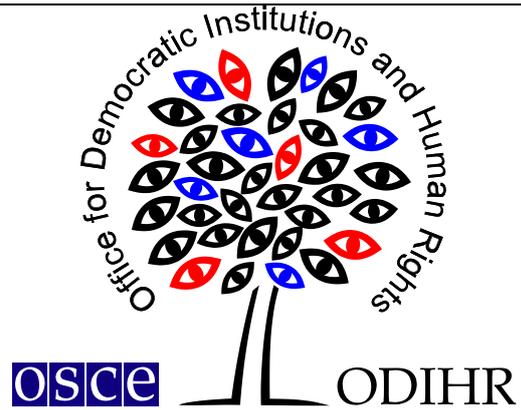


Warsaw, 16 September 2011

Opinion Nr. GEND–MKD/191/2011]
(AT)

www.legislationline.org



OPINION

ON THE DRAFT LAW ON

EQUAL OPPORTUNITIES FOR

WOMEN AND MEN

OF THE

FORMER YUGOSLAV REPUBLIC OF

MACEDONIA

Based on an official English translation of the draft Law

TABLE OF CONTENTS

I. INTRODUCTION

II. SCOPE OF REVIEW

III. EXECUTIVE SUMMARY

IV. ANALYSIS AND RECOMMENDATIONS

- 1. International Gender Equality Standards**
- 2. Subject, Purpose and Application of the Draft Law**
- 3. Definitions and Terminology**
- 4. Measures for Establishing Equal Opportunities**
- 5. Entities Responsible for the Adoption and Implementation of Measures Aimed at Establishing Equal Opportunities**
 - 5.1 General Responsibilities on a State and Local Level*
 - 5.2 Complaints Mechanisms*
- 6. Legal Protection under the Draft Law**

Annex 1: Draft Law on Equal Opportunities for Women and Men

I. INTRODUCTION

1. *In the first half of 2011, the Ministry of Labour and Social Policy of the former Yugoslav Republic of Macedonia initiated discussions on reforming the Macedonian Law on Equal Opportunities for Women and Men (hereinafter “the current Law”).*
2. *On 26 April 2011, the Minister of Labour and Social Policy sent a letter to the Director of the OSCE/ODIHR requesting OSCE/ODIHR to provide an opinion on the existing Law, as well as ensuing draft amendments, to ascertain full compliance with European standards and best practices.*
3. *On 9 June 2011, OSCE/ODIHR issued an opinion on the Law on Equal Opportunities of Women and Men¹ (hereinafter “ODIHR’s 2011 Opinion on the Law”), which the OSCE Mission to Skopje translated and forwarded to the Ministry of Labour and Social Policy, as well as the working group tasked with amending the Law.*
4. *In mid-July, representatives from OSCE/ODIHR travelled to the former Yugoslav Republic of Macedonia to discuss its opinion and recommendations with the working group.*
5. *In the first week of September, the OSCE/ODIHR received the working group’s new draft Law on Equal Opportunities (hereinafter “the draft Law”) for review via the OSCE Mission to Skopje.*
6. *This Opinion is provided in response to the Minister of Labour and Social Policy’s request for review of 26 April 2011 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.*
7. *Prior to the adoption of the Law on Equal Opportunities 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”).*

II. SCOPE OF REVIEW

8. *The scope of the Opinion covers only the above-mentioned draft Law, submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of all available framework legislation governing gender*

¹ OSCE/ODIHR Opinion on the Law on Equal Opportunities of Women and Men of the former Yugoslav Republic of Macedonia, opinion no. GEND-FYROM/184/2011 (AT), issued on 9 June 2011.

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.

OSCE/ODIHR Opinion on the Draft Law on Equal Opportunities for Women and Men of the former Yugoslav Republic of Macedonia

equality, gender mainstreaming and equal opportunities in the former Yugoslav Republic of Macedonia.

9. 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 review on the existing Law on Equal Opportunities for Women and Men⁶.
10. 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.
11. 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 draft Law or related legislation that the OSCE/ODIHR may make in the future.

III. EXECUTIVE SUMMARY

12. Overall, the OSCE/ODIHR believes that the competent working group has made genuine and good efforts to bring the draft Law on Equal Opportunities for Women and Men in line with international gender equality standards and commitments in all spheres of society in the former Yugoslav Republic of Macedonia. At the same time, certain parts of the draft Law would benefit from improvement. 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 thus recommended to amend this draft Law as follows:

1. Key Recommendations

- A. to expand the definition of discrimination under Article 4 par 1 (3) so that all potential discrimination cases are covered by the draft Law; [par 27]
- B. to ensure that the definition of discrimination based on sex under Article 4 par 1 (3) focuses only on gender discrimination, not on discrimination based on other grounds; [par 28]
- C. to develop a proper system for independent monitoring and oversight of implementation of the draft Law [par 45]

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.

⁶ The Law on Equal Opportunities of Women and Men, adopted on 29 May 2006, Official Gazette No. 66.

2. Additional Recommendations

- D. to mention in Article 1 par 1 that the draft Law also covers legal consequences for unequal treatment and ensure consistent terminology throughout the draft Law; [par 20]
- E. to include in Article 1 par 2 the defence and security sector, as well as political and public life as explicit examples of fields of societal life; [par 21]
- F. to amend Article 3 as follows:
 - 1. Clarify the meaning of par 2 with regard to “transactions made in that context”; [par 22]
 - 2. Rectify the reference to sexual harassment; [par 23]
 - 3. Remove par 6 referring to general anti-discrimination principles in employment; [par 24]
- G. to specify under Article 4 par 1 (10) and other provisions in the draft Law that gender mainstreaming involves integrating gender perspective into not only policies, but also programmes; [par 30]
- H. to amend Article 6 as follows:
 - 1. Clarify in par 3 which bodies shall adopt general measures for ensuring equal opportunities in the area of education and professional training, including mechanisms to eliminate prejudice and stereotypes in training programs, school materials and pedagogical/andragogical methods; [par 32]
 - 2. Include in the draft Law a specific obligation for education entities to address sexual harassment in secondary and tertiary education; [par 32]
- I. to amend Article 8 as follows:
 - 1. Reformulate par 2 to state that special measures shall be adopted based on an analysis and description of the status of women and men in various spheres of life; [par 33]
 - 2. Clarify the Ministry’s role under pars 3 and 4 and ensure that its review and oversight competences are either merely an offer of assistance, or apply only to entities belonging to the executive; [par 36]
- J. to make sure that under Article 10 par 4, the Government publishes statistical data on positions, decision-making structures, boards of directors and management structures in state-owned public companies as well; [par 41]
- K. to clarify the role of the Ministry of Labour and Social Policy in Articles 11, 12 and 14, in particular the nature of “materials” under Article 12 and whether the opinions provided under this provision are compulsory and binding; [pars 43 and 44]
- L. to provide more detail on the oversight role of the State Labour Inspectorate compared to that of the Ministry; [par 46]

- M. to see to it that the Commissions of units of local self-government establish mechanisms for maintaining contact with one another to ensure a similar level of work and policy; [par 48]
- N. to specify in Article 29 par 3 which legal or physical persons will receive copies of the Legal Representative's written opinions; [par 58]
- O. to clarify the meaning of Article 30 of the draft Law referring to the "initiative for starting a procedure in front of a competent body for determining responsibility"; and [par 59]
- P. to amend Article 33 as follows:
 - 1. provide more detailed information on which courts are competent to hear anti-discrimination lawsuits; [par 60]
 - 2. clarify the meaning of "urgent procedure", or include a reference to relevant procedural codes explaining this term. [60]

IV. ANALYSIS AND RECOMMENDATIONS

1. International Gender Equality Standards

- 13. 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 Rights⁷ (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 Freedoms⁸ (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*, a person's sex, and Protocol 12 to the Convention, which contains a wider prohibition of all forms of discrimination⁹.
- 14. Next to such generic instruments, the UN Convention on the Elimination of All Forms of Discrimination Against Women¹⁰ (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

⁷ 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.

⁸ 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.

⁹ 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.

¹⁰ 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.

OSCE/ODIHR Opinion on the Draft Law on Equal Opportunities for Women and Men of the former Yugoslav Republic of Macedonia

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.¹¹ 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.

15. 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,¹² which was followed by other resolutions or recommendations covering, *inter alia*, the equality of rights between men and women¹³, progress in women's rights¹⁴, the situation of women in rural society¹⁵, mechanisms for women's decision-making¹⁶, balanced participation of women and men in political and public decision-making¹⁷, as well as women's representation in politics through the electoral system¹⁸. The latest document issued in this context is a recommendation of the Committee of Ministers to Member States on measures to combat discrimination on grounds of sexual orientation and gender identity.¹⁹
16. 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.²⁰ Both EU Gender Directives include definitions

¹¹ 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."

¹² Resolution 855(1986) of the Parliamentary Assembly on equality between men and women, adopted on 27 January 1986 at the 21st Sitting.

¹³ Recommendation 1229 (1994) of the Parliamentary Assembly on equality of rights between men and women, adopted on 24 January 1994 at the 1st Sitting.

¹⁴ [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.](#)

¹⁵ 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.

¹⁶ Resolution 1489 (2006) of the Parliamentary Assembly on mechanisms to ensure women's participation in decision-making, adopted on 17 March 2006.

¹⁷ 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.

¹⁸ 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.

¹⁹ [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.

²⁰ 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

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.

17. 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.²¹ This principle is reiterated in a more detailed manner in par 40.4 of the Moscow Concluding Document²², 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".²³ 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.²⁴ 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 more balanced participation of women and men in public life and in decision-making.²⁵

2. Subject, Purpose and Application of the Draft Law

18. The subject of the draft Law is laid down in Article 1, which states in its par 1 that the draft Law shall regulate implementation of the principle of equal opportunities and equal treatment of women and men, basic and special measures to achieve this aim, rights and responsibilities for entities tasked to ensure equal opportunities, procedure for determining unequal treatment of women and men, as well as the mandate and tasks of the Representative for Equal Opportunities, as the person designated to determine unequal treatment between women and men. Article 1 par 2 states that the establishment of equal

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.

²¹ The Concluding Document of Vienna – The Third Follow-Up Meeting, Vienna, 15 January 1989, Questions Relating to Security in Europe, Principles, par 13.8. ²¹ 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).

²² The Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991.

²³ *Ibid*, par 40.

²⁴ 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.

²⁵ OSCE Ministerial Council Decision MC DEC/7/09 on Women's Participation in Political and Public Life of 2 December 2009.

opportunities is regulated in the draft Law and any other law issues related to this matter. Par 2 then goes on to list a number of fields to which this may apply, ranging from healthcare to goods and services, economy to labour to education, culture and sport, judiciary, and many other areas of society.

19. At the outset, it should be noted that this provision is a great improvement compared to the current Law. For the most part, Article 1 aptly reflects the contents of the draft Law, while clarity and foreseeability have been enhanced in par 2 by the concrete mention of different areas of societal life in which equal opportunities are relevant.
20. It should be noted, however, that while Article 1 par 1 talks of procedures for determining unequal treatment for women and men, it does not talk about the legal consequences for unequal treatment, which are listed in Articles 33-35 on court lawsuits, and in Chapter 8 (misdemeanor provisions). Since Article 1 otherwise very diligently reflects the contents of the draft Law, it is recommended to include this aspect of the draft Law in this provision as well. At the same time, the Representative for Equal Opportunities is called “the Representative” in Article 1, but is referred to as “the legal representative” in Articles 20-32 of the draft Law. Both parts of the draft Law should be made consistent, to ensure that terminology is used in the same way throughout.
21. As for Article 1 par 2, it is recommended to also list the defence and security sector, as well as political and public life, as relevant fields of societal life.
22. Article 3 regulates the application of the draft Law, which explicitly covers both the public and the private sector. Par 2 of this provision lists the entities responsible for applying the draft Law and also includes, among others, “transactions made in [the context of offering goods and services to the public outside the area of private and family life] regardless whether the respective persons belong to the public or private sector, including public bodies”. While this may be derive from unclear translation, the meaning of this part of Article 3 par 2 is not transparent and would benefit from clarification.
23. Article 3 par 3 prohibits discrimination, harassment, and “sexual harassment based on sex” in both the public and private sector. While again, this may derive from inaccurate translation, it is recommended to review and if necessary revise the above reference to sexual harassment, as sexual harassment is always “based on sex”.
24. Under Article 3 par 6, discrimination in accessing employment based on marital status, family status, skin color, language, political or other convictions, participation in unions, nationality or social status, disability, age, ownership, social or other status shall also be prohibited. It is not clear why general discrimination principles have been included in a draft Law on Equal Opportunities of Women and Men, which explicitly focuses only on gender discrimination. It would appear that such general discrimination issues are already sufficiently covered by the Law on Prevention and Protection Against Discrimination of 2010²⁶. It is thus recommended to remove Article 3 par 6 from the draft Law.

²⁶ Law on the Prevention and Protection against Discrimination of 8 April 2010, No. 07-1583/1.

3. Definitions and Terminology

25. As stated in ODIHR's 2011 Opinion on the Law, 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. For the most part, the definitions listed in Article 4 reflect international standards and good practices.
26. Under Article 4 par 1 (3), discrimination based on sex is every differentiation, exploitation or limitation based on sex, the consequence or aim of which is endangering or disabling the recognition, fulfillment or practice of human rights and fundamental freedoms. This definition is in its essence quite similar to the definition of gender discrimination in the current Law.
27. ODIHR's 2011 Opinion on the Law had already noted that while this definition reflects to a certain extent the definition of discrimination provided by Article 1 of the CEDAW²⁷ (see par 14 *supra*), it could conceivably be interpreted in a restrictive manner. This may well lead to a situation where certain cases of discrimination would fall outside the scope of the Law if they are not considered to aim or lead to "endangering or disabling 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 Directives²⁸ ("less favourable treatment [...] than another is, has been or would be treated in a comparable situation"). It is once more recommended to consider expanding the definition of discrimination based on sex to ensure that any less favourable treatment of one person than of another is, has been or would be treated in a comparable situation will be considered gender discrimination under the draft Law.
28. Further, Article 4 par 1 (3) also states that equality of men and women shall be guaranteed regardless of their "race, skin color, gender, belonging to a marginalized group, ethnicity, language, citizenship, social origin, religion or belief, education, political affiliation, personal or social status, mental or bodily impairment, age, family or marital status, financial standing, health condition or any other grounds". This part of the definition appears to relate not so much to equality between men and women, but to equality between all persons. Article 4 par 1 (3) thus appears to blend the definition of discrimination based on sex with a more general definition of discrimination based on a long list of protected characteristics. This renders the definition unnecessarily broad and confusing and leads to a situation where the draft Law is in danger of duplicating the existing Anti-Discrimination Law, which is the primary legislation on fighting discrimination in all spheres of society. It is

²⁷ 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.

²⁸ This definition has, on the other hand, been incorporated into the Law as the definition of direct discrimination under Article 4 par 4.

recommended to delete this general anti-discrimination aspect from the definition of discrimination based on sex, so that it only focuses on any difference in treatment based on a person's sex, not on the other characteristics mentioned above.

29. Article 4 par 1 (6) and (7) also contains definitions of harassment and sexual harassment. It is noted that Article 4 par 2 expressly forbids harassment and sexual harassment as discrimination based on sex. Seemingly, this paragraph was introduced in response to ODIHR's 2011 Opinion on the Law, which requested that sexual harassment be established as unlawful in this provision. This is much welcomed, as it means that sexual harassment claims may also be taken to court under Articles 33 and 35 for violation of the principle of equal treatment based on a person's sex. Article 38 also expressly states that any person violating the dignity of another person based on sex, or creates a threatening, hostile, humiliating or offensive atmosphere, will be fined.
30. Gender mainstreaming is defined under Article 4 par 1 (10) as the "integration of the gender perspective in each phase of the process of creation, adoption, implementation, monitoring and evaluation of policies". It is essential to include such gender perspective into not only policies, but also all programmes. Article 4 par 1 (10) should be expanded accordingly. Likewise, other references to gender mainstreaming throughout the draft Law (e.g. Article 10 par 7, and possibly Article 12 par 1 referring to "political processes") should also refer to integration of the gender perspective into policies and programmes.

4. Measures for Establishing Equal Opportunities

31. Chapter 2 of the draft Law differentiates between several types of measures to ensure equal opportunities between men and women. Article 5 speaks of general measures, with Article 6 covering measures in the area of education and professional training. Article 7 deals with special measures, which include, among others, positive measures, encouraging measures, and programmatic measures. Article 8 under Chapter 3 then regulates the adoption and monitoring of such measures.
32. Article 6 essentially contains many aspects of Article 10 of the current Law. One commendatory addition involves the regular review by state administration bodies working in the education and labour sector of the contents of curricula, syllabuses and course books to promote equal opportunities of women and men (par 4), which also corresponds to a recommendation made in ODIHR's 2011 Opinion on the Law. It would be helpful, however, if Article 6 par 3 on mechanisms to eliminate prejudices and stereotypes in connection to equal opportunities would likewise stress which bodies (possibly the same as in par 4) shall adopt general measures for ensuring equal opportunities in the area of education and professional training, including the above mechanisms in training programs, school materials and pedagogical and andragogical methods. Additionally, as also proposed in ODIHR's 2011 Opinion on the Law, the draft Law should contain a specific

obligation for the responsible educational entities to address the issue of sexual harassment in secondary and tertiary educational institutions.²⁹

33. The differentiation between different types of special measures under Article 7 is positive, as is the analytical and reflected manner of their adoption outlined in Article 8. Article 8 par 2 would, however, benefit from some re-formulation – currently, it states that special measures shall be adopted based on the “analysis and description of the situation in which men and women live”. This part of Article 8 could be made more specific by stating that special measures will be adopted based on an analysis and description of the status of men and women in various spheres of life.
34. Moreover, Article 8 par 3 and 4 foresees that entities adopting special measures shall adopt an implementation plan. This plan is to be sent to the Ministry of Labour and Social Policy for review prior to its adoption. Also, an annual report on the results of applying such measures shall be sent to the Ministry of Labour and Social Policy.
35. It is welcomed that Article 8 now focuses more on ensuring and monitoring implementation of special measures. However, the role of the Ministry in reviewing implementation plans and receiving annual reports may raise certain questions. Based on this provision, the Ministry, an executive body, reviews the implementation plans for special measures and oversees the work of not only the executive, but also the legislative, judicative, other public and private bodies and organizations, political parties, the media and the civil sector.
36. It is of course right and necessary for the Ministry to review implementation plans of bodies and receive annual reports of the executive, e.g. ministries, departments, or units of local self-government. However, granting an executive body the right to review and oversee measures of other public and private institutions may potentially violate the principle of the separation of powers, as well as the independence of political parties, the media and civil society. It would thus be advisable to clarify in Article 8 whether the Ministry’s review of implementation plans and receipt of annual reports from these non-executive bodies is merely an offer of assistance, or whether Article 8 pars 3 and 4 actually grants the Ministry oversight and monitoring powers over the judiciary, all public and private bodies and organizations, political parties, the media and the civil sector. Should the latter be the case, then it is recommended to amend the above provisions and ensure that they only apply to the executive. Non-executive bodies should monitor implementation of the special measures themselves and submit information on the results to an independent body, e.g. the Ombudsperson. For further discussion on the topic of independent monitoring, see par 45 *infra*.

²⁹ 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.

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

37. Chapter 4 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.

5.1 General Responsibilities on a State and Local Level

38. The entities specifically listed under Chapter 4 are the Assembly (Article 9), the Government (Article 10), State Administration Bodies (Article 11), the Ministry of Labour and Social Policy (Article 12), the Ombudsman (Article 13), the Units of Local Self-Government (Article 14), political parties (Article 16) and the media (Article 17).
39. Next to adopting a Strategy for Gender Equality, the Assembly shall also form and determine the composition and competencies of the Commission for Equal Opportunities of Women and Men (hereinafter "the Assembly Commission"). Based on Article 9 par 5, this Commission is responsible for reviewing laws and strategies and monitoring general and special measures based on reports received from the Ministry of Labour and Social Policy. Under Article 14 par 5, units of local self-government are to establish similar commissions on a local level.
40. Under Article 10 par 2, the Government shall also adopt a long-term strategy for gender equality, which it shall submit to adoption to the Assembly. A Coordinator and Deputy Coordinator are appointed to monitor implementation of the principle of equal opportunities of women and men in strategic plans of line ministries, and cooperate with the Ministry of Labour and Social Policy (par 3). Also, the Government undertakes to form an inter-sectorial consultative and advisory group for equal opportunities of women and men, which shall involve civil servants, representatives of citizens' organizations, employers' associations, experts, local self-government representatives, trade unions and other interested parties. The creation of this inter-sectorial group, and in particular its pluralist composition, are much welcomed. It is hoped that this will help enhance cooperation between the Government and civil society in the field of gender equality.
41. Article 10 par 4 states that the Government shall publish statistical data on the representation of women and men in appointed positions, decision-making structures, boards of directors and management structures in the public administration. Such statistical data should also be published with regard to state-owned public companies.
42. Based on Article 11, bodies of state administration are obliged to determine a Coordinator and Deputy Coordinator who shall coordinate activities related to equal opportunities and cooperate with the Ministry of Labour and Social Policy, which he/she shall also submit annual reports to. Under par 3, bodies of state administration shall monitor the effects and influence of their programs on men and women and report on this, which is a positive addition compared to the current Law. All materials regulating or assessing issues

relevant for implementation of the draft Law shall be submitted to the Ministry of Labour and Social Policy for review before going to the Government for review, assessment, i.e. adoption (par 4).

43. While the Ministry of Labour and Social Policy (Article 12) is clearly the central executive organ overseeing and monitoring the implementation of the draft Law, Articles 11, 12 and 14 are not very specific on the nature and effects of the Ministry's involvement in other bodies' work. It would also be helpful to indicate in Article 12 the nature of the "materials" submitted to the Ministry – if this refers to proposals (and related plans) for the adoption of measures for establishing equal opportunities, this should be clearly stated in this provision.
44. As indicated in ODIHR's 2011 Opinion on the Law, 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 12 par 1 shall have the power to shape the policy of other bodies in the field of gender equality. The draft Law should be clearer on whether bodies are required to change their policies or measures if the Ministry of Labour and Social Policy does not agree with them, or whether in such cases, the proposed measure/proposal will enclose the opinion paper of the Ministry of Labour and Social Policy.
45. Chapter 7 on oversight of the implementation of the law states, in Article 37 par 1, that the Ministry of Labour and Social Policy shall supervise the implementation of the draft Law and any other laws/regulations dealing with issues connected to the establishment of equal opportunities. Since the Ministry is also tasked with implementing the draft Law, this effectively means that the Ministry will be overseeing its own implementation of the draft Law. Given the Ministry's central role in executing the draft Law, it would be better if all implementation of the draft Law, including the Ministry's, would be overseen by an independent body, e.g. the Ombudsman or the Commission for Protection on Discrimination under the Law on Prevention and Protection against Discrimination. It is recommended to discuss this matter and develop a proper monitoring system to ensure independent oversight of all parties tasked with implementing the draft Law.
46. Further, Article 37 par 2 gives the State Labour Inspectorate inspection oversight over the implementation of the draft Law. It is not clear how this type of oversight differs in practice from the Ministry of Labour and Social Policy's oversight. Next to the above recommendation on ensuring independent oversight over implementation of the draft Law, it is recommended to clarify the different oversight tasks of each of these bodies under Article 37.
47. Under Article 14, units of local self-government shall establish Coordinators and Commissions, which under par 8 shall cooperate with one another and initiate joint initiatives to promote equal opportunities and non-discrimination. This obligation to cooperate is a positive addition to the draft Law. If these Coordinators and Commissions shall, however, deal with both equal opportunities and non-discrimination, then their competences in the fight against discrimination in general should also be specified under the Anti-Discrimination Law, which is the primary legislation in the former Yugoslav Republic of Macedonia dealing with matters of discrimination in general.

48. Further, as recommended in ODIHR's 2011 Opinion on the Law, commissions of all units of local self-government should establish mechanisms for maintaining contact with one another to ensure a similar level of work and policy.
49. At the same time, it is commendable that the draft Law foresees enhanced and transparent coordination and cooperation between the local Commissions and Coordinators and the Ministry of Labour and Social Policy, as also recommended in ODIHR's 2011 Opinion on the Law.

5.2 Complaints Mechanisms

50. Aside from court proceedings, the draft Law lists three other main complaints mechanisms under Article 20, namely a designated representative of the Ministry of Labour and Social Policy (hereinafter "the Legal Representative") (Articles 21-32), the Ombudsman (Article 13) and the Commission for Protection from Discrimination under the Law on Prevention and Protection from Discrimination.
51. The Legal Representative may deal with all individual complaints involving potential discrimination based on sex by legal or natural entities (Article 22 par 5). The complaints procedure under Articles 22-29 is essentially a written procedure, and investigations are based on documents, though next to written statements, oral statements from the complainant, respondent and other persons are permissible (Article 26). At the end of this procedure, the Legal Representative issues a written opinion determining whether there has been a case of gender discrimination, complete with recommendations on how to remedy the rights violation (Article 29 par 2). The respondent party shall act upon the Legal Representative's recommendations within 30 days upon receipt of the opinion. Should the respondent party not act upon these recommendations, then the Legal Representative may initiate a procedure "before a competent body for establishing his/her responsibility" (Article 30).
52. As for the Ombudsman, Article 13 reiterates his/her 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 Law³⁰. The Ombudsman's competences are explicitly limited to complaints involving alleged gender discrimination by state administration bodies or organizations with public authority (Article 13).
53. The Commission for Protection against Discrimination, established under Chapter IV of the Law on Prevention and Protection against Discrimination (hereinafter "the Anti-Discrimination Law"),³¹ was created as an independent and autonomous body tasked with, *inter alia*, acting upon complaints of concrete cases of discrimination. The Anti-Discrimination Law applies to both the public and the private sector. Commission members are appointed by the Assembly and which has the power to conduct investigations into individual complaints of discrimination.

³⁰ See the Ombudsman Law, no. 07-4502/1, adopted on 10 September 2003.

³¹ *Op cit* note 26

54. On a European level, 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 sex³². 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 citizens³³.
55. When comparing the draft Law with the requirements of the EU Gender Directives, it is noted that of all possible complaints bodies, only the Commission for the Protection against Discrimination corresponds somewhat with the requirements for an equality body as set out therein. The Legal Representative is part of the Ministry for Labour and Social Policy and thus not independent, and the Ombudsman can only deal with complaints against public authorities.
56. Thus, the inclusion of the Commission for the Protection against Discrimination as a complaints body under the draft Law is a positive step which corresponds with the recommendations in ODIHR's 2011 Opinion on the Law and fills the gap left in the current Law. It is also good that proceedings before the Legal Representative complement, but do not replace the complaints procedure before this independent body and the Ombudsman.
57. It is noted that procedures before the Legal Representative are now much clearer and that he/she is now the sole responsible for reviewing complaints – the involvement of inspections bodies to enforce decisions in the current Law has been taken out of the draft Law. This is a marked improvement from the current Law.
58. At the same time, Article 29 par 3 would benefit from some clarification. This provision states that the Legal Representative shall send his/her written opinion to the complainant, the respondent and “any other legal or physical persons”. This formulation is quite vague and does not specify who these legal or physical persons would be. In any case, as also suggested in ODIHR's 2011 Opinion on the Law, the supervisor and/or supervisory body of the respondent should receive a copy of the opinion, as well as any other affected or interested institutions. This should be reflected in Article 29 par 3.
59. Another unclear aspect of procedures before Legal Representative is the formulation of Article 30, which states that in case a person does not remedy the violation of a right in accordance with the Legal Representative's recommendation, the Legal Representative may “start an initiative for starting a procedure in front of a competent body for determining its responsibility”.

³² See Article 20 of Directive 2006/54/EC and Article 12 of Directive 2004/113/EC.

³³ 2004 OSCE Action Plan for the Promotion of Gender Equality of 7 December, par 42.

This vague formulation corresponds to the wording of Article 29 of the Anti-Discrimination Law, which allows the Commission for the Protection against Discrimination to initiate a similar procedure. It is not clear whether this would be an administrative or court procedure. In order to make both the draft Law and the Anti-Discrimination Law more transparent and foreseeable, it is recommended to clarify in both pieces of legislation what kind of procedure these provisions are referring to.

6. Legal Protection under the Draft Law

60. It is commendable that under Chapter 6 of the draft Law, non-judiciary legal protection bodies are the Legal Representative, the Ombudsman and the Commission for the Protection against Discrimination. Other bodies such as inspection bodies and government commissions have been removed from this chapter, and with them numerous ambiguities persisting in the current Law. Articles 33-35 regulate court proceedings and lawsuits before courts in a transparent manner, and Article 39 rightly clarifies that the shift in the burden of proof applies to court proceedings. However, certain aspects of Article 33 could be amended to facilitate access to courts – it would be advisable to clarify in this provision which courts (presumably ordinary courts) are competent in such matters. Furthermore, Article 33 par 3 stating that proceedings shall be urgent should specify what this means, or else include a reference to the relevant procedural code explaining this term.
61. Chapter 8 contains a much-improved list of possible misdemeanors, which clearly specify which behaviour will lead to which sanction. Article 37 pars 3 and 4 now also clarifies that courts will impose such sanctions following court procedures, and that the establishment of misdemeanor charges will also lead to settlement procedures before labour inspectorate. This is a welcome improvement from the current Law, which does not specify which bodies are competent to determine misdemeanor charges and impose such sanctions.

[END OF TEXT]

Annex 1

DRAFT LAW ON EQUAL OPPORTUNITIES OF WOMEN AND MEN

1. GENERAL PROVISIONS

Subject of the Law

Article 1

(1) This law shall regulate the implementation of the principle of equal opportunities and equal treatment of women and men, the basic and special measures for establishment of equal opportunities of women and men, the rights and responsibilities of the entities responsible for ensuring equal opportunities of women and men, the procedure for determining unequal treatment of women and men, as well as the authorization and obligation of the Representative for equal opportunities of women and men (hereinafter: the Representative) as a designated person for conducting the procedure for determining unequal treatment of women and men.

(2) The establishment of equal opportunities of women and men shall be regulated with this and any other law which regulates issues related the equal opportunities of women and men in the area of healthcare and health insurance, social protection, access to goods and services, economy, labor relations and employment, education and professional training, economic and proprietary relations, use of public products and services (consumer rights), culture and sport, information and communication technologies, defense, judiciary and administration, housing, public information and media, state and public administration and other areas of social life.

Purpose of the Law

Article 2

(1) The purpose of this Law is establishment and implementation of the principle of equal opportunities of women and men in the politics, economics, social, educational, cultural, health, civil and any other area of social life.

(2) The establishment of equal opportunities is an obligation of the entire society i.e. of all entities in the public and private sector, and means removing the obstacles and creating conditions for introducing complete equality between women and men.

Application of the Law

Article 3

(1) This Law shall be applied in the public and private sector in the areas specified in Article 1 paragraph 2 of this Law.

(2) The entities to apply the Law shall include: the bodies of the legislative, executive and judicial authorities, the units of local self-government and other bodies and organizations from the public and private sector, public enterprises, political parties, media and the civil sector, as well as all persons providing goods and services available to the public, and that are offered outside of the area of private and family life, and the transactions made in that context, regardless whether the respective person belong to the public or private sector, including public bodies.

(3) Discrimination, harassment and sexual harassment based on sex shall be prohibited both in the public and in the private sector in the areas of employment and labor, education, science and sports, social security, including social protection, pension and disability insurance, health insurance and healthcare, judiciary and administration, housing, public information and media, information and

OSCE/ODIHR Opinion on the Draft Law on Equal Opportunities for Women and Men of the former Yugoslav Republic of Macedonia

communication technologies, defense, membership and active participation in unions, political parties, citizens' associations and foundations, other organizations based on membership, culture and other areas stipulated with this or any other law.

(4) Discrimination based on sex shall be prohibited in the access to goods and services in the public and private sector, including discrimination in the premiums of insurance schemes.

(5) Every citizen shall be entitled to access to employment without any limitations, in accordance with the principle of equal treatment.

(6) In accordance with the principle of equal treatment in the access to employment, discrimination based on marital status, family status, skin color, language, political or other convictions, participation in unions, nationality or social status, disability, age, ownership, social or other status shall also be prohibited.

(7) Unequal treatment which promotes equal opportunities of women and men in accordance with the purpose of this and any other law shall not be considered discrimination.

Definitions

Article 4

Certain expressions used in this Law shall have the following meaning:

1. ***Equal opportunities of women and men*** means promotion of the principle of introduction of equal participation of women and men in all areas of the public and the 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 social development, as well as equal benefits from the results that have resulted from that development;

2. ***Equal treatment*** is absence of direct and indirect discrimination based on sex in accordance with this and any other law;

3. ***Discrimination based on sex*** is every differentiation, exclusion or limitation based on sex, the consequence or aim of which is endangering or disabling the recognition, fulfillment or practice of human rights and fundamental freedoms based on equality of women and men in the political, economic, social, cultural and civil or other area, regardless of their race, skin color, gender, belonging to a marginalized group, ethnicity, language, citizenship, social origin, religion or belief, education, political affiliation, personal or social status, mental or bodily impairment, age, family or marital status, financial standing, health condition or any other grounds;

4. ***Direct discrimination based on sex*** is when one person is treated less favorable than another person is, was or would be treated in a similar situation based on the sex.

5. ***Indirect discrimination based on sex*** is when a seemingly neutral regulation, criterion or customary law puts persons of one sex in a highly unfavorable situation as opposed to persons of the opposite sex, unless that regulation, criterion or customary law is objectively justified with a legitimate goal, and the means used to accomplish that goal are appropriate and necessary;

6. ***Harassment*** based on sex shall mean any inappropriate behavior related to a person's sex, the consequence or aim of which is to damage the person's dignity and creation of an intimidating, hostile, degrading, humiliating or offensive atmosphere.

7. ***Sexual harassment*** based on sex shall mean any form of unsolicited verbal, nonverbal or physical behavior of sexual nature, the consequence or aim of which is damage to personal dignity, especially when it creates an intimidating, hostile, degrading, humiliating or offensive atmosphere;

8. ***Complete equality of women and men*** means equal rights, opportunities, conditions and treatment in all areas of public and private life, and absence of

cultural, social, economic and political conditions which produce unequal power relations and unequal distribution of social goods between men and women;

9. **Equal representation** in the sense of this Law means each percentage representation of one gender which is not lower than its percentage representation in the total population;

10. **Gender Mainstreaming** means integration of the gender perspective in each phase of the process of creation, adoption, implementation, monitoring and evaluation of policies, whereas taking into account the promotion and improvement of equality between women and men.

In the sense of this Law, the harassment and the sexual harassment shall be considered discrimination based on sex shall therefore be forbidden.

2. TYPES OF MEASURES FOR ESTABLISHMENT OF EQUAL OPPORTUNITIES OF WOMEN AND MEN

General Measures

Article 5

(1) The general measures for realization of the principle of equal opportunities of women and men are normative measures from the area of healthcare and health insurance, social protection, access to goods and services, economics, labor relations and employment, education and professional training, economic and proprietary relations, use of public products and services (consumer rights), culture and sport, information and communication technologies, defense, judiciary and administration, housing, public information and media, state and public administration and other areas determined with this law or any other law which prohibits discrimination based on sex.

(2) The general measures for realization of equal opportunities also include the measures for realization of complete equality between women and men, prescribed in the policies and programs for systematic promotion of the principle of equal opportunities of women and men and respecting differences, targeted at changing the social and cultural customs regarding the behavior of women and men in order to eliminate prejudices, as well as any other practice based on inferiority or superiority of one gender or the traditional social role of women or men.

(3) The general measures also include the measures for implementation of systematic inclusion of equal opportunities of women and men in the process of creating, implementing and monitoring the policies and budgets in separate social areas, including the performance of functions and competences of the entities from the public and private sector.

Article 6

(1) The general measures for ensuring equal opportunities of men and women also include the measures in the area of education and professional training.

(2) The education on the establishment of equal opportunities represents an integral part of the system of education and professional training, which needs to ensure readiness of both men and women for active and equal participation in all areas of social life.

(3) Mechanisms for eliminating prejudices and stereotypes in connection to establishing equal opportunities need to be secured in the process of preparation, adoption and conduct of educational or professional training programs, preparation of

course books and other school materials, and in the process of introducing organizational innovations and modifications in the pedagogical and andragogical methods.

(4) The state administration bodies authorized to perform tasks from the area of education and labor, the institutions that conduct education and professional training shall perform regular reviews of the contents of the curricula, syllabuses and course books in terms of promotion of equal opportunities of women and men.

Special Measures

Article 7

(1) The special measures are provisional measures taken in order to overcome the existing unfavorable social position of women and men which is a result of a systematic discrimination or structural gender inequality arising from historic and socio-cultural circumstances.

(2) The special measures are directed towards removal of obstacles or making a special contribution and encouragement for achievement of equal starting positions for women and men, equal treatment, balanced participation or equal social status, development of their individual potentials through which they contribute to social development, as well as equal use of the benefits of that development;

(3) The special measures stipulated in paragraph (1) of this Article include positive, encouraging and programmatic measures:

- the positive measures are measures which give priority, in equal conditions, to persons of the less represented sex until equal representation or the goal of the measures has been accomplished.

The positive measures shall be especially used within all bodies and at all levels in the area of the legislative, executive and judicial authority, as well as in other bodies and organizations, the local government, all other public institutions and offices, the political parties upon performance of political functions, commissions and boards, including participation in the bodies which represent the country at international level, until equal representation has been achieved.

- the encouraging measures are measures which provide special incentives or introduce special advantages in order to eliminate the circumstances which give rise to unequal participation of women and men, or unequal status of one sex as opposed to the other, or unequal distribution of the social goods and resources.

- the programmatic measures are measures which are aimed towards awareness-raising, organizing activities and drafting and implementing action plans for promotion and improvement of equal opportunities.

3. ADOPTION AND MONITORING OF SPECIAL MEASURES FOR ESTABLISHING EQUAL OPPORTUNITIES OF WOMEN AND MEN

Adoption of Special Measures

Article 8

(1) The special measures shall be adopted by the bodies of the legislative, executive and judicial authority, the local self-government units and other bodies and organizations from the public and private sector, public enterprises, political parties, media and the civil sector in all areas specified in Article 1 paragraph 2 of this Law.

(2) The special measures shall be adopted based on analysis and description of the situation in which women and men live, as well as the factors and circumstances which contribute to inequality, which shall include justification for the application of

such measures, including the effect which these measures will have on their lives and opportunities.

(3) The entities adopting special measures in accordance with this Law should also adopt a plan for implementation of the special measures, which they shall submit for review to the Ministry of Labor and Social Policy before its adoption.

(4) The entities which have adopted special measures shall submit an annual report on the results from the application of such measures to the Ministry of Labor and Social Policy no later than 31 March of the current year for the previous year.

4. ENTITIES RESPONSIBLE FOR THE ADOPTION AND IMPLEMENTATION OF MEASURES FOR ESTABLISHING EQUAL OPPORTUNITIES OF WOMEN AND MEN AND THEIR OBLIGATIONS

The Assembly of the Republic of Macedonia

Article 9

(1) The Assembly of the Republic of Macedonia (hereinafter: the Assembly) within the scope of its responsibilities will ensure elimination of all forms of discrimination based on sex and improvement of the social status of women; integrate the principle of equal opportunities of women and men in the law initiatives, policies and programs; monitor the legal provisions and international documents ratified in the Republic of Macedonia regarding equal opportunities of women and men; organize public debates and discussions on issues related to equal opportunities of women and men; review and give opinions on the effects of the legal provisions on the status of women and men; request reports and documents from the competent institutions regarding their field of work and prepare and publish reports on its work.

(2) In the process of electing working bodies and appointing members of its delegations for cooperation with international organizations and for cooperation with the parliaments of other countries, the Assembly shall respect the principle of equal participation of women and men.

(3) The Assembly shall adopt Strategy for Gender Equality and shall monitor its implementation in the sectorial policies and programs, and cooperates with social partners, non-governmental organizations and other public institutions in the relevant area.

(4) The Assembly shall form and determine the composition and competencies of the Commission for Equal Opportunities of Women and Men as a permanent working body.

(5) The Commission for Equal Opportunities of Women and Men shall undertake the following activities:

- review of draft laws and other acts adopted by the Assembly from the areas specified in Article 1 paragraph 2 of this Law, as well as other draft laws and acts from gender mainstreaming perspective therein;
- review the proposed National Strategy for Gender Equality;
- monitor the adoption and application of the general and special measures for establishment of equal opportunities of women and men in all areas of the public and private sector based on reports submitted by the Sector for Equal Opportunities within the Ministry of Labor and Social Policy;
- monitor the system of measures for removing unequal treatment of women and men based on reports submitted by the Sector for Equal Opportunities within the Ministry of Labor and Social Policy;
- initiate adoption of and amendments to laws and other regulations related to equal opportunities of women and men;

OSCE/ODIHR Opinion on the Draft Law on Equal Opportunities for Women and Men of the former Yugoslav Republic of Macedonia

- encourage cooperation between the competent bodies on matters related to equal opportunities of women and men;
- inform the Assembly on regular basis about all issued related to equal opportunities of women and men;
- cooperate with the relevant commissions of other countries; and
- consider other issued related to equal opportunities of women and men.

The Government of the Republic of Macedonia

Article 10

(1) The Government of the Republic of Macedonia (hereinafter: the Government) within the scope of its responsibilities takes care for promotion and establishment of equal opportunities and accomplishment of the goals of this Law through the application of the general and special measures stipulated with this Law.

(2) The Government shall adopt a long-term Strategy for gender equality and submit the same for adoption to the Assembly of the Republic of Macedonia.

(3) The Government shall appoint a Coordinator and a Deputy Coordinator for equal opportunities and shall monitor the implementation of the principle of equal opportunities of women and men in the strategic plans of the line ministries and the budgets, and cooperates with the Ministry of Labor and Social Policy.

(4) The Government shall publish statistical data on the representation of women and men in appointed positions, decision-making structures, boards of directors and management structures in the public administration.

(5) The Government is obliged to provide equal representation of women and men in the process of forming the membership of its working bodies and delegations, consultative and coordinating bodies, and other bodies, and in the process of selecting representatives in public companies and institutions.

(6) The Government shall form an inter-sectorial consultative and advisory group for equal opportunities of women and men composed of official/high-level civil servants, representatives of citizens' organizations, associations of employers, experts, local self-government representatives, trade unions and other interested parties.

(7) The inter- sectorial group is obligated to promote the concept of gender mainstreaming in the general policies of all public institutions; monitor the integration of the concept in the sector policies in cooperation with the social partners and institutions from separate areas; monitor the progress of harmonization of the Macedonian legislation with the EU legislation and the European standards related to gender issues; participate in the preparation and provide guidelines in the process of preparation of the National Strategy for gender equality, and monitor the periodical reports of the institutions.

(8) The inter-sectorial group shall be coordinated by the Ministry of Labor and Social Policy. The composition and the manner of operation of the inter-ministerial group will be regulated with a special act of the Minister of Labor and Social Policy.

State Administration Bodies

Article 11

(1) The bodies of state administration shall, within the scope of their responsibilities, promote and develop equal opportunities by undertaking the general and special measures stipulated in Article 5, 6 and 7 of this Law.

(2) The bodies of state administration shall cooperate with the associations of employers, the trade union and the citizens' associations active in the field of equal opportunities in order to provide proposals and measures for accomplishing the goal of this Law.

(3) The bodies of state administration shall, within their strategic plans and budgets incorporate the principle of equal opportunities of women and men; monitor the effects and influence of their programs on men and women and report in the frames of its annual report.

(4) The bodies of state administration shall submit all materials which regulate or address issues relevant for the accomplishment of the goal of this Law to the Ministry of Labor and Social Policy for review, before submitting the same to the Government for review, assessment i.e. adoption.

(5) The bodies of state administration shall appoint an official person- Coordinator and a Deputy Coordinator who will coordinate the matters within the competence of the state body regarding establishment of equal opportunities.

(6) Following the appointment of an official person - Coordinator and a Deputy Coordinator, the bodies of state administration shall inform thereof the Ministry of Labor and Social Policy in writing.

(7) The Coordinator and the Deputy Coordinator from paragraph (5) of this Article shall be responsible for implementation of the obligations within the scope of the state body for establishing equal opportunities in the sense of this Law, give opinions and proposals for promotion and development of equal opportunities within the competence of the state body, and shall coordinate and cooperate with the Ministry of Labor and Social Policy in the performance of their obligations.

(7) The responsibilities and tasks of the Coordinator and the Deputy Coordinator shall be specifically determined in the act on systematization of posts in the state body.

(8) The Coordinator and the Deputy Coordinator from paragraph (5) of this Article shall submit annual reports on their work to the Ministry of Labor and Social Policy no later than 31 March of the current year for the previous year.

(9) The Coordinator and the Deputy Coordinator shall publish the report from paragraph 8 of this Article on the website of the state body in order to make it available to the public.

Ministry of Labor and Social Policy

Article 12

(1) The Ministry of Labor and Social Policy has the following mandate in the area of equal opportunities of women and men:

- promotes equal opportunities of women and men in all areas of social life;
- ensures the gender-mainstreaming in the reorganization, promotion, development and evaluation of political processes at all levels and in all stages at national and local level;
- provides opinion on the proposals for adoption of the general and special measures for establishing equal opportunities of women and men, and monitors their application;

OSCE/ODIHR Opinion on the Draft Law on Equal Opportunities for Women and Men of the former Yugoslav Republic of Macedonia

- submits to the Government or to the authorized Ministries proposals for adoption of or amendments to laws and other regulations related to the establishment of equal opportunities, as well as for the adoption of the general and special measures;
- prepares the draft National Strategy for Gender Equality and the operational plans, monitors the implementation and publishes annual reports on the activities and the results of the implementation;
- coordinates and supports the work of the inter- resorial group for promotion of equal opportunities of women and men in policies and programs from all areas of social life;
- monitors, in cooperation with the Ministry of Foreign Affairs, the implementation of international agreements that relate to equal opportunities and the promotion of the status of women;
- prepares national reports on the implementation of international obligations of the Republic of Macedonia in the field of equal opportunities;
- prepares analyses, reports, and other documents related to equal opportunities, and publishes the same on the web site of the Ministry in order to make them available to the public;
- cooperates with the Coordinators in the bodies of state administration, as well as with the Coordinators and the Commissions for Equal Opportunities established within the units of local self-government, ensures their mutual cooperation and prepares guidelines and proposals for fulfillment of their obligations for accomplishment of the goal of this Law;
- cooperates with the entities responsible for the implementation of this Law stipulated in Article 3 paragraph 2;
- submits annual report to the Government on the activities undertaken and the progress made in the area of establishment of equal opportunities of women and men, not later than the end of June in the current year for the previous year.

(2) The Ministry of Labor and Social Policy shall monitor the implementation of the positive measures in the areas in which they have been introduced.

(3) The Ministry of Labor and Social Policy provides opinion to the entities from Article 8 paragraph (1) of this Law on adoption of positive measures in those areas of social life where there is unequal participation of women and men or unequal status of persons from one sex.

Ombudsman

Article 13

The Ombudsman shall, within its legally prescribed authority, take care of the implementation of the principle of equal opportunities through legal protection of equal opportunities of women and men, when someone's rights have been violated or limited by a body of state administration or by other bodies or organizations with public authority.

Units of Local Self-Government

Article 14

(1) In order to achieve the goals of this Law, the units of local self-government shall, within the scope of their responsibilities, respect the principle of equal opportunities and promote and develop equal opportunities of women and men by undertaking the general and special measures stipulated in Article 5, 6 and 7 of this Law and prepare an annual plan which will lay down the general and special measures.

(2) The units of local self-government shall, within the scope of their strategic plans and budgets, incorporate the principle of equal opportunities of women and men, monitor the effects and influence of their programs on women and men and report within their annual reports, as well as participate in the preparation of the National Strategy for Gender Equality in the part relating to the units of local self-government.

OSCE/ODIHR Opinion on the Draft Law on Equal Opportunities for Women and Men of the former Yugoslav Republic of Macedonia

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

(4) The bodies of the units of local self-government shall cooperate with the associations of employers, the trade union, non-governmental organization and citizens' associations that are active in the field of equal opportunities in order to obtain proposals and measures for the accomplishment of the goal of the Law.

(5) The units of local self-government shall establish Commission for Equal Opportunities, as a permanent body upon a decision of the Council of the unit of local self-government, the composition, responsibilities, duties and obligations of which shall be determined in the statute of the unit of local self-government.

(6) The Commission for Equal Opportunities from paragraph (5) of this Article shall:

- give opinions on materials and proposals for the Council's session and submit the same to the Council for review;

- participate in the creation and adoption of strategic documents, especially in the process of creation and adoption of the strategy for development of the unit of local self-government, adoption of the budget of the unit of local self-government, the Statute, the Program of the Council, etc.

- identify and give proposals on the manner of incorporation and formalization of the principle of equal opportunities in the work of the bodies of the unit of local self-government and the municipal administration;

- provide consistent implementation of the provisions of the Law on Equal Opportunities of Women and Men and other laws related to equal opportunities and non-discrimination, propose measures and activities to the Council in the direction of promotion of equal opportunities based on analysis of determined conditions in the areas within the scope of responsibilities of the unit of local self-government;

(7) The units of local self-government shall appoint a Coordinator for Equal Opportunities, an official person employed in the unit of local self-government, who will fulfill the obligations of the Coordinator for Equal Opportunities.

(8) The Coordinator from paragraph (7) of this Article shall be responsible for: promotion of equal opportunities within the scope of the responsibilities of the unit of local self-government; giving proposals and opinions related to equal opportunities to the Council of the unit of local self-government and the institutions and organizations at local level; preparing reports on the situation regarding equal opportunities within the unit of local self-government; cooperation with the Commission for Equal Opportunities within the Council of the unit of local self-government and initiation of joint initiatives with the aim to promote equal opportunities; cooperation with the non-governmental organizations and other institutions at local level on the issue of equal opportunities; monitoring the situation regarding equal opportunities at local level and proposing initiatives for undertaking measures for improvement of the situation regarding equal opportunities; and establishing coordination and cooperation with the Ministry of Labor and Social Policy in the process of fulfillment of its responsibilities.

(9) The responsibilities and obligations of the Coordinator shall be regulated with the Act on Systematization of Posts of the units of local self-government.

Article 15

The Coordinator for Equal Opportunities from Article 14 paragraph 7 of this Law shall submit annual reports to the Ministry of Labor and Social Policy no later than 31 March in the current year for the previous year, and publish the same on the website of the unit of local self-government in order to make them available to the public.

Political Parties

Article 16

The political parties in their acts determine the manner and measures for promotion of equal participation of women and men in the bodies of the parties on their lists of candidates for elections in the units of local self-government, in the Assembly and for election of the President of the Republic of Macedonia.

Media

Article 17

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

(2) The public broadcast and presentation of a person in the media should be in un-offensive, un-degrading or un-humiliating manner based on sex.

(3) The Broadcasting Council within the scope of its responsibilities monitors the manner of broadcasting and presentation of women and men in the programmatic concepts and contents and submits annual reports to the Assembly.

(4) The Broadcasting Council within the scope of its legally prescribed authorization and competencies shall prepare annual analysis on gender issues in the programmatic concepts and contents of the media for which is obliged to conduct control and supervision for the programmatic contents, submit the same to the Assembly for review and adoption and publish it.

Presentation of Statistical Data

Article 18

The Assembly, the Government, the bodies of state administration, the judiciary and other state bodies, the bodies of the units of local self-government, the legal entities which have been allowed by law to perform activities of public interest, the citizens' associations, the foundations, the public companies, the educational institutions, the institutions in the field of social protection, the health institutions, the political parties, the media, companies, and other subjects that are obliged by law to collect, record and handle statistical data shall disaggregate these data by gender and submit them to the State Statistical Office.

5. National Strategy for Gender Equality

Article 19

(1) The Government - the Ministry of Labor and Social Policy shall prepare the National Strategy for Gender Equality and submit the same to the Assembly for adoption.

(2) The Strategy shall be prepared for a period of eight years and shall contain the basic principles of gender equality in accordance with the contents of the log-term programmatic documents, more specifically:

- situation analysis
- guidelines and measures for accomplishment of the goals in special areas of social life, especially in the areas of employment, social security and health protection, education, family relations and public participation of women and men;
- responsibility for implementing measures for accomplishing the goals;
- the content of, the authorized bodies and the persons responsible for the preparation and implementation of National Action Plan for Gender Equality for a period of four years and the annual operational plans which facilitate the implementation of the Strategy;
- the data which are gathered and processed are connected, recorded, analyzed, and presented gender disaggregated within the scope of activities of the State Statistical Office;
- methodology of monitoring and reporting on the implementation of the Strategy; and
- the resources necessary for the implementation of measures of the Strategy, resources and ways of securing such resources.

6. LEGAL PROTECTION OF THE RIGHT TO EQUAL TREATMENT OF WOMEN AND MEN

Entities Responsible for Protection of the Right to Equal Treatment

Article 20

(1) The protection of the right to equal treatment based on sex shall be realized by filing a complaint to:

- a legal representative pursuant to the Law on Equal Opportunities of Women and Men;
- the Ombudsman, in accordance with the Law on Ombudsman;
- the Commission for Protection from Discrimination, in accordance with the Law on Prevention and Protection against Discrimination;
- a competent court.

Legal Representative

Article 21

(1) The person whose right to equal treatment has been violated based on sex may file a complaint to the Ministry of Labor and Social Policy.

(2) The procedure within the Ministry of Labor and Social Policy is conducted by a Legal Representative.

(3) The Legal Representative is a person employed as a civil servant in the Ministry of Labor and Social Policy responsible to conduct the procedure for determining unequal treatment of women and men.

Filing the Complaint

Article 22

(1) A complaint may be filed by any legal or natural entity - personally or through an authorized person in writing, by giving an oral statement or in any other form (or by fax or by e-mail).

OSCE/ODIHR Opinion on the Draft Law on Equal Opportunities for Women and Men of the former Yugoslav Republic of Macedonia

- (2) The complaint filed over the phone should also be confirmed in writing within 8 days.
- (3) An official note shall be compiled for each orally filed complaint.
- (4) The complaint must be signed, contain personal information of the complainant and the circumstances, facts underlying the complaint.
- (5) The complaint must include the entity (legal or natural) to which the complaint is addressed, as well as whether the complainant has filed any legal remedies, and if yes, which ones.
- (6) Anonymous complaints shall not be considered.
- (7) The complainant shall be exempt from payment of the administrative fees and any other charges.

Article 23

- (1) The complaint should be filed within six months from the day the violation took place and no later than one year from the day of discovery of the discrimination act.
- (2) The complaint shall contain facts on the basis of which the act and the discrimination activity could be determined.
- (3) If the complaint is ambiguous and does not contain the required facts, the Legal Representative shall demand that the complainant clarify and amend the complaint within 15 days.

Non-initiation of a Procedure

Article 24

- (1) The Legal Representative shall not initiate a procedure upon a complaint filed if it is clearly obvious that there is no violation of the right which the complainant is invoking, i.e. discrimination based on sex; if he/she has already acted upon the same matter and there are no new evidence or facts; if the term for filing the complaint has expired; if the complaint is anonymous; if the same case is in procedure before a competent court or a valid court decision has been brought.
- (2) When the Legal Representative will not initiate a procedure upon a complaint pursuant to paragraph 1 of this Article shall inform the complainant.

Initiation of a Procedure

Article 25

- (1) The legal representative shall initiate a procedure upon a complaint filed if the complaint is filed within six months from the day the violation was made or no later than one year from the discovery of the discrimination act; if the complaint contains facts which might imply that discrimination has taken place.
- (2) The Legal Representative may initiate a procedure at his/her initiative.
- (3) The regulations on protection of confidentiality of personal data shall be applied throughout the procedure.

Determining the Factual Situation

Article 26

- (1) Following the receipt of the complaint, the Representative shall determine the factual situation with insight in the presented documents, taking written or oral statements from the complainant, the person against whom the complaint is filed, as well as from any other persons who the Representative believes to have information about the specific event.
- (2) Following the receipt, the filed complaint shall be delivered to the person against whom it has been filed, so he/she can elaborate on the findings contained therein, no later than 15 from the day of receipt of the complaint.

Article 27

The legal and natural entities shall, upon request from the Legal Representative, submit the information they have on specific cases of discrimination, as well as allow direct inspection of the documentation.

Duration of the Procedure

Article 28

The procedure must be conducted within 90 days from the day of receipt of the complaint.

Opinions and Recommendations

Article 29

(1) Following the completion of the evidentiary proceedings, the Legal Representative shall compile a written opinion.

(2) The opinion shall contain an elaboration on the determined unequal treatment based on sex, as well as a recommendation for the manner of remedying the violation of the right.

(3) The written opinion shall be delivered to the complainant, the person against whom the complaint has been filed, as well as to any other legal or physical persons.

(4) The legal opinion shall be delivered to the Minister of Labor and Social Policy.

(5) The person to whom the recommendation is addressed shall act upon the recommendation and remedy the violation of the right within 30 days from the day of receipt of the opinion and inform the Legal Representative thereof.

Article 30

If the person to whom the recommendation is addressed fails to act upon the recommendation, i.e. does not remedy the violation of the right, the Legal Representative may initiate a procedure before a competent body for establishing his/her responsibility.

Cooperation with Other Bodies

Article 31

The Legal Representative shall perform the work within his/her competence in cooperation with the Ombudsman and the Commission for Protection against Discrimination on specific cases of discrimination upon which these bodies have the competence to act.

Annual Report

Article 32

The Legal Representative shall prepare an annual report on the opinions given, the recommendations implemented and the effects of their implementation no later than 31 March for the previous year.

The report shall be published and delivered to the competent institutions.

Court Protection

Article 33

(1) The person who believes that his/her right to equal treatment has been violated may file a lawsuit before a competent court.

- (2) The provisions of the Law on litigation shall be applied in the procedure accordingly.
- (3) The procedure shall be urgent.

Territorial Jurisdiction

Article 34

Besides the court of general territorial jurisdiction, the court in the jurisdiction of which the seat i.e. the residence of the complainant is located shall also be competent in the procedure for protection of the right of equal treatment based on sex.

Lawsuit

Article 35

The lawsuit may seek to:

- 1) determine that the respondent has violated the right of the complainant to equal treatment based on sex, i.e. that the activity he/she has undertaken or has failed to undertake may have directly contributed to the violation of the right to equality in the treatment;
- 2) forbid undertaking activities which violate or may potentially violate the right of the complainant to equal treatment, i.e. to undertake activities which remedy the unequal treatment or the consequences thereof;
- 3) compensate the pecuniary and non-pecuniary damages resulting from the violation of the right to equal treatment in accordance with the Law on Obligations;
- 4) publicize the court decision determining the violation of the right to equal treatment in the media at the respondent's expense.

Burden of Proof

Article 36

- (1) If the party in the court proceeding claims that his/her right to equal treatment has been violated in accordance with the provisions of this Law, he/she shall present all facts and evidence in support of such claim.
- (2) The proving that there was not a violation of the right to equal treatment falls on the respondent party.

7. OVERSIGHT OF THE IMPLEMENTATION OF THE LAW

Article 37

The Ministry of Labor and Social Policy shall supervise the implementation of the provisions of this Law and any other laws and regulations which regulate issues related to the establishment of equal opportunities.

8. MISDEMEANOR PROVISIONS

Article 38

- (1) Fine in the amount of 400 to 600 EUR in denar counter value will be imposed for a misdemeanor to any person who commits discrimination based on sex in the public and private sector in the areas of Article 3 paragraph 3 of this Law (Article 3).
- (2) Fine in the amount of 400 to 600 EUR in denar counter value will be imposed for a misdemeanor to any person who violates the dignity of another person based on

OSCE/ODIHR Opinion on the Draft Law on Equal Opportunities for Women and Men of the former Yugoslav Republic of Macedonia

sex, or creates threatening, hostile, humiliating or offensive atmosphere, approach or practice (Article 4 paragraph 1 point 6 and 7).

(3) Fine in the amount of 600 to 800 EUR in denar counter value will be imposed for the misdemeanor from paragraph (2) of this Article to the responsible person or any other person in the legal entity, state body, body of the unit of local self-government or a body with public authorization or an individual performing a certain activity in form of a registered profession (Article 4 paragraph 1 point 6 and 7).

(4) Fine in the amount of 800 to 1,000 EUR in denar counter value will be imposed for the misdemeanor from paragraph (2) of this Article to the legal person (Article 4 paragraph 1 point 6 and 7).

Article 39

(1) Fine in the amount of 400 to 600 EUR in denar counter value will be imposed for a misdemeanor to an entity which fails to submit the plan before its adoption to the Ministry of Labor and Social Policy for opinion (Article 8 paragraph 3).

(2) Fine in the amount to 800 to 1.000 EUR in denar counter value will be imposed for a misdemeanor if an entity which has adopted special measures has not submitted an annual report to the Ministry of Labor and Social Policy (Article 8 paragraph 4).

Article 40

(1) Fine in the amount of 400 to 600 EUR in denar counter value will be imposed for a misdemeanor to a responsible person within the state administration bodies who fails to appoint a Coordinator and a Deputy Coordinator for equal opportunities (Article 11 paragraph 5).

(2) Fine in the amount of 400 to 600 EUR in denar counter value will be imposed for a misdemeanor if the Coordinator or the Deputy Coordinator fails to submit a report on the work to the Ministry of Labor and Social Policy within the prescribed deadline (Article 11 paragraph 8).

(3) Fine in the amount of 400 to 600 EUR in denar counter value will be imposed for a misdemeanor to the responsible person within the unit of local self-government which fails to form a Commission for Equal Opportunities (Article 14 paragraph 5).

(4) Fine in the amount to 800 to 1.000 EUR in denar counter value will be imposed for a misdemeanor to the responsible person in the unit for local self-government which will fail to appoint Coordinator for Equal Opportunities (Article 14 paragraph 7).

(5) Fine in the amount of 400 to 600 EUR in denar counter value will be imposed for a misdemeanor if the coordinator for equal opportunities in the unit of local self-government fails to submit a report on the work to the Ministry of Labor and Social Policy within the prescribed deadline (Article 15).

Article 41

(1) Fine in the amount of 400 to 600 EUR in denar counter value will be imposed for a misdemeanor if the Broadcasting Council fails to prepare an analysis of gender issues in the programmatic concepts and contents of the media, and does not submit it to the Ministry of Labor and Social Policy for review and adoption and publish it (Article 17 paragraph 4).

Article 42

(1) Fine in the amount of 400 to 600 EUR in denar counter value will be imposed for a misdemeanor if the entities from Article 18 of this Law fail to collect, record and process the statistical data classified by gender and submit the same to the State Statistical Office (Article 18).

Article 43

(1) Fine in the amount of 400 to 600 EUR in denar counter value will be imposed for a misdemeanor to the entities from Article 3 paragraph 2 which fails, upon request from the Legal Representative, to submit information or allow inspection of the files within 30 days.

Article 44

(1) Fine in the amount of 400 to 600 EUR in denar counter value will be imposed for a misdemeanor to a person who fails to act upon the recommendation issued by the Legal Representative.

(2) Fine in the amount of 600 to 800 EUR in denar counter value will be imposed for a misdemeanor to the responsible persons within the entities from Article 3 paragraph 2 who fail to act upon the recommendation given by the Legal Representative.

9. FINAL AND TRANSITIONAL PROVISIONS

Article 45

(1) The Strategy for Gender Equality stipulated by Article 19 paragraph 1 shall be adopted by the end of 2012.

(2) The Government shall appoint the Coordinator and the Deputy Coordinator from Article 10 paragraph 3 of this Law within three months from the day this Law enters into force.

(3) The act from Article 10 paragraph 8 on the composition and the manner of work of the Inter-resorial group shall be adopted within 90 days from the day this Law enters into force.

(4) The state administration bodies shall appoint the Coordinator and the Deputy Coordinator from Article 11 paragraph 5 of this Law within three months from the day this Law enters into force.

(5) The units of local self-government shall form the Commission for Equal Opportunities from Article 14 paragraph 5 and shall appoint the Coordinator for equal opportunities from Article 14 paragraph 7 within three months from the day this Law enters into force.

Article 44

This Law shall enter into force on the eighth day following the day it is published in the "Official Gazette of the Republic of Macedonia".