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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW

ON THE PROTECTION AGAINST DISCRIMINATION
(“September draft”)

of “the former Yugoslav Republic of Macedonia”

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I - GENERAL REMARKS

Article 1

This Law regulates and advances the right to equality and provides protection against all forms of discrimination.

Article 2

The goal of this Law is to provide the right of equality for every person in securing the rights guaranteed by the Constitution, the law, the international treaties and effective protection from discrimination.

Article 3

Any direct or indirect discrimination, calling upon or instigating discrimination is forbidden, as is helping in discriminatory action on the basis of sex, race, color, ethnic affiliation, language, citizenship, social origin, religion or faith, education, political orientation, birth or social status, disability, age, sexual orientation, family or marital condition, property status, health condition or any other basis envisioned by law or by international treaty (in the document further on: discriminatory basis).

Article 4

This Law provides protection against discrimination to all natural persons in the Republic of Macedonia.

Article 5

In the execution of the jurisdictions the bodies of the state administration, the bodies of the units of the local self government, other institutions and organizations executing public authorizations, as well as public bodies and services will respect the provisions of this Law and will take all necessary measures in reaching the goals underlined by the Law.

Definitions

Article 6

Certain expressions used in this law have the following meaning:

1. Affirmative measures are activities of the state bodies directed toward positive discrimination, meaning, reduction, lowering or eliminating the factual inequality occurring as a result from previous discrimination.
2. Marginalized group is a group of individuals united by: specific position in the society, being an object of prejudices, having special features that make them viable for certain types of violence, have lesser possibility to enjoyment and protection of their rights.
3. Sexual orientation means emotional, sexual and romantic attraction toward another person, which is usually connected with the sex of the persons involved.
4. Sexual harassment is unwanted behavior of a sexual type being expressed in a physical, verbal or any other manner, and whose goal is to cause injury of the dignity of a person and/or to create hostile, threatening and humiliating surrounding, especially when the refusal to accept such a behavior or such a pressure, may affect the decision making, which will have influence that person.

II - FORMS OF DISCRIMINATION

Direct and indirect discrimination

Article 7

(1) Direct discrimination is every unfavorable action, differentiation, exclusion, limitation or privilege, which, as a result have or could have taking away, damaging or limiting the equal recognition or enjoyment of the human rights and basic freedoms, on the basis of Article 3 of this Law, compared with the treatment other person had or could have in same or similar circumstances.

(2) Indirect discrimination is putting any person in an unfavorable state in comparison to other persons according to the basis of Article 3 of this Law, by adopting regulations or criteria or by undertaking certain actions, that by content are neutral, except when the mentioned regulations, criteria or practices are objectively justified by a legitimate cause, and the content for achieving that goal are appropriate and necessary.

Harassment

Article 8

(1) The harassment represents a form of discrimination in the conditions of unwanted behavior, related to the provisions in Article 3 of this Law, which has a goal to damage the dignity of certain person or to create threatening, hostile, degrading, humiliating or frightening atmosphere.

(2) As a harassment, the sexual harassment is considered as well, as are the threat of discrimination, prosecution or racial discrimination, as well as building and sustaining of architectonic surrounding, which makes the access hard for persons with disability to the public places, to be exact a lack of appropriate adaptations for the disabled.

Discrimination of the persons with intellectual or physical disability

Article 9

(1) The lack of appropriate adaptation for the persons with intellectual and physical disability will be considered as discrimination.

(2) As a appropriate adaptation will be considered the adaptation that does not cause unproportional burden, or burden that can effectively be or is compensated with other existing measures.

(3) As discrimination in the sense of this Law will be considered omission to make possible to the persons with intellectual and physical disability, with regard to their specific needs, the use of publicly available resources or taking part in the public and social life or access to employment and the appropriate work conditions.

Incitement of Discrimination

Article 10

As an incitement of discrimination will be considered any activity with which somebody directly or indirectly calls upon, encourages, gives instructions or persuades somebody to commit discrimination.

Segregation

Article 11

(1) Segregation is considered as discrimination in the sense of Article 3 of this Law.

(2) Segregation in the sense of this Law represents forced and systematic special separation of persons on the basis of Article 3 of this Law, meaning every threat, restriction or use of force aiming at changing the ethnic, racial or social structure of a region or locality.

Victimization

Article 12

(1) Victimization is considered as discrimination in the sense of Article 3 of this Law, meaning unfavorable action toward a person that took or it is assumed that he/she has taken or that will take any action for protection from discrimination.

Aggravating form of discrimination

Article 13

As an aggravating form of discrimination in the sense of this Law will be considered the discrimination inflicted to a certain person on multiple grounds of Article 3 of this Law (multiplied discrimination), discrimination performed numerous times (repeated discrimination), one performed in a longer period of time (extended discrimination) or the one which has particularly severe consequences for the victim of discrimination.

III - EXCEPTIONS FROM DISCRIMINATION

General exceptions

Article 14

The prohibition of the discrimination contained in this Law will not apply to the cases when objectively justifiable cause exists according to the Constitution, the law and the international treaties.

Special exceptions

Article 15

The following will not be considered as discrimination:

- 1) action that aims at protecting the health of the people, the general safety and prevention of executing criminal acts, that needs to be justified with a legitimate goal and reasonable and required means to achieve the aim;
- 2) action from the bodies in charge, that aims at improving the position of the members of the communities in a way and through a procedure provided by law;
- 3) different treatment of foreigners in a way and through a procedure provided by law;
- 4) different treatment of the persons regarding certain action when the nature of the that action and the conditions in which it is accomplished are related to some of the bases of Article 3 of this Law, i.e. that represents crucial and decisive condition for the accomplishment of that action;

- 5) different treatment of the persons on the basis of religion, religious belief or sex in connection to the occupation taking place in religious institutions or organizations, when according to the character of the specific occupation or activity, or because of the conditions in which it takes place, the religion, the beliefs or the sex represent a crucial and decisive condition for the accomplishment of the work;
- 6) The requirement of certain age, professional experience or number of years in the working relations, the training and the education, when they represent crucial and decisive condition in accomplishing the work and career advancement;
- 7) The special protection provided by the law for pregnant women, mothers, children without parents, children without parental care, minors, single parents, persons with special needs;
- 8) Measures envisioned by law for the advancement of employment;
- 9) Different treatment of the persons with intellectual and physical disability, according to the law;
- 10) Measures in the area of education and training directed at creating equal opportunities for men and women;
- 11) Measures for protection of the difference and the identity of the persons belonging to different communities and their right to care and develop their own identity individually or in a community with other members;
- 12) The affirmative actions, that aims at protection of marginalized groups, meaning elimination or reduction of the factual inequalities, and if the measure taking with reasonable means is justified and proportional to the aim.

IV - AREA OF IMPLEMENTATION

Article 16

This Law applies to all state bodies, the bodies of the units of the local self government, bodies with public competences and the actions of all legal entities and persons in the area of:

- 1) labor and labor relations, the possibility of executing independent activity, including the criteria of selection and conditions for employment and advancement, access to all types of professional improvements, vocational training, betterment and retraining for a different job;
- 2) Education, science and sports;
- 3) Social security, including the area of social care, pension and health insurance and protection;
- 4) Justice and administration;
- 5) Housing;
- 6) Public information and media;
- 7) Access to goods and services;

- 8) Membership and action in the unions, political parties or any other non-governmental organizations;
- 9) Cultural and artistic creation;
- 10) Other areas provided by law.

V - INSTITUTIONAL FRAMEWORK

Body in charge for protection against discrimination

Article 17

(1) The Ombudsman in the framework of its competences undertakes activities for the advancement of the right of equality and for protection of the persons victims of discrimination.

1) The Ombudsman undertakes the activities from the Paragraph 1 of this Article in a way and through a procedure stipulated by law.

2) The activities for protection against discrimination could be taken by another body provided by law.

3) The state administration, the bodies of the units of local self government, other bodies and organizations executing public competences, public institutions and services are required to inform the institution in charge from the paragraph 1 of this Article about the emergence and forms of discrimination.

Taking part in court proceedings

Article 18

(1) The Ombudsman, upon request of the person claiming to be a victim of discrimination, as an involved party, can take part in the court proceedings, as provided for in the Article 21 of this Law.

VI - LEGAL PROTECTION

Disciplinary responsibility

Article 19

Every discriminatory act made while executing official duties, assumes disciplinary liability according to the way and the procedure provided by law.

Protection in administrative procedure

Article 20

(1) In the administrative procedure an appeal is allowed for protection against discrimination.

(2) Against the final administrative decision the person victim of discrimination can initiate administrative court case.

(3) Administrative proceedings and the administrative court case are conducted in a way and in a procedure stipulated by law.

VIII - COURT PROCEEDINGS FOR PROTECTION AGAINST DISCRIMINATION

Right to protection

Article 21

(1) Person considering that due to discrimination certain right of his/hers was violated, could ask for protection of that right in a procedure in which it would be main issue, and he/she can ask protection in a separate procedure regulated in the Article 22 of this Law.

(2) With the provisions in this Law, the provisions in the separate laws are not amended, except the regulations regarding the burden of proof (Article 25).

(3) The court and other bodies implementing the procedure are required to undertake their actions in the procedure urgently and without delay, so that all of the discrimination claims are investigated.

Separate suits for protection against discrimination

Article 22

(1) Person claiming to be a victim of discrimination according to the provisions of this Law is authorized to bring an action and to demand:

1) to be established that the defendant has harmed the right of the plaintiff to equal procedure, namely that the acting taken or omission can directly lead to harming the equality rights during the procedure (action for establishment of discrimination);

2) to forbid taking actions with which the right of the plaintiff is violated or can be violated, and to implement actions with which the discrimination or its consequences are removed (action to prohibit or eliminate the discrimination);

3) to claim the pecuniary and non-pecuniary damages made through violation of the rights protected by this Law (action to claim damages);

4) to publish in the media the verdict with which the disrespect of the rights of equal procedure has been established on the expense of the defendant.

(2) For the requests from paragraph 1 of this Article the court decides by applying the provisions of the Law for Civil Procedure, unless this law does not otherwise regulates.

(3) The requests from paragraph 1 of this Article can be submitted along with the requests for the protection of other rights for which it can be decided in the civil proceedings if all of the requests are in interconnected relationship and if same court has the jurisdiction on them, regardless if for those requests it is regulated that they be solved in regular or special civil suits, except when it comes to suits concerning trespassing. In that case appropriate rules about the type of suit in question are applied if with this Law is not otherwise regulated.

(4) The request for publishing the verdict from paragraph (1), point 4 of this Article will be adopted by the court if it is established:

1) that the violation of the rights for equal procedure happened with the involvement of the media, or

2) that the information on acting, that violated the right of equal procedure was published in the media, and the publication of the verdict is required for full damages or for the protection from unequal acting in future cases.

(5) If the request for the publication of the verdict is adopted, the court will order for the verdict to be published in full. By exception, the court may state that the verdict should be published in parts or from the text of the verdict certain personal data to be taken out if that is necessary for protection of the privacy of the parties and others, and does not bring in question the aim of the given legal protection.

(6) The verdict ordering publishing in the media is obligatory for the publisher of the media in which the verdict needs to be published, regardless of that if he was a party in the proceedings.

Jurisdiction

Article 23

(1) For the requests from the Article 21 of this Law in the first instance, a Basic court has jurisdiction, if it is not otherwise regulated by Law.

(2) For the lawsuits of Article 21 of this Law, apart from the court with general competences, the court in which area the plaintiff lives, or has a residence, also has a jurisdiction, as well as the court on which area the damages occurred or the discriminatory action has taken place.

Temporary measures

Article 24

(1) Prior to the beginning or during the proceedings regarding the action from the Article 21 of this Law the court can, on the suggestion of a party, decide upon temporary measures.

(2) With the submission of the proposal for a temporary measure, it is necessary that:

- the plaintiff has made probable that his right on equal procedure has been violated;
- the granting of the measure is necessary to remove the danger of inflicting damages that cannot be compensated, and in the cases of especially aggravating violations of the right of equal action or prevention of violence.

(3) For the temporary measures from the paragraph (1) of this Article decides the court in charge for the suits in a way and through a procedure regulated by the Law.

Burden of proof

Article 25

(1) If the party in a court or other procedure claims that the right on equal action was disrespected according to the regulations of this Law, that party is obligated to present all of the facts that justify such claim. In that case, the burden of proving that there was no discrimination lies with the opposite party.

(2) The provision in paragraph 1 of this Article is not applicable in misdemeanor and criminal proceedings.

Third parties

Article 26

(1) In the proceedings regarding the action from the Article 21 of this Law as an involved party on the side of the person claiming to be a discrimination victim, another body, organization, institution, association or other person can be involved, which in the framework of his activities is working on the issue of the protection of the rights of equal action in regard of the group

whose rights are decided in the proceedings. For the third party to take part, court decides with the application of the Law on Civil Procedure in the appropriate way.

(2) The court will allow for the third party to be involved, as stated in the paragraph 1 of this Article, only by approval of the person on whose side the third party wants to be involved.

(3) The third party from the paragraph 1 of this Article can take actions in the proceedings and within it has all of the rights belonging to him.

(4) Regardless of the result of the case, the third party from the paragraph 1 of this Article alone bears the expenses of his involvement in the case.

Deadline for the obligation fulfillment and its execution

Article 27

(1) Regarding the request from the Article (22), paragraph 1, points 1 and 4, the court may decide for the appeal not to delay the fulfillment or to determine a shorter term for the fulfillment of obligations of the opponent.

Extraordinary legal remedies

Article 28

In the proceedings from the Article 21 a revision is always allowed.

Joint action for protection against discrimination

Article 29

(1) Associations, bodies, institutions or other organization established according with the existing regulations and having justified interest for protection of the joint interests of a certain group or in the framework of their activities they deal with the protection of the rights of equal action, could bring an action and in the court proceedings they can present them selves as a co-plaintiff against the person that disrespected the right of equal action if they make it probable that with the actions of the sued party the right of acting was disrespected for a larger number of persons, which generally belong to the group whose rights are protected by the party suing.

(2) In the action from the paragraph 1 of this Article a demand can be put forward:

- 1) to determine that the actions of the defendant has violated the right of equal action in regard to the members of the group;
- 2) to forbid activities with which the right of equal acting is violated or might be violated, meaning to execute activities with which the discrimination is removed or its consequences regarding the members of the group;
- 3) the judgment with which the disrespect of the rights for equal action is established, to be published in the media at the expense of the sued party.

(3) For the action from the paragraph 1 of this Article decision making in first instance is taken by the basic court territorially in charge for the opponent or the basic court in charge at the place where the discriminatory act occurred.

(4) Other regulations from this Law concerning the actions from the Article (21), paragraph 1 of this Law, are applied on the suit from the paragraph 1 of this Article in the appropriate way.

(5) The action from the paragraph 1 of this Article is allowed if there is an concurrence from the person that claims being a victim of discrimination.

VII - MISDEMEANOR SANCTIONS

Article 30

(1) A fine in the amount of 400 to 600 EUR exchanged in denar value will be ruled for misdemeanor for anybody who will hurt the dignity of another, aiming to cause fear or create hostile, humiliating or insulting environment on the basis of sex, race, color, national and social origin, political or religious beliefs, property and social status.

(2) With the misdemeanor sanction of the paragraph 1 of this Article for a misdemeanor the responsible person will be punished in the legal entity, state administration, body of the unit of local self government or a body with public competences.

(3) A fine in the amount of 600 to 800 EUR exchanged in denar value will be ruled for misdemeanor from the paragraph 1 of this Article when done by a person, which executes certain work as a registered trade.

(4) A fine in the amount of 800 to 100 EUR exchanged in denar value will be ruled against a legal entity for the misdemeanor from the paragraph 1 of this article.

Article 31

(1) A fine in the amount of 400 to 600 EUR exchanged in denar value will be ruled for misdemeanor to anybody which will harm the dignity of another with activities of sexual nature with a goal of causing fear or creating hostile, humiliating or insulting environment.

(2) The fine from the paragraph 1 of this Article will be ruled against the responsible person in the legal entity, state administration, bodies of units of local self government or a body with public competences.

(3) A fine in the amount of 600 to 800 EUR exchanged in denar value will be ruled for misdemeanor from the paragraph 1 of this Article when done by a person, which executes certain work as a registered trade.

(4) A fine in the amount of 800 to 1000 EUR exchanged in denar value will be ruled against a legal entity for the misdemeanor from the paragraph 1 of this Article.

Article 32

(1) A fine in the amount of 400 to 600 EUR exchanged in denar value will be ruled against the responsible person in the state administration and the body of the unit of local self government, which will not report to the Ombudsman the existence of probable suspicion of discrimination, for which he/she found out during the course of performing his/hers duties.

(2) If the misdemeanor from the paragraph 1 of this Article is made with an intent, a fine in the amount of 600 to 800 EUR exchanged in denar value will be ruled.

Article 33

(1) A fine in the amount of 400 to 600 EUR exchanged in denar value will be ruled against the person in charge in the state administration or in the body of the unit of local self government if upon a request from the Ombudsman in a period of 30 days from receiving the request, does not provide data connected to the discrimination.

(2) The fine from the paragraph 1 of this Article will be ruled against the person in charge in the state administration or in the body of a unit of self government if upon request from the Ombudsman in a period of 30 days from receiving the request does not allow access to a document.

Article 34

(1) A fine in the amount of 400 to 600 EUR exchanged in denar value will be ruled against the person which will intentionally bring in an unwillful position the person which in good faith reported the discrimination or in any way took part in the act regarding discrimination in accordance to the regulations of this Law.

(2) The fine from the paragraph 1 of this Article will be ruled also against the person that intentionally brings into unwillful position the person that was witness of discrimination or refused an order to behave in a discriminatory manner.

(3) For an attempt for the misdemeanor from the paragraphs 1 and 2 of this Article the person will be punished.

(4) The fine from the paragraph 1 of this Article will be ruled for misdemeanor to the person in charge in the legal entity, state administration, the unit of local self government or organizations with public jurisdictions.

(5) The fine for a misdemeanor from the paragraphs (1) and (2) of this Article will be ruled against a person, which executes certain work as a registered trade.

(6) (1) A fine in the amount of 600 to 800 EUR exchanged in denar value will be ruled against a legal entity for the misdemeanor regarding the paragraphs 1 and 2 of this Article.

VIII - TRANSITIONAL AND FINAL PROVISIONS

Article 35

This Law enters into force on the eighth day from the day of its publication in the Official Gazette of the Republic of Macedonia, and is will be applied after the end of three months from the day of entering into force.