



ANALYSIS OF THE ANTI-DISCRIMINATION LEGISLATION IN THE REPUBLIC OF MACEDONIA IN RELATION TO SEXUAL ORIENTATION AND GENDER IDENTITY

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ABBREVIATIONS

CoE	Council of Europe
CPAD	Commission for Protection against Discrimination
CSO	Civil Society Organization
ECHR	European convention on human rights and fundamental freedoms
ECJ	European Court of Justice
ECtHR	European Court for Human Rights
EU	European Union
FYR	Former Yugoslav Republic
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex and Queer
MASSO	Macedonian Association for Free Sexual Orientation
NATO	The North-Atlantic Treaty Organization
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organization of Security and Co-operation
SAA	Stabilization and association Agreement
SDSM	Socialist Party of Macedonia
SOGI	Sexual Orientation and Gender Identity
TEU	Treaty on EU
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration for Human Rights
UN	United Nations
UNHCHR	Office of the United Nations High Commissioner for Human Rights
UNHRC	United Nations Human Rights Council (former Committee)
VMRO	Internal Macedonian Revolutionary Organization

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ACKNOWLEDGEMENT

Dear reader,

It is our great honor and pleasure to present you the *Analysis of the anti-discrimination legislation in the Republic of Macedonia in relation to sexual orientation and gender identity*. This analysis which provides a detailed overview of the compliance of the anti-discrimination legislation of Macedonia to the EU *acquis communautaire* and to the other international human rights documents and standards is conducted by the association for a critical approach to gender and sexuality SUBVERSIVE FRONT Skopje.

Macedonia still lags significantly behind the countries in South-eastern Europe in regard to adopting and implementing laws and policies that protect and prevent against discrimination based on sexual orientation and gender identity, which has been detected in numerous reports from various institutions and organizations, especially after the country was granted an EU candidacy status. This analysis puts forward a set of recommendations for advancing the human rights framework for protection against discrimination against the LGBTI people.

This analysis was conducted by Aleksandra Bogdanovska MA, the Executive Director of the *Coalition All for fair trials* from Skopje, Macedonia. Her diligent approach to this arduous task is to be highly credited and her comprehensive knowledge of the variety of documents, systems and processes pertaining to the topic of this analysis showed crucial in its successful completion. I would also like to express deep gratitude to my colleague Daniel Mitkovski whose suggestions, ideas and efforts were vital for the technical and administrative aspects of the implementation of this laborious assignment. I would also like to **sincerely thank Saša Gavrić whose efforts at the beginning of the project** planning and implementation were invaluable and inspiring.

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Antonio Mihajlov
President of Subversive Front

INTRODUCTION

In the twentieth century, after the modern gay rights movement in 1969, societies started to debate on homosexuality. The legal and social status of Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) varies significantly around the world and remains fiercely contested in political and religious discussion in many places.

On the global level, there are different measures that countries in the world have taken and are still taking for and against the rights of LGBTIQ. According to the annual report on State-sponsored Homophobia, 72 countries in the world still prosecute people on the ground of their sexual orientation and deny LGBTIQ people their human rights, in 13 of these countries, the death penalty is stipulated as a punishment for same-sex sexual activity.¹ Thus, the LGBTIQ rights are of great importance in the global era for democratization and human rights protection.

In Europe, there are no laws against homosexuality. However, not all European countries have the same protection for LGBTIQ rights. There are dissimilarities in LGBTIQ rights protection between the European countries at least on two levels. The first one - differences between European Union (EU) member states regulations and the second - differences between EU member states and non-EU states regulations. The international community mostly represented by the United Nations (UN), EU and the Council of Europe (CoE) play a big role in the process of democratization and Europeanization of the European countries. The human rights promotion and protection are one of the main pillars of these organizations, therefore the LGBTIQ rights as human rights are of great relevance for the EU members and even more for the candidate countries.²

¹ International Lesbian, Gay, Bisexual, Trans and Intersex Association: Carroll, A., *State Sponsored Homophobia 2016: A world survey of sexual orientation laws: criminalisation, protection and recognition* (Geneva: ILGA, May 2016).
http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf

² The non-discrimination on sexual orientation and gender identity in employment became a condition for EU accession since the Council Directive 2000/78/EC - <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML> (accessed on 04.02.2014)

This analysis will present the anti-discrimination legislation in the Republic of Macedonia in relation to sexual orientation and gender identity. In order to have a wider perspective, the analysis will be divided into few chapters analyzing the international documents, national legislation of the Republic of Macedonia in relation to the alignment of the national legislation with the EU *acquis communautaire*, conclusions and at the end recommendations.

Numerous and various sources of data will be used. The most important for assessing the improvement or the *status quo* will be the official documents (constitutions, national legislations and regulations, reports of the state institutions, governmental law-drafts). The reports of the relevant civil society organizations (CSOs), both national and international, also represent an important source of information for following the changes in the specific fields. The secondary literature and the works of the international and Macedonian scholars and journalists will be used for researching the necessary information.

1. INTERNATIONAL ORGANIZATIONS

Human rights and the process of democratization are two sides of one coin. For one society to become democracy it must respect human rights and the respect of human rights is only possible in a democratic society. The principle of non-discrimination plays an enormous role as a direct indicator of the principle of equality, which is fundamental both to democracy and human rights. The non-discrimination principle as the most important for the rights of minorities can be observed throughout different categories as nationality, ethnicity, religion, language, sex, gender etc. Nevertheless, sexual orientation and gender identity as categories seem to be the least respected when we talk about the minority rights in terms of sexual minorities. The country case studies that have been done show that from the most developed democracies to some not so developed nations the concept of recognition of at least some LGBTIQ rights is a logical consequence of applying non-discrimination and equal protection principles, even if some of those countries are unwilling to extend those principles to full legal recognition of same-sex unions.³

1.1. The United Nations

The Universal Declaration of Human Rights (UDHR) was a milestone document for the history of human rights.⁴ Sixty-six years since the adoption of the UDHR, at a time when homosexuality was even more widely criminalized than it is now, the UN have made important developments in promoting and protecting human rights and sexual orientation and gender identity. Starting from the article 1 of the UDHR which ***states “All human beings are born free and equal in dignity and rights”***⁵, regardless of the sexual orientation and gender identity, until the last article guides the spirit of equality and non-discrimination in all

³ Wilets, James D. *From divergence to convergence? a comparative and international law analysis of LGBTI rights in the context of race and post-colonialism*, Duke journal of comparative & international law vol 21:631,
<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1022&context=djcil> p.644-650

⁴ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html> [accessed 14 May 2016]

⁵ Ibid.

areas of one person's life. Although the nature of the declaration as a document is not legally binding, it has made a significant movement in the era of the human rights.

Thus, from 1948 to 1966, the UN Human Rights Commission's (now the "Council") main task was to create a body of international human rights law based on the Declaration and to establish the mechanisms needed to enforce its implementation and use. The Human Rights Commission produced two major documents: the International Covenant on Civil and Political Rights (ICCPR)⁶ and the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁷. Both became international law in 1976. Together with the UDHR, these two **covenants comprise what is known as the "International Bill of Human Rights."**

Although the discussions of LGBTIQ rights at the UN have mainly centered on resolutions in the United Nations General Assembly and the United Nations Human Rights Council (UNHRC) regarding the topic, the covenants and other conventions especially targeting women⁸, children⁹, discrimination of marginalized groups¹⁰, torture¹¹ and others, have in their core essence of equality and nondiscrimination of all the people.

Besides the Covenants, each convention has a treaty-based body that can decide upon a violation of its provisions. One of the most prominent cases brought before UNHRC by Tasmanian resident Nicholas

⁶ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html> [accessed 14 May 2016]

⁷ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.refworld.org/docid/3ae6b36c0.html>

⁸ UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <http://www.refworld.org/docid/3ae6b3970.html>

⁹ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html>

¹⁰ UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, available at: <http://www.refworld.org/docid/3ae6b3940.html>

¹¹ UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <http://www.refworld.org/docid/3ae6b3a94.html>

Toonen in 1994 made a breakthrough towards the awareness of the LGBTIQ rights. The case *Toonen v. Australia* resulted in the repeal of Australia's last sodomy laws when the Committee held that sexual orientation was included in the antidiscrimination provisions as a protected status under the ICCPR. The UNHRC has affirmed that no individual can be denied the enjoyment of the rights protected by the ICCPR, including equality before the law and equal protection of the law, because of their sexual orientation. Similar affirmations that the principle of non-discrimination includes discrimination on the basis of sexual orientation have been made by the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, the Committee against Torture and the Committee on the Elimination of Discrimination against Women.

By adopting these treaties, the member states are addressing civil and political rights, economic, social, and cultural rights, racial discrimination, and the rights of children, migrant workers, and people with disabilities. The LGBTIQ advocates have been seeking to have their human rights recognized under these and other human rights treaties. Initially, these efforts were not successful.

In a survey of global and regional LGBT leaders, the “Brazil Resolution” was identified as the turning point.¹² In 2003, Brazil introduced a resolution at the meeting of the Human Rights Commission (now the “Council”) to recognize that human rights and freedoms belong to all people, regardless of their sexual orientation. Although this resolution was not adopted it made a significant impact on the LGBTIQ to move forward.

The following years 2005¹³, 2006¹⁴, 2007¹⁵ and 2011¹⁶ the supporting countries reaffirmed the need of protection of the LGBTIQ

¹² Dodo Karsay, *How Far has SOGII advocacy come at the UN and Where is it heading? assessing sexual Orientation, Gender identity, and Intersex activism and Key developments at the un, 2003-2014* (aRc International, 2014), at 8.

¹³ Joint Statement on Sexual Orientation & Human Rights, Commission on Human Rights, delivered by New Zealand on behalf of 32 countries

¹⁴ Joint Statement on Sexual Orientation, gender identity and Human Rights, Human Rights Council, delivered by Norway on behalf of 54 countries

¹⁵ Joint Statement on Sexual Orientation, gender identity and Human Rights, Un General Assembly, delivered by Argentina on behalf of 67 countries

¹⁶ Joint Statement on Sexual Orientation, gender identity and Human Rights, Human Rights Council, delivered by Columbia on behalf of 85 countries

rights by issuing Joint Statements. These Joint Statements paved the way towards creating the foundation for the creation of a resolution.

In 2006, in response to well-documented patterns of abuse, a distinguished group of international human rights experts met in Yogyakarta, Indonesia to outline a set of international principles relating to sexual orientation and gender identity. The result was the “Yogyakarta Principles” - a universal guide to human rights which affirm binding international legal standards with which all States must comply. They promise a different future where all people born free and equal in dignity and rights can fulfil that precious birthright.¹⁷

In 2008 a Dutch/French-initiated, European Union-backed statement supporting LGBT rights was presented to the General Assembly. The statement, originally intended to be adopted as a resolution, prompted an Arab League-backed statement opposing it. Both statements remain open for signature, and neither of them has been officially adopted by the General Assembly.

The Vienna declaration and Programme of Action¹⁸ adopted by the World Conference on Human Rights in Vienna on 25 June 1993, reaffirmed the UDHR and the United Nations Charter¹⁹. In its Preamble the following sentence is placed *“The World Conference on Human Rights, Considering that the promotion and protection of human rights is a matter of priority for the international community, and that the Conference affords a unique opportunity to carry out a comprehensive analysis of the international human rights system and of the machinery for the protection of human rights, in order to enhance and thus promote a fuller observance of those rights, in a just and balanced manner.”*²⁰ In 2011 on a session of the Human Rights Council the first Resolution 17/19 on human rights, sexual orientation and gender

¹⁷ International Commission of Jurists (ICJ), *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, March 2007, available at: <http://www.refworld.org/docid/48244e602.html>

¹⁸ UN General Assembly, *Vienna Declaration and Programme of Action*, 12 July 1993, A/CONF.157/23, available at: <http://www.refworld.org/docid/3ae6b39ec.html>

¹⁹ United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, available at: <http://www.refworld.org/docid/3ae6b3930.html>

²⁰ UN General Assembly, *Vienna Declaration and Programme of Action*, 12 July 1993, A/CONF.157/23, available at: <http://www.refworld.org/docid/3ae6b39ec.html>

identity²¹ was adopted as a follow-up and implementation of the Vienna Declaration and Programme of Action. After this historical moment the Office of the United Nations High Commissioner for Human Rights (UNHCHR) Navi Pillay prepared the first Report of the United Nations High Commissioner for Human Rights - Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity²². In this report, an overall assessment of discriminatory laws and practices was made concerning the basic human rights and at the end recommendations towards the member states and to the Human Rights Council (HRC).

Also in 2014 on a session of the HRC a new Resolution 27/32 - Human rights, sexual orientation and gender identity²³ was adopted, this time by more countries. In this Resolution, positive developments at the international, regional and national levels in the fight against violence and discrimination based on sexual orientation and gender identity were mentioned, as well as the efforts of the office of the UNHCHR.

In 2016, the third resolution on Protection against violence and discrimination based on sexual orientation and gender identity was adopted by the Human Rights Council.²⁴ The resolution establishes the new position of an Independent Expert, whose role it will be to assess the implementation of existing international human rights instruments regarding LGBT people.

According to the latest world survey of International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), the most recent but still unexplored opportunity for deepening sexual orientation and

²¹ UN Human Rights Council, *Human rights, sexual orientation and gender identity: resolution / adopted by the Human Rights Council*, 14 July 2011, A/HRC/RES/17/19, available at: <http://www.refworld.org/docid/512f0bd22.html>

²² UN Human Rights Council, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity - Report of the United Nations High Commissioner for Human Rights*, 17 November 2011, A/HRC/RES/19/41, available at: http://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf

²³ UN Human Rights Council, *Human rights, sexual orientation and gender identity: resolution / adopted by the Human Rights Council*, 14 July 2011, A/HRC/RES/17/19, available at: <http://www.refworld.org/docid/512f0bd22.html> [accessed 19 May 2016]

²⁴ UN Human Rights Council, *Human rights, sexual orientation and gender identity: resolution / adopted by the Human Rights Council*, 30 June 2016, A/HRC/RES/32/2, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/154/15/PDF/G1615415.pdf?OpenElement>

gender identity (SOGI) issues within the UN human rights system is the 2030 Agenda for Sustainable Development.²⁵ The Member States decided that monitoring the achievement of the sustainable Development goals (SDGs) would be done through existing mechanisms, and the Treaty Bodies represent one of the best avenues for doing so. The human rights framework and the development framework are complementary and can accomplish much that could not be accomplished by either framework alone. LGBT human rights practitioners should understand economic methods to identify when governments have violated human rights, particularly for determining the level of burden on a government as part of progressively realized rights.²⁶

1.2. The Council of Europe

The CoE plays important role in protecting the LGBTI rights. One of the most important document is the European convention on human rights and fundamental freedoms (ECHR) and the protection of those rights in front of the European Court of Human Rights (ECtHR). The ECHR is legally binding document for all the member states of the Council and every individual has a right to appeal in front of the ECtHR only after exhausting all the judicial instances within the national law. Provisions from the ECHR that are important for the SOGI issue are connected mostly with the article 14²⁷ - the non-discrimination provisions and all the other articles that can be brought in connection with this article.²⁸

The rulings of the ECtHR are legally separate from the CoE's mandate and are only binding upon the individual signatories to the

²⁵ International Lesbian, Gay, Bisexual, Trans and Intersex Association: Carroll, A., *State Sponsored Homophobia 2016: A world survey of sexual orientation laws: criminalisation, protection and recognition* (Geneva: ILGA, May 2016).

²⁶ For more information about UN in relation to LGBTI rights see Beek, C.M. van *The Politics of LGBT Rights: A Comparison Between the United Nations, the OSCE and the Council of Europe*
<https://openaccess.leidenuniv.nl/bitstream/handle/1887/24155/Thesis%20Cees%20Van%20Beek.pdf?sequence=1>

²⁷ **ECHR article 14 “The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”**

²⁸ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: <http://www.refworld.org/docid/3ae6b3b04.html>

Convention. The fact that the Court in 1981 ruled in the famous *Dudgeon v. United Kingdom* case that the criminalization of homosexuality in Northern Ireland²⁹ infringes upon the right to privacy (Article 8 of the Convention) in principle meant that all other Member States with a similar provision in their Criminal Code also had to change their legislation. With this landmark case, the Court was the first international body to rule that laws criminalizing same-sex conduct between consenting adults violate human rights. In subsequent rulings, the Court elaborated and developed its reasoning. In *Salgueiro da Silva Mouta v. Portugal*³⁰ for example, it explicitly affirmed sexual orientation as a prohibited ground of discrimination within the meaning **of Article 14 of the Convention. Article 14 states that “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” According to the Court, “the list set out in that provision is illustrative and not exhaustive, as is shown by the words ‘any ground such as’.**

All the member states of the EU are member states of the CoE, yet not all the member states of the CoE are EU member states. The question was raised if the ECHR should be signed by the EU, which will mean that the European Court of Justice (ECJ) should rely on the ECHR and on the decisions of the ECtHR. Since the Lisbon Treaty and the Charter of Fundamental Rights and the idea of a structural treaty which became a law in EU, the need of this was actualized. Still in December 2014, The ECJ has ruled that the draft agreement on the accession of the EU to the ECHR is not compatible with EU law.³¹

One of the most important documents of the CoE is the Recommendation CM/Rec (2010)5

²⁹ *Dudgeon v. the United Kingdom* (no. 7525/76), 22 October 1981
[http://hudoc.echr.coe.int/eng?i=001-57473&version=meter+at+null&module=meter-Links&pgtype=article&contentId=&mediald=&referrer=&priority=true&action=click&contentCollection=meter-links-click#{\"itemid\":\[\"001-57473\"\]}](http://hudoc.echr.coe.int/eng?i=001-57473&version=meter+at+null&module=meter-Links&pgtype=article&contentId=&mediald=&referrer=&priority=true&action=click&contentCollection=meter-links-click#{\)

³⁰ *Salgueiro Da Silva Mouta v. Portugal* (no. 33290/96), 21 December 1999
http://www.equalrightstrust.org/ertdocumentbank/Microsoft%20Word%20-%20Salgueiro%20Da%20Silva%20Mouta%20v%20Portugal%20_parental%20responsibility_.pdf

³¹ Court of Justice rejects draft agreement of EU accession to ECHR,
<https://www.euractiv.com/section/justice-home-affairs/news/court-of-justice-rejects-draft-agreement-of-eu-accession-to-echr/>

of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity.³² The Recommendation was agreed upon unanimously by the 47 Council of Europe member states. Although, as a Recommendation rather than a Convention, it is not legally binding, it is based solidly on the existing legally binding international and European human rights obligations of the member states, which therefore have a clear duty to implement its main elements.

1.3. The Organization for Security and Co-Operation in Europe

The Organization for Security and Co-operation in Europe (OSCE) **has its own unique structure and is the world's largest security organization, spanning three continents. Contrary to the CoE and the UN, the OSCE does not have Member States, but "mere" Participating States.** Its foundation was not a formal treaty or charter, but an intergovernmental conference that resulted in a solemn declaration called the Helsinki Final Act³³, which was signed by 35 countries (today 57 Participating States) Participating States of the OSCE. According to this construction, the OSCE has much looser and more flexible structure of the organization. The Participating States have not legally bound themselves, nor does the organization they created enforce the commitments that they have voluntarily subscribed to.³⁴

The LGBTIQ rights are not explicitly mentioned in any of the OSCE commitments or Ministerial Council Decisions adopted at the numerous summits and councils held since 1975. Neither is any reference made to homophobia or sexual orientation. This sets the OSCE apart from both the CoE and the UN, that both have acknowledged LGBTIQ rights in officially adopted documents at the highest political level. One of the

³² Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec\(2010\)5&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec(2010)5&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383&direct=true)

³³ <http://www.osce.org/helsinki-final-act?download=true>

³⁴ Beek, C.M. van *The Politics of LGBT Rights: A Comparison Between the United Nations, the OSCE and the Council of Europe* <https://openaccess.leidenuniv.nl/bitstream/handle/1887/24155/Thesis%20Cees%20Van%20Beek.pdf?sequence=1>

biggest reason for this attitude of the OSCE lies in one of the Participating States - Holy See that blocks any reference to sexual orientation or gender identity in the official Commitments or Ministerial Council Decisions.³⁵

Despite the fact that there is no explicit OSCE mandate in the field of LGBT rights, there are numerous adopted documents that endow the organization with an important role in monitoring and combating intolerance and discrimination.³⁶ One of the 1989 Vienna Document Principles is to ***“ensure human rights and fundamental freedoms to everyone within their territory and subject to their jurisdiction, without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”***.³⁷ The 2003 Maastricht Ministerial Council, under Dutch Chairmanship, again reaffirmed the ***“commitment to promote tolerance and combat discrimination, and its concern about all manifestations of aggressive nationalism, racism, chauvinism, xenophobia, anti-Semitism and violent extremism in all participating States, as well as discrimination based, inter alia, on race, color, sex, language, religion or belief, political or other opinion, national or social origin, property, birth or other status”***.³⁸ Although in the long list of prohibited grounds of discrimination sexual orientation and gender identity is (purposefully) omitted, the addition of ***“or other status”*** and ***“inter alia”*** could theoretically cover these as well. However, there is no consensus among the Participating States whether that is the case.³⁹

The OSCE and Office for Democratic Institutions and Human Rights (ODIHR) are mainly involved in the countries monitoring the situation via their field missions and cooperation with the local CSOs. Lately, the most visible action by the OSCE and ODIHR is monitoring hate

³⁵ One of the statements of the Holy See
<http://www.osce.org/pc/92448?download=true>

³⁶ Beek, C.M. van *The Politics of LGBT Rights: A Comparison Between the United Nations, the OSCE and the Council of Europe*
<https://openaccess.leidenuniv.nl/bitstream/handle/1887/24155/Thesis%20Cees%20Van%20Beek.pdf?sequence=1>

³⁷ Vienna 1989 Document, Questions Relating to Security in Europe: Principles (13.7)

³⁸ Decision No. 4/03 on Tolerance and Non-discrimination, Maastricht Ministerial Council 2003

³⁹ One could of course also turn the argument around: the Organization has never explicitly said that sexual orientation or gender identity are not covered by this mandate.

crime based on SOGI. Of course, this dimension differs from country to country.

2. EUROPEAN UNION

In the EU the LGBT rights **are protected under the EU's treaties** and law. The common ground for all the EU members is that the same-sex sexual activities are legal in all the EU member states and discrimination in employment has been banned since 2000. However, the EU states have different laws when it comes to any greater protection the LGBTIQ rights as fundamental human rights are a very sensitive topic for each state and there is no general policy for this issue.

The general characteristics of the EU law can be put under two principles. The first one is the principle of supremacy - in the case of conflict, the European law prevails over the national law⁴⁰; and the second one is the principle of direct effect - the European law creates rights the individuals can directly invoke before national courts⁴¹. These two principals were embedded by the ECJ through the preliminary procedure under Article 267 of the Treaty on the Functioning of the European Union (TFEU)⁴² which is one of two primary Treaties of the EU alongside with the Treaty on EU (TEU)⁴³.

The TFEU stipulates provisions that are in relation to general obligation for the EU to combat exclusion and discrimination (in article 10)⁴⁴, provisions that are emphasizing the competence on combating sexual orientation discrimination (in article 19)⁴⁵, provisions that are

⁴⁰ For the principle of supremacy see the judgment 26/62 Van Genden Loos [1963] ECR 1; 6/64 Costa v ENEL [1964] ECR 585; 11/70 Internationale Handelsgesellschaft; 106/77 Simmenthal [1978] ECR 629; C-10-22/97 Ministero delle Finanze v IN.CO.GE [1998] ECR I-6307

⁴¹ For the principle of Direct effect see the judgment 26/62 Van Gend en Loos [1963] ECR 1, 43/75 Defrenne v. Sabena [1976] ECR 455; 41/74 Van Duyn [1974] ECR 133

⁴² Consolidated version of the TFEU
<http://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>

⁴³ Consolidated version of the TEU http://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF

⁴⁴ Consolidated version of TFEU article 10 - **"In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation."**

⁴⁵ Consolidated version of TFEU article 19 - **"(1) Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the**

showing the potential for recognition of marriages and registered partnerships (in article 67 (4) and article 81)⁴⁶. The TEU is following the same pattern, in article 2 a new explicit reference to equality, including the rights of persons belonging to minorities stipulates the principle of equality and non-discrimination⁴⁷, the determination of combating exclusion and discrimination is specified in article 3 (3)⁴⁸, in article 6 from the TEU a new fundamental rights architecture was presented in correlation to the Charter of the EU as well as the European convention on human rights and freedoms as a part of the EU law⁴⁹, and the

Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. (2) 2. By way of derogation from paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of Union incentive measures, excluding any harmonization of the laws and regulations of the Member States, to support action taken by the Member States in order to **contribute to the achievement of the objectives referred to in paragraph 1.**"

⁴⁶ Consolidated version of TFEU article 67 (4) **"The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters."**, article 81 **"(1) The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States. (2) For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring: (...) (c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction. (3) Notwithstanding paragraph 2, measures concerning family law with cross-border implications shall be established by the Council, acting in accordance with a special legislative procedure. The Council shall act unanimously after consulting the European Parliament."**

⁴⁷ Consolidated version of TEU article 2 - **"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."**

⁴⁸ Consolidated version of TEU article 3 (3) - **"The Union shall combat social exclusion and discrimination."**

⁴⁹ Consolidated version of TEU article 6 - **"(1) The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. 2) The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties. 3) Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law."**

potential for recognition of marriages and registered partnerships is presented in article 4 (2)⁵⁰.

One of the most relevant documents of the EU is the Charter of Fundamental Rights of the EU. The Charter was proclaimed in 2000, with the idea to bring together in a single document the fundamental rights protected in the EU. The Charter contains rights and freedoms under six titles: Dignity, Freedoms, Equality, Solidarity, Citizens' Rights, and Justice. The Charter has become legally binding on the EU with the entry into force of the Treaty of Lisbon, in December 2009.

The EU anti-discrimination law is the most important source related to SOGI. Namely, there are differences in implementation of the EU law between the EU member states and the states that are still not members of the EU community. At the beginning, the requirements for the EU accession related with the LGBTIQ rights were simple - the decriminalization of the homosexual acts and the equalization of the age of consent for both homosexual and heterosexual relationship. That approach gave disappointing results and the beginning of the fifth enlargement preparation was marked by an almost total disregard of LGBTIQ rights. However, during the last years of pre-accession, the issue of the prohibition on the basis of the sexual orientation was also included in the Regular Reports (which started in 2000), expanding the requirements in changes in the national legislation of the candidate countries. The Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and the Equal Treatment Directive - Council Directive 2000/78/EC⁵¹ are constructing the ground of the EU anti-discrimination law, however, they are crucial only after the EU accession. Nevertheless, the LGBTIQ rights entered the EU legal discourse at the beginning of the 2000s, and

⁵⁰ Consolidated version of TEU article 4 (2) - **“The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional.”**

⁵¹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, *Official Journal L 303*, 02/12/2000 P. 0016 - 0022

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML> (accessed on 05.02.2014)

they did not play an important role in defining the requirements for 2004 and 2007 enlargements.⁵²

The EU member states after the accession, are obliged through the national courts to protect subjective rights deriving from the EU law, while the legal protection must be effective and equivalent to the protection provided to subjective rights stemming from the national law. Furthermore, the courts must interpret the national law, including the national anti-discrimination law, in the light of the European law.⁵³ The states that are still not members of the EU but states that are candidates or in the process of negotiation for a membership aspire as well to align their national law within the *acquis*.

3. LGBTIQ LEGISLATION AND IMPLEMENTATION IN MACEDONIA

Macedonia (FYR)⁵⁴ is a multi-ethnic country, became an independent republic in 1991 following the dissolution of Yugoslavia. Macedonia joined the UN in 1993 and the Council of Europe and OSCE in 1995. Macedonia is a candidate country for EU since 2005 and has held a conditional invitation to join the North-Atlantic Treaty Organization (NATO) since 2008. The Commission made recommendations to the Council to open negotiations with the country and to move to the second phase of the Stabilization and Association Agreement (SAA) implementation. Macedonia is still awaiting the decision to start the accession negotiations. Membership of the EU and the NATO is officially still a foreign affairs priority for the country, however both processes are stalled pending settlement of the name dispute. Until 2014, the name dispute stood as the main reason for not opening negotiations for

⁵² Kochenov, D. *Democracy and human rights - not for gay people? : EU Eastern enlargement and its impact on the protection of the rights of sexual minorities*. 2007. *Texas Wesleyan Law Review* 13(2), 459-495.

⁵³ Šimovic Einwalter, Tena Selanec, Goran *Alignment of the Law on Prohibition of Discrimination with the EU acquis*, Sarajevo, April 2015, ISSN 2303-6079

⁵⁴ **The constitutional name of the country is ‘Republic of Macedonia’.** However, pending settlement with Greece on the name dispute, under a UN Resolution A/RES/47/225, the country was admitted as **a member of the UN under the temporary reference ‘the former Yugoslav Republic of Macedonia’**, which is the term used by the European Commission.

membership with the EU.⁵⁵ However, the 2015 European Commission country progress report highlighted serious problems with the fulfilment of Copenhagen political criteria, including serious challenges to the rule of law (partisation of institutions and society, independence of judiciary and freedom of the media being but a few of the serious findings noted in this report).⁵⁶

According the ILGA - Europe Rainbow Map Index 2016 - reflecting the national legal and policy human rights situation of LGBTI people in Europe, Macedonia gained 16% which is the lowest percentage among the former Yugoslavian countries.⁵⁷

3.1. Legal protection of LGBTIQ rights in Macedonia

Through the years in Macedonia many legal and institutional reforms have resulted in a framework that poses challenges to the rule of law including in relation to legal certainty.⁵⁸ The expansion of new laws and amendments of the laws in summary procedures was highly noticeable in the recent few years.⁵⁹ These have an impact on the

⁵⁵ Kotevska Biljana, *Country report Non-discrimination FYR Macedonia Reporting period 1 January 2014 - 31 December 2014*

http://ec.europa.eu/justice/discrimination/files/ad_2014_country_reports/2015-mk-country_report_nd_final.pdf

⁵⁶ The Former Yugoslav Republic Of Macedonia 2015 Progress Report
http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_the_former_yugoslav_republic_of_macedonia.pdf

⁵⁷ ILGA - Europe Rainbow Map Index 2016 http://www.ilga-europe.org/sites/default/files/Attachments/side_b-rainbow_europe_index_may_2016_small.pdf

⁵⁸ Kotevska Biljana, *Country report Non-discrimination FYR Macedonia Reporting period 1 January 2014 - 31 December 2014*,
http://ec.europa.eu/justice/discrimination/files/ad_2014_country_reports/2015-mk-country_report_nd_final.pdf

⁵⁹ In 2010, 13,1% of the laws were adopted in summary proceedings;
In 2011, from 1.01.2011 to 14.04.2011, 15,2% and from 25.06.2011 to 31.12.2011, 16% of the laws were adopted in summary proceedings;
In 2012, 26,9% of the laws were adopted in summary proceedings;
In 2013, 30,8% of the laws were adopted in summary proceedings;
In 2014, 54,3% of the laws were adopted in summary proceedings;
In 2015, by 31. 08. 2015 (before the opposition returned to the Assembly) 70.8% of laws were adopted in summary proceedings, from 1.09.2015 to 31.12.2015, 30,6% of laws were adopted in summary proceedings.

See more - Checks and balances in the Republic of Macedonia how to make them work? Jordan Shishovski, PhD, Kalina Lechevska, PhD Viktorija Borovska, PhD, Ana Blazheva, MA, *Effective assembly, strong democracy: Vision for improving the system of checks and balances in the Republic of Macedonia*, 2016

country's legal and institutional framework, implementation and practices related to upholding the principle of equality and protection against discrimination.

Macedonia is a unitary, semi-parliamentarian, civil law country, which adopts the monism principle regarding the relationship between international and municipal law, the former being considered part of the latter, and superior to domestic laws and bylaws,⁶⁰ and where, if it is deemed fit and appropriate, courts can use the final judgments of the ECtHR, International Criminal Court (ICC), or any other international court with jurisdiction over the country.⁶¹ Although in theory directly applicable, references to international law in the jurisprudence of the domestic courts are still very rare and, in practice, the courts do not seem to treat it as higher in the national legal hierarchy than the national laws.⁶²

When it comes to LGBTIQ rights and non-discrimination, the origins of this issue should be analyzed since Yugoslavia. Namely, in former Yugoslavia, the Federal Assembly in 1951 introduced the new Criminal Code in which Article 186 predicted that the "for unnatural fornication between persons of the male sex, the offender will be punished with imprisonment of up to two years", thus the male homosexual relationships were illegal in all the former Yugoslav republics. There were no propositions for lesbian relationships.⁶³ In 1974 the constitutional reform in Yugoslavia resulted in abolishment of the federal Penal Code, thus allowing every republic to create its own. There were two waves in decriminalization of the consensual homosexual male act. The first one was in the second half of the 1970s

⁶⁰ **Article 118 of the Constitution states: 'International agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law'. Source: Constitution of the Republic of Macedonia** (Official Website of the Assembly of the Republic of Macedonia, www.sobranie.mk/the-constitution-of-the-republic-of-macedonia.nsp?0)

⁶¹ Law on Courts (Official Gazette of the Republic of Macedonia No. 58/2006, 35/2008, 150/2010; **Constitutional Court Decisions: Y.6p.256/2007 (16.04.2008), Y.6p.74/2008 (10.09.2008), Y.6p.124/2008 (14.01.2009), Y.6p.12/2011 (29.02.2012). Article 18(5)**

⁶² Kotevska Biljana, *Country report Non-discrimination FYR Macedonia Reporting period 1 January 2014 - 31 December 2014*

http://ec.europa.eu/justice/discrimination/files/ad_2014_country_reports/2015-mk-country_report_nd_final.pdf

⁶³ Zuko, Merima. *Diskriminacija nekad i sad*. 2012
<http://diskriminacija.ba/diskriminacija-nekad-i-sad> (accessed on 05.02.2014)

when Croatia, Slovenia and Montenegro decriminalized the same-sex male intercourse, and the second was in the middle of 1990s when Macedonia, Bosnia and Herzegovina and Serbia. Following the ancestor Criminal Code, there were no references to lesbian relationship at the time.⁶⁴

The Republic of Macedonia has accepted the values of rule of law as well as the protection of the fundamental rights and freedoms in the process of becoming a democratic country. This also includes the concept of non-discrimination and equality. Sexual orientation, as a very sensitive problem closely related with the description of one's identity, has shown up on the agendas of the established democracies and therefore the Republic of Macedonia, as a member state of the CoE and as a candidate country for entering the EU, needs to align its legislation with the main legal concepts and take the responsibilities in the fulfillment of the Copenhagen criteria in the integration of the EU.⁶⁵

Macedonia's party system is organized around what can be labeled the left-right dimension, with two bigger parties, Internal Macedonian Revolutionary Organization- Democratic Party for Macedonian National Unity (VMRO - DPMNE) and Social-Democratic Union of Macedonia (SDSM)⁶⁶, representing the fundamentals of the center-left and center-right political block. However, attention should **be paid to the fact that the “left” and “right” in Macedonia, and** particularly, the left and right orientation of SDSM and VMRO - DPMNE are quite disputable.⁶⁷ This distinction is extremely important mostly

⁶⁴ Behlulovic, Mersiha, *The inconstituent peoples of Q reasons behind the invisibility of sexual minorities in Bosnia and Herzegovina*, Master thesis selected for publishing 2010-2011, ***European regional master's degree in democracy and human rights in South-East Europe***. p.30-32

⁶⁵ Dzenk, Ejup. *The Rights of the LGBT population in the Republic of Macedonia*. PDF file p.2

⁶⁶ There are also many other parties in Macedonia, especially the biggest Albanian parties that are also labeled as left and right (Democratic Union for Integration - DUI, the largest party representing mainly ethnic Albanians in Macedonia and Democratic Party of Albanians). However, both of this parties so far have been in governmental coalitions with the VMRO or SDSM.

⁶⁷ While VMRO shows a clear inclination towards the rightist, more nationalistic rhetoric, it still includes some economic solutions typical for the left, a situation that makes it difficult to position the party according to the classical meaning of the left-right as dimension covering both social and economic issues. The positioning of the SDSM poses even stronger controversies. As reported by Macedonian author recently undertaking the research on the political identities of the electorate and parties in Macedonia, the SDSM has some problems with its ideological identity. In the interview with professor Hristova it was underlined that

because of the homophobic statements of the VMRO - DPMNE ruling party which is inevitably reflection on the non-existing legislation for protection of the sexual minorities.⁶⁸

On the international level during the 1990s, Macedonia became a member of UN in 1993 and a member of CoE in 1995 which followed ratification of the ECHR in 1997.⁶⁹ After signing the SAA, Macedonia applied for EU membership in March 2004. The Commission issued a favorable opinion in November 2005, and the Council decided in December 2005 to grant the country candidate status. In October 2009, the Commission recommended for the first time that accession negotiations be opened. During that period there was no concrete legislation concerning LGBTIQ rights. Article 9 of the Chapter II of the **Constitution: “Fundamental Freedoms and Rights of the Human and the Citizen”** guarantees that *“Citizens of the former Yugoslav Republic of Macedonia are equal in freedoms and rights regardless of sex, race, color of skin, national or social origin, political or religious belief, **wealth or social status.**”* regardless of the sexual orientation, gender identity (or other status).⁷⁰

During 2014 the provisions of the Constitutions were evoked with 7 new amendments. The draft amendment XXXIII introduces a constitutional definition of marriage as a union solely between a woman and a man. It also introduces a **constitutional definition of “registered cohabitation” or any other form of “registered life partnership” as a “life union solely between one woman and one man”**. This brought huge

the positioning of the SDSM is problematic, the party even experiencing difficulties in offering a comprehensive party program. It is however usually considered to be the party of the “left-center”, a classification deriving mainly from its heritage (previous communist party), and deriving from its more tolerant, civic-oriented approach to the ethnic questions. For more on this - Marčeta, Irena. **Building democracy with external help: Macedonia and Serbia.** *Alma Mater Studiorum - Universita di Bologna* 2008 p.172-181

⁶⁸ Rights Groups Sue Macedonian Minister For Homophobia
<http://www.balkaninsight.com/en/article/macedonian-minister-exchanges-law-suits-with-gay-community>

⁶⁹ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, available at: <http://www.refworld.org/docid/3ae6b3b04.html> [accessed 30 January 2014]

⁷⁰ Mladenovic, Ninoslav. *Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity Legal Report: “The former Yugoslav Republic of Macedonia”*

http://www.coe.int/t/Commissioner/Source/LGBT/FYROMLegal_E.pdf (accessed on 05.02.2014)

debate and protests in the country, as well as many reactions by the international community,⁷¹ after which the second paragraph of the **draft amendment regulating the “registered cohabitation” or any other form of “registered life partnership” was removed.** The members of the parliament approved the first four proposals of the amendments, and the Parliament will need 82 votes to approve of each individual amendment, and the bill to declare the Constitutional changes. The procedure so far has not been continued.

Regarding the laws, Macedonia’s legislation is very poor in implementing non-discrimination provisions on sexual orientation and gender identity in the areas of employment, access of goods and services, other spheres of life, military, health, assembly and asylum, moreover there are no provisions concerning LGBTIQ people.⁷²

Here, the national laws will be divided in three groups: the first group will be the laws in which sexual orientation is explicitly stipulated⁷³, the second group will be the laws which contain the open-end clause, and the third group will be the laws in which the sexual orientation is not explicitly stated nor the open-end clause is offered.

3.2. The first group laws

The Law on Protection of Patients’ Rights in article 5 (2) prescribes that the patient has the right to realize his right prescribed with this law, ***“without discrimination on the basis of sex, race, color of skin, language, religion, political or any other thought, national or social origin, belonging to a national minority, material position, origin by birth, sexual orientation or any other status”.***⁷⁴

⁷¹ European Commission for Democracy Through Law (Venice Commission), **Opinion on the seven amendments to the Constitution Of “The Former Yugoslav Republic Of Macedonia”** Concerning, In Particular, The Judicial Council, The Competence Of The Constitutional Court And Special Financial Zones,

⁷² International Lesbian, Gay, Bisexual, Trans and Intersex Association: Carroll, A., **State Sponsored Homophobia 2016: A world survey of sexual orientation laws: criminalization, protection and recognition** (Geneva: ILGA, May 2016).

http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf

⁷³ The gender identity had not been included in any law

⁷⁴ **Law on Protection of Patients’ Rights (Official Gazette No. 82/08)**

The **Law on Public Health in article 16 (5) stipulates that “...the Institute (for public health of the Republic of Macedonia) should undertake interventions that will not discriminate on the basis of race, sex, national or social origin, property status, religious belief, sexual orientation, or status of a person with disability”**⁷⁵

The Law on Higher Education in article 108 (5) stipulates that **“The university or the independent higher vocational school shall define the procedure for selection of candidates for enrolment in a manner guaranteeing equality for all candidates irrespective of race, skin color, gender, language, religion, political or other affiliation, ethnic, national or social background, property, birth, social status, disability, sexual orientation or age.”**⁷⁶

The Law on audio and audiovisual services in Article 53(4) states that **“Audiovisual commercial communication shall not participate in or promote any discrimination on the grounds of gender, race, ethnicity, nationality, religion or conviction, disability, age or sexual orientation”**⁷⁷

The Law on Labor Relations has an open-end clause, in which the following grounds are covered by the law: racial or ethnic origin, color, gender, age, health condition, that is, disability, religious, political or other belief, membership of trade unions, national or social origin, family status, property and financial situation, sexual orientation or other personal circumstances.⁷⁸ However, although the official translation from Macedonian to the English language stipulates the **“sexual orientation”**, in the Macedonian language version of the law it is stated sexual **“inclination”**, terminology which itself is discriminatory

⁷⁵ Law on Public Health (Official Gazette No. 22/10)

⁷⁶ Law on Higher Education (Official Gazette no.35/08, 103/08, 26/09, 99/09, 115/10, 17/11 and 51/11)

⁷⁷ Law on Audio and Audiovisual services (Official Gazette no.184/13, 13/14, 44/14, **101/2014 и 132/2014**)

⁷⁸ Law on Labor Relations (Official Gazette of the Republic of Macedonia Nos. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187/2013, 113/2014; Constitutional Court Decisions: U. no. 139/2005, U. no. 161/2005, U. no. 134/2005, U. no. 187/2005, U. no. 111/2006, U. no. 188/2006, U. no. 170/2006, U. no. 200/2008, U. no. 20/2009, U. no. 176/2009, U. no. 263/2009, U. no. 62/2013)

because it refers only to the sexual act, not including all aspects of the sexual orientation.

In the Law on Volunteering Article 9 stipulates that “The organizer of the volunteering must not put the volunteer in unfair position on the basis of his/her the race, skin color, gender, age, health condition, respectively invalidity, religious, political or other conviction, national or social background, family status, property condition, sexual orientation or because of other personal circumstances.”⁷⁹ However, here we have the same misconception as in the Law on Labor Relations, in the Macedonian language version of the law it **is stated “sexual inclination” or the “sex orientation”, albeit this term in itself possesses and expressed terminological obscurity, terminology which itself is discriminatory because it refers only to the sexual act, not including all aspects of the sexual orientation.**

3.3. The second group of laws

The Criminal code in Article 39 (5) in which are provided the general rules to mete **out a sentence it is stipulated that “When the court metes out the sentence, it shall especially consider whether the crime has been committed against a person or a group of persons or property, directly or indirectly, because of their sex, race, skin color, class, member of marginalized group, ethnic background, language, nationality, social background, religious belief, other types of beliefs, education, political affiliation, personal or social background, mental or physical disability, age, family or marital status, property status, health condition, or any other ground foreseen by law or ratified international agreements.”**⁸⁰ Although the sexual orientation and gender identity have not been explicitly mentioned, it can be put under a member of a marginalized group or under any other ground foreseen by law or a ratified international agreement. Hate speech provisions are not included in the Criminal Code and the hate speech has not been condemned by the authorities.⁸¹ Article 137 (1) from the Criminal

⁷⁹ Law on Volunteering (Official Gazette no.85/07)

⁸⁰ Article 39 from Criminal Code (Official Gazette of the Republic of Macedonia No. 114/09) <http://legislationline.org/documents/action/popup/id/18559>

⁸¹ The only effort to promote tolerance and condemn the hate speech for LGBT people was the suggested

Code.⁸² The Criminal Code fails to provide a provision on hate crime that incorporates crimes based on sexual orientation. Article 137 states that **“A person who, on the basis of a difference in sex, race, color, ethnic and social origin, political and religious belief, wealth and social position, language or other personal characteristics or circumstances, restricts or deprives of the rights of a person and citizen, as determined by law or a ratified international treaty, or who, on the basis of such differences privileges a citizen, shall be punished with imprisonment of three months to three years.”** While crimes based on **“personal characteristics”** arguably may be interpreted to include sexual orientation, the LGBT community is left unsure and lacks effective protection. However, there are other articles from the Criminal Code that are in relation to discrimination where not only SOGI are not mentioned but are in a close-end clause.⁸³

The Law on Courts in article 3(1) to (3) on aims and functions of courts states that courts aim to secure equality, equal rights and non-discrimination on any ground and in article 6(1) that everybody has equal access to the courts. However, in article 43(1) it is stipulated that during the election of judges and lay judges, there should be no discrimination on the basis of sex, race, color of skin, national and social background, political and religious beliefs, or property or social status.⁸⁴

Declaration11 for Condemnation of Hate Speech for LGBT people in the Assembly of the Republic of Macedonia,
submitted by Ivon Velichkovski, Member of Parliament from the Liberal Party, and part of the opposition. But,

the Assembly failed to adopt the proposed Declaration for condemnation of hate speech for LGBT people - Shadow Report 2012 available at:

http://www.mhc.org.mk/system/uploads/redactor_assets/documents/368/Shadow_report_EN.pdf

⁸² Criminal Code of the Republic of Macedonia (Official Gazette No.37/96, no.80/99, no.4/02, no. 43/03, no. 19/04, no.81/05, no. 60/06, no.73/06, no.7/08, no.139/08, no.114/09, no.51/11, no.135/11, no.185/11, no.142/12, no.166/12, no.55/13, no.82/13, no.14/14, no.27/14, no.28/14, no.115/14, no.132/14, no.160/14, no.199/14, no.196/15, no.226/15)

⁸³ Article 319 (1) on incitement of national, racial or religious hatred, divisions and intolerance covers national belonging, race and religious belief; Article 394-**r on spread of** racist and xenophobic materials through computer systems covers racial, color, national or ethnic origin, or religious belief; Article 417(1) on racial and other discrimination covers race, color, national or ethnic origin.

⁸⁴ Law on Courts (Official Gazette of the Republic of Macedonia No. 58/2006, 35/2008, 150/2010; Constitutional Court Decisions: U.no.256/2007 (16.04.2008), U.no.74/2008 (10.09.2008), U.no.124/2008 (14.01.2009), U.no.12/2011 (29.02.2012). Article 18(5).)

Also, the Law on Personal Name⁸⁵ stipulates that any citizen has the right to change their personal name and surname, but there are no provisions or procedure for changing the identification number.⁸⁶ It is neither clear whether Macedonian legislation permits transgender persons to change their registered gender on identity documents, nor the eligibility requirements to change are clearly established by law. Furthermore, the legal definition of sex has varying degrees of specificity, subject to much variance in interpretation and practice. Therefore, the law could allow transgender persons to change their registered gender once they have taken decisive steps, which may or may not include medical treatment or particular surgical intervention, to live in a different gender.⁸⁷

The biggest decline in LGBTIQ legislation was made when the Parliament of the Republic of Macedonia on the 8th April 2010, adopted a new anti-discrimination law⁸⁸ that fails to mention sexual orientation as a ground of discrimination, which gave negative points in all upcoming reports from EU and CoE for Macedonia.⁸⁹ Until 2010, anti-discrimination provisions were scattered in various laws. The Law on Prevention and Protection against Discrimination does not comply with the directives regarding minimum protected grounds, definitions and forms of discrimination, effective, proportionate and dissuasive

⁸⁵ Law on Personal Name (Official Gazette of Republic of Macedonia, No.8/95, 66/07, 103/08 and 51/11)

⁸⁶ Shadow Report 2012 available at: http://www.mhc.org.mk/system/uploads/redactor_assets/documents/368/Shadow_report_EN.pdf

⁸⁷ Mladenovic, Ninoslav. *Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity Legal Report: "The former Yugoslav Republic of Macedonia"*

⁸⁸ Law on Prevention and Protection against Discrimination (Official Gazette of the Republic of Macedonia No.50/10, 44/2014, Const.Ct. Decision: U.no.82/2010 (15.09.2010).

⁸⁹ Macedonia's new anti-discrimination law sparked controversy on Friday, as gay activists and the European Union criticized the bill for not including sexual orientation discrimination. The new law, adopted by a slim majority of 62 deputies in the 120-seat parliament late Thursday, is not in line with European standards, a representative of the EU delegation in Skopje told AFP. The bill which lists some 20 bases for discrimination but leaves sexual orientation out of that list makes Macedonia "the only country in the region that has a non-European anti-discrimination law," the official said. Ahead of the vote deputies of the biggest opposition group, the Social Democratic Union of Macedonia (SDSM), walked out in protest because the amendments including sexual orientation were not added. Both the EU and the opposition urged the Macedonian government in vain to delay the vote so the draft could be changed. - part of: *Gay backlash over Macedonia's anti-discrimination law* available at <http://www.eubusiness.com/news-eu/macedonia-rights>.42f

sanctions, use of statistical data, and dialogue with the NGO sector. The equality body established by the act - the Commission for Protection against Discrimination (CPAD) — cannot be said to meet the requirements of Directive 2000/43.⁹⁰ The Law on Prevention and Protection against Discrimination protects the following grounds: color, gender, belonging to a marginalized group, ethnic affiliation, language, citizenship, social origin, education, political affiliation, personal or social status, family or marital status, property ownership, and health condition. It does not explicitly protect the minimum list of grounds prescribed by the directives, as it includes a limited scope of belief, and excludes sexual orientation; however, there is an open-end clause (**‘any other ground established by law or a ratified international treaty’**, Article 3, Anti-discrimination Law), and contains several other grounds not covered by the directives.⁹¹

Law on Execution of Sanctions in Article 4 (2) stipulates that discrimination is forbidden on the bases of race, color, sex, language, religion, political or other beliefs, national or social origin, relation, property and social status or other status. Grounds refer to the person whose sanction is being executed.⁹²

The Law on Child Protection in Article 12 (1) in an open-end clause **stipulates that “any form of discrimination is forbidden on the basis of race, color, sex, language, religious conviction, political and other belief, national, ethnic of social origin, cultural and other affiliation, property status, disability, birth, or other status of the child or his/her parent or his/her legal guardian”**⁹³

The Law on Mental Health in Article 20 (4) prescribes that **“discrimination” is any form of isolation, exclusion, estrangement or**

⁹⁰ Kotevska Biljana, *Country report Non-discrimination FYR Macedonia Reporting period 1 January 2014 - 31 December 2014*
http://ec.europa.eu/justice/discrimination/files/ad_2014_country_reports/2015-mk-country_report_nd_final.pdf

⁹¹ Ibid.

⁹² Law on Execution of Sanctions (Official Gazette No.2/06).

⁹³ Law on Protection of Children (Official Gazette of the Republic of Macedonia No. 23/13, 12/14, 44/14, 144/14, 10/15, 25/15, 150/15)

another treatment having an effect of violation or infringement of the equality of enjoying the rights, except in the cases defined by this law.⁹⁴

The Law on Equal Opportunities for Women and Men in Article 3(6) in accordance with the equal treatment principle in the access to employment, discrimination shall be also prohibited on the basis of marital status, family status, skin color, political or other belief, activity in unions, ethnicity or social status, disability, age, ownership, social or other status; and in Article 4 (3) where the definition of gender-based discrimination is defined as ***“any differentiation, exclusion or limitation on grounds of gender, resulting in endangering or disabling the recognition, achievement or exercise of the human rights and the fundamental freedoms on the grounds of equality of women and men in the political, economic, social, cultural and civil or other sphere, regardless of their race, skin color, gender, belonging to a marginalized group, ethnicity, language, citizenship, social background, religion or religious belief, education, political belonging, personal or social status, mental and physical impediment, material condition, health condition or any other grounds.”***⁹⁵

3.4. The third group of laws

By analyzing the laws in which sexual orientation is explicitly mentioned and the laws in which the discrimination provisions offer open-end clause, one can state that all the other laws are in the third group that is to the disadvantage of the LGBTIQ community. Although this is true, not all the laws are important in relation to discrimination. Moreover, even the Law on Prevention and Protection against Discrimination which is *lex specialis* about the discrimination towards the other laws that contain non-discrimination provisions does not regulate explicit provisions for SOGI.

From the other laws that can be important for the SOGI issues, I will mention few of them, the Law on Social Protection, the Family Law,

⁹⁴ The Law on Mental Health (Official Gazette of the Republic of Macedonia No. 71/06)

⁹⁵ Law on Equal Opportunities of Women and Men (Official Gazette of the Republic of Macedonia No.06/2012, 30/2013, 166/2014)

the Law on Secondary Education, the Law on Voluntary Finances Pension Insurance, the Law on Health Protection, the Law on Housing etc.

3.5. Implementation of LGBTIQ rights in Macedonia

The legislation concerning LGBTIQ rights in Macedonia is on very low level, so the implementation is almost non-existent. Since the sexual orientation is very rarely explicitly mentioned in the laws or can be interpreted from the provision⁹⁶, and gender identity is not mentioned in any law in Macedonia, the biggest role on implementation falls on institutions and courts based on their interpretation.

In the Republic of Macedonia, the Constitutional Court, **the Standing Inquiry Commission on the Protection of Citizens' Freedoms and Rights** of the Assembly of the Republic of Macedonia, the Courts, the Ombudsman and the Commission for Protection from Discrimination are the national human rights bodies that are clearly mandated to address discrimination in general. In practice, human rights structures take no measures in relation to sexual orientation and gender identity.⁹⁷

The CPAD which was established with the Law for protection of Discrimination in 2010 started with its functioning in 2011. Yet the CPAD had been constantly facing numerous problems and obstacles in its work. For example, in 2015 the CPAD stated problems in relation of non-existence of financial department of the CPAD, lack of experts - IT experts, and problems with sending and receiving mail. The CPAD has the following mandate: giving advice and recommendations on cases of discrimination; providing information and initiating procedures at relevant state bodies; reporting, and providing education and training; initiating changes to legislation; cooperation with local government, NGOs, other equality bodies and international organizations; collecting statistical data, establishing databases and carrying out research.

In 2011 the CPAD received the first complaint in relation to sexual orientation i.e. **“any other ground established by law or a ratified**

⁹⁶ Article 137 of the Criminal Code uses an open legal norm “personal characteristics and circumstances” in which the freedom of sexual orientation and/or gender identity can also be interpreted.

⁹⁷ Shadow Report 2012 available at:
http://www.mhc.org.mk/system/uploads/redactor_assets/documents/368/Shadow_report_EN.pdf

international treaty” and the procedure was cancelled due to the removal by the discriminator of the compromising sign of the poster.⁹⁸ In 2012 the CPAD received three complaints in relation to sexual orientation, but still none of them had a successful ending.⁹⁹ In 2013 the CPAD solved one case in relation to member of a marginalized group and found discrimination, however, the concrete marginalized group is not stipulated.¹⁰⁰ In 2014 the CPAD found that in one case there was harassment based on sexual orientation.¹⁰¹ During 2015 the CPAD was highly involved in collaboration with CSOs in increasing their capacities in dealing with cases related to SOGI. The CPAD through its members was involved in workshops for public relations when informing about LGBTIQ issues, a study visit in the Netherlands and preparation of Internal Protocol for the procedure in cases for protection of discrimination on the base of SOGI. The protocol and its annex were adopted in May and June 2015.¹⁰²

The Ombudsman is another body that is dealing with discrimination, still till now on the bases of SOGI the only recorded case in the annual reports is the same one that was submitted in front of the Commission in 2011.¹⁰³

The Courts are rarely dealing with the provision dedicated to the discrimination in general because of the lack of that practice as well as the lack of direct provision which refer to discrimination on the base of sexual orientation and gender identity.¹⁰⁴ The **Public Prosecutor’s Office** is still working under one case of hate speech since 2014.¹⁰⁵ The passivity

⁹⁸ Yearly Report of the CPAD 2011,
http://www.kzd.mk/sites/default/files/dokumenti/god_izvestaj_2011.pdf

⁹⁹ Yearly Report of the CPAD 2012,
http://www.kzd.mk/sites/default/files/dokumenti/god_izvestaj_2012.pdf

¹⁰⁰ Yearly Report of the CPAD 2013,
http://www.kzd.mk/sites/default/files/dokumenti/mcms-godisen_izvestaj_kzd2013prereden%20web.pdf

¹⁰¹ Yearly Report of the CPAD 2014,
http://www.kzd.mk/sites/default/files/dokumenti/god_izvestaj_2014.pdf

¹⁰² Yearly Report of the CPAD 2015,
http://www.kzd.mk/sites/default/files/dokumenti/god_izvestaj_2015.pdf

¹⁰³ Annual report 2011 <http://ombudsman.mk/upload/Godisni%20izvestai/GI-2011/Izvestaj%202011-ANG.pdf>

¹⁰⁴ Shadow Report 2012 available at:
http://www.mhc.org.mk/system/uploads/redactor_assets/documents/368/Shadow_report_EN.pdf

¹⁰⁵ More details - <http://www.libertas.mk/prodolzhuva-praksata-na-diskriminatsi/>

and ignorance of the Public Prosecutor's Office in this case, resulted in protests in front <http://www.plusinfo.mk/vest/12115/galerija-lgbt-zaednicata-odrzuva-dvaesetminuten-protest-pred-obvinitelstvoto> of the Public Prosecution Office with name "The investigation is still on...until when?"¹⁰⁶

The freedom of assembly and association was firstly tried in in 2006 and 2007 when the Macedonian Association for Free Sexual Orientation (MASSO) planned queer festivals ("Queer Square") in Skopje that would re-appropriate the city's public space with street parties and street performances. On both occasions, however, the events were halted by local authorities.¹⁰⁷ There has not yet been any public assembly or protest of LGBTIQ people in the Republic of Macedonia. The Helsinki Committee for Human Rights in cooperation with partner organizations organizes the March for Tolerance seven years in a row, whilst in the public, especially in certain media there are deliberate attempts of twisting the meaning and message of this event into a "concealed gay parade", despite the precise idea and agenda provided by the organizers. This state of invisibility of LGBTIQ people places the entire community in an empty space where many political and other structures are free to abuse it and promote hate towards it. This situation became particularly visible in the process of adopting the Law on Prevention and Protection from Discrimination. There have been signs of increased intolerance towards LGBTIQ people, such as repeated physical attacks on the LGBT Support Centre in Skopje and homophobic media content. While the police have reacted appropriately to violent incidents, full investigations need to be carried out and far more needs to be done by public officials and by media professionals, owners and organizations to publicly denounce intolerance and ignorance.¹⁰⁸

¹⁰⁶ <http://www.plusinfo.mk/vest/12115/galerija-lgbt-zaednicata-odrzuva-dvaesetminuten-protest-pred-obvinitelstvoto>

¹⁰⁷ Official site ILGA Europe
http://www.ilgaeurope.org/home/guide_europe/country_by_country/fyr_macedonia/masso_is_denied_the_right_to_the_freedom_of_assembly

¹⁰⁸ Annual report on the situation of human rights of LGBT people in the Republic of Macedonia in 2010

http://www.ilgaeurope.org/home/guide_europe/country_by_country/fyr_macedonia/annual_report_on_the_situation_of_human_rights_of_lgbt_people_in_the_republic_of_macedonia_in_2010

The EU and the CoE are constantly asking from the authorities to implement all the recommendations regarding the rights of the sexual minorities and to condemn all the violence and intolerance shown towards LGBTIQ organizations and persons, but unfortunately authorities are remaining deaf.¹⁰⁹

Implementation of LGBTIQ rights remains a challenge. As the legislation is the first step of any reform, the implementation is always the hardest part which gives the legislation its practical meaning. In Macedonia, the implementation is almost non-existent because of the lack of the legislation in the field. As a positive outcome, we can mention the visibility of the LGBTIQ community and the network building process in the civil society. Nevertheless, the Gay Prides as a big indicator of direct use of the freedom of assembly and association is on a low level. In Macedonia, there were few attempts that ended in small number of participants, judgments from the society and no support from any **political parties' members**.

4. CONCLUSIONS

Homosexuality has been a part of human culture since the earliest history. The differences in reactions of the societies towards **homosexuality were graduating from normal to “against nature”** behavior, from moral to criminal condemnation and lately liberation.¹¹⁰ Since the Stonewall Riots of 1969, the sexual expression revolution started and triggered the gay community to stand up for their liberation too. That historical moment started a process that on different levels is continuing in more and more improvements for the LGBTIQ communities all around the world. Unfortunately, all continents and all states have different levels of toleration, regulation and implementation of the LGBTIQ rights, from punishment with death penalties to equal rights for all citizens. The variety of different legislation for sexual minorities is also one of the imperative that measures the democratic system and the level of respect of human rights in one country.

¹⁰⁹ **MEPs condemn attack on LGBT centre in Macedonia's capital and cancellation of Pride event** <http://www.pinknews.co.uk/2013/06/25/meps-condemn-attack-on-lgbt-centre-in-macedonias-capital-and-cancellation-of-pride-event/>

¹¹⁰ Wolf, Sherry. Sexuality and socialism. Chicago, Ill: Haymarket, 2009.

Countries in Europe have shown dissimilar practices in regulation of the LGBTIQ rights which has been directly influenced by the recommendations of the EU politics. After the big EU enlargement in 2004, EU came up with the conclusion that the LGBTIQ rights were put in a shadow and that for the next enlargement process changes in the candidate countries must be undertaken in stricter, organized and direct way. In that process the candidate countries were introduced with the Council Directive 2000/78/EC and the EU Chapter of fundamental rights, which became one of the mandatory conditions for implementation in the national legislation.

In 2001 Macedonia signed the SAA and in 2005 Macedonia gained a candidate status. As more defined rules for LGBTIQ rights became obligatory condition with the Directive in 2003 and EU Chapter of fundamental rights came into force in 2009, these new conditions influenced directly the accession process for Macedonia. Unfortunately, the country has not undertaken all the necessary measures in legislation and implementation according to the LGBTIQ rights protection.

The most burning issues in the national context include:

- lack of inclusion of sexual orientation as an explicitly protected ground in the comprehensive anti-discrimination law;
- lack of internal harmonization of national legislation with the Anti-discrimination Law and with international standards;
- weak allocation of resources to both national human rights institutions that have competences in equality and non-discrimination which prevents them from practising the full scope of competences;
- impunity of hate crime and hate speech in practice, especially with regards to sexual orientation;
- lack of independence of the judiciary and partisanship of the state institutions as noted in the EC Progress reports is a serious challenge for both the rule of law and for the trust that people have in the institutions.¹¹¹

¹¹¹ Kotevska Biljana, *Country report Non-discrimination FYR Macedonia Reporting period 1 January 2014 - 31 December 2014*

http://ec.europa.eu/justice/discrimination/files/ad_2014_country_reports/2015-mk-country_report_nd_final.pdf

- inequalities at the intersections remain largely not reflected in the legal and policy frameworks, thus remaining unaddressed by the system. There is a notable absence of an intersectional approach in the laws and policies of relevance for the field of social protection.¹¹²

Macedonia not respecting the EU recommendations and directives and CoE recommendations is still failing to fulfil the political criteria which has resulted in the worst example of respecting LGBTIQ rights, starting in legislation and ending in almost non-existing implementation, keeping its status quo as EU candidate since 2005. The next steps in Macedonia are hard to predict, and one can only anticipate that some changes will take a place, hopefully in a positive connotation. What is happening with the LGBTIQ community regarding the general reaction of the society in a sense of homophobic and intolerant daily behavior regardless of the legislation and implementation might be a topic for further research.

5. RECOMMENDATIONS

The issue of the LGBTIQ people has been a hot issue in Macedonia in the recent few years, especially since the introducing of the Law on Prevention and Protection against Discrimination. Many CSOs and scholars have been researching the situation in Macedonia and introducing recommendations for both, amendments of the laws and implementation.

The general recommendation will be:

Macedonia should start with amending the antidiscrimination law and continue with all the other laws where provisions on the LGBTIQ rights should be implemented and then focus on the implementation process with the help of the EU.

¹¹² Kotevska Biljana *The art of survival: intersecting inequalities in social protection in Macedonia: results of an empirical study/* [authors Biljana Kotevska, Elena Anchevska, Simonida Kacarska, Skopje: Institute for European Policy, 2016.

In this part, I will present the key recommendations that can follow upon this analysis, yet I will use the previous researches and recommendations in the field.¹¹³

- First of all, in Macedonia, awareness-raising actions are needed for improving the LGBTIQ situation. These actions should be undertaken by the state institutions in order to make known the domestic law and practice concerning LGBTIQ rights, as well as the internationally imposed obligations by the CoE (recommendations) and EU (directives).
- Public awareness-raising campaigning should be immediately focused on two target groups - first, the general public so as to provide wide approval of LGBT supportive legislation and second, the LGBT people so as to awaken them and make them want to exercise their own rights and freedoms and protect themselves against all forms of discrimination.
- Amendments to the Constitution with a broad clause on discrimination which will explicitly include sexual orientation and gender identity as a separate ground. The general prohibition of discrimination needs to be amended in order to include a number of other grounds as well. If not by prescribing expressly so, the **notion of “other status” or “other personal circumstances” can be** used, provided that a coherent practice is developed in line with international landmark decisions that the terms include sexual orientation as well, such as the ones reached by the UN Human Rights Committee, the European Court of Human Rights and the European Court of Justice.
- Amendments to the Criminal Code should be initiated, that will include a definition of hate crime that will entail a number of grounds including sexual orientation and gender identity. In this regard, two options may be considered - prescribing stricter penalties for crimes that have been hate-driven, or taking the fact that the motives had been driven by hatred as an aggravating

¹¹³ The international community had been addressing the LGBTIQ issue very intensively and also many CSOs (Helsinki Committee for Human Rights of Macedonia, HERA, LGBTI United and etc.) and many scholars and academics (Biljana Kotevska, Ninoslav Mladenovik and etc.) have been researching the topic and gave their respectful recommendations.

circumstance for the perpetrator when imposing the penalty within the legally prescribed minimum and maximum.

- The Law on Prevention and Protection against Discrimination should also introduce discrimination on grounds of sexual orientation and gender identity so that the country conforms with relevant EU acquis. It is important that complementary antidiscrimination provisions be adopted, and to ensure that similar provisions clarifying the treatment of LGBT persons be included in other relevant laws.
- The Law on Labor Relations and the Law on Volunteering should **change the terminology and include “sexual orientation and gender identity” instead the term “sex orientation”**
- The Law on Execution of Sanctions, the Law on Child Protection, the Law on Mental Health, the Law on Equality Opportunity of Women and Men, which have anti-discrimination provisions in an open-end clause should include **“sexual orientation and gender identity”**.
- The other laws that regulate many life spheres, including health, education, housing, and well-being that have an anti-discrimination clause in a closed-clause, should include **“sexual orientation and gender identity”**.
- The Draft Law on Registered Partnerships should be passed in near future, where same-sex couples would have the same rights as heterosexual ones.
- Strengthening the institutional protection of the LGBTIQ persons by affirmative action programmes, withdrawal from use of the **students’ books, handbooks, teaching manuals etc. which explain “sexual orientation and gender identity” in a way which violates, mispresent or encourages persecution and opposes legal protection.**
- Sexual health education should be introduced to primary and secondary schools that will openly address sexuality and issues faced by LGBT persons.
- Strengthening the capacities of the CPAD in order to be able to deal with cases of discrimination on the basis of **“sexual orientation and gender identity”, by training** courses, collaboration with CSOs, collaboration with international organizations and exchange of experiences with the CPAD from the region.

- Training courses and workshops for judges that will introduce the **ECtHR and ECJ practice in cases related to “sexual orientation and gender identity”**.
- Training courses and workshops for the employees in the institutions for raising awareness about the existence of the inequalities which are generated through interplay and intersection of personal characteristics and power relations.
- Implementation of an intersectional approach in the laws and policies of relevance to the field of social protection.

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7. GLOSSARY

Bisexual - A person who is sexually and emotionally attracted from persons from the both sexes.

Discrimination - Any distinction, exclusion, restriction and every form of putting a person or group of persons at a disadvantage on some basis. Bases or characteristics on which a person or group of persons is

put in unfavorable position are varied and can include: sexual orientation, gender identity, gender expression, gender, age, race, ethnicity and / or nationality, religion, political affiliation, etc. Discrimination can be direct or indirect, institutionalized discrimination, and discrimination on multiple grounds. Bullying, sexual harassment, mobbing, and segregation are also forms of discrimination.

Gay man - A man who is sexually and emotionally attracted exclusively to a person of the same sex - another man. Due to the historical burden of the term *homosexual*, the use of this neutral term is recommended.

Gender - As a social construct of sex, gender is a category that refers to economic, social and cultural attributes which the biologically born bodies acquire. As an individual construct **of one's own** identity / expression, the gender confirms, denies and / or exceeds the socially assigned and formed sex and gender roles of men and women, as well as the whole binary basis of *male* and *female*.

Gender identity - It refers to the personal feeling and personal perception of gender, which may or may not necessarily correspond with the sex assigned at birth. This includes the personal experience of the body and other gender expressions such as clothing, speech, gestures, and mannerisms.

Heteronormativity - The assumption that all people are heterosexual, i.e. that heterosexuality is perfect and superior to homosexuality and bisexuality. Heteronormativity is an opposition towards homosexuality and bisexuality, which is practised at a systematic level (political and economic system, culture, society) and results in systematic rejection, exclusion, and oppression of non-heterosexual identities and sexual behaviors.

Heterosexual - A person who is sexually and emotionally attracted to a person of the opposite sex.

Homophobia - Irrational fear, intolerance, hatred, prejudice and / or discrimination against gays and lesbians. Homophobia manifests itself as undisputed belief in the superiority of heterosexuality which is promoted by the cultural and institutional social practices. This belief begets violence toward non-heterosexual persons which in turn, is

reflected in the physical and verbal attacks on them, discrimination in employment, paying taxes, retirement, etc.

Homosexual - Outdated clinical term for those who are sexually and / or emotionally attracted to people of the same sex. The term is inappropriate and offensive to many gay men and lesbians.

Intersex - A person born with chromosomal, hormonal or genital characteristics that do not correspond to the set standards of *male* and *female* categories due to their sexual and reproductive anatomy. This term has replaced the term *hermaphrodite* which today is considered inaccurate and insulting. Intersexuality may receive various forms and include various positions of intersex people.

Lesbian - A woman who is sexually and emotionally attracted to a person of the same sex. *Lesbian* is one of the oldest and most positive terms for homosexual women, which in the lesbian feminist theory does not only mean a sexual identity that resists conventional gender expectations of women, but also a social and political identity built in opposition to male chauvinism, patriarchy, heterosexism, and phallocentrism.

LGBT - Umbrella term used to denote the lesbian, gay, bisexual and transgender persons. It can be extended to include queer and intersex people (LGBTQI).

Misogyny - Hatred towards women or the female gender in general.

Patriarchy - Social system in which men have a dominant role in relation to women. The patriarchal system of values and social norms creates the basis which the existing system of relations of power and privilege that are continually assigned to men is built upon.

Queer - This term primarily relates to everything that differs from conventional in a certain unusual way (synonymous for strange, eccentric). Initially, the term had offensive meaning for non-heterosexual people and today is used for subversive denouncing of existing almost fixed models, and by that rejecting the differences and the identities. With this, all LGBTI persons, without distinction, are covered by this term, and none of LGBT identities enjoys the preferential and privileged position. This term denotes defiance to heteropatriarchal norms.

Sexism - Discrimination and/or attitudes and behavior that promote the stereotypes and repressive social roles and norms based on **somebody's sex/gender**.

Sexual orientation - Emotional and/or sexual attractedness toward, as well as the ability for sexual and intimate relations with persons of the same sex, opposite sex, or more than one sex.

Straight - It means something *straight, without deviation*, something *non-mixed* but something *conventional*, which does not deviate from the norms which are accepted as *usual, normal* and *natural*. It is also a neutral term for heterosexual people.

Transgender people - General term that refers to people whose gender identity and / or gender expression differ from the sex they are assigned at birth. The term can include transgender and intersex people, transvestites and people with other gender variants, but is not limited only to them.

Transphobia - Irrational fear, intolerance, hatred, prejudice and/or discrimination against transgender people.

8. ABOUT THE AUTHORS

Aleksandra Bogdanovska, the Executive Director of the Coalition **“All for fair trials”**, holds the **European Regional Master’s Degree in Human Rights and Democracy in South - Eastern Europe** from the University of Bologna and University of Sarajevo. She possesses a lengthy professional experience in working for several law offices in Skopje, is a certified trainer in conflict resolution, peace-building and reconciliation, and a dedicated activist for the human rights of the LGBTI people. She is also author of several analyses on issues related to judiciary in Macedonia.

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9. ABOUT SUBVERSIVE FRONT

The association for a critical approach to gender and sexuality SUBVERSIVE FRONT Skopje, established in June 2013, works on promotion of critical, non-patriarchal approach to gender and sexuality, to opening non-homophobic debate for the rights of the people who do not identify with the dominant heteronormative values, on policies and strategies for creating favourable social and political climate for these people, as well as on creating an organic and organized queer and LGBTI community that would be motivated to actively participate in the campaign for equal rights.

Subversive Front works in 5 strategic areas:

- Advocacy for the rights of the LGBTI
- Research and policies for LGBTI
- Training and education for LGBTI
- Free services of legal aid and counseling, and psychosocial support and counseling for LGBTI
- Fundraising for LGBTI projects and initiatives

More information about Subversive Front can be found at:

Web: www.s-front.org.mk

Facebook: www.facebook.com/SubversiveFront

Twitter: [@SubversiveFront](https://twitter.com/SubversiveFront)