



BEING LGBTI in EASTERN EUROPE: The former Yugoslav Republic of Macedonia Country Report

The former Yugoslav Republic of Macedonia

NATIONAL LGBTI REPORT



Empowered lives.
Resilient nations.

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Disclaimer

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List of Abbreviations

CCHR	Centre for Civil and Human Rights
Coalition SHRMC	Coalition “Sexual and Health Rights of Marginalized Communities”
CPD	Commission for Prevention and Protection from Discrimination
CSE	Comprehensive sexuality education
CSO	Civil Society Organization
DA	Democratic Alternative
DOM	Democratic Renewal of Macedonia
EGAL	Equality For Gays And Lesbians
EU	European Union
LDP	Liberal Democratic Party
LEOMW	Law on Equal Opportunities between Men and Women
LGBT	Lesbian, Gay, Bisexual and Transgender People
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex People
LHE	Law on Higher Education
LHP	Law on Health Protection
LLR	Law on Labour Relations
LP	Liberal Party
LPE	Law on Primary Education
LPHW	Law on Protection against Harassment in the Workplace
LPPD	Law on Prevention and Protection Against Discrimination
LPPR	Law on Protection of Patients’ Rights
LSE	Law on Secondary Education
LSP	Law on Social Protection
MASSO	Macedonian Association for Free Sexual Orientation
MHC	Macedonian Helsinki Committee
MOI	Ministry of Interior Affairs
MSM	Men Having Sex With Men
MSW	Male Sex Workers
NGO	Non-governmental Organization
NSDP	New Social-Democratic Party
PLHIV	People Living With HIV
PWID	People Who Inject Drugs
SDSM	Social-Democratic Party of Macedonia
SEE	South-Eastern Europe
SHRMC	Sexual and Health Rights of Marginalized Communities
SOGI	Sexual Orientation and Gender Identity
SW	Sex Workers
VMRO-DPMNE	Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity

Definitions of key terms¹

Discrimination

Discrimination is any distinction, exclusion, restriction or any form of an unfavourable position that a person, or a group of people, is placed in on any grounds. A person or a group of people may be placed in an unfavourable position on various grounds or characteristics. Lesbian, gay and bisexual people may be discriminated against on the grounds of sexual orientation; trans people (among others, transgender and transexual people) on the grounds of gender identity and gender expression; and intersex people may be discriminated against on the ground of their sex characteristics. This is why it is very important that all three grounds (sexual orientation, gender identity and sex characteristics) are recognized by law as prohibited grounds of discrimination.

Gender identity

Discrimination is any distinction, exclusion, restriction or any form of an unfavourable position that a person, or a group of Gender identity reflects a deeply felt and experienced sense of one's own gender. A person's gender identity is typically consistent with the sex assigned to them at birth. For transgender people, there is an inconsistency between their sense of their own gender and the sex they were assigned at birth. In some cases, their appearance and mannerisms and other outward characteristics may conflict with society's expectations of gender-normative behaviour.

Homophobia and Transphobia

Homophobia is an irrational fear of, hatred or aversion towards lesbian, gay or bisexual people; transphobia denotes an irrational fear, hatred or aversion towards transgender people. Because the term homophobia is widely understood, it is often used in an all-encompassing way to refer to fear, hatred and aversion towards LGBT people in general.

Intersex

An intersex person is born with sexual anatomy, reproductive organs, and/or chromosome patterns that do not fit the typical definition of male or female. This may be apparent at birth or become so later in life. An intersex person may identify as male or female or as neither. Intersex status is not about sexual orientation or gender identity: intersex people experience the same range of sexual orientations and gender identities as non-intersex people.

LGBT

LGBT stands for "lesbian, gay, bisexual and transgender". While these terms have increasing global resonance, in different cultures other terms may be used to describe people who form same-sex relationships and those who exhibit non-binary gender identities.

LGBTI

LGBTI stands for "lesbian, gay, bisexual, transgender and intersex". The term refers to a heterogeneous group and is being used in social and political activism.

Sexual orientation

Sexual orientation refers to a person's physical, romantic and/or emotional attraction towards other people. Everyone has a sexual orientation, which is integral to a person's identity. Gay men and lesbian women are attracted to individuals of the same sex as themselves. Heterosexual people (sometimes known as "straight") are attracted to individuals of a different sex from themselves. Bisexual people may be attracted to individuals of the same or different sex. Sexual orientation is not related to gender identity.

Transgender

Transgender (sometimes shortened to "trans") is an umbrella term used to describe a wide range of identities including transexual people, cross-dressers (sometimes referred to as "transvestites"), people who identify as third gender, and others whose appearance and characteristics are perceived as gender atypical. **Transwomen** identify as women but were classified as males when they were born. **Transmen** identify as men but were classified female when they were born. Some transgender people seek surgery or take hormones to bring their body into alignment with their gender identity; others do not.

1. Executive summary

LGBTI people in the former Yugoslav Republic of Macedonia are exposed to stigmatization, discrimination and isolation due to many factors. These include inadequate legislation, traditional patriarchal social attitudes and values, lack of information about legal methods of protection, lack of political will to guarantee and protect the rights of LGBTI people, and fear of possible exposure of their LGBTI status. Over the past 10 years there has been a decline in the protection of the rights of LGBTI people. At the same time there has been an increase in homophobic and transphobic violence, alongside growing visibility of LGBTI people and activist organizations.²

Stigmatization and discrimination are present to a great extent in health, social and other public institutions. They represent an obstacle to the realization and protection of LGBTI people's rights. This is evident in the Anti-Discrimination Law, which does not include sexual orientation and gender identity (SOGI) as grounds for discrimination and which lacks provisions for hate speech and hate crimes on the grounds of SOGI. Public institutions have repeatedly showed an inadequate response towards cases of homophobic hate crimes and hate speech. There has been a creation of moral panic in relation to same-sex marriage, including several attempts by representatives from the ruling party to introduce a constitutional definition of marriage and intimate relations which would institutionalize heteronormativity.

The absence of specific national legal provisions to protect LGBTI people, and the lack of political will to address issues relating to the human rights of sexual minorities is even more worrying given the high levels of fear of social exclusion and stigmatization among LGBTI people. These fears reflect widespread negative attitudes towards LGBTI people within the general population. Surveys measuring the degree to which the general public accept diversity³ indicate that citizens are relatively tolerant when it comes to living in close proximity to groups different from their own. However, a recent study has shown that homosexual couples are considered to be the least acceptable neighbours, including by young people.⁴

LGBTI people face higher levels of discrimination on a daily basis when compared with their non-LGBTI peers.⁵ A significant number of the LGBTI people see themselves as victims of violence because of their SOGI.⁶ The majority of LGBTI people who were victims of violence did not report it to the relevant institutions. Further, people who did report cases of violence reported high level of dissatisfaction because they faced discrimination or unprofessional attitudes based on their SOGI from the police and other institutions involved in the reporting process.⁷ Access to, and quality of, social protection is another area whereby LGBTI people regularly face discrimination.⁸

The former Yugoslav Republic of Macedonia is an EU accession country. To achieve EU integration, Macedonian law must reflect EU requirements in a range of areas including the rule of law and human rights. The transposition of the EU acquis, of international human rights instruments into national legislation can play the role of a corrective and accelerate the process of improvement in the human rights situation of LGBTI people.

This report provides a detailed overview of the socio-political contexts and attitudes towards the LGBTI population in former Yugoslav Republic of Macedonia. It evidences the current legal and on-the-ground status of the rights of LGBTI people, and the areas where action still needs to be taken to reduce discrimination and ensure better levels of protection. Chapter Four sets out a series of recommendations for specific actions that need to be taken at national level in relation to employment, education, health, discrimination, family affairs, the media, political parties, hate speech and hate crimes.

1.1 Introduction

The following report has been developed as part of the regional UNDP project “Being LGBTI in Eastern Europe: Reducing Inequalities and Exclusion, and Combating Homophobia and Transphobia Experienced by LGBTI People in Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Serbia.” The project is supported by USAID and implemented by UNDP, in partnership with Macedonian civil society organizations and in cooperation with the LGBT Equal Rights Association (ERA). It aims to strengthen the evidence base, develop advocacy approaches and instruments in national languages, and convene dialogues that bring together national decision makers from the executive, legislative and judiciary branches with LGBTI civil society organizations, their allies and other stakeholders.

The UNDP project included research on the situation of lesbian, gay, bisexual, transgender and intersex (LGBTI) people in the participating countries. The research focuses on themes such as stigma, discrimination, inequality, social exclusion and violence. The present report describes the situation of LGBTI people in the former Yugoslav Republic of Macedonia.

The research examined the latest developments in anti-discrimination legislation and the process of harmonization of national laws with human rights and equality-related norms of the European Union legal framework (the *acquis communautaire*). It maps newly-emerged national institutions with mandates related to LGBTI issues, such as constitutional rights protectors (ombudspersons), anti-discrimination commissions, and others.

This national report includes insights into the legislative, policy, and on-the-ground situation for LGBTI people in former Yugoslav Republic of Macedonia in relation to their human rights, levels of social inclusion/exclusion and discrimination, and other experiences. It considers objective indicators comprising the existing laws, policies, strategies, actions, operational plans, and competencies of the existing mechanisms and national bodies authorized to ensure protection of human rights and non-discrimination. These are compared with indicators of what is going on in real life practice and the effectiveness of different mechanisms for protection from discrimination of LGBTI people. These include the everyday experiences, needs and problems of LGBTI people, as well as the processes, attitudes and structures for the social and cultural milieu wherein LGBTI people’s lives are shaped, constrained or protected.

The core methods and tools of the research included:

1. Desk review – data collection from secondary sources;
2. Interviews with LGBTI human rights activists and representatives from the Ministry of Labour and Social Policy - field research for the purpose of gathering primary information and data; and
3. Systematic and interpretative analysis and assessment, and development of final report and assessment.

The available information on the situation of intersex people in former Yugoslav Republic of Macedonia was extremely limited. As a result, the findings in this report relate primarily to LGBT people and not to intersex people. UNDP and its partners will strive to explore the situation of intersex people in the former Yugoslav Republic of Macedonia in greater detail in a separate sub-regional analysis.

2. Overview of the situation of LGBTI people in the former Yugoslav Republic of Macedonia

2.1 The historical evolution of LGBTI discourse the former Yugoslav Republic of Macedonia

Unlike some neighbouring ex-Yugoslavian countries, in the former Yugoslav Republic of Macedonia there is no comprehensive historical research on LGBTI issues. The existing data and sources are very scarce; they offer only limited insight into the historical development of sexual identity, or the practices and social situation of LGBTI people.

In 1959, homosexuality was defined in the Penal Code of the Social Federal Republics of Yugoslavia, article 186(2) as "debauchery against nature". It was branded as a threat to society as a whole, a corruptor of youth, an expression of class exploitation and a decadent, rotten remnant of the old, defeated regime. In accordance with the law, homosexuality was punishable with a one-year prison sentence.

The Federal Republics of Slovenia, Croatia and Montenegro, and the Socialist Autonomous Province of Vojvodina decriminalized same-sex acts in 1977. This was the result of reforms in the jurisdiction and the transfer of legitimacy from the federal centre to the republics and provinces with the new Constitution from 1974. However, also in 1977, the former Yugoslav Republic of Macedonia, Serbia and Bosnia and Herzegovina re-criminalized same-sex acts. From June 1977, sex between men was criminalized in the Criminal Code, with article 101(2) stipulating that "People of [the] male sex who commit unnatural debauchery will be incarcerated for up to one year."⁹ Until 1996, sex between men in the former Yugoslav Republic of Macedonia remained legally treated as a criminal act punishable by imprisonment.

As result of the obligations that the country had to meet with becoming a UN member state in 1993 and its admission in the Council of Europe in 1995, sex between men was silently decriminalized by the government in 1996. The government did not make any public statements that would send a positive message to LGBTI people. From 1996 until the early 2000s, the former Yugoslav Republic of Macedonia saw the first attempts to initiate an LGBTI movement and to raise issues concerning sexual minorities. In 2002, the first NGO focusing on the rights of LGBTI people was formed: the Centre for Civil and Human Rights (CCHR). Although this organization did not explicitly include a reference to LGBTI issues in its name, it was open about its struggle for freedom of sexual expression. In one of its first leaflets, the CCHR stated that it was fighting "against all forms of discrimination and violence" and advocated the free expression of one's "sexual choice, as part of the body of fundamental¹⁰ human and civil rights." In November 2003, the CCHR organized the first LGBTI conference in the country, entitled, "Homosexuality in the former Yugoslav Republic of Macedonia – Between Prejudices and Europeanization: Social Status of Homosexuals and Legislation on Homosexuality".

In 2003, EGAL (Equality for Gays and Lesbians) was formed. EGAL focused exclusively on the sexual health of gay men and men who have sex with men, including those who identify as gay or bisexual. EGAL offers the distribution of safe-sex supplies, information, and voluntary and confidential HIV testing. EGAL works with international and state institutions working on public health. One of the biggest annual events organized by EGAL is the Zunica (Rainbow) film festival for LGBTI-themed films.

In 2004, the first officially-declared LGBT organization – MASSO – was established. The very same day MASSO and the "Helsinki Committee for Human Rights of the Republic of Macedonia" (MHC) held a press conference in which, they presented the findings of research identifying the size of the LGBT population in the country.¹¹ The survey results indicated that almost 10 percent of the interviewed people have had same-sex sexual relations and approximately four percent of the respondents were exclusively homosexual. The results of the survey came as a surprise to the wider public since same-sex activities were generally considered as a Western phenomenon and widespread in the former Yugoslav Republic of Macedonia"

In 2008, MASSO ceased to exist as an organization, leaving the Coalition “Sexual and Health Rights of Marginalized Communities” and MHC as the only organizations publicly advocating for the rights of LGBTI people at the time. The Coalition was formed from different organizations targeting sex workers, people using drugs, people living with HIV and MSM, setting thus a wider focus and an intersecting perspective. The coalition’s activities included advocacy, legal assistance, and promoting LGBTI issues through the media and art. Another organization that was formed in the meantime was Women’s Alliance, which focused on lesbian and other non-heterosexual women and prioritized self-help grassroots activities. In the framework of their Queer Macedonia initiative, Women’s Alliance has created and led the online portal queer.mk which tries to raise awareness of LGBTI rights through the promotion of equality, tolerance and non-discrimination with informational and educational articles.¹² In 2012, another LGBT organization was formed – LGBT United Tetov. This was the first LGBT organization to be based outside the capital. LGBT United Tetov also had an ethnic Albanian leader who spoke openly about his sexuality. Also in 2012, the LGBT Support Centre was formed, as part of an LGBT programme of the Helsinki Human Rights Committee. Envisioned as an organization that would advocate for LGBT rights, the LGBT Support Centre offers psychosocial and legal counselling to LGBT people, works on strengthening their capacities for self-organization and provides assistance to other NGOs.¹³

Subversive Front¹⁴ was formed in 2013, as an organization that advocates an important approach to gender and sexuality; provides free services such as legal aid, psychosocial support and counselling to LGBTI people, and promotes research and education on gender and sexuality. The informal group LezFem was launched as a support group in the LGBT Support Centre. It strives to build awareness about women’s rights, feminism and lesbian and bisexual women within the LGBT community and more widely.

At the end of 2013, as a result of an escalation of homophobia, transphobia and violence in public spaces, the informal National Network against Homophobia and Transphobia was formed. This network unites almost all LGBTI organizations in the country, as well as individual activists and supporters.

2.2 Attitudes towards LGBTI people in the former Yugoslav Republic of Macedonia

The question of LGBTI identities in the former Yugoslav Republic of Macedonia forms part of a complex constellation of cultural and historical forces. These include a multicultural national context which integrates several cultures with homogenizing and essentializing tendencies; a mood of constant panic of threat and uncertainty about the country’s national identity; a post-Communist transitional period that has been marked by the country’s recent independence, and by the inter-ethnic conflict of 2001. One important factor for understanding the treatment of LGBTI people is the fact that in 1991, the former Yugoslav Republic of Macedonia gained independence for the first time in its history. State and nation building have been important preoccupations for political and social forces in the country. This has been intensified as a result the contestation the former Yugoslav Republic of Macedonia’s independence and national identity by neighbouring countries, in various different ways.¹⁵

The penetration of capitalism in the process of democratic transition, as well as the country’s aspirations towards EU accession introduced significant changes in terms of gender relations in the former Yugoslav Republic of Macedonia and in South-Eastern Europe more widely. The social and economic crisis which has characterized this transitional period has also shifted the dominant labour relations which were reflected in the traditional gendered division of labour within the family. Namely, this context of insecurity, transformation and instability has disrupted the traditional role of men as primary breadwinners in the home, which is causing a gender identity crisis. Amongst younger, more urban and more educated parts of the population this crisis is resolved – or at least muted – through the adoption of Western-style professional norms and values. Among older generations this “new individualism” is often synonymous with embarrassment, materialism and cynicism!¹⁶ These processes of modernization and the growth of individualism are not linear or unequivocal. The potentially positive effects of modernization on social tolerance and equality are opposed by a strong upsurge in traditionalism, religious values, nationalist ideals and traditional heteronormative notions of the family.

In contrast to neighbouring countries which have adopted laws prohibiting discrimination on the grounds of sexual orientation or gender identity (SOGI), the country has adopted an Anti-Discrimination Law which does not explicitly include SOGI. Instead, it has an open definition; an emerging practice of protection mechanisms acting upon cases is recognizing SOGI as grounds for discrimination. The lack of comprehensive legal protections for LGBTI people and the absence of political will to raise issues related to the human rights of sexual minorities is even more concerning given the continuing high levels of fear of social exclusion and stigmatization among the LGBTI community, and the very high rates of negative attitudes among the general population towards LGBTI people.

Research from 2009 found that 91.6 percent of citizens disapprove of same-sex activities.¹⁷ This was an increase compared with research from a year earlier,¹⁸ when 62.2 percent of respondents said they would not consider it acceptable to have neighbours who have sexual relations with people from the same sex. More than 10 years after the decriminalization of sex between men, every third participant in the survey (33.7 percent) said that same-sex relations should be considered to be a criminal offence. Eight years after the Macedonian Psychiatric Association removed homosexuality from their list of diseases, and 17 years after WHO did the same things in 1991,¹⁹ 48 percent of the respondents believed that homosexuality was a disease. One-third (33 percent) did not agree with this position. Every fifth interviewee (19 percent) answered “do not know” to a question about defining homosexuality.²⁰

Surveys conducted by the Equal Opportunities Barometer²¹ show that citizens are relatively tolerant when it comes to living in close proximity to different groups. An exception to this is having an LGBTI person as a neighbour; in this case the average rate of comfort is four on a scale from one to nine. Young people also believed that homosexual couples were the least acceptable neighbours. Respondents²² also stated that they were more uncomfortable with the idea of a homosexual person being in the highest position of political power than any other category of person.

According to the results of other research²³ targeting young people aged 15-24 years, 3.3 percent (n=24) of sexually-active male participants claimed to have had sexual relations exclusively with male partners, while an additional 3.6 percent reported having had sexual relations with both male and female partners. In total 6.9 percent of the sexually-active male participants had had sexual relations with another man at least once.

2.3 Laws and policies

The struggle for LGBTI rights has been long and hard-fought. Recent decades have seen significant progress in the movement of international and regional law and practice towards inclusion and protection for everyone regardless of their sexual orientation or gender identity. As a member of the UN and the Council of Europe, the former Yugoslav Republic of Macedonia has ratified almost all core human rights treaties that guarantee, amongst other things, the equality of LGBT people. Hence, the former Yugoslav Republic of Macedonia has an obligation to respect, protect and fulfil rights to non-discrimination, and to respect principles of equality. These are also reflected in the country's Constitution.

The country's legislation has many inconsistencies and contradictions when it comes to the rights of sexual and gender minorities. These legal inconsistencies become even more salient when one takes into consideration the continuous reports and comments by international human rights organizations, the European Commission and national NGOs, all of which emphasize the increasingly homophobic political atmosphere and negative social attitudes and stigma towards LGBTI people.

The Constitution²⁴ guarantees that all citizens are equal in their freedoms and rights, regardless of sex, race, colour of skin, national and social origin, political and religious beliefs, property and social status. The closed definition and lack of inclusion of SOGI in this list of characteristics which are protected from discriminatory treatment is further reflected in the national legislation.

The Law on Prevention and Protection against Discrimination (LPPD)²⁵ is a specific law which regulates the field of anti-discrimination. SOGI is not explicitly protected under this law. However, the law includes an open clause that enables application of this law in cases of discrimination based on SOGI. Similarly, the practice of the Commission for Protection from Discrimination, established by this law, includes decisions in cases of discrimination based on SOGI. Even though the LPPD has still not been amended, a Protocol determining the procedure for processing complaints of discrimination on the grounds of SOGI has been prepared and officially adopted by the Commission for Prevention and Protection from Discrimination in 2015. Also, SOGI is partly included in the National Strategy for Equality and Non-Discrimination 2016-2020.²⁶ This strategy includes concrete measures and actions that would address protection from discrimination for sexual and gender minorities. The strategy mentions SOGI in its mission statement and includes measures to address homophobic hate speech and to improve the work of the Commission for Protection against Discrimination against spreading of hate speech motivated by SOGI in the media.

In many laws the term “sex” is used rather than “gender”. Referring only to biological sex tends to exclude a broader definition of gender that includes men and women with different sexual orientations and gender identities. For example, the scope of protection and equality in the Law for Equal Opportunities of Women and Men²⁷ is defined narrowly, based restrictively on the category of sex and thus excluding the range of potential gender identities. It is based exclusively on sex as a binary categorization determined by a person's sex at birth. Consequently, this leads to the exclusion of diverse gender identities.

The Law on Labour Relations (LLR)²⁸ is one of the few laws that does include sexual orientation among reasons that a person cannot be discriminated against. Article 6(1) of LLR prohibits discrimination in that it states that an employer must not place a job applicant or an employee in an unequal position for reasons of racial or ethnic origin, colour, gender, age, health condition, disability, religious, political or other belief, membership in unions, national or social origin, family status, property and financial situation, sexual orientation or other personal circumstances. However, instead of sexual orientation, the LLR uses a scientifically problematic notion of “sex orientation” (полова насоченост). The LLR and other laws that regulate employment are rare examples of legislation that explicitly includes reference to sexual orientation in the non-discrimination provisions. The terminology used in the laws should be harmonized and the term “sexual orientation” should be used together with gender identity when listing the prohibited grounds of discrimination.

In the area of social protection, the Law on Social Protection (LSP)²⁹ includes non-discriminatory provisions, but the protected grounds for discrimination include neither SOGI, nor gender. Existing social protection policies and programmes do not include any specific measures supporting LGBTI people or youth, although they include sectors that are particularly relevant for LGBTI people.

In the health sector, Article 32 of the Law on Protection of Patients' Rights³⁰ prohibits discrimination against a patient on the grounds of SOGI. This and the Law on Labour Relations are the only national laws explicitly prohibiting discrimination on grounds of SOGI. This difference is crucial for ensuring access to justice, human rights protection and redress for LGBTI people.

The country has also developed strategic documents addressing HIV and AIDS. The main strategic document is the National Strategy for HIV 2012-2016,³¹ which is the third national strategy on HIV. In the area of prevention of HIV among MSM, in addition to prevention activities such as the distribution of condoms, the strategy also emphasizes the development of activities for reducing homophobia against MSM; cultural activities and festivals for empowering the MSM community; promotion of safe sexual behaviour; research on the different identities within the MSM community; activities for reducing stigma in schools, and other.

Among education policy, Article 44 of the Constitution states that everyone has a right to education and that education must be accessible to everyone under equal conditions. The educational system in the country is regulated by three key laws: the Law on Primary Education (LPE)³², the Law on Secondary Education (LSE)³³ and the Law on Higher Education (LHE).³⁴ Although these laws guarantee non-discrimination on various grounds, only the LHE includes sexual orientation as protected grounds, and none of them include gender identity. Internal documents of the State University St. Cyril and Methodius also guarantee non-discrimination on the grounds of sexual orientation.

However, the University has not adopted any comprehensive policy document formalizing its commitment to equality and non-discrimination.

A Strategy for Reducing Violence in Schools³⁵ was adopted in 2012 and ended in 2015. Despite an alarming situation with LGBTI children experiencing bullying, psychological distress and depression,³⁶ the Strategy addresses violence in a vague manner, does not focus on any specific group, and pays no attention to homophobic and transphobic violence in schools.

In the area of criminal justice, the lack of uniform definition of hate speech in international law is also reflected in national legislation. There is no dedicated law on hate speech. Whilst the Criminal Code³⁷ incriminates hate speech, this is done in a vague way and lacks coherent provisions to define and regulate hate speech. The articles³⁸ in the Criminal Code that address incitement of hatred, intolerance and discrimination do not include SOGI as protected characteristics. Article 39 of the Criminal Code defines the characteristics to be taken into consideration as grounds for protection against discrimination. This was amended in 2014; although it does not include SOGI explicitly, it does include “any grounds” prescribed by any law or international treaty ratified by the country.

In the context of media regulation, SOGI are also not listed as grounds for protection against discrimination and hate speech. The Law on Media³⁹ and the Law on Audio and Audio-Visual Services⁴⁰ prohibit media publishing or broadcasting of material which is intended to incite or spread discrimination, intolerance and hatred on the grounds of race, sex, religion or nationality. These laws further stipulate that this prohibition should comply with the European Court for Human Rights practice, which *de facto* indirectly includes SOGI as well. Going one step further than the legal regulation of the media, the Code of Journalists of the Association of Journalists of Macedonia (ZNM) stipulates that “journalists shall not consciously create or process information that jeopardizes human rights and freedoms, shall not use hate speech and shall not encourage discrimination of any sort (nationality, religion, sex, social class, language, sexual orientation, political orientation.”⁴¹

The Law on Family⁴² defines marriage exclusively as a traditional union between one man and one woman. A non-marital partnership is also defined in exclusively heterosexual terms by the law, with non-marital partners having the same rights as those in marriage. This law defines family as parents, children and other relatives living in a mutual household. It does not include cohabiting partners, either of heterosexual couples without children, or same-sex couples.

There is no single law in the country that protects transgender people from discrimination on the grounds of gender identity. Legislation does not offer any explicit procedure for legal gender recognition, leaving a vacuum in which the responsible institutions make arbitrary decisions, exclusively on the grounds of their prejudices towards transgender people, with no legal justification. The country does not provide health services that are tailored to the specific needs of transgender persons, including the surgical, hormonal and psychological treatments necessary for gender confirmation. The state (the Health Insurance Fund) also does not recognize the expenses for intervention abroad.

3. Protection of rights of LGBTI people

This section looks at the different legal provisions that can provide protection under the law of the rights of LGBTI people in the former Yugoslav Republic of Macedonia, under the broad categories of education, health, employment, family affairs, discrimination, media, hate speech, hate crimes and politics/political parties. Case studies are included to illustrate some of the advances and challenges in LGBTI issues.

3.1 Employment

The right to work is a fundamental right recognized in many international legal instruments. The right to work is essential for realizing other human rights, and forms an inseparable and inherent part of human dignity⁴³ The right to work is enshrined in Article 6 of the International Covenant on Economic, Social and Cultural Rights and Article 8 of the International Covenant on Civil and Political Rights. There is an obligation for states to guarantee that the right to work can be exercised without discrimination of any kind⁴⁴ The Employment Equality Framework Directive 2000/78/EC⁴⁵ as an EU Directive, and a major part of EU labour law, aims to combat discrimination on grounds of disability, sexual orientation, religion or belief and age in the workplace.

Non-discriminatory provisions in employment are included in the Law on Prevention and Protection against Discrimination (LPPD)⁴⁶ and the Law on Equal Opportunities between Men and Women (LEOMW).⁴⁷ The Law on Labour Relations (LLR)⁴⁸ also includes this type of provision, and includes sexual orientation in its list of prohibited grounds for discrimination. Article 6(1) of the LLR prohibits discrimination such that the employer must not treat the job applicant or the employee unequally.

Vulnerable groups, including LGBTI people, lack access to equal opportunities and equal treatment in life in general. Vulnerable groups often have difficulty in finding and keeping a job, as a result of which they have unequal access to social protection and economic rights. They face a higher risk of social exclusion and poverty.⁴⁹ Interviews with representatives from CSOs working with LGBTI people and LGBTI activists reveal the employment risk of living life openly as a gay or trans person. A major problem faced by LGBTI people in the workplace is the stress and anxiety of having to hide their sexual orientation or gender identity so they can participate on equal terms in the working atmosphere and environment created by their heterosexual peers. The LGBTI community faces discrimination and stigma in workplace such as harassment, bullying, inappropriate jokes and comments and in some cases even dismissal without any other reason. Within the LGBTI community, transgender people face the highest risk of poverty and social exclusion. Interviews with LGBTI and trans activists reveal that the majority of transgender people are unemployed, suffer poverty and have problems with housing. Many transgender people, especially transgender women, are forced to undertake sex work as the only source of income.

Harassment is prohibited and it is defined under the LPPD. Harassment and humiliating treatment are defined as a violation of the dignity of a person or a group of persons that results from a discriminatory ground and is aimed at or results in violation of the dignity of a particular person or creation of an intimidating, hostile, humiliating or offensive environment, approach or practice. Harassment does not constitute a criminal offence. It is part of the provisions of the Law on Labour Relations, which deal with harassment, sexual harassment and mobbing. The Law on Protection against Harassment in the Workplace (LPHW)⁵⁰ in terms of the elements constituting harassment and the definitions of the different types of harassment — psychological and sexual — are in line with the EU Directives. This legislation also outlaws instruction or incitement to harass. The law is silent as to the grounds it covers for psychological harassment. For sexual harassment, the ground – sex — is contained in the title of the type of harassment, although without any clear guidance as to whether multiple grounds could also be considered.⁵¹

Another disadvantage for LGBTI people in labour relations is the benefits for married employees. Because same-sex marriage or partnership is not recognized, LGBTI people are excluded from these benefits. It does not constitute unlawful discrimination in national law if an employer only provides benefits to those employees who are married. National legislation does not mention the right of employers to provide benefits solely to a certain category of employees (such as those married or with children). However, the constitutional provision under which the country provides particular care and protection for the family could be interpreted as opening space for, inter alia, such privileges.⁵²

3.2 Education

The educational system requires 13 years of mandatory education (primary, lower secondary and upper secondary) which include nine years of primary education and four years of secondary education. Education is vital for young people, not just for the purpose of gaining knowledge and skills, but also as an important context for the personal development of young people. Therefore it is essential to develop textbooks that promote an education free from stereotypes, prejudice and discrimination in order to prevent homophobia and discrimination against LGBTI people, and to promote a more inclusive and tolerant society.

The official textbooks for primary and secondary education do not contain any specific material relating to LGBTI people, or SOGI. Primary textbooks include the representation of “masculinity” and “femininity” as natural categories and the domination of heterosexuality. The absence of information about LGBTI identities results in ignorance and exclusion of many aspects of gender and sexuality, such as gender identity, gender expression and sexual orientation.⁵³ There is a total absence of discussion about families with lesbian, gay, bisexual, transgender/transsexual, intersex or queer parents (rainbow families)⁵⁴ Secondary education is equally lacking in terms of its coverage of sexuality and gender. Textbooks prefer the dominant perspective that defines a family solely as a heterosexual union, usually underpinned by marriage as an institution. Some textbooks include material which is discriminatory towards people with a different sexual orientation, in addition to which some textbooks offer information that can contribute to the development of negative stereotypical values and stimulate the spread of homophobia amongst students.⁵⁵

Higher education textbooks are no exception from these practices. They show mainly heterosexist and homophobic attitudes that are rejected by the relevant health and scientific international organizations. Textbooks for higher education include contents that pathologize homosexuality, stigmatize LGBTI people (as deviant or not normal), present discriminatory narratives or narratives that propagate religious dogma, excluding or ignoring LGBTI topics.⁵⁶

Article 26 of the Universal Declaration for Human Rights⁵⁷ states that “education shall be directed to the full development of the human personality and to the strengthening the respect for human rights and fundamental freedoms”. The Yogyakarta Principles on the application of international human rights law in relation to SOGI, on the right to education (principle 16)⁵⁸ state that States shall “ensure that education is directed to the development of each student’s personality, talents, and mental and physical abilities to their fullest potential, and responds to the needs of students of all sexual orientations and gender identities”. However, there is no access to comprehensive sexuality education (CSE) in the former Yugoslav Republic of Macedonia. The main corpus of information relating to sexuality focuses on anatomical aspects and some info about sexually transmitted infections, mainly within the context of biology teaching.

From 2009 onwards, the work of HERA has laid the ground for advocacy and a broader public discussion about comprehensive sexuality education. HERA conducted a needs assessment among students, teachers and parents and made a review of the current curricula. This has generated a body of evidence supporting the need for urgent improvement in access to information related to sexual and reproductive health and rights. On the basis of this, under the guidance of Professor Roger Ingham (University of Southampton, UK), and involving the responsible Ministries, universities, UN offices and NGOs in the consultation process, HERA published a Framework for Comprehensive Sexuality Education. At the beginning of 2011, the Framework was adopted by the Parliamentary Commission on equal opportunities among women and men, with a recommendation that CSE should be piloted. The same commission repeated this recommendation in October 2012 during a public debate on access to modern contraception. However, until now CSE has not been proposed for inclusion into the curricula by either the Ministry for Education and Science nor by the Bureau for Education Development.

The Yogyakarta Principles on the application of international human rights law in relation to SOGI also include the issue of safety in the school environment. In research undertaken by the Coalition "Sexual and Health Rights of Marginalized Communities" on behaviours related to the health of youth in schools,⁵⁹ at 15 years old homosexual and bisexual high school students were exposed to a significantly higher rate of bullying in schools than their heterosexual schoolmates. They were often victims of family violence, both psychological and physical. They were also victims of sexual harassment, as much as five times more often than their heterosexual peers, and in most cases they had no one to talk to about this. The school professional services were found to lack the knowledge and skills to recognize and address these problems.

Interviews with representatives from CSOs working with LGBTI people show that many activists believe education to be the key area for investment in creating values that support equality, non-discrimination and social inclusion of LGBTI people. There is a need for improvement in developing and creating textbooks that will promote the principle of equality, enable comprehensive sexuality education in primary and secondary education and create policies for protection against gender-based violence and discrimination with a focus on homophobic and transphobic bullying.

Case study: "Pedagogy" – the Ministry of Education and Science discriminates

The Coalition "Sexual and Health Rights of Marginalized Communities" submitted a petition to the Commission for Protection Against Discrimination against the authors of the textbook "Pedagogy" (for third-year high school students) and to the Ministry of Education and Science. The petition was made on the basis that the authors wrote and published the textbook, while the Ministry permitted "the use of a textbook that contains a text discriminating against people with homosexual orientation in the syllabus". On May 19, 2011, the Commission for Protection Against Discrimination arrived at an "Opinion" claiming that it has the authority to act upon discrimination on the ground of sexual orientation, and that the disputed textbook content "agitates, causing humiliation and violation of the dignity of a group of people that results from discrimination by the Ministry of Education and Science and the authors Prof. d-r Aneta Barakoska and Eli Makazlieva, M.A." Furthermore, the Commission indicated that "the textbooks must not contain texts that stigmatize a specific group of people" and that "the textbook content must not be directed towards violation of human rights". In addition, the Commission passed a mandatory recommendation to the Ministry of Education and Science to revise the content of the textbook "Pedagogy" regarding "deviation in sexual life", i.e. "in the part referring to homosexuality and lesbianism on page 203, and that the revised contents should not contain elements that might agitate on discriminatory grounds". However, the Commission recommendation was only partly implemented. The "Pedagogy" textbook was revised in the sense that "homosexuality and lesbianism" were deleted from the chapter on "sexual orientation". In reality, the present version of the textbook does not mention homosexuality, or bisexuality and heterosexuality in the chapter on "sexual orientation". Furthermore, the textbook still contains a discriminatory definition of love. Love continues to be exclusively treated as longing "for a certain person of the opposite sex" (p.200), while when referring to sexual relations, the possibility of sexual relations with someone of the same sex is excluded: "Why does a young man have sexual relations with someone of the opposite sex?" (p.201) The Coalition commended the decision and recommendation of the Commission for Protection against Discrimination, but protested against the manner in which the recommendation was administered, thus practically erasing the subject of homosexuality in the context of love, sexuality and "sexual orientation".

3.3 Health

Article 3 of the Law on Health Protection (LHP)⁶⁰ defines the right to health protection and states that everyone shall be entitled to health protection and shall be obliged to care for and maintain and promote his or her health in accordance with this law.

SOGI is not listed as a prohibited grounds for discrimination in the law, and in the Macedonian version of the text, sex is the term used for gender.

The Law on Protection of Patients' Rights (LPPR)⁶¹ regulates the protection of patients' rights when using healthcare. It sets out the obligations of healthcare institutions, health workers and associates, municipalities and the Health Insurance Fund in the promotion and protection of patients' rights; the procedure for protecting patients' rights; as well as the supervision over the implementation of the law. Article 3 of the LPPR includes two overarching principles in relation to a patient's rights to protection: humanity and availability. The availability principle includes non-discriminatory provisions. Article 3 states that the availability principle, among other things, shall be based on healthcare services that are continually available and accessible for all patients equally and without any discrimination.

Article 5 states that each patient has the right to enjoy the rights guaranteed by the law without discrimination on different grounds, with an open clause and sexual orientation included.

Since the first reported HIV case in 1987, HIV prevalence in the former Yugoslav Republic of Macedonia has remained low. It has been possible to maintain a low level of HIV due to the early initiation of harm reduction services and active NGOs⁶² While the country experiences a low-level epidemic overall, prevalence is concentrated among certain key populations, in particular men who have sex with men. An interview with a representative of Stronger Together (Zaedno Posilni), a CSO founded by people living with HIV, reveals that the majority of the gay people living with HIV do not disclose their HIV status even to their closest friends or family. As a result this problem is invisible in the LGBTI community.

Newly registered cases of HIV-infected people are registered as belonging to MSM, but there are no data showing how many of them identify themselves as gay or bisexual. Despite the lack of such disaggregated data, considering that MSM accounted for more than 60 percent of newly diagnosed HIV cases in 2014, it can be assumed that gay and bisexual men are more likely to experience HIV infections based on surveys of MSM respondents in comparison with other key affected populations (people who inject drugs, sex workers) and the general population. The fact that HIV is not perceived as an issue within the LGBTI community can only make things worse.⁶³ Analyses based on modelling by the World Bank and the Ministry of Health indicate that HIV-prevention programmes need to be optimized in such a way that funds for programmes targeting MSM need to be increased to three times their current levels.⁶⁴

The majority of the funding for HIV prevention and treatment comes from international donors, especially the Global Fund to Fight AIDS, Tuberculosis and Malaria. The former Yugoslav Republic of Macedonia has received support from the Global Fund since November 2004, but as it is classified as a middle income country, it is no longer eligible for funding according to the Global Fund Funding Model. The country's budget allocation for 2017 shows a reduction compared to 2016, which will not be sufficient to maintain lifesaving antiretroviral treatment for people living with HIV, let alone support equally important prevention services among key affected populations. Previously, these interventions were fully supported by the Global Fund. In the context of phasing out of the Global Fund financial support by June 2017 and the recent significant cut of state budget funds for the 2017 national HIV programme, there is a substantially increased risk that new infections will rise among MSM. The World Bank and MoH analysis points out that if the level of spending for HIV is maintained and optimized in the appropriate way, at least 860 new infections – predominantly among MSM – and 290 deaths could be prevented by 2030⁶⁵ The civil society organizations delivering HIV prevention and support services for MSM, PWID, sex workers and PLHIV within the National HIV Programme are advocating for adequate budgeting of the Programme from the state budget to replace the Global Fund support, as well as for the establishment of functional mechanisms through which civil society organizations can continue to implement the key prevention components of the National HIV Programme.

Transgender people are a highly vulnerable population in terms of violation of their health rights. They are invisible in terms of their gender identity, as transsexual people have zero access to the services they need, such as psychiatric support, hormone therapy under medical supervision, or surgical procedures. There are not many countries which deem medical services to support TG persons as essential. In the past few years, a few trans people have initiated sex change procedures (now termed gender confirmation procedures). When trying to access basic health services, they have experienced various violations of their health rights⁶⁶

LGBTI youth suffer a significant amount of negative social pressure, discrimination, harassment and violence. This environment has a negative impact on the mental health of young LGBTI people. LGBTI youth typically score higher on an anxiety scale compared with their heterosexual peers. Similar trends are found in relation to depression, with LGBTI people being less able to cope with depression compared with their non-LGBTI peers.⁶⁷

In an interview the president of the LGBT United Tetovo, Mr. Asani, stated that in Tetovo and the west region of the former Yugoslav Republic of Macedonia there are concerns about the practice of offering psychiatric and psychological treatment for homosexuality. However, none of the LGBTI young people undergoing this treatment want to report their cases, since the treatment was suggested by their family.

Case study: "Treatment" of homosexuality by psychiatrists

The Coalition SHRMC has documented several cases where homosexual people are being referred to psychiatrists to undergo treatment. Although the World Health Organization removed homosexuality from its official list of diseases on May 17th 1990, in the former Yugoslav Republic of Macedonia there are still psychiatrists who "treat" homosexuality, against international standards and with methods that do not represent evidence-based medicine.

In 2012, the "treatment" of homosexuality through psychotherapy was promoted in the media by a person presented as a "sexologist" and "doctor." An article titled "They kiss and then boast with their pictures" expounds the opinions of "Doctor Pavle Pavlov" who finds "the indications for homosexuality" and recommends therapy. "If [people] find it pleasurable, then there are indications for homosexuality. The child is always bisexual and has to learn to be heterosexual. In early puberty, the child is still bisexual. This is why when one notices that it goes in the direction of homosexuality, it could be referred to psychotherapy so that it can find the advantage of heterosexuality – says Doctor Pavlov."

The Coalition demanded that the Medical Chamber of Macedonia should publicly condemn medical practitioners who promote the "treatment" of homosexuality; should undertake a serious investigation of this practice; and should deprive all doctors who violate article 112 of the Code of Medical Deontology of their licences to practice medicine. However, to date the relevant institutions have not undertaken measures to combat this illegal practice.

3.4 Discrimination

The Law on Prevention and Protection against Discrimination (LPPD)⁶⁸ is a dedicated law which regulates anti-discrimination. The Law was introduced in 2010. Article 3 prohibits any direct or indirect discrimination, call for and incitement to discrimination, and assistance in discriminatory treatment. The prohibited grounds for discrimination include sex, race, colour, gender, belonging to a marginalized group, ethnic origin, language, nationality, social background, religion or religious beliefs, other types of beliefs, education, political affiliation, personal or social status, mental and physical impediment, age, family or marital status, property status, health condition or any other basis anticipated by a law or ratified international agreement. SOGI is not explicitly included in lists of prohibited grounds of discrimination.

Apart from the LPPD, local bodies for gender equality and non-discrimination are functioning as part of local governments, Deputy Ombudsman's regional offices and regional offices of the Ministry of Justice authorized for providing free legal aid. The coordinators and deputies of the Ombudsmen possess adequate knowledge on the facts and data regarding LGBTI people. The representatives of the regional offices of the Ministry of Justice have the greatest need for improvement in their knowledge about LGBTI people and their experiences.⁶⁹ The majority of the municipalities have developed action plans, annual programmes or strategies for gender equality and non-discrimination. Although SOGI are not included in the LPPD as prohibited grounds for discrimination, the law includes an open clause that enables recourse to this law in cases of discrimination based on SOGI. A Protocol⁷⁰ determining the procedure for processing complaints of discrimination on the grounds of SOGI was prepared and officially adopted by the Commission for Protection against Discrimination in 2015. However, significant differences still exist between the existing knowledge, attitudes and practice in resolving cases of discrimination on grounds of SOGI, and the desired capacities of the Commission. Even though the Protocol exists, there is no effective and independent Commission which can use it. Attitudes towards LGBTI people are the most problematic. Commission members know that prejudice and intolerance towards the LGBTI community are not acceptable and therefore do not express them openly. However, prejudice and intolerance exist and are deeply entrenched among some members.⁷¹

LGBTI people, face a higher level of everyday discrimination compared with their non-LGBTI peers.⁷² A significant part of the LGBTI community considers themselves to have been victims of violence on account of their SOGI.⁷³ Even more alarming is the high level of under-reporting of this kind of violence. Namely, the majority of LGBT people who have been victims of violence do not report this to the relevant institutions. Furthermore, those who report such incidents express a high level of dissatisfaction with the way in which their cases are handled by the authorities. In particular, they experience discrimination or unprofessional attitudes on the part of the authorities who are were supposed to help them.⁷⁴

Employment is another field where LGBTI people face discrimination. A significant part of the LGBTI community states that they have faced discrimination based on SOGI in every aspect of their labour relations. Again, the vast majority have never reported any cases of labour-related discrimination. Those who have reported such a case similarly expressed a high level of dissatisfaction with the way in which their case was handled, and subsequent discrimination or lack of professionalism that they experienced in this process.⁷⁵

LGBTI people often face discrimination in relation to social protection. The majority of the LGBTI community said they have never reported these cases of discrimination. The most frequent reason for this is mistrust in the institutions and a fear of negative consequences.⁷⁶

The reasons that people give for being unwilling to submit complaints about discrimination to the Commission for Protection from Discrimination include: a lack of trust in state institutions; fear of secondary victimization; and a lack of information about the existence of the Commission.⁷⁷ The problem of secondary victimization is especially relevant in cases of discrimination based on SOGI. In a society where stereotypes, prejudice and hate towards LGBT people are highly present it is not surprising that the number of people who are willing to ask for institutional protection against discrimination is very low.⁷⁸

Case study: The CPD finds no discrimination in the representation of transvestites as brutal perpetrators of violence in a university textbook

A textbook “Criminological Psychology” by Professor Liljana Batkoska (published by the Scientific and Research Centre at the Faculty of Tourism and Organizational Sciences, Ohrid, 2007), contains a section on “Transvestism” in Chapter six, “The psychological map of the crime”, which states: “Transvestites can act violently only in moments of their uncontrolled impulses, when they experience unstoppable needs to cross-dress and if someone reveals them or prevents them from doing so. Transvestites' violence can be very brutal, however rare, directed against the female gender, as an act of 'revenge' because nature has 'punished them' by not giving them a complete female form.” The Coalition filed a petition to the Commission for Protection against Discrimination because the text in the textbook stigmatizes transgender people as a deviant phenomenon, as brutal violators against the female gender, punished by nature. The existence of a textbook which portrays transgender persons as violent with uncontrolled impulses and unstoppable needs to cross-dress, is a violation of the right to protection against discrimination of transgender persons and persons with non-heterosexual orientation. Previously, the CPD (Opinion No. 2/27/11 from 29.06.2011) has expressed the view that textbooks should not include in their contents texts that stigmatize certain groups of people, especially given that a textbook has an educational function. According to this the contents of textbooks should not be directed towards the violation of human rights. For this reason, the Coalition asked the CPD to confirm discrimination on the grounds of sexual orientation and gender identity in the use of the textbook “Criminological Psychology” and recommend that the Faculty of Security should withdraw the textbook from usage. The CPD reached an opinion where it affirmed that the content of the textbook is “not discriminatory, but scientific”. The Coalition protested against such illogical elaboration,

3.5 Family affairs

The Law on Family⁷⁹ defines marriage exclusively as a traditional union between two people, a man and a woman. As stated in Article 6 of the Law: “Marriage is a union of a man and a woman regulated by law, by which the interests of the spouses, the family and the society are being realized.” Extramarital unions are also defined as exclusively heterosexual in the law, and partners have the same rights as those in marriage. Article 13 stipulates that “The union of a husband and a wife not established according to the provisions of the Law (extramarital union) for at least a year, is considered equal to a marriage union in terms of the right to mutual financial support and the property acquired during the union.”

In 2006 the Macedonian Association for Free Sexual Orientation (MASSO) prepared a draft Law on Registered Partnerships. The proposed law regulates: “registered partnerships, the relations within these partnerships, the rights and the obligations of registered partners, legal ramifications that result from the registration or the deleting of an already existent RP from the Registry, the alimony, as well as the court proceedings in the cases of legal disputes between the registered partners.” The draft law proposed a definition of registered partnerships as “a life sharing union of two people of the same sex regulated by law, through which the partners fulfil their interests,” whereby registration of an RP has the same legal consequences as those of a marriage.⁸⁰ MASSO tried to advocate with MPs to propose the law in parliament, however the draft law was never proposed. However, the advocacy work with MPs did influence the Social Democrats to include legalization of same-sex registered partnerships as part of their election programme in 2006.⁸¹

In 2007 the newly elected government led by VMRO-DPMNE and DUI amended the existing Law on Family with new provisions. Namely, new amendments to the then existing Article 94-6, Paragraph 2 were introduced in the section of the law regulating family violence.⁸² The proposed and adopted amendments changed the previous definition of close personal relationships (“блиски лични односи”), which was not gender specific, and stipulated that the law “hereby understands close personal relations as personal relations between individuals of the opposite sex who are or have been in a partnership, and do not live out of wedlock.”

In 2012 the Helsinki Committee for Human Rights in the country submitted an initiative to the Supreme Court for reviewing the article 94-b from the Law on Family. This initiative of the Helsinki Committee caused a wave of manipulations on the part of the media and incitement of hatred, further to be supported by a statement made by the Minister of Labour and Social Policy.⁸³ The Supreme Court the same year rejected the initiative of the Helsinki Committee. However, the legal definition of close personal relationships has undergone further changes in subsequent years. Article 94-b was erased from the Law on Family once the new Law on Prevention, Restriction and Protection from Family Violence was introduced in 2014.⁸⁴ This new law redefined close personal relationships (Article 4) with no gender constraints imposed on the partners.

The heteronormative definition of family life was even further extended in 2010 with adoption of the Law on Prevention and Protection Against Discrimination.⁸⁵ After the ruling Demo-Christian party VMRO-DPMNE announced a campaign against homosexual marriages for the purpose of preserving “traditional family values”, the Parliament accepted an amendment to the law that redefined the family as a “union of opposite sexes”, i.e. a man and a woman. Article 5 of the law defines marriage as “a union of a man and a woman regulated by law, by which the interests of the spouses, the family and the society are being realized.” Further on, the same law in article 14 includes “marriage, unwed partnership and family exclusively as a union of different sexes, i.e. a man and a woman” as exceptions from discrimination.

Furthermore, in June and July 2013 a group of MPs from the ruling party of VMRO-DPMNE proposed constitutional changes in the Parliament, aiming for a precise definition of both marriage, and extramarital unions, as unions exclusively between a man and a woman. Although this proposal did not receive a majority vote and support in parliament, a year later in 2014 the Government submitted draft amendments to parliament for new constitutional changes, again seeking to have a precise definition of marriage and extramarital unions in the Constitution. Activists for the human rights of LGBTI people have organized public debates, the campaign “Not in My Name”, and advocacy efforts with MPs and international human rights organizations in order to oppose the proposal. The Venice Commission also criticized the content of the proposed amendment (known as Amendment XXXIII), pointing out that “elevation of this definition to the rank of constitutional principles does not seem necessary from the legal point of view.”⁸⁶ Regarding the attempt to define other forms of personal unions (other forms of personal unions – defined as “registered cohabitation, or any other registered form of life partnership”), the Venice Commission referred to the jurisprudence of the European Court of Human Rights, specifically the judgment of the Grand Chamber in the case against Greece (Vallianatos and Others).⁸⁷ Human Rights Watch also sent a letter to the Minister of Justice, requesting “to repeal amendment XXXIII to the Constitution and to grant equal rights to same-sex couples in relationship legislation.”⁸⁸ This initiative also did not pass in the Parliament, however was followed by a hate speech in the media, and a serious attack on LGBTI activists and people in a coffee bar in the Old Bazar during the celebration of the LGBT Support Centre’s anniversary celebration, which took place in October.

Human rights organizations have also repeatedly reported on family violence where the victims of violence were children who were subject to violence on the grounds of their sexual orientation. In 2013 the Helsinki Committee reported a case of a girl victim of psychological and physical family violence, who was thrown out of her home with no financial support necessary for finishing her high-school education. The LGBT Support Centre has mediated the communication between the girl and the Centre for Social Work as well as with her school. The Centre for Social Work has not responded effectively, while the school has shown good will in helping in the case.⁸⁹ The Helsinki Committee has also reported on other cases of family violence where LGBTI children have been victims; but none of the victims have reported their cases to relevant institutions. This tendency has been noted in research where 37 percent of LGBTI people who were interviewed reported having experienced family violence, and 35 percent of them reported that they did not receive timely or effective response from the relevant institutions.⁹⁰

3.6 Media

The Law on Media⁹¹ prohibits publishing or broadcasting media content that aims to incite or spread discrimination, intolerance and hatred on the grounds of race, sex, religion or nationality (Article 4). Although Article 4 does not explicitly list SOGI as prohibited grounds for incitement of hatred, it states that prohibition based on Article 4 should be in accordance with the practices of the European Court for Human Rights. The same prohibition is regulated further with the Law on Audio and Audio-Visual Media Services⁹² in Article 48.

The Agency for Audio and Audio-Visual Media Services is the agency responsible and authorized to respond to any violations of the law. The Agency is an independent non-profit regulatory body. If Article 48 of the Law is violated, a petition to the Agency can be submitted, and the Agency is authorized to undertake the following measures: to issue a warning; to submit a request to initiate a misdemeanour procedure in cases when the warning is disregarded and the violation continues; after a year of the violation continuing the Agency can deliver a proposal to the Council to revoke the license or to erase it from the Registry pursuant to the law (article 23).⁹³

In addition to these legal regulations of hate speech in the media and the mandate determined for the Agency in the law, the Agency has demonstrated good practice in its adoption of the Strategy for Development of Broadcasting Services in Republic of Macedonia 2013-2017. This Strategy includes human rights in the context of broadcaster programme standards as a primary area of focus. As priority areas for media regulation and increase in professionalism within the media, the Strategy includes discrimination on various grounds: intolerance, disrespect of human dignity and hate speech. In particular, the Strategy emphasizes hate speech on the grounds of sexual orientation or towards other marginalized groups. In its final version, the Strategy sets as its priority measures to “increase of consciousness among providers of linear and nonlinear media services and media workers of hatred and intolerance on different grounds,”⁹⁴ including specific activities for preparing concrete directions for the media by the Agency that would clarify the legal provisions prohibiting hate speech, and trainings for journalists.

Hate speech in the media is further regulated by the Code of Journalists of the Macedonian Association of Journalists. In cases of hate speech committed by members of the Association, a petition can be submitted to the Association’s Court of Honour, which can publicly react and condemn such practices.

The Council of Media Ethics is another self-regulatory body for the media. The Council applies moral sanctions on media actors who do not observe the professional standards and the Code of Journalists. The Council includes a Press Complaints Commission, which has a mandate to review all press complaints related to the violation of professional and ethical standards in the print (print and news agencies), electronic (TV and radio) and Internet media.

Between 1991-1997, the media reporting of issues related to LGBTI people was characterized by Westernization of the portrayal of homosexuality and transgender people. Homosexuality, bisexuality and transsexuality were portrayed to exist only in the Western world, with questions related to these identities left as invisible and non-existent. Another representative strategy deployed by the media in this initial period was the hyper-sexualisation of non-heterosexual people, furthering the common stereotype of homosexuality as sexual behaviour related exclusively to sex and promiscuity, and excluding its affective, emotional, social, political and cultural components. Finally, representations of non-heterosexual practices and identities in the media in those initial years was limited to representations of sex between men.⁹⁵

Between 2006 and 2008 the first LGBT magazine, “Hello”, was published. This magazine included information related to the everyday life of LGBT people in FYR Macedonia, the region and worldwide. It was initiated by the Centre for Civil and Human Rights.

Whilst there has been positive progress in media portrayals from 2000 onwards, there is still a lack of sensitivity in the way the media tends to approach LGBTI issues. Research with journalists and editors in 2009 showed that continuing discriminatory media policies were a result of the deeply ingrained hetero-patriarchal matrix of traditional values, attitudes and stereotypes. These are further mobilized by the media and reflect the current conservative politics of the Government of the former Yugoslav Republic of Macedonia.⁹⁶ Furthermore, the research concluded that the media very rarely promotes the human rights of LGBTI people or tries to address negative stereotypes and prejudices. In some parts of the media, “Negative stereotypes and prejudice are particularly present in comments, followed by homophobic statements and hate speech towards homosexual people.”⁹⁷

From 2011-2014 a significant increase in hate speech and homophobic stigma has been reported, in proportion to the loss of freedom the enhanced politicization of the media in the country, as it faces pressure to report in alliance with the conservative politics of the Government.⁹⁸

In 2013, unverified media information on the alleged gay parade to be held in Skopje incited a storm of homophobic hate speech on social networks and in the comments sections on some newspaper internet sites. Some web portals spread hate speech and open calls to violence towards LGBTI people and the LGBT Support Centre. Immediately before the start of Pride Week the level of hate speech increased on social networks and other internet portals.⁹⁹ Threats against activists and hate speech continued after the attack on the LGBT Support Centre during the opening of the Pride Week. Specifically, some Albanian-language media targeted an LGBT activist directly. The activist was later forced to move to a safer place because of the severity of the death threats.

Although 2013 and 2014 were marked by hate speech on social media and web portals, mainstream media, including printed, electronic and new media, remained almost silent in relation to LGBTI issues. They reported almost nothing on the violence experienced by activists and LGBTI people during the Pride Week events.

3.7 Political parties and LGBT human rights

As crucial opinion formers, political parties are important in terms of lobbying parliamentary structures, and also as political agents that can influence change on a wider social and political level.

In 2006, the Macedonian Association for Free Sexual Orientation (MASSO) prepared and distributed a questionnaire for political parties in order to test their opinion with regards to legal issues related to LGBTI people. This was done a few months prior to the parliamentary elections in 2006. Only the ethnic Macedonian political bloc replied, while MASSO received no response from the ethnic Albanian political bloc. MASSO received support from the LDP, DOM, DA, NSDP, LP and SDSM parties. Subsequently, SDSM stated in their election platform that they would support the passing of the draft Law on Registered Partnerships prepared by MASSO. This was a crucial step forward, since it was the first time in the history of the country for a political party to announce support for the rights of gay people, and – even more important – support for registered partnership, in its political programme.

The political situation in the country has been turbulent over the last eight years. Legal changes, European integration processes, dialogues with the international community, the increasing visibility of LGBTI issues, the rise of nationalism, widespread economic dissatisfaction, and inter-party rivalry, have all served to bring greater attention and prominence to the different attitudes and ideological positions of the political parties in the country.

The public debate on the Law for Protection and Prevention of Discrimination in 2010 was an opportunity to analyse the degree to which principles of democracy, tolerance and equality form core values of political parties’ agendas. The adoption of the law was used as a political weapon variously for discrediting political opponents on homophobic grounds; for delegitimization of citizens’ associations directly involved in sexual minorities’ rights struggles; or for disseminating publicly homophobic hate speech, thus discriminating against homosexual people.¹⁰⁰

Most prominent and explicit in the homophobic rhetoric in the course of the last decade has been the ruling party VMRO-DPMNE. The VMRO-DPMNE's attitude needs to be analysed in the wider context of the party's upheaval and its current position in the national revival politics, all of which are embedded in the party's official doctrine. This doctrine¹⁰¹ puts the idea of the *nation* including the prerogatives of tradition, family, rule of law and economy as core values of this political subject.¹⁰² The values emphasized in the doctrine threaten the development and implementation of certain policies, especially policies related to the politics of national and ethnic identity.

Unlike the ruling block, in the process of adoption of the Law for Prevention and Protection from Discrimination, the oppositional political bloc publicly supported the demands of the human rights activists and insisted on the necessity of including sexual orientation as a prohibited ground for discrimination. However, the leading opposition parties (Liberal-Democrats, Liberals, and Social Democrats) remained silent in relation to questions about same-sex unions tackled by the Demo-Christians in the debate. They were moderate on the subject of political equality of sexual minorities.

The results from research¹⁰³ from 2009 showed there is almost no difference in the attitudes of the general population towards issues relating to same-sex relations, regardless of the political affiliation of the interviewees. Recently, there have been some positive changes within some political parties, opening their political platforms and rhetoric towards greater inclusion of LGBTI human rights. In 2012 a Declaration condemning hate speech, including homophobic hate speech, was proposed in the Parliament by the MP Ivon Velichkovski, leader of the Liberal Party. In the pre-election period in 2014, several organizations proposed a Declaration on Condemnation of Discriminatory and Hate Speech against Women, Lesbians, Gay Men, Bisexuals, Transgender Persons and Marginalized Communities to all political parties. The declaration was signed by seven political parties: the Liberal Party, Liberal-Democratic Party, Social-Democratic Party (SDSM), the New Social-Democratic Party, Democratic Alliance, the Alliance for Positive Macedonia, and the Democratic Renewal of Macedonia (DOM). The oppositional parties – Liberal Party, Democratic Renewal of Macedonia (DOM) and the Social-Democratic Party were also the only parties that publicly and vocally condemned the violent attacks on the LGBT community and human rights activists, and appealed to all relevant institutions to find and persecute the attackers.

The disclosure of illegal wiretapping and other abuses of power which were presented to the public by the Social-Democrat Party brought large masses of people onto the streets in protest. At the largest anti-government protest which took place on 17 May 2015, organized by the oppositional party bloc and led by the Social Democrats, LGBTI activists carried rainbow flags. Later, at a protest camp set up in front of a government building, LGBTI activists joined one of the protest tents and put up rainbow flags which remained there for three months. LGBTI activists have been also invited by the opposition and other anti-government activists to hold speeches and to present the problems and needs of LGBTI people in several public debates held in the camp.

Progress has been noted during the pre-election campaign for the parliamentary elections set for the 11th of December 2016, in accordance with an agreement set by the four major political parties (VMRO-DPMNE, SDSM, DUI, DPA) and commonly referred to as the Przino Agreement. In the election programmes of the political parties, LGBTI human rights have been given bigger visibility for the first time. According to a research conducted by Subversive Front,¹⁰⁴ which included an overview of the election party programmes and interviews with representatives from the political parties, the major topics addressed in the election programmes refer to the fundamental rights and freedoms of LGBTI people, in particular the right to equal treatment and non-discrimination, freedom from violence, freedom of speech, and freedom of assembly.

However, only the opposition parties are addressing these issues, in particular smaller parties with limited political influence. The Social Democrats may support legal initiatives for changes in the LPPD in the direction of including sexual orientation as a prohibited ground for discrimination, and they would support changes to the Criminal Code in relation to the inclusion of sexual orientation as grounds for hate crimes and speech. However, the Social Democrats have not yet formed any opinion in relation to family, marriage or same-sex partnerships.¹⁰⁵ The Democratic Renewal of Macedonia (DOM) have over the previous two years supported demands of LGBTI activists on several occasions, such as proposing amendments to drop the proposal for Constitutional definition of marriage and extramarital unions; and introduction of sexual orientation in the LPPD. For these elections, DOM says that their priorities in terms of the protection of the rights of LGBTI people include protection from discrimination; increasing the visibility of LGBTI issues in media and education; and introducing changes in the LPPD by including SOGI as protected grounds.¹⁰⁶

The Liberal Democrats¹⁰⁷ support changes to the LPPD and the Criminal Code (in relation to hate speech and hate crimes definitions) in the direction of introduction of SOGI as protected grounds. They propose introduction of “partnership union” as a way to ensure legal recognition of same-sex couples. The Liberal Party¹⁰⁸ supports greater inclusion of LGBTI-related issues in educational programmes; changes to the LPPD and Criminal Code (hate crimes and hate speech) in relation to inclusion of SOGI as protected characteristics; and explicitly state in the party declaration/doctrine that they support changes to the definitions of extramarital unions in order to introduce same-sex registered partnerships. The Left (Levica)¹⁰⁹ offers the same support as the Liberal Party when it comes to the human rights of LGBTI people, and together with the Liberal Party and Liberal Democratic Party are the only parties that explicitly support legal introduction of same-sex partnerships. The Left and the Liberal Party are the only parties that would support an initiative for legal changes that would make sex reassignment and gender recognition possible.

3.8 Hate speech

Considering the lack of a specific definition of hate speech in the country's law, we take into consideration the definition of hate speech offered by the Council of Europe Committee of Ministers from the Recommendation 97(20) whereby the term hate speech indicates:

“All forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility towards minorities, migrants and people of immigrant origin.”

This lack of a uniform definition is reflected in the national legislation as well. While there is no special law on hate speech adopted, the Criminal Code adopted in 1996 incriminates hate speech in a vague way, with no coherent article existing that would define and regulate hate speech. However, there are several articles within the Criminal Code¹¹⁰ that are related to elements of hate speech. Article 319(1) criminalizes incitement of hatred, discord and intolerance. Under specific conditions, hate speech is also criminalized in article 417 (3), according to which “whosoever spreads ideas about the superiority of one race over another, or who advocates racial hate, or instigates racial discrimination, shall be sentenced to imprisonment of six months to three years.” Despite the long list of characteristics included in Article 319, sexual orientation and gender identity are not specifically included as prohibited grounds for incitement of hatred. SOGI are also not included as protected characteristics in any other articles in the Criminal Code.

Despite the increasing number of cases of hate speech and incitement of hatred and violence on social networks and via computer systems in the former Yugoslav Republic of Macedonia, as continuously reported by human rights organizations,¹¹¹ in the Criminal Code the incrimination of hate speech which is spread through computer systems (article 394-d) does not include SOGI as a protected characteristic. Until an open list of protected characteristics was introduced with the 2014 Criminal Code, amendments relating to the hate speech provisions in Article 319, Article 417 and Article 394¹¹² the list of protected characteristics was closed and limited to ethnicity, race, nationality and sex.

This non-comprehensive understanding and recognition of hate speech is further reflected in the practices of the competent courts and the offices of the primary public prosecution that show a “tendency of avoiding, or giving more lenient qualification of cases inciting hatred, discord or intolerance on a national, racial, religious and other discriminatory basis. For the period from 2011 to 2014, there was only one final judgment in the former Yugoslav Republic of Macedonia for this crime.”¹¹³

Aside from cases of hate speech in the mainstream media, the most worrisome cases of hate speech have been reported on social media. Many of these have been distributed by journalists themselves, the majority of which have been explicit incitements to violence; and by senior politicians, the majority of whom are from the Government or the ruling parliamentary majority. Anti-LGBTI speech by politicians has been noted as early as 2006 during the pre-election campaign. In the same year the new Minister of Foreign Affairs in the newly-elected Government attacked their political opponents the Social Democrats because of their support for same-sex partnerships, claiming that they were threatening the health of the nation.¹¹⁴

In the summer of 2012, after 10 activists from LGBT United Tetovo took photos in front of the Warrior on Horse fountain in the centre of Skopje with a rainbow flag and paper cards with inscriptions “gay,” “lesbian,” “bisexual” and “transgender,” the photo went viral on numerous media. Two pro-government journalists posted the photo on their Facebook pages and provoked a series of hate speech comments, often followed by explicit calls for violence.

Later the same year another homophobic campaign began, involving government representatives, media, social networks and some civic associations. This was reflected later the same year in an attack on two LGBTI activists on the main square in Skopje during the Tolerance March.

The Helsinki Committee and the Coalition SHRMC have pressed criminal charges to the Public Prosecution relating to these cases. The Primary Public Prosecutor’s Office rejected the charges with the explanation that they are not prosecuted *ex officio*. Furthermore, they indicated that owners of Facebook profiles cannot be responsible for comments left by their fans. The organizations appealed against the decision of the Primary Public Prosecutor to the Higher Public Prosecutor, indicating that the legislator failed to consider that all of the criminal charges were prosecuted upon a civic lawsuit. The Higher Public Prosecutor’s Office rejected the first complaint as unfounded, but accepted the second complaint and required the primary public prosecutor to further continue with the procedure.¹¹⁵ The lack of proactive action on the part of the Primary Public Prosecutor has also been reflected in a lack of positive or proactive response by the Department of Electronic Crime in the MOI.¹¹⁶

In response to the increasingly negative and homophobic atmosphere and the increase in public hate speech motivated by sexual orientation, the Coalition “Sexual and Health Rights of Marginalized Communities” initiated a public discussion in the Assembly on the International Day against Homophobia (IDAHO Day) on 17 May 2012. This was done within the context of the Commission for Equal Opportunities Between Women and Men, in order to raise the Coalition’s grave concerns regarding the widespread public hate speech and homophobic campaigns. The Coalition also proposed a Declaration that would condemn all hate speech against marginalized communities, LGBTI people included, in parliament. However, in recommendations from the final debate, the groups that are most affected by hate speech were not explicitly named. This was interpreted by activists as a lack of will to recognize the existence, problems and struggles of marginalized communities, including LGBTI people.¹¹⁷ Later that year, the draft Declaration proposed by the Coalition was introduced as a draft bill for a Declaration condemning hate speech by the MP Ivon Velichkovski from the Liberal Party. After two months of ignoring the draft bill, the Assembly eventually voted with a majority of votes against it.¹¹⁸

3.9 Hate crimes

The European Court of Human Rights, referring to the European Convention on Human Rights and Fundamental Freedoms has reiterated in several cases the importance of a legal and state response which is proportionate to the harm caused in cases of crime and criminal acts. A proportionate response would take into consideration the potential discriminatory bias of a crime.¹¹⁹ In the case of *Sessic v. Croatia* the court stated that: “when investigating violent incidents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.”¹²⁰

This aspect of the nature of hate crimes and their legal regulation in the legislation is regulated in the Criminal Code,¹²¹ article 39(5) in the provisions for “aggravating circumstance”.

The lack of inclusion of sexual orientation and gender identity as protected characteristics in cases of hate crimes in the Criminal Code is a real problem given that NGOs have continuously reported that sexual orientation is the third most frequent motivation for hate crimes, after hate crimes motivated by ethnicity and political affiliation.¹²² Prior to 2010, activists reported sporadically on the existence of hate crimes motivated on the grounds of sexual orientation, emphasizing LGBTI people's fear of reporting such cases because of their lack of confidence in the state institutions. The few cases that were documented, and which were never legally tried, include violence, harassment by police officers and thefts from gay men, some of which occurred in the cruising areas and during anonymous sex dates.¹²³

In 2012, after a several-week homophobic campaign against "homosexual marriages" initiated by the Government and supported through hate speech incited by some media, two activists of the Helsinki Committee for Human Rights and the Coalition "Sexual and Health Rights of Marginalized Communities" were attacked by a masked person on the main city square in Skopje. The attack took place just before the start of the March of Tolerance marking the International Tolerance Day, on 17 November. This is an example of a rare case where the attacker was detained and prosecuted, and charged with violation of freedom of assembly. However, the Criminal Court failed to take into consideration the existence of "aggravating circumstances" namely the homophobic motivation for the crime.¹²⁴

Since its opening on 23 October 2012, the LGBT Support Centre has been the target of six attacks. The first attack on the Centre occurred just few hours after its opening, by several masked persons. The centre was attacked again less than two months later, with an unsuccessful arson attempt.

In June 2013 the LGBT Support Centre was officially opened again with the promotion of a guide to the health rights of trans people. Dozens of masked individuals attacked the centre, throwing glass bottles, stones and explosive materials, thereby endangering the lives of the people present during the event being held in the centre.¹²⁵ Although representatives from the Ministry of Internal Affairs had guaranteed the organizers of the Pride Weekend that there was to be increased police presence that would guarantee the safety of the participants, only the wounded police officers keeping guard in front of the centre attempted to stop the attackers. Video recordings of the centre show that police officers left their positions immediately before the attack without attempting to prevent the attackers.¹²⁶

Less than a month later, on 5 July 2013, the centre was attacked again. This time, an attempt to set the centre on fire resulted in severe material damage, and the centre was temporarily closed. This occurred only few hours after diplomatic representatives visited the centre in order to express their support and condemn the violent attacks.¹²⁷ The MOI's official daily bulletin failed to even report on the attack.

The last and most severe attack took place a year later, in October 2014. On the occasion of the celebration of the second anniversary of the centre, a group of 30 masked persons with glass bottles attacked the coffee bar Damar in the Old Bazar where the celebration was taking place. Several guests in the bar were injured, with one girl severely wounded in the head.¹²⁸ After this last attack, activists from the National Network for Combat against Homophobia and Transphobia initiated a series of protests, taking place each week in front of the Public Persecution premises.¹²⁹

Despite calls made by LGBT activists to state officials, none of the attacks has been publicly condemned by state institutions and representatives, nor has any of the cases been solved by the MOI or the Public Persecutor. The attackers were only found and persecuted in one of the attacks, and the prosecution charges failed to consider the "aggravating circumstances" and the homophobic motivation of the crime.¹³⁰

As activists have argued, this silence on behalf of the responsible stakeholders reinforces the existing hatred and homophobia in society. It implicitly sends the message that hate crimes motivated by sexual orientation or gender identity are allowed and can pass unpunished.¹³¹

The majority of these attacks on the centre were preceded by hate speech by public figures and journalists, spread on social media. This suggests that the hate speech had some role in motivating the attacks. For example, misinformation distributed on some internet portals and media caused a storm of homophobic hate speech, not only on social networks, but in comments on TV and newspaper websites.¹³² Hate speech included explicit calls for execution of and violence towards LGBTI people. Although human rights activists reported the hate speech to the relevant agencies, there was no reaction, and no prosecution of anyone by the Department for Electronic Crime in the MOI. Even more worrying is the fact that the attacks were followed by further hate speech and justification of the violence against LGBTI people by journalists on their Facebook pages.¹³³

The Coalition SHRMC reported two cases of violence against transgender people in 2014 and 2015. One of the cases was reported to include an attack on several transgender people by a taxi driver in 2014. However, because the victims experienced humiliation and threats by a police officer when attempting to report the case, they decided not to press any charges. Another 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 SHRMC 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."¹³⁴

We have gathered information about these cases through reports and interviews with human rights organizations and activists. State institutions do not provide any comprehensive or systematized database for hate crimes, and there have been no concrete measures undertaken by the State to raise public awareness on hate crimes or to train relevant officials and judges in dealing with hate crimes!³⁵ The Annual Report on hate crimes in the OSCE region confirms that the former Yugoslav Republic of Macedonia does not compile any statistics related to hate crimes!³⁶ The Progress Report of the European Commission for 2014 states that, "Data on the reporting, investigation and prosecution of hate speech and hate crime is not collected systematically and training of law enforcement, prosecutors and judges needs to be stepped up."¹³⁷ The web page www.zlostorstvaodomraza.mk set by the Helsinki Committee for Human Rights in the former Yugoslav Republic of Macedonia is an effort to map, monitor, and report on hate crime incidents. This interactive tool provides citizens with the opportunity to receive information and report hate crimes!³⁸

4. Conclusions and recommendations

4.1 Conclusions

The question of LGBTI identities in former Yugoslav Republic of Macedonia forms part of a complex constellation of cultural and historical forces. These include a multicultural national context which integrates several cultures with homogenizing and essentializing tendencies; a mood of constant panic of threat and uncertainty about the country's national identity; a post-Communist transitional period that has been marked by the country's recent independence, and by the inter-ethnic conflict of 2001. One important factor for understanding the treatment of LGBTI people is the fact that in 1991 the former Yugoslav Republic of Macedonia gained independence for the first time in its history. State and nation building have been important preoccupations for political and social forces in the country. This has been intensified as a result of the contestation about the country's independence and national identity by neighbouring countries, in various different ways.

Nationalistic discourse along the lines of ethnic conflict and division has increased significantly in recent years. This discourse has either neglected the political relevance of LGBTI rights and issues in their entirety, or represented these as something that threatens national welfare and reproduction by undermining the traditional nuclear heterosexual family.

Whilst all neighbouring countries have adopted non-discrimination laws prohibiting discrimination on the grounds on sexual orientation, the former Yugoslav Republic of Macedonia has not yet adopted an inclusive law. A series of homophobic debates have been raised in reference to the inclusion of sexual orientation in the law.

The country's legislation displays many inconsistencies and contradictions when it comes to the rights of sexual and gender minorities. These legal inconsistencies become even more relevant given ongoing reports from international human rights organizations, the European Commission and national NGOs, that the former Yugoslav Republic of Macedonia is experiencing an increasingly homophobic political atmosphere and growing negative social attitudes and stigma towards LGBTI people.

The lack of comprehensive legal provision of protection for LGBTI people, and the failure of political will to raise issues related to the human rights of these groups is still more concerning given the high levels of fear of social exclusion and stigmatization expressed by LGBTI people, and the shockingly high rates of homophobic attitudes among the general population.

This report reviews several different aspects of LGBTI rights in the former Yugoslav Republic of Macedonia, including employment, education, health, discrimination, family affairs, the media, political parties, hate speech and hate crimes.

Non-discriminatory provisions in employment are included in the Law on Prevention and Protection against Discrimination,¹³⁹ the Law on Equal Opportunities between Men and Women,¹⁴⁰ and the Law on Labour Relations.¹⁴¹

The employment risk of living life openly as a gay or trans person in the former Yugoslav Republic of Macedonia remains very high. A major problem faced by LGBTI people in the workplace is stress and anxiety as a result of having to hide their sexual or gender identity in order to "fit in" with their heterosexual peers in the workplace.¹⁴² The LGBTI community faces discrimination and stigma in the workplace, including harassment, bullying, inappropriate jokes and comments and in some cases even dismissal without any other reason. Transgender people face the highest risk of poverty and social exclusion of all LGBTI people. The majority of transgender people are unemployed, suffer poverty and have problems with housing. Many of the transgender community, especially transgender women, are forced to undertake sex work in order to generate an income.

The official textbooks for primary and secondary education do not include any specific content about LGBTI people or sexual orientation and gender identity (SOGI). Primary education textbooks include representation of "masculinity" and "femininity" as natural categories, and heterosexuality as the dominant perspective. Secondary education is equally lacking in terms of its coverage of sexuality and gender.

There is no access to comprehensive sexuality education (CSE) in the former Yugoslav Republic of Macedonia. Limited pieces of information are scattered throughout the curricula for primary and secondary schools. The main corpus of information relating to sexuality focuses on anatomical aspects and some info about sexually transmitted infections, mainly within the context of biology teaching.

There is need to develop textbooks that will promote the principle of equality; enable comprehensive sexuality education in primary and secondary education; and create policies for protection against gender-based violence and discrimination with a focus on homophobic and transphobic bullying.

The Law on Health Protection¹⁴³ includes a list of health protection principles. Among others, the principle of fairness includes non-discrimination provisions. SOGI is not listed in the prohibited grounds for discrimination. In the local language version of the text, sex is the term used for gender. The Law on Protection of Patients' Rights¹⁴⁴ stipulates that each patient has the right to enjoy the rights guaranteed by the law without discrimination on different grounds, with an open clause and sexual orientation included in the list of prohibited grounds for discrimination.

The former Yugoslav Republic of Macedonia is experiencing a low-level, concentrated HIV epidemic. The small number of people currently living with HIV is attributable, in part, to an effective HIV response to date.¹⁴⁵ There is increasing HIV prevalence among certain population groups, particularly men who have sex with men (MSM). This recent trend warrants early attention. To date, the majority of funds for HIV prevention and treatment have been provided by international donors, especially the Global Fund to Fight AIDS, Tuberculosis and Malaria. Currently the country is facing serious challenges in relation as a result of withdrawal of the donors' funds. This poses a significant threat to the continuation and improvement of the HIV response.¹⁴⁶

Transgender people are highly vulnerable to violation of their health rights.¹⁴⁷ They are invisible in terms of their gender identity, and typically have no access to the services they need, such as psychiatric approval, hormone therapy under medical supervision, or surgical procedures.

LGBTI youth suffer a significant amount of negative social pressure, discrimination, harassment and violence. This environment has a negative impact on the mental health of young LGBTI people. LGBTI young people report higher levels of anxiety when compared with their heterosexual peers. Studies also confirm that LGBTI young people experience numerous health disorders related to their experiences of isolation, segregation, exclusion and violence.¹⁴⁸

The Law on Prevention and Protection against Discrimination is a dedicated law which regulates discrimination. Article 3 prohibits any direct or indirect discrimination, any call for or incitement to discrimination, and any assistance in discriminatory treatment on 19 grounds. SOGI is not included in the prohibited grounds for discrimination.

In addition to the national body, the Commission for Prevention and Protection, the former Yugoslav Republic of Macedonia also has local mechanisms for prevention and protection from discrimination. These include the Commissions and Coordinators for Equal Opportunities between Women and Men which promote gender equality and non-discrimination and function as part of local governments; the Deputy Ombudsman's regional offices; and regional offices of the Ministry of Justice which are authorized to provide free legal aid.

The majority of citizens exhibit discriminatory attitudes, prejudice, reduced tolerance and attitudes that lead to social exclusion towards LGBTI people. LGBTI people face higher levels of everyday discrimination compared to their non-LGBTI peers.¹⁴⁹ A significant part of the LGBTI community considers themselves to have been victims of discrimination and violence because of their SOGI. Concerningly, many incidents of this kind of violence are never reported.¹⁵⁰

The Law on Family defines marriage exclusively as a union between two people, a man and a woman. Extramarital union is also defined as exclusively heterosexual in the law, and partners have the same rights as married people.¹⁵¹ Although the Macedonian Association for Free Sexual Orientation (MASSO) prepared a draft Law on Registered Partnership in 2006, to date no specific law has been adopted that covers same-sex registered partnerships. Moreover, various religious representatives and the conservative Government of the political party VMRO-DPMNE have continuously employed rhetoric about same-sex marriage which has created panic in public about the alleged threat this poses to heterosexual marriage.¹⁵²

Human rights organizations have also repeatedly reported¹⁵³ on family violence where children are subject to violence on the grounds of their sexual orientation. Most LGBTI youth whose parents know about their sexual orientation have experienced family violence, including psychological and physical violence.

The Law on Media and the Law on Audio and Audio-Visual Media Services prohibit publishing or broadcasting media content that aims to incite or spread discrimination, intolerance and hatred on the grounds of race, sex, religion or nationality, opening the grounds for motivation in accordance with the practices of the European Court of Human Rights. The Agency for Audio and Audio-Visual Media Services has the responsibility and authorization to monitor any violations of these regulations. The Agency has, on several occasions, demonstrated awareness that hate speech on the grounds of sexual orientation and belonging to a marginalized group is a particular problem. It has made some positive steps in the direction of preventing, condemning or sanctioning hate speech on the grounds of SOGI.

Research on representations of LGBT in the media has noticed gradual changes in the media discourse over the last 25 years.¹⁵⁴

Political parties have mostly been silent in relation to the human rights of LGBTI people.¹⁵⁵ Opposition parties from the liberal and social-democratic block have tended to adopt a negotiated, moderate and defensive official position on LGBTI issues. Ethnic Albanian parties have continuously ignored the problems of the LGBTI community, while the ruling conservative party of VMRO-DPMNE has expressed strict views against same-sex marriages and unions. There has been some progress in recent years in the positions of the more left-oriented parties, which have occasionally become more vocal in relation to violence suffered by LGBTI people. The most significant changes took place during the pre-election period for the parliamentary elections in December 2016, when the majority of political parties expressed support for different issues related to LGBTI rights¹⁵⁶. However, only three parties, the Liberal Party, the Liberal-Democratic Party, and the Left, have expressed support for same-sex registered partnerships; while only two parties, the Liberal Party and the Left, support legal changes for sex reassignments and gender recognition.

There is no special law on hate speech adopted so far. The Criminal Code¹⁵⁷ adopted in 1996 incriminates hate speech in vague way, and includes no coherent article that would define and regulate hate speech. Those articles in the Code that are related to regulations of incitement of hatred do not include SOGI as motivation for hate speech. Despite the increasing number of cases of hate speech and incitement of hatred and violence on social networks and the Internet in the former Yugoslav Republic of Macedonia, the incrimination of hate speech in the Criminal Code related to electronic media does not include SOGI among the protected characteristics.

Despite increasing occurrences of hate speech in the public sphere, activists have noted the lack of a proactive role by the Primary Public Prosecutor. The Department of Electronic Crime in the MOI, and other responsible state institutions have also failed to demonstrate a positive response or take a proactive stance on this issue.

Hate crimes are regulated in the Criminal Code. The provisions for “aggravating circumstances”¹⁵⁸ include a long list of characteristics which may be considered as the cause of the harm produced to a person or property. This list of protected characteristics does not include sexual orientation or gender identity, although the list is open in the sense that it also takes into consideration the relevance of international law and treaties and documents ratified by the state. The lack of inclusion of sexual orientation and gender identity as protected characteristics in cases of hate crimes in the Criminal Code is a real problem given that NGOs report repeatedly how sexual orientation is the third most occurring motivation for hate crimes in the former Yugoslav Republic of Macedonia.

To date, the State has not undertaken any concrete measures to raise public awareness on hate crimes or to train relevant actors and judges in relation to such crimes.

4.2 Recommendation

Recommendations on employment

To Parliament:

- The terminology in the Law on Labour Relations should be adjusted. Sex orientation should be reworded as sexual orientation. Gender identity should also be included as a basis for discrimination.

To trade unions, especially the Federation of Trade Unions in the former Yugoslav Republic of Macedonia:

- Trade unions, especially the Federation of Trade Unions in the former Yugoslav Republic of Macedonia, should include discrimination in employment and work on all prohibited grounds of discrimination. Prohibited grounds of discrimination should explicitly include sexual orientation and gender identity.
- Trade unions, especially the Federation of Trade Unions in the former Yugoslav Republic of Macedonia, should develop collaboration with LGBTI and human rights CSOs, state equality institutions and bodies for human rights in order to fight discrimination in the workplace or in employment.
- Trade unions, especially the Federation of Trade Unions in the former Yugoslav Republic of Macedonia, should develop policies on equal opportunities and non-discrimination.

Recommendations on education

To Parliament:

- The Law on Primary Education and the Law on Secondary Education should include SOGI as a prohibited grounds
- The Law on Higher Education should include non-discriminatory provisions that will contain SOGI as a prohibited grounds for discrimination.

To the Ministry of Education and Science:

- The New Strategy for Reducing Violence in Schools should be developed to add a special focus on combating homophobic and transphobic violence and bullying.
- 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.
- Textbooks for higher education that contain homophobic or transphobic content, or discriminatory and intolerant attitudes and values, should be replaced with adequate textbooks that promote equality, non-discrimination and social inclusion.
- The Ministry of Education and Science and the Bureau for Educational Development should introduce comprehensive sex education into the curricula for primary and secondary education.
- The Ministry of Education and Science should consider creating a High-School Ombudsman as a state body with the purpose of protecting the human rights of high-school students.
- Elementary and high schools should create peer support teams of pupils and students in order to ensure a more supportive environment for the victims of bullying, discrimination or social exclusion.
- The Ministry of Education should develop a new Strategy for Reducing Violence in School that will include concrete actions and measures for combating homophobic and transphobic violence and bullying in schools.
- The Pedagogy Service in collaboration with LGBTI CSOs should develop training modules for professional staff in elementary and high schools with the aim of building the capacities of school psychologists and teaching staff to prevent and combat homophobic and transphobic bullying, discrimination and violence in schools.
- Universities, especially state universities should introduce policies for equal opportunities and non-discrimination.

Recommendations on health

To Parliament:

- Article 9 of the Law on Health Protection should be amended to include SOGI as a prohibited grounds for discrimination.
- The Law on the Protection of Patients' Rights should be amended to include concrete sanctions against discrimination.

To municipalities/local self-government units:

- Local governments should include local LGBT organizations as part of local Commissions for the Protection of Patients' Rights.

To the Ministry of Health:

- The Ministry of Health should work with medical experts and transgender activists to develop a protocol for the health protection of transgender people who are in a gender transition process.
- The Ministry of Health should create professionally equipped medical health care services that will offer health protection for transgender people.
- The Fund for Health Insurance should immediately approve requests for sex change treatments in foreign countries.

- The Ministry of Health and the Government should urgently allocate adequate funding for the national HIV programme. They should prioritize prevention interventions for MSM – including gay and bisexual men and transgender people – in order to prevent the significant number of new HIV infections and deaths that are expected to occur by 2030 predominantly in these groups.
- The Ministry of Health should establish a functional mechanism to maintain and scale up prevention programmes targeting MSM, in partnership with community-based and other civil society organizations.

Recommendations on discrimination

To Parliament:

- The Law on Prevention and Protection against Discrimination should be changed to include SOGI in Article 3 as a prohibited grounds for discrimination.

To the Ministry of Labour and Social Policy:

- In its strategies for prevention and protection against discrimination and gender equality, the Ministry of Labour and Social Policy should more actively involve local government units in work to ensure protection against discrimination. The Ministry should plan and budget for specific activities intended to strengthen local mechanisms for equal opportunities and protection against discrimination and for strengthening local-government involvement in the implementation of activities within the national strategies and plans for gender equality, equal opportunities, and discrimination.
- The National Strategy for Equality and Non-Discrimination 2020-2024 should include specific measures for combating discrimination based on SOGI.
- The Commission for Protection against Discrimination, in collaboration with LGBT CSOs, should continue the good practice of implementing public campaigns to combat discrimination based on SOGI.
- Commissioners from the Commission for Protection against Discrimination should build their capacities through thematic trainings on LGBTI rights and discrimination based on SOGI.
- The Ministry should hold regular meetings with LGBTI NGOs which have regularly lodged complaints with the Commission for Protection against Discrimination, in order to gather their feedback on the work of the Commission in managing such complaints, and to identify possible ways to improve the Commission's effectiveness and efficiency.

Recommendations on the media

To Parliament:

- The Law on Audio and Audio-Visual Services should be amended to include specific and concrete provisions and sanctions in cases of publishing or broadcasting of media content intended to incite or spread discrimination, intolerance and hatred.

To the Agency for Audio and Audio-Visual Media Services:

- The Agency for Audio and Audio-Visual Media Services and MRTV (Macedonian Radio Television) as a public broadcaster should identify campaigns promoting non-discrimination and equal rights of marginalized communities, LGBTI people included, as campaigns of public interest. The status of public interest allows free-of-charge broadcasting of campaign materials.
- The Agency for Audio and Audio-Visual Media Services should continue its good practice of integrating human rights perspectives, the promotion of non-discrimination and the prevention of hate speech on the grounds of SOGI when preparing its new strategy.

To the Ministry of Justice:

- The Ministry of Justice should prepare legal amendments that will offer better protection and sanctions against hate speech in the media (including readers' and viewers' comments).

To the Government:

- The Government should create an annual programme to combat discrimination against and social exclusion of LGBTI people. This programme should include an action plan with a budget for activities to raise awareness among editorial staff and journalists about the role which the media plays in combating discrimination and social exclusion.

To state bodies for the protection of human rights:

- State bodies for human rights such as the Commission for Protection against Discrimination and the Ombudsman, together with CSOs, should organize regular briefings for journalists to present updates on the current situation of the human rights of marginalized communities (including LGBTI people).
- The Commission for Protection against Discrimination should plan concrete programme activities to stimulate research into media discourse. Such research should focus both on the role of media in promulgating negative stereotypes prejudice, discrimination, social exclusion, or discriminatory and hate speech towards LGBTI people, and also on their positive role in combating discrimination and promoting equal rights.
- The Ombudsman should produce an annual report focusing on the representation of marginalized communities (including LGBTI people) in the media. The conclusions and recommendations of the report should be presented to editors, journalists and their professional associations.

To other relevant stakeholders:

- CSOs working with LGBTI people, in collaboration with professional associations of journalists, should create proposals aimed at stimulating investigative journalism into the human rights of marginalized communities. These proposals would be the basis for donor funding applications.
- A specific curriculum should be created in accredited higher educational institutions for journalism in which the human rights of marginalized communities (including LGBTI people) will be addressed.
- The Court of Honour of the Macedonian Journalists Association, in collaboration with CSOs, should produce a collection of books detailing cases of media violations of human rights of marginalized communities (including LGBTI). This would clearly illustrate the dangers arising from sensationalistic media coverage, and the need for respecting the relevant clauses from the Ethical Codex.

Recommendations on political parties

- Political parties should include principles of non-discrimination, tolerance and equality, with a focus on SOGI, in their documents (statutes, manifestos, platforms etc.).
- The electoral programmes of political parties should include specific activities and measures for improving the situation relating to LGBTI rights in the former Yugoslav Republic of Macedonia.
- CSOs working on LGBTI issues should provide trainings on human rights, non-discrimination and the social inclusion of LGBTI people for the youth branches of political parties.
- Political parties and CSOs working on LGBTI issues should foster collaboration on combating homophobia and transphobia.

- MPs from different political parties should sign and adopt a Declaration condemning hate speech against LGBTI people in parliament.

Recommendations on hate speech

- The Criminal Code should be amended in order to offer better protection and sanctions for hate speech and hate crimes on the grounds of sexual orientation and gender identity. The Code should include a clear definition of hate speech in accordance with the decisions of the European Court for Human Rights and the Council of Europe.
- The Government, the Parliament and the relevant state institutions should introduce a range of positive measures into various policy documents relating to media regulation, education, culture and other relevant fields, aimed at tackling prejudice and discrimination without recourse to punitive sanctions.
- The Ministry of Interior Affairs and the Department for Cybercrime should take a proactive role in combating hate speech spread via the internet.
- The Public Prosecutor's Office should increase its interest in and prosecution of ex officio hate speech crimes in accordance with its mandate.
- The Ministry of Interior Affairs should collect statistical data about the occurrence of hate speech on different grounds, including on the grounds of SOGI, in accordance with the recommendation of the OSCE Mission in Skopje.
- Equality institutions and state bodies for human rights should use their mandate to develop data collection mechanisms and promote empirical and other research on hate speech on various grounds, including SOGI.
- The Agency for Audio and Audio-Visual Media Services should develop at least two reports on hate speech on various grounds, including SOGI, per year. The analysis and recommendations from these reports should be presented to relevant state institutions, media and editorial staff and relevant parliamentarian commissions.
- Equality institutions and state bodies for human rights, together with LGBTI CSOs, should develop campaigns for combating hate speech that will target the general public, youth and journalists.
- The media and journalists who spread hate speech should be properly sanctioned in accordance with the Criminal Law, to support the prevention of future hate speech.

Recommendations on hate crimes

- The Criminal Law should include SOGI in the lists of prohibited grounds for discrimination in articles regulating hate crimes.
- The former Yugoslav Republic of Macedonia should invest in securing timely and effective investigations for prosecution of hate crimes, taking in consideration all grounds of discrimination during the criminal procedure.
- The Government and relevant state institutions should take adequate measures to ensure that victims have easy access to mechanisms for reporting hate crimes.
- Victims of hate crimes should receive psycho-social and legal aid from CSOs and relevant state institutions during and after investigation.
- The Ministry of Interior Affairs should collect statistical data about hate crimes on various grounds including SOGI, and develop annual reports on the situation of hate crimes in the former Yugoslav Republic of Macedonia.

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⁵⁸ The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (Principle 16). Available at: <http://www.yogyakartaprinciples.org/principle-16/>

⁵⁹ Kjostarova, Unkovska, Lina. 2016. *How Equal and Safe is the Macedonian Youth in their Sexual Development and Experiences? On Sexuality and Sexual Health explored through Gender Affiliation, Roles, Behaviour and Children's Rights*. Скопје: Coalition SHRMC. This research included a nationally representative sample.

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- ⁹⁶ Trajanoski Zarko, Dimitrov Slavco, Cvetkovic Irena. 2009. *Media, Non-Discrimination and Marginalized Communities*. Skopje: HOPS.
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- ⁹⁸ Koteska, Jasna, Rosich, Tatjana and Ljumovic, Janko (eds.). 2015. *Representations of Gender Minorities in the Media: Serbia, Macedonia and Montenegro*. Belgrade: FMK.
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- ¹⁰² The party doctrine states that "Tradition, along with the faith and the church, was a protector guarding the identity of the Macedonian throughout the ages."
- ¹⁰³ Klekovski Saso. 2009. *Attitudes towards traditional/secular values.*, Skopje: MCMS.
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- ¹¹⁴ MASSO. 2007. *Report*. Skopje: MASSO.
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- ¹¹⁷ Interview with Irena Cvetkovic, Executive Director of the Coalition SHRMC.
- ¹¹⁸ Coalition "Sexual and Health Rights of Marginalized Communities". 2013. *Annual Report 2012*. Skopje: Coalition SHRMC.
- ¹¹⁹ Nachova and Others v. Bulgaria, Judgement of the European Court of Human Rights (Grand Chamber), 6 July 2005, paragraphs 160-168, <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database>
- ¹²⁰ 120Secic v Croatia, Judgement of the European Court of Human Rights, (Chamber Judgement), 31 May 2007, paragraph 66, <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database>
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- ¹²⁵ The Report by MOI states: "On 22 June 2013, around 6.40 p.m., in the Old Bazaar, a group of young individuals interrupted the peace and order, whereupon the Helsinki Committee Office was stoned and the windows were broken, after which the group escaped to the surrounding streets. The group which threw stones also wounded a police officer who was transferred to the City Hospital "St. Naum Ohridski" in Skopje for medical assistance. SOI Skopje is undertaking measures to find the perpetrators and solve the case." Daily Bulletin of the MOI, 23.06.2013,
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