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Institute for Human Rights



REPORT

# HUMAN RIGHTS SITUATION IN THE REPUBLIC OF NORTH MACEDONIA



# **HUMAN RIGHTS SITUATION IN THE REPUBLIC OF NORTH MACEDONIA**

## Report by the Institute for Human Rights

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# INTRODUCTION

This report briefly presents the human rights situation in the Republic of North Macedonia through the prism of the key areas in which the Institute for Human Rights works. It aims at determining the important events and aspects of the (dis)respect of human rights in our country that marked the year of 2023.

This report covers several areas. It focuses on the access to justice with a special focus on access to administrative justice of marginalized groups and free legal aid, equality and non-discrimination, as well as on the human rights of specific groups, such as women, persons with disabilities, Roma etc. This report also provides a brief overview of the judgments of the European Court of Human Rights that were pronounced in 2023 against the Republic of North Macedonia. It concludes with a special section on the right to a healthy environment.



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**ADMINISTRATIVE  
JUSTICE**

Access to administrative justice is particularly important for marginalized and vulnerable groups of citizens (recipients of social assistance, persons with disabilities, Roma, single parents, senior citizens, etc.) who are often unable to exercise their rights. The reasons for this impossibility are located in the lack of financial resources for conducting a certain administrative procedure or the lack of information about the possibility of filing a complaint before the Administrative Court, in the lack of knowledge of the legal norms and laws, and in the lack of trust in the institutions in front of which these citizens have the legal right to exercise the guaranteed freedoms and rights.

Taking into account the forgoing, as well as the meetings held with the citizens by way of focus groups, similar panel discussions and the provided free legal assistance, the Human Rights Institute recognized the need to monitor the public hearings in front of the Administrative Court.

For analysis and follow up, selected were the public hearings related to social rights, such as the right to receive old age pension, family pension, reimbursement for healthcare abroad, reimbursement for medication costs, child allowance, compensation for assistance and care from another person, and other grounds.

### **The following can be concluded from monitoring the public hearings:**

Citizens are very often not familiar with the procedures for exercising certain social rights before the public authorities. This applies to the procedures addressing the right to reimbursement of medication costs and reimbursement of healthcare abroad. Citizens are unaware of the procedure to be followed in order to obtain a medical opinion (consilium) for medical treatment abroad. The situation is similar with the calculation of the old age pension, especially with regard to the calculation formula, which is too complicated and incomprehensible for the citizens.

The Administrative Court very often does not respect the principle of trial within a reasonable time, i.e., the monitoring of the public hearings in front of the Administrative Court led us to conclude that complaints and cases have been filed that were initiated as early as 2021, but have not yet been completed.

The monitoring revealed continuous delays in the scheduled trials, which means that the scheduled trial slots were not respected due to delays in the previously scheduled slots. Some of the factors causing the delays include poor staffing of the court and inadequate management with the time scheduled for hearings for the purpose of more efficient performance of work tasks. All this contributes to postponing the scheduled slots for the public hearings during the day and overlapping of the hearings.

In some of the cases that were returned again for review by the Administrative Court, it was noted that the administrative authorities did not act according to the instructions given by the Administrative Court; there were even cases when the administrative authorities passed an administrative act containing the same decision. This represents a serious problem for the citizens, because it causes the realization of their rights to be prolonged, and since at issue here are the social rights, this can be crucial for improving the situation in which they find themselves from an existential, social or health aspect.

From the continuous monitoring of public hearings it can be established that the sued authority did not attend most of the scheduled hearings and that in most cases the absence was not announced or justified in advance. Of course, even then the Court could act and discuss the case; however, the weight of the Court is to assess the facts and the evidence that the defendant presented. In addition, one gets the impression that the administrative authorities are not interested in attending the scheduled hearings, and then, after the completion of the case, they often file appeals against the decisions of the Administrative Court.

In some of the public hearings that were monitored it became evident that plaintiffs do not hire their own attorney because they are recipients of social assistance or because they do not have any or have a minimal income and are not financially able to pay the attorney's fees for the full administrative procedure.

Also, citizens are not familiar with the possibilities offered by the Law on Free Legal Aid and that the Ministry of Justice can approve appointment of an attorney who would represent them in the administrative procedure or in a dispute, if they meet the requirements under the said law.

The Administrative Court does not apply the caselaw of the European Court of Human Rights and the established principles relating to administrative justice when conducting proceedings and making decisions.

The monitoring of the public hearings in front of the Administrative Court made it evident that the citizens need to be educated on how they can exercise their social rights in front of the administrative bodies and the Administrative Court. Moreover, the scheduled appointments for the hearings need to be respected in order to observe the principle of efficiency, and especially because of the specific health situation of the citizens (plaintiffs), considering that they belong to the marginalized and vulnerable groups of citizens. Active participation of public authorities in front of the Administrative Court is particularly important with a view to timely and complete delivery of the necessary documents and consistent application of the provisions of the Law on General Administrative Procedure and the Law on Administrative Disputes.

In 2023, the European Court of Human Rights pronounced a judgement in the case *S.B. against North Macedonia*, wherein it found a violation of Article 1 of Protocol 7 of the European Convention on Human Rights governing procedural guarantees in case of expulsion of foreigners.

The case concerns a person under international protection, who was found to be a danger to national security and therefore the state terminated their protection. The Court found that the decision was based on a classified note stating that the person represented a danger to the national security, whereas the courts limited themselves to a purely formal examination of the contested decision. The applicant, as determined by the Court, was not able to adequately present her case in the subsequent court proceedings because she did not have an overview of the facts that served as grounds for the decision that she leaves the sued state. In addition, the High Administrative Court grounded its decision on a completely different finding, in accordance with the Kosovo Report, and not solely on the ground that the applicant posed a security risk. Hence, the Court found that the applicant did not have the opportunity to contest such new claim at the Higher Administrative Court, as a last instance, which constitutes an additional violation.

# FREE LEGAL AID PROGRAM OF THE HUMAN RIGHTS INSTITUTE

For the third year now, the Institute for Human Rights has been implementing the Free Legal Aid Program, the goal of which is to provide access to justice and guaranteed freedoms and rights to all citizens, with a special focus on marginalized groups of citizens.

The aim of the program is to firstly provide legal assistance for all citizens in the Republic of North Macedonia, to promote equal access to justice for all, without discrimination, and to help marginalized groups of citizens so that they would be able to realize the rights they have, but also to provide an answer on how they can exercise these rights before the state institutions.

Practice shows that the positive trend of 2022 continues in 2023, as questions related to the scope of free legal aid and what it represents are fewer. This pinpoints the fact that the citizens, for the most part, are familiar with the free legal aid and how they can obtain it, but are not familiar with the areas in which it can be applied nor with the issues arising from the everyday problems of the citizens.

In the past period, the Institute for Human Rights provided primary legal assistance in 49 cases in which general legal information or general legal advice was given.

According to the Law on Free Legal Aid, the scope of primary legal aid includes:

- initial legal advice on the right to use free legal aid;
- general legal information;
- general legal advice;
- assistance in filling out the request for secondary legal assistance;
- assistance in filling out forms, forms issued by an administrative authority in an administrative procedure for social protection and for the protection of children's rights; pension, disability and health insurance; protection of victims of gender-based violence and family violence; registration procedure in the register of births; acquiring personal identification and citizenship documents;
- drafting petitions to the Antidiscrimination Commission and to the Ombudsman, and requests for the protection of freedoms and rights to the Constitutional Court of the Republic of North Macedonia.

It can be concluded from the forgoing that citizens most often need general legal information and/or general legal advice, whereas the rest of the opportunities for assistance in filling out forms, filing petitions to the Commission for Prevention and Protection against Discrimination, and to the Ombudsman, and requests for the protection of freedoms and rights to the Constitutional Court, are not as frequent. This may be the result of the fact that citizens often need information or legal advice on how to solve a certain legal problem that does not involve addressing the above-mentioned institutions.



Follow the grounds on which primary legal aid is provided:

Grounds of requested primary legal assistance	Number of general legal information and advice given
Where can I get free legal aid and what is free legal aid?	13
Protection of human rights and proceedings before the European Court of Human Rights in Strasbourg	7
Social rights (rights from health and pension insurance, benefits, right to disability pension, health care, etc.)	12
Property disputes (physical division, lifetime alimony, purchase and sale, inheritance, termination of contracts, determination of ownership rights, etc.)	9
Protection against discrimination (on different grounds)	2
Labor relations (unpaid wages, recording seniority, etc.)	1
Questions from the criminal area	4
Questions related to misdemeanor procedure	1
Consumer law	2
Other rights (forensic examination, delivery of documents, documents drawn by attorney-at-law, etc.)	6
Questions related to enforcement procedure	1

In 2022, citizens mostly contacted the Institute for Human Rights through the Institute's official email, through Facebook and the Institute's phone number. Most of the questions that were sent to the IHR were related to the realization of social rights, in particular health and pension insurance rights, such as: recognition of fulfilled requirements for acquiring a disability pension, physical disability allowances, the death of a member of the immediate family and care by another person, recognition of pensionable service, and reporting and dealing with cases of negligent treatment.

From the analysis of the rest of the questions that were sent to the Institute for Human Rights, it can be noted that many of them refer to requests for general legal information and/or legal advice in property disputes such as physical division, establishment of ownership, and challenging purchase and sale contracts and lifetime alimony contracts. The number of questions related to the protection of human freedoms and rights and questions related to submitting an application to the European Court of Human Rights in Strasbourg increased this year.



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**EQUALITY AND  
NON-DISCRIMINATION**

The new Law on Prevention and Protection against Discrimination confers to the Commission new and expanded authority compared to the duties and authority conferred with the previous Anti-discrimination Law. The Commission consists of seven members elected by the Assembly of the Republic of North Macedonia. The members are elected in a transparent procedure, with a public announcement published by the Assembly and a mandatory public hearing. Commission members are elected for a term of five years, with the right to one subsequent re-election. The current composition of the Commission of only five members was elected on January 25, 2021; during 2022 one member resigned for personal reasons, after another member resigned in 2021. This situation seriously hinders the Commission's normal functioning, creating a risk of delays in the decision-making deadlines in a period when the Commission is perceived as very relevant by the public and receives a significantly larger number of cases. In addition, in February 2024, the mandates of two more members will expire, which could further halt the work of the Commission. In 2023, the Parliament published a public advertisement<sup>1</sup> for the selection of four members of the Commission for Prevention and Protection against Discrimination, namely three members with a mandate of five years and one member with a mandate of one year two months and eight days. 25 candidates applied. At the scheduled session of the CPPD Elections and Appointments Committee the compiling of the proposed list of shortlisted candidates for members of the Commission for Prevention and Protection against Discrimination was discussed. The session was attended by civil society organizations that had the opportunity to ask the candidates questions directly. Still, the selection of members caused a series of reactions from the public, especially because two members were closely associated with political parties, whereas the elected candidate from the civil sector was granted the shortest mandate, without any adequate and legal explanation to justify it. During the procedure for selecting CPPD members other omissions were made as well. Given that candidates should have 5 years of experience in the field of discrimination, and 7 years in the field of human rights, it is obvious that this rule is interpreted very broadly.

Citizens put political affiliation and nationality/ethnicity at the top of the list of reasons for discrimination and mostly believe that discrimination occurs in the field of employment, as evident from the national representative surveys<sup>2</sup>. The fact that political and ethnic affiliation are considered the main or most common reasons for discrimination is an indication of the political and ethnic polarization of the Macedonian society. Surveys also indicate relatively low awareness and knowledge of the reality of discrimination.

Intersectional discrimination is defined as a more serious form of discrimination in the new Anti-Discrimination Law. However, intersectionality is not recognized in the policy development process.

1 <https://www.sobranie.mk/javen-oglas-za-izbor-na-clenovi-na-komisijata-za-spreccuvanje-i-zashtita-od-diskriminacija.nspk>

2 Equal Opportunities Barometer 2023, available at: [https://kszd.mk/%D1%81%D0%B5%D0%BA%D0%BE%D1%98-%D1%82%D1%80%D0%B5%D1%82-%D0%B3%D1%80%D0%B0%D1%93%D0%B0%D0%BD%D0%B8%D0%BD-%D0%B1%D0%B8%D0%BB-%D0%B4%D0%B8%D1%81%D0%BA%D1%80%D0%B8%D0%BC%D0%B8%D0%BD%D0%B8%D1%80/-%20ПРИСТАП%20ДО%20ПРАВДА%20ЗА%20ЦИТЕ/Anketa\\_Pristap%20do%20pravda.pdf](https://kszd.mk/%D1%81%D0%B5%D0%BA%D0%BE%D1%98-%D1%82%D1%80%D0%B5%D1%82-%D0%B3%D1%80%D0%B0%D1%93%D0%B0%D0%BD%D0%B8%D0%BD-%D0%B1%D0%B8%D0%BB-%D0%B4%D0%B8%D1%81%D0%BA%D1%80%D0%B8%D0%BC%D0%B8%D0%BD%D0%B8%D1%80/-%20ПРИСТАП%20ДО%20ПРАВДА%20ЗА%20ЦИТЕ/Anketa_Pristap%20do%20pravda.pdf)



3

**RIGHTS OF  
SPECIFIC GROUPS**

## WOMEN

In 2022, the Ministry of Labor and Social Policy proposed a new Law on Gender Equality<sup>3</sup> in order to improve the current approach to gender mainstreaming. This new law was supposed to replace the Law on Equal Opportunities between Men and Women. However, the proposal was not supported and was not adopted in the Parliament and is still in the consultation procedure. The law was subject to negative attacks from the public, mostly with rhetoric led by the Macedonian Orthodox Church and the anti-gender movement, claiming that the Law on Gender Equality challenges traditional gender roles and introduces an unwanted "gender ideology".

The proposed Law on Gender Equality offers a comprehensive framework for the promotion and integration of gender equality. However, its content was not well explained and communicated to the public. Unfortunately, anti-gender theories and false information regarding the text of the law prevailed in the media.

For the purpose of implementing the Istanbul Convention, several laws have been amended and harmonized with the Convention, namely the Law on Social Protection, the Criminal Code and the Law on Education.

The Parliament passed amendments to the Criminal Code in February 2023, aimed at harmonizing it with the obligations of the Istanbul Convention. Various articles were amended and new provisions were introduced, adapting existing legal concepts and introducing new ones.

Amendments include several key changes compliant with the Istanbul Convention. The definition of domestic violence has been revised to bring it in line with the standards of the Istanbul Convention, including violence against LGBTI persons and expanding the definition to include psychological and economic violence as forms of domestic violence that can occur in addition to physical and sexual violence. Changes have also been made to the definitions of sexual assault and rape, emphasizing the importance of the clear absence of consent and the explicit criminalization of rape by a current or former spouse or intimate partner. A new definition of gender-based violence was introduced, in accordance with the Istanbul Convention. Other changes include criminalizing of female genital mutilation and stalking. A new crime was introduced as well - sexual harassment. An aggravating circumstance in these crimes is when the victim is dependent on the perpetrator or is particularly vulnerable due to age, illness, disability, drug addiction, pregnancy or due to the existence of a more severe physical or mental disability.

However, in practice, services for victims of gender-based violence need to be expanded and an adequate budget is needed to meet the standards of the Istanbul Convention, including access for women with disabilities, as well as respect for different cultural, ethnic and religious factors in reporting violence. There is a lack of clear inter-institutional protocols between the police and health workers and capacities for appropriate measures.

Free legal aid for victims is provided mostly through civil society organizations. Psycho-social support should be provided in Social Work Centers. However, only initial support is provided, not long-term or specialist counselling. Employment support services and measures have not been developed in a way that makes them adaptable to the individual needs of victims. Victims of domestic violence are part of the target groups of operational plans and active measures for employment in the state. But this is an opportunity only for women - victims of domestic violence and only for victims who are registered with the Employment Agency as active job seekers. These policies do not cover the inactive population, composed mostly of women. Furthermore, the Law on Social Protection does not recognize victims of gender-based violence as a special category entitled to a guaranteed minimum income.

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3 Proposed Law on Gender Equality, [https://ener.gov.mk/Default.aspx?item=pub\\_regulation&subitem=view\\_reg\\_detail&itemid=75591](https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=75591)

Cases of domestic violence in rural areas are underreported due to lack of information and lack of support services. Furthermore, existing gender stereotypes, especially present in rural areas, influence the perception that domestic violence is still a private matter and contribute to it being underreported.

As for specialized services, the geographical distribution of shelter centers remains a major issue, as most centers are located in several larger cities and are inaccessible to women from rural areas. Also, they are not adapted to the needs of vulnerable groups of women.

## PERSONS WITH DISABILITY

The state is working on the inclusion of children with disabilities in regular schools and preschool/kindergarten facilities. Unfortunately, the treatment of people with disabilities is still viewed through the lens of the medical approach. The human rights-based approach to implementing policies has not been fully applied. Despite improvements in the legal framework, action to ensure equal access to education for children with disabilities is at an early stage and in practice there are many issues that need to be addressed.

The amendments to the Electoral Code, adopted in September 2021, indicate that the right to vote is maintained only for persons whose legal capacity has been completely revoked by an executive court decision, or whose legal capacity has been partially revoked by an executive court decision.

According to the Constitution and the Electoral Code, citizens' right to vote can be taken away with a court decision due to intellectual or psychosocial disability, which is in contradiction with the international obligations and standards.

In 2023, the process of amending the Electoral Code began, but the issue of amending these articles was not raised. The Institute for Human Rights, through a working group, submitted proposed amendments, but their full implementation would also require corresponding amendments to the Constitution. In addition, the Institute for Human Rights, in cooperation with the "Inkluziva" association, submitted a proposal for amending the Law on Political Parties in order to enable easier and independent inclusion of the persons with disabilities, as active stakeholders, in the electoral process.

Appropriate disaggregated data is necessary for proper planning and implementation of policies affecting persons with disabilities. The long-awaited census, which took place in 2022, was an excellent opportunity to overcome the problem of the absence of relevant statistics on the number of persons with disabilities. The absence of disaggregated data on the type of disability, age, gender, ethnicity, religion, etc., has a negative impact on the creation of appropriate policies and on the allocation of appropriate budgets for policy implementation. The Ombudsman and civil society organizations that are part of the independent monitoring mechanism, submitted jointly to the State Statistical Office an opinion with observations regarding the census lists questions that refer to persons with disabilities for the purpose of changing them in line with the many questions of the Washington Group, and in accordance with the Convention on the Rights of Persons with Disabilities and the United Nations standards. Despite the interventions, the census management methodology and the census questions were not changed, leaving the issue of not having adequate data on people with disabilities unresolved.

In 2023, the National Strategy on the Rights of Persons with Disabilities was adopted, covering the period 2023-2030<sup>4</sup>. This strategy aims at promotion, protection and complete enjoyment of all human rights and freedoms by persons with disabilities on an equal basis with other citizens, as well as at higher respect

<sup>4</sup> National Strategy on the Rights of Persons with Disabilities, [https://ener.gov.mk/Default.aspx?item=pub\\_regulation&subitem=view\\_reg\\_detail&itemid=75591](https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=75591)

and promotion of their dignity. In 2023, the Law on the Dissability Assessment System for Persons with Disabilities was adopted.<sup>5</sup>

## ROMA PEOPLE

Amendments have been introduced to the Law on the Civil Registry, which should ensure institutional and legal protection for the Roma people, and especially for their children so as to finally obtain a civil identity and citizenship. This law also fulfills the internationally accepted obligations for civil records and issuing documents, as accepted under the United Nations Convention on the Reduction of Statelessness, whereby every child born on the territory of the Republic of North Macedonia immediately and not later than within 45 days from the day of birth, regardless of the citizenship and personal situation of the child's parents, is recorded in the Register of births. Access to health services for Roma women remains to be a problem. Reduced access to reproductive health services leaves Roma women in a particularly vulnerable situation.

Hate crime and hate speech against Roma persist. According to a recent survey, the vast majority of the Roma perceive the system as unfair. Contributing factors include widespread ethnic profiling, as well as routine intimidating, violent and racially abusive behavior by police officers in encounters with Roma.<sup>6</sup> There are no systematic measures to solve the problem of street children.

Segregation remains an issue in the elementary schools. An appropriate solution for the segregation problem in the primary schools in Shtip and Bitola was not found neither in 2023.

The judgment of the European Court of Human Rights in the case "Elmazova and others v. North Macedonia" was pronounced in 2022. This case addresses segregation of Roma students in two elementary schools - "Gyorgi Sugarev" from Bitola and "Goce Delchev" from Shtip.

In 2020, 83.5% of the students in the primary school "Gyorgi Sugarev" were Roma. In the school "Todor Angeleski", in the same municipality and in close proximity to the settlement of Bair, which is mostly inhabited by Roma, 95.1% of the students were ethnic Macedonians. In the past few years, 58 requests for enrolling students in "Todor Angeleski" were for students who were supposed to be enrolled in "Gyorgi Sugarev" according to the zoning decision. Except for three requests submitted by Roma, all the rest were submitted by ethnic Macedonians and all were approved. In the school year 2021/2022, every child enrolled in the primary school "Gyorgi Sugarev" was of Roma origin.

In the academic year 2018-2019, Roma students accounted for 67% of the students in PS "Goce Delchev" in Shtip, and some first-grade classes were populated with Roma students only (100% of students).

In 2015 and 2016, the Ombudsman reports<sup>7</sup> established that there was indeed segregation in the said two schools ("Gyorgi Sugarev" and "Goce Delchev"), also confirmed with the report of the Institute for Human Rights and supported by the European Roma Rights Center (ERRC),<sup>8</sup> largely due to the refusal of

<sup>5</sup> Law on the Dissability Assessment System for Persons with Disabilities, 209/2023 from 05/10/2023

<sup>6</sup> [http://www.errc.org/uploads/upload\\_en/file/5459\\_file1\\_justice-denied-roma-in-the-criminal-justice-system-of-north-macedonia.pdf](http://www.errc.org/uploads/upload_en/file/5459_file1_justice-denied-roma-in-the-criminal-justice-system-of-north-macedonia.pdf)

<sup>7</sup> Dzenifer Dzeladin and Kristina Doda, Segregation of Roma Children in the Education Process, research, Institute for Human Rights, 2016, available at: [https://www.ihr.org.mk/storage/app/media/Publications/%D0%98%D1%81%D1%82%D1%80%D0%B0%D0%B6%D1%83%D0%B2%D0%B0%D1%9A%D0%B5%20%D1%81%D0%B5%D0%B3%D1%80%D0%B5%D0%B3%D0%B0%D1%86%D0%B8%D1%98%D0%B0%20%D0%BD%D0%B0%20%D1%83%D1%87%D0%B5%D0%BD%D0%B8%D1%86%D0%B8%20%D0%A0%D0%BE%D0%BC%D0%B8%20%D0%B2%D0%BE%20%D0%BE%D1%81%D0%BD%D0%BE%D0%B2%D0%BD%D0%BE%20%D0%BE%D0%B1%D1%80%D0%B0%D0%B7%D0%BE%D0%B2%D0%B0%D0%BD%D0%B8%D0%B5%20%20%D0%B2%D0%BE%20%D0%A0.%20%D0%9C%D0%B0%D0%BA%D0%B5%D0%B4%D0%BE%D0%BD%D0%B8%D1%98%D0%B0\\_%D0%9C%D0%9A.pdf](https://www.ihr.org.mk/storage/app/media/Publications/%D0%98%D1%81%D1%82%D1%80%D0%B0%D0%B6%D1%83%D0%B2%D0%B0%D1%9A%D0%B5%20%D1%81%D0%B5%D0%B3%D1%80%D0%B5%D0%B3%D0%B0%D1%86%D0%B8%D1%98%D0%B0%20%D0%BD%D0%B0%20%D1%83%D1%87%D0%B5%D0%BD%D0%B8%D1%86%D0%B8%20%D0%A0%D0%BE%D0%BC%D0%B8%20%D0%B2%D0%BE%20%D0%BE%D1%81%D0%BD%D0%BE%D0%B2%D0%BD%D0%BE%20%D0%BE%D0%B1%D1%80%D0%B0%D0%B7%D0%BE%D0%B2%D0%B0%D0%BD%D0%B8%D0%B5%20%20%D0%B2%D0%BE%20%D0%A0.%20%D0%9C%D0%B0%D0%BA%D0%B5%D0%B4%D0%BE%D0%BD%D0%B8%D1%98%D0%B0_%D0%9C%D0%9A.pdf)

<sup>8</sup> The Ombudsman Report 2015, available at: [https://ombudsman.mk/CMS/Upload/NarodenPravobranitel/upload/Godisni%20izvestai/GI-2015/GI\\_2015-za\\_pecat.pdf](https://ombudsman.mk/CMS/Upload/NarodenPravobranitel/upload/Godisni%20izvestai/GI-2015/GI_2015-za_pecat.pdf)



ethnic Macedonian parents to enroll their children in schools with predominantly Roma students. In 2018, a group of Roma parents and children from the "Gyorgi Sugarev" school filed a request for the protection of freedoms and rights before the Constitutional Court, as victims of segregation and discrimination in exercising the right to education. Although the court concluded that the "children in the Bair area attend two ethnically separated schools", it dismissed the appeal and refused to determine that the students from the primary school "Gyorgi Sugarev" experienced different or unequal treatment in exercising their right to education.

Also, at the end of 2018, a group of Roma parents and children from PS "Goce Delchev" submitted a similar petition to the Constitutional Court, stating that due to segregation and discrimination, they do not have the same opportunities as non-Roma students in their further education, employment and integration into society. In this case too, the court refused to establish that segregated students were treated differently from students in mixed classes.

In 2021 and 2022, ERRC submitted complaints to the Commission for Prevention and Protection against Discrimination concerning the segregation of Roma students in the primary schools "Gyorgi Sugarev" and "Goce Delchev", for the academic year 2021/2022. They resulted in positive decisions, in which the Commission determined that discrimination is a systemic problem in the educational system in these areas and confirmed the long-term negative consequences that segregation can have on children. The Commission issued a general recommendation to the relevant state and local authorities, as well as to the administration of the affected schools, to ensure a stricter and more consistent application of the zoning decisions that would reduce the segregation of the Roma.<sup>9</sup>

In 2023, the European Court of Human Rights pronounced a judgement on the case "Memedova and others v. North Macedonia"<sup>10</sup>, whereby it determined that four people, citizens of N. Macedonia, members of the Roma ethnic community, were discriminated by the border services by way of violating their right to freedom of movement and the prohibition of discrimination. These four people are victims of the illegal practice applied by the Ministry of Internal Affairs in the period from 2011 to 2016, by which people from the Roma ethnic community were often prohibited from leaving the country, without any legal grounds and in a manner that hurts their human dignity.

Relying on Article 2 of Protocol no. 4 (Freedom of movement), considered separately and in conjunction with Article 14 (Prohibition of discrimination), the applicants complained to the Court that their right to leave the country had been violated and that they had been singled out by border police because of their Roma ethnicity.

The Court established in the judgement that the border officers did not allow the persons of Roma nationality to leave the territory of the defendant state in order to prevent them from becoming potential asylum seekers in the European Union. Such conduct undoubtedly constitutes an interference with their right to freedom of movement, and the same may, in certain cases, be considered justified, but the imposition of such a measure, without any consideration of the individual circumstances of the applicants, cannot be characterized as necessary in a democratic society.

Furthermore, the Court found that the applicants were not allowed to leave the territory of the sued state solely because of their Roma ethnicity, and because of that they were discriminated against by the border police. It is noted in the decision that domestic authorities and courts did not provide an objective and reasonable justification for the different treatment to which the applicants who were then at the bor-

9 Opinion of the Commission for Prevention and Protection against Discrimination, available at: <https://kszd.mk/%D0%B4%D0%BE%D0%BD%D0%B5%D1%81%D0%B5%D0%BD%D0%B0-%D0%BE%D0%BF%D1%88%D1%82%D0%B0-%D0%BF%D1%80%D0%B5%D0%BF%D0%BE%D1%80%D0%B0%D0%BA%D0%B0-%D0%B7%D0%B0-%D0%B4%D0%B5%D1%81%D0%B5%D0%B3%D1%80%D0%B5%D0%B3/>

10 Memedova and others v. North Macedonia, Applications nos. 42429/16



der were subjected, nor for the actions taken by border control officials and authorities. Discriminatory practices were evident, regardless of the individual circumstances of the applicants.

## LGBTI

The new Law on Prevention and Protection against Discrimination, as well as the Criminal Code, provide a legal framework that protects against discrimination and hate crimes based on sexual orientation and gender identity.

Sexual orientation is one of the protected grounds in the Law on Asylum and Temporary Protection. Also, there is a new Policy Guidance published on LGBTI asylum claims. However, hate speech and hate crime against LGBTIQ+ remains a major problem, despite the number of reports from civil society organizations that monitor hate speech and provide free legal aid to victims of hate speech and potential hate crimes, as the law is not applied in practice. In the absence of case law and rulings on hate speech, there is widespread homophobic and transphobic speech, especially online.

North Macedonia advanced in 2023 on the ILGA Rainbow Map and is ranked 32nd out of 49 countries<sup>11</sup>. Significant progress has been made in freedom of association and assembly, reflecting improvements in security at public LGBTI events.

The current legal framework still does not allow official recognition of same-sex couples.

None of the previous acts of anti-LGBTI hate crimes recorded by the Support Center have been resolved by the judicial authorities. In 2023, only one final judgment was passed against a perpetrator, for a physical attack on an LGBTI+ activist, motivated by their sexual orientation. The perpetrator was sentenced to six months in prison.

The Commission for Prevention and Protection against Discrimination brought several positive decisions on sexual orientation and/or gender identity-based discrimination, mostly in the media.

Following the judgment of the European Court of Human Rights, the Government prepared amendments to the Law on Civil Registry, in order to implement a legal procedure for gender recognition. However, in March 2022 the draft law was withdrawn from the parliamentary procedure for further amendments, followed by the same anti-gender movement as in the case of the Law on Gender Equality.

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<sup>11</sup> <https://www.ilga-europe.org/report/rainbow-europe-2023/>

## THE ECTHR CASE "D.H. AND OTHERS V. NORTH MACEDONIA"

In 2023, the European Court of Human Rights pronounced a judgement in the case "D.H. and others v. North Macedonia"<sup>12</sup>. It found that the state exposed sex workers to inhumane and degrading treatment while they were deprived of their freedom in a police station, left all night without food, water and access to a toilet. The Court also found a violation of the right to privacy due to the publication of photographs of the victims on the website of the Ministry of Interior, without concealing their identity, and ordered the state to pay them an amount of 13,300 euros for the injuries suffered and the ineffective protection of their rights before domestic courts.

The case concerns the inhumane and degrading treatment the applicants were subjected to while in police custody after being arrested as members of a large group of sex workers. In particular, the case concerns the conditions of their detention, their photographing and publication of photos and videos with them, as well as the lack of reasoned arguments in the judgments of the national courts.

Invoking Articles 3 (Prohibition of inhuman or degrading treatment), 6 § 1 (Right to a fair trial) and 8 (Right to respect for private and family life) of the European Convention, the applicants pointed out before the Court that they were kept in detention for several hours; that they were not given food, water or proper medical care; that they did not have access to a toilet; and that their photos were published by the Ministry of Interior and their blood was tested for sexually transmitted diseases.

This judgment is a confirmation that the state has an obligation to respect the rights of everyone and to investigate allegations of inhuman and degrading treatment with a thorough and efficient investigation, especially when they come from a vulnerable group of citizens. As determined by the Court, the victims deprived of their freedom, in a situation where they are solely under the control of the authorities, were the responsibility of the State, and according to the Court, the Government did not present sufficient evidence that conclusively proves that the police authorities took into account the basic needs of the applicants, including the provision of food, water and access to a toilet during the stay at the police station. In addition, the publication of the photos taken at the police station, on the website of the Ministry of Internal Affairs, wherefrom the identity of the victims can be determined, constitutes a violation of the right to private life.

In addition to the obligation of the competent institutions to promptly implement the decision of the European Court of Human Rights, there is also the obligation to compensate damages for the injuries suffered and the ineffective protection of the rights of the plaintiffs in front of the domestic courts. Moreover, in the future it is expected that measures will be taken by the institutions, especially the Ministry of Interior, to refrain from repeating actions that violate the rights of sex workers, as well as from the competent courts to take care of the effective protection of their rights, having regard to the above judgment.

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<sup>12</sup> Case of D.H. and others v. North Macedonia, Application no. 44033/17)



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**THE RIGHT TO A  
HEALTHY ENVIRONMENT**

There is a lack of comprehensive and accurate data on pollutants and pollution sources, and there is also a lack of an integrated approach to solving environmental issues, especially in the management of water resources and waste and their impact on various vulnerable groups.

There is a lack of functional coordination between the local and national levels of government on environmental issues. There is also a lack of reliable data for assessing the impact of air pollution on human health and the environment. It is also necessary to design appropriate activities to mitigate negative impacts.

The death rate attributable to air pollution is not systematically monitored. There is a lack of air quality monitoring in rural areas.

Access to justice for environmental protection, as a human right, is very limited. There is a lack of knowledge, capacity and expertise in government bodies, the judiciary and in independent legal protection bodies to promote and implement effective access to justice in environmental matters. The Academy for Judges and Public Prosecutors does not deliver training on environmental justice.

A civil organization filed a complaint with the Civil Court, asking the Court to determine that the Government of the Republic of North Macedonia, the Ministry of Environment and Spatial Planning and the City of Skopje did not take effective measures to reduce concentrations of PM<sub>2</sub>, PM<sub>5</sub> and PM<sub>10</sub> particles in the air and were consequently in violation of the right to health, the right to a healthy environment, the right to privacy of personal and family life and the right to inviolability of the home. Charges have also been filed against certain public office holders for failure or omission to carry out actions to protect the environment. These cases were rejected by the Court.

In similar environmental disputes regarding the wild landfill in Struga, the Struga court ruled twice to dismiss the charges by declaring that it does not have jurisdiction to decide on the landfill, i.e., lacks substantive jurisdiction.

In both cases, the court ruled after several hearings were held. Evidence was collected with an on-site investigation and presented concurrently, even though the court is obliged to assess the issue of the regularity of the charges in the initial phase of the preliminary examination.

It is characteristic here that there is a low level of citizen participation, transparency and involvement when deciding on concession permits. Citizens often complain that they do not receive adequate information and are not consulted about the processes for issuing permits for concessions that are in close proximity to their places of residence.

The Ministry of Environment and Spatial Planning is a key institution in making available and in providing open and easy access to environmental information. Although there have been efforts to improve communication with the public on environmental issues, information is still presented in a way that is too technical, because of which the public finds it difficult to understand it, while the connection to human health and safety is not explicitly presented.

