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Status – quo Analysis Reports

Activity 1 of the



Project:

Equal Access through Service Learning for Persons with Disabilities

Skopje, 2012

Note: The texts included herein, in general, are as originally submitted by the authors, i.e. they were not subject to contextual changes.

Status – quo Analysis Reports

Activity 1 of the Project:

Equal Access through Service Learning for Persons with Disabilities

**Status quo analysis on disability discrimination in the
legal system of the Republic of Macedonia
(with comparative overview of the
international standards in this area)**

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Skopje, 2012

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Table of Contents

Table of Contents	3
Introduction	4
Disability versus Social (anti)Discrimination.....	7
1. Definition of the term disability	7
2. Discrimination on ground of disability and its justification	10
3. Reasonable accommodation	12
4. Development of the anti-discrimination legislation on the ground of disability in concrete area	14
4.1. Employment and labour relations	14
4.2. Education	17
4.3. Access to goods and services	20
4.4. Social and health protection.....	22
Conclusion.....	25

Status quo analysis on disability discrimination in the legal system of the Republic of Macedonia (with comparative overview of the international standards in this area)

Introduction

Disability discrimination is widespread phenomenon in the Republic of Macedonia. Its perception is rather high, i.e. 45% of respondents think that disability discrimination is a common feature in our society. When we add on this the opinion of more than half of surveyed citizens (51%) who believe that discrimination on multiple grounds is common¹, it gets to a very worrying situation.² However, these surveys are based on citizens' perception, not facts. But, they are important indicator for the current situation of persons with disabilities in the country.

As to the legislation, the Republic of Macedonia in the recent years developed anti-discrimination legal framework which can be taken as relatively solid ground upon which the courts in the future can create jurisprudence.

The Constitution of the Republic of Macedonia, in Article 9 encompasses the equality clause that provides as follow: “[c]itizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of sex, race, color of skin, national and social origin, political and religious beliefs, property and social status. Citizens are equal before the Constitution and the law.”³ Lacking of the disability as discriminatory ground from this clause is evidential.⁴ In addition, this provision is often criticized due to the fact that speaks of “citizens” which leaves the impression that the foreigners are not protected from discrimination by this provision. Furthermore, this provision does not contain any significant contemporary discriminatory grounds, one of them being the disability, and on the other side it contains a closed list of grounds. Finally, Article 9 of the Constitution, with regard that is directed to the rights and freedoms of the citizen, does not mention the protection from discrimination of the legal entities. In addition to this, to add to the abovementioned criticisms, many years the Constitutional Court has interpreted this clause very restrictively, which was clearly shown in pronouncing itself to be non-competent in almost all cases of alleged discrimination and thus not deciding on the merits in most of its cases.⁵ All of the above raises the issue of effectiveness of this protection mechanism and procedure.⁶

¹ See: V.Petrovska Beshka, M.Najcevska, *Survey report “Equal Opportunities Barometer”*, Macedonian Center for International Cooperation, 2009, available at: <http://www.mcims.org.mk>. This publication is part of the publication *Discrimination in the European Union: Perceptions, Experiences and Attitudes, Special Eurobarometer 296*, European Commission, 2008, available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_296_en.pdf.

² See: E.Simoska, N.Gaber, A.Jovevska, P.Atanasov, K.Babunski, *Research project: How inclusive is the Macedonian society*, Foundation Institute Open Society – Macedonia, 2008, available at: <http://www.soros.org.mk>.

³ See: Constitution of the Republic of Macedonia, *Official Gazette of RM, No.52/1991*, from 22 November 1991, Article 9. Available at: <http://www.slvesnik.com.mk>.

⁴ The Constitution of the Republic of Macedonia refers to the persons with disabilities as invalids (Article 35 paragraph 3). This category is constitutional and should be respected as such, however position of the author is that need exist to redefine the constitutional provisions that refers to this group of persons according to the contemporary disability theories, seeing the disability from standpoint of the social model that is in accordance with the international standards. This redefining should encompass terminological as well as substantial change, due to the fact, that the so called terminology reflects the view of society and its relation to the persons with disabilities.

⁵ Besides protection of constitutionality and legality, according to Article 110 paragraph 3 from the Constitution the citizens can submit *request for protection of freedoms and rights* which refers to

Thus, national legislation started explicitly to prohibit discrimination in general, including disability discrimination, with adoption of couple of laws⁷, especially the ones

freedom of belief, conscience, thought and public expression of thought, political association and exercise of this right, and prohibition of discrimination of the citizens based on gender, race, religious, national, social and political affiliation. This provision is operationalised with the Rules of Procedure of the Constitutional Court, Article 51 that provides: “[a]ny citizen considering that an individual act or action has infringed his/her right or freedom, as provided in Article 110 paragraph 3 of the Constitution of the Republic of Macedonia, he/she may request protection by the Constitutional Court within 2 months from the day of delivery of the final or legally enforced individual act, namely from the date on which he/she became aware of the activity undertaken creating such an infringement, but not later than 5 years from the day of the undertaking”. During 2011, out of total 361 new cases submitted in front of the Constitutional Court, 23 of the cases were regarding protection of rights and freedoms determined in Article 110 paragraph 3, from which 23 were decided and 4 were transferred in 2012. In 3 cases the Court decided to reject the request, 1 was completed administratively, and in 19 cases the Court decided to reject the claim mainly due to non-competence (in 11 cases), absence of procedural prerequisites for deciding (in 2 cases), and violation of the timelines (in 5 cases). See: *Overview of the work of the Constitutional Court of the Republic of Macedonia in the period 1 January 2011 till 31 December 2011*, Skopje, February 2012, pp.7-12 and pp.32-34. Available at the web page of the Constitutional Court: <http://www.ustavensud.mk/domino/WEBSUD.nsf>.

⁶ In the Republic of Macedonia there is no clear nomenclature of legal remedies and procedures for protection of the rights and freedoms of the citizen, including the protection of the principle of equality and non-discrimination. Especially, there is no clear distinction between the procedure in front of the Constitutional Court and the regular courts. Decisions of the Constitutional Court which do not reach the merit of the case, diminish the standard set by the European Court of Human Rights (ECtHR) in *Vernillo case* and *Dalia case* which requires exhaustion of all available and effective domestic remedies, not only in theory but also in practice. The ECtHR position that the Constitutional Court is considered as effective legal remedy in discrimination cases in the Republic of Macedonia set in *Sijakova case*, *Kosteski case*, *Krstev case* and *Vraniskoski case* slowly is undermined in *Verka Kamceva case*. See: ECtHR, *Vernillo v. France case*, Series A no.198, 20 February 1991; ECtHR, *Dalia v. France case*, Reports 1998-I, 19 February 1998, paragraph 38 from the judgement; ECtHR, *Kosteski v. FYRoM case*, Application No.55170/00, 13 April 2006; ECtHR, *Sijakova and Others v. FYRoM case*, Dec. No.67914/01, 6 March 2003; ECtHR, *Krstev and Others v. FYRoM case*, Application No.30278/06, 38130/06, 41358/06, 3747/07, 11762/07, 40639/07, 58926/08; ECtHR, *Vraniskoski v. FYRoM case*, Application No.37973/05, ECtHR, *Verka Kamceva v. FYRoM case*, Application No.23876/08, October 2011.

⁷ See: Criminal Code, *Official Gazette of RM*, No.37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 60/2006, 73/2006, 139/2008, 114/2009 and 135/2011, Article 137, Article 282, Article 319 and Article 417. The Criminal Code explicitly does not mention the disability as protected ground, available at: <http://www.slvesnik.com.mk>. See also: Law on courts, *Official Gazette of RM*, No 58/2006, 35/2008 and 150/2010, Article 3 paragraph 1 line 3, Article 6 paragraph 1 and Article 43 paragraph 1. In addition see: Law on social protection, *Official Gazette of RM*, No.79/2009, 36/2011 and 51/2011, Article 20. The Law explicitly mentions disability as protected ground (referring to it as: impairment). Also, the Law on child protection, *Official Gazette of RM*, No.170/2010 (consolidated text), 51/2011 and 157/2011, Article 9 in which disability is explicitly stated as discriminatory ground (referring to it as: impairment), available at: <http://www.mtsp.gov.mk> and <http://www.slvesnik.com.mk>. In addition see: Law on primary education, *Official Gazette of RM*, No.103/2008, 53/2010, 116/2010, 156/2010, 18/2011 and 51/2011, Article 2, and the Law on secondary education, *Official Gazette of RM*, No.52/2002, 113/2005, 30/2007, 49/2007, 81/2008, 92/2008, 116/2010 and 156/2010, Article 3, that does not explicitly provides for disability as protected ground. Furthermore, see: Law on higher education, *Official Gazette of RM*, No.35/2008, 103/2008, 26/2009, 83/2009, 99/2009, 115/2010, 17/2011 and 51/2011, Article 108 paragraph 5, available at: <http://www.mon.gov.mk> and <http://www.slvesnik.com.mk>. In addition, see: Law on equal opportunities of women and men, *Official Gazette of RM*, No.6/2012. The Law explicitly mentions disability as protected ground, available at: <http://www.mtsp.gov.mk> and <http://www.slvesnik.com.mk>. Also, see: Law on health protection, *Official Gazette of RM*, No.17/1997 (consolidated text), 84/2005, 65/2006, 77/2008, 67/2009, 88/2010, 53/2011 and 43/2012, as well as the Law on protection of rights of patients, *Official Gazette of RM*, No.82/2008, 12/2009 and 53/2011, Article 5, available at: <http://www.moh.gov.mk> and <http://www.slvesnik.com.mk>. These laws are not explicitly providing for disability as protected ground. Finally, see: Law on volunteering, *Official Gazette of RM*, No.85/2007 and 161/2008, Article 9 that

dealing with labour relations⁸, process that reached its pick in 2010 with adoption of the Law on prevention and protection from discrimination (ADL)⁹. They explicitly prohibits all discriminatory forms including direct and indirect discrimination, harassment¹⁰, reasonable accommodation¹¹ as well as instruction to discriminate, committed by natural persons and legal entities in the public as well as private sector, in the area of: employment and labour relations, education, access to goods and services, housing, health, social protection, judiciary and administration, science, sport, participating and acting in syndicate, political parties, associations of citizens and other areas, accordingly. The author's opinion is that protection from disability discrimination slowly but surely tries to take its place in the Macedonian society, although still not there yet. Unfortunately, the lack of sufficient judicial and quasi-judicial practice¹² is significant obstacle in explaining the application of these legal institutes, provided by the anti-discrimination legislation.

provides explicitly for disability as discriminatory ground (referring to it as: invalid) as well as health condition. Although all these laws contains anti-discriminatory provisions, still their critique applies mostly on inconsistency in used terminology and legal terms, different solutions and inconsistent system of protection in different areas and on different grounds.

⁸ See: Law on labour relations, *Official Gazette of RM*, No.62/2005, 106/2008, 161/2008, 114/2009, 16/2010 (consolidated text), 50/2010, 52/2010, 158/2010 (consolidated text) and 47/2011, Article 6. The Law explicitly provides for disability as discriminatory ground in addition to 15 other grounds including non exhaustive list of grounds. Available at: <http://www.mtsp.gov.mk> and <http://www.slvesnik.com.mk>.

⁹ See: Law on prevention and protection from discrimination, *Official Gazette of RM*, No.50/2010, from 13 April 2010, available at: <http://www.mtsp.gov.mk> and <http://www.slvesnik.com.mk>. Even though the Law was adopted in April 2010, the same had prolonged implementation period starting from 1 January 2011. This Law is expected to fill in the legal gaps that exist in our legal system in the area of anti-discrimination and to allow easier legal protection to *inter alia* persons with disabilities who are alleged victims of discrimination. The Law in its Article 3 mentions *mental and physical disability* as discriminatory ground supplemented by non exhaustive list of discriminatory grounds encompassing with the phrase *any other ground*. Furthermore, Article 12 provides for multiple discrimination. However, the process of its adoption was controversial and still it is very disputable the level of its approximation with the EU anti-discrimination legislation. More on this question see: European Commission, Macedonia 2011 Progress report, SEC(2011) 1203 final, Brussels, 12 October 2011, pp.55 and 63 (in the English version of the document), available at: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/mk_rapport_2011_en.pdf.

¹⁰ The Law on labour relations according to Article 9 and Article 9-a differentiate between harassment generally defined, sexual harassment and mobbing (psychological harassment in working environment) as its emerging forms, that constitute discrimination. From another side, the Law on social protection does not recognizes and mentions harassment.

¹¹ Even tough, the reasonable accommodation is very important for the persons with disabilities, still as legal institute is not explicitly provided in the Law on labour relations, that is caunted for one of its major critique. The same is overcome with the ADL by defining the reasonable accommodation in its Article 5 paragraph 1 line 12, and stating that not providing the reasonable accommodation will constitute discrimination according to Article 8 paragraph 2.

¹² According to the national legislation there is two quasi-judicial protective mechanisms available to the citizens to invoke in situation of alleged discrimination, as follows: the Commission for protection from discrimination and the Ombudsman. According to the Law on the Ombudsman, this institution is responsible for *inter alia* protection of the principle of non-discrimination. For more information see: Law on the Ombudsman, *Official Gazette of RM*, No.60/2003 and 4/2009, Article 2. In 2011, from all submitted complaints by citizens to the Ombudsman Institution only 0,99% were cases of alleged discrimination, from which nitherone is alleged disability discrimination. From another side, the Commission for protection from discrimination in 2011 had received in total 61 complaints from which only 3 were cases on alleged disability discrimination. For more information see: Ombudsman 2011 Annual Report, available at: <http://www.ombudsman.mk/ombudsman/upload/documents/2012/Izvestaj%202011-MK.pdf>.

Furthermore, see: Annual Report for 2011 of the Commission for protection from discrimination, available at: <http://www.kzd.mk>.

Disability versus Social (anti)Discrimination

1. Definition of the term disability

When we talk about disability the scope of protection in the international as well as the national legal system of the EU Member States encompass sometimes the (chronic) diseases¹³, genetic characteristics¹⁴, health condition¹⁵ etc. For example in the Charter of Fundamental Rights of the European Union¹⁶ in its Article 21 paragraph 1 is stated that: "any discrimination based on any ground such as ... genetic features [and] ... disability ... shall be prohibited ...". This diversity exists because there is no international universally accepted legal definition of disability. On European level neither the European Convention for the Protection of Human Rights and Fundamental Freedoms¹⁷ nor the Directive 2000/78/EC¹⁸ are defining this ground, and also the Member States. Namely, the Member-States in the process of transposing in their national legislation in most of the cases abstained in defining the meaning of the term disability¹⁹.

As regarding this issue, in the EU frame a number of different patterns are identifiable that can be grouped in four groups²⁰. A number of Member States, including Belgium, Bulgaria, Greece, Italy, Poland, Romania, Denmark and Slovakia have followed the precedent set by the EU, and included no definition of disability whatsoever in the transposing anti-discrimination legislation. This is the *first group*. Due to this two potential risks exists, as follows: *first*, the national courts will blindly follow the definition developed in the *Chacón Navas case*²¹ (analysed below) which is based on the medical model of seeing the disability and in contradiction with the UN Convention on the Rights of Persons with Disabilities (UN CRPD)²² and the primary policy towards the persons with disabilities

¹³ For example in: Portugal, Netherlands (provides for protection on the ground of real or presumed disability or chronic illness), and Romania.

¹⁴ See: Convention on Human Rights and Biomedicine, 1997, Article 11, as well as the Federal Belgian Anti-discrimination Law of 2007.

¹⁵ For example in: Finland, Hungary, Sweden and Belgium.

¹⁶ See: Charter of Fundamental Rights of the European Union, Solemn Proclamation by the President of the European Parliament, the European Commission and the Council of Ministers, Nice, OJ C 364/1, from 7 December 2000, available at: http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

¹⁷ See: European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The Republic of Macedonia ratified the Convention on 10 April 1997. The text of the ECHR with all its additional Protocols and explanatory memorandums, as well as list of signatory states and contracting parties are available at: <http://conventions.coe.int/treaty/en/treaties/html/005.htm>.

¹⁸ See: Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for Equal Treatment in Employment and Occupation, [2000] OJ L 303/16, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:303:0016:0022:EN:PDF>.

¹⁹ For example: France, Greece, Hungary, Poland, Romania, Slovenia, Croatia, as well as the Republic of Macedonia.

²⁰ See: European Network of Legal Experts in the Non-Discrimination Field, L.Waddington, A.Lawson, *Disability and non-discrimination law in the European Union, An analysis of disability discrimination law within and beyond the employment field*, European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, Unit G.2, Brussels, July 2009.

²¹ See: CJEU, *Sonia Chacón Navas v. Eures Colectividades SA*, Case C-13/05, [2006] ECR I-6467, from 11 July 2006. The CJEU ruled that 'sickness in itself' does not amount to disability, but that in the context of the Directive 2000/78/EC it must be understood as 'a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life'.

²² See: UN Convention on the Rights of Persons with Disabilities, UN Doc. A/RES/61/611, from 13 December 2006, with all supplementary materials including list of signatory states and contracting parties is available at: <http://www.un.org/esa/socdev/enable/rights/convtexte.htm>. More on the UNCRPD see: *inter alia* J.Kumpuvuori, M.Scheinin (eds.), *United Nations Convention on the Rights of persons with Disabilities – Multidisciplinary Perspectives*, Finland, 2010; G.Quinn, O.M.Arnardottir,

developed by the EU institutions. And *second*, the risk that the national courts will draw on definitions of disability found in other national legislation, typically social security legislation which are limiting especially in the personal scope of protection. *The second group*, from another side, including Austria, Malta, Portugal, Sweden and the United Kingdom has chosen to include a definition of disability within their anti-discrimination legislation. However, these definitions are problematic due to highly medical approach to defining disability and focusing on the health status or impairment of an individual, and not on the (alleged) act of discrimination. *The third group* of EU Member States, such as Czech Republic and Slovenia in their anti-discrimination legislations included definitions of disability identical as the ones found in their social security legislation. In general, the approach of utilizing a definition of disability developed in a context other than anti-discrimination and equality legislation is highly questionable due to the fact that these definitions are almost certainly breaching the Directive 2000/78/EC, as well as failing to follow the CJEU's ruling in *Chacón Navas*, and are seriously reducing the effectiveness of any national disability non-discrimination law. Lastly, there is a *fourth group* of EU Member States such as Germany, France and Hungary that opted for dual approach to defining disability. Namely, the general anti-discrimination law provides for general definition of disability which is wider in the personal scope of protection, whilst the law addressing reasonable accommodation makes use of more limited definition. This is also questionable because it seems to amount to a breach of the Directive 2000/78/EC due to the fact that the Directive makes no distinction between those individuals with disabilities who are entitled to claim protection from discrimination and those who are also entitled to claim a reasonable accommodation.

In the Republic of Macedonia, also, this question is extremely important because when we talk about disability often we confuse the social protection from one side, and the creating opportunities for equal access to rights and freedoms by persons with disabilities from another side. The ADL provides no definition of the disability nor of the protected group – persons with disabilities. These were done in other laws, as follows: the Law on social protection, Law on employment of invalids²³, Law on invalid organisations, Law on child protection²⁴ and for the specifying group of deaf and hard of hearing persons it is done in the Law on use of the sign language²⁵. Namely, Article 17 from the Law on social protection which does not define disability, but the protective group states, “disabled [invalid] person under this Law shall be considered a person with mental or physical disability”. This definition is strictly based on the medical model and in its nature is very restrictive, i.e. encompasses persons with only a certain kind of disability while excluding others (especially those with multiple disability). Defining this group of persons in the Law on employment of invalids goes one step further stating that “[d]isabled person, under this law, is a person with impaired vision, impaired hearing, impairments in voice, speech and language, a physically disabled person, a person with intellectual disability and a person with multiple disabilities

The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspective; R.Kayess, P.French, *Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities*, in *Human Rights Law Review*, 2008; A.Lawson, *The United Nations Convention on the Rights of Persons with Disabilities: New Era or False Dawn?*, 34 *Syracuse Journal of International Law and Commerce*, 563, 2007.

²³ See: Law on employment of invalids, *Official Gazette of RM*, No.87/2005 (consolidated text), 113/2005, 29/2007, 88/2008, 161/2008, 99/2009 and 136/2011, available at: <http://www.mtsp.gov.mk> and <http://www.slvesnik.com.mk>.

²⁴ See: *supra* note 7 Law on child protection. Interesting to note is that the Law on two occasions states who are the children that are defined as disabled, first in the part dealing with special supplement and here they are referred as *children with development problems* (Article 25), and second in the part dealing with the competences of the kindergarten and they are referred as *children with problems in the mental development and physical impairment* (Article 48). The both definitions are based on the medical model of seeing the disability.

²⁵ See: Law on use of the sign language, *Official Gazette of RM*, No.105/2009, from 21 August 2009, available at: <http://www.mtsp.gov.mk> and <http://www.slvesnik.com.mk>. The Law in its Article 3 defines the protected group on the ground of the medical model of seeing the disability.

that due to the degree of disability has specific needs in employment field, ... as well as unemployed disabled worker, a person with residual or reduced working ability” (Article 2 paragraph 1 and 2). The critique of this article lies in its paragraph 3 which provides that, the disability is determined by the Commission for evaluation of working ability. The need to proof existing disability is contrary to the purpose of the anti-discrimination legislation.

Finally, we will briefly address the definition of the protected group under Article 5 of the Law on invalid people’s organisations²⁶. Namely, “[p]erson with disability ... is an individual who because of his congenital or acquired injuries and impairments acquired or created by their physical or living environment, alone can not partially or fully satisfy his personal, living or family needs to live in the community” (Article 5 paragraph 2). From all these definitions it is evident that there is an inconsistency, which consists of different naming and defining the protected group, however should be stated that the last quoted definition in part reflects the social model. This definition is much wider in comparison with the definition developed by the Court of Justice of the EU in *Chacón Navas case*, because it makes no clear distinction between disability and sickness on the one hand, nor include explicit temporal limitation of the criterion “it must be probable that it will last for a long time” on the other side. Thus this definition allows greater range of personal protection.

In addition, when we are talking about personal scope of protection, the discrimination by association on the ground of disability it is not explicitly provided for in the national legislation, which makes our legislation unharmonised with the judgment of the Court of Justice of the EU in the *Coleman v Attridge Law case*²⁷. Namely, the Court stated that the Directive 2000/78/EC protects people who, although not themselves disabled, suffer direct discrimination and/or harassment in the field of employment and occupation because they are associated with a disabled person. Discrimination by association is explicitly provided for in Ireland, Sweden, Austria, Bulgaria and France. Furthermore, the Macedonian legislation does not provide for protection against discrimination on the ground of assumed disability. Contrary to our practice, in Canada this group is protected and this is reflected in the case-law of Supreme Court of Canada²⁸.

We can conclude that, existing definitions in the Macedonian legislation (with the exception of those contained in the Law on invalid people’s organisations) fully reflect the medical model of looking at disability and are not reflecting the spirit of the anti-discrimination legislation, due to the fact that it closely defines the protective group and portrays people with disabilities as helpless, that largely makes assumptions about the effect of their impairment. For these reasons I think that there is a need to define persons with disabilities in line with the UN CRPD and contemporary anti-discrimination legislation in terms of the social model, as seen for example in the Republic of Ireland.

²⁶ See: Law on invalid people’s organisations, *Official Gazette of RM, No.89/2008*, from 18 July 2008, available at: <http://www.mtsp.gov.mk> and <http://www.slvesnik.com.mk>.

²⁷ See: CJEU, *S.Coleman v Attridge Law, Steve Law*, Case C-303/06, OJ C 224, from 17 July 2008. In this case the Court was on the position that the Directive 2000/78/E3 prohibits direct discrimination of the mother of a disabled child when this discrimination is based on the disability of her child.

²⁸ See: Supreme Court of Canada, *Quebec v. Montréal City; Quebec v. Boisbriand City*, SCC 27, 2000, available at: <http://scc.lexum.umontreal.ca/en/2000/2000scc27/2000scc27.pdf>. The Supreme Court of Canada took broad approach when defining the protection from disability discrimination, adding it to “any type of disability which can result in physical limitation, disease, social relation, assumed limitation or combination of all these factors”.

2. Discrimination on ground of disability and its justification

Direct discrimination²⁹ on ground of disability (referred to as: mental and physical impairment) is prohibited according to Article 6 paragraph 1 from the ADL and shall be taken to occur where disabled person is treated less favorably in the form of differentiating, excluding or restricting this persons which has or shall have as a consequence a deprivation, violation or restriction of the recognition or enjoyment of its human rights and basic freedoms on an equal basis with others, compared to the treatment which has or shall have other person in same or similar situation, only because of its mental and physical impairment. In addition to the disability as protected ground, the legislator provides for protection from discrimination on grounds of health status (Article 3). This definition is not fully in compliance with the Directive 2000/78/EC because it is stated that “direct discrimination shall be taken to occur where one person *is treated* less favorably than another is, or *would be treated* in a comparable situation”, not that “direct discrimination shall be taken to occur where one person *is treated* less favourably than another is, *has been* or *would be treated* in a comparable situation”. Thus, should be redrafted reflecting the three elements of proving direct discrimination (less favorable treatment, comparator, and discriminatory ground). Also, the ADL as well as the Law on labour relations³⁰ do not prohibits explicitly the discriminatory ads and statements on grounds of disability. This should be amended according to the existing anti-discrimination standards.

The ADL does not provide for general justification of direct discrimination. However, the anti-discrimination legislation encompass great number of general exceptions, and for persons with disabilities relevant are the following: it shall not be deemed discrimination any measure provided for in the Law aiming at promoting employment (Article 15 paragraph 1 line 2 from the ADL)³¹; when foreseen as genuine and determining occupational requirement (Article 14 paragraph 1 line 2 from the ADL)³²; in the cases of undertaking affirmative measures³³ (Article 13 from the ADL); when existing different treatment of persons with disabilities during training and acquiring education to the effect of satisfying special educational needs aiming at equalisation of the opportunities (Article 15 paragraph 1 line 3 from the ADL); and in undertaking special protection, stipulated by law, for *inter alia* persons

²⁹ This prohibition is provided in Article 7 paragraph 2 from the Law on labour relations, in Article 21 paragraph 1 from the Law on social protection, in Article 9-b paragraph 1 from the Law on child protection and etc.

³⁰ The Law on labour relations in its Article 24 paragraph 1 is explicitly prohibiting the discriminatory ads and statements based on sex.

³¹ For example, actions for encouraging employments of persons with disabilities in the public as well as private sector, provided for in the Law on employment of invalids. However, as defined this exception without allowing for satisfying the proportionality test is very questionable. Namely, as defined this exceptions provides that every measure that encourage employment is not discrimination, which is not in compliance with the international standards, especially the case-law of the Court of Justice of the European Union. See: ECJ, *Werner Mangold v. Rüdiger Helm*, Case C-144/04, [2005] ECR I-9981; ECJ, *Kalanke v. Freie Hansestadt Bremen*, Case C-450/93, [1995] ECR I-3051, from 2005.

³² Te ADL provides for different treatment *inter alia* on the ground of disability that is needed due to “the nature of the particular occupation or activity, or of the conditions in which it is carried out”. This criterion is stipulated in Article 8 paragraph 1 from the Law on labour relations.

³³ What is essential for affirmative measures is that their application is limited, as long as they meet the legal criteria that prescribed them, respectively while they are necessary and achieves the purpose for which provided. The courts needs to assess in concrete cases did the affirmative measures are designed to achieve the intended legitimate aim or they are counterproductive and do not give results and thus discriminatory. The preferential treatment of persons with disabilities is summarized in the National Strategy for equalization of the rights of the persons with disabilities (revised version) 2010-2018, Ministry of Labour and Social Policy, 2009, available at: <http://www.mtsp.gov.mk>.

with disabilities (Article 15 paragraph 1 line 7 from the ADL)³⁴. Especially questionable is the exception stipulated in Article 14 paragraph 1 line 7 from the ADL which refers to freedom of speech, public appearance, opinion and media and which is not conditioned with the requirement of necessity and proportionality. On a contrary, it is raised to the level of absolute exception. Thus defined this exception is problematic because absolutely defined freedom of expression is in collision with the provision of possible instruction to discriminate and incitement to discrimination, which are prohibited by the ADL and the Criminal Code.

Indirect discrimination³⁵ on ground of disability (referred to as: mental and physical impairment) is prohibited according to Article 6 paragraph 2 from the ADL, and occurs where an apparently neutral provision, criteria or practice puts *inter alia* person with disability or group of persons with disabilities in a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. This definition is not fully in compliance with the Directive 2000/78/EC because it is stipulated that shall be taken to occur because *puts* the persons with disabilities in especially less favorable position, not that *puts or would put* the persons with disabilities in a particular disadvantage. The law provides for possibility for general justification of the indirect discrimination if legitimate aim exists and satisfies the proportionality test. It is interesting to note the courts should play a crucial role in deciding upon the percentage of affection of members of the group in cases of indirect discrimination, which is very important when dealing with indirect discrimination.

Harassment on grounds of disability is prohibited according to Article 7 from the ADL defining it as separate form of discrimination. Harassment and humiliating treatment is a violation of the dignity of the individual or group of persons that is based on the existing disability with the purpose or effect of violating the dignity of the disabled person or creating an intimidating, hostile, degrading, humiliating or offensive environment, access or practice. The harassment is defined broadly encompassing the violation of the dignity of the disabled individual as well as of the whole group of persons with disabilities. However, it is omitted to mention that should be unwanted conduct, i.e. there can not be a victim of harassment if the alleged individual wanted or agreed to that conduct/treatment. Although the law is not clear on the question who can be a harasser, partial answer is given by the Law on labour relations that stipulates that psychological harassment in the working environment can be done by one or more persons in its capacity as employer as natural person, responsible person in the legal entity or a worker (Article 9-a paragraph 4). On the end, I will mention that when we talk about harassment, the national legislation is not providing clear answer on the question of third party responsibility for the employer or the service provider for conducted harassment. Still, this third party liability of the employer including the ones for harassment will depend, to greater extent, on the nature of their relationship as well as the developed jurisprudence on this concrete issue³⁶.

Finally, the instruction to discriminate (referred to as: aiding and inciting discrimination) is prohibited according to Article 9 from the ADL and shall be deemed to be a separate form of discrimination. The form provides for direct as well as indirect calling for, incouriging, giving instructions or inciting other person to discriminate.

³⁴ For example: measures for specific protection of persons with disabilities stipulated in *Part XII Special protection* (Article 161-162, 164 and 169) from the Law on labour relations, even though constituting different treatment they are not amounting to discrimination due to the fact that they are aiming at health protection of these individuals.

³⁵ This prohibition is stipulated in Article 7 paragraph 3 from the Law on labour relations, in Article 21 paragraph 2 from the Law on social protection, in Article 9-b paragraph 2 from the Law on child protection, etc.

³⁶ See: The European Network of Legal Experts in the Non-Discrimination Filed, *Developing Anti-Discrimination Law in Europe*, November 2010, pp. 43.

3. Reasonable accommodation

The reasonable accommodation, that is based on the social model of seeing the disability, means “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”³⁷. The duty to provide reasonable accommodation exists in many legislations all over the world, but what is distinctive about it is that different legislations had differently treated this duty. Namely, in some that is treated as separate form of discrimination³⁸, for some it is an obligation that entails explicit consequences³⁹, for others it is an obligation whose failure does not entail explicit consequences⁴⁰, and on the end, there are countries where it is not explicitly mentioned the duty to make reasonable accommodation⁴¹. We could say that, most progressive in this regard in the United States legislation which looks at the reasonable accommodation as a mean that can help in removing or exceeding the obstacles for achieving equal opportunities for persons with disabilities.

In the Republic of Macedonia, provisions providing for reasonable accommodation are enumerated in the ADL (Article 5 paragraph 1 line 12 and Article 8 paragraph 2), as well as the Law on employment of invalids (Article 7 paragraph 2). Namely, the ADL stipulates that “adjustment of infrastructure and services is undertaking appropriate measures, where needed in a particular case, in order to enable the person with mental and physical impairment, to have access to, participate in, or advance in employment, unless such measures would impose a disproportionate burden on the employer”. The provision is limited due to the fact that it concerns only the adjustment of infrastructure and services. Furthermore, the Law does not define the term “appropriate measures” to enable a person with a disability, except it explains that they are individualized, i.e. needed in a particular case. In addition, the Law does not distinguish between important and essential working duties and the ones that are marginalized and unimportant, which is a significant disadvantage of this provision.

To determine whether the measures in question give rise to a disproportionate burden, (according to the law: disproportionate encumbrance) the Macedonian legislation is not analysing nor conditioning it, as in other countries, with the nature and cost of the accommodation; the financial and other costs entailed⁴², including the benefit of the accommodation; the scale and financial resources of the organisation⁴³ or undertaking; the type of business that the legal entity conducts, including the structure of the work force; and the possibility of obtaining public funding or any other assistance. The author is on a position that this clarification should be added when the ADL will undergo amendments in the future.

Finally, we can conclude that the question of reasonable accommodation falls within the scope of the national anti-discrimination legislation, and according to Article 8 paragraph 2 from the ADL is certain that unjustified noncompliance with the duty to make reasonable accommodation will be deemed to be a form of discrimination. This is quite a progressive norm and fully in compliance with the UN CRPD.

From another side, the Law on employment of invalids according to Article 7 paragraph 2 envisage the reasonable accommodation stating that “[w]hen employing a

³⁷ Article 2 from the UN CRPD.

³⁸ For example in: Ireland, France (indirect discrimination). In France this duty is limited *ratione personae* only for those who have been officially recognized as workers with disabilities.

³⁹ For example in: Great Britain, Sweden, and Germany. In Cyprus this duty is not limited only to the area of employment and labour relations, its includes basic human rights as well.

⁴⁰ For example in: Finland, Netherlands, Belgium, Lithuania, Greece, Hungary and Romania.

⁴¹ For example in: Australia, Austria, Bulgaria, Italy, Slovenia, Poland and Turkey.

⁴² For example in: Bulgaria, Cyprus, Finland, France, Germany, Ireland, Malta, Spain and United Kingdom.

⁴³ For example in: Austria, Finland, Ireland, Malta, Slovakia and United Kingdom.

disabled persons, the employer is obliged to create appropriate working conditions and to adapt the workplace according to the specificity of the job, the type and level of education and the type and level of the impairment of the disabled person which is in the process of employing for that concrete job". The legislator does not explain in detail this provision, without saying what are those conditions that need to be created by the employer (eg. if they would include adjusting the process of interviewing for employment, adjustment of working hours and practices, recruiting professional vocational trainer, etc). Not precising this provision, the legislator left the frames of this legal institute to be set through case law. In addition, the legislator does not explain in detail neither the kind of adaptation of the workplace that needs to be performed; however, this is specified with the Rulebook for criteria and manner for awarding of unrefundable means from the specialised fund for improvement of the conditiond for employment and work of persons with disabilities⁴⁴. Namely, according to Article 7 paragraph 2 from this Rulebook it is stated that adaptation includes adjustment of the working and auxiliary facilities as well as the equipment, working tools, devices and other technical working means. It is positive that despite the duty to make reasonable accommodation, the law foretold funds provided from a special fund to improve employment conditions and work for the persons with disabilities (Article 8 and Article 20). However, restrictiveness of these provisions lies in the fact that the legislator is limiting the opportunity for use of this legal institute, i.e. it is limiting the personal scope of protection. Namely, for one person to request for reasonable accommodation should be employed in the private sector and should be recognized as disabled persons according to the law.

One can concluded that the institute reasonable accommodation is quite a new concept in the national legal system and requires specifying the norms that provides for, both in the sphere of labour relations as well as in the anti-discrimination legislation in general. Also, at this moment it is desirable to create case law in relation to the application of these provisions in order conveniently to show where the limits of this legal institute should be put.

⁴⁴ See: Rulebook for criteria and manner for awarding of unrefundable means from the specialised fund for improvement of the conditiond for employment and work of persons with disabilities, *Official Gazette of RM, No.156/2008*, from 17 December 2008.

4. Development of the anti-discrimination legislation on the ground of disability in concrete area

4.1. Employment and labour relations

The number of employed disabled persons in comparison to the employed population in general in the Republic of Macedonia is quite small. Namely, the number of employed disabled persons is 2.394 from which 814 are women.⁴⁵ From employed disabled persons and persons undergoing rehabilitation, the most are with intellectual disability (1.081 persons), than with physical disability (538 persons), followed by persons with hearing impairment (286 persons) and on the end persons with visual impairment (172 persons), and in addition exist a category of other persons (465 persons). Currently, the number of unemployed disabled persons is 2.326 persons from which 809 are women, and in many of the cases are with elementary education (1.569 persons, and with university education and higher vocational education are only 35 persons).⁴⁶ According to conducted researches in this area, persons with intellectual disabilities followed by persons with physical disabilities are most discriminated against in employment due to the existence of numerous prejudices towards those persons.⁴⁷ This is reconfirmed by other studies showing that people with disabilities are not recognized as employees on an equal basis with others, which is manifested by getting less pay for equal work, less chances of promotion and increased harassment in the workplace⁴⁸.

In the area of protection from discrimination on the grounds of disability on the labour market crucial is the Law on labour relations which is *lex generalis* in this area (especially Article 6 paragraph 1), supplemented by the ADL (Article 4 paragraph 1 line 1). Similar as the Directive 2000/78/EC, these laws shall apply to all persons in relation to: conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion; access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; employment and working conditions, including dismissals and pay; зачленување и учество во membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

The Law on labour relations does not differentiate between employees in the public and private sectors (Article 3 paragraph 1), and between those employed full-time and part-time (Article 8 paragraph 3). Interesting to consider in terms of discrimination against persons with disabilities is the provision of the Law on labour relations which states that “[w]hen concluding the contract of employment the candidate is not obliged to submit proof of his medical ability, unless the employer on their own expense sent the candidate to medical examination” (Article 25 paragraph 5), which is supplemented by the following paragraph that says: “[t]esting the knowledge or the ability of the candidate or determination of his

⁴⁵ See: Statistic overview – Social welfare for children, juveniles and adults in the Republic of Macedonia 2010-2011, State Statistic Office, Number.2.4.11.16, 701, from October 2011, pp.28-29, available at: <http://www.stat.gov.mk>.

⁴⁶ See: Overview of unemployed persons with disabilities according to the type of impairment, level of education and age structure, condition on 31 December 2010, Employment Agency of Republic of Macedonia, available at: <http://www.avrm.gov.mk>.

⁴⁷ See: *supra* note 2 E.Simoska, N.Gaber, A.Jovevska, P.Atanasov, K.Babunski, *Research project: How inclusive is the Macedonian society*, pp.35 and pp.50-51.

⁴⁸ See: V.Jovanova, S.Dimitrijoska, S.Tomovski, M.Ignjatovik, *The position of the physically disabled persons on the labour market, study on the conducted research*, with support of UNIFEM, Skopje, December 2009. In total 25.9% from the respondents with physical disability think that they were discriminated in the working place.

health condition or medical ability should not apply to circumstances which are not directly related to the tasks/duties of the concrete job for which a contract of employment is concluded” (Article 25 paragraph 6). These provisions fully satisfy the standards for protection from discrimination on the ground of disability, but they are derogable considering the provisions from the Law on civil servants⁴⁹ (relating to employment in the public sector) which provides for *good general health* as a general condition for employment. This provision as defined, even though apparently neutral, still has disproportionately negative effect towards the persons with disabilities, due to the fact that the group as a whole *a priori* is made unable to apply for employment. Should be pointed that, even though for some subgroups of persons with disabilities this is a valid stand, for most of the persons with physical or sensory disability who are psychophysically capable to undertake the essential tasks of the concrete job this criteria is irrelevant, and thus discriminatory. Same provisions can be found in the Law on courts⁵⁰, Law on bar⁵¹, Law on police⁵², Law on army service of the Republic of Macedonia⁵³, Law on foreign affairs⁵⁴, etc. This criteria does not mean that always will be discriminatory; however the same should be challenged and subjected to judicial review. Because of this, the author suggest reassessing this criteria, and its full individualisation in all above stated laws in line with Article 25 from the Law on labour relations, i.e. embedding this criteria in the context of the concrete occupation and/or function.

On the other hand, this condition shall be used for termination of employment, which is clearly stated in the Law on army service of the Republic of Macedonia. Namely, even when disability occurs as a consequence of the army service, this condition leads to the loss of the status of military officer (Article 38). What is problematic in this regard is the provision in the law that states that in any case of obtaining disability the person may not retain its status as military officer. This legal provision puts these persons in unequal (discriminatory) position compared to others, because they are automatically excluded from the right to have the status of military officers. However, this question should be discussed because even in the international as well as national legislation exception from discrimination exists when concrete condition for employment and dismissal from work is genuine and determining occupational requirement.⁵⁵ In our case this means that upon gaining disability the military officer no longer has capabilities to perform tasks that are required by this profession. Because of this generalization, the question arises of possible discriminatory criteria and the author suggests it to be individualised.

Additionally, Article 8 paragraph 2 from the Law on labour relations provides exemption from discrimination relating to special protection and assistance to certain

⁴⁹ See: Law on civil servants, *Official Gazette of RM, No.76/2010* (consolidated text), 167/2010 and 103/2011, Article 9 paragraph 6, Article 13 paragraph 2 line 3, available at: <http://www.mioa.gov.mk> and <http://www.slvesnik.com.mk>.

⁵⁰ See: *supra* note 7 Law on courts, Article 45 paragraph 1 line 3.

⁵¹ See: Law on bar, *Official Gazette of RM, No.59/2002, 60/2006, 29/2007, 106/2008 and 135/2011*, Article 12.

⁵² See: Law on police, *Official Gazette of RM, No.114/2006 and 6/2009*, Article 95, available at: <http://www.slvesnik.com.mk>. When the psychophysical and general health is impaired resulting from injury during work or occupational disease, than the person is assigned to another job according to its capabilities while maintaining the salary and the rank that he had before the accident (Article 109 paragraph 3 and paragraph 4)

⁵³ See: Law on army service of the Republic of Macedonia, *Official Gazette of RM, No.36/2010, 23/2011, 47/2011 and 148/2011*, Article 31 and Article 38, available at: <http://www.slvesnik.com.mk>.

⁵⁴ See: Law on foreign affairs, *Official Gazette of RM, No.46/2006 and 107/2008*, available at: <http://www.slvesnik.com.mk>. Namely, for appointment of ambassador (Article 36 paragraph 1 line 5) and general consul (Article 49 paragraph 1 line 5) one of the condition is *to have medical and psychophysical abilities*. The same condition is applicable also for the employees in the MFA (Article 64 paragraph 1 line 3).

⁵⁵ See: *supra* note 8 Law on labour relation, Article 8 paragraph 1; *supra* note 9 the ADL, Article 14 paragraph 1 line 2; as well as *supra* note 19 Directive 2000/78/EC, Article 4(1).

categories of workers, especially the protection of persons with disabilities. This specialized protection is elaborated in Articles 161-162⁵⁶ as well as in Articles 177-178⁵⁷. However, this should not mean that the employer should hire persons who do not meet basic requirements for the respective job. Namely, Article 103 provides for the termination of the employment contract if the employee came to the loss of working ability necessary for the concrete job.

When we talk about discrimination towards people with disabilities in the area of labour relations the Law on employment of invalids⁵⁸ should be mentioned, which is a *lex specialis* in this area. Namely, Article 4-a paragraph 5 provides for “[p]erson with disability can be an employer or to conduct work as responsible person in the legal entity, if he/she receive positive opinion from specialised Commission within the Ministry of Labour and Social Policy ...”. Even though, the author thinks that the purpose of the legislator drafting this provision was not to discriminate against persons with disabilities, on a contrary he acted protectively against any missus (especially against persons with mental disability), still this provision as drafted is discriminatory and should be redrafted. The same represents textbook example for discrimination based in the law.

Especially interesting to discuss is the issue of sheltered employment⁵⁹. The Law on employment of invalids and the two Rulebooks deriving from this law⁶⁰ regulates the issue of employment of persons with disabilities in the sheltered companies. Namely, according to Article 9 from the law, sheltered company is a “commercial company that employs at least ten persons on full-time bases, if at least 40% are persons with disabilities from the total number of employees, from which at least half are persons with diagnosed and established disability”. It is positive that, according to the national legislation, this employment is regulated as regular employment as any other. From the researches it is determent that 55.8% from the total number of employed persons with disabilities are employed in the sheltered companies, and most of them in the companies that are providing services (40%).⁶¹

According to Article 4 from the Law on employment of invalids a vast number of stimulative measures (subsidies) are provided aiming to improve the employment condition for the persons with disabilities, as follows: awarding unreimbursable means for full time employment of unemployed person with disability, adjusting of the workplace in which the disabled person will work if needed, purchasing equipment, tax incentives and providing for means for paying the social insurance tax, and financial assistance in working. These are in

⁵⁶ Namely, persons with disabilities are counted as specific and risky group, and the employers should have this in mind when distributing the workload and if essential changes in the working conditions occurs. In addition, when a risk is established which can not be eliminated in another way, the employer is obliged to make changes in the working conditions and working hours or to offer to the employee under risk appropriate alternative work.

⁵⁷ In those it is stated that “[t]o the worker, a labour invalid with right to professional rehabilitation on the ground of professional incapability to work, the employer is obliged to provide him with the necessary conditions to conduct his professional rehabilitation and to transfer him to another position with full working time” (Article 178 paragraph 1) which is supplemented by another paragraph which stipulates that, “[t]o the worker who suffers from imminent risk of being disabled, the employer is obliged to transfer him to another adequate position and compensate for the difference in the pay between the job that the worker had prior to the transfer and the new job” (Article 178 paragraph 2).

⁵⁸ See: *supra* note 23 Law on employment of invalids.

⁵⁹ Data received from the State Statistic Office shows that by 31 December 2010, in the Republic of Macedonia exists 268 companies that employ 2.394 persons with disabilities.

⁶⁰ See: *supra* note 23 Law on employment of invalids; Rulebook for occupational training of the persons with disabilities, *Official Gazette of RM, No.54/2004*, from 13 August 2004; and *supra* note 44 Rulebook for criteria and manner for awarding of unrefundable means from the specialised fund for improvement of the condition for employment and work of persons with disabilities.

⁶¹ See: *supra* note 48 V.Jovanova, S.Dimitrijoska, S.Tomovski, M.Ignjatovik, *The position of the physically disabled persons on the labour market, study on the conducted research*. The research shows that women with physical disability mostly are employed in sheltered companies (49.1%) and after on the open labour market (27.8%), and the men with physical disability mostly are employed on the open labour market (33.3%) and after in the sheltered companies (30%). Employment in the public sector is very low, and even insignificant with only 2.6%.

principle good measures that are classified as affirmative measures. Still, the same should be put under judicial review, especially due to the opportunity for misuse of the same by the employers, especially the owners of the sheltered companies. Also, it is worrying that these means are constantly decreasing, creating lack in the funds for employment and reasonable accommodation for persons with disabilities.⁶²

4.2. Education

People with disabilities have lower level of participation in all phases of the educational process, especially in secondary and higher education. Reports from the Ombudsman showed that children with disabilities included in regular primary education often do not complete their primary education but are studying a few years, and after some children continue their education in special schools and some drop out from school. Most common reason of premature drop out from primary education is the demands of parents for their child to stop schooling, but a large number of children left education because of their deteriorated health and lack of conditions and opportunities for further education in the mainstream education system. Also, some children leave the regular education because of resistance of the parents of other school mates, teachers' resistance or unacceptance by other pupils.⁶³ Especially vulnerable category are persons with mental disability. Namely, the researches shows that 31,4% of respondents believe that people with mental disabilities are the most discriminated in the education. Other types of disabilities, especially persons with physical disability are far more accepted by the society (14,7%).⁶⁴

Prohibition from discrimination *inter alia* on the ground of disability in the education is provided for according to Article 4 paragraph 2 line 2 from the ADL. Supplementary to this law, prohibition from discrimination in all phases of the education, starting from preschool and ending to the higher education, not distinguishing between public and private educational institutions are regulated by the Law on child protection⁶⁵, Law on primary education⁶⁶, Law on secondary education⁶⁷ and Law on higher education⁶⁸.

The preschool education is regulated with the Law on child protection which stipulates that public kindergarten provides care and upbringing of children with mental and physical disability in accordance with the type and degree of the disability (Article 48). Providing for care and upbringing of children with low degree of disabilities is carried out in regular groups with provided additional competent assistance and adapted programmes, and for children with moderate and severe disabilities in separate groups according to specialized programmes. The legal framework is inclusive and fairly clear. However, the problem arises in its proper implementation in practice, because these programmes for education of children with disabilities who need to be prepared by the Bureau for development of education and to be adopted by the Minister has not yet being adopted. And also, the problem occurs in some kindergartens which in practice refuse to enroll children with disabilities⁶⁹ or if already enrolled are expelled due to minor problems. From the data of the State Statistic Office in 2010 in total 23.157 children are enrolled in the primary schools from which only 52 children are

⁶² In the period between 2000-2011 this law is amended 8 times, decreasing the amount in the special fund from initial 15% to 5% from the total income on the ground of tax for permanent employment.

⁶³ See: Special report of the Ombudsman on inclusion of children with special needs in the education, October 2006, available at: http://www.ombudsman.mk/comp_includes/webdata/documents/Posebni%20potrebi%20na%20decata1%20-mk.pdf.

⁶⁴ See: E.Simoska, N.Gaber, A.Jovevska, P.Atanasov, K.Babunski, *Research project: How inclusive is the Macedonian society*, pp.51.

⁶⁵ See: *supra* note 7 Law on child protection, Article 9.

⁶⁶ See: *supra* note 7 Law on primary education, Article 2 paragraph 2.

⁶⁷ See: *supra* note 7 Law on secondary education, Article 3 paragraph 3.

⁶⁸ See: *supra* note 7 Law on higher education.

⁶⁹ See: M.Najcevska, B.Kadriu, K.Jandrijeska Jovanova, B.Cavkovska, V.Mora Bajrami, *Invisible for the society – Readiness to ratify of the Convention on the Rights of Persons with Disabilities*, Foundation Open Society – Macedonia, Skopje, 2011, pp.48.

with disabilities from which most of them are 5-years old (in total 28 children).⁷⁰ This is to small number that confirms the above stated finding.

In Article 44 from the Constitution it is stated that anyone has right to education, and the same is compulsory and free of charge. In addition, the Article 6 from the Law on primary education is stipulating that for children with disability (in the law referred to as: children with special educational needs) special condition for acquisition of primary education in mainstream and special schools are provided and they have the right to individualized assistance for the acquisition of elementary education and upbringing. If this article is read in conjunction with Article 10 paragraph 3 which states that "primary education for pupils with special educational needs are organized and carried in special schools and special classes in regular schools" will come to the conclusion that the inclusion of these children is only declarative and that in fact the aim of the legislator is not educating children with disabilities along with other children who have not disabilities in the same classes, but their subtle segregation. Where will the child with special educational needs obtain his education depends largely on the choice of the parent, i.e. the parent has the right to enroll his child with special educational needs in the mainstream educational system, "except in cases of special educational needs of the child are such that he should be enrolled in special primary schools" (Article 51 paragraph 1). Should be mentioned that in practice this exception should always be individualized, and should not be used to exclude *a priori* the whole group of persons with certain disabilities, from all or part of the educational process.

Furthermore, the law provides that realization of the educational activity with the pupils with special needs is organized through special curricula and programmes, tailored to their special educational needs (Article 30). These adjusted curricula and programmes should be of equal quality as those used for the education of children without disabilities. In addition, Article 42 paragraph 9 from the Law on primary education provides for possibility to hire a person with a completed degree in special education to help the teacher in classes where there are enrolled pupils with special educational needs. However, as long this is a possibility and not an obligation for schools, the same will not be fully respected, leaving the children with disabilities and teachers in schools without adequate assistance in implementation of the process of inclusion. Article 61 paragraph 2 from the Law on primary education states that "[p]upils with special educational needs are entitled to free transport regardless of the distance of their place of residence to the primary school". All these problems in the education of children with disabilities that often results in discriminatory practices are outlined in the Special report of the Ombudsman on inclusion of children with special needs in education from 2006⁷¹. Namely, the report notes that "in the practical application of the legal provisions there are a lot of problems and obstacles that do not allow for providing adequate and equal access for children with disabilities, and due to this often these children are discriminated when using their right to education".

While primary education, at least declaratively, is inclusive, the secondary education for persons with disabilities is far more segregated. Namely, according to Article 39 paragraph 1 from the Law on secondary education, "[t]he secondary education for pupils with special educational needs is educating students according to harmonized programs for vocational or educational profiles or for vocational training". When you take into account that vocational training programs are outdated and the jobs for which the students with disabilities are educated often do not correspond with the needs of the labor market, arise the question of the purpose of this education and then on the real possibilities of equalization of the chances for the persons with disabilities to apply and be employed in the open labor market. This means that, regardless of the potential that the people with disabilities have, under the current legal framework they are destined (doomed) for manual and minimum-payd jobs. I think that

⁷⁰ For more information see: Information for the public facilities for providing care and upbringing of children – kindergartens for 2010, State Statistic Office, Number.2.1.11.01, from 24 February 2011, available at: <http://www.stat.gov.mk>.

⁷¹ See: *supra* note 63 Special report of the Ombudsman on inclusion of children with special needs in the education.

this should be redefined in line with allowing the persons with disabilities to obtain their secondary education in the mainstream educational system on equal basis with others. In cases where no opportunity for regular education exists, offered educational programs should be developed towards sophisticated contemporary occupations that are required on the open labor market.

Lastly, the Law on higher education provides that all citizens will have, under equal conditions, the right to education in higher educational institutions (Article 7), while the anti-discrimination provision applies only to the procedure for selection of candidates. Namely, Article 108 paragraph 5 of the law provides that the procedure for selection of candidates for admission to higher education institutions guarantees equality to all candidates regardless of *inter alia* disability (the law refers to as: invalid). The two other provisions of law that refers to persons with disabilities are concerning protective measures that ease the process of learning for those persons. Namely, the first encompass the suitability for non-payment of tuition for persons that has first and second degree of disability (Article 87 paragraph 3), and the second concerns the right to special benefits provided by the Statute of the higher education institution for *inter alia* blind, deaf and persons that has first and second degree of disability (Article 150 paragraph 4).

An additional problem arises due to the inaccessibility of the educational facilities for persons with disabilities. Given that primary and secondary education is compulsory for all and only a small number of schools are accessible⁷², dilemma exists about the real enforceability of this legal obligation. Also, according to the Law on higher education (Article 150) all students can use the space, equipment, scientific and professional infrastructure of the higher education institutions, as well as the university facilities for sports and cultural activities and services offered under the category student standards (such as accommodation in students dormitories, paying for food in students restaurants with reduced prices etc), under equal conditions. However, if they are not accessible and available then the opportunity for students with disabilities is extremely relative and completely discriminatory. Also a problem is the inaccessibility of the digital space, i.e. inaccessible information and communication systems that instead of being a tool to improve inclusion of persons with disabilities in the educational process, become an additional obstacle.⁷³

As mentioned above, the legislation provides to a certain extent for inclusive education. In addition to the regular educational process, there is an opportunity for education in special classes in the regular educational system, as well as in specialized schools for different types of disabilities (physical, intellectual, sensory, mental or multiple)⁷⁴. According to the statistics in the school year 2010/2011, in the regular educational process in the primary education a total of 204,439 students in 990 schools were enrolled, from which no statistics

⁷² See: *Research report: Use of assistive information technology in primary schools in the Republic of Macedonia, current realities and needs*, Open the windows, Skopje, March 2011, pp.13-15. From in total 334 primary schools that exist in the Republic of Macedonia, in this report 238 schools are analysed (71,3%). From which accessible ramps on the entrance had 18,9% from the schools, adjusted indoor premises (classrooms and toilets) had 10,9% from the schools, and not a single school had an internal elevator. It is noticeable that the schools from Skopje region has higher degree of physical accessibility in comparison with the rest of the schools.

⁷³ See: *supra* note 72 *Research report: Use of assistive information technology in primary schools in the Republic of Macedonia, current realities and needs*, pp.9-12. From the analysed schools, 74,3% schools are using computers in the educational process, however only 40,8% from the pupils with disabilities are using computer on equal basis with others pupils due to unadjusted computer tools (assistive devices) and software adjustments. In addition, vast majority of schools (88.7%) feel that students with special educational needs can benefit from using computers, especially in mastering the educational programme/curricula.

⁷⁴ For more information on the conditions in specialised primary and secondary schools see: Information of the Ombudsman after the visit of the specialised primary schools “D-r Zlatan Sremac” and “Idnina” – Skopje, “Ss.Ciment Ohridski” – Novo Selo and state secondary schools for education and rehabilitation “Ss.Naum Ohridski” – Skopje and “Iskra” – Stip, February 2010, available at: <http://www.ombudsman.mk>.

exists how many of them are students with special educational needs, and in addition 1,013 students enrolled in 44 special schools with a total of 179 classes. As for the secondary education in the same school year a total of 94,155 students in 111 schools were enrolled, from which no statistics exists how many of them are students with special educational needs, and in addition 309 students were enrolled in a total of 4 special schools with 54 classes.⁷⁵

Analyzing the legislation in the field of education one can conclude that it does not provide systematic and comprehensive approach to achieving the right to education of persons with disabilities without discrimination, ensuring optimal development of individual capacities and abilities of children with disabilities. Thus, the prohibition of discrimination on grounds of disability should be explicitly laid down in the laws on primary and secondary education. Also, the educational institutions does not have a duty to provide reasonable accommodation and they are not to be taken accountable in case of unjustified failure to provide this accommodation for persons with disabilities, which is a serious flaw in the fight against discrimination against persons with disabilities, especially in the filed of education.

4.3. Access to goods and services

According to the ADL, discrimination is prohibited on ground of *inter alia* disability in access to goods and services (Article 4 paragraph 1 item 7 and Article 11).

The anti-discrimination legislation does not sets an obligation, the facilities and infrastructure to be designed and built in accessible manner for the persons with disabilities, although Article 8 paragraph 2 stipulates that unprovayding for accessibility of the infrastructure and the space will be considered as a form of discrimination. However, the duty and the standards for accessibility are envisaged under the Law on construction⁷⁶. It states that unimpeded access to and in the building represents one of the basic requirements for construction, which should be meet by every building depending on its purpose. Namely, according to Article 11 paragraph 1 the newly constructed buildings for public and business purposes and the buildings intended for housing and residential purposes, as well as buildings with residential and business purposes must be designed and constructed so to allow the persons with disabilities to have unimpeded access, movement, residence and work to and within these buildings. All details regarding the unimpeded access, movement, residence and work to and within these buildings are regulated with the Rulebook on means of securing unimpeded access, movement, residence and work of persons with disabilities to and within these buildings⁷⁷. What is important for this Rulebook is that it defines standards for accessibility of a range of facilities, both for public and business use, as well as residential facilities and facilities for residential and business purposes.

In addition, under Article 170 of Law on construction, already constructed buildings with public and business purpose must meet these conditions by the end of October 2013, and staircases in outer space for public use should be made accessible for persons with disabilities by October 2011. When we talk about accessibility of facilities, it is necessary to note that they should be accessible within their own buildings, and this is clearly highlighted by the

⁷⁵ See: Information on primary and secondary schools on the beginning of the school year 2010/2011, State Statistic Office of the Republic of Macedonia, Number.2.1.11.04, from 21 April 2011, available at: <http://www.stat.gov.mk>.

⁷⁶ See: Law on construction, *Official Gazette of RM*, No.130/2009, 36/2010, 124/2010, 18/2011, 36/2011, 54/2011, 59/2011 (consolidated text), 13/2012 and 39/2012 (consolidated text), available at: <http://www.mtc.gov.mk> and <http://www.slvesnik.com.mk>.

⁷⁷ See: Rulebook on means of securing unimpeded access, movement, residence and work of persons with disabilities to and within these buildings, *Official Gazette of RM*, No.25/2010, from 19 February 2010, available at: <http://www.mtc.gov.mk> and <http://www.slvesnik.com.mk>. The Rulebook is very progressive because it targets all persons with disabilities, i.e. physical, mentall as well as intellectual and sensoral disability and combined disability, and furthermore persons suffering from cronical diseases (Article 4 paragraph 1), defines broadly the facilities/buildings which has the duty to provide for unimpeded access, movement, residence and work of persons with disabilities (Article 5), and concretely explains all obligations that derives from it.

aforementioned Rulebook. Although legal timeframes are clearly stated, however, the author is on position that much of already build constructions, particularly objects of public use will violate the specified legal deadlines and thus it would bring into question the access of persons with disabilities to own facilities and services they are providing, which will constitute a discrimination. For example: the inaccessibility of the courts, banks, educational institutions and similar, seeing in conjunction with Article 11 of the ADL represents discrimination.

Despite the accessibility of facilities, the environment and the public transport should be accessible as well, i.e. roads with lowered curbs should be build, as well as intersections with traffic lights sound devices, tactile surfaces for the blind, as well as audio and visual announcements in public transport vehicles, introducing accessible buses, introducing adapted intercity bus services, accessibility of timetables and schedules, opportunities for visually impaired use and etc.

Despite the inaccessibility additional problem for persons with disabilities, especially those with sensory disabilities, is the inaccessibility of public resources that was tried to be overcome by adopting the Law on use of sign language⁷⁸. Namely, the sign language is recognized as a completely natural way of communicating equal to voice communication (Article 2, paragraph 1) and commits the state and the local authorities, judicial bodies, public enterprises, institutions, funds and other institutions and organizations, to provide to the deaf and slightly deaf person an interpreter upon request or ex officio (Article 7 paragraph 1). When this provision shall be read in conjunction with Article 8 paragraph 2 from the ADL not allowing for using of publicly available resources and participation in the public and social life of persons with disabilities will be considered a form of discrimination.

Additionally, for the persons with impaired sight, discriminatory practice is the conduct of banks that are not allowing for these persons to raise loans or receive credit cards without signature to the appropriate bank forms. This seemingly neutral provision or practice that applies to all equally is extremely unfavorable for persons with visual impairments who can not see on what they will put their signature, so this must go through a verified statement of power of attorney by a notary. Because of all these, the author suggests that this internal policy in the banking system should be interpreted flexibly precisely for this group of persons with disabilities, aiming at not causing adverse effect for around 2,700 blind people in the country⁷⁹.

In the area of housing, the ADL prohibits discrimination on grounds of *inter alia* disability (Article 4 paragraph 1 line 5). In addition, the Law on housing⁸⁰ stipulates that the adequate housing in addition to the minimum housing elements includes *inter alia* physical accessibility as well (Article 8 paragraph 3). This law also set up a Regulatory Commission that among other things prevents discrimination in the area of housing. As for the accessibility of the housing this obligation clearly arises from the Law on construction analysed above, but further to that Article 19 paragraph 1 line 12 of the Law on housing provides for obligation for the managers of the facilities to know the standards and norms for accessibility for persons with disabilities in residential premises. It is criticized the lack of financial grants that can be used for renovation and adaptation of existing housing premises according to the needs of persons with disabilities. It is needed to develop programmes for housing as well as providing equal access to publicly funded social housing programmes through existing affirmative measures in the area of housing.

⁷⁸ See: *supra* note 25 Law on use of the sign language.

⁷⁹ See: different requests for issuing credit cards and different kind of loans, available at: <http://www.stb.com.mk>; <http://www.kb.com.mk> and <http://www.nlbtc.com.mk>. Also, see the editorial in the daily newspaper Dnevnik: *Blind people on the margin of the society*, from 15 October 2007.

⁸⁰ See: Law on housing, *Official Gazette of RM*, No.99/2009, 57/2010, 36/2011, 54/2011, 13/2012 and 38/2012 (consolidated text), available at: <http://www.slvesnik.com.mk>.

4.4. Social and health protection

In Article 1 from the Constitution, the Republic of Macedonia is defined as a social state, supplemented by Article 35 paragraph 3, that establishes the state responsibility to ensure the social protection and social security of citizens, provides special protection for persons with disabilities (referring to as: invalids) and conditions for their full inclusion in society. This constitutional provision practically means an obligation of the state, within its social policy measures and overall normative-legal activity, to take account of the substantial equality of the persons with disabilities in comparison with the other citizens, so except for the general needs to take account of their specific needs as well.

The ADL provides for explicit prohibition of discrimination on grounds of *inter alia* disability in the area of social security including the area of social protection, pension and disability insurance, health insurance and health care (Article 4 paragraph 1 line 3). In addition, the Law on social protection⁸¹ provides protection against discrimination on grounds of *inter alia* disability (the law refers to as: impairment) in the exercise of the social welfare rights (Article 20 paragraph 1) which applies both to public and private institutions for social protection as well as to the civil society organisations and individuals who are providing services in the field of social protection (Article 20 paragraph 2). The realization of the social protection for the persons with disabilities is carried out through institutional and non-institutional forms of social protection, housing and awareness raising (Article 11 paragraph 3). Persons with disabilities, pursuant to Article 44 of the law, are entitled to financial assistance as well. Parents of children with physical or mental disability and severe chronic diseases are entitled to compensation for wages (loss earning) for part-time working time, due to the need for providing care for their child (article 44 paragraph 1 line 7).

In the Republic of Macedonia, a total of 8,211 children with disabilities are registered from which 4,871 are children with mental disabilities, 2,504 are children with physical disabilities and 836 are children with multiple disability. Of these, most live in their biological families, while 92 children are placed in foster families and 182 are placed in institutions⁸². Additionally, the state recorded a total of 5,206 persons with disabilities over 26 years of age, from which 2,256 people are with mental disabilities and 2,950 are persons with physical disabilities. Of these, most live in their biological families, while 20 were placed in foster families and 325 are placed in institutions⁸³. However these data are incomplete. Lacking of adequate and complete statistics on the number of persons with disabilities, among other things, hinders the assessment that all persons with disabilities who are socially vulnerable exercise their right to social protection. According to the State Statistic Office in 2010, the number of persons who received financial aid was 4,289 users, the number of users of care and support was 13,243 persons, or nearly 20% of the total social package, which indicates a large number of persons with disabilities who are socially disadvantaged.⁸⁴

⁸¹ See: *supra* note 7 Law on social protection, Article 20.

⁸² From which 70 childrens with moderate mental disability are accommodated in the Rehabilitation center for childrens and youth – Skopje, 79 childrens with severe mental disability are accommodated in the Special center Demir Kapija and 13 childrens with physical disability are accommodated in the Center for protection and rehabilitation Banja Bansko – Strumica.

⁸³ From which 19 persons with moderate mental disability are accommodated in the Rehabilitation center for childrens and youth – Skopje, 261 persons with severe mental disability are accommodated in the Special center Demir Kapija and 47 persons with physical disability are accommodated in the Center for protection and rehabilitation Banja Bansko – Strumica.

⁸⁴ For more details see: Information for facilities, forms, means and services for social protection for 2010, State Statistic Office, Number.2.1.11.11, from 25 May 2011, as well as: *supra* note 45 Statistic overview – Social welfare for children, juveniles and adults in the Republic of Macedonia 2010-2011. Namely, according to the statistics the number of juveniles with mental disability which are beneficiaries of social protection is 3.285 and the number of children with physical disabilities is 3.080 beneficiaries. From another side, total number of adults with disabilities which are beneficiaries of social protection is 14.379 from which 5.839 are women. That almost half of these persons are in the age group 60 and above, and this is valid for in total of 6.275 persons that confirms the vulnerability of elderly with disabilities, that can potentially be discriminated on more than one ground simultaneously.

As the field of health protection, the numerous prejudices of the medical personnel toward persons with disabilities, specifically on their quality of life and lifestyles, and even fear and anxiety they feel towards persons with disabilities, are affecting the health services that they are providing to these persons. This stand is reflected in the perception of the public supported in the conducted studies that finds that after drug addicts, the persons with disabilities are the most discriminated against in the health care delivery.⁸⁵ When we add to this that in the Law on health protection⁸⁶, the Law on health insurance⁸⁷ and the Law on public health⁸⁸ there are no anti-discrimination clauses and in the Law on protection of rights of patients⁸⁹ in the anti-discrimination clause there is no mentioning of disability as discriminatory ground, we will see that in this area much has to be done.⁹⁰ This could be a serious obstacle for achieving protection in cases of discriminatory treatment against persons with disabilities in connection with the exercise of the right to health protection and care. That is why the author believes that health care is one area in which the state should not only protect against discrimination, but should also guarantee the right of equality, while creating conditions for effective health care.

As far as deinstitutionalization, yet this process is still on the beginning in the Republic of Macedonia. Studies have shown that 27.6% of respondents believe that persons with mental disabilities should be placed in separate institutions and 19.8% are not having a position on that, which amounts to a large percentage of people who believe that institutionalization is still acceptable⁹¹, even though segregation is a form of direct discrimination. However, the state policy of deinstitutionalization, which was clearly elaborated in the National Strategy for deinstitutionalization in the social protection system in the Republic of Macedonia⁹², should be epitomized by developing new and enhancing the existing systems of non-institutional protection for persons with disabilities (social services in residential areas as support to the persons with disabilities and their families, providing for care in foster families, small family group home, etc.)

Living conditions in institutions do not meet the required minimum standards due to: inadequate and poor nutrition, inadequate health protection and care, lack of education and lack of privacy (clothing and items for personal use), and lack of clear criteria for selection of groups of residents (by sex, age and abilities) and the lack of sufficiently trained staff.⁹³

According to the data from the Ministry of Labour and Social Policy at the end of 2008, 962 persons were placed in an institution for social protection. As stated above, the process of deinstitutionalization of persons from the Special center in Demir Kapija (facility which accommodates persons with severe and profound mental disabilities) is started. At the end of the process is planned all housed 192 persons to be deinstitutionalized. Currently, from this institution 58 people were deinstitutionalized and 5 people as a measure of prevention

⁸⁵ See: *supra* note 2 E.Simoska, N.Gaber, A.Jovevska, P.Atanasov, K.Babunski, *Research project: How inclusive is the Macedonian society*, pp.48-49.

⁸⁶ See: *supra* note 7 Law on health protection.

⁸⁷ See: Law on health insurance, *Official Gazette of RM, No.19/2011* (consolidated text) and *53/2011*, available at: <http://www.moh.gov.mk> и <http://www.slvesnik.com.mk>.

⁸⁸ See: Law on public health, *Official Gazette of RM, No.22/2010* and *136/2011*, available at: <http://www.moh.gov.mk> and <http://www.slvesnik.com.mk>.

⁸⁹ See: *supra* note 7 Law on protection of rights of patients, Article 5 paragraph 2.

⁹⁰ In the Law on mental health it is stipulated that “person with mental disease should not be discriminated on the grounds of his mental health”. See: Law on mental health, *Official Gazette of RM, No.71/2006*, from 8 June 2006, Article 7 paragraph 2 and Article 20 paragraph 4, available at: <http://www.slvesnik.com.mk>.

⁹¹ See: *supra* note 2 E.Simoska, N.Gaber, A.Jovevska, P.Atanasov, K.Babunski, *Research project: How inclusive is the Macedonian society*, pp.69.

⁹² See: National Strategy for deinstitutionalisation in the social protection system of the Republic of Macedonia 2008-2018, Ministry of Labour and Social Policy, December 2007, available at: <http://www.mtsp.gov.mk>.

⁹³ See: *Human Rights of Persons with Intellectual Disability, Country Report for Republic of Macedonia*, Inclusion Europe and Republic Center for Helping Persons with Mental Handicap – Message, January 2002, pp.5 and pp.28.

from institutionalization, which now are housed in 7 residential units for independent living with community support in Negotino and 7 residential units for independent living with community support in Skopje, with 4-5 people each living in one residential unit. This process, although still at the beginning, is extremely important because the institutionalization can be seen as a form of segregation, which is a form of direct discrimination against persons with disabilities. Thus, we should take all necessary steps for its intensifying and making it sustainable.

Conclusion

From the foregoing it can be concluded that discrimination on ground of disability is a widespread phenomenon throughout the world, and the Republic of Macedonia is no exception to this trend. As far as national legislation is concerned, in the recent years an anti-discriminatory legal framework is created that can be taken as a relatively solid foundation upon which the future case law should be created.

However, in many areas further improvements are needed, such as:

1. The definition of disability and/or the protected group (persons with disabilities) in the anti-discrimination legislation should be incorporated, especially in the ADL embedding the social model of seeing the disability. Furthermore, defining of this phenomenon or the protected group should be incorporated in the other laws providing for *inter alia* protection of the persons with disabilities, such as: the Law on social protection, Law on employment of invalids, Law on invalid organisations, Law on child protection and the Law on use of the sign language.
2. Aligning the definitions of all forms of discrimination, especially the indirect discrimination, as well as all exception from discrimination from the ADL with the EU acquis.
3. Elaboration of the legal institute – reasonable accommodation in the direction of creating jurisprudence it will be paramount. Namely, the provision should be enlarged to include not only the adjustment of infrastructure and services. Furthermore, the Law should be amended in light of defining the term “appropriate measures” to enable a person with a disability to claim reasonable accommodation accordingly. In addition, the Law should distinguish between important and essential working duties and the ones that are marginalized and unimportant. And finally, in determining whether the measures in question give rise to a disproportionate burden, this legal institute in the national legislation should be analyzed and conditioned with nature and cost of the accommodation; the financial and other costs entailed, including the benefit of the accommodation; the scale and financial resources of the organisation or undertaking; the type of business that the legal entity conducts, including the structure of the work force; and the possibility of obtaining public funding or any other assistance.
4. Individualizing the criteria *general good health* as a general condition for employment, especially for persons with disabilities in the Law on civil servants, Law on courts, Law on bar, Law on police, Law on army service of the Republic of Macedonia, Law on foreign affairs, similarly as it was done in the Law on labour relations.
5. Providing systematic and comprehensive approach to achieving the right to education of persons with disabilities without discrimination and on an equal basis with others in the legislation in the field of education. Namely, the prohibition of discrimination on grounds of disability should be explicitly laid down in the laws on primary and secondary education. Furthermore, individualizing the exception provided in the Article 51 paragraph 1 from the Law on primary education, and not using it to exclude *a priori* the whole group of persons with certain disabilities, from all or part of the educational process. The adjusted curricula and programmes for pupils with special needs should be of equal quality as those used for the education of children without disabilities. There should be duty to hire a person with a completed degree in special education to help the teacher in classes where there are enrolled pupils with special

6. Providing and guaranteeing the accessibility of facilities, environment, public transport and the systems for information and communication, as well as the availability of the public resources for the persons with disabilities is fundamental for their independence, inclusion and mobility. Namely, full implementation of the Rulebook on means of securing unimpeded access, movement, residence and work of persons with disabilities to and within buildings for public and business purposes and the buildings intended for housing and residential purposes, as well as buildings with residential and business purposes, should be secured. Furthermore, internal policy in the banking system should be interpreted flexibly precisely for the person with visual impairment that are not allowed to raise loans or receive credit cards without signature to the appropriate bank forms.
7. Overcome the numerous prejudices against persons with disabilities especially their quality of life and lifestyles aiming to provide solid healthcare and social protection. Include the disability as discriminatory ground in the anti-discrimination clause existing in the Law on health protection, the Law on health insurance, the Law on public health and the Law on protection of rights of patients. Furthermore, providing for adequate and complete statistics on the number of persons with disabilities.
8. Intensifying the process of deinstitutionalization and making it sustainable by developing new and enhancing the existing systems of non-institutional protection for persons with disabilities (social services in residential areas as support to the persons with disabilities and their families, providing for care in foster families, small family group home, etc.).