

# Report

## on implementation of the Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity by the Republic of Macedonia



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**About the Helsinki Committee for Human Rights of the Republic of Macedonia**

**About the LGBTI Support Centre**

## I. Executive summary

Macedonian authorities did not take any steps to implement the Recommendation of the Council of Europe. The Recommendation was not even translated into Macedonian, with an explanation from the Ministry of Foreign Affairs that the recommendations of the Council of Europe are not binding for the member states. In addition, the Recommendation was not disseminated to all the relevant institutions, NGOs and the LGBT community. The Macedonian Helsinki Committee disseminated the Recommendation to all the relevant institutions during the implementation of this project. In addition, the translated Recommendation in Macedonian and its appendix was submitted to all the members of the Assembly of the Republic of Macedonia.

Even the Law on Prevention and Protection against Discrimination, which was adopted in 2010, did not include sexual orientation as a specific ground for protection from discrimination. Gender identity as a specific ground for discrimination was not taken into consideration during the adoption of the law. The interests and needs of the LGBT community were not taken into consideration even during the creation and adoption of the National Strategy for Equality and Non-discrimination, which includes only four grounds: ethnicity, age, mental and physical disability and sex.

The authorities that according to the Recommendation should promote tolerance and condemn hate speech do the exact opposite. Namely, in the media a negative image of the LGBT people is constantly promoted by the representatives of the Government, promoting the fact that they are a Christian-Democratic party and they will not recognise any other form of civil union except one between a man and a woman. This presents a basis for the media to continue the hate speech towards LGBT people.

All of the abovementioned leads to endangering the freedom of expression of LGBT people in relation to LGBT issues and especially to endangering the freedom of peaceful assembly, and this is why the LGBT community does not feel strong enough to organize Gay Pride marches or similar events.

On 17<sup>th</sup> of November 2012, the Macedonian Helsinki Committee organised the March for Tolerance, which purpose was to promote tolerance towards LGBT persons, and to appeal for an end to homophobic and transphobic campaigns. During the march, two activists were attacked and injured. The negative images of LGBT people promoted by the authorities inevitably make attacks such as these more likely. Although, there was good collaboration with the police and the march was secured, still it proved that support, understanding and tolerance by the public officials are needed for the LGBT persons to enjoy their right to peaceful assembly. There is freedom of association for the LGBT organizations, but they do not have impact in the decision making process for adopting or changing the laws and the national strategies or policies.

Same-sex couples are discriminated by the Family Law compared with different – sex ones, and there are no measures taken by the authorities to solve this problem. Same-sex couples are not even protected from domestic violence by the Family Law.

There are no clear procedures for changing an identification number, which is necessary for legal recognition of a person's gender reassignment. The absence of procedures that specifically regulate the legal recognition of a person's gender reassignment has produced confusion in the actions of the public servants as well as to transgender persons.

Although, the State provides endocrinological and psychological treatment for transgender persons, this is not effective or appropriate because there is no practice or trainings for the professional health care workers in cases of gender reassignment. The state does not provide surgery for gender reassignment and there is no

evidence of reimbursement by the State Health Fund even where transgender persons had conducted the surgery in a foreign country with a private founds.

The state has made some progress in the process of combating discrimination in general and enacted the Law on Prevention and Protection from Discrimination that covers employment, social security, pension and disability insurance, health insurance and health care, education, science and sport, justice and administration, public information's and media, access to and supply of goods and services, including housing. Sexual orientation and gender identity were not included as specific grounds for discrimination, which leaves LGBT people out of the legal framework for protection of discrimination.

State bodies have done absolutely nothing to overcome discrimination on the grounds of sexual orientation and gender identity and hate speech in sports.

In the field of health, except for the prevention programs and behavioral studies within the Global Fund to fight HIV, malaria and tuberculosis, there are no other programs and services available to LGBT people. Although, in our classification of diseases sexual orientation is not classified as a disease, in the textbooks for secondary schools and higher education, regardless of sexual orientation, the authors use interpretations, views and classifications that are not based on modern scientific thought and are not in accordance with existing official documents for the classification of diseases/disorders.

Although, in the list of the grounds on which asylum may be requested, the Macedonian Law on Asylum and Temporary Protection does not explicitly mention sexual orientation or gender identity, refugee status can be granted under the "membership of a particular social group". However, there are no examples or documented cases that prove that refugee status was granted because of a person's sexual orientation or gender identity.

In the Republic of Macedonia the Constitutional Court, the Standing Inquiry Commission on the Protection of Citizens' Freedoms and Rights of the Assembly of the Republic of Macedonia, the Courts, the Ombudsman and the Commission for Protection from Discrimination are the national human rights bodies that are clearly mandated to address discrimination in general. In practice human rights, structures take no measures in relation to sexual orientation and gender identity.

## II. Recommendations to the Macedonian Government for priority actions towards implementation of the CMCE Recommendation by Macedonian Helsinki Committee

1. To explicitly include sexual orientation and gender identity as a grounds for discrimination in the Criminal Code and the Law on Prevention and Protection from Discrimination
2. To explicitly include gender identity in the list of anti-discrimination grounds in the Labour Relations Act of Macedonia.
3. To include sexual orientation and gender identity in the Criminal Code as a basis for hate crime and hate speech
4. Authorities to promote tolerance for LGBT people and to condemn homophobic and transphobic speech and violence that can be qualified as hate crimes because of a person's sexual orientation and gender identity
5. To amend Article 94-b, paragraph 3 of the Family Law Act ( this article defines close personal relations as personal relations between persons of the opposite sex who either are, or were in partnership, but do not live in an extra marital community and enjoy the special protection from domestic violence) with the purpose of extending its effect to same-sex couples
6. Ministry of Health to take measures (to initiate a procedure and to provide trainings for the professional health care workers ) that will provide effective access to appropriate gender reassignment services for transgender people, including surgery for gender reassignment
7. Ministry of Health specifically to include that the insurance for surgery for gender reassignment will be provided by the state
8. Authorities to bring procedures that will regulate the legal gender recognition without the requirement that gender reassignment surgery is done
9. Ministry of Education and Science to revise and remove the textbooks for secondary school and the Medical Faculty at Ss. Cyril and Methodius University to revise and remove the textbooks for higher education which describe homosexuality or bisexuality as a disease, mental disorder, sexual perversion etc.
10. Authorities to provide access for the NGOs that work on LGBT issues to take part in awareness raising programs for students in primary and secondary schools and university students, but also to hold trainings for the educational staff
11. To include topics of sexual orientation and gender identity in initial and in-service training programmes for judges and other members of the legal profession and law enforcement officials.
12. To take into consideration the applications of the LGBT organizations when they apply for public funds, advancing the diversity in the society and supporting the marginalized groups
13. Law on Execution of Sanctions to be amended in order to make it possible for the Minister of Justice to enact regulations through which it will be ensured that the gender identity of inmates is respected, especially with regards to their placement in a male or a female prison
14. To adopt a medium/long term action plan for implementing other aspects of the Recommendation.

## III. Introduction

### Background

On 31<sup>st</sup> of March 2010, the Committee of Ministers of the Council of Europe adopted its Recommendation to member states “on measures to combat discrimination on grounds of sexual orientation or gender identity”.

It was a historic moment. The Recommendation is, as Council of Europe Secretary-General Thorbjørn Jagland recognised, the world’s first international legal instrument dealing specifically with discrimination on these grounds, which he described as “one of the most long-lasting and difficult forms of discrimination to combat”.

In broad terms, the Recommendation does three things:

- It emphasises the key principle, that human rights are universal and apply to all individuals, including therefore LGBT persons;
- It acknowledges the fact of the centuries-old and continuing discrimination experienced by LGBT persons on account of their sexual orientation or gender identity;
- It recognises that specific action is required to ensure the full enjoyment of human rights by LGBT persons, and sets out the measures required of member state governments.

The Recommendation was agreed upon unanimously by the 47 Council of Europe member states. Although, as a Recommendation rather than a Convention, it is not legally binding, it is based solidly on the existing legally binding international and European human rights obligations of the member states, which therefore have a clear duty to implement its main elements.

The Recommendation has three parts: first, a preamble, which sets out the background to its adoption, and the key principles guiding it; second, the operative section of the Recommendation, which is very brief, listing broad measures to be taken; and third, an Appendix which sets out specific measures to ensure enjoyment of rights and combat human rights violations across a wide range of areas, including hate crimes, hate speech, freedom of association, expression and assembly, right to respect for private and family life, employment, education, health and housing, sports, the right to seek asylum, and discrimination on multiple grounds. It also includes a section on the role of national human rights structures.

An Explanatory Memorandum, which documents the international human rights instruments and legal precedents on which the individual measures in the Recommendation and the Appendix are based support the Recommendation.

### The purpose of this report

The purpose of this report is to assess what progress the Macedonian authorities in implementing the Recommendation, have made, and to highlight the areas where further action is needed. By documenting which measures have, and which have not been completed, it provides a base line against which further progress in implementing the Recommendation in the coming years can be measured.



The report has two main target audiences. Firstly, at national level, the political leaders and civil servants who are responsible for implementing the Recommendation, and secondly, the Committee of Ministers of the Council of Europe, which agreed, on adopting the Recommendation, that it would conduct a review of progress towards its implementation in March 2013. It is intended that this report will contribute to that review.

## Methodology

The report's assessment of progress is based on a checklist of specific detailed measures required by the Recommendation. This list of measures is derived from the text of the Recommendation and its Appendix, supplemented by additional details set out in the Explanatory Memorandum.

This checklist, and the data which Macedonian Helsinki Committee has compiled in order to assess progress in implementation of the individual measures of the Recommendation, are set out in Appendix III to this report, entitled "the Compliance Documentation Report".

The data used to assess progress in implementation have been obtained from a number of sources:

- Responses from individual ministries and departments to letters from the Macedonian Helsinki Committee, listing the relevant checklist questions and asking for comments on actions taken to implement the related measures.
- Information from published sources
- Research and documentation assembled by Macedonian Helsinki Committee and other non-governmental organisations.
- Information available through Macedonian mass media and Internet.

## IV. Findings

### The Recommendation

The operative text of the Recommendation includes four main steps: a review of existing measures to eliminate any discrimination on grounds of sexual orientation or gender identity, introduction of effective measures to combat such discrimination, ensuring that victims have access to effective legal remedies, and ensuring that the recommendation is translated and disseminated as widely as possible. It also requires that member states be guided by the principles and measures contained in the Appendix to the Recommendation.

The evidence presented in the Compliance Documentation Report indicates that the state authorities have not even carried out the simplest of this, the translation and dissemination of the Recommendation, despite the requests to the Ministry of Foreign Affairs by the Macedonian Helsinki Committee. No debate for informing the general public about the Recommendation and its Appendix has been organized by the State authorities. Macedonian Helsinki Committee has translated the Recommendation in Macedonian, placed it on the website<sup>1</sup> and sent the translated text to the authorities and Members of the Assembly. Apart from the Broadcasting Council<sup>2</sup>, no other state body has placed the Recommendation on their website.

Sexual orientation and gender identity were not included as grounds for discrimination in the Law on Prevention and Protection from Discrimination. In addition, sexual orientation and gender identity were not included in the National Strategy for equality and nondiscrimination. The LGBT focal person from the Macedonian Helsinki Committee was a member of the working group that was developing the Strategy for combating discrimination but could not make input to the framework of the Strategy since before the working group started to work it was decided by the Government that the Strategy will apply to four grounds only: sex, age, disability and ethnicity. At the end of the process, the Strategy for the period of 2012-2015 included only the grounds of sex, age, disability and ethnicity.

There is no sign that the government intends to identify and redress discrimination on grounds of sexual orientation or gender identity in any strategic or national plan, legislative or other measures for combating discrimination based on sexual orientation or gender identity. We did not find any example of the Government promoting tolerance for LGBT people and taking measures to combat discrimination on the grounds of sexual orientation or gender identity. On the contrary, the Minister for Labour and Social Policy often reminds the public that there will not be changes of the legislation for same - sex couples to be legally recognized as partners and there will not be changes in the legislation by which same – sex couples can adopt children. This attitude promotes negative reactions in the public for LGBT people. Furthermore, to this date only Ivon Velichkovski, Member of Parliament from the Liberal Party, part of the opposition, has tried to raise the awareness of the public authorities and institutions about disavowing hatred and discriminatory speech, by submitting a Declaration<sup>3</sup> for condemnation of hate speech against LGBT people in the Assembly. But, the Assembly failed to adopt the proposed Declaration<sup>4</sup>, because it was not supported by the ruling party.

1 Macedonian Helsinki Committee <http://www.mhc.org.mk/>

2 The Broadcasting Council [http://www.srd.org.mk/index.php?option=com\\_content&view=article&id=490%3A-mrec20105-.....&catid=50%3Aevropska-legislativa&Itemid=80&lang=mk](http://www.srd.org.mk/index.php?option=com_content&view=article&id=490%3A-mrec20105-.....&catid=50%3Aevropska-legislativa&Itemid=80&lang=mk)

3 The Liberal Party <http://www.lp.org.mk>

4 The Assembly of the Republic of Macedonia <http://www.sobranie.mk/ext/sessiondetails1.aspx?id=28adf593-733f-4c22-961e-b723cc6996dd>

## Appendix to Recommendation CM/Rec(2010)5

### I. Right to life, security and protection from violence

#### A. "Hate crimes" and other hate-motivated incidents

The key recommendations in Section I.A of the Appendix cover training of police officers, judiciary and prison staff, the introduction of independent machinery for investigating hate crimes allegedly committed by law-enforcement and prison staff, and a range of other legislative and other measures to combat "hate crimes" and hate motivated incidents on grounds of sexual orientation or gender identity, including hate crimes legislation. Member states are also required to gather and analyse data on the prevalence and nature of discrimination in this field. In total, some 17 measures are identified under this heading in the Compliance Documentation Report.

The replies to our enquiries from the Ministry of interior, the Sector for Internal Control and Professional Standards within the Ministry of Interior, the Center for Trainings of the Ministry of Interior, and the Academy for Public Prosecutors and Judges, the Directorate for Execution of Sanctions, presented in the Compliance Documentation Report, section "Hate crimes and other hate motivated incidents", indicates that Macedonia fails to comply with the requirements of the Appendix to the CMCE Recommendation in almost every respect.

The Criminal Code recognises hate crimes only if and when they are based on national, racial or religious grounds, but sexual orientation and gender identity are not included /covered by the Criminal Code. Also, according to the provisions of the Criminal Code, sexual orientation and gender identity cannot be taken as an aggravating factor in determining sanctions for a crime and until now we know of no precedent made by the Courts on this basis.

Police officers, prison officials and judiciary do not have trainings for identifying any kind of crime where sexual orientation and gender identity is considered to be a motive. Also, they do not have specific trainings on sexual orientation and gender identity as grounds for discrimination. They only have trainings on discrimination issues in general, but this is not enough for us to say that these are effective trainings that will provide protection from harassment and discrimination based on sexual orientation and gender identity. Progress in conducting trainings on these subjects is made only in the academic curriculum of the Faculty of Security-Skopje, because they devote particular attention to marginalized communities and discrimination against LGBT persons within the subject Police and Human Rights and the subject Non-discrimination and Vulnerable Groups.

There is no collection of data either in respect of such hate crimes and other hate motivated incidents, nor in respect of sexual orientation and gender identity discrimination more generally. Therefore, there are no policies brought by the authorities to combat such crimes.

In addition, there are no procedures that regulate the placement of convicted transgender persons in the prisons. The case of Andrea, a transgender person that still has not changed the identification number, which the Court, due to non-payment of the child support, convicted on six months of prison, convicted on six months of prison, with a one year suspended sentence, , caused confusion among the authorities. The Directorate for Execution of Sanctions about this case stated that because this is the first case of its kind, they will come out with a solution if the conditional term expires and the sentence becomes effective<sup>5</sup>.

<sup>5</sup> See for instance <http://www.vest.com.mk/default.asp?ItemID=913B332F0FF0B74D9ECEB68CE2A43CBA>  
<http://www.time.mk/read/3cee1efc8e/9d86846033/index.html>

On 23.10.2012, the Macedonian Helsinki Committee opened the Centre for Support of the LGBTI community in the Republic of Macedonia, a place where LGBTI people can express and transmit information<sup>6</sup>. After the end of the event, around 3 hours and 30 minutes after midnight, the building was damaged by unknown perpetrators i.e. the glass at the entrance of the Centre was broken<sup>7</sup>. In accordance with the laws in the Republic of Macedonia, the Macedonian Helsinki Committee and the LGBTI Support Center immediately reported the case to the police authorities, which performed inspection of the scene; a procedure against unknown perpetrators has been initiated. While the police is cooperative and working with the LGBTI Support Center on calming the situation with the local community, this violence was not condemned by the public officials.

Also, there was another attack on the LGBT center on 17<sup>th</sup> of December 2012, when unknown perpetrators tried to burn the center. On the shutter of the Center the perpetrators had drawn swastikas and left a message "Tremiti<sup>8</sup>".

*A recent example of hate crimes directed at the LGBT community occurred with the attack on two activists on the city square, during the march for tolerance which was dedicated against hate speech on LGBT people and women, held on 17th November and organized by the Macedonian Helsinki Committee and the LGBTI Support Center. It was a crime committed because of hate for LGBT people, but because the state does not recognize hate crimes because of a person's sexual orientation and gender identity, the attacker will be prosecuted only for violence.*

### **B. "Hate speech"**

Section I.B. of the Appendix requires measures to combat "hate speech" on grounds of sexual orientation or gender identity, including laws penalising such "hate speech", promotion of good practice within media organisations and by internet service providers, public disavowal of such speech by government officials, and guidelines to government officials to refrain from such speech and indeed to promote respect for the human rights of LGBT people. In all, some nine measures are identified under this heading in the Compliance Documentation Report.

The evidence presented in the Compliance Documentation Report indicates an almost total absence of compliance with these requirements. In the Macedonian legal system legal penalties exist against "hate speech" in several laws, including the Criminal code, that cover "hate speech" based on national, political, ethnic or racial group or religious affiliation. These measures do not cover transphobic or homophobic "hate speech". Public officials have not condemned homophobic or transphobic statements and there are examples of public homophobic or transphobic hate speech.

On the contrary, the Minister for Labor and Social Policy, always reminds the public of the Government position for LGBT rights, specifically referring that they are against same-sex marriages and adoption of children by same-sex couples. This approach encourages hate speech in the media and social networks. This homophobic campaign that the Government promoted in 2012 was supported by several media and especially by the daily newspaper "Vecher" and contributed to the attack on the city square on two activists, on the march for tolerance which was dedicated to opposing hate speech against LGBT persons and women, held on 17th November

6 See for instance <http://tocka.com.mk/1/78376/helsinki-komitet-go-otvori-prviot-centar-za-poddrska-na-lgbti-zaednicata-vo-makedonija> <http://www.karmakasha.mk/rubriki/vesti/item/6809-lgbti-centar-makedonija>

7 See for instance <http://press24.mk/story/za-poddrshka/foto-kamenuvan-noviot-lgbti-centar-za-poddrshka-eve-kako-izgleda> <http://www.dnevnik.com.mk/default.asp?ItemID=DBC7FF4AAC2C544E8E47EBD07A3F68DE>

8 Isole Tremiti is an archipelago were Benito Musolini during the fascist regime had deported hundreds of homosexuals

and organized by the Macedonian Helsinki Committee and the LGBTI Support Center. Except the Minister for Internal Affairs and the party Democratic Renewal of Macedonia, which is part of the ruling coalition<sup>9</sup>, no one else condemned this attack. Minister for Labor and Social Affairs, even stated that he does not feel responsible for the situation of the LGBT community, because he was only referring to the issue of same sex marriages, and according to the Minister, LGBT people enjoy a lot of rights in Macedonia<sup>10</sup>.

The only effort to promote tolerance and condemn the hate speech for LGBT people was the suggested Declaration<sup>11</sup> for Condemnation of Hate Speech for LGBT people in the Assembly of the Republic of Macedonia, submitted by Ivon Velichkovski, Member of Parliament from the Liberal Party, and part of the opposition. But, the Assembly failed to adopt the proposed Declaration for condemnation of hate speech for LGBT people<sup>12</sup>.

Also, there is lack of good practices to prevent the dissemination of homophobic and transphobic materials, threats and insults by the media and internet service providers. However, the Broadcasting Council showed a positive reaction regarding this Recommendation and its Appendix by posting it on their website.

*The homophobic campaign that the Government promoted in 2012 was supported by several media and especially by the daily newspaper "Večer" which is why several non-governmental organizations, including the Macedonian Helsinki Committee, jointly submitted a complaint to the Commission for Protection against Discrimination against the daily newspaper "Večer" and chief editor Ivona Talevska for discrimination based on sexual orientation and gender identity. In the period of 13<sup>th</sup> of October till 17<sup>th</sup> the daily newspaper "Večer" continuously published articles and photographs on the front page with discriminatory content that disturb and create irrational fear towards the LGBT community which is discrimination based on sexual orientation and gender identity. The headlines of these articles were: "We want children, not fagots"<sup>13</sup> "Children adopted by homosexuals are victims of pedophilia"<sup>14</sup> "ladies with condoms"<sup>15</sup> "There won't be gay marriages in Macedonia"<sup>16</sup>*

## II. Freedom of association

Section II of the Appendix requires member states to take appropriate measures to ensure that LGBT organisations can gain official registration, are able to operate freely, are involved on a partnership basis when framing and implementing public policies which affect LGBT persons, and are able to access public funding earmarked for NGOs without discrimination; also, that LGBT human rights organisations are protected effectively from hostility and aggression.

There is no discrimination in the legal framework or practice. Several organizations have been registered to promote and work on LGBT rights.

9 Statement sent to the public by the party Democratic Renewal of Macedonia <http://www.time.mk/read/NONE/48a9ff94dc/index.html>

10 The statement of the Minister for Labor and Social Affairs <http://www.time.mk/read/NONE/5d650954da/index.html>

11 The Liberal Party <http://www.lp.org.mk>

12 The Assembly of the Republic of Macedonia

<http://www.sobranie.mk/ext/sessiondetails1.aspx?id=28adf593-733f-4c22-961e-b723cc6996dd>

13 Daily newspaper "Večer" <http://www.vecer.com.mk/default.asp?ItemID=FD32A31036253E45A91FC75BFE441ECE>

14 Daily newspaper "Večer" <http://www.vecer.com.mk/default.asp?ItemID=0CBFC61E03485140879688B1BCA9CBE2>

15 Daily newspaper "Večer" <http://www.vecer.com.mk/default.asp?ItemID=35CB0BF2F31A9B4590D5921185428452>

16 Daily newspaper "Večer" <http://www.vecer.com.mk/default.asp?ItemID=152A7482AD070B469C627C73A2D62BF2>

While LGBT organizations are operating freely, we can state that the state is ignoring LGBT organizations. LGBT activists are very often involved in the working groups responsible for the preparation of the non-discrimination policies, but this has been proved to be only formal because the framework of the policies are usually previously prepared and the proposals of the NGO members are rarely implemented. For example, the LGBT focal person from the Macedonian Helsinki Committee and LGBTI Support Center was a member of the working group that was developing the Strategy for combating discrimination but could not intervene in the framework of the Strategy since before the working group started to work it was decided by the Government that the Strategy will apply to only four grounds: sex, age, disability and ethnicity.

No public funding was granted for LGBT projects so far. In previous years, an application has been submitted by MASSO (an LGBT organisation that no longer operates) however, they have never received any funding from the Government.

While there is no systematic approach by the state for effective measures for protection from hostility and aggression or promoting and protecting the work of LGBT organizations, it is significant to note that after the attack on the LGBTI Support Center, when just eight hours after the official opening of the Center on 23th of October 2012, the front window was broken, the Police Station Bitpazar, which is closest to the Center, took an active role in protection and calming the local community.

### III. Freedoms of expression and peaceful assembly (Section III of the Appendix)

This section of the Appendix requires member states to guarantee freedoms of expression and peaceful assembly to LGBT people, ensuring the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, encouraging pluralism and non-discrimination in the media, protection of lawful assemblies, and condemnation by public authorities of any interference with the exercise of the right to freedoms of expression and peaceful assembly by LGBT people.

The Constitution of the Republic of Macedonia, in its Article 16, guarantees freedom of expression in general, including freedom of expression and freedom of receiving and transmitting information and ideas of LGBT people, but in practice very few media cover the LGBT issues and activities, usually writing about and presenting the LGBT topics in a sensationalistic manner.

The Constitution of the Republic of Macedonia, in its Article 21, guarantees freedom of peaceful assembly and in Article 22 guarantees the right of peaceful demonstration. Also, these rights are protected by the Law on public gatherings and all of these rights refer to LGBT people as well.

But, because of the hostile environment the LGBT community is still not visible enough and strengthened to organize this type of events.

#### Freedom of expression

The Constitution of the Republic of Macedonia, in its article 16, guarantees freedom of expression in general, including freedom of expression and freedom of receiving and transmitting information and ideas of LGBT people, but in practice very few media cover the LGBT issues and activities.

There have not been any restrictions formally placed on freedom of expression. However, very few media are reporting on LGBT issues and very often, they falsify the informations. There are media that are in obvious synergy with the Government and are continuously promoting homophobic and transphobic attitudes.

When one of the representatives of the party in power stated that as long as they hold the power, same-sex couples will never be legally recognized in this country, the media was filled with stories on this subject. Most of the media was covering just the negative researches for the homosexuality, writing shamelessly and fulfilling the pages with hatred towards LGBT people. Only a few media pointed out the obvious homophobia and the strategy of attacking the LGBT by the government, mostly the ones that lay their stories just online. The lack of media, which inform without being influenced by parties, is the biggest problem of the freedom of expression in Macedonia for LGBT issues.

There has been unfriendly behaviour obstructing the freedom of expression during the LGBT exhibition- Article 1 and Non- heterosexual museum, organized by the Coalition "Sexual and Health Rights of Marginalized Communities" shown from 22.02.2012 till 15.03.2012 at the Chifte Amam – the National Gallery of Macedonia. A few days before the opening of the exhibition, homophobic groups were tearing the posters for the exhibition, but public authorities did not condemn such behaviour.

### Freedom of assembly

The Constitution of the Republic of Macedonia, in its Article 21, guarantees freedom of peaceful assembly and in Article 22 guarantees the right of peaceful demonstration. In addition, these rights are protected by the Law on public gatherings and all of these rights refer to LGBT people as well.

The police is cooperative and is providing protection on the events dedicated to LGBT issues. For example, Macedonian Helsinki Committee and LGBTI Support Center on 17th November 2012, on the occasion of the International Day of Tolerance, for the fourth time held a march for tolerance which was dedicated to opposing hate speech against LGBT persons and women. The slogan of the march was "Stop womenphobia, homophobia and transphobia". This march was supported by several NGOs that work on LGBT rights, sexual rights and gender equality. The cooperation with the police was on a good level and the safety of the participants was ensured. But, on the city square, where they were setting up booths with materials, two people were attacked and injured. First was attacked Kocho Andonovski, Program Director of the LGBTI Support Center and organizer of the March for Tolerance and known for making the first public coming out as a gay person. When another activist wanted to help, he was also injured. The person that did the attack was soon found by the police and they will submit criminal charges for violence to the public prosecutor against this person.

But still public authorities are not condemning violence and hate speech towards LGBT people. Macedonian Helsinki Committee and the Coalition "Sexual and Health Rights of Marginalized Communities" for the attack on the march for tolerance sent a request<sup>17</sup> through the media for the public officials to condemn this behavior and to stop the negative campaign for LGBT people, but except the Minister for Internal Affairs and the party Democratic Renewal of Macedonia, which is part of the ruling coalition<sup>18</sup>, no one else condemned this attack. The Minister for Labor and Social affairs, even stated that he does not feel responsible for the situation of

<sup>17</sup> The public announcement from the Macedonian Helsinki Committee <http://www.time.mk/read/NONE/64dedf92ad/index.html>

<sup>18</sup> Statement sent to the public by the party Democratic Renewal of Macedonia <http://www.time.mk/read/NONE/48a9ff94dc/index.html>

the LGBT community, because he was only referring to the issue of same sex marriages, and according to the Minister, LGBT people enjoy a lot of rights in Macedonia<sup>19</sup>.

#### **IV. Respect for private and family life (excluding specific transgender issues) (Section IV, paragraphs 18, 19 and 23 – 27 of the Appendix)**

These paragraphs of section IV of the Appendix address criminalisation of same-sex sexual acts, collection of personal data, and discrimination in access to the rights of couples and parenting.

Macedonia has decriminalized the homosexuality in 1996, which means that currently people are free to have homosexual relations. The “age of consent” in Macedonia is equal for both homosexual and heterosexual acts.

In Macedonia, there are no criminal law provisions, which because of their wording or scope are liable to be applied in a discriminatory manner regarding sexual orientation and gender identity.

From the written reply from the State Archive, the Ministry of Interior and the Directorate for Execution of Sanction, it can be concluded that records about a person’s sexual orientation or gender identity do not exist, but judging from the latest homophobic campaign in Macedonian society, the possibility of such data existing secretly cannot be excluded.

As far as access to the rights of couples is concerned, Macedonia does not allow same-sex partnerships, nor recognizes same-sex couples in any way. The legislation covers the rights and obligations only for the unmarried heterosexual couples in the Family Law and defines close personal relations as personal relations between persons of the opposite sex who either are or were in partnership but do not live in an extramarital community.

The Macedonian Helsinki Committee has submitted an initiative to the Constitutional Court for an assessment procedure regarding the constitutionality of Article 94-b paragraph 3 of the Family law Act which defines close personal relations as personal relations between persons of the opposite sex because there is commitment of direct discrimination against persons who have close personal relations with people of the same sex and do not enjoy the special protection from domestic violence. . About the disputed Article 94-b, paragraph 3 of the Family law act, on 28.11.2012 the Constitutional Court of the Republic of Macedonia adopted a decision with which the submitted initiative was rejected because the Constitutional Court having analyzed the Law on Family and Article 94-b of this Law, established that not a single category of citizens that could be potential victims of domestic violence is exempt from protection from domestic violence, due to which potential victims of family violence (including same-sex couples) can be persons that live in a “common household”. Thereby, the Constitutional Court has assessed that essentially the Macedonian Helsinki Committee with this initiative wanted to extend the content of the disputed provision, for which the Constitutional Court is not competent. However, the initiative of the Macedonian Helsinki Committee was not about the persons that live in a “common household”. It was about the fact that the term “close personal relations” is defined as relations between persons of different sex which are or were in partner relations and do not live in a extramarital community i.e. they do not live under the same roof, which is a broader category than marriage, family and extramarital

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<sup>19</sup> The statement of the Minister for Labor and Social Affairs  
<http://www.time.mk/read/NONE/5d650954da/index.html>



community and the term “common household” which involves the persons living under the same roof, due to which the same discriminates against same-sex couples that do not live under the same roof and leaves them with no protection from domestic violence, which is why we still consider that the disputed provision is contrary to the Constitution of the Republic of Macedonia.

As far as parenting is concerned the Macedonian Helsinki Committee was unable to detect any steps taken by the authorities to ensure that decisions regarding the parental responsibility for guardianship of a child, adoption by a single person or access to assisted reproductive treatment are taken without discrimination based on sexual orientation or gender identity. On the contrary in one case a person publicly declared as transgender, had her right to see her children revoked by the Center for Social Affairs and the decision was confirmed by the Minister of Labour and Social Affairs.

The authorities have taken no steps towards the solution of the everyday problems of same-sex couples. These couples are still openly discriminated in the field of property rights, compared with the different-sex ones; and no measures have been taken for protection from discrimination on the ground of sexual orientation or gender identity related to parental rights, adoption and guardianship of a child.

## V. Respect for private and family life and access to healthcare – specific transgender issues

(section IV of the appendix, paragraphs 20, 21 and 22, and Section VII, paragraph 35 and 36)

Paragraphs 20, 21 and 22 of Section IV of the Appendix require member states to guarantee the full legal recognition of a person’s gender reassignment in a quick, transparent and accessible way, to remove any prior requirements for legal recognition (including any of a physical nature) that are abusive, and ensure that transgender persons are able to marry once gender reassignment has been completed. The paragraphs 35 and 36 of Section VII require member states to ensure that transgender persons have effective access to appropriate gender reassignment services, and that any decisions limiting the costs covered by health insurance should be lawful, objective and proportionate.

Macedonia fails to ensure the full recognition of a person’s gender reassignment in a quick transparent and accessible way. According to the Law on Personal Name (Official Gazette of Republic of Macedonia, No.8/95, 66/07, 103/08 and 51/11) any citizen has the right to change their personal name and surname.

However, when it comes to the change of the personal identification number, which consists a code for the person’s sex, it is clear who has the authority to change it.

Having in mind the answers from the Ministry of Internal Affairs and the Directorate for keeping the parental record (document issued for every child, with the names of the parents, identification number, date and place of birth...), within the Ministry for Justice, we can conclude that the procedure for changing a person’s identification number is not clear.

Two transgender persons, who are supposed to be treated equally in the process for the change of the identification number, under the same conditions initiated a procedure in different cities, both without completing all of the needed gender reassignment surgeries. In the end, they got different results. One of them got the number changed and the other has been rejected because there was no proof that a gender reassignment surgery was done.

According to the examples of people compiling the same conditions, the conclusion would be that in Macedonia there is no sure procedure or a way to know if some authority will change the number or is going to claim responsibility for the other institution. Therefore, there is a confusion produced by the actions of the public servants.

Regarding the right to marriage, the existing legislation stipulates that marriage is a union between a man and a woman regulated by law and that the man and the woman regulate their relations by their own decisions based on equality, mutual respect and assistance. Therefore, in conclusion, after the legal gender recognition, there will be no obstacles for a transgender to marry a person of the opposite sex. But, unfortunately, there is no guarantee, as we did not get any reply to our enquiries from the Ministry of Justice and Ministry of Labour and Social Policy regarding this question.

Transgender persons make tests and go to treatment if they want to receive a positive opinion for surgery and legal recognition of gender reassignment.

The State provides psychological and endocrinological treatment for transgender persons, but it cannot be said that this is an appropriate service or expertise because there is no practice or trainings for the professional health care workers in cases of gender reassignment.

Our state does not provide surgery for gender reassignment. All recorded evidence reflecting these issues are made in a foreign country with a private insurance and there is no proof for reimbursement by the State Health Fund.

Regarding access to appropriate gender reassignment services, Macedonia is non-compliant. There are problems with inadequate qualifications among medical staff, absence of necessary specialists and offensive behaviour of the medical staff. The hospital in Tetovo discriminated Andrea because of her gender identity by not providing access in the hospital to see her psychiatrist. Andrea initiated a criminal procedure against the hospital and is being represented by the Macedonian Helsinki Committee. The procedure is ongoing.

Regarding coverage of the cost of gender reassignment treatment by health insurance, the reality is that patients have no alternative but to pay for the costs by themselves. In the regulations for reimbursement of costs there is an article which guaranties covering of 80% of the spending for a treatment abroad, but it is not clear if this also covers the gender reassignment and judging by the transphobic atmosphere we do not think it will be interpreted in favour of transgender people.

*I cannot see my children and I am not sure if I will ever be able to see them again. As they are young, they will be taught that something is wrong with me, just because I am a transgender person, so there will not be a possibility even in the future for me to see them. There is no protection in this country that can help us, the transgender persons... a transgender person from Macedonia*

## VI. Employment

Section V of the Appendix requires Member States to provide effective protection against discrimination on grounds of sexual orientation and gender identity in employment, including legislation prohibiting discrimination, other policy related measures to combat discrimination, and specific measures in relation to the armed forces

and transgender persons. It also requires Member States to protect the privacy of transgender individuals in employment.

While Article 6 of the Law on Labour Relations prohibits discrimination by employers based on sexual “inclination”, we consider the terminology as discriminatory because it refers only to the sexual act, not including all aspects of the sexual orientation. Namely, sexual orientation refers to sexuality in all its aspects biological, cultural, social, psychological and political, while sexual inclination refers to a biological rigid point (not on sexuality in all its complexity). This terminology, so far, is unknown in the international legislation, theory or methodology. With this provision, LGBT persons may seek protection under the possible grounds “other personal characteristics”. This Article covers access to employment, dismissals, pay, harassment and other forms of victimization, but in practice, we are not aware of a case where a person was protected from victimization.

No measures or programs have been designed to combat discrimination in employment, which fully and effectively cover transgender persons. From the case of Andrea, a transgender person, that is changing gender from male to female, it is clear that this kind of programs do not exist. Andrea divorced from her wife and the Court decided to entrust the raising and education of their two children, to their mother and obligated Andrea to pay child support of €35 per month for every child. Because Andrea is unemployed and has no funds, she did not pay the child support. Because in the Article 202 of the Criminal Code nonpaying child support is regarded as a crime Andrea was convicted by the Court convicted on six months of prison, with a one year suspended sentence. Even though this Court decision is not yet effective, because of the right of appeal; it shows that the Court did not take into consideration that Andrea could not find a job because of her transgender identity. Even though Andrea is constantly looking for a job she could not find it because there are no programs for employment of transgender persons.

Although the Law on Prevention and Protection from Discrimination does not specifically cover the gender identity, the practice of the Commission for Protection against Discrimination shows that the Commission acts on complaints for discrimination based on gender identity on the grounds of sex and gender.

The Law on Prevention and Protection from Discrimination covers discrimination in employment. Even though this Law does not specifically include sexual orientation or gender identity as a ground for discrimination, the Commission for Protection against Discrimination, in a number of its decisions, has recognized discrimination based on sexual orientation. With this provision, LGB persons may seek protection from the Commission under the possible grounds “other personal characteristics”.

The Law on service in the Army does not have a discriminatory character, based on sexual orientation, when it comes to employment and career advancement in the armed force. The only important thing is the candidate to meet the general and special requirements determined by the Law on service in the Army. The sexual orientation or gender identity is not asked about in the employment process. Also Article 131 paragraph 16 of the Law on service in the Army prohibits gender harassment and includes disciplinary sanctions. The Ministry of Defense refers that this article protects harassment based on sexual orientation and gender identity, but because there are no records of such a case, it cannot be said that in practice this article protects LGBT people from harassment in the Army.

Measures to combat discrimination, harassment and victimization, in both the public and private sector on the grounds of sexual orientation or gender identity are not promoted. The National Strategy for combating discrimination prepared by the Ministry of Labour and Social Policy is only for four grounds: sex, age, disability and ethnicity.

*The sexual orientation of Mitko, who worked in the Ministry of Foreign Affairs, became known to his colleagues and even to the Minister. Following this, Mitko experienced unfriendly and humiliating attitude from his colleagues, and he could not get a promotion nor be appointed as a consul in another state. He submitted an appeal to the Commission for Protection against Discrimination about this, but they did not find discrimination in the appointment procedures.*

## VII. Education

Section VI of the Appendix requires member states to ensure that the right to education can be enjoyed without discrimination on grounds of sexual orientation or gender identity, including measures to provide protection from bullying and social exclusion such as equality and safety policies, codes of conduct and training programmes for staff, and measures to promote mutual tolerance and respect in schools, including objective information in school curricula and educational materials, specific information and support for LGBT pupils and students, and measures to meet the special needs of transgender students.

The program “Education for life skills” for secondary schools (gymnasium, art and technical education) includes goals referring to human rights and non-discrimination on different grounds including sexual orientation and gender identity, such as, the existence of different groups in the society which are marginalized, about the stereotypes and the prejudices that influence the relationship between the different social groups, everyone should have equal opportunities and enjoyment of their rights. Also, there is a manual prepared for implementing this program and training and seminars for high-school teachers. However, because this is a new program, there are still no results regarding the implementation of this program by the teachers and its effect on pupils.

As set out in the Compliance Documentation Report, there is no support for the mounting of school campaigns and cultural events against homophobia and transphobia, or invitation for LGBT organizations to participate in such campaigns and there are no measures for protection and support for LGBT pupils.

There were discriminatory elements in the textbook for secondary schools, “Pedagogy”, in which homosexuality was considered as a disease. On 19.05.2011, the Commission for Protection against Discrimination, found discrimination in this textbook and made a decision that prompted the Ministry of Education and Science, to review the textbook. Changes were made, but the old textbook was still in use in the school year 2011/2012. The revised textbook is available in the bookstores. Also, there were discriminatory elements in the textbook “Criminal Psychology”, that is part of the educational program of the University Saint Climent Ohridski Bitola - Faculty for Security – Skopje because transgender people were named as transvestites, that with dressing or behaving like the opposite sex transgender people experience sexual pleasure, that homosexuals wear clothes of the opposite sex as a way to attract partners who still hesitate and are bisexuals, and do not experience pleasure through clothes, that the violence of transvestites people can be brutal, although rare, targeted towards females, as an act of revenge, because nature has punished them not giving them a totally feminine look. The Coalition “Sexual and Health Rights of Marginalized Communities” submitted a complaint to the Commission for Protection against Discrimination, but they answered that this is not discrimination because it is a scientific position based on scientific research.

## VIII. Health – other than transgender and those issues<sup>20</sup> (Section VII Appendix paragraph 33, 34

These paragraphs of Section VII of the Appendix require member states to ensure that the highest attainable standard of health can be enjoyed without discrimination on grounds of sexual orientation or gender identity. Measures proposed include taking account of the specific needs of LGBT people in the development of national health plans, including suicide prevention measures, health surveys, curricula and training courses, permitting patients to identify their “next of kin” without discrimination, withdrawing medical textbooks and other documents that treat homosexuality as a disease, and ensuring no one is forced to undergo any medical treatment because of their sexual orientation or gender identity.

Except for the prevention programs and bio-behavioral studies within the Global fund to fight HIV, malaria and tuberculosis, the HIV prevention national plan for 2011, sexual orientation and gender identity are not taken into consideration in the health system of the country. In the classification of diseases sexual orientation is not classified as a disease, yet in the textbook for secondary schools, “Pedagogy” and “Ethics”, and in the textbooks “Medical pedagogy” and “Psychiatry” and “Development Psychology” for the Faculty of Medical Sciences at the University St. Cyril and Methodius, with regard to sexual orientation, the authors use interpretations, views and classifications that are not based on modern scientific thought and are not in accordance with existing official documents for the classification of diseases/disorders. The textbook “Pedagogy” was revised and the new edition is available in the bookstores. The other textbooks are still in use.

Because homosexuality is not a disease according to the national classification of diseases no one can be treated with any medical or other treatment for his sexual orientation.

Also, taking into consideration that sexual orientation within the health care curricula is either not mentioned or is still treated as a mental condition, it can be concluded that there are no training programs for health professionals that enable them to deliver the highest attainable standard of health care with full respect for sexual orientation and gender identity.

Even though the Law for patient’s rights specifically protects against discrimination based on sexual orientation when it comes to identifying next of kin, a positive campaign has not been made until now about LGBT rights and issues. Also, in practice same – sex partners are not recognized as next of kin by the health workers.

Regarding the intersex people no measures have been taken nor data has been collected .

## IX. Housing

Section VIII of the Appendix requires that adequate housing can be enjoyed without discrimination on the grounds of sexual orientation or gender identity through such measures as prohibiting discrimination in the sale or rent of housing, in the provision of loans for purchase of housing, in the recognition of the rights of a tenant’s partner, and evictions; also, the provision of related information to landlords and tenants, and measures to ensure non-discriminatory access to shelter and emergency accommodation, and to address the risks of homelessness faced by LGBT people, including young persons excluded by their families.

<sup>20</sup> see section v. above

In Macedonia, the Law on Prevention and Protection from Discrimination covers housing and even though discrimination based on sexual orientation and gender identity were not included in this Law, the Commission for Protection against Discrimination can recognize discrimination based on sexual orientation and gender identity in the area of housing. Gender identity is not part of this Law.

Judging by the latest statements by the Commission for Protection against Discrimination<sup>21</sup>, when the president of the Commission rejected recognizing some of the homophobic statements of the public officials as discriminating and homophobic, and because this body often goes in synergy with the government, there is no guarantee that this Commission will take seriously any complaint for discrimination in the area of the housing based on sexual orientation and even less for gender identity.

There are no answers from the authorities or evidence of any measures adopted for the access to shelter and other emergency accommodation regarding sexual orientation and gender identity. There is no information or practice available to landlords and tenants aimed at preventing such discrimination.

Considering the homophobic atmosphere there is a big need for campaigns conducted among housing agencies for anti-discrimination provisions, social programs, including support programs, which address factors that increase the vulnerability to homelessness of LGBT people, children and young people including schemes of neighbourhood support and security. However, up until this date none of these measures exists in Macedonia as far as the Macedonian Helsinki Committee is aware.

*EGAL is a civic association that works on improvement of the sexual and reproductive health of the gay and lesbian population in Macedonia. Because EGAL had a need for new premises, it started negotiations with one owner of an apartment in Skopje for concluding a lease agreement. They reached a tentative oral agreement to lease the apartment. After negotiating the details of the contract, EGAL was in final preparations for the occupation of the apartment and signing a written agreement, but at that time the headquarters of the Community Association sent a letter with extremely discriminatory content, which was delivered by the President of the Community. The president of the Association present at the headquarters of the association said that he personally does not agree with the letter, but it is a decision of the majority of the Community. The community in the letter expressed disagreement that members of the target group of the association could use and gather in common areas of the building. Because of the scope of operation of the association, and I quote ... 'LGBT people and people suffering from AIDS (mostly narcotics abusers)' ... and for their own health and health care and socialization of their children, the community feels that the association and the target groups of the association should not use the common areas of the building." EGAL were revolted by such discriminatory attitudes of the community and because of the possibility of further discrimination against the employees of the Association and members of the target groups who visit the same association it was forced to give up the apartment and to not sign a written lease agreement for the apartment.*

## X. Sports

Section IX of the Appendix requires member states to combat sexual orientation or gender identity discrimination in sports through measures to counteract and punish the use of discriminatory insults, codes of conduct for sports organisations, encouragement of partnerships between LGBT organisations and sports clubs, and anti-discrimination campaigns, and to put an end to the exclusion of transgender persons from sports activity.

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<sup>21</sup> See for instance <http://www.time.mk/read/NONE/bd59efca63/index.html>

No measures have been taken to prevent discrimination on the grounds of sexual orientation and gender identity in this area.

Although the Agency of Youth and Sport states that a National coordination body for prevention of hostility on the sports field is being formed and it is working on all grounds of discrimination on the sports field including sexual orientation and gender identity, there is no concrete proof about the measures taken to protect LGBT people from exclusion from participation in sports or discrimination on sport events. Also, some sportspeople have taken part in the homophobic campaign by the Minister of Labor and Social Policy against same-sex marriages and adoption of children by same-sex couples.

As set out in the Compliance Documentation Report, effective measures have not been taken to prevent, counteract and punish the use of discriminatory insults during and in connection with sports events. The Macedonian Criminal Code does not recognize homophobic or transphobic chanting as a criminal act. In the reply to our enquiries from the Agency for Youth and Sport it is stated that the National coordinative body for protection of hostility on the sport field is working in accordance with the European Convention on Spectator Violence and Misbehaviour at Sports Events, the European Sports Charter and ECRI's General Policy Recommendation, without mentioning general or specific practices or measures to combat discriminatory insults based on sexual orientation or gender identity<sup>22</sup>.

## XI. Right to seek asylum

Section X of the Appendix requires member states, where they have international obligations in this respect, to recognise a well-founded fear of persecution based on sexual orientation or gender identity as a valid ground for the granting of refugee status and to ensure that asylum seekers are not sent to a country where their life or freedom would be threatened or they would face the risk of torture, inhuman or degrading treatment or punishment on grounds of sexual orientation or gender identity. It also requires that asylum seekers are protected from any discriminatory policies or practices on these grounds, and that staff responsible for processing asylum requests are provided with training in the specific problems encountered by LGBT asylum seekers.

The reply of the Ministry of Justice, Department for Asylum, did not provide specific information for any of these paragraphs. Judging by the legislation, Macedonian Law on Asylum and Temporary Protection (The Official Gazette of Republic of Macedonia, No. 49/03, No. 66/07, No.142/08, No.146/09, and No.166/12) in Art. 4 defines a status of a recognized refugee as a person who is not a citizen of the Republic of Macedonia and meets the requirements set out in the Convention relating to the status of refugees from 1951 and the Protocol on the status of refugees from 1967, and experiences a well-founded fear of being persecuted on account of race, religion, nationality, membership of a particular social group, or political opinion. Sexual orientation and gender identity should fall under the "membership of a particular social group" but still it is left to interpretation and there could be no guarantee that this status could be recognized. The Macedonian Helsinki Committee is not aware of practices for asylum requests based on sexual orientation or gender identity.

Because the Ministry of Justice, Department for Asylum in their reply to our enquiries were not clear, we cannot be sure that the authorities ensure compliance with the obligation not to send asylum seekers to a country where their life or freedom would be threatened or they would face the risk of torture, inhuman or degrading treatment or punishment on grounds of sexual orientation or gender identity.

<sup>22</sup> See for instance <http://www.inpress.com.mk/default.asp?ItemID=1875DED48360C2489F50493CB26D821D>

The Macedonian Helsinki Committee is not aware of any measures taken by the authorities for protecting the asylum seekers from discriminatory policies or practices on grounds on sexual orientation or gender identity as the Ministry of Justice, Department for Asylum did not give a clear answer in its letter regarding this question either.

## XII. National human rights structures

Section XI of the Appendix requires member states to ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity, and in particular should be able to make recommendations on legislation and policies, to raise awareness amongst the general public, and – as far as national law provides – to examine individual complaints and participate in court proceedings.

In the Republic of Macedonia national human rights bodies that are mandated to address discrimination in general are the Constitutional Court, the Standing Inquiry Commission on the Protection of Citizens Freedoms and Rights, within the Assembly of the Republic of Macedonia, the Courts, the Ombudsman and the Commission for protection from Discrimination.

The Macedonian Helsinki Committee is not aware that any of the Commissions working on the issues of discrimination such as the Commission for equal opportunities between men and women, within the Assembly of Republic of Macedonia or within the municipalities, the Standing Inquiry Commission on the Protection of Citizens Freedoms and Rights within the Assembly of Republic of Macedonia and, also, the Sector for equal opportunities within the Ministry for labor and social policy, are working on cases with violations by the state bodies, adopt any measures or were dealing with any cases based on sexual orientation or gender identity nor did these Commissions make any proposals or indication of the need for adoption laws and other regulation acts with more complete protection of the freedoms and rights of citizens regarding LGBT people.

The Ombudsman and the Commission for Protection against Discrimination are not clearly mandated to address discrimination based on the grounds of sexual orientation or gender identity, but based on their decisions until now they have recognized the discrimination based on sexual orientation, while the Commission also acts on complaints for discrimination based on gender identity because it is covered with the sex and gender basis of discrimination.

Although the Commission in theory could recognize the discrimination on the grounds of sexual orientation and gender identity, we cannot say that the Commission for Protection against Discrimination will interpret the cases independently as it is not a fully independent body, it is often in synergy with the government when LGBT questions are an issue, so protection is not guaranteed against discrimination for the LGBT population by this body as well.

*Andrea, a transgender person, has submitted an appeal to the Constitutional Court for discrimination by a public prosecutor based on sex, but the Constitutional Court has no yet made a decision about this appeal.*



**Recommendation CM/Rec(2010)5  
of the Committee of Ministers to member states  
on measures to combat discrimination on grounds  
of sexual orientation or gender identity**

*(Adopted by the Committee of Ministers on 31 March 2010  
at the 1081st meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, and that this aim may be pursued, in particular, through common action in the field of human rights;

Recalling that human rights are universal and shall apply to all individuals, and stressing therefore its commitment to guarantee the equal dignity of all human beings and the enjoyment of rights and freedoms of all individuals without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) (hereinafter referred to as "the Convention") and its protocols;

Recognising that non-discriminatory treatment by state actors, as well as, where appropriate, positive state measures for protection against discriminatory treatment, including by non-state actors, are fundamental components of the international system protecting the human rights and fundamental freedoms;

Recognising that lesbian, gay, bisexual and transgender persons have been for centuries and are still subjected to homophobia, transphobia and other forms of intolerance and discrimination even within their family – including criminalisation, marginalisation, social exclusion and violence – on grounds of sexual orientation or gender identity, and that specific action is required in order to ensure the full enjoyment of the human rights of these persons;

Considering the case law of the European Court of Human Rights ("hereinafter referred to as "the Court") and of other international jurisdictions, which consider sexual orientation a prohibited ground for discrimination and have contributed to the advancement of the protection of the rights of transgender persons;

Recalling that, in accordance with the case law of the Court, any difference in treatment, in order not to be discriminatory, must have an objective and reasonable justification, that is, pursue a legitimate aim and employ means which are reasonably proportionate to the aim pursued;

Bearing in mind the principle that neither cultural, traditional nor religious values, nor the rules of a "dominant culture" can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity;

Having regard to the message from the Committee of Ministers to steering committees and other committees involved in intergovernmental co-operation at the Council of Europe on equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender persons, adopted on 2 July 2008, and its relevant recommendations;

Bearing in mind the recommendations adopted since 1981 by the Parliamentary Assembly of the Council of Europe regarding discrimination on grounds of sexual orientation or gender identity, as well as Recommendation 211 (2007) of the Congress of Local and Regional Authorities of the Council of Europe on “Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons”;

Appreciating the role of the Commissioner for Human Rights in monitoring the situation of lesbian, gay, bisexual and transgender persons in the member states with respect to discrimination on grounds of sexual orientation or gender identity;

Taking note of the joint statement, made on 18 December 2008 by 66 states at the United Nations General Assembly, which condemned human rights violations based on sexual orientation and gender identity, such as killings, torture, arbitrary arrests and “deprivation of economic, social and cultural rights, including the right to health”;

Stressing that discrimination and social exclusion on account of sexual orientation or gender identity may best be overcome by measures targeted both at those who experience such discrimination or exclusion, and the population at large,

Recommends that member states:

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;
2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;
3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;
4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;
5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible.

## Appendix to Recommendation CM/Rec(2010)5

### I. Right to life, security and protection from violence

#### A. "Hate crimes" and other hate-motivated incidents

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.
2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.
3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related "hate crimes" and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.
4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.
5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on "hate crimes" and hate-motivated incidents related to sexual orientation or gender identity.

#### B. "Hate speech"

6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such "hate speech" should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.
8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

## II. Freedom of association

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.
10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.
11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.
12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

## III. Freedom of expression and peaceful assembly

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.
15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.
16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.
17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

#### IV. Right to respect for private and family life

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.
19. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.
20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.
21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.
22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.
24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.
25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.
26. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.
27. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.
28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

## V. Employment

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.
30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

## VI. Education

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education

can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

## VII. Health

33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subjected to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

## VIII. Housing

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures

should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

## IX. Sports

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

## X. Right to seek asylum

42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they would face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.



## XI. National human rights structures

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

## XII. Discrimination on multiple grounds

46. Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.

## Glossary

**Gender identity** refers to a person's deeply felt individual experience of gender, which may or may not correspond with the sex assigned at birth, and includes the personal sense of the body and other expressions of gender (that is, "gender expression") such as clothes, speech and mannerisms. The sex of a person is usually assigned at birth and becomes a social and legal fact from there on. However, some people experience problems identifying with the sex assigned at birth – these persons are referred to as "transgender" persons. Gender identity is not the same as sexual orientation, and transgender persons may identify as heterosexual, bisexual or homosexual.

**Gender reassignment treatment** refers to different medical and non-medical treatments which some transgender persons may wish to undergo. However, such treatments may also often be required for the legal recognition of one's preferred gender, including hormonal treatment, sex or gender reassignment surgery (such as facial surgery, chest/breast surgery, different kinds of genital surgery and hysterectomy), sterilisation (leading to infertility). Some of these treatments are considered and experienced as invasive for the body's integrity of the persons.

**Harassment** constitutes discrimination when unwanted conduct related to any prohibited ground (including sexual orientation and gender identity) takes place with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, degrading, humiliating or offensive environment. Harassment can consist of a single incident or several incidents over a period of time. Harassment can take many forms, such as threats, intimidation or verbal abuse, unwelcome remarks or jokes about sexual orientation or gender identity.

**Hate crime** towards LGBT persons refers to criminal acts with a bias motive. Hate crimes include intimidation, threats, property damage, assault, murder or any other criminal offence where the victim, premises or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support or membership of an LGBT group. There should be a reasonable suspicion that the motive of the perpetrator is the sexual orientation or gender identity of the victim.

**Hate-motivated incidents** are incidents, acts or manifestations of intolerance committed with a bias motive that may not reach the threshold of hate crimes, due to insufficient proof in a court of law for the criminal offence or bias motivation, or because the act itself may not have been a criminal offence under national legislation.

**Hate speech** against LGBT people refers to public expressions which spread, incite, promote or justify hatred, discrimination or hostility towards LGBT people – for example, statements made by political and religious leaders or other opinion leaders circulated by the press or the Internet which aim to incite hatred.

**Homophobia** is defined as an irrational fear of, and aversion to, homosexuality and to lesbian, gay, bisexual and transgender persons based on prejudice.

**Intersex people** are persons who are born with chromosomal, hormonal levels or genital characteristics which do not correspond to the given standard of "male" or "female" categories as for sexual or reproductive anatomy. This word has replaced the term "hermaphrodite", which was extensively used by medical practitioners during the 18th and 19th centuries. Intersexuality may take different forms and cover a wide range of conditions.

**LGBT people** or **LGBT persons** is an umbrella term used to encompass lesbian, gay, bisexual, and transgender persons. It is a heterogeneous group that is often bundled together under the LGBT heading in social and political arenas. Sometimes LGBT is extended to include intersex and queer persons (LGBTIQ).

**Multiple discrimination** describes discrimination that takes place on the basis of several grounds operating separately.

**NGO** is the abbreviation for “non-governmental organisation”.

**Sexual orientation** is understood to refer to each person’s capacity for profound emotional, affectionate and sexual attraction to, and intimate and sexual relations with, individuals of a different gender (heterosexual) or the same gender (homosexual, lesbian, gay) or more than one gender (bisexual).

**Transgender** persons include persons who have a gender identity which is different from the gender assigned to them at birth and those people who wish to portray their gender identity in a different way from the gender assigned at birth. It includes those people who feel they have to, prefer to, or choose to, whether by clothing, accessories, mannerisms, speech patterns, cosmetics or body modification, present themselves differently from the expectations of the gender role assigned to them at birth. This includes, among many others, persons who do not identify with the labels “male” or “female”, transsexuals, transvestites and cross-dressers. A transgender man is a person who was assigned “female” at birth but has a gender identity which is “male” or within a masculine gender identity spectrum. A transgender woman is a person who was assigned “male” at birth but has a gender identity which is female or within a feminine gender identity spectrum. Analogous labels for sexual orientation of transgender people are used according to their gender identity rather than the gender assigned to them at birth. A heterosexual transgender man, for example, is a transgender man who is attracted to female partners. A lesbian transgender woman is attracted to female partners. The word **transgenderism** refers to the fact of possessing a transgender identity or expression.

**Transphobia** refers to a phenomenon similar to homophobia, but specifically to the fear of, and aversion to, transgender persons or gender non-conformity. Manifestations of homophobia and transphobia include discrimination, criminalisation, marginalisation, social exclusion and violence on grounds of sexual orientation or gender identity.

**Monitoring Implementation of  
the Council of Europe Recommendation to member states  
on measures to combat discrimination on grounds of sexual orientation  
or gender identity (the “CMCE Recommendation”)**

**Compliance Documentation Report – Republic of Macedonia**

**The Helsinki Committee for Human Rights of the Republic of Macedonia  
(Macedonian Helsinki Committee), Skopje, Macedonia, 2012**

As a part of the monitoring process Macedonian Helsinki Committee sent enquiries to the state bodies responsible for implementing the different parts of the Recommendation, requesting their comments on the extent to which they consider they have completed the checklist questions (corresponding sections of the checklist were attached to every letter). Their responses are included in the report. The enquiries and other correspondence to the state bodies were made on behalf of the Macedonian Helsinki Committee.

State bodies that responded to the enquiries for information are the following:

Ministry of Justice; Ministry of Internal Affairs; Ministry of Labour and Social Policy; Ministry of Foreign Affairs; Ministry of Defence; Ministry of Education and Science; Agency for Youth and Sports; Directorate for Execution of Sanctions, within the Ministry of Justice; Sector for Internal Control and Professional Standards, within the Ministry of Internal Affairs; Bureau for Development of Education, within the Ministry of Education and Science; The General Secretariat of the Government of the Republic of Macedonia – department for cooperation with non-governmental organizations; Ombudsperson office; Ministry of Internal Affairs- department for Asylum; Academy for Judges and Public prosecutors; University Saint Climent Ohridski Bitola - Faculty for Security – Skopje; The Broadcasting Council; The State Archive, Commission for Protection against Discrimination.

The copies of all letters to state bodies and their replies, used in the course of preparation of this report are available on demand.

## **Recommendation**

- 1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;**

- i. Has a review been conducted of existing legislative and other measures which could result directly or indirectly in (a) sexual orientation or (b) gender identity discrimination?*

The Ministry of Labor and Social Policy has replied to the posted question with a formally written reply that they have made an analysis for the compliance of the existing legislative with the European Union Directives (Directive 32000L0043 and the Directive 32000L0078) in relation to the prohibition of discrimination on grounds of sex and the right of equal treatment. Considering this answer, it can be stated that a special review or analysis of the existing legislative which could result directly and indirectly in sexual orientation or gender identity discrimination is not conducted.

Even when authorities are working on issues which touch upon sexual orientation or proposing new initiatives that regulate the field of discrimination, their official position is that sexual orientation and gender identity will not be included in any legal action or instrument. In addition to this, the statement of the Minister of Labor and Social Policy is showing the attitude and the reaction of the Government to combat the discrimination based on sexual orientation and gender identity.<sup>23</sup>

- ii. Are processes in place to ensure that the discrimination thus identified is redressed?*

Until now, there is no sign that the government intends to identify and redress discrimination on grounds of sexual orientation or gender identity in any strategic or national plan, legislative or other measures for combating discrimination based on sexual orientation or gender identity. In contrast, in the process of developing the National Strategy for equality and nondiscrimination, the LGBT focal person from the Macedonian Helsinki Committee was a member of the working group that was developing the Strategy for combating discrimination but could not intervene in the framework of the Strategy since before the working group started to work it was decided by the Government that the Strategy will apply to four grounds only: sex, age, disability and ethnicity. At the end of the process, the Strategy was brought for the period of 2012-2015 only on the grounds of sex, age, disability and ethnicity.

**2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;**

- i. Has legislation against discrimination on the grounds of (a) sexual orientation and (b) gender identity covering employment, social security and health care, education, access to and supply of goods and services, including housing, been introduced?*

<sup>23</sup> Minister Says Macedonia Will Defend Traditional Marriage <http://www.balkaninsight.com/en/article/macedonian-minister-stands-against-same-sex-marriage>, Balkan Insight, 01<sup>st</sup> of June 2012; Official web portal of the Government of the Republic of Macedonia, Statement of the Minister for Labor and Social Policy, <http://vlada.mk/node/3309> June 30 2012

Sexual orientation as a ground for discrimination specifically is covered only in the employment, health care and in the education, only in the Law on Higher Education:

1. Law on Public Health, (Official Gazette of Republic of Macedonia, No. 22 of 15 February 2010) in the Section governing the activities of the Institute for Public Health and the Centres, Article 16;
2. Law on Higher Education, (Official Gazette of Republic of Macedonia, No. 35 of 14 March 2008) in the Section governing the studies enrolment procedures and requirements, Article 108
3. Law on Protection of Patient's Rights, (Official Gazette of Republic of Macedonia, No. 82 of 08 July.2008) in the Section on patient's rights, Article 5;
4. Family Law Act (Official Gazette of Republic of Macedonia, No. 157/08 of 12 December 2008), in the Section on victims of trafficking and their families, Article 177-l;
5. Law on Establishing a National Agency for European Educational Programs and Mobility, (Official Gazette of Republic of Macedonia, No. 113 of 20 September 2008) in the Section on Youth in action program, articles 7 and 8;
6. Labour Relations Act, (Official Gazette of Republic of Macedonia, No. 158 of 09 December 2010) Article 6 prohibits discrimination based on sex "inclination", which might be considered as a discriminatory terminology which refers to the sexual act only, not including all aspects comprising sexual orientation (emotional, romantic, spiritual etc.)

The Law on Prevention and Protection from Discrimination, (Official Gazette of Republic of Macedonia, No. 50 of 13 April 2010) which entered into force on January 1st, 2011, covers employment, social security and health care, education, access to and supply of goods and services, including housing. Discrimination based on sexual orientation was not included. Even though the Commission for Protection from Discrimination, in the period of 2011 and 2012, acted and gave their opinion in eight complaints for discrimination based on sexual orientation, acting in accordance with the European Convention on Human Rights, Article 14 and Protocol 12, still, there is a need for the Law on prevention and protection from discrimination to include and explicitly recognize sexual orientation as a ground for discrimination.

Gender identity as a specific ground for discrimination is not included in the Law on Prevention and Protection from Discrimination or any other law, but according to the reply from the Commission for Protection against Discrimination, the Commission acts on complaints for discrimination based on gender identity because gender identity is covered with the sex and gender basis of discrimination and this practice is in synergy with the practice of the European Court for human rights. Law on Prevention and Protection from Discrimination protects against discrimination on the grounds provided as discriminatory with ratified international agreements. Thus, according to Article 2, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights, gender identity is recognized as discriminatory ground and it covers transgender, transsexual and intersexual people, hence the law covers discrimination on the basis of gender identity<sup>24</sup>.

Also, the EU Directives 2006/54/EC and 2004/113/EC that refer to gender equality in employment and goods and services, are implemented in the part of the equality and nondiscrimination for the men and women, but there are no specific provisions in this laws or action plans on which can be concluded that they refer to the transgender people as well. However, except this answer from the Commission, there are no court decisions that will provide a clear picture about discrimination based on gender identity.

<sup>24</sup> General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights) <http://www.unhcr.org/refworld/docid/4a60961f2.html>

Concerning this matter, Andrea, a transgender person, has submitted an appeal to the Constitutional Court, for discrimination based on sex because, according to the Article 110 of the Constitution of the Republic of Macedonia, the Constitutional Court protects the people and the citizens from discrimination based on gender, race, religion, national, social or political affiliation made by the public bodies and courts. The Constitutional Court has not yet made a decision about this appeal.

- i. Has a comprehensive strategy, including long-term education and awareness raising programmes, aimed at tackling discriminatory or biased attitudes and behaviour within the general public and correcting prejudices and stereotypes, been implemented?*

There is no comprehensive or any other strategy for dealing with discrimination, stereotypes and prejudices about sexual orientation or gender identity. On the contrary, the public authorities with their public speeches increase the prejudices and stereotypes about LGBT people. The Minister for Labor and Social Policy raised the question about same-sex marriages and adoption of children by same-sex couples, without any debate or request about these questions from the LGBT community. Again, the Minister publicly confirmed the Government's position about LGBT people and caused the LGBT community to be condemned by the public without any reason.<sup>25</sup>

**3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;**

- i. Do effective legal remedies for victims of (a) sexual orientation or (b) gender identity discrimination exist at national level?*
- ii. Are there effective procedures to make victims aware of, and able to access, such remedies, even where a violation is committed by a person acting in an official capacity?*
- iii. Are the remedies effective, proportionate and dissuasive?*
- iv. Do the remedies include, where appropriate, adequate reparation for victims?*

In Article 137 of the Criminal Code “personal characteristics and circumstances” can be a ground for violation of the equality of citizens, in which the freedom of sexual orientation and/or gender identity can also be interpreted. According to the Criminal Code, if any person takes away or limits the rights of humans and citizens in this respect, they will be punished with imprisonment from three months to three years and if a public

<sup>25</sup> See for instance <http://www.youtube.com/watch?v=U3W65DRKy98&feature=plcp>

official does this act they will be punished with imprisonment from six to five years. Still, for this article to be considered as an effective remedy against discrimination based on sexual orientation and gender identity, it has to be included as a specific ground.

Andrea, a transgender person has filed criminal charges against the hospital in Tetovo for violation of equality because of her personal characteristics and circumstances and for torture, because she was not allowed to visit her psychiatrist and was bitten by the security of the hospital. The public prosecutor did not initiate proceeding ex officio, so Andrea, represented by the Macedonian Helsinki Committee, initiated a court proceeding and the process is on going.

Also, the Law on Prevention and Protection against Discrimination, (Official Gazette of Republic of Macedonia, No. 50 of 13 April 2010) provides legal protection from discrimination by the Commission for Protection against Discrimination and by the Courts. However, considering the fact that discrimination based on sexual orientation and gender identity are not explicitly included in this law and also considering the fact that sexual orientation as a ground for discrimination is covered only by a small number of laws, one may argue that there are effective legal remedies available to victims of this type of discrimination.

Accordingly, we can conclude that there are no effective procedures that will make victims aware of legal remedies, nor allow them access to any mechanism for protection against discrimination.

**4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;**

**5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible**

*i. What steps have been taken to ensure as wide as possible dissemination of the Recommendation and its appendix?*

To this date, middle of November 2012, no debate for informing the general public about the Recommendation and its Appendix has been organized by State authorities. Macedonian Helsinki Committee has translated the Recommendation in Macedonian, placed it on the website<sup>26</sup> and sent the translated text to the authorities and Members of Parliament. Apart from the Broadcasting Council<sup>27</sup>, no other state body has placed the Recommendation on their website.

*ii. Have the Recommendation and its appendix been translated?*

*iii. Have they been disseminated:*

- *within the lesbian, gay, bisexual and transgender communities?*
- *throughout public administration?*

<sup>26</sup> Macedonian Helsinki Committee <http://www.mhc.org.mk/>

<sup>27</sup> The Broadcasting Council [http://www.srd.org.mk/index.php?option=com\\_content&view=article&id=490%3A-cmrec20105-----&catid=50%3Aevropska-legislativa&Itemid=80&lang=mk](http://www.srd.org.mk/index.php?option=com_content&view=article&id=490%3A-cmrec20105-----&catid=50%3Aevropska-legislativa&Itemid=80&lang=mk)



- *throughout law-enforcement structures, including the judiciary and penitentiary system?*
- *to national human rights protection structures (including equality bodies)?*
- *throughout the educational system?*
- *throughout the health-care system?*
- *to representatives of public and private sector employees and employers?*
- *to the media?*
- *to relevant non-governmental organisations?*

The Macedonian Helsinki Committee sent a letter to the Ministry of Foreign Affairs inquiring whether the Recommendation and its Appendix have been translated in Macedonian and disseminated to other relevant institutions, NGO's etc. In the answer that we received from the Ministry of Foreign Affairs (04.07.2012), they state that the recommendations of the Council of Europe (CoE) are public information which is not binding and that they are available on the web site of the CoE. However, the same are used in the work of our state and public bodies. Considering this, it is clear that the Recommendation and its Appendix are not translated by the state and are not disseminated to other relevant institutions.

## Appendix to Recommendation CM/Rec(2010)5

### I. Right to life, security and protection from violence

#### A. "Hate crimes" and other hate-motivated incidents<sup>28</sup>

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.
  - i. *Does the training of police officers ensure that they are aware of the need to make special efforts to investigate any (a) homophobic or (b) transphobic connotations in hate crimes or hate motivated incidents effectively, promptly and impartially, particularly where violence is involved?*

From the answers that we received from the Sector for internal control and professional standards within the Ministry of Interior (31.07.2012) and the Center for Trainings of the Ministry of Interior (24.08.2012), it is clear that the police do not have specific trainings for investigating crimes based on homophobic or transphobic connotations. They only have trainings for human rights in general. Progress in the trainings and subjects is made in the academic curriculum of the Faculty of Security-Skopje. From the answer that we received from the Faculty (22.08.2012), it can be concluded that within the subject Police and Human Rights and the subject Non-discrimination and Vulnerable Groups, they devote particular attention to marginalized communities and discrimination and violence against LGBT people.

- ii. *Is there an independent and effective machinery for receiving and investigating reports of hate crimes or hate motivated incidents allegedly committed by law-enforcement staff, particularly where sexual orientation or gender identity constitute one of the motives?*

<sup>28</sup> See Glossary (Appendix II) or Explanatory Memorandum for explanation of hate crimes and hate-motivated incidents <https://wcd.coe.int/ViewDoc.jsp?id=1570957&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

The Sector for Internal Control within the Ministry of Interior is the body that is dealing with reports and investigations of crimes when there is a suspicion that the act is committed by police officers. But we cannot say that this is an independent and effective body, because it is within the Ministry for Internal Affairs. The Ombudsman is also a body that receives reports for crimes committed by the law-enforcement staff. However, the Macedonian Helsinki Committee knows of no cases regarding hate motivated incidents committed by the law enforcement staff, especially not for hate motivated incidents where sexual orientation and gender identity are constituted as one of the motives.

**2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.**

- i. Do legislative measures to combat “hate crimes” and other hate-motivated incidents exist? Do these measures recognise (a) sexual orientation and (b) gender identity as a possible motive in such crimes or incidents?*
  
- ii. Does this legislation ensure that a bias motive related to (a) sexual orientation (b) gender identity may be taken into account as an aggravating circumstance when determining sanctions?*

Article 319 of The Criminal Code is recognizing hate crimes only if and when they are based on national, racial or religious grounds. Sexual orientation and gender identity are not included /covered by the Criminal Code.

According to the provisions of the Criminal Code, we can say that sexual orientation and gender identity cannot be taken as an aggravating factor in determining sanctions for a crime and until now we know of no precedent made by the Courts on this basis.

**3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.**

- i. Has a simple and comprehensible definition of “hate crimes”, which includes the motive of (a) sexual orientation and (b) gender identity been disseminated to the general public?<sup>29</sup>*

<sup>29</sup> e.g. through police websites or leaflets distributed in the community.

There is no specific definition of “hate crimes”, but they are covered with Article 319 of the Criminal Code on national, racial or religious grounds. Especially, there is no definition on hate crimes where sexual orientation and gender identity are considered to be a motive.

- ii. Do training programmes and procedures ensure that the police and judiciary possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?*

From the answers that we received from the Sector for internal control and professional standards within the Ministry of interior (24.08.2012), the Center for trainings of the Ministry of Interior (24.08.2012), and the Academy for Public Prosecutors and Judges (01.08.2012), it can be concluded that police and judiciary do not have trainings for identifying any kind of crime where sexual orientation and gender identity is considered to be a motive.

- iii. Do training programmes and codes of conduct for the police and judiciary ensure that LGBT persons are treated in a non-discriminatory and respectful manner so that they feel safe to report hate crimes or other hate motivated incidents, whether as victims or witnesses, in relation to their (a) sexual orientation and (b) gender identity?*
- iv. Are units within the police tasked specifically with investigating crimes and incidents linked to (a) sexual orientation and (b) gender identity?*

From the answers that we received from the Sector for Internal Control and Professional Standards within the Ministry of Interior, the Center for Trainings of the Ministry of Interior, and the Academy for Public Prosecutors and Judges, it can be concluded that police and judiciary do not have specific trainings on sexual orientation and gender identity as grounds for discrimination. They only have trainings on discrimination issues in general. Progress in the trainings and subjects is made in the academic curriculum of the Faculty of Security-Skopje. From the answer that we received from the Faculty, it can be concluded that within the subject Police and Human Rights and the subject Non-discrimination and Vulnerable Groups, they devote particular attention to marginalized groups and discrimination on the grounds of sexual orientation and gender identity.

At the moment there are no affirmative measures that will allow LGBT persons to feel free or safe to report hate crimes or other hate motivated accidents to the police or other state organs, regardless whether they are in a position of a victim or witness.

- v. Are there special police liaison officers tasked with maintaining contact with local LGBT communities in order to foster a relationship of trust?*

The Macedonian Helsinki Committee is not aware of a community based policing which is in direct or indirect contact with the LGBT community, groups or organizations and until now there are no special police liaison officers tasked with maintaining contact with local LGBT communities in order to foster a relationship of trust.

- vi. Is there a system of anonymous complaints or on-line complaints, or use of other means of easy access, which allows reporting by third parties in order to gather information on the incidence and nature of these incidents?*

The legislation allows criminal charges, for a crime that is prosecuted ex officio, to be anonymous.

The official website of the Ministry of Interior has online registration only regarding improper conduct of the employees in the Ministry of Interior.<sup>30</sup> However, because our legislation does not recognize hate crime based on sexual orientation or gender identity, we can say that this system cannot be used for this kind of incidents.

- 4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.**

- i. Do training programmes and codes of conduct for prison staff ensure that prisoners are treated with respect and without discrimination in relation to their (a) sexual orientation and (b) gender identity?*

In its reply to the Macedonian Helsinki Committee, the Directorate for execution of sanctions, failed to confirm that training programs and codes of conduct for the prison staff include matters in relation to sexual orientation or gender identity. These grounds are not even mentioned in the Law on Execution of Sanctions (Official Gazette of the Republic of Macedonia 2/2006) and the Law Amending the Law on Execution of Sanctions (Official Gazette of the Republic of Macedonia 57/2010) or any code of conduct as specific ground for discrimination.

- ii. Are there effective measures to minimise the dangers of physical assault, rape and other forms of sexual abuse, including effective procedures for determining the disciplinary or criminal liability of those responsible, including for failure of supervision?*

The Directorate for Execution of Sanctions answered that for minimizing the danger of physical assault, rape and other forms of sexual abuse, the Directorate continuously conducts trainings and takes measures for improving

<sup>30</sup> Ministry of Internal Affairs; <http://www.mvr.gov.mk/DesktopDefault.aspx?tabindex=0&tabid=352>

the conduct of prison staff. But, it failed to confirm that these are effective measures, especially when sexual orientation and gender identity are in question.

Bad conditions in the prisons, that are below the minimum requirements provided in national legislation and international standards, the low level of education and professionalism of the prison staff and the improper functioning of the security services in prisons remain to be factors for the violation of the prisoners' rights that are highlighted in the media and in the reports of the Ombudsman<sup>31</sup> and the human rights defenders.

*iii. Is there an independent and effective machinery for receiving and investigating reports of such crimes by the prison staff?*

According to the Law on Execution of Sanctions (Official Gazette of the Republic of Macedonia 2/2006) and the Law Amending the Law on Execution of Sanctions (Official Gazette of the Republic of Macedonia 57/2010), the Directorate for Execution of Sanctions is responsible for supervising the execution of sentences by the prison staff, but because the Directorate for Execution of Sanctions is a body within the Ministry of Justice, it is not independent in its operation. We can say that the Ombudsman of the Republic of Macedonia is an independent institution for receiving and investigating reports of such crimes. The Ombudsman of the Republic of Macedonia protects the rights of persons who are serving a prison sentence and the persons against whom detention is conducted by taking actions and measures to implement the rights guaranteed by domestic and international norms and standards. However, Macedonian Helsinki Committee knows of no received and investigated report regarding crimes being committed by the prison staff because of the sexual orientation or gender identity of a prisoner.

*iv. In the case of transgender prisoners, are there procedures to ensure that the gender identity of the individual is respected in regard to interactions with prison staff such as body searches and also particularly in the decisions taken on the placement of a prisoner in a male or female prison?*

No such procedures have been established by the authorities and from the answer of the Directorate for Execution of Sanctions we learned that the Directorate was not aware of any cases where a transgender person was placed in prison thus far.

Andrea, a transgender person that still has not changed the identification number, was convicted by the Court convicted on six months of prison, with a one year suspended sentence, because she did not pay child support. Although, this court decision is not still effective, because of the right of appeal, the daily newspaper Vest asked the Directorate for Execution of Sanctions whether Andrea will serve the sentence in a male or female prison. From there it was stated that this is the first case of its kind and with a final decision, they will come out if the conditional term expires and the sentence will be effective<sup>32</sup>.

<sup>31</sup> The annual report of the Ombudsman of the Republic of Macedonia  
<http://www.ombudsman.mk/ombudsman/upload/documents/2012/Izvestaj%202011-ANG.pdf>

<sup>32</sup> See for instance <http://www.vest.com.mk/default.asp?ItemID=913B332FOFFOB74D9ECEB68CE2A43CBA>  
<http://www.time.mk/read/3ceetefc8e/9d86846033/index.html>

**5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.**

- i. Is there research into the nature and causes of hostile and negative attitudes to LGBT people, with a view to developing effective policies to combat these phenomena?*

No study or research has been conducted by the authorities and there are no effective policies that consider hostile and negative attitude towards LGBT people. Only a certain number of NGO's have conducted research regarding the social acceptance and the rights of the LGBTI community. However, those research findings are not considered by the authorities in order to eliminate hostile behaviour, homophobia and transphobia.

In November 2011, the Ministry of Labour and Social affairs promoted the Draft Strategy for equality and non-discrimination on the grounds of gender, age, ethnicity and handicap. The Minister of Labour and Social Affairs has stated that homosexuals are not acceptable for the majority of the Macedonian people, on the day of the promotion of the Draft Strategy. Therefore, this implies that the Ministry is not accepting to combat discrimination on this specific ground. In addition, gender identity was not even mentioned.<sup>33</sup>

- ii. Are there regular surveys into levels of social acceptance of / hostility towards LGBT people?*

The Macedonian Helsinki Committee knows of no regular surveys regarding the level of social acceptance or hostility towards LGBT people by any organ or institution of the State.

- iii. Is there an effective system for recording and publishing statistics on hate crimes and hate-motivated incidents related to (a) sexual orientation and (b) gender identity?*

The Macedonian Helsinki Committee knows of no regular system that records and publishes statistical data regarding hate crimes and hate - motivated incidents related to sexual orientation and gender identity by the authorities.

To this date, December 2012, we are aware of three incidents that can be qualified as hate crimes against LGBT people. On 23.10.2012, the Macedonian Helsinki Committee opened the Centre for Support of the LGBTI community in the Republic of Macedonia, a place where LGBT people can express and transmit information<sup>34</sup>. After the end of the event, around 3 hours and 30 minutes after midnight, the building was damaged by unknown perpetrators i.e. the glass at the entrance of the Centre was broken<sup>35</sup>. In accordance with the laws in the Republic of Macedonia, the Macedonian Helsinki Committee and the LGBTI Support Center immediately

<sup>33</sup> Ibid, 2, <http://www.balkaninsight.com/en/article/macedonian-minister-stands-against-same-sex-marriage>,

<sup>34</sup> See for instance <http://tocka.com.mk/1/78376/helsinki-komitet-go-otvori-prviot-centar-za-poddraska-na-lgbti-zaednicata-vo-makedonija> <http://www.karmakasha.mk/rubriki/vesti/item/6809-lgbti-centar-makedonija>

<sup>35</sup> See for instance <http://press24.mk/story/za-poddrshka/foto-kamenuvan-noviot-lgbt-centar-za-poddrshka-eve-kako-izgleda> <http://www.dnevnik.com.mk/default.asp?ItemID=DBC7FF4AAC2C544E8E47EBD07A3F68DE>

reported the case to the police authorities, which performed inspection of the scene; a procedure against unknown perpetrators has been initiated.

Also, there was another attack on the LGBT center on 17<sup>th</sup> of December 2012, when unknown perpetrators tried to burn the Center. On the shutter of the Center the perpetrators had drawn swastikas and left a message "Tremiti<sup>36</sup>".

Another example of hate crimes directed at the LGBT community occurred with the attack on the city square on two activists, during the March for tolerance which was dedicated to hate speech against LGBT persons and women, held on 17th November and organized by the Macedonian Helsinki Committee and the LGBTI Support Center.

All three cases are crimes committed because of hate for LGBT people, but because the legislation does not recognize hate crimes because of a person's sexual orientation and gender identity, the attackers will be prosecuted only for violence.

## B. "Hate speech"<sup>37</sup>

- 6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such "hate speech" should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.**

- i. Do legislative measures penalising "hate speech" on certain grounds exist? Do these measures penalise (a) homophobic and (b) transphobic "hate speech"?*

In the Macedonian legal system legal penalties exist against "hate speech" in several laws such as Criminal code, Law on Citizens Associations and Foundations, Law on Political Parties, Law on Preventing Violence and Disgraceful Behaviour on Sport Events and Law on Service in the Army of the Republic of Macedonia, that cover "hate speech" based on national, political, ethnic or racial group or religious affiliation. These measures do not cover transphobic or homophobic "hate speech".

- ii. Are media organisations, including those operating on the internet, encouraged to promote in their own practices (e.g. through codes of practice):*

- *a culture of respect, tolerance and diversity, and*
- *to avoid negative and stereotyped representations of LGBT people?*

<sup>36</sup> Isole Tremiti is archipelago where Benito Mussolini during the fascist regime had deported hundreds of homosexuals

<sup>37</sup> See Glossary (Appendix II) or Explanatory Memorandum for definition of "hate speech".



At the moment no measures have been taken to encourage media organizations to promote respect, tolerance and diversity as positive values. The Broadcasting Council replied to our letter on 03.10.2012, saying that in accordance with the disrespect of LGBT people by the media, the Council has not taken many measures because this is not a very topical subject, but when they notice homophobic or transphobic speech, the Broadcasting Council, warns and encourages media to respect sexual orientation and the gender identity of people. However, researches prove that the media consistently projects a negative image that leads to prejudice and stigmatization of LGBT people. Research about media and marginalized communities was made by the Coalition "Sexual and Health Rights of Marginalized Communities".<sup>38</sup>

Also, the Media are interested in the work of the LGBT organizations only in a sensationalistic way often promoting negative stereotypes and prejudices towards LGBT persons, continuously promoting homophobic and transphobic attitudes. The daily newspaper "Večer" has published a statement of a famous folk singer in which homosexuals are explicitly discriminated and discredited. This statement caused series of negative reactions, expressed via social media.<sup>39</sup>

Also, degrading and discriminatory speech for LGBT people in Macedonia was noticed in the article of the main editor of the daily newspaper "Večer" and TV Sitel, published in the daily newspaper "Večer".<sup>40</sup>

The homophobic campaign that the Government promoted in 2012 was supported by several media and especially by the daily newspaper "Večer" which is why several non-governmental organizations including the Macedonian Helsinki Committee jointly submitted a complaint to the Commission for Protection against Discrimination against the daily newspaper "Večer" and chief editor Ivona Talevska for discrimination based on sexual orientation and gender identity. In the period of 13<sup>th</sup> of October until 17<sup>th</sup> of October the daily newspaper "Večer" continuously published articles and photographs on the front page with discriminatory content that disturb and create irrational fear towards the LGBT community which is discrimination based on sexual orientation and gender identity. The headlines of these articles were: "We want children, not fagots"<sup>41</sup> "Children adopted by homosexuals are victims of paedophilia"<sup>42</sup> "ladies with condoms"<sup>43</sup> "There won't be gay marriages in Macedonia"<sup>44</sup>. The process about this complaint is on going and to this date, middle of November, there is no decision concerning this from the Commission for Protection against Discrimination.

*iii. Has legislation for criminalising "hate speech" on the internet been implemented, and does this cover (a) homophobic and (b) transphobic "hate speech"?*

38 Coalition "Sexual and Health Rights of Marginalized Communities, <http://archive.coalition.org.mk/images/mak%2Bbang-%2Bfinal%2B.pdf>,

39 Večer "Gay relationships are the disease of the modern time" <http://vecer.mk/?ItemID=29C18A673A3F34CADE9C45972B8B9A2>

40 Former Editor of newspaper Večer, Dragan Pavlovich Latas, column "Summer" <http://vecer.com.mk/?ItemID=B45552FD58AE8A489030328C035BF773>

41 Daily newspaper "Večer" <http://www.vecer.com.mk/default.asp?ItemID=FD32A31036253E45A91FC75BFE441ECE>

42 Daily newspaper "Večer" <http://www.vecer.com.mk/default.asp?ItemID=OCBFC61E03485140879688B1BCA9CBE2>

43 Daily newspaper "Večer" <http://www.vecer.com.mk/default.asp?ItemID=35CB0BF2F31A9B4590D5921185428452>

44 Dayly newspaper "Večer" <http://www.vecer.com.mk/default.asp?ItemID=152A7482AD070B469C627C73A2D62BF2>

The amendment 394-g of the Criminal code, (Official Gazette of Republic of Macedonia, No. 114/09 of 14.09.2009), considers “hate speech” on the internet, based on skin colour, political, ethnic or racial group or religious affiliation to be a criminal act. This means that transphobic or homophobic “hate speech” are not criminal acts in our legislative.

- iv. Have internet service providers been encouraged to take measures to prevent the dissemination of (a) homophobic and (b) transphobic materials, threats and insults?*

The Macedonian Helsinki Committee knows of no measures that have been taken to encourage the Internet Service Providers to prevent the dissemination of homophobic and transphobic material, threats and insults, or to promote the practices of a culture of respect, tolerance and diversity. The Broadcasting Council in their letter answered that they are warning the media to be tolerant and respectful to LGBT people, in accordance with the Law on Broadcasting, but they did not give a specific example or explanation that will prove this action. Nevertheless, the Council showed a positive reaction regarding this Recommendation and its Appendix by posting it on their website.

- v. If there are incidents of “hate speech”, are they publicly disavowed by leading public officials?*

The leading public officials have never refrained from public homophobic or transphobic hate speech. On the contrary, the Minister of Labor and Social Affairs, always reminds the public of the Government position for LGBT rights, specifically referring that they are against same-sex marriages and adoption of children by same-sex couples, that is causing hate speech in the media and social networks. The Macedonian Helsinki Committee and the Coalition “Sexual and Health Rights of Marginalized Communities” for the attack on the city square on two activists, on the march for tolerance which was dedicated to hate speech against LGBT persons and women, held on 17th November and organized by the Macedonian Helsinki Committee and the LGBTI Support Center, (see section 15 below) sent a request<sup>45</sup> through the media for the public officials to condemn this behavior and to stop the negative campaign for LGBT people, but except the Minister for Internal Affairs and the party Democratic Renewal of Macedonia, which is part of the ruling coalition<sup>46</sup> no one else condemn this attack. Minister for labor and social affairs, even stated that he does not feel responsible for the situation of the LGBT community, because he was only referring on the issue on the same sex marriages, and according to the Minister, LGBT people enjoy a lot of rights in Macedonia<sup>47</sup>

- 7. Member states should raise awareness among public authorities and public institutions at all levels about their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.**

45

46 Assembly of the Republic of Macedonia <http://www.sobranie.mk/ext/sessiondetails1.aspx?id=28adf593-733f-4c22-961e-b723cc6996dd>

47 Statement of the Minister of Labor and Social Policy <http://www.time.mk/read/NONE/5d650954da/index.html>

- i. *Have guidelines been issued or other measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from such statements?*

To this date only Ivon Velichkovski, Member of Parliament from the Liberal Party, part of the opposition, has tried to raise the awareness of the public authorities and institutions about disavowing hatred and discriminatory speech, by submitting a Declaration<sup>48</sup> for condemnation of hate speech for LGBT people in the Assembly. But, the Assembly failed to adopt the proposed Declaration for condemnation of hate speech for LGBT people in the Assembly<sup>49</sup>.

- ii. *Have there been cases of statements by representatives of public authorities and institutions which may reasonably be understood as legitimising such hatred or discrimination?*

The Minister of Labour and Social affairs, on the promotion of the Draft Strategy for combating the discrimination on the grounds of gender, age, ethnicity and handicap and regarding the Initiative submitted by the Macedonian Helsinki Committee to the Constitutional Court for an assessment procedure regarding the constitutionality of Article 94-b, paragraph 3 of the Family law act, stated that the government does not support changes to the legislation regarding the legalization of same-sex relationships and that homosexuals are not acceptable for the majority of Macedonian people. The disputed paragraph 3 of Article 94-b defines close personal relations as personal relations between persons of the opposite sex who either are, or were in partnership, but do not live in an extramarital community. With the disputed provision, the legislator has committed direct discrimination against persons who have close personal relations with people of the same sex, because they do not enjoy the special protection from domestic violence. The statement of the Minister of Labour and Social Affairs is published on the official web site of the Government of the Republic of Macedonia.<sup>50</sup> Also, the statement that the Minister for Labor and Social Policy that same-sex marriages and adoption of children by same-sex couples, will not be allowed in Macedonia, caused hate speech towards LGBT people among the media and social networks<sup>51</sup>. Macedonian Helsinki Committee, Coalition "Sexual and Health Rights of Marginalized Communities", Foundation Open Society Macedonia and LGBT UNITED, protested against this homophobic statement of the Minister, with a statement that they will submit a complaint to the Commission for Protection against Discrimination for discriminating the LGBT community.

**Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.**

48 The Liberal Party <http://www.lp.org.mk>

49 <http://www.sobranie.mk/ext/sessiondetails1.aspx?id=28adf593-733f-4c22-961e-b723cc6996dd>

50 Official web portal of the Government of the Republic of Macedonia, <http://vlada.mk/node/3309>

51 See for instance <http://a10n.mk/wordpress/archives/49550>

See for instance <http://www.mkd.mk/67073/makedonija/nevladini-organizacii-go-obvinija-ristovski-za-homofobija/>

See for instance <http://24vesti.mk/nevladini-organizacii-kje-go-tuzhat-spiro-ristovski>

See for instance <http://telma.com.mk/index.php?task=content&cat=1&rub=6&item=20836>

See for instance <http://www.makdenes.org/archive/news/20121014/428/428.html?id=24739158>

- i. *Has guidance been issued to public officials and state representatives in this respect?*
- ii. *If so, is there evidence of public officials and other state representatives promoting tolerance for LGBT people in their dialogue with civil society, and encouraging the use of responsible and non-violent speech?*

Except the suggested Declaration for condemnation of hate speech towards LGBT people, by MP Ivon Velichkovski, that promotes tolerance and respect for the rights of LGBT, the Macedonian Helsinki Committee knows of no other guidance that has been issued to public officials and state representatives to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons.

## II. Freedom of association

**Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, this including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.**

- i. *Are organisations whose publicly stated purpose is to work for the well-being of LGBT people, whether for their human rights, or in other ways, prevented from gaining official registration?*
- ii. *If so, is this through the use of discriminatory administrative procedures, through restrictions based on public health, public morality or public order, or through other means?*

In this section we can say that there is no discrimination in the legal framework or practice. Several organizations have been registered to promote and work on LGBT rights.

- iii. *Are there examples of measures taken to:*
  - *ensure that LGBT organisations can operate freely,*
  - *defend their interests when necessary,*
  - *facilitate and encourage their work?*

*iv. Are LGBT organisations involved on a partnership basis when framing and implementing public policies which affect LGBT persons?*

LGBT activists are involved in the bodies that are working on non-discrimination policies, but this is just formally because the framework of policies often is previously arranged.

For example, the LGBT focal person from the Macedonian Helsinki Committee and LGBTI Support Center was a member of the working group that was developing the Strategy for combating discrimination but could not intervene in the framework of the Strategy since before the working group started to work it was decided by the Government that the Strategy will apply to only four grounds: sex, age, disability and ethnicity.

**8. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.**

*i. Is public funding earmarked for NGOs accessible to LGBT organisations without discrimination?*

*ii. Has such funding been made available to LGBT organisations?*

There is no discrimination in the legal framework, but in practice, no public funding was granted for LGBT projects. With the purpose of receiving information, the Committee sent a letter to the General Secretariat of the Government of Republic of Macedonia, Department for cooperation with NGO's. Their answer and the decisions of the Government for allocations of funds to NGOs published in the Official Gazette of the Republic of Macedonia for the past four years, does not prove that public funding were allocated to LGBT organizations.

In previous years, an application has been submitted by MASSO (when MASSO was active as an organization) however, they have never received any funding by the Government.

**9. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.**

*i. Does the state provide effective protection from hostility and aggression for LGBT human rights organisations?*

The State does not provide effective protection from hostility and aggression for human rights organizations. For example, the role of some State institutions in the closure of the first LGBT organization – MASSO is still

unclear. A criminal complaint was submitted to the Public prosecutors' office five years ago, but was never processed.

- ii. Are there examples of measures taken by the state to create an environment conducive to the work of such organisations, enabling them freely to conduct their activities, and promoting respect for their work?*

Macedonian Helsinki Committee is not aware of any example that these kinds of measures are taken by the state. However, it is significant that after the attack on the LGBTI Support Center, when just eight hours after the opening, the front window was broken with stones, the Police Station Old Bazar, which is closest to the Center, has an active role in protection and calming the local community.

- iii. Are LGBT human rights organisations able to work with*

- *national human rights institutions and ombudsmen,*
- *the media,*
- *other human rights organisations?*

The LGBT and the human rights organizations are formally cooperating with the national human rights institutions and the Ombudsman; However in practice they are not able to make any serious impact on the policies.

- iv. Are they able to take part in training sessions, international conferences and other human rights activities?*

They are free to take part in training sessions, international conferences and other human rights activities.

**10. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.**

- i. Are LGBT organisations consulted on the adoption and implementation of measures affecting the rights of LGBT persons?*

No consultations are made by the authorities when LGBT rights are in question. For example, the LGBT focal person from the Macedonian Helsinki Committee and the LGBTI Support Center was a member of the working

group that was developing the Strategy for combating discrimination but could not intervene in the framework of the Strategy since before the working group started to work it was decided by the Government that the Strategy will apply only to four grounds: sex, age, disability and ethnicity.

*ii. Have there been such consultations regarding the implementation of this Recommendation?*

Except the previously mentioned positive reaction from the Council for Broadcasting, to this date, the Macedonian Helsinki Committee is not aware of any other consultations regarding the implementation of this Recommendation and its Appendix.

### III. Freedom of expression and peaceful assembly

**11. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.**

*i. Have the authorities ensured the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, including:*

- *activities that support the human rights of LGBT persons*
- *publication of material*
- *media coverage*
- *organisation of/participation in conferences*
- *dissemination/access to information on safe sexual practices?*

The Constitution of the Republic of Macedonia, in its Article 16, guarantees freedom of expression in general, including freedom of expression and freedom of receiving and transmitting information and ideas of LGBT people, but in practice very few media cover the LGBT issues and activities.

On 23.10.2012, the Macedonian Helsinki Committee opened the Centre for Support of the LGBTI community in the Republic of Macedonia, a place where LGBT people can express and transmit information<sup>52</sup>.

<sup>52</sup> See for instance <http://tocka.com.mk/1/78376/helsinski-komitet-go-otvori-prviot-centar-za-poddrska-na-lgbti-zaedni-cata-vo-makedonija> <http://www.karmakasha.mk/rubriki/vesti/item/6809-lgbti-centar-makedonija>

- ii. *Or, on the contrary, have there been cases where restrictions have been placed on freedom of expression?*

There have not been any restrictions formally placed on freedom of expression. However, very few media are reporting on LGBT issues and very often, they falsify the information.

- iii. *Have the authorities encouraged pluralism and non-discrimination in the media in respect of issues of (a) sexual orientation or (b) gender identity?*

No, on the contrary, there are media that are in obvious synergy with the Government and are continuously promoting homophobic and transphobic attitudes.

**12. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.**

- i. *Have the authorities ensured freedom of peaceful assembly for LGBT people?*

The Constitution of the Republic of Macedonia, in its Article 21, guarantees freedom of peaceful assembly and in Article 22 guarantees the right of peaceful demonstration. In addition, these rights are protected by the Law on public gatherings and all of these rights refer to LGBT people as well.

**13. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.**

- i. *If there has been hostility to LGBT freedom of assembly events, have the law enforcement authorities taken reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully?*
- ii. *In particular, have the police protected participants in peaceful LGBT demonstrations effectively?*



- iii. Have the police acted with integrity and respect towards LGBT people and their supporters when policing LGBT freedom of assembly events?*

Macedonian Helsinki Committee and LGBTI Support Center on 17th November, on the International Day of Tolerance, for the fourth time held a march for tolerance, which was dedicated to hate speech against LGBT persons and women. The slogan of the march was “Stop womenphobia, homophobia and transphobia”. This march was supported by several NGOs that work on LGBT rights, sexual rights and gender equality, such as Youth Educational Forum, Coalition “Sexual and Health rights of marginalized communities”, National Network against Violence against Women and Domestic Violence, Freedom Square, National Council for Gender Equality, Institute for Human Rights, Civil - Center for Freedom, H.E.R.A. – Association for Health Education and Research, Humanity - Association for Advancement of Conditions for Care and Accommodation of Elderly People.

We had good cooperation with the police and they have ensured the safety of the participants. But, on the city square, where they were setting up booths with materials, two people were attacked and injured. One of them was Kocho Andonovski, Program Director of the LGBTI Support Center and organizer of the March for Tolerance and known for doing the first public coming out as a gay person. The person that did the attack was soon found by the police and they will submit criminal charges for violence to the public prosecutor against this person.

**14. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.**

- i. Have the authorities placed restrictions on freedom of assembly events? If so, what have been the grounds?*
- ii. Have conditions been placed, for example, with regard to the route or timing of demonstrations, which are not generally applied to other demonstrators?*
- iii. If restrictions have been placed on freedom of assembly events, has it been possible to challenge them in the courts or through other independent review mechanisms?*

Because the only public event which is considered as partly dedicated to the rights and status of the LGBT persons was the “ March for tolerance“ organized by the Macedonian Helsinki Committee and the LGBTI Support Center, we cannot say more on this topic. Because of the hostile environment, the LGBT community is still not visible enough and strengthened to organize this type of events.

**15. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their**

**freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.**

- i. *If there have been unlawful interferences with the right to freedom of expression and peaceful assembly,*
  - a. *Has there been encouragement to public authorities to condemn such interferences?*

There has been hostile behaviour during the LGBT exhibition- Article 1 and Non- heterosexual museum, organized by the Coalition “Sexual and Health Rights of Marginalized Communities” shown from 22.02.2012 till 15.03.2012 at the Chifte Amam – the National Gallery of Macedonia. Few days before the opening of the exhibition, homophobic groups were tearing the posters for the exhibition, but public authorities did not condemn such behaviour.

- b. *Have public authorities actually condemned such interferences?*
  - ii. *Where there has been public hostility towards the exercise of freedom of assembly by LGBT people, have the authorities upheld this right publicly?*
  - iii. *Or, on the contrary, have the authorities endorsed or supported hostility towards LGBT freedom of assembly events?*

Macedonian Helsinki Committee and the Coalition “Sexual and Health Rights of Marginalized Communities” for the attack on the city square on two activists, during the march for tolerance which was dedicated to hate speech against LGBT persons and women, held on 17th November and organized by the Macedonian Helsinki Committee and the LGBTI Support Center, sent a request<sup>53</sup> through the media for the public officials to condemn this behavior and to stop the negative campaign for LGBT people, but except the Minister for Internal Affairs and the party Democratic Renewal of Macedonia, which is part of the ruling coalition<sup>54</sup>, no one else condemned this attack. The minister for Labor and Social Affairs, even stated that he does not feel responsible for the situation of the LGBT community, because he was only referring to the issue of the same sex marriages, and according to the Minister, LGBT people enjoy a lot of rights in Macedonia<sup>55</sup>.

53 The public announcement from the Macedonian Helsinki Committee ' <http://www.time.mk/read/NONE/64dedf92ad/index.html>

54 Statement sent to the public by the party Democratic Renewal of Macedonia <http://www.time.mk/read/NONE/48a9ff94dc/index.html>

55 The statement of the Minister for labor and social affairs <http://www.time.mk/read/NONE/5d650954da/index.html>

In addition, the Major of the City of Skopje has supported the Motorbike festival that has openly banned access to the festival for the homosexuals on the promotional materials by stating that the festival is banning fagots<sup>56</sup>.

#### IV. Right to respect for private and family life

**16. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.**

- i. Does legislation criminalise same-sex sexual acts? Are there any differences in the age of consent? If either applies, what steps are the authorities taking to repeal the legislation?*
- ii. Are there any criminal law provisions which, because of their wording or scope are liable to be applied in a discriminatory manner regarding*
  - (a) sexual orientation or*
  - (b) gender identity?*
- iii. If so, what steps are the authorities taking to remedy this situation?*

Same-sex sexual acts are neither considered nor banned by the Criminal Code as criminal acts and the age of consent is the same for heterosexual and homosexual relations.

There are no criminal law provisions which, because of their wording or scope, are liable to be applied in a discriminatory manner regarding sexual orientation and gender identity.

**17. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.**

<sup>56</sup> See for instance <http://www.time.mk/read/93b3f1fca3/9e1a7b0057/index.html>

- i. *What steps have been taken to ensure that public authorities comply with this requirement, in respect of (a) sexual orientation and (b) gender identity particularly with regard to records held by law enforcement authorities?*
- ii. *What steps have the authorities taken to ensure that existing records are destroyed?*

There is no legislation that includes segregation of the personal data regarding sexual orientation and gender identity.

- iii. *Have these steps been effective?*

*Is there any evidence of:*

- *the continued existence of such records*
- *the continuing collection of such data?*

From the answers we got from the State Archive, the Ministry of interior and the Directorate for Execution of Sanctions, on previously sent letters, it can be concluded that records with information on the persons' sexual orientation or gender identity do not exist.

**18. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.**

- i. *Has a review of such prior requirements been conducted?*
- ii. *Are there still requirements which might be considered disproportionate or even abusive<sup>57</sup>, such as:*
  - *irreversible sterilisation,*
  - *hormonal treatment,*
  - *preliminary surgical procedures, or proof of a person's ability to live for a long period of time in the new gender?*

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<sup>57</sup> The Explanatory Memorandum draws attention to Committee of Ministers Recommendation Rec(2007)17 on gender equality standards and mechanisms, which affirms that "both women and men must have a non-negotiable right to decide over their own body, including sexual and reproductive matters. Such acknowledgement must be reflected in the development, implementation, access to, monitoring and evaluation of health-care services and in research priorities."

There is a hormonal therapy controlled by the Clinic for Endocrinology, but there is no practice when transgender patients undergo the other forms of therapy without their free consent.

**19. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.**

*i. Are there procedures in operation which ensure the full legal recognition of a person's gender reassignment?*

In its reply the Ministry of internal affairs has informed us that according to the Law on Personal Name (Official Gazette of Republic of Macedonia, No.8/95, 66/07, 103/08 and 51/11) any citizen has the right to change their personal name and surname.

About the changing of the identification number the Ministry replied that according to the Law amending the Law on Parental Record, the Directorate for keeping the parental record, within the Ministry of justice, is responsible for changing the identification number. But, to this reply the Directorate answered that their responsibility is to register the changed identification number, but not to change it. According to this answer, the decision for changing the identification number is a responsibility of the Ministry of internal affairs.

So, according to these replies, it can be stated that there are no clear procedures for changing the identification number, which is necessary for full recognition of a person's gender identity. For instance, one transgender person initiated a procedure to change the identification number before the Directorate for keeping the parental record, but was rejected due to not having completed the surgical procedure. According to this, they did not answer that they are not competent to start and finish such a procedure. This person has submitted a lawsuit to the Administrative Court about this matter and the procedure is on going.

*ii. Do these make possible the change of name and gender in official documents including birth certificates, identity papers, driving licences, passports, social insurance cards and numbers, electoral, land and text registers in a quick, transparent and accessible way?*

The absence of a legislation and procedures that would regulate the legal gender recognition has produced confusion in the actions of the public servants. Until today, only one transgender person from the city of Delchevo was permitted to change the name and gender in the official documents including birth certificates and identity papers, and now he is working on changing the passports, social insurance cards and numbers, electoral, land and text registers. However, as it was mentioned above, to another transgender person from the city of Skopje this procedure was denied because there was no proof that gender reassignment surgery was done, while for the other person, from the city of Delchevo, the request was approved even though he had not completed all of the gender reassignment surgeries requested by the authorities.

- iii. *Are there procedures to ensure corresponding changes in key documents originated by non-state actors, such as*
- *diplomas,*
  - *certificates of employment, and*
  - *insurance or banking documents?*
- iv. *If yes, do these procedures include the protection of the person's private life, so that no third party can become aware of the gender reassignment?*

Macedonian Helsinki Committee is not aware of this kind of procedures. We sent a letter to the Ministry for education about the changes in the diplomas, but we did not get any answers about this matter.

**20. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.**

- i. *Is the right of a legally recognised transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?*

The Family Law (Official Gazette of Republic of Macedonia, No. 83/04 of 24 November 2004) stipulates that marriage is a union between a man and a woman regulated by law, and that the man and the woman determine their relations by their own decision based on equality, mutual respect and assistance. In addition, Article 17 states that a marriage can be concluded between two persons of the opposite sex.

Therefore, it can be concluded that after legal gender recognition there will be no legal obstacles for a transgender person to marry a person of the opposite sex. Regarding this question, we sent letters to the Ministry of Justice and Ministry of Labour and Social Policy, but they did not provide any answer.

**21. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.**

- i. *Does legislation confer rights and obligations on unmarried couples? If so, have steps been taken to ensure that these rights and obligations apply to same-sex couples?*

The legislation covers the rights and obligations only of the unmarried heterosexual couples. Article 13 of the Family Law (Official Gazette of Republic of Macedonia, No. 157/08 of 12 December 2008) stipulates that community life of man and woman is based in accordance with provisions of this law (out-of-wedlock community) and lasting at least one year, is equal to marriage in terms of law of mutual support and property acquired during the life of that community. Also, Article 94-b, paragraph 3 of the Family law act defines close personal relations as personal relations between persons of the opposite sex who either are, or were in partnership, but do not live in an extra-marital community.

On the International day against homophobia, 17th of May 2012, the Macedonian Helsinki Committee has submitted an Initiative to the Constitutional court for an assessment procedure regarding the constitutionality of Article 94-b, paragraph 3 of the Family Law Act. The disputed paragraph 3 of Article 94-b defines close personal relations as personal relations between persons of the opposite sex who either are, or were in partnership, but do not live in an extramarital community. With the disputed provision, the legislator has committed direct discrimination against persons who have close personal relations with people of the same sex, because they do not enjoy the special protection from domestic violence. In the initiative, we have called on the *Karner v Austria*<sup>58</sup> case, emphasizing that because the state of Austria could not advance any arguments that would allow another conclusion, the ECHR found a violation of Article 14 of the ECHR taken in conjunction with Article 8. The conclusion arising from this judgment – when seen in correlation with the disputed Article of the Act – is that the exclusion of the category of persons who have close personal relations with persons of the same sex was neither proportional nor necessary with regard to realization of the aim sought by the Act (protection from domestic violence).

About the disputed Article 94-b, paragraph 3 of the Family law act, on 28.11.2012 the Constitutional Court of the Republic of Macedonia adopted a decision with which the submitted initiative was rejected because the Constitutional Court having analyzed the Law on Family and Article 94-b of this Law, established that not a single category of citizens that could be potential victims of domestic violence is exempt from protection from domestic violence, due to which potential victims of family violence (including same-sex couples) can be persons that live in a “common household”. Thereby, the Constitutional Court has assessed that essentially the Macedonian Helsinki Committee with this initiative wanted to extend the content of the disputed provision, for which the Constitutional Court is not competent. But, the initiative of the Macedonian Helsinki Committee was not about the persons that live in a “common household”. It was about the fact that the term “close personal relations” is defined as relations between persons of different sex which are or were in partner relations and do not live in a extramarital community i.e. they do not live under the same roof, which is a broader category than marriage, family and extramarital community and the term “common household” which involves the persons living under the same roof, due to which the same discriminates the same-sex couples that do not live under the same roof and leaves them with no protection from domestic violence, which is why we still consider the disputed provision is contrary to the Constitution of the Republic of Macedonia.

**22. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.**

<sup>58</sup> *Carner v Austria* (Application no. 40016/98), Strasbourg, 24 July 2003.

- i. Does legislation recognise registered same-sex partnerships? If so, have steps been taken to ensure that their legal status and rights and obligations are equivalent to those of heterosexual couples?*

Macedonian legislation does not allow legal registration of same-sex partnerships.

**23. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.**

- i. If same-sex couples enjoy no rights or obligations, either through access to registered partnership or through their status as unmarried couples, have the authorities considered the possibility of implementing legal or other means to address the practical problems arising from this lack of recognition?*

The initiative that the Macedonian Helsinki Committee has submitted to the Constitutional court is the first reaction to the competent institutions for detecting discrimination, which exists among people who have close personal relations – partnerships with people of the same sex. But, on 28.11.2012 the Constitutional Court of the Republic of Macedonia adopted a decision with which the submitted initiative was rejected because the Constitutional Court having analyzed the Law on Family and Article 94-b of this Law, established that not a single category of citizens that could be potential victims of domestic violence is exempt from protection from domestic violence, due to which potential victims of family violence can be persons that live in a “common household”. Thereby, the Constitutional Court has assessed that essentially the Macedonian Helsinki Committee with this initiative wanted to extend the content of the disputed provision, for which the Constitutional Court is not competent. But, the initiative of the Macedonian Helsinki Committee was not about the persons that live in a “common household”. It was about the fact that the term “close personal relations” is defined as relations between persons of different sex which are or were in partner relations and do not live in a extramarital community i.e. they do not live under the same roof, which is a broader category than marriage, family and extramarital community and the term “common household” which involves the persons living under the same roof, due to which the same discriminates the same-sex couples that do not live under the same roof and leaves them with no protection from domestic violence, which is why we still consider the disputed provision is contrary to the Constitution of the Republic of Macedonia.

**26. Taking into account that the child’s best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.**



- i. *What steps have been taken to ensure that decisions regarding the parental responsibility for, or guardianship of a child, are taken without discrimination based on (a) sexual orientation or (b) gender identity?*
  
- ii. *In practice, are such decisions taken on a non-discriminatory basis?*

The Macedonian Helsinki Committee is not aware of any steps taken by the authorities to ensure that decisions regarding the parental responsibility for guardianship of a child are taken without discrimination based on sexual orientation or gender identity.

In the case of Andrea, the first publicly declared transgender person, the Center for social affairs revoked Andrea's right to see her children. The decision was later confirmed by the Minister of Labor and Social Affairs.

The Ministry of Labour and Social Affairs did not answer to questions of this section in its reply and Macedonian Helsinki Committee has no information that the above-mentioned steps have been taken. It can be concluded that no corresponding measures have ever been taken or planned.

**27. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.**

- i. *What steps have been taken to ensure that decisions regarding adoption of a child by a single person (where such adoption is permitted by national legislation), are taken without discrimination based on (a) sexual orientation (b) gender identity?*
  
- ii. *In practice, are such decisions taken on a non-discriminatory basis?*

The Family Law allows access for a single person to adopt a child, but the Macedonian Helsinki Committee is not aware of any steps taken by the authorities to ensure such decisions, or whether the adoption of a child by a single person is performed without discrimination based on sexual orientation or gender identity, because we did not receive any information about these questions.

**28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.**

- i. *What steps have been taken to ensure that access by single women to assisted reproductive treatment (where permitted by national legislation), is without discrimination based on sexual orientation?*
  
- ii. *In practice, is such access granted on a non-discriminatory basis?*

The legislation allows access for a single woman to get assisted reproductive treatment<sup>59</sup>, but the Macedonian Helsinki Committee is not aware of any steps taken by the authorities to ensure that such decisions are made without discrimination based on sexual orientation or gender identity.

The Macedonian Helsinki Committee is not aware of such access being granted in practice.

## V. Employment

**29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.**

- i. *Does legislation<sup>60</sup> exist which prohibits discrimination in employment in the public and private sector on grounds of (a) sexual orientation and (b) gender identity?*
  
- ii. *Does it cover:*
  - *access to employment (including recruitment); promotion,*
  - *dismissals,*
  - *pay, harassment and other forms of victimisation?*

<sup>59</sup> Law for biomedical assisted fertilization, Article 9 (Official Gazette of the Republic of Macedonia 37/2008)

<sup>60</sup> <sup>18</sup>Under the European Social Charter this legislation should cover both direct and indirect discrimination. It should also provide for the burden of proof in discrimination cases to rest with the employer. (See the Digest of Case Law of the European Committee of Social Rights -- Interpretation of the Different Provisions -- Article 1 -- right to work -- [http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf)). The EU Employment Directive provides the following definition of indirect discrimination: "where an apparently neutral provision, criterion or practice would put persons having a ... particular sexual orientation at a particular disadvantage compared with other persons ...".

Article 6 of the Law on labour relations, prohibits discrimination by employers based on sexual “inclination”, which we consider as a discriminatory terminology because it refers only on the sexual act, not including all aspects of the sexual orientation. Namely, sexual orientation refers to sexuality in all its aspects biological, cultural, social, psychological and political, while sexual inclination refers to a biological rigid point (not on sexuality in all its complexity).

This terminology, so far, is unknown in the international legislation, theory or methodology. With this provision, LGBT persons may seek protection under the possible grounds “other personal characteristics”. This Article covers access to employment, dismissals, pay, harassment and other forms of victimization, but in practice, we are not aware of a case where a person was protected from victimization.

Also, The Law on Prevention and Protection from Discrimination covers discrimination in employment. Even though this Law does not specifically include sexual orientation or gender identity in the basis of discrimination, the Commission for Protection against Discrimination, in a number of its decisions, has recognized discrimination based on sexual orientation. With this provision, LGBT persons may seek protection from the Commission under the possible grounds “other personal characteristics”.

Although the Law on Prevention and Protection from Discrimination does not specifically cover the gender identity, the practice of the Commission for Protection against Discrimination shows that the Commission acts on complaints for discrimination based on gender identity on the grounds of sex and gender.

*iii. Have the authorities promoted other measures to combat discrimination, harassment and victimisation, in both the public and private sectors, for example:*

- *adoption of codes of conduct for both employers and employees;*
- *training and awareness raising programmes for both employers and employees;*
- *distribution to employees of materials explaining their rights, complaints mechanisms and remedies;*
- *recruitment efforts directed at LGBT persons;*
- *the adoption of non-discrimination policies explicitly referencing sexual orientation and gender identity;*
- *co-operation with and support for employee groupings of LGBT persons?*

Macedonian Helsinki Committee is not aware of any promoted measures to combat discrimination, harassment and victimization, in both the public and private sectors and in any of the mentioned sections. Ministry of Labor and Social Policy did not answer if any measures are taken for this purpose.

*iv. Have steps been taken to abolish laws, regulations and practices which discriminate on grounds of (a) sexual orientation and (b) gender identity in access to and career advancement within certain professions and occupations, including particularly the armed forces?*

The Ministry of Labor and social policy did not provide an answer whether any of the above mentioned measures have been taken, Macedonian Helsinki Committee is not aware of any measure taken by the authorities on this question in general.

Ministry of defense in its reply (19.09.2012) has informed us that the Law on service in the Army does not have discriminatory character, based on sexual orientation, when it comes to employment and career advancement in the armed force. The only important thing is the candidate to meet the general and special requirements determined by the Law on service in the Army. The sexual orientation is not asked about in the employment process.

v. *Specifically in relation to the armed forces:*

- *Have measures been taken to provide protection for LGBT persons against investigations, warnings, harassment, bullying, cruel initiation rites, humiliation and other forms of ill-treatment?*
- *Do codes of conduct and training address the need to combat discrimination against LGBT persons and promote tolerance and respect?*

Ministry of defense in its reply has informed us that the Article 131 paragraph 16 of the Law on service in the Army prohibits gender harassment and includes disciplinary sanctions. They state that this article protects harassment based on sexual orientation and gender identity, but because there are no records of such a case, it can not be said that in practice this article protects LGBT people from harassment in the Army.

vi. *Do measures designed to combat discrimination in employment fully and effectively cover transgender persons?*

No measures have been designed to combat discrimination in employment which fully and effectively cover transgender persons. The Ministry of labor and social policy did not provide information for any measure that is designed to combat discrimination in employment that covers transgender persons.

vii. *Have employment programmes focusing specifically on employment opportunities for transgender persons been developed?*

No programmes of such kind have ever been developed and are also not planned for the future. The Ministry of labor and social policy did not provide information for any program developed specifically on employment opportunities that is designed to combat discrimination in employment that covers transgender persons.

But, from the case of Andrea, a transgender person, that is changing their gender from male to female, it is clear that this kind of programs do not exist. Andrea divorced from her wife and the Court decided to entrust the raising and education of their two children, to their mother and obligated Andrea to pay child support of

35 Euros for every child. Because Andrea is unemployed and has no funds, she did not pay the child support. Because in the Article 202 of the Criminal Code nonpaying child support is regarded as a crime Andrea was convicted by the Court convicted on six months of prison, with a one year suspended sentence. Even though this Court decision is not yet effective, because of the right of appeal; it shows that the Court did not take into consideration that Andrea could not find a job because of her transgender identity. Even though Andrea is constantly looking for a job she could not find it because there are no programs for employment of transgender persons.

**30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.**

- i. Have measures been taken to avoid disclosure of transgender persons' gender history or former name in the context of employment?*

Macedonian Helsinki Committee is not aware of such a practice. We sent a letter to the Ministry of Labor and Social Policy about this matter, but we did not receive any reply.

However, given the legal uncertainty about changing the gendered personal number, transgender persons are likely to be exposed to unwanted disclosure in the context of employment.

## VI. Education

**31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.**

- i. Have*
- *equality and safety policies,*
  - *codes of conduct and*
  - *handbooks*

*for educational staff been introduced or updated to ensure that LGBT pupils and students receive their education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment?*

- ii. *Do initial and in-service training programmes for teachers and other educational staff address the need for them to*
  - a. *treat their LGBT pupils and students with respect*
  - b. *be able to detect, analyse and effectively respond to and combat discrimination on these grounds in schools?*

The program “Education for life skills” for primary and secondary schools aims to contribute to personal, emotional and social development of pupils, thus helping the development of psychosocial skills enabling the student to successfully tackle the challenges of everyday life.

On a previously sent letter to the Bureau for the development of education, within the Ministry for education and science, we received an answer on 31.07.2012, where it is stated that the program “Education for life skills” for secondary schools (gymnasium, art and technical education) will include goals referring to human rights and non-discrimination on different grounds including sexual orientation and gender identity, such as, the existence of different groups in the society which are marginalized, about the stereotypes and the prejudices that influence the relationship between the different social groups, everyone should have equal opportunities and enjoyment of their rights.

Also, there is a manual prepared for implementing this program and training and seminars for high-school teachers. However, because this is a new program, there are still no results regarding the implementation of this program by the teachers and its effect on pupils.

- iii. *Is there support for the mounting of school campaigns and cultural events against homophobia and transphobia, including the participation, where appropriate, of representatives of LGBT organisations?*

This kind of support does not exist.

- 32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.**

- i. Is information on*
  - a. sexual orientation*
  - b. gender identity*

*provided in school curricula and sex and health education classes?*

- ii. Is it provided in a respectful and objective manner?*

Except the program “Education for life skills”, the Macedonian Helsinki Committee is not aware of other school curriculum that has information about sexual orientation and gender identity. On the contrary, there were discriminatory parts in the textbook for secondary schools, “Pedagogy”, in which homosexuality was considered as a disease. On 19.05.2011, the Commission for Protection against Discrimination, found discrimination in this textbook and made a decision which prompted the Ministry of Education and Science, to review the textbook. Changes were made, but the old textbook was still in use in the school year 2011/2012. The Ministry for Education and Science in its reply on 12.09.2012 informed us that the textbook is revised and the new edition is available in the bookstores. Also, there were discriminatory parts in the textbook “Criminal Psychology”, that is part of the educational program of the University Saint Climent Ohridski Bitola - Faculty for Security – Skopje because transgender people were named as transvestites, that with dressing or behaving like the opposite sex transgender people experience sexual pleasure, that homosexuals dress clothes of the opposite sex as a way to attract partners who still hesitate and are bisexuals, and do not experience pleasure through clothes, that the violence of transvestites people can be brutal, although rare, targeted towards females, as an act of revenge, because nature has punished them not giving them a totally feminine look. The Coalition “Sexual and Health Rights of Marginalized Communities” submitted a complaint to the Commission for Protection against Discrimination, but they answered that this is not discrimination because it is a scientific position based on scientific research.

- iii. Are LGBT pupils and students provided with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity?*
- iv. Are measures taken to adequately meet the special needs of transgender students in their school life, for example with regard to change of name or gender in school documents?*

Macedonian Helsinki Committee is not aware of the existence of this kind of information, protection and support for the LGBT pupils. We sent an inquiry to the Ministry of Education and Science concerning this matter, but no reply was received.

## VII. Health

33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

*i. Do*

- a. the design of national health plans,*
- b. health surveys,*
- c. suicide prevention programmes,*
- d. medical training programmes,*
- e. training courses and materials*
- f. the monitoring and quality assessment of health-care services*

*take into account specific needs in relation to (a) sexual orientation and (b) gender identity?*

Except for the prevention programs and bio-behavioral studies within the Global fund to fight HIV, malaria and tuberculosis, the HIV prevention national plan for 2011, the sexual orientation and gender identity are not taken into consideration.

- ii. Do training programmes for health professionals enable them to deliver the highest attainable standard of health-care to all persons, with full respect for (a) sexual orientation and (b) gender identity?*

There was no reply from the Ministry of Health about this question. Taking into consideration that sexual orientation within the health care curricula is either not mentioned or is still treated as a mental condition, it can be concluded that there are no training programs for health professionals that enable them to deliver the highest attainable standard of health care with full respect for sexual orientation and gender identity. On the contrary, the hospital in Tetovo discriminated Andrea because of her gender identity by not providing an access in the hospital to see her psychiatrist. Andrea initiated a criminal procedure against the hospital and is being represented by the Macedonian Helsinki Committee. The procedure is ongoing.

- iii. Are education, prevention, care and treatment programmes and services in the area of sexual and reproductive health available to LGBT people, and do they respect their needs?*



Except for the prevention programmes and bio-behavioural studies within the Global fund to fight HIV, malaria and tuberculosis, there are no other programmes and services in the area of sexual and reproductive health available to LGBT people.

- iv. Are health professionals and social workers encouraged to create an environment that is reassuring and open to young LGBT persons, for example through information campaigns?*

Macedonian Helsinki committee is not aware that any positive campaign is made until now about LGBT rights and issues.

- v. Are patients in hospital or otherwise the subject of medical emergencies, free to identify their "next of kin", and are rules on issues regarding "next of kin" applied without discrimination on grounds of (a) sexual orientation and (b) gender identity?*

The Law for patient's rights specifically protects against discrimination based on sexual orientation when it comes to identifying next of kin. However, in practice same – sex partners are not recognized as next of kin by the health workers.

**34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.**

- i. Has homosexuality been removed from the national classification of diseases?*

The Macedonian national classification of diseases has the same standards as the World Health Organization Classification of Diseases and according to this homosexuality was removed from the national classification of diseases.

- ii. Have all policy documents, medical textbooks and training materials which may previously have treated homosexuality as a disease been corrected or withdrawn?*

In our classification of diseases sexual orientation is not classified as a disease, yet in the textbook for secondary schools, "Pedagogy" and "Ethics", and in the textbooks "Medical pedagogy" and "Psychiatry" and "Development Psychology" for the Faculty of Medical Sciences at the University St. Cyril and Methodius, regardless of sexual orientation, the authors use interpretations, views and classifications that are not based

on modern scientific thought and are not in accordance with existing official documents for the classification of diseases/disorders. The Macedonian Helsinki Committee sent a letter to the Ministry of Education and Science requesting information about whether these textbooks are still in use and they informed us that the textbook "Pedagogy" is revised and the new edition is available in the bookstores. For the others textbooks they didn't provide any answer.

- iii. Are measures in place to ensure that no one is forced to undergo any form of treatment, protocol or medical or psychological test or confined in a medical institution because of their sexual orientation or gender identity?*

Because homosexuality is not a disease according to the national classification of diseases no one can be treated with any medical or other treatment for his sexual orientation. Transgender persons make tests and go to treatment if they want to receive permit for surgery and legal recognition of gender reassignment.

**35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.**

- i. Do transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise?*

The State provides psychological and endocrinological treatment for transgender persons, but it cannot be said that this is an appropriate service or expertise because there is no practice or trainings for the professional health care workers in cases of gender reassignment.

Our state does not provide surgery for gender reassignment. All recorded evidence reflecting these issues are made in a foreign country with a private insurance and there is no proof for reimbursement by the State Health Fund.

- ii. If it was the practice to make transgender persons undergo therapy to accept their birth gender, has this practice now been abandoned?*

There is no practice when transgender patients undergo the other forms of therapy without their free consent.

*iii. Have measures been adopted to ensure that no child has their body irreversibly changed by medical practices designed to impose a gender identity without his or her full, free and informed consent, in accordance with his or her age and maturity?*

Macedonian Helsinki Committee is not aware of any taken measures or collected data regarding the intersex people.

**36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.**

*i. Where legislation provides for the coverage of necessary health-care costs by public or private social insurance systems, is such coverage for gender reassignment treatment ensured?*

*ii. If yes, is it ensured in a reasonable, non-arbitrary and non-discriminatory manner?*

All recorded evidence reflecting these issues are made in a foreign country with a private insurance and there is no proof for reimbursement by the State Health Fund.

## VIII. Housing

**37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.**

*i. Does legislation prohibit discrimination in such areas as:*

- *the sale or rent of housing;*
- *the provision of loans for purchase of housing;*
- *the recognition of the rights of a tenant's partner;*
- *evictions*

*on the grounds of (a) sexual orientation and (b) gender identity?*

Legislation does not directly prohibit discrimination based on sexual orientation and gender identity in the area of housing. However, the Law on Prevention and Protection from Discrimination, covers housing and even though discrimination based on sexual orientation was not included in this Law, the Commission for Protection against Discrimination, can recognize discrimination based on sexual orientation in the area of housing. Gender identity is not part of this Law. Still, the awareness for this possibility to protect discrimination based on sexual orientation, especially in the area of housing is at a very low level.

*ii. Are provisions in place to ensure non-discriminatory access to shelter and other emergency accommodation is provided in regard to (a) sexual orientation and (b) gender identity?*

Macedonian Helsinki Committee is not aware about any provided provisions regarding sexual orientation and gender identity in the access to shelter and other emergency accommodation, because there was no answer from the Minister for Labor and Social Affairs about this question.

*iii. Is information available to landlords and tenants aimed at preventing such discrimination?*

There is no information or practice available to landlords and tenants aimed at preventing such discrimination, as far as Macedonian Helsinki Committee is aware.

*iv. Are adequate and effective legal or other remedies available to victims of such discrimination?*

As we stated previously, our legislation does not directly prohibit discrimination based on sexual orientation and gender identity in the area of housing. However, the Law on Prevention and Protection from Discrimination, covers housing and even though discrimination based on sexual orientation was not included in this Law, the Commission for Protection against Discrimination, can recognize discrimination based on sexual orientation in the area of housing. Still, the awareness for this possibility to prevent discrimination based on sexual orientation, especially in the area of housing is at a very low level, because it can be said that this is not an effective legal remedy.

*v. Are any awareness raising campaigns conducted among housing agencies in order to level-up their knowledge on anti-discrimination provisions?*

There are no campaigns about this question, as far as the Macedonian Helsinki Committee is aware.

**38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social**

**exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.**

- i. *Have social programmes, including support programmes, been established to address factors which increase the vulnerability to homelessness of LGBT people, especially children and young people, including schemes of neighbourhood support and security?*
- ii. *Have the relevant agencies been provided with training and awareness-raising programmes to ensure that they are aware of and sensitive to the needs of LGBT people facing homelessness, particularly young persons?*

There are no social programmes, including support programmes, being established to address factors which increase the vulnerability to homelessness of LGBT people, children and young people, including schemes of neighbourhood support and security, as far as the Macedonian Helsinki Committee is aware.

## IX. Sports

**39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.**

**40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.**

- i. *What measures have been taken to prevent the risk of exclusion from participation in sports on grounds of (a) sexual orientation and (b) gender identity?*
- ii. *By encouraging, for example:*
  - *the drawing up and dissemination of codes of conduct on questions relating to sport and sexual orientation or gender identity for sports organisations and clubs,*
  - *partnerships between associations representing lesbian, gay, bisexual and transgender persons and sports clubs,*
  - *anti-discrimination campaigns in the sports world,*
  - *support for sports clubs set up by lesbian, gay, bisexual and transgender persons themselves.*

No measures have been taken to prevent the discrimination on the grounds of sexual orientation and gender identity in this area.

In its reply on 12.10.2012 the Agency of Youth and Sport informed us that a National coordination body for prevention of hostility on the sport field is being formed and it is working on all grounds of discrimination on the sport field including sexual orientation and gender identity. However, the Agency did not provide any concrete answer about the measures taken to protect LGBT people from exclusion from participation in sports or discrimination on sport events. Also, some sports people have been included in the homophobic campaign by the Minister of Labor and Social Policy against same-sex marriages and adoption of children by same-sex couples.

*iii. Have effective measures been taken to prevent, counteract and punish the use of discriminatory insults during and in connection with sports events?*

*iv. In particular:*

- *Has homophobic and transphobic chanting at or around sports events been made a criminal offence?*
- *Have the relevant provisions of the European Convention on Spectator Violence and Misbehaviour at Sports Events,<sup>61</sup> the European Sports Charter<sup>62</sup>*
- *and ECRI's General Policy Recommendation No.12<sup>63</sup> been implemented in respect of (a) sexual orientation and (b) gender identity?*

Effective measures have not been taken to prevent counteract and punish the use of discriminatory insults during and in connection with sports events. The Macedonian Criminal Code does not recognize homophobic or transphobic chanting as a criminal act. In the answer from the Agency for Youth and Sport it is stated that the National coordinative body for protection of hostility on the sport field is working in accordance with the European Convention on Spectator Violence and Misbehaviour at Sports Events, the European Sports Charter and ECRI's General Policy Recommendation, without mentioning general or specific practices or measures to combat discriminatory insults based on sexual orientation or gender identity<sup>64</sup>.

*v. Have specific appropriate measures been taken to:*

61 <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=120&CL=ENG> – see particularly Articles 2 (“Domestic coordination”), 3 (“Measures”), 5 (“Identification and treatment of offenders”).

62 [https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(92\)13&Sector=secCM&Language=lanEnglish&Ver=rev&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(92)13&Sector=secCM&Language=lanEnglish&Ver=rev&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75);

See particularly: Article 1.1 (to enable every individual to participate in sport, in a safe environment); Article 3 (close co-operation with the non-governmental sports organisations); Article 4.1 (non-discrimination); Article 4.2 & 4.4 (accessed by disadvantaged persons).

63 [http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation\\_N12/e-RPG%2012%20-%20A4.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N12/e-RPG%2012%20-%20A4.pdf): Although this document relates specifically to racism and racial discrimination in the field of sport, the detailed measures set out in it are just as relevant to combating sexual orientation and gender identity discrimination in sport. Of the three documents listed above, this is the most useful in practical terms.

64 See for instance <http://www.inpress.com.mk/default.asp?ItemID=1875DED48360C2489F50493CB26D821D>

- *put an end to the exclusion of transgender persons from sports activity or competitions,*
- *remove the obstacles encountered by them in participating in sport (dressing room access),*
- *recognise their preferred gender?*

The Agency for youth and sport did not provide any concrete answer about this question, and it can be stated that specific measures have not been taken in this area.

**41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.**

- i. Have steps been taken to encourage dialogue with, and support for sports associations and fan clubs in*
- *developing awareness-raising activities,*
  - *condemning homophobic and transphobic behaviour during and in connection with sports events?*

The Agency for Youth and Sport did not provide any answers about this question and it can be concluded that there are no activities for supporting this area.

## X. Right to seek asylum

**42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for granting refugee status and asylum under national law.**

- i. Is a well founded fear of persecution based on (a) sexual orientation and (b) gender identity recognized as a valid ground for the granting of refugee status and asylum?*

In its reply, the Ministry of Justice, Department for Asylum, did not provide specific information about the questions raised in the previously sent letter.

According to Article 29 of the Constitution, foreigners in the Republic of Macedonia enjoy freedoms and rights guaranteed by the Constitution, under the conditions stipulated by law and international treaties.

Macedonian Law on Asylum and Temporary Protection (The Official Gazette of Republic of Macedonia, No. 49/03, No. 66/07, No.142/08, No.146/09, No.166/12) in Art. 4 defines a status of a recognized refugee as a person who

is not a citizen of Republic of Macedonia and meets the requirements set out in the Convention relating to the status of refugees from 1951 and the Protocol on the status of refugees of 1967, experiences a well-founded fear of being persecuted on account of race, religion, nationality, membership of a particular social group, or political opinion. Although the list of the grounds on which asylum may be requested does not explicitly mention sexual orientation or gender identity, they should fall under the “membership of a particular social group

*ii. Are staffs responsible for processing asylum requests provided with training in the specific problems encountered by LGBT refugees or asylum seekers?*

In its reply on 01.10.2012, the Ministry of Justice, Department for Asylum, Informed us that the staff in this department is attending trainings continuously and is acquainted with all the recommendations. This does not mean that the staff of the department is specifically trained to manage problems for LGBT refugees or asylum seekers.

*iii. Are asylum requests turned down on the ground that the claimant can escape persecution in the country of origin by keeping his or her sexual orientation or gender identity secret?*

Macedonian Helsinki Committee knows of no practices for asylum requests.

**43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they would face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.**

*i. What procedures are in place to ensure compliance with this obligation?*

In its reply, the Ministry of Justice, Department for Asylum did not refer to any procedure that ensures compliance with this obligation, and the Macedonian Helsinki Committee is not aware of any practice or procedure about this obligation.

*ii. Are there documented cases where asylum seekers have been returned to such a country?*

Macedonian Helsinki Committee is not aware of any documented cases where asylum seekers have been returned to such a country.

**44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent**



**risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information is relevant to their particular situation.**

- i. *What measures have been taken to comply with this requirement?*
- ii. *In particular, have the staff of administrative detention centres, police and medical staff and voluntary organisations with access to such cases, received appropriate training and information on issues regarding (a) sexual orientation and (b) gender identity?*

In its reply the Ministry of Justice, Department for Asylum did not give a concrete answer that any measure is taken in accordance with this requirement.

## **XI. National human rights structures**

**45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.**

- i. *Are national human rights structures clearly mandated to address discrimination on grounds of (a) sexual orientation or (b) gender identity?*

In the Republic of Macedonia the Constitutional Court, the Standing Inquiry Commission on the Protection of Citizens' Freedoms and Rights, within the Assembly of the Republic of Macedonia, the Courts, the Ombudsman and the Commission for Protection from Discrimination are the national human rights bodies that are clearly mandated to address discrimination in general.

The Commission for equal opportunities between men and women, within the Assembly of the Republic of Macedonia, the Commissions for equal opportunities of men and women within the municipalities in the state and the Sector for equal opportunities within the Ministry of labor and social policy are working on the equality and nondiscrimination on men and women. However, until this date Macedonian Helsinki Committee is not aware that this bodies are working on LGBT issues. Macedonian Helsinki Committee sent a letter to every parliamentary in the Assembly in order to acquaint them with this recommendation and its content and the question whether any actions have been taken to implement the recommendation, but we did not receive any response from the parliamentarians.

Also, there is legal representative for equal opportunities between men and women that is working in the Ministry of Labor and Social Policy, that acts on complaints when it comes to discrimination based on sex/gender.

According to the practice, it can be stated that the legal representative acts on complaints for discrimination based on gender identity.

According to the Article 76 of the Constitution of the Republic of Macedonia, the Standing Inquiry Commission on the Protection of Citizens' Freedoms and Rights, within the Assembly of the Republic of Macedonia, is clearly mandated to protect the freedoms and rights of citizens in cases of their violation by the state bodies. The findings of the Commission are the basis for initiating a procedure for determining the liability of public officials. Until now, the Macedonian Helsinki Committee is not aware of any position or proposal or indication of the need for adoption of laws and other regulations and acts with more complete protection of the freedoms and rights of citizens regarding LGBT people, made by this Commission. As we stated above, the Macedonian Helsinki Committee send a letter to every parliamentary in the Assembly in order to acquaint them with this recommendation and its content and the question whether any actions have been taken to implement the recommendation, but we did not receive any response from the parliamentarians.

According to the Article 110 of the Constitution of the Republic of Macedonia, the Constitutional Court protects the people and the citizens from discrimination based on sex, race, religion, national, social or political affiliation made by the public bodies and courts. Andrea, a transgender person, has submitted an appeal to the Constitutional Court, for discrimination by the public prosecutor based on sex, but the Constitutional Court has not yet made a decision about this appeal.

Although the Ombudsman and the Commission for Protection against Discrimination are not clearly mandated to address discrimination on the grounds of sexual orientation or gender identity, with its decisions they have recognized discrimination based on sexual orientation and the Commission acts on complaints for discrimination based on gender identity because gender identity is covered with the sex and gender basis of discrimination. In addition, the Law on Prevention and Protection from Discrimination (The Official Gazette of Republic of Macedonia, No. 50 of 13 April 2010) provides court protection from discrimination. Criminal procedure for violation of the equality of citizens can be initiated by the public prosecutor, in accordance with article 137 of the Criminal Code.

*ii. In practice do they*

- *make recommendations on legislation and policies,*
- *conduct awareness-raising among the general public,*
- *examine individual complaints,*
- *participate in court proceedings,*
- *speak out in support of the exercise of rights by LGBT people, for example, when freedom of assembly events are opposed,*

*in relation to (a) sexual orientation or (b) gender identity?*

In practice human rights, structures take no measures in relation to sexual orientation and gender identity. On the contrary, the president of the Commission for Protection against Discrimination often is in synergy with the Government when LGBT question is an issue. It can be said that he is not a fully independent body because he is working in the Ministry for Labor and Social Policy as state councilor.

## About the Helsinki Committee for Human Rights of the Republic of Macedonia

[www.mhc.org.mk](http://www.mhc.org.mk)

### OUR MISSION

Helsinki Committee for Human Rights of the Republic of Macedonia (Macedonian Helsinki Committee) is a non-governmental organization for the promotion and protection of human rights, without political and religious orientation, established in 1994. The whole existence of the Macedonian Helsinki Committee arises from the awareness of the concept of human rights and basic freedoms. MHC monitors the human rights situation, provides legal assistance to citizens in cases of violation or restriction of rights and freedoms, to cooperate with other organizations and state authorities in order to increase the promotion, respect and protection of human rights and freedoms.

### OUR VISION

Macedonian Helsinki Committee's vision is that all people should have the opportunity to exercise their basic rights and freedoms and have the opportunity to protect them in case of violation or restriction. This is the foundation of democratic development and guarantees peace at the national, regional and global level.

### OUR GOALS

In order to accomplish its mission and vision, we have five general goals that will determine our actions:

Protection from Discrimination

Strengthening the rule of law

Strengthening economic and social rights

Promotion of freedom of belief and religion

Strengthening freedom of expression

The strategic goal of the Macedonian Helsinki Committee is further institutional strengthening of the state and practical preconditions for identifying discrimination, limiting and sanctioning discrimination cases, especially in the part of discrimination based on sexual orientation and gender identity. Therefore, Macedonian Helsinki Committee, with support of the Dutch Embassy, has opened the first LGBT support center in Macedonia, in the Old Bazaar in Skopje on 23.10.2012 that is working as a subsidiary of the Macedonian Helsinki Committee.

## About the LGBTI Support Centre

[www.lgbti.mk](http://www.lgbti.mk)

The LGBT Program of the Helsinki Committee for Human Rights of the Republic of Macedonia has upgraded into the LGBTI Support Centre in October 2012.

### OUR MISSION

Our Mission is strengthening of the LGBTI community for self-advocacy and changing of the legal and social status of the LGBTI people in the society.

### OUR VISION

Our Vision is world free of discrimination where all people are enjoying their rights and freedoms.