



of the Legal Mandate of the Commission for Prevention and Protection against Discrimination and Prerequisites for Transparency, Accountability and Effectiveness



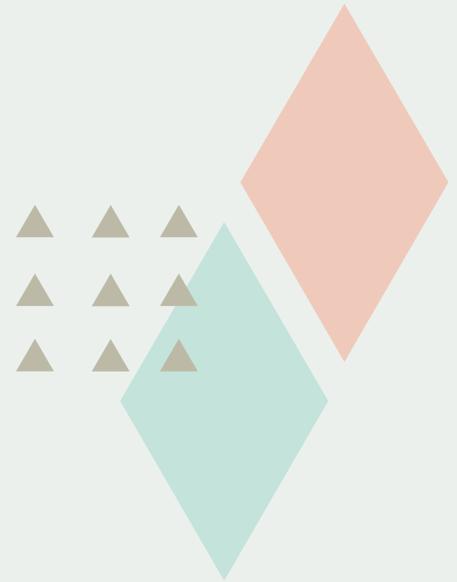


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CONTENTS

INTRODUCTION AND METHODOLOGICAL APPROACH

1. ABOUT THE COMMISSION

- 1.1. Institutional structure of the Commission and Its Internal Capacities to implement the Law (Technical and Administrative Body)
- 1.2. Commission's Powers

2. TRANSPARENCY AND ACCOUNTABILITY

- 2.1. Transparency in the Process of Amending the Law on Prevention and Protection against Discrimination - Legislation Impact Assessment
- 2.2. Statutory Provisions on Commission's Work Transparency and Prerequisites for Transparent Operation
- 2.3. Statutory Provisions on Accountability in Commission's Work and Prerequisites for Accountable Operation

3. EFFECTIVENESS

- 3.1. Statutory Provisions on Commission's Work Effectiveness and Prerequisites for Effective Operation
- 3.2. Rules of Procedure and Other Internal Procedures of the Commission, Prerequisites for Effective Operation

4. RECOMMENDATIONS FOR THE COMMISSION

- Annex 1 - Comparative Analysis with Other Independent Institutions and Bodies - the Ombudsman and the State Commission for Prevention of Corruption
- Annex 2 - The Gender Dimension in Commission's Composition and Work



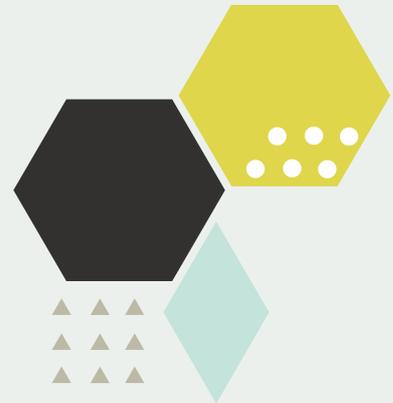
FOREWORD

In order to contribute to the affirmation and promotion of equality and to ensure effective prevention and protection against discrimination, the Association for Emancipation, Solidarity and Equality of Women-ESE, with the financial support from the Institute of Human Rights, started the implementation of the Project “For a Transparent and Accountable Commission for Prevention and Protection against Discrimination”, in parallel with other activities undertaken in this area.

“The Project, with the duration of one year, is primarily aimed at promoting transparency, accountability and effectiveness in the work of the Commission for Prevention and Protection against Discrimination (hereinafter, the Commission), in accordance with the new Law on Prevention and Protection against Discrimination (Official Gazette of the RNM no. 08-2888/1 of 16 May 2019), and it will take place in several phases through a number of activities.

These include: 1) conducting an analysis of the Commission’s legal mandate; 2) developing a Methodology for monitoring the transparency, accountability and effectiveness of the Commission; and 3) taking action for increased public information and promoting the Commission’s mandate.

Within this Project, ESE Association is focused on developing a comprehensive Methodology to monitor the transparency, accountability and effectiveness of the Commission for Prevention and Protection against Discrimination. This Methodology will be designed as a practical tool that will include measurable indicators (both general and specific) for monitoring and evaluation of a number of key aspects in the Commission’s work, namely: transparency, accountability and effectiveness of the actions and financial operations of the Commission. Special emphasis will be placed on gender discrimination and the inclusion of gender equality in all aspects of Commission’s activities, where specific gender equality markers and measurable indicators will also be defined.



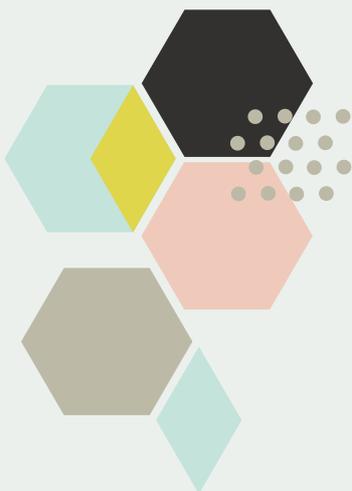
The process of Methodology preparation, headed by ESE, will be open, transparent and inclusive, ensuring the active participation of all stakeholders, including the Commission, competent state authorities, independent institutions and bodies, experts and academia, and civil society. Based on the Methodology prepared for monitoring and evaluating the work of the Commission, quarterly and annual reports will be drafted, which will be made public and available to all interested parties. At the same time, these reports will be the subject of open discussion and debate with representatives of relevant state institutions, civil society organizations, informal groups and the broader professional and general public. It is expected that the debates and discussions will give rise to concrete proposals and recommendations to overcome the weaknesses and inconsistencies identified and to improve the transparency, accountability and effectiveness of the Commission.

The starting point in the development of the monitoring and evaluation Methodology and tools is the analysis of the new and significantly expanded mandate of the Commission. Of paramount importance for the success of its work and the pursuit of its legal responsibilities is to establish a consistent and objective monitoring and evaluation system, and to promote the monitoring results in public, which will contribute to Commission's increased visibility, efficiency, accountability and transparency, and strengthen public awareness of the principles of equality and non-discrimination.

Skopje, June 2019

INTRODUCTION AND METHODOLOGICAL APPROACH

The adoption of the Law on Prevention and Protection against Discrimination, published in the Official Gazette of the RNM no.101 of 22 May 2019, repealed the Law on Prevention and Protection against Discrimination (Official Gazette of the RM no.50/10, 44/14, 150/15, 31/16 and 21/18), which defined different types and forms of discrimination and for the first time ever envisaged the establishment of a Commission for Protection against Discrimination as a special body to ensure the protection against discrimination in both the public and private sectors. In recent years, the Commission for Protection against Discrimination has failed to position itself as an independent and effective body for prevention and protection from discrimination, which resulted in a low level of confidence among the public and a small number of complaints made about discrimination. To some extent, this situation was conditioned by the possibilities contained in the 2010 Law, and by the lack of efficiency and capacity of the Commission to handle its entrusted responsibilities and challenges. A system to monitor the efficiency, transparency and accountability of its operation was also lacking. The 2019 Law on Prevention and Protection against Discrimination (hereinafter, the LPPD and the Law) created legal conditions for substantial improvement of both the system and institutional mechanisms that guarantee equality and ensure the prevention and protection from discrimination. The concept and content of the Law are based on international norms and standards contained in a number of international documents adopted by the United Nations Organization (UN), the Council of Europe, the European Union and certainly, the Constitution of the Republic of North Macedonia. The new legal possibilities provide for a high level of our legislation harmonization with the European Union's aquiscommunitaire and international standards in this area, which is one of the key requirements for meeting the political criteria for our country's accession to the European Union, which mainly underline the standards in the areas of rule of law, human rights and minorities' protection.

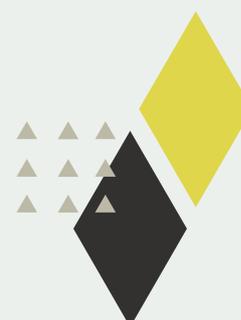


The purpose of the Law is to ensure and implement the principle of equality and prevention and protection against discrimination in the exercise of human rights and freedoms (Article 2 of the LPPD). The Law regulates the prevention and prohibition of discrimination, forms and types of discrimination, procedures for protection against discrimination, as well as the composition and work of the Commission for Prevention and Protection against Discrimination.

The main novelties introduced in the LPPD are related to the subject matter of this Law, its definitions, grounds of discrimination, and protection mechanisms, and especially the position and responsibilities of the Commission. It is important that this LPPD has a wide *ratione personae* application and includes all natural and legal persons, superseding its former territorial principle of application. Following this verbiage, the substance scope (*ratione materiae*), i.e. the areas in which the LPPD is implemented are also broadly defined. In addition, the Law provides obligations for all entities referred to in the LPPD, i.e. all natural and legal persons (government bodies, local government units, legal persons with public authorities, and other legal entities and individuals) to take measures for the promotion of equality and discrimination prevention. There is an obligation foreseen for all entities responsible for the collection of statistical data to present such data disaggregated by discrimination grounds (Article 3 of the LPPD), which will greatly help in the creation of effective measures and public policies in this area.

The most important benefits relate to the expansion of grounds of discrimination, by introducing sexual orientation, gender identity, political convictions and personal capacity or “any other ground”, which means that the list is non-exhaustive and not tied to the legal system of the country, which was particularly welcomed by the international factors. The non-exhaustive list of grounds was also part of the previous Law, but those other grounds were to be provided by law or a ratified international agreement. The new Law, for the first time, explicitly stipulates sexual orientation and gender identity as new grounds. The new Law also specifies forms of discrimination and for the first time, segregation is envisaged as a particular form of discrimination.

Key changes were also introduced in respect of the Commission for Prevention and Protection against Discrimination (its name was changed), primarily by: expanding its responsibilities in the promotion of equality, awareness-raising, educating the public and performing an advisory role for the promotion of anti-discrimination legislation and practice; its professionalization and depoliticization, independence and accountability enhancement through stricter criteria and transparency of the procedure for selection of its members; shorter deadlines in its action on complaints; the possibility of initiating a procedure *ex officio* and delivery of general recommendations regarding equality and non-discrimination, etc.



The judicial protection has also been improved through the exemption from payment of court fees, the introduction of a lawsuit for public interest protection (*actiopopularis*) without having a victim and by the use of statistics and data obtained through situation testing as evidence in court proceedings. In terms of strengthening the protection against discrimination, the Law prescribes higher civil penalties and the establishment of a separate misdemeanor body (Commission) within the state administration authority responsible for labour affairs.

Analysing the new legal framework as regards the Commission's institutional structure and powers, it appears that fundamental prerogatives have been created for the Commission to function as an independent and effective equality body, which besides its protective and preventative role in relation to discrimination, also has an active promotional role in terms of equality and realization of human rights and freedoms, particularly the Paris Principles regarding the status of national human rights institutions and relevant European Union's Directives [1].

The challenge will lie in the consistent application of the letter and spirit of this Law in practice by the Commission and all legal and natural persons to which it applies. In order to monitor the situation with regards to non-discrimination and implementation of laws, regulations and strategic documents in the area of discrimination, the Government, in March 2018, established a National Non-discrimination Coordination Body. The body is consisted of competent state institutions, NGOs, international organizations and independent experts in the area of non-discrimination and human rights. The national body was established to monitor the non-discrimination situation and the implementation of laws, regulations and strategic documents in this area. As stated in the Government's Communication[1], this decision was made as a result of the need to set up a special body for coordination and monitoring of the non-discrimination situation, primarily for the purpose of: increasing the transparency of institutions' work in this area; coordinating the activities between institutions and organizations (civic associations and international organizations) to jointly identify annual priorities in this area based on international and other reports and analyses; and continuous monitoring of the situation in this area and proposing joint measures for improvement of the situation.



[1]Council

Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, CELEX no. 32000L0078; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, CELEX no. 32004L0113 and Directive no. 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), CELEX no. 32006L0054.

The challenge will lie in the consistent application of the letter and spirit of the Law in practice by the Commission and all legal and natural persons to which it applies. In order to follow the non-discrimination situation and implementation of the laws, regulations and strategic documents in the area of discrimination, in March 2018, the Government established the National Coordination Body for Non-discrimination. The body is composed of competent state institutions, NGOs, international organizations and independent experts in the area of non-discrimination and human rights. The national body was established to monitor the situation with non-discrimination and implementation of laws, regulations and strategic documents in this area. As stated in the Government's Communication[1], this decision was made as a result of the need to set up a special body for coordination and monitoring of the non-discrimination situation, primarily for the purpose of: increasing the transparency of institutions' work in this area; coordinating the activities between institutions and organizations (civic associations and international organizations) to jointly set annual priorities in this area based on international and other reports and analyses; and continuous monitoring of the situation in this area and proposing joint measures for improvement of the situation.



Purpose of Analysis

The purpose of this analysis is to evaluate the existing legal framework and the position of the Commission as one of the institutional mechanisms for the promotion of equality and prevention and protection against discrimination, with a focus on the legal possibilities contained in the 2019 LPPD and regulations, as well as the preconditions to be met at the internal organization level in order to fulfill the obligations for Commission's transparent, accountable and effective operation.

Methodological Approach of Analysis

From a methodological viewpoint, this analysis is based on a review and study of the relevant public policies, strategic documents, laws, regulations, international documents and reports providing information on the situation in the field of equality and non-discrimination in the country. In this sense, the analysis is based on the constitutional provisions, the National Strategy for Equality and Non-discrimination for the period from 2016 to 2020, the 2019 LPPD and other laws in this area, the Commission's 2011 Rules of Procedure and internal regulations.

Besides the analysis of the legal framework, available Commission's annual reports and publications were also reviewed, as well as reports and analyses on Commission's past period work produced by domestic institutions, civil society organizations and international organizations (the European Union, the Venice Commission, ECRI, OSCE, etc.).

In parallel, a comparative analysis of the legislation related to similar equality bodies such as the Ombudsman and State Commission for Prevention of Corruption was performed. The comparative method was especially used in terms of the provisions regulating their institutional structure, competencies, election and dismissal, reporting, prerequisites and best practices for transparency, accountability and effectiveness. Thus, through "learning from the experience" of these independent bodies, the formulation of specific recommendations was inspired in order to improve the performance and strengthen the capacities and integrity of the Commission for Prevention and Protection against Discrimination, which is about to be constituted.

Limitations of Analysis

The main limitation of this analysis was that at the time of its preparation, although the Law had already entered into force, very little was undertaken towards its implementation. The Commission was not yet constituted, and consequently, there were no regulations adopted concerning its work, and an Administrative Office was not set up either. The procedure for constituting the Commission started on 11 June 2019 when the Assembly of the Republic of North Macedonia made a Decision to publish an advertisement for the election of Commission Members, and the advertisement was published in the Official Gazette of the RNM no.120/19 on 13 June 2019. The deadline for the constitution of the new Commission expires on 22 August 2019, while the deadline for adoption of its bylaws is 22 November 2019, i.e. six months after the Law's entry into force. Hence, the conclusions and recommendations contained herein are based primarily on the legal text and impact assessment of the legislation, the reasoning of the bill, reports and opinions of key international factors and the views of academia and civil society, as well as authors' opinions.



1. ABOUT THE COMMISSION

1.1. Institutional Structure of the Commission and its Internal Capacities to implement the Law (Technical and Administrative Body)

The most important novelties incorporated into the new LPPD relate precisely to the Commission for Prevention and Protection against Discrimination and they generally include the expansion of its powers and professionalization, as well as novelties regarding the procedure for appointment and dismissal of its members. At the same time, the Law incorporates grounds that provide for greater independence, competence, transparency and accountability in Commission's action, as well as Commission's greater financial independence and stability.

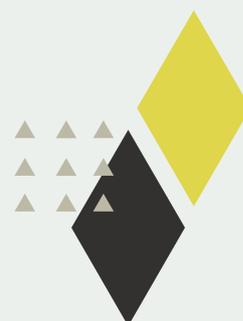
Commission's Legal Personality and Composition (Articles 14 and 16)

The Commission for Prevention and Protection against Discrimination is an independent body with a legal entity status and clearly defined legal powers. The Commission shall consist of seven members appointed and dismissed by the Assembly of the Republic of North Macedonia. Their term of office shall be five years, with the right to one re-election. When selecting the first composition of the Commission, four members shall be elected for a term of five years and three members for a term of three years, also with the right to one re-election. President of the Commission shall be elected from among its members for a term of one year, but with no right to re-election. Commission Members should also reflect the diversity and composition of society. For this purpose, the Law provides that in the election of Commission Members, the principle of adequate representation of all social groups, the principles of equitable and fair representation of community members and gender-balanced participation shall apply.

Requirements for Election of Commission Members (Article 17)

Making attempts to overcome the shortcomings arising from the previous Law, according to which the Commission Members simultaneously performed another function in a state body or institution and there were no clear criteria for their election, thus putting the competence and effectiveness of the Commission under question, the new LPPD provides for the Commission's professionalization and tighter and clearer criteria for election of Commission Members.

therefore, a person meeting the following requirements can be elected Commission Member: 1) shall be a national of the Republic of North Macedonia; 2) shall have gained 240 credits according to ECTS or VII/1 level of education and a minimum of seven-year work experience in the field of human rights, of which five years in the field of equality and non-discrimination; 3) at the time of appointment, shall not be sentenced to imprisonment of more than six months or banned to perform a profession, activity or duty by an effective court decision and 4) shall not hold a function in any political party (Article 17).



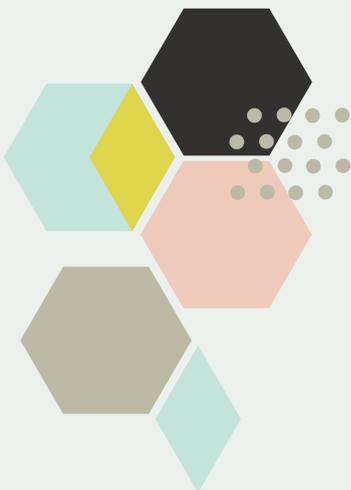
Procedure for Election of Commission Members (Article 18)

This procedure provides for a number of prerequisites for transparency in the selection of Commission Members by the legislature. First, the choice shall be made through a public advertisement placed by the Assembly in at least two daily newspapers issued across the territory of the country, where one of the newspapers issued shall be in the language spoken by at least 20% of the citizens speaking an official language different from Macedonian. This advertisement shall also be published in the “Official Gazette of the Republic of North Macedonia” and on the website of the Assembly and on the website of the Commission in the languages of all communities in the Republic of North Macedonia. Second, the deadline for application regarding the advertisement shall be 30 days as from the date of its publication in the “Official Gazette of the Republic of North Macedonia” which is double the period provided in the previous Law, leaving sufficient time for interested candidates to apply.

Third, the Committee on Elections and Appointments of the Assembly of the Republic of North Macedonia shall, with a majority vote of the total number of its members (absolute majority), identify a short list of applicants after having previously conducted a public hearing thereon and submit it to the Assembly along with all the applications received and a report of the public hearing conducted. The proposed short list shall be upheld by the competent parliamentary committee, while the selection decision thereon shall be adopted by a majority vote of the MPs in attendance (simple majority), in a plenary session of the Parliament, since the Constitution does not provide for any other type of majority in such case. This possibility, which also applies to the procedure for dismissal, was particularly criticized by the Venice Commission and ECRI because it leaves some loopholes and does not provide sufficient guarantees for the independence of the Commission. In implementing this procedure, the procedure for election of members of the State Commission for Prevention of Corruption may be followed as an example, because it was extremely transparent by including direct parliamentary channel television broadcast and showing the interviews with candidates where both the academia and media participated (Official Gazette of the RNM no. 12/19).

Status of Commission Members (Article 19)

The Law introduces full Commission professionalization. Commission Members shall have the status of appointed officials who shall perform their function professionally and full time. The Law also provides for incompatibility or impossibility to perform another public function, profession or political party function simultaneously. The Commission Members’ public office shall be terminated, and if they were employed, such employment shall be suspended. Commission Members shall be entitled to a salary and other benefits in accordance with the Law on Salaries and Other Allowances of Elected Officials.



Dismissal and Termination of Office of Commission Members (Article 20)

Commission Members shall be individually responsible for their work. Parliament shall dismiss a Commission Member before the end of his/her term upon a proposal of the Committee on Elections and Appointments in case a final decision imposing a ban on performing a profession, activity or duty was issued to him/her or he/she was sentenced to imprisonment of more than six months, he/she permanently lost his/her legal capacity to perform the function or is performing his/her function in an unprofessional, biased and unethical manner. The LPPD does not stipulate a procedure and elements to establish the unprofessional, biased and unethical performance of the function, which may adversely affect the independence and impartiality of this body. On the other hand, termination of office shall occur if the Commission Member so requests, due to death or by meeting the retirement requirements.

The dismissal procedure consists of several steps. The Parliamentary Committee on Elections and Appointments shall render a decision establishing whether the dismissal requirements have been met by a majority vote of the total number of its members upon a previously conducted public hearing, and submit an initiative for Commission Member's dismissal to the Parliament of the Republic of North Macedonia, accompanied by a report on the public hearing conducted. Parliament shall immediately place an advertisement for appointment of another Commission Member with a mandate until the expiry of the mandate of the Member being replaced.

Administrative Office

The previous Law did not contain any legal basis for the establishment of an Administrative Office, because it specified that the technical and administrative activities of the Commission shall be performed by the Commission itself. The most important legal novelties that are actually expected to contribute to Commission's work greater effectiveness include Commission's professionalization and the establishment of its Administrative Office.

Namely, in accordance with Article 22 of the LPPD, in order to perform professional, administrative and technical activities of the Commission, an Administrative Office shall be established. Staff at the Commission's Administrative Office shall have the status of administrative officers and with regard to their rights, powers and responsibilities, the provisions of the Law on Administrative Officers shall apply. The Commission shall regulate the Administrative Office's internal organization and job description and systematization by a special internal regulation to be adopted within six months as from the entry into force of the Law (Article 50).

This legal possibility will help to overcome the weaknesses in the Commission's previous operation and create prerequisites to implement the Commission's extended powers. The Administrative Office will significantly contribute to the improvement and transparency of promotional, preventive, protective, advisory and expert function of the Commission. Although Article 33 of the Commission's Rules of Procedure (2011) states that "to perform professional, administrative and technical affairs, the Commission shall establish an Administrative Office which shall be located on Commission's premises, where there shall be a professional person responsible for the receipt of complaints, their recording and client reception", this has never been implemented in practice. Occasionally, the Commission would manage to hire part-time employees helping in its work.



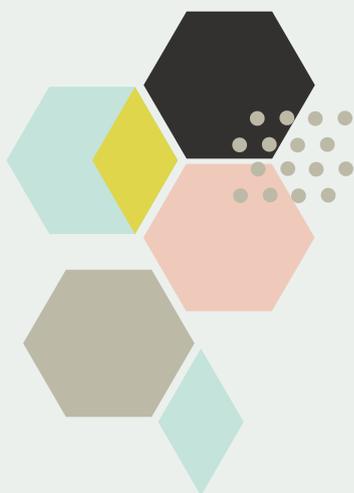
1.2. Commission's Powers (Article 21)

The new Law stipulates the Commission's powers within a wider or more precise scope. Almost all Commission's powers are connected with, and affect the transparency, accountability and effectiveness of Commission's work to a lesser or greater extent. Therefore, these three aspects have to be intertwined with all the activities undertaken by the Commission, thus ensuring a comprehensive, systematic and consistent approach to the promotion and affirmation of equality in the exercise of both rights and freedoms, and prevention and effective protection against discrimination. The legal powers of the Commission shall enable the performance of its main functions including: promotion, prevention, protection and advisory and expert function.

The Commission's promotional and preventive function encompasses the implementation of: activities for the promotion, protection and prevention of equality, human rights and non-discrimination; promoting equality and the right to non-discrimination, and tackling all forms of discrimination by public awareness raising, information and education; contributing to the preparation and implementation of programmes and materials in the area of both formal and informal education; providing general recommendations on specific equality and non-discrimination issues and monitoring their implementation.

The Commission's protective function includes the following responsibilities: acting upon complaints, rendering opinions, recommendations and conclusions on specific discrimination cases; initiating proceedings for protection from discrimination ex officio; providing information to interested parties about their rights and possibilities to bring judicial or other proceedings for the protection from discrimination; monitoring the implementation of its opinions and recommendations on particular cases of discrimination until the fulfillment of such recommendations made by the Commission; initiating and participating as an intervenor in court proceedings on protection from discrimination; upon request of the party or upon its own initiative, the Commission may request the court to allow it to act as Friend of the Court (*amicus curiae*).

Through its advisory and expert function, the Commission shall advocate and actively engage towards the improvement of national legislation, policies and practices in the area of equality and non-discrimination. In this context, it shall stand for ratification of bilateral or multilateral international agreements in the field of human rights or for accession to such agreements, and it shall: monitor their implementation; contribute in preparing the reports that the state is obliged to submit to international and regional human rights bodies, and contribute to the implementation of their recommendations; promote and propose harmonization of national legislation, regulations and practices with international and regional human rights instruments; initiate amendments to regulations for the purpose of implementing and improving the protection against discrimination; give opinions on draft-laws of importance for the prevention and protection against discrimination.



The Commission's cooperation is an important element in the implementation of Commission's legal mandate and successful performance. The Commission shall cooperate with a number of natural and legal persons, as well as civic associations, foundations and social partners, while also collaborating with relevant national bodies of other countries and with both international and regional organizations in the field of protection against discrimination. The LPPD has repealed the article relating to Commission's cooperation with the Ombudsman, thus equalizing the Ombudsman's Office with all other institutions that are in some way involved in the protection against discrimination.

Conclusions and Recommendations

Considering that so far, the Commission has not had an Administrative Office, it is necessary to pay special attention to its staffing by employing adequate professional and technical staff based on competence and respect for the principle of adequate and equitable representation, gender equality and other diversity in society.

Administrative Office's human, material and financial capacities should be continuously upgraded. It shall be required to provide the Commission Administrative Office's staff members regular opportunities for continuing education and continuous professional development, in order for them to carry out their duties related to the Commission's legal mandate in a professional, impartial and responsible manner.



2. TRANSPARENCY AND ACCOUNTABILITY

Accountability and transparency are one of the key pillars in the execution of all legal powers of the Commission, especially in terms of its extended powers relating to its new function of promotion, education and public awareness-raising in regard to the values of equality, respect for diversity and prevention of discrimination. Also, Commission's strengthened protective and advisory and expert function requires greater transparency and openness to the general public.

2.1. Transparency in the Process of Amending the Law on Prevention and Protection against Discrimination - Legislation Impact Assessment

The 2019 Law on Prevention and Protection against Discrimination has created normative assumptions for substantial improvement of both the system and institutional mechanisms that guarantee equality and ensure the prevention and protection from discrimination. The initiative to change the existing Law was for the purpose of complying with international standards and providing more effective protection against discrimination, which was missing prior to the application of the existing Law. The new bill was proposed in line with the 2016-2020 Strategy for Equality and Non-discrimination[1] and according to the European Commission's Reports aimed at improving the legislation towards more effective prevention and protection against discrimination.

Given that the initiative to change the Law on Prevention and Protection against Discrimination was proposed by the Ministry of Labour and Social Policy, a procedure for legislation impact assessment was conducted and published in the system SNERR[2]. According to the information available in the electronic system, the procedure for amending the Law has taken for more than a year. In the process of proposing amendments to the Law, a report assessing the impact of this legislation on the Draft Law on Prevention and Protection against Discrimination was prepared and submitted by the Ministry of Labour and Social Policy. In the process of making amendments to the Law, the academia was consulted, given the numerous comments of the system upon the Bill by experts and organizations' representatives.



[1]Strategy for Equality and Non-discrimination,2016–2020.

<http://www.mtsp.gov.mk/content/pdf/dokumenti/7.7_Strategija%20za%20ednakvost%20i%20nediskriminacija.pdf>[2]Single National Electronic Register of Regulations of the Republic of North Macedonia.
<https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=BcRt!YGdPJnoq%2fuSJRJMlg%3d%3d>

As stated in the Report on Legislation Impact Assessment regarding the Bill, the preparation of the draft of the Law included the Ministry of Justice, Ministry of Information Society and Administration, Secretariat for Legislation, Secretariat for European Affairs, representatives from the Non-discrimination Network, representatives of civil society and international organizations advocating human rights, and they all actively participated in the Working Group preparing the draft text of the Law. At the same time, four (4) Public Debates on the draft text of the Law were organized with the support of OSCE Mission in Skopje.

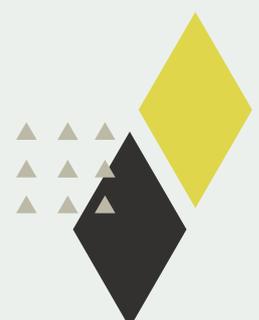
According to the Legislation Impact Assessment Report, the risk of insufficiently secured funding to the effective implementation of the Law was specified as the only risk towards the effective implementation and enforcement of the Law.

So far, the LPPD has been subject to changes on several occasions, from 2010 until the adoption of the new Law. The process of legislation impact assessment was implemented for some of these changes.

Conclusions and Recommendations

If the electronic register of regulations is consulted, the procedure for the most recent change to the LPPD was conducted transparently and by observing the procedures in the process of legislation impact assessment. As regards previous amendments, the procedure was also conducted transparently; however, without the interest by the stakeholders to comment on the changes proposed.

Greater motivation and encouragement of stakeholders shall be required to track and monitor the process of Law implementation in order to identify the main constraints of the Law and to be more active during its next amendment.



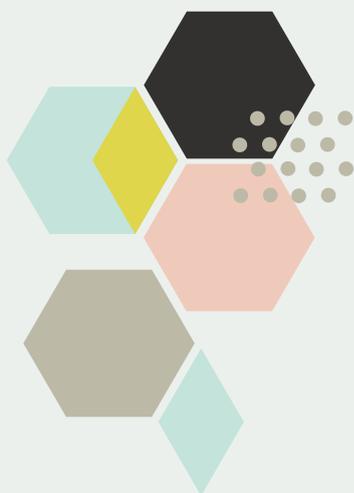
2.2. Statutory Provisions on Transparency in Commission's Work and Prerequisites for Transparent Operation

The new Law of 2019 envisages a number of grounds for transparency in Commission's work and it contains specific obligations for public information.

The Commission's promotional function requires that greater transparency, communication and interaction with the general public should be ensured and encouraged. This category includes: Taking action on the promotion, protection and prevention of equality, human rights and non-discrimination (Article 21, Item 1); Promoting equality, the right to non-discrimination and tackling all forms of discrimination by public awareness-raising, information and education (Article 21, Item 3); Contributing to the preparation and implementation of programmes and materials in the area of both formal and informal education (Article 21, Item 4); Preparing and publishing special thematic reports on specific issues of equality and non-discrimination (Article 21, Item 5); Giving ("and publishing" is missing) general recommendations on specific issues related to equality and protection from discrimination, and monitoring their implementation (Article 21, Item 6); Quarterly informing the public about cases of discrimination in a manner established by its internal regulation (Article 21, Item 20); Sharing its opinions, findings and recommendations, and addressing the public through any media (Article 21, Item 21); Monitoring the implementation of the LPPD and giving opinions and recommendations (Article 21, Item 2); Collecting and publishing statistical and other data, and establishing databases about discrimination (Article 21, Item 24); Submitting for consideration an annual report on its work to the Assembly (Article 21, Item 25); Publishing all reports, including its financial report on Commission's website (Article 21, Item 26). The Commission's Rules of Procedure (2011) specify the modalities of public information and relations.

Conclusions and Recommendations

The LPPD does not contain a special chapter regarding the publicity in Commission's operation, as is the case with the Law on the Ombudsman; however, it provides for a broad basis to ensure transparency in Commission's action, which is of paramount importance to achieve Commission's promotional, preventive, protective and advisory and expert functions. Nevertheless, it shall be required to introduce a legal provision which would explicitly provide that Commission's sessions (their course and vote) shall be public, with a possibility to exclude the general public in specifically defined cases envisaged by an internal regulation, thus respecting parties' rights to private life and personal data protection.

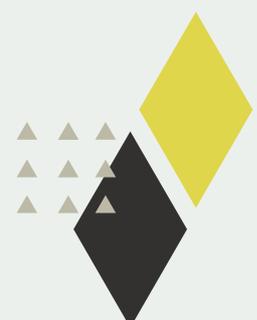


This recommendation corresponds to the principle of publicity regarding court protection in general, including cases of protection against discrimination in litigation and other court proceedings. In addition, the LPPD provides that the person claiming to have been discriminated against may ask the court to publish in the media the operative part of its judgment establishing such discrimination in an accessible format at the expense of the defendant (Article 34, Item 5). If the court upholds the claim, the media publisher shall publicize the operative part of the judgment, whether a party to the proceedings or not (Article 34, Item 3). Although Commission's opinions are not legally binding, the possibility of their publication in the media would have a positive influence on the discriminated person and objectives of equality promotion and general prevention against discrimination.

Also, the Commission's Rules of Procedure Article 8 provides that Commission's sessions may be attended by both domestic and foreign experts, and by professional scientific institutions that may be requested their expert opinion, only if they are invited to such sessions by the Commission's President. There is no room left for any interest shown by an outside party to attend and monitor the sessions, upon party's request. In addition, although the Law provides to the general public (under the Articles highlighted above) ample opportunity for information, there are no provisions imposing sanctions in cases of not observing such obligations.

It is recommended that the Commission shall regularly prepare not only an Annual Work Programme and Action Plan, but also a strategic document which would define the strategic directions and goals for a longer period of time in accordance with the public policies in this area. These Commission's Work Programme and strategic documents shall be developed in an open, transparent and inclusive process with the participation and consultation of all stakeholders. In this way, Commission's visibility will be increased and the general public will be informed on the vital role played by the Commission in the protection against discrimination and outlining the directions of substantial changes in society to be taken for the consistent observance of equality and rights and freedoms of all.

Among these strategic documents, special emphasis should be given to the strategic document for communication with the media and the general public. In that sense, it is recommended that the Commission should prepare and adopt a long-term Strategy for Media and Public Communication, which can be operationalized through Annual Action Plans. This Strategy should underline the commitment to building partnerships and close cooperation with the media, civil society and various organizations and interest groups representing the society's diversity. Pursuant to Commission's competence, all these documents and/or reports shall be published on the Commission's website (Article 21, paragraph 26). So far, this website has had no information, especially no public reports concerning the Commission's work. Therefore, it is recommended that the Commission should disclose all its programme-oriented documents in the future. Also, the Commission's Rules of Procedure Article 8 provides that Commission's sessions may be attended by both domestic and foreign experts, and by professional scientific institutions that may be requested their expert opinion, only if they are invited to such sessions by the Commission's President. There is no room left for any interest shown by an outside party to attend and monitor the sessions, upon party's request. In addition, although the Law provides to the general public (under the Articles highlighted above) ample opportunity for information, there are no provisions imposing sanctions in cases of not observing such obligations.



Let us not forget that Commission's financial performance and transparency also imply the preparation and publication of multiple documents on the Commission's website. Namely, those are: Commission's Budget Proposal submitted to the Parliament of the RNM; amended Budget Proposal of the Commission; approved Commission's Budget; Plans on Commission's monthly funding needs submitted to the Ministry of Finance of the RNM; Monthly Reports on Commission's Budget Implementation; Semi-annual Report on Commission's Budget (including budget implementation by the 30th of June in the current year and projections for the rest of the year); Commission's Draft Supplementary Budget submitted to the Parliament of the RNM; Commission's Draft Supplementary Budget adopted by the Parliament of the RNM; amended Draft Supplementary Budget of the Commission; adopted Supplementary Budget of the Commission; Commission's Final Account; civic version of both the Budget Proposal and adopted Budget. All these documents shall be available in a PDF format, including software which enables automatic data processing such as Excel. Regarding the timing of their publication, international standards shall be observed, i.e. the ones proposed by the International Budget Partnership on the following link:<https://www.internationalbudget.org/wp-content/uploads/open-budget-survey-2017-guidelines-on-public-availability-of-budget-documents.pdf>.

One of the key prerequisites to increase the Commission's transparency is to collect and analyze data on Commission's work. In its 2018 Annual Report, the Commission points to the fact that at the national level, there is no single central system established yet to be used for collecting, recording and analyzing data on discrimination and legal protection against discrimination that will form a kind of database, which in turn will enable continuous monitoring of discrimination. Hence there is a need to introduce such a system.

The Commission's website, as one of the transparency-ensuring tools, contains categories of data on relevant regulations (the Constitution, laws and bylaws), documents (work reports, opinions and publications), publicity, public releases, links and contacts. At the time of writing this analysis, this website was not fully functional and most of its contents were inaccessible.

In order to facilitate the access to the Commission, i.e. to get the Commission's work closer to citizens, it is recommended that the Commission's website should be redesigned as an interactive platform, which would be versatile, simple and attractive to use. This platform can be fitted with tools enabling its users easy retrieval of content, automatic responses to most frequently asked questions, videos on persons with disabilities.



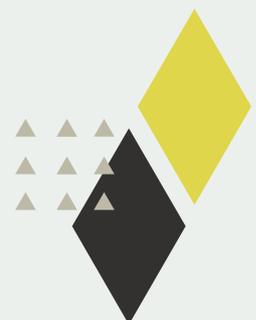
The form used to file complaints, which can currently be downloaded from the Commission's website, can also be completed online. Although the establishment of such a tool was aimed at improving citizens' accessibility and enabling the Commission to immediately contact the applicant and inform them on the next steps in the discrimination procedure, according to the Commission, during 2018, there was not any complaint submitted via the electronic form. This situation may be due to the fact that the Commission's website was not functional for a longer period of time because of "technical problems".

Further, it would be useful to offer additional tools on the website, such as guidance and template of various types of complaints according to the grounds and areas of discrimination, which would enable education and public awareness-raising. However, it is also required that the Commission's legal obligations in terms of informing the public shall be respected. For example: "The Commission shall be responsible to inform the general public on discrimination cases on a quarterly basis, in the manner established by a Commission's regulation" (Article 21, paragraph 20).

Through its activities, the Commission should be continuously visible and present in the media and on social media, thus expanding its possibilities to communicate with the media, the general public and especially the younger population. The Commission has its own Facebook account which is not functional. What is even more important, all information placed on the website, through social media and the media, should be regularly updated by the Administrative Office's staff.

Commission's relations with the media and general public should continuously be promoted, thus increasing the Commission's visibility and enabling greater understanding of Commission's role in the prevention and protection from discrimination, and gradually building the trust and confidence of the public. Furthermore, vigorous activities should be undertaken for information, promotion and education on equality and human rights, as well as protection against discrimination not only at the central but also at the local level, in rural areas and especially among marginalized groups.

In addition, it shall be necessary for the Commission to have a PR person and be equipped with, and avail of, solid information technology, which will enable free, simple and fast information and communication with the media and the general public.



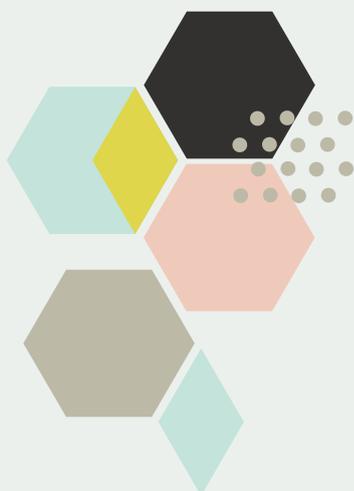
2.3. Statutory Provisions on Commission's Work Accountability and Prerequisites for Accountable Operation

Accountability of the Commission stems from its institutional placement and the manner of appointment and dismissal of its members by the legislature, its independence and autonomy in performing its duties, including its financial independence. In terms of Commission's accountability in the past, it was reduced to the minimum required under the Law.

The 2019 Law provides a number of provisions relating to accountability in the performance of Commission's legal mandate. According to the new piece of legislation, Commission's work accountability shall be accomplished primarily through the preparation and submission of reports to the Parliament and the public. Namely, the Commission shall submit for consideration an Annual Report on its work to the Parliament of the Republic of North Macedonia no later than 31 March of the current year for the previous year (Article 21, Item 25). The narrative part of the report shall contain a description of the main issues, statistical data on the complaints received, processed and pending, as well as a report on other activities implemented by the Commission. The financial part shall contain information related to the budget and resources for Commission's work, revenues and expenses, and their financial implications.

From the provisions of the LPPD concerning the obligation of the Commission to submit an Annual Report on its work to the Parliament, it is not clear whether and in what way the Parliament will discuss the Commission's report. For the purpose of affirming the principles of equality and non-discrimination as fundamental values of our constitutional order, the procedure applied to the consideration of Ombudsman's Annual Report could be implemented here, which consideration must be attended by members of the Government or its representatives (Article 34 of the Law on Ombudsman).

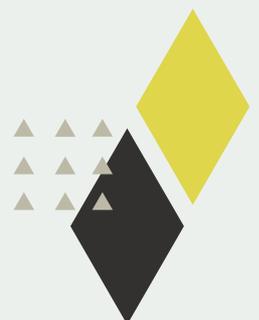
The legal basis for information was extended, and thus the accountability of the Commission before the general public, i.e. through the Commission's obligation to draw up and publicize special thematic reports on specific issues of equality and non-discrimination (Article 21, Item 5) and to provide general recommendations on specific issues of equality and non-discrimination, and to monitor their implementation (Article 21, Item 6).



Particularly important for accountability and financial independence of the Commission are the specific procedural guarantees foreseen by the Law. The first procedural guarantee is that the Assembly shall determine the funds for the work of the Commission upon its proposal. This means that the amount of funds shall be determined by the Commission itself in accordance with its own estimation of annual revenues and expenditures. The second procedural guarantee consists in the fact that the Parliament shall vote separately on the line in the Budget of the Republic of North Macedonia allocated to the Commission. The third and strongest guarantee for its financial independence and consequently, for its accountability, is the fact that the Law provides that the Commission shall decide independently on the use, allocation and purpose of its operation resources provided from the state budget.

Conclusions and Recommendations

Statutory provisions create conditions for stable and secure funding from the budget for the performance of Commission's responsibilities. The implementation of the LPPD and the Law on Budgets in practice will show whether the Commission will have adequate and sufficient financial and material resources to carry out its responsibilities effectively and efficiently. From the verbiage of the Law, it can not be concluded whether the Commission's President will defend and explain the Draft Budget and whether the Parliament is bound and obliged to accept the Commission's proposal when determining the budget line allocated to fund its work. Independence, transparency and effectiveness in Commission's work, and thus, the Commission's accountability, would be strengthened if these provisions are interpreted and applied in a manner as is the case with the Judicial Budget and the State Commission for Prevention of Corruption. In order to improve the situation, we propose a regular practice of defending and presenting the Commission's budget to the RNM Parliament to be established, as well as a regular practice of six-month reporting where the financial results and projections for the coming period will be discussed.



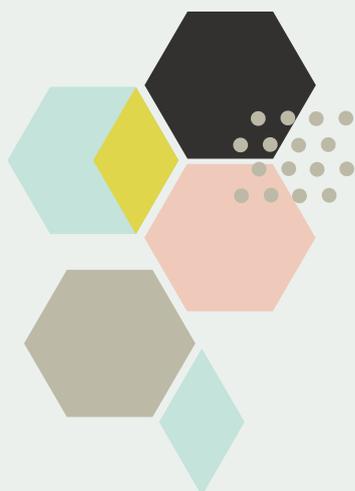
3. EFFECTIVENESS

3.1. Statutory Provisions on Commission's Work Effectiveness and Prerequisites for Effective Operation

A significant number of provisions from the LPPD reflect and are important for the effectiveness and efficiency in Commission's work. In order to provide greater efficiency, the Commission shall adopt various acts regulating its internal organization and operation, including the Rules of Procedure, the Annual Work Plan and Programme, as well as other acts concerning its operation (Article 21, Item 22) and may establish advisory bodies of experts on specific issues related to the promotion, prevention and protection against discrimination (Article 21, Item 23); collect and publish statistical and other data; and establish databases about discrimination (Article 21, Item 24) etc.

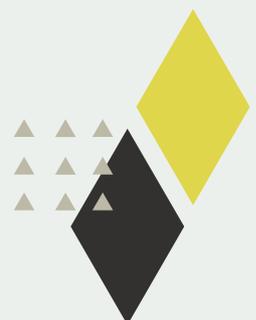
Commission's effectiveness shall mainly be assessed through the lens of Commission's protective function and handling of complaints. The Law introduces significant novelties in the procedure of prevention and protection against discrimination before the Commission, which is regulated in Article 23 to Article 31. Several aspects of the procedure have been specified and conditions have been created for greater efficiency and effectiveness in Commission's action. Thus, the legal action has been expanded such that a procedure before the Commission may be initiated by any natural or legal person deeming to have suffered discrimination, as well as by any association, foundation, trade union or other civil society organization and institution that has justified interest to protect the interests of a particular group or that in the framework of its activity is dealing with protection against discrimination (Article 23, Items 1 and 3). The legal action is no longer bound by the territorial principle. Furthermore, the Law also provides the possibility for the Commission itself to initiate proceedings ex officio if the circumstances and facts of the case, and the knowledge extracted by rumors give grounded suspicion that discrimination was perpetrated (Article 23, paragraph 4). The Law allows for greater involvement and active participation of civil society organizations and other relevant entities working in this area to the side of the complainant, which will allow more effective protection against discrimination.

The volume of work and the number of complaints upon which the Commission shall act, will undoubtedly be affected by the provisions extending the relative and absolute deadline for the submission of complaints. According to Article 24, paragraph 5, the petition may be filed no later than six months after the discovery of the act of discrimination (relative deadline) or no later than one year from the day when the violation occurred (absolute deadline). This legal possibility is quite different from the previous one, where the relative deadline was within three months from the date the violation occurred or no later than one year from the date of discovery of the act of discrimination. The procedure may be initiated even after the expiry date if the Commission considers that it is about a case that concerns a far larger group or the effect is lasting or affects the public interest.



The Law also introduces shorter deadlines regarding the actions undertaken and decisions made by the Commission, which should certainly positively affect the effectiveness and efficiency of its future action. Thus, the Commission shall deliver the complaint to the person against whom it is filed within five days of receipt thereof and the person may respond to the allegations in the complaint within 15 days of receipt thereof (Article 24 paragraph 7), as opposed to the deadline of 15 days stipulated in the previous Law. Pursuant to Article 27, the Commission shall give its opinion within 60 days of filing the complaint and deliver it to both the complainant and the person against whom the complaint was filed, as opposed to the deadline of 90 days stipulated in the previous Law. If the Commission finds that there has been discrimination, in its written opinion, it shall recommend measures to eliminate the violations of the right. Commission's recommendation is binding and the person to whom it is addressed shall eliminate the violation of the right within 30 days of receipt thereof, or within a longer period if there are particularly justified reasons, but no longer than six months, and notify the Commission thereon. If the person does not act upon the recommendation, the Commission shall file an application for initiation of infringement proceedings before a competent misdemeanor court. Ultimately, the Commission may, on its own initiative, make a general recommendation on the protection against discrimination if it finds discrimination against a larger group of people.

In the proceedings before the Commission, the provisions of the Law on Use of Languages shall apply, and for the first time ever, the use of sign language is allowed. It is especially important that the Commission shall ensure accessibility in the implementation of all its powers, while the funds required for this purpose shall be provided from the state budget. Equally important to Commission's effectiveness are also the issues of Commission's financial independence and accountability provided by Article 15. The new Law envisages significant strengthening of Commission's financial stability and independence, providing that the funds for Commission's work shall be primarily secured from the Budget of the Republic of North Macedonia, including funds for adequate accommodation (physical access) for persons with disabilities. Besides the budget, the Commission may also provide funds from other sources such as donations, grants etc.



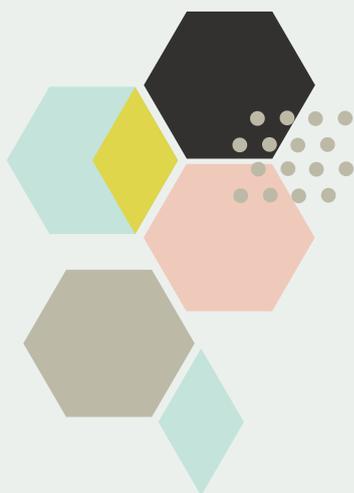
Conclusions and Recommendations

The complaint analysis for the period from 2010 to 2018 shows that in the first year after the Commission was established, the number of complaints was 60, followed by an increasing trend until 2014, while since 2015, the number of complaints has fallen dramatically. The only larger increase was recorded in 2018, when the number of complaints from 59 in 2017, went up to 132 in 2018. These data do not even nearly reflect the real situation with discrimination in the country, but they indicate low public awareness of the role of the Commission, as well as lack of confidence in its independence, competence and effectiveness in the protection of equality and non-discrimination, as compared to the Ombudsman. This highlights the need for proactive action by the Commission aimed at promoting its legal mandate, raising public awareness, providing prevention and education regarding issues related to equality and discrimination.

The new legal possibilities regarding the procedure for prevention and protection against discrimination before the Commission, create conditions for improving the effectiveness and efficiency of Commission's actions. The workload and the number of complaints upon which the Commission shall act will undoubtedly be affected by the aforementioned provisions that expand the possibility of taking action, extend and further explain the relative and absolute deadline for submission of complaints, and shorten the deadline for rendering a decision by the Commission. Experiences from the implementation of the previous LPPD show a great discrepancy between the letter of the law and its application in practice. The analysis of available reports on the work of Commission's predecessors can lead to a conclusion that the envisaged legal deadlines were rarely respected, even in cases where the Commission did not decide on the merits.

Therefore, in order to ensure a consistent and lawful implementation of Commission's protective function and other responsibilities, it is recommended to establish internal mechanisms and transparent work procedures in the Commission. In parallel, it is required to build both an internal and external system of monitoring and evaluation of Commission's work, which will also be a corrective mechanism and contribute to achieving Commission's key role of protector against discrimination and a driver of social change for improvement of equality and respect for diversity.

In order to increase its effectiveness, the Commission shall be required to cooperate and coordinate its work with the National Coordination Body for monitoring the situation with discrimination and implementation of laws, regulations and strategic documents in this area, established at the Ministry of Labour and Social Policy (the Decision on its establishment was published in the Official Gazette of the RM no. 60/2018). This is particularly important because their main mandate is prevention and protection against discrimination at the national level.



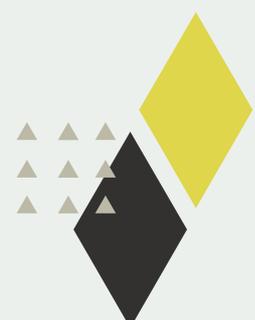
As was already emphasised in terms of transparency, in order to promote accountability, it is crucial to prepare a standardized Methodology and Protocols for collection, processing and analysis of statistical and other data, and to develop an internal database which will generate data disaggregated by the discriminatory grounds in the relevant areas, in accordance with Article 21, Item 24 and Article 3, paragraph 4 of the LPPD.

It is also recommended to introduce an intranet, which will enable more efficient and expeditious operation and action by the Commission, quick and easy access of all Commission Members and Commission's Administrative Office to all relevant legislation, both pending and archived case files and databases. This way will enable the adoption of consistent opinions and decisions and building a uniform practice in Commission's action, which will in turn increase legal certainty and equality before the law.

The effective performance of the Commission, i.e. the normal implementation of its mandate and competencies, requires the provision of funds to the extent that would be sufficient for Commission's operation and guaranteeing that funding from other sources will not disrupt its independence. These principles are in line with the Venice Commission's recommendations and other international human rights treaties.

In terms of providing sufficient funding, we want to emphasize as positive the fact that during 2019, even before the new Law was adopted, from the Budget of the RNM, about 8.5 million denars more were granted to the Commission compared to the previous year's budget (i.e. in 2019, 15.138 million denars were granted, while in 2018, 6.652 million denars were granted). Therefore, in order to provide the adequate level of resources, we suggest that the Commission, based on its strategic documents and Annual Work Programme, should determine its financial needs realistically, which will further serve the Commission to prepare and propose its budget.

Also, it is recommended to strengthen the capacities of the newly-formed Commission and its Administrative Office, particularly regarding issues specifically related to budgeting, financial management and reporting, as well as preparing and managing projects and grants from both domestic and foreign organizations, for the purpose of expanding Commission's sources of funding.



3.2. Rules of Procedure and other Internal Procedures of the Commission, Prerequisites for Effective Operation

For the purpose of providing greater effectiveness, the Commission shall: adopt Rules of Procedure, Annual Plan and Work Programme and other regulations concerning its operation; may establish advisory bodies of experts on specific issues related to the promotion, prevention and protection against discrimination; collect and publish statistical and other data, and establish databases related to discrimination.

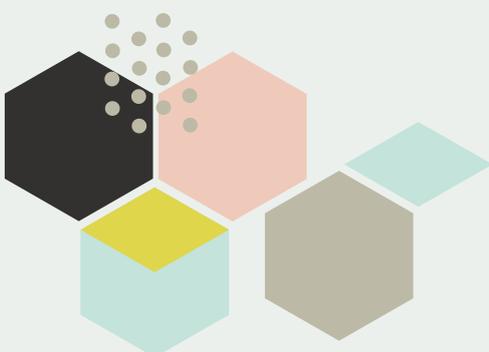
The Commission's Rules of Procedure were adopted in 2011 and they regulate in detail the procedure and manner in which all powers of the Commission shall be exercised. The Rules of Procedure regulate the basic principles of organization, work procedure, the manner of case assignment and session work of the Commission. There is a distinction made between the protective, promotional, advisory-educational, and research functions, and inter-institutional cooperation. As a collective body, the Commission works in sessions and working meetings. The Commission is represented by its President. The President shall, once a month upon his/her own initiative or upon a reasoned proposal by any Commission Member, convene and chair sessions. A session quorum shall mean attendance of more than four (4) Members. Sessions may also be attended by both domestic and foreign experts, but only at the Commission President's invitation. Decisions shall be rendered if the session is attended by five Members, with at least four (4) votes of the total number of Commission Members. The Commission advocates for amicable settlement of cases. Commission's opinions are not legally binding, while the recommendations delivered by the Commission to the discriminator are mandatory and it shall monitor their implementation.

Conclusions and Recommendations

The Commission's Rules of Procedure adopted in 2011 should be aligned with the new 2019 LPPD, or new Rules of Procedure corresponding to the substantial legal novelties in this area should be adopted. Due to the increased number and diversity of Commission's responsibilities, it is recommended to regulate the manner and modalities of Commission's action by separate secondary legislation (regulations, guidelines, methodologies, protocols), in order to achieve greater clarity, intelligibility and applicability of these regulations. According to Article 50 of the LPPD, the Commission shall adopt its internal regulations within six months as from the entry into force of the Law.

The Rules of Procedure do not provide for publicity of Commission's sessions, which is in direct collision with the requirement for transparency and accountability in all aspects of Commission's activities. Therefore, it is recommended to overcome this restrictive approach and foresee opening the Commission's sessions not only to the academia, but also to the general public and media, while ensuring privacy and personal data protection.

It is recommended to re-evaluate the manner of case assignment provided by the Rules, which does not ensure sufficient guarantees of impartiality, because it is not carried out under the principle of random choice and leaves room for the Commission President to influence the case assignment at his/her discretion (Articles 24 and 26).



4. Recommendations for the Commission

Fully aware of the fact that the proposed recommendations could not be fully separated from the individual principles of operation and that they present part of a broader framework for promoting the Commission's work, for the purposes of this analysis and in the interest of giving equal importance to them, we present them under each individual principle, i.e. principle of operation.

Transparency

▷ Increase motivation and encourage all stakeholders to track and monitor the process of implementation of the Law and this body's work in order to identify the main constraints and address them adequately.

▷ Involve all stakeholders in the preparation of the Work Programme and strategic documents of the Commission and their publication on the website of this body.

▷ Provide publicity of the Commission's sessions, except for specific cases foreseen by internal regulations, while respecting parties' rights to privacy and personal data protection.

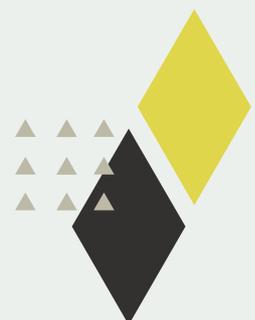
▷ Undertake activities for information, promotion and education regarding equality and human rights and protection against discrimination not only at the central but also at the local level, in rural areas and especially among marginalized groups.

▷ Develop and adopt a long-term Strategy for Communication with the media and the public; engage a person in charge of public relations; and equip the Commission with solid information technology.

▷ Redesign the Commission's website with the aim to introduce the public to the work of this body; enable easy retrieval of content; website adjustment for use by persons with disabilities; and easy access by users through the placement of additional tools, guidance and templates of various types of complaints according to the grounds and areas of discrimination, which will allow for education and public awareness-raising.

▷ Regularly prepare and publish key budget documents on the Commission's website.

▷ Collect and analyze data on the operation of this body.



Accountability

▷Regularly prepare: Annual Work Programme and Action Plan and strategic documents which will define the strategic directions and goals for a longer period of time, according to the public policies in this area.

▷Establish a regular practice of defending and presenting the budget of the body before the Parliament, and regular practice of reporting thereon every six months.

Effectiveness

▷Develop both an internal and external system of monitoring and evaluation of the Commission's work, which will also be a corrective mechanism and contribute to the implementation of Commission's key role as protector from discrimination and a driver of social change towards promoting equality and respect for diversity.

▷Strengthen the cooperation and coordination with the National Coordination Body for monitoring of the situation with non-discrimination and implementation of laws, regulations and strategic documents in this area.

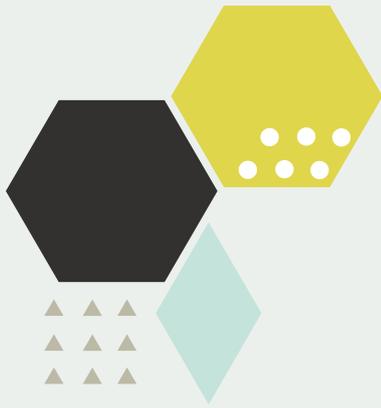
▷Develop a Methodology and Protocols for data collection and analysis.

▷Introduce an intranet which will enable the Commission's more efficient and expeditious operation and action, quick and easy access of all Commission Members and Commission's Administrative Office to all relevant legislation, both pending and archived case files, and databases.

▷Ensure an adequate level of resources to the Commission through the realistic identification of its financial needs based on its strategic documents and Annual Work Programme, which will further serve to prepare and propose its budget.

▷Strengthen the capacities of the newly established Commission and its Administrative Office regarding issues specifically related to budgeting, financial management and reporting, and prepare and manage projects and grants provided by both domestic and foreign organizations in order to expand Commission's sources of funding.





ANNEX1

Comparative Analysis with Other Independent Institutions and Bodies - the Ombudsman and the State Commission for Prevention of Corruption

The Ombudsman

Under the Law on the Ombudsman (Official Gazette of the RM no. 60/2003), the Ombudsman shall undertake measures and activities for the protection of constitutional and legal rights of citizens and protection of the principle of non-discrimination and adequate equitable representation of members of communities in the state administration, local government units, and public institutions and agencies (Article 11). The Ombudsman shall also: monitor the situation in this area; make initiatives for legislative changes; and perform other duties specified by law. The Ombudsman is independent and autonomous in the performance of its function, which is incompatible with another public office and profession or any political party membership.

Accountability –The Ombudsman shall be elected and dismissed by the Assembly upon a proposal of Assembly’s Committee on Elections and Appointment Issues for a period of eight years, with the right to one more re-election. In performing its functions and powers, the Ombudsman shall be assisted by Deputies that shall also be elected by the Assembly. The election and dismissal of the Ombudsman and Ombudsman’s Deputies shall be made by majority vote of the total number of MPs and there must be a majority of the total number of MPs belonging to communities that are not majority in the Republic of North Macedonia (double/Badinter majority).

Transparency –The Law contains a separate chapter on publicity of Ombudsman’s work and submission to and consideration of the Ombudsman’s Annual Report by the Parliament (Article 36). The session where Parliament discusses such Report shall be attended by members of the Government or its representatives. The Report shall be published in the media.

Effectiveness –The effectiveness and efficiency of the Ombudsman’s work is positively affected by the organizational structure of the institution, which has an Administrative Office and six regional offices as detached units in Tetovo, Kichevo, Shtip, Strumica, Kumanovo and Bitola managed by the Deputy Ombudsman (Articles 43 and 44). Resources for operation shall be provided from the state budget, which shall allow for financial security. The Ombudsman shall adopt Rules of Procedure and other internal regulations.

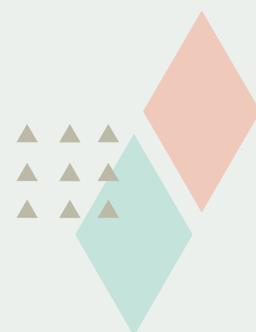
Website –The rich content on the Ombudsman’s website is structured into: 1) basic information on the Ombudsman, 2) case work, 3) national preventive mechanism, 4) protection of children’s rights, and 5) public relations. Also, the website contains all annual programmes and reports, special thematic reports, initiatives, opinions and suggestions, the Ombudsman’s Newsletter, news and forthcoming activities, and other useful information. Online filing of petitions is enabled.

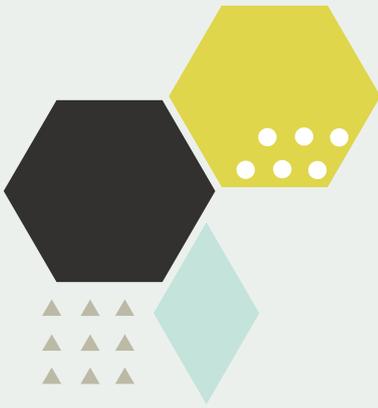
The State Commission for Prevention of Corruption

Pursuant to the Law on Prevention of Corruption and Conflict of Interest (Official Gazette of the RNM, no. 12 of 19 January 2019), the State Commission for Prevention of Corruption (hereinafter, the SCPC) has a similar institutional set-up, i.e. it is an independent and autonomous professional body that performs its responsibilities in the capacity of legal entity. The SCPC consists of a President and six Members.

Transparency –The Law stipulates quite detailed provisions that ensure transparency in the procedure for appointing the President and Members of the SCPC, which is implemented by the Assembly of the Republic of North Macedonia. The deadline for application is rather restrictive and is ten days. The procedure is conducted by the Parliament's Committee on Elections and Appointment Issues, which shall set up a Commission for Selection of Candidates. This Commission for Selection shall verify the fulfillment of requirements and conduct interviews with candidates in a public session of the Committee on Elections and Appointments. The manner of performing the interviews, evaluation and ranking of candidates is determined by an act passed by the Parliament. At the same time, via the Parliament's website, a call shall be published inviting the academia, journalists' associations, other associations and foundations to participate in the interviews and pose questions to candidates. Within three days of the implementation of interviews, the Commission for Selection shall determine the ranking of candidates in accordance with the criteria established and submit it to the Committee on Elections and Appointment Issues, which shall, within two days, propose the best-ranked candidates to the Assembly in a single Draft-List for SCPC President and Members, including a rationale for each of the proposed candidates (Article 12 of this Law). Further, the presence of the public in the SCPC sessions is a strong guarantee for transparency and accountability in the Commission's work and decision-making. As an exception, the public may be excluded when acting on cases that contain classified information and data protected by law (Article 22, paragraphs 3 and 4 of this Law).

Funding–Resources for the SCPC's work shall be provided from the Budget of the Republic of North Macedonia. SCPC shall prepare a budget proposal to be submitted to the Ministry of Finance in accordance with the Budget Law. SCPC's President, and in his/her absence, SCPC's Deputy President, shall participate in the sessions of Parliament's Working Committees where the draft budget is discussed, in order to present and explain the SCPC's funding needs.





Accountability – SCPC shall submit to Parliament an Annual Report on its work no later than 31 March of the current year for the previous year. SCPC shall also submit its Annual Report to the President and Government of the Republic of North Macedonia, as well as to the media (Article 19 of this Law). At the request of the Assembly, the SCPC shall submit a report even for a period shorter than one year. The Assembly shall consider and adopt the SCPC's reports. The Law also stipulates: what data shall be contained in the report, including data on the cases built, settled and pending; the number of initiatives made by the SCPC to the Public Prosecutor's Office and other bodies; the number of cases for which infringement proceedings were initiated; evaluation of this Law's implementation; and evaluation of the situation with corruption and fight against corruption in the country.

Effectiveness – One of the main prerequisites for efficiency and accountability of the SCPC is the professional, independent and autonomous performance of its function, which is incompatible with another public function and profession or political party membership. SCPC has a Secretariat, which ensures the smooth and successful implementation of SCPC's competences in the performance of SCPC's professional, administrative and technical matters.

Website – The SCPC's website contains a multitude of data, organized into several categories: 1) basic information on SCPC; 2) information for the public: media releases, decisions, initiatives, public warnings, information of public character, election cycles, most frequently asked questions; 3) register of appointed and elected officials, represented by a web application; 4) anti-corruption education; 5) protection of whistle-blowers; 6) forms: survey questionnaire, property change sheet, statement of interest, and information on property status; and 7) documents. The category of documents contains laws and regulations, annual and audit reports, strategic plans, work programmes, public procurement plans, annual accounts and budget of the SCPC.

ANNEX2

The Gender Dimension in Commission's Composition

Commission's Members should reflect the diversity and composition of society. For this purpose, the Law provides that in the election of Commission Members, while observing the professional criteria, the principles of equitable representation of all social groups, the principle of adequate and equitable representation of community members and gender balanced participation shall apply (Article 16, paragraph 5 of the LPPD).

Conclusions and Recommendations

Departing from this legal commitment, it is recommended that the Assembly of the Republic of North Macedonia, while electing the Commission Members, among other things, should take care of the representative and substantial representation of women, men and other gender identities within the Commission's composition. Namely, it is necessary to strengthen the gender sensitivity of the Assembly and Committee on Elections and Appointments, which shall ensure the gender-balanced participation of Commission Members even while drafting the list of proposed candidates.

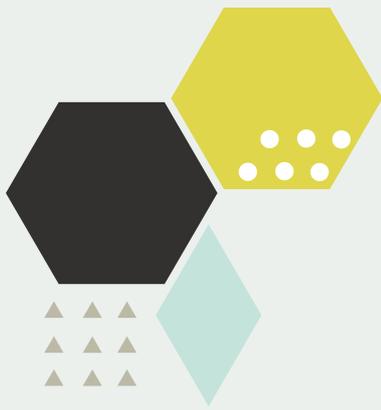
For comparison, in the first Commission's composition (2011-2015), of a total of seven Members, three were women. In the second and still current Commission's composition (2015-2019), there is only one woman. The new Commission should be a real embodiment of society's diversity and build a recognizable image of an open and gender sensitive institution in the implementation of all its legal powers and functions. Also, the Commission's Administrative Office should employ adequate professional and technical staff, based on their competence and respect for the principle of equitable and adequate representation, gender equality and other diversity in society.

In this context, it is especially recommended that the Commission should draw up a separate Strategy for Integration of the Gender Dimension in its work, using as a guide for the preparation of such strategy the guidelines of the EU and European Institute for Gender Equality -EIGE - <https://eige.europa.eu/>. Also, it is recommended to introduce a system of indicators or markers by which to monitor and measure gender equality and the inclusion of the gender dimension in all aspects of Commission's work.

Indicators:

- Gender-balanced representation and participation of Commission Members
- Gender-balanced representation and participation of Commission's Administrative Office
- Gender-balanced representation and participation in drafting the Strategy for Integration of the Gender Dimension in Commission's Work
- Gender-balanced representation and participation in consultations and discussions on the Strategy for Integration of the Gender Dimension in Commission's Work
- Indicators defined in the Strategy for Integration of the Gender Dimension in Commission's Work
- Gender-balanced budgeting of the Commission
- Gender-responsive and gender-sensitive work environment
- Gender-balanced participation in promotional activities and training programmes





The Gender Dimension in Commission's Work

One of the key novelties of the Law relates to the extension of the grounds of discrimination, where besides sex and gender, gender identity and sexual orientation have been introduced, as well as personal capacity and “any other grounds”. This means that the list of discriminatory grounds is open-ended (non-exhaustive) and not tied exclusively to the legal order of the country and ratified international treaties.

The recognition of gender identity as a separate ground of discrimination enables to overcome addressing discrimination only based on biological differences between women and men. The Law recognizes gender identity as a broader individual and social category, which may include other gender identities unconditioned by sex.

Gender identity is a personal perception of one's own gender which may, but need not coincide with the sex at birth, which may evolve over time and through which a person is perceived and presented in the environment. Hence comes the social dimension of gender identity, which refers to the role of the individual in the community, culture, their right to determination and choice, participation and access to all areas of political, economic and social life.

In handling complaints, the Commission should pay especially cautious, since sex, gender and gender identity, in combination with other discriminatory grounds, may lead to more complex forms of discrimination, such as cross-section and multiple discrimination.

Conclusions and Recommendations

Pursuant to the Law, the Commission is responsible to collect and publish statistical and other data and establish databases on cases of discrimination on all grounds and in all areas. It is recommended that in the management of individual and crossed data, special attention should be paid to sex, gender and gender identity as discriminatory grounds.

At the same time, given the current situation in society in terms of gender (in)equality and various forms of gender discrimination and violence against women, the Commission should have a very active role in the promotion of gender equality, affirmation of women's rights and addressing all forms of gender discrimination and violence through public awareness-raising campaigns, information and education of the general public and giving general recommendations to all stakeholders.

It is preferable that the Commission initiates multi-year activities for the promotion of gender equality and combating gender discrimination, preventive activities in rural areas by working with marginalized women and girls, creative activities at schools and universities, participation in summer schools for young people, etc.

Indicators:

Cases of discrimination on the grounds of sex, gender and gender identity, and associated forms and types of discrimination

Publication of specific recommendations addressed to state institutions and private organizations regarding gender discrimination

General recommendations for the promotion of gender equality and gender-balanced participation

Activities for the promotion of gender equality and women's rights

Training and campaigns on gender equality

Markers

For both segments of the gender dimension in Commission's composition and work, it is recommended to introduce gender equality evaluation markers according to the following scale:

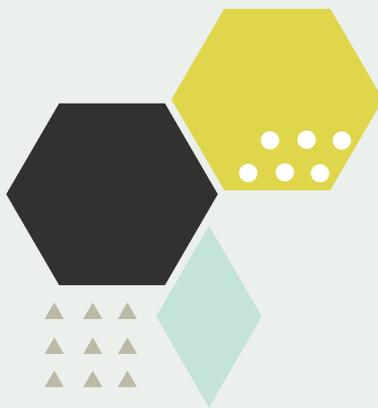
A0-Activities not contributing to gender equality

A1-Activities having a limited contribution to gender equality

A2-Activities whose purpose is largely geared towards gender equality

A3-Activities whose purpose is fully geared towards gender equality





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