervenor, in such a case the court with an analogous application of Article 195 Paragraph 1 of the LCP will have to refuse the participation, because it is not allowed by Article 40 Paragraph 1 of the LPPD.

The question arises as to how and who will cover the costs of the intervenor's participation in the litigation. In accordance with the provisions of Article 145 Paragraph 1 of the Civil Procedure Code, litigation costs are the expenses incurred during or on the occasion of the procedure, and in accordance with Article 148 Paragraph 1 of the Civil Procedure Code, the party that loses the litigation in its entirety is liable to the opposing party and its intervenor. to reimburse them for their expenses. Emphasizing the intervenor's request for costs, that is, making a decision by which the court will reject the request to oblige the defendant who loses the litigation to reimburse the costs of the intervenor's proceedings, on the side of the claimant who won the litigation with actions taken by the intervenor is allowed.

Among the other main characteristics of the participation of third parties in the litigation is that the intervenor must receive the litigation in the state in which it is when it intervenes in the litigation. Furthermore, during the procedure, he is authorized to present motions and undertake all other litigation actions within the time limits in which those actions could be undertaken by the party he joined (Article 196 Paragraph 1 of the LCP). In this sense, he has the right to propose, for example, that the evidentiary procedure be supplemented with new documents, that new witnesses be heard, that the witnesses heard be confronted, that additional expertise be established, that the intervenor be heard as a witness, that carry out a re-inspection to establish some new circumstances and facts, to take into account data from a test situation or statistical data that the interloper will present before the court, etc. The aforementioned powers of the intervenor derive from the content of the provision of Article 283 Paragraph 2 of the Civil Procedure Code, according to which the president of the council, that is, the individual

judge, by asking questions and in other expedient ways, ensures that all decisive facts are presented during the hearing, to the parties' incomplete allegations of important facts are supplemented, the evidentiary means relating to the parties' allegations are marked or supplemented, and in general all clarifications necessary to establish the factual situation important for the decision are given. For the application of this provision - Article 196 Paragraph 1 of the LCP from the aspect of the content of Article 40 of the LPPD, there is no obstacle for it to be applied in the procedures for protection against discrimination in which a third party, an interloper, participates.

One of the indisputable opinions among the professional public since the entry into force of the previous Law (2010) is that as a third party, intervenor on the side of the person who claims to have been discriminated against and with his approval, the CPPD can also appear. The same is confirmed by the LPPD. This is clearly provided for in Article 40 Paragraph 1 of the LPPD, which unequivocally provides that in litigation, on the occasion of claims brought on the ground of this Law, as an intervenor on the part of the person who claims to have been discriminated against, an authority that in within the framework of its activity, it deals with the protection of the rights of equality and non-discrimination. CPPD can act as an intervener in the civil proceedings initiated by an individual or joint claim. The intervenor, in this case CPPD, can have the position of a sole opponent, if the legal effect of the verdict should apply to it as well. This is expressly provided for in Article 197 Paragraph 1 of the LCP. In such a case, the intervenor with the position of the only rival can file an extraordinary legal remedy in the litigation in which, until the decision on the claim became final, he did not participate as an intervenor.

The possibility given in the previous Law (2010) and in the LPPD for third parties to participate in the procedure for individual anti-discrimination protection is a result of the recommendations of the European Union which indicate that as a friend of the court (Lat. *amicus curiae*) they should intervene in the procedure authorities, organizations, institutions, associations or unions or other persons who, within the framework of their activity, deal with the protection of the rights of equal treatment, whose rights are decided in the procedure. This condition would be met by associations of citizens that are engaged in promoting and protecting the interests of the group (for example: associations for the protection of the rights of women, patients, marginalised groups, persons with disabilities, etc.). Since it is not necessary that the intervenor is exclusively concerned with the protection of the rights and interests of individual groups, the organizations dealing with the protection of human rights and protection against discrimination would have a legitimate interest in intervening. This competence is given to the CPPD given in Article 21 Paragraph 1 item 18 of the LPPD. More about the competence of the CPPD to appear as an intervener in court proceedings, see Part 3.4. Competences of the Commission

The OMB also has this competence in accordance with the *Law on the Ombudsman* (Article 11 Paragraph 2 and Article 30-b).

Excerpt from the Case Law No. 183

With a final judgment, the claim of the claimant to establish that the defendants SOU G. was rejected. S. S. Štip and R.P. from Štip as director of SOU G. S. S. Štip violated her right to equal treatment, put her in a disadvantageous situation in relation to other employees based on her personal and social status, that is, that they committed repeated, prolonged and severe direct discrimination from Articles 6, 7 and 9 of the *Law on Labour Relations*, that is, Article 12 in relation to Article 3, Article 4 Paragraph 1, Article 6 Paragraph 1, Article 7 Paragraph 1 of the *Law on Prevention and Protection against Discrimination*; to prohibit the defendants

from taking further actions of discrimination against the claimant; to oblige the defendants as jointly and severally liable to pay the claimant compensation for non-material damage in the total amount of 320,000.00 denars, based on the criterion - suffered fear amounting to 85,000.00 denars and based on the criterion - mental pain amount from 235,000.00 denars; to oblige the defendants at their own expense to publish this judgment in one of the daily newspapers and to compensate them for the costs in the procedure in the total amount of 100,824.00 denars.

During the procedure, the Commission for Protection against Discrimination took part as an intervenor on the part of the claimant, which stated in its submission that following the claimant's application, an opinion was adopted which established discrimination, that according to the opinion adopted, the person to whom the recommendation for removal of the committed discriminatory actions did not act, thus the Commission had a legal interest to be involved in this procedure in accordance with Article 194 of the LCP and Article 39 of the *Law on Prevention and Protection against Discrimination* (2010).

The court submitted the request from the Commission for Protection against Discrimination to the defendants, who, at the preparatory hearing, did not consent to the Commission for Protection against Prevention of Discrimination appearing as an intervenor in the proceedings due to the fact that the conditions of Article 194 of the LCP were not met.

In accordance with Article 194 Paragraph 1 of the Civil Procedure Code, the court passed decision *RO.No.449/13* dated 3.9.2013, which allowed the participation of the Commission for Protection against Discrimination as an intervenor on the side of the claimant.

During the procedure, the court presented as evidence the *Opinion* of the Commission for Protection against Discrimination *No. 078-84/3* dated 28.10.2012, with which it made recommendations for the second defendant (*RO.449/13* dated 17.2.2014 of the Basic Court Štip, confirmed by *ROZ No. 156/14* of 8.4.2014 of the Appellate Court Štip).

6. MISDEMEANOUR PROVISIONS

Article 41

(1) A fine in the amount of 400 to 10,000 euros in the denar equivalent will be imposed for an offense against a legal entity that has been established by a competent authority to have committed discrimination in accordance with Article 6, in connection with Article 4 points 4 and 5, Article 8, Article 9, Article 10, Article 11, Article 12, Article 29 and Article 30 of this law in the following manner: from 400 to 1000 euros in the denar equivalent for micro traders, from 600 to 2000 euros in the denar equivalent for small traders, from 800 to 10,000 euros in the denar equivalent for medium traders and from 1,000 to 10,000 euros in the denar equivalent for large traders.

(2) A fine in the amount of 400 to 2,000 euros in the denar equivalent value will be imposed for the offense of another legal entity, different from Paragraphs 1 and 2 of this article, which has been established by a competent authority to have committed discrimination in accordance with article 6, in connection with article 4 points 4 and 5, article 8, article 9, article 10, article 11, article 12, article 29 and article 30 of this law.

(3) A fine in the amount of 100 to 400 euros in the denar equivalent will be imposed for an offense from Paragraph (2) of this article, on the official of a state authority, the mayor of the local self-government unit or on an official entrusted with the performance of public authority.

(4) A fine in the amount of 50 to 150 euros in the denar equivalent will be imposed for the offense of a natural person, who has been established by a competent authority to have committed discrimination in accordance with Article 6, in connection with Article 4 Points 4 and 5, Article 8, Article 9, Article 10, Article 11, Article 12, Article 29 and Article 30 of this law.

The LPPD uses the term “fine” which originates from Byzantine times and is intended as a fine for minor offenses - until then only corporal punishment was known. This type of punishment is accepted by Dušan's Code - fines are imposed for minor offenses. The laws of the rest of the countries in the region, with the exception of the Republic of Slovenia, use the term - fine, which is more appropriate, because there is a difference between the term fine and fine in the conceptual meaning itself. Also, there is a difference between the title of the chapter that regulates the provisions on the responsibility of violators of the provisions of the laws on protection against discrimination. Namely, in the *Law on Prohibition of Discrimination of the Republic of Serbia* (The Official Gazette of the Republic of Serbia Nos. 22/2009 and 52/2021), Chapter 8 provides penal provisions for violators of the provisions of the Law. At the same time, misdemeanour provisions for discrimination in the Republic of Serbia are also provided for in the *Law on Prevention of Discrimination against Persons with Disabilities of the Republic of Serbia* (The Official Gazette of the Republic of Serbia Nos. 33/2006 and 13/2016). Penal provisions are also provided for in the *Law on Combating Discrimination of the Republic of Croatia* (The Official Gazette of the Republic of Croatia Nos. 85/8 and 112/12), as well as in the provisions in the *Law on Prohibition of Discrimination of Montenegro* (The Official Gazette of Montenegro Nos. 46/2010, 40/11, 18/2014 and 42/2017). In contrast to them, the *Law on Prohibition of Discrimination of Bosnia and Herzegovina* (The Official Gazette of Bosnia and Herzegovina Nos. 59/09 and 66/16) in Chapter 6 provides penal - misdemeanour provisions. In the Republic of Slovenia, on the other hand, misdemeanour provisions for

committed discrimination are provided for in the *Law on Labour Relations* of the Republic of Slovenia and the *Law on Equal Opportunities for Men and Women* of the Republic of Slovenia. These criminal provisions mostly refer to discrimination in the area of labour relations.

In Paragraph 1 of this article, it is provided that a fine in the amount of 400 to 10,000 euros in the denar equivalent value will be imposed for the offense of the legal entity that has been established by a competent authority to have committed discrimination in accordance with article 6 (and in connection with article 4 points 4 and 5), then articles 8, 9, 10, 11, 12, 29 and 30 of this Law. Competent authority in the sense of this Paragraph is the CPC because this article should be read in correlation with Article 27 Paragraph 4 of the CPC where it is stated that after the discrimination established by the CPC and the recommendation made, if the person does not act according to the instructions of the CPC, the same submits a request for initiation of misdemeanour proceedings before a competent court for misdemeanours. In other words, the court will impose an offense on the legal entity that has been established by the CPPD to have committed discrimination. The law is not clear whether any other competent authority, such as, for example, OMB, because it acts on cases for protection against discrimination in the public sphere, if it defines discrimination in a specific case and the person against whom the application is filed does not act on the indications and recommendations of the OMB will be able to submit a request to initiate misdemeanour proceedings before a competent court for misdemeanours. Also, the determination of whether a person, legal or physical, has committed discrimination can be requested directly from the court without, at the same time, having to resolve the relevant case out of court, before CPPD or OMB. This should be regulated accordingly in the next amendments to the LPPD.

The fine will be imposed when the CPPD defines violations of Article 6 of the LPPD, that is, discrimination. The article accessoryly links this violation with article 4, points 4 and 5 which refer to the explanation of the terms "adequate accommodation" and "access to infrastructure, goods and services", only because in Article 6 it is stated that discrimination means all forms of discrimination including the denial of appropriate accommodation, accessibility, availability of infrastructure, goods and services understood in accordance with the defined vocabulary in Article 4. For an explanation of terms see more in Part 1.3. Glossary For the definition of discrimination see more in Part 1.4. Discrimination grounds and Definition of Discrimination. We should note that the other points of Article 4 are not mentioned in this Paragraph because they either explain what the discrimination grounds can be and who can suffer/or commit discrimination ("person", "person with a disability", "after association', 'by perception' and 'marginalised group') or explain terms relating to the purpose of the Act ('equality') or evidence ('situation testing') and the four types of more severe forms of discrimination ('multiple discrimination', "repeated discrimination", "persistent discrimination", and "intersectional discrimination"), for which, in turn, fines are provided for in Article 42.

In addition, the fine will also be imposed when the CPC defines violations of all forms and types of discrimination provided for in Chapter 2 of the CPC, with the exception of the more severe forms of discrimination regulated by Article 13 for which a larger fine has been provided. That is, in accordance with this Paragraph 1, the fine will be imposed when the CPPD defines violations of: article 8 (direct and indirect discrimination), article 9 (inviting, inciting and instruction for discrimination), article 10 (harassment), article 11 (victimization) and/or Article 12 (segregation).

It is not clear why the legislator in the same Paragraph also defines the fine for the impossibility of CPPD to inspect the documentation and the premises (Article 29) and the failure to provide data on specific cases of discrimination and general practices of

discrimination (Article 30) because here there is no determination by a competent authority that discrimination has been committed. If the legislator considered it necessary to provide an offense specifically for failure to act in accordance with Articles 29 and 30, he should have formulated it accordingly and set it apart in a separate article.

Paragraph 1 of this article, accordingly gradates the different legal entities - from micro, small, medium and large traders, predicting higher fines for larger legal entities, while also meeting the standard set by the anti-discrimination and gender directives of the European Union, that is, the "sanction to be effective, proportionate and dissuasive". Although LPPD does not explicitly define in the glossary who these traders are nor does it refer to the *Law on Trade Companies*, the interpretation of these terms should be derived from this Law and Article 470. Namely, in the *Law on Trade Companies*, in the department "Classification of Merchants", in Article 470, the terms of legal entities - merchants are defined, which terms are provided for in Article 41 Paragraph 1, but also in Article 42 Paragraph 1 of the LPPD. Namely, in accordance with Article 470 Paragraph 1 of the *Law on Trade Companies*, traders are classified into large, medium, small and micro traders, depending on the number of employees, the annual income and the average value of the total assets according to the annual accounts in the last two years (accounting years).In accordance with Paragraph 4 of the same article, a micro trader is considered to be a trader who in each of the last two accounting years, that is, in the first year of operation, has satisfied the first criterion and at least one of the second and third of the following criteria: 1) the average number of employees, based on working hours, should be up to ten workers and 2) the gross income generated by the trader from any source should not exceed 50,000 euros in the denar equivalent value and 3) a maximum of 80% of the trader's gross income should be generated by one client/consumer from a person related to this client/consumer and 4) all rights to participate in the microenterprise are owned by a maximum of two natural persons. In accordance with Paragraph 5 of the same article, a small trader is a trader who in each of the last two accounting years, that is, in the first year of operation, satisfied the first criterion and at least one of the second and third of the following criteria: 1) the average number of employees on based on hours of work up to 50 workers and 2) the annual income is less than 2,000,000 euros in the denar equivalent value, the total turnover is less than 2,000,000 euros in the denar equivalent value or 3) the average value (at the beginning and at the end of the accounting year) of the total assets (in assets) is less than 2,000,000 euros in the denar equivalent. In accordance with Paragraph 6 of the same article, a medium trader is considered a trader who in each of the last two accounting years, that is, in the first year of operation, satisfied the first criterion and at least one of the second and third of the following criteria: 1) the average number of employees based on working hours is up to 250 workers and 2) the annual income is less than 10,000,000 euros in the denar equivalent or 3) the average value (at the beginning and end of the accounting year) of the total assets (in assets) to be less than 11,000,000 euros in the denar equivalent. In Paragraph 7 of the same article, the concept of large traders is defined, that is, traders who are not classified as micro, small or medium traders acquire the status of large traders. Also, in Paragraph 10 of the same article, it is provided that banks, insurance companies and other financial institutions and traders who prepare consolidated annual accounts and consolidated financial statements are distributed in accordance with the provisions of this article that refer to large traders.

Excerpt from the Academic Literature No. 87

"The obligation of the states that the provided sanctions be "effective, proportionate and dissuasive" is firmly established in the anti-discrimination legislation, at the international and national level. At the same time, there is a lack of full and unambiguous interpretation of what these concepts embody, as well as what type and level of sanctions would meet this

standard. Effective means successfully achieving the desired outcome. This principle ensures that the sanction should be able to be effectively imposed by national courts or bodies. In the case of *von Colson* (Sabine von Colson and Elizabeth Kamann v. Land Nordrhein-Westfalen, C-14/83, Judgment of 10 April 1984, Paragraph 23), the CJEU decided that although there is no requirement for a particular form of sanction for unlawful discrimination, the sanction must be such that it "guarantees real and effective judicial protection... has a real deterrent effect". … Proportionate means balanced, in relation to the gravity, nature and extent of loss and/or damage. In the von Colson case, the Court states that "where a Member State chooses to sanction a breach of the prohibition of discrimination by awarding damages, that compensation must in any event be adequate in relation to the harm suffered" (Paragraph 23) … A deterrent effect means dissuasion, or serves as a persuasive argument against future acts of discrimination by the discriminator and other employers or providers of goods or services" (Poposka, 2016, p.7-8).

Paragraph 2 of this article, identical to Paragraph 1, provides that a fine in the amount of 400 to 2,000 euros in the denar equivalent will be imposed for the offense of another legal entity - which is not registered as a trader, for which it has been established by a competent authority that committed discrimination in accordance with Article 6 (and in connection with Article 4 points 4 and 5), then Articles 8, 9, 10, 11, 12, 29 and 30 of this Law. The legal entities to which this Paragraph applies are: the state authorities, the authorities of the local self-government units, the legal entities with public powers that perform activities of public interest and other legal entities from the public and private sectors. It is noted that the upper threshold of the fine is significantly lower. Also, an error is noted, referring to Paragraph 2, which does not exist, because the text itself constitutes Paragraph 2 of this article.

Paragraph 3 of this article provides, in addition to the responsibility of the legal entity in accordance with Paragraph 2 of this article, when the discrimination is carried out by a state authority, the authority/s of the local self-government unit and the legal entity with public powers that performs an activity of public interest, in addition and responsibility of the official on the same. Namely, a fine in the amount of 100 to 400 euros in the denar equivalent will be imposed for an offense against the official of a state authority, the mayor of the local self-government unit or an official entrusted with the exercise of public authority. It should be noted that it is not clear why the legislator does not provide a special Paragraph for imposing a fine on the responsible person in the legal entity - trader.

Paragraph 4 of this article provides for the responsibility of the natural person who will be fined in the amount of 50 to 150 euros in the denar equivalent for an offense if a competent authority has established that he/she committed discrimination in accordance with article 6, in connection with article 4 points 4 and 5 and articles 8, 9, 10, 11, 12, 29 and 30 of LPPD.

Excerpt from the Academic Literature No. 88

"The biggest flaw in these provisions is that failure to act on the Commission's recommendation is not an offense, but discrimination. The current wording of the misdemeanour provisions allows the misdemeanour court, after the submission of the request for misdemeanour procedure by the Commission, to re-establish the discrimination and to be appointed as the supervisor of the Commission for Prevention and Protection against Discrimination. It is necessary to introduce provisions with which failure to act on the recommendation will constitute a violation, as well as provisions with which the Commission will present itself as a violation authority and lead the settlement procedure by issuing a payment order" (Mishev and Gliguroska, 2022, p.12).

Comparatively, the *Law on Prohibition of Discrimination of Bosnia and Herzegovina* (The Official Gazette of Bosnia and Herzegovina Nos. 59/09 and 66/16) in Article 19 sanctions all forms of discrimination, first, determining the sanction against the legal entity, with that it refers to the grounds of discrimination listed in Article 2 Paragraph 1, as well as the method of performing discrimination described in Articles 3 and 4 of the Law.

On the other hand, the *Law on Combating Discrimination of the Republic of Croatia* (The Official Gazette of the Republic of Croatia Nos. 85/8 and 112/12) combines the grounds of discrimination with harassment in its criminal provisions. Namely, in Article 1 Paragraphs 2 and 3 it is established what constitutes discrimination - placing any person in a less favourable position, as well as persons who are in a family or other relationship, based on the protected characteristics provided for in Article 1 Paragraph 1, as well as putting to a person in a less favourable position due to a misrepresentation of the existence of a basis for discrimination from Article 1 Paragraph 1 of the Law. Article 3 provides for harassment and sexual harassment - any unwanted behaviour that is caused on the ground of one of the protected grounds (characteristics) from Article 1 Paragraph 1, as well as any verbal, non-verbal or physical unwanted behaviour of a sexual nature, which aims or constitutes a violation of the dignity of the person, and causes fear, hostile, humiliating or offensive environment. It is provided that the provisions of the Law relating to discrimination shall be applied to harassment and sexual harassment in an appropriate manner. In the misdemeanour provisions, in Article 25 of the Croatian law, the legislator first referred to part of the notion of harassment and sexual harassment - causing fear in another or creating a hostile, humiliating or offensive environment, to then list all the protected characteristics - grounds, provided for in Article 1 Paragraph 1 of the Law and provided for a fine for the offense committed, and then in Article 26 to sanction the harassment. The Croatian law provides for the same fine as for anyone who commits an offense under Article 25 Paragraph 1, as well as for the responsible person in the legal entity, state authority, authority of the local self-government unit or authority with public powers, while, on the other hand, it provides for a much higher a fine for an individual trader or a person who performs an independent activity in the area of sales or other activity. In Paragraph 4 of the same article of the Law, a fine is provided for the legal entity, which is not much higher than that provided for an individual trader or a person who performs an independent activity in the area of sales or other activity.

In Montenegro, the fine for a committed offense in the area of discrimination is defined as a certain multiple amount of the minimum wage. The *Law on Prohibition of Discrimination of Montenegro* (The Official Gazette of Montenegro Nos. 46/2010, 40/11, 18/2014 and 42/2017) contains only one article (Article 34) in which criminal liability for offenses is established from the area of discrimination, with the fact that what exactly constitutes an offense is specifically defined. Thus, it is correctly stipulated that an offense constitutes a refusal to provide public services, conditioning on the provision of services, intentional delay or postponement of the provision of services by a legal entity or entrepreneur, even though the person or group of persons requesting the services have fulfilled the conditions for providing services in a timely manner before other persons, making it impossible, limiting or making it difficult to use approaches to buildings and surfaces in public use for persons with reduced mobility and persons with disabilities, filing a claim without the consent of the discriminated person or group of persons, not keeping a separate record for all cases of reported discrimination or not submitting the data from the record to the protector in a timely manner, not keeping a separate record for filed discrimination claims, or untimely submission of the data from the records to the protector. In Paragraph 2 of the same article, misdemeanour liability is provided for the responsible person in the authority or legal entity, as well as for the natural person. The big difference between the fine provided for legal entities, which amounts

to two hundred to three hundred times higher than the minimum wage, comes to the fore, while for responsible persons and natural persons it is twenty times higher than the minimum wage in Montenegro. It is not defined at all which amount of the minimum wage will be taken into account when determining the fine, whether the monthly or the annual amount of the minimum wage.

Criminal liability and fines for a committed offense in the *Law on Prohibition of Discrimination of the Republic of Serbia* (The Official Gazette of the Republic of Serbia Nos. 22/2009 and 52/2021), are provided for by Articles 50 to 60. Article 50 also provides for a fine for an offense committed by an official or a responsible person in a public authority if he acts in a discriminatory manner. Unlike all the other laws commented on above, only in the Serbian law in separate articles are sanctioned certain areas for which criminal liability for committed discrimination is provided. Thus, for example, in Article 51 Paragraph 1 criminal liability is provided for a legal person, that is, an entrepreneur, if it violates the equal opportunities for establishing an employment relationship, or the enjoyment of equal rights under equal conditions in the area of work, for the specified persons. In Paragraph 2 of the same article, criminal responsibility is provided for the responsible person in a legal entity, in a public authority or a natural person. Article 52 provides criminal liability for legal entities, that is, entrepreneurs, if, within the framework of their activity, on the ground of some personal attribute of a certain person or group of persons, they refuse to provide certain services, or, on the other hand, require the fulfilment of certain conditions that they are not required from the other persons who do not have that personal capacity, or, on the other hand, if they unjustifiably give precedence to a person or group of persons in the provision of services. In addition to the misdemeanour liability of these persons, in Paragraph 2 of the same article, liability is also provided for the owner or user of a facility in public use or public area, who, based on some personal capacity of a certain person or group of persons, will deny access to them. In Paragraphs 3 and 4 of the same article, misdemeanour liability is provided for the responsible person in the legal entity, that is, for the natural person. Article 53 provides for criminal liability for all previously listed persons if they act contrary to the principle of free expression of faith or belief, that is, if a certain person or group of persons is denied the right to acquire, maintain, express and change faith or belief and the right to express them privately or publicly, that is, to act in accordance with their convictions. Article 54 of the Law provides for criminal liability for educational institutions and responsible persons in these institutions if a person or group of persons, due to some personal capacity, unjustifiably makes it difficult or impossible to enroll in these institutions, that is, if exclude them from these institutions. It is interesting that this article does not provide for liability for natural persons who are employed in these establishments. Gender discrimination and criminal liability on the ground of gender is provided for in Article 55, for all persons listed in Article 52, as criminal liability is also provided for physical or other violence, exploitation, hate speech, disparagement, blackmail and harassment based on gender. Article 56 provides criminal responsibility based on sexual orientation. Articles 57 and 58 provide for criminal responsibility for discrimination based on age, with Article 57 providing for responsibility for discrimination against children, that is, minors, based on whether they were born in marriage or out of wedlock, as well as based on gender., property status, profession or other features in the social status, activities, opinions or beliefs of their parents, guardians or family members. The Law, in addition to these enumerated and protected features, does not provide criminal responsibility for some personal properties that children, ie minors, could have, which may represent a certain type of omission of the Law. Article 58 provides criminal liability for neglecting or harassing a person based on age, but only in the area of providing health services or other public services. Criminal liability for discrimination committed on this basis in other areas of life is not provided at all. It is

interesting that, on the other hand, Article 60 of the Law provides for criminal responsibility for refusing to provide health services based on a certain personal characteristic of a person or a group of persons. Article 59 of the Law provides responsibility for discrimination based on political conviction, or political non-affiliation.

Finally, bearing in mind the standard for sanctions to be "effective, proportionate and deterrent", the question that arises is whether such a fine would have a repressive, that is, resocializing meaning and whether it would deter them from future discrimination. Namely, when determining the amount of the fine for a committed offense, surely the legislator had in mind the amount of the average, that is, the minimum salary. In the LPPD, the amount of the fine for the offenses committed in accordance with Paragraph 3 of this article is from 100 to 400 euros in the denar equivalent value and in accordance with Paragraph 4 of this article from 50 to 150 euros in the denar equivalent value. For illustration, the minimum monthly net salary per employee, from March 2023, amounts to 20,175 denars, and the average monthly net salary paid per employee, in February 2023, amounts to 33,720 denars. This data indicates that the amount of the fine is within the minimum monthly salary paid per employee in March of this year.

Article 42

(1) A fine in the amount of 3,000 to 10,000 euros denar equivalent will be imposed for the offense of the legal entity that has been established by a competent authority to have committed discrimination in accordance with Article 13 of this law, in the following manner: from 3,000 to 5,000 Euros in the denar equivalent for micro-traders, from 4,000 to 6,000 Euros in the denar equivalent for small traders, from 5,000 to 8,000 Euros in the denar equivalent for medium traders and from 6,000 to 10,000 Euros in the denar equivalent for large traders.

(2) A fine in the amount of 3,000 to 5,000 euros in the denar equivalent will be imposed for an offense against another legal entity, other than Paragraph (1) of this article, which has been established by a competent authority to have committed discrimination in accordance with article 13 of this law.

(3) A fine in the amount of 200 to 500 euros in the denar equivalents will be imposed for an offense from Paragraph (2) of this article, on the official of a state authority, the mayor of the local self-government unit or on an official entrusted with the performance of public authority.

(4) A fine in the amount of 100 to 250 euros in the denar equivalent will be imposed for an offense against a natural person, who has been established by a competent authority to have committed discrimination in accordance with Article 13 of this law.

The prediction of this norm is, in general, positive, because the previous Law (2010) did not provide a stricter sanction for the more severe forms of discrimination, which is overcome by this article in the existing LPPD.

In Paragraph 1 of this article, it is provided that a fine in the amount of 3,000 to 10,000 euros in the denar equivalent will be imposed for the offense of the legal entity that has been established, by a competent authority, to have committed any of the more severe forms of discrimination without, at the same time, as in Article 41, to state Article 4 Points 10, 11, 12 and 13 which explain all four more severe forms of discrimination ("multiple discrimination",

"repeated discrimination", "persistent discrimination", and "intersectional discrimination"). For an explanation of terms see more in Part 1.3. Glossary For more severe forms of discrimination see more in Part 2.6. More Severe Forms of Discrimination

What is unusual is that although the lower threshold of the fine is higher, unlike the other forms and types of discrimination sanctioned in Article 41, the upper threshold in both articles remains the same (10,000 euros in the denar equivalent). What this means for large traders is that it will make no difference if they are fined for an offense of any type of discrimination, including the more severe types, if the upper threshold of the fine is imposed. In addition, it is worrying that the legislator for these more severe forms of discrimination has provided the imposition of a fine for medium-sized traders that is lower than for the other forms and types of discrimination established by Article 41 Paragraph 1 of the LPPD (with a maximum amount of 8,000 euros in the denar equivalent value versus 10,000 euros in the denar equivalent value) in accordance with Article 41). This should be regulated accordingly in the next amendments to the LPPD.

Paragraphs 2 to 4 are regulated identically to Article 41, with the difference that in all Paragraphs the amount of both the lower and upper threshold of the fine is increased proportionally.

Article 43

The calculation of the amount of the fine for the legal entity is carried out in accordance with the *Law on Misdemeanors*.

Although LPPD refers to the *Law on Misdemeanors* (hereinafter: LMD) as the key law on the ground of which the amount of the fine for legal entities is measured, however, although offenses and fines for natural persons are provided for in Articles 41 and 42, however, LPPD, just like in the previous Law (2010), the legislator does not provide the way of measuring the fine for natural persons. This should be regulated accordingly in the next amendments to the LPPD.

As for legal entities, in accordance with the LMD, in Article 39, it defines the method for measuring a fine for a legal entity and an individual trader. The measurement of the amount of the fine includes the application of several criteria - total income achieved in the previous fiscal year, average number of employees based on the situation at the end of the previous month in relation to the month in which the offense was committed and previous behaviour of the offender. Depending on the total income that the legal entity, that is, the sole trader, achieved in the fiscal year preceding the year in which the offense was committed, a certain percentage of the prescribed fine for the offense is provided, so that, according to this criterion, a maximum of up to 70% of the prescribed fine for the offence. If the legal entity, that is, sole trader, has not submitted an annual account for the previous fiscal year to the Central Registry of the Republic of North Macedonia from which the total income can be established, when calculating the amount of the fine, the average total income at the level of activity that committed by the offender. Based on the "average number of employees" criterion, a maximum of 20% of the prescribed fine for the offense can be imposed, with the percentage depending on the number of employees in the legal entity, that is, in the individual trader. As the third and last criterion in determining the amount of the fine, the previous behaviour of the perpetrator

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of the offense is provided. If the perpetrator has not previously been subject to enforceable sanctions, then the percentage is 0%, and if there is, the percentage is 10%. When determining the amount of the fine, the percentages based on all the criteria are added, so the established fine is the sum of all the percentages based on all the criteria. It is provided that for the repetition of the offense the assessed fine is increased by 10%, but the increase cannot exceed twice the amount of the prescribed fine for the offense for a time period of 5 years. Paragraph 8 of Article 39 of the LMD stipulates that the offense authority keeps records of the perpetrators of the offense and of the fines imposed for the offense committed. In cases of committed offenses in the area of discrimination, the only offending authority could be the CPPD, which is the only one currently given the opportunity to initiate criminal proceedings against a specific perpetrator with the LPPD. In Article 26 of the LMD, the general rules for determining the sanction of the offender are provided, taking into account the criminal responsibility of the offender and the gravity of the offense, as well as all aggravating and facilitating circumstances.

In any case, when conducting the procedure for a committed offense of discrimination, the court cannot apply Article 29 of the LMD, which provides for exemption from a sanction, because in order for the perpetrator to be exempted from a misdemeanour sanction, it must be explicitly established in law, which is not the case with LPPD. However, a question arises, whether the court could apply the provision of Article 30 of the LMD, which provides a special basis for exemption from sanction, if the offense was committed due to negligence and the consequences of it hardly affect the offender, while the sentence of the sanction in such a case would not correspond to the purpose of the sanctioning, and, at the same time, bearing in mind that no intention is required to perform discrimination at all. We believe that the court could in any case apply the provision of Article 31 of the LMD, which provides for the reduction of the fine and release due to the removal of the harmful consequences of the offense. For the release of the perpetrator from the sanction for the offense committed, in accordance with this article of the LMD, two conditions are provided that must be cumulatively fulfilled: the consent of the injured party is required and compensation for the damage, that is, the harmful consequences, until the end of the criminal procedure.

Article 44

For the misdemeanours established in this law, misdemeanour proceedings are conducted and misdemeanour sanctions are imposed by the competent court.

In the LPPD, the provision on the jurisdiction of the court was added, and although no provision regarding the statute of limitations is provided, identical to the previous Law (2010), however, given that it is provided that the misdemeanour procedure is conducted and the misdemeanour sanction is pronounced by the competent court, it can be concluded that the same procedure will be conducted in accordance with the provisions of the LMD.

Article 55 Paragraph 2 of the LMD stipulates that the criminal authority where the registered office of the legal person is located, that is, the representative office of the foreign legal person, is competent for conducting misdemeanour proceedings against a legal entity, unless otherwise established by a separate law, without being provided for the jurisdiction of the court. Article 77 provides for the actual competence of the court - the misdemeanour procedure in the first instance is led by an individual judge in the Basic Court, and the procedure for legal remedies is led by a council of three judges. Article 2 of the LMD stipulates that the

courts in the misdemeanour procedure apply the provisions of the *Law on Criminal Procedure* that refer to the basic principles, language, local jurisdiction, the consequences of lack of jurisdiction, etc. The above means that also in misdemeanour proceedings in the area of discrimination, the provision provided for in Article 26 Paragraph 1 of the *Law on Criminal Procedure* will be applied, in which it is provided that the local jurisdiction, as a rule, is the court in whose area the crime was committed or attempted. Given that the LMD explicitly states that there is no criminal responsibility for an attempted offense, this means that the local competent court for misdemeanour proceedings in the area of discrimination is the court in whose territory the offense was committed. If, on the other hand, the offense was committed in the areas of different courts or on the border of those areas, or it is uncertain in which area the offense was committed, the competent court is the one that, upon request from the authorized claimant, first started the procedure, and if the procedure is still has not been initiated, the court to which the request for initiation of the procedure was first submitted. As it was previously stated, the LPPD provides for the CPPD as the only authorized authority for submitting a request for the initiation of criminal proceedings, so the mentioned provision should be interpreted that in such a case the court that first received the request for the initiation of the criminal procedure would be competent. misdemeanour procedure.

If the offense is committed on a domestic ship or on a domestic aircraft while it is in a domestic port, the court in whose territory that port is located is competent. In other cases when the offense is committed on a domestic ship or on a domestic aircraft, the jurisdiction is the court whose territory is the home port of the ship, that is, the aircraft or the home port where the ship, that is, the aircraft will first stop.

It should be noted that in accordance with Article 26 Paragraph 5 of the *Law on Criminal Procedure,* which provides for the local jurisdiction of the court in the event that the offense was committed through the press - if the crime (offense) was committed through the press, the court is competent area the newspaper is printed. If that place is not known or the document is printed abroad, the court in whose territory the printed document is distributed is competent. If according to the Law the compiler of the document is responsible, the court of the place where the compiler has a residence or the court of the place where the event referred to in the document took place is also competent. At the same time, in Paragraph 6 of the same article, it is provided that the provision of Paragraph 5 will also be applied in the event that the document or statement was published via radio, television or the Internet. Finally, the *Law on Criminal Procedure* in Article 26 Paragraph 7 provides that if the place of commission of the offense is not known, or, on the other hand, it was committed in a place located outside the territory of our country, the court in whose territory the accused is competent has a residence or abode.

On the other hand, the LPPD does not contain a provision at all about who is the authorized holder for submitting a request for conducting a misdemeanour procedure for a committed offense of discrimination against a specific person. In Article 27 Paragraph 4 it is stated that if the person against whom CPPD has established discrimination and given a recommendation, does not act on it, CPPD submits a request for initiation of misdemeanour proceedings before a competent court for misdemeanours. In that case, the offense will be pronounced for failure to act on the recommendation of CPPD, and not for committed discrimination. In the cases in which the CPPD defines discrimination (that is, discrimination has been committed by a specific person) and that person acted on the recommendation within the established term of the opinion, the CPPD does not automatically initiate a misdemeanour procedure. On the other hand, the LPPD should establish exactly who can be the holder for submitting a request to initiate criminal proceedings for the offense of discrimination against a

specific person, because an extrajudicial opinion establishing discrimination can also be issued by the LPPD and by the OMB and the person can directly seek protection before the court in the case of protection against discrimination. So, if the court passes a final verdict establishing discrimination, in that case it is not clear who will have to submit a request for initiation of misdemeanour proceedings before a competent court for misdemeanours. The vagueness of these provisions in the legal solution leaves room for the person who committed discrimination to not be criminally liable for the offense committed. At the same time, it has not been established at all who, where and until when (limitation period) can submit a request for initiation of misdemeanour proceedings. We believe that this is a severe legal gap that should be adjusted accordingly in the following amendments to the LPPD in the shortest possible time.

7. TRANSITIONAL AND FINAL PROVISIONS

Article 45

(1) The public announcement for selection of Commission Members shall be published by the Assembly of the Republic of North Macedonia within 15 days as from the date of entry into force of this Law.

(2) The first announcement for the selection of members of the Commission for Prevention and Protection against Discrimination, after the entry into force of this law, is not published on the website of the Commission.

Paragraph 1 of this article stipulates that in order to timely elect the new members of the CPPD, the deadline for the publication of the public notice shall be announced by the Assembly within 15 days from the date of entry into force of the LPPD. This term is reasonable and allows to complete the procedure for the election of the new members of the CPPD with the entry into force of the new legal solution. This article should be read in close connection with article 18, which governs the procedure for electing the members of the CPPD. That is, the procedure for the election of the members of the CPPD begins with the publication of a public announcement for the election of members of the CPPD in The Official Gazette by the Assembly and in at least two daily newspapers that are published throughout the entire territory of the country, of which one of the newspapers which is issued in the language spoken by at least 20% of the citizens who speak an official language other than the Macedonian language. In addition to this, there is an obligation to publish the announcement on the websites of the Assembly and CPPD translated into the languages of all communities in the Republic of North Macedonia. More about the publication of the advertisement by the Assembly and regarding the procedure for the selection of members of the CPPD, see Part 3.2. Requirements for Election of Commission Members

Paragraph 2 of this article provides for an exception to the regular rule of publishing the announcement for the election of the members of the CPPD on the websites of the Commission itself, translated into the languages of all communities, only for the first announcement after the entry into force of the LPPD. This is a logical solution because the website of the previous CPD was not functional even after the CPD stopped working in 2018. The new website of CPPD started functioning in 2021 and therefore the provision of Article 18 Paragraph 1 of LPPD can be applied in full.

Article 46

By-laws provided for by this law will be adopted by the Commission within six months from the day of its election.

By passing a certain law, in order to implement it, it is sometimes necessary to pass by-laws, the term of which in this case the legislator established according to the usually accepted term of six months from the date of entry into force of this Law. In principle, in order to be able to implement certain laws, they should provide for the adoption of by-laws, except when their role and content is perceived in the law that is adopted. In the case in Article 21 Paragraph 1 Point 22 of the LPPD, the competence of the Commission to adopt rules of procedure, annual work plan and program and other acts related to its operation is provided, which is why there is a necessity to establish the deadline for their implementation in the transitional provisions. adoption, which is carried out with Article 46. It is noted that the CPPD was late in adopting the acts provided for in Article 46, that is, the Rules of Procedure of the Commission for Prevention and Protection against Discrimination, as a key document that fully regulates the operation of the CPPD was initially adopted on 7 October 2021, and the CPPD started with his work on 22.1.2021. Additionally, in 2021, CPPD adopted its Strategic Plan, the Annual Work Program for 2022 and the Proposed Annual Budget for 2022. More about the competence of the CPPD to appear as an intervener in court proceedings, see Part 3.4. Competences of the Commission

Article 47

Initiated procedures for protection against discrimination, as well as for submitted applications for which no procedure has been initiated until the date of entry into force of this law, will end according to the provisions of this law.

With this determination, the legislator had in mind that it was about passing a new law that completely replaces the old law, which is from the same legal area as the previous Law (2010), without changing the name of the Law. However, taking into account that with the entry into force of this Law, the previous *Law on Prevention and Protection against Discrimination* ceases to be valid (The Official Gazette of the Republic of Macedonia Nos. 50/10, 44/14, 150/15, 31/ 16 and 21/18), from Article 46 it follows that the procedures for protection against discrimination that were started before the day of entry into force of this Law and the applications that were submitted to the previous CPD or from the termination of the existence of the CPD in 2018 until the start of work of the new CPPD in 2021, but not put into operation by the day of entry into force of this Law, will be completed according to the provisions of this Law.

In this way, the new LPPD is given a retroactive effect on the initiated court proceedings, thereby deviating from the general constitutional prohibition of applying the regulations retroactively, except as an exception, in cases where it is more favourable for the citizens (Article 52 Paragraph 4 of the Constitution).

Excerpt from the Academic Literature No. 89

"Retroactivity, that is, retrospective effect, is the operation of the law backwards. Retroactive application of the law is in contradiction with the essential elements of the rule of law – with the principle of trust in the law and its predictability in advance and with the principle of legal certainty. That is why the general constitutional ban on applying regulations retroactively applies, except for exceptions, in cases where it is more favourable for the citizens" (*Handbook for Nomotechnical Rules*, 2007, p.53).

Thus, according to the structure of the previous Law (2010), which ceases to be valid, the started procedures that will have to be completed with the new LPPD, refer to the procedures before the previous CPD, in civil procedures and misdemeanour procedures. Experientially, there are different legal solutions from the legal solution in the LPPD, as they were during the adoption of the LCP, where it was provided:

Excerpt from the Academic Literature No. 90

Article 474 of the LCP (The Official Gazette of the Republic of Macedonia No. 79/2005)

If, before the date of application of this Law, a first-instance verdict or a decision was passed that ends the procedure before the First-instance Court, the further procedure will be carried out according to the previous regulations.

If, after the day of application, the first instance decision from Paragraph 1 of this article is revoked, the further procedure will be carried out according to this Law.

Article 476 of the LCP

On the date of application of this Law, the *Law on Civil Procedure* ceases to be valid (The Official Gazette Nos. 33/98 and 44/2002)

Then, with the adoption of the Law amending and supplementing the LCP (The Official Gazette of the Republic of Macedonia No. 110/2008 dated 2.9.2008), the legislator provided in Article 19 that: "Procedures before the first-instance courts started before the entry into force of this Law, are completed according to the previous regulations. Proceedings before the first-instance courts, which have not been started until the entry into force of this Law, are conducted according to the provisions of this Law."

For comparison, based on the principle of validity of the regulations, with the adoption of the amendments to the *Law on Prohibition of Discrimination of Bosnia and Herzegovina* (The Official Gazette of Bosnia and Herzegovina Nos. 59/09 and 66/16), with which ceased to be valid certain procedural provisions from the original Law passed in 2009, in the transitional provisions in Article 14 it is provided in Paragraph 1 that "proceedings in cases in which no first-instance decision has been made by the date of entry into force of this Law shall be conducted according to the provisions of this Law" and Paragraph 2 states "in proceedings in cases in which until the date of entry into force of this Law, a first-instance decision of the court is passed, they will be implemented according to the previously valid provisions of this Law".

As for the proceedings initiated before the previous CPD and the civil proceedings initiated, with the adoption of the LPPD, the general conclusion is that the novelties in the Law compared to the previous Law (2010), which ceased to be valid, are more favourable for the affected persons and this determination is not contrary to the exception for the constitutional ban on applying the regulations retroactively, that is, backwards.

Article 48

Laws containing provisions related to prevention and protection against discrimination will have to comply with this law within two years from the date of entry into force of this law.

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Article 48 provides a general obligation to harmonize the legislation with the LPPD, explicitly those regulations that contain provisions relating to the prevention and protection against discrimination. In addition, the provision provides for a period of two years from the date of entry into force of the LPPD (October 2020). The given wording has a limited scope because formally and legally it refers only to the laws that already contain provisions relating to discrimination and can be interpreted very restrictively by the legislator, however, it represents a good basis for a more even approach and systemic change of the legislation. The new laws that will be adopted after the adoption of the LPPD should be harmonized with the standards set in the LPPD if they contain provisions that in their material scope fall under prevention and protection against discrimination. This can also be ensured by the CPPD because one of the competences it has in accordance with article 21 Paragraph 1 item 11 is to give opinions on proposals for laws of importance for preventing and protecting against discrimination, but also to initiate changes to regulations for the purpose of implementation and promotion of protection against discrimination (Article 21 Paragraph 1 Point 10).

The obligation to harmonize individual laws with the previous Law (2010) was not provided in the transitional and final provisions of the law itself. As a result, the changes that were made did not cover all the relevant laws, were not systematically implemented and did not bring this anti-discrimination legislation closer to the citizens.

The provision of Article 48 provides an opportunity for systematic, consistent and comprehensive harmonization of the legislation with the anti-discrimination standards contained in the LPPD.

Excerpt from the Academic Literature No. 91

"Before approaching the harmonization process, a single or combined model of harmonization should be chosen which will be applied at the level of general principle. A maximalist model of a comprehensive treatment of discrimination in each separate law can be accepted, an optimal model that implies referring to the general provisions in the *Law on Prevention and Protection against Discrimination* and specifying special elements related to the specific area, or a minimalist model that will consist of, only in reference to the LPPD and minimal interventions related to the specific area. It is also possible to apply a combined model (maximalistic approach in systemic and optimal in other laws).

Any of the possible models to be chosen in the substantive and procedural laws must establish the principle of reference to the LPPD (reference provision) which will ensure equality of the definitions of the bases, the terms used, the categories related to the protection against discrimination and a place will be provided for the exercise of the provided competences of the Commission for Protection against Discrimination" (Najčevska, 2019, p. 27).

Article 49

This law enters into force on the day of its publication in The Official Gazette of the Republic of North Macedonia.

Excerpt from the Academic Literature No. 92

"The general arrangement at the beginning of the validity of the regulations is a constitutional matter (Article 52 of the Constitution). The Constitution defines publication of the regulation as a condition for entry into force. The thus provided opportunity to get acquainted with the regulation, before it becomes valid, is an integral part of the law and the principle of legality. Until the regulation is published in the (appropriate) "Official Gazette", it cannot come into effect. The exception is the Constitution and the constitutional law, which come into force with the proclamation - as it is established in them.

The regulation exists legally as a regulation, as soon as it is published as such in the prescribed official gazette, but it is not yet in force. During the period while it exists, but is not in force, the regulation cannot be supplemented or changed in any way, nor can it be repealed.

The determination of the beginning of validity is, in fact, a mandatory constituent norm of the regulation, which does not allow the immediate use of the constitutional provision for the beginning of validity. The shortest possible term, which can be established as the beginning of the validity of the regulation, is the day after its publication in the official gazette. The day, which is indicated in the official gazette as the day of publication, is not included in the specified vacatio legis.

The provision for the beginning of validity is an essential element of the text of each regulation, its mandatory integral part and always the last provision (article) of the regulation. The usual "standard" established length of the vacatio legis is eight days. However, circumstances may establish a shorter or longer duration of vacatio legis" (Handbook of nomotechnical rules, 2007, p.45-46).

Article 49 regulates an unusual period of absence of law (Lat. *vacatio legis*) because instead of eight days from the day of publication in the official gazette, which is the standard period, the legislator chose the LPPD to enter into force according to the shortest possible period, that is, with the day of publication in The Official Gazette of the Republic of North Macedonia. Determining a shorter period of absence of law (Lat. *vacatio legis*) is justified if the necessity of such intervention is indicated by the adoption, publication and start of application of the new regulation. Although, when this deadline is too short, there is a risk of jeopardizing legal security, because it is essentially contrary to the possibility of getting acquainted with the regulation, however, in the case of the LPPD, it is justified because after the entry into force of the Law, the deadlines for electing members began to run. of CPPD and thus effective extrajudicial protection of citizens from discrimination. The previous CPD ceased to exist in 2018 and although the OMB was an extrajudicial mechanism for protection against discrimination of citizens, however, the competence of this institution is only in the public sphere, because citizens were left without protection against discrimination in the private sphere more of two years, the legislator decided on this choice for the unusually short period of absence of law (Lat. *vacatio legis*), which in this case is completely justified.

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Literature Used

Aristotle, Ethica Nicomachea, V.3

CCPR, Antonina Ignatane v. Latvia, Communication No. 884/1999, CCPR/C/72/D/884/1999, Views adopted on 31 July 2001

CCPR, S. W. M. Broeks v. The Netherlands, Communication No. 172/1984, CCPR/C/OP/2 Views adopted on 9 April 1987

CEDAW, S.B. and M.B. against North Macedonia, CEDAW/C/77/D/143/2019, Views adopted on 7 December 2020

CJEU, Abrahamsson and Leif Anderson v. Elisabeth Fogelqvist, Case C-407/98, Judgement of 6 July 2000

CJEU, Asociaţia Accept v. Consiliul Naţional pentru Combaterea Discriminării, C-81/12, Judgement of 25 April 2013

CJEU, Asma Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole SA, C-188/15, Judgement of 14 March 2017

CJEU, Bilka-Kaufhaus GmbH v. Weber Von Hartz, Case 170/84, Judgement of 13 May 1986

CJEU, Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV, Case C-54/07

CJEU, CHEZ Razpredelenie Bulgaria AD v. Komisia za zashtita ot diskriminatsia, Case C 83/14, Judgement of 16 July 2015

CJEU, Commission v France, Case 248/83, Judgement of 21 May 1985

CJEU, Handels- og Kontorfunktionærernes Forbund i Danmark v. Dansk Arbejdsgiverforening (acting on behalf of Danfoss), C-109/88, Judgement of 17 October 1989

CJEU, David L. Parris v Trinity College Dublin and Others, C-443/15, Judgement of 24 November 2016

CJEU, Dr. Pamela Mary Enderby v. Frenchay Health Authority and Secretary of State of Health, C-127/92, Judgement of 27 October 1993

CJEU, Fag og Arbejde (FOA) acting on behalf of Karsten Kaltoft v Kommunernes Landsforening (KL), Case C-354/13, Judgement of 18 December 2014

CJEU, Félix Palacios de la Villa v Cortefiel Servicios SA, Case C-411/05, Judgement of 16 October 2007

CJEU, Galina Meister v. Speech Design Carrier Systems GmbH, C-415/10, Judgement of 19 April 2012

CJEU, Hilde Schönheit v. Stadt Frankfurt am Main and Silvia Becker v. Land Hessen, Joined case, C-4/02 and C-5/02, Judgement of 23 October 2003

CJEU, Kalanke v. Freie Hansestadt Bremen, Case C-450/93, Judgement of 17 October 1995

CJEU, Mahlburg v. Land Mecklenburg-Varpommern, Case C-207/98, Judgement of 3 February 2000

CJEU, Marschall v. Land Nordrhein-Westfalen, Case C-409/95, Judgement of 11 November 1997

CJEU, M. H. Marshall v Southampton and South-West Hampshire Area Health Authority, C-152/84, Judgement of 26 February 1986

CJEU, P. v. S. and Cornwall County Council, Case C-13-94, Judgement of 30 April 1996

CJEU, Regina v. Secretary of State for Employment, ex parte Seymour-Smith and Perez, C-167/97, Judgement of 9 February 1999

CJEU, Rijksdienst voor Pensionen v. Elisabeth Brouwer, Case C-577/08, Judgement of 29 July 2010

CJEU, S. Coleman v Attridge Law, Steve Law, Case C-303/06, Judgement of 17 July 2008

CJEU, Sabine von Colson and Elizabeth Kamann v. Land Nordrhein-Westfalen, C-14/83, Judgement of 10 April 1984

CJEU, Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV, C-157/15, Judgement of 14 March 2017

CJEU, Susanna Brunnhofer v. Bank der österreichischen Postsparkasse AG, C-381/99, Judgement of 26 June 2001

CJEU, Tadao Maruko v Versorgungsanstalt der deutschen Bühnen, Case-267/06, Judgement of 1 April 2008

CJEU, Vasil Ivanov Georgiev v. Tehnicheski universitet - Sofia, filial Plovdiv, C-250/09, C-268/09, Judgement of 18 November 2010

CJEU, Werner Mangold v. Rüdiger Helm, Case C-144/04, Judgement of 22 November 2005

Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 005), Rome 04.11.1950

Council Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204, 26.7.2006

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373, 21.12.2004

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000

Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex

Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, OJ L 39, 14.2.1976

Council of Europe/European Court of Human Rights, Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention, Prohibition of discrimination, Strasbourg, updated on 31 August 2022

Court of Appeal of England and Wales, Igen Ltd (formerly Leeds Careers Guidance) and Others v Wong, Chamberlin and Another v Emokpae and Webster v Brunel University, [2005] IRLR 258

CRPD, F v. Austria, Communication No. 21/2014, CRPD/C/14/D/21/2014, Views adopted on 21 September 2015

CRPD, Gemma Beasley v. Australia, Communication No. 11/2013, CRPD/C/15/D/11/2013, Views adopted on 25 May 2016

CRPD, H.M v. Sweden, Communication No. 3/2011, CRPD/C/7/D/3/2011, Views adopted on 21 May 2012

CRPD, Gemma Beasley v. Australia, Communication No. 11/2013, CRPD/C/15/D/11/2013, Views adopted on 25 May 2016

CRPD, Szilvia Nyusti and Péter Takács v. Hungary, Communication No. 1/2010, CRPD/C/9/D/1/2010, Views adopted on 21 June 2013

CRPD, Zsolt Bujdosó, Jánosné Ildikó Márkus, Viktória Márton, Sándor Mészáros, Gergely Polk and János Szabó v. Hungary, Communication No. 4/2011, CRPD/C/10/D/4/2011, Views adopted on 16 October 2013

De Schutter, O. 2003. The European Social Charter in a time of crisis. Turin Forum on Social Rights in Europe

Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, OJ L 180, 15.7.2010

ECRI, General Policy Recommendation No. 7

ECRI, General Policy Recommendation No. 2

ECSR, Mental Disability Advocacy Center v. Bulgaria, Complaint No. 41/2007, Decision of 3 June 2008

ECSR, International Association Autism-Europe (IAAE) v. France, Complaint No. 13/2002, Decision of 7 November 2003

ECSR, European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, Decision of 11 September 2013

ECtHR, Airey v. Ireland, App. No. 6289/73, Judgement of 9 October 1979

ECtHR, Anguelova v Bulgaria, App. No. 38361/97, Judgement of 13 June 2002

ECtHR, Bączkowski and Others v. Poland, App. No. 1543/06, Judgement of 3 May 2007

ECtHR, B.S. v. Spain, App. No. 47159/08, Judgement of 24 July 2012

ECtHR, Bulut v. Austria, App. No. 17358/90, Judgement of 22 February 1996

ECtHR, Carvalho Pinto de Sousa Morais v. Portugal, App. No. 17484/15, Judgement of 25 July 2017

ECtHR, Case relating to certain aspects of the laws on the use of languages in education in Belgium v. Belgium, App. Nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63 and 2126/64, Judgement of 23 July 1968

ECtHR, Cyprus v. Turkey, [GC] App. No. 25781/94, Judgement of 12 May 2014

ECtHR, D.H. and Others v. Czech Republic, [GC] App. No. 57325/00, Judgement of 13 November 2007

ECtHR, Deweer v. Belgium, Judgement of 27 February 1980, Series A No. 35

ECtHR, E.B. v. France, [GC] App. No. 43546/02, Judgement of 22 January 2008

ECtHR, Elmazova and Others v. North Macedonia, App. Nos. 11811/20 and 13550/20, Judgement of 13 December 2022

ECtHR, G. v. Italy, Judgement of 27 February 1992, Series A No. 228-F

ECtHR, Gaygusuz v. Austria, App. No. 17371/90, Judgement of 16 September 1996

ECtHR, Campbell and Cosans v. United Kingdom, App. No. 7511/76; 7743/76, Judgement of 23 March 1983

ECtHR, Guberina v. Croatia, App. No. 23682/13, Judgement of 22 March 2016

ECtHR, H v. Finland, App. No. 37359/09, Judgement of 13 November 2012

ECtHR, Horváth and Kiss v. Hungary, App. No. 11146/11, Judgement of 29 January 2013

ECtHR, I.B. v Greece, App. No. 552/10, Judgement of 3 October 2013

ECtHR, Karner v. Austria, App. No. 40016/98, Judgement of 24 July 2003

ECtHR, Kjeldsen, Busk Madsen and Pedersen v. Denmark, App. Nos. 5095/71, 5920/71, 5929/72, Judgement of 7 December 1976

ECtHR, Kiyutin v. Russia, App. No. 2700/10, Judgement of 10 March 2011

ECtHR, Laduna v. Slovakia, App. No. 31827/02, Judgement of 13 December 2011

ECtHR, Larkos v. Greece, App. No. 29515/95, Judgement of 18 February 1999

ECtHR, Luczak v. Poland, App. No. 77782/01, Judgement of 27 March 2007

ECtHR, Makuchyan and Minasyan v. Azerbaijan and Hungary, App No. 17247/13, Judgement of 26 May 2020

ECtHR, Marckx v. Belgium, App. No. 6833/74, Judgement of 13 June 1979

ECtHR, McFeeley v. United Kingdom, 8317/78, [1981] 3 EHRR 161, [1984] ECHR 23

ECtHR, Metropolitan Church of Bessarabia and Others v. Moldova, App. No. 45701/99, Judgement of 13 December 2001

ECtHR, Nachova and Others v. Bulgaria, [GC] App. Nos. 43577/98 and 43579/98, Judgement of 6 July 2005

ECtHR, Novruk and Others v. Russia, App. No. 31039/11, 48511/11, 76810/12, 14618/13 and 13817/14, Judgement of 15 March 2016

ECtHR, Oršuš and Others v. Croatia, [GC] App. No. 15766/03, Judgement of 16 March 2010

ECtHR, „Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy)“ v. „the former Yugoslav Republic of Macedonia“, App. No. 3532/07, Judgement of 16 November 2017

ECtHR, Pandolfelli and Palumbo v. Italy, Judgement of 27 February 1992, Series A No. 231-B

ECtHR, Pinkas and Others v. Bosnia and Herzegovina, App. No. 8701/21, Judgement of 4 October 2022

ECtHR, Raimondo v. Italy, Judgement of 22 February 1994, Series A No. 281-A

ECtHR, Sahin v. Germany, App. No. 30943/96, Judgement of 8 July 2003

ECtHR, Salgueiro da Silva Mouta v. Portugal, App. No. 33290/96, Judgement of 21 December 1999

ECtHR, Salman v. Turkey, App. No. 21986/93, Judgement of 27 June 2000

ECtHR, Sejdič and Finci v. Bosnia and Herzegovina, App. Nos. 27996/06 and 34836/06, Judgement of 22 December 2009

ECtHR, Shackell v. United Kingdom, App. No. 45851/99, Judgement of 27 April 2000

ECtHR, Thlimmenos v. Greece, [GC] App. No. 34369/97, Judgement of 6 April 2000

ECtHR, Timishev v. Russia, App. Nos. 55762/00 and 55974/00, Judgement of 13 December 2005

ECtHR, Vocaturo v. Italy, Judgement of 24 May 1991, Series A No. 206-C

ECtHR, Wagner and J.M.W.L. v. Luxembourg, App. No. 76240/01, Judgement of 28 June 2007

ECtHR, X v. France, Judgement of 31 March 1992, Series A No. 234-C

ECtHR, X v. the United Kingdom, Judgement of 5 November 1981, Series A No. 46

ECtHR, Çam v. Turkey, App. No. 51500/08, Judgement of 23 February 2016

ECtHR, Cînța v. Romania, App. No. 3891/19, Judgement of 18 February 2020

European Network of Legal Experts in Gender Equality and Non-Discrimination. 2013. European Anti-discrimination Law Review Issue 17. Migration Policy Group and Human European Consultancy. Brussels

European Social Charter (revised) (ETS No. 163), Strasbourg 03.05.1996

Farkas, L., O'Farrell, O. 2014. Reversing the burden of proof: Practical dilemmas at the European and national level. European Commission. Brussels

Federal Equal Treatment Act of Austria (Bundes-Gleichbehandlungsgesetz ((B-GBG)), StF: BGBl. Nr. 100/1993 (NR: GP XVIII RV 857 AB 923 S. 101. BR: AB 4,448 S. 564.), [CELEX-Nr.: XVIII: 375L0117, 376L0207]

Frendman, C. 2016. Intersectional discrimination in EU gender equality and non-discrimination law

General Comment No. 6, Article 5: Equality and non-discrimination, Committee on the Rights of Persons with Disabilities, CRPD/C/GC/6, 9 March 2018

General Comment No. 20, Non-discrimination in economic, social and cultural rights, United Nations Committee on Economic, Social and Cultural Rights, E/C.12/GC/20, 2 July 2009

General Recommendation No. 32, The meaning and scope of special measures in the International Convention on the Elimination of All Forms [of] Racial Discrimination, CERD/C/GC/32, 24 September 2009

General Comment No. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 26 May 2004

General Comment No. 3, Article 6: Women and girls with disabilities, Committee on the Rights of Persons with Disabilities, CRPD/C/GC/3, 25 November 2016

Handbook on European Non-discrimination Law. 2018. European Union Agency for Fundamental Rights and Council of Europe. Publications Office of the European Union. Luxembourg

Handbook on European Non-discrimination Law. 2010. European Union Agency for Fundamental Rights and Council of Europe. Publications Office of the European Union. Luxembourg

Makkonen, T. 2016. European handbook on equality data. European Commission. Brussels

Ombudsman Against Discrimination on Grounds of Sexual Orientation v. A.S., Case No. T-3562-06, Svea Court of Appeal, 11 February 2008

Ordinance 137/2000 regarding the prevention and the punishment of all forms of discrimination, Romania, nr. 137, 31 August 2000, MONITORUL OFICIAL nr. 99 din 8 februarie 2007

Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender Identity and Sex Characteristics, A Manual for Human Rights Institutions. 2016. Asia Pacific Forum of National Human Rights Institutions and the United Nations Development Programme. Bangkok

Ringelheim, J. 2019. The burden of proof in anti-discrimination proceedings. A focus on Belgium, France and Ireland, in European equality law review, European network of legal experts in gender equality and non-discrimination. Publications Office of the European Union. Luxembourg

Tannock, S. 2008. The problem of education-based discrimination, British Journal of Sociology of Education, 29:5

United Nations, Human Rights Committee, Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia CCPR/C/MKD/CO/3, 17 August 2015

United Nations, Committee on Elimination of All Forms of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic report of the former Yugoslav Republic of Macedonia, adopted by the Committee at its fifty-fourth session (11 February–1 March 2013) CEDAW/C/MKD/CO/4-5, 22 March 2013

US Department of State. 2015. International Religious Freedom Report (Macedonia). Office of the International Religious Freedom

Yesilkagit, K., Snijders, B. 2008. Between Impartiality and Responsiveness Equality Bodies and Practices of Independence. Equinet. Brussels

Агендата за одржлив развој на Обединетите нации до 2030 година *[The United Nations 2030 Agenda for Sustainable Development]*

Агенцијата за антидискриминација на Холандија, Мислење бр. 1997-65, 10 јуни 1997 година *[The Dutch Anti-discrimination Agency, Opinion No. 1997-65, 10 June 1997]*

Алексов, Ж., Цветановска, А. 2014. Анализа за стратешко водење на предмети во судска постапка од областа на дискриминација. Македонско здружение на млади правници – МЗМП. Скопје *[Aleksov, Ž., Cvetanovska, A. 2014. Analysis of the Strategic Case Management in Court Proceedings in the Area of Discrimination. Macedonian Young Lawyers Association – MYLA. Skopje]*

Амдију, Н., Попоска, Ж. 2023. Прирачник за државните органи за промоција и унапредување на еднаквоста и превенција од дискриминација. Мисија на ОБСЕ во Скопје и Министерство за труд и социјална политика. Скопје. *[Amdiju, N., Poposka, Ž. 2023. A State Authorities' Handbook on Promoting and Advancing Equality and Preventing Discrimination. OSCE Mission to Skopje and Ministry of Labour and Social Policy. Skopje.]*

Амдију, Н., Попоска, Ж. 2023. Водич за преминување на товарот на докажување на Комисијата за спречување и заштита од дискриминација. Мисија на ОБСЕ во Скопје и Комисија за спречување и заштита од дискриминација. Скопје. *[Amdiju, N., Poposka, Ž. 2023. Guidelines on Shifting the Burden of Proof of the Commission for Prevention and Protection against Discrimination. OSCE Mission to Skopje and Commission for Prevention and Protection against Discrimination. Skopje.]*

Ананиев, Ј. 2016. Соодветното приспособување за лицата со попреченост (истражувачки извештај). Мисијата на ОБСЕ во Скопје и Комисија за заштита од дискриминација. Скопје *[Ananiev, J. 2016. Reasonable Accommodation for Persons with Disabilities (investigative report). OSCE Mission to Skopje and Commission for Protection against Discrimination. Skopje]*

Ананиев, Ј. 2015. Разлика во плати врз основ на пол на национално ниво (истражувачки извештај). Мисијата на ОБСЕ во Скопје и Комисија за заштита од дискриминација. Скопје *[Ananiev, J. 2015. Gender Pay Gap on National Level (investigative report). OSCE Mission to Skopje and Commission for Protection against Discrimination. Skopje]*

Ананиев, Ј. 2014. Сегрегација на децата Роми во образовниот процес (истражувачки извештај). Мисијата на ОБСЕ во Скопје и Комисија за заштита од дискриминација. Скопје *[Ananiev, J. 2014. Segregation of Roma Children in the Education Process (investigative report). OSCE Mission to Skopje and Commission for Protection against Discrimination. Skopje]*

Ананиев, Ј. 2013. Дискриминациските огласи (истражувачки извештај). Мисијата на ОБСЕ во Скопје и Комисија за заштита од дискриминација. Скопје *[Ananiev, J. 2013. Discrimination in Job Advertisements (investigative report). OSCE Mission to Skopje and Commission for Protection against Discrimination. Skopje]*

Апелационен суд Битола, ГЖ-2086/16 од 12.12.2016 *[Appellate Court Bitola, GŽ-2086/16 dated 12.12.2016]*

Апелационен суд Битола, ГСЖ-1671/19 *[Appellate Court Bitola, GSŽ-1671/19]*

Апелационен суд Битола, ТСЖ бр. 21/19 од 18.2.2019 *[Appellate Court Bitola, TSŽ-21/19 dated 18.2.2019]*

Апелационен суд Скопје, ГЖ 5953/17 од 15.11.2017 *[Appellate Court Skopje, GŽ-5953/17 dated 15.11.2017]*

Апелационен суд Скопје, ГЖ 5169/14 од 23.9.2015 *[Appellate Court Skopje, GŽ-5169/14 dated 23.9.2015]*

Апелационен суд Скопје, РОЖ-1019/18 од 26.9.2018 *[Appellate Court Skopje, ROŽ-1019/18 dated 26.9.2018]*

Апелационен суд Скопје, РОЖ-1336/17 од 7.2.2018 *[Appellate Court Skopje, ROŽ-1336/17 dated 7.2.2018]*

Апелационен суд Скопје, РОЖ-731/14 од 18.11.2015 *[Appellate Court Skopje, ROŽ-731/14 dated 18.11.2015]*

Апелационен суд Штип, ГЖ-183/15 од 9.3.2015 *[Appellate Court Štip, GŽ-183/15 dated 9.3.2015]*

Апелационен суд Штип, РОЖ-156/14 од 8.4.2014 *[Appellate Court Štip, ROŽ-156/14 dated 8.4.2014]*

Врховен суд на Република Северна Македонија, РевЗ бр.55/2018 од 18.12.2018 *[Supreme Court of the Republic of North Macedonia, Rev3 No. 55/2018 dated 18.12.2018]*

Врховен суд на САД, Havens, 455 U.S. 363, 365 *[Supreme Court of the United States, Havens, 455 U.S. 363, 365]*

Врховен суд на Франција, секција за социјални права, P+B Fluchère, Dick and CFDT v SNCF, бр. 1027, 28 март 2000 година *[Supreme Court of France, Social Rights Section, P+B Fluchère, Dick and CFDT v SNCF, No. 1027, 28 March 2000]*

Генерален коментар бр. 20 на Комитетот за економски, социјални и културни права *[General Comment No. 20 of the Committee on Economic, Social and Cultural Rights, E/C.12/GC/20, 2 July 2009]*

Георгиевска, Е., Новеска, Љ. 2016. Анализа на случаи од стратешко застапување. Македонско здружение на млади правници – МЗМП. Скопје *[Georgievska, E., Noveska, Lj. 2016. Analysis of Strategic Advocacy Cases. Macedonian Young Lawyers Association – MYLA. Skopje]*

Декларација за расата и расните предрасуди *[Declaration on Race and Racial Prejudice, UNESCO, 27 November 1969, E/CN.4/Sub.2/1982/2/Add.1, Annex V, 1982]*

Договорот за функционирање на Европската Унија *[Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012]*

Државен совет на Франција, бр. 16-102017, 16 октомври 2017 година *[The Council of State of France, No. 16-102017, 16 October 2017]*

Европска Комисија. Извештаите за напредокот на државата во процесот на евроинтеграциите *[European Commission. North Macedonia 2021 Progress Report. Commission Staff Working Document. SWD (2021) 294 final, 19 October 2021]*

Европска Комисија. Извештаите за напредокот на државата во процесот на евроинтеграциите *[European Commission. The Former Yugoslav Republic of Macedonia 2016 Progress Report. Commission Staff Working Document. SWD (2016) 362 final, 9 November 2016]*

Европска Комисија. Извештаите за напредокот на државата во процесот на евроинтеграциите *[European Commission. The Former Yugoslav Republic of Macedonia 2015 Progress Report. Commission Staff Working Document. SWD (2015) 212 final, 10 November 2015]*

Европска Комисија. Извештаите за напредокот на државата во процесот на евроинтеграциите *[European Commission. The Former Yugoslav Republic of Macedonia 2012 Progress Report. Commission Staff Working Document. SWD (2012) 332 final, 10 October 2012]*

Заклучни согледувања за државата на Комитетот за елиминација на сите форми на дискриминација врз жената, CEDAW/C/MKD/6 *[Concluding Observations on the Sixth Periodic Report of the former Yugoslav Republic of Macedonia. Committee on the Elimination of Discrimination against Women. CEDAW/C/MKD/6]*

Закон на Грција бр. 3996/2011, 5 август 2011 година *[Greece – Law No. 3996/2011, 5 August 2011]*

Закон за административни службеници. Службен весник бр. 27/2014, 199/2014, 48/2015, 154/2015, 5/2016, 142/2016 и 11/2018; и Службен весник на РСМ бр. 275/2019, 14/2020, 215/2021 и 99/2022 *[Law on Administrative Servants. The Official Gazette Nos. 27/2014, 199/2014, 48/2015, 154/2015, 5/2016, 142/2016 and 11/2018; and The Official Gazette of RNM Nos. 275/2019, 14/2020, 215/2021 and 99/2022]*

Закон за заштита од вознемирување на работно место. Службен весник бр. 79/2013 и 147/2015; и Службен весник на РСМ бр. 103/2021 *[Law on Protection against Workplace Harassment. The Official Gazette Nos. 79/2013 and 147/2015; and The Official Gazette of RNM No. 103/2021]*

Закон за еднакви можности на жените и мажите. Службен весник бр. 6/2012, 30/2013, 166/2014 и 150/2015; и Службен весник на РСМ бр. 53/2021 *[Law on Equal Opportunities of Women and Men. The Official Gazette Nos. 6/2012, 30/2013, 166/2014 and 150/2015; and The Official Gazette of RNM No. 53/2021]*

Закон за еднаквост (2006) на Велика Британија *[Equality Act 2006 of the United Kingdom]*

Закон за еднаков третман на Холандија *[Equal Treatment Act of the Netherlands, 1.1.2005]*

Закон за еднаков третман во вработувањето независно од возраста на Холандија *[Equal Treatment in Employment (Age Discrimination) Act of the Netherlands, 2002]*

Закон за етнички еднаков третман на Данска *[Act on Ethnic Equal Treatment of Danmark, Ref. No. 2002/5000-6, 28 May 2003]*

Закон за забрана од дискриминација на Босна и Херцеговина (Zakon o zabrani diskriminacije. Službeni glasnik BiH br. 59/09 i 66/16) *[Law on Prohibition of Discrimination*

of Bosnia and Herzegovina. The Official Gazette of Bosnia and Herzegovina Nos. 59/09 and 66/16]

Закон за забрана на дискриминација врз основа на возраст во работните односи *[Age Discrimination in Employment Act of the United States, 29 U.S.C. 621 to 29 U.S.C 634]*

Закон за спречување на дискриминација на лица со инвалидитет на Република Србија (Zakon o sprečavanju diskriminacije osoba sa invaliditetom. Služben glasnik RS br. 33/2006 i 13/2016) *[Law on Prevention of Discrimination against Persons with Disabilities of the Republic of Serbia. The Official Gazette of the Republic of Serbia Nos. 33/2006 and 13/2016]*

Закон за забрана на дискриминација на Република Србија (Zakon o zabrani diskriminacije. Služben glasnik RS br. 22/2009 i 52/2021) *[Law on Prohibition of Discrimination of the Republic of Serbia. The Official Gazette of the Republic of Serbia Nos. 22/2009 and 52/2021]*

Закон за забрана од дискриминација на Црна Гора (Zakon o zabrani diskriminacije. Služben list br. 46/2010, 40/11, 18/2014 i 42/2017) *[Law on Prohibition of Discrimination of Montenegro. The Official Gazette of Montenegro Nos. 46/2010, 40/11, 18/2014 and 42/2017]*

Закон за заштита од дискриминација на Косово (Ligji nr. 05-L.021. Gazeta zyrtare 16/2015, 26.06.2015) *[Law on Protection against Discrimination of Kosovo, Law No. 05-L.021. The Official Gazette of Kosovo No. 16/2015, 26.06.2015]*

Закон за заштита од дискриминација на Република Словенија (Zakon o varstvu pred diskriminacijo. Uradni list Republike Slovenije 1427, stran 4817) *[Law on Protection against Discrimination of the Republic of Slovenia. The Official Gazette of the Republic of Slovenia No. 1427, p. 4817]*

Законот за заштита од дискриминација на Република Бугарија. ДВ бр. 86/30.09.2003 *[Law on Protection against Discrimination of the Republic of Bulgaria. The State Gazette of the Republic of Bulgaria No. 86/30.09.2003]*

Закон за заштита на потрошувачите. Службен весник на РСМ бр. 236/2022 *[Law on Consumer Protection. The Official Gazette of RNM No. 236/2022]*

Закон за класифицирани информации. Службен весник на РСМ бр. 275/2019 *[Law on Classified Information. The Official Gazette of RNM No. 275/2019]*

Закон за кривична постапка. Службен весник бр. 150/2010, 100/2012, 142/2016 и 198/2018 *[Law on Criminal Procedure. The Official Gazette Nos. 150/2010, 100/2012, 142/2016 and 198/2018]*

Закон за локалната самоуправа. Службен весник бр. 5/2002 *[Law on Local Self-government. The Official Gazette No. 5/2002]*

Закон за Народниот правобранител. Службен весник бр. 60/03, 114/09, 181/16, 189/16 и 35/2018 *[Law on the Ombudsman. The Official Gazette Nos. 60/03, 114/09, 181/16, 189/16 and 35/2018]*

Закон за недискриминација на Финска (Yhdenvertaisuuslaki, 1325/2014, FIN-2014-L-1010880) *[Law on Non-discrimination of Finland. Yhdenvertaisuuslaki, 1325/2014, FIN-2014-L-1010880]*

Закон за обезбедување на побарувањата. Службен весник бр. 87/2007 и 31/2016 *[Law on the Securing of Claims. The Official Gazette Nos. 87/2007 and 31/2016]*

Закон за облигациони односи. Службен весник бр. 18/2001, 4/2002, 5/2003, 84/2008, 81/2009, 161/2009 и 123/2013; и Службен весник на РСМ бр. 215/2021 *[Law on Obligations. The Official Gazette Nos. 18/2001, 4/2002, 5/2003, 84/2008, 81/2009, 161/2009 and 123/2013; and The Official Gazette of RNM No. 215/2021]*

Закон за општата управна постапка. Службен весник бр. 124/2015 *[Law on the General Administrative Procedure. The Official Gazette No. 124/2015]*

Закон за парнична постапка. Службен весник бр. 79/2005, 110/2008, 83/2009, 116/2010 и 124/2015 *[Law on Civil Procedure. The Official Gazette Nos. 79/2005, 110/2008, 83/2009, 116/2010 and 124/2015]*

Закон за плата и други надоместоци на пратениците на Собранието на Република Македонија и другите избрани и именувани лица во републиката. Службен весник бр. 36/1990, 44/1990, 11/1991, 38/1991, 23/1997, 37/2005, 84/2005, 121/2007, 161/2008, 92/2009, 42/2010, 97/2010, 162/2010, 11/2012, 145/2012, 170/2013, 139/2014 и 45/2018 *[Law on the Salary and Other Reimbursements to the Members of Parliament in the Assembly of the Republic of Macedonia and to Other Elected and Appointed Persons in the Republic. The Official Gazette Nos. 36/1990, 44/1990, 11/1991, 38/1991, 23/1997, 37/2005, 84/2005, 121/2007, 161/2008, 92/2009, 42/2010, 97/2010, 162/2010, 11/2012, 145/2012, 170/2013, 139/2014 and 45/2018]*

Закон за правната положба на црквата, верската заедница и религиозната група. Службен весник бр. 113/2007 од 20.09.2007 *[Law on the Legal Position of the Church, the Religious Community and the Religious Group. The Official Gazette No. 113/2007 dated 20.09.2007]*

Закон за прекршоци. Службен весник на РСМ бр. 96/2019 *[Law on Misdemeanours. The Official Gazette of RNM No. 96/2019]*

Закон за работни односи. Службен весник бр. 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 и 120/2018; и Службен весник на РСМ бр. 10/2019, 267/2020, 151/2021 и 288/2021 *[Law on Labour Relations. The Official Gazette 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 and 120/2018; and The Official Gazette of RNM Nos. 10/2019, 267/2020, 151/2021 and 288/2021]*

Законот за работни односи на Република Франција *[Labour Code of the French Republic]*

Законот за снабдување со вода за пиење и одведување на урбани отпадни води. Службен весник бр. 68/2005 *[Law on the Supplying of Drinking Water and the Draining of Urban Wastewater. The Official Gazette No. 68/2005]*

Закон за спречување и заштита од дискриминација (2010). Службен весник бр. 50/10, 44/14, 150/15, 31/16 и 21/18 *[Law on Prevention and Protection against Discrimination (2010). The Official Gazette Nos. 50/10, 44/14, 150/15, 31/16 and 21/18]*

Закон за спречување и заштита од дискриминација. Службен весник на РСМ бр. 258/2020 *[Law on Prevention and Protection against Discrimination. The Official Gazette of RNM No. 258/2020]*

Закон за спречување на корупцијата и судирот на интереси. Службен весник на РСМ бр. 12/2019 *[Law on Prevention of Corruption and Conflict of Interest. The Official Gazette of RNM No. 12/2019]*

Закон за судовите. Службен весник бр. 58/2006, 62/2006, 35/2008, 150/2010, 83/2018 и 198/2018; и Службен весник на РСМ бр. 96/2019 *[Law on Courts. The Official Gazette Nos. 58/2006, 62/2006, 35/2008, 150/2010, 83/2018 and 198/2018; and The Official Gazette of RNM No. 96/2019]*

Закон за судските такси. Службен весник бр. 114/2009, 148/2011, 106/2013 и 166/2014; и Службен весник на РСМ бр. 257/2020 *[Law on Court Fees. The Official Gazette Nos. 114/2009, 148/2011, 106/2013 and 166/2014; and The Official Gazette of RNM No. 257/2020]*

Закон за сузбивање на дискриминацијата на Република Хрватска (Zakon o suzbijanju diskriminacije. Narodne novine br. 85/8 i 112/12) *[Law on Combating Discrimination of the Republic of Croatia. The Official Gazette of the Republic of Croatia Nos. 85/8 and 112/12]*

Закон за трговските друштва. Службен весник бр. 28/2004, 84/2005, 25/2007, 87/2008, 42/2010, 48/2010, 24/2011, 166/2012, 70/2013, 119/2013, 120/2013, 187/2013, 38/2014, 41/2014, 138/2014, 88/2015, 192/2015, 6/2016, 30/2016, 61/2016, 64/2018 и 120/2018; и Службен весник на РСМ бр. 290/2020, 215/2021 и 99/2022 *[Law on Trade Companies. The Official Gazette Nos. 28/2004, 84/2005, 25/2007, 87/2008, 42/2010, 48/2010, 24/2011, 166/2012, 70/2013, 119/2013, 120/2013, 187/2013, 38/2014, 41/2014, 138/2014, 88/2015, 192/2015, 6/2016, 30/2016, 61/2016, 64/2018 and 120/2018; and The Official Gazette of RNM Nos. 290/2020, 215/2021 and 99/2022]*

Закон за управните спорови. Службен весник бр. 62/2006 *[Law on Administrative Disputes. The Official Gazette No. 62/2006]*

Институт за човекови права. 2013. Дискриминација на Ромите во образовниот процес: кршење на ѕидот на одбивање и сегрегација. Скопје *[Institute for Human Rights. 2013. Discrimination of Roma People in the Education Process: Breaking the Wall of Rejection and Segregation. Skopje]*

Кадриу, Б. 2010. Старосната дискриминација во меѓународното право за правата на човекот. Правен факултет Јустинијан I – Скопје. Скопје *[Kadriu, B. 2010. Age Discrimination in the International Human Rights Law. Iustinianus Primus Faculty of Law in Skopje. Skopje]*

КЗД, Годишен извештај за работата на Комисијата за заштита од дискриминација за 2016 година, 2017. Скопје *[CPD, 2016 Annual Work Report of the Commission for Protection against Discrimination, 2017. Skopje]*

КЗД, Годишен извештај за работата на Комисијата за заштита од дискриминација за 2015 година, 2016. Скопје *[CPD, 2015 Annual Work Report of the Commission for Protection against Discrimination, 2016. Skopje]*

КЗД, Годишен извештај за работата на Комисијата за заштита од дискриминација за 2014 година, 2015. Скопје *[CPD, 2014 Annual Work Report of the Commission for Protection against Discrimination, 2015. Skopje]*

КЗД, Годишен извештај за работата на Комисијата за заштита од дискриминација за 2013 година, 2014. Скопје *[CPD, 2013 Annual Work Report of the Commission for Protection against Discrimination, 2014. Skopje]*

КЗД, Мислење бр. 08-35/1 од 8.3.2018 година *[CPD, Opinion No. 08-35/1 dated 8.3.2018]*

КЗД, Мислење бр. 03-814/1 од 15.2.2018 година *[CPD, Opinion No. 03-814/1 dated 15.2.2018]*

КЗД, Мислење бр. 0801-229/1 од 7.2.2018 година *[CPD, Opinion No. 0801-229/1 dated 7.2.2018]*

КЗД, Мислење бр. 08-58 од 22.6.2017 година *[CPD, Opinion No. 08-58 dated 22.6.2017]*

КЗД, Мислење бр. 07-1185 од 13.4.2017 година *[CPD, Opinion No. 07-1185 dated 13.4.2017]*

КЗД, Мислење бр. 0801-1751 од 2.3.2017 година *[CPD, Opinion No. 0801-1751 dated 2.3.2017]*

КЗД, Мислење бр. 08-1880/9 од 5.5.2017 година *[CPD, Opinion No. 08-1880/9 dated 5.5.2017]*

КЗД, Мислење бр. 08-1744 од 8.11.2016 година *[CPD, Opinion No. 08-1744 dated 8.11.2016]*

КЗД, Мислење бр. 1729 од 25.8.2016 година *[CPD, Opinion No. 1729 dated 25.8.2016]*

КЗД, Мислење бр. 7-1617 од 30.6.2016 година *[CPD, Opinion No. 7-1617 dated 30.6.2016]*

КЗД, Мислење бр. 0801-1722 од 19.5.2016 година *[CPD, Opinion No. 0801-1722 dated 19.5.2016]*

КЗД, Мислење бр. 07-839 од 19.5.2016 година *[CPD, Opinion No. 07-839 dated 19.5.2016]*

КЗД, Мислење бр. 07-922 од 27.03.2014 година *[CPD, Opinion No. 07-922 dated 27.03.2014]*

КЗД, Мислење бр. 07-607 од 1.8.2013 година *[CPD, Opinion No. 07-607 dated 1.8.2013]*

КЗД, Мислење бр. 2/27/11 од 29.6.2011 година *[CPD, Opinion No. 2/27/11 dated 29.6.2011]*

КЗД, Општа препорака за еднаквото уживање на слободата на вероисповед од 21.9.2017 *[CPD, General Recommendation on the Equal Enjoyment of the Freedom of Religion dated 21.9.2017]*

КЗД, Претставка бр. 0801-268 од 27.08.2018 година, Мислење од 5.10.2018 година *[CPD, Application No. 0801-268 dated 27.08.2018, Opinion dated 5.10.2018]*

КЗД, Претставка бр. 243/1 од 16.11.2017 година, Мислење од 11.4.2018 година *[CPD, Application No. 243/1 dated 16.11.2017, Opinion dated 11.4.2018]*

КЗД, Претставка бр. 08-36/1 од 9.2.2018 година, Мислење од 8.3.2018 година *[CPD, Application No. 08-36/1 dated 9.2.2018, Opinion dated 8.3.2018]*

КЗД, Претставка бр. 0801-157/1 од 19.7.2017 година, Мислење од 26.9.2017 година *[CPD, Application No. 0801-157/1 dated 19.7.2017 Opinion dated 26.9.2017]*

КЗД, Претставка бр. 94-1 од 18.4.2017 година, Мислење од 13.7.2017 година *[CPD, Application No. 94-1 dated 18.4.2017, Opinion dated 13.7.2017]*

КЗД, Претставка бр. 08-80 од 4.4.2017 година, Мислење бр. 08-80 од 19.5.2017 година *[CPD, Application No. 08-80 dated, 4.4.2017 Opinion No. 08-80 dated 19.5.2017]*

КЗД, Претставка бр. 04-489 од 4.4.2017 година, Мислење бр. 04-489 од 19.5.2017 година *[CPD, Application No. 04-489 dated 4.4.2017, Opinion No. 04-489 dated 19.5.2017]*

КЗД, Претставка бр. 07-839 од 24.10.2013 година, Мислење од 19.5.2016 година *[CPD, Application No. 07-839 dated 24.10.2013, Opinion dated 19.5.2016]*

КЗД, Претставка бр. 07-778 од 2013 година *[CPD, Application No. 07-778 dated 2013]*

КЗД, Претставка бр. 07-572 од 2013 година *[CPD, Application No. 07-572 dated 2013]*

Коалиција сексуални и здравствени права на маргинализирани заедници Скопје. 2018. *[Coalition Sexual and Health Rights of Marginalised Communities Skopje. 2018]*

Коалиција сексуални и здравствени права на маргинализирани заедници. 2015. Користењето дроги и живеењето со ХИВ во образованието. Скопје *[Coalition Sexual and Health Rights of Marginalised Communities. 2015. Drug Use and Living with HIV in Education. Skopje]*

Коалиција сексуални и здравствени права на маргинализирани заедници. 2011. Хомосексуалноста во образованието во Република Македонија. Скопје *[Coalition Sexual and Health Rights of Marginalised Communities. 2011. Homosexuality in Education in the Republic of Macedonia. Skopje]*

Конвенција за државјанство *[European Convention on Nationality. European Treaty Series – No. 166, Strasbourg, 6.XI.1997]*

Конвенцијата за елиминација на сите форми на дискриминација врз жените *[Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), G.A. Res. 34/180, U.N GAOR 34th Sess., Supp. No.46 at 193, U.N. Doc. A/34/46, 1981]*

Конвенција за правата на лицата со хендикеп *[UN Convention on the Rights of Persons with Disabilities, UN Doc. A/RES/61/611), dated 13 December 2006]*

Конвенцијата на УНЕСКО против дискриминација во образованието *[UNESCO Convention against Discrimination in Education, CPG.61/VI.11y/AFSR, Paris, 14 December 1960]*

Кимов, Ѓ., Кимова, Т. 2019. Барометар за еднакви можности. Мисија на ОБСЕ во Скопје. Скопје. *[Kimov, Ǵ., Kimova, T. 2019. Barometer of Equal Opportunities. OSCE Mission to Skopje. Skopje.]*

Коментар на Протоколот бр. 12 кон Европската конвенција за човековите права и основните слободи *[Explanatory Report to the Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms. 2000. European Treaty Series – No. 177. Council of Europeѓ*

Котевска, Б. 2016. Стереотипи, предрасуди и дискриминација во образованието: Фокус на учебниците за основното образование. Мисија на ОБСЕ во Скопје и Комисија за заштита од дискриминација, Скопје *[Kotevska, B. 2016. Stereotypes, Prejudice and Discrimination in Education: Focus on Primary Education Textbooks. OSCE Mission to Skopje and Commission for Protection against Discrimination. Skopje]*

Котевска, Б. 2013. Водич за основи за дискриминација. Мисија на ОБСЕ во Скопје. Скопје *[Kotevska, B. 2013. Gude on Discrimination Grounds. OSCE Mission to Skopje. Skopje]*

Коцевски, Г. 2020. Преминување на товарот на докажување во судските постапки за заштита од дискриминација, Анализа на и препораки за унапредување на ефективноста на судската заштита од дискриминација, документ за јавни политики. Коалиција „Сексуални и здравствени права на маргинализираните заедници“ МАРГИНИ Скопје, Мрежа за заштита од дискриминација. Скопје. *[Kocevski, G. 2020. Shifting the Burden of Proof in Court Proceedings on Protection against Discrimination, Analysis of and Recommendations for Improving the Effectiveness of the Judicial Protection against Discrimination, A Public Policy Document. Coalition Sexual and Health Rights of Marginalised Communities MARGINS Skopje, Network for Protection against Discrimination. Skopje]*

Кочоска, Е., Трпевска, М. 2020. Водич за соодветно приспособување. Мисија на ОБСЕ во Скопје. Скопје *[Kočoska, E., Trpevska, M. 2020. Guidelines for Reasonable Accommodation. OSCE Mission to Skopje. Skopje]*

КСЗД, Годишен извештај за 2022 година *[CPPD, 2022 Annual Report]*

КСЗД, Годишен извештај за 2021 година *[CPPD, 2021 Annual Report]*

КСЗД, Годишна програма за работа за 2022 година *[CPPD, 2022 Annual Work Programme]*

КСЗД, Годишен финансиски план за расходи за 2021 година *[CPPD, 2021 Annual Financial Plan of Expenditures]*

КСЗД, Деловник за работа на Комисијата за спречување и заштита од дискриминација, бр. 01-301/1 од 7.10.2021 година. Службен весник на РСМ бр. 232/2021 *[CPPD, Rules of Procedure for the work of the Commission for Prevention and Protection against Discrimination, No. 01-301/1 dated 7.10.2021, The Official Gazette of RNM No. 232/2021]*

КСЗД, Измени на Деловникот за работа на Комисијата за спречување и заштита од дискриминација, бр. 0101-301/3 од 29.12.2021 година *[CPPD, Amendments to the Rules of Procedure for the work of the Commission for Prevention and Protection against Discrimination, No. 0101-301/3 dated 29.12.2021]*

КСЗД, Општа препорака кон Државната изборна комисија од 3.12.2021 година *[CPPD, General Recommendation to the State Election Commission dated 3.12.2021]*

КСЗД, Општа препорака кон Управата за извршување на санкции од 3.12.2021 година *[CPPD, General Recommendation to the Directorate for Execution of Sanctions dated 3.12.2021]*

КСЗД, Општа препорака бр. 08-244/1 од 27.4.2022 година *[CPPD, General Recommendation No. 08-244/1 dated 27.4.2022]*

КСЗД, Општа препорака од 27.3.2023 година *[CPPD, General Recommendation dated 27.3.2023]*

КСЗД, Општа препорака од 8.4.2022 година *[CPPD, General Recommendation dated 8.4.2022]*

КСЗД, Општа препорака од 3.12.2021 година *[CPPD, General Recommendation dated 3.12.2021]*

КСЗД, Правилникот за безбедноста на обработката на личните податоци на КСЗД *[CPPD, Rulebook on the Security of Personal Data Processing in CPPD]*

КСЗД, Правилник за внатрешна организација *[CPPD, Rulebook on the Internal Organisation]*

КСЗД, Правилник за образецот, содржината и начинот на постапување при издавање, користење и одземање на службена легитимација на членови и вработени во стручната служба на Комисијата за спречување и заштита од дискриминација, 31.5.2022 година. Службен весник на РСМ бр. 123/2022 *[CPPD, Rulebook on the Form and the Contents of and the Work Method for Issuing, Using and Revoking the Official Identification Document of the Members and the Staff of the Professional Support Service of the Commission for Prevention and Protection against Discrimination, 31.5.2022. The Official Gazette of RNM No. 123/2022]*

КСЗД, Правилник за систематизација на работните места на стручната служба *[CPPD, Rulebook on the Systematisation of Work Positions in the Professional Support Service]*

КСЗД, Правилник за формирање советодавни тела од експерти за одредени специфични прашања поврзани со промоција, спречување и заштита од дискриминација, бр. 01-122/1 од 16.2.2023 година *[CPPD, Rulebook on the Setting Up of Advisory Expert Bodies for Particular Specific Issues Related to Promotion, Prevention and Protection against Discrimination, No. 01-122/1 dated 16.2.2023]*

КСЗД, Предлог за Годишниот буџет за 2022 година *[CPPD, 2022 Proposal Annual Budget]*

КСЗД, Претставка бр. 08-176/1 од 15.2.2023 година, Мислење од 11.4.2023 година *[CPPD, Application No. 08-176/1 dated 15.2.2023, Opinion dated 11.4.2023]*

КСЗД, Претставка бр. 08-520/1 од 29.9.2022 година, Мислење од 22.3.2023 година *[CPPD, Application No. 08-520/1 dated 29.9.2022, Opinion dated 22.3.2023]*

КСЗД, Претставка бр. 08-674/1 од 22.12.2022 година, Мислење од 16.3.2023 година *[CPPD, Application No. 08-674/1 dated 22.12.2022, Opinion dated 16.3.2023]*

КСЗД, Претставка бр. 08-574/1 од 7.11.2022 година, Мислење од 2.3.2023 година *[CPPD, Application No. 08-574/1 dated 7.11.2022, Opinion dated 2.3.2023]*

КСЗД, Претставка бр. 08-478/1 од 16.9.2022 година, Мислење од 2.3.2023 година *[CPPD, Application No. 08-478/1 dated 16.9.2022, Opinion dated 2.3.2023]*

КСЗД, Претставка бр. 08-374/1 од 6.7.2022 година, Мислење од 8.2.2023 година *[CPPD, Application No. 08-374/1 dated 6.7.2022, Opinion dated 8.2.2023]*

КСЗД, Претставка бр. 08-639/1 од 21.11.2022 година, Мислење од 8.2.2023 година *[CPPD, Application No. 08-639/1 dated 21.11.2022, Opinion dated 8.2.2023]*

КСЗД, Претставка бр. 08-613/1 од 21.11.2022 година, Мислење од 3.2.2023 година *[CPPD, Application No. 08-613/1 dated 21.11.2022, Opinion dated 3.2.2023]*

КСЗД, Претставка бр. 08-597/2 од 22.11.2022 година, Мислење од 1.2.2023 година *[CPPD, Application No. 08-597/2 dated 22.11.2022, Opinion dated 1.2.2023]*

КСЗД, Претставка бр. 08-525/1 од 5.10.2022 година, Мислење од 16.12.2022 година *[CPPD, Application No. 08-525/1 dated 5.10.2022, Opinion dated 16.12.2022]*

КСЗД, Претставка бр. 08-424 од 18.8.2022 година, Мислење од 13.12.2022 година *[CPPD, Application No. 08-424 dated 18.8.2022, Opinion dated 13.12.2022]*

КСЗД, Претставка бр. 08-369/1 од 1.7.2022 година, Мислење од 25.10.2022 година *[CPPD, Application No. 08-369/1 dated 1.7.2022, Opinion dated 25.10.2022]*

КСЗД, Претставка бр. 08-368 од 30.6.2022 година, Мислење од 12.10.2022 година *[CPPD, Application No. 08-368 dated 30.6.2022, Opinion dated 12.10.2022]*

КСЗД, Претставка бр. 08-343/1 од 20.6.2022 година, Мислење од 15.9.2022 година *[CPPD, Application No. 08-343/1 dated 20.6.2022, Opinion dated 15.9.2022]*

КСЗД, Претставка бр. 08-121/1 од 18.2.2022 година, Мислење од 16.8.2022 година *[CPPD, Application No. 08-121/1 dated 18.2.2022, Opinion dated 16.8.2022]*

КСЗД, Претставка бр. 08-506/1 од 30.12.2021 година, Мислење од 11.7.2022 година *[CPPD, Application No. 08-506/1 dated 30.12.2021, Opinion dated 11.7.2022]*

КСЗД, Претставка бр. 08-227/1 од 13.4.2022 година, Одлука од 11.4.2022 година, Мислење од 6.6.2022 година *[CPPD, Application No. 08-227/1 dated 13.4.2022, Decision dated 11.4.2022, Opinion dated 6.6.2022]*

КСЗД, Претставка бр. 08-305/1 од 8.10.2021 година, Мислење од 13.4.2022 година *[CPPD, Application No. 08-305/1 dated 8.10.2021, Opinion dated 13.4.2022]*

КСЗД, Претставка бр. 08-92/1 од 9.2.2022 година, Мислење од 13.4.2022 година *[CPPD, Application No. 08-92/1 dated 9.2.2022, Opinion dated 13.4.2022]*

КСЗД, Претставка бр. 08-34/3 од 9.12.2022 година, Мислење од 11.4.2022 година *[CPPD, Application No. 08-34/3 dated 9.12.2022, Opinion dated 11.4.2022]*

КСЗД, Претставка бр. 08-481, Одлука од 22.12.2021 година, Мислење од 28.3.2022 година *[CPPD, Application No. 08-481, Decision dated 22.12.2021, Opinion dated 28.3.2022*]

КСЗД, Претставка бр. 08-82/1, Одлука од 3.2.2022 година, Мислење од 7.3.2022 година *[CPPD, Application No. 08-82/1, Decision dated 3.2.2022, Opinion dated 7.3.2022*]

КСЗД, Претставка бр. 0801-413 од 1.12.2021 година, Мислење од 4.3.2022 година *[CPPD, Application No. 0801-413 dated 1.12.2021, Opinion dated 4.3.2022]*

КСЗД, Претставка бр. 0801-295/1 од 22.10.2019 година, Мислење од 17.2.2022 година *[CPPD, Application No. 0801-295/1 dated 22.10.2019, Opinion dated 17.2.2022]*

КСЗД, Претставка бр. 0801-15/1 од 3.1.2022 година, Мислење од 15.2.2022 година *[CPPD, Application No. 0801-15/1 dated 3.1.2022, Opinion dated 15.2.2022]*

КСЗД, Претставка бр. 08-89/1 од 8.10.2021 година, Мислење од 3.2.2022 година *[CPPD, Application No. 08-89/1 dated 8.10.2021, Opinion dated 3.2.2022]*

КСЗД, Претставка бр. 0801-458/1 од 15.12.2021 година, Мислење од 27.1.2022 година *[CPPD, Application No. 0801-458/1 dated 15.12.2021, Opinion dated 27.1.2022]*

КСЗД, Претставка бр. 0801-259 од 6.9.2021 година, Мислење од 24.12.2021 година *[CPPD, Application No. 0801-259 dated 6.9.2021, Opinion dated 24.12.2021]*

КСЗД, Претставка бр. 0801-275 од 21.9.2021 година, Мислење од 14.12.2021 година *[CPPD, Application No. 0801-275 dated 21.9.2021, Opinion dated 14.12.2021]*

КСЗД, Претставка бр. 0801-312 од 12.10.2021 година, Мислење од 13.12.2021 година *[CPPD, Application No. 0801-312 dated 12.10.2021, Opinion dated 13.12.2021]*

КСЗД, Претставка бр. 0801-265 од 14.9.2021 година, Мислење од 9.12.2021 година *[CPPD, Application No. 0801-265 dated 14.9.2021, Opinion dated 9.12.2021]*

КСЗД, Претставка бр. 0801-278/1 од 22.9.2021 година, Мислење од 22.11.2021 година *[CPPD, Application No. 0801-278/1 dated 22.9.2021, Opinion dated 22.11.2021]*

КСЗД, Претставка бр. 0801-269 од 23.9.2021 година, Мислење од 13.10.2021 година *[CPPD, Application No. 0801-269 dated 23.9.2021, Opinion dated 13.10.2021]*

КСЗД, Претставка бр. 0801-225 од 16.8.2021 година, Мислење од 8.10.2021 година *[CPPD, Application No. 0801-225 dated 16.8.2021, Opinion dated 8.10.2021]*

КСЗД, Претставка бр. 08-231/1 од 13.7.2019 година, Мислење од 13.9.2021 година *[CPPD, Application No. 08-231/1 dated 13.7.2019, Opinion dated 13.9.2021]*

КСЗД, Претставка бр. 0801-136 од 25.6.2021 година, Мислење од 30.8.2021 година *[CPPD, Application No. 0801-136 dated 25.6.2021, Opinion dated 30.8.2021]*

КСЗД, Претставка бр. 0801-228/3, Одлука од 17.8.2021 година, Мислење од 18.8.2021 година *[CPPD, Application No. 0801-228/3, Decision dated 17.8.2021, Opinion dated 18.8.2021*]

КСЗД, Претставка бр. 0801-232/1 од 19.7.2019 година, Мислење од 9.8.2021 година *[CPPD, Application No. 0801-232/1 dated 19.7.2019, Opinion dated 9.8.2021]*

КСЗД, Претставка бр. 0801-273 од 19.9.2019 година, Мислење од 19.7.2021 година *[CPPD, Application No. 0801-273 dated 19.9.2019, Opinion dated 19.7.2021]*

КСЗД, Претставка бр. 0801-18 од 17.2.2020 година, Мислење од 13.7.2021 година *[CPPD, Application No. 0801-18 dated 17.2.2020, Opinion dated 13.7.2021]*

КСЗД, Претставка бр. 0801-247/3 од 31.7.2019 година, Мислење од 12.7.2021 година *[CPPD, Application No. 0801-247/3 dated 31.7.2019, Opinion dated 12.7.2021]*

КСЗД, Претставка бр. 0801-119/1 од 15.6.2021 година, Мислење од 9.7.2021 година *[CPPD, Application No. 0801-119/1 dated 15.6.2021, Opinion dated 9.7.2021]*

КСЗД, Претставка бр. 0801-243/1 од 30.7.2019 година, Мислење од 8.7.2021 година *[CPPD, Application No. 0801-243/1 од 30.7.2019, Opinion dated 8.7.2021]*

КСЗД, Претставка бр. 0801-257 од 26.8.2019 година, Мислење од 7.7.2021 година *[CPPD, Application No. 0801-257 dated 26.8.2019, Opinion dated 7.7.2021]*

КСЗД, Претставка бр. 0801-257 од 26.8.2019 година, Мислење од 7.7.2021 година *[CPPD, Application No. 0801-257 dated 26.8.2019, Opinion dated 7.7.2021]*

КСЗД, Претставка бр. 0801-262/1 од 2.9.2019 година, Мислење од 7.7.2021 година *[CPPD, Application No. 0801-262/1 dated 2.9.2019, Opinion dated 7.7.2021]*

КСЗД, Претставка бр. 08-7 од 22.1.2020 година, Мислење од 7.7.2021 година *[CPPD, Application No. 08-7 dated 22.1.2020, Opinion dated 7.7.2021]*

КСЗД, Претставка бр. 0801-2781 од 26.9.2019 година, Мислење од 5.7.2021 година *[CPPD, Application No. 0801-2781 dated 26.9.2019, Opinion dated 5.7.2021]*

КСЗД, Претставка бр. 0801-139 од 28.6.2021 година, Мислење од 30.6.2021 година *[CPPD, Application No. 0801-139 dated 28.6.2021, Opinion dated 30.6.2021]*

КСЗД, Програма за волонтирање во стручната служба на КСЗД, бр. 01-207/1 од 6.4.2022 *[CPPD, Professional Support Service Volunteering Programme No. 01-207/1 dated 6.4.2022]*

КСЗД, Стратешкиот план за 2021–2026 година, октомври 2021 *[CPPD, 2021–2026 Strategic Plan, October 2021]*

КСЗД, Упатство за службени патувања и Правилник за користење на сопствено возило за службени потреби *[CPPD, Instructions for Official Travels and Rulebook on Using Personal Vehicles for Official Purposes]*

КСЗД, Функционалната анализа на КСЗД и План за подобрување 2021 *[CPPD, 2021 CPPD Functional Analysis and Improvement Plan]*

Меѓународната конвенција за елиминирање на сите форми на расната дискриминација *[International Convention on the Elimination of All Forms of Racial Discrimination (CERD), G.A. Res. 2106 (XX), U.N GAOR, Supp. No.14 at 47, U.N. Doc. A/6014, 1966]*

Меѓународната организација на трудот. Конвенцијата за дискриминацијата во вработувањето и професиите (1958) *[International Labour Organisation. Convention concerning Discrimination in Respect of Employment and Occupation (1958)]*

Меѓународниот пакт за граѓански и политички права *[International Covenant on Civil and Political Rights (ICCPR)), G.A. Res. 2200A (XXI), U.N GAOR, Supp. No.16 at 52, U.N. Doc. A/6316 (1966)]*

Мишев, С., Глигуроска, М. 2022. Извештај за спроведувањето на Законот за спречување и заштита од дискриминација (2019–2022). Мрежата за заштита од дискриминација. Скопје *[Mišev, S., Gliguroska, M. 2022. Report on Implementation of the Law on Prevention and Protection against Discrimination (2019–2022). Network for Protection against Discrimination. Skopje]*

Најчевска, М. 2019. Анализа за хармонизација на легислативата во областа на антидискриминацијата, Мисија на ОБСЕ во Скопје и Министерство за труд и социјална политика, Скопје *[Najčevska, M. 2019. Analysis of Harmonisation of Legislation in the Area of Anti-discrimination. OSCE Mission to Skopje and Ministry of Labour and Social Policy. Skopje]*

Најчевска, М., Кадриу, Б. 2008. Поимник на изрази поврзани со дискриминацијата, Мисија на ОБСЕ во Скопје и Македонски центар за меѓународна соработка. Скопје *[Najčevska, M., Kadriu, B. 2008. Terminology Glossary for Discrimination. OSCE Mission to Skopje and Macedonian Centre for International Cooperation. Skopje]*

Нацрт-упатството за државните органи за промоција и унапредување на еднаквоста и превенција од дискриминација, Национално координативно тело, Влада на Република Северна Македонија. Скопје *[Draft Guidelines for State Authorities on the Promotion and Advancement of Equality and Prevention of Discrimination. National Coordinating Body, The Government of the Republic of North Macedonia. Skopje]*

Незировиќ, Г. 2012. Постапки за заштита од дискриминација. Сараево *[Nezirović, G. 2012. Procedures for Protection against Discrimination. Sarajevo]*

НП, Годишен извештај за работата на Народниот правобранител за 2022 година *[OMB. The Ombudsman's 2022 Annual Work Report]*

НП, Годишен извештај за работата на Народниот правобранител за 2021 година *[OMB. The Ombudsman's 2021 Annual Work Report]*

НП, Годишен извештај за работата на Народниот правобранител за 2019 година *[OMB. The Ombudsman's 2019 Annual Work Report]*

НП, Годишен извештај за работата на Народниот правобранител за 2018 година *[OMB. The Ombudsman's 2018 Annual Work Report]*

НП, Годишен извештај за работата на Народниот правобранител за 2017 година *[OMB. The Ombudsman's 2017 Annual Work Report]*

НП, Годишен извештај за работата на Народниот правобранител за 2016 година *[OMB. The Ombudsman's 2016 Annual Work Report]*

НП, Годишен извештај за работата на Народниот правобранител за 2014 година *[OMB. The Ombudsman's 2014 Annual Work Report]*

НП, Годишен извештај за работата на Народниот правобранител за 2012 година *[OMB. The Ombudsman's 2012 Annual Work Report]*

НП, Годишен извештај за работата на Народниот правобранител за 2011 година *[OMB. The Ombudsman's 2011 Annual Work Report]*

НП, Претставка бр. 2447/17 *[OMB. Application No. 2447/17]*

НП, Претставка бр. 2148/16 *[OMB. Application No. 2148/16]*

НП, Претставка бр. 3988/15 *[OMB. Application No. 3988/15]*

НП, Претставка бр. 3512/14 *[OMB. Application No. 3512/14]*

НП, Претставка бр. 2527/14 *[OMB. Application No. 2527/14]*

НП, Претставка бр. 500/11 *[OMB. Application No. 500/11]*

Општ федерален закон за недискриминација на Белгија *[General Federal Non-discrimination Act of Belgium]*

Основен суд Битола, П4 бр. 123/17 од 30.3.2018 година *[Basic Court Bitola, P4 No. 123/17 dated 30.3.2018]*

Основен суд Битола, П4-130/16 од 3.10.2016 година *[Basic Court Bitola, P4-130/16 dated 3.10.2016]*

Основен суд Битола, ТС бр. 2/18 од 3.10.2018 година *[Basic Court Bitola, TS No. 2/18 dated 3.10.2018]*

Основен суд Велес, РО-106/13 од 17.4.2014 година *[Basic Court Veles, RO-106/13 dated 17.4.2014]*

Основен суд Делчево, П4 бр.14/2014 од 5.3.2016 година *[Basic Court Delčevo, P4 No.14/2014 dated 5.3.2016]*

Основен суд Кочани, П5 бр. 2/14 од 26.11.2014 година *[Basic Court Kočani, P5 No. 2/14 dated 26.11.2014]*

Основен суд Куманово, РО-17/18 од 3.5.2018 година *[Basic Court Kumanovo, RO-17/18 dated 3.5.2018]*

Основен граѓански суд Скопје, П4 бр. 775/19 од 22.4.2021 година *[Basic Civil Court Skopje, P4 No. 775/19 dated 22.4.2021]*

Основен граѓански суд Скопје, П4 бр. 265/20 од 22.3.2021 година *[Basic Civil Court Skopje, P4 No. 265/20 dated 22.3.2021]*

Основен граѓански суд Скопје, X РО бр.2824/19 од 2.2.2019 година *[Basic Civil Court Skopje, H RO No. 2824/19 dated 2.2.2019]*

Основен граѓански суд Скопје, РО-1969/17 од 20.3.2018 година *[Basic Civil Court Skopje, RO-1969/17 dated 20.3.2018]*

Основен суд Скопје во Скопје, 5 РО 87/17 од 27.2.2018 година *[Basic Court Skopje in Skopje, 5 RO 87/17 dated 27.2.2018]*

Основен суд Скопје 2 во Скопје, 7 РО 956/17 од 13.2.2018 година *[Basic Court Skopje 2 in Skopje, 7 RO 956/17 dated 13.2.2018]*

Основен суд Скопје 2 во Скопје, 16П-894/16 од 7.6.2017 година *[Basic Court Skopje 2 in Skopje, 16P-894/16 dated 7.6.2017]*

Основен суд Скопје 2 во Скопје, П4 бр. 641/17 од 1.11.2017 година *[Basic Court Skopje 2 in Skopje, P4 No. 641/17 dated 1.11.2017]*

Основен суд Скопје 2, РО-980/17 од 6.7.2017 година *[Basic Court Skopje 2, RO-980/17 dated 6.7.2017]*

Основен суд Скопје 2, РО-618/15 од 3.3.2016 година *[Basic Court Skopje 2, RO-618/15 dated 3.3.2016]*

Основен суд Скопје 2 во Скопје, П4 бр. 453/17 од 17.7.2017 година *[Basic Court Skopje 2 in Skopje, P4 No. 453/17 dated 17.7.2017]*

Основен суд Скопје 2 во Скопје, П4 1228/13 од 11.4.2014 година *[Basic Court Skopje 2 in Skopje, P4 1228/13 dated 11.4.2014]*

Основен суд Скопје 2 во Скопје, РО бр. 472/15 од 3.7.2015 година *[Basic Court Skopje 2 in Skopje, RO No. 472/15 dated 3.7.2015]*

Основен суд Скопје 2 во Скопје, РО бр. 1007/12 од 10.4.2014 година *[Basic Court Skopje 2 in Skopje, RO No. 1007/12 dated 10.4.2014]*

Основен суд Скопје 2 во Скопје, РО-814/14 *[Basic Court Skopje 2 in Skopje, RO-814/14]*

Основен суд Скопје 2 во Скопје, РО-971/14 *[Basic Court Skopje 2 in Skopje, RO-971/14]*

Основен суд Скопје 2 во Скопје, РО-784/14 *[Basic Court Skopje 2 in Skopje, RO-784/14]*

Основен суд Скопје 2 во Скопје, РО-972/14 *[Basic Court Skopje 2 in Skopje, RO-972/14]*

Основен суд Скопје 2 во Скопје, РО-531/13 *[Basic Court Skopje 2 in Skopje, RO-531/13]*

Основен суд Скопје 2, РО-433/12 *[Basic Court Skopje 2, RO-433/12]*

Основен суд Скопје 2 во Скопје, РО-2235/11 *[Basic Court Skopje 2 in Skopje, RO-2235/11]*

Основен суд Штип, РО.449/13 од 17.2.2014 година *[Basic Court Štip, RO.449/13 dated 17.2.2014]*

Општ коментар бр. 2 на Комитетот за правата на лицата со попреченост за член 9: Пристапност *[General Comment No. 2 of the Committee on the Rights of Persons with Disabilities on Article 9: Accessibility, CRPD/C/GC/2, 22 March 2014]*

Општ коментар бр. 22 на Комитетот за човекови права за член 18: Слобода на мисла, уверување и религија *[General Comment No. 22 of the Human Rights Committee on Article 18: Freedom of Thought, Conscience and Religion, 30 July 1993. CCPR/C/21/Rev.1/Add.4]*

Општа препорака бр. 25 на Комитетот за елиминација на дискриминација врз жените за член 4, став 1: Привремени посебни мерки *[General Recommendation No. 25 of the Committee on the Elimination of Discrimination against Women on Article 4, Paragraph 1: Temporary Special Measures, 2004]*

Општи согледувања за толкувањето и спроведувањето на Париските принципи од страна на Меѓународниот координативен комитет на националните институции за промоција и заштита на човековите права, 21 февруари 2018 година *[General Observations on Interpreting and Implementing the Paris Principles of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, 21 February 2018]*

Повелба за фундаментални права на ЕУ *[Charter of Fundamental Rights of the European Union, Solemn Proclamation by the President of the European Parliament, the European Commission and the Council of Ministers, Nice, from 7 December 2,000 OJ C 364/1]*

Попоска, Ж. 2018. Толкувач на Меѓународната конвенција за правата на лицата со попреченост на Организацијата на Обединетите нации. Полио плус – движење против хендикеп. Скопје *[Poposka, Ž. 2018. Commentary to the United Nations Convention on the Rights of Persons with Disabilities. Polio Plus – Movement against Disability. Skopje]*

Попоска, Ж. 2012. Дискриминација врз основа на хендикеп во меѓународното право за правата на човекот. Универзитет „Свети Кирил и Методиј" – Скопје, Правен факултет „Јустинијан I". Скопје *[Poposka, Ž. 2012. Discrimination on Grounds of Disability in the International Human Right Law. Ss. Cyril and Methodius University in Skopje, Iustinianus Primus Faculty of Law. Skopje]*

Попоска, Ж., Димова, Л., Велковска, Б., Георгиевски, А., Коцевска, Л. 2014. Практикум на Законот за спречување и заштита од дискриминација. Мисијата на ОБСЕ во Скопје и Академија за судии и јавни обвинители. Скопје *[Poposka, Ž., Dimova, L., Velkovska, B., Georgievski, A., Kocevska, L. 2014. Practice Handbook on the Law on Prevention and Protection against Discrimination. OSCE Mission to Skopje and Academy for Judges and Public Prosecutors. Skopje]*

Попоска, Ж., Јовевски, Л. 2017. Антидискриминациско право. Мисија на ОБСЕ во Скопје и Правен факултет Јустинијан I Скопје. Скопје *[Poposka, Ž., Jovevski, L. 2017. Anti-discrimination Law. OSCE Mission to Skopje and Iustinianus Primus Faculty of Law in Skopje. Skopje]*

Попоска, Ж., Михајлоски, З., Георгиевски, А. 2013. Водич за улогата на Комисијата за заштита од дискриминација во судска постапка и преминување на товарот на докажување. Мисијата на ОБСЕ во Скопје. Скопје *[Poposka, Ž., Mihajloski, Z., Georgievski, A. 2013. Guidelines on the Role of the Commission for Protection against Discrimination in Court Proceedings and Shifting the Burden of Proof. OSCE Mission to Skopje. Skopje]*

Попоска, Ж., Шаврески, З., Амдију, Н. 2014. Водич за соодветно приспособување. Мисијата на ОБСЕ во Скопје и Комисија за заштита од дискриминација. Скопје *[Poposka, Ž., Šavreski, Z., Amdiju, N. 2014. Guidelines for Reasonable Accommodation. OSCE Mission to Skopje and Commission for Protection against Discrimination. Skopje]*

Препорака на Комисијата (ЕУ) 2018/951 за стандардите за телата за еднаквост *[Commission Recommendation (EU) 2018/951 of 22 June 2018 on Standards for Equality Bodies, C/2018/3850, OJ L 167]*

Принципи поврзани со статусот и функционирањето на националните институции за заштита и промоција на човековите права *[Principles Relating to the Status and Functioning of National Institutions for the Promotion and Protection of Human Rights, United Nations General Assembly, A/RES/48/134, 85th Plenary Meeting, held on 20 December 1993]*

Полио Плус движење против хендикеп. 2006. Развој на Антидискриминационото законодавство во Европа; споредба на 25 земји членки на ЕУ. Скопје *[Polio Plus – Movement against Disability. 2006. The Development of the Anti-discrimination Legislation in Europe: Comparing the 25 EU Member States. Skopje]*

Практикум на Законот за спречување и заштита од дискриминација. 2014. Мисија на ОБСЕ во Босна и Херцеговина. Сараево *[Practice Handbook on the Law on Prevention and Protection against Discrimination. 2014. OSCE Mission to Bosnia and Herzegovina. Sarajevo]*

Принципи на Генералното собрание на ОН кои се однесуваат на статусот на националните институции за човекови права (Резолуција 48/134) *[Principles of the UN General Assembly Relating to the Status of the National Human Rights Institutions (Resolution 48/134)]*

Прирачник за номотехнички правила. 2007. Влада, Секретаријат за законодавство. Скопје *[Handbook on Nomotechnical Rules. 2007. The Government, Secretariat for Legislation. Skopje]*

Прирачникот за промоција и унапредување на еднаквоста и превенција од дискриминација. 2023. Национално координативно тело. Влада на Република Северна Македонија. Скопје *[Handbook on Promoting and Advancing Equality and Preventing Discrimination. 2023. National Coordinating Body. The Government of the Republic of North Macedonia. Skopje]*

Протокол бр. 1 кон Европската конвенција за човековите права и основните слободи *[Protocol No.1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 009, Paris, 20.03.1952]*

Протокол бр. 12 кон Европската конвенција за човековите права и основните слободи *[Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms), ETS No.177]*

Регионален суд во Софија, Одлука бр. 164 за граѓански спор 2860/2006 од 21 јуни 2006 *[Regional Court in Sofia, Decision No. 164 regarding the Civil Dispute 2860/2006 dated 21 June 2006]*

Спасовски, О. 2015. Сегрегација на Ромите во образованието. Фондација Отворено општество – Македонија. Скопје *[Spasovski, O. 2015. Segregation of Roma People in Education. Foundation Open Society – Macedonia, Skopje]*

Топиќ, Б. 2015. Товар на докажување на директна и индиректна дискриминација. Коментар. Сараево *[Topić, B. 2015. Burden of Proof in Direct and Indirect Discrimination. Commentary. Sarajevo]*

Управен суд Скопје, У бр. 909/2015 од 2.10.2017 *[Administrative Court Skopje, U No. 909/2015 dated 2.10.2017]*

Устав. Службен весник бр. 52/1991 од 22 ноември 1991 година *[The Constitution. The Official Gazette No. 52/1991 dated 22 November 1991]*

Уставен суд, Одлука У бр. 116/2017-0-0 од 27.6.2018 *[Constitutional Court, Decision U No. 116/2017-0-0 dated 27.6.2018]*

Уставен суд, Одлука У бр. 24/2012-0-0 од 20.11.2012 *[Constitutional Court, Decision U No. 24/2012-0-0 dated 20.11.2012]*

Хелсиншки комитет за човекови права. 2016. Месечен извештај за човековите права, јуни 2016 година *[Helsinki Committee for Human Rights. 2016. Monthly Human Rights Report, June 2016]*

ХЕРА – Асоцијација за здравствена едукација и истражување. 2016. Проценка на потребите на локалните механизми за заштита од дискриминација и пристап до правдата во општините: Битола, Куманово, Струмица, Тетово и Штип. Скопје *[HERA – Health Education and Research Association, 2016. Needs assessment of Local Mechanisms for Protection against Discrimination and Access to Justice in the Municipalities of: Bitola, Kumanovo, Strumica, Tetovo and Štip. Skopje]*

Цековски, И., Димитриевски, В. 2018. Правни потреби и пристап до правда за луѓето кои инјектираат дроги и сексуалните работници во Македонија. ХОПС - опции за здрав живот. Скопје *[Cekovski, I., Dimitrievski, V. 2018. Legal Needs and Access to Justice for People Who Inject Drugs and Sex Workers in Macedonia. HOPS – Healthy Options Project Skopje. Skopje]*

Чавдар, К., Чавдар, К. 2016. Коментар на Законот за парнична постапка *[Čavdar, K., Čavdar, K. 2016. Commentary on the Law on Civil Procedure]*

Чавдар, К., Чавдар, К. 2014. Коментар на Законот за облигациони односи. *[Čavdar, K., Čavdar, K. 2014. Commentary on the Law on Obligations]*

Чаловска, Н. 2014. Тестирање ситуација – метод за докажување дискриминација. Мисија на ОБСЕ во Скопје и Хелсиншки комитет за човекови права. Скопје *[Čalovska, N. 2014. Situation Testing: A Method of Proving Discrimination. OSCE Mission to Skopje and Helsinki Committee for Human Rights. Skopje]*

Чаловска-Димовска, Н., Чубриќ, С. 2016. Користење на actio popularis во случаи на дискриминација. Мисија на ОБСЕ во Скопје и Хелсиншки комитет за човекови права. Скопје *[Čalovska-Dimovska, N., Čubrić, S. 2016. Use of Actio Popularis in Cases of Discrimination. OSCE Mission to Skopje and Helsinki Committee for Human Rights. Skopje]*

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