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SEX IN RECENT GENDER POLICIES: INTERDISCIPLINARY REFLECTIONS ON THE X V. NORTH MACEDONIA CASE BEFORE THE ECTHR

Abstract

This article was initially prompted by the inconsistent use of the terms *sex* and *gender* in the landmark case X v. the Former Yugoslav Republic of Macedonia (now Republic of North Macedonia) before the European Court of Human Rights (ECtHR). Although the judgment was delivered several years ago, national legal implementation remains incomplete and, to some extent, problematic. This topic remains timely more broadly, given the limited engagement of English legal discourse with the ECtHR's evolving approach to gender recognition. The authors investigate why a seemingly straightforward legal adjustment, such as introducing a gender marker on birth certificates, has proven so contentious. Their inquiry revealed that the term *gender*, originally introduced to distinguish from *sex*, has been increasingly subsumed into the concept of *sex*, often being used interchangeably. The Court's judgment reflects this conflation: at

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times it refers to *sex*, at others to *gender*, and frequently to both (e.g., *sex/gender*) without clear differentiation. This raises critical questions, foremost among them: Why was there such a concerted effort to establish *gender* as distinct from *sex* when some of the same actors now assert that the two are effectively synonymous? While the X v. North Macedonia judgment marks a significant step in affirming transgender rights, it also exposes the ECtHR's ongoing terminological ambiguity. In the absence of clear and consistent language, and in pursuit of fulfilling human rights obligations, particularly under articles 8 and 14 of the ECtHR, a legal compromise has emerged: recognizing *gender identity* as a fundamental aspect of personal identity, protected under the right to respect for private life.

Keywords: birth register, sex, gender, gender identity, gender policies

INTRODUCTION

This paper analyses the case of X v. North Macedonia in the light of the recent ruling of the European Court of Human Rights (ECtHR) and investigates why a seemingly straightforward legal adjustment, such as introducing a gender marker on birth certificates, has proven to be very contentious. Our analysis found that the term *gender*, originally introduced to distinguish an individual's psychosocial experience from the individual's biological sex, has been increasingly subsumed into the concept of sex and is often used interchangeably in social and biological/medical literature as well as in the media. The judgment of the ECtHR reflects the melting of these two distinct concepts, at times making a reference to *sex*, at others to *gender*, and frequently to both (e.g., *sex/gender*) without clear differentiation, reinforcing a terminological ambiguity, notwithstanding the legal compromise of recognizing *gender identity* as a fundamental aspect of personal identity, protected under the right to respect for private life.

The manuscript starts by describing the Case of X v. North Macedonia, then focuses on the historical emergence and use of the two terms, particularly in the legal arena, and discusses the implications of the ruling for the legal system and practices in North Macedonia, including the adoption of sex and gender as legal terms. In the end, the manuscript puts the investigated issue from the social/legal into the

context of the biological science, calling for a collaboration between the social and natural sciences in clarifying the correct use of the terms sex and gender.

THE CASE OF X V. NORTH MACEDONIA

X, who is transgender, complained that no adequate laws or remedies existed to enable legal gender recognition and that the authorities imposed an unreasonable and unjustified obligation to undergo genital surgery before permitting a change of sex/gender in official documents (*X v. the former Yugoslav Republic of Macedonia*, 29683/16, para. 3). At birth, X was registered as female, with a traditionally feminine name and a personal identification number reflecting female sex. The applicant stated that from an early age, he identified as male. Unable to access appropriate medical care in North Macedonia, in 2010, X used specialist clinical care in Belgrade, Republic of Serbia, where a psychologist and sexologist diagnosed him with "transsexuality." A medical certificate dated 20 September 2010 recommended that he begin hormone therapy in preparation for possible genital reassignment surgery. Subsequently, X used hormone treatment to raise his testosterone levels (para. 7). A request to change both his first and family names was submitted by X on 1 June 2011. The Ministry of the Interior in North Macedonia approved this request on 7 June 2011, and shortly thereafter, the applicant received a new identity card reflecting his updated name. However, the sex designation and personal identification number on the card remained unchanged, continuing to indicate female sex (para. 8). For context, the personal identification number consists of thirteen digits, some of which encode the individual's sex, while currently no indication of a person's gender exists in the personal identification number (Закон за матичен број на граѓанинот 1992, чл. 2). On 5 July 2011, the applicant requested a change in the sex marker and personal identification number on his birth certificate to reflect his male sex (*X v. the former Yugoslav Republic of Macedonia*, 29683/16, para. 9). The Civil Status Registry, a body within the Ministry of Justice, rejected this application on the grounds that "no certificate [has been] issued by a competent authority [attesting to the fact] that [the applicant's] sex [had] been changed" (para. 10). The applicant appealed, contending that sex reassignment surgery was unavailable in North Macedonia and further, that it was unjustified in his case, given that it would force him to undergo unwanted medical

treatment and sterilization, in violation of his rights. He argued that his diagnosis of transsexuality should suffice for legal gender recognition.

From this point onward, the ECtHR's discussion begins to interweave the concepts of sex and gender. Under Article 8 of the Convention, the applicant complained about the lack of a regulatory framework that would recognize his gender identity and about the requirement, unsupported by domestic law, that he undergo genital surgery to have his male gender legally acknowledged. Under Article 13, he alleged the absence of an effective remedy (*X v. the former Yugoslav Republic of Macedonia*, 29683/16, para. 36). The ECtHR noted the applicant initiated lengthy proceedings in order to obtain redress that had been pending for over seven years, with no foreseeable conclusion. Psychologists reported that the prolonged delay and lack of legal recognition had caused long-term negative effects on his mental health (para. 22; 41).

It was observed that the applicant faced no practical barriers in bringing his claim to the national authorities, which twice upheld his claim and remitted it for reconsideration. Initially, the authorities based their findings on section 22 (2) (formerly section 23) of the Law, citing the absence of documentation proving a factual change of sex (*X v. the former Yugoslav Republic of Macedonia*, 29683/16, para. 51). The applicant maintained that no legal procedure or established judicial practice existed for altering the sex/gender marker in the civil status register, and that the law did make a distinction between rectification and alteration of public records. Consequently, there was no "quick, transparent, and accessible" legal process for gender recognition in North Macedonia.

Moreover, the authorities had arbitrarily imposed a requirement for genital surgery. The position of X relied on the precedent set in the case of A.P., Garçon and Nicot v. France (*A.P., Garçon and Nicot v. France*, 79885/12, 52471/13 and 52596/13), and argued that forcing him to undergo genital surgery was a violation of his rights in respect to private life under Article 8. That case established that transgender individuals should not have to make a choice between bodily integrity and legal recognition of gender identity. In contrast, he had been compelled to undergo surgery without a statutory basis or justification (*X v. the former Yugoslav Republic of Macedonia*, 29683/16, para. 56).

From the authors' perspective, it is understandable that the Court acknowledged the practical implications of "complete sex reassignment

surgery," noting that it cannot be considered entirely arbitrary under law (*X v. the former Yugoslav Republic of Macedonia*, 29683/16, para. 58). It is also clear that while Article 8 primarily protects an individual against arbitrary interference by public authorities, it imposes positive obligations on the State to ensure effective respect for these rights (para. 63). However, the ECtHR also highlighted that domestic law contains no explicit provision allowing a change in a person's sex/gender marker, unlike the right to change a personal name (para. 26–28), and that no formal procedures or conditions have been established for such changes (para. 67). The terminology regarding sex and gender remains somewhat ambiguous, leaving open the question of whether the terms are identical or distinct in meaning. Namely, how can a State introduce a procedure for the change of sex (similar to the change of name) when such a change of sex cannot be done (according to the laws of biology)?

According to the European Union Commission's Research Executive Agency, sex refers to biological characteristics (including genetic, hormonal, physiological, and anatomical) that distinguish between male, female, and intersex (in humans) or hermaphrodite (in non-human animals) (European Research Executive Agency [EREA] 2023). The World Health Organization (WHO) offers a similar definition of sex, as referring to "the different biological and physiological characteristics of females, males and intersex persons, such as chromosomes, hormones and reproductive organs" (World Health Organization [WHO], n. d. a.). The definitions of other medical professional organizations, such as the Australian National Health and Medical Research Council, the Canadian Institutes of Health Research, and the UK National Health Service, are in line with these definitions (Australian Government 2024; Canadian Institute of Health Research, n.d.). From this consensus on the definition of sex, it follows that change of sex cannot actually be achieved even by medical interventions – since sex is not just a combination of the mere appearance of one's genitalia and type/level of sex hormones which can be altered medically, but also a set of genetic (chromosomal and gene level) characteristics present in each cell within the individual from the moment of conception, which can *not* be changed.

Therefore, what the respondent State could introduce is probably a new graph indicating gender. This point is not contested anywhere in the case, including in the dissenting opinions of Judges Pejchal and Wojtyczek. Their disagreement with the majority centers solely on two issues: (i) the admissibility of the application, given that proceedings

before the national authorities are still ongoing, and (ii) whether there has been a violation of Article 8 of the Convention due to the absence of a regulatory framework safeguarding the applicant's right to respect for private life, invoking the principle of subsidiarity.

Since this case ruling uses the terms sex and gender in a very confusing way, the question of whether there is a difference between the terms sex and gender and whether they could be used as if they were synonyms had to be searched elsewhere. In the aftermath of the case, the Action Plan (Action plan for X v. North Macedonia 2020) stated that the Government adopted a decision, instructing the Civil Status Registry to render a decision in this matter upholding the applicant's request to effect a change on the latter's sex/gender marker on the birth certificate and the personal identification number, as soon as possible (Action plan for X v. North Macedonia 2020, 6). However, the Civil Status Registry repeatedly rejected the applicant's request, declining its jurisdiction on the account of a lack of legislation regulating legal gender recognition (Action plan for X v. North Macedonia 2020, 9). Regarding legislative measures, the Government set up a task force to prepare the draft amendments to the Law on Civil Status Registry in line with the Convention requirements on legal gender recognition, accompanied by several other activities. However, there was a significant public resistance regarding the introduction of such changes (Funa 2023), which eventually resulted in the *status quo* on the matter. Another updated Action Plan followed (Action plan for X v. North Macedonia 2023) in which the State informed the Committee of State Ministers that the Civil Status Registry has finally changed the sex/gender marker in the official book records, while the Ministry of the Interior issued a new personal identification number for the applicant corresponding with the new sex/gender marker (in fact the sex marker was legally changed, in a person diagnosed as transexual, with chromosomes and intact genitalia corresponding to the original sex marker) (Action plan for X v. North Macedonia 2023, 12). Regarding legislative measures, a draft proposal for a law was made, which was never passed in the Parliament, with the excuse of the pending change of the Government in the respondent State (Action plan for X v. North Macedonia 2023, 28). Avoiding further infringements and legal gaps, the Government Agent recommended that the Higher Administrative Court gives full effect to the judgment in similar cases (Action plan for X v. North Macedonia 2023, 36). The draft proposal of the new law stipulates "in

the proceeding for legal recognition of the gender, each person should be able to change the sex marker in the register, which should provide that person with acknowledgement of their gender identity." To date, the draft Law has not been considered and passed in the Parliament, due to anti-gender movements in the respondent State. According to the lawyer who represented the applicant, some progress has already been made, given that so far 18 or 19 persons have changed their sex/gender marker (asking for Birth certificates' revisions due to errors). The lawyer believes that a new law should drastically facilitate the procedure (Трајаноски 2023).

THE LINGUISTIC PARADIGM – SEX AND GENDER LOST IN TRANSLATION

According to the World Health Organization, sex refers to "the biological characteristics that define humans as female or male. While these sets may not be exclusive (because there are individuals who possess both), they tend to differentiate humans as males and females" (WHO 2021; WHO, n. d. b.). The working definition of WHO for sexuality is: "[…] a central aspect of being human throughout life. This encompasses sex, gender identities and roles, sexual orientation, eroticism, intimacy, and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, behaviors, practices, and relationships. It is much influenced by the interaction of biological, psychological, social, economic, political, cultural, legal, religious, and spiritual factors" (WHO 2021; WHO, n. d. b.). According to the current working definition of WHO, sexual and reproductive health is: "[…] a state of physical, emotional, mental and social well-being; it is not merely the absence of disease, dysfunction or infirmity" (WHO 2021; WHO, n. d. b.). According to this definition, sexual and reproductive rights are legal rights and freedoms related to sexuality, reproduction, and reproductive health. They include the freedom to choose about one's body and life and are uplifted in many international documents, the most important being: the UN Declaration on Growth – 1968 (first official document of that kind), the International Convention on Population and Development, Cairo – 1994, the World Conference on Women, Beijing – 2005 and the UN Convention for Elimination of all Forms of Discrimination against Women, New York – 1979. Sexual and reproductive rights include: the rights to equality and non-discrimination

(this also means equal access to ART), the right to be free from torture or to cruel, inhumane or degrading treatment or punishment, the right to privacy, the right to marry and to found a family, the right to decide the number and spacing of one's children, the rights to information, as well as education, the right to access healthcare, the rights to freedom of opinion and expression, and the right to an effective remedy for violations of fundamental rights (WHO 2021; WHO, n. d. b.). For women and girls, the capacity to exercise control over their own bodies, sexuality, and reproductive choices, free from discrimination, coercion, or violence, is fundamental to their empowerment and equality. Reproductive rights include access to abortion and contraception, protection against coerced sterilization or forced contraceptive measures, the right to high-quality reproductive healthcare, and the opportunity to receive education that enables free and informed decision-making regarding reproduction. The realization of these rights is essential not only for personal autonomy but also for the broader exercise of self-determination in other areas of life. When women's and girls' sexuality and reproductive choices are controlled or restricted, it leads to systematic violations of these rights, including forced marriage, domestic violence, femicide, female genital mutilation, and other harmful practices that undermine their dignity, safety, and agency. In these terms, sexual and reproductive rights are very closely related to sex and its male/female categories. Even more, it seems like the distinction is beneficial for providing protection for girls and women. However, in some languages in which the term gender does not exist, 'biological sex' is usually used to refer to 'sex,' and 'cultural and social sex' to refer to 'gender.' Nevertheless, even when the two distinct terms exist in the language, 'sex' and 'gender' are often used interchangeably (CE, n.d.). The European Institute for Gender Equality also provides very extensive definitions of sex and gender (European Institute for Gender Equality [EIGE], n.d.).

It seems like the differentiation of the terms sex and gender disappears, especially in specific fields of studies such as Gender studies, Women studies, Feminist studies, Queer studies, and more recently in Legal studies. In the work "Translating Gender," a group of authors has worked on the translation of the word gender in the languages of European countries (for Slavic languages see: Bahovec 2002, 30 cited in: Braidotti 2002). They noted that even what they considered a simple and straightforward term, Women's Studies, seems not to be so simple anymore because they could meet it in different titles such as Feminist

Studies, Feminine Studies, Sex Roles, or even Gender Studies. The authors rightly observe that "this semantic euphoria that stresses the term Women's Studies was never more than a compromise solution, revealing the depths of hesitation surrounding the very signifier 'woman'" (Braidotti 2002, 6). While they acknowledge that the central concern of such studies is women's emancipation, they also accept the use of alternative terminology, such as Gender Studies, to describe the same field. In this context, their working definition of gender encompasses the "many and complex ways in which social differences between the sexes acquire meaning and become structural factors in the organization of social life" (Braidotti 2002, 7). They further emphasize that "gender is a cultural and historical product, as opposed to an essentialist definition of the physical differences between sexes" (Braidotti 2002, 7).

Although the authors argue that gender primarily refers to women, they recognize that it also includes men. To clarify the concept, they adopt the classification system proposed by feminist epistemologist Sandra Harding, which frames gender in three dimensions: (i) as a dimension of personal identity, reflecting the inter-personal process of self-consciousness; (ii) as a principle organizing social identity, evident in the foundations of social institutions – from family and kinship to the division of labor across economic, political, and cultural spheres; and (iii) as the basis for normative values, embedded in identity-giving norms structured in a binary system that informs the distribution of power (Braidotti 2002, 7). From this perspective, gender research primarily seeks to improve the status of women in society.

The authors also explored the translation of sex and gender across European languages, noting that such comparisons are challenging because the two concepts are often expressed by a single term. Where distinctions exist, they frequently do not align with English usage. For example, in Slavic languages, the word "(s)pol" (sex) denotes both the biological characteristics of maleness or femaleness and grammatical gender (masculine, feminine, neuter), whereas "rod" (gender) relates to concepts such as childbirth, offspring, crops, nationhood, and blood relatives. The etymology of "sex" in various Slavic languages traces back to the Old Slavic term "(s)pol," meaning "half," derived from "(s) pholu-," signifying something that has been divided or cut into two (Braidotti 2002, 8; Bahovec 2000, 28; Bahovec 2002, 30–32).

Among the many texts examining the distinction between sex and gender, historically and in contemporary scholarship, the work considered

most explanatory by the authors of this text is *Distinguishing Between Sex and Gender: History, Current Conceptualizations, and Implications* (Muehlenhard and Peterson 2011). Although the paper primarily draws on psychological literature, it effectively traces the evolution of the terms over time and demonstrates how the perceived differences between them have become less pronounced and less meaningful.

Historically, the distinction between sex and gender in psychology began with John Money and his colleagues in the 1950s (Money, Hampson, and Hampson 1955). They used "sex" to refer to individuals' physical characteristics and "gender" to denote psychological traits and behaviors. In that way, John Money separated the biological structures, such as sex chromosomes, from psychological concepts, like gender identity. This distinction was crucial in recognizing that biology is not destiny, highlighting that some observed differences between women and men might be socially constructed rather than innate (Crawford 2006, 26).

Twenty years later, Rhoda Unger argued that the widespread use of "sex" implied biologically determined differences and reinforced the idea that distinctions between men and women are natural and immutable. She proposed using "gender" to describe culturally ascribed traits deemed appropriate for women and men, encompassing assumptions about sex differences: "those characteristics and traits socio-culturally considered appropriate to males and females" (Unger 1979). Unger also introduced the concept of gender identity, defining it as "characteristics an individual develops and internalizes in response to the stimulus functions of biological sex," noting that gender identity may be a stronger predictor of behavior than biological sex (Unger 1979, 1086).

Anthropologist Gayle Rubin was another early proponent of distinguishing sex from gender. She defined sex as the biological body into which one is born, while gender represents the socially imposed division of roles: "Gender is a socially imposed division of the sexes" (Rubin 1975, 179). According to Rubin, gender serves to enforce "obligatory heterosexuality" and societal expectations regarding labor divisions, such as men's role in providing and women's role in childcare.

Later scholarship shows that this distinction gradually led to a broader conceptual shift from sex to gender. For example, Basow found that in several psychology textbooks focusing on women, the term "sex" in early editions was replaced by "gender" in subsequent editions (Basow 2010). Muehlenhard and Peterson note that in the era before

and during the 1960s, the term "sex" appeared in textbooks over 200 times more frequently than "gender," whereas by the 2000s, "gender" had become the more commonly used term (Muehlenhard and Peterson 2011, 795 cited in: Haig 2004).

More recent uses of the terms "sex" and "gender" reveal considerable inconsistency. Scholars attempting to clarify their usage have found it challenging to establish common ground, as many authors offer their own definitions of sex and gender, along with related concepts, including sex/gender differences, roles, or identities. For instance, some authors use "female" and "male" to denote sex, linking these terms to biological characteristics, while reserving "women" and "men" for gender, associated with social or cultural factors (Glasser and Smith 2008). Others, however, reverse this usage, highlighting the lack of consensus even within the academic literature (Helgeson, Balhan, and Winterrowd 2025, 25).

Muehlenhard and Peterson categorized the various definitions of sex and gender. For some authors, "sex" refers to biological categories based on chromosomes, hormones, and reproductive anatomy, distinguishing male from female, while "gender" differentiates men from women in social or cultural terms. Others use "sex" more broadly, to describe sexual behavior or traits that arise from biological origins (Muehlenhard and Peterson 2011, 796–797).

Definitions of gender are more diverse. Scholars have conceptualized gender as maleness or femaleness, as social groups or categories, as traits or characteristics shaped by social origins, as stereotypes or societal expectations assigned to women and men, or as the performance of socially prescribed roles – often referred to as "doing gender." The latter approach has gained widespread acceptance. For example, sociologists West and Zimmerman described gender as "a routine accomplishment embedded in everyday interaction," with day-to-day behaviors constituting the ongoing performance of gender (West and Zimmerman 1987).

Philosopher Judith Butler, in her influential work *Gender Trouble*, further developed this perspective by framing gender as performative: "Gender proves to be performative, that is, constituting the identity it is purported to be. In this sense, gender is always a doing" (Butler 1990, 33). Butler argued that individuals can enact different genders at different times, emphasizing that gender is not a fixed attribute but an ongoing set of practices. She critiques traditional feminist uses of sex and gender, aiming to decouple the two so that both gender and desire

can be "flexible, free-floating, and not caused by other stable factors" (Butler 2004; Buchanan 2010). According to Butler, the conventional distinction between biological sex and socially constructed gender is misleading: sexed bodies cannot signify without gender, and the perception of sex as preexisting and independent of cultural discourse is itself an effect of gendered practices. According to Butler, sex and gender are both constructed, interpreting the notorious Simone de Beauvoir quote that a woman is not born but becomes one as if no one is really gender from the start, instead, becomes one over time (De Beauvoir 1949, cited in: Butler 2004). Consequently, many authors came closer to such ideas, claiming that not only gender but sex too is not a mere matter of biology: both sex and gender are largely the product of the complex interaction of social processes and categories, and our concepts of them are shaped by social meanings (Casetta and Tripodi 2012). The notion of identity as fluid and gender as performative, rather than innate, has become a cornerstone of queer theory. Matlin observes that "the phrase doing gender emphasizes that gender is an active, dynamic process rather than something that is stable and rigid" (Matlin 2008, 4). Rosenblum and Travis define gender as "the culturally and historically specific acting out of 'masculinity' and 'femininity'" (Rosenblum and Travis 2003, 23).

Lorber and Moore describe gender display as "the presentation of self as a gendered person through the use of markers and symbols, such as clothing, hairstyles, and jewelry" (Lorber and Moore 2007). Similarly, Golden characterizes gender as an "accomplishment," a form of self-presentation that individuals consciously or unconsciously strive to perform (Golden 2008, 142).

However, there are also authors who use both terms interchangeably. Glasser and Smith wrote, "because consensus on the meaning of gender remains elusive in education research (beyond, at best, its social and cultural basis), we recommend that researchers acknowledge this reality and clearly state their meaning if they want to use the term" (Glasser and Smith 2008, 349). However, the more recent trend indicates that sex and gender come closer, and an increasing number of authors seem to identify them. For example, Yoder acknowledges the existence of biological bodies, including chromosomes, hormones, and genitalia, while arguing that biological sex may not be as fixed as traditionally assumed. She points to growing evidence that biology influences behavior, but experiences also shape biology, illustrating what has been termed the "principle of reciprocal determinism" (Yoder 2003, 17).

This perspective supports viewing sex and gender as inseparable and intertwined, suggesting that a comprehensive understanding of women, men, girls, and boys must consider both biology (sex) and the cultural meanings ascribed to biological differences (gender) (Yoder 2003, 17). Muehlenhard and Peterson align with Yoder, proposing that as research advances, the distinction between sex and gender may become increasingly less significant or meaningful (Muehlenhard and Peterson 2011, 796–797).

Overall, it seems that the working definitions that distinguish between sex and gender are outdated in the humanities. Is it possible that the humanities and natural sciences differ so much? Isn't it that science should be complementary, evolving in facts, not in ideologies? If a sex and gender are inseparable or not very different, and the definition of gender is elusive, given its psychosocial subjective nature, a geneticist would argue that we are then left with the more objective term sex as the only objective definition of the sexual dimorphism in humans, that is the sum of the biological, endocrine, genital and genetic characteristics of an individual. A lawyer, however, especially more recently, would argue that gender identity is a part of personal identity, therefore part of a person's private life as protected by human rights treaties.

INTERNATIONAL LEGAL DOCUMENTS AND THEIR ACCEPTANCE OF THE CONCEPTS OF GENDER AND SEX

Sex and gender seem to have appeared in human rights treaties in the second half of the twentieth century, starting with the United Declaration of Human Rights in 1948. It was followed by the International Covenant on Civil and Political Rights from 1976, which recognized equal civil and political rights to men and women in its Article 3. These rights were further developed by the UN Convention on the Elimination of All Forms of Discrimination against Women from 1979. Several other key documents followed, such as the documents from the International Conference of Population and Development in Cairo in 1994, as well as the conclusions from the Fourth World Conference on Women in Beijing in 1995 that envisioned the idea that women's rights are human rights, featuring discussions on sex, sexuality, and sexual health. They linked reproductive health and women's human rights to the WHO's overall definition of health as "a state of complete physical, mental, and

social well-being and not merely the absence of disease or infirmity" (WHO, n. d. a.). Gender rights sprouted from women's rights with their joint concern regarding recognition of the inherently political nature of the "private" lives of women, including domestic lives, religious beliefs and practices, as well as sexualities (Gurr and Naples 2013, 21). In Europe, the Convention on Preventing and Combating Violence Against Women and Domestic Violence aims to prevent gender-based violence, protect victims of violence, and punish perpetrators (Council of Europe [CE], CETS No. 210). Under the Convention, "violence against women" is recognized as both a human rights violation and a form of discrimination. It encompasses all acts of gender-based violence that cause, or are likely to cause, physical, sexual, psychological, or economic harm or suffering to women. This includes threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private spheres (Art. 3a). Meanwhile, gender is defined as the "socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for women and men" (Art. 3.c). Furthermore, "gender-based violence against women," is defined as "violence that is directed against a woman because she is a woman or that affects women disproportionately" (Art. 3.d), while the term "women" includes girls under the age of 18 (Art. 3.f). Furthermore, Article 6 encompasses the commitment that Parties should "undertake gender-sensitive policies to include a gender perspective in the implementation and evaluation of the impact of the provisions of this Convention and to promote and effectively implement policies of equality between women and men and the empowerment of women" (Art. 6). This means that women's rights are not only in the category of gender rights, but they are gender rights, even more, they include girls, i.e., children, therefore are not only human rights but also children's rights.

In the practice of the ECtHR, several cases are considered the pioneers in appreciation of the human rights of trans people, such as Christine Goodwin v. United Kingdom, Y.Y. v. Turkey, Van Kück v. Germany, and Schlumpf v. Switzerland, in which the Court found a violation of Article 8 (private life) of the ECtHR due to different infirngements done by the related State (*Schlumpf v. Switzerland*, 29002; *X v. the former Yugoslav Republic of Macedonia*, 29683/16; *Y.Y. v. Turkey*, 14793/08; *Van Kück v. Germany*, 35968/97). The Committee of Ministers adopted Recommendation to Combat Discrimination on the Grounds of Sexual Orientation and Gender Identity in 2010 that states:

"Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates" (Committee of Ministers of the Council of Europe [CMCE], CM/Rec(2010)5). The European Parliamentary Assembly adopted Resolution 2024 on Discrimination against Transgender People in Europe in 2015 that states the following in its paragraph 3: "The Assembly is concerned about the violations of fundamental rights, notably the right to private life and to physical integrity, faced by transgender people when applying for legal gender recognition; relevant procedures often require sterilization, divorce, a diagnosis of mental illness, surgical interventions and other medical treatments as preconditions (Parliamentary Assembly of the Council of Europe [PACE], Doc. 13742). In addition, administrative burdens and additional requirements, such as a period of "life experience" in the gender of choice, make recognition procedures generally cumbersome. Furthermore, a large number of European countries have no provisions on gender recognition at all, making it impossible for transgender people to change the name and gender marker on personal identity documents and public registers" (PACE, Doc. 13742).

The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender from 2007, with additional changes from 2017, strengthen the right to legal recognition by stipulating: "Everyone has the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to obtain identity documents, including birth certificates, regardless of sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to change gendered information in such documents while gendered information is included in them" (Yogyakarta Principles 2017).

Compared to Europe, there is a trend among the Member States of the Council of Europe in legal recognition of sex/gender without compulsory sterilization or other medical preconditions, such as in Ireland, Denmark, Malta, Norway, the Netherlands, Sweden, Croatia, Portugal, etc. North Macedonia is one of the ten member countries of the

Council of Europe where the legal gender recognition is not available (in this category also belong Albania, Andora, Ermenia, Cyprus, Georgia, Lichtenstain, Monaco, San Marino and Serbia) (Закон за изменување на Законот за матичен број [ЗИЗМБ] 2024, чл. 1).

In order to understand how the early debates that resulted in certain legal changes occurred elsewhere (in the USA), an example will be taken from the City of New York between 1965 and 2006 as depicted by Moore and Currah (Moore and Currah 2009). The City of New York faced the challenges of sex/gender reassignment policies a long time ago. However, while the debates were precisely over their dichotomy, the final societal compromise equalized them. Moore and Currah elaborate that the designation of sex in the birth certificates evolved from the initial notion of "fraud" to the more recent (at that time – in 2006) "permanence" as a measure of authenticity. They cite Caplan, who explains that the sex designation on a birth certificate, together with the date and place of birth and parentage (when known), serves as a fundamental classificatory element of the "accurate description" intended to create a lasting correspondence "between a person and a set of signs" (Caplan 2001, 50 cited in: Moore and Currah 2009, 114).

This set of taxonomies is used to classify individuals in many categories, such as race, sex, or national origin. At the beginning, the sex designation on the birth certificates of transsexuals reprised assumptions about genitals and gender identities as accepted by the state institutions. The New York Academy of Medicine in 1965 concluded that "the desire of concealment of a change of sex by the transsexual is outweighed by the public interest for protection against fraud" (New York Academy of Medicine and New York Academy of Medicine Committee on Public Health [NYAM] 1965; NYAM 1966). The Committee concluded that an individual's status as a transsexual should be recorded for the protection of the general public. Their reasoning was based on the premise that individuals who transition retain the chromosomes of their original sex. Consequently, to prevent potential fraud, birth certificates should not be amended to reflect a change in sex. These arguments were frequently cited in court cases denying transgender individuals' requests for legal sex reclassification, at least until 2002.

For example, the highest court in Texas held that certain aspects of sex cannot be altered by will or medical intervention, stating that a physician cannot change a person's gender through surgery, medication, or counseling (*Littleton v. Prange*, 04-99-00010-CV). In 1971, the New

York City policy inclined towards a new policy that would eventually leave an empty box for sex designation for persons with petitions to change their sex. However, in order to be eligible for this "no-sex" certificate, transsexual men and women had to prove they had undergone "convertive" genital surgery, interpreted by the Department of Vital Statistics as phalloplasty or vaginoplasty. However invasive this might have seemed, the mere absence of a sex designation was a sign that the person underwent a procedure for transiting to the other sex. In this way, the absent box was speaking louder than the existing one. Between 2002 and 2006, transgender rights advocates began promoting the idea that legal sex designation should be based on gender identity rather than surgically altered genitalia, marking a significant shift in policies regarding birth certificate changes. During this period, nearly all U.S. jurisdictions, except Idaho, Ohio, and Tennessee, permitted amendments to sex on birth records (Moore and Currah 2009, 121–122). Advocates argued that legal recognition of sex should reflect an individual's gender identity, consistent with the *International Bill of Gender Rights*, which asserts that it is "fundamental that individuals have the right to define, and to redefine as their lives unfold, their own gender identities, without regard to chromosomal sex, genitalia, assigned birth sex, or initial gender role" (International Conference on Transgender Law and Employment Policy [ICTLEP] 1990). The transgender community proposed an "ideal policy" in which no sex marker would be assigned at all, effectively removing the state from defining sex. A more practical approach, which was eventually widely accepted, was to eliminate the requirement for surgical or other bodily modifications, allowing petitions for legal sex change to be supported solely by medical expert affidavits. Transgender healthcare advocates emphasized that transition is highly individualized, with multiple possible pathways, and argued that mandating genital surgery was excessive, as most transgender individuals do not undergo it. A key concern, however, was the perceived permanence or temporality of gender identity, with medical professionals worried that legal recognition might later require multiple revisions, potentially creating additional hardships.

In July 2005, the Committee recommended that medical and mental health professionals, considered the most knowledgeable about transgender health, should determine whether an individual is living fully in their acquired gender. The proposed policy required affidavits from two U.S.-licensed experts: one board-certified physician and one

mental health professional, each confirming the individual's intention for a permanent transition. Additionally, the individual had to be at least 18 years old and demonstrate that they had lived in their acquired gender for a minimum of two years. This policy proposal was perceived as a victory by the transgender advocates because it shifted transsexual people from "frauds" to ones in which the new sex of individuals could be listed on their birth certificates, even without surgery. The advocates had begun the process of renegotiating the birth-certificate policy with two goals: first, that re-issued birth certificates list the reassigned sex; second, that the requirement for "convertive surgery" be eliminated. The policy proposal was meant to accomplish both goals. In the conclusions, Moore and Currah described that the period of change in the legislation was characterized by governmental anxieties to secure the relationship between identification and identity, to ensure, in short, that someone *is* who they say they are (Moore and Currah 2009, 130).

From the described legislation development, it could be concluded that the initial conflict over the dichotomy of sex and gender slowly but surely disappeared in the public arena, being replaced with other concerns, such as the permanence or temporality of the situation, the necessity or not of medical intervention, etc. The more recent tendencies discard the later concerns too, since sex and gender are increasingly seen as interconnected, interdependent, and fluid.

NATIONAL LEGAL ADAPTATION OF THE CONCEPTS OF GENDER AND SEX FOLLOWING THE CASE X V. THE NORTH MACEDONIA

The text moves to the aftermath of the lost case in front of the ECtHR and the legal consequences for North Macedonia. What happened after the judgment in the case of X v. the former Yugoslav Republic of Macedonia?

The person concerned in the case received a new sex marker and personal identification number after 9 years of pending procedures. While this individual measure was taken (even though it took too long) as part of the State's obligation imposed by the ECtHR, the State's intentions to avoid future infringements were not successful. The authorities initiated proceedings for legislative changes in a form of amendments to the existent Law on Civil Status Registry (ЗИЗМБ 2024) that envisaged that everyone over 18, who is legally capable and unmarried, has the

right to legal recognition of their gender (пара. 19а). It was meant for the procedure to be initiated by a request filed by the person to the Civil Status Registry, together with a copy of their ID card and notarized statement, taking full material and criminal responsibility that their gender identity does not correspond to the sex given at birth and that the change is not requested for the purpose of avoiding a contractual or legal obligation, as well as executing of a sentence imposed by a competent domestic of foreign court (пара. 19в). Based on a final decision that legally recognizes the new gender (by changing the sex marker), the Civil Status Registry would have to change the sex data in the birth certificate and send a request for annulment of the personal identification number to the Ministry of the Interior (пара. 19ѓ). A new birth certificate would then be issued without any note of sex change, while the information regarding the change should remain secret (пара. 19е). The legal recognition of the gender was defined as a process in which an individual could change the sex marker in the Register as a way for the State to recognize their real gender (чл. 2). This is in contrast with the definition of "sex" and "gender" in the very same draft law that considers sex as a physical characteristic of the individual (reproductive system, chromosomes, hormones) according to which the sex is ascribed, while gender is considered as societally constructed roles, behaviors, and attributes that a certain society considers appropriate for women and men. This is also in contrast with other definitions of sex as an objective biological reality, some of which can be 'doctored' (appearance of genitalia, type and level of hormones), but some of which can't be changed (chromosomal makeup) and gender as a subjective psychosocial construct. On the other hand, gender identity is defined as "internal and individual experience of gender which may or may not correspond with the sex ascribed at birth, including the personal feelings about one's body and other manifestations of the gender, such as name, outfit, speech and manners" (чл. 1–8). Again, the main question in this research pops out – why the trouble of defining, therefore distinguishing sex and gender when they are later treated as if they were the very same?

However, in 2022, the government withdrew the draft amendments from parliamentary proceedings under the premise that they would produce a new and updated Law on Civil Status Registry, including the suggested amendments. This was criticized by the Committee of Ministers in December 2022 (CMCE, CM/Del/Dec(2022)1451/A2a). There was another attempt to bring the amendments in front of the Parliament in

June 2023 that also turned out not to be successful. These amendments, together with the newly suggested Law on Gender Equality, brought a heated debate over the concept of gender, especially contested by the Church and other civil society representatives, resulting in a similar fate of failing to progress. The Commission for Human Rights of the Council of Europe called upon the Parliament of North Macedonia to adopt the amendments concerning legal gender recognition, as an important step towards execution of the judgment X v. North Macedonia in July 2023 (Commissioner for Human Rights Council of Europe [CHRCE], 08-3221/1; Funa 2023).

The last time the Committee of Ministers examined the execution of this case was in September 2024, when the Committee reiterated "with grave concern that further to its withdrawal from the Parliament by the Government in March 2022, the draft text of the new Law on Civil Status Registry has still not been finalized, even though the previously envisaged deadline for adoption of this legislation has expired" (CE – Execution Department, 004-52421; *X v. the former Yugoslav Republic of Macedonia*, 29683/16). Even though the Committee noted positive developments of the domestic practice regarding changes of records in official documents, including the consolidation of the administrative practice of the State Commission, allowing legal gender recognition, on the basis of self-determination and without imposing any medical treatment as a condition to legal gender recognition, it gave a new deadline to the new Government formed on 23 June 2024 to fully and effectively execute the judgment in terms of the legislative changes. The draft version of the Law on Gender Equality defines gender as a societal construction – societal characteristics and possibilities that are connected with being a male or female, relationships between women and men, girls and boys, as well as relationships between women themselves and men themselves (Предлог закон за родова еднаквост [ПЗРЕ] 2021) and defines sex as biological and *psychological* characteristics based on which persons can identify as women or men (ПЗРЕ 2021). This extraordinary extension of the definition of sex to include *psychological* characteristics is unparalleled and may be a linguistic error in the draft, using *psychological* instead of *physiological*, which would be in line with the literature. The same draft defines gender identity as the inner and individual feeling of one's gender that could, but also does not have to, comply with the sex assigned at birth, as well as a personal experience of one's body and different expression of the gender, including name,

dress, speech, etc. (ПЗРЕ 2021). It remains unclear what the difference between sex, gender, and gender identity is; that is, can they actually be different, given that all reside in the psychosocial arena? Furthermore, the draft defines a person with versatile gender identities if the person does not identify themself(ves) in the binary identities of women and men, including also transgender persons, transsexuals, inter-sexuals, and non-binary persons (ПЗРЕ 2021). It is unlikely to be used in a Law a provision that treats children up to 18 years as women, men, and persons with versatile gender identities, especially if the country is a state party of the Convention on the Rights of the Child (ПЗРЕ 2021). Furthermore, the Law clarifies that the terms women and men should also apply to transgender persons who identify as such (ПЗРЕ 2021). The draft version of the Law on Gender Equality also aims to improve the position of women (which could be seen from numerous provisions that are appointed towards women primarily, for instance Art. 16, par. 1 that stipulates especially encouraging measures that give priority to women when in the same or similar conditions as men (ПЗРЕ 2021, чл. 16, пара. 1). Despite the fact that there is already a Law on Equal Possibilities for Women and Men (Закон за еднакви можности на жените и мажите 2012), the Law on Gender Equality has been promoted in the public as if its main purpose is to improve the equality of women and men (*Сител Телевизија* 2023; Закон за изменување и дополнување на Законот за еднакви можности на жените и мажите 2014). Actually, this is an ancillary purpose, while the main is to introduce gender sensitive policy in the society, which after all should be appreciated, instead of being hidden. The Law on Prevention and Protection from Violence against Women and Domestic Violence also uses the term gender-based violence in its text (from Art. 1 onwards) to describe violence against women (Закон за спречување и заштита од насилство врз жените и семејно насилство 2021). It can be concluded that in more recent times, the term gender is used often instead of sex and woma(e)n in international documents, comparatively, and in the Macedonian legislation.

COLLABORATION BETWEEN HUMANITIES AND NATURAL SCIENCES – IS THERE A UNIFORM TRUTH OR PARALLEL REALITIES?

Natural sciences appear to be more coherent in comparison to the humanities (Wizemann and Pardue 2001). A male organism is the sex that produces the mobile small gamete, sperm cell, while a female organism is the sex that produces the immobile large gamete, oocyte. A male cannot reproduce sexually without access to at least one ovum from a female. Healthy humans have 46 chromosomes in the nucleus of every cell of the body, containing the genes, two of which are the sex chromosomes, or gonosomes, which contain the genes that determine the sex of a healthy individual. Male humans (men) have one X and one Y sex chromosome (46, XY), while female humans (women) have two X chromosomes (46, XX), and this is how the sex dimorphism is coded in our genes. Men inherit an X chromosome from their mother and a Y chromosome from their father, while women inherit one X chromosome from their mothers and one X chromosome from their fathers. When the gametes are produced, the number of chromosomes is halved, and gametes have 23 chromosomes. Consequently, all oocytes women produce contain an X chromosome (23, X), whereas half of the sperm cells produced by men contain an X (23, X) and half a Y chromosome (23, Y), and therefore it is the sperm cell (or men) determining the sex and a 1-to1 *probability* that *assigns* sex *from the moment of conception* (Science of Bio Genetics 2023) or shortly after conception takes place (Erickson 1997). It follows that the very zygote (the product of fusion of the sperm cell and the oocyte) has (genetic) sex, as does every cell of the developing embryo and foetus. At the time of birth, the baby has had a sex (detectable prenatally by genetic tests or ultrasound) for approximately 9 months, and at birth, the medical profession merely recognizes the sex based on the appearance of external genitalia and records it in the medical and legal documentation. Therefore, the commonly used phrase "sex assigned at birth" is a misnomer, given that the biological reality is one of sex actually being assigned at conception.

In rare cases of about 1 in 500–1000 people there is a variation on the number of sex chromosomes resulting in sex chromosome aneuploidies associated with certain medical conditions such as Klinefleter syndrome (47, XXY – male) (Los *et al.* 2023), Jacobs syndrome (47, XYY – male) (Sood and Clemente Fuentes 2024), Turner syndrome (45,XO – female)

(Sharma and Shankar Kikkeri [2023] 2025), triple-X syndrome (47, XXX – female) (Tartaglia *et al.* 2010), etc. In other, extremely rare cases (1 in 5000–50000 people), there could be a reversal of the sex determining chromosomes and the sex, such as 46, XY female (Meyer *et al.* 2019; Singh and Ilyayeva 2023), Swyer syndrome (Meyer *et al.* 2019) and Androgen insensitivity syndrome (Singh and Ilyayeva 2023) or 46, XX male and certain intersex conditions, due to gene level genetic changes. While these genetic conditions present exceptions to the usual dichotomy of chromosomal sex determination, XX female and XY male, they do not disprove or alter the biological reality of the sex binary in healthy individuals – sperm cells producing males and oocytes producing females. Most such conditions affect the reproductive ability, with only a few case reports of preserved fertility described in the medical literature, for example, a livebirth from a predominantly 46, XY female (mosaic 80% 46, XY and 20% 45, XO) (Dumic *et al.* 2008). While an increasing number of pregnancies are tested with non-invasive prenatal tests for common aneuploidies that detect the sex of the developing baby, chromosome analysis is not a routine test performed in each newborn. Instead, the physical appearance of the baby's external genitalia is the main indicator for recognizing and recording the sex at birth (or "assigning the sex" at birth). In situations where the baby has mixed sex characteristics, persons were categorized in the past as hermaphrodites or are categorized today as intersex, third gender, etc. (Vilain *et al.* 2007). Transgender people are people who have a gender identity or gender expression that differs from their sex (trans-men and trans-women). Some transgender people seek medical treatments such as hormone replacement therapy, sex reassignment surgery, etc. Not all transgender people desire these treatments, and some cannot complete surgery for medical reasons.

According to natural sciences, sex is determined at the time of conception and is a result of a specific chromosomal makeup of the zygote (46, XX or 46, XY). If sex is defined as a sum of the biological characteristics of an individual, including their chromosomes (and genes), then the fact that sex is established from the moment of conception should be a concept easy to understand by geneticists and physicians, but also by non-medical professionals. However, the most commonly used phrase about the origins of sex among gender theorists and activists is that "sex is assigned at birth." Surprisingly, the genetic and medical professions seem not to be completely immune to the

pressures of identity politics – leading to revision of the standardized pedigree nomenclature by the National Society of Genetic Counsellors to include sex and gender inclusivity in 2022 (Bennett *et al*. 2022). This influential publication that sets the standards for the practice of the genetic counselling profession, uses the word "assigned" in the context of *sex assigned at birth* 33 times, and differentiates sex from gender in the following way: "Broadly speaking, sex is defined by morphology or biology (phenotype, karyotype, etc.) while gender refers to social constructions of roles, behaviors, expressions, and identities of men, women, boys, girls, and gender diverse people" (Bennett *et al*. 2022, 1239). The authors define sex as "a category often assigned at birth based on biological attributes (e.g., the appearance of genitalia or secondary sex characteristics)" – although secondary sex characteristics (for example menstruation in girls and sperm production in boys) are not present at birth and develop *during* puberty (Krishna and Witchel [2000] 2024). The standard pedigree symbol for male sex is a square, and for female sex, a circle. Of note, this new revision of the practice guidelines calls for a new practice of using a circle in the case of a transgender female person that was "assigned male at birth" with the use of the acronym AMAB ("assigned male at birth") under the circle and using a square in case of a transgender male person that was "assigned female at birth" with the use of acronym AFAB ("assigned female at birth").

Parents could find out the sex of their embryo after prenatal screening, and some others even by blood sample after the 10th week of pregnancy. Moreover, sex could be traced even with pre-genetic tests on an embryo in a laboratory prior to its implantation in the woman's womb. Even though sex selection is a commonly forbidden practice, in most national legislations (including North Macedonia), it is allowed to choose the sex of the embryo in circumstances when there is a known possibility for a genetically transmitted disease (since some diseases could be transmitted only to a certain sex, not to the other). Therefore, the sexes are very separate and distinguished not only by their physical appearance (certain genitals), but also by their functioning and reacting to certain traits. Those parents who opt to know their embryo's sex are not going to be surprised by their child's sex after delivery. On the contrary, they know their embryo's sex from the time they examined their genetic construction, and some even prior to the embryo's implantation in the woman's womb. Therefore, their child's sex is not "ascribed at birth"

voluntarily, by disposition, or by other indicators by the obstetrician or by other administrative bodies. Instead, it is a simple *reflection of a fact*.

Recent trends suggest that the interchangeable use of sex and gender is now interpreted as evidence of collaboration among law, science, and the humanities. Legal and academic frameworks increasingly treat sex and gender as complementary: *sex* refers to biological classification, while *gender* pertains to identity and social roles (Sharpe 2018, 23–29). This approach challenges the notion that legal definitions must be based on medical or biological criteria. On the contrary, recent trends suggest that that human rights law is an evolving concept that should not be confined by biologically deterministic definitions. In this line, the ECtHR in the case of X v. North Macedonia has rejected definitions of gender identity limited to biological criteria, favoring a more generous, case-by-case assessment.

In biological sciences, *sex* typically denotes biological characteristics–such as chromosomes, reproductive anatomy, and hormone profiles–used to classify individuals as male, female, or intersex (Fausto-Sterling 2000, 3–8). In this domain, *gender* is either peripheral or used in sociobiological contexts to describe observable behaviors. By contrast, in the humanities and social sciences, *gender* is understood as a socially and culturally constructed identity encompassing roles, behaviors, and identities that extend beyond the male/female binary. Furthermore, even *sex* is critiqued as a concept not solely grounded in biology but shaped by social perception and discourse (Butler 1990). In this line, Fausto-Sterling claims that "labeling someone a man or a woman is a social decision. We may use scientific knowledge to help us make the decision, but only our beliefs about gender (not science) can define our sex. Furthermore, our beliefs about gender affect what kinds of knowledge scientists produce about sex in the first place" (Fausto-Sterling 2000, 3).

In legal contexts, particularly international and human rights law, *sex* has traditionally been used in anti-discrimination provisions (e.g., ECHR 1950, Art. 14). However, *gender* and *gender identity* have more recently emerged as distinct legal categories. This evolution recognizes that a person's self-identified gender may not align with their assigned sex and that both categories warrant legal protection (Yogyakarta Principles 2017). Contemporary human rights law seeks to reconcile these perspectives by affirming gender identity while acknowledging biological realities, without reducing one concept to the other or

imposing additional requirements for recognition. This is evident in the evolving jurisprudence of bodies such as the ECtHR or CJEU, which, despite occasional inconsistencies in terminology, increasingly affirm the legal relevance of gender identity alongside traditional sex-based categories (e.g., *Christine Goodwin v. the United Kingdom*, 28957/95; *Identoba and Others v. Georgia*, 73235/12; A.*P., Garçon and Nicot v. France*, 79885/12, 52471/13 and 52596/13; *X v. the former Yugoslav Republic of Macedonia*, 29683/16; Court of Justice of the European Union [CJEU], 34/35).

CONCLUSION

The judgment in X v. North Macedonia marks a significant advancement in affirming the rights of transgender individuals in the country, but it also highlights the ECtHR's ongoing terminological inconsistency. The ECtHR stated: "The applicant alleged that the absence of a clear legal framework for gender recognition violated his right to respect for private life under Article 8 of the Convention" (*X v. the former Yugoslav Republic of Macedonia*, 29683/16). Elsewhere, it noted: "[…] the Civil Status Registry ("the Registry") – a body within the Ministry of Justice ("the Ministry") dismissed the applicant's application, stating that "no certificate [has been] issued by a competent authority [attesting to the fact] that [the applicant's] sex [had] been changed, the application having been corroborated only with a certificate that gender reassignment surgery [was] in preparation, which cannot be regarded as proof that it [would] take place" (*X v. the former Yugoslav Republic of Macedonia*, 29683/16). This dual usage of *sex* and *gender*, without clear differentiation, reflects a conflation of the two concepts. The ECtHR frequently uses *sex* and *gender* interchangeably throughout the judgment, which contributes to the conceptual ambiguity. The applicant's gender identity (male) and his legal sex designation (female) were treated as interchangeable, owing to several factors. First, terminology varies across Member States. Many, including North Macedonia, use only the term *sex* in civil status law and lack distinct legal provisions for gender or gender identity. The ECtHR's language often reflects the terminology used in domestic law (Holzer 2022), as well as precedents from earlier cases, such as Christine Goodwin v. the United Kingdom, where the ECtHR referred to changes in "sex" while addressing the right to gender recognition (*Christine Goodwin v. The United Kingdom*, 28957/95). Second, linguistic issues

arise from the ECtHR's bilingual (English and French) jurisprudence. The French word *sexe* can refer to both biological sex and gender identity, leading to ambiguity in translation and interpretation. Third, the ECtHR tends to prioritize substantive human rights protection over semantic precision. In X v. North Macedonia, the central question was whether the applicant's inability to legally affirm his gender identity constituted a violation of Article 8, not the specific language used to describe his identity.

Nevertheless, the interchangeable use of *sex* and *gender* risks diminishing the distinct and lived nature of gender identity. From a rights-based perspective, clarity in legal language is not a mere academic concern – it directly impacts the articulation of rights claims, the understanding of discrimination, and the coherence of state obligations. Notably, in Identoba and Others v. Georgia, the ECtHR recognized discrimination based on gender identity under Article 14, even though that article only explicitly references "sex" (*Identoba and Others v. Georgia*, 73235/12, para. 96). Though the ECtHR has not formally defined *gender identity*, it has consistently treated it as a protected aspect of private life under Article 8 (*Christine Goodwin v. The United Kingdom*, 28957/95). This recognition signals a gradual but significant shift toward a more inclusive and precise legal lexicon. However, the judgment in X v. North Macedonia demonstrates the continued need for conceptual clarity, especially as gender identity becomes an increasingly central issue in human rights litigation.

Regarding the use of *sex* and *gender* at the intersection of law, science, and the humanities: while disciplinary approaches differ and tensions do exist, these differences are increasingly viewed as complementary rather than conflicting. Challenges arise particularly in politicized or policy-heavy domains, such as healthcare (e.g., eligibility for medical screenings), sports (e.g., participation in gendered events), and legal documentation (e.g., criteria for changing legal sex or gender). These debates often blur disciplinary boundaries, such as the (mis)use of biological claims in discussions of gender identity rights.

In conclusion, the legal recognition of gender identity as a core component of personal identity is occasionally linked to the recognition of sex in official state records, particularly in systems where no separate gender marker exists. This linkage aims to fulfill the obligations under Articles 8 and 14 of the ECtHR. However, it represents a compromise: a pragmatic solution driven by linguistic limitations and the diversity

of national legal systems. Whether this compromise is appropriate, or whether it constitutes an overextension of the Convention's scope as a "living instrument," remains a subject of ongoing debate (Financial Times 2025).

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ПОЛ У САВРЕМЕНИМ РОДНИМ ПОЛИТИКАМА: ИНТЕРДИСЦИПЛИНАРНА РАЗМАТРАЊА О СЛУЧАЈУ X ПРОТИВ СЕВЕРНЕ МАКЕДОНИЈЕ ПРЕД ЕВРОПСКИМ СУДОМ ЗА ЉУДСКА ПРАВА

Резиме

Овај чланак је првобитно подстакнут недоследном употребом појмова *пол* и *род* у пресуди у предмету X против Републике Северне Македоније пред Европским судом за људска права (ЕСЉП). Иако је пресуда донета пре неколико година, њена имплементација у националном праву и даље је непотпуна и, у одређеној мери, проблематична. Тема остаје актуелна и у ширем смислу, имајући у виду ограничено интересовање англофоног правног дискурса за развој приступа ЕСЉП-а у погледу правног признања рода. Аутори разматрају због чега се наизглед једноставна правна реформа – увођење родног обележја у матичне књиге рођених – показала толико спорном. Анализа указује на то да је појам *род*, који је првобитно уведен ради разликовања од *пола*, постепено потчињен појму *пол*, те да се ова два термина све чешће користе као синоними. Пресуда Суда одражава ову терминолошку нејасноћу: час се позива на *пол*, час на *род*, а понекад и на оба (нпр. *пол/род*), без доследног разликовања. Ово отвара важна питања, међу којима и оно кључно: због чега је постојала потреба да се *род* успостави као засебан појам у односу на *пол*, када сада поједини актери тврде да су та два појма суштински истоветна? Иако пресуда у предмету X против

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Северне Македоније представља значајан корак у афирмисању права трансродних особа, она истовремено разоткрива трајну терминолошку двосмисленост у пракси ЕСЉП-а. У одсуству јасног и доследног језичког разликовања, а у настојању да се испуне обавезе из области људских права, нарочито према члановима 8. и 14. Европске конвенције о људским правима, обликовао се правни компромис: признавање *родног идентитета* као суштинског аспекта личног идентитета, заштићеног правом на поштовање приватног живота.

Кључне речи: матична књига рођених, пол, род, родни идентитет, родне политике

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