Analysis of the Treatment of Transgender Persons in the National Legal System of Republic of Macedonia

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Introduction

In the Republic of Macedonia, LGBTI people, and especially trans people live in a legal system which systematically discriminates against them, a society whose media never miss a chance to sensationalize this community as a whole, as well as individuals within it, an environment which on several occasions has manifested its intolerance toward them, often using methods of open violence, calls for violence and hate.

The legal framework in Macedonia, which is (or should be) regarding trans people is very confusing, full of incomplete aspects, and at times contradictory to itself. In almost every field of the national legal system, the specific needs of LGBTI people, and especially trans people are ignored. The very attempt of opening an informed debate on the issue hasn't yielded with results yet. On the contrary, the same institutions that should promote tolerance and inclusion are most often the ones that discrimination and transphobia comes from.

Protection in national antidiscrimination law

The Law on prevention and protection against discrimination, formally is restrictive enough not to contain sexual orientation and gender identity as separate grounds for discrimination, but also open enough to cover these two possible grounds under the category of "any other grounds". Hence, in reality, state mechanisms for protection can say that they do process submissions on discrimination on the grounds of gender identity, but simultaneously, this can be limited to a formalistic post delictum processing of the few cases of discrimination per year, where the victims had been brave enough to address the Commission for protection against discrimination. However, the confusing and deficient situation does not end with the general anti-discrimination Law of the
Republic of Macedonia. If we look more closely at the laws in the Republic of Macedonia which regulate certain areas, we will notice that sexual orientation as a category is legally comprised only in the field of employment, higher education and health care. However, without properly defined general protection against discrimination, discrimination in employment is too complicated to prove; higher education institutions are still using textbooks which treat homosexuality as a "deviation" or "pathology", while a textbook on Criminalistic psychology at the Faculty of security in Skopje categorizes transvestites as people prone to committing brutal violent crimes; regarding the national health care system, the LGBTI Support Centre has no information on whether at least one person was reimbursed the costs of sex reassignment surgery in another country (which is a legally regulated obligation of the Health Insurance Fund, regarding medical treatment which is unavailable in the country), while several representatives of the system have publicly given very homophobic and transphobic statements. For example, the former Minister of labor and social affairs (currently Minister of education). This very same minister explained the absence of sexual orientation and gender identity in the Law on prevention and protection against discrimination on his Facebook profile, speaking of his and his party's efforts for a "healthy nation" and "births of healthy children in a healthy family environment". Gender identity is not mentioned in any law, even though the Commission for protection against discrimination has stated that it processes complaints on this ground, classifying them under the "sex and gender" category.

Protection in national criminal law

Regarding legal protection against criminal acts, in the Republic of Macedonia hate crimes are treated within the process of determining the punishment, after the perpetrator is found guilty of his basic crime. This model is not a problem by itself, and it is being applied by many countries in Europe and throughout the world, but its success
depends on the degree in which the police, prosecution and judicial procedures have been adjusted in order to respond to the needs of processing hate crimes. In the Republic of Macedonia, the police and prosecution have not even had special education, nor a particular legal obligation for special processing of this type of crimes. Furthermore, not one state institution keeps records on hate crimes. This is how the state practically blocks itself from acting preventively against intolerance, discrimination and violence against trans people, and it is also too restricted by the laws to conduct an effective formal procedure, during a period of increasing cases of discrimination and violence against the members of this marginalized group.

Medical treatment, administrative procedures and asylum

Although, the State provides endocrinological and psychological treatment for transgender persons, this is not effective or appropriate because there is no practice or trainings for the professional health care workers in cases of gender reassignment. The state does not provide surgery for gender reassignment and there is no evidence of reimbursement by the State Health Fund even where transgender persons had conducted the surgery in a foreign country with a private funds.

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

Same-sex couples are discriminated by the Family Law compared with different – sex ones, and there are no measures taken by the authorities to solve this problem. Same-sex couples are not even protected from domestic violence by the Family Law.
In the list of the grounds on which asylum may be requested, the Macedonian Law on Asylum and Temporary Protection does not explicitly mention sexual orientation or gender identity, refugee status can be granted under the “membership of a particular social group”. However, there are no examples or documented cases that prove that refugee status was granted because of a person’s sexual orientation or gender identity.

**Practical results of legal exclusion**

The entire situation with the lack of inclusion of LGBTI people in general in the legal framework in Macedonia, in reality was supplemented by the work of the largest national media, which were organized in joining the homophobic and transphobic statements of government representatives and public servants, and repeatedly used homophobic and transphobic rhetoric, twisted the facts and published lies of LGBTI people and organizations which protect and promote their rights, only to increase the sensationalism in their articles and reports. Unfortunately, the combination of homophobic and transphobic public standpoints of the government and the sensationalist, biased and subjective reporting by the largest national media proved to be more than effective for paving the way for violence, hate and intolerance toward LGBTI people. The LGBTI Support Centre itself was a target of attacks and arson attempts on several occasions. However, what is most concerning is the passiveness of state institutions and lack of punishment for the perpetrators. The Minister of interior did not express clear public condemnation of anti-LGBTI violence. Neither did the Prime Minister, the President or any other high-level government representative. National bodies for protection of human rights, among which is the Commission for protection against discrimination, did not visit the premises of the LGBTI Support Centre, neither did they condemn the anti-LGBTI violence and attacks against human rights defenders. Regarding the attacks against the Centre, activists and members of the community, there have been no results from the investigations conducted by the Ministry of interior.
The only finished investigation is the one against the attackers of the Centre on the second of March, but primarily due to the ethnic dimension of this incident. Even though in this case one of the main evidence were the recordings from the security cameras of the Centre, in the other cases the recordings seemed to not be helpful. This passiveness of the institutions is worrying because it leaves an impression that they not only support anti-LGBTI violence, but they also promote it with their passiveness.

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

**National law in regard to international standards and recommendations**

The European Commission in its 2009 Progress Report on Macedonia emphasized the state treatment of LGBTI people as a problem, for the first time in a document of this type. Since then, all Progress Reports explicitly state that the national anti-discrimination legislation is not aligned with the demands of the EU and that the social intolerance toward LGBTI people is worrying. The UN mechanisms also note this lack of alignment with the international human rights standards, which the country has ratified and accepted in the national legal system. Simultaneously, the latest Report of the Committee for civil liberties, justice and internal affairs of the European Parliament clearly points to the need for consolidation of the existing legal framework of the EU among member-states, in the field of protection against discrimination on the grounds of sexual orientation and gender identity, but the analysis of the implementation of the Committee of Ministers of the Council of Europe Recommendation CM/Rec(2010)5 points out that LGBTI people in Macedonia are discriminated on systemic level and lack appropriate mechanisms for protection against discrimination, because unequal treatment of LGBTI people in Macedonia is legally regulated.
The operative text of the Recommendation includes four main steps: a review of existing measures to eliminate any discrimination on grounds of sexual orientation or gender identity, introduction of effective measures to combat such discrimination, ensuring that victims have access to effective legal remedies, and ensuring that the recommendation is translated and disseminated as widely as possible. It also requires that member states be guided by the principles and measures contained in the Appendix to the Recommendation.

The evidence presented in the Compliance Documentation Report indicates that the state authorities have not even carried out the simplest of this, the translation and dissemination of the Recommendation, despite the requests to the Ministry of Foreign Affairs by the Macedonian Helsinki Committee. These requests were followed by an explanation from the Ministry of Foreign Affairs that the recommendations of the Council of Europe are not binding for the member states. No debate for informing the general public about the Recommendation and its Appendix has been organized by the State authorities. In addition, the Recommendation was not disseminated to all the relevant institutions, NGOs and the LGBT community. Macedonian Helsinki Committee has translated the Recommendation in Macedonian, placed it on the website and sent the translated text to the authorities and Members of the Assembly. Apart from the Broadcasting Council, no other state body has placed the Recommendation on their website.

National legislative measures to combat discrimination on grounds on gender identity and sexual orientation

One cannot find any example of the Government promoting tolerance for LGBT people and taking measures to combat discrimination on the grounds of sexual orientation or

1 Macedonian Helsinki Committee [http://www.mhc.org.mk/](http://www.mhc.org.mk/)
gender identity. On the contrary, the Minister for Labour and Social Policy often reminds the public that there will not be changes of the legislation for same-sex couples to be legally recognized as partners and there will not be changes in the legislation by which same-sex couples can adopt children. This attitude promotes negative reactions in the public for LGBT people.

To this date, only Ivon Velichkovski, Member of Parliament from the Liberal Party, part of the opposition, has tried to raise the awareness of the public authorities and institutions about disavowing hatred and discriminatory speech, by submitting a Declaration³ for condemnation of hate speech against LGBT people in the Assembly. But, the Assembly failed to adopt the proposed Declaration⁴, because it was not supported by the ruling party.

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