

HUMAN RIGHTS WATCH

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February 3, 2010

The Prime Minister of Macedonia
Mr Nikola Gruevski
Government of Macedonia
Llindenska bb
1000 Skopje,
Republic of Macedonia

Dear Prime Minister,

Human Rights Watch writes to you in concern over your government's decision to deny effective protection based on sexual orientation and gender identity in a proposed new anti-discrimination law. As you are aware, Human Rights Watch is an independent organization dedicated to defending and protecting human rights. We investigate and expose human rights violations and hold abusers accountable.

On January 29, 2010, the government of Macedonia announced a revised proposal for an anti-discrimination law. Although previous drafts had referred to "sexual direction" as ground protected against discrimination, in the present draft such reference has been eliminated.

The Minister of Labor and Social Policy, Mr. Xhelal Bajrami acknowledged this change, adding that lesbian, gay, bisexual and transgender people could still ask for protection as the draft law also refers to "other grounds" of discrimination.

Human Rights Watch disagrees with this approach. Express mention of the grounds of discrimination is an essential measure toward eliminating unequal treatment. We urge you to change the draft law and make the anti-discrimination framework law compatible with international human rights standards.

The principles of non-discrimination and equality are at the foundation of the international human rights system, under which Macedonia has undertaken clear and obligatory commitments. The Universal Declaration of Human Rights (UDHR) establishes that "all human beings are born free and equal in dignity and rights" (art. 1) and "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind" (art. 2(1)). These principles are reiterated throughout the International Covenant on

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Civil and Political Rights and other major treaties to which Macedonia is a party.¹

The principle of non-discrimination is thus a core treaty obligation and a non-derogable norm. The enjoyment of all the rights guaranteed under the core treaties without discrimination is not subject to progressive realization; it has been defined as an immediate obligation.²

International law and standards prohibit discrimination on the basis of sexual orientation. Protecting lesbian, gay, bisexual and transgender people against discrimination is therefore part of Macedonia's duty-bound obligations. The International Covenant on Civil and Political Rights (ICCPR) to which your country acceded in 1994, affirms the equality of all people in articles 2 and 26. In the 1994 case of *Nicholas Toonen v Australia*, the Human Rights Committee, the international body of experts that monitors compliance with the ICCPR, found that both these provisions should be understood to include sexual orientation as a status protected against discrimination. Specifically it held that "reference to 'sex' in articles 2, para.1 and article 26 is to be taken as including sexual orientation."

Likewise, the United Nations Committee on the Rights of the Child, the international body of experts that monitors compliance with the Convention on the Rights of the Child (CRC) to which Macedonia acceded in 1993 has also affirmed in its General Comments that the Convention's prohibitions on discrimination (art.2) are taken to include "sexual orientation."³

United Nations treaty bodies have expressed concern when governments like yours fail to include sexual orientation in their non-discrimination legislation.⁴ United Nations treaty bodies have commended governments which have passed non-discrimination legislation that includes sexual orientation.⁵

¹ International Convention on the Elimination of all forms of Racial Discrimination (CERD), 1965, 660 UNTS 195; International Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), 1979, 1249 UNTS 13; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984, GA Res. 39/46; Convention on the Rights of the Child (CRC), 1989, GA Res. 44/25

² See: the nature of States parties obligations (Art. 2, para.1) General comment 3, December 14, 1990, and General Comment No. 14, The rights to the highest attainable standard of health: 11/08/2000, E/C.12/2000/4.

³ Committee on the Rights of the Child. General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child, CRC/GC/2003/4, July 1, 2003

⁴ For example, the Committee on Economic, Social and Cultural Rights, the international body of experts that monitors compliance with international Covenant on Economic, Social and Cultural Rights (ICESR), to which your country acceded in 1994, has repeatedly expressed concern with Hong Kong's failure in this area, Committee on Economic, Social and Cultural Rights. Concluding Observations: China, E/C.12/1/Add.107, May 2005; Concluding Observations: (Hong Kong) China, E/C.12/1/Add.58, May 21, 2001

⁵ For example, the Committee on the Elimination of Discrimination against Women, charged with interpreting and monitoring compliance with the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), to which your country acceded in 1994, has commended the governments of Sweden and New Zealand. Committee for the Elimination of Discrimination against Women. Concluding Observations: Sweden, A/56/38, July 31, 2001; Concluding Observations: New Zealand, A/49/38, April 12, 1994

Macedonia is a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms. In art. 14, the Convention prohibits discrimination in the enjoyment of the rights and freedoms set forth in the Convention. Macedonia was also one of the first countries in Europe to ratify protocol 12 of the Convention which prohibits discrimination in all rights ‘set forth by law’. The European Court of Human Rights, which authoritatively interprets and enforces the Convention, has recognized that sexual orientation is covered by article 14 of the European Convention on Human Rights. In its recent first ruling on protocol 12 it said the grounds for discrimination prohibited under that protocol would be the same as under article 14, i.e. including sexual orientation.⁶

Since 2005 your country has been involved in a “stabilization and association” process with the European Union as a candidate for future membership. The draft anti-discrimination law of your government is not in line with the Charter of Fundamental Rights of the European Union, which affirms human rights among the core values of the Union. Article 21 of the Charter, which entered into force in December 2009, prohibits discrimination, specifically including discrimination on the basis of sexual orientation.

The European Commission noticed in their 2009 progress report on your country⁷:

“Little progress has been made in the area of anti-discrimination policy. Mechanisms to identify, pursue and criminalize all forms of discrimination by State and non-State bodies against individuals or groups do not yet exist. A framework law on anti-discrimination remains to be adopted. Discrimination based on sex, ethnic origin, disability and sexual orientation persists.....Neither the Constitution nor the existing legislation identifies sexual orientation as a basis of discrimination. Lesbian, gay, bisexual and transgender (LGBT) people are not protected against direct or indirect discrimination and are stigmatized, particularly in rural areas.”

The wording of the proposed anti-discrimination law of your government also contradicts Macedonia’s public commitment in signing a joint statement on human rights and sexual orientation and gender identity presented by 66 States at the General Assembly of the United Nations on December 18, 2008.

The statement calls upon “all States and relevant international human rights mechanisms to commit to promote and protect the human rights of all persons, regardless of sexual orientation or gender identity.” It also “urges States to ensure

⁶ See the 2003 case of *Karner v Austria*. Also the explanatory memorandum of Protocol No. 12 recognizes that sexual orientation is covered by article 14 of the European Convention on Human Rights. The first ruling on protocol 12 was *Sejdić and Finci v Bosnia-Herzegovina* in 2009.

⁷ Brussels 14 October 2009, SEC (2009) 1335/3 on page 20

adequate protection of human rights defenders, and remove obstacles which prevent them from carrying out their work on issues of human rights and sexual orientation and gender identity.”

Similarly, the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (<http://www.yogyakartaprinciples.org/>), adopted by a group of 29 experts on international human rights law in 2006, call upon states to “embody the principles of equality and non-discrimination on the basis of sexual orientation and gender identity in their national constitutions or other appropriate legislation, if not yet incorporated therein, including by means of amendment and interpretation, and ensure the effective realization of these principles;” (principle 2A).

Several of your neighboring countries are in the process of introducing anti-discrimination laws or have done so in the recent past—among them Albania and Serbia. In all cases the law expressly mentions sexual orientation as a ground for non-discrimination.

We urge Macedonia not to turn away from international human rights standards and isolate itself in the region.

The purpose of a non-discrimination law is to deepen the domestic commitment to equality, and to fulfill international obligations. However, a non-discrimination law must be inclusive.

I urge you to introduce sexual orientation and gender identity into the draft non-discrimination law, work toward developing protection for all people against discrimination based on their sexual orientation or gender identity, and support the bill’s passage.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. O. Dittrich', written in a cursive style.

Boris O. Dittrich,
Advocacy director in the program for lesbian, gay, bisexual and transgender people
Human Rights Watch

CC :

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