

The Former Yugoslav Republic of Macedonia

Report from 2016

http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Former_Yugoslav_Republic_Macedonia/MKD-CbC-V-2016-021-ENG.pdf

- **Context information from ECRI**

“Furthermore, the levels of intolerance towards LGBT persons are alarmingly high and incitement to homo- / transphobic hatred and violence is increasing and is not effectively prevented or punished by the authorities. In addition, LGBT persons face other forms of discrimination and intolerance in their daily lives.”

The authorities should expand existing training initiatives on racist and homotransphobic violence for members of law enforcement agencies and the judiciary. Possible bias motivations should consistently be included in police reports and investigations, as well as in any further judicial proceedings. In order to address the problem of underreporting the authorities should implement confidence-building measures to enhance the relationship between the police and vulnerable groups, in particular the LGBT community.

NGOs report that LGB persons are typically not outing themselves in the workplace, while transgender persons face difficulties obtaining employment in the first place when their transgender status is visible.

- **Transphobia and data on hate crimes in the country**

There is no official monitoring mechanism for homo-/transphobic hate speech and the authorities do not collect statistics about incidents. International organisations and human rights defenders agree, however, that homo- and transphobic hate speech is a widespread and rapidly growing problem.¹⁹ Just like racist hate speech (see § 15), it is often part of nationalistic discourse in which, among other groups, sexual minorities and their supporters are defined as a threat to the country. Hate speech against LGBT persons in the media, in which negative stereotyping of sexual minorities is prevalent, as well as on the internet and in social media has grown in intensity and frequency in recent years. Human rights observers noted that the use of homophobic language by politicians has also increased. This became evident, for example, in the context of a 2013 parliamentary discussion on a constitutional amendment to define marriage exclusively as a heterosexual union, when several members of Parliament engaged in homophobic rhetoric, which included labelling homosexuality as a disease and akin to paedophilia.

The density of homo- and transphobic hate speech is also causing a rising number of threats made against LGBT persons, especially those who are publicly advocating for tolerance and non-discrimination. In 2013, for example, the LGBT NGO United received several death threats on its Facebook page.²⁴ Hate speech and threats against LGBT persons tend to increase as a result of negative media coverage in the run up to and aftermaths of public LGBT events, such as the Pride

Week. Likewise, several attacks²⁵ on the LGBTI Support Centre in Skopje attracted hateful news coverage portraying the victims as provocateurs, which were followed by threats.

So far, the courts have not found anyone guilty of racist or homo-/transphobic hate speech. Moreover, on many occasions the Public Prosecutor have not even taken the initiative to file charges.²⁸ In spite of the increase in hate speech in recent years, there were no court proceedings for cases related to causing national, racial and religious hatred, discord or intolerance in 2013 and 2014.

Racist and homo-/transphobic hate speech in the media remains unpunished as there is no adequate response taken by the regulatory body or other relevant authorities against its widespread use.

Civil society organisation have made significant efforts over the past years to react to racist and homo-/transphobic hate speech, for example by drawing public attention to incidents and condemning them (see for example § 21). The authorities, on the other hand, have not adopted such a positive attitude. A proposed declaration for the condemnation of hate speech against LGBT persons, for example, was submitted to Parliament in 2012 by Liberal Party MP Ivon Velichkovski. The Parliament, however, rejected the proposal.

ECRI recommends that the authorities take urgent measures to tackle the growing problem of racist and homo-/transphobic hate speech, in particular by :

- i) stepping up the training activities on hate speech for law enforcement officers, prosecutors and judges;
- ii) introducing administrative sanctions for hate speech in the Law on Audio and Audiovisual Media Services of 2013;
- iii) providing the regulatory authority for audio and audio-visual media services with the possibility of issuing warnings or demanding apologies in cases of racist or homo-/transphobic hate speech and related breaches of professional journalistic standards and ethics;
- iv) setting up a system of information sharing through which the regulatory authority for audio and audio-visual media services receives information from prosecutors and courts concerning cases that it forwarded in order to enable the regulatory authority to improve and optimise its media monitoring activities;
- v) establishing effective regulatory bodies, while respecting the principle of media independence, that can monitor incidents of hate speech in print media and internet services. Furthermore, ECRI recommends that an evaluation of past initiatives to prevent hate speech is carried out with a view of building on existing efforts and expanding good practices, especially in the media and education sectors.

The authorities do not collect comprehensive data concerning racist or homo-/transphobic violence and the country has not submitted any data to the OSCE/ODIHR annual hate crime reporting exercise. In 2013, the NGO Helsinki Committee for Human Rights of the Republic of Macedonia (henceforth: MHC), supported by the OSCE Mission to Skopje, began to collect information and to monitor and map such acts of violence to fill the gap caused by the absence of official data.

In 2013, some 100 incidents of racist or homo-/transphobic violence were recorded by MHC. Types of offences include assault, arson and vandalism. The majority of attacks were committed by juveniles. Victims and perpetrators were usually of different ethnicity, belonging to the two largest ethnic groups in the country.⁴² An estimated 84% of incidents occurred due to ethnic hatred, demonstrating the tense relationship between the two major communities in the country. An example is the event of 1 March 2013, when a mob of 100 to 200 youths attacked ethnic Albanians in the centre of Skopje, injuring several victims.

The growth in homo-/transphobic hate speech in the country (see section I.2) has created a general atmosphere in which violence against LGBT persons, in particular those advocating for LGBT rights, is becoming increasingly accepted. Hatred based on sexual orientation or gender identity was the motivation in 9% and 10% of the incidents recorded by MHC in 2013 and 2014 respectively (see §§ 35 and 37).⁵⁴ While these proportions do not seem to be very high, LGBT organisations point out that they reflect only a part of the problem because they mainly include cases which attracted public attention. Given the generalised intolerance against LGBT persons in the country (see section II.5), underreporting seems to be a bigger problem in the field of homo-/transphobic attacks than in the area of violence based on ethnic or religious hatred. In the latter category, victims usually have less of a problem making their identity known, also because they can often rely on established political networks representing their respective group at local and national level. LGBT persons, on the other hand, face high levels of stigmatisation if they reveal their identity by reporting a homo- or transphobic attack to the police. They also have no political support network.

In ECRI's view, the importance of LGBT networks engaged in countering discrimination and assisting victims of homo-/transphobic violence cannot be overestimated. It is therefore of particular concern when these organisations themselves become the target of violence, as happened repeatedly. In the evening of 23 October 2014, for example, some 60 persons were celebrating the second anniversary of the LGBTI support centre in a Café in the Old Bazaar of Skopje, when they were suddenly attacked by a mob of about 40 masked men who injured several guests with glass bottles and punches. The centre has been attacked six times in total. On 22 June 2013, a group of dozens of masked men armed with stones, bars and glass bottles attacked the approximately 40 guests of the opening seminar of the Pride Week and endangered their lives by throwing pyrotechnical items into the LGBTI support centre.⁵⁷ Violence against LGBT groups is not confined to Skopje. In April 2013, several members of the LGBT NGO United were attacked by seven men in the city of Bitola when the activists were placing posters in support of LGBT rights.

The authorities have taken some measures to deal with racist and homo- /transphobic violence, although these can, so far, not be considered adequate. Since the end of 2014, some positive trends have, however, become visible and ECRI hopes that they will continue.

The (possible) bias motivation is usually not included by the police when recording incidents. Most cases are merely treated by the law enforcement agencies as acts of violence or vandalism without any consideration for the underlying elements of hatred. This renders it difficult, if not impossible, to take such a motivation into consideration during subsequent court proceedings, which might include

the application of the law on aggravating circumstances. Furthermore, it also constitutes an obstacle to raising awareness of the problem of racist and homo-/transphobic violence.

Cases that illustrate the above-mentioned problems include the attacks against the LGBT support centre in Skopje. Only the last out of six attacks, the incident of 23 October 2014 (see § 41), triggered an investigation by the prosecutor, who had initially refused to take the case further but was eventually instructed by the 2nd level prosecutor to do so. The Ministry of Interior (henceforth: Mol), responding to a query from MHC, replied that they had registered the case and brought it to the attention of the public prosecutors' office. The Mol report, however, did not include any mention of the homo-/transphobic motivation of the offences, but merely reported general acts of violence.⁶¹ Similarly, in the case of the attack against the centre on 22 June 2013 (see § 41), an Mol report about the incident did neither mention the homo-/transphobic nature of the attack, nor the fact that it was an organised group that had carried it out. The report rather gave the impression that a group of teenagers had merely disturbed the peace by throwing a few stones and breaking windows.

In 2014, a working group on hate crime was set up by the Ministry of Justice, in cooperation with the OSCE Mission to Skopje. It also includes the Ministry of Interior, the Prosecutors Office, the Academy for Judges and Prosecutors and several NGOs. The group aims at streamlining efforts against racist and homo-/transphobic violence, inter alia by establishing a comprehensive data collection system and by organising trainings for members of law enforcement agencies and the judiciary. As a first step, 150 judges and prosecutors as well as 50 police officers participated in an OSCE/ODHIR anti-hate crime training (TAHCLE). The working group also promotes learning from other European experiences and already carried out a study visit to Croatia.

In spite of the scale of the problem of racist and homo-/transphobic violence, no specific awareness-raising programmes on this issue have been conducted. ⁶³ There is also no specific outreach activity to vulnerable communities, such as LGBT persons, to overcome existing obstacles to reporting acts of violence (see §§ 39-40), for example by building a better relationship with the police.

ECRI recommends that existing training initiatives on racist and homotransphobic violence for members of law enforcement agencies and the judiciary are expanded. ECRI also recommends that the authorities ensure that a possible existence of a bias motivation is consistently taken into consideration in police reports and investigations, as well as in any further judicial proceedings, in relevant cases of violence. Furthermore, ECRI recommends that in order to address the problem of underreporting the authorities implement confidencebuilding measures to enhance the relationship between the police and vulnerable groups, in particular the LGBT community.

- **Legislative issues**

There are no clear provisions in the legislation providing for transgender persons to change their name or gender in identity documents. While the authorities informed ECRI of one case in which such changes were made, several civil society organisations described the practice as arbitrary. Furthermore, ECRI notes that there are also no regulations clarifying whether the cost of gender reassignment treatment can be covered by the public health care system.

- **List of recommendations from ECRI**

1. (§5) ECRI recommends that the authorities bring the country's Criminal Code, in general, into line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should explicitly (i) criminalise public racist insults and defamations; (ii) add sexual orientation and gender identity to the list of enumerated grounds in Articles 39(5) and 319; and (iii) introduce a general provision to criminalise the creation or the leadership of a group which promotes racism; support for such a group; and participation in its activities.

2. (§ 10) ECRI recommends that the authorities bring the country's civil and administrative law, in general, into line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should amend the Law on Prevention and Protection against Discrimination with the aim of including (i) sexual orientation and gender identity into the enumerated grounds; (ii) segregation and discrimination by association; (iii) a possibility for associations that have a legitimate interest in combating racism and racial discrimination to initiate a court case on behalf of a victim and to bring civil cases or intervene in administrative cases even if a specific victim is not referred to; and (iv) an obligation on public authorities to promote equality and prevent discrimination and to ensure that contractors or partners they work with adhere to non-discrimination principles.

6. (§ 48) ECRI recommends that existing training initiatives on racist and homotransphobic violence for members of law enforcement agencies and the 36 judiciary are expanded. ECRI also recommends that the authorities ensure that a possible existence of a bias motivation is consistently taken into consideration in police reports and investigations, as well as in any further judicial proceedings, in relevant cases of violence. Furthermore, ECRI recommends that in order to address the problem of underreporting the authorities implement confidence-building measures to enhance the relationship between the police and vulnerable groups, in particular the LGBT community.

19. (§ 97) ECRI recommends that the authorities regulate the procedure and conditions of gender reassignment, as well as the issuing of new identity cards to persons who have undergone gender reassignment surgery.

20. (§ 103) ECRI recommends that the authorities carry out an independent comprehensive study on all forms of discrimination against LGBT persons jointly with the LGBT community. This study should also pave the way towards preparing and adopting an action plan to end such forms of discrimination.