



# **Human Rights Violations Against Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) People in the Former Yugoslav Republic of Macedonia: A Shadow Report**

**Submitted for consideration at the 114th Session of the  
Human Rights Committee**

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**I. Introduction**

This shadow report is submitted to the Human Rights Committee (“Committee”) by Subversive Front,<sup>1</sup> Coalition Sexual and Health Rights of Marginalized Communities,<sup>2</sup> the Center for International Human Rights of Northwestern University School of Law, and the Global Initiative for Sexuality and Human Rights (“GISHR”) of Heartland Alliance for Human Needs & Human Rights, in anticipation of the Committee’s consideration at its 114<sup>th</sup> Session of the Former Yugoslav Republic of Macedonia’s compliance with the International Covenant on Civil and Political Rights (“Covenant”).<sup>3</sup>

The purpose of this report is to direct the Committee’s attention to serious and ongoing violations of the Covenant rights of lesbian, gay, bisexual, transgender, and intersex (“LGBTI”) individuals by the Former Yugoslav Republic of Macedonia. This report will conclude with (1) suggested questions to be asked during the review session and (2) suggested recommendations to be made to the Former Yugoslav Republic of Macedonia to promote greater compliance with its Covenant obligations. We respectfully ask that the violations discussed in this report be raised by the Committee during the upcoming review session and that the Committee consider our proposed recommendations and questions.

This report will focus in particular on the following violations of Covenant rights:

**Hate crimes and hate speech targeting people on the basis of their sexual orientation and gender identity, and targeting in particular LGBTI human rights defenders and the NGOs with which they work.** (Section II of Report)

These violent physical and verbal attacks violate rights protected by:

- \* Article 7 (freedom from torture and cruel, inhuman or degrading treatment)
- \* Article 9 (security of person)
- \* Article 17 (freedom from unlawful attacks on honour and reputation)

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<sup>1</sup> Subversive Front is a Macedonian NGO that works on promotion of a critical, non-patriarchal approach to gender and sexuality, on opening a non-homophobic debate for the rights of the people that do not identify with the dominant heteronormative values, on policies and strategies for creating a favourable social and political climate for these people, as well as on creating an organic and organised queer and LGBTI community that would be motivated for an active participation in the campaign for equal rights.

<sup>2</sup> Coalition Sexual and Health Rights of Marginalized Communities is a Macedonian NGO that promotes protection and respect for the fundamental human rights of marginalized communities. It promotes equal access to health, social and legal services and inclusion in all social processes, in an environment that is supportive for all people, in which equality, freedom and diversity are respected, and where members of marginalized communities actively participate in the struggle to implement their rights and freedoms.

<sup>3</sup> International Covenant on Civil and Political Rights, 16 Dec. 1966, 999 U.N.T.S. 171 [hereinafter *Covenant*].

- \* Article 19 (freedom of expression)
- \* Article 21 (freedom of assembly)
- \* Article 22 (freedom of association)
- \* Articles 2(1) and 26 (equality and non-discrimination)

This section of the report will present examples of physical and verbal attacks against LGBTI individuals (including human rights defenders) and organizations, and it will also describe the climate of homophobia and transphobia that leads to such attacks.

**Macedonia’s failure to meet its positive obligations to ensure Covenant rights, in violation of Article 2(1).** (Section III of Report)

Macedonia has failed to take appropriate measures to prevent the above-referenced attacks, to adequately investigate, prosecute and punish the perpetrators, and to ensure that victims receive appropriate remedies. More broadly, it has failed to take adequate measures to reduce the prevalence within Macedonia of homophobic and transphobic attitudes and to engender, in their place, a culture of respect for the human dignity of sexual minorities.

**Discrimination with respect to health care and identity documents, in violation of Article 26 (equality and non-discrimination) and Article 17 (right to protection of privacy, honour and reputation).** (Section IV of Report)

Transgender individuals who want access to hormone therapy, reassignment surgery, and appropriate psychological counseling do not have access to these services. Additionally, transgender individuals are not allowed to conform their personal identity documents to their actual gender identity.

**II. Hate crimes and hate speech targeting people on the basis of their sexual orientation and gender identity, and targeting in particular LGBTI human rights defenders and the NGOs with which they work**

**A. Examples of hate crimes and hate speech**

Homophobic and transphobic attitudes remain prevalent in Macedonia, and these attitudes frequently manifest themselves in violent hate crimes and hate speech directed at individuals because of their sexual orientation and gender identity. LGBTI organizations and human rights defenders are particularly targeted for attack. Examples of these physical and verbal attacks include the following:

On 17 November 2012, two LGBT activists were attacked in the main city square in Skopje, just before the start of a planned March for Tolerance. Kočo Andonovski of the Helsinki Committee for Human Rights in Macedonia and Marko Kovačevski of the Coalition Sexual and Health Rights of Marginalized Communities were preparing information stands when Mr. Andonovski was attacked by a masked assailant. When Mr. Kovačevski came to his aid, he was struck

several times on the head.<sup>4</sup> This incident represents a rare case in which the attacker was arrested and charged, and on 27 January 2015 the Criminal Court found that the attacker had violated the victims' right to freedom of assembly. However, the Criminal Court failed to take into consideration as an aggravating circumstance the fact that this crime was a hate crime based on the sexual orientation of the victims and focus of work of the NGO that organized the march.<sup>5</sup> This is contrary to the provision in Macedonian Criminal Code (discussed in Section III A, below), which requires a court to take into consideration, as an aggravating factor in determining the sentence, the fact that the perpetrator's crime was motivated by the victim's personal characteristics, such as race, gender, membership in a marginalized group, or other grounds.<sup>6</sup>

On 20 April 2013, activists from LGBT United and the Coalition for the Sexual and Health Rights of Marginalized Communities were attacked by a group of football supporters during a "Civic Initiative for LGBT Rights" event in the town of Bitola. Carrying a rainbow flag and placards, the activists were distributing posters on the rights of LGBT people. A group of seven attackers violently grabbed the activists' placards and used them to hit the activists on their heads and faces. The attackers also pushed and spat on the activists and subjected them to verbal abuse. When one of the activists tried to call for help on his mobile phone, one of the attackers threw the phone on the ground and threatened to kill the activist. Although the activists immediately reported the attack to the police, there has been no investigation and no prosecution. According to Amnesty International, following this attack "[a] photo of the activists was also posted on the official Facebook page of the Macedonian Sport Fans' group, with the message: 'Never again will faggots step foot in Bitola.'"<sup>7</sup>

In June 2013, actor and activist Peter Stojković was the target of death threats and hate speech on social media sites, following the publication of an article in which Mr. Stojković disclosed that he is gay. Several days after the publication of the article, on 25 June 2013, a hostile crowd assembled outside his home. With Mr. Stojković and his partner inside, the crowd threw stones and shouted homophobic insults and threats. Mr. Stojković reported the 25 June mob action to the police, but they arrived after the mob had left. On 12 July 2013, shortly before midnight, Mr. Stojković's house again was stoned. Police investigation into the death threats and mob actions remains ongoing with no results, although nearly two years have passed. No one has been arrested or charged in connection with any of these crimes.<sup>8</sup>

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<sup>4</sup> Dejan Georgievski, *Organizers of March for Tolerance Attacked in Skopje*, One World OWPSEE (19 November 2012), available at <http://oneworldsee.org/content/organizers-march-tolerance-attacked-skopje>; Coalition Sexual and Health Rights of Marginalized Communities, *Annual Report 2012 Health and Sexual Rights of Marginalized Communities* (2012), at 94, available at <http://coalition.org.mk/wp-content/uploads/2008/10/izvestaj-2012-FINAL.pdf> [hereinafter Coalition, *Annual Report 2012*].

<sup>5</sup> Information reported by the LGBTI Support Centre and by the Coalition Sexual and Health Rights of Marginalized Communities.

<sup>6</sup> See Section III A, below.

<sup>7</sup> Amnesty International, *Macedonia Must Prevent Homophobic Attacks* (23 April 2013), available at <http://www.amnesty.org/en/library/asset/EUR65/002/2013/en/80fd552e-1598-4d52-8e53-d7042a7ac558/eur650022013en.html>.

<sup>8</sup> Coalition Sexual and Health Rights of Marginalized Communities, *Annual Report 2013 Health and Sexual Rights of Marginalized Communities* (2013), at 74-77, available at <http://coalition.org.mk/wp-content/uploads/2014/06/izvestaj-2013.pdf> [hereinafter Coalition, *Annual Report 2013*]; Human Rights Watch, Letter to Prime Minister of Macedonia (10 July 2013), available at <http://www.hrw.org/node/117037> [hereinafter *HRW Letter to Prime Minister*]; Amnesty International, Urgent Action: Escalation in Anti-LGBT Attacks in

The repeated attacks against the LGBTI Support Centre in Skopje illustrate the climate of threats, hatred and violence facing the LGBTI community in Macedonia. The LGBTI Support Centre was established by the Helsinki Committee for Human Rights of the Republic of Macedonia. It serves as a community center, running support groups and organizing events, and also provides legal aid and monitors the implementation in Macedonia of legislation and international standards regarding LGBTI rights.<sup>9</sup> Even before the Centre had opened its doors on 23 October 2012, it had received threats.<sup>10</sup> Once open, it was immediately targeted for attack. In the early hours of 24 October, three masked assailants stoned the Centre, breaking windows. Although this attack was immediately reported to the police, it remains “under investigation” more than two and a half years later, with no arrests and no prosecutions having been made.<sup>11</sup>

During the night of 16 December 2012, the Centre was attacked again when arsonists attempted, unsuccessfully, to burn the Centre down.<sup>12</sup> In March 2013, the building was again stoned.<sup>13</sup>

A new round of attacks against the LGBTI Support Centre took place in connection with Pride Week activities in June 2013. The Support Centre had planned a week of events such as films and discussions. Although no public march was planned, prior to Pride Week unverified and erroneous information had been publicized online, warning of plans for a six-day “gay parade” to be held in Skopje during Pride Week. Although Pride Week organizers denied the misinformation on the same day it first appeared, the news of the “gay parade” circulated online and provoked homophobic hate speech and threats on social media and web portals, particularly in the days leading up to the Pride Week events. A “Counter Gay Parade” was planned for 22 June (the opening day of the Pride Week events), and a “Counter Gay Parade” social network group incited hate, violence, and limitations of the rights of LGBTIQ people.<sup>14</sup>

On 22 June at 2:00 p.m., the Counter Gay Parade group marched from Skopje’s Holy Orthodox Temple to Square Macedonia. There, a number of members of the Counter Gay Parade group assaulted several people, including a minor. Ministry of Interior officials initially denied that the assaults had been the work of the anti-LGBTI protesters.<sup>15</sup>

Several hours before the opening of the Pride Week events, LGBTI activists met with representatives of the Ministry of the Interior to discuss security for Pride Week events, and were told that there would be adequate police presence near the LGBTI Support Centre to guarantee

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Macedonia (12 July 2013), *available at* [http://www.amnestyusa.org/sites/default/files/uaa17613\\_0.pdf](http://www.amnestyusa.org/sites/default/files/uaa17613_0.pdf) [hereinafter Amnesty International, *Urgent Action*].

<sup>9</sup> Sigrid Rausing Trust, LGBT Support Centre of the Macedonian Helsinki Committee, *available at* <http://www.sigrid-rausing-trust.org/Grantees/LGBT-Support-Centre-of-the-Macedonian-Helsinki-Committee>; LGBTI Support Centre, About the Center, *available at* <http://www.lgbti.mk/AboutUs/AboutTheCentre>.

<sup>10</sup> International Lesbian, Gay, Bisexual, Trans and Intersex Association Europe (ILGA-Europe), *ILGA-Europe’s written submission to the European Commission’s 2013 Progress Report on FYR Macedonia* (17 May 2013), at 1 (unpaginated), *available at* [http://www.ilga-europe.org/home/guide\\_europe/country\\_by\\_country/fyr\\_macedonia/ilga\\_europe\\_s\\_submission\\_to\\_2013\\_progress\\_report\\_fyr\\_macedonia](http://www.ilga-europe.org/home/guide_europe/country_by_country/fyr_macedonia/ilga_europe_s_submission_to_2013_progress_report_fyr_macedonia) [hereinafter ILGA-Europe, *Submission to European Commission’s 2013 Progress Report*].

<sup>11</sup> *Id.*; Coalition, *Annual Report 2013*, *supra* note 8, at 65.

<sup>12</sup> ILGA-Europe, *Submission to European Commission’s 2013 Progress Report*, *supra* note 10, at 1 (unpaginated).

<sup>13</sup> Amnesty International, *Urgent Action*, *supra* note 8.

<sup>14</sup> Coalition, *Annual Report 2013*, *supra* note 8, at 67-68.

<sup>15</sup> *Id.* at 68-69

the security of the Pride Week participants.<sup>16</sup> Unfortunately, this promise was not realized.

Pride Week opened at 6:00 p.m. on 22 June with a film showing and discussion on the health rights of transgender people at the LGBTI Support Centre. About 40 people attended the event. Shortly after the start of the event, a mob of about 30 people gathered outside the Centre shouting homophobic slogans and threats. The mob threw bottles, stones, and pyrotechnical materials at the Centre. Everyone inside was traumatized by the attack, and two individuals suffered minor injuries due to the shattering of a glass window. Although one police officer went outside the Centre to try to stop the attackers (and was injured as a consequence), video recordings from a security camera showed police officers leaving their positions before the attack, rather than trying to stop the attackers.<sup>17</sup> Afterwards, one of the organizers of the event, from LGBT United Macedonia, received death threats on Facebook.<sup>18</sup> No one has been arrested or prosecuted in connection with these events, even though video evidence clearly shows the perpetrators of the attack. Similarly, no response has been received to a complaint to the Ministry of the Interior regarding the dereliction of duty by the police officers who left their positions instead of trying to stop the attack.

On 5 July 2013, another attempt was made to burn down the LGBTI Support Centre. Roof tiles were removed, gasoline was poured on the roof planks, and the building was set on fire. The fire brigade was able to localize and extinguish the fire.<sup>19</sup> To date, there has been no police investigation of this arson attack, and no one has been prosecuted for it.

On 23 October 2014 at 9:30 p.m., a stampede of around thirty young people advanced with lightning speed from both sides of the street leading towards the Damar café, where the LGBTI Support Centre – Helsinki Committee for Human Rights was celebrating its second anniversary. This is the sixth attack against the Centre and its activities in its two years of existence. Wearing hoods over their heads and armed with glass bottles and other hard objects, the thugs stoned the café and, as quickly as they had appeared, vanished in the nearby alleys. At the time of the incident, more than sixty people were attending the celebration in the Damar café, two of whom, a young man and a woman, were standing outside in front of the main entrance of the bar. They were attacked by the violent group with glass bottles and sustained injuries on their heads and bodies. During the attack, the assailants kept telling them that they should leave and that faggots were not welcome there. Several people who were inside the bar at the time of the incident sustained small cuts from flying glass. The attack was reported to the police, and the investigation is still ongoing. Representatives of the National Network against Homophobia and Transphobia are cooperating with the Police in the course of the investigation. The Police submitted a Special Report to the Public Prosecutor, but as far as is known, none of the assailants has been charged yet. There has been no institutional condemnation of the incident.<sup>20</sup>

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<sup>16</sup> Coalition, *Annual Report 2013*, *supra* note 8, at 69-70.

<sup>17</sup> *Id.* at 75-76; Amnesty International, *Urgent Action*, *supra* note 8; HRW Letter to Prime Minister, *supra* note 8.

<sup>18</sup> Amnesty International, *Urgent Action*, *supra* note 8.

<sup>19</sup> HRW Letter to Prime Minister, *supra* note 8.

<sup>20</sup> Information reported by the LGBTI Support Centre and by the Coalition Sexual and Health Rights of Marginalized Communities.

These kinds of physical attacks are fomented and encouraged by a steady stream of virulent hate speech on the internet and social media. For example, on 26 November 2012, a pro-government journalist posted a message on his Facebook page promoting hatred and inciting violence against homosexuals: “All who are faggots should be exterminated.” In response, a comment on another Facebook profile agreed: “All should be exterminated until the last faggot!!!”<sup>21</sup>

Another of the many examples of internet and social media hate speech appeared following a day in July 2012 when ten LGBT United activists gathered in the main square in Skopje in front of a large statue and fountain known as Warrior on a Horse. They took photos of themselves carrying a rainbow flag with signs saying “gay,” “lesbian,” “bisexual,” and “transgender.” These photos went viral on the internet, provoking hate speech and calls for violence. For example: “Why was there not someone to pull them into the fountain;” “Slaughter for all of you!;” and “These should be killed!!!”<sup>22</sup>

Another storm of hate speech and calls to violence erupted on social media in response to the erroneous media reports that there would be a “gay parade” as part of 2013 Pride Week events.<sup>23</sup> For example, the social network postings of the “Counter Gay Parade” group, formed in opposition to the 2013 Pride Week events, called for hatred, violence, and the limitation of the rights of the LGBTI community.<sup>24</sup>

## **B. Prevalence of homophobia and transphobia**

The hate crimes and hate speech described above did not happen in a vacuum. Instead, they are the product of an atmosphere in which homophobic sentiment is freely and frequently expressed, and is rarely condemned by public figures or leading media outlets. Indeed, members of government have joined in making comments derisive of sexual minorities.

### **1. Media**

TV and newspaper reporting in Macedonia often includes blatantly homophobic commentary. This routine presentation of demeaning and prejudiced attitudes about LGBTI individuals fuels discriminatory sentiment and serves to legitimate discrimination and even violence on the basis of sexual orientation and gender identity.

On 18 May 2012, the day after LGBTI rights activists had observed the International Day Against Homophobia, TV Sitel broadcast as part of its main news program a completely false story claiming that LGBTI rights activists had filed a Constitutional Court petition to legalize same-sex marriage. This story headlined as “Homosexuals campaign for same-sex marriage,” even though there had been absolutely no public demands for same-sex marriage. As part of this “news” story, TV Sitel’s reporter informed the public that “citizens both at home and around the region clearly stand behind the opinion that homosexuals need professional and medical, not

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<sup>21</sup> Coalition, *Annual Report 2012*, *supra* note 4, at 83-84, note 42.

<sup>22</sup> *Id.* at 83, note 41.

<sup>23</sup> Coalition, *Annual Report 2013*, *supra* note 8, at 67.

<sup>24</sup> *Id.* at 68.

legal aid.”<sup>25</sup> Worse still, the reporter appeared to justify violence against LGBT individuals, saying: “That [people] are against their demands is visible in the last attempts for gay parades in Serbia and Croatia, where homosexuals face brutal clashes with the citizens who demanded that their children should be left alone and develop the way nature goes.”<sup>26</sup>

Appropriately, TV Sitel received a written warning from the Broadcasting Council of Macedonia over this story.<sup>27</sup> Following this warning, a TV Sitel editor wrote a column for the newspaper Vecer, complaining that “Faggots always have the right.”<sup>28</sup>

Examples of other offensive newspaper columns abound. A 27 May 2012 column in the daily Dnevnik, entitled “The Sin and the Normal,” stated that “homosexuality and other deviations (pedophilia, necrophilia, transvestism) from the normal sexual relations should be equated with other illnesses of modern civilizations and human rights should be considered by society as a right entitling serious treatment so that such deviant phenomena be overcome.”<sup>29</sup>

In a 6 November 2012 column in the Dnevnik newspaper, entitled “Adam Has Only Eve,” the author stated, “I regard homosexuality as a pathology.” He went on to characterize homosexuality as “non-naturalness, deviation, an escape from nature, and nothing short of an illness!”<sup>30</sup>

The daily newspaper Vecer also has published derogatory and demeaning articles. For example, on 6 November 2012, Vecer published a column that was rife with degrading language reflecting stereotypes and prejudices against the LGBT community.<sup>31</sup>

On 1 February 2013, Vecer called upon its readers to join in “outing” journalists believed to be gay. In a front-page article headlined “Are there any homosexuals among journalists?,” the newspaper named journalists believed to be gay and published the photos of three such journalists. The article went on to invite readers to join in by submitting names of other “homosexual journalists.”<sup>32</sup>

One media presentation was particularly disturbing because it involved Macedonia’s Minister of Labour and Social Policy, Spiro Ristovski. In October 2012, in an appearance on TV Sitel, Mr. Ristovski stated that “homosexuals cannot raise healthy children.”<sup>33</sup> Journalist Ivona Talevska asked him the following question:

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<sup>25</sup> Coalition, *Annual Report 2012*, *supra* note 4, at 81.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 82. This warning was issued in response to a complaint filed by the Coalition Sexual and Health Rights of Marginalized Communities.

<sup>28</sup> *Id.* at 82.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Amnesty International, *Macedonia: Failures in the Former Yugoslav republic: Impunity for war crimes and rendition; discrimination and limits on freedom of expression* (1 June 2013), at 7, available at <http://www.amnesty.org/en/library/info/EUR65/003/2013/en>; Coalition, *Annual Report 2012*, *supra* note 4, at 98.

<sup>33</sup> ILGA-Europe, *Submission to European Commission’s 2013 Progress Report*, *supra* note 10, at 1 (unpaginated).

“What is the Minister’s attitude, are there opportunities to recognize same sex marriages in the Republic of Macedonia, that these people be given the opportunity to adopt children, and according to this maybe to legalize incest, and pedophilia, and polygamy as it is in some other countries, or all will remain the same?”

In response to this highly offensive question, Minister Ristovski merely reiterated his party’s position against same-sex marriage and adoption of children by same-sex partners. He made no attempt whatsoever to challenge the journalist’s disparaging comparison of homosexuality to incest, pedophilia and polygamy. This is all the more disturbing because governmental anti-discrimination efforts come within the competence of Minister of Labour and Social Policy Ristovski.<sup>34</sup>

When civil society organizations held a press conference criticizing the Minister’s statement, the media coverage that ensued was rife with homophobia.<sup>35</sup> Over the four days following the press conference, the daily newspaper *Vecer* ran highly offensive cover stories, entitled “There will be no gay marriages in Macedonia;” “Girls with Condoms;” “We want grandchildren, not faggots;” and “Children adopted by homosexuals are victims of pedophilia.”<sup>36</sup> Each of these cover stories included images from gay porn movies.<sup>37</sup>

## 2. Textbooks

Textbooks used in high schools and universities in Macedonia perpetuate homophobic attitudes.<sup>38</sup> For example, discriminatory language pathologizing homosexuality (presenting homosexuality as an illness or medical disorder) is present in a number of Macedonian textbooks covering psychiatry, medical psychology, and psychology.<sup>39</sup> By wrongly pathologizing homosexuality, these textbooks contribute to marginalization, discrimination, and stigma against LGBTI people.

According to a university textbook on “Criminological Psychology” authored by Prof. Liljana Batkoska, transvestites experience “uncontrolled impulses” and “unstoppable needs” to cross-dress, which can lead them to commit “very brutal” acts of violence against women if they are prevented from cross-dressing. Prof. Batkoska then claims that these acts of violence are directed against women as a form of “revenge,” because nature has “punished” the transvestites “by not giving them a complete female form.”<sup>40</sup> The Coalition Sexual and Health Rights of Marginalized Communities (“the Coalition”) complained to the Commission on the Prevention of Discrimination (CPD) about the inclusion of these statements in Prof. Batkoska’s textbook.

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<sup>34</sup> Coalition, *Annual Report 2012*, *supra* note 4, at 87-88.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 89.

<sup>37</sup> ILGA-Europe, *Submission to European Commission’s 2013 Progress Report*, *supra* note 10, at 1 (unpaginated).

<sup>38</sup> Coalition, *Annual Report 2013*, *supra* note 8, at 64; *See also* Coalition, *Annual Report 2012*, *supra* note 4, at 68, noting concern expressed by EU Parliament.

<sup>39</sup> Coalition, *Annual Report 2013*, *supra* note 8, at 68.

<sup>40</sup> Coalition, *Annual Report 2012*, *supra* note 4, at 98-99.

The CPD, however, opined that the contents of the book were “scientific” and not discriminatory.<sup>41</sup>

The Coalition also filed a complaint with the CPD against Prof. Dr. Velimir Stojkovski, the Rector of St. Cyril and Methodius University, and Prof. Dr. Olga Murgeva-Shkaric, the author of several psychology textbooks used at St. Cyril and Methodius University, on account of the discriminatory, homophobic content of Dr. Murgeva-Shkaric’s three textbooks. For example, one of her textbooks describes homosexuals as “the most common transmitters of AIDS” and suggests that “(h)omosexuality destroys natural family, since it contradicts the sexual dimorphism of people.”<sup>42</sup> Her textbooks claim that “scientific” research proves that homosexuality is not a normal, healthy alternative to heterosexuality.<sup>43</sup> The CPD, however, took no action on the complaint.<sup>44</sup>

The Coalition filed yet another complaint with the CPD against the Rector of St. Cyril and Methodius University and several additional textbook authors. One of the challenged textbooks, entitled “Medical Psychology,” defines “normal” sexual activity as occurring exclusively between two people of different sexes.<sup>45</sup> The author also describes homosexuality as a disorder, a view long since abandoned in mainstream psychology.<sup>46</sup> Furthermore, this textbook incorrectly states that the criminal code of Macedonia penalizes “fornication between men,” although this has not been the case since the law was changed in 1996.<sup>47</sup>

The complaint also addressed the false and discriminatory language found in two psychiatry textbooks, “Psychiatry, Volume 1” and “Psychiatry, Volume 2.” In Volume 1, homosexuality and transvestism are listed as sexual “disorders” along with satyriasis, nymphomania, impotence, and frigidity.<sup>48</sup> Volume 2 characterizes homosexuality as a “dysfunction, a deviation or disorder.”<sup>49</sup>

It is noteworthy that on 7 May 2014, in response to this complaint, the CPD issued an opinion finding that the content of these three textbooks constituted harassment based on sexual orientation. The CPD recommended that the offending text be removed and not used in the future, and it called on certain of the authors to apologize. The CPD is to be applauded for this opinion.

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<sup>41</sup> *Id.* at 99.

<sup>42</sup> *Id.* at 81.

<sup>43</sup> *Id.* at 81-82.

<sup>44</sup> *Id.* at 82.

<sup>45</sup> Coalition, *Annual Report 2013*, *supra* note 8, at 82.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 82-83.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

### 3. Statements by governmental officials

Unfortunately, some members of the Macedonian government have contributed to the climate of intolerance through their own expressions of homophobic prejudices.

In 2010 the Former Yugoslav Republic of Macedonia enacted a Law on prevention and protection against discrimination (LPPD) that prohibits discrimination on various grounds. No legal changes in LPPD were made, notwithstanding the explicit observations by the European Commission that the Law is not in line with the EU legislation, since discrimination on the grounds of sexual orientation is still not included.<sup>50</sup> During the drafting process, sexual orientation was included in the LPPD and it was erased in the final proposal to the Parliament. The Minister of Labor and Social Policy, who was representing the draft law, clarified that “the Law covers more grounds for protection against discrimination than the European directives do, yet it doesn’t cover homosexuals since such term does not exist in the Macedonian legislation. The reasons behind this are that it is not in compliance with the Constitution and the laws in the Republic of Macedonia”.<sup>51</sup>

There were many reactions on the draft law coming from National Civil Society Organizations as well as from international human rights organizations.<sup>52</sup> The Parliament debate abounded in numerous homophobic statements and “arguments.” There were disputes and derogation of the sexual orientation concept: suggestions that different sexual orientations should not be adopted as a social norm, derogatory analogies, and misinterpretation of sexual orientation as sodomy. There was an attempt to manipulate the notion that listing “sexual orientation” in the Law is not an EU criterion. It was claimed that adoption of sexual orientation as a ground for discrimination is “odd, forced and unnatural” and will bring into question the Macedonian traditional values and the “Macedonian family model.” There was “argumentation” that adoption of sexual orientation in the Law would lead towards legalization of homosexual marriages (with the possibility of the partners adopting children), and that redefining of marriage leads towards “decadence, auto-destruction”, incest, and polygamy. MPs used excuses that religious institutions and the majority of parliamentary parties “are not prepared to standardize socially the private affinity of a small

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<sup>50</sup> European Commission, Commission Staff Working Document, The Former Yugoslav Republic Of Macedonia, 2012 Progress Report *accompanying the document* Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2012-2013, p. 16, *available at* [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/mk\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/mk_rapport_2012_en.pdf) (“The Anti-Discrimination Law is still not fully in line with the *acquis*; discrimination on the grounds of sexual orientation is still omitted. The Lesbian, Gay, Bisexual and Transgender (LGBT) community continue to suffer from discrimination and stigmatisation.”). The term “*acquis*” refers to the body of law of the European Union.

<sup>51</sup> Coalition Sexual and Health Rights of Marginalized Communities, Annual Report 2010, *available at* [www.coalition.org.mk](http://www.coalition.org.mk) [hereinafter Coalition, *Annual Report 2010*].

<sup>52</sup> The first to react was ILGA Europe on 01.02.2010, calling for “non-discrimination on the grounds of sexual orientation in the draft Law on Anti-discrimination, which is being reviewed in the Republic of Macedonia.” The letter stressed that “As a country-candidate for membership in the European Union, Republic of Macedonia is expected to introduce a comprehensive Antidiscrimination Law that shall provide protection against discrimination on 6 grounds of discrimination, including sexual orientation”. Human Rights Watch also reacted with a letter “to the Prime Minister of Macedonia” asking for an amendment to the draft Law to include sexual orientation and gender identity. The representative of the EU also reacted demanding that the Government respect European standards. The members of the European Parliament reacted on couple of occasions. Coalition, *Annual Report 2010*, *supra* note 51.

group of citizens that wants to redefine this society”.<sup>53</sup> A Member of Parliament, a doctor by vocation, stated that, “there is no need for proposing a new draft-law unless the opposition party and its NGO’s have an intention to legalize homosexuality, homosexual marriages as well as adopting children by homosexual couples”. He attempted to present his individual views as scientific to the members of the Parliament and the invited representatives from the NGO’s: “Let me explain discrimination from a scientific view”, “this is science, not demagogy”. “Transsexuality is a severe psychological disorder, upon which the ill person demands a surgical change of sex”. “I have given this explanation, these unwanted forms of intersexuality with a sexual orientation towards the same sex in order to introduce you to homosexuality as a disease that needs to be cured, not legalized, with the possibility of marriage, or adopting children by homosexual couples”.<sup>54</sup>

Another example of homophobic statements by government officials is the October 2012 comment on TV Sitel, noted above, by Macedonia’s Minister of Labour and Social Policy, Spiro Ristovski, proclaiming that “homosexuals cannot raise healthy children.”<sup>55</sup>

Yet another example is found in comments made by certain Members of Parliament in the context of an August 2013 proposal made by Macedonia’s ruling party to revise the Constitution to prohibit same-sex marriage. Although the proposal was ultimately rejected, the initiative led to a new round of homophobic comments in the media and in the Parliament itself. MP Nadica Tanceva Tulieva described the possibility of adoption by same-sex couples as “terrifying”: “Even more terrifying, in some states the adoption of children [by] same-sex partners is allowed, i.e. legal.”<sup>56</sup> MP Dragisha Miletic emphasized that both he and his party (the Serbian Progressive Party) view homosexuality as “a disease.”<sup>57</sup> He noted that “during socialism this category [homosexuals] was criminalized . . . and with good reasons.”<sup>58</sup> And, he asked, “Does this mean that in 20 years pedophiles will also be a specific category, or a sexual orientation? In 20 years we might be discussing this as well.”<sup>59</sup>

An additional example involves Macedonian Prime Minister Nikola Gruevski, who chose to discuss same-sex marriage and adoption in his 23 October 2012 address commemorating the Day of Macedonian Revolutionary Struggle. Lamenting the small number of children in most Macedonian families, he decried the fact that “we have debates about perverted values, same sex marriages, and what is more, adoption of children in these same-sex marriages.”<sup>60</sup>

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<sup>53</sup> *Id.*

<sup>54</sup> Notes from the 20th session of the Query Commission of the Parliament of the Republic of Macedonia, held on 16 March 2010. *See also*, Coalition, *Annual Report 2010*, *supra* note 51.

<sup>55</sup> ILGA-Europe, *Submission to European Commission’s 2013 Progress Report*, *supra* note 10, at 1 (unpaginated).

<sup>56</sup> Coalition, *Annual Report 2013*, *supra* note 8, at 84, note 34.

<sup>57</sup> *Id.* at 85, note 40.

<sup>58</sup> *Id.* at 85, note 38.

<sup>59</sup> *Id.* at 84, note 34.

<sup>60</sup> Coalition, *Annual Report 2012*, *supra* note 4, at 92-93.

### **III. Macedonia's failure to meet its Article 2(1) positive obligations to ensure Covenant rights**

Although the physical and verbal attacks described in the preceding section were committed by private actors, these attacks nevertheless engage Macedonia's responsibility under Article 2(1) of the Covenant. Article 2(1) obliges States Parties to "ensure," as well as to respect, the rights set out in the Covenant. As this Committee has noted,

[T]he positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights . . .<sup>61</sup>

Accordingly, a State Party can violate its Covenant obligations by "failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities."<sup>62</sup>

The obligation to take positive measures to prevent future violations is of particular importance. This is especially true where – as here – there have already been repeated violations of the Covenant rights of a vulnerable population. As this Committee has emphasized, there exists "an obligation integral to article 2 to take measures to prevent a recurrence of a violation of the Covenant."<sup>63</sup>

Additionally, a State Party's failure to investigate allegations of violations or to bring those responsible to justice "could in and of itself give rise to a separate breach of the Covenant."<sup>64</sup> States Parties also are obliged to "provide an effective remedy" to anyone whose Covenant rights have been violated.<sup>65</sup>

Unfortunately, as will be shown, Macedonia has not succeeded in complying with its positive obligation to ensure Covenant rights to LGBTI individuals.

#### **A. Failure to expressly include sexual orientation and gender identity in laws prohibiting discrimination and criminalizing hate crimes and hate speech**

The most important steps that Macedonia could take to prevent further hate crimes and hate speech against LGBTI individuals would be to enact and to vigorously enforce laws against discrimination, violence and threats based on the victim's sexual orientation or gender identity. At present, Macedonia's anti-discrimination law and its criminal laws on hate crimes and hate

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<sup>61</sup> U.N. Human Rights Comm. (ICCPR), General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant (Article ), CCPR/C/21/Rev.1/Add.13, ¶ 8, 26 May 2004 [hereinafter *General Comment No. 31*].

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* ¶ 17.

<sup>64</sup> *Id.* ¶ 18.

<sup>65</sup> *Id.* ¶ 16.

speech do not list sexual orientation and gender identity among the specified grounds of discrimination and bases of hate crimes and hate speech to which the laws apply.<sup>66</sup>

Although the Macedonian Constitution declares in Article 9 that “all citizens” are “equal before the Constitution and law,” it omits mention of sexual orientation and gender identity when it further proclaims that “[c]itizens of the Republic of Macedonia are equal in their freedoms and rights, *regardless of sex, race, colour of skin, national and social origin, political and religious beliefs, property and social status.*”<sup>67</sup> Sexual orientation and gender identity likewise are not mentioned in Article 110, under which Macedonia’s Constitutional Court is given responsibility for “protect[ing] the freedoms and rights of the individual and citizen relating to . . . the prohibition of discrimination among citizens *on the ground of sex, race, religion or national, social or political affiliation.*”<sup>68</sup>

Similarly, the 2010 Law on Prevention and Protection Against Discrimination (“LPPD”) omits explicit mention of sexual orientation and gender identity among the bases as to which discrimination is prohibited. Discrimination is defined as follows:

**“Discrimination** is any unjustified legal or actual, direct or indirect differentiation or unequally acting i.e. permission (excluding, limitation or giving priority) related to persons or groups *on the grounds of sex, race, skin colour, gender, belonging to marginalized group, ethnic origin, language, citizenship, social origin, religion or confession, education, political belonging, personal or social status, intellectual and body disability, age, family or marital status, property status, health condition or on any other grounds.*”<sup>69</sup>

While, arguably, discrimination on the basis of sexual orientation or gender identity is covered under the categories of “belonging to a marginalized group” or “any other grounds,”<sup>70</sup> the omission of a specific reference to sexual orientation and gender identity discrimination is significant. The signal this sends is that discrimination against sexual minorities is not on par with discrimination on other grounds. It suggests that discrimination against sexual minorities is not as blameworthy as other forms of discrimination, and/or that it is not a sufficiently large problem in Macedonia to warrant inclusion in the national anti-discrimination law. Indeed, the decision to omit sexual orientation and gender identity from the list of impermissible grounds of

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<sup>66</sup> As explained below, discrimination and hate speech directed at someone due to the person’s sexual orientation or gender identity may be covered by these laws under catch-all categories. However, as also explained below, the failure to name these grounds as among the prohibited grounds sends a very negative message.

<sup>67</sup> Constitution of the Republic of Macedonia, as amended, Article 9 (emphasis added), Official Gazette of the Republic of Macedonia, 12 April 2011, *available at* [http://www.legislationline.org/download/action/download/id/3651/file/FYROM\\_Constitution\\_1991\\_am2011\\_en.pdf](http://www.legislationline.org/download/action/download/id/3651/file/FYROM_Constitution_1991_am2011_en.pdf) [hereinafter *Macedonian Constitution*].

<sup>68</sup> *Id.* art. 110.

<sup>69</sup> The Law on Prevention and Protection against Discrimination, Official Gazette of the Republic of Macedonia, No. 50 (13 April 2010), Article 5(3), *available at* [http://legislationline.org/download/action/download/id/3483/file/FYROM\\_Law%20on%20protection%20against%20discrimination\\_2010\\_en.pdf](http://legislationline.org/download/action/download/id/3483/file/FYROM_Law%20on%20protection%20against%20discrimination_2010_en.pdf).

<sup>70</sup> See Marina Stojanovska, *Macedonians get new recourse against discrimination*, Southeast European Times (19 January 2011), *available at* [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/features/2011/01/19/feature-03](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2011/01/19/feature-03).

discrimination implies that the very terms “sexual orientation” and “gender identity” are unmentionable.

Regarding the Replies of the State to the List of Issues, it is clear that the State has no intention to explicitly recognize sexual orientation and gender identity as a discriminatory basis in the LPPD as a general law that prohibits discrimination based on all grounds in all spheres by any perpetrator.<sup>71</sup> The Government justifies the lack of protection based on sexual orientation in the LPPD by claiming that sexual orientation is already included through the reference in the LPPD to “any other grounds,” and by referring to other laws that contain sexual orientation.<sup>72</sup> As to the LPPD, the need for explicit mention of sexual orientation is made clear by the extremely hostile comments made by Government officials during the debate, at the time of the law’s adoption, over whether or not to explicitly mention sexual orientation. (*See* pp. 10-11, above.) In view of the explicit decision *not* to include sexual orientation, it is essential that the law be amended to explicitly include sexual orientation. As to the other laws mentioned in the Government’s Replies to the List of Issues, only the Labor law and Law on patient’s rights actually prohibit discrimination; the other laws mentioned in the Reply to the List of Issues only guarantee non-discrimination. This is an important difference, because a law that prohibits discrimination allows a victim to file a lawsuit and claim for redress, whereas a law that merely says that it guarantees non-discrimination does *not* permit such lawsuits. Thus, under the current laws, Macedonia does not have a legal framework that prohibits and protects against discrimination based on sexual orientation in all spheres of life, which is contrary to its obligations under the Covenant.

It is also important to note that there is a complete legal vacuum regarding prohibition and protection against discrimination on the basis of gender identity. None of Macedonia’s laws make reference to gender identity. Moreover, in its Replies to the List of Issues, the Government does not claim that any of its existing laws prohibit and protect against discrimination based on gender identity.<sup>73</sup> This leaves transgender people completely without protection. Additionally, it should be noted, the State failed to introduce sexual orientation and gender identity as grounds for discrimination in the Law of equal opportunity of women and men, as a crucial law that should promote and protect the rights of transgender people.

Macedonia’s Criminal Code also fails to include sexual orientation and gender identity in the articles of the Criminal Code that address crimes motivated by discriminatory animus:

Article 39(5) of the Criminal Code makes it an “aggravating circumstance” for sentencing purposes if the person or property against which the crime was committed was targeted on the basis of any one of a long list of personal characteristics. Notably, the list does not include sexual orientation or gender identity:

“When determining the sentence, the court shall especially consider whether the crime has been committed against a person or group of persons or property, directly or indirectly, because of

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<sup>71</sup> Replies of the Former Yugoslav Republic of Macedonia to the list of issues, CCPR/C/MDK/Q/3/Add.1 (received 7 May 2015), ¶ 3 [hereinafter *Replies of Macedonia to the LOI*].

<sup>72</sup> *Id.* ¶ 4.

<sup>73</sup> *Id.*

his/hers sex, race, color of skin, gender, belonging to a marginalized group, ethnic origin, language, citizenship, social origin, religion or religious belief, other beliefs, education, political adherence, private or social status, mental or physical disability, age, family and marital status, property status, health condition, or any other ground provided in law or ratified international agreement.”<sup>74</sup>

Article 417 of the Criminal Code makes it a crime (1) to violate a person’s “basic human rights and freedoms” on the basis of the person’s “race, colour of skin, nationality or ethnic belonging,” (2) to “persecute[] organizations or individuals because of their efforts for equality of the people” or (3) to “advocate[] racial hate,” “instigate[] to racial discrimination,” or “spread[] ideas about the superiority of one race above some other.”<sup>75</sup> No comparable law criminalizes the same offenses targeting sexual minorities.

Article 137 criminalizes an “Injury to the equality of citizens.” According to Section 1 of Article 137:

“A person who, based on a difference in gender, race, color of skin, national and social origin, political and religious belief, wealth and social position, the language or other personal characteristics or circumstances, takes away or limits the rights of humans and citizens, determined by the Constitution, by law or by ratified international covenant, or who based on all these differences gives citizens favors in contrary to the Constitution, some law or international ratified covenant, shall be punished with imprisonment of three months to three years.”<sup>76</sup>

This law fails to list sexual orientation and gender identity among the many specified bases upon which it is a crime to injure the equality of citizens.

Article 144(4) of the Criminal Code criminalizes the use of an “information system” (such as the internet) to threaten to commit a crime<sup>77</sup> against someone because of the targeted person’s

“belonging to specific sex, race, colour of skin, gender, belonging to a marginalized group, ethnicity, language, citizenship, social background, religion or religious belief, other beliefs, education, political affiliation, personal or societal status, mental or physical disability, age, family or marital status, property status, health condition, or on any other ground established with law or ratified international agreement.”<sup>78</sup>

Once again, the law omits specific mention of sexual orientation and gender identity.

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<sup>74</sup> Excerpts from Republic of Macedonia Criminal Code, as amended (February 2014), Article 39(5), available at <http://www.legislationline.org/documents/action/popup/id/18559> [hereinafter *Excerpts from Macedonian Criminal Code, as amended (Feb. 2014)*].

<sup>75</sup> Republic of Macedonia Criminal Code, as amended (September 2009), Article 417, available at <http://www.legislationline.org/documents/action/popup/id/16066> [hereinafter *Macedonian Criminal Code, as amended (Sept. 2009)*].

<sup>76</sup> Macedonian Criminal Code, as amended (Sept. 2009), *supra* note 75, art. 137(1).

<sup>77</sup> The threatened crime must be one which is punishable by imprisonment of five or more years. Excerpts from Macedonian Criminal Code, as amended (Feb. 2014), *supra* note 74, art. 144(4).

<sup>78</sup> *Id.*

The same is true of Article 319 of the Criminal Code, which criminalizes the incitement of hatred, discord or intolerance:

“Whosoever by force, maltreatment, endangering the security, mocking of the national, ethnic, religious and other symbols, by burning, destroying or in any other manner damaging the flag of the Republic of Macedonia or flags of other states, by damaging other people's objects, by desecration of monuments, graves, or in any other discriminatory manner, directly or indirectly, *causes or excites hatred, discord or intolerance on grounds of gender, race, color of the skin, membership in marginalized group, ethnic membership, language, nationality, social background, religious belief, other beliefs, education, political affiliation, personal or social status, mental or physical impairment, age, family or marital status, property status, health condition, or in any other ground foreseen by law on ratified international agreement*, shall be sentenced to imprisonment of one to five years.”

Yet again, the lengthy list of personal characteristics as to which Article 319 applies does not specifically include sexual orientation or gender identity.

## **B. Failure to prosecute, punish, remedy, and condemn hate crimes and hate speech against LGBTI individuals and organizations**

With rare exception, no one has been prosecuted and punished for any of the attacks described in Section IIA of this report.<sup>79</sup> Indeed, in its Replies to the List of Issues, the State claims only to have “solved one case of ‘violence’ by a perpetrator against persons belonging to the LGBT community,” during the period from 2012 to 2014.<sup>80</sup> In view of the large number of violent attacks, the fact that only one case has been solved is striking. The message this sends is that people can attack with impunity LGBTI activists, other LGBTI individuals, and the NGOs that support them.

This message is underscored by the failure of government leaders to immediately and strenuously condemn these attacks. For example:

There was no public political condemnation in response to the October 2012 stoning of the LGBTI Support Centre the night after it opened.<sup>81</sup>

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<sup>79</sup> See Section IIA, and sources cited therein. The only cases in which convictions were obtained were the March 2013 attack on the LGBTI Support Centre and the November 2012 attack upon Mr. Andonovski and Mr. Kovačevski. Even then, these attacks were not recognized as hate crimes, as they should have been. The March 2012 attack on the LGBTI Support Centre was not evaluated as a hate crime against the LGBTI community, but rather as collateral damage stemming from ethnicity-based rioting. The November 2012 attack upon Mr. Andonovski and Mr. Kovačevski led to a conviction for violating the right to freedom of assembly, but the court failed to consider it an aggravating factor that the crime was motivated by the victims’ sexual orientation and their roles as LGBTI human rights defenders in organizing the March for Tolerance at which they were attacked. See Coalition, *Annual Report 2013*, *supra* note 8, at 65; additional information provided by the LGBTI Support Centre and the Coalition Sexual and Health Rights of Marginalized Communities.

<sup>80</sup> Replies of Macedonia to the LOI, *supra* note 71, ¶ 5.

<sup>81</sup> *Id.*

When LGBTI activists Mr. Andonovski and Mr. Kovačevski were attacked at the 2012 March for Tolerance, civil society organizations called upon the Prime Minister, the Minister of Internal Affairs, and the Minister of Labour and Social Policy to condemn the violence. Unfortunately, no condemnation was forthcoming.<sup>82</sup>

Civil society organizations also called upon public authorities to condemn the April 2013 violence against LGBT rights activists in the town of Bitola. Again, these calls went unanswered.<sup>83</sup>

Following the mob attack upon the LGBTI Support Centre during its Pride Week 2013 opening event, the Macedonian authorities were again called upon to condemn the violence against LGBTI people and organizations. The response from Macedonian politicians was muted, with only a few of the smallest political parties condemning the attack.<sup>84</sup> Two weeks later, Prime Minister Nikola Gruevski was asked in an interview why he had not responded to the “call to condemn the violence against homosexuals.” His response was to say that incidents of violence occur from time to time, and that his party “has never supported violence, regardless of the subjects of the violence.”<sup>85</sup> Thus, even in the face of such an egregious mob attack, the Prime Minister was unwilling to clearly and forcefully condemn violence against LGBTI individuals and organizations.

In November 2014, members of the National Network against Homophobia and Transphobia (which consists of the five LGBTI organisations and 15 other civil society organisations showing solidarity and support in the struggle against homophobia and transphobia) protested in front of the Public Prosecutor’s office and complained to the police that ineffective investigations into previous attacks had contributed to the latest assault, on 23 October 2014, on the Damar café. The police responded only by stating that they had filed the relevant reports with the prosecutor’s office. This was followed by a statement from the General Prosecutor, asserting that he was not familiar with the number and the dates of the attacks against the LGBTI community.<sup>86</sup>

The refusal of Macedonia’s political leaders to strongly condemn violent attacks based on sexual orientation and gender identity reinforces the message of impunity sent by the failure to prosecute, punish and remedy these offenses. Indeed, the authorities’ failure to forcefully condemn these attacks suggests that such attacks might be seen as justifiable, or at least not worthy of society’s censure.

Macedonia’s failure to prosecute, punish, remedy and condemn these attacks is particularly worrisome because so many of the attacks targeted LGBTI human rights defenders and NGOs. The failure of Macedonia to meet its positive obligations to protect against these physical and verbal attacks has heavy implications on the exercise of the rights to freedom of expression (Art. 19), assembly (Art. 21), and association (Art. 22).

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<sup>82</sup> Coalition, *Annual Report 2012*, *supra* note 4, at 68.

<sup>83</sup> Coalition, *Annual Report 2013*, *supra* note 8, at 65.

<sup>84</sup> *Id.* at 66.

<sup>85</sup> *Id.* at 78, note 22.

<sup>86</sup> Information reported by the LGBTI Support Centre and by the Coalition Sexual and Health Rights of Marginalized Communities.

These failures on the part of Macedonia's law enforcement and criminal justice mechanisms are matched by failures on the part of Macedonia's Commission for Protection against Discrimination ("CPD"). Despite the fact that sexual orientation is not explicitly mentioned in the LLPD, the CPD has recognized sexual orientation as a ground for discrimination and decides on cases regarding discrimination based on sexual orientation. However, based on the practice of the CPD, there is no effective protection of the LGBTI community.

So far, as the State has acknowledged in its Replies to the LOI, the CPD has found violations in only three cases out of twelve.<sup>87</sup> In the case against the Minister Labour and Social Policy, Spiro Ristovski, CPD failed to respond to the call to condemn the discriminatory statements he had made. The Chair of the CPD, who is also an employee in the Ministry of Labour and Social Policy, publicly argued that "In Minister Ristovski's statement there is neither hate speech nor it is about discrimination." Instead of condemning the Minister's discriminatory statements, the CPD Chair attempted to excuse the statements by interpreting the party attitudes of the Minister: "He is referring to the law, but also to the party determination, which is conservative and demochristian and for which the family is the priority. According to the law, but also to the natural state of affairs, a new life, conception and offspring is made by a man and a woman. The family union is created by a man, a woman and children, this cannot be a primitive community. In our country there are also forms of extra-marital communities, which surely have rights and obligations according to law – said Dushko Minovski, the Chair of CPD."<sup>88</sup> Similarly, the CPD found no discrimination in two cases related to homophobic and transphobic textbooks.<sup>89</sup> The inconsistent practice of the CPD violates the principles of rule of law and access to justice for LGBTI people.

#### **IV. Discrimination with respect to health care and identity documents**

Health services to meet the particular needs of trans people are not provided in Macedonia. There are no health facilities in Macedonia that provide surgical, hormonal, and psychological treatments for gender confirmation.<sup>90</sup> When Macedonians go abroad for hormonal therapy or gender confirmation surgeries, the Macedonian Fund for Health Insurance refuses to cover the expenses on the purported ground that these medical services are merely cosmetic.<sup>91</sup> Overall, the Macedonian Ministry of Health has failed to develop and adopt standards and protocols to meet the health needs of transsexual and intersex people.<sup>92</sup>

Macedonia does not allow transsexuals to conform their personal identity documents, which indicate gender, to their actual gender identity.<sup>93</sup> When a transsexual person's identity

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<sup>87</sup> Replies of Macedonia to the LOI, *supra* note 71, ¶ 3.

<sup>88</sup> "Homosexuals are brought together by power and opposition," Dnevnik, 15.10.2012, *available at* <http://dnevnik.com.mk/default.asp?ItemID=CFE39E2302B8E246990D93316902F049>.

<sup>89</sup> See [http://www.soros.org.mk/CMS/Files/Documents/izvestaj-mreza\\_za\\_zastita\\_od\\_diskriminacija.pdf](http://www.soros.org.mk/CMS/Files/Documents/izvestaj-mreza_za_zastita_od_diskriminacija.pdf).

<sup>90</sup> Coalition, *Annual Report 2013*, *supra* note 8, at 89; Coalition, *Annual Report 2012*, *supra* note 4, at 100, 102, and note 72.

<sup>91</sup> Coalition, *Annual Report 2013*, *supra* note 8, at 89

<sup>92</sup> *Id.*; Coalition, *Annual Report 2012*, *supra* note 4, at 100-101.

<sup>93</sup> Coalition, *Annual Report 2012*, *supra* note 4, at 102.

documents indicate one gender, and his or her appearance indicates a different gender, accessing health care of any kind becomes more difficult.<sup>94</sup>

Contrary to contemporary medical standards, some psychiatrists in Macedonia continue to promote psychotherapeutic “treatment” of homosexuals to “cure” them of homosexuality.<sup>95</sup>

Macedonia’s failure to ensure that the health needs of LGBTI individuals, and in particular trans people, are met on the same basis as the health needs of other individuals, violates Macedonia’s obligations under Articles 2(1) and 26 of the Covenant.

Macedonia further discriminates against trans people by refusing to permit them to conform their identity documents to their actual gender identity. Each non-trans Macedonian has the benefit of an official identity document that matches his or her actual gender identity. Trans people in Macedonia, by contrast, are denied this right.

The denial of access to gender confirmation medical services and the refusal to conform identity documents to a trans person’s actual gender identity also violate the Art. 17 rights of trans people to privacy, honour and reputation. In considering an analogous provision of the [European] Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>96</sup> the European Court has found that the denial of access to gender reassignment surgery and the refusal to conform identity documents to gender identity violate a trans person’s right under Art. 8 of the European Convention to respect for one’s private life.<sup>97</sup>

## V. Suggested Questions

1. Is the Former Yugoslav Republic of Macedonia willing to reconsider its decision not to amend its laws to explicitly include sexual orientation and gender identity as protected categories in the Law on Prevention and Protection Against Discrimination and in those sections of the Criminal Code that criminalize or increase penalties for crimes committed on the basis of the victim’s personal characteristics (including Sections 39(5), 144(4), 319, and 417)?
2. What measures will the Former Yugoslav Republic of Macedonia take to prevent further hate crimes and hate speech based on sexual orientation or gender identity? In particular, what measures will be taken to protect the rights of freedom of expression, association, and assembly, by preventing hate crimes that target LGBTI activists and activist organizations?

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<sup>94</sup> *Id.* at 102, note 73.

<sup>95</sup> *Id.* at 103; Coalition, *Annual Report 2013*, *supra* note 8, at 86-87.

<sup>96</sup> [European] Convention for the Protection of Human Rights and Fundamental Freedoms, art. 8, *opened for signature* 4 Nov. 1950, 213 U.N.T.S. 221, *available at* <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=005&CM=8&DF=4/25/2006&CL=ENG> [hereinafter *European Convention*]. Art. 8(1) of the European Convention provides: “Everyone has the right to respect for his private and family life, his home and his correspondence.”

<sup>97</sup> *L. v. Lithuania*, Eur.Ct.H.R., 31 Mar. 2008, at ¶¶ 56-60, *available at* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-82243>.

3. What measures will the Former Yugoslav Republic of Macedonia take to expedite the investigation and prosecution of hate crimes and hate speech based on sexual orientation or gender identity, and to assure that victims of these crimes receive appropriate remedies?

4. What measures will the Former Yugoslav Republic of Macedonia take to ensure that transgender and intersex individuals have access to hormonal, surgical and psychological treatments for gender confirmation, that transgender individuals can conform their identity documents to their actual gender identity, and that health care services are provided without discrimination on the grounds of sexual orientation or gender identity?

## **VI. Suggested Recommendations**

1. Sexual orientation and gender identity should be explicitly added as protected categories in the Constitution (Articles 9 and 110), in the Law on Prevention and Protection Against Discrimination, and in those sections of the Criminal Code that criminalize or increase penalties for crimes committed on the basis of the victim's personal characteristics (including Sections 39(5), 144(4), 319, and 417).

2. Greater efforts and resources should be committed to ensure that acts of violence based on the victims' sexual orientation and gender identity, and hate speech which promotes such acts of violence, are investigated and prosecuted in a timely and effective manner. In determining penalties, prosecutors and courts should treat as an aggravating factor the fact that crimes were motivated by the sexual orientation or gender identity of the victims.

3. National health care policies should be adjusted to ensure that access to hormonal, surgical and psychological treatments for gender confirmation is provided on the same basis as all other necessary medical treatments. Relevant laws and policies should be adjusted so that transgender individuals have the legal right to conform their identity documents to their actual gender identity.