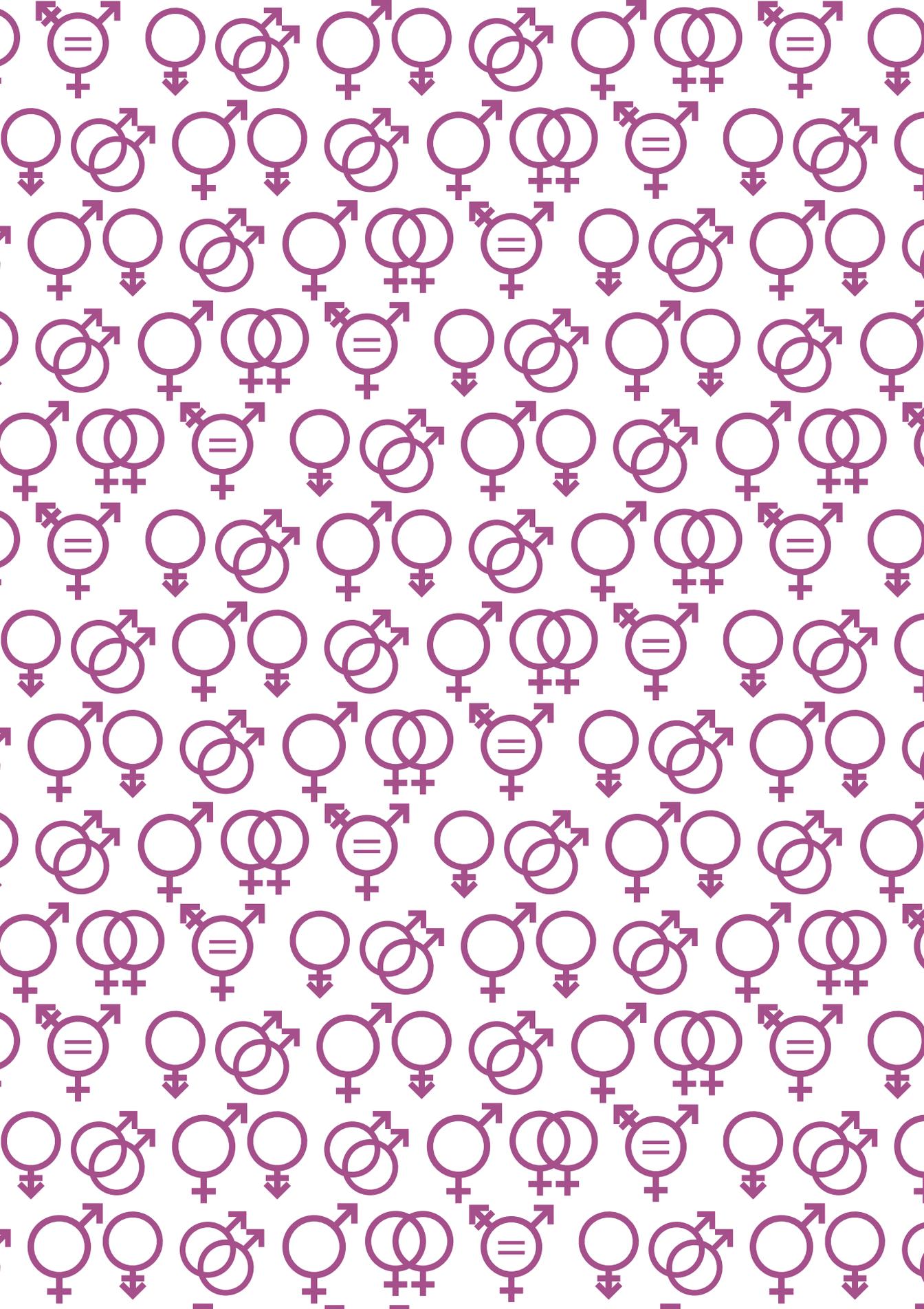


ANALYSIS OF THE LEGAL FRAMEWORK FOR THE PROTECTION OF THE RIGHTS OF THE LGBTI COMMUNITY

 **ХЕЛСИНШКИ**
КОМИТЕТ ЗА ЧОВЕКОВИ
ПРАВА НА РЕПУБЛИКА
МАКЕДОНИЈА

 **LGBTI**
центар за поддршка
gender per prkrajnje
support centre





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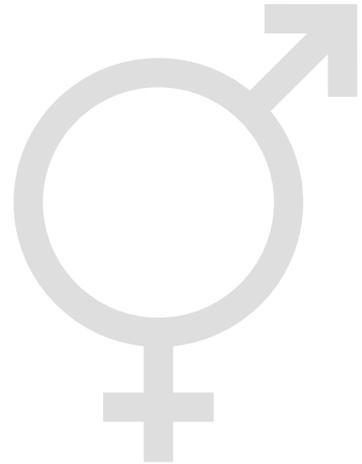
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Introduction

Even after 25 years of independence of the Republic of Macedonia, homophobia and transphobia still exist in almost every aspect of life. Domestic and international reports on the situation with the rights of LGBTI persons, without exceptions, present the community's situation as one of the worst in Europe. The lack of political will, the openly expressed homophobia by high institutions' representatives, as well as the dysfunction of the judicial system, are the main obstacles for exercising the principle of equality of all citizens. An example of the aforementioned are the reports on the progress of the Republic of Macedonia towards the European Union¹ in which the country is constantly criticized for the general shortcomings in implementing standards of human rights that affect the most vulnerable and most marginalized social groups, such as the LGBTI community. Moreover, the reports by the ILGA-Europe Organization² which fights for LGBTI rights and publishes a list of 49 countries according to their respect for the human rights of this community, constantly places Macedonia at the bottom of the list.

There are systemic problems which institutions and positive law fail to overcome, overcome at a very slow pace or only worsen. Basic problems involve the imprecision or discriminatory content of legal regulations, the insufficient expertise and training of institutions' representatives and the lack of effective legal protection. In the Republic of Macedonia, the Constitutional Court, the Standing Inquiry Committee for Protection

1 Reports by the European Commission on the Republic of Macedonia for 2012, 2013, 2014, 2015 and 2016: <https://goo.gl/SCM7Xn>, <https://goo.gl/CwUa56>, <https://goo.gl/VDSJTs>, <https://goo.gl/azwqB2>, <https://goo.gl/SQxrrV>

2 Reports by ILGA-Europe Organization for the situation with LGBTI rights in the Republic of Macedonia for 2012, 2013, 2014, 2015 and 2016: <http://www.ilga-europe.org/who-we-are/organisational-documents/annual-reports>

of Civil Freedoms and Rights of the Assembly of the Republic of Macedonia, the Ombudsman, the Commission for Protection against Discrimination, and the courts are state mechanisms for protection of human rights with a clear mandate for dealing with discrimination in general, but in practice, human rights structures do not take almost any measure in terms of sexual orientation and gender identity. Positive laws cause a continuous violation of the rights and freedoms of LGBTI people in the Republic of Macedonia and fail to offer any type of protection to the community. The legislation does not include sexual orientation and gender identity as special grounds for protection and, therefore, members of the community remain vulnerable and susceptible to different treatment from heterosexuals.

This analysis gives a brief description of the main problems in the legislation, including specific proposals for their overcoming. The analysis is divided into three parts as to clearly locate the problems without undermining that which has already been achieved. The first part analyzes the desired legal solutions, such as adoption of a strategy for overcoming homophobia and transphobia, the amendments to the Law on Prevention and Protection against Discrimination³, the Criminal Code⁴ and the Law on Family⁵ as well as the adoption of regulations for systemic recognition of sex change. Furthermore, in the second part, for a better understanding of the existing legislation regarding LGBTI people, the legal provisions and the bylaws that mention and regulate rights related to sexual orientation and gender identity are listed. More specifically, six laws are included as follows: The Law on Protection from and Prevention of Domestic Violence⁶, the Law on Audio and Audiovisual Media Services⁷, the Law on Public Health⁸, the Law on

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3 Law on Prevention and Protection from Discrimination, *Official Gazette of RM* no. 117/2015

4 Criminal Code of the Republic of Macedonia, *Official Gazette of the Republic of Macedonia* no. 37/96

5 Law on Family, Article 15, *Official Gazette of RM* no. 80/92, 9/96, 38/2004, 33/2006 and 84/2008

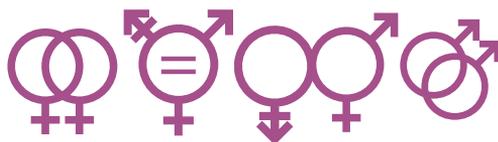
6 The Law on Protection from and Prevention of Domestic Violence, *Official Gazette of RM* no. 138/2014

7 Law on Audio and Audiovisual Media Services, *Official Gazette of RM* no. 184/13, 101/14 и 132/14

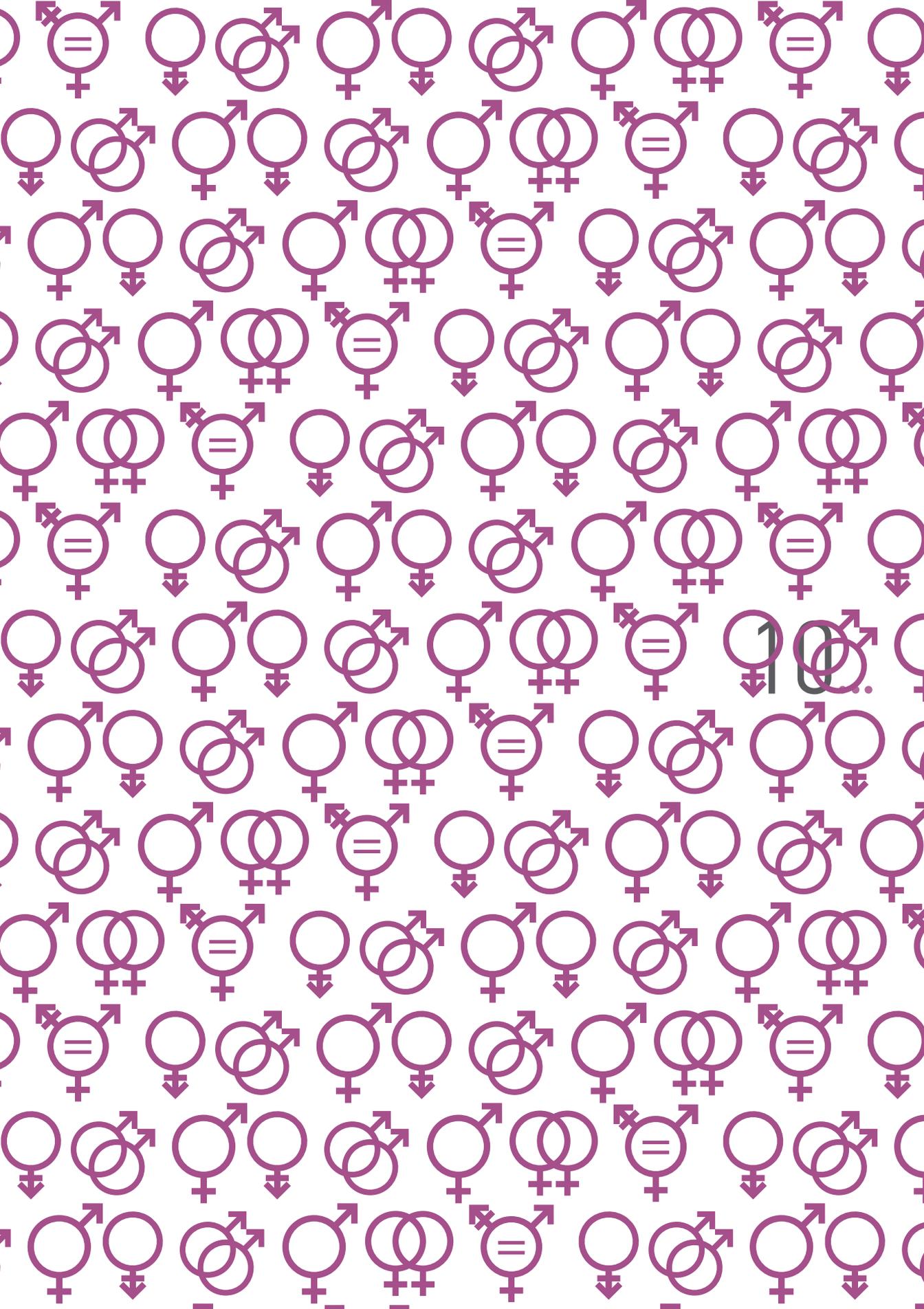
8 Law on Public Health, *Official Gazette of RM* no. 22/2010

Amending and Supplementing the Law on Family⁹, the Law on Patients' Rights¹⁰, the Law on Higher Education¹¹, and the Rulebook on New Advertising Techniques¹² and Guidelines on Implementing Product Placement Rules¹³ adopted by the Agency for Audio and Audiovisual Media Services. Finally, the third part presents international experiences through research and indicators as well as specific recommendations on how to overcome the existing problems and create an atmosphere of acceptance. The analysis refers to all concerned bodies for the protection of the rights of citizens and other non-judicial bodies and topics related to their work. It is intended to inform the public about the human rights and freedoms legislation of LGBTI people and can serve as a guide to the legislator in the important reform period ahead.

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- 9 Law on Amending and Supplementing the Law on Family, *Official Gazette of RM* no. 153/2014
- 10 Law on Patients' Rights, *Official Gazette of RM* no. 12/2009
- 11 Law on Higher Education, *Official Gazette of RM* no. 35/08; 103/08; 26/09; 83/09; 99/09; 115/10; 17/11; 51/11; 123/12; 15/13; 24/13; 41/14; 116/14; 130/14; 10/15; 20/15; 98/15; 145/15; 154/15 and 30/16
- 12 Rulebook on New Advertising Techniques, *Official Gazette of RM* no. 56/2015
- 13 Guidelines on Implementing Product Placement Rules, *Official Gazette of RM* no. 201/2014



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II Description of Problems and Necessary Legal Solutions

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1. Implementing a Strategy for Overcoming Homophobia and Transphobia

At the moment, there is no comprehensive or any other type of strategy for tackling discrimination, stereotypes and prejudice on the basis of sexual orientation or gender identity. On the contrary, representatives of institutions with their public speeches have increased prejudices and stereotypes for LGBTI people. Former Minister of Labor and Social Policy raised the issue of same-sex marriages and the adoption of children by same-sex couples without any public debate or opinion on these issues by the LGBTI community¹⁴. Thus the Minister, yet once again, publicly reaffirmed the Government's position for guaranteeing the rights of LGBTI people and caused public condemnation aimed at the LGBTI for no apparent reason. In addition to the fact that the National Strategy for Equality and Non-Discrimination 2016-2020¹⁵ includes sexual

14 "An Imposed Constitution" Public Debate on draft amendments to the Constitution of the Republic of Macedonia: <http://www.soros.org.mk/CMS/Files/Documents/FOOM-inserter-Nametnat-ustav.pdf>

15 National Strategy for Equality and Non-discrimination 2016-2020: <http://arhi->

orientation and gender identity, it does so only in the introduction without ever focusing on the needs and problems in the rest of the text. Hence, considering that there are several groups that would be included in this strategy, as well as the uniqueness of the problems they face, it is necessary to adopt a special strategy that can offer a comprehensive protection. The adoption of the Strategy for Overcoming Homophobia and Transphobia requires establishing an intersectoral body composed of government representatives and representatives of civil organizations that would work on the protection and promotion of the rights of LGBTI people, whose task will be the creation and implementation of the Strategy. As a first step towards the implementation of the Strategy, it is necessary to conduct special training for the state administration, the police, and the judiciary for raising awareness and identifying discrimination based on sexual orientation and gender identity. This will result in sensitization regarding the issue of LGBTI people's rights and will emphasize the cooperation between institutions and organizations whose work is in the domain of the LGBTI community. The second part covers the area of education that requires the revision of the textbooks used in different levels of Macedonian education which would involve removal of the inaccurate or outdated research that wrongly represents the LGBTI community. Additionally, as another segment of the second part, the Labor Law must provide equal rights and obligations for all employees, regardless of sexual orientation and gender identity, and from there arises that the health and social protection of LGBTI persons should be equally accessible as it is for all other persons. In the third part of the Strategy for Overcoming Homophobia and Transphobia, the attention is focused on the perception of the LGBTI community in sports and other fields. Cheering in the most popular sports often abounds in homophobic and transphobic chants and is almost never sanctioned. The pronouncement of more severe punishments and constant cooperation with fan groups will contribute to the gradual reduction of hate speech based on sexual orientation and prevention of the violence resulting from that atmosphere. In the Republic of Macedonia, the Law on Prevention and Protection against Discrimination also applies to households. Aside

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from the fact that sexual orientation and gender identity are not included in the Law, the Commission for Protection against Discrimination can recognize discrimination based on sexual orientation and gender identity in the area of households. However, practice shows that this happens very rarely or almost never. Hence, there is a pressing need for campaigns social programs in relation to anti-discrimination provisions that would include support programs for addressing factors that increase the vulnerability and risk of homelessness of LGBTI people, children and youth, and support and security schemes in the neighborhood. In the fourth and final part, the Strategy will amend several laws and other legal acts that will guarantee the basic human rights of LGBTI people. These legal acts are as follows: the Law on Prevention and Protection against Discrimination, the Criminal Code, the Law on Family and the Regulation on Systemic Recognition of Gender Change.

2. Changes to the Law on Prevention and Protection against Discrimination

In the Law on Prevention and Protection against Discrimination, which was adopted in 2010, sexual orientation was not included as a separate basis for protection against discrimination. As for gender identity as a separate basis for discrimination, it was not even considered in the drafting of the Law. According to Article 3 of the Law on Prevention and Protection against Discrimination, the grounds for discrimination are listed exhaustively and they do not include a ban on discrimination based on sexual orientation or gender identity. Although the affiliation to a marginalized group exists as grounds for prohibition of discrimination, the interpretation and submission of cases under this group entirely depends on the judges. Current case-law has not shown positive results or included cases where sexual orientation and gender identity have been considered on the “affiliation of a marginalized group” basis. There are several cases in which the Commission for Protection against Discrimination adopted positive decisions regarding discrimination due to sexual orientation and gender identity that have were reviewed under “any other” basis, but their number is very small and disproportionate to the real need for protection. For these reasons, it is necessary to introduce the concepts of sexual orientation and gender identity as special grounds

for protection against discrimination in order to ensure full respect for the human rights of lesbians, gay men, bisexuals and transgender people, and to promote patience towards these groups. With this change, the Commission for Protection against Discrimination will have the opportunity to constantly review the existing and other measures, as well as to collect and analyze relevant data in order to monitor and determine any direct or indirect discrimination based on sexual orientation or gender identity. Finally, it will provide an effective remedy before national authorities that will enable victims of discrimination to be aware of the existence of the same, thereby providing anti-discrimination measures that include sanctions for violations and provisions for an adequate compensation for the victims.

3. Changes to the Criminal Code

The Criminal Code of the Republic of Macedonia recognizes hate crimes only on a national, racial or religious basis, while sexual orientation and gender identity are not considered as grounds for hate crimes. According to the provisions of the Criminal Code, sexual orientation and gender identity cannot be considered as an aggravating factor in determining the sanctions for a committed crime, and so far, there has not been adopted any court decision that proves the contrary. There is no data regarding such hate crimes and other hate-related incidents, nor is there any data on discrimination based on sexual orientation and gender identity, and there is still no resolution for any of the five attacks on the LGBTI Center. Hence, it can be concluded that state institutions do not have a clear policy to combat such crimes. The necessary change to the Criminal Code in the section on hate crimes should be in such a way that sexual orientation and gender identity become special grounds for hate crimes. Additionally, it is evident that most police officers, court and prison employees have never attended any training on how to react to hate crimes that are based on sexual orientation or gender identity. In order for the legal framework to be effective, the change will have to involve training and preparation of the competent institutions for dealing with those types of crimes. With this change, the Ministry of Interior, the Sector for Internal Control and Professional Standards and the Training Center (as bodies within the Ministry of Interior), the Academy for Judges and

Public Prosecutors and the Directorate for Execution of Sanctions will be able to collect and analyze Data on the performance and character of crimes and discrimination in this area. This allows for more rigorous measures in the fight against hate speech based on sexual orientation or gender identity, including laws under which such hate speech would be punishable. At the same time, good practices would be promoted in the media and internet service providers. Political representatives would publicly express zero tolerance towards hate speech, especially on the basis of sexual orientation and gender identity.

4. Changes to the Law on Family

The Republic of Macedonia decriminalized homosexuality in 1996, which means that since then, people are free to have homosexual relationships. The age of maturity for consent to sexual relations in Macedonia is equal for both homosexual and heterosexual relationships. There are no provisions in the Criminal Code that, due to their wording or their scope, could be used in a discriminatory manner in terms of sexual orientation or gender identity. However, pursuant to Article 15 of the Law on Family, two persons of a different sex can be married, which means that same-sex couples are discriminated against by the Law on Family as opposed to couples with partners of different sexes. In accordance with current regulations, same-sex couples are neither recognized by the state nor have any rights. The Law on Family defines the rights and obligations of only unmarried heterosexual couples only, and close and personal relationships are defined as relationships between people of a different sex who are or have been in a relationship but do not live in an extramarital community. It thus becomes clear that the authorities have not taken any steps to solve the everyday problems of same-sex couples. They are still openly discriminated when it comes to property rights and no measures have been taken to protect them against discrimination based on sexual orientation or gender identity regarding parental rights, adoption, and custody of a child. In order to overcome this kind of discrimination, the changes to the Law on Family must guarantee equality between same-sex couples and couples with partners of different sexes both in the marital and extra-marital community. This will enable the protection of LGBTI people regarding property rights and will open up the possibilities

for work in the area of nondiscriminatory treatment when it comes to parental rights, adoption and custody of children.

5. Adoption of a Regulation for Systemic Recognition of Gender Change

In the Republic of Macedonia, there are no precisely determined and clear procedures for change of a personal identification number, which is necessary for the legal recognition of the change of sex in the case of a transgender person. For these reasons, confusion is created in the actions of civil servants, but also with the transgender people themselves. Although the state offers endocrinological and psychological treatment that is needed for transgender people, it is either ineffective or inappropriate because there is no practice or training for professional health workers in cases of transgender people, that is, in the process of gender change. The state does not offer sex reassignment surgeries and there is no evidence to reimburse funds from the Health Insurance Fund, even in cases when persons have performed the operation in another state, with their own funds. Thus, the state violates the constitutionally guaranteed right to health care¹⁶ for all citizens, including the LGBTI people. According to the Law on Personal Name,¹⁷ each citizen has the right to change his/her personal name and surname, however, when it comes to changing the identification (ID) number which contains the code for the person's sex, it is not clear which authority has the competence to change it. Practice shows that the procedure for changing the ID number is not clearly established. For example, in one case, two transgender people who need to be treated equally in the process of changing the ID number under the same conditions and initiate the procedure in different cities without having performed surgical interventions and receive different results. For all these reasons, the state must guarantee full legal recognition of a person's sex change in a quick, transparent and accessible way. Furthermore, the state must provide access for transgender persons to appropriate sex change services and remove any obstacles that limit the possibility of costs being covered by

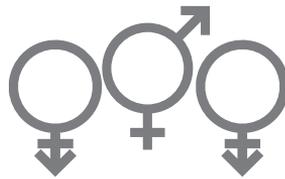
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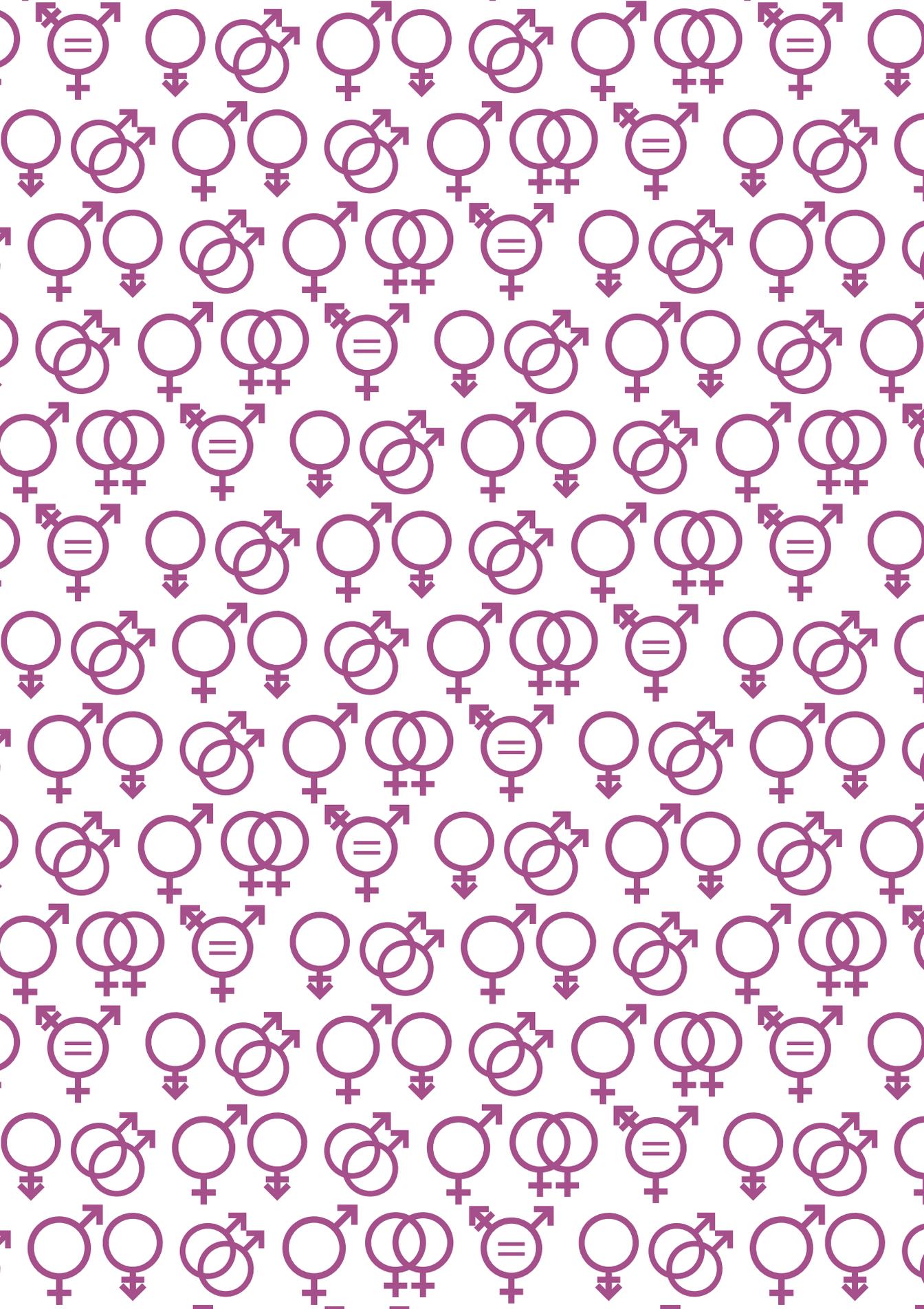
16 Constitution of the Republic of Macedonia, Article 39, Official Gazette of RM no. 52/91

17 Law on Personal Name, Official Gazette of RM no. 8/95

health insurance, and the costs incurred by transgender persons must be legal, objective and proportionate. This will allow for a unified procedure for systemic recognition of gender change that will include simple legal and health procedures with a clear division of responsibilities between the Ministry of the Interior and the Registry Records Administration.

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III Positive Legislation Regarding the LGBTI Community

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The aforementioned areas refer to the main areas that require legal changes, which will enable the equalization of LGBTI people's rights with citizens' rights. For the purpose of better understanding of the positive legislation regarding LGBTI people, the following text includes the legal provisions and by-laws that mention and regulate rights related to sexual orientation and gender identity.

Law on Protection from and Prevention of Domestic Violence

Article 3 of the Law defines domestic violence and reads as follows: "Domestic violence refers to maltreatment, insulting, endangering safety, bodily harm, sexual or other psychological, physical or economic violence that causes a feeling of insecurity, endangerment or fear, including threats for such actions towards a spouse, parents or children or other persons living in a marital or extra-marital union or a common household, as well as towards a present or former spouse, an extramarital partner or a persons who have a child or are in close personal relationships regardless of the fact whether the perpetrator shares or shared the same dwelling with the victim or not". Considering

the fact that the aforementioned article does not define partners on a gender basis, the formulation “or other persons living in an extramarital status or common household” protects same-sex couples from domestic violence as well. Moreover, the broad definition of “persons in close personal relationships” includes the communities of either two men or two women and thus guarantees the protection from and prevention of domestic violence for these groups as well.

Law on Audio and Audiovisual Media Services

Article 53 of the Law which regulates audiovisual commercial communication stipulates that audiovisual commercial communication should not include or promote any kind of discrimination based on sex, race, ethnicity, nationality, religion or conviction, disability, age or sexual orientation. This article directly states *sexual orientation* as one of the grounds for protection against discrimination. However, even in this law, gender identity is not protected on a separate basis.

Law on Public Health

Article 16 of the Law on Public Health establishes the principles for the work of the Institute and the Centers for Public Health of the Republic of Macedonia. The Institute and the Centers shall base the activities referred to in Articles 10 and 11 of this Law on six principles, one of which is to perform interventions that will not discriminate against individuals on grounds of race, sex, national or social origin or property, religious beliefs, *sexual orientation* or status of a person with special needs. The situation in this law is identical to the prevention provided by the Law on Audio and Audiovisual Media Services—protecting sexual orientation, but omitting gender identity.

Law Amending the Law on Family - Custody of minors - victims of human trafficking¹⁸

On 19 July 2008, the Law on Amending the Law on Family entered into force. With these amendments, according to Article 177 of the Law, a new Chapter V-a “Custody of Minors - Victims of Human Trafficking”, which includes 16 articles, was added. Article 177-l stipulates that a child who

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18 Law Amending the Law on Family, *Official Gazette of RM*, no. 153/2014

is a victim of human trafficking and the family are granted assistance regardless of religion, race, sex, nationality or social origin, genetic characteristics, language, religion, psychological or physical abilities, sexual orientation, age, and other. In addition to the fact that the list is left open with the definition of “other”, gender identity is, yet again, not specified as a separate basis for protection.

Law on Patients’ Rights

Article 5 of this Law protects patients from discrimination and stipulates that the patient has the right to exercise the rights prescribed by this law without discrimination based on sex, race, skin color, language, religion, political or any other opinion, national or social origin, belonging to a national minority, material status, birth origin, *sexual orientation* or any other status. The situation is identical with the amendments to the Law on Family—even though the list is left open with the definition of “any other status”, gender identity is, yet again, not referred to as a separate basis for protection.

Law on Higher Education

Article 5 of the Law that regulates the conditions and the manner of enrollment stipulates that the university or the independent higher vocational school determines the procedure for selection of candidates for enrollment in a manner that guarantees equality of all candidates regardless of race, color, sex, language, religion, political or other belief, ethnic, national or social origin, property, birth, social status, disability, *sexual orientation* and age. Sexual orientation is listed as a separate basis for protection, but again, gender identity is omitted from the closed list of bases.

Rulebook on New Advertising Techniques - Agency for Audio and Audiovisual Media Services

This Rulebook prescribes the rules for the use of new advertising techniques by providers of audiovisual media services and aims to protect viewers from excessive exposure to advertising from different brands and from dishonest commercial practices. Article 11 for consumer protection stipulates that new advertising techniques must not include and promote any discrimination on the listed bases, including sexual

orientation. Gender identity as a separate basis for protection is, yet again, not included.

Guidelines on Implementing Product Placement Rules - Agency for Audio and Audiovisual Media Services

These Guidelines prescribe the manner of applying the rules of product placement. The general rules stipulate that placing products must not jeopardize respect for human dignity and/or to include or promote any discrimination on the listed bases, including sexual orientation. Gender identity is, yet again, not included as a separate basis.

The foregoing considerations lead to the conclusion that sexual orientation is mentioned mostly in the legal and by-law acts in the areas of media, health and social affairs. On the other hand, it can also be concluded that gender identity does not exist at all in the Macedonian legal system, which means that the transgender and intersex people are completely invisible to the legislator and the public administration.

IV International Research, Indicators and Recommendations to RM

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For the purpose of gaining a wider perspective on the situation in legislation and its consequences in real life, this chapter gives an insight into the findings of ILGA-Europe—the European branch of the largest international organization for protection and realization of the LGBTI community’s rights. Each year, ILGA-Europe publishes individual reports on the progress (or regress) of the situation in European countries and submits them to the European Commission. In the report on Macedonia for 2016¹⁹, ILGA offers three key recommendations for improvement of the legal framework regarding the LGBTI people’s rights. The first recommendation involves adopting specific legal provisions that will protect employees from discrimination based on sexual orientation, gender identity and/or sex characteristics. The second recommendation is the development of a fair and transparent legal framework for legal gender recognition based on the principle of self-determination, free from abusive and inhumane requirements (such as sterilization, medical diagnosis and/or surgical interventions). The final recommendation

19 ILGA-Europe Report for 2016: http://ilga-europe.org/sites/default/files/2017/fyr_macedonia.pdf.

targets the widely-present social problem of hate speech in the Republic of Macedonia. ILGA-Europe recommends introducing legal solutions for the prohibition of hate speech that will explicitly refer to sexual orientation, gender identity and sexual characteristics as protected grounds.

For a more graphic presentation, each year, ILGA-Europe publishes a rainbow map²⁰ which ranks European countries according to the progress achieved towards the full realization of the LGBTI people's rights. This year Macedonia is, yet again, among the last countries—at the 41st position out of 49 countries—similarly to Belarus, Azerbaijan, Russia, and Turkey. According to the ILGA-Europe Conclusions, Macedonia has implemented only 16% of the necessary legal solutions that protect and guarantee the rights and freedoms of the LGBTI community. Below is a disaggregated criteria index²¹ indicating the criteria that the Republic of Macedonia has/has not fulfilled.

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20 Rainbow Map by ILGA-Europe: <https://rainbow-europe.org/>.

21 Criteria Index by ILGA-Europe: http://www.ilga-europe.org/sites/default/files/Attachments/side_b-rainbow_europe_index_may_2016_small.pdf.

Equality and non-discrimination

✗ Not fulfilled	✓ Fulfilled
Constitutional (sexual orientation)	Access to goods and services (sexual orientation)
Employment (sexual orientation)	Access to education (sexual orientation)
Conversion therapy (sexual orientation)	Access to public health care (sexual orientation)
Equality body mandate (sexual orientation)	
Equality action plan (sexual orientation)	
Constitution (gender identity)	
Employment (gender identity)	
Access to goods & services (gender identity)	
Access to education (gender identity)	
Access to public health care (gender identity)	
Conversion therapy (gender identity)	
Equality body mandate (gender identity)	
Equality action plan (gender identity)	
Law on free gender expression	
Law on the protection of the body integrity intersex people	
Policies for protection of intersex people	

Family

✗ Not fulfilled	✓ Fulfilled
Marriage equality	No constitutional limitation on same-sex marriages
Registered partnership (similar rights)	Medically assisted insemination (singles)
Registered partnership (limited rights)	
Cohabitation	
Joint adoption	
Second parent adoption	
Automatic co-parent recognition	
Medically assisted insemination (couples)	
Trans people can marry a person of another gender	

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Hate speech and hate crimes

✗ Not fulfilled	
Hate crime law (sexual orientation)	Hate speech law (gender identity)
Hate speech law (sexual orientation)	Policy tackling hatred (gender identity)
Policy tackling hatred (sexual orientation)	Hate speech law (gender identity)
Hate crime law (gender identity)	Policy tackling hatred (intersex)

Legal gender recognition and bodily integrity

✗ Not fulfilled	✓ Fulfilled
<p>Existence of legal measures</p> <p>Existence of administrative procedures</p> <p>No age restriction for name change</p> <p>No Gender Identity Disorder diagnosis/psychological opinion required</p> <p>No compulsory medical intervention required</p> <p>No compulsory surgical intervention required</p> <p>No compulsory sterilization required</p> <p>No age restriction</p> <p>Prohibition of medical intervention before child is able to informed consent (intersex)</p>	<p>Name change</p> <p>No compulsory divorce required</p>

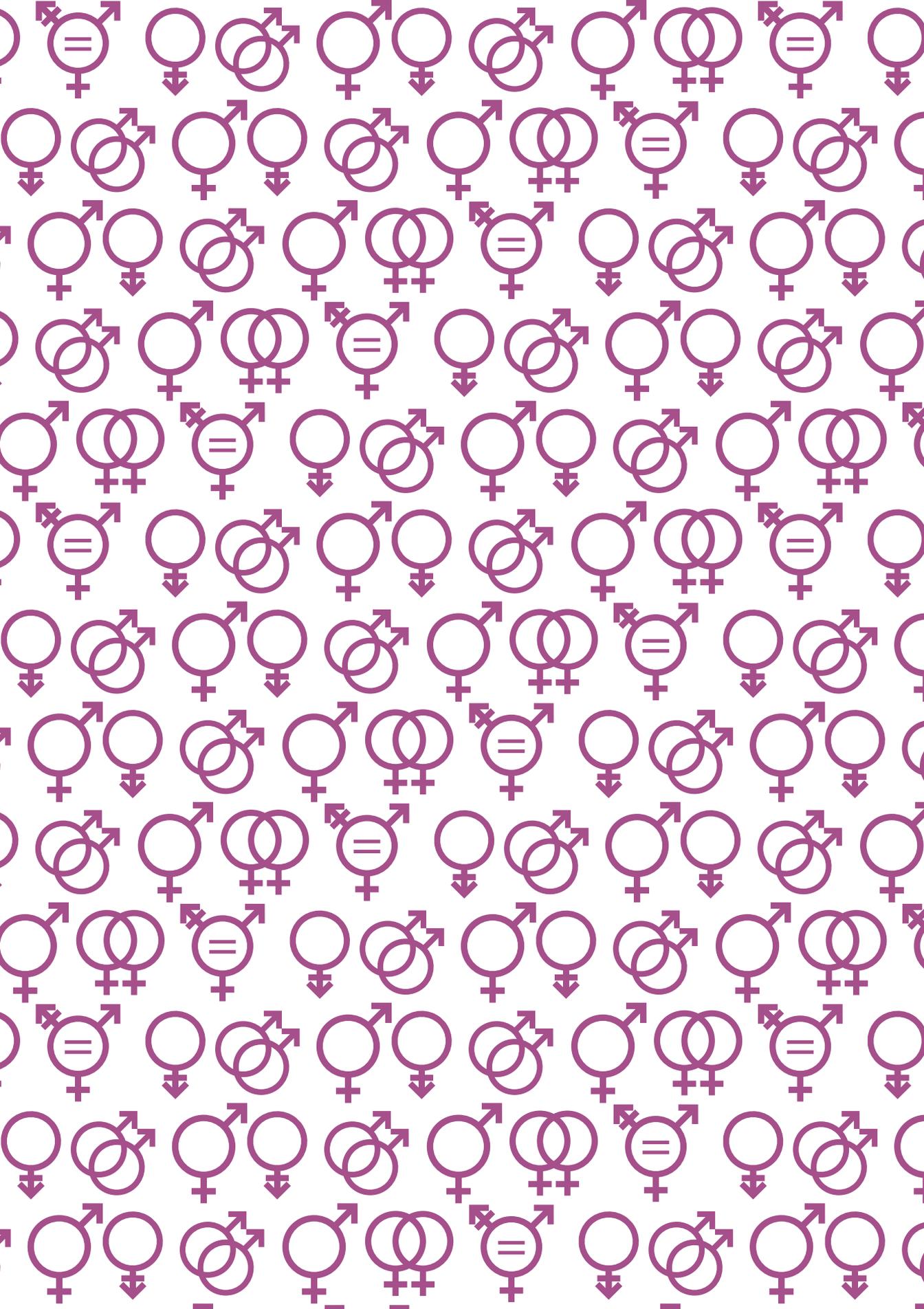
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Civil society space

✓ Fulfilled
<p>Public event held, no state obstruction of freedom of assembly (3 years)</p> <p>Associations operate, no state obstruction of freedom association (last 3 years)</p> <p>No laws limiting freedom of expression (national/local)</p>

Asylum

✗ Not fulfilled
<p>Law on asylum (sexual orientation)</p> <p>Policy/other positive measures (sexual orientation)</p> <p>Law on asylum (gender identity)</p> <p>Policy/other positive measures (gender identity)</p> <p>Law on asylum (intersex)</p> <p>Policy/other positive measures (intersex)</p>



RECOMMENDATIONS

Regarding the Legal Framework for the LGBTI Community's Rights in the Republic of Macedonia

There are several recommendations regarding the foregoing index:

1. An answer to the investigation against the attackers of the LGBTI Center and the LGBTI people should be provided immediately because the impunity of the attackers is discrimination against LGBTI people as a marginalized group, which completely destroys trust in the institutions.
2. Adoption of a comprehensive strategy for overcoming homophobia and transphobia/action plan for the National Strategy for Equality and Non-Discrimination 2016-2020.
3. The introduction of the amendments to the Law on Prevention and Protection against Discrimination, especially in the area of access to justice for victims of discrimination, should begin as soon as possible, i.e. the exemption from legal fees for initiating legal proceedings for protection against discrimination, the independence of Commission for Protection against Discrimination, and the inclusion of sexual orientation and gender identity as basis for discrimination.
4. Implementing legal solutions for the prohibition of hate speech in which sexual orientation, gender identity and sexual characteristics will be explicitly established as protected grounds.
5. Implementing specific legal provisions that will protect employees against discrimination based on sexual orientation, gender identity and/or sexual characteristics.

6. Introducing a fair and transparent legal framework for legal gender recognition based on the principle of self-determination and freedom from offensive and inhumane conditions (such as sterilization, medical diagnosis and/or surgical interventions).
7. Amending the Law on Family in such a way as to guarantee equality between same-sex couples and couples with partners of different sexes, both in the marital and the extramarital community.



V Conclusion

Following the description of the problems and the desired legal solutions, considering the positive legislation regarding the LGBTI community and the comparison of international research and indicators, as well as the recommendations for the Republic of Macedonia, it can be concluded that urgent and efficient reforms are necessary in order to provide The basic human rights of the LGBTI community in the Republic of Macedonia. The LGBTI community in the country will remain deeply marginalized until the above recommendations are implemented. The long-standing climate of general animosity towards the LGBTI community in the mainstream media, the political establishment and society, as well as the failure to take measures to prevent hate speech and acts of hatred against LGBTI individuals have contributed to the continuous deterioration of the situation, placing the country at the bottom of the European continent. Today, LGBTI people live in constant fear and on the margins of society without any guarantee from the state that they will be protected in the event of an attack. All this represents a sufficient number of arguments that the struggle for change can no longer be delayed even for a day because LGBTI rights are human rights!



Annex 1:

The situation with LGBTI rights in countries of the Western Balkans

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The countries of the Western Balkans, which include Macedonia, Albania, Kosovo, Montenegro, Serbia, Bosnia and Herzegovina, and Turkey (although it does not correspond geographically, Turkey is traditionally listed here as a candidate country for EU membership in the region) have a history of problems in securing equal rights and opportunities for the LGBTI community. There are numerous factors for this, such as the transition period of the nineties, poor economic development, and the dominant conservative ideology. However, the past period was a period of progress which noted providing a legal framework for the protection of community rights, although this is not always reflected in reality. Albania, Kosovo, Montenegro, Bosnia and Herzegovina, and Serbia have made significant progress, which, unfortunately, is not the case with Macedonia and Turkey. In its conclusions and reports, ILGA-Europe noted the following reforms made by the countries of the Western Balkans for 2016:

Bosnia and Herzegovina

The previous year in Bosnia and Herzegovina marked the adoption of several new legal acts and policies. A positive step forward was the adoption of an anti-discrimination action plan, which is the first document of the type that explicitly protects the LGBTI people on the national level.

Furthermore, the wording of the existing federal anti-discrimination law was revised and clarified, and sexual characteristics were added to the list of protected grounds in all spheres of life. However, the everyday difficulties that intersex people face, such as the lack of procedures in health institutions when dealing with intersex children, continue to be one of the shortcomings identified by non-governmental organizations. On the other hand, another group in the wider LGBTI community, which continues to face difficulties, are the LGBTI people who are not citizens of Bosnia and Herzegovina, i.e. asylum seekers who still do not have legal protection in Bosnia and Herzegovina. This problem persists despite the fact that the country adopted the Law on Asylum in 2016, drafted according to EU standards. LGBTI activists and supporters offered amendments, but they were not taken into account. In the second part of the year, a well-established politician publicly expressed support for the community after the Ombudsman's encouragement in his special report on human rights in the country. Overall, it can be concluded that Bosnia and Herzegovina has achieved far more progress than Macedonia in the areas of equality and non-discrimination, the legal protection from hate speech and hate crimes, as well as the legal framework for asylum provision. ILGA's overall assessment of Bosnia and Herzegovina, as of 2016, is 31%, which is even 15% higher than Macedonia.

Kosovo

The need for equality laws was publicly introduced in Kosovo in 2016. A group working on LGBTI rights stated raising awareness and better implementation of existing anti-discrimination policies as primary goals. The European Commission, in its Annual Enlargement Package, called on leaders to support the community. A survey by NGOs has shown the need for sensitizing health workers for their responsibility towards LGBTI people who need health care. The survey also includes recommendations for the minimum legal protection of transgender people in Kosovo. In the absence of well-developed policies for dealing with hate speech and hate crimes, NGOs continue to offer support and assistance to LGBTI people—victims of violence who do not have institutional protection. Compared with Macedonia, Kosovo has made better progress in the area of equality and non-discrimination, as well as the legal framework for

asylum provision. However, the reality in Kosovo shows that positive legal changes are insufficiently implemented on the ground. ILGA, for 2016, assessed Kosovo with a 30% progress on a fully implemented legal framework for equal rights for LGBTI people.

Albania

Albania is the best example for the difference between the existence of laws of paper and the reality that the LGBTI people face in their everyday lives. In 2016, Albania made legislative progress by adopting an action plan to promote and protect the community's human rights. However, no efforts have been made to break the prevailing homophobia in the society. As a candidate country, Albania is positively evaluated every year by the European Commission for its progress towards joining the Union, but low levels of social acceptance of LGBTI people are one of the areas highlighted by the Commission as seriously concerning. Even though Albania already has legislation in the area of equality and hate crimes, the implementation of this legislation is insufficient, and so is the training of relevant officials. This was highlighted by several surveys that showed public officials think they do not come in contact with people from the LGBTI community in their work. Even if there is legislation, people might be unaware that this protection also covers LGBTI people, as was revealed in a report stating that young people do not understand the Anti-Discrimination Law sufficiently. Regardless of the above, LGBTI activists are making efforts to change the public narrative and raise awareness. In comparison to Macedonia, Albania has made greater progress in the area of equality and non-discrimination, as well as with legal protection against hate speech and hate crimes. ILGA-Europe's latest assessment for Albania is 33%.

Montenegro

The year of 2016 was yet another difficult year for LGBTI organizations and activists in Montenegro who faced a series of successes, but also challenges. Activists continued to provide expertise and training, including the first LGBTI equality workshop for educators working with pre-school children. Also encouraging was the creation of the LGBTQ Women Network, as well as the complaint filed by the LGBTI activists

against the Serbian Orthodox Church for hate speech aimed at the LGBTI community, which resulted in a positive outcome. While Montenegro continued its efforts for becoming the region's leading promoter for LGBTI people's rights, activists were the target of attacks, which shows the discrepancy between law development and social opinion. However, while there are laws and policies, according to the annual conclusions of the European Commission, their actual implementation remains problematic. Montenegro has made greater progress than Macedonia in the area of equality and non-discrimination, as well as legal protection against hate speech and hate crimes. The ILGA assessment is 39%.

Serbia

The European Commission's annual assessment of Serbia was based on the implementation of the positive legal regulations. The rights of LGBTI people are included in some laws on equality and hate crimes, but the Enlargement Report emphasizes that more efforts are required for their implementation. The need for greater political support to the community and dealing with hate crimes is also emphasized. Regarding political cooperation, an analysis of the materials of political parties showed that only a handful of parties explicitly mention the LGBTI community in their programs. In the meantime, the first lesbian to publicly express her sexual orientation was assigned a state function. Recently, this minister, Ana Brnabic, was appointed Prime Minister of the Republic of Serbia. With a new police by-law, anti-discrimination protection based on gender identity was introduced, but sexual orientation is not included in this act. At the end of the year, transgender people continued to face a situation in which there was no clear procedure for legal gender recognition. Compared with Macedonia, Serbia has made greater progress in the areas of equality and non-discrimination, as well as the provision of legal protection against hate speech and hate crimes on sexual orientation. The ILGA assessment for Serbia for 2016 is 30%.

Turkey

A claustrophobic atmosphere reinforced by the declared state of emergency following a coup d'état attempt last July—the backdrop that the LGBTI activists are faced with in Turkey. The extended deadlines for imprisonment without charge and the limited legal assistance contributed

to the serious safety threat for the work of journalists, lawyers and NGOs. All of this created a scenario where freedom of assembly could be restricted in the name of “anti-terrorism measures” and “security measures”, which resulted in the ban on the IDAHOT march in Ankara and the marches of pride in Istanbul and Izmir. The offices of well-established LGBTI non-government organizations were forced to close due to rumors of security threats. During the season of pride, extremist groups launched a series of threats. LGBTI people, especially transgender women, were victims of hate crimes, and many of them resulted in deaths. The brutal murder of renowned trans-activist Hande Kader has sparked public outcry and protests in Turkey, as well as across the European continent. Of great significance were the lengthy prison sentences for persons who raped activist Kemal Ordek. A human rights committee was formed, but the protection of LGBTI people from discrimination was not included in its jurisdiction. The Council of Europe and other EU institutions expressed serious concern about the status of minority groups, especially about LGBTI people. The European Commission estimated that there was a regress in the protection of fundamental rights, which is a particularly worrying trend, taking into account the minimum existing legal protection for LGBTI people. Macedonia has a better assessment only in comparison to Turkey in relation to the Western Balkan countries. Compared with Turkey, Macedonia has made greater progress in the areas of equality and non-discrimination and providing space for the community in the civil society. According to ILGA-Europe, Turkey has one of the lowest ratings in Europe—only 9%.

