



UNIVERSAL PERIODIC REVIEW (UPR) STAKEHOLDER SUBMISSIONS

HELSINKI COMMITTEE FOR HUMAN RIGHTS OF REPUBLIC OF NORTH MACEDONIA (MHC)

Submission to the United Nations Universal Periodic Review

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In its persistent efforts to promote and protect human rights and harmonize the domestic legislation and practice with that of the European Union, the Helsinki Committee: Organizes systemic monitoring of the situation of human rights in the country; Provides free legal assistance and protects the individual, collective and rights of other legal entities on the territory of the Republic of North Macedonia and before international organizations; Prepares monthly, annual and special reports on the situation of human rights; Prepares analyses and other specific documents related to the situation of human rights; Organizes conferences, seminars, panels, public actions and other legal forms of civic engagement; Promotes and aids the development of democracy, rule of law and civic society; and Performs other activities of public interest pursuant to the Law on Citizens' Associations.

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Summary

1. This submission is made by the Helsinki Committee for Human Rights of the Republic of North Macedonia (MHC) in advance of the fourth universal periodic review (UPR) of the Republic of North Macedonia. It addresses crucial areas of human rights issues related to gender equality, hate speech, hate crimes, discrimination, torture and ill treatment and LGBTI rights. It provides information for the Working Group on the progress and shortcomings of the country's relation to the implementation of these rights and MHC's recommendations on how the Working Group should encourage the government of Macedonia to address these issues.

Gender equality

2. The Law on Prevention and Protection against violence against women and domestic violence was adopted on May 6th 2021, which has made a significant improvement of the country legislative in accordance with the Istanbul Convention when it comes to gender equality and protection of women against all forms of violence.
3. Amendments of the Criminal Code were made in February 2023 aligning with the Istanbul Convention where sexual harassment (harassment with electronic means of communication included) and stalking were introduced as new crimes. With the amendments, gender-based violence was recognized and defined, the definition of domestic violence was supplemented with psychological and economic violence, the lack of clearly expressed will as a key feature in rape crimes were introduced. In addition, femicide, the most serious form of gender-based violence against a woman for being a woman, is not yet recognized as a separate crime in the Criminal Code, a more serious form of murder when committed during domestic violence.
4. Most relevant institutions still do not recognize gender-based violence as a form of violence, only domestic violence. According to the latest survey of the MHC conducted in 2022, citizens generally have a high degree of mistrust in the actions of institutions, including the police, social work centres, and the judiciary, which significantly influences citizens to be demotivated to report violence. This points out the fact that in North Macedonia, only 2% of women who experienced violence have reported it to the competent institutions.
5. A completely new version of the Law on Equal Opportunities for Women and Men, now called the Law on Gender Equality, is currently in the works for 2023. Although the Ministry of Labor and Social Policy established a working group including a MHC representative to draft the law in 2020, the draft text was made public and open for discussion in 2022, it has yet to be passed as the year comes to a close.¹ The need to adopt the new law arose from the limited effectiveness of the previous, particularly at the local level, which was pointed out in the last recommendations of the CEDAW Committee.²

Recommendations:

- Implementation of recommendations by the CEDAW Committee, including measures for elimination of discrimination against all vulnerable categories of women;
- Adoption of the new Law on Gender Equality;

¹ Draft Law on Gender Equality. Available at:

https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=75591

² Committee on the Elimination of Discrimination against Women. (2018). Concluding observations on the sixth periodic report of the Former Yugoslav Republic of Macedonia. Available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/MKD/CO/6&Lang=En



- Adoption of the new Law on Labor and Law on Prevention and Protection from Harassment at Work;
- Relevant institutions to provide safe access to protection and justice for victims at all levels, including reporting and institutional response to violence, through adequate implementation and conduct of the laws in this are;
- Appropriate sanctioning of the perpetrators of gender based violence, strengthening the efficiency of the judiciary and respecting the urgency of procedures for protection from gender based violence by the courts;
- Capacity building of the representatives of all relevant institutions for proper recognition, qualification and response to all forms of gender based violence, according to the Law on Prevention and Protection of Violence against Women and Domestic Violence and the Criminal Code.

Hate speech

6. The presence of hate speech in North Macedonia is noticeable both on social media and in public discourse. MHC monitors hate speech, registering cases on the online platform www.govornaomraza.mk. Through the analysis of these cases, embedded prejudices and stereotypes within the population have become evident, depending on the socio-political context. Hate speech based on ethnic affiliation is the most prevalent and intense form of hate speech further fueled by the political context. Hate speech, as well as homophobic and harassing speech based on sexual orientation and gender identity, has become particularly prominent with the increased visibility of the LGBTI community. However, despite all reports submitted to the prosecution for hate speech against this community, no charges have been filed.
7. In 2023, for the period from January to August, a total of 723 cases of hate speech with elements of criminal offenses, as well as discriminatory and harassing speech, were registered on the platform www.govornaomraza.mk. Of the total number of reports, 365 cases relate to hate speech based on ethnic affiliation, where 234 cases relate to cases related to hate speech based on sexual orientation and gender identity, and 138 cases are related to national affiliation.
8. During this period, MHC has filed four criminal reports, of which three have not yet received a response from the relevant prosecution authorities, and one report against the leader of a political party for spreading hate speech against the LGBTI community was rejected.
9. MHC has submitted two complaints to the Commission for the Prevention and Protection against Discrimination regarding harassment of the LGBTI community, by the leader of a political party, and one of these complaints has received a finding of discrimination.

Recommendations:

- Clearly define which expressions of hate speech are subject to criminal liability to ensure legal certainty and to prevent the risk of unjustified use of criminal liability.
- Ensure effective legal protection against hate speech under civil and administrative law, especially general misdemeanor law, anti-discrimination law, and administrative misdemeanor law.
- The Commission for the Prevention and Protection against Discrimination does not have an explicit mandate regarding the handling of hate speech. Its mandate for addressing hate speech arises from Articles 9 and 10 of the Law, which prohibits incitement, encouragement, and instruction of discrimination or harassment on discriminatory grounds. Hate speech as a phenomenon inevitably touches on equality bodies with their legal mandates to promote equality and combat discrimination on these grounds. Therefore, the mandate of equality bodies should be expanded to include hate speech.



- In the digital environment, introducing effective legislation to prevent and combat online hate speech.
- Establish a centralized, functional, and fused administrative mechanism for registering hate speech.

Hate crime

10. The Macedonian Criminal Code was adopted in September 2009, amended in December 2018, particularly in the area of hate crime. The adopted amendments reflect many international standards and good practices in the area of bias-motivated crime legislation and constitute a major improvement to the previous legal framework for punishment of such crimes in North Macedonia.
11. The number of registered hate crimes and hate motivated incidents in 2022 increased 34% compared to 2020, and 49% compared to 2021. Incidents occurring on grounds of ethnicity are the most represented with 83.54% of the overall number of registered incidents. Young people are still the most involved in the hate-motivated incidents, both as perpetrators and victims, representing 46% of the number of registered incidents. Beside the fact that some steps towards increasing the protection of the rights of the LGBTI community are taken, they are still at risk of hate motivated harm, particularly during and after the annual Pride parade. However, a shift in the society is noticeable, considering that LGBTI people are encouraged to contact the civil society organizations offering free legal aid and to ask for protection by the relevant institutions. The court decision to sentence a perpetrator for hate crime on the grounds of sexual orientation is a significant starting point for change. Bias motivated crimes are not properly registered or investigated by the police and prosecutor's offices. Very few efforts have been made to introduce preventive measures, including education about human rights and raising awareness, especially among high school students and young people, bearing in mind, the majority of victims and significant number of perpetrators are juveniles or young adults.

Recommendations

- Provide that the courts would be obliged to put on record reasons even when applying the sentence-enhancing provisions in cases of bias-motivated crime;
- Ensure prompt and effective investigation and prosecution of hate crimes by ensuring that bias motives are taken into consideration throughout criminal proceedings;
- Collect and publish comprehensive and comparable data on hate crimes, as far as possible including the number of such incidents reported by the public and registered by law enforcement authorities; the number of convictions; the bias motives behind these crimes; and the sentences handed down;
- Establish and maintain cooperation between public authorities and civil society organizations on various aspects of hate crime work, such as training, victim support and increasing reporting;
- Ensure that victims of hate crime are supported and protected;
- Improve communication and coordination across public authorities and institutions on hate crime issues;
- Promote training for relevant practitioners coming into contact with victims of hate crime, thereby enabling them to efficiently assist these victims; and
- Enhance preventative measures, inter alia by reflecting remembrance in human rights education, history curricula and relevant training, taking steps to educate the public especially minors and young people on the values of cultural diversity and inclusion, and aiming for all



sectors of society to have a role in combating such intolerance.

Torture and ill treatment

12. Besides the efforts on the state in the last period to eliminate, existing torture and inhuman treatment from the police officers and the prison police still, there are numerous challenges on this field. MHC continued to carry out monitoring visits to penitentiary institutions, providing legal aid to convicted persons and initiating proceedings before the competent institutions in order to protect their rights. During 2023, MHC and the Macedonian Young Lawyers Association conducted 10 visits and info-sessions in several penitentiary institutions and 4 consequential monitoring visits of penitentiary institutions. The most pressing problems are access to health care, educational process, the process of resocialization of convicted persons, untrained management and professional staff in penitentiary institutions, and ineffective internal and external mechanisms for reporting and prosecuting cases of torture and inhumane treatment of convicted persons. Overcrowding is still one of the most pressing problems.
13. Regarding the penitentiary institutions it is important to emphasize that for the first time in 2023 a “state of crisis” was established. This decision aimed at preventing security threats and strengthening the institution's security. The state of crisis lasted for 30 days, being interrupted for 2 days and redeclared on July 7th. During the crisis declaration, members of the Ministry of Interior and the Army were deployed to secure the prison due to the lack of guards. One of the main problems faced by "Idrizovo" is the shortage of staff. The number of employees in the prison police is insufficient to meet daily needs. The government approved the employment of 100 new prison police officers and 40 million euros were allocated for the reconstruction and construction of a new building. However, while the new building is being constructed, convicted individuals would still be housed in inhumane and substandard conditions. On July 27, 2023, the Parliament unanimously approved the extension of the state of crisis. It is important that the state of crisis does not continue indefinitely, especially considering that structural deficiencies in penitentiary institutions have existed for a long time.

Recommendations:

- The state must ensure that, during this crisis, international standards are respected and that it does not negatively affect the convicted individuals serving sentences in KPD Idrizovo.
- Measures should be taken in improving the conditions in the penitentiary institutions;
- Measures should be taken to eliminate overcrowding in the institutions;
- The number of prison officers and personnel in the rehabilitation sector should be increased;
- The Directorate for the Execution of Sanctions should provide new appropriate equipment for prison officers;
- The Ministry of Justice, Directorate for the Execution of Sanctions, and penitentiary institutions should provide conditions for free, sports, educational, and vocational activities for all convicted individuals to ensure a quality use of their free time;
- The Ministry of Health should take measures to ensure proper access to healthcare for convicted individuals, including:
 - Providing medication and an adequate number of healthcare workers to improve access to medicines, doctors, psychiatrists, gynecological, and dental services;
 - Timely provision of therapy for convicted individuals and transportation to medical facilities;
 - All individuals in need of buprenorphine or methadone treatment should receive it without cost from their own funds but rather from the Ministry of Health's addiction program;
 - Psychoeducation for individuals with addiction in the prison;



Discrimination

14. Following the adoption of the new Law on Prevention and Protection from Discrimination and the appointment of the new Commission for Prevention and Protection from Discrimination, the commission is currently operating with one less member, due to the resignation of one of its elected members. In 2022, another member resigned, but the Assembly has yet to initiate the process of electing new members.
15. A few years after the implementation of the law, certain shortcomings were determined, for which civil society organizations working in this area initiated a procedure for legal amendments. Taking into account the numerous logistical and financial challenges faced by the Commission, the question of increasing the Commission's budget was raised in order to guarantee the functional independence of the CPPD, by providing adequate financial resources for its smooth and comprehensive functioning.
16. MHC submitted two public interest lawsuits (actio popularis) to the Basic Civil Court Skopje in 2021. The first lawsuit was filed against the Government of North Macedonia, the State Election Commission, and the Ministry of Local Self-Government for the establishing of direct discrimination committed by the defendants against persons with disabilities by failing to take actions to adjust the infrastructure and space to and in the polling stations - accessibility of persons with disabilities. The basic civil court in Skopje determined that the Government and the SEC committed direct discrimination against persons with disabilities in exercising their right to vote. The Appellate Court issued a Verdict in which it accepted the defendants' appeal, and sent the case back to the first-instance court for re-decision. Upon review the first-instance court decides in favor of our lawsuit and the verdict was once again appealed and the procedure is once again in the Appellate Court. The second lawsuit was filed against the Government of the Republic of North Macedonia, the Ministry of Education and Science, the Ministry of Labor and Social Policy, the Ministry of Health, the State Education Inspectorate, the Municipality of Bitola and the Municipality of Shtip in order to establish that the defendants committed discrimination - segregation against Roma children in the educational process due to the lack of activities to regulate the method of rezoning in order to avoid possible segregation.

Recommendations:

- To elect new members Commission for Prevention and Protection from Discrimination;
- Amendments to the Law on Prevention and Protection from Discrimination to clearly and unambiguously allow the Commission and other entities with a legal interest to intervene in ongoing proceedings for protection against discrimination, regardless of the type of proceeding involved;
- The Commission for Prevention and Protection from Discrimination to undertake comprehensive and strategic activities to address hate speech;
- Amendments to the Law on Prevention and Protection from Discrimination an explicit mandate for hate speech should be provided in Article 21 of the Law on the Prevention of and Protection against Discrimination, which defines the competencies of the Commission for the Prevention and Protection against Discrimination;

LGBTI rights

As part of the hybrid attacks, efforts to pass gender recognition legislation were used to further target the transgender community, to attack gender equality in general. Anti-gender movements in our country seem to be a tool for blocking the integration process of the state and it is becoming more



and more obvious that the domestic anti-gender structures are connected and act in coordination with external factors and use ready-made narratives. In this development, the transsexual community remains one of the most vulnerable and at risk of additional stigma, discrimination, and violence. Last year the state was again unable to implement the decision of the Strasbourg Court of Human Rights, referring to the regulation of the legal recognition of gender and enabling minimum conditions for the functioning of transsexual people in our country, which at the same time would cushion the effects of the aggressive campaign of anti-gender structures. On the other hand, last year's Skopje Pride saw a turnout of around 3,000 people, which is a 30% increase from the previous year. This demonstrates a growing support for the LGBTI community and gives hope that citizens are more aware of threats to social cohesion and indicates that additional efforts are needed from the state to raise awareness about modern risks. These two contradictory processes reflect the growing division in society.