

Contribution from Subversive Front, LGBT United, ILGA- Europe and ERA to Macedonia's Report 2016

Submitted: 16 May 2016, updated 10 June 2016

Summary of key developments and trends

2015 has not been a year of great progress in context to LGBTI rights and status in Macedonia. The state impunity of SOGI-based hate crimes remains a worrisome trend, in addition to the lack of legal recognition of hate crimes and hate speech based on sexual orientation, gender identity and sex characteristics. The existing legal framework for protection against discrimination is still not in alignment with the *EU acquis*, which was called for by the EU in previous progress reports. Trans and intersex people remain invisible in legislation and in society. New research data reveal the harmful effect of homophobia and transphobia on the health and the general well being of LGBTI people, and confirm the increased need of state protection against discrimination of LGBTI people in the fields of employment, police protection, and social protection.

While at national level the right to freedom of assembly is still not guaranteed and among others infringed upon using the law that allows prosecution of 'participating in a crowd which commits a crime', there was strong cooperation with and support from a number of municipalities, in particular Tetovo Municipality. Both in December 2015 and in May 2016, successful public events protected and supported by the municipality were organised there.

Main action points for the coming year

The government should be urged to:

- Amend the Law on prevention and protection against discrimination to expand the number of protected grounds (including sexual orientation, gender identity, and sex characteristics);
- Amend the Criminal Code to expand the number of protected grounds (including sexual orientation, gender identity, and sex characteristics) for the criminal act of incitement to hatred and violence;
- Adopt and implement laws that would explicitly regulate legal gender recognition;
- Raise awareness of the harmful effects that homophobia and transphobia have on the health and general well-being of LGBTI people, and conduct public campaigns and training on promoting and respecting diversity in society for health-care professionals, media, education professionals, law enforcement bodies, prosecutors and judges.

Bias-motivated violence, hate speech, hate crimes

In the 2015 progress report, the government was urged to:

- Systematically collect data on the reporting, investigation and prosecution of hate speech and hate crime and give adequate follow-up to cases of hate speech in social media and blogs
- Fully investigate and prosecute the six violent attacks on LGBTI organisations.

No progress was made concerning these action points.

In the coming year these action points should be reiterated as well as expanded to amend the Criminal Code to recognise acts of crime motivated by hatred based on sexual orientation, gender identity and sex characteristics. Even further, the government should be urged to conduct compulsory education of the competent law enforcement officers who are handling committed criminal acts, to raise awareness of the competent officials at every level of the proceeding of such a crime, and to secure a mechanism that the state officials and state heads shall use in order to publicly condemn hate speech and hate crime based on sexual orientation, gender identity, and sex characteristics.

An opinion poll carried out by the National Democratic Institute in 2015 showed that 27% of the LGBTI people surveyed in Macedonia had suffered physical violence because of their sexual orientation or gender identity. The same opinion poll revealed that 66% of the LGBTI people surveyed in Macedonia had been verbally harassed or abused because of their sexual orientation or gender identity.

Bekim Asani, LGBTI activist from Tetovo, received many homophobic messages and multiple death threats after a video of his speech at Amsterdam Pride 2015 appeared online. He was also publicly harassed in Tetovo, both physically and verbally, at multiple occasions. He temporarily relocated abroad, during which period his family was threatened and verbally harassed.

In November, the Commission for Protection against Discrimination together with several CSOs launched the *Nation without Discrimination* video campaign to make the public more aware of how to report discrimination on various grounds, including sexual orientation. The campaign attracted serious bias-motivated speech. The incidents were reported to the Cyber Crime Unit but no action had been taken by the end of 2015.

In December 2015, the decision to sentence the perpetrator of a violent attack against two LGBTI activists in 2012 to 7 months imprisonment was quashed on appeal.

Freedom of assembly, association and expression

In the 2015 progress report, the government was urged to:

- Address police impunity by establishing an independent oversight mechanism and investigating complaints of ill treatment seriously and thoroughly.
- Address lack of freedom of expression in the current media culture and political climate.

- Stop infringing on the freedom of assembly through the law that allows prosecution under 'participating in a crowd which commits a crime'.
- Introduce provisions to safeguard human rights and clear operational standards to accompany the Law on Policy, and give all relevant police officers rigorous human rights training

No progress was made concerning these action points. On the contrary, the freedom of assembly through the law that allows prosecution under 'participating in a crowd which commits a crime' has been infringed several times in the reporting period.

In the coming year, these action points should be reiterated, and expanded to include stronger cooperation between the central and the local government, especially in those municipalities (e.g. Tetovo) where the local government has shown support in safeguarding the right to freedom of peaceful assembly.

The 2015 opinion poll of the National Democratic Institute revealed that 45% of the LGBTI people surveyed in Macedonia felt that Pride parades have improved the position of LGBTI community in society; Macedonia was the only one of six Western Balkans countries surveyed where only a minority agreed with this statement. In addition, 84% of the general population would not personally support the organisation of Pride events. 32% of the LGBTI people surveyed think that they would be motivated to support a Pride parade if the state authorities guaranteed the security of all of the Pride parade participants.

LGBT United Tetovo organised an event in cooperation with NGO Romano Avazi on 8 December 2016 to celebrate international Human Rights Day. At the event, called 'Human rights for all', LGBT activists, volunteers and local supporters along with the Ambassador of the Kingdom of the Netherlands were present in the main square in Tetovo. The event featured music and speeches and ended with a march around the circle at Tetovo city centre. The event was without any physical threats or violence, and was well secured by police officers. The cooperation with municipality and police was very satisfactory.

On the occasion of IDAHOT on the 17th of May 2016, LGBT United Tetovo organised public awareness raising events in the local municipalities of Gostivar, Kumanovo and Struga. These events featured informative stands on the streets, where activists were distributing leaflets about IDAHOT 2016. These street actions ended without any verbal or physical violence or threat of violence. In addition, for the first time, a protest walk on the streets of Tetovo Municipality was organised by LGBT United Tetovo on the occasion of IDAHOT. The protest walk also ended without any verbal or physical violence or threat of violence. Moreover, Tetovo Municipality expressed support for the event and made municipality premises available for the IDAHOT event participants. In addition, media coverage of all IDAHOT events was satisfactory.

The National Broadcasting Television did not respond to a request from NGOs to air the *Nation without Discrimination* video campaign as a public interest broadcast.

Equality and non-discrimination

In the 2015 progress report, the government was urged to:

- Make much greater efforts to raise public awareness of the Commission for Protection against Discrimination's role and work.
- Increase staff and resources, and guarantee the independence of Commission for Protection against Discrimination.
- Align the legislative framework with the *acquis* as regards discrimination on grounds of sexual orientation (and gender identity).

No significant progress was made concerning these action points. The only and rather symbolic act of progress was the adoption of a Protocol by the State Commission for Protection against Discrimination, where the procedure on claiming discrimination on the grounds of sexual orientation and gender identity is prescribed. The Protocol contains a form annexed to it, where in addition to all the protected grounds from the Law on Prevention and Protection against Discrimination, sexual orientation and gender identity are also mentioned. Thus the plaintiff can circle "sexual orientation and gender identity" in the form for filing a complaint to the Commission for Protection against Discrimination.

In the coming year, these action points should be reiterated, and expanded to include making strong efforts of public awareness raising on the harmful effect discrimination has on LGBTI individuals.

On 13 July 2015, Subversive Front filed a complaint to the Commission for Protection against Discrimination regarding discriminatory, derogatory and openly homophobic content in some supplementary books at the University "Ss. Cyril and Methodius" in Skopje. No response to this complaint has been received to the date of sending this submission.

The 2015 opinion poll conducted by the US-based National Democratic Institute revealed that 54% of the LGBTI people surveyed in Macedonia had been personally discriminated against because of their sexual orientation or gender identity. The same poll also showed that the three areas where the LGBTI people surveyed consider to be most frequently exposed to discrimination are employment (36%), police protection (24%), and social protection (8%) – areas where the state has mandate over.

In November 2015, several NGOs launched an anti-discrimination protocol, which outlines how to treat claims of discrimination based on sexual orientation or gender identity.

In January 2016, several NGOs expressed concern following the appointment of six new members of the Commission for Protection against Discrimination. The NGOs were particularly concerned about three appointees as they had previously expressed homophobic, islamophobic and misogynistic views.

Legal recognition for same-sex couples

In the coming year, the government should be urged to withdraw the constitutional amendment on defining marriage as a union solely between a man and a woman, and to renounce any amendment that would define extra-marital union/civil union also as a union solely between a man and a woman.

The 2015 opinion poll carried out by the National Democratic Institute revealed that 89% of the general population finds same-sex marriage unacceptable. Regarding the rights coming from registered partnerships/recognised unions for same-sex couples, 44% of the general population in Macedonia think it is acceptable LGBTI people to exercise the right to visit their partner in hospital or prison, while 36% think it is acceptable for LGBTI people to exercise the right to health insurance based on their partner's insurance.

The 26 January 2016 parliamentary session on the constitutional definition of marriage as a union solely between a man and a woman was not concluded to date as the ruling coalition did not obtain the two-thirds majority of votes required. The session is still in recess.

Rights and equal treatment of trans and intersex persons

In the coming year, the government should be urged to adopt and implement laws that would explicitly regulate legal gender recognition. In addition, the government should be urged to adopt and implement laws that would define the responsibilities of the competent medical institutions to set up teams and train medical professionals to perform medical procedures for gender confirmation in Macedonia, and which would assign the Health Insurance Fund the obligation to cover the expenses of these medical procedures out of the health insurance budget.

In November 2015, NGO Subversive Front filed a case in the Administrative Court in support of a trans woman whose request to change her gender marker and official ID was refused. The NGO also initiated civil proceedings due to the authorities' delay in responding to her request; this is still pending. Some of the 5 other cases of trans people who have requested legal gender recognition are pending since 2011.

The 2015 opinion poll that National Democratic Institute conducted has revealed that 19% of the general population in Macedonia think that transgender persons work only in prostitution.

Public awareness and attitudes

In the 2015 progress report, the government was urged to make considerable effort to raise awareness of and respect for diversity within society and to counter intolerance, through public campaigns and training of law enforcement bodies, prosecutors, judges and health workers.

No progress was made concerning this action point. On the contrary, the National Broadcast Television which is financed by the taxpayers' contributions, did not respond to the request from several NGOs to air the *Nation without Discrimination* video campaign as a public interest broadcast.

In the coming year, this action point should be reiterated and also expanded to target the media professionals and education professionals with public campaigns and training on promoting diversity within society and countering intolerance. Also, in the coming year, the government should be urged to make considerable efforts to raise awareness of the harmful effects homophobia and transphobia have to the health and the general wellbeing of LGBTI people.

From June to August of 2015, the National Democratic Institute, the U.S. Agency for International Development, the Gay and Lesbian Victory Institute and Civil Rights Defenders carried out opinion polls in the Western Balkans on attitudes towards LGBTI people. In Macedonia, 58% of the general public said that they would try to help their son or daughter find a cure if they found out that their child was not heterosexual. 61% said they would not vote for a political party that championed the rights of LGBTI people. Only 1% of the general population could correctly answer which social group belongs to the LGBTI group. 61% of the general population agree that homosexuality is an illness, while 14% agree that it is quite right to physically punish homosexuals. 61% of the general population would not vote for a political party that at the same time actively deals with the most important problems in the country but also focuses on protecting and promoting the rights of LGBTI citizens.

The *Survey on SOGI-based bullying among youth* that Subversive Front conducted between October and December 2015, reveals that young LGBTI people are more often exposed to discrimination than their non-LGBTI counterparts, that young LGBTI people tend to conceal important information about themselves, that young LGBTI people experience higher levels of anxiety in social interaction, and that young LGBTI people are more prone to suffer from depression than their non-LGBTI counterparts.

On 18 April 2016, Subversive Front held the first civil society forum for political participation of LGBTI where representatives of 5 different political parties, all from the opposition, discussed the level of inclusion of LGBTI issues in their political programmes and their past commitments and efforts.

A supportive and enabling environment for civil society

LGBTI rights have been discussed and addressed at different civil society forums, and several CSOs have showed solidarity and support to the campaign for equal rights for LGBTI people in Macedonia. On 17 May 2016, for the first time, the representations of the EU and the UN in the country, together with Subversive Front, marked the International Day against Homophobia, Biphobia and Transphobia – IDAHOBIT.

The lack of state support to LGBTI projects and initiatives is evident. There is a lack of dialogue between the LGBTI CSOs and the government. To date there has been no state financial support to any LGBTI project and initiative. At local level, state authorities – police and local self-government units show signs of support within the scope of their mandate (see the example of the 8th December March on Human Rights Day in Tetovo).

Local and central government should show initial political will to open the dialogue on LGBTI people's rights with the LGBTI CSOs and activists, and to include them in the consultations on issues related to the mandate the respective government body has. The case of adopting the Protocol by the Commission for Protection against Discrimination, in partnership with the CSOs, shows that the government can be circumvented. However, in the long term, the government should be urged to make significant efforts and show stronger commitment in steps undertaken to improve the status of the LGBTI people in the country.