

## Draft Legal gender recognition Law in North Macedonia

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North Macedonia is among the few member states of the Council of Europe with no clear regulation regarding the legal gender recognition procedure. Even though there are no clear regulations, trans people can use certain laws in their efforts for partial uniformity of the public registry data with their gender identity. The Register of Births contains data on the name; gender, personal identification number that reflects the gender as well. The Law on civil registry permits the rectification and modification of entries in the civil status register and refers to the Civil Registry Office as a competent authority to decide on these matters.

In practice, trans people face little obstacles in the name change. There are few documented cases when the clerk advises the person to choose gender-neutral name, but there is no case of rejection of the request for the change of the name.

The problem appears when trans people request a change of the gender marker in the registers. As a result of legal obscurities in current laws, in more than 15 different cases, initiated in the same period, the Civil Registry Office made different decisions and differently applied the Law on Civil Registry.

Consequently, in one case, the Office allowed a change in the gender marker, while in another case, a trans person in an identical position was denied the change with the explanation that he had failed to submit medical documentation confirming medical confirmation of his gender. Later on, when two other people who had gone through the whole process of medical gender confirmation, were denied a change of their gender marker with an explanation that such cases do not fall in the competency of the Office.

Based on these uncertainties and lack of legal protection, person X in 2016 pursued the case before the ECHR. He argued that the absence of clear legislation or meaningful administrative practice renders the decision to reject his legal gender recognition request arbitrary and unlawful. Without any official guidance, the authorities referred to the applicant's failure to present **"the certificate issued by a relevant authority"** without, however, stating what type of certificate was required and which authority was supposed to issue it, or to his failure to comply with unspecified "requirements."

In January 2019 The ECHR delivered the decision X v. FYROM in which notes that no provision in the domestic law explicitly allows the change of the gender marker in the civil status register, unlike the right to have a person's name changed. Furthermore, the legislation does not impose any terms and conditions to be fulfilled and procedures to be followed. These considerations enabled the ECHR to conclude that the current legal framework does not provide "quick, transparent and accessible procedures" for changing on birth certificates the registered sex of transgender people.

Alongside the strategic litigation through legal cases, the civil society organization and the trans community advocated for the adoption of a legal framework with all relevant institutions, including the Ministry of Justice and the Parliament. Trans people and activists were organizing public discussions, marches, and media presence in order to raise awareness on the problems they face in their everyday life due to the lack of a clear legal framework on legal gender recognition. Our advocacy was directed toward the adoption of separate law that will comprehensively regulate the LGR procedure and will recognize gender in any area of life.

The Ministry of Justice recognized the need for amendments to the law and in November 2018 a working group was established to propose amendments to the existing Law on Civil Registry. The process was inclusive and all relevant stakeholders were part of the working group. CSOs had meaningful participation in the drafting of the law and all proposals were discussed with the transgender community. The current law reform process, although slow, signals North Macedonia's efforts to fulfill its obligations under the European Convention on Human Rights and implement the European Court judgment delivered in the X v. FYROM case.

As the introduction of the draft law highlights, the legal changes aim to remedy the lack of a regulatory framework for legal gender recognition. However, some sections raise concern among the trans community and CSOs working on the issue. Specifically, those provisions are the requirements that applicants are unmarried or get a divorce before submitting the request for legal gender recognition. Further areas of concern include the lack of provisions expressly covering the rights of non-binary people; those residing in North Macedonia without citizenship, including refugees, asylum seekers, and foreign residents; trans people in places of detention; and trans people who are parents. The draft law fails to ensure that trans children have the right to gender recognition based on self-determination and without discrimination on the ground of age.

The resilience of person X and many other trans people in the last decade resulted in an ECHR decision that provides not just individual remedy for him, but also imposes an obligation on the state to adopt a legal framework that will guarantee legal gender recognition in quick, transparent and accessible procedure based on self-determination. Following the X v. FYROM five trans people who have finished the medical transition were granted legal gender recognition. However, this is not enough to systematically resolve the problem of the unclear legal framework. Therefore, we need prompt adoption of the law. Currently the law is blocked in the Parliament and we expect once the local elections are finished the MPs to support and vote the amendments.

We are aware of the existing opposition to the adoption of the law. The rising anti-gender movement, which became more visible and vocal in recent months, might endanger the process of adoption of the amendments. However, the trans community and CSOs involved will continue their fight on different levels to achieve full recognition of the gender identity of all trans people.