

## **DISCRIMINATION AND LEGAL PROBLEMS OF TRANSGENDER PEOPLE IN NORTH MACEDONIA**

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### **Introduction**

The positive political reforms that took place in North Macedonia since the 2016 elections and the formation of Zoran Zaev's government in May 2017 are well known. This story, told so many times by now, begins with a description of North Macedonia as a Western Balkan country in deep political and inter-ethnic turmoil. The government was wiretapping over 20,000 individuals, leaks revealed high-level corruption, the electoral processes was rigged, murders and direct political influence over media uncovered, while journalists who dare to publish truth are intimidated.

In contrast, there is with a description of North Macedonia as a country that is turning its Euro-Atlantic dream into a reality. The list of successes seem endless. From pushing for multiethnic policies by making Albanian the second official language, to building good neighborly relations with Bulgaria and resolving the 27- year-old name dispute with the Republic of Greece. One can observe the latest European Commission's report praising North Macedonia's government for being transparent, accountable and for advocating equal access with its policy 'One society for all'.

There is no doubt that this story is positive and welcoming, but in order to sustain it the government will have to continue delivering on reforms. Take the government's 'One society for all' policy; it is about inclusive development, gender equality and protection from all forms of discrimination, yet some marginalized groups are far from full inclusion and equal treatment in society, especially members of the LGBT+ community.

This paper provides details of some steps achieved since the new government came to power and suggests next steps that could help keep the momentum. For the government to be ready to implement them, pressure from civil society in North Macedonia and the EU institutions will be key.

### **Achievements and reality**

On 29 June 2019, for the first time in history of North Macedonia, around 1,000 people gathered in Skopje for a Pride Parade. North Macedonia and Bosnia and Herzegovina were the two last countries in the Balkans to never hold a Pride. The event took place under strong police security, passed without any incidents and was attended by government ministers who pledged to fight for an equal society.

For a country where the LGBT+ community has not been on any government's agenda since the independence of North Macedonia, the current government has made visible progress in improving and enabling equal treatment for the community.

In March 2018, the Assembly of the Republic of North Macedonia ratified the Istanbul Convention on the Prevention and Combating of Violence against Women and Domestic Violence, by which the Ministry of Labour and Social Policy advocates for equal treatment for all persons and opening new crisis centres for victims of domestic and sexual violence including transgender persons, by the end of 2023.

The reality for the LGBT+ community, however, is still challenging. According to latest Rainbow Europe data, in 2019, North Macedonia is ranked 34<sup>th</sup> out of 49 countries, with

members of the LGBT+ population facing, discrimination, unequal treatment and hate speech on a daily basis.

In 2017, the Helsinki Committee for Human Rights of the Republic of North Macedonia detected 26 cases of hate speech connected to sexual orientation, while in 2018, 19 cases of hate speech due to sexual orientation in the media, and 26 cases in public areas, were registered in the country.

In 2019 two cases of discrimination due to sexual orientation were noted where gay men are discriminated against in healthcare. Three people with HIV were discriminated against because of their HIV status and sexual orientation, although they have reported them to non-governmental organizations in North Macedonia; despite the free legal aid, no case has been reported to the Ministry of Interior.

### **Being transgender in North Macedonia**

Transgender people are one of the most vulnerable groups. Initially because in order to get specific health services they have to obtain funding and most often seek it outside their own country. In 2017 only one gender reassignment surgery of a transgender person was performed. However, most often they have to go to the neighboring Serbia to undergo a gender reassignment surgery that costs from 3,000 to 10,800 euros. With an average salary of 400 euros in North Macedonia, only few are privileged to afford it.

The latest information from the Ministry of Health of North Macedonia is that a gender reassignment surgery is set to be performed in the public Urology Clinic - Unit for Urologic-Reconstructive surgery by a doctor who is already in training to perform it. Whether it will be covered by health insurance remains unclear since Minister of Health first stated that the gender reassignment surgery would be financed by the state, but after 12 hours the statement was denied by the ministry.

Transgender people have been subject to discrimination for a long time. Their gender reassignment cases have been wandering through the judicial and administrative labyrinths of Macedonian institutions. The verdict in Case X before the European Court of Human Rights proves this.

The European Court delivered the first positive verdict in 2019, and has obliged North Macedonia to enact a new law on the prevention and protection of discrimination that includes both sexual orientation and gender identity as grounds for discrimination.

Person X was born in Skopje in 1987 with a female sex organ. At birth, Person X was registered as a girl, with a clear female name. From an early age, Person X became aware that he felt like a man. In 2010 he went to a specialist clinic in Belgrade, Serbia, where a psychologist and sexologist diagnosed him as 'transsexual'. Person X began taking hormones to increase testosterone levels, as recommended by the clinic.

In June 2011 he applied to change his name and surname. The Ministry of Interior approved the application, registering Person X under a clear male name and issued him with a new ID. However, the gender and the numeric personal code remained the same, identifying Person X as female. In July 2011, he requested that the gender and personal numeric code of the birth certificate be corrected to indicate that he was a man. The Ministry rejected his application on the grounds that there was no official document that the applicant had changed his gender. Person X claimed that he had already been diagnosed as a trans person, which according to him was sufficient to obtain legal recognition of gender. His fight for legal recognition of gender had lasted since 2011, after the Ministry dismissed the appeal, until 2016 when the Administrative Court rejected it again.

Person X complained about the absence of a regulatory framework for the legal recognition of gender and the voluntary imposition of a condition for genital surgery. The Strasbourg Court decided on 17th January 2019 in his favor, granting damages of 9,000 euros to Person X and asking authorities in North Macedonia to make legislative changes.

### **What next?**

In order to promote equal treatment of all citizens in North Macedonia, there is a need to adopt legislation that will ensure legal recognition of gender without transgender persons undergoing sterilization or gender reassignment surgery.

For that purpose, the Margini Coalition has submitted in September 2018 a proposal for the initiation of legal recognition of gender. This proposal recommends that the administrative procedure for legal recognition of gender should be completely separated from medical processes. The state should provide a fast, transparent and easily accessible procedure for legal recognition of gender, where trans people can change their name, gender mark, identification number, based on self-determination. The legal obligation for recognition of gender should not impose an obligation on transgender persons to perform medical intervention, in order to be able to exercise this right.

The EU, its institutions and member states, should support civil society in North Macedonia and progressive forces within the government and parliament in insisting on rapid implementation of the European Court of Human Right's judgment in the case of Person X. They should also insist on investigating and prosecuting all cases of hate speech due to sexual orientation. Furthermore, the European Commission should consider supporting the government in opening new crisis centres for victims of domestic and sexual violence, including for transgender persons.