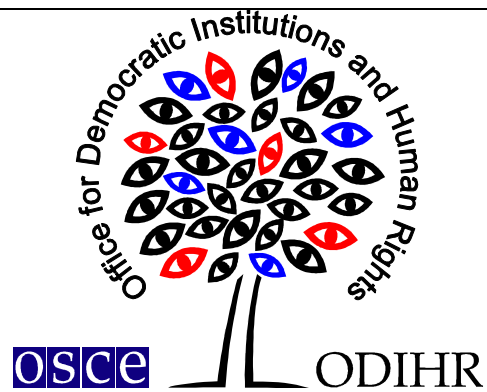


Warsaw, 9 June 2011

Opinion Nr. GEND– FYROM/184/2011

(AT)

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OPINION

ON THE LAW ON EQUAL OPPORTUNITIES FOR

WOMEN AND MEN

OF THE

FORMER YUGOSLAV REPUBLIC OF

MACEDONIA

Based on an official English translation of the Law

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Annex 1: Law on Equal Opportunities of Women and Men

1. INTRODUCTION

1. *On 26 April 2011, the Minister of Labour and Social Policy sent a letter to the Director of the OSCE/ODIHR informing him that the Ministry planned to reform the Law on Equal Opportunities of the former Yugoslav Republic of Macedonia¹ (hereinafter “the Law”). In order to ensure that the final version of the envisaged draft legislation will be in line with European standards and good practices, the Minister requested that OSCE/ODIHR provide an opinion on the existing Law, as well as on the draft amendments once completed.*
2. *This Opinion is provided in response to the above request and is conducted based on the OSCE/ODIHR’s special mandate to promote gender equality and review related legislation, established by the OSCE Action Plan for the Promotion of Gender Equality².*
3. *Prior to the adoption of the Law in 2006, the OSCE/ODIHR had prepared two reviews on different versions of the then draft Law on Equal Opportunities, namely the Preliminary Comments on the draft Law on Equal Opportunities of 3 August 2005³ (hereinafter “ODIHR’s 2005 Preliminary Comments”) and the Opinion on the Revised Version of the draft Law on Equal Opportunities of 8 March 2006⁴ (hereinafter “ODIHR’s 2006 Opinion”).*

2. SCOPE OF REVIEW

4. The scope of the Opinion covers only the above-mentioned Law, submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of all available framework legislation governing gender equality and gender mainstreaming in the former Yugoslav Republic of Macedonia.
5. The Opinion raises key issues and indicates areas of concern. The ensuing recommendations are based on international gender equality standards and good practices, as found in the international agreements and commitments ratified and entered into by the former Yugoslav Republic of Macedonia. Additionally, the Opinion refers not only to international standards that are legally binding on the former Yugoslav Republic of Macedonia, but also to those which the State is aspiring to.⁵ The Opinion also reflects the contents of the previous OSCE/ODIHR reviews on the Law during its drafting stage, as applicable.
6. This Opinion is based on an official translation of the Law provided by the Ministry for Labour and Social Policy. Errors from translation may nevertheless result.

¹The Law on Equal Opportunities of Women and Men, adopted on 29 May 2006, Official Gazette No. 66.

² OSCE Ministerial Council Decision MC DEC/14/04 on the 2004 OSCE Action Plan for the Promotion of Gender Equality of 7 December, 2004, Annex, Chapter 5, par 44(b).

³ OSCE/ODIHR Preliminary Comments on the Draft Law on Equal Opportunities of the former Yugoslav Republic of Macedonia, opinion no. GEND-MK/036/2005, issued 3 August 2005.

⁴ OSCE/ODIHR Opinion on the Revised Version of the Draft Law on Equal Opportunities of the former Yugoslav Republic of Macedonia, opinion no. GEND-MK/054/2006, issued on 8 March 2006.

⁵ Although the former Yugoslav Republic of Macedonia is not a member of the EU, it has been a candidate for EU membership since 2005 and thus aspires to meet the standards set by the EU, also in the field of gender equality.

7. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion is without prejudice to any written or oral recommendations and comments to the Law or related legislation that the OSCE/ODIHR may make in the future.

3. EXECUTIVE SUMMARY

8. Overall, the OSCE/ODIHR believes that the current Law on Equal Opportunities is an important instrument to ensure equal treatment of women and men in all spheres of society in the former Yugoslav Republic of Macedonia. At the same time, in order to ensure the full compliance of the said legislation with international standards and to facilitate proper and effective implementation of such legislation, it is recommended that this Law be amended as follows:

3.1 Key Recommendations

- A. to expand the definition of discrimination under Article 4 par 3 so that all potential discrimination cases are covered by the Law; [par 19]
- B. to outline the mandate, main functions and obligations, as well as the tenure, accountability, reporting lines, chain of command, complaint procedures and working principles of the parliamentary and local level commissions on gender equality, mentioned in the Law; [pars 28 and 33]
- C. to ensure that the Law establishes an equality body, in line with the EU Gender Directives; [par 44]
- D. to consider simplifying the administrative complaints procedure before the Ministry Representative, by providing the Representative with the powers to enforce his/her decisions; [par 48]
- E. to clarify possible legal remedies under Article 37 and the circumstances in which they may be made use of, in particular in situations involving complaints of sexual harassment; [par 57]

3.2 Additional Recommendations

- F. To include in Article 1 par 2 references to other legislation governing equal opportunities and specify in which circumstances other laws shall exceptionally take precedence over the Law; [pars 15 and 16]
- G. To ensure harmonization of the Law with all other legislation dealing with gender equality; [par 16]
- H. To delete all references to “social life” throughout the text of the Law; [par 17]
- I. To establish sexual harassment as unlawful in Article 4; [par 21]
- J. To clarify the types of normative measures that Article 5 par 1 is referring to and the sanctions for nonobservance of requirements and violation of prohibitions; [pars 23-24]

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- K. To ensure that measures proposed under Articles 6-9 are clearly outlined and that their implementation is thoroughly assessed; [par 25]
- L. To include in Article 6 information on how the implementation of special measures will be enforced and monitored; [par 25]
- M. To specify in Article 8 the timeframe of periodical plans; [par 25]
- N. To include in Article 10 the regular review of school curricular and ensure that the issue of sexual harassment is addressed in secondary and tertiary institutions; [par 26]
- O. To clarify in more detail the extent of the involvement of the Ministry of Labour and Social Policy in policy-making processes in the field of gender equality of other ministries under Articles 13 and 14 and of political parties under Article 18; [pars 30 and 36]
- P. To provide employers' associations, unions and citizens' associations with a more specific and formal role in shaping public policy in the field of equal opportunities under the Law; [par 31]
- Q. To establish in the Law coordination and cooperation mechanisms between different local and central coordinators; [pars 34 and 35]
- R. To clarify the reporting lines to the Ministry of Labour and Social Policy and ensure that all reports submitted to the Ministry are published and publicly disseminated; [par 35]
- S. To include in Article 18 a mechanism to monitor submission and implementation of plans for equal opportunities of political parties; [par 36]
- T. To enhance clarity as to whom or which body data on human resources according to gender shall be presented to under Article 20; [par 37]
- U. To amend provisions outlining proceedings before the Representative of the Ministry of Labour and Social Policy and consequences of such proceedings as follows:
 - 1) Specify in Article 30 that the Ministry Representative shall inform complainants about missing documents before deciding to terminate proceedings for lack of proper documentation; [par 46]
 - 2) Ensure that under Article 31 par 2, a copy of the Ministry Representative's written opinion is sent automatically to the Minister of Labour and Social Policy, and other supervisory instances within the Ministry, as well as the competent supervisory body of the respondent party; [par 47]
 - 3) Clarify whether the outcome of proceedings before the Ministry Representative will also include compensation for damages or dismissal; [par 48]
 - 4) Expand Article 32 so that the Ministry Representative's annual report shall include information on the effect of

his/her written opinions and that this report is published and disseminated; [par 49]

- 5) Specify the bodies competent to take over cases from the Ministry Representative under Article 33; [par 54]
 - 6) See to it that under Article 34 par 2, the decision ordering compliance with the Ministry Representative's written opinion is sent to the complainant, relevant stakeholders involved in the proceedings and the hierarchical supervisor of the respondent party; [par 55]
- V. To specify the nature and procedure before the Commission within the Government mentioned in Article 35; [par 56]
- W. To outline which body shall determine acts of misdemeanor under Articles 42 and 43, following which procedure; [par 59]
- X. To ensure that the lack of cooperation with civil society, the failure of coordinating and other bodies to submit reports to the Ministry, as well as the failure to appoint a commission are also considered misdemeanors under the Law; [par 59] and
- Y. To clarify whether the shift of the burden of proof under Article 39 shall also occur in proceedings before the Ministry Representative and whether it shall apply to administrative and other non-criminal court proceedings in general. [par 60]

4. ANALYSIS AND RECOMMENDATIONS

4.1 International Gender Equality Standards

9. This Opinion analyzes the current draft Law from the viewpoint of its compatibility with relevant international human rights standards and OSCE commitments. Basic international equality standards can be found in generic human rights instruments such as the International Covenant on Civil and Political Rights⁶ (hereinafter "the ICCPR"). Article 26 of the ICCPR states that all persons are equal before the law and that the law shall prohibit any discrimination and guarantee to all persons equal and effective protection from discrimination on any ground, including one's sex. This principle is also found in the European Convention on Human Rights and Fundamental Freedoms⁷ (hereinafter "the ECHR"), mainly in Article 14, which prohibits discrimination in the enjoyment of the Convention's other rights on the grounds of, *inter alia*,

⁶ The United Nations International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) on 16 December 1966 and succeeded to by the Former Yugoslav Republic of Macedonia on 18 January 1994.

⁷ The Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, signed on 4 November 1950, entered into force on 3 September 1953. The former Yugoslav Republic of Macedonia ratified the Convention on 10 April 1997.

a person's sex, and Protocol 12 to the Convention, which contains a wider prohibition of all forms of discrimination⁸.

10. Next to such generic instruments, the UN Convention on the Elimination of All Forms of Discrimination Against Women⁹ (hereinafter "CEDAW") for the first time adopted a definition for "discrimination against women", which stressed that the effect of discrimination against women is such as to impair or nullify the recognition, enjoyment or exercise by women of human rights in the political, economic, cultural, social, civil or other fields on the same footing as men.¹⁰ States party to CEDAW are held to work towards eliminating discrimination of women in all areas of life, including, *inter alia*, legal status, political participation, employment, education, healthcare, and family structures.
11. The Council of Europe has issued numerous documents on topics related to gender equality, starting with resolution 855 (1986) on the equality between men and women,¹¹ which was followed by other resolutions or recommendations covering, *inter alia*, the equality of rights between men and women¹², progress in women's rights¹³, the situation of women in rural society¹⁴, mechanisms for women's decision-making¹⁵, balanced participation of women and men in political and public decision-making¹⁶, as well as women's representation in politics through the electoral system¹⁷. The latest document issued in this context is a recommendation of the Committee of

⁸ Protocol 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by the Former Yugoslav Republic of Macedonia on 13 July 2004.

⁹ Convention on the Elimination of All Forms of Discrimination against Women, adopted by resolution 34/180 of the General Assembly at its thirty-fourth session, 18 December 1979. The former Yugoslav Republic of Macedonia succeeded to this Convention on 18 January 1994.

¹⁰ See Article 2 of the CEDAW: "[...] the term "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 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."

¹¹ Resolution 855(1986) of the Parliamentary Assembly on equality between men and women, adopted on 27 January 1986 at the 21st Sitting.

¹² Recommendation 1229 (1994) of the Parliamentary Assembly on equality of rights between men and women, adopted on 24 January 1994 at the 1st Sitting.

¹³ Recommendation 1269 (1995) of the Parliamentary Assembly on achieving real progress in women's rights as from 1995, adopted on 27 April 1995 at the 15th Sitting.

¹⁴ Recommendation 1321 (1997) of the Parliamentary Assembly on improving the situation of women in rural society, adopted by the Standing Committee on behalf of the Parliamentary Assembly on 19 March 1997.

¹⁵ Resolution 1489 (2006) of the Parliamentary Assembly on mechanisms to ensure women's participation in decision-making, adopted on 17 March 2006.

¹⁶ Recommendation Rec (2003)3 of the Committee of Ministers to member states on balanced participation of women and men in political and public decision-making, adopted by the Committee of Ministers on 12 March 2003 at the 831st Meeting of the Ministers' Deputies.

¹⁷ Resolution 1706 (2010) of the Parliamentary Assembly on increasing women's representation in politics through the electoral system, adopted on 27 January 2010, and Recommendation 1899 (2010) of the Parliamentary Assembly on increasing women's representation in politics through the electoral system, also adopted on 27 January 2010.

Ministers to Member States on measures to combat discrimination on grounds of sexual orientation and gender identity.¹⁸

12. Under European Union law, two main directives (hereinafter “EU Gender Directives”) have reflected EU countries’ commitment to protecting equality between men and women, namely Council Directive 2004/113/EC on the principle of equal treatment between men and women in the access to and supply of goods and services and Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.¹⁹ Both EU Gender Directives include definitions of discrimination (direct and indirect), including sexual harassment, and stipulate the equality of treatment in the above areas (goods and services, and employment), while also focusing on remedies and enforcement.
13. Of the various OSCE Commitments focusing on equal treatment, the Vienna Document is perhaps one of the most specific in stressing that all OSCE participating States commit to ensure human rights and fundamental freedoms to everyone within their territory and subject to their jurisdiction, without distinction of any kind based on such characteristics as, *inter alia*, a person’s sex.²⁰ This principle is reiterated in a more detailed manner in par 40.4 of the Moscow Concluding Document²¹, where OSCE participating States affirmed their goal to achieve not only *de jure*, but also *de facto* equality of opportunity between men and women, as well as the promotion of effective measures to that end. In the same Document, OSCE participating States recognized that “true and full equality between men and women is a fundamental aspect of a just and democratic society based on the rule of law”.²² The OSCE Action Plan for the Promotion of Gender Equality of 2004, in its Chapter IV, also calls on OSCE participating States to develop policies and establish mechanisms to promote and strengthen gender equality, and to comply with the relevant international instruments that they have ratified or acceded to.²³ In 2009 in Athens, the OSCE Ministerial Council called on OSCE participating States to, *inter alia*, consider specific measures to achieve gender balance in all public institutions and consider possible legislative measures to facilitate a

¹⁸ 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, adopted by the Committee of Ministers on 31 March 2010 at the 1081st Meeting of the Ministers’ Deputies.

¹⁹ 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; and Council Directive 2004/113/EC of 13 December 2004 on the principle of equal treatment between men and women in the access to and supply of goods and services.

²⁰ The Concluding Document of Vienna – The Third Follow-Up Meeting, Vienna, 15 January 1989, Questions Relating to Security in Europe, Principles, par 13.8. ²⁰ The Ministerial Council Decision 7/09 on Women’s Participation in Political and Public of 2 December 2009 called upon all OSCE participating States to consider specific measures to achieve gender balance in all legislative, judicial and executive bodies and legislation to facilitate gender equality in political and public life, and especially in decision-making (pars 1 and 2).

²¹ The Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991.

²² *Ibid*, par 40.

²³ OSCE Ministerial Council Decision MC DEC/14/04 on the 2004 OSCE Action Plan for the Promotion of Gender Equality of 7 December, 2004, Chapter 4, par 42.

more balanced participation of women and men in public life and in decision-making.²⁴

4.2. Scope and Purpose of the Law

14. Based on Article 1 par 1, the Law determines the “general and special measures” for establishing equal opportunities between men and women, also competencies, duties and obligations of entities responsible for ensuring equal opportunities, the procedure and competent authority for determining unequal treatment between women and men, and the rights and obligations of participants to this procedure. This Article is positive in that it clearly reflects the general principle of equality (including of persons of different sex) laid down in Article 9 of the Constitution, as does Article 2 outlining the purpose of the Law.
15. However, the second paragraph of Article 1 remains quite vague, stating that issues of significance for the establishment of equal opportunities between women and men shall be determined by the Law “and other laws”.²⁵ It is essential that persons applying the law are well-informed about the applicable legislation governing gender equality. For this reason, it is paramount that the Law specifies which legislation, aside from the Law, will cover this field. Ideally, such references should include the titles of other relevant legislation, or at least point to such legislation by topic.
16. Further, Article 1 par 2 also does not specify which laws regulating gender equality shall take precedence over the other. While it is assumed that the Law on Equal Opportunities has priority over all other legislation stipulating equal treatment between men and women, there may be exceptions to this general rule. Should other legislation take precedence over the Law in specific circumstances, these laws need to be outlined in detail in the Law. Other relevant legislation should contain clear references to the Law and should specify that generally, the Law takes precedence over them in all matters involving gender equality and gender mainstreaming. Overall, lawmakers should ensure that all legislation dealing with gender equality and mainstreaming is harmonized with the Law.
17. Article 2 of the Law deals with the aim or purpose of the Law, namely the promotion of principles aimed at establishment of equal opportunities for men and women in the political, economic, social, educational and other spheres of social life. It is noted that references to social life are found throughout the Law²⁶. This term may refer to all aspects of public life, but could potentially also be interpreted restrictively in that it may not cover political and public life (indeed, in the wording of Article 2 par 1, the first mention of the term “social life” appears to be separate from political, economic and educational spheres of life). In order to ensure that the purpose of the Law in Article 2, as well as other provisions, have a wide scope of application, it is recommended to delete

²⁴ OSCE Ministerial Council Decision MC DEC/7/09 on Women’s Participation in Political and Public Life of 2 December 2009.

²⁵ Similarly vague references to other legislation can be found in Articles 3, and 4 par 2 of the Law.

²⁶ See also, e.g., Articles 7, 10, 14 and 21.

the term “social” throughout the Law, so that the Article 2 and other relevant provisions refer only to “other spheres of life”²⁷.

4.3. Definitions and Terminology

18. As stated in ODIHR’s 2006 Opinion, the mention of numerous definitions under Article 4 of terms used in the Law, such as equal opportunities, direct and indirect discrimination, harassment and sexual harassment is much welcomed.
19. Under Article 4 par 3, discrimination is every differentiation, exploitation or limitation based on gender, which endangers or disables the exercise or protection of human rights and freedoms. For gender discrimination to take place, certain behaviour (differentiation, exploitation or limitation) must thus “endanger or disable the exercise or protection of human rights and liberties”. While this definition somewhat reflects the definition of discrimination provided by Article 1 of the CEDAW²⁸ (see par 10 *supra*), it could conceivably be interpreted in a restrictive manner, which would lead to a situation where certain cases of discrimination would fall out of the scope of the Law if they are not considered to “endanger or disable human rights”. Other international definitions of discrimination would appear to have a wider scope, such as the ones contained in Protocol 12 to the ECHR (“the enjoyment of any right set forth by law [...] without discrimination”) and the EU Gender Directives²⁹ (“less favourable treatment [...] than another is, has been or would be treated in a comparable situation”). It is recommended to consider expanding the definition of discrimination somewhat to ensure that all potential cases of gender discrimination will be covered by the Law.
20. By contrast, the definitions of direct and indirect discrimination (Article 4 pars 4 and 5) reflect EU and ECtHR standards in this respect and are as such much welcomed.³⁰
21. Article 4 pars 6 and 7 also contain definitions of harassment and sexual harassment. It is positively noted that both definitions are very similar to those contained in Article 2 of both EU Gender Directives. At the same time, it would be preferable if, as already stated in ODIHR’s 2005 Preliminary

²⁷ It is possible that in the Macedonian original text, the term “social life” has a wider scope and that the issue discussed in this paragraph is only relevant in the English version.

²⁸ Article 1 of the CEDAW specifically refers to “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 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.*” While similar to the definition found under Article 4 of the Law, the CEDAW definition would thus appear to be somewhat wider, and at the same time more specific. At the same time, it is unique in its focus on the fact that discrimination is often a result of certain actions, where, namely, women do not enjoy rights on equal footing with men.

²⁹ This definition has, on the other hand, been incorporated into the Law as the definition of direct discrimination under Article 4 par 4.

³⁰ See the EU Gender Directives, namely Article 2 of Directive 2006/54/EC and Article 2 of Directive 2004/113/EC. See also, instead of others, the ECtHR’s judgment in the case of *D.H. v. the Czech Republic* of 13 November 2007, application no. 57325/00, pars 81-83. This judgment mainly concerns racial discrimination, but its principle may be applied *mutatis mutandis* to all cases of discrimination including gender.

Comments³¹, sexual harassment would not only be defined, but would also be established as unlawful in Article 4 of the Law. Clearer specifications of legal remedies and sanctions under the Law, discussed in greater detail under pars 57-59 *infra*, should also refer explicitly to recourse, compensation and sanctions for individuals complaining of sexual harassment.

4.4. Measures for Establishing Equal Opportunities

22. The Law differentiates between different types of measures to ensure equal opportunities between men and women. Article 5 speaks of general measures, while Article 6 covers special measures in “particular areas of social life”, which include, among others, positive measures, encouraging measures, and programmatic measures. Articles 7-9 then cover the adoption of such measures.
23. Article 5 par 1 defines general measures as normative measures from various fields that prohibit gender-based discrimination and “anticipate commitments” for entities under the Law for care and creation of conditions for securing equal treatment in the exercise and protection of rights and freedoms and which anticipate sanctions in case of “nonobservance of requirements and for violation of prohibitions”. Presumably, this refers to sub-legal norms passed by the executive to ensure respect for gender equality. If not, then this provision should specify which norms it is referring to and the relationship between the Law and this other legislation.
24. Assuming, however, that general measures amount to sub-legal norms, the matter of sanctions under these norms could pose problems if they exceed the scope of sanctions mentioned or discussed under the present Law. Based on the principle of the hierarchy of laws, sub-legal norms shall implement legislation, but shall not exceed it. It is recommended to clarify these issues in the above provision.
25. The differentiation between different types of special measures under Article 6 is positive, as are the provisions referring to their adoption (Articles 7-9), which foresee a pluralistic and transparent manner of adoption. However, it would be advisable to include in this part of the Law information on how the implementation of such measures will be enforced and monitored. While Article 8 refers to periodical plans, it should also include a time frame (e.g. annual submission of such plans). It is also essential that the measures proposed are clearly outlined and that their implementation is thoroughly assessed.
26. Article 10 differs somewhat from the above provisions in that it focuses only on equal opportunity measures in the process of education and professional training. It is reiterated at this point that the regular review of school curricula and addressing the issue of sexual harassment in secondary and tertiary educational institutions, both proposed in ODIHR’s 2005 Preliminary Comments³², would be a positive addition to this provision.³³

³¹ See ODIHR’s 2005 Preliminary Comments, par 16, and ODIHR’s 2006 Opinion, pars 16 and 17.

³² See, ODIHR’s 2005 Preliminary Comments, par 16.

4.5. Entities Responsible for the Adoption and Implementation of Measures Aimed at Establishing Equal Opportunities

27. Chapter IV of the Law deals with bodies and institutions responsible for the adoption and implementation of measures aimed at establishing equal opportunities and such bodies/institutions' obligations.

4.5.1 General Responsibilities on a State and Local Level

28. Article 11 of the Law introduces a Commission for Equal Opportunities (hereinafter "the Parliamentary Commission"), whose composition and competences shall be determined by the Assembly. In this context, it is noted that Article 11 contains no specific information on the exact mandate of this Commission. As already stressed in ODIHR's 2005 Preliminary Comments, the main functions and obligations, as well as the tenure, accountability, reporting lines, chain of command, complaint procedures and principles based on which this Parliamentary Commission shall work should be set out in the Law. The composition and criteria/procedure for appointing members of the Parliamentary Commission should also be included in the Law in a clear and transparent manner. The rules of procedure for the Commission's work should also be clear and transparent and the Law should specify whether these rules are drafted by the Assembly or by the Parliamentary Commission.
29. Within the executive, the Ministry of Labour and Social Policy takes on a leading role with regard to gender mainstreaming and the promotion of equal opportunities (Article 14). Each government ministry is obliged to determine a Coordinator, who shall be responsible for coordinating activities related to equal opportunities and implementing the Law within the areas of competence of the respective ministry and cooperating with the Ministry of Labour and Social Policy, which he/she shall also report to. Ministries are obliged to request the Ministry of Labour and Social Policy's opinion on all materials pertaining to gender equality before submitting them to the Government for review, adoption or enactment (Article 13 par 2).
30. Articles 13 and 14 are not very specific on what the effects of the Ministry's involvement in other ministries' work will be – it would be advisable to include in the Law some information on whether the Ministry's role here is purely advisory, or whether its opinions under Article 14 pars 2 and 5 shall have the power to shape the policy of other bodies in the field of gender equality. Possibly, the Law could specify whether in cases where the Ministry of Labour and Social Policy does not agree with a proposed measure or document of another ministry related to equal opportunities and gender mainstreaming, the proposed measure/document shall be adapted, or if sent to

³³ It should also be noted that in its Concluding Comments for the former Yugoslav Republic of Macedonia, of 3 February 2006, the CEDAW Committee called upon the State Party to implement various awareness-raising and educational campaigns, in particular in rural areas, as well as with regard to women's participation in political and public life, and with regard to the unacceptability of all forms of violence against women, pars 20, 24, and 26.

the Government for approval under Article 13 par 1, shall also enclose an opinion paper of the Ministry of Labour and Social Policy.³⁴

31. Under Article 13 par 1, the Ministries are obliged to cooperate with employers' associations, unions and citizens' associations active in the field of equal opportunities, "with the purpose of ensuring suggestions and measures for accomplishing the aim of the Law". In order to enhance such cooperation and make sure that these actors are given a proper and effective role in enhancing equal opportunities in the public sector, the Law should provide them with a more specific and more formal role in shaping public policy in this field. For example, associations or unions could be given a permanent seat in gender equality working groups on a ministerial level, or the Law provides mechanisms for the formal consideration of their opinions by the relevant Ministries while developing gender equality measures.
32. The responsibilities of units of local self-government under the Law are regulated in Article 16. In addition to the Parliamentary Commission for Equal Opportunities, units of local self-government are also obliged to form local commissions for equal opportunities. Units of local self-government also appoint local coordinators.
33. Article 16 does not specify the competences and mandate of the local commissions and coordinators and how they shall complement one another. As with the Parliamentary Commission, the composition, appointment criteria and procedures, authority, tasks and obligations of the local commissions should be set out in the draft Law, in addition to being set out in the statutes of the unit of local self-government³⁵.
34. Further, it is noted that, as already stated in ODIHR's 2005 Preliminary Comments, the Law does not include a coordination mechanism between the different local coordinators.³⁶ Such mechanism is important to ensure that coordinators are informed about each others' actions on a local level – it could constitute a platform on which the coordinators could meet and make recommendations as to necessary changes in policy and law, transpiring from regular reporting. A similar mechanism should be envisaged on the central level between ministries and other state bodies.
35. The different local commissions should maintain contact with one another to ensure a similar level of work and policy. Additionally, along the same lines, the obligation of the local commissions to report to the Ministry of Labour and Social Policy (Article 17) should be clarified and expanded. Overall, coordination and cooperation mechanisms between these local bodies and the Ministry should be further strengthened, and between the Ministry and the Parliamentary Commission, to ensure that the Ministry will be able to address the needs of local commissions with the Parliamentary Commission and other relevant stakeholders. All reports submitted to the Ministry by state and local bodies and commissions should be published and publicly disseminated, to ensure maximum transparency.³⁷

³⁴ See, on a similar note, ODIHR's 2005 Preliminary Comments, par 24.

³⁵ Ibid., par 29.

³⁶ Ibid., par 25

³⁷ Ibid., par 31.

36. According to Article 18, political parties are held to adopt plans for equal opportunities once every second year. These plans are submitted to the Ministry of Labour and Social Policy prior to adoption. While Article 18 is very much welcomed in principle, it would acquire greater practical effect if it were accompanied by a mechanism to monitor the submission of the plan and the implementation of the plan, as already stressed in ODIHR's 2005 Preliminary Comments³⁸. Further, it would be advisable to specify the Ministry's role here in greater detail, especially with regard to effects that this body's involvement is meant to have. It should however be noted that any involvement of the Ministry should not go so far as to unduly interfere with the right of parties as free associations to manage their own internal affairs³⁹.
37. Article 20 requires numerous state bodies and institutions, but also non-governmental organizations, media, companies and other subjects that are obliged to collect, record and process statistical data, to present data on human resources according to gender. From this provision, it is not clear to whom or to which body this information shall be presented. If the word "present" would imply that these bodies and institutions shall publish this information, then it is essential that this be done in line with international standards on protection of personal data.⁴⁰

4.5.2 Complaints Mechanisms

38. Aside from court proceedings, the Law lists two main complaints mechanisms, mainly the Ombudsman (Article 15) and a complaints procedure outlined under Chapter VI in the Law, led by a designated representative of the Ministry of Labour and Social Policy (hereinafter "the Ministry Representative") (Article 23 pars 2 and 3).
39. Essentially, Article 15 reiterates the Ombudsman's competences to deal with complaints based on gender discrimination under his/her general human rights protection mandate, laid down in Article 2 of the Ombudsman Law⁴¹. The Ombudsman's competences are explicitly limited to complaints involving alleged gender discrimination by state administration bodies or organizations with public authority (Article 15).
40. The Ministry Representative, on the other hand, may deal with all complaints involving potential gender discrimination by "entities in the public and private sector" (Article 24 par 3). The complaints procedure under Articles 24-31 is essentially a written procedure, which also foresees a written explanation from the respondent party. A meeting with the parties involved in the procedure may be held exceptionally, if the Ministry Representative determines that this would help clarify the facts of the case (Article 27 par 2). At the end of this procedure, the Ministry Representative issues a written opinion determining whether there has been a case of gender discrimination, complete with

³⁸ Ibid, par 17.

³⁹ See the ODIHR/ODIHR-Venice Commission Guidelines on Political Party Regulation of 25 October 2010, par 97.

⁴⁰ Ibid., par 20. Standards on protection of personal data are codified in the European Convention of the Automatic Processing of Personal Data, ETS 108, adopted on 28 January 1981.

⁴¹ See the Ombudsman Law, no. 07-4502/1, adopted on 10 September 2003.

recommendations on how to remove irregularities (Article 31). In this opinion, he/she may ask the respondent party to inform him about the undertaken measures within a certain time period. Should the irregularities not be removed, or should the Ministry Representative not be informed of such remedial action, then the Ministry Representative will refer his/her written opinion to the competent inspection body, the Ombudsman or other body supervising the enforcement of the Law (Article 33).

41. The EU Gender Directives specifically mention the establishment of so-called equality bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex⁴². The competences of these bodies shall also include providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, conducting independent surveys on discrimination and publishing independent reports/issuing recommendations on any issue relating to such discrimination. Similar requirements are found in the OSCE Action Plan for the Promotion of Gender Equality, which states that in order to strengthen existing mechanisms for ensuring gender equality, the services of an impartial or independent person or body, such as an Ombudsman or Human Rights Commissioner, should be made available to address gender-related discrimination against individual citizens⁴³.
42. Given the former Yugoslav Republic of Macedonia's status of EU candidate country, current activities to reform the Law should aim to ensure wide consistency of this piece of legislation with existing EU standards. When comparing the current Law with the requirements of the EU Gender Directives, it is noted that neither the Ombudsman, nor the Ministry Representative, nor any other body or institutions mentioned in the Law correspond entirely with the requirements for an equality body as set out therein. It is true that the promotion, analysis, monitoring and support tasks outlined in the EU Gender Directives are currently being undertaken by the Ministry for Labour and Social Policy. However, the Ministry itself and its Ministry Representative are not in a position to provide independent assistance to complainants, conduct independent surveys or issue independent reports on such discrimination, since they are both part of the executive, and therefore not independent bodies.
43. The Ombudsman, on the other hand, is an independent body (Article 3 of the Ombudsman Law), but has so far not been mandated to provide such services. He/she may provide independent assistance to complainants, but not in cases where they complain against discrimination in the private sector. Also, special surveys and reports on discrimination, particularly gender discrimination, have so far not been part of the Ombudsman's mandate under the Ombudsman Law. The same holds true for awareness-raising concerning gender equality and domestic mechanisms to address cases of gender discrimination.
44. One possibility to resolve this issue would be to enhance the competences of the Ombudsman to specifically address cases of gender discrimination, including in the private sector, as well as awareness-raising in this sector. It is recommended to discuss ways to ensure that the Law is better aligned with the

⁴² See Article 20 of Directive 2006/54/EC and Article 12 of Directive 2004/113/EC.

⁴³ 2004 OSCE Action Plan for the Promotion of Gender Equality of 7 December, par 42.

requirements of the EU Gender Directives, either by expanding the competences of the Ombudsman, or by creating a new independent equality body⁴⁴. Another option could be to add special competences in the field of gender equality to the mandate of the Commission for Protection against Discrimination established under Chapter IV of the recently adopted Law on Prevention and Protection against Discrimination⁴⁵. Proceedings before any of the independent bodies mentioned above should complement, not replace the administrative complaints procedure established under Chapter VI of the Law.

45. Further, while large parts of this administrative procedure before the Ministry Representative are welcomed (e.g. the appropriate time limits, the possibility for the Ministry Representative to initiate proceedings *ex officio*, the possibility of third-party intervention and initiation of procedures), other aspects would benefit from certain improvements.
46. One such instance is Article 30, which specifies in which circumstances the Ministry Representative may terminate procedures. One of the reasons for such termination is a lack of proper documentation submitted by the complainant. As complainants may not always be informed about the necessary documents that need to be presented, it would be preferable if, prior to terminating procedures, the Law would require the Ministry Representative to ask for additional documentation. Should the complainant not provide the necessary information despite the Ministry Representative's reminder, then procedures can still be terminated at a later stage.
47. According to Article 31 par 2, the Ministry Representative's written opinion is submitted to the entities involved in the case. In order to ensure transparency and commitment on the side of the respondent party, it is advisable to amend Article 31 par 2 to the effect that a copy of the opinion is also sent automatically to the Minister of Labour and Social Policy and other supervisory instances within the Ministry. The supervisory body of the respondent party should also be informed.
48. It is also not clear why the Ministry Representative's recommendations may not be enforced directly, but may only be confirmed and then enforced by the competent inspection body in proceedings under Chapter VII. It would appear that the enforcement procedure via the body for inspections is an unnecessary additional procedural step, which could conceivably prolong administrative procedures. It is recommended to consider providing the Ministry Representative with the power to enforce his/her decisions⁴⁶. Such decisions could then be appealed to a specifically designated higher administrative body; if desirable, such appeal could even have suspensive effect. Further, the Law should also clarify whether the outcome of proceedings before the Ministry Representative would also include compensation for damages or dismissal⁴⁷.

⁴⁴ See ODIHR's 2005 Preliminary Comments, par 28.

⁴⁵ Law on the Prevention and Protection against Discrimination of 8 April 2010, No. 07-1583/1.

⁴⁶ See ODIHR's 2005 Preliminary Comments, pars 27-28. See also the CEDAW Committee's Concluding Remarks for the former Yugoslav Republic of Macedonia, par 16, which "request the State party to ensure that the national machinery for the advancement of women (...) has sufficient decision-making power."

⁴⁷ See ODIHR's 2005 Preliminary Comments, par 29.

49. Based on Article 32, the Ministry Representative is to submit an annual report on his/her activities to the Ministry of Labour and Social Policy. It is essential that this report includes not only the activities of the Ministry Representative, but also information on the effects of his/her opinions, both in terms of specific cases, and in terms of gender equality in public institutions and private companies. It should also be published and disseminated.

4.6. Legal Protection under the Law

50. Chapter VII of the Law deals with the legal protection of discriminated persons and focuses on administrative proceedings that are apparently separate from the complaints proceedings before the Ministry Representative.
51. Article 33 foresees cases in which the Ministry Representative refers his written opinion to the competent inspection body, the Ombudsman or another authorized body that “perform[s] supervision of the enforcement of the provisions of the law regulating equal opportunities”. This is permissible in cases where the respondent party did not comply with the written recommendations of the Ministry Representative, or did not inform the latter about having complied with his recommendations within the time period given, if the case, according to the Ministry Representative, contains all characteristics typical of discrimination.
52. First of all, it is not clear what type of bodies this provision concerns. In par 2 of Article 33, the “competent inspection body” is described as being any body for inspection authorized by law to supervise the enforcement of laws and bylaws, collective agreements, and general acts in cases involving discrimination under the Law. This description is, however, quite vague, and does not reveal specifically which body Article 33 is referring to.
53. The nature of authorized bodies that “perform supervision of the enforcement of the provisions of the law regulating equal opportunities” is equally unclear. While Article 41 states that the Ministry of Labour and Social Policy supervises the enforcement of the Law and other laws and regulations regulating issues of importance for the establishment of equal opportunities, it is not apparent whether this means that the Ministry is the competent body mentioned in Article 33.
54. In the interests of legality and foreseeability of this Law, it is essential to name clearly which bodies shall then take over the cases that originated before the Ministry Representative, and what the effect of such referral should be. In the case of the Ombudsman, the consequence of a referral would presumably be the initiation of his/her own proceedings in accordance with the Ombudsman Law. As for procedures before the competent inspection body, these are laid down in Articles 34-36 of the Law. However, in the case of the authorized bodies that “perform supervision of the enforcement of provisions of the law regulating equal opportunities”, the ensuing procedure would benefit from further clarification.
55. The procedure before the competent inspection body under Article 34 may, if the competent body considers that a violation of the Law has taken place, lead to a decision ordering compliance with the written opinion of the Ministry Representative. According to Article 34 par 2, this decision shall be issued to

the respondent party and the Ministry Representative. Aside from certain misgivings related to the necessity of this extra step, it would be advisable to ensure in Article 34 par 2 that the decision of the competent body shall also be sent to the complainant, relevant stakeholders involved in proceedings, and the hierarchical supervisory body of the respondent party (if applicable). This is especially important, given that the decision of the competent inspection body confirms the result of a procedure initiated by a complaint.

56. Appeals against such decisions shall be submitted to the authorized Commission within the Government (Article 35). The exact nature of and procedure before this Commission is not evident from the wording of the Law and should be clarified. It is also advisable to specify whether decisions of this Commission will be open to the possibility of an appeal to ordinary courts.
57. Instead, Article 37 states that “in case of non-observance of the prohibition of discrimination” determined by Article 3 of the Law, individuals may seek protection of their rights in administrative and judicial procedures, in the manner and under the conditions determined by law. This provision is quite vague, as it does not clarify which type of behaviour would fall under Article 37. It also does not specify which type of procedures such individuals could then initiate before which administrative bodies and which courts. Individuals applying the Law require more detailed information on the circumstances in which they may address certain administrative offices or courts – provisions phrased in a vague manner will often not provide sufficient information to ensure that the provision acquires practical effect. It would thus be preferable to specify that this provision applies in cases where individuals feel that they have been discriminated against by an act or regulation of a public authority or private entity. And the provision should clarify by name which administrative authority or court would be responsible to deal with such cases, and following which procedure set out in which laws (for a positive example where this was done, see Article 38 on damage compensation). It would also be helpful to indicate the possible outcomes of such proceedings, whether this would be limited to fines or whether in the public sector, the dismissal or transfer of individuals could also be an outcome (possibly, this could be the object of separate disciplinary proceedings). Such clarifications are especially important in cases involving grave violations of the Law, such as acts of sexual harassment.
58. Articles 42 and 43, on the other hand, have been formulated in a more specific manner. Article 42 states that if subjects of the Law do not submit their periodical plans for establishment and promotion to the Ministry of Labour and Social Policy before implementing them, they shall be fined for a misdemeanor in the amount of EUR 3,000 to 5,000 in Denar counter-value. Public officials responsible for appointing coordinators within the units of local self-government shall also be fined in the amount of EUR 1,500 to 2,000 in Denar counter-value individually, should one of them fail to appoint a coordinator.
59. This attempt to enhance implementation of the Law is in principle much welcomed. In both cases, however, it is not clear which body will be competent to determine whether such misdemeanors have occurred and to impose the above fines, and following which procedure. Also, implementation

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of the Law may be enhanced if failures to perform other tasks under the Law, such as lack of cooperation with civil societies and other bodies under Article 12 par 3, the failure of coordinators and other bodies to submit reports to the Ministry of Labour and Social Policy (e.g. Article 13 par 4, Article 14 par 4 and Article 17), or the failure to appoint commissions under Articles 11 and 16 par 2, would also be considered misdemeanors.

60. The transfer of the burden of proof to the respondent party under Article 39 is welcomed, as is the clarification in par 2 that this principle does not apply to criminal proceedings. However, Article 39 would still benefit from certain clarification as to whether this shift of the burden of proof shall also take place in proceedings before the Ministry Representative, and whether it applies to both administrative and court proceedings in general.

[END OF TEXT]

Annex 1

LAW ON EQUAL OPPORTUNITIES FOR WOMEN AND MEN

CONSOLIDATED TEXT

I. GENERAL PROVISIONS

Subject of the Law

Article 1

(1) This Law shall regulate the general and special measures aimed at establishing equal opportunities for women and men, the competencies, the duties and obligations of the responsible entities in ensuring equal opportunities, the procedure for determining unequal treatment of women and men, the rights and obligations of the Representative for Equal Opportunities for Women and Men (hereinafter: the Representative) as a designated person for conducting the procedure for determining unequal treatment of women and men, as well as the rights and obligations of the entities participating in that procedure.

(2) The issues of importance for the establishment of equal opportunities for women and men shall be regulated by this and other laws.

Aim of the Law

Article 2

- (1) The aim of this Law shall be the promotion of the principle aiming at the establishment of equal opportunities for women and men in the political, economic, social, educational and other spheres of the social life.
- (2) The establishment of equal opportunities shall be an obligation of the entire society and shall represent elimination of the obstacles to the establishment and achievement of equality between women and men, by means of preventing and eliminating the unequal treatment of women and men and by establishing conditions for introduction of equal participation of women and men in all areas of the social life.

Prohibition of discrimination in social life

Article 3

Discrimination on grounds of gender in the public and private sector in the areas of employment and labor, education, social security, culture, and sport shall be prohibited in accordance with this and other law.

Definitions

Article 4

The terms used in this Law shall have the following meaning:

1. "Equal opportunities for women and men" in dignity and rights is the promotion of the principle of introduction of equal participation of women and men in all areas of the public and private sector, equal status and treatment in the exercise of all rights and in the development of their individual potentials through which they contribute to the social development, as well as equal benefits of the results arising from that development;
2. "Equal treatment" is the absence of direct or indirect discrimination on grounds of gender, in accordance with this or other law;
3. "Discrimination" is any differentiation, exploitation or limitation on grounds of gender, endangering or disabling the exercise or the protection of the human rights and freedoms;
4. "Direct discrimination" is when a person is treated, has been treated or would be treated worse than other person in a similar situation, on grounds of gender;
5. "Indirect discrimination" is when apparently neutral provision, criterion or customary law places people of one gender into a particularly unfavorable position compared with persons of the opposite gender, unless that provision, criterion or customary law is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary;
6. "Harassment" is unwanted behavior associated with the gender of a person, aimed at or resulting in violation of the dignity of a person, and creation of intimidating, hostile, degrading, humiliating or offensive atmosphere;
7. "Sexual harassment" is any type of unwanted verbal, nonverbal or physical behavior of sexual nature, aimed at or resulting in violation of the dignity of a person, especially when intimidating, hostile, degrading, humiliating or offensive atmosphere is created.

II. TYPES OF MEASURES FOR THE ESTABLISHMENT OF EQUAL OPPORTUNITIES

General measures

Article 5

- (1) General measures for implementation of the principle of equal opportunities shall be normative measures from various fields that prohibit discrimination based on gender and anticipate commitments for the entities determined by this Law for care and creation of conditions for ensuring equal treatment in the exercise and protection of the rights and freedoms, and which anticipate sanctions for nonobservance of the requirements and for violation of the prohibitions.
- (2) In addition to the measures referred to in paragraph (1) of this Article, general measures shall also be the measures connected to the creation and the exercise of the powers and functions and competences of the legislative, executive and judiciary bodies, the bodies of the local self-government units, the legal entities entrusted with performance of activities of public interest by law, the citizens associations and foundations, the educational institutions, the institutions in the field of social protection, the health institutions, scientific, cultural institutions, the political parties and the mass media, directed towards the establishment of equal opportunities from the aspect of informing the individual and the public, activity programs and development strategies for particular areas of the social life.

Special Measures

Article 6

- (1) Special measures shall be measures directed towards the establishment of equal opportunities, as well as towards the promotion and improvement of the equal opportunities in particular areas of the social life.
- (2) The special measures referred to in paragraph (1) of this Article shall be directed towards the removal of objective barriers to the establishment of the principle of equal participation of women and men or unequal status of persons of one gender as opposed to persons of the other gender, as well as towards giving a special contribution in the form of promotion of participation of the underrepresented gender, or towards removing the possibilities contributing to the unequal status based on gender.
- (3) The special measures referred to in paragraph (1) of this Article, shall primarily include:
- **positive measures** which give priority, in the cases of unequal participation of women and men in the bodies of the state authority at all levels, including the judiciary, legislative and executive authority, the local self-government, as well as all other public institutions and services, political offices, commissions and boards, including the participation in bodies representing the state at international level, until equal participation is achieved. Unequal participation of women and men shall exist when the representation of women or men in the state authority bodies at all levels, including the judiciary, legislative and executive authority, local self government, as well as all other public institutions and services, political offices, commissions and boards, including the participation in the bodies that represent the state at international level, is less than 40%,
 - **encouraging measures** directed towards ensuring special incentives or contributions, with the purpose of eliminating the unequal participation of women and men, or unequal status based on gender, and
 - **program measures** directed towards awareness-raising, organizing activities and drafting and implementing action plans for the purpose of promoting and improving the equal opportunities.

III. ADOPTION OF SPECIAL MEASURES FOR THE ESTABLISHMENT OF EQUAL OPPORTUNITIES

Adoption of special measures

Article 7

Special measures shall be adopted in the field of education, employment, professional life, public and political activity, and in other areas within the framework of the particular areas of the social life where the basis referred to in Article 6 of this Law are given for their introduction and enforcement.

Adoption of positive measures

Article 8

- (1) The positive measures referred to in Article 6 of this Law shall be adopted by the bodies of the legislative, executive and judicial authority in accordance with the organizational structure and the manner of operation, other bodies in the public sector, public enterprises, political parties and associations of citizens.
- (2) The entities referred to in paragraph (1) of this Article shall be obliged to undertake positive measures within the framework of the periodical plans for promotion of gender equality and establishment of equal opportunities based on analysis on the status of women and men in the framework of their fields of action.

Adoption of encouraging and program measures

Article 9

- (1) The entities referred to in Article 8, paragraph (1) of this Law, within the framework of their competences under this Law, as well as on the basis of the organizational structure, shall adopt encouraging and program measures.
- (2) The encouraging and program measures can be adopted on the basis of the documents prepared under this Law, as well as on the basis of the documents of the bodies of the legislative, executive and judiciary authority, other bodies in the public sector, public enterprises, political parties or other bodies, depending on the nature and the content of the field they are active in.

Measures in the process of education and professional training aimed at establishing equal opportunities

Article 10

- (1) The education on the establishment of equal opportunities shall represent an integral part of the system of education and professional training, which has to obtain preparedness of women and men for active and equal participation in all fields of the social life.
- (2) The state administration bodies competent for performing the activities in the field of education and labor, the institutions providing education and professional training shall be obliged to ensure equal treatment of women and men, especially with regard to the access to education.
- (3) During the process of preparation, adoption and implementation of the programs for education or professional training, the preparation of course books and school aiding material, and in the process of introducing organizational innovations and modifications of pedagogical and andragogical methods, mechanisms for elimination of prejudices and stereotypes in connection to the establishment of equal opportunities shall be ensured.
- (4) The entities referred to in paragraph (2) of this Article shall be obliged to establish a system of measures for elimination of unequal treatment of women and men.

IV. ENTITIES RESPONSIBLE FOR ADOPTION AND IMPLEMENTATION OF MEASURES AIMED AT ESTABLISHMENT OF EQUAL OPPORTUNITIES AND THEIR OBLIGATIONS

Assembly of the Republic of Macedonia

Article 11

- (1) The Assembly of the Republic of Macedonia (hereinafter: the Assembly) shall adopt a National Action Plan for Equal Opportunities for Women and Men and shall determine the composition and the competences of the Commission for Equal Opportunities for Women and Men.
- (2) During the process of electing the members of the working bodies and in the process of determining the members of its delegations for cooperation with international organizations and cooperation with the parliaments of other states, the Assembly shall be obliged to respect the principle of equal participation of women and men.

Government of the Republic of Macedonia

Article 12

(1) The Government of the Republic of Macedonia (hereinafter: the Government) within the framework of its competences, shall be responsible for the promotion and the establishment of equal opportunities and the achievement of the aims of this Law through mechanisms of general and special measures determined by this Law.

(2) The Government shall be obliged to provide equal participation of women and men in the process of forming its working bodies and delegations, consultative and coordinating bodies, and other bodies, and in the process of appointing representatives in public enterprises and institutions.

State administration bodies

Article 13

(1) The ministries shall be obliged to cooperate with the associations of employers, the union and the citizens associations active in the field of equal opportunities, with the purpose of ensuring suggestions and measures for accomplishing the aim of the Law.

(2) The ministries shall be obliged to submit all materials regulating or addressing issues of importance for the achievement of the aim of this Law to the Ministry of Labor and Social Policy for an opinion, before submitting them to the Government for consideration, determination, i.e. adoption.

(3) The ministries shall be obliged to designate an official – coordinator, who shall coordinate the activities under the competence of the ministry, aimed at establishing equal opportunities.

(4) The coordinator referred to in paragraph (3) of this Article shall be responsible for the fulfillment of the obligations within the competence of the ministry regarding the establishment of equal opportunities in terms of this Law, and to cooperate with the Ministry of Labor and Social Policy.

(5) The coordinator referred to in paragraph (3) of this Article shall be obliged, once a year, to submit a report for its work to the Ministry of Labor and Social Policy.

Ministry of Labor and Social Policy

Article 14

(1) The Ministry of Labor and Social Policy in regard to the equal opportunities for women and men shall have the following scope of work:

- take care for the promotion of the status of women and men in all areas of the social life,
- take care for the introduction of the principle of equal opportunities in main flows of reorganization, promotion, development and evaluation of the political processes at all levels and in all stages, at national and local level,
- give an opinion on the application of the positive measures in particular areas of the social life,
- submit proposals for adoption or amendment of laws and other regulations of importance for the establishment of equal opportunities, as well as for the adoption of other measures to the Government or to the competent ministries,
- prepare the National Action Plan for Equal Opportunities for Women and Men, and monitor its implementation,
- in cooperation with the Ministry of Foreign Affairs, monitor the implementation of international agreements referring to equal opportunities and the promotion of the status of women,

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- prepare national reports based on the reports referred to in Article 13 paragraph (5) of this Law for the implementation of international obligations by the Republic of Macedonia in the field of equal opportunities,
- prepare analysis, reports, and other documents connected to equal opportunities,
- cooperate with the coordinators within the state administration bodies, as well as with the coordinators and the commissions for equal opportunities formed within the units of local self-government,
- cooperate with the citizens association active in the field of equal opportunities, and
- submit a yearly report on its activities to the Government, not later than the end of April, for the previous year.

(2) The Ministry of Labor and Social Policy shall provide an opinion to the periodical plans referred to in Article 8 paragraph (2) of this Law, provided that the adoption of positive measures is justified and in accordance with Article 6 of this Law.

(3) The Ministry of Labor and Social Policy shall control the implementation of the positive measures in the areas wherein they have been introduced.

(4) The bodies that have introduced positive measures shall be obliged to submit a report on the implementation of the measures to the Ministry of Labor and Social Policy, in accordance with the National Action Plan for Equal Opportunities for Women and Men.

(5) The Ministry of Labor and Social Policy shall give an opinion to the entities referred to in Article 8 paragraph (1) of this Law, regarding the adoption of positive measures in the areas of the social life in which there is an unequal participation of women and men or an unequal status of persons of one gender.

The Ombudsman

Article 15

The Ombudsman shall, within its legally determined competence, be responsible for the exercise of the principle of equal opportunities through legal protection of equal opportunities for women and men, in cases of depriving or limiting someone's rights by a state administration body or by organizations vested with public authorizations.

Units of local self-government

Article 16

(1) The local self-government units, for the purpose of achieving the aims of this Law within the framework of their competences, shall be obliged to determine and promote equal opportunities and to respect the principle of equal opportunities in the process of adoption of measures and activities necessary for the establishment of equal opportunities.

(2) The units of the local self-government shall be obliged to form a Commission for Equal Opportunities and to designate a person from among the employees or other persons competent and expert in fulfilling the obligations of the Coordinator for Equal Opportunities for Women and Men, to participate in the preparation of the National Action Plan for Equal Opportunities for Women and Men in the section referring to the units of local self-government.

(3) The Commission for Equal Opportunities referred to in paragraph (2) of this Article, by a decision of the Council of the unit of the local self-government, shall be formed as a permanent body, and its composition, competences, activities, and obligations shall be determined by the Statute of the local self-government unit.

(4) The bodies and the organs of the local self-government units in the process of adopting the development plans and other acts and decisions, shall be obliged to review and to take in consideration the measures and activities proposed by the Commission for Equal Opportunities and the Coordinator for Equal Opportunities.

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(5) The bodies of the local self-government units shall be obliged to cooperate with the associations of employers, the union, the non-governmental organizations and citizens associations active in the field of equal opportunities in order to obtain proposals and measures for the accomplishment of the aim of the Law.

Article 17

The Commission for Equal Opportunities referred to be obliged, at least once a year, to submit a report of its work to the Ministry of Labor and Social Policy.

Political parties

Article 18

(1) The political parties, within the framework of their political determination, every two years, shall adopt a plan for equal opportunities determining the methods and measures for promotion of equal participation for women and men in the bodies of the party, in the candidates lists for elections in the local self-government units, in the Assembly and election of the President of the Republic of Macedonia.

(2) The political parties shall submit the draft proposal of the plan for equal opportunities to the Ministry of Labor and Social Policy, for an opinion.

(3) The political parties, after the adoption of the plan for equal opportunities, shall submit it to the Ministry of Labor and Social Policy, for the purpose of monitoring and analyzing the conditions.

Mass media

Article 19

(1) The mass media, through their program concepts, should contribute to the development and awareness raising of the equal opportunities, as well as to the equal participation of women and men in the creation of program concepts and contents.

(2) The public broadcast and presentation of a person, based on gender, should be done in an inoffensive, non-degrading or non-humiliating manner in the mass media.

Presentation of statistical data

Article 20

The Assembly, the Government, the bodies of the state administration, the judiciary bodies and the other state bodies, the bodies of the local self-government units, the legal entities vested with the performance of activities of public interest by law, the citizens associations, the foundations, the public enterprises, the educational institutions, the institutions in the field of social protection, the health institutions, the political parties, the mass media, the trade companies, and the other entities obliged by law to collect, record and process statistical data shall be obliged to present these data on human resources according to gender.

V. NATIONAL ACTION PLAN FOR EQUAL OPPORTUNITIES FOR WOMEN AND MEN (NAPEO)

Article 21

(1) The Government shall propose to the Assembly a National Action Plan for Equal Opportunities for Women and Men (hereinafter: the Action Plan) based on the proposals made by the bodies of the state administration, the competent sector, the bodies of the local self-government units, the associations of employers, the union, the citizens associations and other organizations and individual experts.

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- (2) The Action Plan shall contain the general principles for equal opportunities in accordance with the content of the long-term program documents, and especially:
- the guidelines and the measures for the accomplishment of the aims in particular areas of the social life, among other, in the areas of employment, social security and health protection, education, family relations and representation of women and men in the public life,
 - the responsibility for implementation of the measures for achieving the aims,
 - the content, the competent bodies and the responsible persons for the preparation and implementation of the periodic plans being in function of implementation of the tasks from the Action Plan in particular areas of the social life,
 - the data that are gathered and processed, are connected, recorded, analyzed, and presented separately according to their gender structure, within the framework of the activities of the State Statistical Office,
 - the method of monitoring and reporting on the implementation of the Action Plan, and
 - the necessary resources for the implementation of the measures from the Action Plan, sources and ways of providing such resources.

Periodical plans for implementation of the Action Plan

Article 22

- (1) The Periodical Plan for Implementation of the Action Plan shall be an act that determines the planned activities for the particular areas of the social life, for a period of two years.
- (2) The Ministry of Labor and Social Policy shall be obliged to prepare a draft Periodical Plan on the basis of the recommendations from the state administration bodies contained in the reports for the previous two-year period, and to submit it to the Government for adoption.
- (3) The state administration bodies shall be obliged to submit the reports referred to in paragraph (2) of this Article, to the Ministry of Labor and Social Policy not later than two months before the expiration date of the previous Periodical Plan.
- (4) The Government, once a year, shall prepare a report on the implemented measures and activities from the Action Plan, and shall publish it in the manner accessible to the public.

VI. PROCEDURE FOR DETERMINING UNEQUAL TREATMENT FOR WOMEN AND MEN

Person designated to conduct the procedure

Article 23

- (1) The procedure for determining unequal treatment of women and men, based on a written initiative submitted by individuals, citizens associations, unions, and other legal entities (hereinafter: the procedure), shall be conducted at the Ministry of Labor and Social Policy.
- (2) The procedure at the Ministry of Labor and Social Policy shall be conducted by a Representative.
- (3) The Representative shall be a person employed as a civil servant in the Ministry of Labor and Social Policy responsible for conducting the procedures for determining unequal treatment of women and men.

Initiation of the procedure

Article 24

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(1) The procedure shall be initiated by submitting a written initiative to the Representative.

(2) The Representative can also initiate a procedure on his/her own initiative.

(3) Individuals, citizens associations, unions and other legal entities shall have the right to submit a written initiative for initiation of the procedure before the Representative with regard to an adopted individual act or undertaken action by the entities in the public and private sector, which is contrary to the prohibition referred to in Article 3 of this Law.

(4) The conduction of the procedure shall be free of charge.

(5) The regulations on protection of personal data secrecy shall apply during the procedure.

Initiative for conducting the procedure

Article 25

(1) The initiative referred to in Article 24 of this Law shall be submitted in a written form, within the shortest possible time period, and not later than one year after the violation has been made.

(2) The Representative can initiate a procedure after the expiry of the time period referred to in paragraph (1) of this Article as well, provided that he/she assesses that the case is of such importance so it would be necessary and advisably to conduct the procedure.

Non-initiation of the Procedure

Article 26

The Representative for Equal Opportunities shall not initiate a procedure upon written initiatives, provided that it is undoubtedly clear that there is no case of unequal treatment of women and men in terms of this Law, and shall inform the submitter of the initiative in writing about the reasons for non-initiation of a procedure within 30 days as of the day the initiative has been submitted.

Course of the procedure

Article 27

(1) The procedure shall be conducted in a written form.

(2) As an exception, the Representative can invite the entities involved in the case of unequal treatment for a meeting, provided that it would help clarify the case.

(3) The Representative can require from the entity against which the procedure for determining unequal treatment of women and men has been initiated, to submit a written explanation, within 15 days as of the day the request for explanation has been delivered.

(4) Provided that the entity referred to in paragraph (3) of this Article does not submit the requested explanation, the Representative shall present his/her opinion on the basis of the information that are at his/her disposal.

Obligation for cooperation with the Representative

Article 28

All entities addressed by the Representative shall be obliged to submit the required documents and information, as well as to provide all necessary explanations.

Duration of the Procedure

Article 29

- (1) The procedure should be conducted within a period of 60 days as of the day the written initiative is submitted.
- (2) The time period referred to in paragraph (1) of this Article can be prolonged for an additional 30 days provided that the complexity of the case requires so.

Termination of the Procedure

Article 30

The Representative shall terminate the procedure upon a written request by the submitter of the initiative if the submitter is not interested in future conduct of the procedure or if, due to lack of documents, i.e. proofs and information, the procedure cannot be fully conducted.

Written opinion

Article 31

- (1) The procedure shall end upon submission of a written opinion containing the actual situation determined by the Representative and his/her opinion on the circumstances of the case, in terms of whether there is unequal treatment of women and men in accordance with this Law.
- (2) The Representative shall submit the written opinion to the entities involved in the case.
- (3) In the written opinion referred to in paragraph (1) of this Article, the Representative can include the irregularities determined in the concrete case and give recommendations on their removal, and can also ask from the party against which the procedure for unequal treatment of women and men was initiated to inform him/her on the undertaken measures, within a certain time period.

Annual report

Article 32

Every year, but not later than 31st March for the previous year, the Representative shall prepare a report on his/her activities, and submit it to the Ministry of Labor and Social Policy.

VII. LEGAL PROTECTION OF DISCRIMINATED PERSONS

Case referral

Article 33

- (1) The Representative shall submit the written opinion referred to in Article 31 of this Law to the competent inspection body, the Ombudsman, or other competent body performing supervision of the enforcement of the provisions of the law regulating equal opportunities in cases when the entity against which the procedure for determining unequal treatment has been initiated did not remove the determined irregularities, in accordance with the written opinion of the

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Representative, or if the Representative is not notified by the entity against which the procedure for determining unequal treatment has been initiated within the determined time period, when the case, in accordance with the opinion of the Representative, contains all the characteristics of discrimination, according to this Law.

(2) Competent inspection body referred to in paragraph (1) of this Article shall be considered the inspection body competent by law to conduct supervision over the enforcement of laws and bylaws, collective agreements, as well as general acts in cases of activities considered as discrimination in accordance with the provisions of this Law.

Competences of the inspection bodies

Article 34

(1) Provided that the competent inspection body determines that this and other laws that regulate equal opportunities have not been enforced in the case for which the Representative made a written opinion, a decision that orders compliance with the recommendations from the Representative shall be adopted within a time period that is determined by the competent inspection body, which cannot be longer than 15 days from the day the decision was adopted.

(2) The competent inspection body shall submit the decision referred to in paragraph (1) of this Article to the entity to which the Representative's opinion has been submitted within the concrete case where the inspection supervision has been made and to the Representative, within a period of 15 days from the day the decision has been adopted.

Article 35

(1) An appeal against the decision of the competent inspection body can be submitted to the competent Commission of the Government, within a period of eight days as from the day the decision has been received.

(2) The appeal referred to in paragraph (1) of this Article shall not postpone the enforcement of the decision.

(3) (3) A decision on the appeal shall be adopted within 15 days as from the day the appeal has been received.

Article 36

(1) If the competent inspection body determines that by violating this Law and other laws that regulate equal opportunities, a misdemeanor or criminal offense has been committed, it shall be obliged to file a motion for initiation of a misdemeanor procedure that is to bring criminal charges without any postponement.

(2) The body to which the motion or the charges referred to in paragraph (1) of this Article have been submitted, shall be obliged to submit its decision to the competent inspection body.

Legal protection

Article 37

In case of non-observance of the prohibition against discrimination determined in Article 3 of this Law, the person who considers that a certain right has been violated with an individual act or activity on grounds of gender shall have the right to seek

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protection of his/hers rights in an administrative and judicial procedure, in the manner and under the conditions determined by law.

Damage compensation

Article 38

The person who, by a decision of a competent body or other legal entity, is determined to have his/her rights infringed by an individual act or action on grounds of gender, shall be entitled to require damage compensation in accordance with the Law on Obligations.

Providing proofs

Article 39

(1) When a person who considers himself/herself as a victim of discrimination presents facts wherefrom it can be assumed that discrimination has occurred, then the person who is blamed for discrimination shall be obliged to prove that he/she has not violated the principle of equal treatment.

(2) The rule referred to in paragraph (1) of this Article shall not apply to criminal procedures.

Article 40

The citizens associations, the associations of employers and the unions can represent the persons referred to in Article 39, paragraph (1) of this Law, on their request, in an administrative procedure initiated for the purpose of protecting the rights which were taken away or limited on the basis of gender.

IX. SUPERVISION OVER THE ENFORCEMENT OF THE LAW

Article 41

The Ministry of Labor and Social Policy shall conduct the supervision over the enforcement of the provisions of this Law and other laws and regulations regulating issues of importance for the establishment of equal opportunities.

X. MISDEMEANOR PROVISIONS

Article 42

Fine in the amount of Euro 3.000 to 5.000 in Denar counter-value shall be imposed for a misdemeanor on the responsible persons in the bodies of the legislative, executive and judicial authority, public enterprises, political parties and citizens associations which before the enforcement of the positive measures referred to in Article 8 of this Law have not submitted the periodical plans for establishment and promotion of equal opportunities for an opinion to the Ministry of Labor and Social Policy or have not submitted the requested documents and information to the Representative.

Article 43

Fine in the amount of Euro 1.500 to 2.000 in Denar counter-value shall be imposed for a misdemeanor on the responsible person in the ministries and the bodies of the local self-government units that do not designate a Coordinator for Equal Opportunities in accordance with the obligation referred to in Article 13 paragraph (3) and Article 16 paragraph (2) of this Law.

XI. TRANSITIONAL AND FINAL PROVISIONS

Article 44

- (1) The Ministry of Labor and Social Policy shall designate a Representative for Equal Opportunities for Women and Men within a period of six months as from the day this Law enters into force.
- (2) The state administration bodies shall designate a Coordinator referred to in Article 13 of this Law within a period of three months from the day this Law enters into force.
- (3) The local self-government units shall form a Commission for Equal Opportunities and shall designate a Coordinator for Equal Opportunities within a period of six months as from the day this Law enters into force.
- (4) The state administration bodies, other state authority bodies, the bodies of the local self-government units, the legal entities vested with the performance of activities of public interest by law, citizens associations, public enterprises, educational institutions, institutions in the field of social protection, health institutions, political parties, mass media, and scientific and cultural institutions listed in this Law shall submit action plans with special measures to the Ministry of Labor and Social Policy within a period of one year from the day this Law enters into force.

Article 45

This Law shall enter into force on the eight day from the day of its publication in the "Official Gazette of the Republic of Macedonia."