



Coalition
Sexual and Health Rights of Marginalized Communities
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Advocacy action plan for adopting a legal gender recognition law

(2017-2019)

The action plan was created on July 21st 2017, on a workshop moderated by Richard Kohler, TGEU. The team from the Coalition executive office, representatives of member-organizations of the Coalition and members of the trans community attended the workshop.

The goal of the action plan is to determine clear advocacy steps for adoption of an appropriate legal gender recognition law, in a process involving and in cooperation with decision makers and relevant institutions on one hand, and enabling the participation of the trans community and civil organizations advocating for trans rights on the other hand.

1. Overview of the current situation

In the Republic of Macedonia there is a lack of a clear legal framework regulating legal gender recognition. Legal recognition or confirmation of a person's gender identity in the registry books signifies a change in personal information reflecting the sex of the person assigned at birth. In Macedonia, change of this information is allowed on the grounds of a decision by a competent authority. There is no prohibition of changing the sex marker and personal code in the registries, but in practice, trans people are facing an obstacle when attempting to change this information and align it with their gender identity. Despite the Coalition's calls to relevant institutions to align their responses in cases when trans people ask for a change of the sex marker, 2016 was a continuation of the arbitrary practice of the Civil registry, which violates the trans people's right to private life. So far, only one trans person has managed to change their information in the registries.¹ It is very concerning that the Civil registry has issued different explanations while rejecting sex marker change requests on three similar occasions, which undermines the legal security of citizens in the realization of their rights. In order to protect their own rights, a

¹ Two persons, with the Administrative Court's verdict from September 2017. When writing the initial version of this document, this case was still in procedure.



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trans person requests protection before the European Court of Human Rights, which imposes an obligation on the states, including the Republic of Macedonia, to legally recognize their gender and issue documentation reflecting the preferred gender of trans people.

Certain persons, who have completed their surgical gender confirmation procedures abroad, face restrictions when it comes to legal gender recognition, which leaves them in a limbo situation where their personal identification documents do not reflect their gender identity. In this situation, these people face daily discrimination, harassment in their surroundings, as well as obstacles when attempting to access employment, health care, goods and services etc.

2. What we have achieved so far

In 2016-17 the Coalition conducted 3 analyses:

- **Analysis of the health needs of trans people and the availability of health services in the Republic of Macedonia**

This analysis presents the problems of trans people within Macedonia's health care system, in the attempt of receiving medical services related to the medical transition process, but also general health care services. The results show that health professionals have a low level of knowledge on the needs of trans people. They are not trained or sensitized for working with this population, and the health care system is explicitly non-accepting toward trans people, and the numerous examples we got during this research are proof of that. On the other hand, the analysis maps the existing capacities of medical facilities to respond to the needs of trans people by providing medical transition-related services. The results show a need for capacity building of the staff, additional training for health professionals in other countries where many health services are already provided (diagnostics, endocrinological services, surgeries, post-surgery care and psycho-social support), and/or mentorship by foreign doctors which would be training health professionals from the relevant medical branches in Macedonia. The biggest problem for the provision of these services to trans people in their transition process is the lack of recognition of these procedures by the Ministry of Health and the Health Insurance Fund, as services necessary for the improvement of the life and health of trans people. According to the analysis, these interventions need to be included in the DRG (diagnosis related group) system of the Health Insurance Fund, in order for them to be identified as services offered in medical facilities and to be financially covered by the state. Moreover, the process of medical



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transition needs to be defined by adopting a medical protocol, forming teams for performing these interventions and monitoring the condition of trans people.

Due to the lack of transition-related health services in Macedonia, trans people often seek help abroad, mostly in neighboring Serbia. They cover all expenses abroad out of pocket, which is often a serious financial burden jeopardizing the material situation of trans people and their families. The analysis contains personal stories and documented cases of violations of trans people's rights in a health care context, which will be used in the advocacy for introducing quality transition-related services, as well as basic health care.

- **Analysis of positive legal gender recognition practices**

The goal of this analysis is to provide information on the development of international standards for protecting trans people's rights and the influence of these standards on national legislation. In Europe and the world there are various models of regulating the legal gender recognition procedure, which are often complicated and demand the fulfillment of conditions deeply undermining fundamental rights. In Europe, 37 countries have legal provisions regulating legal gender recognition, 35 of which stipulate a mental disorder diagnosis, while 23 demand sterilization before the change of documentation is permitted. Within this analysis, special focus is put on the legislation of Denmark (2014), Malta (2015) and Ireland (2015), which are currently positive examples of well-regulated legal gender recognition, with full respect for trans people's rights.

Conclusions:

The legal gender recognition procedure is a significant measure for protection against discrimination for trans people. In Europe, the first laws reflecting their needs are already being implemented. Denmark, Malta and Ireland have adopted laws stipulating a quick, transparent and easily accessible legal gender recognition procedure. The legal and political context in all three countries is different, but what connects them is the fact that the trans community was involved in the entire process of preparation and adoption of the laws. What is typical, particularly in Malta and Ireland, is that the shift of political willingness to start the process of adopting the LGR framework occurred when left-oriented political parties, who base their programme on human rights, came in power.

The length of the process varies, but the development of international practice for protecting the rights of trans people had major influence in all countries. Furthermore, the procedures before domestic institutions significantly influenced the manner in which these countries decided to regulate legal gender



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recognition. Ireland's case of Lydia Foy is a good example of strategic litigation for trans rights, which resulted with a court decision demanding that the country aligns its legislation with the European Convention on Human Rights.

All three countries have laws permitting legal gender recognition by submitting a request containing a statement of wishing to change the sex marker, i.e. the desire to live in the preferred gender, different than the sex assigned at birth. In line with the Council of Europe recommendations, the right to legal gender recognition may not be hindered by any demands to undergo medical interventions as preconditions for this right. The legal gender recognition procedure in all three countries, subjects of this analysis, the name, surname and sex marker are changed, as well as the personal code if it contains a code referring to the person's sex (Denmark). There are differences in the age limit when people acquire access to the right to legal gender recognition. The Danish law only permits adults to initiate the procedure, while in Ireland the parent or guardian submits a request on behalf of children aged 16 years. Malta's law is the most progressive, having no age limit, and according to the latest amendments, persons above the age of 16 may request legal gender recognition without their parents' approval. Apart from this, Malta enables legal gender recognition for prisoners and has adopted specific policies relating to trans prisoners. Malta is also one of few countries in the world that have adopted provisions protecting the bodily autonomy and physical integrity of intersex people. The law prohibits any kind of surgical intervention on the sex characteristics of minors, if the intervention can be delayed until the person is able to give their informed consent.

The analysis of the context in which the laws are implemented produces the conclusion that we are looking at a clear and transparent procedure, containing no legal gaps that would violate the rights of trans people. This is particularly important to have in mind when planning our legislation, because the practice in Macedonia shows that adopted laws are not always implemented in their entirety.

This analysis enables us to conclude that Macedonia has the lowest level of respect toward the rights of trans people, entirely contrary to the obligations imposed by the European Court of Human rights. Hence, there is an urgent need to begin the process of preparation of a comprehensive law, which shall grant easy access to legal gender recognition and respect to the right of self-determination, without imposing medical interventions as a precondition for this right. Having in mind Malta's example, it is also necessary to reform other laws related to the rights of trans people, in line with the right to legal gender recognition.

Experiences from other countries show that the right to legal gender recognition can be exercised freely only by comprehensive reform and clearly demonstrated political willingness to respect and promote the rights of trans people. The analysis shall be useful for institutions involved in the workgroup



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for the preparation of Macedonia's law, as a way to familiarize them with modern trends and existing models for legal gender recognition and enable them to apply these good practices in the national context.

- **The transgender experience: Identities, Socialization and Politization - community research**

The goal of this research is to provide insight and knowledge, and give voice to the experience of transgender people through multiple perspectives. On one hand, the subject-matter of the research are the main traits, topics and turning points of the transgender experience of forming the identity, gender identity as much as sexual identity, while having in mind the complex social dynamics and inter-subjective relations, in, through and opposed to which the transgender identity is formed. On the other hand, the research aims to give voice and examine the narratives and stories of transgender people themselves, through analysis and presentation of the key problems and needs they identify, based on the specificity of their experience. Moreover, the research attempts to present and recognize transgender experiences of forming relations of intimacy, social worlds and friendships, as well as support networks through which transgender people survive and affirm their identities in a highly transphobic socio-political and cultural environment. Finally, the research aims to give the front row to the views, feelings and needs for activist mobilization of trans people, as well as the influence of activism on the formation of the transgender identity.

The field portion of the research was implemented from June to September 2017 by conducting in-depth interviews with 23 trans people. The research will be finished in November 2017 and the results shall be presented to activists, civil organizations, relevant institutions and decision makers.

The Coalition continuously advocates to improve the rights of trans people, including the legal gender recognition issue. The Coalition provides free legal aid and legal procedures before national institutions and regional human rights protection mechanisms. Apart from legal aid, the Coalition also provides psycho-social support for trans people in the transition process. In 2016, the Coalition was in contact with 11 trans people for the purpose of providing legal or psycho-social support.



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In 2014 the Coalition started working with **medical practitioners** in order to improve the health rights and access to health services for trans people. The Coalition identified a group of medical practitioners who are either experienced in working with trans people or, in accordance with their specialty, personal and professional interest want to dedicate themselves to various matters and medical issues that trans people are facing. They completed a training and a study visit to Belgrade in order to become better familiarized with the health services and gender confirmation procedures, and establish contacts with colleagues working with such interventions for a longer period of time.

Within its legal gender recognition cases, the Coalition performs strategic litigation by using all domestic and international human rights protection mechanisms. For this purpose, the Coalition has initiated a procedure before the **European Court of Human Rights**, and considering the latest developments in the Court's practice, we may expect that the Court shall determine there have been violations of the applicant's rights in this case. Apart from determining the violations, one of the demands in this procedure is a general legal remedy signifying a systemic solution for the legal gender recognition issue. We need to use this positive verdict in the process of advocating for a legal gender recognition law and a change of institutional practices currently violating trans people's rights.

In May 2017, the **Ministry of Labor and Social Policy** began working on an information letter to the Government, stating the need for legal gender recognition legislation. After consulting with the civil organizations and the trans community, the Ministry prepared this letter, which is expected to be sent to the Government and examined on a Government session by the end of 2017. With the letter, the Ministry shall request the following conclusions from the Government:

1. The Government of the Republic of Macedonia considered and adopted the Information on the need for legal changes in the direction of providing equal access and non-discrimination in the exercise of basic rights and obligations of transgender people in the Republic of Macedonia;
2. The Ministry of Labor and Social Policy is obliged, as a coordinator in the field of non-discrimination, in cooperation with the Ministry of Justice and Ministry of Interior to establish and coordinate a workgroup comprised of relevant Government institutions and representatives of relevant civil organizations working with LGBTI rights and non-discrimination and trans people, who would work on proposal laws, in the competence of the Ministry of Justice and Ministry of Interior, and in the direction of providing equal access to basic rights for transgender people in Macedonia. This joint letter of all three ministries, alongside the proposals laws and recommendations should be submitted to the Government at the latest on December 15th 2017.

After the Government adopts this information letter, the Ministry of Labor and Social Policy shall form a workgroup working on a draft law.



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3. A map of the key actors in legal gender recognition

The map of the key actors in the process of adopting a legal gender recognition law includes relevant institutions, decision makers, domestic and international human rights and LGBT organizations. They were distributed in the graph below, in accordance with the interest they have on adopting this law and the power to influence the processes.

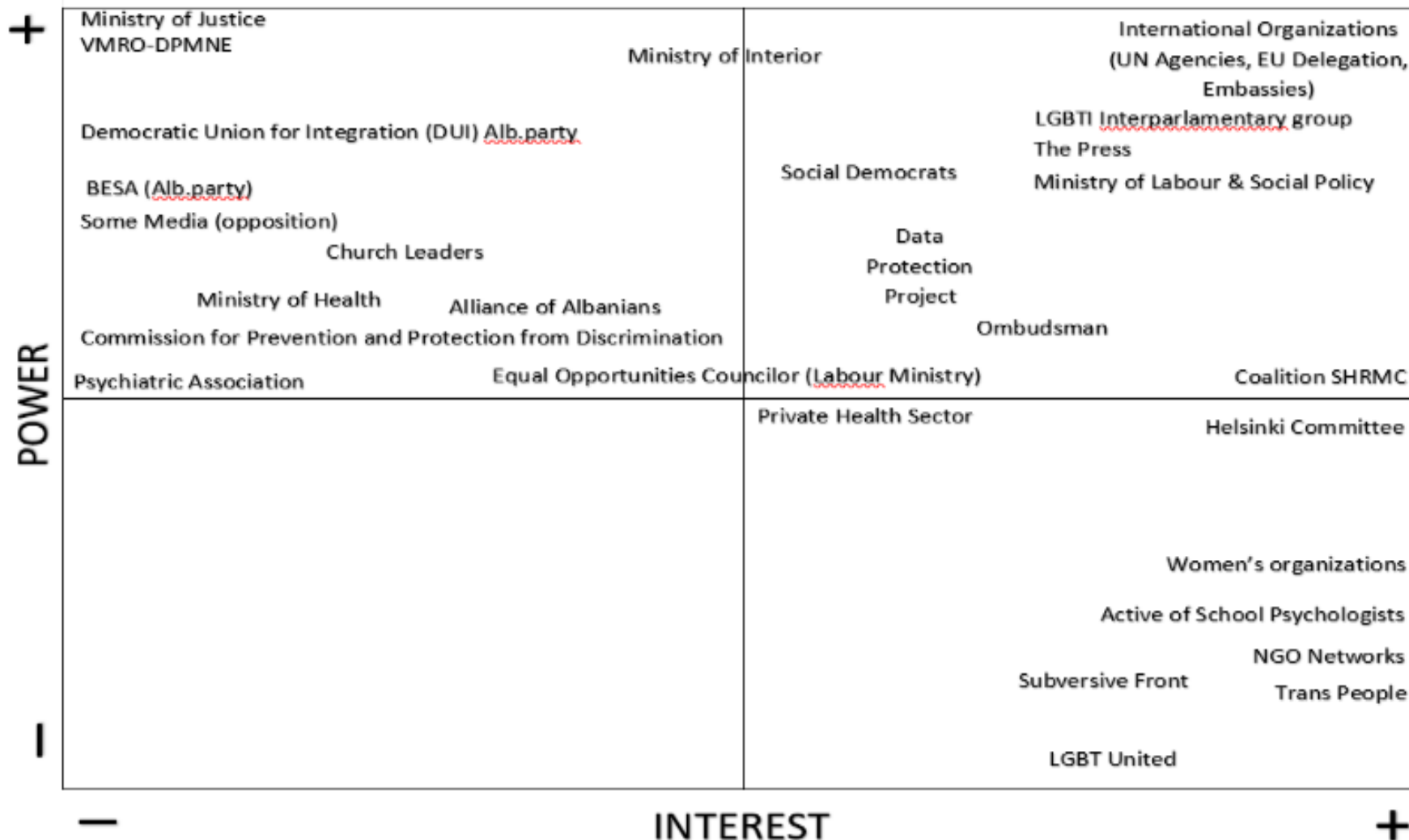
The high-interest and high-power group contains the following actors: The Ministry of Labor and Social Policy, international organizations (EU delegation), UN agencies and the embassies of the US, Netherlands, the UK, France and Germany, mapped members of Parliament who support the LGBT community (Liljana Popovska, Maja Morachanin, Pavle Bogoevski, Juliana Nikolova, Irena Stefoska, Ivana Tufegdžik and Branko Manojlovski), the Ombudsman, the SDSM party and some of the media.

The group of high-power, low-interest (lack of interest) or opposing actors contains: VMRO - DPMNE, BESA, religious communities (Macedonian Orthodox Church, Islamic Religious Community), the Commission for Prevention and Protection against Discrimination, Psychiatrists' Association, Alliance of Albanians, Democratic Union for Integration, Ministry of Justice, Ministry of Health, Ministry of Interior and some of the media.

The group of low-power, high-interest actors contains: the trans community, private medical facilities, the Coalition SHRMC (HOPS, STAR, HERA, EGAL, Zaedno posilni), the Helsinki Committee for Human Rights, Secondary school-based professional services group of the city of Skopje, LGBT United Tetovo, Subversive Front, women's organizations and human rights organizations, Network for protection against discrimination, National Network Against Homophobia and Transphobia.



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4. Areas of the legal gender recognition action plan

The areas are divided in line with the goals which need to be achieved in the process of adopting a legal gender recognition law.

These areas are the following:

- Raising public awareness on the need for regulating legal gender recognition, as a step toward the promotion and protection of the human rights of trans people;
- Strengthening the capacities of the trans community for their active involvement in the advocacy processes for regulating legal gender recognition;
- Building and strengthening partnerships with human rights organizations, as partners and supporters;
- Writing a draft law and other legal solutions for regulating the issue and obtaining the support of relevant institutions, ministries, members of Parliament and political parties

Area 1: Raising public awareness on the need for regulating legal gender recognition, as a step toward the promotion and protection of the human rights of trans people						
Objective	Target group	Activity	Timeframe	Indicator	Responsible persons in the Coalition's team	Check
Increasing the knowledge and capacities of media and including the voices of trans people and their	Partner media and journalists with positive attitudes toward LGBT	1. Organizing a media briefing after writing a draft law; 2. Media workers training on reporting on trans persons; 3. Scheduling interviews with trans people and experts	2Q and 3Q of 2018	Number of announcements, - Number of journalists who completed the training and attended the briefing,	Jana Kocevska, Irena Cvetkovik, Natasha Boshkova	



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families		4. Regular announcements and briefings		- Number of interviews and articles.		
Informing the public about the trans community and creating a supporting environment	The trans community, their families Social networks and supporting media	- Media campaign on social networks and supporting media with stories and statements by trans people and their families; - Support group for trans people giving the statements.	Before the law reaches the Parliament	- Number of media articles; - Reactions by the community and on social networks; - Number of trans people involved.	Igor Raiden, Jana Kocevaska, Irena Cvetkovic	
Support by medical professionals	Psychologists, psychiatrists and other health practitioners	1. Mapping supporting health practitioners; 2. Training for health practitioners on legal gender recognition with international experts; 3. Involving the health professionals with statements and interviews.	Q1 and Q2 of 2018	Number of health practitioners publicly stating their support	Slavco Dimitrov and Natasha Boshkova	
Promoting the verdict of the ECtHR	Media, ministries, members of Parliament	1. Meetings with members of Parliament (10); 2. Briefing and press announcement; 3. Public debate with judges, ministries and activists.	2Q and 3Q of 2018	# of articles and debates in the media, - MPs using the verdict in Parliament debates, - Judges using the verdict in other cases.	Slavco Dimitrov, Dragana Drndarevska and Natasha Boshkova	
Area 2: Strengthening the capacities of the trans community for their active involvement in the advocacy processes for regulating legal gender recognition						
Objective	Target group	Activity	Timeframe	Indicator	Responsible for implementation	Check
Building the capacities of the trans community	Trans community	1. Training on legal gender recognition; 2. Training on advocacy skills; 3. Training on communication skills.	4Q of 2017 and 1Q of 2018	% of increased knowledge A minimum of 5 trans people mapped as interested to join the advocacy teams	Igor Raiden and Irena Cvetkovic	



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Informational brochure on legal gender recognition	Trans community Decision makers Activists Media	1. Writing the informational brochure (design and printing) 2. Meetings with mapped MPs and journalists to present the brochure 3. Distribution of the brochure among trans people and activists	3Q and 4Q of 2018	- Brochure published; - Number of meetings; - Number of distributed copies.	Igor Raiden, Aleks, Teo, Anders Natasha Boshkova and Dragana Drndarevska	
Involving the trans community in advocacy	Trans community	1. Three trans activists contact and inform trans people on the process 2. Establishing 3 trans cores in 3 cities, involving activists, trans people and their families	3Q and 4Q of 2018	- Number of trans people involved; - 3 cores formed	Igor Raiden, Aleks, Teo, Irena Cvetkovik	
Area 3: Building and strengthening partnerships with human rights organizations, as partners and supporters						
Objective	Target group	Activity	Timeframe	Indicator	Responsible persons in the Coalition's team	Check
Support by CSOs and networks	LGBT organizations, women's organizations, HIV and sex workers' organizations Anti-discrimination network Human rights organizations Organization for protection of privacy	1. Mapping organizations and activists interested in the issue (workgroup / mailing list); 2. Signing memos of cooperation; 3. Training for CSOs interested in legal gender recognition 4. Their involvement in a campaign and advocacy teams 5. Consultations and presenting the draft law	Q1 and Q2 of 2018	- List of mapped activists and organizations; - Signed memos; - Training held; - Number of activists involved in the campaign and advocacy teams.	Dragana Drndarevska, Irena Cvetkovik	



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Area 4: Writing a draft law and other legal solutions for regulating the issue and obtaining the support of relevant institutions, ministries, members of Parliament and political parties						
Objective	Target group	Activity	Timeframe	Indicator	Responsible for implementation	Check
Preparation of a draft law	Trans community, CSOs, Ministries (Justice and LSP), experts	<ol style="list-style-type: none"> 1. Meetings with the Minister of Justice and Minister of Labor and Social Policy; 2. Forming a workgroup in the MLSP; Engaging an expert for writing the law 3. Comparative study; 4. Preparation of a draft law; 5. Public debates and presentation of the law; 6. Building the capacities of the expert community; 7. Acceptance of the law by the Government. 	1Q to 3Q of 2018	<ul style="list-style-type: none"> - Draft law prepared; - Workgroup formed; - Number of CSOs participating in the group; - Number of trans people consulted; - Number of public debates. 	MLSP, Coalition	
Support by the Parliament	MPs and political parties	<ol style="list-style-type: none"> 1. Meetings with political parties and MPs; 2. Committee debate - Committee for equal opportunities / Committee for health / Committee for EU - participation of CSOs; 3. Conclusions from the debate; 4. Plenary session for the law. 	4Q of 2018 and 1Q of 2019	<ul style="list-style-type: none"> - Number of meetings; - Positive results from meetings; - Number of trans people and activists speaking during the debate; - Positive conclusions from the debate; 	Coalition / Mapped MPs	



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5. The law we want to have

- The Republic of Macedonia has an obligation to adopt a comprehensive legal framework for legal gender recognition which is respectful toward fundamental rights, as well as the right to personal and bodily integrity of trans people;
- The legal gender recognition framework should provide rules for implementation based on which trans people will be able to change their name, sex marker and personal code, given clear, complete and unambiguous instructions for the course and length of the procedure, as well as determining the relevant institutions authorized to perform this procedure;
- The state should provide a quick, transparent and easily accessible legal gender recognition procedure, in which trans people would be able to change their name, sex marker and personal code in the civil registry based on their self-determination, regardless of their age, health or marital status;
- The marital status of trans people should not be an obstacle to the realization of the right to legal gender recognition;
- The legal gender recognition framework should not impose the performance of a certain medical intervention as criteria for access to this right ("medical intervention" signifies a diagnosis, hormonal therapy, surgery or sterilization);
- The administrative legal gender recognition procedure must be entirely separate from the medical processes. The trans community is very diverse and imposing uniformed medical conditions for people with different possibilities and needs for medical interventions would be disrespectful toward their personal and bodily integrity. Simultaneously, global trends are moving toward the demedicalization of this process, because this is an administrative procedure where self-determination is of primary importance;
- When preparing the legal framework, the best interest of the child should be the primary criteria based on which access to legal gender recognition will be regulated for people under 18 years of age. The wishes and needs of the child, in line with their age and maturity, should be considered in cases of legal gender recognition for children;



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- The state should ensure that no one shall be subject to unnecessary medical or surgical intervention after birth or during childhood, and should guarantee the bodily integrity, autonomy and self-determination of all people regardless of age;
- The state should consider the possibility for legal regulations concerning people who do not identify with either sex, i.e. the introduction of a third sex marker;
- The relevant institutions should, directly and as comprehensively as possible, involve trans people in the process of adopting the law, which should reflect their needs and protect their rights.

Glossary of relevant terms

1. Sex - a category which society bases on biological traits, is assigned at birth and is registered in the civil registry books.
2. Sex marker - the letter (M or F) signifying the sex of a person in the civil registry books.
3. Gender identity - the personal identification of a person with a certain gender or lack thereof. There are many options.
4. Legal gender recognition - the recognition of a person's gender identity and its entry into the civil registries. At the present time, there are only two options, which is a limitation for people identifying outside of those categories.
5. Sex change - a term used in a medical context, referring to the complete surgical alignment and transition from one sex to the other. The affirmative term "gender confirmation" is preferred, because the process moves in the direction of physical adjustment of the body in line with the individual's gender, hence its confirmation. In this context, the term "medical transition" may also be used, even though it derives from a binary context (two sexes), hence it is always best to clearly state what kind of individual we are referring to.



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6. Legal regulation of sex change - this term refers to the regulation of the medical transition process and should not be confused with legal gender recognition, which is purely administrative in its nature.

7. Desired sex - a term used to signify the gender role an individual wants to live in. The terms "preferred gender", "gender identity" or simply "gender" are more appropriate. In this context, the term "social transition" may be used, which signifies living in the preferred gender, with or without commencing the medical transition process.

8. Gender change - a term which may be found in the context of changing the sex marker, but it is best not to use it in order not to leave an impression that gender is changeable, which supports the arguments that trans people may later change their minds, and this leads to requirements for irreversible medical changes, or total negation of the need to start the medical process. On the other hand, this does not negate the fact that genderfluid and genderqueer people exist, however, the terminology we use should be as universal as possible.

In short, the preferred terms are: sex marker, gender identity, legal gender recognition, (medical) gender confirmation, preferred gender, medical transition, social transition.