

“EVEN IF I COMPLAIN,  
IT WILL BE IN VAIN...”

Skopje, 2009

*Analysis of the relevant legislation and Citizen Logs in order to resolve the equal treatment of the Roma and facilitate the access for them to the state institution services in the Republic of Macedonia, especially for the Roma women*

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## Abbreviations

EARM	– Employment Agency of the Republic of Macedonia
EU	– European Union
ECHR	– European Court on Human rights
MI	– Ministry of Interior
MLSP	– Ministry of Labor and Social Policy
NGO	– Nongovernmental organization
NAP	– National Action Plan
PO	– Ombudsman
CE	– Council of Europe
EOS	– Equal Opportunities Sector
UN	– United Nations
CEFVW	– Convention of elimination of all forms of discriminations against women
UNIFEM	– United Nations Development Fund for Women

## Introduction

In December 2007 the Ministry of Labor and Social Policy – Sector for Equal Opportunities, in cooperation with representatives from the relevant Ministries and female representatives from the relevant Roma NGOs, developed a National Action Plan for Improvement of the Roma Woman (National Action Plan) in the frames of the already adopted National Strategy for Roma in Macedonia<sup>1</sup>. In the same time special operational plans for the period 2008-2010 were developed. This National Action Plan and the operational plans for improvement of the Roma women status in Macedonia were adopted by the Government of the Republic of Macedonia on its 139<sup>th</sup> session held on 23 March 2008. The Minister for Labor and Social Policy is in charge to implement this Action Plan, in cooperation with all the relevant Ministries and Institutions. The National Action Plan for improvement of the Roma women includes strategic objectives and specific activities in 5 priority areas:

- 1. Education**
- 2. Employment**
- 3. Health**
- 4. Public and political involvement of the Roma women, and**
- 5. Fight against discrimination and human rights**

No progress has been made from the adoption of the National Action Plan till this activity, with regards to implementation of the activities.

The Sector for Equal Opportunities in the Ministry of Labor and Social Policy, supported by UNIFEM (United Nations Development Fund for Women) – Skopje for this purpose undertook initiative to implement a joint project with aim to survey the existence of discriminatory practices towards Roma women by the civil servants and increase the awareness of the official persons and civil servants regarding their responsibility to ensure equal treatment towards all the citizens.

The information received from the survey should contribute towards implementation of one (from the total of five) strategic priorities of the National Action Plan for Roma women i.e. the strategic objective regarding the human rights of the Roma woman.

It is important to underline that this is a first research of its kind that was implemented by a state institution in the Republic of Macedonia.

This survey is based on the assumption that the Roma, especially the Roma women, are faced with unequal treatment when using the services in the state institutions when compared to other ethnic groups. There are many analysis and reports that point out to the fact that most of the violation of the rights happen exactly at the state institution counters when they are approached by the Roma in order to use specific service. This lead us to be focused in more depth on this issue in order to have an insight in the situation. The analysis we did included the legal framework and the experience of the citizens and had, as an output, two documents which are complementary in their recommendations.

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1 Strategy of the Government of the Republic of Macedonia for improvement of the Roma status

## Subject of the survey

During the last decade the status of the Roma in the society, their marginalization, exclusion and discrimination are topics that were included in numerous analysis and reports. Although the reasons and the motives for these documents and multiple, a common thread for all of them is that the special conditions, needs and violations of the Roma human rights are becoming more and more an issue of national and international interest.

According to the National Constitution of the Republic of Macedonia, the Roma are citizens with equal rights and responsibilities like all others that enjoy the basic human and citizen rights as such.

The current statistics show that the Roma in Macedonia are faced, mainly, with development challenges. However, there are documented cases that confirm the widely spread discrimination on this ethnic group which is significantly impeding the enjoyment of the basic human rights. In this regard, the Roma women suffer double discrimination – not only in their respective communities due to stereotypes and traditional values but also in the public area due to their social stratification (educational level, the gender and ethnic background, etc.) According to the CEDAW Shadow Report on the Roma women in Macedonia published in 2005, the discrimination in the access to education, health insurance, employment and citizenship are the main problems faced with by this group<sup>2</sup>.

Due to the presence of discrimination and various approach and attitude of the civil servants, the realization of the basic human rights is impossible since the rights very often depend from one another.<sup>3</sup> Due to this situation the Roma women are faced with difficulties when they try to obtain the basic documents and they also have limited access to education, participation on the labor market and in the decision making processes on national and local level.

This survey will be used as a tool to increase the awareness of the Roma women as well as to increase the awareness of the civil servants that have legal and ethnical responsibility for equal treatment of all citizens.

## The methodology

There is no doubt that the discrimination is a complex social phenomenon which has been researched from sociological, psychological, historical, political, gender and legal aspects. This survey aims to provide an analysis of the discrimination faced with by the Roma population when they approach the state authorities in their efforts to obtain personal documents. Beside the intention to contribute to the general corpus of knowledge regarding the status of the Roma in the Republic of Macedonia (which knowledge is currently quite limited), this survey also has a pragmatic objective – to provide specific recommendations for actions that will provide efficient implementation of the equality principle. Therefore the problem is treated with interdisciplinary approach – on one side it provides an overview of the current legal framework for protection of these rights and, on the other side it provides collection of field

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2 Amnesty International Report, p. 9

3 CEDAW Shadow Report on the status of the Roma women in the Republic of Macedonia, 2005



information by using sociological methods.

The analysis is focused on the legal acts and practices in two Ministries – Ministry of Interior and the Ministry of Labor and Social Policy. These two Ministries were selected because they are in charge to decide on the citizenship, personal I.D. documents, passports, social insurance. The realization of rights covered by other Ministries (such as education and health) is not included by this survey since these rights add to the basic rights for access to personal documents. Therefore we underline that the selection of these two main Ministries does not mean that the discrimination is more present in these Ministries and less present in the work of the Ministries that cover education, health or the local self-government units.

Although the methodology used in the legal and sociological survey of the problem is quite different and the analysis were made by the survey teams it is important to point out that the field survey intends to support the legal survey with facts and obtain statistical information about the discrimination problem. The entire survey was motivated from the comments from various international observers that report in the area of human rights which specifically point out on the lack of statistical information on the direct and indirect discrimination.

The first part of the survey provides analysis of the international and local legal acts, including recommendations for their harmonization regarding the ethnic and gender discrimination. This part of the survey starts by analyzing the general principles of the law by which the states-parties to international legal instruments in the relevant areas accept their positive obligation to treat all the citizens equally not only from the aspect of their ethnic and gender background but also including those citizens who are facing difficulties due to their illiteracy. We are also analyzing the local legislation in this area. This section starts by analyzing the Law on Equal Opportunities Between Men and Women as well as the Draft Law on Protection From and Prevention of Discrimination. This is followed by overview of the laws and bylaws that regulate this matter in the frames of the Ministry of Labor and Social Policy and the Ministry of Interior. Subject of the second analysis (the field survey) are the attitudes of the two target groups with regards to their mutual relations:

- The attitudes of the civil servants towards the Roma, with special emphasis on the Roma women in the case of direct communication i.e. when requesting and providing counter services; and
- The attitudes of the Roma, with special emphasis of the Roma women towards the civil servants if their rights were violated.

The survey intends to identify the reasons that are causing the inappropriate treatment by the civil servants and the employees in the state institutions and agencies towards the Roma and Roma women and identify their interaction.

The subject and focus of this survey is to identify the attitude of the civil servants towards the Roma/ Roma women.

# Analysis of the legal framework

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## The state administration bodies and authorities and the Roma in the Republic of Macedonia

### 1. Background

**1.1. The survey context.** There is a good number of analyses<sup>4</sup> that point out to the fact that the Roma from many countries are faced with the discriminatory attitude by the state administration authorities.<sup>5</sup> The difficult access to the basic documents (I.D. documents) leads to a chain reaction – the individual who can not be obtain or more required documents is further prevented from enjoying a series of human rights. The chain reaction includes difficulties when trying to obtain birth certificates, I.D. document, residential permit, documents required to apply for social benefits from the state, passports, etc. One part of this vicious circle is the impeded right to ownership, health insurance, education, employment or the right for personal involvement. On the other side, the state administration bodies will find important that the process of registration of the individuals living on its territory is smoothly implemented. These records are necessary for creation of all state policies – economic and other policies, for proper allocation of budget funds as well as for provision of general security in the state.

**1.2. Subject of the survey.** This survey provides analysis of multiple laws and bylaws in the Republic of Macedonia that regulate the obtaining of documents that guarantee the basic status of the citizens and provides the citizen with opportunity to enjoy all his/ her basic rights. These documents are: citizenship certificates, extracts from the birth registry, personal I.D. document, passports, social insurance, labor relations, employment and insurance in the case of unemployment. In addition to this it is important to emphasize that the only criterion we used to select this area for survey is the knowledge that exactly these legal areas regulate the first and initial steps that the citizen needs to further enjoy an entire series of other rights. Due to these reasons, the areas which regulate the access to health protection or regulation (these issues are of significant importance for the Roma population and they are not covered at all by the analysis).

Secondly, it is obvious that the selected laws and bylaws cover exceptionally difficult and diverse area. It is important to emphasize that this survey does not do comprehensive analysis of these laws from the aspect

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4 Field surveys carried out in the former Yugoslav Republics carried out during 2000/2 by the European Center on Roma Rights. The local monitors involved are NGOs that monitor the development of the Roma rights: Helsinki Committee of Human Rights in the Republic of Srpska in Bijeljina, Bosnia and Herzegovina, Association for Protection of Roma Rights from Shtip, Macedonia, Center for Minority Rights in Belgrade, Serbia. <http://www.errc.org/cikk.php?cikk=1097>

5 Somewhere this problems is very dramatic, such is the case with the legislation in Czech Republic from 1999/2 created with a purpose to prevent the numerous Roma legislation to obtain citizenship. More about this issue and on the international pressure for this legislation to be changed: <http://www.errc.org/cikk.php?cikk=1055>

of their impact on the Roma population.<sup>6</sup> This survey has a unique objective – improve the communication between the state authorities and the Roma population by identifying the possibilities for discrimination and increase the monitoring of the service where such discrimination is likely to occur.

Thirdly, the survey aims to respond to the question in what way the normative framework from the area of protection from discrimination (done by the state administration authorities) impacts the status of the entire Roma population. In addition to this main objective, the survey also aims to dedicate special attention to the legal status of the Roma woman so the legal framework defined by the Law on Equal Opportunities has been considered. Since the Roma woman is a potential victim of double or multiple discrimination, the research aim to assess how sensitive the analyzed legal acts are with regards to multiple discrimination. Additional focus here is the status of the illiterate persons (where the percentage of women is quite high). In order to cover also the legal status of this group, the survey provides analysis of the presence of the legal principle for obligation of the state for reasonable adaptation.

Fourth, since the Law on Prevention and Protection from Discrimination will soon be adopted, it is highly likely that there is a series of activities for its implementation and harmonization of the discrimination provisions in a series of legal areas. It is probable to expect that there will be also changes in the subject covered by this document. The draft Law on Prevention and Protection from Discrimination foresees increased implementation and monitoring that can also cause positive changes for the Roma population. This goes especially for the commitments that this Law regulates the severe form of discrimination. If this legal institute becomes alive it will have significant effect on the status of the Roma women that are victims of multiple discriminations.

**1.3. The survey methodology.** This survey will analyze the said legal acts from the aspect of their influence on the Roma population rights, for their equal treatment by the state authorities and bodies. In this regard the survey will rely on the general legal principles for protection from discrimination established by the international law, the Constitution of the Republic of Macedonia and the Law on Equal Opportunities of Men and Women.<sup>7</sup> The analysis should show whether the act imposes obligation on the state authorities to consider the needs of the Roma population and principles of equal treatment and non-discrimination. This will be followed by review of specific provisions that discriminate directly or indirectly. The available complaint mechanisms will be considered in this regard. According to the international law, the Government is responsible for indirect discrimination done by the state authorities even when there was no discrimination intention by these state authorities and if the state can not show that it was discriminating due to reasonable and legitimate objective. This method will rely directly on the international standards. In the court law, whenever there is a discrimination case it is common to rely on statistical information. One of the primary objectives of our survey is exactly

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<sup>6</sup> For example, any change in the requirements for obtaining citizenship can be damaging or in favor of the Roma. The same goes for any change in the Law on Labor Relation that impacts the Roma population in general and the position of the Roman women. It is assumed that care will be taken about the situation of the Roma when proposing changes to these laws in order to avoid eventual provisions that would introduce indirect discrimination.

<sup>7</sup> Draft Law on Prevention and Protection from Discrimination which is still not adopted in the time of writing.

the need to start the collection of this information.<sup>8</sup> The collection of statistical information will serve as a proof for whether some virtually neutral provision has worse effect on the Roma or Roma women than on other people. Furthermore, this survey will also aim to answer the question whether the positive obligation of the state for reasonable adjustment to the needs of the illiterate persons has been met.

The survey will start with short explanation of the current provisions for equality of the citizens in front of the Law in the international and European regional system. This will be followed by explanation of the valid definition on the nature of the equality and obligation of the state for reasonable adjustment. Further analysis of the legal acts of the Republic of Macedonia and the identified discrimination will be based on the arguments mentioned in this text. The legal analysis will finish with several conclusions as well as with recommendations to change the normative framework.

## **2. International standards<sup>9</sup>**

### **2.1. United Nations**

#### **International Convention on the Elimination of All Forms of Racial Discrimination**

This Convention has been ratified by the Republic of Macedonia on 18 January 1994.<sup>10</sup> The Committee on the Elimination of the Racial Discrimination does permanent monitoring of the situation in this area in the Republic of Macedonia. The Committee monitors the development and implementation of the National Strategy on Roma in the Republic of Macedonia<sup>11</sup>. In 2007 the Committee has especially recommended removal of all administrative barriers faced with by the Roma population in their access to personal documents which they need in order to be able to enjoy a series of economic, social and cultural rights.<sup>12</sup>

According to the provisions in the Convention on the Elimination of All Forms of Racial Discrimination, this definition means every distinction made between the people on the basis of their race which aims to limit the realization of the “human rights and basic freedoms in political, economic, social, cultural or any other area of the public life”. This provision imposes many positive obligations on the states. The states are obliged to deliver policies

8 Refer to Overview of the results from the field survey.

9 Macedonia has ratified all the basic international legal instruments which are related to protection of the human rights. According to the Constitution, all ratified international agreements become part of the local legal system. Since Macedonia is obliged in relation to these agreements, the antidiscrimination provisions impose obligation on the state – its administrative, legal and judicial system. Some of the ratified international legal instruments are: the International Charter of Citizens and Political Rights from 1966, International Charter on Economic, Social and Cultural Rights from 1966, International Convention on Elimination of the Racial Discrimination from 1965, Convention on Elimination of All Forms of Discrimination Against Women from 1979 and the Convention on the Rights of the Child from 1989. In the frames of the European legal area, Macedonia has ratified the European Convention on Protection of the Human Rights and Fundamental Freedoms from 1950 as well as the Framework Convention for Protection of the National Minorities from 1995 and the European Social Charter from 1996.

10 Collection of instruments relating to the international protection of human rights, Vol. 1, International Institute of human rights, 205.

11 CERD/C/MKD/7 para 47-50; CERD/C/MKD/CO/7 para 7-8.

12 CERD/C/MKD/CO/7 para 14.

that will aim towards elimination of the racial discrimination and ensure that “all state authorities and state institutions, on national and local level, will act in accordance with this provision”. They will undertake “effective measures to consider the government, national and local policies” by “changing, revoking or abolishing all the laws and regulations that create or maintain the racial discrimination“

While the legal acts that include provisions for direct discrimination are easier to identify, in the cases of indirect discrimination we are talking about virtually neutral provision which, if implemented in practice, has an effect on specific group of people, Even when the Governments had no such intention, the indirect discrimination is contrary to the international law. In order to prove the indirect discrimination it is sufficient to show that specific policy, without justified reasons, has disproportionately large negative effect on specific minority group. However, making difference is still allowed when it comes to introduction of positive treatment of a group that was initially mal-treated, but only within certain time period.

According to the United Nations Committee on Human Rights<sup>13</sup> positive treatment is allowed only if the criteria on which it is based are reasonable and objective and if its objective is legitimate one in accordance with the international law standards. These measures are treated as integral part of the generic quest for equality.

A series of international legal instruments regulate the same issues<sup>14</sup>. Without intending to go deeper into this rich area, we will point out that some international legal instruments allow for discrimination on the basis whether the specific person has or does not have citizenship of a particular state,<sup>15</sup> although in the modern law there is an attitude that the lack of citizenship is not justification for violation of the basic rights of the individual.<sup>16</sup>

### **International Convention on the Elimination of all Forms of Discrimination against Women**

Being a successor state of the former Socialist Federal Republic of Yugoslavia, the Republic of Macedonia acceded to the Convention on 18 January 1994.<sup>17</sup> By doing so, Macedonia undertook the compulsory responsibility towards the international community for undertaking measures, improvement of the situation in all respective areas and for regular notifications. The Republic of Macedonia signed also the Optional Protocol to this Convention in 2000 which was ratified on 24 June 2003 and entered into force on 17 October 2003.<sup>18</sup> This Convention introduced a series of positive changes in the Republic of Macedonia such as the adoption of the Law on Equal Opportunities of men and Women. The elimination of discrimination and the principle of equality of men and women are guaranteed in a series of legal areas such as employment,

13 General comment No.18: <http://www.unhchr.ch/tbs/doc.nsf/0/3888b0541f8501c9c12563ed004b8d0e?Opendocument>

14 For example, the International Charter on Citizens and Political Rights from 1966.

15 International Charter for Elimination of the Racial Discrimination from 1965.

16 For example, the Committee on Human Rights of the United Nations

17 Collection of instruments relating to the international protection of human rights, Vol. 1, International Institute if human rights, 259.

18 National Action Plan on Gender Equality, 2007-2012, <http://www.mtsp.gov.mk/WBStorage/Files/NPARR-finalen%20dokument.pdf>

education, health protection, social policy, human rights. The protection of the human rights, the prevention of discrimination and promotion of full and effective equality are included in the criminal, civil and administrative legislation. From institutional perspective a Sector for Equal Opportunities has been established in the Ministry of Labor and Social Policy in 2007, coordinators were introduced in the Ministries and in the local self-government units as well as a Committee on Equal Opportunities for men and women was established in 2006 in the Parliament of the Republic of Macedonia. The reports issued by the bodies in charge for this Convention especially raise concern regarding the status of the Roma women in the Republic of Macedonia.<sup>19</sup>

Article 1 from the International Convention on the Elimination of all Forms of Discrimination against Women refers to protection of equality in “political, economic, social, cultural, civil and any other area”. According to Article 2, the states-signatories oblige that they will eliminate the discrimination against women by introducing the principle of equality in their respective Constitutions and other laws, and that these principles will be implemented in practice, that all discriminatory laws, regulations, customs and practices will be abolished and sanctions will be introduced in the case of discrimination: “The State will with-stand from any act or practice of discrimination against women and will ensure that the state authorities and institutions will act in accordance with this obligation”.

## **2.2. Council of Europe**

### **Convention for the Protection of Human Rights and Fundamental Freedoms**

This Convention has been ratified by the Republic of Macedonia on 10 April 1997. The membership of the Republic of Macedonia in the Council of Europe has its effect towards strengthening of the mechanisms for monitoring of the application of the human rights protection. The European Commission reports against racism and non-tolerance recommend to the state administration to make detailed research of the difficulties the Roma are faced with when trying to obtain basic personal documents.<sup>20</sup> The same Report recommends to the Republic of Macedonia to create a monitoring system that will provide statistics on the discrimination towards various ethnic groups in many areas whereas special attention should be paid to the gender dimension due to the danger from double and multiple discriminations.<sup>21</sup>

The European standards provide insight on how exactly to identify the cases when the discrimination is prohibited. In accordance with Article 14 from the European Convention for the Protection of Human Rights and Fundamental Freedoms, “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”. The European Court for Human Rights allows a positive treatment if such treatment has “objective and rational justification”, “legitimate purpose” and “reasonable proportionality between the means used and the objective that should be

19 CEDAW/C/MKD/CO/3, para 27.

20 CRI(2005)4, para 109-111.

21 CRI(2005)4, para 81.

realized “.<sup>22</sup>

### 2.3. The European Union

In April 2007 the Republic of Macedonia adopted the updated National Plan for Adoption of the European Union Acquis for the period 2007-2010. This Plan includes all the measures, activities, documents, institutional arrangements and budget funds through which the established priorities will be met including the European Union accession. Some of these commitments are related to implementation of the principles for equality and non-discrimination on various bases. The provisions that provide guarantees for the equality principle are integrated in the legislation of the Republic of Macedonia, especially in the area of labor relations and social insurance, although the European Commission Progress Report still talks about the weak administrative capacity in the area of equal opportunities. Because of that the effective implementation is lacking.<sup>23</sup> The same Report also talks about slight improvement of the administrative capacities in the area of equal opportunities. In the area of anti-discrimination on all other bases, including the attitude of the Roma, there is no improvement of the situation. The Report points out that still there is no any statistical information available for direct and indirect discrimination.<sup>24</sup>

In addition to equality between men and women, the European Union Acquis foresees equal treatment on the basis of racial and ethnic background, religion and belief, handicap and disability, sexual orientation and age. The provision for protection for women has been included in the European Community Acquis since the very beginning and, in time, this protection has spread through large number of legislative acts as well as through the jurisprudence of the European Court of Justice. Currently the Directive 2006/54/EC consolidates seven previous Directives for protection of the women<sup>25</sup>, mainly in the areas related to labor relations.

The Directive 2000/78/EC was introduced in the year of 2000. This Directive provided general framework for equal treatment in the labor relations and occupations, although the material scope of its application is not so extensive as it was the case with the Directive 2000/43/EC which implements the principle of equal treatment of the people regardless of the racial and

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22 The Committee of Ministers at the Council of Europe from Protocol 12 introduce obligation according to which the protection of the persons suffering from discrimination is expanded to at least four dimensions: “in the enjoyment of every right that is vested in the individual in accordance with the national law; in the enjoyment of a right from which the state authorities have clear obligation in accordance with the national law i.e. where the national law imposes obligation on the state authorities to act in specific manner; when the public authorities have abused their discretion power (for example, to grant social assistance); with any failure (omission) to act by the public authorities (for example, behavior of the police during strike).”

23 COM (2009) 533, 53.

24 COM (2009) 533, 54.

25 Directive 2006/54/EC of the European Parliament and the Council from 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation consolidates the following Directives: Council Directive 75/117/EEC on equal pay; Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, amended with the Directive 2002/73/EEC; Council Directive 97/80/EC on the burden of proof in cases of discrimination based on sex, amended by the Directive 98/52/EC and Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes, amended by the Directive 96/97/EC.

ethnic background. Indeed, the Directive 2000/43/EC according to its scope of implementation is the most ambitious one. It is expanding its field of effect in many areas that are beyond the area of labor relations. The indirect discrimination is proven on every possible way, including statistical information. The indirect discrimination by the public authorities is prohibited even in cases when no discrimination intention can be ascertained. It is especially important to have into consideration that the scope of effect of this Directive are the public and private sector with regards to employment, social protection (including social insurance and health protection) and “access to supply with goods and services which are available to the public, including housing”. If it is justified it is allowed to make differentiation between the persons. All laws and administrative acts and policies that prohibit equal treatment are considered illegal. The burden of proof is on the accused. Monitoring is necessary in all member states, the sanctions must be convincing and the victim must receive compensation. The European Commission is obliged to provide periodical notifications on the level of application/ enforcement of the Directive in each and every member states. In this regard the Commission must also take into account the assessments from the NGOs.

For this survey it is necessary to refer to the extensive activity of the European Union in the form of “hard” and “soft” law which implements the principle of equality and due to one more question – the European Union is involved in a series of policies which are indented for application of the concept for equality and human rights among the socially excluded categories. In this sense we can refer to the “European Parliament resolution on illiteracy and social exclusion” (2001/2340 (INI) from 7 February 2002. This is an interesting example of the “Open coordination method” which is very much present in the legal area of the European Union. For our survey this is important as an argument for the correlation between the illiteracy and the social exclusion.

## **2.4. The concept of substantial equality and the positive (legal) obligations**

### **The positive (legal) obligations that derive from the human rights and the substantial equality**

“Equality” can be defined in formal or in more substantial sense.<sup>26</sup> The formal approach to the equality is based on the Aristotle definition that the equal cases should be treated equally. The substantial equality is based on the premise that different cases should be treated differently, in proportion with the difference between them. The formal approach to the equality emphasizes the irrelevance of the difference and importance for equal treatment while the second case recognizes the possible relevancy of the differences and aims to promote the equality and to focus on realization of equal results. The difficulty with the formal approach is that there is still room in which it is necessary to determine whether the two cases are indeed equal. On the other side, the substantial approach provides greater explicitness of the values that are in the background of the choice: when the equal treatment leads towards increase in the inequality then the real question is whether these differences create obligation for differences in the treatment.

According to the traditional belief, the civil and political rights mainly



include negative obligations – the prohibit the state authorities to interfere with the individual freedoms such as, for example, the freedom of expression. It was considered that the social and economic rights mean positive obligation to promote, ensure and realize these rights, such as the right to work. The contemporary law, such as the General Recommendations of the bodies in charge for implementation of the UN contracts and the judicial law of the European Court of Human Rights have the standpoint that all the human rights understand positive and negative obligations. It is considered as a consequence from accepting the indivisibility and the interdependency of the human rights.<sup>27</sup>

This “approach of obligations” was developed with the implementation of the instruments for protection of the human rights. The types of obligations are mainly described as “negative” obligation for respect of the rights as well as “positive” obligation for protection and realization of the rights. If applied on the equality principle, the positive obligations mean that the states sometimes have to undertake measures in order to introduce or at least promote equality. This obligation of the state can even include measures that also bind third parties. The measures that will be undertaken could have financial implications. The European Court of Human Rights already has a standpoint that the European Convention understands positive obligations in its legal reasoning (in the case *Airey from 1979*).<sup>28</sup> Similar reasoning with regards to the positive obligations of the state has been applied on the *Marckx case*.<sup>29</sup> When interpreting Article 14 of the European Convention on Human Rights, the Court developed an approach according to which the prohibition for discrimination does not only understand different treatment of the persons that are in the same situation without providing objective and reasonable justification for such treatment. On the contrary – the Court even identified violation of the non- discrimination provision in cases when the states will fail to treat differently the people that are found in significantly different circumstances, without having objective and reasonable justification in that regard.<sup>30</sup>

This refers to the attitude that the substantial equality approach is closely related to the ultimate objective – the universal human rights should be guaranteed to everyone. The obligation of the state to provide reasonable

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27 A/CONF.157/23, Vienna Declaration and Action Program.

28 In this case we are talking about the right to access to court, foreseen by Article 6 of the European Convention on Human Rights. This article implies that free legal assistance should be introduced in specific circumstances. The court has rejected the standpoint of the Iranian Government according to which, when the plaintiff is not faced with obstacles in the realization his/ her right to access to court, in that case the complaint is ill founded. The court emphasized that the right to access must be “effective” right: “the implementation of the duty designated by the Convention in some cases requires positive action by the state – in such cases the state can not simply remain passive”. “There is no room to make distinction between the action and the omission”. ECtHR, 9 October 1979, *Airey vs. Ireland*, par. 25.

29 ECtHR, 13 June 1979, *Marckx vs. Belgium*, par. 41. Such is the case with *Thlimmenos vs. Greece*. ECt HR, 6 April 2000, *Thlimmenos vs. Greece*, par.44.

30 This general principle of the law has quite long past and it is not limited only to the European legal area. This is proven by the reasons of the Standing Court for International Justice in the case of “Minority Schools in Albania”. PCIJ, Series A/B, No 64, p.19 (1935), 8 AD, pp 386, 389-390) According to this Court: “the legal equality excludes discrimination of any type while the factual equality can include a need for different treatment in order to achieve a result that will enable equilibrium between different situations”. The relevant test of acceptable different treatment in such circumstances will be focused around the issue of “what is fair or reasonable or objective or reasonable justified” Shaw M, International Law, Cambirdge University Press, 268-269.

adaptation is in the line with this interpretation. Therefore the most relevant thing would be to take into account the wider concept of human rights in order to define the scope and importance of this concept.

### **Obligations related to the non-discrimination principle in the context of the European Union Acquis.**

The cases *Thlimmenos* of the European Court of Human Rights as well as the case *Thibault*<sup>31</sup> or the *Mangold*<sup>32</sup> case of the European Court of Justice show that the guaranteeing of the substantial equality is important issues. It seems that the non-discrimination principle incorporated in the European Union Acquis is seen as implementation of the fundamental principle of equality of which also includes obligation to harmonize the relevant national legislation with the international law on human rights.<sup>33</sup>

Many academic comments agree with the wider interpretation of equality. Sandra Friedman<sup>34</sup> is criticizing the European Union Acquis in the area of equality by saying that it is mainly based on the understanding of equality as “negative obligations”. According to her, this model of human rights that is based on the right where the individual plaintiff can address to court in order to ensure application of the non-discrimination principle, can not ensure wider social change and respond to the need to resolve a series of social inequalities. She is advocating for “proactive model” in which the initiative will be in the hands of the policy makers, in those that implement the policies and the employers – they are obliged to point out the institutional and structural reasons for inequality.

We can conclude that the obligation to provide reasonable adaptation to the needs of every citizen derives from the inter-related doctrines of the substantial equality and the positive obligations. This is important since the national courts are expected to enforce the national law in accordance with the international obligations. The relevant international law and its interpretation by the relevant institutions (such as the bodies in charge to implement the international agreements and the European Court of Human Rights) play active role in the development of the concept for reasonable adaptation in the Framework Directive in 2006. In this spirit, Mark Bell arguments that “for the European Union member states is not sufficient to refer only to the European Union Directives as single response to the discrimination “.<sup>35</sup>

### **3. Macedonia – the legal framework for protection from discrimination**

This section will start by providing overview of the framework for

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31 Case C-136 /95 *Caisse nationale d'assurance vieillesse des travailleurs salariés (CNAVTS) vs. Thibault*

32 Case C-144 /04 *Mangold* [2005] I-9981, par. 74.

33 The overview of the national legislations of the EU members states, such as the Opinion of the Dutch Committee on Equal Treatment point that, in addition to disability (which is regulated by the EU Acquis) many other grounds for discrimination were taken into account and translated into obligations so that the employers can provide reasonable adaptation in order to provide equal treatment. Such is the example with special hygiene rooms for men and women. See: Opinion 1996-112 and 2006-161.

34 Sandra Friedman, “Changing the Norm: Positive Duties in Equal Treatment Legislation” (2005) 12 MJ, 369-373.

35 Bell, M, “The Relationship Between EU Law and Protocol No. 12”: Non-discrimination: a Human Right, Seminar to mark the entry into force of Protocol No. 12, Strasbourg, Council of Europe Publishing, 65–70 (2006).

implementation of the principles for quality and protection from discrimination, provided by the National Constitution as well as by the Law on Equal Opportunities Between Men and Women. Unfortunately, in the time of the survey, the Law on Protection and Prevention of Discrimination is still in the Parliamentary procedure pending adoption.

**3.1. The National Constitution.** According to Article 118, the international legal instruments, following their ratification, become part of the internal legal system and they can not be changed by law. Article 8 explicitly confirms that, *inter alia*, the fundamental value of the constitutional arrangement is the respect for “fundamental freedoms and rights of the person and individual, recognized in the international law”. Article 9 determines that the citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of the gender, race, skin color, ethnic and social background, political and religious belief, property and social status. According to Article 54, the limitation of the freedoms and rights can not be discriminated on the grounds of gender, race, skin color, language, religion, ethnic or social background, property or social status. The Articles 15, 24 and 50 guarantee court protection, initiation of administrative procedure against specific acts adopted by the state administration and other institutions that perform public duties. The right to file application (affix) to the state authorities and other public services is also included.

**3.2. The Law on Equal Opportunities of Men and Women**<sup>36</sup> aims to introduce the “equal opportunities” for men and women in wider range of areas (Article 2). The Law also advocates for “prevention and removal of the unequal treatment” which leads us to conclude that it is based on the substantial equality principle. According to Article 3 the discrimination is prohibited in the public and private sector.<sup>37</sup> The definitions for direct and indirect discrimination entirely reflect the text from the European Union Acquis i.e. Article 2 from the Directive 2006/54. This means that the Law, in Article 4.4. defines that direct discrimination means case when a person is treated badly only on the basis of his/ her gender compared to the treatment of other person that was treated or could be treated in a similar situation. According to Article 4.5, indirect discrimination occurs when a virtually neutral provision, criterion or common law puts people from one gender into especially unfavorable situation compared to the persons from other gender, except if that provision, criterion or common law is objectively justified with legitimate goal and the means for realization of that objective are appropriate and necessary. According to Article 5, Paragraph 1, the basic measures for realization of the equal opportunities principle are the normative measures from different areas which prohibit discrimination on the basis of gender and there is obligation for care and creation of conditions that will ensure equal treatment for realization and protection of the rights and freedoms and which also foresee sanctions for failure to respect the requirements and violation of the prohibitions. This Article clearly points out to the obligation for the state administration authorities to regulate this area with relevant norms and meet their positive obligations. The aim to bring this Law closer to the substantial equality model can be also seen in Article 6 which talks about a

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36 Official Gazette of the Republic of Macedonia No. 66/06 from 29.05.2006. Refer also to the Law on Changes and Amendments of the Law on Equal Opportunities of Men and Women, Official Gazette of the Republic of Macedonia No. 117/09.

37 This survey is based on the changes made in the Law on Changes and Amendments of the Law on Equal Opportunities of Men and Women, Official Gazette of the Republic of Macedonia No.117/09.

series of special measures. The entities in charge for implementation of the measures, in addition to the National Parliament and the Government (Articles 11 and 12) and the Ombudsman (more about this in the text below) are also the state administration bodies and authorities (Article 13) which are obliged to designate an official person – coordinator that will coordinate the activities in the mandate of the Ministry, related to introduction of equal opportunities in cooperation with the Ministry of Labor and Social Policy. Furthermore, the Ministries are obliged to cooperate with employer associations, the trade unions and the NGOs active in the area of equal opportunities in order to provide measures and proposals for achievement of the objective of the Law.

Article 14 emphasizes the role of the Ministry of Labor and Social Policy which is coordinating all the activities in this field. The Ministry of Labor and Social Policy, inter alia, submits draft laws, regulations and other measures important for this area to the Government and the relevant Ministries. It is also monitoring the implementation and enforcement of the international agreements which are related to equal opportunities. The Ministry of Labor and Social Policy cooperates also with the coordinators from the state authorities and bodies as well as with the coordinators and Committees for equal opportunities established in the local self-government units. The Ministry of Labor and Social Policy also cooperates with the NGOs that are active in the area of equal opportunities.

Chapter 6 regulates the procedure for ascertainment of the unequal treatment of men and women which is carried out by the Ministry of Labor and Social Policy for activities carried out by entities from the public and private sector (Articles 23-24). Individuals, NGOs, trade unions and other legal entities have to right to initiate procedure. The procedure ends with written opinion by the representative (Article 23.3. and Article 31) in which he/ she can point out the irregularities that were ascertained and provide recommendations to remedy them. This written opinion is submitted to the inspection body, the Ombudsman or other body that does supervision over the implementation of the provisions of this Law, when the entity against which procedure for initiated for ascertainment of the unequal treatment did not remedy the irregularities that were ascertained (Article 33). If the inspection body has ascertained that misdemeanor or criminal act were perpetrated, that body will file a request for initiation of misdemeanor procedure i.e. initiation for criminal act (Article 36). If there is no compliance to the prohibition for discrimination, the person can request protection of his/ her rights in administrative and in court procedure (Article 37). Compensation for the damage exists in Article 36 and burden of proof is on the party under suspicion that it acted contrary to the Law (Article 40). During administrative procedure, the persons who had their rights violated can be represented from NGOs, employer associations and trade unions (Article 40).

This Law enables links between multiple state institutions, the Ombudsman and NGOs. It opens possibilities for coordination of the policies and regulations as well as of the complaints with regards to the unequal treatment against other state administration bodies. Therefore it can be expected that, if the Law is fully implemented, it will play a positive role for protection of women in front of the state administration bodies. Unfortunately, a series of analyses all over Eastern Europe<sup>38</sup> show that exactly the implementation is the weakest

38 Ina Zoon, On the Margins: Roma and Public Services in Slovakia, OSI, 2001, 1-6. [http://www.soros.org/initiatives/roma/articles\\_publications/publications/marginsslovakia\\_20011201/slovakia.pdf](http://www.soros.org/initiatives/roma/articles_publications/publications/marginsslovakia_20011201/slovakia.pdf)

ring in the chain for protection from discrimination.

### **3.3. Draft-Law on Prevention and Protection from Discrimination.**

This review will not provide analysis of this draft law since it is not clear what changes will be introduced in the final text. However, it is obvious that the developers of the Law included a series of solutions which are also part of the European Union Directives. The Law itself is a significantly important requirement for progression of the European integration of the Republic of Macedonia.<sup>39</sup> The urgent adoption of this Law is very important for harmonization of the laws in all areas with regards to protection from discrimination. It is also with regards to the subject of our research.

## **4. Laws and bylaws in the Republic of Macedonia**

**4.1.1.** The analysis of the Law on Civil Servants<sup>40</sup> will aim to identify the manners in which the civil servants will be held responsible if they discriminate someone. The Law says that the civil servants are obliged to comply to the citizens equality principles as well as to the principle for protection from discrimination, both of which originate from the international law, the Constitution, the Law on Equal Opportunities and the draft Law on Protection from Discrimination. According to Article 2, “The civil servants perform their work related to the functions of the state in accordance with the Constitution and the law in professional, politically neutral and impartial manner”. According to Article 26, “the civil servant is obliged, in accordance with the law, following request from the citizens, to provide information necessary for realization of their rights and interests...” This provision provides opportunity to establish indirect discrimination by submitting statistical information which say that the civil servant rejects to provide information to the discriminated person and the civil servant usually provides that information to other persons.

The Chapter 5 – “Responsibilities of the Civil Servants” includes interesting provisions. The disciplinary responsibility is regulated in Article 74 according to which “For every violation of the official position/ duty, the civil servant... is held disciplinary responsible... The responsibility for criminal act i.e. misdemeanor perpetrated does not exclude the disciplinary responsibility of the civil servant”, Very interesting is Article 78.1. that has 17 Paragraphs. According to this Article, the disciplinary violation<sup>41</sup> is, *inter alia*, “failure to perform, or performs in improper, inappropriate, late or neglecting manner the official duty”, “Rejection to provide, or provision of incorrect, information to state authorities, legal entities and citizens if the provision of the date is prescribed by the Law”, “Abuse of the status or overstepping of the authorizations in the

39 SOM (2009) 533, 54.

40 Official Gazette of the Republic of Macedonia No.108 from 12.12.2005. The Law on Changes and Amendments of the Law on Civil Servants from 5.5.2006 does not cover the issues which are covered by this document. The Parliament is currently adopting the changes in this Law.

41 According to Article 75.1. “The civil servant is disciplinary responsible for improper behavior and disciplinary violation”. According to Article 75.2. “Improper behavior” in the sense of Paragraph 1 of this Article refers to light and small violation of the official duty i.e. smaller violation of the dignity of the service or reputation of the civil servant. 75.3. “Disciplinary violation” in the sense of Paragraph 1 of this Article refers to more severe and significant violation of the official duty i.e. severe violation of the dignity of the service or reputation of the civil servant.

realization of official tasks and duties, including “insulting or violent behavior”. None of these Paragraphs (although it might sound like it) does not especially emphasize the non-discrimination principle.

According to Article 76.1. “Disciplinary measure can be imposed against the civil servant, with decision, for violation of the official duty”. Article 78.2. lists multiple sanctions for disciplinary violations. Article 80 includes provisions on the actual disciplinary procedure and Article 89 says that “the Agency will adopt an act that will precisely determine the actual disciplinary procedure implemented for ascertainment of the disciplinary violation.”

**4.1.2. Code of Ethics for the civil servants.** According to Article 1.1, the purpose of this Code is to ensure that the work of the civil servants is done in accordance with “compliance to the principles of the legality, professional integrity, efficiency and loyalty in carrying out of their official duties”. The civil servant does the official duties in accordance with the Constitution and the laws (2.1.). He/ she “provides equal treatment of the citizens and the legal entities when performing his/ her official duties” (2.2.). He/ she acts “in accordance with the interests of the citizens... in the realization their rights, responsibilities and interests”. Especially in 2.6. “In the contacts with the citizens... the civil servant behaves in a way that provides establishment of mutual trust and cooperation between these entities and the administration. In the rapport with the citizens... the civil servant will show understanding, kindness, courtesy and greatest possible will to assist, and will not impede the realization their rights and interests”. Article 3 requires impartiality in the decisions, especially Article 3.3. “the civil servant provides equal treatment of the citizens that come in contact with the authority in which the civil servant is employed. For that purpose he/ she will not reject to provide service to a person/ and the same service is regularly provided to other persons, not will give service to a person that is not regularly provided to other persons. Article 6.2 .says that the “civil servant will facilitate the access for the citizens to the information they are entitled to obtain”. According to Article 6.2 he/ she “will not reject to give and does not give incorrect data or information... if the disclosure/ provision of such data is provided by the law”. In accordance with Article 13.1 “the civil servant who is in direct contact with the citizens and legal entities will pay due attention to every question from them and will submit the explanation he is required to submit in relation to his/ her behavior and the behavior of other employees in that body”. We need to especially emphasize the provision introduced with the changes from 15 March 2003 i.e. Article 1.3 which introduces disciplinary responsibility for acting contrary to the Code.

#### **4.1.3. Regulation on the Manner of Implementation of the Disciplinary Procedure for Identification of Disciplinary Violation<sup>42</sup>**

According to Article 1 its intention is to arrange the “manner of implementation of the disciplinary procedure for identification of the responsibility of the civil servant regarding violations of the official duty which are disciplinary violation”. Further provisions regulate this procedure in details.

If is obvious that all the mentioned acts are committed to build a modern and responsible state administration. Although the Code of Ethics takes care

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42 No. 01-6846/1 from 31 May 2006.

for the principle of equality of the citizens we still think that this issue should be included in the actual Law on Civil Servants since the principle of equality of the citizens is the first priority of every modern state.

We propose to introduce two amendments. In Article 78, which includes 17 paragraphs that define the possible reasons for a civil servant to be held accountable for disciplinary violation, there should be one additional Paragraph on the responsibility in the case of non-compliance to the principles of equality of the citizens and non-discrimination which would add the definition for direct and indirect discrimination. In addition we also propose to amend Article 23 from Chapter 3 "Rights and Obligations of the Civil Servants" with one more Paragraph. This new Paragraph would include a special duty to comply to the non-discrimination principle. These provisions would enable easier identification of the civil servant responsibility in cases when there are doubts for possible discriminatory behavior. In addition, we propose to introduce a provision which will provide reasonable adaptation to the needs of the citizens which are illiterate. The international acts (as we mentioned above) determine that the illiteracy is a correlation for social exclusion. The National Constitution of the Republic of Macedonia, on the other side, is explicitly in favor of not having discrimination on the basis of the social status. The European Union Acquis does not reflect on the reasonable training except with regards to persons with disability. However, since the reasonable adaptation to the illiterate persons is a unreasonable and unjustified burden from financial aspect, we propose that the basis for this provision to be drawn directly from the National Constitution of the Republic of Macedonia and the from the standards of the international law, mentioned above.

## 4.2. Ministry of Interior

**4.2.1. Law on the Ministry of Interior from 29.03.1995.**<sup>43</sup> This Law regulates a quite extensive matter. Relevant for this survey is the fact that in its entire work (in accordance with Article 6), the employees of this Ministry are obliged "to respect the freedoms and rights of the citizens and the people". We are proposing, in the spirit of building a modern Ministry of Interior to include in the Law a provision that will prohibit discrimination on all grounds.

**4.2.2. Law on Citizenship from 2004**<sup>44</sup> The conditions to acquire citizenship were especially sensitive issue in Macedonia.<sup>45</sup> There is no doubt that obtaining of citizenship is the door for realization of huge number of rights.<sup>46</sup> Without intending to go into details about these issues, we will emphasize Article 24 according to which "The request for acquisition, termination or ascertainment of citizenship of the Republic of Macedonia is submitted to the

43 Official Gazette of the Republic of Macedonia No. 92/09 from 24.07.2009.

44 Law on Citizenship of the Republic of Macedonia (clean text), Official Gazette No. 45/04 from 7.7.2004.

45 This issue is beyond the scope of our survey. When it comes to the provisions from the European Charter on Citizenship which was acceded to by the Republic of Macedonia in 2003 as well as regarding the negative effect on the Roma population of the citizenship requirements from the Law from 1992 please refer to: "Roma Made Stateless by the Act on Citizenship of the Republic of Macedonia" section in the ERRC country report on Macedonia. A Pleasant Fiction: The Human Rights Situation of Roma in Macedonia: <http://errc.org>. "A Profile of One Community: A Personal Document Survey Among the Romani Population of Kumanovo, Macedonia". Analysis: <http://www.errc.org/cikk.php?cikk=1097>

46 Numerous analyses on the lack of personal I.D. documents among the Roma in many countries in Europe: <http://www.errc.org/cikk.php?cikk=1055>

Ministry of Interior according to the place of residence of the person...” the same Article also foresees a right to appeal to the relevant Committee in the Government of the Republic of Macedonia as well as opportunity to initiate an administrative dispute. Since we are talking about a Law that regulates the most important link between the person and the state we think that Article 24 (which regulates the issue of applications for citizenship) should be worded in a manner that will leave no doubt for unequal treatment. In this regard we are proposing two changes. In the spirit of the international acts, the Constitution, the Law on Equal opportunities of Men and Women and the draft Law on Protection and Prevention of Discrimination, we propose to introduce provision that will explicitly commit to the non-discrimination principles. It is also important to introduce the rule of reasonable adaptation to the persons that are illiterate in accordance with the arguments stipulated above with regards to the Law on Civil Servants. Otherwise this provision could be discriminatory in indirect manner if the statistics show that, beside the virtual neutrality, the disproportionately large number of Roma can not fill in a request due to the illiteracy. One of the objectives of this survey is the start the collection and processing of statistical data.

**4.2.3. Regulation on the Manner of Maintaining Registry of the Citizens of the Republic of Macedonia and on the forms that are used i.e. issued.**<sup>47</sup> According to Article 6, the “Citizenship Certificate is issued on the basis of request (Form No.1) which is filed to the regional organizational unit of the MBR where the person lives”. We are proposing changes. For illiterate persons this provision should be amended with reasonable adaptation. The introduction of provisions for discrimination would help. In addition, the enclosed field surveys provide statistical information that this provision can have negative effect on specific discriminatory category.

**4.2.4. Law on Main Records.**<sup>48</sup> This Law, in Articles 6 and 7, determines the deadlines by which the birth of a child should be reported and (in Article 9) the personal name of the child. It also regulates the deadline by which death should be reported (Articles 14-16). According to Article 29, the documents needed for this (extracts, certificates, confirmations, etc.) are issued upon request. Article 32 regulates financial penalties for misdemeanor perpetrated if the birth and the personal name of the child are not reported in the prescribed deadline.

**4.2.5. Law on Personal I.D. Card.**<sup>49</sup> Article 4 says that the procedure for issuing of the personal I.D. Card starts upon request. For persons that are 18 years of age and have no I.D. document financial penalties are foreseen.<sup>50</sup> The Article 15-a introduces misdemeanor procedure.

For both laws there is no doubt that the penalties and the misdemeanor procedure are difficulties for the Roma population since it can be statistically proven that this population suffers from bad social status but that is not direct subject of this analysis. We propose the following: Introduce provision on non-

47 No. 121-205/1 from 5 January 1993.

48 Law on Main Records, Official Gazette No. 08/95 from 15.02.1995, with the amendments from 5.06.2002, 31.05.2007, 4.08.2008, 29.05.2009.

49 Official Gazette of the Republic of Macedonia 08/95 from 15.02.1995, with the amendments from 30.05.2002, 22.03.2004, 22.02.2005, 19.02.2007.

50 Article 15 was replaced by Article 10 of the Law on Changes and Amendments of the Law on Personal I.D. Card. Official Gazette of the Republic of Macedonia 6p.19 from 19.02.2007.



discrimination which will be very beneficial, as well as reasonable training for the illiterate people. We especially recommend to regulate the issue of complaints since the statistics can show that the procedure for obtaining of I.D.Card has disproportionately greater effect on the Roma or Roma women than on the rest of the population which is an indicator for indirect discrimination.

**4.2.6. Law on Passports for the Citizens of the Republic of Macedonia.**<sup>51</sup> The procedure in accordance with this Law starts with the request for issuing of passport, filed in person by using the prescribed Form (Articles 28-29). Article 37 clearly mentions the possible reasons for rejection. A complaint can be filed against the decision to reject the issuing of passport (Article 40). There is no reasonable training for illiterate persons or provision for protection from discrimination. We are proposing to rectify this situation with explicit provisions. The possibility for appeal exists.

**4.2.7. Instruction on changing and amending the Instruction on the manner of issuing of passport and joint passport for the citizens of the Republic of Macedonia and visa issuing procedure on such passports.**<sup>52</sup> Article 2 determines that the issuing of passports is done on the basis of request for issuing of passport that was filed personally. Article 3 and Article 8-a point out that the relevant officer ascertains the identity of the filer of the request and verifies whether the request has been properly filled in. Here we could introduce an Article that regulates the reasonable adjustment to the needs of the illiterate persons.

**4.2.8. Citizens Log of the Ministry of Interior.**<sup>53</sup> Developed in the spirit of modern administration, in item 1 this act includes provision according to which its intention is to improve the relations between the administration and the citizens. It is contributing towards improvement of the public services, defining of the manner and standards in the provision of services as well as the system for comments and complaints. Item 2 says that the Ministry of Interior provides “protection and respect for the fundamental human freedoms and rights of the citizens regardless of their racial, ethnic, religious, political or gender background as well as regardless of their social status. In tem 4 the Citizens log lists good number of commitments, including the duty to provide easy to understand and “correct information and consultations since the very first contact with the administration”. Especially relevant for this survey is the commitment that the Citizens Log is introducing: “Equal access to the services and equal attitude towards all beneficiaries, regardless of their needs, social status, education, age, gender ,ethnic background or religious believes”. Item 4 includes one additional commitment – the confidentiality principle with regards to the objections and appeals/ complaints of each beneficiary, regardless of his/ her needs, social status, education, age, gender ,ethnic background or religious belief. The list also includes the education as a potential basis for

51 Clean text in the Official Gazette No. 73/04 from 21.10.2004, with the amendments from 19.2.2007 and 11.7.2008.

52 Official Gazette of the Republic of Macedonia No.40 from 30.3.2007

53 The Government of the Republic of Macedonia introduced the Citizen Logs in good number of state bodies. “The Citizens Log is a declaration by which the body/ authorities clearly pledge towards the public that they will comply to the standards of services they provide and in the same time enable the citizens access to services that concern them, including the possibility to assess the services provided which is a tool for measurement of the success of the bodies in each individual case”. The Citizen Logs exist for the Ministries, Government Agencies as well as for the Customs Authority. <http://www.uslugi.gov.mk/grdnevnik.aspx>.

discrimination which makes it wider than the Constitution and the Law on Equal Opportunities of Men and Women and the draft Law on Protection and Prevention of Discrimination. Considering the vision for modern administration which is provided by the Citizens Log, the commitment to equality, regardless of the educational background, can be expanded with the obligation for reasonable adaptation, especially in Section 8 that regulates the system for appeals/ complaints.

Conclusion: We deem that the commitments stipulated in the Citizens Log are not sufficient for protection of the principles for equal treatment and non-discrimination. In addition, it is unclear what is the exact link between this act and initiation of the disciplinary procedure against the civil servant. Therefore we prefer to introduce clear obligation for equality and non-discrimination, explicit obligation for clear adjustment to the needs of the illiterate persons as positive obligation of the state and the right to appeal in all the above mentioned legal texts. The easier solution regarding the fees will probably have an effect on the Roma but that is not part of the legal analysis. Unfortunately, the results from the field surveys that are mentioned in Section 2 point out that majority of the respondents are not aware that the Citizens Log exists so the potentials of these mechanisms are significantly reduced.

### **4.3. Ministry of Labor and Social Policy**

**4.3.1. The Law on Social Protection**<sup>54</sup> regulates wider issues and in this Law we can notice the influence of the international standards. Definitions are introduced for direct and indirect discrimination (Articles 20-21) and it is possible to seek protection from a relevant authority as well as compensation for damages (Article 22). The burden of proof in that case is on the public institution, the NGO or the individual person which is under suspicion that perpetrated discrimination (Article 23). The social protection procedure starts with the request for realization of the social protection right. The Center in charge for the area in which the requesting person lives is in charge to decide with regards to the request. The Minister decides on the eventual complaint against the decision of the Center. However, this complaint does not postpone the enforcement of the decision (Article 181). According to Article 182 the procedure for realization of the social protection right is initiated upon request from the citizens i.e. his/ her legal representative, guardian or on ex officio basis. The Center initiates the procedure on ex-officio basis on its initiative, upon initiative from the citizen, the relevant body or other bodies and organizations when that is in the interest of the citizen or when there is interest from third parties.

According to Article 186, upon request from the Center, the legal entities and physical persons are obliged to provide data and documentation which are proofs for realization of the rights of the beneficiaries determined by this Law. According to Article 187, before deciding on the social protection rights, the Center will provide professional assistance to the citizen when filing the request and also advise him/ her on the possibility to realize his/ her rights on the basis of other regulations. According to Article 188, the provisions from the Law on General Administrative Procedure shall apply in the procedure for realization of the social protection rights, unless foreseen otherwise by this

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54 Official Gazette No. 79 from 24.06.2009.

Law.<sup>55</sup> In the misdemeanor provisions Article 254 regulates, *inter alia*, a penalty for misdemeanor caused by the institution that is putting the beneficiary of social protection in unfavorable condition (Article 20). The Law also foresees active role for the NGOs (Chapter 5.1.). This role can be easily focused towards active support in the process of issuing of documents or assistance in the complaint procedure. Furthermore it is obvious that professional assistance is provided by the relevant Center when filing the request. It seems that this correspond to the need for reasonable training of the illiterate persons.

**4.3.2. The Law on Labor Relations<sup>56</sup>** is a legal text under strong influence of the European Union Directives. Again we will focus our attention only on one aspect. It is a Law which regulates the private-legal area and the impact by the state administration is small. In Article 6 the discrimination is prohibited on the basis of race, skin color, gender, age, health condition i.e. disability, ethnic or social background, family status, property status, sexual orientation or due to other personal circumstances. The same Article guarantees the equality between men and women. Definitions on direct and indirect discrimination are included with regards to the conditions for employment, progression, termination of the employer contract as well as in the Collective Agreements (Article 7). There is also compensation for damage (Article 10) and shifting of the burden of proof (Article 11). Clearly visible is the influence of the European Union Directive that regulates the working hours as well as the policies aimed towards “consideration for the family” (Articles 161-171). Very interesting is the “realization of the rights at the employer and court protection” which enables compensation for damage in front of the court of the prohibition for discrimination has been violated (Article 181). There are also misdemeanor sanctions for the same (Article 264). We can conclude that this Law has been significantly influenced by the EU regulations. However, the provisions of this Law are binding for the employers and not for the state authorities.

**4.3.3. Law on Employment and Insurance in the Case of Unemployment.<sup>57</sup>** According to Article 1, the Law arranges the issues of labor exchange, rights and obligations of the employers, the unemployed persons and the state regarding the employment and insurance in the case of unemployment as well as other issues of importance for the employment. We propose to introduce clear provision in the Law that the non-discrimination principle will be applied especially in the work of the Employment Agency of the Republic of Macedonia which is defined as public institution in Article 4. Furthermore it is good to include an obligation for reasonable adjustment to the persons that are illiterate especially since this obligation does not mean additional financial burden. This obligation can be included in Chapter 2, Section 6 – “Service from the Labor Exchange of the Unemployed and other job seeking persons” in Article 19 or in Article 28 which lists the guiding principles for the work of the Employment Agency of the Republic of Macedonia. The same obligations can

55 According to Article 230, the inspection supervision, *inter alia*, includes also supervision over the realization of the rights and realization of the obligations towards the beneficiaries, as established by this Law. According to Article 236, the inspection supervision is performed as regular or extraordinary inspection. The extraordinary supervision is implemented on *ex officio* basis, upon initiative by the citizens, relevant authority, other authority and organizations as well as other legal entities, when there is interest for the citizen, interest of third parties or general interest.

56 Official Gazette of the Republic of Macedonia No. 80/03 from 15.12.2003 (clean text).

57 Official Gazette 37/97 from 31.7.97, with the following amendments: 30.3. 2000, 4.12. 2000, 2.7.2001, 8.4. 2003, 14.6. 2004, 17.1.2005, 17.4.2006, 9.3.2007, 18.8. 2008, 24.12.2008.

be introduced also in Chapter 4 – “Insurance in the Case of Unemployment”. In this Chapter Article 80 says that the realization of these rights starts with written request. The Employment Agency decides with regards to this request in the first instance and the Ministry in charge for labor issues decides in the second instance (Article 81). These provisions, although virtually neutral, could include indirect discrimination if it is statistically proven that the Roma (or the Roma women) are more frequently illiterate compared to other categories of persons. Furthermore, the Article 84 from Chapter 6 “Public Works” regulates that the public works are accessible under equal conditions for all unemployed persons. There is no clear determination of the non-discrimination principles and there is no positive obligation of the state for reasonable adjustment. This leaves an impression that this is a Law that is based solely on the formal equality principles which is definitely not enough.

**4.3.4. Citizens Log.** It is developed in the spirit of modern administration. In item 1 the purpose of this act is to improve the relations between the administration and the citizens. It is contributing towards improvement of the public services, defining of the manner and standards in the provision of services as well as the system for comments and complaints. According to item 4, the Citizens Log, *inter-alia*, is committed to quality services, better communication with the beneficiaries, provision of information to the beneficiaries and responsibility in the work. Item 10 says that all employees in the Ministry of Labor and Social Policy will provide courteous service. This definition is not defined in more details. However, there are names of relevant officers regarding complaints in relation to the services and standards, and there is also a timeframe for response to these complaints. There is a mailbox for the complaints. We propose several changes. Probably this act would also come closer to the principles of equality of the citizens if there is a special Article that will introduce disclaimer against the discrimination. The reasonable adjustment to the needs of the illiterate persons can be also included. However, beside the commitments from item 4 it seems that the surveyed people were very little aware of the existence of the Citizens Log (refer to Section 2).

Conclusion: In addition to the Law on Employment and Insurance in the case of unemployment we can conclude that the acts of the Ministry of Labor and Social Policy are sensitive towards the principles of substantial equality of the citizens and protection from discrimination.

## 4.4. The Ombudsman Office

**4.4.1. Law on Ombudsman.**<sup>58</sup> Article 2 says that it is a body that protects “the Constitutional and legal rights of the citizens and all other persons when they have been violated with acts, actions and omissions to act by/ of the state administration bodies... for protection of the principles of non-discrimination and relevant and equitable representation of the minorities in the state administration bodies...”<sup>59</sup>. Article 3 says that this body acts on the basis of the Constitution, the law and the international agreements ratified in

58 Official Gazette of the Republic of Macedonia No. 60/2003, 01.10.2003.

59 The Article 15 from the Law on Equal Opportunities for Men and Women from 2006 says that the Ombudsman will take care in the frames of its legal mandate for realization of the equal opportunities principle, through legal protection of the equal opportunities of men and women when someone has been deprived from his/ her rights or such rights were limited by a state administration body or by organizations with public authorizations.

accordance with the Constitution.<sup>60</sup>

The procedure starts by submitting a signed application or upon initiative by the Ombudsman (Articles 13 and 16). Article 21 says that other person in the name of that person can submit an application, in agreement with him/ her. According to Article 28, the Ombudsman can provide his/ her opinion, recommendation or criticism to the body in question. According to Article 32 he/ she raise an initiative for disciplinary procedure against the official i.e. responsible person and also address to the public prosecutor in order to establish a penalty responsibility. According to Article 34, the state administration bodies and other bodies and organizations that have public authorizations are obliged to notify the Ombudsman on the measures implemented for realization of his demands, proposals, opinions, recommendations or similar. If these bodies and organizations do not comply to the requests from the Ombudsman, the Ombudsman, as an addition can make a separate report and inform the immediate higher body and publish the case in the mass media, referring to the authority of the public. According to Article 30, the Ombudsman can provide also initiatives to the authorized proposes for changes, amendments or abolishment of laws and other bylaws and their harmonization with international agreements. The Ombudsman can also submit proposal to the Constitutional Court of the Republic of Macedonia for assessment of the Constitutionality of the laws and the Constitutionality and legality of other regulations or general acts.

This short overview points out that the Ombudsman has a variety of mechanisms available to act which makes its role especially important if we take into account the current unequal legal framework on the non-discrimination principles.

**4.4.2. The Rules and Procedures of the Ombudsman** includes the details of the procedure. It also includes the procedure in reference to applications from NGOs (Article 13). For our survey relevant fact is that this Article allows verbal submission of the applications as well as via telephone, fax and email. Article 16 adds that official note is made in the case of verbal application. With all these possibilities there is reasonable adjusting to the needs of the illiterate persons. Article 14 allows that every citizen can submit his/ her application in his/ her mother tongue. Since the legal framework is incomplete with regards to the protection from discrimination the step in Article 28 is very important – it allows referral to the fairness principle when the application of the legal provisions could eventually lead to obvious unfairness. There is also good potential for the Article 40 regarding cooperation with the NGOs active in the area of improvement of the human rights.

There is no doubt that the Ombudsman could develop into body that will additionally strengthen the responsibility of the state authorities for compliance to the equality principle. The competency of the Ombudsman extends from opinions regarding legal legislation proposals, provision of opinions to the state administration bodies, all the way to communication with the Public Prosecutor for initiation of criminal procedure. The reasonable adjustment to the needs of

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60 According to Article 77, Paragraph 2 of the Constitution, the Ombudsman protects the constitutional and legal rights of the citizens if they were violated by the state administration bodies as well as by other authorities and organizations that have public mandates. This Constitutional provision is supplemented with Item 2 in the Eleventh Mandate of the National Constitution of the Republic of Macedonia. According this Item, in addition to the above mandate i.e. authorization of the Ombudsman, the Ombudsman also has wider rights and authorizations – “it dedicates special attention to protect the principles of non-discrimination, appropriate and equitable representation of the minorities in the state administration bodies, the local self-government bodies and in the public institutions and services”.

the illiterate persons exists and the right to application is established on very wide base. Considering all these facts, the results are true disappointment. The Annual Report for<sup>61</sup> points out that there was only one Roma who filed application with regards to non-discrimination and appropriate and equitable representation. The total number of applications received regarding non-discrimination is 21.

## **5. Conclusion of the survey**

The application of the concept for protection from discrimination is faced with great challenges in all legal systems, including the states with matured legal systems in Western Europe and North America. We are talking about a complex phenomenon that is determined by a series of psychological, sociological, economic, historical and political dimensions. The legal regulation is extremely difficult undertaking and the results are often unsatisfactory. It is probable that, even in cases when, due to the requirements from the international organizations in which the Republic of Macedonia is member or an aspiring member, as well as due to the internal development towards realization of democratic institutions and values, the legal framework will be completely implemented, still the legal system will be facing difficulties in the implementation of the mechanisms for identification of the discrimination, its monitoring, legal remedies and compensation of damages. These difficulties must not discourage those working on improvement of the human rights or the state authorities which are dedicated towards building of public services that is equally available for every citizen. On the contrary – the social changes, their legal regulation and the implementation of this regulation are “phenomena that last long time” which occur as a result of the long-term joint efforts of both the state authorities and the civil society.

An argument in this favor is the said analysis which shows that huge changes are currently taking place in the Republic of Macedonia in the area of introduction of the principles of equality of citizens and non-discrimination. The definite assessment will be possible to be made only after the adoption of the Law on Prevention and Protection from Discrimination – this act is seen in all countries of Eastern Europe as a main event for introduction of this principle. After this Law is adopted then it will be possible to discuss about harmonization of the other acts regarding this issue.

Currently, even in the frames of a single area, there are huge differences in the understanding of the actual concept of equality. For example, the Law on Employment and Insurance in the Case of Unemployment pays little attention to the substantial equality compared to the Law on Social Insurance and the Law on Labor relations. This is even more surprising since the Law on Labor Relations mainly does not oblige the state but the employers which aim towards reduction of the labor costs in all the countries thus narrowing some rights of the employees. We think that this surprising situation is temporary and that it will be rectified. From overall perspective, it is obvious that the Ministry acts are taking into account the issue of substantial equality which is in accordance with the overall rationale of its work (labor and social issues). The assessment also includes the issues of our interest – the mechanisms for complaints and responsibility of the state authorities for reasonable adaptation. This is becoming even more obvious compared to those acts from the Ministry of Interior that

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61 [http://www.ombudsman.mk/comp\\_includes/webdata/documents/Godisen%20izvestaj2008.pdf](http://www.ombudsman.mk/comp_includes/webdata/documents/Godisen%20izvestaj2008.pdf)

we considered here and which are not open to the needs for protection from discrimination. However, this situation is also not surprising taking into account that all the analysis show that the greatest violations by the state with regards to the rights of the citizens happen in the area of work of these Ministries (and that is the case all over the world) – for example, in the work of the Police). Still, we expect that the above mentioned acts that regulate the work of the Ministry of Interior will suffer change towards imposing explicit obligation for protection of the citizens from discrimination, including the possibility for complaints and the obligation to consider those complaints and regulation of the obligation of the state bodies for reasonable adjustment.

The laws and bylaws that provide for responsibility of the civil servants in general, point out to openness towards the rights of the citizens for equality, there is disciplinary responsibility but it does not orient explicitly the civil servants on how to work with the differences.

Quite discouraging is the small number of applications submitted to and resolved by the Ombudsman – a body with significant competencies on this issue. Although there will be changes in the institutional framework after the definite adoption of the Law on Prevention and Protection from Discrimination we must say that this lack of success was forecasted by many analysts that work on the issue of discrimination in the region. They point out that it is not the legal acts but what is really missing is their methodical implementation and political will for that. The empirical surveys which are integral part of this document point out that the citizens are insufficiently informed about their rights. This is especially visible in the area of available mechanisms for complaint (such as the Citizen Logs). The lack of implementation of these obligations gives an impression that, although there are efforts to introduce numerous reforms, the actual state authorities are not prepared for transparent and responsible work.

In order for the above (and other) legal changes to be introduced it is necessary to wait for adoption of the draft Law on Prevention and Protection from Discrimination and urgent coordination of the efforts by all existing state institutions (as well as those institutions that are yet to be established), with the NGO sector representatives in order to finalize the legal framework and implement it. We hope that this survey which aims to provide legal statistical information collected through field survey and support the legal analysis with that statistics will be accompanied by a series of other surveys.

The legal analysis shows that the international legal instruments request from the states-parties realization of the principles for equal treatment of the citizens through all legal acts and actions, regardless of their ethnic background and gender, including implementation of the obligation for reasonable adjustment/ adaptation.

The current Law on Equal Opportunities Between Men and Women provides wide connections between many state institutions, the Ombudsman and NGOs. It opens opportunity for coordination of the policies and regulations, including possibilities to appeal with regards to unequal treatment against other state administration bodies. In addition to this we can expect that, if implemented in total, it can play a positive role in the protection of the Roma women in front of the state authorities.

The draft Law on Protection and Prevention of Discrimination includes establishment of new bodies for monitoring in this area. Since the potentials for procedure in front of the Ombudsman are not yet met, hope remains that

the new bodies that will be foreseen by this Law will start functioning in a satisfactory manner both in the terms of rapport/ attitude towards the Roma and the state authorities.

The legal framework of the Ministry of Interior that is considered here is not sensible to the needs for protection of the citizens from discrimination or especially the Roma. The regulation that is about obtaining citizenship, the main records, the I.D.Cards and Passports is silent with regards to discrimination on ethnic or gender basis. It also does not include provisions for reasonable adaptation/ adjustment of the state to the needs of the illiterate persons. The commitments in the Citizens Law are not sufficient to compensate for these gaps.

When it comes to the regulation in the area of work of the Ministry of Labor and Social Policy, the Law in the area of social protection includes provisions for protection from discrimination and the area of labor relations includes equality on ethnic and gender bases as well as reasonable training of the illiterate persons. However, the main carriers of the obligations in this area are the employers and not the state authorities. In the area of employment we are missing the regulation on insurance in the case of unemployment and the concept of formal equality is predominant. The Citizens Log of the Ministry of Labor and Social Policy would easily get closer to the principles for equality of the citizens if there is special Article that would provide disclaimer from the discrimination. The reasonable adaptation to the needs of the illiterate persons is also something that is missing. The field survey points out that even this mechanism for complaints (and it is the simplest one) is still little known to the respondents.

## **6. Recommendations**

We are proposing the adoption of the Law on Protection and Prevention of Discrimination. The adoption of this Law will enable initiation of the process of introduction of anti-discriminatory regulation in a series of legal areas.

Law on Equal Opportunities for Men and Women: We propose to collect statistical information on how much (in accordance with Article 5, Paragraph 1 of the Law on Equal Opportunities) the state administration bodies comply to the principle of equal opportunities of the genders and how much they meet their positive obligation towards them. In addition to this, we propose (in accordance with Article 13 of this Law) collection of information on how are these issues regulated in various Ministries. We also propose monitoring of the coordinative role for gender equality in the Ministry of Labor and Social Policy in accordance with Article 14 of the Law and monitoring of the procedure that is implemented in the Ministry of Labor and Social Policy against the public sector (Chapter 6 from the Law).

Law on Civil Servants: We propose to introduce a provision in the Law that will guarantee explicit obligation for compliance to the non-discrimination principle. We also propose amendment in Article 78 which, in 17 Paragraphs, defines the possible reasons on the basis of which the civil servant can be held responsible – one more Paragraph should be added regarding the responsibility in the case of failure to comply to the principles of equality of the citizens and non-discrimination plus definition would be added for direct and indirect discrimination. We propose that Article 23 from Chapter 3 “Rights and Obligations of the Civil Servants” to be amended with one more Paragraph that would include a special obligation to comply to the non-discrimination principle.



These provisions would make it easier to determine the responsibility of the civil servant in cases when there are doubts for eventual discriminatory behavior. Finally, we propose to introduce a provision in the same law that will ensure reasonable adaptation to the needs of the illiterate persons.

Ministry of Interior: We propose to add a provision on the Law on Ministry of Interior that will regulate an explicit obligation for equality and non-discrimination on ethnic and gender background. We also propose to introduce a general provision in the Law for reasonable adjustment to the needs of the illiterate persons. Since the Law on Citizenship is a Law that regulates the most important link between the person and the state we think that Article 24 (which regulates the issues of citizenship applications) should be worded in a way that will leave no room for unequal treatment. In the spirit of the international acts, the Constitution, the Law on Equal opportunities of Men and Women and the draft Law on Protection and Prevention of Discrimination, we propose to introduce provision that will explicitly commit to the non-discrimination principles. It is important to introduce the rule for reasonable adaptation for the persons that are illiterate in the Law on Citizenship. Otherwise this provision could be discriminatory in indirect manner.

Article 6 from the Regulation on the Manner of Maintaining Registry of the Citizens of the Republic of Macedonia and on the forms that are used i.e. issued says that the "Citizenship Certificate is issued on the basis of request (Form No.1) which is filed to the regional organizational unit of the MBR where the person lives". For illiterate persons this provision should be amended with reasonable adaptation. The introduction of provisions for discrimination would help.

We propose to introduce a provision on non-discrimination in the Law on Main Records and in the Law on I.D. There should be also a reasonable training for the people that are illiterate. We especially recommend to regulate the issue of complaints since the statistical information can point out to the fact that the procedure to obtain I.D. has greater disproportionate effect on the Roma (or Roma women) compared to the rest of the population which points out to indirect discrimination.

In the Law on Passports for the Citizens of the Republic of Macedonia there is no reasonable training for the persons that are illiterate and there is also no provision for protection from discrimination. We propose that these provisions are introduced there. In the Instruction on changing and amending the Instruction on the manner of issuing of passport and joint passport for the citizens of the Republic of Macedonia and visa issuing procedure on such passports, Article 3 and Article 8-a point out that the relevant officer ascertains the identity of the filer of the request and verifies whether the request has been properly filled in. Here we could introduce an Article that regulates the reasonable adjustment to the needs of the illiterate persons. Taking into account the vision for modern administration provided by the Citizens Log of the Ministry of Interior, the commitment for equality regardless of the educational background can be expanded with obligation for reasonable adjustment, especially in the Section 8 that regulates the system for complaints/ applications.

In the regulation that is arranging the work of the Ministry of Interior in this area we think that the commitments included in the Citizens Log are not sufficient for protection of the principles of equal treatment and non-discrimination. Furthermore, it is unclear what is the exact link between this act and the initiation of disciplinary procedure against a civil servant so we

prefer to introduce a clear obligation for equality and non-discrimination, explicit obligation for reasonable adjustment to the needs of the illiterate persons as a positive obligation for the state, including the right to appeal in all the above mentioned laws.

Unfortunately, the results from the field surveys mentioned in Section 2 point out that majority of the respondents are not aware that the Citizens Log exists so the potential possibilities of this mechanism are significantly reduced. Therefore we propose dissemination campaigns to inform the citizens. We also propose monitoring of the internal mechanisms for complaint in the Ministry of Interior by the relevant bodies that will be created after the adoption of the Law on Prevention and Protection from Discrimination as well as monitoring by the Ministry of Labor and Social Policy in accordance with the provisions from the Law on Equal Opportunities of Men and Women.

Ministry of Labor and Social Policy: With regards to the provisions from the Law on Social Protection which includes substantive approach to the equality, we propose monitoring for implementation by the relevant bodies that will be created after the adoption of the Law on Prevention and Protection from Discrimination, as well as by the Ministry of Labor and Social Policy, in accordance with the provisions from the Law on Equal Opportunities. Furthermore, we propose monitoring from the NGOs in order to identify the eventual difficulties during the implementation. We propose this same monitoring in the Law on Labor Relations which is also sensible in accordance with all criteria which are included in this analysis – ethnic, gender aspects, reasonable training for the illiterate persons although this law obliges the employers and not the state.

Regarding the Law on Employment and Insurance in the Case of Unemployment, we propose to introduce a clear provision in the Law that the non-discrimination principle will be applied especially in the work of the Employment Agency of the Republic of Macedonia which is defined as public institution in Article 4. Furthermore it is good to include an obligation for reasonable adjustment to the persons that are illiterate especially since this obligation does not mean additional financial burden. This obligation can be included in Chapter 2, Section 6 – “Service from the Labor Exchange of the Unemployed and other job seeking persons” in Article 19 or in Article 28 which lists the guiding principles for the work of the Employment Agency of the Republic of Macedonia. The same obligations can be introduced also in Chapter 4 – “Insurance in the Case of Unemployment”. In this Chapter Article 80 says that the realization of these rights starts with written request. The Employment Agency decides with regards to this request in the first instance and the Ministry in charge for labor issues decides in the second instance (Article 81). These provisions, although virtually neutral, could include indirect discrimination if it is statistically proven that the Roma (or the Roma women) are more frequently illiterate compared to other categories of persons.

In the Citizens Log of the Ministry of Labor and Social Policy, Item 10 says that all employees in the Ministry of Labor and Social Policy will provide courteous service. This definition is not defined in more details. However, there are names of relevant officers regarding complaints in relation to the services and standards, and there is also a timeframe for response to these complaints. There is a mailbox for the complaints. Probably this act would also come closer to the principles of equality of the citizens if there is a special Article that will introduce disclaimer against the discrimination. The reasonable adjustment to the needs of the illiterate persons can be also included. We also propose

campaign for informing the citizens that the Citizens Log of the Ministry of Labor and Social Policy exists.

We propose improved campaign to inform the citizens about the competencies of the Ombudsman to act in relation to the human rights. If the final text of the Law on Protection and Prevention of Discrimination introduces create establishment of new bodies that will be in charge for these issues than we think that it is especially important to inform the public about the work of these bodies.

### **General recommendations:**

Immediately after the Law on Protection and Prevention of Discrimination is adopted, we propose that the relevant bodies should work in cooperation with the Ministry of Labor and Social Policy towards capacity building for internal monitoring in the said Ministries. These relevant bodies, in cooperation with the Ministry of Labor and Social Policy and the local self-government units start registering and providing statistics about the persons that do not have documents. These relevant bodies, in cooperation with the Ministry of Labor and Social Policy and the local self-government units could start cooperation with NGOs for effective resolution of the problem faced by the citizens regarding the lack of personal I.D. documents. This coordinated action would resolve the cases that require assistance the most (population in the rural areas, person for which it is not certain whether they meet the legal grounds to obtain citizenship, illiterate persons), the NGO representatives can assist to bring these citizens closer to the relevant representatives of the Ministry of Interior and the Ministry of Labor and Social Policy. However, we propose that this should be in any way replacement for making the legal framework more sensitive.

Immediately after the adoption of the Law on Protection and Prevention of the Discrimination, we propose that the relevant authorities, in cooperation with the Ministry of Labor and Social Policy and the local self-government units to start cooperating with the NGOs in order to influence the making of future policies/ draft laws in these areas regarding the introduction of the substantial equality principle. By doing so, all legal acts that will be adopted in these areas of the state bodies will take due care for the potential effects on the Roma, especially the Roma women as potential victims of discrimination on multiple basis. All acts should also pay attention to the reasonable adaptation to the needs of the illiterate persons.

We propose introduction of convincing and proportional sanctions in all current and future laws and texts that regulate the work of the state bodies with different categories of people. Furthermore, we propose the introduction and implementation of the equitable compensation principle for the discrimination victims. We think that additional and continuous surveys are very important since these will yield statistics on the situation in this area, especially from the aspect of indirect discrimination, with special emphasis on investigation of the cases related to double/ multiple discrimination. In this regard it is desirable to improve the monitoring of the overall legal area that regulates the status of the Roma, the Roma women and illiterate persons by the NGO sector.

# The attitude of the civil servants towards the Roma women in Macedonia - Discrimination practices - Overview of the results from the field survey

By:

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## The grounds for the survey:

The implementation of this survey is based on several assumptions:

1. The state institutions do not protect the basic rights of the Roma women and girls<sup>62</sup> and they do not provide additional affirmative measures for overcoming of the unequal situation;
2. The Roma population is faced with serious difficulties in the access and enjoyment of rights that are guaranteed by the Constitution due to many prejudices, stereotypes, obsolete traditional values and the effect of different factors such as the status, gender, ethnic background, educational level. In this context, as a result of the above mentioned phenomena, the Roma women are faced with dual discrimination – in the private but also in the public area.
3. The women face difficulties when trying to obtain personal documents. In addition to the other factors this contributes towards limitation in their access to the public institutions, to the labor market and in the demand for and use of the public services. Furthermore, their opportunities for involvement in the decision making processes on national and local level are limited;

Starting from several pre-assumptions that were derived from number of formal (meetings with Roma women – activists)<sup>63</sup> and informal data (such as the following):

*The educational level has influence on the easier access to the public institutions;*

- (1) *The men from the Roma ethnic community more regularly require services from the state institutions compared to the women;*
- (2) *The Roma have different treatment by the state institutions compared to the larger ethnic groups; and*
- (3) *The manner of communication (the official treatment) of the state institutions towards the Roma and the Roma women is not understandable.*

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62 The Roma Center of the City of Skopje, European Center on the Roma Rights, Network Female Program and Roma Women Initiatives, “**Shadow Report on the status of the Roma women in Macedonia**“, Skopje, February 2006

63 Regular meetings in the frames of the project “**Gender Equality and Fairness**” (Project of the Roma Center of the City of Skopje, supported by the Roma Participatory Program – Budapest, 2009 )

## Methodology:

The results from the survey, presented in this document were obtained in the following manners:

- (1) Field survey questionnaire realized with Roma/ Roma women and representatives from the state institutions and the Employment Agency;
- (2) Structured interview realized with the Roma and Roma women

### Territorial coverage:

This survey was implemented with cities that have greater concentration of Roma population: Skopje (municipalities of Shuto Orizari and Topaana), Gostivar, Kumanovo and Shtip.

The survey covered:

- **74 civil servants** from these cities, representatives of institutions that have direct responsibility in relation to the implementation of the Law on Equal Opportunities (ZEM); the branch offices of the Ministry of Labor and Social Policies, the Employment Agency, the branch offices of the Ministry of Interior and the local offices of the Ombudsman;
- **400 Roma (127 men and 273 women)** ages 15 years and above.
- **38 structured interviews (23 with Roma women and 15 with Roma)**

### Respondents

The inclusion of the Roma men in the survey was done in order to implement the comparison method and see whether there are differences in the attitude of the civil servants towards the Roma men and women.

The different age of the respondents was also intended to verify the tendencies in the attitude of the civil servants towards the Roma on the basis of their age.

### The survey questionnaire:

The questionnaire for the civil servants<sup>64</sup> was implemented in their working premises, with previous approval from their superior. All the institutions that were covered receive initial written notification about the objective and the idea of the survey from the project coordinator.

The questionnaire helped to obtain answers the analysis of which shows:

The current system of communication between the state institutions and the citizens (men and women) when using the public services; and

1. The specific problems the civil servants are faced with when working with Roma.

The questionnaire for the Roma men and women was implemented in the home of every respondent. This questionnaire obtained the following

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<sup>64</sup> The cooperation between our surveyors and the civil servants was not satisfactory. Good number of the civil servants were not interested to fill in the survey questionnaire. We had a very specific example in the branch office of the Ministry of Labor and Social Policy in the city of Gostivar. The manager ordered the persons we surveyed to fill in a same survey questionnaire, by following his responses, with explanation that "all of them share the same organizational opinion". Because of this attitude we did not include these 6 questionnaires into our analysis.

information:

General data (age, educational background, working status, citizenship, marital status, number of children)

1. How much they are informed about the legal obligations for realization of specific legal right (for example, the right to acquire social assistance, right to personal documentation, etc.)
2. How much they are informed about the procedures to file complaints in the case they are not satisfied or in the case of violation of their right by the civil servants;
3. Cases of discrimination by the civil servants;

### **Structured interview with Roma men and women**

This interview was carried out with Roma men and women we found in the branch offices of the Ministry of Labor and Social Policy, the Employment Agency and the local offices of the Ministry of Interior. We obtained information about the following:

Why have they come to this institution;

1. How satisfied are they with the treatment they are getting;
2. Cases of discrimination by the civil servants.

## **Overview of the results**

### **Overview of the educational and social-economic status of the respondents**

The information we obtained from the questionnaires confirmed the already known facts about the marginalized educational and social-economic structure of the respondents.

**44.5% of the respondents have not completed elementary education or they are completely illiterate.** 35% of the surveyed men have not completed their elementary education or they are completely illiterate and 49% of the women have not completed their elementary education or they are illiterate (which is by 14% compared to the men) (Table No. 1)

#### **1. Educational background of the respondents**

Educational background of the respondents	Men	Women	Total surveyed	%
<b>Illiterate</b>	17	73	90	22,5
<b>Incomplete elementary education</b>	28	60	88	22,0
<b>Secondary education</b>	24	30	54	13,5
<b>Elementary education</b>	28	71	99	24,8
<b>Ongoing secondary education</b>	20	28	48	12,0
<b>Tertiary education</b>	3	2	5	1,3
<b>Higher educational</b>	7	9	16	4,0
<b>Total</b>	127	273	400	100,0

Table No.1

**2,5% of the respondents 910 persons) had no citizenship.** Two persons said that they have no citizenship since they do not have the basic funds to survive. The obtaining of the documents, in their opinion, is additional cost which they can not afford (Table No.1.1)

## 1.1 Legal regulation of the respondents:

Table No. 1.1

	Men	Women	Total surveyed	%
Having citizenship	122	268	390	97,5
Not having citizenship	5	5	10	2,5
Total	127	273	400	100,0

Graph of the Table No.1.1

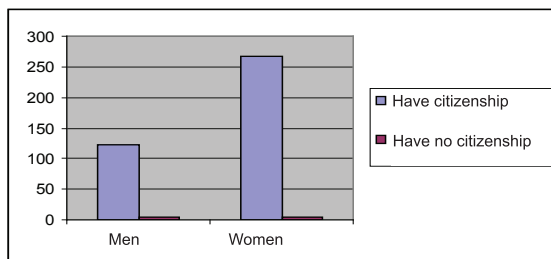


Table No. 1.2

Employed	Men	Women	Total number of respondents	%
Yes	39	61	100	25,0
No		212	300	75,0
Total	127	273	400	100,0

**300 persons (75%) are not formally employed (88 men and 212 women) (Table No.1.2).**

### 1.2 Respondents that are formally employed

**56,3% are registered in the Employment Agency.** From the total number of respondents (43.8%) who said that they do not register as unemployed: 37.1%, said that they do not need to register (these are pensioners, persons that are currently in education and persons that have health insurance through the spouse); 4,8% are not registered since they do not have complete documentation; 0,8% answered that they do not know why they do not register; 0,5% do not trust the institution and 0,5% were de-registered due to large reporting for re-registration (Table No.1.3)

### 1.3 People registered in the Employment Agency of the Republic of Macedonia:

Table No. 1.3

Answer:	Men	Women	Total number of respondents	%
They report	78	147	225	56,3
They do not report	49	126	175	43,8
Total	127	273	400	100,0

## How well are they informed about the dissemination of official information and the complaint procedures

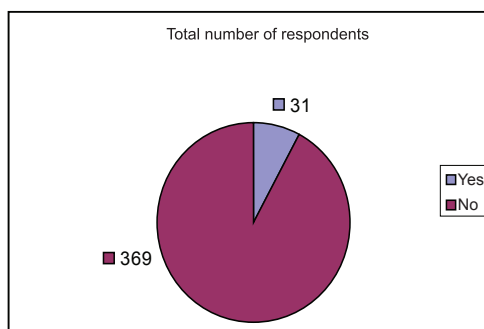
From the total number of 400 respondents (Roma men and women)

92,3% of them do not know what does “Citizens Log” mean<sup>65</sup> (Table No.2).

Table No.2

Answer	Men	Women	Total number of respondents	%
Yes	13	18	31	7,8
No	114	255	369	92,3
Total	127	273	400	100,0

Graphic representation of the Table 2



This percentage points out to the lack of awareness and information about the existence of such document and its role. We got the same impression from the people working at the counters.

- 98,5% have never received the Form<sup>66</sup> for evaluation of the services provided by the public institutions; (Table No.2.1.a)

Table No.2.1.a

Answer	Men	Women	Total number of respondents	%
<b>Yes</b>	3	3	6	1,5
<b>No</b>	124	270	394	98,5
<b>Total</b>	127	273	400	100,0

- 85,3% (341 people) do not know what is the purpose of the boxes for complaints<sup>67</sup> (Table No.:2.1.b)

<sup>65</sup> The Citizens Log is a text provided by the services providers (the state institutions) which is about their responsibilities regarding the quality of their services, their availability and protection from discrimination when using them. Every institution has its respective citizens log (source: Legal analysis)

<sup>66</sup> The Citizens Log, in addition to its purpose to inform, also aims to provide analysis of the quality of services delivered by the state institutions. In this context there is a form through which you can assess their services in relation to your needs."

<sup>67</sup> The Citizens Log also means installation of a complaints box.



Table No.2.1 b

Answer	Men	Women	Total number of respondents	%
<b>Yes</b>	19	40	59	14,8
<b>No</b>	108	233	341	85,3
<b>Total</b>	127	273	400	100,0

From the total number of 59 persons that were informed about the existence of these boxes for complaints, only 9 have filed their comments (2 men and 7 women); (Table No.2.1.v)

Table No.2.1.v

Answer	Men	Women	Total number of respondents	%
Yes	2	7	9	2,3
No	113	258	371	92,8
Not informed	11	7	18	4,5
Fear, lack of confidence	1	1	2	,5
<b>Total</b>	127	273	400	100,0

23,3% said that they are informed about the specific legal procedures through television and the Internet; 18,8% through their friends and relatives, **18,3% through NGOs** and 16.8% by the civil servants; (Table No.2.2).

Table No.2.2

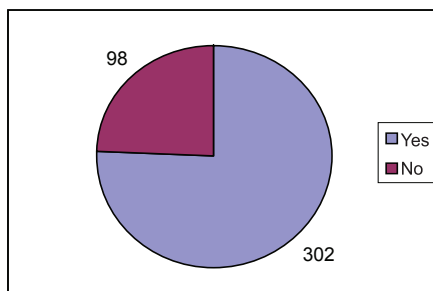
Answer	Men	Women	Total number of respondents	%
<b>TV, radio, Internet</b>	33	60	93	23,3
<b>Magazines and newspapers</b>	13	27	40	10,0
<b>Through NGOs</b>	31	42	73	18,3
<b>Civil servants</b>	19	48	67	16,8
<b>Friends, relatives</b>	24	51	75	18,8
<b>Spouse</b>	4	40	44	11,0
<b>Never got any information about that</b>	3	5	8	2,0
<b>Total</b>	127	273	400	100,0

According to the expectations, all the respondents use the public media to be informed but we must also point out that that there is number of respondents that are also using the NGOs (Table No. 3). They are using the NGOs to obtain initial information about legal procedures in the process of obtaining personal documentation. We point out that this manner of cooperation is also recognized by the institutions where the NGOs represent the interest of the Roma (and this facilitates the access to the institutions for the Roma).

Table No. 3

Answer	Men	Women	Total number of respondents	%
Yes	109	193	302	75,5
No	18	80	98	24,5
<b>Total</b>	127	273	400	100,0

Table No.3.1



- 58,5% said that they have no support in obtaining information. This refers to the support provided by the civil servants when they are approached by the citizens and when they require basic or additional information (Table No.3.2).

- **34,5% have language skills in understanding - 42 men and 96 women** (some of them do not understand sufficiently the Macedonian language, the complexity of the Forms is also difficult for these people); (Table No.3.2).

Table No. 3.2

Answer	Men	Women	Total number of respondents	%
Do not understand the language	42	96	138	34,5
No support for information	78	156	234	58,5
Unequal treatment	4	9	13	3,3
Illiteracy	2	10	12	3,0
No problems	1	2	3	,8
Total	127	273	400	100,0

*Regarding the information, we can see that there is no big difference in the level of information of men and women.*

*There was a difference in the part on how they receive the information i.e. which resources they are using. The men often receive the information via TV and electronic media and the women often use their spouses for initial information.*

### From the total of 74 civil servants that were surveyed:

Table No. 4

Does your organization have Citizens Log?		
Answer	Total number of respondents	%
Yes	23	31,5
No	50	68,5
Total	73	100,0

- **68,5% (51 people) i.e. 2/3** said that they have no **Citizens Log**, 23 people (1/3) of the civil servants that were surveyed (from which 15 were from the local offices of the Ministry of Interior) said that they have Citizens Log in their institutions; (Table No.4)

- In the institutions that have Citizens Log, 66% said that the Log

is available in Macedonian and Albanian language, 21,7% said that the Log is available in Macedonian only (Table No.4.1)

Table No. 4.1

Institutions	In which language is the Citizens Log available?					Total
	Macedonian	Albanian	Roma	Macedonian + Albanian	No Citizens Log	
Ministry of Interior	2			12	5	19
Ministry of Labor	3	1	1		23	28
Employment Agency				2	19	21
Ombudsman				2	4	6
Total	5	1	1	16	51	74

**The citizens are informed by the clerks working on the counters (49,3%).** This information was obtained when the people were asked how to they transmit the information to the citizens regarding the documents required, the deadlines and procedures: 26% said they do that upon request by the citizens, 15% through visible communication by the information services and 9,5% refused to answer (Table No.4.2)

Table No.4.2

Answer	Total number of respondents	%
By the clerks on the counters	36	49,3
Through visibly posted communication	11	15,1
No response	1	9.6
Upon their request	19	26,0
Total	73	100,0

The citizens are informed about their rights via: direct contact (48 respondents); brochures and other printed materials (20 respondents), electronic and printed media (3 respondents) and others (Table No.4.3).

Table No. 4.3

12.3 How do you inform your clients about their rights in relation to the use of the services from your institution?		
Answer	Total number of respondents	%
Brochures and other printed media	20	27
Electronic and printed media	3	4.5
Other	3	4.5
Direct contact	48	64
Total	74	100,0

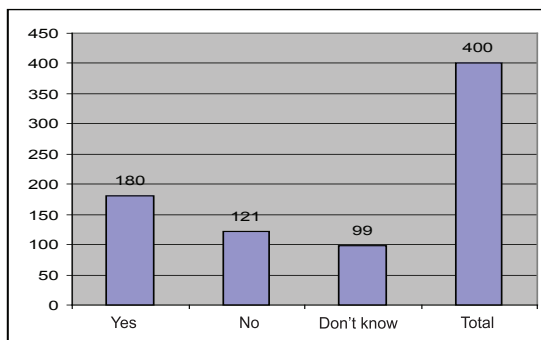
## Most commonly used services, provided by the civil servants

Table No .5

Answer	Men	Women	Total number of respondents	%
<b>Yes</b>	65	115	180	45.0
<b>No</b>	43	78	121	30.3
<b>I do not know</b>	19	80	99	24.8
<b>Total</b>	127	273	400	100.0

– 45% from the total number of respondents know where they should address (to which institution) in the case of violation of the legal right. The women are much less informed than men about the institutions to which they can complain in the case of violation of the human rights. Even 57.8% of women said “I do not know” compared 48.8% men (Table No.5).

Graphic of the Table No.5



41.7% of men approach the state institutions by themselves if they need it. Only 23,8% of the women decide to approach the state institutions by themselves (Table No. 5.1)

Table No.5.1

Answer	Men	Women	Total number of respondents	%
Alone	53	65	118	29,5
Alone but requires assistance by the staff	29	62	91	22,8
With his/ her spouse	4	55	59	14,8
Assistance from NGO	23	37	60	15,0
Assistance from a friend	15	47	62	15,5
From a person that happens to be there	3	5	8	2,0
Other	/	2	2	0,5
<b>Total</b>	127	273	400	100,0

In this context it is obvious that there is a geographical difference – most of the women living in Skopje and in Kumanovo said that they go alone in these institutions, compared to the women from Gostivar and Shtip (Table No.5.1.a).

Table No.5.1a

City		How do you approach the state institutions when you need their services?						
		Alone	Alone but requires assistance by the staff	With his/ her spouse	Assistance from NGO	Assistance from a friend	From a person that happens to be there	Other
Gostivar	No.	13	24	17	1	13	2	
	%	3,3	6,0	4,3	3	3,3	5	
Skopje	No.	28		22	8	12		
	%	7,0		5,5	2,0	3,0		
Kumanovo	No.	19	6	6	22	9		1
	%	4,8	1,5	1,5	5,5	2,3		,3
Shtip	No.	5	32	10	6	13	3	1
	%	1,3	8,0	2,5	1,5	3,3	8	,3
	Total	65	62	55	37	47	5	2

From the total number of surveyed women, 20.14% of them approach the state institution through their husband. *The answer we received corresponds to how the women initially obtain the information (explained above) and leads us to conclusion that some percentage of surveyed women have greater dependency on their husband.*

Both genders equally use the civil servants (when they ask for assistance from the civil servants when filling in forms and obtaining information about procedures) (Table No. 5.1a).

- Most commonly, the respondents address to the state institutions in order to obtain personal documentation (76,3%), for realization of social and health services (13,5%), Very small is the number of those that approach the institutions in order to get registered in the Employment Agency (5,8%), (Table No.5.2)

Table No. 5.2

Answer	Men	Women	Total number of respondents	%
Personal documents	91	214	305	76,3
Realization of social and health services	18	36	54	13,5
Registration in the Employment Agency	10	13	23	5,8
Filing of complaint regarding violated right	7	2	9	2,3
Other	1	8	9	2,3
Total	127	273	400	100,0

In this table we can conclude that the women mainly approach the state institutions in order to obtain personal documentation (78.3% of the female respondents and 13.8% that claim social and health benefits.

- 46% from all civil servants said that they have Regulation in their institution on the procedure with regards to complaints filed by the citizens;**

▪ 64,4% confirm that they are missing a structured form for submission of comments.

### The attitude of the civil servants towards the Roma men and women

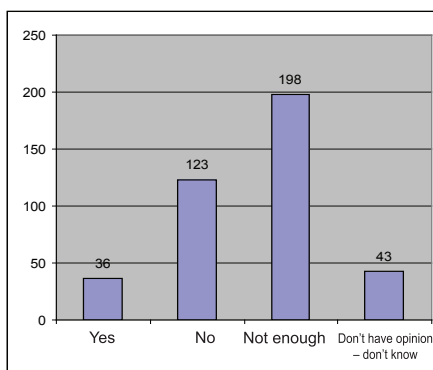
**79.3% of the respondents are not satisfied by the support provided by the civil servants on how to fill in the required forms (Table No.6)**

Table No.6

Answer	Men	Women	Total number of respondents	%
Yes	38	45	83	20,8
No	89	228	317	79.3
Total	127	273	400	100,0

49,5% if the respondents say that the civil servants are not sufficiently professional, 30,8% say that they are totally unprofessional and only 9% think that their attitude is professional

Graphic for Table No. 6



#### Intervju 2 : Man in Shtip

*"It depends on their mood on job that day. Very often they are kind but also quite they go contrary to their obligations, they are sending us back like "come tomorrow" or "wait for 5 minutes" so I am disappointed from them.*

Table No.6.1.

		The civil servants are professional?				Total
		Yes	No	Insufficiently	I do not know	
Gender	Men	4	4	7	2	17
	%	3,1	3,1	5,5	1,6	13,4
	Women	5	23	29	16	73
	%	1,8	8,4	10,6	5,9	26,7
Total		9	27	36	18	90
	%	2,3	6,8	9,0	4,5	22,5

According to the educational background and the satisfaction expressed regarding the attitude of the civil servants we point out to the data

we received by the illiterate respondents (total of 90). 10% of them think that the civil servants are professional, 70% say that is not the case or they are not completely satisfied while 20% have no standpoint. When comparing the level of education with the reasons for lack of information we found out that 47.7% of the illiterate respondents said that they are missing information since they have no access to the information. 44.4% of them say that they do not understand the language in which the information is provided. (Table No.6.1.)

**There is insignificant percentage of people that are convinced that the unequal treatment and the illiteracy are obstacles for the access to information.** This is raising the question: if the illiterate population is convinced that that is not a problem, it leaves a room to think about alternative solution of the problem which, in their works, is very alarming. Interesting is the data where they emphasize the language used by the civil servants: 43.8% from the illiterate group said that the language is a barrier. The high level of illiteracy among women and the difficult language used in the state institution is an important aspect of problems when offering and requesting services and not having such services delivered quickly and effectively.

89% of the civil servants believe that their institution provides support to the citizens when using the services they offer (Table No. 7). They provide their support through: direct explanation of the procedures (25,5%), filling in the forms if there is a need for that (63,5%), and guidance at the counters (11%) (Table No.7.1)

Table No.7

Answer	Total number of respondents	%
Yes	65	89,0
No	6	8,2
No response	2	2,7
Total	73	100,0

Table No.7.1

Answer	Total number of respondents	%
Direct explanation	19	25.5
Fill in the form if necessary	47	63,5
Guidance to the relevant counter	8	11,0
Total	74	100,0

**49.3% of the respondents say that the Roma are not informed about the procedures when they are requesting services in their centers** (Table No.8)

Table No.8

Answer	Total number of respondents	%
No information	36	49,3
Illiteracy	18	24,7
Non-compliance to the deadlines	12	16,4
Other	1	1,4
Inappropriate behavior, fear	3	4,1
Inappropriate behavior, aggressiveness	3	4,1
Total	73	100,0

*This data supports the data obtained from the field survey where we obtained high percentage of dissatisfaction due to the lack of support provided. This situation is due to the fact that the civil servants are burdened with additional explanations and clarifications (regarding the necessary documents, the data that must be included in those forms, etc.)*

– 24,7% are convinced that the illiteracy among Roma is the main factor for the difficulty they face in trying to communicate with the civil servants, 16.4% say that the Roma do not comply to the deadlines, 4.1% think that the Roma are afraid (inappropriate attitude), 4.1% say that the aggressiveness among Roma deserves the treatment they are getting and 1.4% did not respond (Table No.8)

### Discrimination

#### Interview No.2: Men in Skopje (in front of the Social Center building in the Municipality of Chair)

*„He is telling that I need a birth certificate and I have one. After one month they are telling me to bring new certificate about me, my daughter and my children. I am telling him that I have no children, only a 24 years old daughter and he is telling me to bring her here as well as certificate that she is not employed. He is asking me do I have a son abroad, I say I do not have – if I had a son abroad I would have never come to you in the first place – my son will just send me 100 euros and I will eat only salt, pepper and tomatoes. This is too much! They were very aggressive! He wanted to grab my hand from the other side of the window!”*

**73% of the respondents said they felt discrimination from the civil servants.**

When the total number of discriminated respondents is shown per gender, we can notice the difference – even 75% of women were discriminated compared to 68.5% men, 36,8% of them were discriminated many times, 23.3% once or twice and 13% constantly experience such discrimination. (Table No.9)

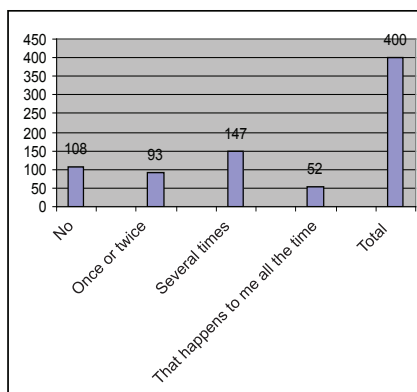
The Table below shows men and women according to their discrimination statements.

Table No.9:

Answer	Men	Women	Total number of respondents	%
<b>No</b>	40	68	108	27
<b>Once or twice</b>	23	70	93	23,3
<b>Many times</b>	41	106	147	36,8
<b>Constantly</b>	23	29	52	13,0
<b>Total</b>	127	273	400	100,0



Graph of Table No.9



Regarding differences in the place of resident, 86 respondents from Skopje felt they were discriminated by the civil servants: 29 of them were men (96.6%) and 57 were women (81.45%). In Shtip their total number is 83 - 22 were men (73.3%) and 61 women (87.1%). In Kumanovo their number is 75 respondents - 28 men (75.6%) and 47 women (73.4%) and in Gostivar a total of 48 people - 8 men (26.6%) and 40 women (57.1%) ( Table No.10.1).

Table No. 10

	From the total of 87 men that felt they were discriminated	From the total of 205 women that felt they were discriminated
Have been discriminated once or twice	26.4%	34.1%
Have been discriminated many times	47.2%	51.7%
Constantly	26.4%	14.2%
Total	100%	100%

Table No.10.1 (Discrimination in the cities)

City	Discriminated men	Discriminated women
Skopje	96.6%	81.45%
Shtip	73.3%	87.1%
Kumanovo	75.6%	73.4%
Gostivar	26.6%	57.1%

According to the place of living the discrimination is mainly present in the City of Skopje and least in the city of Gostivar.

**Interview No.5: Woman in Skopje (in front of the Employment Agency)**

*I graduated secondary education in class 1976/77. Many people received letter for employment but I have received nothing. All my friends are employed, they have apartments, cars and I have nothing all this time.*

*These friends you are mentioning – are they Macedonian women? Yes You think that is the case just because you are Roma. right? Well, I do not exactly but I am telling – maybe it is just me, I have never received any letter”.*

37.5% of the respondents said that their ethnic background is the reason for discrimination, 26.3% that it is their skin color that is the reason for discrimination, 4.8% say it is the age, 3.3% the gender and 1.2% the material status (Table No. 10.2)

Table No.10.2

Answer	Men	Women	Total number of respondents	%
Gender	1	12	13	3,3
Age	2	17	19	4,8
Skin color	29	76	105	26,3
Ethnic background	53	97	150	37,5
Material status	1	3	5	1,2
No discrimination	41	68	108	27
Total	127	273	400	100,0

It is obvious that the percentage of the female respondents who said that the gender is the reason for discrimination - 4.3% were statements from women and 0.7% are statements from men. It is obvious that the men enjoy much more in their own role and they do not notice advantage or disadvantage from belonging to any of the gender.

Reaction following violation of a right

**Only 30,5% of the discriminated respondents reacted**

Table No. 10.3

Answer	Men	Women	Total number of respondents	%
Yes	39	83	122	30,5
No	48	119	167	42.5
No discrimination	40	71	111	27
Total	127	273	400	100,0

The question „**Have you reacted after experiencing discrimination**” was open and to provided opportunity for the respondents to say why they did not react in reference to the discrimination by the civil servant. The lack of reaction is related to fear and shame (49 people). They fear from eventually being rejected in the future from the same civil servants when trying to use the same services and they relate the fear with possible conflict and involvement of the police in the resolution of the problem. 23 persons do not believe that something will be changed if they react and they have great lack of trust towards the system of management. 14 people were not informed and 84 did not respond.

– **88 surveyed Roma said that they react verbally in the case when there is different treatment from the civil servants.** 28 people react to the superiors of the civil servants, 4 reacted to courts, 1 filed appeal to the Ministry of Interior and 1 appeal was left in the boxes for appeals and complaints (Table No.10.3.a)

Table 10.3 a

Answer	Men	Women	Total number of respondents	%
To their superior	5	23	28	7,0
To the Ministry of Interior	1	/	1	,3
To the court	2	2	4	1,0
Complaint in the box	1	/	1	,3
Verbally	33	62	88	22.0
No reaction	45	115	160	40
None	40	71	111	27.7
Total	127	273	400	100,0

– **15% of the appeals were registered (procedure was initiated against those that violated the right)** and the rest of the reactions remained unnoticed due to the statements provided by the respondents (Table No.10.4)

Table No. 10.4 (Did you initiated a procedure regarding the right that was violated?)

Answer	Men	Women	Total number of respondents	%
Yes	19	41	60	15,0
No	23	43	62	15.5
Will not	85	189	278	69.5
Total	127	273	400	100,0

**235 respondents think that the manner of communication of the state institutions is different compared to the non-Roma in their community<sup>68</sup>** (Table No.11)

Table No.11

Answer	Men	Women	Total number of respondents	%
Yes	77	158	235	58,8
No	5	12	17	4,3
Not always	37	79	116	29,0
I do not know	8	24	32	8,0
Total			400	100,0

87 men said that they have experienced discrimination - 20 (22,9%) of them think that the difference communication is not always present. From the total of 40 men respondents that did not experience discrimination, 45 of them are convinced that there is different communication with the Roma (Table No.11.1). From the total of 68 female respondents that did not experience discrimination, 38.2% share the same attitude with the men. (Table No.11.1)

<sup>68</sup> *In the society there are large differences in the groups. The possibilities to emphasize the negative element of the identity is big among the minorities (Roma in this particular case). If this extends to a massive sale that it produces an effect of sustenance of the community faced with inferior position i.e. position that it is already in and maintenance of the relations among the groups based on non-equalities that do not initiate conflicts, so they express their dis-satisfaction through music, poetry, religious activities. (This text is part of the scientific-research project "The sociological aspects of the ethnic living in the Republic of Macedonia" , financed by the Ministry of Science of the Republic of Macedonia and CEU)*

Table No. 11.1.

	Yes	No	Not always	I do not know	Total from the question No.3	Discriminated by the civil servants
Total	26	7	26	9	<b>68</b>	No
%	6,5	1,8	6,5	2,3		
Total	32	1	31	6	<b>70</b>	Once or twice
%	8,0	3	7,8	1,5		
Total	77	1	21	7	<b>106</b>	Many times
%	19,3	,3	5,3	1,8		
Total	23	3	1	2	<b>29</b>	Constantly happening
%	5,8	,8	,3	,5		
Total for question No.6	<b>158</b>	<b>12</b>	<b>79</b>	<b>24</b>	<b>273</b>	

This situation is problematic. In general, all the respondents are convinced that there is different attitude by the civil servants regardless whether they are or they are not victims of different treatment.

**17.6% of women and 14.2% of men are convinced that the other gender is given greater priority and easier access when requesting services from the civil servants (Table No.12)**

Table No.12

			Gender	Gender	Total
	Answers		Men	Women	
Men/ women preference	Yes		8	20	28
		% of column	6,3	7,3	7,0
	No		109	225	334
		% of column	85,8	82,5	83,5
	Creates additional difficulties		10	28	38
		% of column	7,9	10,3	9,5
Total	Calculation		<b>127</b>	<b>273</b>	<b>400</b>
		% of column	100,0	100,0	100,0

**29.3% of the respondents demand that the attitude of the civil servants should be changed, 28.5% demand that sanctions and measures are implemented in order to overcome the unequal treatment, 14.3% propose that Roma are employed in the state institutions, 1.6% call on the NGOs for greater engagement in protecting their interests. (Table No.13)**

Table No.13

Answer	Men	Women	Total number of respondents	%
Change the attitude of the civil servants	36	81	117	29,3
Measures and sanctions to be introduced	39	75	114	28,5
Hire Roma in the state institutions	22	35	57	14,3
Greater commitments by the NGOs	/	6	6	1,5
No answer	30	76	106	26,5
Total	127	273	400	100,0

**Interview 1: Man in Kumanovo**

*"I have not complaint to anyone yet because they are protecting between themselves – the superiors protect their staff. Even if I complain, it will be in vain"*

In order to verify the authenticity of the data obtained on the field, the same questions were asked to the civil servants. The data obtained only confirm the statements received on the field.

According to the civil servants, the citizens, in general, approach directly (82,2%), address in writing (9.6%), other (2.7%) and only one respondent said that the citizens are using the boxes for complaints and appeals. (Table No. 14)

Table No.14

Answer	Total number of respondents	%
<b>Direct contact</b>	60	82,2
<b>Correspondence</b>	7	9,6
<b>Other</b>	2	2,7
<b>None</b>	3	4,1
<b>Complaints box</b>	1	1,4
<b>Total</b>	73	100,0

**- 60.3% of the respondents confirmed that they have received no complaints from the Roma men and women (Table No. 15)**

Table No. 15

Answer	Total number of respondents	%
<b>Yes</b>	30	39,7
<b>No</b>	44	60.3
<b>Total</b>	74	100,0

- 31.5% said the complaints or reactions they receive from the Roma are because the information they received are not clear to them or they are related to lack of satisfaction from the services, 19,2% of the respondents said that the Roma react/ complain on the inappropriate assistance they are getting, 15,1% think that the Roma are the ones that usually complain to discrimination and 24,7% rejected to answer this question. (Table No.16)

Table No.16

	Total number of respondents	%
Discrimination	11	15,1
The information is not clear	14	19,2
Other	7	9,6
None	18	24,7
Information related to services	23	31,5
Total	74	100,0

- 42,5% of the respondents have not done analysis on the number of applications/ complaints filed according to ethnic background, 28,8% did not respond, 12,3% think that the Albanians are the ones that usually file, 8.2% think that it is the Roma, 5.5% said it is the Macedonians and 2,7% other ethnic groups. (Table No.17)

Table No.17

Answers	Total number of respondents	%
<b>Commonly by Albanians</b>	9	12,3
<b>Commonly by Roma</b>	6	8,2
<b>Others</b>	2	2,7
<b>Commonly by Macedonians</b>	4	5,5
<b>No response</b>	21	28,8
<b>No analysis if this kind</b>	31	42,5
<b>Total</b>	73	100,0

50.7% have not noticed which of the two genders more frequently requests services from them, 17.8% say that both partners are coming but the communication is done by the woman, 13.7% say that both partners are coming but the communication is done by the man, 8.2% said that usually the men are coming, 5.5% said that usually the women are coming and 4.1% said that there are no gender differences. (Table No.18)

Table No.18

Alternative answers	Total number of respondents	%
Women usually come	4	5,5
Men usually come	6	8,2
We have not noticed such tendency	37	50,7
They come together – the man talks	10	13,7
No gender difference	3	4,1
They come together – the woman talks	13	17,8
Total	73	100,0

From the total number of respondents, 16 act in accordance with the Regulation, 20 consider the complaints and refer them to the relevant departments, 18 said they make analysis and undertake specific steps with regards to the complaints, 3 review the complaints and discuss, 11 did not respond and 5 think there is other procedure. (Table No.19)

Table No. 19

Answer	Total number of respondents	%
Act in accordance with the Regulation	16	21,9
Have considered the complaints	20	27,4
Other	5	6,8
Analyze and undertaken specific steps	18	24,7
None	11	15,1
Have reviewed the complaints and discussed	3	4,1
Total	73	100,0

“The Roma in the state institutions complain through direct communication” was the answer by 57.5% of the civil servants-respondents, 9.6% said they complain in written form (letters), 4.1% of them responded in writing by using the complaint boxes and 28.8% of the respondents did not answer to this question. (Table No.20)

Table No. 20

Answer	Total number of respondents	%
<b>In direct communication with the civil servants</b>	42	57,5
<b>In written form by using the complaint boxes</b>	3	4,1
<b>No response</b>	21	28,8
<b>In written form with letters</b>	8	9,6
<b>Total</b>	74	100,0

## Conclusion

The overall social situation of the Roma population in Macedonia is assessed as unfavorable in many segments of the social life. The educational structure features high level of illiteracy. The involvement of the Roma in the political life is almost invisible and there are negative tendencies in the employment (high unemployment rate). Although there were significant changes in the status, the role and contribution of the women in the society during the last century and beginning of the new century, the balance of power, the responsibilities and the access to information between men and women is still not equal.

Today, more than ever, there are resources to assist the people in understanding the context of inequality between genders, its history and specifics. The general conclusion from the survey is that it can be used to make an extensive general overview about the entire Macedonian society regarding the interaction between the citizens and the civil servants although its main intention was to identify the problems and needs of a specific ethnic group.

The focus on the ethnic background neglected the other factors. In our society there are strong divisions according to the ethnic background and it is not possible to make a separation of different treatment according to the gender and social category because there is still lack of awareness for identification according to the social categories, place of living, etc.

The data from the field survey confirm the existence of discriminatory policies of the state institutions towards the Roma women (75% of the respondents – Roma women said they have experienced discrimination) in Macedonia. The survey conclusions point out to the need of urgent measures for compliance to the legal provisions for communication between the institutions and the citizens for better information of all the citizens about the existing opportunities in relevant and adequate way.

High figures about the presence of discrimination by the civil servants (73% of all Roma respondents confirm the presence of discrimination) as well as inaccessible procedures.

The Roma women have unequal starting position towards men with regards to the educational level. The illiteracy makes the women dependent from other people (very often this means dependency on the husband or man in the family). The dependency is visible in the case when the woman is approaching the state institutions and is always accompanied by her husband since she is unable to introduce proper communication and realize her rights.

17.6% of women and 14.2% men respondents would like to be the other gender since they think the other gender makes easier access and obtains better service from the civil servants.

There were prejudices by the civil servants - 58.7% of the Roma men or women said that the civil servants have different attitude and approach with other ethnicities.

The manner of communication and conveying of the information by the state institutions towards the Roma is not understandable and inaccessible – this is confirmed by 93% of the respondents.

The civil servants have problem in realization of understandable communication with the Roma due to the large number of illiterate people requesting services and their lack of information about the procedures foreseen



by the law.

This study will be used as a tool to advocate for and increase the awareness of the Roma women and their rights, as well as the rights of the civil servants which are obliged to legal and ethnical responsibility for equal treatment of all citizens.

We hope that this document will contribute towards the commitments of the Sector for Equal opportunities with regards to men and women in the process of realization of the needs and interests of the Roma women. It will serve as a basis to understand the problems the Roma are faced with when using the public services and the need to improve the conditions.

## **Recommendations from the field survey**

### **Resolution of the issue of lack of information about the legal mechanisms**

- Campaign for motivation of the citizens to use the complaint bodes (the Citizens Log) when they are experiencing violation of their rights by the civil servants;
- Regular trainings for the people working in the state institutions regarding the legal changes related to their working obligations;
- Compulsory service for information in each institution, promoted on visible spot. This service should include: direct explanation of the procedure, assistance how to fill in a form if the citizen needs that and escort/ guidance to the relevant counter (the service should be adapted to the language of the citizen);
- Promotion of the information services in the institutions (fliers, hotlines, etc.)

### **Resolution of the issue of lack of information among the Roma regarding procedures when requesting services from the state institutions**

- Campaign on the legal obligations of the citizens when requesting services from the institutions surveyed (for example, how to realize the right to obtain personal documentation, right to social protection, right to employment, etc. in Roma language);
- All the related to realization of the right to personal documentation, right on social insurance, right to employment, etc. need to be disseminated by electronic or TV media, directly in the municipality (in the Roma communities) or via the local NGOs;
- Each institution should hire Roma that will be in charge for:
- Registration and documenting of the verbally initiated complaints and appeals from the Roma;
- Assist the illiterate Roma that can not understand the language used in the forms;
- Regular reminding of the Roma population that they have to comply to the deadlines.

**Resolution of the inappropriate attitude towards the Roma by the civil servants**

- Training of the civil servants on how to deal with the citizens that have difficulties in communication; and
- Motivate the civil servants for more efficient implementation of their duties.

**Resolution of the language barrier (inability to understand and fill in the forms)**

- Create simpler forms (additional to the existing ones) that will be understandable for the category of citizens that have lower level of education; and
- Employment of Roma civil servants.

**Resolution of the discrimination**

- Sanction the civil servants that do not comply to the provisions from the Law on Civil Servants. Public presentation (as annual reports) of the measures undertaken by the managers in sanctioning the civil servants, individually per sectors and departments;
- Presenting of the annual reports on the number of complaints filed by the citizens, broken down per type of complaint, ethnic background and gender and the appropriate feedback by the state institution (proposals and solutions for improvement of the services);
- Improve the control and supervision over the work of the civil servants; and
- Speed up the process of applications/ complaints resolved, submitted to the Ombudsman.

**Resolution of the lack of analysis on the applications/ complaint filed in the state institutions, broken down per gender and ethnic background**

- Gender sensitivity training for the civil servants; and
- Analyses, databases and registration of the applications/ complaints received in each and every institution per gender and ethnic background.