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Manual on Antidiscrimination

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Skopje, 2022

HORIZONTAL FACILITY FOR THE WESTERN BALKANS AND TURKEY II

Promotion of Diversity and Equality in North Macedonia



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INTRODUCTION

The Action “Promotion of Diversity and Equality in North Macedonia” is part of the joint EU and Council of Europe programme Horizontal Facility for the Western Balkans and Turkey 2019-2022 programme aiming at supporting beneficiaries of the Western Balkan Region and Turkey to align with Council of Europe standards. The project supports beneficiaries in North Macedonia on countering hate speech and hate crime; promoting and protecting rights of LGBTI persons; strengthening anti-discrimination institutions/mechanisms and coordination in line with the standards of the Council of Europe and monitoring bodies’ findings, notably those of the European Commission against Racism and Intolerance (ECRI).

With the objective to support the fight against discrimination the Action supported the creation of this Anti-Discrimination Manual. The Manual aims to reach out to the general populations and to help better understand the concepts of discrimination and antidiscrimination, and to learn more about the available local and international mechanisms for protection against discrimination. The Anti-Discrimination Manual contains practical examples which give easier understanding of the complexity of discrimination and the steps that relevant institutions are taking when discrimination occurs.

This document is split into 4 parts. The first part explains discrimination as a concept, why and where it happens, why is a human rights violation, what is not discrimination and what are the basics of discrimination, what drives it and how does it harm individuals, groups, institutions, organisations and society in general.

The second part goes more thoroughly into the concept of anti-discrimination, what is discrimination, how to prevent it and how can each person fight against discrimination, what to do when confronted with discrimination and what to do if you are a witness of discrimination.

The third part is more focused on discrimination and antidiscrimination in international context and gives an overview of international documents and bodies of United Nations, European Union and Council of Europe. The part that focuses on the European Court of Human Rights includes practical cases which went in front of the European Court of Human Rights.

The last, fourth part, discrimination and anti-discrimination in Macedonian contexts gives an overview of the existing Macedonian legislation related to the protection against discrimination and the available mechanisms for protection against discrimination in Republic of North Macedonia. In the framework of this part, the reader can find practical cases of discrimination which went in front of the Commission for Prevention and Protection Against Discrimination and the courts of Republic of North Macedonia.

PART 1: UNDERSTANDING THE CONCEPT OF DISCRIMINATION

1. What is discrimination and why it should be prohibited?

People are born equal, at the same time with different personal traits, characteristics or believes that they gain through their life, that differs them from others. These differences shouldn't disrupt the concept of equality and be a barrier for equal enjoyment of rights. We all have the right to be treated equally, regardless of our nationality, religion, belief, sex, gender, language, sexual orientation, gender identity, age, health or other personal status (known as discriminatory grounds or protected characteristics) or because we are erroneously perceived as belonging to "another race" ¹. Prejudices and stereotypes are ideas in people's minds, but discrimination goes further, and it is always expressed in an act.

Discrimination is unequal treatment of people and groups based on the above-mentioned grounds. which results on differential treatment, exclusion, limitation or privileged treatment of a person or a group which has no objective and reasonable justification and does not pursue a legitimate aim. Discrimination may be individual, but it can also be institutional. **Institutional discrimination** is unjust or unequal treatment that is 'built in' to a social structure. Discrimination is harming someone's rights simply because of who they are or what they believe. Considering that discrimination unjustifiably deprives individuals or groups from enjoying fully and equally their rights, it is prohibited by national and international legislation.

There are various forms and types of discrimination. This manual provides an overview of direct discrimination, indirect discrimination, discrimination by association, harassment and victimization. All types of discrimination may apply to any protected characteristic or discriminatory ground.

Direct discrimination shall mean any differential treatment based on any ground such as "race", colour, belief, language, religion, sexual orientation, nationality or other, which has no objective and reasonable justification. Differential treatment has no objective and reasonable justification if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realized.²

A comparator is not needed only in cases of discrimination during pregnancy when a woman doesn't need to prove that she has been treated less favourably than someone else, considering that pregnancy cannot be compared to another condition. For example, there is direct discrimination when an individual or a group is denied entrance to a public space (restaurant, pool) because the colour of their skin, when a person is being subject to verbal abuse because of their gender, when someone is not being allowed to apply for a job position because of his/her age.

Indirect discrimination shall mean cases where an apparently neutral factor such as a provision, criterion or practice cannot be as easily complied with by, or disadvantages, persons belonging to a group designated by a ground such as "race", colour, belief, language, religion, sexual orientation, nationality or other, unless this factor has an objective and reasonable justification.

This latter would be the case if it pursues a legitimate aim and if there is a reasonable relationship of proportionality between the means employed and the aim sought to be realised.³ For example, company applies practice of employing women of certain age (from 25 to 30) in the sales department. Such policy discriminates disproportionately all other women, because their age is not relevant to carry out the role.

An example may be a law that requires "good general health condition" as a prerequisite for job qualification for any civil servant, may have an indirect discriminatory effect on a group

¹ ECRI rejects theories based on the existence of different "races". However, in this Recommendation ECRI uses this term in order to ensure that those persons who are generally and erroneously perceived as belonging to "another race" are not excluded from the protection provided for by the legislation

² ECRI Glossary: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/ecri-glossary>

³ ECRI Glossary: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/ecri-glossary>

that is less likely to be in certain health condition and their health condition is not relevant for the job performance. An example of indirect discrimination may be a minimum height requirement for a job where height is not relevant to carry out the role. Such a requirement would likely discriminate disproportionately against women (and some minority ethnic groups) as they are generally shorter than men.⁴

Discrimination by association occurs when a person is discriminated against on the basis of his or her association or contacts with one or more persons designated by one of the enumerated grounds. Discrimination by association is explicitly prohibited by many national laws. It is the case for example when someone discriminates because he thinks the person has certain ethnic origin when it doesn't. It is discrimination by association to refuse someone into a restaurant because he/she is associated with the perceived race of another person who is accompanying her/him.

For example, a person that is not LGBTI is talking openly at work, in front of the manager, that he/she went to a pride event with some friends. The manager is aware that he/she is not LGBTI but starts treating this person less favourably than his/her other colleagues on the basis of his/her association with that particular group.

Harassment consists of conduct related to one of the enumerated grounds which has the purpose or the effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

An example of harassment is hostile treatment of children within a school or class only because of their ethnic origin (verbal offensive or physical abuse). Harassment may take different forms "from spoken words and gestures to the production, display and circulation of written words, pictures or other materials". Sexual harassment is a specific type of discrimination where the verbal non-verbal or physical conduct is of sexual nature. Sexual harassment is most prevalent at the workplace and mostly happens to women and it can include inappropriate touching, patting, rubbing, or purposefully brushing up against another person.

Victimization is when somebody is victim of retaliatory measures because of his/her acting against discrimination, submitting complaint against discrimination, reporting discrimination, providing evidence or information about discrimination cases, testifying or participating in a judicial procedure. An example of retaliatory measure is when a person is initiating procedure for protection against discrimination at the workplace and consequently to this, the person is fired. That is an act of victimization, and the consequence of acting against discrimination is losing your job.

⁴ Equality, Diversity and Inclusion, University of Cambridge: <https://www.equality.admin.cam.ac.uk/training/equalities-law/key-principles/indirect-discrimination>

2. Why is discrimination a human rights violation?

The recognition of discrimination as a violation of human rights has resulted in the introduction of relevant provisions in international law and in the national legislation of many countries. The prohibition of discrimination in international law is found in all international instruments on civil and political rights, including the Charter of the United Nations (1945), the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the Charter of Fundamental Rights of the European Union (2000) or the African Charter on Human and Peoples' Rights (1981).

The European Convention on Human Rights states in its Article 14 that:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

This Article of the Convention clarifies that discrimination is prohibited on practically any ground. While some grounds are listed here, like sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property or birth, the last part of the sentence (“...or any other status”) allows the European Court of Human Rights to extend protection from discrimination to other grounds not mentioned in Article 14, like gender identity, sexual orientation, disability or age. This Article, however, only prohibits discrimination with respect to the enjoyment of rights under the Convention. Protocol 12 to the European Convention on Human Rights introduces the general prohibition of discrimination, not limiting it only to the rights in the Convention.

When, therefore, do human rights violations occur?

We already know that every human being has freedoms and rights. These include, but are not limited to, the right to life, the right to security of person, freedom from torture, inhuman and degrading treatment, freedom from discrimination, the right to a fair trial or the right to decent living conditions. You do not have to meet any requirements to have these rights: they belong to every person simply because they are human. Human rights are the same for all people regardless of, for example, gender, sexual orientation, religion, ethnic, social, national or political origin or any other status. On the one hand, human rights are legal protections enshrined in many international, regional and national documents (such as the Universal Declaration of Human Rights); on the other hand, they promote values such as freedom, equality, justice or non-discrimination. Human rights are indivisible, inalienable, interdependent and universal for all people. Respect for human rights is the basis of justice, freedom, peace and security in the world.

Unfortunately, human rights are violated every day. The state can violate human rights, either directly or indirectly. It can be an intentional action by a state actor (government officials, police, judiciary, etc.), like police brutality, or adopting laws that limit access to fair trial. The state may also fail to prevent violations, do nothing to intervene and protect vulnerable people and groups. It is important to remember that the states bear the primary burden of responsibility for protecting, respecting and fulfilling human rights enshrined in international treaties it had signed and ratified. When violations occur, it's the government's job to intervene and prosecute those responsible. The government must hold everyone (and itself) accountable.

People should be able to enjoy and exercise all their human rights. An act of discrimination, treating people less favourably than others in the same or similar situations solely because of a particular characteristic, such as gender, age, ethnicity, language or sexual

orientation limits people's access to their human rights or sometimes denies access to them; therefore, it constitutes a human rights violation.

The European Court of Human Rights has dealt with many cases in which applicants claim their freedom from discrimination was violated, like:

- Failure of the State to protect applicant's daughter from domestic violence and to conduct an effective investigation into the matter (Tkhelidze v. Georgia, 2021).
- Failure of the State to conduct an effective investigation into whether the attack on the Roma family had had racial overtones (Lakatošová and Lakatoš v. Slovakia, 2018).

The authorities' refusal to grant a survivor's pension to the applicant on the ground that her marriage according to the Roma community's own rites had no civil effects under the law ([Muñoz Díaz v. Spain](#), 2009).

The lack of an appropriate procedural response of the domestic authorities to an act of violence by a private party motivated by her sexual orientation (Sabalić v. Croatia, 2021).

The refusal of a monthly allowance provided to families in which children had one living parent only to an applicant who is a single mother whose minor children had not been recognised by their father (Yocheva and Ganeva v. Bulgaria, 2021)

In all those cases, the Court confirmed that there had been a violation of Article 14 of the Convention - Prohibition of discrimination.

3. What is not discrimination?

Not every behavior that is commonly referred to as discrimination is discrimination. One of them is mobbing.

Mobbing is actions or behavior concerning an employee or directed against an employee, consisting of persistent and prolonged harassment or intimidation of an employee, causing an employee to underestimate their professional suitability. It also causes or intends to cause humiliation or ridicule of an employee, isolating them or eliminating them from the team of co-workers. Mobbing is often associated mainly with the employee (as the victim) and the employer (as the oppressor). Although this type of mobbing is common, it is worth realising that it is not the only type. There are two variants, and each can be equally damaging:

- Vertical mobbing - This occurs in the employer-employee relationship and is based on different levels of the employment hierarchy. The bully uses the power of their position and the opportunities that come with it.
- Horizontal mobbing - Occurs between employees at the same level of the hierarchy. It does not have to be the same position; it is sufficient that they are equivalent, and neither is more important than the other.

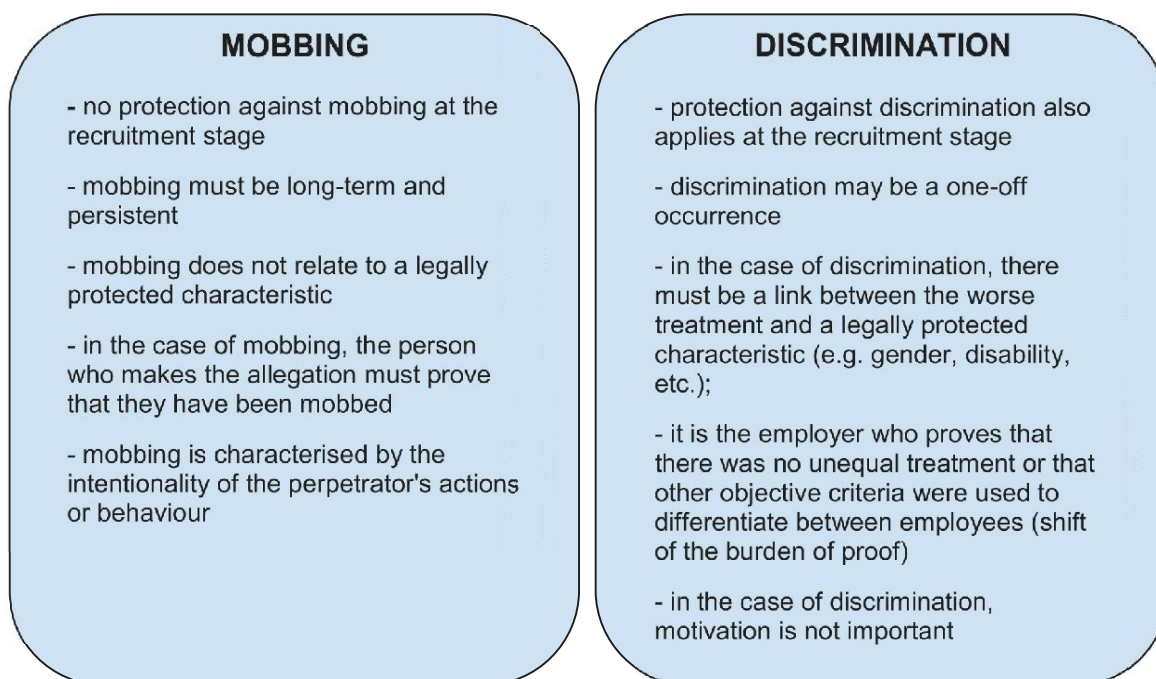
Mobbing can take different forms. There are usually two types of actions that can be described as mobbing:

- **Direct mobbing** - the classic form, i.e. personal remarks, reproaches, ridicule or threats. Most common and easy to recognise.
- **Indirect mobbing** - a form of action by those around, without contact with the victim, i.e. spreading false information, defamation or denunciation. This is much rarer, and because of the gradual increase in resentment from the rest of the workforce, it is difficult to identify the bully.

Mobbing may take the form of **passive behaviour**:

- Neglecting the person.
- Not assigning tasks to the person.
- Not talking to them.
- Not responding to emails or person's questions and opinions about ideas put forward by her co-workers.

The picture below explains the differences between mobbing and discrimination:



Mobbing and discrimination are phenomena that seem to have a lot in common. However, there are fundamental differences between them. What the two phenomena certainly have in common is their unequivocal reprehensibility. Above all, they should never have happened.

Positive action is another phenomenon that is often confused with discrimination. It is sometimes called 'positive measures', 'affirmative action' or 'positive discrimination'. Positive action involves giving preferential treatment to people from these groups, who face particular barriers and restrictions that hinder equal access to resources and social goods. It consists in undertaking actions or introducing specific legal measures to provide equal opportunities for people belonging to certain groups (protected characteristics), e.g. people of a different ethnicity, in order to reduce the actual inequalities suffered by these people.

It aims to promote marginalized groups in places where disparities are particularly visible, e.g. where there is less access to senior positions. Positive action includes quotas or parity, as well as other actions aimed at redressing disparities. Positive action is temporary and is an exception to (but not a breach of) the principle of equal treatment.

Positive action sometimes can be seen as discrimination against the majority group. The right to equal treatment is a fundamental human right. Positive action can be considered as a means of combating discrimination and unequal treatment if it is aimed at preventing a situation in which stereotypes and prejudices against groups, rather than actual professional qualifications, constitute the sole and decisive criterion, for promotion, participation in public life, access to vocational training and the design of working conditions, particularly pay. Positive action should not be considered as an exception or derogation from the principle of equal opportunities. Positive action is a form of implementation, on the positive side, of the principle of equal opportunities and is a necessary element of that principle. There are a lot of standards developed by the international organisations in relation to positive treatment. Below you can find some of them in the field of gender equality⁵.

⁵ In: Gender Equality Glossary, Gender Equality Commission, Council of Europe 2016 (revised 2022), p. 23

Relevant standards of the Council of Europe:

- Part II, Article 1 of the Protocol to the European Social Charter (1988): “1. With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

- access to employment, protection against dismissal and occupational resettlement;
- vocational guidance, training, retraining and rehabilitation;
- terms of employment and working conditions including remuneration;
- Career development including promotion. (...)

Paragraph 1 of this article shall not prevent the adoption of specific measures aimed at removing de facto inequalities [...]”.

- Article 4 §4 of the Istanbul Convention: “Special measures that are necessary to prevent and protect women from gender-based violence shall not be considered discrimination under the terms of this Convention.”

- Paragraph 1 of the Recommendation (2003) 3 on balanced participation of women and men in political and public decision making: “Member states should consider possible constitutional and/or legislative changes, including positive action measures, which would facilitate a more balanced participation of women and men in political and public decision making.”

- Paragraph III of the Recommendation (1985)2 on legal protection against sex discrimination): “Special temporary measures (positive action): States should, in those areas where inequalities exist, give consideration to the adoption of special temporary measures designed to accelerate the realisation of de facto equality between men and women, where there are obstacles of a constitutional nature, (...)”

Other references to and definitions of “positive actions”:

- Article 4 of the UN Convention on the Elimination of All Forms of Discrimination against Women also foresees such measures: “Temporary special measures are measures aimed at accelerating de facto equality between men and women. They shall not be considered discrimination (...) and shall be discontinued when the objectives of equality of opportunity and treatment have been achieved”.

- Article 157§4 of the European Union Treaty allows for positive action in order to ensure gender equality in working life: ‘With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers”.

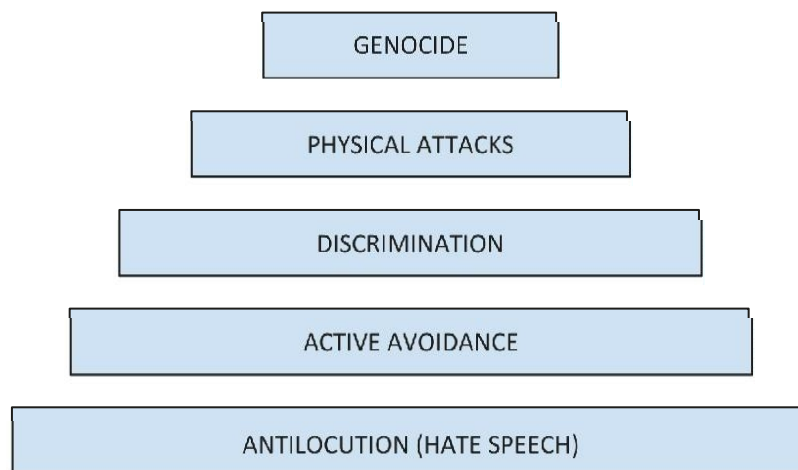
4. What drives discrimination?

It is difficult to say why people commit acts of discrimination. Sometimes a single factor can influence human behaviour, and sometimes it is a combination of many factors, both internal and external.

| EXAMPLES OF INTERNAL FACTORS | EXAMPLES OF EXTERNAL FACTORS |
|---|---|
| <p>Stereotypes</p> <p>Prejudice</p> <p>Type of personality</p> <p>Radicalised opinions and behaviour</p> <p>Strong in-group association</p> <p>Lack of skills to manage challenging situations or conflicts</p> <p>Poor management skills</p> <p>Lack of knowledge</p> <p>Insecurity</p> <p>Ignorance</p> <p>Psychological problems</p> | <p>Lack or insufficient protection against discrimination</p> <p>Tolerance of discrimination</p> <p>Hate speech</p> <p>Toxic work environment</p> <p>Fake news and conspiracy theories</p> <p>Rumours</p> <p>Polarization in the society</p> <p>Harmful cultural habits or traditions</p> <p>Unhealthy power relations</p> <p>Lack of anti-discrimination policies and anti-discrimination procedures, for example in the workplace</p> |

The internal factors are mainly of cognitive, existential, psychological and competence-based nature, while external are related to social, political or legal aspects.

One of the ways to explain what leads to discrimination is to analyse the mechanism of discrimination. Pyramid of hate - the model created by the American psychologist Gordon Allport depicts the process of escalating violence against a group and its members. It shows that genocide does not happen overnight but is conditioned by a series of preceding phenomena. Ignoring these seemingly harmless ones, such as hateful comments, allows violence to escalate. At each of the following stages: hate speech - avoidance - discrimination - physical attacks - extermination, breaking this process is increasingly more difficult, and in the end - virtually impossible.



At the bottom of the pyramid there are **stereotypes and prejudices** that materialise in hate speech, which may incite to discrimination. Stereotypes are simplistic beliefs about another group or people who belong to it (e.g. all Roma are..., all LGBTI people are...). Stereotypes attribute certain characteristics or behaviours to an entire group (all its members). They are also false because they blur the differences between individuals in a given group. We reach for stereotypes when we lack knowledge - they “organize” reality and reinforce the division between us and them. They also have a strong emotional (evaluative) character. Stereotypes are learnt in the process of socialization - in the family, school, or friends. They are also reproduced in culture (films, school textbooks, advertisements).

Stereotypes may evolve and become prejudices - attitudes towards some groups of people based on unchecked, generalised and residual information. Prejudice is persistent, difficult to change, and is associated with strong emotions such as fear or anger. An example of prejudice is showing a negative attitude towards people who were not born in your country. Someone may hold this prejudice even though they do not know all the people who were not born in their country. The status of foreigner is enough to speak ill of people belonging to that group.

Holding prejudice leads people to use hate speech towards people they are prejudiced against and avoid contact with them. One of the ways to do it is to exclude those people from the group of people you know or from your work environment (active avoidance). This may lead to discrimination, treating people less favourably or badly. Hate speech very often dehumanise people who are targeted with it. Dehumanisation consists in negating the humanity of a person or group. Dehumanisation makes us start seeing another person as an inferior being, not fully human - similar to an animal or an object, deprived of dignity, feelings and emotions, and mental abilities. Dehumanisation is particularly dangerous because towards someone who is perceived as inferior, it is easier to justify the use of violence or unequal treatment.

People sometimes commit acts of discrimination without knowing that what they do is discrimination, or they do not know how to manage people or challenging situations. This in no way excuses their behaviour. Discrimination occurs whether the person committing it is aware of it or not.

Some people do not know how to approach difficult situations and one of the ways to deal with them is to use scapegoating - blaming a selected individual or group for complex, negative social processes. This mechanism is often activated during strong crises. It is reinforced by stereotypes and prejudices, so the scapegoat often becomes a minority group, perceived as

foreign, to which negative characteristics are attributed. This mechanism stiffens inter-group divisions. It can also exist at small group level (class, workplace). Scapegoating very often leads to discrimination.

There are many external factors that can lead to discrimination. One of them is insufficient legal protection against discrimination. If the perpetrators of discrimination know that they may not be held responsible for their actions because of a weak system of protection against discrimination, they may take the opportunity to use discriminatory behaviour towards others.

Lack of anti-discrimination policies and procedures in a given place, e.g. workplace, may create a climate conducive to discrimination. Such policies and procedures give people the feeling that they are protected against discrimination and know what to do if discrimination occurs.

Sometimes people can be convinced that using discrimination is justified because they are influenced by conspiracy theories and fake news. Such theories are an attempt to explain complicated events or phenomena by the existence of a conspiracy - an alleged secret activity of a group of people who allegedly act together - usually to the detriment of society. The source of conspiracy thinking lies, among others, in the need for simple solutions to complex problems. Conspiracy theories and fake news can fuel prejudice towards marginalized groups and consequently lead to discrimination.

They also lead to polarisation - the creation of a strong division between one's own group (perceived as better) and a foreign group (worse), often based on illusory differences. This division is often reinforced for short-term goals, e.g. political. Polarisation can be driven by political groups and, when they are in power, they can create an atmosphere that encourages discrimination, a belief that discrimination against particular social groups is justified. It is important to remember that discrimination is fostered by intergroup divisions: us/them, minority/majority, and the power of one group over another.

There are no easy answers to the question 'what drives discrimination'. Each case of discrimination is different and should be considered individually. Knowing why people commit discrimination can be useful to understand its mechanism and can help to prevent and counteract it.

5. Where does discrimination happen?

Discrimination can practically occur in any place where there are people and power relations, be it actual or symbolic. Below, you can find some examples of such places and services with examples of discrimination that can occur there:

| | |
|--|---|
| <p>WORKPLACE</p> <p>Lack of promotion...</p> <p>Not being hired...</p> <p>Being dismissed...</p> <p>...because of protected characteristics or association with a group</p> | <p>SPORTS</p> <p>Denial to practice sport...</p> <p>Non-admission to the team...</p> <p>Exclusion from a sporting activity...</p> <p>...because of protected characteristics or association with a group</p> |
|--|---|

| | |
|---|---|
| <p>SCHOOL</p> <p>Refusal of admission to school...</p> <p>Exclusion from educational programmes...</p> <p>Refusal to grant a scholarship...</p> <p>...because of protected characteristics or association with a group</p> | <p>HOUSING</p> <p>Refusal to rent a flat...</p> <p>Forced eviction...</p> <p>Overcharging for rental accommodation...</p> <p>...because of protected characteristics or association with a group</p> |
|---|---|

| | |
|--|--|
| <p>CULTURE</p> <p>Refusal to enter a cultural event...</p> <p>Refusal to enter a cultural place...</p> <p>Removing pieces of arts of people...</p> <p>...because of protected characteristics or association with a group</p> | <p>PUBLIC PLACES</p> <p>Refusal to enter a public place...</p> <p>Throwing someone out of the restaurant...</p> <p>Less favourable treatment in public services...</p> <p>...because of protected characteristics or association with a group</p> |
|--|--|

| BANKING | HEALTH |
|---|---|
| Refusal to open a bank account... | Lack of access to health services... |
| Refusal of getting a loan / credit... | Not being admitted to the hospital ... |
| Being provided with worse banking services... | Being provided with worse health services... |
| ...because of protected characteristics or association with a group | ...because of protected characteristics or association with a group |

| POLITICS / VOTING | LAW / POLICE |
|---|--|
| Preventing people from voting... | Racial profiling... |
| Preventing people for standing up in the elections... | Refusal to undertake steps to carry on an effective investigation... |
| Preventing people from being active in political groups... | Neglect in carrying an investigation in legal cases ... |
| ...because of protected characteristics or association with a group | ...because of protected characteristics or association with a group |

| TRAVEL / TOURISM | TRANSPORTATION |
|---|---|
| Refusal to issue a visa... | Depriving people of the use of transport... |
| Harassment by security staff in the airport... | Harassment in public transportation... |
| Refusal to be accommodated in a hotel... | Not facilitating access to public transportation... |
| ...because of protected characteristics or association with a group | ...because of protected characteristics or association with a group |

Incitement to discrimination can also happen **on the Internet**, which is a place sometimes used even to incite racist violence. **Hate speech** online is unfortunately quite common. However, hate speech is not a new phenomenon, although we seem to have heard more about it in recent years. ECRI General Policy Recommendation No. 15 defines hate speech as:

... the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect of such a person or group of persons and the justification of

all the preceding types of expression, on the ground of “race”⁶, colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status;⁷

It is not an easy definition, but it is very detailed. Apart from advocating, promoting and inciting hatred, it also draws attention to its justification. Hate speech, according to this definition, is therefore any expression which attempts, sometime in an apparently neutral way, for example, to justify the need to get rid of migrants from the territory of a country at any cost and in any way. This definition also indicates that hate speech can be expressed in any form. It does not have to be only words: films, memes, pictures photos or behaviours are also forms of hate speech.

Hate speech reflects negative stereotypes, prejudice and stigma and is based on perceptions of boundaries and hierarchies between groups. Hate speech can lead to **hate crimes** if it encourages action (through threats of violence against people or their property). It also often accompanies hate crimes. It can also lead to discrimination against other people (treating people who possess a certain characteristic worse than those who lack it). Discrimination, which is also motivated by prejudice, is a component of hate crimes. For example, burning down someone’s home because there are refugees, could be treated as Hate Crime because in addition to the ordinary crime of arson (i.e. deliberately setting fire to property, there is a bias or a prejudice towards refugees as an aggravating factor).

The use of **artificial intelligence (AI) and algorithmic decision-making** can also lead to discrimination on the Internet. Artificial intelligence is the term used to describe a computer program that, instead of executing a list of exact instructions, uses advanced statistical models to solve a task. Artificial intelligence (AI) has taken hold in our daily lives, in the operations of companies, public administration, healthcare and other fields. Many public and private services provide solutions based on the AI that are supposed to help in making quicker decisions, for example in recruitment process in the university, accessing public benefits or getting a loan in a bank. Very frequently we are not even aware of it when using these services. Lack of transparency in the operation of the AI systems may raise questions about whether decisions based on them are biased and manipulated. These systems are created by people, so they may reflect and reinforce human stereotypes and biases and as a result lead to discrimination.

How does it work in practice?

- People may be refused a loan or credit in a bank because in the online form they put their postcode, which the system recognise as a poor area inhabited mainly by a migrant population

- A person may not be admitted to the university as the system deducted points for women with foreign names in the recruitment procedure

AI-based identification systems are already more likely to misidentify different groups of people, such as minority ethnic groups, LGBTI people, senior citizens and women, which is of particular concern in the context of law enforcement and the judiciary. Algorithms should be transparent, traceable, and sufficiently documented to ensure that basic rights are respected when using these technologies. People must always make final decisions, and those monitored by AI-based systems must have access to redress.⁸

⁶ Since all human beings belong to the same species, ECRI rejects theories based on the existence of different races. However, in this Recommendation ECRI uses this term “race” in order to ensure that those persons who are generally and erroneously perceived as belonging to another race are not excluded from the protection provided for by the Recommendation.

⁷ ECRI General Policy Recommendation No. 15 on Combating Hate Speech, adopted on 8 December 2015, European Commission against Racism and Intolerance (ECRI), Council of Europe - 2016, p. 3: <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01> (access 29 March 2022)

⁸ Report on artificial intelligence in criminal law and its use by the police and judicial authorities in criminal matters (2020/2016(INI)), Committee on Civil Liberties, Justice and Home Affairs, European Parliament 2021: https://www.europarl.europa.eu/doceo/document/A-9-2021-0232_EN.html (access 29 March 2022)

6. What are the different grounds of discrimination?

The grounds of discrimination are related with protected characteristics. The international conventions and specialized laws that prevent and prohibit discrimination have different scope of discriminatory grounds. There may be an open list of protected grounds and a broad range of areas. Discriminatory grounds are race, sex, age, disability, sexual orientation, pregnancy, gender identity, political affiliation, social background, education and other. Each discriminatory ground may be related with all types and forms of discrimination. This manual/handbook will comprise discrimination based on race, nationality or ethnicity; Discrimination based on religion or belief; Discrimination based on gender/gender identity; Discrimination against LGBTIQ people; Discrimination against people with disabilities; Discrimination based on age and intersectional discrimination.

Discrimination based on “race”, nationality or ethnicity: Discrimination based on “race” is when a person is being treated unfavourably because it is erroneously perceived of another “race” due to the colour of the skin or his/her ethnic or national origin. This applies for example when someone is a Roma, living in North Macedonia, holding Macedonian citizenship but belonging to the Roma ethnic group.

Race and Ethnicity are related and overlapping concepts. Whereas the notion of race is rooted in the false idea of biological classification of human beings into subspecies according to morphological features such as skin colour or facial characteristics, ethnicity has its origin in the idea of societal groups marked by common nationality, tribal affiliation, religious faith, shared language, or cultural and traditional origins and backgrounds.

Therefore, while race as such does not exist racism is spread worldwide and is often related with nationalism or xenophobia, systematically denying people enjoyment of their rights because of colour, race, ethnicity or national origin. Many Roma people living across Europe are discriminated continuously. They are usually subject to forced evictions, they may be deprived of access to goods and services, such as entering restaurants or public swimming pools, access to clean drinking water; and in some counties there is segregation of Roma children in schools.

Discrimination based on religion or belief is treating somebody differently because they are or they’re not of particular religion or they hold a belief that affects their attitude towards the world or their life. Discrimination on the grounds of religion includes different treatment of somebody because the person is not part of a preferred religion in a certain societal environment, or if the person is an atheist. The protection from discrimination based on religion or belief applies when someone belongs to organized religion such as Christianity or to a smaller religion like Jehovah witnesses, if a person has no religion or if a person is by philosophical belief communist or nihilist. The prohibition of discrimination applies to access to goods and services, work, in education, housing, travel and other. An example of discrimination is when someone is not employed because he/she is a Christian; somebody is not allowed to enter a restaurant because of exhibiting a religious symbol, or someone is refused to rent a place because is Jewish. An example of discrimination based on belief is when someone is not allowed to be a part of a University Club because he/she holds to the Marxist ideology.

Discrimination based on gender / gender identity is unequal treatment based on gender, not only related to sex and sexuality but to gender identity as a personal sense of one’s own gender, and the gender expression. Gender identity may be the person’s assigned sex or it can differ from it. If at birth a person is assigned as a girl this may not corelate with the gender identity and he/she may feel as a boy. The gender expression may reflect a person’s gender identity, but this may not always be the case.

The most common gender inequality or discrimination based on gender is the different treatment of women and girls compared to man and boys. Discriminating and unequal treatment of women compared to man occurs in the family relations, education, sports, employment, career. There are cases where women are excluded from the right of inheritance contrary to existing laws; in many sports, sport clubs don’t invest in girls to compete on tournaments

compared to boys. An example of gender-based discrimination is when a company is hiring only man on managerial positions.

Discrimination against LGBTI people - lesbian, gay, bisexual, transgender, intersex and queer persons are often stigmatised and discriminated because of their sexual orientation, who they and who they choose to love. These people often face unequal treatment in every sphere of their life whether is within the family, in education, work, housing. Many of them are victims of harassment and hate speech. Often, they live in shame of who they are or who they choose to love, and do not express their feelings which leads them to psychological suffering, depression and anxiety. There are cases when some teenagers are punished by parents or bullied at school because of their sexual orientation. In many national laws the cohabitation between LGBTI is not recognized and they are unable to register civil partnership or marriage. As consequence of that they are deprived of property rights, health insurance benefits (one can obtain health insurance through their partner), they are not protected from family violence etc. An act of discrimination may be when someone who is open about being gay, lesbian or transgender to be refused for employment or promotion.

Discrimination against people with disabilities has different aspects. Firstly, it may occur as unfavourable treatment of someone because of their disability and failure to make proper and reasonable adjustments. The society is responsible to secure inclusion of people with disability. This applies to every aspect in life, including housing, education, support of families of children with disabilities, access to infrastructure for people with disabilities, adjusting the transportation and similar. When a disabled person is in disadvantage compared to people who are not disable at the workplace or when accessing certain goods and services, the employer or the provider of goods and services should make reasonable adjustments like physical adjustment to the premises or supply of proper equipment. The local self-government and the competent administrative body should ensure the accessibility in the area of construction starting from legal instruments such as laws, bylaws to field monitoring and control. For example, every person should have access to the house or building where he/she lives or plans to live. Denying the access and availability of infrastructure, goods and services constitutes discrimination. In the area of education, the competent authorities should take all available measures for inclusion of children with disabilities, from developing programmes, assuring the availability of assistants who can accompany children to school, to purchasing appropriate IT equipment. It is of high importance that people with disabilities are enabled to take an equal part in the society with benefits for them and the society itself.

Discrimination on the ground of age is when somebody is treated differently because of their age. Age discrimination may occur in the context of various rights. Sometimes it may be due to certain policy that was not intentionally developed with the purpose to exclude or discriminate. Most often discrimination based on age is related with work, due to the fact that employers may prefer people of certain age or belonging to a certain age group (under 50). The unequal treatment may happen in the first phase when applying for a job and age disqualifies the candidate because you are above 45 and the employer has a policy of hiring people under that age.

Another example may be when somebody is young and does not get to be promoted despite number of years of experience or higher level of education. Beside the situations when age is not relevant to carry out the role, there are circumstances when being treated differently due to age is lawful. An example would be when insurance companies charge higher amount for insurance premium depending on your age, or when financial institutions like banks having age limit for different types of loans.

Intersectional discrimination is discrimination based on two or more discriminatory grounds which are simultaneous and inseparably linked. Intersectional discrimination is a type of multiple discrimination when two or multiple grounds operate simultaneously and interact in an inseparable manner, producing a specific form of discrimination. People with differing backgrounds often face multiple discrimination because everyone has an age, a gender, an ethnic origin, a sexual orientation, a belief system or religion; everyone has some state of

health or may acquire a disability. A person may be at the same time discriminated because of race, age and sex; disability, gender and age or sexual orientation and ethnic origin. There are cases for example where women with disabilities experience additional disadvantage as a result of the intersection of disability with gender.

7. How does discrimination harm individuals, groups, institutions, organisations and society at large?

Discrimination has a very negative impact on those directly affected. It can have a destructive impact on their emotional state, causing great stress, increasing their sense of loneliness, leading to states of depression and feelings of sadness and helplessness. All of this consequently promotes lowered self-esteem, the appearance of suicidal thoughts and in some cases even suicide attempts. There is often a sense of uselessness to society.

Because of discrimination, people are not recruited or lose their jobs and are thus unable to support themselves or their families. They are unable to enter or continue education and as a result may not be able to obtain satisfactory employment. Discrimination may prevent or restrict people's access to public services and health care. All this may have a negative impact on a person's mental health and relationships.

The reaction to discrimination is, of course, always a very individual matter and depends on previous experiences and resistance to situations causing severe stress. It should also be mentioned that sometimes discrimination has a mobilising effect on those experiencing it: they become more motivated to resist or even counter discrimination by various means.

Discrimination has an impact on groups who experience it directly or indirectly. Discrimination may lead to fuelling more stereotypes and prejudices towards groups who already experience it, which in consequence may lead to further discrimination, hate speech or even hate crimes against those groups. Discrimination can have a devastating impact on institutions and organisations. It has effects on both the employee and the work environment.

These include a poor work culture when an employee loses focus and displays work-damaging behaviours such as not completing tasks on time, leaving work early and constantly being late. This affects the work organisation and efficiency of the whole organisation. The institution / organisation may lose reputation if the clients are aware, it commits acts of discrimination. Consequently, it may lose contracts and income.

Very often discrimination goes hand in hand with toxic behaviour in the workplace. If an employer allows acts of discrimination or other acts of violence by management against employees, this can lead to a workplace where discrimination is justified and normalised. This will have an impact on all employees, who may lose motivation to work and be unproductive in performing tasks. This will lead to mental or physical health deterioration, sick leaves, or a big staff turnover.

Discrimination also has an impact on society as a whole. It is often used as a mechanism to silence individuals, who consequently refrain from expressing their opinions in public for fear of judgement and violence (and thus cannot exercise their freedom of expression). Discrimination (especially racial discrimination) can lead to increased social unrest, which can result in violence and riots. Because of this, society as a whole suffers, living in a sense of insecurity and creating a feeling of distrust towards other people. The public debate becomes more aggressive, which increases further prejudices that can lead to further discrimination, violence and hate crimes. A vicious circle therefore arises - hatred fuels hatred.

PART 2: UNDERSTANDING ANTI-DISCRIMINATION

1. What is anti-discrimination?

Anti-discrimination means **promoting equality of opportunity for all people by protecting them from discrimination and harassment**. It is an active process and practice of preventing and acting against discrimination by challenging and changing attitudes and beliefs, systems and structures, developing and adopting laws and policies that protect people from discrimination and give them access to redress. Finally, it is also about creating independent institutions responsible for preventing discrimination and protecting people from it. The overall aim of anti-discrimination is to develop **a culture of non-discrimination**, where human rights are promoted and respected, and equality of opportunity is the reality for all.

Anti-discrimination can (and should) be practised by many actors in society:

- Legal professionals
- Civil servants and other representatives of public institutions
- Representatives of international organisations
- Politicians/policymakers
- Teachers
- Health professionals
- Sports teams and fan clubs members
- Artists
- Media
- Civil society organisations, both formal and non-formal
- Private companies
- Individuals

Each actor has a different role; however, some roles may be the same or similar. Cross-sectoral co-operation is crucial here: different actors working together to coordinate and improve strategies and actions. You can read more about roles of different actors in the next part of this chapter.

It is crucial for the anti-discrimination process and practice to involve people who are at risk of discrimination, especially coming from marginalised or minority groups. Their experience and needs should be always taken into account when designing and implementing anti-discrimination strategies and actions.

2. How to prevent and combat discrimination?

Prevention of discrimination is important as it can have a lasting effect on individuals, institutions, organisations and society at large. It comes with many benefits:

- It supports the building of an environment that is free from violence and in which all people are given equal opportunities, thus making people feel safe
- It ensures that the entity concerned acts in accordance with the law
- It helps avoid legal and financial liability, as well as the negative publicity that can result from discrimination claims

- It supports upholding human rights values and adhering to systems of ethics and personal morals in the organisation/institution;
- It ensures that all persons are treated with respect for their dignity

There are many ways to prevent and combat discrimination. In this manual, you can find many references to anti-discrimination legislation, which is not the only means to prevent and combat discrimination. Other ways to do it include, for example:

DIRECT REACTION: Prejudicial views are very difficult to change but reacting to what can cause discrimination is one of the ways to prevent discrimination from occurring. That is why acting against hate speech, reacting to people who express prejudices, negative attitudes towards a person or group of people because of their characteristic is something each person can and should do.

EXAMPLE: REACTING TO HATE SPEECH AND PREJUDICES

When someone expresses hate speech or speaks badly about people from marginalized or minority groups, especially in a private situation or online the reaction should be quick. One way to do it is to use STOP – ASK – EDUCATE – ECHO strategy:

STOP: ask a person to stop. Tell them it is hate speech.

ASK: ask the person to tell you why they think so, what arguments they have, how do they know it.

EDUCATE: tell them what hate speech is, what impact it has on people, why using hate speech harms individuals and groups of people.

ECHO: if nothing works, ask the people in the group (or chat) if they agree what a person said; there is a great probability that there will be people who also consider it hate speech and this way your voice will be amplified.

If you want to react to hate speech online, counter-narratives and alternative narratives can be a good way to do it. Counter and alternative narratives are tools to change and undermine hateful or extremist narratives and reinforce human rights-based narratives. They do so by challenging negative stereotypes, by discrediting violent messages, for example, through humour or other methods to show that another interpretation of reality exists. You can learn more about how to develop them from “We Can!” manual published by the Council of Europe: WE CAN! Taking Action against Hate Speech through Counter and Alternative Narratives, by Agata de Latour, Nina Perger, Ron Salaj, Claudio Tocchi and Paloma Viejo Otero, Council of Europe 2017: <https://rm.coe.int/wecan-eng-final-23052017-web/168071ba08> (access 30 March 2022)

ANTI-DISCRIMINATION EDUCATION AND TRAINING: it develops knowledge, skills and influences attitudes in order to prevent discrimination and violence motivated by prejudice and to promote equality and diversity. It can be provided in every place where people work or gather. It is crucial, however, to provide training to people whose work is to enforce the law and promote equal opportunities, such as civil servants or police officers.

AWARENESS RAISING: making people aware what discrimination is and how to combat it. It can be done through campaigning, street or social media activism.

EXAMPLE: LIVING LIBRARY

The Living Library works just like a normal library. The reader/s can come on the day of the event and choose an item of interest from the catalogue and then borrow it for a set period of time. However, in this library the books are real people, authentic representatives of minorities and social groups which are not accepted in society, which face exclusion, discrimination and prejudice. When borrowing a Living Book, the reader enters into a dialogue with it. Thanks to this interaction both parties have the opportunity to confront their ideas with reality and find out for themselves what it is really like. It can be organised during a public event, at the workplace, in the parliament or at school.

The objectives of the Living Library are to create a space for dialogue and understanding and to promote respect for human rights. Another important aspect is to share the knowledge and experience of people exposed to discrimination, stereotyping, prejudice and exclusion. Participation in the project by Living Books, volunteers and readers is intended to shape attitudes of openness and acceptance towards diversity, encourage learning about human rights and provoke critical thinking.

More information: <https://www.coe.int/en/web/youth/living-library> (access 30 March 2022)

ANTI-DISCRIMINATION POLICIES: A document which sets out the principles for preventing and counteracting discrimination and harassment and contains procedures to be used if such phenomena occur, e.g. in an institution, organisation or company. The anti-discrimination policy should identify and clearly describe prohibited behaviour. These behaviours can replicate the provisions of law related to equal treatment and, in particular, explain the meaning of terms such as direct discrimination, indirect discrimination, harassment, sexual harassment, encouraging discrimination, or victimization. The document should indicate a specific procedure whereby a person who is the victim of discrimination will have the opportunity to report the irregularities that have occurred and to expect that their problems in this respect will be dealt with effectively. The document may also specify a person to whom one can turn to if discrimination occurs. The process of creating such a document should be the responsibility of all people concerned; therefore, it is crucial to involve all people in a given place so that every voice is heard, and all people are empowered to actively involved in preventing and combating discrimination.

REASONABLE ACCOMMODATION: Reasonable accommodation requires changes or adjustments necessary in a specific situation, in order to meet the specific needs resulting from a person's disability notified to the employer. Reasonable accommodation may consist of adaptation of the room (elimination of architectural barriers), appropriate equipment (e.g. office equipment controlled by voice - facilitation for the visually impaired people, enabling the use of alternative forms of communication - employment of a sign language interpreter), as well as determination of working time, division of tasks or educational or integration offer, depending on the type of disability and notified needs. Sometimes it is sufficient to move the workstation or the place of recruitment or training from the upper floor to the ground floor. Under EU rules, employers must provide reasonable accommodation to employees with disabilities. However, many companies or organisations follow reasonable accommodation to

cater for the needs of people with other protected characteristics, e.g. religion and belief or ethnicity.

ESTABLISHING STRONG EQUALITY BODIES: The independent equality bodies play an essential role in advancing equality and combating discrimination and intolerance. ECRI General Policy Recommendation No. 2⁹ contains standards to help States to further strengthen their equality bodies. It focuses on the key elements for the establishment, independence and effective functioning of equality bodies that make a real impact in the field of equality.

Who should/can do what?

Individuals should/can:

- inform themselves and others about discrimination: such information should include the ways of recognising discrimination, available redress mechanisms, both legal and other than legal, places where to get support when discrimination occurs.

Civil servants should/can:

- be trained in anti-discrimination - ECRI General Policy Recommendation No. 7¹⁰ specifies that the national law should put public authorities under a duty to promote equality and to prevent discrimination in carrying out their functions. Civil servants need to learn how to promote equality, recognise discrimination and how to prevent it.
- make sure the principle of anti-discrimination is observed in all administrative tasks they need to perform.
- take part in the development of the code of conduct / anti-discrimination policy in their workplace and follow it in their duties

Civil society organisations should/can:

- get involved in monitoring how anti-discrimination legislation is implemented and document both positive and negative examples
- co-operate with the equality body - according to the ECRI Recommendation No. 2, equality bodies are expected to establish cooperation with civil society organisations
- support victims of discrimination, e.g. by providing counselling
- run anti-discrimination education programmes for different professionals and awareness raising activities for the community
- aim at promoting inclusion and diversity in all aspects of their activity - diversity should also be reflected in staff composition

Law enforcement should/can:

- get trained in anti-discrimination and
- educate citizens about anti-discrimination legislation and available remedies
- enforce anti-discrimination laws and give proper attention in investigating discrimination cases

Equality body should/can:

- serve as a model with regard to diversity and gender balance in all areas, especially in the leadership of the equality bodies

⁹ ECRI General Policy Recommendation N°2 revised on Equality Bodies to combat racism and intolerance at national level <http://rm.coe.int/ecri-general-policy-/16808b5a23> (access 30 March 2022)

¹⁰ ECRI General Policy Recommendation N°7 on national legislation to combat racism and racial discrimination <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.7> (access 30 March 2022)

- make sure the way the body is organised and functions follow the standards set in ECRI General Policy Recommendation No. 2
- Co-operate with civil society organisations, especially in the development of strategic planning and action plans
- Co-operate with the media

Private business should/can:

- develop anti-discrimination policies and procedures and therefore promote equality and non-discrimination in all areas of their activity
- make sure reasonable accommodation is observed in the workplace
- provide anti-discrimination training to all employees
- aim at promoting inclusion and diversity in all aspects of their activity - diversity should also be reflected in staff composition

Media should/can:

- use inclusive language when reporting on different events
- provide for greater visibility of people coming from various groups, especially marginalised people and people coming from minorities
- report professionally, refraining from hate speech
- raise awareness about discrimination

3. What to do when you experience discrimination?

When experiencing discrimination, the first, and most important thing, is to take care of your own well-being. Experiencing discrimination can be very traumatic and may result in serious mental health problems.

Victims of discrimination or harassment are often not aware that behaviour that they do not like, that offends them, that violates their dignity, humiliates, degrades, insults them or creates an unpleasant atmosphere is something that should be signalled / reported.

A person who has experienced discrimination or harassment should object to the unwanted behaviour. The objection should be expressed in such a way that it is a clear sign of disapproval. It can be expressed either verbally or non-verbally (avoiding contact with the perpetrator).

If discrimination or harassment happens in the workplace, you should always inform your employer if you perceive any behaviour as harmful to you. The employer should then react, taking concrete actions to prevent it from recurring in the future, e.g. by adopting an anti-discrimination policy, appointing an employee as anti-discrimination officer or organising anti-discrimination training. Some companies already have anti-discrimination policies and procedures which, and they should be used when a case of discrimination is reported.

If you are refused access to services (for example at a hospital, school or government office) you have the right to complain to the relevant authorities, such as the management of the institution or organisation.

The person discriminated against should pursue their rights in the court (employment tribunal or civil court). They can seek compensation or reinstatement to their former position in the case of unjustified dismissal. It is worth remembering that in court, it is the person who is accused of discrimination who has the burden of proving their innocence. Sometimes, the conduct of discrimination or harassment can be a criminal offence, and it should be reported

to the law enforcement.

There are many institutions and organisation that provide support to people who experienced discrimination, for example:

- Counselling and therapy centres provide psychological assistance
- Equality body in your country - provides assistance and support, and could have the power to bring the case to court

4. How to act when you witness discrimination?

Anyone can witness discriminatory or violent actions towards others. Without being the direct object of discrimination or racist violence, we may be aware of its presence in our surroundings and of the suffering of those who experience it. However, we usually ask ourselves whether and how to react. We do not know how to talk to a person experiencing racist violence or discrimination, nor do we know what institutions or organisations there are to support people with such experiences.

The role of the witness can be very crucial in discrimination cases. As with other violent behaviours, the most important thing is to **take care of the well-being of the person experiencing discrimination**. Responding to discrimination is sometimes not easy, and some people decide not to react. It requires certain competences, such as skills related to assertive behaviour, and, importantly, it requires courage. People often do not react to discrimination because they are afraid of losing their jobs, for example.

When there are many witnesses of discrimination, we may be dealing with the so-called **bystander effect**. This is the mechanism of diffusion of responsibility, which is that the greater the number of witnesses to a situation, the less likely is that a single person react. This passivity is explained by psychology by the fact that when something bad happens in the presence of too many witnesses, each witness feels absolved of the responsibility to take action.

The US organisation 'Right to be' has developed the 5Ds of Bystander Intervention Model, which not only helps to understand the roles of a witness, but also suggests very concrete actions a person can take when another person around them experiences discrimination. This model was developed in relation to harassment but can easily be used in cases of discrimination.

DISTRACT

Distraction is a subtle and creative way to intervene with the aim to derail the incident by interrupting it.

Engage directly with the person who experiences discrimination

Don't talk about or refer to the incident that's happening. Instead, talk about something completely unrelated.

DELEGATE

Delegation is asking a third party for help with intervening in discrimination case.

Look for a Delegate who is ready and willing to help. Often, a great choice is the person right next to you.

When you Delegate someone to help you, try to tell them as clearly as possible what you're witnessing and how you'd like them to help.

DOCUMENT

Documentation involves either recording or taking notes on discrimination case to have proof it happened and to know what exactly happened.

Never record if the victim is not taken care of

ALWAYS ask the person who was harassed what they want to do with your recording and/or notes. NEVER post it online or use it without their permission.

DELAY

If we cannot react at the moment, we can do so later. We can have a very big impact on the well-being of the person experiencing discrimination if we talk to them later.

Ask how the person is feeling and tell them that what they have experienced is not OK

Offer company and help (ask what support they need)

DIRECT

Direct response to discrimination by naming the behavior confronting the person doing harm. Before doing it, assess the situation if it is safe for all parties.

Name the behaviour: 'It's discrimination', 'It's humiliating'

Show consequences: 'It's against the law'

Ask to stop right now

Developed on: The 5Ds of Bystander Intervention, Right to be: <https://righttobe.org/guides/bystander-intervention-training/> (access 30 March 2022)

The witness can also help the victim to seek justice in bringing the case to court or other institution, according to the national legislation. When the company or organisation has its anti-discrimination policy and procedures, the witness may be asked to testify. Standing up against discrimination can give others the impetus to act.

If you witness hate speech that incites to discrimination in social media, you can report it to the service provider.

Discrimination is a serious human rights violation; therefore, it is always important to react when we witness it.

PART 3: DISCRIMINATION AND ANTI-DISCRIMINATION IN THE INTERNATIONAL CONTEXT

1. The United Nations

In April 1945, before the end of the World War II, representatives of 50 countries, gathered at the United Nations Conference on International Organization in San Francisco, California. Four months after the San Francisco Conference ended, the United Nations officially began, on 24 October 1945, when it came into existence after its Charter had been ratified by China, France, the Soviet Union, the United Kingdom, the United States and by a majority of other signatories. All main bodies of the UN were established with the UN Charter:

The General Assembly - main deliberative, policymaking and representative organ of the UN.

All [193 Member States](#) of the UN are represented in the General Assembly, making it the only UN body with universal representation.

The Security Council, - has primary responsibility, under the UN Charter, for the maintenance of international peace and security. It has 15 Members ([5 permanent and 10 non-permanent members](#)). Each Member has one vote.

The Economic and Social Council - the principal body for coordination, policy review, policy dialogue and recommendations on economic, social and environmental issues, as well as implementation of internationally agreed development goals.

The Trusteeship Council - established in 1945 by the UN Charter, to provide international supervision for 11 Trust Territories that had been placed under the administration of seven Member States, and ensure that adequate steps were taken to prepare the Territories for self-government and independence.

The International Court of Justice - principal judicial organ of the United Nations. Its seat is at the Peace Palace in the Hague (Netherlands). It is the only one of the six principal organs of the United Nations not located in New York (United States of America).

The UN Secretariat - comprises the Secretary-General, as Chief Administrative Officer of the Organization and tens of thousands of international UN staff members who carry out the day-to-day work of the UN as mandated by the General Assembly and the Organization's other principal bodies.¹¹

Today, the United Nations is still working to maintain international peace and security, give humanitarian assistance to those in need, protect human rights, and uphold international law.

¹¹ Main Bodies | United Nations

Universal Declaration of Human Rights

In December 1948, the UN General Assembly¹² adopted the Universal Declaration of Human Rights (UDHR), which for the first time set out fundamental human rights to be universally protected. UDHR lay down the principles that brought human rights into the realm of international law and has been a foundation of most international documents aiming to secure human rights. UDHR is the most translated document in the world. Since then, the Organization has protected human rights through legal instruments and on-the-ground activities.

Article 1 of the UDHR states: “All human beings are born free and equal in dignity and rights.” Freedom from discrimination, set out in Article 2, is what ensures this equality. Article 7 goes further in securing the principle of equality: “*All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.*”

The principle of equality and non-discrimination is present in all major international human rights treaties¹³. There are two international documents with special focus on non-discrimination: The International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination against Women.

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was adopted¹⁴ in 1965 by the UN General Assembly with the conviction that “any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in **practice, anywhere**”.

The Convention defines the term „racial discrimination”¹⁵ as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. The document sets the obligations of States Parties to the convention, for promoting tolerance and combating racial discrimination, ensuring effective protection, legal remedies and measures. The Convention establishes the Committee on the Elimination of Racial Discrimination.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979 by the UN General Assembly concerning that despite various instruments extensive discrimination against women continues to exist with the conviction that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields.

According to CEDAW „discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital

¹² UN General Assembly, Paris, 10 December 1948, 183rd plenary meeting.

¹³ 1. Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol of the Convention against Torture; International Covenant on Civil and Political Rights (CCPR) and Second Optional Protocol to the CCPR; 3. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); 4. International Convention on the Elimination of All Forms of Racial Discrimination (CERD); 5. International Covenant on Economic, Social and Cultural Rights (CESCR); 6. Convention on the Rights of the Child (CRC) with its Optional Protocol to the CRC; 7. Convention on the Rights of Persons with Disabilities (CRPD); 8. Convention for the Protection of All Persons from Enforced Disappearance (CED);

¹⁴ [International Convention on the Elimination of All Forms of Racial Discrimination | OHCHR](#)

¹⁵ International Convention on the Elimination of All Forms of Racial Discrimination, Article 1

status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹⁶

CEDAW obliges States Parties to condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and undertake necessary measures for that purpose. For the purpose of implementation of the Convention, a Committee on the Elimination of Discrimination against Women is established.¹⁷

Another important document emphasizing equality and non-discrimination, with focus on inclusion, is the UN Convention on the rights of persons with disabilities (CEPD), adopted by the UN General Assembly in December 2006. The general principles of CEPD include non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; Equality between men and women.

UN bodies established for promotion and protection of human rights

For the purpose of ensuring promotion and protection of human rights the United Nations system has two types of bodies:

1. Charter bodies, established with the UN Charter to fulfil UN general purpose for promotion of human rights with mandates in all UN member states. The charter bodies are The Human Rights Council and **Office of The United Nations High Commissioner for Human Rights**.
 - **The Human Rights Council (HRC)** is the principal UN Charter Body, established by The General Assembly established in 2006, with 47 UN . One of its main purposes is to review the human rights record of every UN member state once every four years and to make recommendations for improvement.
 - **Office Of The United Nations High Commissioner For Human Rights (OHCHR)** was established in 1993, to prevent human rights violations and secure respect for human rights by promoting international cooperation and coordinating the UN' human rights activities. The OHCHR conducts a very broad range of activities from its headquarters in Geneva.
2. Treaty bodies have responsibility for monitoring and promoting compliance with a particular human rights treaty (Conventions, Covenants), that these bodies are established by. The treaty bodies consider reports from State Parties on their compliance with the treaty and some treaty bodies can receive individual complaints of treaty body violations.

Treaty bodies are the Committee on the Elimination of Racial Discrimination monitors State Parties compliance with ICERD; the Committee on the Elimination of Discrimination against Women monitors State Parties compliance with CEDAW and other.

Other UN organs, that perform important human rights work are: UN High Commissioner for Refugees; Commission on the Status of Women; United Nations Development Fund for Women (UNIFEM); United Nations Children's Fund (UNICEF); UNAIDS.

¹⁶ [Microsoft Word - Document1 \(ohchr.org\)](#), CEDAW, Article 1

¹⁷ CEDAW, Article 2 and Article 17

2. The European Union

The European Union has many legal instruments that tackle discrimination. In principle, their provisions apply on the territory of the 27 member states of the European Union.

The Charter of Fundamental Rights of the European Union includes the principle of non-discrimination in its Part III under the title Equality (Article 21). It reads:

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

It can be noticed that the Article enumerates many grounds of discrimination. The use of the words 'such as' at the beginning of point 1 may be interpreted as imbuing this article of the Charter with the potential to protect categories of discrimination going beyond those listed in Article 21. The Charter is a legally binding document, and all EU institutions are bound to comply with the Charter, as are EU Member States but only when implementing EU law (Article 51 of the EU Charter). EU Charter emphasises the importance of the principle of equal treatment in the EU legal order. Part III of the document, apart from the principle of non-discrimination, contains the following rights:

- equality before the law
- cultural, religious and linguistic diversity
- equality between women and men
- the rights of the child
- The rights of the elderly
- integration of persons with disabilities

Other important EU documents related to non-discrimination:

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (so called Racial Equality Directive)

The Racial Equality Directive lays down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment. It applies to all persons, as regards both the public and private sectors, including public bodies in relation to: employment and self-employment, vocational guidance and training, membership of and involvement in an organisation of workers or employers, social protection, including social security and healthcare, education, access to and supply of goods and services which are available to the public, including housing.

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (so called The Employment Equality Directive)

This Directive lays down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment. It applies to all persons, as regards both the public and private sectors, including public bodies, in relation to: conditions for access to employment, to self-employment or to occupation, access to all types and to all levels of vocational guidance and vocational training, employment and working conditions, membership of, and involvement in, an organisation of workers or employers.

Both Directives have many common points:

- They define direct and indirect discrimination, and harassment
- They do not prevent Member States from introduction of positive actions (A policy or a programme providing advantages for certain groups of people who are seen to have traditionally been discriminated against, with the aim of creating a more egalitarian society.)
- They call for the Member states to ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive
- They oblige the States to prevent victimisation
- They state that the burden of proof in legal proceedings lies with the employer. It is the person accused of discrimination (e.g. employer) who will have to prove that the discrimination did not take place or that the unequal treatment that occurred was legally permissible.

Other important EU documents related to non-discrimination:

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 (so called Gender Equality Directive) that ensures the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. It guarantees equal treatment in relation to social security, and not to the broader welfare system, such as social protection and access to healthcare and education. It prohibits discrimination related to salaries. The pay scheme should be based on the same criteria for both men and women.

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, which lays down a framework for combating discrimination based on sex in access to and supply of goods and services.

All EU countries are obliged to designate a national equality body responsible for promoting equal treatment and prevent discrimination. These bodies:

- provide independent assistance to the victims of discrimination
- conduct surveys and studies
- publish independent reports and recommendations

In 2018, the Commission recommended a set of measures for Member States to improve equality bodies' independence and effectiveness,

[Commission recommendation on standards for equality bodies](#)

All these bodies are parts of **Equinet - the European Network of Equality Bodies** (<https://equineteurope.org/>). The main objective of the Network is to collect information and create new knowledge on equality and non-discrimination that can help members further improve their practice at national level.

Besides, the European Union implements different actions aimed at preventing discrimination:

Providing statistical data related to issues of equality, through **Eurostat** - <https://ec.europa.eu/eurostat>

Promotion and protection of fundamental rights, exchange of practice, research, through e.g.

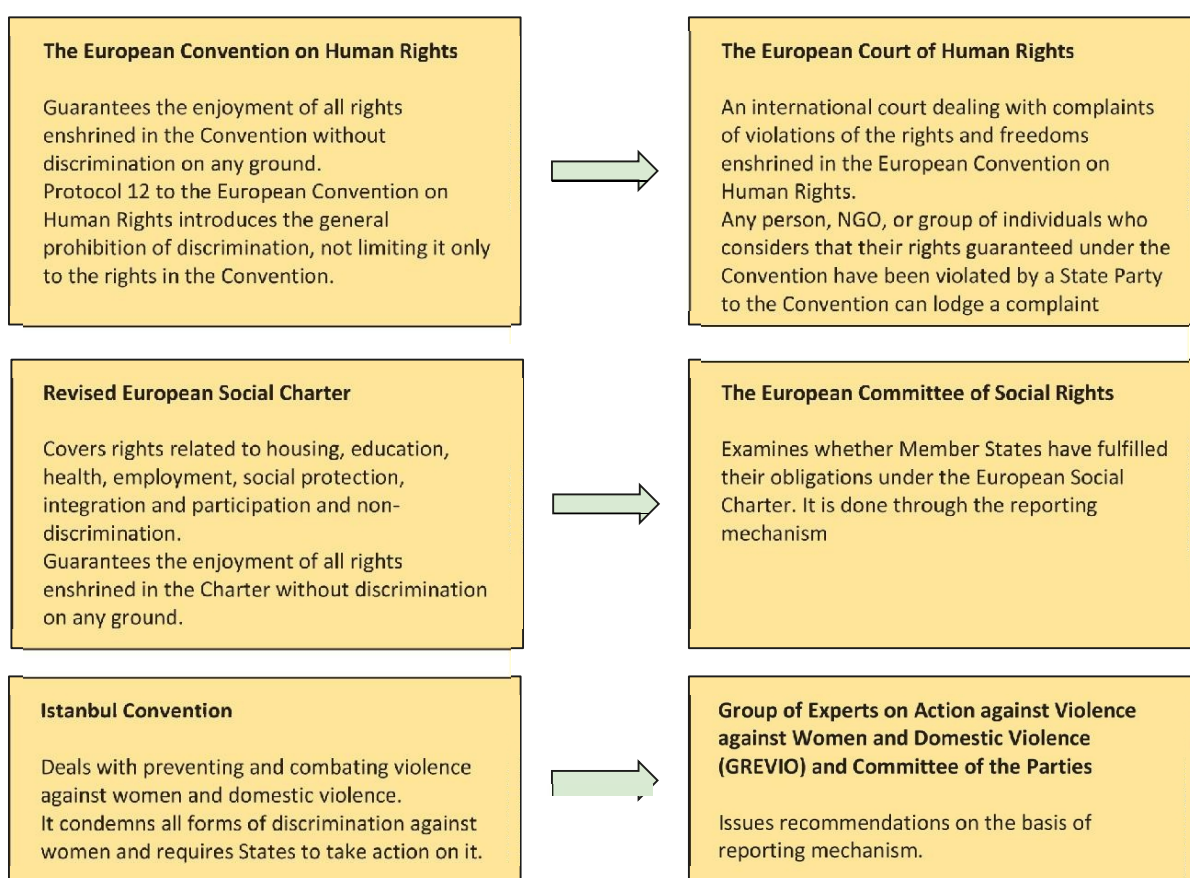
The European Union Agency for Fundamental Rights (FRA) - <https://fra.europa.eu/en>

- Providing funding to national of international projects run by the national public bodies, non-governmental organisations or other institutions.

3. The Council of Europe

The Council of Europe (CoE) is an intergovernmental organisation comprised of 46 member states with its seat in Strasbourg (France). Only 3 European states are not members of the Council: The Holy See, Belarus and the Russian Federation. The organisation is primarily concerned with the promotion and protection of human rights, democracy and the rule of law, therefore one of the things the Council of Europe does is setting and observing standards in these three areas. The principle of non-discrimination has been influential in shaping CoE standards and is seen as a fundamental right that needs to be protected.¹⁸

Selected major Council of Europe documents related to non-discrimination



As previously mentioned, the principle of non-discrimination is included in Article 14 of the **European Convention on Human Rights**, one of the most important documents of the organisation. This principle guarantees the enjoyment of all rights enshrined in the Convention without discrimination on any ground. Protocol 12 to the Convention extends prohibition of discrimination to equal treatment in the enjoyment of any right, including rights under national law. **The European Court of Human Rights** in Strasbourg is an international court set up in 1959. It rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights. You can read more about it in the next part of this publication.

¹⁸ Handbook on European non-discrimination law, 2018 edition, European Union Agency for Fundamental Rights and Council of Europe, 2018, p. 19: https://www.echr.coe.int/Documents/Handbook_non_discr_law_ENG.pdf (access 30 March 2022)

The Revised European Social Charter (1996) is another essential human rights document that explicitly prohibits discrimination. In Part V, Article E non-discrimination clause can be found:

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

The Charter is the most progressive and modern international human rights agreement in the area of social and economic rights. It provides better protection in areas such as equal treatment of men and women, elimination of workplace hazards, rights of children and adolescents (for example, working time regulations) (Article 7), vocational training of the unemployed and reintegration of the long-term unemployed (Article 10), conditions for dismissal (Article 24), the right to dignity at work (Article 26), protection against social marginalisation and poverty (Article 30) and finally the right to housing (Article 31). Some provisions of the Charter oblige States to immediately adopt measures to protect certain rights. Other provisions, on the other hand, are formulated in such a way that States are expected to take steps to satisfy rights progressively, using the maximum available resources, or are required to take steps to create the conditions for the realisation of those rights.

The European Committee of Social Rights (ECSR) examines whether Member States have fulfilled their obligations under the European Social Charter. Its independent and impartial members are elected for a term of six years, renewable once, by the Committee of Ministers of the Council of Europe. The Committee's task is to determine whether legislation and practice in the States party to this international convention is consistent with the provisions of the Charter. It is done through the reporting mechanism - the State parties need to submit regular reports, on the basis of which the Committee proposes recommendations. The implementation of the recommendations is supervised by the Committee of Ministers of the Council of Europe. Under an Additional Protocol to the Charter, which came into force in 1998, national trade unions and employers' organisations as well as certain European trade unions and employers' organisations, and certain international NGOs, are entitled to lodge complaints of violations of the Charter with the Committee.

The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) is a gender-specific human rights treaty focusing on women and girls. It is the first pan-European legally binding instrument that provides standards to prevent and combat violence against women and domestic violence. It also serves as an instrument to promote greater equality between women and men. The Convention is based on four pillars: prevention, protection, prosecution and co-ordinated policies. Each pillar contains provisions which States that signed and ratified the document need to observe and are obliged to implement. The Convention is entirely dedicated to eliminating violence against women, which is impossible without achieving equality between women and men. It is in this context that it requires measures to be taken to achieve de facto equality between women and men.

The Istanbul Convention condemns all forms of discrimination against women (Article 4 (2)) and requires taking the following measures:

- embody in national constitutions or other legislation the principle of equality between women and men and ensure the practical realisation of this principle;
- prohibit discrimination against women, including through the use of sanctions, where appropriate,
- abolish laws and practices which discriminate against women.

The Convention sets up a monitoring mechanism to assess how well its provisions are put into practice. This monitoring mechanism consists of two pillars: the **Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)**, an independent expert body, and the **Committee of the Parties**, a political body composed of official representatives of the States Parties to the Convention. Their findings and recommendations will help to ensure states' compliance with the convention and guarantee its long-term effectiveness.

There are many other documents that also include non-discrimination provisions, such as:

- Framework Convention for the Protection of National Minorities¹⁹
- Convention on Action against Trafficking in Human Beings²⁰
- Convention on Access to Official Documents²¹
- The Additional Protocol to the Convention on Cybercrime²²
- Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity²³

There are also institutions within the Council of Europe that deal with the issue of discrimination.

European Commission against Racism and Discrimination (ECRI) is one of them. It is the Council of Europe's independent monitoring body for combating racism, racial discrimination, xenophobia, anti-Semitism and intolerance. It consists of independent experts from each Council of Europe country. ECRI organises regular monitoring visits to the Member States, during which Commission members meet with the authorities as well as NGOs. On this basis, it prepares reports with recommendations for the national authorities. For this purpose, ECRI analyses legislation, policies and measures taken by the States to combat racism and discrimination and evaluates their effectiveness. The government has the right to submit its response to the report.

¹⁹ National Minorities (FCNM) <https://www.coe.int/en/web/minorities> (access 30 March 2022)

²⁰ Council of Europe Convention on Action against Trafficking in Human Beings. Warsaw, 16.V.2005 <https://rm.coe.int/168008371d> (access 30 March 2022)

²¹ Council of Europe Convention on Access to Official Documents. Tromsø, 18.VI.2009 <https://rm.coe.int/1680084826> (access 30 March 2022)

²² Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, Strasbourg, 28.I.2003. <https://rm.coe.int/168008160f> (access 30 March 2022)

²³ Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a (access 30 March 2022)

ECRI also develops general policy recommendations addressed to all Council of Europe states. They include, for example, standards²⁴ related to combating:

- racism and racial discrimination in the field of sport
- antigypsyism and discrimination against Roma
- racism and racial discrimination in policing
- hate speech
- racism and racial discrimination in employment
- racism and racial discrimination in and through school education
- combating anti-Muslim racism and discrimination

Another institution is the **Commissioner for Human Rights**. It is an independent body of the Council of Europe tasked with promoting respect for and knowledge of human rights in Council of Europe countries. The Commissioner monitors the respect for human rights in the member states of the Council of Europe. To this end, the Commissioner regularly visits countries and also organises ad hoc visits to examine a particular problem. During these visits, the Commissioner meets with the authorities as well as with non-governmental organisations and also visits places that are particularly vulnerable to human rights violations (penitentiary facilities, refugee camps, children's homes, sobering stations, Roma settlements, etc.). At the end of the visit, the Commissioner submits a report with the assessment of the state of human rights in the country, conclusions and recommendations. The government has the right to submit its response. In addition to visits to Council of Europe member states, the Commissioner also publishes studies and opinions of a general nature. These are devoted to various human rights problems that exist in a number of European countries, such as the rights of people with disabilities, intersex people, or refugees.

Apart from setting standards related to anti-discrimination, the Council of Europe:

- runs co-operation projects with the Member States and the European Union on the issues of anti-discrimination and inclusion
- organises training activities for different groups of people (police, legal professionals, youth workers, policy makers, etc.) either offline or through its HELP online platform
- publishes manuals and materials on anti-discrimination for various professionals.

²⁴ Full list of General Policy Recommendations can be found here: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/ecri-standards> (access 30 March 2022)

4. European Court of Human Rights

The European Court of Human Rights is an international court based in Strasbourg (France) that rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights (the convention). Since 1998 it has sat as a full-time court and individuals can apply to it directly. Its judgments are binding on the countries concerned and have led governments to alter their legislation and administrative practice in a wide range of areas. The European Convention on Human Rights is an international treaty under which the member States of the Council of Europe, including the Republic of North Macedonia, are obliged to secure fundamental civil and political rights, not only to their own citizens but also to everyone within their jurisdiction. The Convention secures in particular: the right to life; the right to a fair hearing, the right to respect for private and family life; freedom of expression; freedom of thought, conscience and religion and the protection of property. The Convention prohibits in particular: torture and inhuman or degrading treatment or punishment; slavery and forced labour; death penalty; arbitrary and unlawful detention, and discrimination in the enjoyment of the rights and freedoms set out in the Convention.

Any person, and in some cases even a group of individuals, or NGO can bring a complaint about a violation of their rights before the Court against one or more states that have ratified the convention. Republic of North Macedonia ratified the convention and all persons, groups of individuals, companies or NGO's that consider that their recognized rights under the Convention have been violated may file a complaint before the Court. Cases can be brought directly by individuals and the assistance of a lawyer is not necessary at the start of the proceedings. It is important that before filing a complaint, the applicant must exhaust all available national legal effective remedies in the State against which a complaint is filed.

Article 14 of the **European Convention on Human Rights and Fundamental Freedoms** states that the rights and freedoms set out in the Convention should be secured '*without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*'

Protocol 12 to the Convention (2005) expanded the scope of the prohibition on discrimination, to cover all rights guaranteed at national level, regardless of whether or not they are rights within the Convention.

Cases before the European Court of Human Rights regarding discrimination²⁵

Prohibition of inhuman or degrading treatment and gender-based discrimination

Tunikova and Others v. Russia 14 December 2021

This case concerned acts of domestic violence, including death threats, bodily injuries and one case of severe mutilation, which the four applicants sustained at the hands of their former partners or husbands. The applicants complained, in particular, of a failure on the part of the Russian State to protect them from domestic violence, of a lack of remedies in that regard, and that the general failure to combat gender violence had amounted to discrimination against women. The Court held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention, finding that the Russian authorities had failed to establish a legal framework to combat domestic violence effectively, that they had not assessed the risks of recurrent violence, and that they had not carried out an effective investigation into the domestic violence the applicants had suffered. It also held that there had been a violation of Article 14 (prohibition of discrimination) of the Convention in conjunction with Article 3, finding it established that as regards protection against the risk of domestic violence, women in Russia were in a situation of de facto discrimination.

In this regard, it noted in particular that the failure of the Government to pass legislation to address the staggering scale of domestic violence against women in Russia, and the systematic problems in securing prosecutions and convictions, had led to a continuing climate that was conducive to domestic violence. As a structural bias had been shown to exist, the applicants had not needed to prove any individual prejudice. Lastly, under Article 46 (binding force and execution of judgments) of the Convention, the Court recommended that urgent changes to domestic law and practice to prevent similar violations from occurring be made.²⁶

Right to life and gender-based discrimination

A and B v. Georgia (no. 73975/16) 10 February 2022.

This case concerned the murder of the daughter and mother, respectively, of the two applicants, by the second applicant's father, a police officer, following a troubled relationship. It also concerned the ensuing investigation. The applicants complained, in particular, of a failure on the part of the authorities to protect their relative from domestic violence and to conduct an effective investigation. The Court held that there had been a violation of Article 2 (right to life) taken in conjunction with Article 14 (prohibition of discrimination) of the Convention in the present case. It found that, overall, the case could be seen as yet another vivid example of how general and discriminatory passivity of the law-enforcement authorities in the face of allegations of domestic violence could create a climate conducive to a further proliferation of violence committed against victims, merely because they were women. The Court noted in particular that, despite the various protective measures available, the authorities had not prevented gender-based violence against the applicants' next-of-kin, which had culminated in her death, and they had compounded that failure with an attitude of passivity, even accommodation, as regards the alleged perpetrator, later convicted of the victim's murder.²⁷

²⁵ European Court of Human Rights. <https://echr.coe.int/Pages/home.aspx?p=press/factsheets&c=>

²⁶ Factsheet – Gender Equality. European Court of Human Rights. https://echr.coe.int/Documents/FS_Gender_Equality_ENG.pdf, page 5

²⁷ Ibid. page 5

Right to life and discrimination based on ethnicity

Nachova and Others v. Bulgaria 6 July 2005 (Grand Chamber)

This case concerned the killing of the applicants' relatives, both aged 21, by a military policeman who was trying to arrest them. The applicants alleged in particular that their relatives had been deprived of their lives in violation of Article 2 (right to life) of the Convention, as a result of deficient law and practice which permitted the use of lethal force without absolute necessity. They further alleged that prejudice and hostile attitudes towards people of Roma origin had played a decisive role in the events leading up to the shootings and the fact that no meaningful investigation had been carried out, relying on Article 14 (prohibition of discrimination) of the Convention in conjunction with Article 2. The Court held that there had been a violation of Article 2 (right to life) of the Convention in respect of the deaths of the applicants' relatives. It also held that there had been a violation of Article 2 in that the authorities had failed to conduct an effective investigation into these deaths. As to whether the killings had been racially motivated, departing from the Chamber's approach²⁸, the Grand Chamber did not find it established that racist attitudes had played a role in the applicants' relatives' deaths. It therefore held that there had been no violation of Article 14 of the Convention taken together with the material limb of Article 2. Lastly, regarding whether there had been an adequate investigation into possible racist motives, the Grand Chamber found that the authorities had failed in their duty to take all possible steps to investigate whether or not discrimination may have played a role in the events, in violation of Article 14 taken together with the procedural limb of Article 2.²⁸

Right to respect for home and racial discrimination/discrimination based on ethnicity

Burlya and Others v. Ukraine 6 November 2018

The applicants, Ukrainian nationals of Roma ethnicity, submitted that they had been forced to flee their homes in a village in the Odessa Region following warnings of an anti Roma attack. They complained in particular about this attack on their homes and alleged that the authorities had been complicit in or had at least failed to prevent or to investigate the attack effectively. The Court held that there had been a violation of Article 8 (right to respect for home) of the Convention, taken in conjunction with Article 14 (prohibition of discrimination). It also held, with respect to the applicants who had been at home at the time of the events in question, that there had been two violations of Article 3 (prohibition of inhuman or degrading treatment/lack of effective investigation) of the Convention, taken in conjunction with Article 14. The Court noted in particular that the role of the police, who had chosen not to protect the applicants but had advised them to leave before the pogrom – and the fact that those events had involved the invasion and ransacking of the applicants' homes by a large mob that was driven by sentiment aimed at them as Roma – was such as to constitute an affront to the applicants' dignity sufficiently serious as to be categorized as degrading" treatment. Furthermore, despite clear evidence to the effect that the attack had targeted members of a specific ethnic group, it had been investigated as an ordinary disturbance, and there had been no evidence that the authorities had conducted any investigation into anti Roma prejudice as a likely motive of the crime.²⁹

²⁸ Factsheet – Roma and Travellers. European Court of Human Rights. https://echr.coe.int/Documents/FS_Roma_ENG.pdf, page 5

²⁹ Ibid. page 2

Right to respect for private life and discrimination based on social status

Sidabras and Džiautas v. Lithuania 27 July 2004

The applicants were both dismissed of their position of tax inspectors because of their previous occupation as KGB agents. They complained in particular that being banned from finding employment in the private sector from 1999-2009 on the ground that they had been former KGB officers was in breach of Articles 8 (right to respect for private life) and 14 (prohibition of discrimination) of the Convention. The Court concluded that the ban on the applicants seeking employment in various private-sector spheres had constituted a disproportionate measure, even having regard to the legitimacy of the aims pursued by that ban. It therefore held that there had been a violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private life) of the Convention.

Right to respect for private life and discrimination based on social status

Rainys and Gasparavičius v. Lithuania, judgment of 7 April 2005

Sidabras and Others v. Lithuania 23 June 2015

The three applicants, formerly a tax inspector, a prosecutor and a lawyer in a private telecommunications company, complained about Lithuania's failure to repeal legislation ("the KGB Act") banning former KGB employees from working in certain spheres of the private sector, despite judgments of the European Court of Human Rights in their favour in 2004 and 2005 (see above). The Court held that there had been no violation of Article 14 (prohibition of discrimination), taken in conjunction with Article 8 (right to respect for private and family life) of the Convention, on account of the first two applicants, not being able to obtain employment in the private sector, and, that there had been a violation of Article 14, taken in conjunction with Article 8, on account of the third applicant, not being able to obtain employment in the private sector. The Court found in particular that neither the first nor the second applicant had plausibly demonstrated that they had been discriminated against after its judgments in their case (see above).

The first applicant had not provided any particular information as to who had refused to employ him as a result of restrictions under the relevant legislation, or when. Nor did the Court see anything to contradict the domestic courts' conclusion in his case that he had remained unemployed because he lacked the necessary qualifications. As concerned the second applicant, he had himself acknowledged that he was a trainee lawyer as of 2006 and that he had never attempted to obtain other private sector jobs. However, as concerned the third applicant, the Court was not convinced that the Lithuanian Government had demonstrated that the domestic courts' explicit reference to the KGB Act – namely, the fact that the third applicant's reinstatement to his job could not be resolved favorably while the KGB Act was still in force – had not been the decisive factor forming the legal basis on which his claim for reinstatement in the telecommunications company had been rejected.³⁰

³⁰ Factsheet – Work-Related Rights. European Court of Human Rights. https://echr.coe.int/Documents/FS_Work_ENG.pdf, page 8

Freedom of thought, conscience and religion and discrimination based on religion

Thlimmenos v. Greece 6 April 2000 (Grand Chamber)

The executive board of the Greek chartered accountants body refused to appoint the applicant as a chartered accountant – even though he had passed the relevant qualifying exam – on the ground that he had been convicted of insubordination for having refused to wear the military uniform at a time of general mobilization (he was a Jehovah’s Witness). The Court held that there had been a violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 9 (Freedom of thought, conscience and religion) of the Convention. States had a legitimate interest to exclude some offenders from the profession of a chartered accountant.

However, unlike other convictions for serious criminal offences, a conviction for refusing on religious or philosophical grounds to wear the military uniform could not imply any dishonesty or moral turpitude likely to undermine the offender’s ability to exercise this profession. Excluding the applicant on the ground that he was an unfit person was not, therefore, justified. The applicant had served a prison sentence for his refusal to wear the military uniform. Imposing a further sanction on him was disproportionate. It followed that his exclusion from the profession of chartered accountants did not pursue a legitimate aim. There existed no objective and reasonable justification for not treating the applicant differently from other persons convicted of a felony. The State, in order to ensure respect for Article 14 taken in conjunction with Article 9, should have introduced appropriate exceptions to the rule barring persons convicted of a felony from the profession of chartered accountants.³¹

Right to respect for private life and discrimination based on birth status

Brauer v. Germany 28 May 2009

The applicant was unable to inherit from her father who had recognised her under a law affecting children born outside marriage before 1 July 1949. The equal inheritance rights available under the law of the former German Democratic Republic (where she had lived Factsheet – Children’s rights 18 for much of her life) did not apply because her father had lived in the Federal Republic of Germany when Germany was unified. The applicant complained that, following her father’s death, her exclusion from any entitlement to his estate had amounted to discriminatory treatment and had been wholly disproportionate. The Court held that there had been a violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life) of the Convention. It could not find any ground on which such discrimination based on birth outside marriage could be justified today, particularly as the applicant’s exclusion from any statutory entitlement to inherit penalised her to an even greater extent than the applicants in other similar cases brought before it.³²

³¹ Factsheet – Work-Related Rights. European Court of Human Rights. https://echr.coe.int/Documents/FS_Work_ENG.pdf, page 2

³² Factsheet – Children’s Rights. European Court of Human Rights. https://echr.coe.int/Documents/FS_Childrens_ENG.pdf, page 17 and 18

Right to respect for private life and discrimination based on birth status

Mitzinger v. Germany 9 February 2017

The applicant in this case complained that she could not assert her inheritance rights after her father's death in 2009, as she had been born out of wedlock and before a cut-off point provided for by legislation in force at the time. Notably, children born outside marriage before 1 July 1949 were excluded from any statutory entitlement to inherit and from the right to financial compensation. The Court held that there had been a violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life) of the Convention. It found that the aims pursued by the applicant's difference in treatment, namely the preservation of legal certainty and the protection of the deceased and his family, had been legitimate. However, the Court was not satisfied that excluding children born out of wedlock before a certain cut-off point provided for by legislation had been a proportionate means to achieving the aims sought to be achieved. Decisive for that conclusion was the fact that the applicant's father had recognised her. Furthermore, she had regularly visited him and his wife. The latter's awareness of the applicant's existence, as well as of the fact that the legislation allowed children born inside marriage and outside marriage after the cut-off date to inherit, had therefore to have had a bearing on her expectations to her husband's estate. In any case, the Court noted, European case-law and national legislative reforms had shown a clear tendency towards eliminating all discrimination regarding the inheritance rights of children born outside marriage.³³

³³ Factsheet – Children's Rights. European Court of Human Rights. https://echr.coe.int/Documents/FS_Childrens_ENG.pdf, page 18

PART 4: DISCRIMINATION AND ANTI-DISCRIMINATION IN THE MACEDONIAN CONTEXT

1. Introduction

The grounds of the system for protection from discrimination in the Republic of North Macedonia were established with the Constitution of the Republic in 1991. *“Citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of sex, race, color of skin, national and social origin, political and religious beliefs, property and social status. All citizens are equal before the Constitution and law.”*³⁴ RNM also ratified all the international treaties regarding prevention and protection from discrimination.³⁵

The first specialized Law for Prevention and Protection against Discrimination was adopted in 2010. The LPPD defined the prohibition of discrimination, included variety of discriminatory grounds, indirect and direct discrimination, victimization, provisions for an establishment and competences of the Equality Body – Commission for prevention and protection against discrimination, as well the Court procedure for protection from discrimination. The CPPD was established and commenced its work in 2011. After five years of implementation of the LPPD, considering the inconsistencies and weaknesses of the system, in 2016 the Ministry for social and policy affairs, the OSCE Mission to Skopje, together with professionals working in the field for protection from discrimination started a process for improvement of the anti-discrimination legislation.

The process of preparation of the novelties lasted 3 years and the new Law on Prevention and protection against discrimination was adopted in 2020 by the Assembly of Republic of North Macedonia and entered into force on 30 October.³⁶ The new composition of the Commission for Prevention and Protection from discrimination was established in December 2020.

2. Law on prevention and protection from discrimination

The novelties and improvements of the Law on prevention and protection from discrimination comprise of more precise glossary and terms, exceptions from discrimination, the manner and procedure of election of the Commissioners, competences of the Commission, the scope of the discriminatory grounds, possibility of *actio popularis*, court fees and other.

The new LPPD defines and additionally includes discrimination by association, discrimination by perception and intersectional discrimination. The scope of discriminatory grounds consists of broad and opened list open list of protected grounds and range of areas as before, adding the sexual orientation and gender identity. The measures and actions not deemed to constitute discrimination are defined differently from the previous law and determining the marriage as a union between a man and a woman does not represent an exception from discrimination.

According to the new Law, the members of the Commission were appointed by the Assembly of RNM as before, except that in the applicant phase, the Commission of Elections and Appointments of the Assembly must conduct public *hearing*, and after that submit the list of applicants to the Assembly. The Commission for protection and prevention of discrimination has a more precise and widened scope of duties and responsibilities. The Commission

³⁴ The Constitution of the Republic of North Macedonia, https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspx, Article 9

³⁵ Ibid.

³⁶ Изгласан Законот за заштита од дискриминација, првпат собра 69 гласа „3А“. *Сакам да кажам*. 27 октомври 2020 https://sdk.mk/index.php/makedonija/izglasani-zakonot-za-zashtita-od-diskriminatsija-prvpat-sobra-69-glasa-za/?fbclid=IwAR0MRzQyt2THqFaGVbtY4jUTdVDRmkjQFTNGNA02P1aV90dNBjWBSa1Z_8

shall: Provide general recommendations on *specific issues* in the area of equality and non-discrimination and monitor their implementation; *Initiate ex officio proceedings* for protection against discrimination; *may establish advisory bodies of experts on specific issues* related to the promotion, prevention and protection against discrimination; 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*). Another improvement in the new law is that persons initiating court proceedings for protection against discrimination shall be exempt from paying the costs of court fees, and the fees shall be borne by the Budget of RNM.

3. Criminal Code

The Criminal code of RNM is a complex law that in the special part prescribes all crimes, divided in chapters. There are several criminal acts that can relate to discrimination.

In the chapter - Crimes against life and body, the criminal act **Torture and other cruel, inhuman or degrading treatment and punishment** prescribes that whosoever causes suffering (severe physical or mental suffering in order to punish him for a crime committed or for a crime for which he or another person is a suspect, or to intimidate or force him to waive one of his rights) due to any type of discrimination, shall be sentenced to imprisonment of three to eight years.³⁷

In the chapter Crimes against the state, the crime **Causing hatred, discord or intolerance on national, racial, religious or any other discriminatory ground foresees that** “Whosoever by force, maltreatment, endangering the security, mocking of the national, ethnic, religious and other symbols, by burning, destroying or in any other manner damaging the flag of the Republic of Macedonia or flags of other states, by damaging other people’s objects, by desecration of monuments, graves, or in any other discriminatory manner, directly or indirectly, causes or excites hatred, discord or intolerance on grounds of gender, race, color of the skin, membership in marginalized group, ethnic membership, language, nationality, social background, religious belief, other beliefs, education, political affiliation, personal or social status, mental or physical impairment, age, family or marital status, property status, health condition, or in any other ground foreseen by law on ratified international agreement, shall be sentenced to imprisonment of one to five years.”³⁸

Another crime that relates to discrimination, Spreading racist and xenophobic material via information system, Chapter - crimes against public order – “ Whosoever via a computer system spreads in the public racist and xenophobic written material, photo or other representation of an idea or theory helping, promoting or stimulating hatred, discrimination or violence, regardless against which person or group, based on sex, race, skin color, class, membership in a marginalized group, ethnic background, language, nationality, social background, religious belief, other types of beliefs, education, political affiliation, personal or social condition, mental or physical disability, age, family or marital status, property status, health condition, or any other ground foreseen by law or ratified international agreement, shall be sentenced to imprisonment of one to five years.”³⁹

Lastly, in the Chapter - Crimes against humanity and international law, the crime **Racial or other discrimination** foresees: “ Whosoever based on the difference in sex, race, skin color, class, membership in a marginalized group, ethnic background, language, nationality, social background, religious belief, other types of beliefs, education, political affiliation, personal or social condition, mental or physical disability, age, family or marital status, property status,

³⁷ Criminal Code of Republic of North Macedonia, Article 142

³⁸ Ibid, Article 319

³⁹ Ibid. Article 394-d

health condition, or any other ground foreseen by law or ratified international agreement, violates the basic human rights and freedoms acknowledged by the international community, shall be sentenced to imprisonment of six months to five years". If the act is committed against organizations or individuals because of their efforts for equality of the people, the same sentence will be imposed. Paragraph three additionally prescribes that "Whosoever spreads ideas about the superiority of one race over another, or who advocates racial hate, or instigates racial discrimination, shall be sentenced to imprisonment of six months to three years."⁴⁰

4. Regulations in other Laws

Many laws have incorporated provisions for prevention and against discrimination. The provisions regarding prohibition of discrimination are different in the laws, depending on the area regulated with the concrete law. Certain laws have been harmonized with the new Law on prevention and protection against discrimination as *lex specialis* and have unified provisions for prohibition of discrimination.

The Law on Social Protection (LSP) prescribes equal treatment and non-discrimination, banning discrimination and including the discriminatory grounds as stipulated with the new Law on prevention and protection from discrimination. According to LSP the protection from discrimination is provided with the LPPD as *lex specialis*. The Law on primary education (LPE), that is also harmonized with the new LPPD includes provisions on prevention from discrimination and promotion of the principle of equality within the education, as well affirmative measures. Unlike the LSP and LPE, the Law on Labour relations prohibits discrimination, not including all discriminatory grounds, and defines direct and indirect discrimination differently from the LPPD.

The Law on Health Protection prohibits discrimination in health services based on race, sex, age, nationality, social origin, religion, political or other belief/affiliation, property, culture, language, disease, mental or physical disability. This law is not harmonized with the new anti-discrimination law as well. The harmonization of the laws should proceed with amendments in existing laws and incorporating anti-discriminatory provisions in new laws where appropriate.

5. Available mechanisms for protection from discrimination in north Macedonia (with cases)

There are several mechanisms for protection from discrimination in North Macedonia:

- The Commission for prevention and protection from discrimination as Equality Body established with the Law on Prevention and Protection against Discrimination.
- The Civil Courts that are competent Courts to resolve/to work on cases against discrimination, according to the Law on prevention and protection from discrimination
- The Ombudsman, a professional and independent body that protects the rights of the citizens, competent to overtake actions and measures for protection against discrimination when they are violated by state administration and other organs and organizations with public authorities.
- The Constitutional Court protects the rights and liberties of all people and citizens that refer to the prohibition of discrimination on the grounds of sex, race, religion, nationality, social and political affiliation.

⁴⁰ Criminal Code of Republic of North Macedonia, Article 417

Commission for prevention and protection from discrimination

The Commission for prevention and protection from discrimination is an autonomous and independent body established with the LPPD. The Commission undertakes activities for for promotion, prevention and protection regarding equality, human rights and non-discrimination. Any person that believes that 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. The Commission gives opinions and recommendations and submits a request to initiate infringement proceedings in case a person fails to act upon the recommendation. The procedure before the Commission is shorter than a court procedure, but its opinions don't have the legal force as Verdicts, and they cannot be executed by force. There is a possibility for the Commission to initiate a misdemeanour procedure before competent Court.

The Commission may indicate a general recommendation in case of discrimination committed against a larger number of persons. When filling an application before the Commission the person claiming to be discriminated is not obliged to submit any evidence, but it is more convenient and recommendable. The procedure before the Commission is free of any fees. The Commission has given numerous opinions and recommendations since its establishment.

CASES BEFORE THE COMMISSION

Direct continued discrimination against persons with physical disabilities

The Commission found direct continued discrimination based on disability to participate in public and political life committed by the State Election Commission against people with physical disabilities, which had occurred due to the inaccessibility for people with physical disabilities to the SEC regional office in the municipality of Karposh. This office is a place where people from three municipalities deposit their signatures in support of independent candidates for Municipal Civil or Council members.

The CPPD (Commission for Prevention and Protection against Discrimination) issued a General Recommendation to the SEC to act as soon as possible and to take all necessary emergency actions to ensure the right of people with physical disabilities to be able to voluntarily support one of the independent candidates lists for the upcoming local elections.

Harassment based on sexual orientation and gender identity on internet portals

The commission found harassment based on sexual orientation and gender identity, committed by an author of a text and portals that published it, which read: "Sorry gay friends, it's not about hormones, it's about logic!". The text contained several sections with disturbing content based on sexual orientation and gender identity in terms of the Law on Prevention and Protection against Discrimination.

According to the Commission, the discriminatory speech in the text goes beyond the limits of freedom of expression and encroaches on the rights of others. The Commission referred to the case law of the ECHR, which in the case of *Veejdelend and others v. Sweden*, Complaint no. 1813/07, decided that such speech should be sanctioned. The Court concluded that the sanctioning of such speech, its recognition as harassment which creates a threatening, humiliating and hostile environment is necessary in a democratic society, in order to protect the rights and dignity of others.

The author of the text was recommended to apologize for the written text “Sorry gay friends, it’s not up to hormones, it’s up to logic!” and to publish the apology on the portals that published the text, as well as to refrain from writing texts in the future which may contain disturbing content based on sexual orientation and gender identity or any other discriminatory grounds.

The portals were recommended to publish the author’s apology publicly, as well as their own apology on the Facebook pages. They (the portals) were also recommended to refrain from publishing texts with disputable content in the future.

Direct intersectional discrimination against a woman and two minor children

Direct intersectional discrimination was found on the basis of race, skin colour, social origin, ethnicity and belonging to a marginalized group against a woman and her two minor children, committed by the Public Transport Company. The Commission concluded that a Public Transport Company driver had restricted the right of access to public goods and services to a family of Roma ethnicity on the basis of their race, skin color, social origin, ethnicity and belonging to a marginalized group. Additionally, the driver caused a situation in which he humiliated and insulted the family and also caused feelings of fear and anxiety. A qualifying element is that one of the children was in a wheelchair, which further shows the driver’s lack of sensitivity towards this category of people. The intersectional discrimination in this case referred to the area of access to public goods and services by the company responsible for the transport of passengers in the public city and suburban traffic in the area of the City of Skopje.

The CPPD recommended the Public Transport Company Skopje to take measures that will contribute to the prevention of future discriminatory practices by the drivers of their buses, having in mind that the CPPD had already established discrimination in the past for similar relevant events.

According to the Commission, the PTC should conduct training on discrimination in order to sensitize drivers in their work with various marginalized groups. The perpetrator was obliged to act upon the Recommendation within 30 days; otherwise, a misdemeanor procedure would be initiated before a competent court.

Discrimination based on political beliefs in the field of labor relations

The Commission for Prevention and Protection against Discrimination found harassment based on political convictions in the field of work and labour relations, committed by a former mayor against an employee at the municipality.

The employee was harassed in a way that he was under pressure and was being placed in an unequal position in relation to other colleagues by the then mayor of the municipality. Unlike the other colleagues, in the period when the government measures for restrictive work in the state bodies were in force, he was assigned to perform his work tasks with physical presence, for which he filed a complaint, upon which it was decided several months later, i.e. after the termination of the emergency period. During the mentioned period, the complainant continuously performed his work tasks with physical presence, contrary to the then Decision of the Government of RNM. He also received a Decision ordering him to perform his duties in another municipal building, 9 km away from where he had worked until then.

The Commission recommended the municipality to remove the violations caused by the harassment and to enable, within 30 days, the employee to perform his work tasks in the municipal regional office where he had worked before the adoption of the disputed Decision, as well as to inform the Commission in writing about it. Otherwise, it was stated that a misdemeanour procedure would be initiated before a competent court.

Civil Courts

According to the LPPD the Court protection against discrimination is provided by the competent Civil Courts and any person deeming to be discriminated may initiate a procedure. Provisions of the Law on Civil Procedure shall apply during the procedure, unless otherwise regulated by LPPD. The procedure before the Civil Courts is initiated by filing a complaint before the Basic Civil Courts in the country and the Civil Court Skopje – first instance courts. Against a decision of the first instance courts, the parties have a right to appeal before the Appellate Courts, and in certain cases the parties have a right to file a remedy (Revision) before the Supreme Court of RNM.

There is possibility for Action for protection against discrimination of public interest (*actio-popularis*), and any associations, foundations, unions or other civil society organisations, as well 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 complaint if it is likely that the defendant's actions have discriminated against a larger number of people.

Since 2011, when the first anti-discrimination Law entered into force, the Courts were the most effective mechanism for protection from discrimination, considering the legally binding force of the Court decisions and the possibility of their execution. There were many Court cases against discrimination on different grounds. The Court procedure lasts longer than the procedure before other competent bodies and costs more. Unlike the previous law, the new LPPD prescribes that person initiating court proceedings for protection against discrimination shall be exempt from paying the costs of court fees.

CASES BEFORE THE CIVIL COURTS

Discrimination on the ground of disability and proper adjustment

The plaintiff was a 13-year-old girl, represented by her father, with chronic medical condition and physical disability. The access to her home was limited because of improperly adjusted infrastructure i.e. the street that lead to her home was out of function and demolished. According to the LPPD the local authorities were obliged to adjust the infrastructure and remove all obstacles for enabling unrestricted access. Civil procedure for protection against discrimination was initiated against the Municipality before Basic Court Kavadarci. The Attorney leading the case was contacted by the Mayor of the Municipality who expressed willingness to adjust the infrastructure. The lawsuit ended with amicable settlement and the infrastructure was adjusted so the plaintiff has appropriate access to her home.

Discrimination on the ground of ethnic origin

The plaintiffs were a family of Roma ethnic origin, were stopped and sent back from the borders of North Macedonia three times in their attempt to travel or visit their relatives. They first tried to cross the northern border of the country "Tabanovce" in February 2015 when the Macedonian border police banned them from further travel, with an explanation they don't have enough funds guarantee or return tickets. The same month 2015 they tried to travel to Greece through the southern border "Medzitlija" when again they were banned to leave the country with an explanation they are under suspicion to request asylum in an European country. In June 2015 they had their third attempt to leave the country and travel to Switzerland. In July 2015 they were sent back from the airport in Ohrid with an explanation they don't have return tickets nor funds. Civil procedure was initiated before the Basic Court Bitola against

the Ministry of Interior. It was required from the Court to determine discrimination based on the ground of ethnic origin, violation of the right to free movement and compensation of pecuniary and non-pecuniary damages.

The Basic Court Bitola ruled that the defendant – Ministry of Interior, infringed the right of equal treatment and the right to free movement. The Court ordered a restraint of further acts of the border police that will cause infringement of the right to free movement and equal treatment of the plaintiffs, as well compensation of pecuniary and non-pecuniary damages. The Court of Appeal Bitola confirmed the first instance Court Verdict.

Discrimination on the ground of ethnic origin, severe form of discrimination

The plaintiffs were a family of Roma ethnic origin from Skopje, deprived from the right to leave the country several times on the border with Republic of Serbia and their passports were marked, including the passports of two minor children. Civil procedure was initiated before the Civil Court Skopje against the Ministry of Interior requesting the Court to determine that the defendant conducted severe form of discrimination - discrimination repeated several times and infringement of the right to leave the country, against the plaintiff and his family as members of a marginalized group(Roma community); ;the defendant to be obliged to restrain from further acts of discrimination and to compensate for pecuniary and non-pecuniary damages and he defendant to be obliged to annul the valid passports of the plaintiff and to reissue new passports to the defendant and his family on his expense in urgent procedure, as well as to publish the verdict in a daily newspaper on his expense.

The Civil Court Skopje rejected the complaint as ill grounded, and the Court of Appeal confirmed the first instance Court Verdict.

Discrimination on the grounds of family, marital status and pregnancy

The plaintiff was a woman from Kumanovo, that was rejected to transform her temporary employment agreement into agreement with indefinite duration, after announcing that she was pregnant. A civil procedure was initiated before the Basic Court Kumanovo against the employer – Municipal Primary School and the School Principal. It was requested from the Court to determine discrimination on the grounds of family and marital status i.e. pregnancy, as well compensation of pecuniary and non-pecuniary damages. The Basic Court Kumanovo ruled that the defendants conducted discrimination on the grounds of family and marital status i.e. pregnancy and infringed the right of equal treatment. The Court of Appeal Skopje confirmed the first instance Court Verdict.

Ombudsman

The Ombudsman is an independent and professional body established with the Constitution of RNM and regulated with the Law on Ombudsman, protects the constitutionally and legally granted rights of citizens, when violated by state institutions and other organizations with public powers. The Ombudsman protects the principle of anti-discrimination as well. Every citizen can submit a petition/complaint before the Ombudsman if he/she considers that one of his constitutional or legal rights has been violated by the acts or activities of the organs of the state administration and other institutions, bodies and organizations with public authorizations. The Ombudsman is competent to provide recommendations, opinions and overtake actions and measures for protection against discrimination.

The procedure before the Ombudsman is free of any fees.

Discrimination on the ground of disability, access to good and services

A person with impaired eyesight was unable to use bank services, because the Bank that failed to adjust the system and overtake security measures for safe use of credit and debit cards by visually impaired persons. The person submitted a complaint before the Ombudsman, requesting determination of discrimination on the grounds of disability in the field of access to goods and services. The Ombudsman, deciding on the complaint, recommended amendments of the bank and financial regulations that will obligate the providers of bank and other financial services to adjust their services in compliance with national and international anti-discrimination standards. The Ombudsman recommended the Ministry of Finance of RNM to perform in-depth analysis of the valid and applicable laws according to which the financial institutions and banks act and make decisions. The purpose of the in-depth analysis would be establishing systematic solution that will impose obligations for the financial institutions to overcome the current inconsistencies and properly adjust their services for people with disabilities I.e. impaired eyesight/vision.

Constitutional Court

The Constitutional Court of the RNM protects the freedoms and rights of the individual and citizen relating to the freedom of conviction, conscience, thought and public expression of thought, political association and activity as well as to the prohibition of discrimination among citizens on the ground of sex, race, religion or national, social or political affiliation. According to the Rules of procedure of the Constitutional Court any citizen that considers an individual act or action has infringed his/her right or freedom he/she may request protection by the Constitutional court. With the decision the Constitutional court determines whether there is an infringement and depending on that, it will annul the individual act, prohibit the action causing the infringement or refuse the request.

There are not many requests sent before the Constitutional Court for protection against discrimination on the ground of sex, race, religion or national, social or political affiliation. This is due to the fact that in the last decade or more the CC has decided only in one case on the merits, not rejecting it formally.

Discrimination on the ground of political affiliation

The Constitutional Court determined violation of the right of freedom of public expression of thought and violation of the prohibition of discrimination on the ground of political affiliation against police officials. The act of discrimination was committed against two members of a political party during a peaceful protest where they wanted to express their opinion by holding a transparent "Against war for profit". The police officials warned the protestors and ask them to leave the square where they were protesting. The protestors left to the nearby Trade Centre holding the transparent and tried to place the transparent to be visible. Consequently, the protestors were deprived from their liberty, they were handcuffed for 15 minutes and asked to show identification. With these acts the police officials deprived the protestors from their right to express their opinion publicly. With these acts, the protestors were deprived from their constitutionally granted rights, the right to freedom of expression and the right to equal treatment of all citizens regardless of their political affiliation. The Court found that there has been a violation of the LPPD and the ECHR (article 14 in relation to article 10).

Abbreviations

AI – artificial intelligence

CC – Criminal Code

CoE – Council of Europe

CPPD – Commission for Prevention and Protection against Discrimination

ECRI - European Commission against Racism and Discrimination

ECHR – European Convention on Human Rights

ECSR - The European Committee of Social Rights

ECtHR – European Court of Human Rights

EU – European Union

FRA - The European Union Agency for Fundamental Rights

LCP - Law on Social Protection

LPPD - Law on Prevention and Protection against Discrimination

LGBTIQ – Lesbian, gay, bisexual, transgender, intersex, queer

NGO - non-governmental organisation

OSCE – Organization for Security and Cooperation in Europe

RNM -Republic of North Macedonia

SEC – State Election Commission

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This document was produced with the financial support of the European Union and the Council of Europe. The views expressed herein can in no way be taken to reflect the official opinion of either party

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