

REPORT

on the implementation of the 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 in Republic of Macedonia

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Monitoring of the Implementation of the 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 in the Republic of Macedonia

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Table of contents

I. Executive summary	6
II. Recommendations to the Macedonian government for priority actions towards implementation of the CMCE Recommendation	9
III. Introduction	12
IV. Compliance report	14
I. Right to life, security and protection from violence	14
a. "Hate crimes" and other hate-motivated incidents	14
b. "Hate speech"	20
II. Freedom of association	24
III. Freedom of expression and peaceful assembly	25
IV. Respect for private and family life	27
V. Employment	30
VI. Education	31
VII. Health	33
VIII. Housing	34
IX. Sports	35
X. Right to seek asylum	36
XI. National human rights structures	38
XII. Discrimination on multiple grounds	39
Appendix I. 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	40
Appendix II. Glossary	48

List of Abbreviations

AAVMS	Agency of Audio and Audiovisual Media Services
AYS	Agency for Youth and Sports
BDE	Bureau for Development of Education
CPAD	Commission for Protection Against Discrimination
CPRFC	Committee for Protection of the Rights and Freedoms of the Citizens
CSE	Comprehensive sexual education
CSOs	Civil society organizations
DCDF	Department of Cybercrime and Digital Forensics
DES	Directorate for Execution of Sanctions
DRG	Diagnosis related group system
HIF	Fund for Health Insurance
HERA	Health Education and Research Association
IDAHOA	International Day Against Homophobia and Transphobia
LBQ	Lesbian, bisexual and queer
LGBTI	Lesbian, gay, bisexual, transgender and intersex
LGBTIQ	Lesbian, gay, bisexual, transgender, intersex and queer
LITP	Law on International and Temporary Protection
LPPD	Law on Prevention and Protection against Discrimination
MHC	Helsinki Committee for Human Rights of the Republic of Macedonia
MHC-LGBTI	Helsinki Committee for Human Rights of the Republic of Macedonia – LGBTI Support Center
MLSP	Ministry of Labor and Social Policy
MOE	Ministry of Education
MOI	Ministry of Interior
MOJ	Ministry of Justice
MPs	Members of parliament
NGO	Non-governmental organization
OSCE	Organization for Security and Co-operation in Europe
PPO	Public Prosecutor's Office
SOGI	Sexual orientation and gender identity
SOGIES	Sexual orientation, gender identity and expression and sex characteristics
SWC	Social welfare centers
USAID	The United States Agency for International Development

I. Executive summary

During the preparation of the first Report in 2012, the Helsinki Committee for Human Rights of the Republic of Macedonia - LGBTI Support Center (MHC-LGBTI) translated and disseminated the Recommendation (2010)5 and its Appendix to all relevant institutions, as well as to the members of the Assembly of Macedonia. The initiative was undertaken by the MHC-LGBTI because the Ministry of Foreign Affairs failed to carry out the task at that point, and it was considered to be of high importance that the lawmakers and the institutions of the system become aware of the directions given by the Recommendation. Unfortunately, there has not been any significant progress in the implementation of the Recommendation in the past years. The political context in the past 5 years has been very dynamic. In the years between 2012 and 2015, the state and the state-controlled media were the main sources of homophobia and transphobia. Between 2015 and 2016, during the political protests in the country, the LGBTI activists were also in the front fighting against injustice. Their involvement in the protests increased the visibility of LGBTI people in the public as well as the emphasis on the issues concerning LGBTI people in the society. Indeed, on few occasions, LGBTI activists were invited as guest speakers to public debates on how to rebuild democratic values in Macedonia, and on another occasion, LGBTI activists led one of the daily protests that took place on May 17, 2016 (IDAHOT) with the banner "Silence Equals Death".

At the elections held at the end of 2016, the political party that was in power for 11 years finally stepped down and the biggest oppositional (until then) party formed the new government. The newly formed government pledged to focus on reforming the society in order to establish the rule of law in the country. LGBTI activists used this opportunity to challenge the governmental leadership to publicly pledge their dedication to the improvement of the rights of the LGBTI members of our society as well. That resulted in a few public statements of support: The Minister of Culture opened the Skopje Pride Weekend 2017 and in 2018, the Ministry was among the donors for the Pride festival with a small but very important contribution, the first time an LGBTIQ event to be financed by state funds. In December 2017, the Minister of Interior opened the conference "Access to Justice for LGBTI" with the words that the Criminal Code must be changed and recognize sexual orientation and gender identity (SOGI) as grounds for hate crimes. One of the most important public statements was the one that the Prime Minister gave at the 5th Anniversary of the LGBTI Support Center in 2017. It was a statement of solidarity with those who survived the hate crime attacks and a statement of condemnation of the violence and discrimination against LGBTI people.

One of the more concrete measures undertaken by this government was accepting the draft Law on Prevention and Protection against Discrimination proposed by the Ministry of Labour and Social Policy, without any significant changes. The draft law includes both sexual orientation and gender identity, intersectional discrimination and professionalization of the Commission for Protection against Discrimination. In the moment of submission of this report, the draft law is in the Parliament's procedures for first reading. Nevertheless, the state failed to recognize the need to include "sex characteristics" as a ground of discrimination, and thus it failed to provide legal security to intersex people.

Steps in the direction of improving the rights of LGBTI people were undertaken by the Parliament as well. In December 2017, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, commonly known as the Istanbul Convention, was ratified. The Istanbul Convention as the most comprehensive, detailed and legally binding response to violence against women and gender-based violence is a significant step forward in the protection of the rights of LGBTI people since the non-discrimination provision includes both sexual orientation and gender identity. This is even of greater

importance for transgender people since gender identity is not mentioned in any of the current laws in the country¹.

The other significant step forward is the formation of the Inter-Party Parliamentary group on advancing the rights of the LGBTI people in April 2018. Three LGBTI organizations, including the LGBTI Support Center, worked with a group of MPs in establishing and structuring the group. The group now consists of 13 MPs from different political parties, it has adopted its annual action plan and has already started representing the interests of the LGBTI people in the Parliament.

In spite of the positive steps, the LGBTI people remain on the margins of the society when it comes to access to rights and justice. The Criminal Code still does not recognize sexual orientation and gender identity as grounds for hate crimes and hate speech. The state has failed to take the measures to adequately investigate, prosecute and punish perpetrators of hate crimes and hate speech, and to ensure that victims receive appropriate remedies. The failure to serve justice for hate crimes on the grounds of sexual orientation and gender identity contributes to even more violence. In 2017 alone, the Coalition Margins documented 22 cases of violence (physical and/or verbal violence, including life threats) against LGBTs, mostly transgender women sex workers.² **Moreover, the state failed to provide a system for complaints registration and data collection on hate crimes and hate-motivated incidents.**

Whilst the Recommendation CM/Rec (2010)5 urges the state to condemn hate speech, in the previous years, quite the opposite has been witnessed. The attacks of the LGBTI support center and LGBTI people were incited and encouraged by a steady stream of hate speech on the internet and social media. According to the platform for registering hate speech,³ a total of 92 hate speech incidents have been registered since February 2014 on the grounds of sexual orientation and/or gender identity. **The state failed to investigate the cases of hate crimes and hate speech against LGBTI people and did not prosecute the perpetrators.**

The state still fails in providing effective access for transgender people to appropriate legal gender recognition procedures. The lack of legislation for legal gender recognition contributes to the inconsistency in the practice: in one case, the officials agreed to change the gender marker in the documents, but in many other cases, they failed to do so. In 2017, the Administrative Court ruled in favor of two transgender women whose request to have their gender marker changed had been rejected earlier.⁴ After the positive ruling, they were able to change their gender marker. In another case, the Administrative Court found irregularities in the procedure before the first instance authority and the dispute went back and forth for years.⁵ For this case, Coalition Margins prepared and filed a motion to the European Court of Human Rights.⁶ **This kind of inconsistency in the legal practice creates legal insecurity for transgender people.**

The access to health services for LGBTI people, particularly for transgender people, is limited. The necessary medical procedures for transgender people who are in process of medical transition (hormone replacement therapy and surgical intervention for gender affirmation), are not recognized by the Ministry of Health and the Health Insurance Fund (HIF) as necessary for advancing the life and health of the transgender people⁷ and they are not available in the medical facilities in the country. When transgender people go abroad for

1 The Draft Law on Prevention and Protection against Discrimination includes gender identity as a ground for discrimination. Currently, the draft law is in the Parliament procedures for first reading.

2 Coalition Margins, *Annual report 2017*, p. 98.

3 www.govornaomraza.mk - platform for mapping and registering hate speech, managed by the Helsinki Committee for Human Rights of the Republic of Macedonia.

4 Coalition Margins, *Annual report 2017*.

5 Interview with the attorney in the case.

6 Application no. 29683/16, *X v. the Former Yugoslav Republic of Macedonia*.

7 Coalition Margins, *Annual Report 2017*, p. 122.

hormone replacement therapy or gender confirmation surgeries, the Macedonian Fund for Health Insurance refuses to cover the expenses on the purported ground that these medical services are merely cosmetic.⁸ Overall, the Macedonian Ministry of Health has failed to develop and adopt standards and protocols to meet the health needs of trans people.⁹

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 against Discrimination are the national human rights bodies that are clearly mandated to address the rights and freedoms of the LGBTI people in the country. **In practice, the human rights structures fail to take sufficient and adequate measures to ensure the full access to rights and justice for LGBTI people.**

⁸ Coalition Margins, *Annual Report 2013*, p. 89.

⁹ *Id.*; Coalition, *Annual Report 2012*, pp. 100-101.

II. Recommendations to the Macedonian Government for priority actions towards implementation of the CMCE Recommendation (2010)5

General Recommendations

1. The Ministry for Foreign Affairs should translate, disseminate and regularly monitor the implementation of the CMCE Recommendation (2010)5.
2. Adopting a medium/long term action plan for implementing all aspects of the CMCE Recommendation (2010)5.
3. Adopting and executing an action plan on the implementation of the Istanbul Convention.

Hate crimes

1. Amending the Criminal code as to explicitly recognize sexual orientation and gender identity as grounds for hate crimes.
2. Introducing obligatory training courses on LGBTI (with focus on discrimination, hate crimes and hate speech on grounds of sexual orientation, gender identity, gender expression and sex characteristics) at the Academy for Prosecutors and Judges, at the Faculty of Security and the Training Center for Police Officers.
3. MOI, Courts and Public Prosecution should develop a system for documenting hate crimes including the crimes on the grounds of sexual orientation, gender identity, gender expression and sex characteristics.
4. The state should expedite the investigation and prosecution of hate crimes and hate speech based on sexual orientation or gender identity, and should make sure that victims of these crimes will receive appropriate remedies.

Hate speech

1. Amending the Criminal code as to explicitly recognize sexual orientation, gender identity and expression and sex characteristics as grounds for hate speech.
2. Amending the Draft Law on Audio and Audiovisual Media Services by adding sex characteristics and gender expression as prohibited grounds for hate speech or discrimination.
3. Adopting the Draft Law on Audio and Audiovisual Media Services that prohibits media programs that consist hate speech or discrimination on sexual orientation and gender identity and including gender expression and sex characteristics as prohibited grounds for hate speech or discrimination.

Freedom of association

1. Introducing specific funding scheme for human rights and LGBTI organizations.
2. Building and maintaining partnerships with the LGBTI organizations during policy-making and decision-making processes.
3. In situations of an existent threat, the state to protect the safety and security of the LGBTI organizations.

Freedom of expression and peaceful assembly

1. The state should take all the measures to protect the rights of freedom of expression, association, and assembly by preventing hate crimes that target LGBTI activists and activist organizations.
2. The state should expedite the investigation and prosecution of the attacks against LGBTI Support Center and to assure that victims of these crimes receive appropriate remedies.

Right to respect for private and family life

1. Adopting a Law on legal gender recognition that would provide quick, transparent, easy and accessible administrative procedure on the basis of self-determination and without invasive procedures.
2. Amending the Law on Family: excluding the marital status as criteria for selection of adoptive parent and adding anti-discriminatory provisions in order to ensure equal access to the right to form a family by adoption for the LGBTI people as well.
3. Amending the Law on Biomedical Assisted Fertilization with an anti-discriminatory provision and explicitly recognizing “sexual orientation” as prohibited ground for discrimination.
4. The state should ensure sustainability of the only shelter for LGBTI people under risk of homelessness, “Safe House for LGBTI” by providing financial support.

Employment

1. Adjusting the terminology in the Law on Labour Relations and replacing the term ‘sex inclination’ with ‘sexual orientation’, and adding ‘gender identity’, ‘gender expression’ and ‘sex characteristics’ as bases for discrimination.

Education

1. Amending the Law on Primary Education and the Law on Secondary education in order to recognize SOGIES as protected grounds for discrimination.
2. Amending the Law on Higher Education as to include gender identity and expression and sex characteristics as protected grounds for discrimination.
3. The Ministry of Education should introduce comprehensive sexual education in the curricula for primary and secondary education.
4. The Ministry of Education and Science and the Bureau for Educational Development should conduct a comprehensive review of all official textbooks for primary and secondary education with the purpose of removing all discriminatory and offensive content towards LGBTI people and replace them with adequate textbooks that promote equality, non-discrimination and social inclusion.
5. The Ministry of Education should introduce an anti-bullying strategy in primary and secondary schools, including measures against bullying based on SOGIES.

Health

1. Including gender affirmation procedures in the DRG-system (diagnosis related group) which would be financially covered by the State Health Insurance.
2. The Ministry of Health should prepare and adopt a Protocol for the health protection of the transgender people who are in medically transitioning/undergoing gender affirming procedures.
3. Including sexual orientation, gender identity and expression, and sex characteristics as protective bases for discrimination in the Law on Health Protection.
4. Including gender identity and expression and sex characteristics as protected grounds for discrimination in the Law on Protection of the Rights of the Patients.

Housing

1. Amending the Law on Housing as to include anti-discrimination provisions protecting the rights of LGBTI people in access to housing.
2. The Ministry of Labour and Social Policy should introduce measures that would ensure that the relevant social services are provided in a non-discriminatory and respectful manner to the LGBTI people.
3. The Ministry of Labour and Social Policy should introduce mandatory training programs for sensitizing the social workers for work with sexual and gender minorities in a respectful manner.

Sports

1. Amending the Law on Sports in order to include non-discriminatory provisions and sexual orientation, gender identity and expression, and sex characteristics as protected grounds for discrimination.
2. Conducting a comprehensive analysis on the penalties used against hate speech during sports events and introducing measures for effective tackling of hate speech on the grounds of sexual orientations and gender identity and expression during sports events.

Right to seek asylum

1. The Ministry of Interior should introduce mandatory training for sensitizing the officials for work with the LGBTI refugees and asylum seekers in a non-discriminatory and respectful manner.

National Human Rights Structures

1. Adopting the newly drafted Law on Prevention and Protection against Discrimination that recognizes the need of professionalization of the Commission for Protection against Discrimination and foresees strict criteria for selection of Commissioners.

Discrimination on multiple grounds

1. Adopting the newly drafted Law on Prevention and Protection against Discrimination that recognizes discrimination on multiple grounds, including intersectional discrimination.

III. Introduction

Background

On 31st of March 2010, the Committee of Ministers of the Council of Europe (CMCE) adopted its Recommendation to member states “on measures to combat discrimination on grounds of sexual orientation or gender identity”. The Recommendation CM/Rec (2010)5 and the Appendix to the Recommendation offer a comprehensive approach in overcoming discrimination and social exclusion on the account of sexual orientation and gender identity by implementing the measures by the states members of Council of Europe.

This Recommendation is a document of the great importance for the LGBTI people. As the world's first international legal instrument dealing specifically with discrimination on these grounds, the Recommendation acknowledged the fact of a centuries-old and continuing discrimination experienced by LGBTI persons on account of their sexual orientation or gender identity. The Recommendation also emphasized the universality of the human rights – they apply to all individuals, including the LGBTI people, and pointed out that specific actions are required by the states to ensure the full enjoyment of human rights by LGBTI people.

Purpose of the report

This report presents the key findings and recommendations from the assessment of the progress of the Recommendation CM/Rec (2010)5 and the Appendix to the Recommendation implementation by the state. The report aims to provide information on the level of implementation of the Recommendation CM/Rec (2010)5 and its Appendix to the second review by the Committee of Ministers of the Council of Europe. This report can also be used by the LGBTI organizations and activists as an advocacy tool in the efforts for improving the access to justice and equality for the LGBTI people in the society.

Methodology

The report's assessment of progress is based on the questionnaire about specific detailed measures required by the Recommendation. This questionnaire with the 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 questionnaire and the data which the MHC-LGBTI has compiled in order to assess progress in the implementation of the individual measures of the Recommendation are set out in part V of this report, entitled “Compliance Report”.

The questionnaire was disseminated to 23 relevant institutions, 13 of which provided answers. In addition, meeting with the Minister of Foreign Affairs was organized as to better understand their dedication to ensuring proper translation and dissemination of the questionnaire.

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

- Responses from individual ministries and departments to letters from the MHC-LGBTI, listing the relevant questions and asking for comments on actions taken to implement the related measures;
- Research and documentation assembled by the MHC-LGBTI and other LGBTI and human rights organizations;
- Information available through Macedonian mass media and Internet;
- Information from conducted research for the rights and needs of LBQ women;
- Research reports on LGBTI published by the MHC-LGBTI and other LGBTI and human rights organizations;
- Progress reports published by the European Commission;
- Reports and other publications on the status of human rights of LGBTI people, published by ILGA-Europe, Transgender Europe, Amnesty International and other international organizations;
- Interviews and consultations with the LGBTI organizations in the country.

IV. Compliance report

The Recommendation

During the preparation of the first Report in 2012, the Helsinki Committee for Human Rights of the Republic of Macedonia - LGBTI Support Center (MHC-LGBTI) translated the Recommendation (2010)5 and its Appendix in Macedonian and disseminated it to all relevant institutions as well as to the members of the Assembly. The initiative was undertaken by the MHC-LGBTI because the Ministry of Foreign Affairs failed to carry out the task at that point, and it was considered to be of high importance that the lawmakers and the institutions of the system become aware of the directions given by the Recommendation. Unfortunately, there has not been a significant level of implementation of the Recommendation in the past years.

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 Criminal Code of Macedonia does not explicitly recognize sexual orientation and gender identity as grounds for hate crimes. However, the open provision “any other grounds foreseen in law or in international agreement” gives an opportunity to law enforcement institutions to provide protection from hate crimes on the grounds of sexual orientation and gender identity.

Homophobic and transphobic attitudes in Macedonia in the past years have frequently resulted in violent hate crimes and hate speech directed at the LGBTI people because of their sexual orientation and gender identity. Since the previous assessment in 2012, the number of hate crimes on these grounds has significantly increased.

Case study

After the attacks on the LGBTI Support Center, which remain unsolved to date, the attacks on the individuals also increased.¹⁰ It can be speculated that the potential perpetrators felt secure to attack since the previous perpetrators (on the LGBTI Support Center) did not face any legal consequences. In one case,¹¹ on September 9th, 2013, a transgender woman was attacked and hurt with a knife. The perpetrator was identified and called for questioning at the police station, but was released after the questioning. The legal procedure is still ongoing. In another case,¹² on October 13th, 2013, another transgender woman was attacked and hurt on her head and her stomach by a group of three perpetrators who were never identified nor prosecuted.¹³ The case was reported to police by the survivor of the hate crime, but the perpetrators were neither identified nor prosecuted.

On April 20th, 2013, activists from LGBTI United and the Coalition Margins were physically and verbally attacked by a group of football supporters during a “Civic Initiative for LGBTI Rights” event in the town of Bitola. Carrying a rainbow flag and placards, the activists were distributing posters on the rights of LGBTI people. Although the activists immediately reported the attack to the police, there has been no investigation and no prosecution. According to Amnesty International, following this attack “[a] photo of the activists was also posted on the official Facebook page of the Macedonian Sports Fans’ group, with the message: ‘Never again will faggots step foot in Bitola.’”¹⁴

In 2017, the Coalition Margins alone documented 22 cases of violence (physical and/or verbal violence, including life threats) against LGBTI people, mostly transgender women sex workers.¹⁵ It is particularly alarming that five of these cases are a violation of transgender women by police officers. Some of these are pending before the Ombudsperson office and the Sector for Internal Control of the Ministry of Interior and Prosecution Office. Cases like this make it difficult for victims to have trust in the police or the justice system, and that makes it almost impossible for LGBTI people to access justice and legal remedies.

As documented by the LGBTI Support Center in 2016,¹⁶ 61% of the LGBTI people in the country consider themselves victims of violence because of their sexual orientation and/or gender identity. Out of those who experienced violence on the ground of sexual orientation and/or gender identity, 71% did not report the case to any institution or organization. Those who did report the violence, consequently experienced discrimination based on their sexual orientation/gender identity (42%), untimely and inefficient performance delay of the case or lack of response (37%), and inappropriate treatment by the employees because of their sexual orientation and/or gender identity (21%).

Article 319 of the Criminal Code covers acts and incidents of hatred if and when they are committed on a national, racial or religious basis, but also includes an open provision which entails “any other grounds foreseen in law or international agreement”. With this provision, the law enforcement institutions have the opportunity to provide protection from hate crimes on the grounds of sexual orientation and gender identity. In the questionnaire returned to the MHC-LGBTI, the Ministry for Justice stated that, in cooperation with OSCE mission, they are now preparing a draft Law on Amending the Criminal Code that incorporates all

10 LGBTI Support center, Annual reports 2013-2017; Coalition Margins, Annual reports 2013-2017; Helsinki Committee for Human Rights of the Republic of Macedonia, Hate crimes in the Republic of Macedonia 2013, 2014, 2015, 2016, 2017.

11 <http://zlostorstvaodomraza.mk/>

12 <http://zlostorstvaodomraza.mk/>

13 <http://zlostorstvaodomraza.mk/>

14 Amnesty International, Macedonia Must Prevent Homophobic Attacks (23 April 2013), available at <http://www.amnesty.org/en/library/asset/EUR65/002/2013/en/80fd552e-1598-4d52-8e53-d7042a7ac558/eur650022013en.html>

15 Coalition Margins, Annual report 2017, p. 98.

16 “Analysis of the problems and the needs of LGBTI people in the Republic of Macedonia”, published by LGBTI Support Center, Skopje, 2016. For the purpose of this report, we are using the data for LGBTI people in lack of specific analysis and surveys on lesbians, bisexual women and trans people.

international standards from the appropriate area. They also informed that they have held several debates within a closed group of domestic and foreign experts and civil society organizations' representatives, and soon the draft law will be presented to the public.

There is a positive change in the practice of the criminal court in cases of hate-motivated crimes based on SOGI. Namely, in 2015, the Criminal Court in Skopje delivered a decision in which a perpetrator of two LGBT activists was found guilty for violence, and in the explanation of the decision, the court emphasizes that the violence was motivated by the prejudice of the perpetrator toward LGBT people. In 2016, the same court convicted a man who committed a crime against a trans woman and, in the decision, it was stated that it was a crime motivated by hate and prejudice against trans people. The court awarded the latter victim with compensation on the expenses that the victim had covered for the medical treatment following the attack.¹⁷

The Ministry of Interior, in their answers to the questionnaire submitted to them by the MHC-LGBTI, pointed out that the Ministry has a special online application ("red button") for reporting misconduct by police officers or hate crimes to the Sector for Internal Control and the Ombudsman. Nevertheless, they did not state if they take measures to inform the citizens about the existence and possibility of such an application.

Whilst some minor improvements can be noted, the State still fails in providing systemic changes that would ensure protection from and prevention of hate crimes and hate-motivated incidents on the grounds of sexual orientation and gender identity and, in times when those occur, it fails to ensure effective, prompt and impartial investigations.

Hate crimes against trans people

The findings from the assessment of the implementation of the Recommendation by the state show that the state failed to conduct any form of data collection on the violence and analysis to better understand the vulnerability of a specific group of LGBTI community. The reports from the LGBTI organizations show that the transgender people are most exposed to violence,¹⁸ but also least protected by the state since gender identity is not recognized in any law in the country. Therefore, the ratification of the Istanbul Convention in December 2017 is of great importance for the transgender community because a) the Convention is the most comprehensive, detailed and legally binding response to violence against women and gender-based violence; and b) the explanatory report of the Convention clarifies that in regard to gender identity "transgender or transsexual persons, cross-dressers, transvestites and other groups of persons that do not correspond to what society has established as belonging to "male" or "female" categories" are covered by the non-discrimination provision.¹⁹

17 Interview with the attorney of the victims.

18 Coalition "Sexual and Health Rights of Marginalized Communities". 2013. Annual Report 2012. Skopje: Coalition SHRMC; Coalition "Sexual and Health Rights of Marginalized Communities". 2014. Annual Report 2013. Skopje: Coalition SHRMC; Coalition "Sexual and Health Rights of Marginalized Communities". 2015. Annual Report 2014. Skopje: Coalition SHRMC; Coalition "Sexual and Health Rights of Marginalized Communities". 2016. Annual Report 2015. Skopje: Coalition SHRMC; Coalition "Sexual and Health Rights of Marginalized Communities". 2017. Annual Report 2016. Skopje: Coalition SHRMC; Coalition "Sexual and Health Rights of Marginalized Communities". 2018. Annual Report 2017. Skopje: Coalition SHRMC.

19 Protection of Trans People under the Istanbul Convention, Transgender Europe <https://tgeu.org/protection-of-trans-people-under-the-istanbul-convention/>

Case study

The Coalition Margins has reported two cases of violence against transgender people in 2014 and 2015. One of the cases includes an attack on several transgender people by a taxi driver in 2014. However, due to the fact that the victims experienced humiliation and threats by a police officer when attempting to report the case, they decided not to press any charges. The other case of violence against a transgender person, reported in 2015, was motivated by hatred based on gender identity, followed by criminal charges for bodily injuries and impaired physical and mental health. Again, the Coalition Margins called the Public Prosecution's Office and MOI "to identify and bring to justice all previous perpetrators of hate-motivated crimes due to sexual orientation and gender identity in order to discourage homophobic attackers and encourage victims to report hate-motivated violence".²⁰

According to the recently published research in the community, "Transgender experience: identities, bodies, violence and socialization", all of the respondents have experienced some form of violence.²¹ For the purpose of this report, one statement from the research will be presented as follows:

Statement

*I was subject to physical violence from a very young age. First to domestic violence, by my father, who was very violent. Bless him. So that's how I started experiencing domestic violence. This was just the beginning of everything that followed, the violence I faced on the streets. As I grew, there was more and more of it. Later on, when I was 11, particularly traumatic things happened to me, I was chased by a group of boys, around 20-25 boys who were chasing me in order to beat me up. I was really scared. I was afraid to go to school, I remember that, because I would get beaten. I went with fear, I went everywhere with fear, running, rushing... And whenever I went, there was always a problem with me. There was always someone who had a problem with me. There was always someone who didn't like me, someone bothered by me, wanting to beat me up, Macedonian assholes trying to look strong.
(S., a trans woman, 23-32, Macedonian)*

Victims' support and prisons

Based on the returned questionnaires by relevant institutions, the police officers, prison officials and judiciary do not have specialized training courses for adequate approaches in dealing with crimes, including discrimination, violence and hate speech, where sexual orientation and gender identity are considered to be a motive, but they include limited information within some courses.

The Faculty of Security (Police Academy) stated that their programs include lectures on "identification of criminal acts motivated by sexual orientation" in the books "Psychopathology" by Prof. Dr. Dragana Batik and Prof. Dr. Roza Krstevska, and "Psychology of communication" by Prof. Dr. Dragana Batik. The Faculty officials also claim that their program includes lectures on the rights and protection of the LGBTI community. In the answers provided by the Training Center (within the Ministry of Interior), it is not specified in what course, but they claim that they put "special emphasis" on "this type of crimes". In addition, the curriculum used by the Training Center, as stated in their questionnaire, includes basic human rights training. The training is focused on hate-motivated incidents. It is not clear if these training courses include a section on hate-motivated incidents on the grounds of SOGI. However, the Faculty failed to inform that the curriculum also includes the book titled "Criminological Psychology" by Prof. Liljana Batkoska, which contains highly transphobic content, presenting transvestites' experience as "uncontrolled impulses" and "unstoppable needs" to cross-dress, which can lead them to commit "very brutal" acts of violence against women if they are prevented from cross-dressing. Prof. Batkoska further claims that these acts of violence are directed

20 Coalition "Sexual and Health Rights of Marginalized Communities". Annual Report 2015. Skopje, Coalition SHRMC.

21 "The transgender experience: identities, bodies, violence and socialization", Slavco Dimitrov, Coalition Margins, Skopje 2018.

against women as a form of “revenge,” because nature has “punished” the transvestites “by not giving them a complete female form.”²²

The Ministry of Interior (MOI) in their returned questionnaire to the MHC-LGBTI stated that the police officers continuously have training courses with the MOI as well as on a decentralized level with the Sectors for Internal Affairs of MOI, where they increase their knowledge and skills in handling “these types of hate crimes”. Again, by the answers provided by MOI it is not clear if and to what extent sexual orientation and gender identity as grounds for hate crimes are included in these training courses.

Nevertheless, the reports from the LGBTI organizations providing legal support to LGBTI people have recorded cases of different types of misconduct by police officers: double victimization of the survivors of hate crime, mocking, violating their privacy by disseminating their photograph, not reporting the case, not providing minutes to the survivors and even direct violence.²³ **Due to the misconducts, the police officers when they do not report the case, they obstruct justice for the survivors.**

According to the analysis conducted by the LGBTI Support Center,²⁴ 78.95% of those who reported crimes against them directly in a police station, are not satisfied by the treatment from the police officer. In the same analysis, 15.69% of those who report the crime against them outside of police station suffered the excessive and unjustified use of police force. Out of them, **45.92% did not report the case of police brutality.**

The Academy for Judges and Prosecutors stated that, in cooperation with the OSCE mission and the Helsinki Committee for Human Rights of the Republic of Macedonia, they have organized extracurricular training courses for their students, focusing on prevention and protection against discrimination (including the discrimination against LGBTI people), combating hate speech and access to justice for LGBTI people. The practice of the European Court for Human Rights is part of the training courses. In their questionnaire, the Academy stated that, over the years, they have organized “numerous training courses of trainers” on topics such as discrimination and hate crimes, aimed to qualify domestic judges and public prosecutors as lecturers on these topics. They have also published a publication on the judicial practice of the European Court for Human Rights on cases of discrimination. However, not one case on the grounds of sexual orientation or gender identity was included in this publication.

Statement

“Moreover, the specific situation in the courtroom demonstrates the high level of intolerance and ignorance towards trans people by the judges. During a court hearing where two trans women claim their right to privacy, the judge and the attorneys of the accused laugh on the decision of one of the plaintiffs to change her name in the official documents. The laughter was followed by a harassing comment that was supported by the judge herself. On the request for the judge’s removal from the case, the president of the court did not find a violation of the principle of impartiality by the seating judge.”²⁵

In their returned questionnaire, the MOI did not inform about the existence of special units within the police specifically assigned to tackle hate-motivated incidents against LGBTI persons. The understanding of MHC – LGBTI is that such units do not exist within the police.

22 Coalition, Annual Report 2012, pp. 98-99.

23 Coalition “Sexual and Health Rights of Marginalized Communities”. Annual Report 2017. Skopje, Coalition SHRMC.

24 “Analysis of the problems and needs of LGBTI people in the Republic of Macedonia (in the area of social protection, legal services and policing)”, Koco Andonovski, Pavle Bogoevski, Andrijana Gelevska, Doriana Bojanovska, MHC-LGBTI Support Centre.

25 Source of information: statement by the Attorney at Law that represents the trans women before court, request for exception and decision of the President of the Court.

The MOI did not provide an answer, nor is the MHC-LGBTI aware of the existence of liaison officers assigned the task of maintaining contact with LGBTI communities in order to establish relationship and trust. The MHC-LGBTI signed a general memorandum of cooperation with the MOI in the autumn of 2017 and held informative meetings with police officials from municipalities Center and Karpos, both in Skopje, where the LGBTI Support Center operates. **But still, the state fails to provide both units tasked to specifically investigate the hate-motivated incident on SOGI and liaison officers who would increase the trust of the LGBTI community in the police.**

The Directorate for Execution of Sanctions (DES) under the Ministry of Justice (MOJ), in the questionnaire, stated that the prison system in the country “does not discriminate the prisoners on any ground including sexual orientation and gender identity”. In the admission procedure of persons deprived of their liberty, the correctional and educational-correctional facilities do not collect information on the SOGI identities of the prisoners. According to DES, this is the reason why there are no anti-bullying strategy and special measures in place to minimize the dangers of physical assault, rape and other forms of sexual abuse against LGBTI people deprived of their liberty.

Based on the aforementioned findings, **the conclusion can be made that the state body failed to undertake all the measures recommended by the Committee of Ministers of the Council of Europe in order to ensure safety and dignity for the LGBTI people deprived of their liberty.**

In their answers to the questionnaires, both the MOJ and the DES stated that, in the period of the last five years, they have not recorded a transgender person deprived of their liberty to request for allocation between male and female facilities. According to their questionnaires, that is the reason why the current procedures of DES do not regulate their work in “this type of cases”.

The MOJ stated that, currently, there are no protective measures for treatment of LGBTI detainees, while the separation in solitary confinement is performed in accordance with the existing procedures (same for all detainees with no exception to the LGBTI detainees).

One positive step, according to their returned questionnaire, is that in February this year, the DES adopted a Code of Conduct for prison officials. The Code of Conduct is prepared with the support of the Council of Europe and contains “explicit provision for respect of diversities and prohibition of discrimination on any ground, including sexual orientation and gender identity”. In regard to the new Code of Conduct, training courses for the prison officials were conducted during April and May this year.

Data collection on hate crime and hate-motivated incidents

There is no system for registration of complaints and systematic data collecting on hate crimes and hate-motivated incidents and there are no publicly available official statistics.²⁶ The only platform that provides statistic is the <http://www.zlostorstvaodomraza.mk/> website, launched and run by the MHC and supported by the OSCE mission. The platform is used for mapping, monitoring, reporting and analyzing of hate crimes and hate-motivated incidents and includes both sexual orientation and gender identity as grounds in further reporting and analyzing of data.²⁷

26 The Progress Report of the European Commission for 2013; The Progress Report of the European Commission for 2014; The Progress Report of the European Commission for 2015; The Progress Report of the European Commission for 2016.

27 www.zlostorstvaodomraza.mk

The surveys on the level of social acceptance towards LGBTI people are mainly conducted by LGBTI organizations in the country or international LGBTI or human rights organizations. In the returned questionnaires to the MHC-LGBTI, there was no information if and to what extent the state is using the data provided by the surveys.

Conclusion and recommendations

Based on the findings obtained from the questionnaires and the analysis of the current legislation and its implementation, it can be concluded that Macedonia fails to comply with the requirements of the Recommendation (2010)⁵ in many aspects. The Criminal Code still does not specifically recognize sexual orientation and gender identity as grounds for hate crimes and hate speech. Moreover, the state has failed to take appropriate measures to prevent the attacks on LGBTI people, to adequately investigate, prosecute and punish the perpetrators, and to ensure that victims receive appropriate legal remedies. Also, the state lacks a system for recording complaints and data collection on hate crimes and hate-motivated incidents based on different grounds.

Therefore, the recommendations to the state are as follows:

1. Amending the Criminal code as to explicitly recognize sexual orientation and gender identity as grounds for hate crimes.
2. Introducing obligatory training courses on LGBTI (with focus on discrimination, hate crimes and hate speech on grounds of sexual orientation, gender identity, gender expression and sex characteristics) in the Academy for Prosecutors and Judges, in the Faculty of Security and the Training Center for Police Officers.
3. MOI, Courts and Public Prosecution should develop a system for documenting hate crimes including the crimes on the grounds of sexual orientation, gender identity, gender expression and sex characteristics.
4. The state should expedite the investigation and prosecution of hate crimes and hate speech based on sexual orientation or gender identity, and should ensure that victims of these crimes receive appropriate remedies.

B. “Hate speech”

In the Macedonian legal system “hate speech” is included in several laws, including the Criminal Code, but the state has failed to recognize and regulate hate speech on the grounds of sexual orientation and gender identity in the Criminal Code from 2014. This is the case despite the fact that the number of hate speech and hate crime cases on the grounds of SOGI²⁸ increased in the period before the law was adopted. The new Law, replaced the closed list of protected characteristics that was limited to ethnicity, race, nationality, and sex with an open one, adding “any grounds” prescribed by any law or an international treaty ratified by the country.

In accordance with the current Law on Audio and Audiovisual Media Services (Article 4), the publishing, i.e. broadcasting media content must not threaten the national safety, call for violent overthrow of the constitutional order of the Republic of Macedonia, call for military aggression or armed conflict, incite or spread

28 Stojanovski Voislav, Iseni Drilon, and Bogoevski Pavle. 2015. “Analysis of the Situation with Hate Speech in the Republic of Macedonia”. Skopje: Helsinki Committee for Human Rights of the Republic of Macedonia

discrimination, intolerance or hatred based on race, sex, religion or nationality. **Yet again, sexual orientation, gender identity and expression, and sex characteristics (SOGIES) are not listed as grounds.**

In their answers on the questionnaire, the Agency of Audio and Audiovisual Media Services (AAVMS), stated that even though the law is limited to only four grounds: race, gender, religion and nationality, they are basing their policy on the European Court for Human Rights practice, and while monitoring the media content, they always take sexual orientation into account as a ground for discrimination. Also, in order to provide clear rules for the broadcasters on how to detect and avoid hate speech, the Agency in 2014 published the “Guide for monitoring of hate speech” by Jelena Surchulija Milojevik, MA, and Snezana Trpevska, Ph.D.²⁹ In the above-mentioned guide, sexual orientation is mentioned only when the authors provide information on the legislation in United Kingdom, Ireland and Bosnia and Herzegovina. **AAVMS also failed to recognize sex characteristics, gender identity and expression as grounds for hate speech.**

The new draft Law on Audio and Audiovisual Media Services prepared earlier this year also did not include SOGIES as grounds for hate speech and discrimination. After entering into Parliamentary Procedure, the Inter-Party Parliamentary Group on LGBTI submitted two amendments: 1) an Article that prohibits media programs that consist hate speech or discrimination on all grounds, including sexual orientation and gender identity; and 2) a fine of up to 5000 EUR to be imposed on the media legal entity that would broadcast such program. The draft Law is still in a procedure in the Parliament. The Agency of Audio and Audiovisual media services (AAVMS), as a media regulatory body, with the Law currently in power, does not have jurisdiction to issue administrative fines against media who use hate speech. Lacking that jurisdiction, AAVMS reactions include: publishing reports on the identified discrimination or hate speech on their website;³⁰ sending written notification to the broadcaster for the violation; and establishes cooperation with the Commission for Protection against Discrimination (CPAD) and the Public Prosecutor Office. Based on their experience, as stated in their answers to the questionnaire, very rarely does this cooperation have a positive outcome.

Case study

The AAVMS, in their answers to the questionnaire, referred to their experience in cooperating with the Commission for Protection against Discrimination in regard to one significant case of hate speech. After AAVMS determined violation of Article 48 of the Law on Audio and Audiovisual Media Services and determined that the broadcasted, national tv stations TV Kanal 5 and TV Kanal 5+, allowed the author of the show “Milenko Nedelkovski Show” on 15th, 22nd, 29th of January, 5th, 12th and 19th of February 2016 to encourage and spread discrimination, intolerance and hatred on the grounds of sexual orientation and to be source of homophobia and hate speech on ground of sexual orientation. In March 2016, AAVMS informed the broadcasters on the matter and sent a report annexed with the video materials of the show to the CPAD, asking to act within their jurisdiction. The CPAD answered to the request on October 2017, informing the AAVMS that they don’t have jurisdiction in this case and, according to their opinion, the broadcaster is not responsible for the violation because the journalist only shares his opinion.³¹ After the public pressure, the CPAD sent additional information to AAVMS, stating that they cannot establish grounds for discrimination because “based on the presented material evidence the Commission could not, with certainty, decide on the facts of the case”.³²

The example shared by AAVMS is not an isolated case, and it clearly shows the Commissioners as incompetent and biased.

29 <http://avmu.mk/wp-content/uploads/2017/11/Guide-to-monitor-hate-speech-FINAL-9.pdf>

30 www.avmu.mk

31 http://avmu.mk/wp-content/uploads/2017/05/lzvestuvanje_od_Komisija_za_zastita_od_diskriminacija.pdf

32 <http://avmu.mk/wp-content/uploads/2018/05/lzvestuvanje-od-Komisija-za-zastita-od-diskriminacija-MART-2017-govor-na-omraza.pdf>

Furthermore, the attacks of the LGBTI Support Center and LGBTI people were incited and encouraged by a steady stream of hate speech on the internet and social media. According to the platform for registering hate speech,³³ since February 2014, 92 incidents have been registered on the grounds of sexual orientation and/or gender identity. The platform is run by the Helsinki Committee for Human Rights of the Republic of Macedonia (MHC). In the cases when more elements that can prove hate speech are present, the MHC submits complaints to the Department of Cybercrime and Digital Forensics (DCDF) within the Ministry of Interior if the hate speech was present on internet portal or social media or directly to the Ministry of Interior or Public Prosecutors Office (PPO) when the hate speech was present in public space. In 2016, the MHC submitted 4 complains on the grounds of sexual orientation and gender identity (SOGI) to the DCDF, but no charges were filed for neither of them.³⁴ The MHC has also filed two criminal complaints with the PPO for hate speech on bases of SOGI. One was filed in cooperation with Coalition Margins in 2014 against a TV Show host. With the decision from 2015, PPO found that “this is not a criminal act that is eligible for *ex officio* prosecution” and denied the criminal complaint.³⁵ This initial decision (that there is no criminal act), was returned twice by the Higher Public Prosecutor’s Office and the case was brought before the PPO for a third time. To date (4 years later), the case remains unresolved.

The second one was filed in cooperation with Coalition Margins and HERA against the candidate for Mayor in regard to the case described in the following case study:

Case study

Case of hate speech against LGBTI is documented during the local elections in 2017 when candidate of one political party stated that “homosexuality is the most dangerous mafia that wants to infiltrate in the Municipality”³⁶ and with that initiated and allowed an organization for protecting family values to distribute leaflets during campaign’s public gathering with accusations of the political opponent of destroying the family values because he is a “supporter of the gay lobby in Macedonia”.³⁷ With these actions, the candidate for mayor caused intolerance and hatred towards LGBTI people and with that violated the Article 319 paragraph 1 cp. 2 of the Criminal Code. The LGBTI Support Center, Coalition Margins and HERA filed charges against the candidate. The Public Prosecutor has not reported on the outcome yet.³⁸

A storm of hate speech and calls to violence erupted on social media in response to the erroneous media reports that there would be a “gay parade” as part of 2013 Pride Week events.³⁹ For example, the social network postings of the “Counter Gay Parade” group, formed in opposition to the 2013 Pride Week events, called for hatred, violence, and the limitation of the rights of the LGBTI community.⁴⁰

During 2017, the Coalition Margins conducted a research of the media coverage of topics connected with the LGBTI Community in the period between 1.1.2017- 15.7.2017. The main conclusions are that there is a small decrease of hate speech and verbal violence against LGBTIs in the media and that the public support and solidarity coming from high representatives from the executive and law-making governance is influencing the higher number of supportive media products. Explicit negative reporting towards LGBTIs is detected in 43 texts with a focus on Macedonia (29% of all media texts covering LGBTI topics from Macedonia).⁴¹

33 www.govornaomraza.mk

34 Helsinki Committee for Human Rights of the Republic of Macedonia, Annual Report 2016.

35 Decision by Public Prosecution Office KO 1 no. 501/14, Skopje, 28.12.2015.

36 <http://govornaomraza.mk/reports/view/913>

37 <http://govornaomraza.mk/reports/view/915>

38 http://mhc.org.mk/system/uploads/redactor_assets/documents

39 Coalition, Annual Report 2013, p. 67.

40 Coalition, Annual Report 2013, p. 68.

41 www.coalition.org.mk

In the questionnaire for the assessment of progress, the Agency for Audio and Audiovisual Media Services (AAVMS) stated that they have organized many meetings, training courses and workshops on hate speech and respect of professional journalistic standards in collaboration with civil society organizations in the past years. The training courses and workshop were designed for the AAVMS personnel, broadcasters and all other interested parties. The Agency also cooperated with Coalition Margins in conducting an Analysis on reporting frameworks in media coverage of topics related to LGBTI community. Besides that, AAVMS stated that they include questions related to LGBTI in their regular annual research for 2017 on the attitudes of the audience to the media program. As a result to the aforementioned cooperation, AAVMS, Media Ethic Council, Association of Journalists in Macedonia and LGBTI organizations: Coalition Margins, LGBTI Support Center and LGBTI United Tetovo signed a Declaration⁴² on ethical and professional reporting on topics related to LGBTI in the media.

The CPAD, in their answers to the questionnaire, stated that they have delivered few training courses in cooperation with HERA⁴³ for employees of the local self-government official, few with the Academy for judges and prosecutors and few on Faculty of Law Skopje.

None of the other relevant institutions provided information on organized workshops, training courses or other activities for raising awareness.

Conclusion and recommendations

In conclusion, the legislation on hate speech is poor and the state has failed to undertake effective and efficient measures to prohibit and publicly disavowed whenever it occurs. That contributes to even more hate speech to be present in the public sphere.

Therefore, the recommendations to the state include:

1. Amending the Criminal code to explicitly recognize sexual orientation, gender identity and expression and sex characteristics as grounds for hate speech.
2. Amending the Draft Law on Audio and Audiovisual Media Services by adding sex characteristics and gender expression as prohibited grounds for hate speech or discrimination.
3. Adopting the Draft Law on Audio and Audiovisual Media Services that prohibits media programs that consist hate speech or discrimination on sexual orientation and gender identity and including gender expression and sex characteristics as prohibited grounds for hate speech or discrimination.

42 http://coalition.org.mk/wp-content/uploads/2018/03/declaration_eng-copy.pdf

43 www.hera.org.mk

II. Freedom of association

LGBTI human rights organization have the freedom of association guaranteed by the Constitution of the country, and there is no recorded case of violation of this freedom.

In January 2017, the citizens' alliance Stop Operation Soros was launched in the capital of Macedonia. The initiative called for a 'de-Sorosization' of Macedonian civil society. Based on that, the government of that period, using the state mechanisms, conducted an investigation in more than 30 organizations in the country that received funds from the Open Society Foundation and/or USAID. The investigations were conducted on two levels: one by the Tax Revenue Office and another by the Financial Police. The Helsinki Committee for Human Rights of the Republic of Macedonia and the LGBTI Support Center were under both investigations. There is a complaint pending for the former case, while for the latter, the financial police issued a statement that the financial work of the organization is based solely on domestic legislation and there was no reason to continue the investigation. Despite the fact that the organizations presented the audit reports for the financial work prepared by independent external audits to the state authorities leading the investigation, the authorities decided to continue with the investigation while obstructing the work of the organizations for 6 months.

There is no legislation or procedure that bans financing of LGBTI organizations. The LGBTI organizations can apply for public funding same as any other organization. However, the first ever financial support for a project targeting the LGBTI community was granted earlier this year from the Ministry of Culture for the Skopje Pride Weekend. Considering that this was the first and only public funding to be dedicated for an LGBTI project with a very low amount allocated (3.000 EURO), **it can be concluded that the LGBTI organizations in Macedonia have very limited access to public funding.**

The state has not succeeded in protecting the human rights defenders of lesbian, gay, bisexual and transgender people in the country. The state has failed to prevent the hate crimes against the LGBTI activists and the LGBTI Support Center. Indeed, before two LGBTI events that later ended with attacks, the police were officially informed about the social media threats and hate speech targeting the events and requested to provide additional presence and protection. **The state has also failed to adequately investigate, prosecute and punish the perpetrators in each case and failed to bring justice for the survivors of the violence.**

After the change of the government, state officials started inviting the representatives from the LGBTI and human rights organizations to join working groups and represent the needs of the LGBTI at the table, such as the group for drafting the Law on Prevention and Protection against Discrimination. Even though, now the LGBTI organizations and activists are invited to sit in working groups and consultative meetings on a higher scale, the state lacks a system of selecting and inviting the representatives. In last year's practice, the representatives were selected *ad hoc*. In many occasions, the same person is invited for many working groups/consultative meetings which is not sustainable because, first, it overwhelms the person with work, and second, it does not ensure broader representation of the LGBTI community.

Conclusion and recommendations

In conclusion, even though the Constitution guarantees the right to association, the state did not provide state funding for the LGBTI organizations as to ensure the safety and security of the LGBTI organizations, as well as to conduct clear and transparent procedures for selecting representatives in the state working groups.

Therefore, recommendations to the state include:

1. Introducing a specific funding scheme for human rights and LGBTI organizations.
2. In situations of a potential threat, protecting the safety and security of the LGBTI organizations.
3. Building and maintaining partnerships with the LGBTI organizations during policy-making and decision-making processes.

III. Freedom of expression and peaceful assembly

The Constitution of the Republic of Macedonia guarantees freedom of expression (Article 16) and freedom of peaceful assembly (Article 21). Nevertheless, in the period of progress assessment, these rights have been violated. For the purpose of this report, two cases shall be presented as follows:

Case study

Case 1: The attack against the LGBTI Support Center at the opening of the Skopje Pride Week 2013. Pride Week opened on June 22nd with a movie projection and promotion of the manual on the health rights of transgender people at the LGBTI Support Center. About 40 people attended the event (35 on the second-floor presentation room and 6 people on the first floor, including one police officer). Shortly after the start of the event, a mob of about 30 people gathered in the nearby street and approached the Center, shouting homophobic slogans and threats and throwing bottles, stones, and pyrotechnical materials at the Center (that had a glass door and big glass window for a wall). Two individuals suffered minor injuries due to the shattering of the glass window. All of the people present at the Center during the attack were traumatized. The police officer who was inside the Center exited outside and tried (by himself) to stop the attackers (and was injured as a consequence), while his colleagues from outside, as shown in the security camera's recording, left their positions before the attack instead of trying to stop the attackers.⁴⁴ The LGBTI activists monitoring the social media before the opening of the Pride Weekend, reported a higher presence of hate speech and calls for violence against the LGBTI people, adequately informed the police and demanded better protection. Most of the police officers assigned to this task, at the time of the attack, drank beer in the nearby café. The surveillance recordings clearly show the identities of the perpetrators of the attack, but to date, no one has been arrested or prosecuted regarding this event.

44 *Id.* pp. 75-76; Amnesty International, Urgent Action, HRW Letter to Prime Minister; MHC –LGBTI Annual report 2013, p. 69-70.

Case study

*Case 2: The attack on Damar café, during the 2nd Anniversary of the LGBTI Support Center in 2014. On October 23rd, 2014, the LGBTI Support Center was celebrating its second anniversary in Damar café. At around 21h30 a stampede of around thirty young people advanced with high speed from both sides of the street leading towards the Damar café. This was the sixth attack against the Center and its activities in its two years of existence. Wearing hoods over their heads and armed with glass bottles and other hard objects, the thugs stoned the café and, as quickly as they had appeared, vanished in the nearby alleys. At the time of the incident, more than sixty people were attending the celebration in the Damar café, two of whom, a young man and a woman, were standing outside, in front of the main entrance of the cafe. They were attacked by the violent group with glass bottles and sustained injuries on their heads and bodies. During the attack, the attackers kept telling them that they should leave and that faggots were not welcomed there. The proceedings are still pending. **To date, none of the attackers has been charged and there has been no institutional condemnation of the incident.**⁴⁵*

Access to (mainstream) media for the LGBTI organizations is still very limited. The findings show a high presence of negative representation of the LGBTI community in media. Coalition Margins is continuously monitoring media coverage. According to the last published research report, "Framing the rainbow: Analysis on reporting frameworks in media coverage of topics related to LGBTI community",⁴⁶ for the short period between January 1st and July 15th, 2017, 28.9% of the media Articles that refer to Macedonia have explicitly expressed a negative attitude towards the LGBTI community or the individuals identified in the text. According to the report, in almost all of these texts, the LGBTI community and its public advocates are contextualized in a politically-manipulative way with the aim of attacking or demonizing political party opponents, and in that regard, they have been discursively abused.

Conclusion and recommendations

Whilst the political context has slightly changed after the change of the government and quite often high-level governmental representatives attend LGBTI public events, thus the level of protection is higher, the former attacks against LGBTI people and LGBTI Support Center are still not fully prosecuted and the justice is not served.

Therefore recommendation to the state include:

1. The state should take all the measures to protect the rights of freedom of expression, association, and assembly by preventing hate crimes that target LGBTI activists and activist organizations.
2. The state should expedite the investigation and prosecution of the attacks against LGBTI Support Center and should make sure that victims of these crimes receive appropriate remedies.

⁴⁵ MHC-LGBTI, Annual Report 2014; Coalition Margins, *Annual Report 2014*.

⁴⁶ "Framing the rainbow: Analysis on reporting frameworks in media coverage of topics related to LGBTI community", Igor Micevski, Coalition 'Sexual and Health Rights of Marginalized Communities', Skopje 2017.

IV. Right to respect for private and family life

There are no provisions in the Criminal Code which, due to the way they are formulated or because of their scope, are discriminatory or criminalize same-sex sexual acts between consenting adults and the age of consent is the same for heterosexual and same-sex relations. However, same-sex partnership is not recognized in any form in the Family Law. Moreover, in 2015, when the government of that period proposed constitutional changes, one of the amendments (Amendment 33) was proposing a definition of both marriage and civil union solely as unions consisted of one man and one woman. Due to public pressure by the LGBTI and Human Rights activists as well as the decision by the Venice Commission, this amendment was changed as to define only marriage. Nevertheless, due to the broader political context of that period, the package of constitutional changes was never adopted.

There is no legislation that includes segregation of the personal data regarding sexual orientation and gender identity. That was additionally confirmed by the questionnaire received from the Directorate for Personal Data Protection.

In Macedonia, there is neither a specific law nor a regulated procedure for **legal gender recognition**. That makes Macedonia one of the few member states of the Council of Europe where legal gender recognition is unavailable.⁴⁷ The lack of legislation for legal gender recognition contributes to inconsistency in the practice.

In lack of clear legal procedure, the transgender people are using existing laws for partial alignment⁴⁸ of data in the identification documents with their gender identity:

- The Law on Personal Name⁴⁹ allows transgender people to change their name if they fulfill the conditions applicable for every citizen without exceptions for transgender people. Transgender people can choose a name that is historically associated with a different gender.
- The Law on Personal Identification Document⁵⁰ allows re-issuing of the document with changed information (Article 8) only in case of change of the name or the address of the person. In this Law, there is no clear procedure for change of the gender marker and the unique citizen number (that contains data on the person's gender assigned at birth).
- The Law on Passports⁵¹ allows re-issuing of a new document with changed information (Article 26-a) in cases of change of the name, date of birth, sex and unique citizens number. However, the Law does not provide a clear procedure for change of the gender marker and the unique citizen number.
- The Law on Civil Registration⁵² regulates data entry, managing of registrar books, as well as the change or correction of data written in the registrar books. Same as the other aforementioned laws, this Law does not provide a clear procedure for change of the gender mark and the unique citizen number.

Within this legal framework in Macedonia, only 3 transgender people managed to have their gender marker changed in Registrar Book of Births.⁵³ Coalition Margins, as an organization that provides free legal aid and support for transgender people, in addition to the consultations with the transgender people, is currently working on legal representation in seven active cases. For one of the cases (described in the case study below) represented by the Coalition since 2011, a procedure for legal gender recognition has been initiated before the European Court for Human Rights.⁵⁴

47 Trans Rights Europe Index, 2015, <http://tgeu.org/trans-rights-europe-map-2015/>.

48 Boskova Natasa, Raiden Igor, 2017. "Analysis of positive practice for legal gender recognition". Skopje: Coalition Margins.

49 Official Gazette of the Republic of Macedonia No. 8/95 8/1995; 66/2007; 103/2008; 51/2011; 154/2015 and 55/2016. Law on Personal Name.

50 Official Gazette of the Republic of Macedonia No. 8/1995; 38/2002; 16/2004; 12/2005; 19/2007; 10/2010; 51/2011; 13/2012; 166/2012; 154/2015 and 55/2016. Law on Personal Identification Document.

51 Official Gazette of the Republic of Macedonia 67/1992; 20/2003; 46/2004; 19/2007; 84/2008; 51/2011; 135/2011; 106/2014; 154/2015 and 55/2016. Law on Passports.

52 Official Gazette of the Republic of Macedonia No. 8/1995; 38/2002; 66/2007; 98/2008; 67/2009; 131/2013; 43/2014; 148/2015 and 27/2016. Law on Civil Registration.

53 Boskova Natasa, Raiden Igor, 2017. "Analysis of positive practice for legal gender recognition". Skopje: Coalition Margins.

54 Application no. 29683/16, X v. the Former Yugoslav Republic of Macedonia.

Case study

In 2011, two cases for gender marker change were documented: in one of them, in a smaller town in the country, the officials changed the gender marker in the documents, but in the other case, the transgender person failed to do so. Even though both transgender men were in the same phase of the medical transition (even though that is not a requirement regulated by any law), only the officials in the smaller town followed the Constitution (Article 8)⁵⁵ and changed the gender marker in all the documents of the trans person. As for the second case, the Administrative Court found irregularities in the procedure in front of the first instance authority and the dispute went back and forth for years (since 2011).⁵⁶ For this case, Coalition Margins prepared and submitted a complaint to the European Court of Human Rights. This study case shows the inconsistency in the legal practice that creates legal insecurity for transgender people.

However, even in the absence of clear legal procedures, one big leap forward happened in 2017 when the Administrative Court ruled in favor of two transgender women whose request to have their gender marker changed had been rejected earlier.⁵⁷ These are very rare court rulings, in which the court is quoting rulings from the European Court for Human Rights. It is important to report that the two trans women had undertaken all phases of medical transition before requesting the change of the gender marker. Even though that is not specifically mentioned in the rulings, it can be speculated that this circumstance contributed to the positive ruling. **After the positive ruling, they were able to change their gender marker in the birth certificate and the documents for personal identification.**

The Law on Family regulates the adoption of children. Earlier versions of the Law stated that any citizen could adopt a child regardless of their marital status. However, in 2010, an amendment was introduced to the Law, adding the marital status as one of the criteria in the selection of adoptive parent (Article 100-a).⁵⁸ **Considering that the state does not recognize same-sex marriage, this provision is discriminatory against LGBTI people as it limits their access to the right to form a family by adopting children.**

According to the Law on Biomedical Assisted Fertilization⁵⁹ single women, women in marriage or women in non-marital cohabitation (that by the Law on Family is defined as a community between a man and a woman) have right to access biomedical assisted fertilization if they fulfill the conditions defined by the Law (Article 3 and Article 9). **Nevertheless, the law fails to include an anti-discriminatory provision and explicitly recognize “sexual orientation” as a prohibited ground for discrimination.**

Progress has been made with the adoption of the Law on Prevention and Protection from Domestic Violence⁶⁰ in 2014, regarding the protection of victims of domestic violence in same-sex relationships. **Namely, the aforementioned Law introduces the terminology “close personal relations” in defining domestic violence, without specifying the gender of the partners in such close personal relations.**

55 Article 8 of the Constitution of Republic of Macedonia: “Anything that is not prohibited by the Constitution or by any law is permitted in the Republic of Macedonia.”

56 Interview with the attorney in the case.

57 Coalition Margins, Annual report 2017.

58 Official Gazette of the Republic of Macedonia no. 80/1992, 9/1996, 19/2000, 79/2001, 38/2004, 60/2005, 33/2006, 84/2008, 117/2009, 67/2010, 156/2010 39/2012, 44/2012, 38/2014, 115/2014, 104/2015, 150/2015. Family Law.

59 Official Gazette of the Republic of Macedonia no. 37/2008, 164/2013, 149/2014, 192/2015, 37/2016. Law on biomedical assisted fertilization.

60 Official Gazette of the Republic of Macedonia No. 138/2014; 33/2015; 150/2015. Law on Prevention and Protection from Domestic Violence.

The state failed to provide Shelter for the LGBTI people under risk of homelessness. Therefore, in the spring of 2017, LGBTI Support Center opened a shelter as a direct service for the LGBTI people under risk. The shelter provides assistance in situations of crisis and acute violence as well as longer-term assistance and protection, programs for reintegration and resocialization and other support. With capacity for 7 people for a long stay, this is the only shelter for LGBTI people in the country. The shelter is accredited by the Ministry of Labour and Social Policy for fulfilling the necessary criteria. **But, by the time of preparation of this report, the shelter had not received financial support from the state, even though the state does not provide this form of protection for LGBTI people under risk of homelessness.**

Conclusion and recommendations

In conclusion, the state recognizes the same-sex relationships in providing prevention and protection of domestic violence but fails to provide safe space or to financially support the only shelter for LGBTI people. The state has also failed to provide legal security and access to legal gender recognition for transgender people that want their gender marker changed. The state has also does not provide access to forming a family through adoption for LGBTI people in same-sex partnerships and falls short in protecting them from discrimination in the access to assisted reproductive treatment.

Therefore the recommendations to the state include:

1. Adopting a law on legal gender recognition that would provide quick, transparent, easy and accessible administrative procedure on the basis of self-determination and without invasive procedures.
2. Amending the Law on Family: excluding the marital status as criteria for selection of adoptive parent and adding anti-discriminatory provisions to ensure equal access to the right to form a family by adoption for the LGBTI people as well.
3. Amending the Law on Biomedical Assisted Fertilization with an anti-discriminatory provision and explicitly recognizing “sexual orientation” as prohibited ground for discrimination.
4. The state should ensure sustainability of the only shelter for LGBTI people under risk of homelessness by providing financial support.

V. Employment

The Law on Labour Relations⁶¹ (Article 6) prohibits discrimination in access to employment on the ground of “sex inclination”. The term “sex inclination” is limited and does not include all aspect of the “sexual orientation”. The Law (Article 7) prohibits direct or indirect discrimination of employees and applicants in regard to conditions for employment, job promotion, access to all forms and levels of advancement in education, working conditions and all rights in regard to labour relations including equal pay, termination of the employment agreement, access to rights to join workers’ association or other professional organization, and the collective contract. **However, the law does not recognize SOGIES as prohibited grounds for discrimination.**

The Law on Prevention and Protection against Discrimination⁶² also includes a non-discriminatory provision in employment. However, the state neglected to include SOGIES as grounds for discrimination. Harassment is prohibited and it is defined under this Law. However, harassment is also regulated by the Law on Protection against Harassment in the Workplace⁶³ that provides a definition of the two different types of harassment: psychological and sexual. The Law also includes instruction or incitement to harass as prohibited acts. These laws do not protect the LGBTI people and therefore they do not have trust in the institutions that should protect them. According to the Analysis on the needs and problems that LGBTI people are facing in Macedonia,⁶³ almost 37% of the LGBTI people have experienced discrimination at their workplace due to SOGI, out of which only 10% have reported the case to NGO (6%), to the trade union (2%) or to the Commission for Protection against Discrimination (2%).

Conclusion and recommendations

In conclusion, the state failed to ensure equal access and protection against discrimination in access to employment for LGBTI people. Therefore, recommendations for the state include:

1. Adjusting the terminology in the Law on Labour Relations and the term ‘sex inclination’ by replacing it with ‘sexual orientation’ and adding ‘gender identity’, ‘gender expression’ and ‘sex characteristics’ as bases for discrimination.

61 Official Gazette of the Republic of Macedonia no. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014, 20/2015, 33/2015, 72/2015, 129/2015 and 27/2016. Law on Labour Relations.

62 Official Gazette of the Republic of Macedonia no. 50/2010, 44/2014, 150/2015 and 31/2016. Law on Prevention and Protection against Discrimination.

63 Official Gazette of the Republic of Macedonia no. 79/2013 and 147/2015. Law on Protection against Harassment at the Workplace.

VI. Education

The Constitution of the state (Article 44) guarantees the right to education and that education must be accessible to everyone under equal conditions. However, the Law on Primary Education⁶⁴ and the Law on Secondary Education⁶⁵ as two of the three key laws that regulate the educational system in the country do not include SOGIES as non-discriminatory grounds. Only the Law on Higher Education⁶⁶ (Article 149) includes sexual orientation as prohibited ground of discrimination.

The LGBTI youth are much more often harassed and bullied in school than their cisgender and heterosexual peers.⁶⁷ According to the same research, **they are almost five times more often victims of sexual harassment and assault.** Also, depression, sadness, hopelessness and serious suicidal thoughts are among the highest risks in the life of the LGBTI youth. At the same time, the Ministry of Education, in the recently adopted Comprehensive Strategy for Education 2018-2025 failed include an anti-bullying strategy and, moreover, did not include activities for incorporating comprehensive sexual education in the educational curriculum, thus ignoring the suggestions and reactions from the organizations working in the field.⁶⁸

According to the recent research⁶⁹ which was conducted among lesbians, bisexual and queer (LBQ) women, by LGBTI Support Center and LezFem in June 2018, more than 40% of LBQ women have experienced discrimination at school, by their peers (23.81%), teachers (11.11%) or by the school administration (5.56%). It is even more concerning that none of them reported the case to any organization or institution. When the respondents stated the reason why they did not report the case, the majority explained that they do not believe that institutions could help them (30.19%), they are afraid of condemnation and prejudice by their surroundings (24.53%) and they are afraid for their safety (18.87%). **The findings confirm the failure of the state to ensure equal access to education for all.**

The textbooks used in high schools and universities in Macedonia perpetuate homophobic and transphobic attitudes.⁷⁰ **Discriminatory language pathologizing homosexuality is present in a number of Macedonian textbooks covering psychiatry, medical psychology, and psychology.**⁷¹ There is a significant number of textbooks that promote discrimination based on gender, gender identity and sexual orientation, which present LGBTI people as sick, deviant and dangerous for the society. According to a university textbook on "Criminological Psychology" authored by Prof. Liljana Batkoska, transvestites experience "uncontrolled impulses" and "unstoppable needs" to cross-dress, which can lead them to commit "very brutal" acts of violence against women if they are prevented from cross-dressing. Prof. Batkoska then claims that these acts of violence are directed against women as a form of "revenge," because nature has "punished" the transvestites "by not giving them a complete female form."⁷² In one of the textbooks, the author Prof. Dr. Olga Murgeva-Shkaric describes homosexuals as "the most common transmitters of AIDS" and suggests that "(h)omosexu-

64 Andonovski Kocho, Bojanovska Doriana, Bogoevski Pavle, Gelevska Andrijana. "Analysis of the problems and needs of LGBTI people in the Republic of Macedonia (in the area of social protection, legal services and policing)". 2016. LGBTI Support Centre.

65 Official Gazette of the Republic of Macedonia no. 103/2008; 48/2009; 53/2009; 82/2009; 88/2009; 33/2010; 116/2010; 156/2010; 18/2011; 42/2011; 51/2011; 6/2012; 100/2012; 24/2013; 41/2014; 116/2014; 135/2014; 10/2015; 98/2015; 145/2015; 30/2016; 127/2016; 67/2017; 64/2018; Law on Primary Education.

66 Official Gazette of the Republic of Macedonia no. 44/1995; 16/1996; 24/1996; 34/1996; 35/1997; 82/1999; 41/2001; 29/2002; 40/2003; 42/2003; 78/2003; 67/2004; 51/2005; 55/2005; 113/2005; 3/2006; 35/2006; 30/2007; 49/2007; 81/2008; 92/2008; 88/2009; 33/2010; 116/2010; 156/2010; 18/2011; 42/2011; 51/2011; 6/2012; 100/2012; 24/2013; 41/2014; 116/2014; 135/2014; 10/2015; 98/2015; 145/2015; 30/2016; 127/2016; 67/2017; 64/2018. Law on Secondary Education

67 Official Gazette of the Republic of Macedonia no. 82/2018. Law on Higher Education.

68 Kostarova Unkovska Lina. 2017. Skopje. "How equal and safe are the youth in Macedonia in their sexual development and sexual experiences". Coalition Margins.

69 <https://hera.org.mk/reakcija-nova-strategija-za-obrazovanie/>

70 The report of the research is being prepared at this time and it will be published by MHC-LGBTI in 2018.

71 Coalition, Annual Report 2013, p. 64; See also Coalition, Annual Report 2012, p. 68, noting the concerns expressed by EU Parliament.

72 Coalition, Annual Report 2013, p. 68.

ality destroys the natural family since it contradicts the sexual dimorphism of people.”⁷³ Her textbooks claim that “scientific” research proves that homosexuality is not a normal, healthy alternative to heterosexuality.⁷⁴ Moreover, these textbooks are part of the mandatory teaching courses.

The Ministry of Education (MOE) did not answer the questionnaire for the MHC-LGBTI. The Bureau for Development of Education (BDE) that operates under this Ministry, in their answers stated that the right of education can be exercised without discrimination. And immediately after, they stated that BDE does not have a mandate and thus they do not provide anti-discrimination training or support and teaching aids; information, protection and support for pupils and students; respect for the self-determined name and gender marker of pupils and students in form of address, educational documents, and use of gendered facilities/classes; and school equality and safety policies and action plans. The BDE also stated that the curriculum for the primary and secondary school, in the “Life Skills Education” course, the textbook includes information on gender identity. The MHC-LGBTI does not have knowledge in regard to the level and quality of implementation of the curriculum since this course is optional and it is up to the teachers what topic they will include in their lectures. On the other hand, the teachers are not trained and do not have enough knowledge for all the topics covered by the textbook, so they choose to talk about what is most known or most acceptable to them.

On a more positive note, this year the BDE has formed a national working group for development of systematic models of comprehensive sexual education (CSE). The aim is for the BDE to propose these models to the Ministry of education and the report from this activity to be the basis for piloting CSE in the formal education. Members within the group are experts from various fields, mostly working in education, such as representatives from the BDE, the MOE, the Institutes of Psychology, Pedagogy, Defectology, the Academy for Pedagogy, the Center for Vocational Education, representatives from schools such as psychologists, pedagogists, teachers and representatives from organizations working in the field of youth, health, education and LGBTI issues among others.

Conclusion and recommendations

In conclusion, the state failed to provide legal protection of discrimination on grounds of SOGIE in access to education. The state also failed to provide anti-bullying protection for LGBTI students in schools and to ensure equal access to safe education. There are still a number of textbooks used in mandatory courses, full of discriminatory language pathologizing homosexuality. Therefore, the recommendations to the state include:

1. Amending the Law on Primary Education and the Law on Secondary education as to recognize SOGIES as prohibited grounds for discrimination.
2. Amending the Law on Higher Education as to include gender identity and expression and sex characteristics as prohibited grounds for discrimination.
3. The Ministry of Education should introduce comprehensive sexual education in the curricula for primary and secondary education.
4. The Ministry of Education and Science and the Bureau for Educational Development should conduct a comprehensive review of all official textbooks for primary and secondary education with the purpose of removing all discriminatory and offensive content towards LGBTI people and replace them with adequate textbooks that promote equality, non-discrimination and social inclusion.
5. The Ministry of Education should introduce an anti-bullying strategy in primary and secondary schools, including measures against bullying based on SOGIES.

⁷³ Coalition, Annual Report 2012, pp. 98-99.

⁷⁴ Id., p. 81.

VII. Health

According to the Law on Protection of the Rights of the Patients (Article 5),⁷⁵ “The patient has the right to exercise the rights prescribed by this Law, without any discrimination based on gender, race, skin color, language, religion, political or another opinion, national or social origin, national minority, material status, origin by birth, sexual orientation or any other status”. The legislator failed to include gender identity and expression, and sex characteristics in the lists of grounds for discrimination, leaving transgender people even more marginalized and invisible. The Law on Health Protection,⁷⁶ in the non-discrimination provisions (Article 9) does not recognize SOGIES as a basis for discrimination. Moreover, the Ministry of Health failed to establish functional mechanisms foreseen in the law to promote and protect patient’s rights.

Access to both general and trans-specific health care for transgender people is limited. The Ministry of Health does not provide training courses for the medical professionals in regard to the health of transgender people. According to a recent analysis, medical professionals in Macedonia do not have the knowledge or the skills for working with transgender people, and they are not sensitive nor aware of the health needs of transgender people.⁷⁷

The necessary medical procedures for transgender people who are in process of transition (hormonal therapy and surgical intervention for gender-affirming procedures), are not recognized by the Ministry of Health and the Health Insurance Fund (HIF) as necessary for advancing the life and health of the transgender people,⁷⁸ they are not available in the medical facilities in the country and are not on the in the DRG - system (diagnosis related group) so as to be financially covered by the State Health Insurance. When transgender people go abroad for hormonal therapy or gender affirmation surgeries, the Macedonian Fund for Health Insurance refuses to cover the expenses on the purported ground that these medical services are merely cosmetic.⁷⁹

The lack of access to health for transgender people is obvious in several cases that demonstrate transgender people’s experience in the health system. In one of them, earlier this year, a transgender woman was denied an examination by an urologist in relation to a surgery she should have undergone at the state clinic in Skopje. The surgery was supposed to remove the atrophied testicles, which are a potential cause of cancer. The medical professionals, assuming that this was gender affirmation surgery, refused to give her the needed medical attention and with that, directly endangered her life. After reactions by the LGBTI organizations, the transgender woman gained access to the health services and the case was closed.

Conclusions and recommendations

Overall, the Macedonian Ministry of Health has failed to develop and adopt standards and protocols to meet the health needs of transgender people. The state failed to recognize the medical procedures as necessary for advancing the life and health of transgender people:

- 1. Including gender affirmation procedures in the DRG - system (diagnosis related group) as to be financially covered by the State Health Insurance.**

75 Id., pp. 81-82.

76 Official Gazette of the Republic of Macedonia no. 82/2008, 12/2009 and 53/2011. Law on Protection of the Rights of the Patients.

77 Official Gazette of the Republic of Macedonia no. 43/2012, 145/2012, 87/2013, 164/2013, 39/2014, 43/2014, 132/2014, 188/2014, 10/2015, 61/2015, 154/2015, 192/2015, 17/2016 and 37/2016. Law on Health Protection.

78 Boshkova Natasha, Raiden Igor. 2017. Analysis of the health needs and accessibility of health services for transgender people in Macedonia. Coalition Margins

79 Coalition, Annual Report 2017, p. 122.

80 Coalition, Annual Report 2013, p. 89.

2. The Ministry of Health should prepare and adopt a Protocol for the health protection of the transgender people who are in medically transitioning/undergoing gender affirming procedures.
3. Including sexual orientation, gender identity and expression, and sex characteristics as protected grounds of discrimination in the Law on Health Protection.
4. Including gender identity and expression and sex characteristics as protected grounds of discrimination in the Law on Protection of the Rights of the Patients.

VIII. Housing

The Law on Prevention and Protection against Discrimination prohibits discrimination in access to housing. This Law does not include sexual orientation, gender identity and expression in the list of grounds on which discrimination is prohibited, but offers an open list for other grounds defined in other laws or ratified with international documents. That gives limited access to legal protection when the housing rights are violated. Nevertheless, the Law on Housing does not include specific provisions to address the rights and the needs of LGBTI people.

According to the Ministry of Labour and Social Policy (MLSP), the state does not provide special measures to decrease the risk of homelessness faced by LGBTI people. Also, they stated that “for many years now, the budget for non-discrimination training courses has not been approved.” However, MLSP stated that in the following period they will implement training courses for social welfare workers in cooperation with LGBTI organizations. The analyses conducted by the organizations show a very high presence of discrimination on the grounds of SOGI in the social welfare centers (SWC).⁸¹ According to one analysis, 39% of LGBTI people have experienced discrimination in access to social services. Out of those, only 17% reported the case to SWC, while 75% did not report the case to any institution or organization. The main reason for not reporting the cases of discrimination in access to social services is the lack of trust in the institution (45%), while other reasons include fear of harmful consequences (34%), discomfort to talk about own sexual orientation and/or gender identity and other reasons (4%). **This analysis confirms the high level of distrust the LGBTI community has in the institutions, but it also shows the urgent need of introducing measures that would ensure that the relevant social services are provided in a non-discriminatory and respectful manner to the LGBTI people.**

The state failed to provide Shelter for LGBTI people under risk of homelessness. Therefore, in the spring of 2017, LGBTI Support Center opened a shelter as a direct service for LGBTI people under risk. The shelter provides assistance in situations of crisis and acute violence, it provides longer-term assistance and protection, programs for reintegration and resocialization and other support. With a capacity of 7 people for a long stay, this is the only shelter for LGBTI people in the country. The shelter is accredited by the Ministry of Labour and Social Policy for fulfilling the necessary criteria. **But, up to the time of preparation of this report, the shelter had not received any financial support from the state, even though the state does not provide this form of protection for LGBTI people under risk in any other way.**

81 Andonovski Kocho, Bojanovska Doriana, Bogoevski Pavle, Gelevska Andrijana. “Analysis of the problems and needs of LGBTI people in the Republic of Macedonia (in the area of social protection, legal services and policing)”. 2016. LGBTI Support Centre.

Conclusions and recommendations

The state failed to recognize the need to ensure the protection from discrimination against LGBTI people in the access to housing and failed to sensitize social workers for work with LGBTI people and failed to ensure sustainability of the only shelter for LGBTI people by providing financial support. Therefore, the recommendations to the state include:

1. Amending the Law on Housing as to include anti-discrimination provisions protecting the rights of LGBTI people in access to housing.
2. Ministry of Labour and Social Policy should introduce measures that would ensure that the relevant social services are provided in a non-discriminatory and respectful manner to the LGBTI people.
3. Ministry of Labour and Social Policy should introduce mandatory training for sensitizing the social workers for work in a respectful manner to the sexual and gender minorities.

IX. Sports

The Agency for Youth and Sports (AYS) stated that they follow the Recommendation CM/REC (2010)5 and the Appendix to Recommendation CM/Rec (2010)5 in their work. They stated that AYS and the National Federations of Sports undertake all the measures to “avoid discrimination on grounds of sexual orientation or gender identity in sport”. However, the Law on Sports⁸² does not include any non-discriminatory provisions. In addition, the MHC-LGBTI in the desk research of the documents of four national federations of sports did not map a provision that prohibits discrimination in any document.

Incitement to violence and hate are an often occurrence at sports events. Although this act is predicted as a criminal act in Article 319 of the Criminal Code, it is also foreseen as a misdemeanor in the Law on Prevention of Violence and Misbehavior at Sports Competitions,⁸³ where the foreseen penalty is most often a fine. The biggest problem occurs in the practice. Even though hate speech based on sexual orientation and gender identity and expression is often practiced at sports events (according to an online survey on the portal queer.mk, 35% of the respondents survived or witnessed homophobic behaviour during sports event⁸⁴), it is always sanctioned as a misdemeanor, and not as a criminal act. There are no registered cases of criminal charges for incitement of hatred or violence on the basis of sexual orientation and gender identity at sports events. **Given that this is a constant and re-occurring practice, the effectiveness of the penalties is highly questionable.**

AYS stated that they have encouraged dialogue between sports organizations and fan clubs aimed to raise awareness and to condemn the homophobic and transphobic behavior by some individuals from the fan club members.

82 Official Gazette of the Republic of Macedonia no. 29/2002, 66/2004, 81/2008, 18/2011, 51/2011, 64/2012, 148/2013, 187/2013, 42/2014, 138/2014, 177/2014, 177/2014, 72/2015, 153/2015, 6/2016, 55/2016, 61/2016, 106/2016 and 190/2016. Law on Sports.

83 Official Gazette of the Republic of Macedonia no. 89/2004, 142/2008, 135/2011 and 154/2015. Law on Prevention of Violence and Misbehavior at Sports Competitions.

84 <https://www.queer.mk/zlatko-andonovski-portparol-na-fudbalskata-federacija-na-makedonija-porachuva-fudbalot-e-sport-za-site-28-02-2017.html>

Conclusions and recommendations

In conclusion, the state failed to include anti-discriminatory provisions in the Law on Sports and failed to introduce measures to prevent and protect of hate speech on grounds of sexual orientation and gender identity and expression during the sports events.

Therefore, the recommendations to the state include:

1. Amending the Law on Sports in order to include non-discriminatory provisions and to include sexual orientation, gender identity and expression, and sex characteristics as protected grounds of discrimination.
2. Conducting a comprehensive analysis on the penalties used against hate speech during sports events and introducing measures for the effective tackling of hate speech on the grounds of sexual orientations and gender identity and expression during sports events.

X. Right to seek asylum

The Constitution (Article 29) guarantees the “right of asylum to foreign subjects and stateless persons expelled because of democratic political convictions and activities”. The conditions are defined by the recently adopted Law on International and Temporary Protection (LITP)⁸⁵ that aimed to harmonize national legislation with EU Directives in regard to asylum and international protection. In Article 7(1), the LITP gives clear definitions of the grounds upon which one person can have justified fear that they are or will be persecuted. The described grounds are race, religion, and nationality, membership to a particular social group or because of the political beliefs. Article 7(5) provides the definition for (social) “group” and the state, for the first time, recognizes both sexual orientation and gender identity as grounds for seeking asylum or protection: “(d) depending on the circumstances of the country of origin, a social group may also be a group based on sexual orientation. Sexual orientation is not a crime punishable under national law. Gender-related elements that include gender identity should be taken into account when determining a membership or characteristic of a particular social group”.

According to LITP, the asylum seeker, refugee or a person under subsidiary protection cannot be expelled or in any way returned to the borders of the state a) in which his/her life or freedom would be in jeopardy because of his race, religion, nationality, belonging to a particular social group or political belief, or b) where he/she would be subjected to torture, inhuman or degrading treatment or punishment. Although clearly progressive, the functionality of the Law is yet to be seen as it has been adopted in April 2018 and the number of refugees and asylum seekers passing through Macedonia has significantly decreased.

According to the questionnaire received by the Ministry of Interior (MOI), the LITP precisely defines the authority of the Department of Asylum and Immigration and what supporting documents can be required in the procedure upon asylum request. According to LITP, the Department has no right to ask for any additional “evidence” or to impose psychological tests for the asylum seeker to prove their sexual orientation or gender identity. Furthermore, according to LITP (Article 7), it is not important if the asylum seeker owns the racial, religious, national, social or political characteristics provided that the characteristic is attributed to them by the persecutor.

85 Official Gazette of the Republic of Macedonia no. 64/2018. Law on International and Temporary Protection.

The MOI, in their returned questionnaire, did not refer to the articles from LITP that protect the rights of the LGBTI people, but instead, gave long, complicated and irrelevant answers, which makes the implementation of the Law concerning and questionable.

There are no specific measures in place to prevent violence against LGBTI asylum seekers deprived of their liberty. The LITP only provides provisions in terms of exceptional cases in which the asylum seeker may be restricted in their freedom of movement if other less compelling alternative measures under national law (revocation of identification documents, regular reporting) cannot be effectively enforced. The freedom of movement may be limited by the following measures:

- prohibition of movement outside the Reception Center for Asylum Seekers or another place of accommodation determined by the Ministry of Labor and Social Policy, or
- accommodation in the Reception Center for Foreigners.

There are no alternatives created for and offered specifically to LGBTI asylum seekers. The laws and measures are not individualized for the specific groups and their needs for protection, which might expose the LGBTI asylum seekers to high risk of violence.

The Law on Free Legal Aid⁸⁶ guarantees access to the right to free legal aid to the asylum seeker. However, only a small number of the asylum seekers have access to this right. Namely, in 2016, there were 58 claims to the Ministry of Justice to approve free legal aid form asylum seekers, 36 of which were ceased and 22 were denied the right.⁸⁷

Conclusion and recommendations

The new law on international and temporary protection is a progressive legal solution in terms of recognizing sexual orientation and gender identity as grounds. But, the fact that the MOI did not refer to the Article that recognizes sexual orientation and gender identity is worrisome. Therefore, the recommendations to the state include:

1. The Ministry of Interior should introduce mandatory training for sensitizing the officials for working with the LGBTI refugees and asylum seekers in a non-discriminatory and respectful manner.

⁸⁶ Official Gazette of the Republic of Macedonia no. 161/2009, 185/2011, 27/2014 and 104/2015. Law on Free Legal Aid.

⁸⁷ Ministry of Justice, Annual Report on Free Legal Aid available at: <http://www.pravda.gov.mk/Upload/Documents/tekst%20na%20izvestajot%20za%202016.pdf>

XI. National Human Rights Structures

In Macedonia, the Constitutional Court, the Ombudsman, the Commission for Protection against Discrimination, the Standing Inquiry Committee for the Protection of Freedoms and the Rights of the Citizens, within the Assembly of the Republic of Macedonia, and Public Prosecutor's Office, are national human rights structures which address and act in cases of discrimination.

According to Article 76 of the Constitution of the Republic of Macedonia, the Standing Inquiry Committee for Protection of the Rights and Freedoms of the Citizens (CPRFC) within the Assembly of the Republic of Macedonia, has a clear mandate to protect the freedoms and rights of citizens in cases when they are endangered by the state bodies. The findings of the CPRFC are the basis for initiating a procedure for determining the liability of state organs. On invitation by the CPRFC, on the last open session dedicated on the EU Progress report, a representative from the MHC-LGBTI gave an overview on the progress noted by the European Commission, but also the recommendations for the advancement of the rights of the LGBTI people. As a result of that, in the conclusions of the session, they urged for the necessary measures to be undertaken for investigating and resolving the attacks against the „marginalized groups“. Nevertheless both the representative of the MHC-LGBTI and the Coordinator of Inter-Party Parliamentary Group on LGBTI, in their statements referred to “LGBTI people and LGBTI Support Center” while giving the statements, the president of CPRFC decided on “marginalised groups” and did not step down even after reactions from the Coordinator of Inter-Party Parliamentary Group on LGBTI.

The Constitution recognizes that “all citizens” are “equal before the Constitution and the Laws”, but neglects to mention sexual orientation, gender identity and expression, and sex characteristics when later states that: “the citizens of Republic of Macedonia are equal in their freedoms and rights, impartially of their sex, race, skin colour, nationality and social heritage, political and religious affiliation, property and social status” (Article 9). It also neglects to include sexual orientation, gender identity and expression, and sex characteristics on the grounds (sex, race, faith, nationality, social and political affiliation) for the prohibition of discrimination (Article 110).

The Ombudsman and the Commission for Protection Against Discrimination (CPAD) are not clearly mandated to address discrimination based on the grounds of sexual orientation or gender identity, having in mind that sexual orientation and gender identity are not included as special grounds for discrimination in the Law on Prevention and Protection against Discrimination (LPPD) or in the Law on the Ombudsman. However, the open list of discriminatory grounds in LPPD opens the possibility of protection from discrimination based on sexual orientation and gender identity by the CPAD. This was also confirmed in the answer received by the CPAD. In absence of a clear framework for protection from discrimination based on sexual orientation and gender identity, in 2016, the CPAD adopted a Protocol for determining the procedure for dealing with cases for protection from discrimination based on sexual orientation and gender identity.⁸⁸ However, the Protocol was not fully promoted by the Commission and the LGBTI people remain uninformed about its existence. Therefore, most of the cases for discrimination based on sexual orientation or gender identity in which the Commission has acted are initiated by the CSO's. **The Commission does not fulfill the standards of independence, expertise and professionalism and in obvious cases of discrimination, when other equality bodies have determined discrimination, the Commission failed to do so.**

88 <http://hera.org.mk/wp-content/uploads/2015/11/Protokol-Zastita-od-diskriminacija-MK.pdf>

Case study

From 2015 until the day of submission of this report, the members of the National Network against Homophobia and Transphobia submitted a total of 18 complaints on SOGI to the CPAD. The CPAD found discrimination in only 3 cases. In 10 cases, it did not identify discrimination, in 2 cases, the organizations are still waiting on a decision, and in 3 cases, the CPAD provided an unclear opinion or stopped the procedure.⁸⁹

The mandate of the Ombudsman includes measures and activities for the promotion of the non-discrimination principle. The Ombudsman is also competent to act against state administration and other public bodies in cases of discrimination. The discriminatory grounds are not specifically listed in the Law on the Ombudsman and therefore, sexual orientation and gender identity are not included as separate grounds for discrimination. In practice, the Ombudsman acts on complaints about discrimination based on SOGI, mostly submitted by the CSO's. However, there is no example for initiating *ex-officio* procedure in cases of discrimination against LGBTI as a group. In December 2016, the LGBTI Support Center signed a Memorandum of Cooperation with the Ombudsman. With this, the Ombudsman pledged dedication in the protection of the rights of the LGBTI people. However, in their annual report, the Ombudsman summarized their work in protecting human rights and freedoms altogether, without mentioning the grounds of the violations. The lack of this information, on the other hand, prevented organizations to monitor and report the Ombudsman's work in the protection of the rights and freedoms of LGBTI people. The official request submitted by the MHC-LGBTI to access to the Ombudsman's information of public character has been left unanswered. Therefore, outcomes of the Memorandum cannot be reported here.

Conclusion and recommendations

In conclusion, apart from the steps in a positive direction, the national human right structures still neglect to provide comprehensive support of LGBTI people. Therefore, the recommendations to state include:

1. Adopting the newly drafted Law on Prevention and Protection against Discrimination that recognizes the need of professionalisation of the Commission for Protection against Discrimination and foreseen strict criteria for selection of Commissioners.

XII. Discrimination on multiple grounds

The Law on Prevention and Protection against Discrimination (Article 12) defines severe forms of discrimination: discrimination inflicted on one person on multiple discriminatory grounds (multiple discrimination), discrimination inflicted several times (repeated discrimination), discrimination being inflicted for a longer period (extended discrimination) or discrimination that severely affects the discriminated person with its consequences. The new draft Law also includes intersectional discrimination.

Conclusion and recommendations

The state has not undertaken any special measures to pro-actively identify, protect and/or support LGBTI people affected by multiple discrimination, as stated in the answers provided by the Ministry for Labour and Social Policy. Therefore, the recommendations to the state include:

1. Adopting the newly drafted Law on Prevention and Protection against Discrimination that recognizes discrimination on multiple grounds including intersectional discrimination.

⁸⁹ National Network Against Homophobia and Transphobia, "Arguments for Adopting a New Law on Prevention and Protection against Discrimination", 2018. Available at: <http://coalition.org.mk/wp-content/uploads/2018/06/Glasaj-za-ednakvost-MK-za-proverka-03.pdf>

Appendix I

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 ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, 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;

Recognizing 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 human rights and fundamental freedoms;

Recognizing 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 criminalization, marginalization, 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 analyze 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 analyzed 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 legitimizing 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 organizations, political organizations 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 organizations 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 organizations 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 favor 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 criminalizing 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 recognized 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 recognizes 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 recognize 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 victimization.

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 Organization.

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.

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 recognize 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 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 so 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.

Appendix II. 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 expression refers to each person's manifestation of their gender identity, and/or the one that is perceived by others.

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), sterilization (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 LGBTI 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 LGBTI 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 LGBTI people refers to public expressions which spread, incite, promote or justify hatred, discrimination or hostility towards LGBTI 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.

LGBTI people or LGBTI 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 LGBTI heading in social and political arenas. Sometimes LGBTI is extended as 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 organization”.

Sex characteristics refer to the chromosomal, gonadal and anatomical features of a person, which include primary characteristics such as reproductive organs and genitalia and/or in chromosomal structures and hormones; and secondary characteristics such as muscle mass, hair distribution, breasts and/or structure.

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).

SOGIES is an acronym for sexual orientation, gender identity and expression, and sex characteristics.

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 term “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, criminalization, marginalization, social exclusion and violence on grounds of sexual orientation or gender identity.

